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Tuesday
April 9, 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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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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-NM-72-AD; Amendment 39-6960]

Airworthiness Directives; Boeing Model 747 Series Airplanes Equipped With General Electric CF6-80C2 Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes equipped with General Electric CF6-80C2 engines, which requires inspections for damage to the engine fire extinguishing tubes located in the number two and three engine struts and replacement or repair, if necessary, of the engine fire extinguishing tubes and/or tube support clamps. In addition, this AD requires reorienting a fire extinguishing tube clamp to clear the adjacent structure. This amendment is prompted by multiple reports of support clamps in the number two and three engine struts chafing a hole in the engine fire extinguishing tubes. This condition, if not corrected, could result in inadequate fire extinguishing agent concentration levels within the engine fire zone following discharge of the engine fire system.

EFFECTIVE DATE: April 19, 1991.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Kaszycki, Seattle Aircraft Certification Office, Propulsion Branch, ANM-140S; telephone (206) 227-2669. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: Two operators of Boeing Model 747 series airplanes equipped with General Electric CF6-80C2 engines reported recently that the tube support clamp in the number two and three engine struts chafed the engine fire extinguishing tubes. In some cases, the chafing resulted in a broken tube clamp and ultimately wore a hole in the fire extinguishing tube. The chafing appears to be induced by normal engine strut structure flexing during flight. This condition, if not corrected, could result in inadequate fire extinguishing agent concentration within the engine fire zone due to agent leakage in the strut.

The FAA has reviewed and approved Boeing Telegraphic Alert Service Bulletin 747-26A2179, dated February 28, 1991, which describes procedures for inspecting the number two and three engine fire extinguishing tubes, replacing or repairing a damaged tube and tube clamp, and reorienting the fire extinguishing tube clamp to clear the adjacent structure.

The FAA considers the required inspections to be interim action. The FAA will consider further rulemaking action when a permanent fix is developed by the manufacturer.

Since this condition is likely to exist or develop on other airplanes of the same type design, this AD requires repetitive inspections of the number two and three engine fire extinguishing tubes within the strut, reorientation of the tube clamp to clear the adjacent structure, and if necessary, replacement or repair of the tube and tube clamp, in accordance with the service bulletin previously described.

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

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

Boeing: Applies to Model 747 series airplanes equipped with General Electric CF6-80C2 engines, as listed in Boeing Alert Service Bulletin 747-26A2179, dated February 28, 1991, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent the possibility of inadequate fire extinguishing agent concentration levels within the engine fire zone following engine fire system discharge, accomplish the following:

A. Within 10 days of the effective date of this AD, accomplish the following in accordance with Boeing Telegraphic Alert Service Bulletin 747-26A2179, dated February 28, 1991:

1. Visually inspect the engine number two and three fire extinguishing tube and specified tube clamp within the engine strut.

2. If damage is detected, prior to further flight, replace or repair the damaged engine fire extinguishing tubes, as applicable, in accordance with the Telegraphic Alert Service Bulletin. (The service bulletin specifies three repair procedures, depending upon the amount of chafing damage to the tube.)

3. Remove the specified tube clamp from the fixed strut structure (the clamp should remain attached to the tube), and reinstall the tube clamp to orient the legs away from any structure.

B. Repeat the inspection required by paragraph A. of this AD at the interval specified in subparagraph B.1. or B.2. below, as applicable:

1. For airplanes that have not used the extinguishing tube patch repair procedures to repair the tube in accordance with paragraph A.2. of this AD: at intervals not to exceed 100 flight cycles or 400 hours time-in-service, whichever occurs first; or

2. For airplanes that have used the extinguishing tube patch repair procedures to repair the tube in accordance with paragraph A.2. of this AD: at intervals not to exceed 50 flight cycles or 175 hours time-in-service, whichever occurs first.

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

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

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

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment becomes effective April 19, 1991.

Issued in Renton, Washington, on March 25, 1991.

Darrell M. Pederson,

Acting Manager Transport Airplane Directorate Aircraft Certification Service.

[FR Doc. 91-8302 Filed 4-8-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-ASW-10; Amendment 39-6959]

Airworthiness Directives; Costruzioni Aeronautiche Giovanni Agusta Models A109A and A109AII Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts an airworthiness directive (AD) that supersedes a priority letter AD applicable to certain Agusta Model A109A and A109AII helicopters. The AD requires immediate and recurring inspections of certain main rotor blades, and contains provisions for terminating inspections. The AD is needed to detect or preclude a fatigue crack which could result in failure of the main rotor blade.

DATE: Effective May 7, 1991.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 7, 1991.

ADDRESSES: The applicable technical bulletins may be obtained from Agusta Aerospace Corporation, 3050 Red Lion Road, Philadelphia, PA 19114, or may be examined in the Rules Docket, Office of the Assistant Chief Counsel, Room 158, Building 3B, FAA, 4400 Blue Mound Road, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Samuel E. Brodie, FAA, Rotorcraft Standards Staff, Fort Worth, Texas 76193-0110, telephone (817) 624-5116.

SUPPLEMENTARY INFORMATION: On November 2, 1989, the FAA issued Priority Letter AD 89-23-08 which was made effective immediately as to all known U.S. owners and operators of Agusta Models A109A and A109AII helicopters. The AD requires immediate and recurring inspections of certain main rotor blades to prevent a fatigue crack which, if undetected, could result in failure of the main rotor blade and subsequent loss of the helicopter. Since the issuance of AD 89-23-08, the FAA approved (October 3, 1990) an acceptable inspection technique developed by Agusta that, when accomplished, constitutes an optional terminating action for further inspections.

Therefore, this amendment supersedes AD 89-23-08, incorporates the requirements of AD 89-23-08, and includes the optional terminating action.

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety, Incorporation by reference.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding AD 89-23-08, issued November 2, 1989 with the following new AD:

Construzioni Aeronautiche Giovanni Agusta: Amendment 39-6959. Docket No. 91-ASW-10.

Applicability: All Model A109A and A109AII helicopters, certificated in any category, with main rotor blades, part number (P/N) 109-0103-01 (all dash numbers), with serial numbers 378 through and including 1519, installed.

Compliance: Required prior to further flight for blades with 300 or more hours' total time in service on the effective date of this AD, and thereafter, for the remaining blades upon attaining 300 hours' time in service, unless already accomplished.

To prevent possible fatigue failure of the main rotor blade and subsequent loss of the helicopter, accomplish the following:

(a) Before further flight, inspect each main rotor (M/R) blade for cracks using a dye penetrant or equivalent inspection method and again within the next 10 hours' time in service as follows:

(1) Identify the designated area of the M/R blade in accordance with the requirements of paragraph 6.1.2 of Agusta Service Document BTT No. 109-6, Rev. B, dated November 2, 1989.

(2) Prepare the designated areas and conduct dye penetrant inspections in accordance with paragraphs 6.1.3 through 6.1.6 of Agusta BTT No. 109-6, Rev. B, dated November 2, 1989.

(3) Remove the blade from the helicopter for the initial inspection.

(4) After completing the inspection, protect the designated area in accordance with Agusta BTT No. 109-6, Rev. B, dated November 2, 1989, paragraph 6.1.8, or other FAA-approved methods.

Note: If an eddy current inspection, in accordance with Agusta BTT No. 109-6, Rev. B, dated November 2, 1989, is accomplished before further flight, the requirements of this paragraph are satisfied.

(b) Within the next 20 hours' time in service after the effective date of this AD, and thereafter at intervals not to exceed 25 hours' time in service, inspect each M/R blade in the designated area identified in paragraph (a) for cracks using an eddy current inspection method in accordance with the requirements of paragraph 6.2 and subparagraphs 6.2.1 through 6.2.7.2 of Agusta BTT No. 109-6, Rev. B, dated November 2, 1989, as follows:

(1) Remove the blade from the helicopter for the inspections.

(2) After completing the inspection, protect the designated area in accordance with Agusta BTT No. 109-6, Rev. B, dated November 2, 1989, paragraph 6.1.8, or other FAA-approved methods.

(c) If a crack is detected during the inspection of paragraph (a) or (b) of this AD, remove the blade from service and replace with an airworthy M/R blade.

(d) In accordance with FAR §§ 21.197 and 21.199, the helicopter may be flown to a base where the inspections required by the AD may be accomplished.

(e) An alternate method of compliance or adjustment of the compliance times, which provides an equivalent level of safety, may be used if approved by the Manager, Rotorcraft Standards Staff, FAA, Fort Worth, Texas 76193-0110, telephone (817) 624-5110.

(f) Report cracks found to the manager identified in paragraph (e) within 10 days of the inspection. (Reporting approved by the Office of Management and Budget under OMB No. 2120-0056.)

(g) The inspection requirements of paragraphs (a) and (b) do not apply to serviceable blades which have been inspected and reidentified in accordance with part II of Agusta Technical Bulletin No. 109-79, dated July 27, 1990. Serviceable blades will be reidentified by adding "T" after the serial number on the data plate.

The inspection procedures shall be done in accordance with Agusta Technical Bulletin No. 109-6, Rev. B, dated November 2, 1989, and Agusta Technical Bulletin No. 109-79, dated July 27, 1990, which incorporates Report No. 109-02-79, dated July 15, 1990. The incorporation by reference was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Agusta Aerospace Corporation, 3050 Red Lion Road, Philadelphia, PA 19114. Copies may be inspected at the Office of the Assistant Chief Counsel, FAA, 4400 Blue Mound Road, Fort Worth, TX, or at the Office of the **Federal Register**, 1100 L Street, NW., room 8401, Washington, DC.

This amendment supersedes Priority Letter AD 89-23-08, issued November 2, 1989.

Amendment 39-6959 becomes effective May 7, 1991.

Issued in Fort Worth, Texas, on March 20, 1991.

James D. Erickson,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 91-8239 Filed 4-8-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 90-CE-41-Ad; Amendment 39-6964]

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

EFFECTIVE DATE: May 13, 1991.

ADDRESSES: Technical Note No. 209-1/88 and Coversheet to Repair Instruction Elevator 209-31014RA1, both dated June 22, 1988, that are discussed in this AD may be obtained from Messerschmitt-Bolkow-Blohm GmbH, Post fach 801160, D-8000 Munchen 80, Federal Republic of Germany. This information may also be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD that is applicable to certain Messerschmitt-Bolkow Blohm GmbH (MBB) BO-209 "Monsun" airplanes was published in the **Federal Register** on January 9, 1991 (56 FR 809). The action proposed inspections and modifications of the elevator assembly area in accordance with MBB Technical Note No. 209-1/88 and Coversheet to Repair Instruction Elevator 209-31014RA1, both dated June 22, 1988.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. These minor corrections will not change the meaning of the AD nor add any additional burden upon the public than was already proposed.

It is estimated that 9 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 28 hours per airplane to accomplish the required action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $75 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $14,535.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

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

Messerschmitt-Bolkow-Blohm GMBH: Amendment 39–6964; Docket No. 90–CE–41–AD.

Applicability: Models BO–209–150FV, BO–209–150RV, BO–209–160FV, BO–209–160RV, BO–209–150FF "Monsun" airplanes (all serial numbers), certificated in any category.

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

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

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

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

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

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

(c) Special flight permits may be issued in accordance with FARs 21.197 and 21.199 to operate airplanes to a location where the requirements of this AD can be accomplished.

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

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

This amendment becomes effective on May 13, 1991.

Issued in Kansas City, Missouri, on March 28, 1991.

Don C. Jacobsen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–8300 Filed 4–8–91; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 91-ANE-08; Amendment 39-6962]

Airworthiness Directives; Textron Lycoming Reciprocating Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Textron Lycoming reciprocating engines, which requires a one-time leak check of the engine driven fuel pump diaphragm. This amendment also requires a one-time inspection of the pump fitting for proper restrictor orifice size. This AD is prompted by an engine failure which resulted from a ruptured engine fuel pump diaphragm and an oversized pump vent port restrictor orifice. This AD is needed to prevent engine power loss and possible loss of aircraft.

EFFECTIVE DATE: May 6, 1991.

ADDRESSES: The applicable service documents may be obtained from Textron Lycoming/Subsidiary of Textron Inc., 652 Oliver Street, Williamsport, Pennsylvania 17701, or may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, room 311, 12 New England Executive Park, Burlington, Massachusetts.

FOR FURTHER INFORMATION CONTACT: Mr. Pat Perrotta, or Mr. Nick Minniti, Propulsion Branch, ANE–174, New York Aircraft Certification Service, Engine & Propeller Directorate, Aircraft Certification Service, FAA, new England Region, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581; telephone (516) 791–7421.

SUPPLEMENTARY INFORMATION: The FAA has determined that a TIO–540–AF1A engine failure, and subsequent aircraft accident occurred, as a result of a leaking engine driven fuel pump diaphragm, and an oversized pump vent fitting restrictor orifice. The restrictor orifice in the pump vent fitting is intended to prevent excessive fuel flow in the event of a defective diaphragm. Since the fuel pump is vented to the engine air induction system, fuel passing through a defective pump diaphragm flows into the engine causing an over rich mixture and subsequent engine failure when the boost pump is turned on.

Textron Lycoming issued a Special Alert Notice in October 1990 to operators of TIO–540–AF1A engines, and Service Bulletins Nos. 494 and 497 for other affected engines. These publications called for performing a leak check of the engine driven fuel pump diaphragm and replacement of the restrictor fitting at the vent port. In 1989 a similar condition occurred on Model TIO–540–AE2A engines which use a similar but higher capacity fuel pump. The FAA issued AD 89–15–10 requiring similar actions as contained in this AD. Therefore, the TIO–540–AE2A Model is excluded from this AD.

Since this condition is likely to exist or develop on other engines of this same type design, an AD is being issued

which requires a leak check of the engine driven fuel pump and inspection of the fuel pump vent orifice on all Textron Lycoming turbocharged engines which incorporate an "AN" type fuel pump.

Since this condition can result in engine power failure and loss of aircraft, there is a need to minimize the exposure of revenue service engines to fuel leakage and improper vent port restrictor orifices. Therefore, safety in air transportation requires adoption of the regulation without prior notice and public comment. In addition, based on the above and the urgent need to correct this unsafe condition, a situation exists that requires immediate adoption of this regulation. Therefore, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

39.13 [Amended]

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

Textron Lycoming: Applies to TIO-360 Series engines with serial numbers up to L-215-64A inclusive; TIO-540 Series engines with serial numbers up to L-9245-61/61A inclusive, except TIO-540-AE2A engines for which the requirements of AD 89-15-10 are met; LTIO-540 Series engines with serial numbers up to L-2911-68A inclusive; TIGO-541 Series engines with serial numbers up to L-780-62 inclusive; all TIO-541 Series engines; and all TIVO-540 Series engines. Also applies to overhauled and remanufactured engines of these models shipped from the factory prior to November 15, 1990, and to any Textron Lycoming engine that has been modified to use a turbocharger and that has the fuel pump vent vented to the induction system.

Compliance is required within the next 15 hours in service for paragraph (a) and within the next 50 hours in service for paragraph (b), after the effective date of this AD, unless already accomplished.

To prevent engine power loss and possible loss of the aircraft, accomplish the following:

(a) Perform a fuel leak check at the fuel pump vent hose fitting as follows:

(1) Disconnect the fuel pump vent hose at the engine fuel pump. Then proceed to turn on the aircraft boost pump and visually inspect for any fuel draining out from the engine pump vent port.

(2) Prior to further flight, remove and replace with a serviceable pump, engine fuel pumps which exhibit leakage. Repeat the leak check following pump replacement to verify no fuel is passing through the fuel pump vent port.

(3) Reconnect the fuel pump vent hose at the engine fuel pump.

(b) Inspect and replace if necessary, the fuel pump vent restrictor fitting as follows:

(1) Remove fitting from the pump vent port and measure the orifice opening using an appropriate size wire gauge or drill bit. The orifice diameter must be within .014-.020 inch and the fitting must have the code letter "R" impression stamped on a flat surface.

(2) Prior to further flight, replace any restrictor fitting that has an orifice diameter out of limits, or if no restrictor orifice exists. Install a new or serviceable restrictor fitting with a proper size orifice, and identified with the letter "R", using Loctite hydraulic sealant or equivalent on the pipe threads.

(3) Ensure that the orientation of the reinstalled fitting is the same as the original fitting.

(4) Reconnect the pump vent line.

Note: Textron Lycoming Service Bulletins Nos. 494 and 497 and Service Instruction No. 1460 pertain to this subject. Fuel pump vent fittings supplied by Textron Lycoming with the proper size orifice are identified by the letter "R" stamped on each fitting.

Engine Models TIO-541 and TIVO-540 series are not specified in the service bulletins, for these engines the engine driven pump and vent fitting were furnished by the aircraft manufacturer.

(c) Aircraft may be ferried in accordance with the provisions of Federal Aviation Regulations 21.197 and 21.199 to a base where the AD can be accomplished.

(d) Upon submission of substantiating data by an owner or operator through an FAA Inspector (maintenance, avionics, or operations, as appropriate), an alternate method of compliance with the requirements of this AD or adjustments to the compliance schedule specified in this AD may be approved by the Manager, New York Aircraft Certification Office, Engine & Propeller Directorate, Aircraft Certification Service, FAA, New England Region, room 202, 181 South Franklin Avenue, Valley Stream, New York 11581.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Textron Lycoming/Subsidiary of Textron Inc., 652 Oliver Street, Williamsport, Pennsylvania 17701. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, room 311, 12 New England Executive Park, Burlington, Massachusetts.

This amendment becomes effective May 6, 1991.

Issued in Burlington, Massachusetts, on March 19, 1991.

Jack A. Sain, Manager,

Engine & Propeller Directorate Aircraft Certification Service.

[FR Doc. 91-8299 Filed 4-8-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 90-CE-53-AD; Amendment 39-6965]

Airworthiness Directives; Twin Commander Aircraft Corporation 500 and 600 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Twin Commander 500 and 600 series airplanes. This action requires initial and repetitive ultrasonic inspections to detect and monitor possible lower wing spar cap corrosion. Corrosion has been reported on several in-service airplanes between the lower aluminum spar cap and internal stainless steel strap, which necessitated

spar cap replacement. The actions specified in this AD are intended to identify and correct this corrosion before the wing structure is damaged to the point of failure.

EFFECTIVE DATE: May 14, 1991.

ADDRESSES: Twin Commander Service Bulletin No. 208, dated June 11, 1990, that is discussed in this AD may be obtained from the Twin Commander Aircraft Corporation, 19003 59th Drive NE., Arlington, Washington 98223; Telephone (206) 435-9797. This document may also be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Richard E. Barnett, Aerospace Engineer, FAA, Northwest Mountain Region, 1601 Lind Avenue SW., Renton, Washington 98055-4056; Telephone (206) 227-2598.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD that is applicable to certain Twin Commander 500 and 600 series airplanes that were fitted with an internal stainless steel strap in the spar cap assembly at manufacture was published in the **Federal Register** on December 26, 1990 (55 FR 53001). The proposed AD would require initial and repetitive ultrasonic inspections to detect and monitor possible lower wing spar cap corrosion in accordance with Twin Commander Service Bulletin (SB) No. 208, dated June 11, 1990.

Interested persons have been afforded an opportunity to participate in the making of this amendment. One comment in favor of the proposed rule was received. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. These minor corrections will not change the meaning or intention of the AD nor add any additional burden upon the public than was already proposed.

It is estimated that 689 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 16 hours per airplane to perform the required AD, and that the average labor rate is $55 an hour. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $606,320.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

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

Twin Commander Aircraft Corporation: Amendment 39-6965; Docket No. 90-CE-53-AD.

Applicability: Twin Commander Models 500U, 680FL, 680FL(P), 680W airplanes (serial numbers (S/N) 1731 through 1854); Model 500S airplanes (S/N 1755 through 3323); Model 681 airplanes (S/N 6001 through 6072); Model 685 airplanes (S/N 12001 through 12066); and Models 690, 690A, and 690B airplanes (S/N 11001 through 11566), certificated in any category.

Compliance: Required within the next 90 calendar days after the effective date of this AD, unless already accomplished, and every 12 calendar months thereafter.

To prevent structural failure of the wing in the area of the lower spar cap, accomplish the following:

(a) Perform an ultrasonic inspection for corrosion in accordance with the instructions in part II of Twin Commander Service Bulletin (SB) No. 208, dated June 11, 1990.

(1) If corrosion is not found, return the airplane to service and continue the inspection intervals as required in the Compliance section of this AD.

(2) If corrosion damage is found, prior to further flight, repair or replace the lower spar cap in accordance with the criteria and instructions in Twin Commander SB No. 208, dated June 11, 1990. Continue the inspection intervals as required in the Compliance section of this AD.

(b) Special flight permits may be issued in accordance with FARs 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD an be accomplished.

(c) An alternate method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Modification Branch, FAA, Northwest Mountain Region, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Modification Branch, FAA, Northwest Mountain Region.

(d) All persons affected by this directive may obtain copies of the document referred to herein upon request to the Twin Commander Aircraft Corporation, 19003 59th Drive NE., Arlington, Washington 98223; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on May 14, 1991.

Issued in Kansas City, Missouri, on March 29, 1991.

Don C. Jacobsen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-8301 Filed 4-8-91; 8:45 am]

BILLING CODE 4910-13-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1 and 150

Exemption From Speculative Position Limits for Positions Which Have a Common Owner, But Which Are Independently Controlled

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission ("Commission") has determined to adopt as final the rules it proposed extending to certain commodity trading advisors an exemption from speculative position limits for positions which have a common owner but which are independently controlled (55 FR 30926 (July 30, 1990)). In adopting the proposed rules as final, the Commission is modifying Rule 1.46, as well, in response to comments received. As adopted, these rules broaden the scope of

eligibility for this exemption from speculative positions limits to commodity trading advisors, simplify the application process, and make other technical modifications to the rule.

EFFECTIVE DATE: May 9, 1991.

FOR FURTHER INFORMATION CONTACT: John R. Mielke, Associate Director, or Paul M. Architzel, Chief Counsel, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K St. NW., Washington, DC 20581, (202) 254-3310 or 254-6990, respectively.

SUPPLEMENTARY INFORMATION:

I. Background

A. Paperwork Reduction Act Notice

The public reporting burden for the approved collection of information which contains this Rule is estimated to average 1.03 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of the information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Joe F. Mink, C.F.T.C. Clearance Officer, 2033 K St. NW., Washington, DC 20581, and to Gary Waxman, Office of Management and Budget, room 3228, N.E.O.B., Washington, DC 20503.

B. Statutory Framework

As the Commission has noted previously, speculative position limits have been a tool for the regulation of futures markets for over half a century. During this time, the Congress consistently has expressed confidence in the use of speculative position limits as an effective protection against unreasonable or unwarranted price fluctuations. See, H.R. Rep. No. 421, 74th Cong., 1st Sess. 1 (1935). See also, H.R. Rep. No. 624, 99th Cong., 2d Sess. 44 (1986).

In this regard, section 4a(1) of the Commodity Exchange Act ("Act"), 7 U.S.C. 6a(1), states that:

> * * * [e]xcessive speculation in any commodity under contracts of sale of such commodity for future delivery made on or subject to the rules of contract markets causing sudden or unreasonable fluctuations or unwarranted changes in the price of such commodity, is an undue and unnecessary burden on interstate commerce in such commodity.

Accordingly, the Congress provided the Commission with the authority to may be held by any person under contracts of sale of such commodity for future delivery on or subject to the rules of any contract market as the Commission finds are necessary to diminish, eliminate, or prevent this burden." 7 U.S.C. 6a(1).

C. Regulatory Framework

Generally, there are three elements to the regulatory framework of speculative position limits. They are the levels of the limits, the exemptions from them (in particular, for hedgers), and the policy on aggregating accounts. Undergirding this framework are the basic determinations of the Commission that all contract markets must have speculative position limits and that responsibility for speculative position limits be lodged with both the Commission and the exchanges.[1] Since its creation, the Commission periodically has reviewed each of these policies pertaining to speculative limits.[2]

Over the last several years, the Commission had been engaged in a thorough revision of its speculative position policies. In this regard, the Commission had modified and updated speculative position limits by issuing a clarification of its hedging definition with regard to the "temporary substitute" and "incidental" tests (52 FR 27195 (July 20, 1987)), and guidelines regarding the exemption of risk-management positions from exchange-set speculative position limits in financial futures contracts. 52 FR 34633 (September 14, 1987). In addition, the Commission completely revised Federal speculative position limits, adding Federal speculative position limits for soybean meal and soybean oil, and amending the structure and levels of the Federal speculative position limits, 52 FR 38914 (October 20, 1987). Most recently the Commission promulgated Commission Rule 150.3(a)(4), an exemption from speculative position limits for the positions of multi-advisor commodity pools and other similar entities which use independent account controllers. See, Commission Rule 150.3, 53 FR 41563 (October 24, 1988).

D. Exemption for Commonly-Owned, But Independently Controlled Positions

The exemption from speculative position limits for commonly owned but independently controlled positions was promulgated in response to concerns raised by certain segments of the futures industry, such as commodity pool operators and commodity trading advisors, with regard to the application of the Commission's 1979 Aggregation Policy to such accounts, 53 FR 41563, 41565.[3] Such issues were also raised before the Congress during the Commission's 1986 reauthorization. In particular, commodity pools and pension funds objected that the aggregation of such positions based upon ownership, but where actual trading control had been delegated, unnecessarily restricted their use of the futures and option markets, thereby restricting their growth.[4]

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[1] In this regard, it should be noted that the Commission directly administers speculative position limits for futures contracts on domestic agricultural commodities. See, 17 CFR 150.2. In contrast, Commission Rule 1.61, 17 CFR 1.61, requires that for all option contracts, and for futures contracts on all other commodities, exchanges adopt and enforce speculative position limits. Exchange-set speculative position limits are approved by the Commission under the standards set forth in rule 1.61 and under Section 5a(12) of the Act. Section 4a(5) of the Act provides that violation of such an exchange-set speculative position limit that has been approved by the Commission, in addition to being an enforceable violation of exchange rules, is also a violation of the Act.

[2] Initially, for example, the Commission redefined "hedging" (42 FR 42748 (August 24, 1977)), raised speculative position limits in wheat (41 FR 35060 (August 19, 1976)), and in 1979 issued its Statement of Policy On Aggregation of Accounts and Adoption of Related Reporting Rules ("1979 Aggregation Policy"), 44 FR 33839 (June 13, 1979).

In the 1979 Aggregation Policy, the Commission provided guidance to futures commission merchants and others regarding the aggregation of positions for participants in controlled and guided account programs. Specifically, the 1979 Aggregation Policy provided guidance with respect to the meaning of the "control" criterion of the aggregation standard contained in Section 4a of the Act. The 1979 Aggregation Policy stated that FCMs are deemed to control all discretionary customer accounts and accounts which are part of a customer trading program unless specified conditions indicative of the absence of control exist.

[3] That policy provided with respect to commodity pools that the positions held in all commodity pools operated by a commodity pool operator, other than a commodity pool operator who is an officer, partner, or employee of a futures commission merchant, shall be considered positions controlled by the commodity pool operator unless:

1. A trader other than the commodity pool operator directs trading for such commodity pool;

2. The commodity pool operator maintains only such control over trading in the commodity pool as is necessary to fulfill its duty to supervise diligently all accounts of the pool; and

3. Each trading decision of the commodity pool is determined independently of all trading decisions in other commodity pools and positions in accounts which the commodity pool operator holds, has a financial interest in or controls. 44 FR 33846.

Unlike the relief granted to the managed account programs of FCMs, however, the 1979 Aggregation Policy did not relieve individual commodity pools from the retirement that they aggregate their positions, even if they used independent advisors to control their trading.

[4] *See*, H.R. Rep. No. 624, 99th Cong., 2d Sess. 43 (1986).

In response, the Commission determined not to amend directly its aggregation policies. Rather, in recognition of the growth of such multi-advisor commodity funds and to accommodate these changing market conditions, the Commission determined to exempt such entities, on a case-by-case basis, from speculative position limits, 17 CFR 150.3 (1990). The salient characteristics of the exemption adopted by the Commission included: defined eligibility for the exemption limited to commodity pool operators or similar entities excluded under Commission Rule 4.5; the requirement that independent account controllers be unaffiliated, or be deemed to be unaffiliated by meeting specified criteria;[5] application of the exemption only to positions held in trading months outside of the spot month; case-by-case determinations; and, the Commission's ability to condition or withdraw the exemption in its discretion, including the ability to grant partial relief.[6]

Eligibility for this exemption was limited to commodity pool operators or the operators of similar entities excluded from the definition of "pool" or "commodity pool operator" under Commission Rule 4.5 that have delegated trading authority to independent account controllers. In response to the initial notice of proposed rulemaking, 53 FR 13290, several commenters requested that the eligibility for this exemption be broadened. The Commission determined, however, that in light of the unprecedented nature of the exemption, caution in defining its applicability and breadth was warranted. 53 FR 41567.

II. The Proposed Rulemaking

A. The Proposed Amendments

After observing the operation of the exemption since the end of 1988, and completing a market survey of trading by commodity pools during the period of December 1, 1988, to March 31, 1989, the Commission concluded, that, overall, this exemption from speculative position limits has worked well. It further concluded, however, that certain specific provisions of the rule could be refined to achieve greater administrative efficiency. Accordingly, as discussed below, the Commission proposed to broaden the exemption under Commission Rule 150.3(a)(4) and to simplify the application process. See, 55 FR 30926 (July 30, 1990).

In particular, the Commission proposed to expand eligibility for the exemption to commodity trading advisors. Commodity trading advisors initially were not eligible for the exemption.[7] Nevertheless, several commenters argued that, by virtue of their being Commission registrants who trade professionally on behalf of others, sometimes using multi-advisor structures, commodity trading advisors were similarly situated to commodity pool operators. These commenters also pointed out that the independent commodity trading advisors of a futures commission merchant are included under the Commission's 1979 Aggregation Policy and that commodity trading advisors not associated with a futures commission merchant should be accorded equivalent treatment by inclusion in the exemptive relief.[8]

In light of the absence of extraordinarily large position concentrations associated with the current exemption, the lack of adverse data arising from the study of trading by commodity pools [9] and the lack of problems associated with the relief accorded to commodity trading advisors associated with a futures commission merchant under the Aggregation Policy, the Commission proposed to include commodity trading advisors within the class of those eligible for exemption from the speculative position limits for positions which are commonly owned, but independently controlled.

Although Commission Rule 150.1(d)(3) currently defines an independent account controller as a person "who is unaffiliated with" other account controllers or the applicant commodity pool, an applicant may nonetheless demonstrate that sufficient indicia of independence exist to deem an account controller which is affiliated, either with a second account controller or as an employee of a commodity pool operator, to be unaffiliated, for purposes of this exemption. 53 FR 41568.

Many of the applications for exemption received by the Commission have included affiliated account controllers requesting to be deemed to be unaffiliated pursuant to the specified criteria. Before approving these exemptions, the Commission required the affiliated account controllers to demonstrate that they used screening procedures appropriate for maintaining the independence and confidentiality of their day-to-day trading activities, while providing for an appropriate level of supervision and oversight of their activities. In light of this experience and the lack of problems associated with these exemptions, the Commission proposed to remove the non-affiliation requirement from the definition. Rather, the Commission proposed that, where independent account controllers are affiliated, they specifically demonstrate their actual independence through the indicia of appropriate screening procedures, separate registration and marketing of the affiliated entities, and upon request, a demonstration that the affiliate's trading system is independent from that of the applicant or any other of the applicant's account controllers. In addition, the Commission proposed a fourth criterion, that the trading system of affiliated account controllers be separately developed and independent of other trading systems. 55 FR 30930.

As explained in the Notice of Proposed Rulemaking, separate development would be required to be demonstrated by reference to the autonomy of the system's originator and independence of the trading system by its lack of reliance on any other trading systems for its development or operation and that its trading signals are unique. Under this proposed criterion, the

[5] These indicia of independence include appropriate screening procedures, separate registration and marketing, and a separate trading system. 53 FR 41563, 41568.

[6] Were a commodity pool operator or other eligible entity to seek approval for multiple independent account controllers which cause the Commission concerns because of the potential size of the overall positions, the Commission could grant the applicant commodity pool operator an exemption for some fraction of the amount of contracts for which the exemption is being sought.

[7] Initially, in adopting this exemption, the Commission determined that, in light of its unprecedented nature, caution was warranted. In particular, the Commission determined that providing for an initial period to study the implementation of the rule before its further expansion was advisable. 53 FR 41567.

[8] Commission staff twice has been requested to confirm that it will not recommend to the Commission any enforcement action against multi-advisor commodity trading advisors seeking to be exempted from the speculative position limits where a commodity trading advisor has an equity ownership interest in a second commodity trading advisor. In both cases, the requestors stated that the commodity trading advisors trade according to separate technical systems, which were developed completely independently, that they maintain separate operations, are marketed to the public separately, and have in place appropriate screening procedures. One of those requests was granted subsequent to the proposed expansion of the exemption. See, CFTC No-Action Letter No. 90-5 issued by the Division of Economic Analysis, and the other was withdrawn.

[9] In particular, the staff's compilation of statistical data regarding trading by commodity pools indicates that the positions controlled by commodity pools generally are not, as a class, of the largest magnitude. To be sure, particular commodity trading advisors or commodity pools may be active, and may generally hold positions, in particular futures markets. Nothing in the statistics complied on their trading activities from December 1, 1988, to March 31, 1989, however, specifically would militate against the granting of exemptions under the current rule, or to the expansion of the exemption to additional categories of professional traders.

applicant would be required to describe the circumstances of the development of the respective trading systems. *Id.*

Finally, the Commission proposed to reduce the amount of documentation required to be filed as part of the application for exemption. In proposing this amendment, the Commission noted its belief that, in granting these exemptions, greater reliance can be placed on the applicant's sworn factual statements and representations that it meets the applicable criteria. In proposing this modification to the rules, the Commission noted that—

> to the extent market surveillance uncovers trading patterns between such independent account controllers which suggest actual trading together or otherwise lack of independence on the part of various account controllers, the Commission will initiate vigorous, appropriate action including recision of exemptions which have been granted, or other appropriate legal action. Specifically applicants should note that affidavits submitted pursuant to Commission Rule 150 constitute a "report filed with the Commission" for purposes of section 6(b) of the Act. Thus, any applicant who willfully makes any false or misleading statement of a material fact in such an affidavit commits a violation of the Act.

55 FR 30930.

Along with a greater reliance on the affidavits and representation of the applicants, the Commission proposed to streamline the application process. In particular, the Commission proposed to delete certain of the requirements that documentary evidence supporting the affidavit of the applicant be provided for its analysis.[10] Instead, those submitting affidavits as part of their application should assume responsibility for assuring themselves that the appropriate documentary and other factual evidence supports their affidavit. The Commission proposed these changes based on its belief that this modification is in greater harmony with the approach it has adopted under the 1979 Aggregation Policy in determining issues of independence, and is the more appropriate placement of responsibility for assuring compliance with the Act.

The Commission also proposed to modify the provision that applications must be supplemented or updated ten days prior to changes in independent account controller, within ten days of any material change in the application, or within such time as specified by the Commission in a special call. As proposed, the Commission must be notified ten days prior to the addition of independent account controllers, and within ten days following the termination of the authority of, or relationship with, independent account controllers. The Commission further proposed that where an applicant is adding independent account controllers, the notice include the same information required in the affidavits filed as part of the original application. These proposed modifications to the requirement for supplementation of the original application recognize the fact that, as the Commission has observed, such changes have occurred relatively often and are consistent with the industry practice, as detailed by various commenters, of terminating trading authority on less than ten days notice.[11]

Finally, the Commission noted in initially proposing the exemption, that although certain additional reporting requirements eventually might be needed to monitor operation of the exemption, at the outset, such concerns could be addressed through special call to the traders, 53 FR 13294. Although, the Commission has issued no such special calls to date, it determined that modifications to the reporting requirements are necessary in order to monitor effectively the activities of those trading pursuant to such an exemption, but noted that it separately will propose to modify its reporting requirements to permit it to better monitor the trades of entities eligible for this exemption, along with other changes to the reporting rules. Those rules are still being considered by the Commission, and have not yet been proposed.

B. Comments Received

The Commission received twelve comments in response to its proposed rulemaking to broaden the categories of those eligible for the exemption and to streamline the application process. These twelve commenters included four futures exchanges, three commodity trading advisors, three industry associations, one futures commission merchant and one producer association.

Generally, commenters were supportive of the proposed rules. They expressed agreement with the Commission's incremental approach to expanding the exemptions from speculative position limits, in response to its experience with the earlier rules. In particular, several commenters noted with approval the Commission's position that the current exemption has worked well. In this regard, most commenters noted that they welcomed the Commission's continuing attention to the impact of its rules and changes in the markets. Commenters expressing a view on the proposed streamlining of the application process and the reduction in supporting documents required to be filed uniformly supported the proposal.

Nevertheless, despite their general agreement with the Commission's approach, most commenters offered suggestions for modifying the proposed rules. In particular, several commenters suggested that eligibility for the exemption be broadened further. In addition, commenters opposed the additional proposed criterion, that the trading systems of affiliated account controllers be separately developed and independent, by which an affiliated account controller must demonstrate its independence. One commenter objected that the exemption does not apply in the spot month, and others objected that exchange implementation of similar rules was burdensome. Two comments concerned ancillary rules regarding the treatment of long and short positions held in the same account and issues regarding disclosure by commodity trading advisors. The Commission has considered carefully these comments, and as explained below, with one addition, is adopting as final the proposed amendments.

III. The Final Rules

The most frequent comment suggested that eligibility for the exemption be broadened even further. In this regard, one commenter opined that the exemption as proposed to be amended would not be available to—

> commercial banks, merchant banks, investment banks, insurance companies, broker-dealers, FCMs and other financial institutions which engage in speculative futures trading through multiple, independent account controllers. The rapid pace of evolution in the financial markets counsels against freezing the class of entities that may be eligible for relief under the exemption. Indeed, predetermining the class of eligible entities may have an unintended adverse

[10] In particular, the Commission proposed to delete the requirement that supporting documents, such as binding powers of attorney and account opening documents, be filed. Additional documents which are currently required with the application, but which the Commission is proposing to delete, include proof of registration with the Commission of each independent account controller and updated Form 40s.

Of course, most, if not all, of these types of documentary evidence, in any event, are required elsewhere by the Commission to be maintained, or will be maintained as a routine business record.

[11] As the Commission noted in the Notice of Proposed Rulemaking, both the current provision, and as proposed to be modified, is merely a notification requirement. Accordingly, the Commission will notify the applicant within the ten day period if the supplementation and updating of the application is insufficient or raises concerns about the continued viability of the exemption. In the absence of such notification, the exemption remains effective and the change is effective.

55 FR 30931.

impact on the structure and growth of the institutional presence in the domestic futures markets.

A futures exchange noted that eligibility for the exemption should be extended to other market participants, as well, including futures commission merchants, certain partnerships and registered floor traders. The exchange opined that broadening eligibility for this exemption from speculative position limits generally should result in increased volume and open interest, especially in the deferred months. An industry trade association commenting on this issue noted that futures commission merchants, investment banks and "other financial intermediaries", parent/affiliate firms and corporate divisions may also have such multi-advisor structures and should therefore also be included under the exemption. Other commenters suggested broadening the exemption also to include commercial banks, merchant banks, and insurance companies.

The Commission has carefully considered the views expressed by the commenters with regard to the appropriate breadth of the exemption. The Commission is mindful that sophisticated institutions may employ multi-advisor structures for trading. Moreover, the Commission is aware of no adverse market effects resulting from the exemptions granted so far.

Nevertheless, the Commission believes that the continued expansion of eligibility should be in a phased approach. The current exemption and the proposed expansion are limited to those who trade professionally for others, and who have a fiduciary relationship to those for whom they trade. In this respect the exemption has been similar to the relief which previously was made available to futures commission merchants under the 1979 Aggregation Policy. The classes of trader suggested by commenters for inclusion in the exemption differ from this pattern. The Commission will undertake further expansion of the exemption after it has had an opportunity to assess the impact of the current expansion and has gained a better understanding of the characteristics of the market users who might benefit from, and their need for, such an exemption and any potential impact from further broadening this exemption.

In this connection, the Commission notes that only eleven entities have applied for an exemption under the current rules, and an analysis of their trading reveals that they generally do not often avail themselves of the expanded limits. In particular, of the six commodity pools granted exemptions under Commission Rule 150.3(b) that were studied by the staff, over the last six months, these pools exceeded the all-futures-combined speculative position limit in only 9.6 percent of the instances in which they held reportable positions in any futures market having a Commission-set speculative position limit. Moreover, the Commission notes that none of the types of market users suggested by commenters as needing a broadened exemption themselves commented on the proposal. Accordingly, the prerequisite factual context for further expansion has not yet fully been developed.

Commenters also expressed concern regarding the proposed revisions associated with modification of the requirement that independent account controllers, by definition, must be unaffiliated. In particular, while deleting this definitional requirement, the Commission proposed an additional criterion by which affiliated account controllers demonstrate their actual independence. That criterion requires that the trading system of affiliated account controllers be separately developed and independent of other trading systems.

One commenter, an exchange, opined that this criterion should be defined in a "broader sense." The commenter continued that "the development and independence of trading systems may be extremely difficult to differentiate." It concluded that trading systems may be—

> defined by market knowledge, training, instinct and skill. The specifics of such a system cannot be systematically measured, and are inherently different. Furthermore, computer programs that use the same fundamental market indicators * * * may be indistinguishable between affiliated account controllers.

A producer group agrees, in general, with the above observations. It notes that although "proof of independence is an admirable goal * * * a perfectly unique system might be difficult to produce" and that "elements of logic and analysis" are bound to be similar. Instead, it recommends without elaboration that the Commission should assess the independence of trading systems. An industry trade association suggested that "genuinely independent trading systems, which have a common or overlapping genesis but which have been separately refined, especially fundamental trading systems which have a common developmental genesis may have problems meeting the criterion that trading systems be separately developed." This commenter recommends that the CTA describe the circumstances of the development of the trading system and that the Commission, in its discretion, deny such exemptions on a case-by-case basis. And finally, a commodity trading advisor observed that "there exist objective methods for demonstrating the independence of two systems" and that these data comparisons between systems should be the basis for establishing the independence of systems traded by affiliated account controllers.

The current exemption includes a bright-line test of independence, thus defining independent account controllers as "unaffiliated." See, 17 CFR 150.1(d)(3). In moving away from this requirement and toward a more streamlined application procedure, it is necessary to maintain a clearly defined standard of that which constitutes independence. Although data comparisons between various trading systems have been made, the Commission believes that, at this time, it lacks sufficient experience to use these forms of analysis in establishing such a definitive standard. Accordingly, the Commission proposed that the trading systems of affiliated account controllers be separately developed and independent of other trading systems.

The fundamental rationale underlying the proposed rule is that individual traders, and not computer programs, control trading. There is little difference with regard to the control of trading between a trader who trades regularly following two separate philosophies in determining his trading activities from a second trader who reduces those philosophies to an automated format using computer technology. The Commission believes that all of the trading of each of the individuals equally is controlled by that trader and should be aggregated. Moreover, the rule would not recognize as independently developed two systems by the same designer, who then licensed one to a second commodity trading advisor to trade.

Of course, many trading systems based on technical analysis, even when developed by different individuals, will use similar data bases and similar logic. Analogously, many traders in any particular futures market will share similar views with respect to market fundamentals. This fact alone will not call into question the separate development of a trading system, as long as the system was autonomously developed by its creator. As explained in the notice of proposed rulemaking, this standard clearly would be met

where an affiliated commodity trading advisor—

purchased its interest in the affiliate subsequent to the development by the affiliate of its trading program * * * * Alternatively, a commodity pool operator could seek an exemption for an employee who autonomously developed a trading system, and who met the other indicia of independence * * * *

55 FR 30930.

As emphasized by the Commission in proposing this amendment—

* * * [t]he lack of affiliation remains a brightline test in establishing the independence of account controllers. Accordingly, affiliates would still 'bear a heavy burden in otherwise demonstrating their independence,' 53 FR 41568, by reference to the above four indicia.

Id.

A futures exchange suggested that the spot month restriction be eliminated, contending that "independent control does not disappear during the spot month" and that the exchange is "very concerned that this restriction could potentially result in the forced liquidation of large positions at an artificial point." Commission Rule 150.3(a)(4), however, permits the speculative position limits to be exceeded to the extent that the positions are carried for entities qualifying for exemption under the rule and "are not in the spot month if there is a position limit which applies to individual trading months during their expiration." 17 CFR 150.3(a)(4). As the Commission explained in adopting this rule, it—

has traditionally taken a cautious approach with regard to spot-month speculative position limits. In proposing that the exemption apply to positions outside of the spot month, the Commission was mindful that specific spot-month limits are provided in order to alleviate concerns regarding congestion and other problems attendant to the shortages of deliverable supplies at the expiration of the contract. However, the Commission notes that the absence of position limits for individual trading months indicates the absence of these regulatory concerns in some cases such as certain finanical futures which are cash settled or physical delivery contracts with very broad deliverable supplies (*e.g.*, foreign currencies) * * * * The rule, as adopted, provides that the exemption shall apply in the spot month for those contracts which do not have individual month speculative position limits. By permitting the exemption to apply in the spot month for those contracts, the Commission will have an opportunity to study this issue further based upon actual trading experience.

53 FR 41569 (footnote omitted).

Accordingly, exchanges have been free, based on, and consistent with, the existing Commission rule, to apply their own exemptions in the spot month of selected contracts. As indicated above, the Commission assumed that the exemptions adopted by the exchanges would reflect that fact, and that subsequently it would be able to review the exchange experience with trading in the spot month. The Commission continues to believe that the position stated above with the adoption of the original rule remains valid. Accordingly, the Commission reiterates that, as currently provided, exchanges are free to adopt rules applying such an exemption in the spot month for those contract markets not having an individual month limit during the expiration month. And as stated above, the Commission may reconsider this requirement after having an opportunity to study further the issue based upon actual trading experience.

On an issue related to implementation of exchange rules, two commenters opined that the Commission should formulate a coordinated procedure with the exchanges to approve applications for exemption. One of the commenters "question(ed) the usefulness of having a number of exchanges review the same materials and draw their own conclusions for granting an exemption, once the Commission has already made such a determination."

The Commission is mindful that the enforcement by each exchange of its speculative position limit rules has the potential of increasing regulatory costs. However, application to each exchange for which an exemption is requested is necessary because such exemptions may be conditioned, in the discretion of the grantor, based upon the application and any other relevant factors.[12] See, 17 CFR 150.3(b)(2). In this connection, an exchange noted that—

the Exchange believes that it should be vested with the power to grant the exemption from speculative position limits on a case-by-case basis. In other words, the exemption should not be self-executing by merely filing * * * *. Additionally, the Exchange believes it should be able to deny or limit the extent of its approval if concerned that its markets are too liquidate or if concerned about the potential size of the overall positions in its markets. Certainly, the Exchange would not want to be faced with a situation where, if a CTA (or CPO or pension fund) were to go bankrupt, an excessive number of positions in any one commodity would have to be liquidated. The Exchange should be able to deny or restrict the exemption whenever it has reason to believe that the financial risk of any one position is too large.

The Commission agrees that it is necessary for each exchange to make an independent determination of whether, and to what degree, an exemption from its speculative limits should be granted. Nevertheless, the Commission also believes that the relative burden of filing with each exchange can be moderated. For that reason, the Commission has encouraged the exchanges to adopt exemptive rules which duplicate the Commission's. Accordingly, current exchange rules are uniform. In this regard, the Commission encourages the exchanges to modify their rules consistent with the amendments adopted herein. The uniform implementation of these amendments by the exchanges, and in particular, the simplified filing procedures being adopted herein, should largely mitigate the cost of multiple filings.

The CTAs commenting on the proposed rules raised two issues involving relief from requirements which are ancillary to the exemption but which both arise from the treatment of "affiliated" entities. In particular, they requested that the Commission clarify the applicability of rule 1.46 and the disclosure requirements under rules 4.31(a)(3) and 4.21(a)(5) to those entities granted exemptions under Commission Rule 150.3. The commenters note that in granting an exemption from speculative position limits under rule 150.3, the Commission determines that those entities, regardless of the formal nature of their relationship, trade independently. Accordingly, they contend, relief from the provisions of rules 1.46, 4.31(a)(3) and 4.21(a)(5) is consistent with the intent of those rules.

In particular, Commission Rule 1.46 requires that the positions be offset when both long and short positions are held for the account of any customer. 17 CFR 1.46. Among the exemptions from that general requirement are purchases or sales made in the separate account of a commodity pool, 17 CFR 1.46(d)(4), and purchases or sales made in separate accounts owned by a customer where "[e]ach person directing trading for one of the separate accounts is unaffiliated with and acts independently from each other person directing trading for a separate account." 17 CFR 1.46(d)(6).

[12] The commenter also suggested that the Commission and the exchanges set the applicable exemptive levels too low when conditioning such exemptions. The Commission has granted exemptions to commodity pools having multiple independent account controllers generally at levels between two and four times the applicable speculative position limit, depending upon the overall liquidity of the particular contract market. An analysis of selected entities granted such exemptions reveals that seldom, if ever, do they approach the upper limit of the exemption level granted. Accordingly, the Commission, for the present, will continue to grant exemptions as it has been doing, but will review its policies in this regard periodically.

The Commission agrees that the intent of these exemptions from rule 1.46 would be applicable equally to any entity granted an exemption from speculative position limits under Commission Rule 150.3.[13] Accordingly, the Commission is amending rule 1.46, adding a new paragraph (d)(7), to clarify this intent.

Rules 4.21 and 4.31, respectively, require registered commodity pool operators and commodity trading advisors to disclose their past performance and the past performance of their principals. Rule 4.21 also requires registered commodity pool operators to show the past performance of their pools' commodity trading advisors and their principals. In the Notice of Proposed Rulemaking, the Commission noted that such disclosures would not constitute "marketing" for purposes of determining the independence of the traders. 55 FR 30930. The commenters further suggested, however, that "[o]nce the Commission determines that each is a separately operated entity that will not be involved in the trading of the other, there is no reason to include both sets of data" in the applicable Disclosure Documents.

In this regard, the Commission notes that the Division of Trading and Markets has issued a letter exempting a CTA from the requirement in rule 4.31(a)(3) that it include in its Disclosure Document a statement of the past performance of a second CTA, which is a ninety percent owner of the first, based upon representations that:

> (1) the * * * trading programs were separately developed; (2) [the second CTA] and its personnel have no role in the day-to-day operations of [the first]; (3) [the first] has sufficient support personnel such that, in the event of an emergency it should not be necessary to call upon [the second's] personnel for assistance; and (4) [the first's] Disclosure Document explicitly states that neither [the second] nor its principals have any involvement in [the first's] trading.

CFTC Interpretative Letter No. 91-1, *supra* note 13, at 37,631. The Commission anticipates that the staff will review requests for exemptive relief with respect to past performance disclosure by entities granted exemptions under Commission Rule 150.3 on a case-by-case basis. Accordingly, the Commission is not now amending these rules. Of course, it may reconsider this determination based upon its further experience in administering exemptions under Commission Rule 150.3.

IV. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, requires that agencies, in proposing rules, consider the impact of these rules on small entities. The Commission has previously determined that "large traders" are not "small entities" for purposes of the RFA. 47 FR 18618 (April 30, 1982). These proposed rules are exemptions from limits on the size of speculative positions which typically may be held by the largest traders in these markets. Accordingly, if promulgated, these rules would have no significant impact on a substantial number of small entities. Moreover, the Commission invited comments from any firms or other persons which believed that the promulgation of these rules might have a significant impact upon their activities. No such comments were received. For the above reasons, and pursuant to section 3(a) of the RFA, 5 U.S.C. 605(b), the Chairman, on behalf of the Commission, hereby certifies that these regulations will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 (PRA), 44 U.S.C. 3501 *et seq.*, imposes certain requirements on Federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. In compliance with the PRA, the Commission previously submitted these rules in proposed form and their associated information collection requirements to the Office of Management and Budget (OMB), estimating that the burden associated with this entire collection, including the rule, as proposed, is as follows:

Average Burden Hours Per Response	1.03
Number of Respondents	165
Frequency of Response	3.82

OMB approved the collection of information associated with the rule on November 2, 1990, and assigned OMB control No. 3038-3013 to the rule.

Copies of the OMB approved information collection package associated with this rule may be obtained from Gary Waxman, Office of Management and Budget, room 3228, NEOB, Washington, DC 20503, (202) 395-7340. Copies of the information collection submission to OMB are available from Joe F. Mink, CFTC Clearance Officer, 2033 K Street, NW., Washington, DC 20581, (202) 254-9735.

List of Subjects in 17 CFR Part 150

Agricultural commodities, Exemptions from speculative Position limits, position limits.

In consideration of the foregoing and pursuant to the authority contained in the Act and, in particular, sections 2(a)(11), 4a, and 8a(5) of the Act, 7 U.S.C. 4a(j), 6a, and 12a(5), the Commodity Futures Trading Commission hereby proposes to amend parts 1 and 150 of chapter I of title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

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

Authority: 7 U.S.C. 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6l, 6m, 6n, 6o, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a-1, 16, 16a, 19, 21, and 24, unless otherwise noted.

2. Section 1.46 is amended by adding a new paragraph (d)(7) to read as follows:

§ 1.46 Application and closing out of offsetting long and short positions.

* * * * *

(d) * * *

(7) Purchases or sales made in the separate accounts of a person granted an exemption in accordance with § 150.3 of this chapter, *provided* That:

(i) The purchases and sales for such accounts are executed in open and competitive means on or subject to the rules of a contract market; and

(ii) No position held for or on behalf of separate accounts traded in accordance with this paragraph may be closed out by transferring such an open position from one of the separate accounts to another of such accounts.

* * * * *

PART 150—LIMITS ON POSITIONS

3. The authority citation for part 150 continues to read as follows:

Authority: 7 U.S.C. 6a and 12a(5) (1982).

4. Section 150.1 is amended by redesignating paragraph (d) as paragraph (e), revising newly redesignated paragraph (e), and adding a new paragraph (d) to read as follows:

[13] In this regard, the Commission notes that the Division of Trading and Markets, by letter dated January 18, 1991, confirmed that where two CTAs which are affiliated "will be operated as independent entities with independent trading systems and * * * will not be involved in one another's trading activities", and "where [the two CTAs] each direct trading for a separate account of a client, they will satisfy the criteria of [Rule 1.46(d)(6)(i)]. * * *" CFTC Interpretative Letter No. 91-1 [Current Transfer Binder], Comm. Fut. L. Rep. (CCH) ¶ 24,988 (Jan. 18, 1991).

§ 150.1 Definitions.

* * * * *

(d) *Eligibility entity* means—

A commodity pool operator, the operator of a trading vehicle which is excluded, or who itself has qualified for exclusion from the definition of the term "pool" or "commodity pool operator," respectively, under § 4.5 of this chapter, or a commodity trading advisor:

(1) Which authorizes an independent account controller independently to control all trading decisions for positions it holds directly or indirectly, or on its behalf, but without its day-to-day direction; and

(2) Which maintains only such minimum control over the independent account controller as is consistent with its fiduciary responsibilities and necessary to fulfill its duty to supervise diligently the trading done on its behalf.

(e) *Independent account controller* means a person—

(1) Who specifically is authorized by an eligible entity, as defined in paragraph (d) of this section, independently to control trading decisions on behalf of, but without the day-to-day direction of, the eligible entity;

(2) Over whose trading the eligible entity maintains only such minimum control as is consistent with its fiduciary responsibilities necessary to fulfill its duty to supervise diligently the trading done on its behalf;

(3) Who trades independently of the eligible entity and of any other independent account controller trading for the eligible entity; and

(4) Who is registered as a futures commission merchant, introducing broker, commodity trading advisor, or an associated person of any such registrant.

5. Section 150.3 is amended by revising paragraphs (a)(4), the introductory text of (b), (b)(1), and (b)(3)(i)–(iii) to read as follows:

§ 150.3 Exemptions.

(a) * * *

(4) Carried for an eligible entity in the separate account or accounts of an independent account controller which has been approved by the Commission under paragraph (b) of this section, and are not in the spot month if there is a position limit which applies to individual trading months during their expiration; *provided, however,* That the overall positions held or controlled by each such independent account controller may not exceed the limits specified in § 150.2 of this part.

(b) Application for Exemption of Independent Account Controllers. Any eligible entity who directly or indirectly holds, but does not control, positions in contract markets having speculative position limits set forth in § 150.2 of this part may file with the Commission an application for exemption from those limits for the positions controlled by an independent account controller.

(1) Filing the application. Such application shall be made to the Commission's Washington office, Attention: Division of Economic Analysis, unless otherwise directed by the Commission or its delegates, and must include the following:

(i) An affidavit, duly notarized, of the eligible entity identifying each independent account controller and stating that each named independent account controller has been delegated authority to trade the account without further specific, day-to-day direction of trading decisions, and that the applicant maintains only such minimum control as is necessary to fulfill its fiduciary responsibilities and its duty to supervise diligently the trading by the independent account controllers. If the applicant is an organization, the affidavit must be that of a partner, officer, or trustee authorized by the organization to bind the organization;

(ii) An affidavit, duly notarized, of each independent account controller certifying that the controller is registered with the Commission, in fact exercises independent authority with respect to directing the trading of the account and does not have knowledge of trading decisions by any other account controller. If the independent account controller is affiliated with the eligible entity or another independent account controller trading for the eligible entity, the affidavit further must:

(A) Explain the circumstances of the affiliation;

(B) Describe the written procedures in place to preclude such account controllers from gaining access to, or receiving data about, trades of other account controllers, including a description of document routing procedures, the physical location of such account controllers, and other procedures or security arrangements which would maintain the independence of their activities;

(C) Certify that such trading is done pursuant to separately-developed and independent trading systems and describing the circumstances of the development of the trading systems; and

(D) Certify that such trading has been solicited by a separate Disclosure Document that meets the standards of § 4.21 of this chapter and has been separately marketed from that of the applicant.

(iii) Any additional information or documents required by the Commission which, in light of the circumstances of the application, appears necessary to demonstrate the nature of the relationship between the eligible entity and the independent account controller(s).

* * * * *

(3) * * *

(i) Ten days prior to additions of independent account controllers;

(ii) Within ten days of withdrawal by the eligible entity of trading authorization to an approved account controller, changes in the ownership or control of the accounts, changes in registration status of the account owners or independent account controllers, or any other material change in the application; or

(iii) Within such time as may be specified by the Commission upon special call by the Commission to the applicant.

* * * * *

Issued in Washington, DC, this 2nd day of April, 1991, by the Commodity Futures Trading Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 91–8135 Filed 4–8–91; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 175

[Docket No. 90F-0252]

Indirect Food Additives: Adhesives and Components of Coatings

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of ethylene-acrylic acid copolymer, partial sodium salt as a component of adhesives intended for use with articles in contact with all types of food. This action is in response to a petition filed by Michelman, Inc.

DATES: Effective April 9, 1991; written objections and requests for a hearing by May 9, 1991.

ADDRESSES: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of August 28, 1990 (55 FR 35189), FDA announced that a food additive petition (FAP OB4218) had been filed by Michelman, Inc., 9089 Shell Rd., Cincinnati, OH 45236-1299, proposing that § 175.105 *Adhesives* (21 CFR 175.105) be amended to provide for the safe use of ethylene-acrylic acid copolymer, partial sodium salt as a component of adhesives intended for use in food-contact applications.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed food additive use of ethylene-acrylic acid copolymer, partial sodium salt as a component of adhesives intended for use with articles in contact with all types of food is safe, and that the regulations in § 175.105(c)(5) should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before May 9, 1991 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 175

Adhesives, Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 175 is amended as follows:

PART 175—INDIRECT FOOD ADDITIVES: ADHESIVES AND COMPONENTS OF COATINGS

1. The authority citation for 21 CFR part 175 continues to read as follows:

Authority: Secs. 201, 402, 409, 706, of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 376).

§ 175.105 [Amended]

2. Section 175.105 *Adhesives* is amended in the table in paragraph (c)(5) by removing the text under the heading "Limitations" for the entry "Ehhylene-acrylic acid copolymer, partial sodium salt * * *."

Dated: March 29, 1991.

Douglas L. Archer,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 91-8204 Filed 4-8-91; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 161

[CGD 90-048]

RIN 2115-AD62

Vessel Traffic Management in St. Marys River

AGENCY: Coast Guard, DOT.

ACTION: Final rule; correction.

SUMMARY: The Coast Guard is correcting the table which appeared in rule document 90-048 on vessel traffic management in St. Marys River (56 FR 11511), published on Tuesday, March 19, 1991.

FOR FURTHER INFORMATION CONTACT: Bruce Riley, Project Manager, Navigation Safety Special Projects Staff, Tel. (202) 267-0412.

SUPPLEMENTARY INFORMATION: In rule document 90-048 (56 FR 11511), of Tuesday, March 19, 1991, the table in § 161.834 on page 11512 identifying permanent reporting points, incorrectly required reporting at all points, whether upbound or downbound. The introductory text and the table in § 161.834 should read as follows:

§ 161.834 [Corrected]

The following locations are permanent reporting points:

Downbound vessels	Reporting points	Upbound vessels
Report	Ile Parisienne Light.	
	Gros Cap Reefs Light.	Report.
Report	Round Island Light 32.	Report.
Report	Pointe Louise	Report.
Report	Clear of lock	Report.
Report	Mission Point	Report.
Report	Six mile Point	Report.
Report	Ninemile Point	Report.
Report	West Neebish Channel Light 29.	
Report	Munuscong Lake Junction Lighted Body.	Report.
Report	De Tour Reef Light.	Report.

Dated: April 3, 1991.

J.W. Lockwood,

Captain, U.S. Coast Guard Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 91-8275 Filed 4-8-91; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[CC Docket No. 88-475; FCC 90-336]

Construction Prior to Receiving Authorization for Public Mobile Service Applicants

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule, 55 FR 46952, November 8, 1990, which inadvertently omitted paragraph (d)(1)(viii) in § 22.43.

FOR FURTHER INFORMATION CONTACT: Gayle Shifflett, Publications Branch, (202) 632-4178.

SUPPLEMENTARY INFORMATION: In FR Doc 90-25695, published in the November 8, 1990 **Federal Register** on page 46952, the following correction is made in § 22.43:

§ 22.43 [Corrected]

Paragraph (d)(1)(viii) is added to read as follows:

(d) * * *

(1) * * *

(viii) Applicants seeking authorization for a *de minimis* extension of an existing or proposed CGSA or 39 dBu contour beyond the borders of the cellular market, see /S 22.903 of the rules;

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91-8267 Filed 4-8-91; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register
Vol. 56, No. 68
Tuesday, April 9, 1991

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 921, 922, 923, and 924

[Docket No. FV-91-260PR]

Proposed 1991-92 Fiscal Year Expenditures and Assessment Rates for Specified Marketing Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish assessment rates for the 1991-92 fiscal year (April 1-March 31) under Marketing Order Nos. 921, 922, 923 and 924. These expenditures and assessment rates are needed by the marketing committees established under these marketing orders to pay marketing order expenses and collect assessments from handlers to pay those expenses. The proposed action would enable these committees to perform their duties and the orders to operate.

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

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456. Three copies of all written material shall be submitted, and they will be made available for public inspection in the office of the Docket Clerk during regular business hours. All comments should reference the docket number, date, and page number of this issue of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456; telephone: (202) 475-3918.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Agreement and Marketing Order Nos. 921 (7 CFR part 921) regulating the handling of fresh peaches grown in designated counties in Washington; 922 (7 CFR part 922) regulating the handling of apricots grown in designated counties in Washington; 923 (7 CFR part 923) regulating the handling of cherries grown in designated counties in Washington; and 924 (7 CFR part 924) regulating the handling of fresh prunes grown in designated counties in Washington and in Umatilla County, Oregon. These agreements and orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

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

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

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

There are about 70 handlers of Washington peaches, 30 handlers of Washington apricots, 85 handlers of Washington cherries, and 35 handlers of Washington-Oregon prunes subject to regulation under their respective marketing orders. In addition, there are about 390 Washington peach producers, 190 Washington apricot producers, 1,115 Washington cherry producers and 375 Washington-Oregon prune producers in their respective production areas. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of these handlers and producers may be classified as small entities.

These marketing orders, administered by the U.S. Department of Agriculture (Department), require that assessment rates for a particular fiscal year shall apply to all assessable fresh fruit handled from the beginning of such year. An annual budget of expenses is prepared by each marketing committee and submitted to the Department for approval. The members of these committees are handlers and producers of the regulated commodities. They are familiar with the committees' needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by each committee is derived by dividing anticipated expenses by the tons of fresh fruit expected to be shipped under the order. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committees' expected expenses. Recommended budgets and rates of assessment are usually acted upon by the committees shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the committees will have funds to pay their expenses.

The Stone Fruit Executive Committee (SFEC) met on March 12, 1991, and unanimously recommended 1991-92 fiscal year expenditures and assessment rates for each of these marketing orders. The SFEC is made up of offices of the four stone fruit marketing committees established under these orders. The SFEC is authorized to take this action under the by-laws of the stone fruit marketing committees. The SFEC's recommendations are based on preseason projections of 1991 season shipments, expenses, and reserve fund levels under these orders.

The proposed 1991-92 budgeted expenditures and assessment rates for these marketing orders are higher than those for 1990-91. Most of the higher expenditures reflects salary increases and the purchase of a new automobile,

while the much higher assessment rates reflect an expectation that the 1991 season peach, apricot, cherry, and prune crops will be much smaller than last year. These crops are expected to be only about one-half of normal due to freeze damage to the fruit trees last winter. Each stone fruit committee has adequate reserves to fund any expenditures in excess of income for 1991–92.

The proposed expenditures are all for administration of these orders, except for prune research and cherry market development activities. Administrative expenses include those for salaries, travel, and office operations. The stone fruit marketing committees share office expenses, based on an agreement among the committees.

For the Washington Fresh Peach Marketing Committee, the SFEC recommended 1991–92 expenditures of $21,394, and an assessment rate of $3.00 per ton of peaches shipped under M.O. 921. In comparison, 1990–91 budgeted expenditures were $18,841 and the assessment rate was $1.00 per ton.

For the Washington Apricot Marketing Committee, the SFEC recommended 1991–92 expenditures of $7,760, and an assessment rate of $4.00 per ton of apricots shipped under M.O. 922. In comparison, 1990–91 budgeted expenditures were $6,965 and the assessment rate was $1.00 per ton.

For the Washington Cherry Marketing Committee, the SFEC recommended 1991–92 expenditures of $104,130 and an assessment rate of $5.00 per ton of cherries shipped under M.O. 923. In comparison, 1990–91 budgeted expenditures were $94,545 and the assessment rate was $2.00 per ton.

For the Washington-Oregon Fresh Prune Marketing Committee, the SFEC recommended 1991–92 expenditures of $18,115 and an assessment rate of $3.00 per ton of prunes shipped under M.O. 924. In comparison, 1990–91 budgeted expenditures were $16,149 and the assessment rate was $1.50 per ton.

This proposed rule provides that comments must be received by May 31, 1991. Extending the comment period until that date will allow all four stone fruit marketing committees to meet and make any necessary adjustments in their proposed 1991–92 expenses and assessment rates prior to issuance of a final rule. The peach, apricot, and cherry committees plan to meet during the second week in May and the prune committee during the fourth week of May to review 1991 season crop and market conditions for these fruits.

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

List of Subjects in 7 CFR Parts 921, 922, 923 and 924

Apricots, Cherries, Marketing agreements, Peaches, Prunes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR parts 921, 922, 923 and 924 be amended as follows:

1. The authority citation for 7 CFR parts 921, 922, 923 and 924 continues to read as follows:

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

PART 921—FRESH PEACHES GROWN IN DESIGNATED COUNTIES IN WASHINGTON

2. A new § 921.230 is added to read as follows:

§ 921.230 Expenses and assessment rate.

Expenses of $21,394 by the Washington Fresh Peach Marketing Committee are authorized, and an assessment rate of $3.00 per ton of assessable peaches is established for the fiscal year ending March 31, 1992. Any unexpended funds from the 1990–91 fiscal year may be carried over as a reserve.

PART 922—APRICOTS GROWN IN DESIGNATED COUNTIES IN WASHINGTON

3. A new § 922.230 is added to read as follows:

§ 922.230 Expenses and assessment rate.

Expenses of $7,760 by the Washington Apricot Marketing Committee are authorized, and an assessment rate of $4.00 per ton is established for the fiscal year ending March 31, 1992. Any unexpended funds from the 1990–91 fiscal year may be carried over as a reserve.

PART 923—SWEET CHERRIES GROWN IN DESIGNATED COUNTIES IN WASHINGTON

4. A new § 923.231 is added to read as follows:

§ 923.231 Expenses and assessment rate.

Expenses of $104,130 by the Washington Cherry Marketing Committee are authorized, and an assessment rate of $5.00 per ton is established for the fiscal year ending March 31, 1992. Any unexpended funds from the 1990–91 fiscal year may be carried over as a reserve.

PART 924—FRESH PRUNES GROWN IN DESIGNATED COUNTIES IN WASHINGTON AND IN UMATILLA COUNTY, OREGON

5. A new § 924.231 is added to read as follows:

§ 924.231 Expenses and assessment rate.

Expenses of $18,115 by the Washington-Oregon Fresh Prune Marketing Committee are authorized, and an assessment rate of $3.00 per ton of assessable prunes is established for the fiscal year ending March 31, 1992. Any unexpended funds from the 1990–91 fiscal year may be carried over as a reserve.

Dated: April 3, 1991.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–8222 Filed 4–8–91; 8:45 am]

BILLING CODE 3410-02-M

FEDERAL ELECTION COMMISSION

[Notice 1991-5]

11 CFR Parts 107, 114, and 9008

Presidential Election Campaign Fund and Federal Financing of Presidential Nominating Conventions

AGENCY: Federal Election Commission.

ACTION: Suspension of rulemaking.

SUMMARY: The Federal Election Commission is suspending further action on its proposed revisions to the Presidential nominating convention regulations at 11 CFR part 107, § 114.1 and part 9008 until after the 1992 nominating conventions have taken place. These regulations implement section 437 of the Federal Election Campaign Act of 1971, as amended, (2 U.S.C. 431 *et seq.*) and section 9008 of the Presidential Election Campaign Fund Act (26 U.S.C. 9008). Further information is provided in the supplementary information which follows.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street, NW., Washington, DC 10463, (202) 376–5690 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: On August 22, 1990, the Commission published a Notice of Proposed Rulemaking in which it sought comments on proposed revisions to its regulations at 11 CFR part 107, § 114.1, and part 9008, which concern the public financing of Presidential nominating conventions. 55 FR 34267. Written comments were received from the Republican National Committee and the Democratic National Committee in response to the Notice. The Commission has now decided to table further action on this rulemaking until after the 1992 conventions have been held. With regard to the 1992 nominating conventions, the Commission intends to interpret its current convention regulations based on the Advisory Opinions issued as well as upon the policy decisions made through the audit process for past convention committees.

Dated: April 4, 1991.

Joan D. Aikens,

Vice Chairman, Federal Election Commission.

[FR Doc. 91-8276 Filed 4-8-91; 8:45 am]

BILLING CODE 6715-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 90-AWP-11]

Proposed Establishment of the Tucson/Ryan Field, Tucson, AZ, Control Zone

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish the Tucson/Ryan Field, Tucson, AZ, Control Zone. It would provide controlled airspace for aircraft executing instrument approach and departure procedures to and from Tucson/Ryan Field.

DATES: Comments must be received on or before May 27, 1991.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, System Management Branch, AWP-530, Docket No. 90-AWP-11, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

The official docket may be examined in the Office of the Regional Counsel, Western-Pacific Region, Federal Aviation Administration, Room 6W14, 15000 Aviation Boulevard, Lawndale, California.

An informal docket may also be examined during normal business hours at the Office of the Manager, System Management Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Cheryl Miller, Airspace Specialist, System Management Branch, AWP-530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (213) 297-0010.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 90-AWP-11." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the System Management Branch, AWP-530, Air Traffic Division, 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, AWP-530, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2a which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.171 of part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish a control zone at Tucson/Ryan Field, Tucson, AZ. This action would provide controlled airspace to conduct instrument approach and departure procedures. Section 71.171 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6G dated September 4, 1990.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

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

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Tucson/Ryan Field, Tucson, Arizona [New]

Within a 4-mile radius of the Tucson/Ryan Field (lat. 32°08'29" N., long. 111°10'24" W.), within 2 miles each side of the Ryan Runway 6 Localizer extending from the 4-mile radius zone to 7 miles southwest of the airport, and within 2 miles each side of the 317° bearing from the Ryan Radio Beacon (lat. 32°08'18" N., long. 111°09'39" W.) extending from the 4-mile radius zone to 7 miles northwest of the airport. This control zone shall be effective during specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Issued in Los Angeles, California, on March 27, 1991.

Richard R. Lien,

Manager, Air Traffic Division Western-Pacific Region.

[FR Doc. 91-8304 Filed 4-8-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 20, 25, and 301

[PS-92-90]

RIN 1545-AP44

Special Valuation Rules

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing relating to special valuation rules under chapters 11 and 12 of the Internal Revenue Code.

DATES: The public hearing will be held on September 20, 1991, beginning at 10 a.m. Outlines of oral comments must be received by September 6, 1991.

ADDRESSES: The public hearing will be held in the Internal Revenue Service Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The requests to speak and outlines of oral comments should be submitted to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R, (PS-92-90), room 4429, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Felicia A. Daniels of the Regulations Unit, Assistant Chief Counsel (Corporate), 202-566-3935, (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 2701 of the Internal Revenue Code of 1986. The proposed regulations appear in the proposed rules section of this issue of the **Federal Register.**

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than September 6, 1991, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by the questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be permitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 91-8296 Filed 4-4-91; 12:26 pm]

BILLING CODE 4830-01-M

26 CFR Parts 20, 25, and 301

[PS-92-90]

RIN 1545-AP44

Special Valuation Rules

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations providing special valuation rules for purposes of the Federal estate and gift taxes imposed under chapters 11 and 12 of the Internal Revenue Code. Changes to the applicable law were made by the Omnibus Budget Reconciliation Act of 1990, Public Law 101-508, 104 Stat. 1388. The proposed regulations will provide guidance needed to comply with that Act.

DATES: Written comments, requests to appear, and outlines of oral comments to be presented at the public hearing scheduled for September 20, 1991, must be received by September 6, 1991. See the notice of public hearing published elsewhere in this issue of the **Federal Register.**

ADDRESSES: Send comments, requests to appear and outlines to: Internal Revenue Service, Attention: CC:CORP:T:R (PS-92-90), room 4429, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Fred E. Grundeman (202) 535-9512 (not a toll free telephone number); concerning the hearing, Felicia Daniels (202) 566-3935 (not a toll free telephone number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information requirements and suggestions for reducing the burden should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attention: IRS Reports Clearance Officer T:FP, Washington, DC 20224.

The collection of information requirements in these regulations are in sections 26 CFR 25.2701-2, 25.2701-4, and 301.6501(c)-1(e). This information is required by the Internal Revenue Service to determine the effect on an individual's taxable transfers on the occurrence of a transfer to which section 2701 applies and the occurrence of a subsequent taxable event. The likely respondents are individuals.

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

Estimated total annual reporting burden: 496 hours.

Estimated burden per respondent varies from 2 minutes to 1 hour, depending on individual circumstances, with an estimated average of 25 minutes.

Estimated number of respondents: 1,200.

Estimated frequency of response: One time election.

Background

This document contains proposed additions to the Estate and Gift Tax Regulations (26 CFR Parts 20 and 25) under sections 2701 through 2703 of the Internal Revenue Code and the regulations (26 CFR part 301) under section 6501 of the Internal Revenue Code. The proposed additions reflect additions made to the Code by section 11602 of the Omnibus Budget Reconciliation Act of 1980, Public Law 101-508, 104 Stat. 1383.

Explanation of Provisions

Overview

The proposed regulations published in this notice are the first of two installments of regulatory guidance under chapter 14. Proposed regulations to be published later this year will contain rules for adjustments made necessary by the application of sections 2701 or 2702, and rules for transactions affected by section 2704 (relating to certain lapsing rights and restrictions).

Chapter 14 contains valuation rules that apply to transfers to certain family members of interests in corporations or partnerships (section 2701) and of interests in trusts to certain family members (section 2702), and to transfers of property subject to certain options or agreements, such as buy-sell agreements (section 2703). Generally, sections 2701 and 2702 determine gift tax consequences at the time a transfer is made by imposing special rules for determining the existence and amount of any gift resulting from the transfer. Although these two sections apply to determine the amount of the gift, they do not change the value of the transferred property for other tax purposes. Thus, in general, sections 2701 and 2702 do not apply for purposes of the generation-skipping transfer tax. In contrast, section 2703 does affect the value of the transferred property and will therefore apply for all transfer tax purposes.

Section 2701

Generally, section 2701 applies when a transfer of an interest in a corporation or partnership is made to a member of the transferor's family and the transferor or an applicable family member thereafter holds an applicable retained interest.

Valuation Rules

Section 2701 provides special rules for valuing applicable retained interests held by a transferor or an applicable family member of a transferor. Generally, an applicable retained interest is any interest that confers (1) a discretionary liquidation, put, call or conversion right, or (2) a distribution right in a family-controlled entity. A retained put, call, or conversion right, a right to compel liquidation, or a similar right (an "extraordinary payment right") is valued at zero. A distribution right (other than a qualified payment right) in a controlled entity is also valued at zero. Other rights (including qualified payment rights) are valued as if the rights valued at zero did not exist but otherwise without regard to section 2701. The proposed regulations treat certain rights, such as a right to receive a mandatory payment that is fixed as to time and amount, as neither an extraordinary payment right nor a distribution right.

If a qualified payment right (generally a right to a fixed-rate cumulative dividend payable on a periodic basis or the partnership equivalent) is held in conjunction with an extraordinary payment right (such as the right to compel liquidation), the rights are valued on the assumption that each right will be exercised in a manner that results in the lowest total value for all the rights (the "lower of" rule). Except for the "lower of" rule, qualified payment rights are valued under current law without regard to section 2701.

Under section 2701, guaranteed payments of a fixed amount described in section 707(c) are excluded from the definition of a distribution right. Comments are invited as to whether the exclusion should be extended to other payments under section 707.

Subtraction Method

The legislative history of section 2701 specifies that the amount of an individual's gift is determined using the subtraction method of valuation. Under this method, the value of senior interests (including applicable retained interests) is subtracted from the value of the entire entity to determine the value of junior interests (such as common stock). The proposed regulations prescribed a 3-step method for applying the subtraction method when section 2701 applies.

The first step of the 3-step method is to determine the value of the entire corporation or partnership, giving effect to appropriate adjustments to reflect fragmented ownership, *e.g.*, minority discounts and control premiums. Revenue Rulings 59-60, 1959-1 C.B. 237, and 83-120, 1983-2 C.B. 170, are generally applicable under this step. To ensure that the value determined accurately reflects the value of the entity, the proposed regulations require that the valuation of the various classes of equity interests be made using a consistent set of assumptions.

In Step 2, the value of the entity determined in the first step is reduced by the sum of the fair market values of all senior equity interests held by non-family members and by the sum of the values of the family-held senior equity interests determined under § 25.2701-2. A special adjustment is provided in this step to avoid attributing value to a transferred interest that will not inure to equity interests held by family members (see § 25.2701-3(b)(4)).

In Step 3, the amount determined in Step 2 (the value of the junior equity interests determined under section 2701) is reduced by the sum of the fair market values of non-family held junior equity interests. The proposed regulations then allocate the balance among the transferred interests and other interests of the same class and subordinate classes held by the family.

Minimum Value Rule

Proposed regulation § 25.2701-3(c) implements the minimum value rule of section 2701(a)(4), which provides a floor on the value of junior equity. Under the proposed regulation, the value of the junior equity must not be less than 10 percent of the sum of total equity in the entity plus debt owing to the transferor and applicable family members. The proposed regulations provide that indebtedness incurred for current operating expenses is not indebtedness for this purpose. The proposed regulations adopt the statutory definition of a junior equity interest in a partnership (*i.e.*, junior as to income and capital). Comments are invited as to the appropriate test for determining the junior equity interest in a partnership when no interest is junior as to both income and capital.

Elections

Section 2701 provides that an individual may elect to treat a payment that is not a qualified payment as a qualified payment. Section 25.2701-2(c)(2) of the proposed regulations provides that if such an election is made, the value of the right under the election cannot exceed the fair market value of that right determined without regard to the election. The proposed regulations allow taxpayers to make "partial" elections with respect to otherwise nonqualifying distribution rights. The portion of the qualified payment right that is valued under a partial election must meet all the requirements of a qualified payment (*e.g.*, amounts must be payable periodically and no less frequently than annually). For example, if corporate stock provides a 10-percent annual non-

cumulative dividend, a taxpayer may elect to treat that dividend right as a qualified payment right with respect to a 5-percent annual cumulative dividend.

Section 2701 also permits an individual to elect out of qualified payment treatment. The proposed regulations permit an individual to make a partial election out. However, a partial election out must be made as to a consistent portion of every qualified payment.

Absent an election out, applicable family members who hold qualified payment rights would be subject to section 2701 even though they have made no transfer and may not be aware that a transfer has been made. In these cases, the individuals would be subject to the "compounding rule" for missed payments, potentially increasing their future gift and estate tax liability. To avoid this result, the proposed regulations consider an applicable family member as having elected not to treat payments as qualified payments unless a statement signed by the individual is attached to the transferor's gift tax return affirmatively electing to treat the payments as qualified payments. A technical correction consistent with this position is under consideration by the Congress.

Attribution Rules for Determining Control

For purposes of determining whether an entity is a controlled entity, the proposed regulations attribute to an individual only those interests held by the lineal descendants of the parents of the individual and spouse. See § 25.2701-2(b)(5).

Transfers

Section 2701 provides that a contribution to capital, or a recapitalization, redemption or other change in capital structure is treated as a transfer if the transferor or an applicable family member receives an applicable retained interest as a result of the transaction. Pursuant to the regulatory authority granted in section 2701, § 25.2701-1(b) of the proposed regulations treats similar transactions as transfers if the transferor or an applicable family member otherwise holds an applicable retained interest after the transaction and, as a result of the transaction, either the individual receives additional property or the value of the applicable retained interest already held by that individual increases. The proposed regulations include a contribution to a start-up entity as a transfer because creation of a new entity presents the same opportunities for transferring wealth as a contribution to an existing entity.

Exceptions to Section 2701

Section 2701 and the proposed regulations do not apply if there are market quotations readily available for the transferred interest. In addition, section 2701 and the proposed regulations do not apply to value any applicable retained interest if there are market quotations readily available for that interest.

Section 2701 also does not apply to a transfer of an interest of the same class as the retained interest (*e.g.*, a single class of stock in a corporation) or if the retained interest is of a class that is proportionally the same as that of the transferred interest. The proposed regulations also exclude a transfer of a "vertical slice" of interests in the entity. To qualify for the "vertical slice" exception, the transfer must effect a proportionate reduction in each class of interest held by the transferor and all applicable family members in the aggregate. See § 25.2701-1(c)(4).

Compounding Rule

Section 2701 and § 25.2701-4 increase an individual's taxable estate (or taxable gifts) if qualified payments are not made within the statutory 4-year grace period. The amount of the increase, if any, is intended to approximate the value of late or unpaid qualified payments had those payments been made when due and reinvested by the recipient. The amount of any missed payment, with compounding, is treated as a taxable transfer when the applicable retained interest is later transferred (or, at the election of the taxpayer, when the payment is actually made). Any qualified payment made within four years of its due date is considered paid on its due date.

To prevent double tax, § 25.2701-4(c) of the proposed regulations reduces the amount of the inclusion by any amount otherwise included in the gift or estate tax base without regard to chapter 14.

The amount of the inclusion is limited by the "applicable percentage" of the amount of appreciation in the subordinate equity from the time of the original gift to the time of the taxable event. The proposed regulations clarify that the minimum value rule does not apply in determining the amount of appreciation. In addition, the proposed regulations treat as appreciation any amounts paid in redemption of a subordinate equity interest. These rules ensure that capital changes cannot be used to manipulate the amount later treated as a taxable transfer.

The proposed regulations define "applicable percentage" as the highest ownership percentage of any class of preferred interests held by the person triggering the taxable transfer.

The proposed regulations provide that this limit does not apply if a person elects to treat a late payment of a qualified payment as triggering the inclusion of the compounded amount in taxable gifts. Absent this rule, a taxpayer could manipulate the timing of payments and elections to take advantage of temporary fluctuations in the value of the entity.

The proposed regulations provide that a taxpayer who elects to treat the receipt of a qualified payment as a taxable event thereby elects with respect to all previous qualified payments as to which an election was available but not made.

Indirect Ownership

Under section 2701, stock or partnership interests held through corporations, partnerships, trusts or other entities are attributed to individuals. Interests held in a corporation are attributed to any shareholder in the corporation based on the percentage of the total value of the equity interests in the corporation owned by that shareholder. Interests held in a partnership are attributed to any partner based on the higher of that partner's interest in profits or capital. Because the rights of individuals are not fixed in discretionary trusts, interests held in trust are attributed to a person to the extent such person could receive a distribution of the interest or its income or proceeds. Interests held in a trust treated as owned by any individual under the grantor trust rules are attributed to that individual. Ordering rules are provided for cases where there is attribution of an interest to more than one individual under these rules.

Interests Treated as Separate Interests

The proposed regulations exercise the regulatory authority granted by section 2701 to treat interests as separate interests in appropriate cases. However, because the situations in which it may be appropriate to treat interests as separate interests are likely to be dependent on the particular facts and circumstances, this authority is exercised by permitting taxpayers to request private letter rulings from the Internal Revenue Service.

Section 2702

Overview

Section 2702 provides special valuation rules for determining the

amount of a gift on the transfer of an interest in trust to a family member of the transferor. Generally, the amount of the gift is the value of the transferred property less the value of any interest retained by the transferor or an applicable family member. Generally, all retained interests other than qualified interests are valued at zero. A qualified interest is (1) a right to receive at least annually a fixed amount (or a fixed percentage of the initial value of the trust); (2) a right to receive at least annually a fixed percentage of the value of the property valued annually; or (3) a noncontingent remainder if all other interests in the property are qualified interests. An exception to the zero valuation rule is provided for a retained income interest in tangible property if the term holder's failure to exercise rights with respect to the transferred property would not increase the value of the property passing to the remainderman. In such a case, the value of the term holder's interest is the amount an unrelated party would pay for the interest.

Section 2702 does not apply to a transfer that is an incomplete gift or to the transfer of an interest in a trust holding only property used as a personal residence by the term holder.

Definition of Transfer

Section 2702 treats transfers of property in which there are one or more term interests as transfers in trust. A joint purchase by members of the same family is treated as an acquisition of the entire property by the term holder followed by a transfer of the remainder interest. Under the proposed regulations, the term "transfer in trust" includes transfers to a new or existing trust as well as a beneficiary's transfer of an interest in an existing trust. Neither a qualified disclaimer nor the exercise of a limited power of appointment is treated as a transfer subject to section 2702.

Definition of Retained

The proposed regulations treat an interest as "retained" by the transferor or an applicable family member only if it is held by the same individual both before and after the transfer. Thus, an individual will not pay gift tax on more than the full value of the property, even if one of the interests is transferred to an applicable family member. The result is the same under the proposed regulations even if the transfer of the income interest qualifies for a marital deduction, because the property will later be included in the transferee spouse's estate.

Definition of Qualified Interest

A qualified interest is a qualified annuity interest, a qualified unitrust interest, or a noncontingent remainder interest. In defining qualified annuity and unitrust interests, the proposed regulations generally look to the rules governing charitable lead annuity and unitrust interests. The focus of the charitable lead trust rules parallel the concerns of section 2702; *e.g.*, ensuring that actual payments are consistent with initial valuation assumptions.

Exclusions

The proposed regulations provide an exception for transfers of an interest in trust to a family member if the remainder interest in the trust qualifies for the gift tax charitable deduction. These transfers do not present the possibility of valuation abuse to which section 2702 is addressed. Moreover, the amount paid with respect to the noncharitable interests in these types of transfers cannot be subsequently manipulated.

The proposed regulations clarify that the incomplete transfer exception in section 2702 applies only to a transfer no portion of which would be treated as a completed gift under chapter 12.

Personal Residence Trusts

A transfer of an interest in trust is not subject to section 2702 if the only property held in the trust is a personal residence of the term holder. However, the prohibition against the trust holding even minimal amounts of cash may limit the utility of this exception. Therefore, the proposed regulations provide a safe harbor (called a qualified personal residence trust) designed to provide taxpayers with more flexibility, while preventing use of a qualified personal residence trust as a device to avoid the general rules of section 2702. The requirements of a qualified personal residence trust include limitations on other assets that the trust can hold, rules concerning the sale of the residence by the trust, a prohibition on commutation of the term holder's interest, and a prohibition against distribution of assets by the trust to persons other than the term holder.

The proposed regulations define personal residence to mean the principal residence and one other residence of the term holder consistent with the principles of section 163(h). See § 25.2702–5(b).

Exception for Term Interest in Certain Tangible Property

Section 2702 provides that if the failure of the holder of a term interest in tangible property to exercise his or her rights would not increase the value of the property that passes to the remainderman, the value of the term interest is the amount an unrelated party would pay for the interest. For example, this rule could apply to valuable art work and undeveloped real property. Under the proposed regulations, this rule applies to term interests in tangible property other than property for which a depreciation or depletion deduction would be allowable if the property were used in a trade or business or held for the production of income. A *de minimis* exception is provided by the proposed regulations in cases where the value of appurtenant depreciable property does not increase the fair market value of the tangible property by more than 2 percent. For example, a fence enclosing range land typically would not prevent a transfer of an interest in the land from qualifying for the exception (even if the fence is subject to an allowance for depreciation).

The proposed regulations generally require evidence of actual sales or rentals that are comparable both with respect to the duration of the term and the nature of the property to establish the value of the term interest for this exception. If property that qualified under this exception is converted to property that would not have qualified, the unexpired portion of the term interest, valued under section 7520 as of the time of the conversion, will generally be an additional gift at that time. However, no gift will result if the property is placed into a trust meeting the requirements of a qualified annuity trust.

Section 2703

Overview

Section 2703 provides that the value of property (for estate, gift, and generation-skipping transfer tax purposes) is determined without regard to any option, agreement, or other right to acquire or use the property at a price less than fair market value and without regard to any restriction on the right to sell or use such property (collectively called a "right or restriction"). This general rule does not apply to any right or restriction that: (1) Is a bona fide business arrangement; (2) is not a device to transfer the property to members of the decendent's family for less than full and adequate consideration in money or money's worth; and (3) is an arrangement the terms of which are comparable to similar arrangements entered into by persons in arm's length transactions.

Consistent with the legislative history, the proposed regulations clarify that these three tests are independently applied. An agreement exclusively among unrelated parties (who are not the natural objects of each others bounty) is presumed to meet these tests. The Service invites comments on ways to further refine the criteria used to determine whether an agreement involving unrelated parties is subject to section 2703.

For purposes of the section test, the proposed regulations interpret "family" as meaning "the natural objects of the transferor's bounty." This is the class of persons described in current regulations under section 2031 that was cited in the legislative history as the source of the statutory rule. A technical correction consistent with this position is under consideration by the Congress.

The proposed regulations also clarify that the third test is satisfied if terms of the right or restriction could have been obtained in a fair bargain between unrelated parties dealing with each other at arm's length in the same business. This standard may be met by showing that the arrangement conforms to the general practice among unrelated parties under negotiated agreements in the same business. For this purpose, "same business" refers to the general line of business of which the entity is a part (*e.g.*, property and casualty insurance agencies).

Qualified Easements

The proposed regulations provide that section 2703 does not apply to a qualified easement for which a charitable deduction was allowed under section 170.

Substantial Modifications

Any substantial modification to a right or restriction is treated as the creation of a new right or restriction at the time of the modification. Generally, a modification resulting in other than a *de minimis* change in the quality, value, or timing of the rights of any party under a right or restriction is a substantial modification. A substantial modification does not include mandatory changes under a right or restriction or a change to a right or restriction to more closely approximate fair market value.

Some commentators have suggested that an adjustment is necessary under section 2703 to prevent double taxation. No such adjustment is provided in these proposed regulations. However, comments are invited regarding the circumstances in which an adjustment may be needed and the appropriate mechanism for any adjustment.

Effective Date of Section 2703

The statute applies to rights or restrictions created or substantially modified after October 8, 1990. Thus, a right or restriction created before October 9, 1990, and not substantially modified thereafter is grandfathered under the statute.

Additional Regulations to be Issued

The Internal Revenue Service expects to issue additional proposed regulations under chapter 14 in the near future. Those proposed regulations will cover section 2704 and the adjustment provisions specifically reserved in these proposed regulations and may cover additional matters. Further regulations will also be proposed as necessary to address issues related to or affected by chapter 14 under the income, estate and gift tax provision of the Code.

Overview of Proposed Regulation § 25.2701

The rules of section 2701 are implemented in proposed regulation §§ 25.2701–1 through 25.2701–7. Section 25.2701–1(a) provides an overview of the operation of section 2701. Paragraph (b) sets out transfers and other transactions that trigger the application of the rules, while paragraph (c) identifies circumstances in which section 2701 does not apply. Paragraph (d) defines the family relationships that are relevant to section 2701. Finally, introductory examples are provided in paragraph (e).

If section 2701 applies to a transfer, the special subtraction method of valuation in proposed regulation § 25.2701–3 must be used to determine the existence and amount of any gift. Paragraph (a) of § 25.2701–3 sets forth the subtraction method, including the requirement that the special valuation rules of § 25.2701–2 must be used to value applicable retained interests held by the transferor and applicable family members. Paragraph (b)(4) contains a special adjustment that prevents attribution to members of the family of value that inures to non-family members. Paragraph (c) implements the minimum value rule of section 2701(a)(4), which requires that the entity's junior equity be given an overall value equal to at least ten percent of the value of the equity in the entity plus certain debt.

Proposed regulation § 25.2701–2(a) sets out the special valuation rules of section 2701(a)(1) for applicable retained interests. Paragraph (b) defines applicable retained interest, together with its component parts and exceptions. Paragraph (c) provides elections that permit taxpayers and applicable family members to treat qualified payments as not qualified payments and to treat payments that are not qualified payments as qualified payments.

Proposed regulation § 25.2701–4 sets out the compounding rules of section 2701(d). Paragraph (b) of § 25.2701–4 lists the taxable events that trigger an increase in taxable gifts or the taxable estate, and paragraph (c) sets out how the increase is computed. Paragraph (d) explains the election under which a taxpayer can treat the receipt of certain late qualified payments as a taxable event.

Proposed regulation § 25.2701–5 is reserved for an explanation of the adjustments necessary to prevent double taxation.

Proposed regulation § 25.2701–6 implements section 2701(e)(3)(A), which attributes ownership by entities to the individuals holding interests in those entities. The proposed regulations address ownership through corporations, partnerships, estates, trusts, and other entities. Special rules are provided in paragraph (a)(5) for multiple attribution of the same interest in an entity.

Proposed regulation § 25.2701–7 implements the Secretary's authority under section 2701(e)(7) to treat an applicable retained interest as two or more separate interests. The proposed regulation states that generally applicable rules may be issued through revenue rulings and other forms of published guidance. In addition, taxpayers may request from the Commissioner a private letter ruling that an applicable retained interest be treated as two or more interests.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedures Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations; and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, a copy of this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comments on its impact on small business.

Comments and Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably nine copies) to the Internal Revenue Service. All comments will be available for public inspection and copying. A public hearing is scheduled for September 20, 1991. See the notice of public hearing published elsewhere in this issue of the Federal Register.

Drafting Information

The principal author of these regulations is Fred E. Grundeman, Office of Chief Counsel, Internal Revenue Service. Other personnel from the Internal Revenue Service and Treasury Department participated in developing these regulations.

List of Subjects

26 CFR Part 20

Estate taxes, Reporting and recordkeeping requirements.

26 CFR Part 25

Gift taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Administrative practice and procedure, Bankruptcy, Courts, Crime, Employment taxes, Estate taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Penalties, Pensions, Reporting and recordkeeping requirements, Statistics, Taxes.

Proposed Amendments to the Regulations

The proposed amendments to 26 CFR parts 20, 25 and 301 are as follows:

PART 20—ESTATE TAX; ESTATES OF DECEDENTS DYING AFTER AUGUST 16, 1954

Paragraph 1. The authority for part 20 continues to read, in part:

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

Par. 2. Section 20.2031-2 is amended by adding a sentence to the end of paragraph (h) as follows:

§ 20.2031-2 Valuation of stocks and bonds.

* * * * *

(h) * * * See § 2703 and the regulations at § 25.2703 of this chapter for special rules involving options and agreements (including contracts to purchase) entered into (or substantially modified after) October 8, 1990.

* * * * *

Par. 3. Section 20.2031-3 is amended by adding a sentence to the end thereof as follows:

§ 20.2031-3 Valuation of interests in businesses.

* * * * *

* * * See section 2701 and the regulations at § 25.2701 of this chapter for special rules for valuing the transfer of an interest in a corporation or a partnership and for the treatment of unpaid qualified payments at the death of the transferor or an applicable family member.

PART 25—GIFT TAX; GIFTS MADE AFTER DECEMBER 31, 1954

Par. 4. The authority for part 25 continues to read, in part:

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

Par. 5. Section 25.2512-1 is amended by adding a sentence to the end thereof as follows:

§ 25.2512-1 Valuation of property; in general.

* * * See section 2701 and the regulations at § 25.2701 for special rules for valuing transfers of an interest in a corporation or a partnership and for the treatment of unpaid qualified payments at the subsequent transfer of an applicable retained interest by the transferor or by an applicable family member.

Par. 6. Section 25.2512-5 is amended by adding a new sentence to paragraph (a)(1)(i) immediately after the sixth sentence as follows:

§ 25.2512-5 Valuation of annuities, life estates, terms for years, remainders, and reversions transferred after November 30, 1983.

(a) *In general.* (1)(i) * * * See section 2702 and the regulations at § 25.2702 for special rules for valuing transfers of interests in trust after October 8, 1990. * * *

* * * * *

Par. 7. Section 25.2512-8 is amended by adding a sentence to the end thereof as follows:

§ 25.2512-8 Transfers for insufficient consideration.

* * * See also sections 2701, 2702 and 2703 and the regulations at §§ 25.2701, 25.2702 and 25.2703 for special rules for valuing transfers of business interests, transfers in trust, and transfers pursuant to options and purchase agreements.

Par. 8. A new undesignated centerheading and new §§ 25.2701-0 through 25.2701-7, 25.2702-0 through 25.2702-6, and 25.2703-1 are added in the appropriate place to read as follows:

Special Valuation Rules

§ 25.2701-0 Table of contents.

This section lists the paragraphs contained in §§ 25.2701-1 through 25.2701-7.

§ 25.2701-1 Special valuation rules in the case of transfers of certain interests in corporations and partnerships.

(a) In general.
  (1) Scope of section 2701.
  (2) Effect of section 2701.
  (3) Example.
(b) Transfers and other triggering events.
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  (3) Excluded transactions.
(c) Circumstances in which section 2701 does not apply.
  (1) Marketable transferred interests.
  (2) Marketable retained interests.
  (3) Interests of the same class.
  (4) Proportionate transfers.
(d) Family definitions.
  (1) Member of the family.
  (2) Applicable family member.
  (3) Relationship by adoption.
(e) Examples.

§ 25.2701-2 Special valuation rules for applicable retained interests.

(a) In general.
  (1) Valuing an extraordinary payment right.
  (2) Valuing a distribution right.
  (3) Special rule for valuing a qualified payment right held in conjunction with an extraordinary payment right.
  (4) Valuing other rights.
  (5) Example.
(b) Definitions.
  (1) Applicable retained interest.
  (2) Extraordinary payment right.
  (3) Distribution right.
  (4) Rights that are not an extraordinary payment right or a distribution right.
  (5) Controlled entity.
  (6) Qualified payment right.
(c) Qualified payment elections.
  (1) Election to treat a qualified payment right as other than a qualified payment right.
  (2) Election to treat other distributions as qualified payments.
  (3) Elections irrevocable.
  (4) Treatment of certain payments to applicable family members.
  (5) Time and manner of elections.
(d) Examples.

§ 25.2701-3 Determination of amount of gift.

(a) In general.
(b) Valuation methodology.
  (1) Step 1—Entity valuation.
  (2) Step 2—Subtract the value of senior equity interests.
  (3) Step 3—Allocate the remaining value among the transferred interests and other interests of the same and subordinate classes.
  (4) Valuation adjustment.
(c) Minimum value rule.
  (1) In general.
  (2) Indebtedness.
(d) Examples.

§ 25.2701–4 Accumulated qualified payments.
(a) In general.
(b) Taxable event.
(1) In general.
(2) Individual treated as interest holder.
(c) Amount of increase.
(1) In general.
(2) Appropriate discount rate.
(3) Application of payments.
(4) Limitation.
(d) Taxpayer election.
(1) In general.
(2) Limitation not applicable.
(3) Time and manner of election.
(4) Example.

§ 25.2701–5 Adjustments. [RESERVED]

§ 25.2701–6 Indirect holding of interests.
(a) In general.
(1) Attribution to individuals.
(2) Corporations.
(3) Partnerships.
(4) Estates, trusts, and other entities.
(5) Multiple attribution.
(b) Examples.

§ 25.2701–7 Separate interests.

§ 25.2701–1 Special valuation rules in the case of transfers of certain interests in corporations and partnerships.

(a) *In general*—(1) *Scope of Section 2701.* Section 2701 provides special valuation rules to determine the amount of the gift when an individual transfers an equity interest in a corporation or partnership to a member of the individual's family. For section 2701 to apply, the transferor or an applicable family member (as defined in paragraph (d)(2) of this section) must, immediately after the transfer, hold an applicable retained interest (a type of equity interest defined in § 25.2701–2). If subsequent payments with respect to the applicable retained interest do not conform to the assumptions used in valuing the interest at the time of the initial transfer, § 25.2701–4 provides a special rule to increase the individual's later taxable gifts or taxable estate.

(2) *Effect of section 2701.* If section 2701 applies to a transfer, the amount of the transferor's gift, if any, is determined using a subtraction method of valuation (described in § 25.2701–3). Under this method, the amount of the gift is determined by subtracting the value of any applicable retained interests and other non-transferred equity interests from the value of the corporation or partnership. Generally, in determining the value of any applicable retained interest held by the transferor or an applicable family member—

(i) Any put, call, or conversion right, any right to compel liquidation, or any similar right is valued at zero if the right is an "extraordinary payment right" (as defined in § 25.2701–2(b)(2));

(ii) Any distribution right in a controlled entity (*e.g.*, a right to receive dividends) is valued at zero unless the right is a "qualified payment right" (as defined in § 25.2701–2(b)(6)); and

(iii) Any other right (including a qualified payment right) is valued as if any right valued at zero did not exist but otherwise without regard to section 2701.

(3) *Example.* The following example illustrates rules of this paragraph (a).

Example. A, an individual, holds all the outstanding stock of S Corporation. A exchanges A's shares in S for 100 shares of 10-percent cumulative preferred stock and 100 shares of voting common stock. A transfers the common stock to A's child. Section 2701 applies to the transfer because A has transferred an equity interest (the common stock) to a member of A's family, and immediately thereafter holds an applicable retained interest (the preferred stock). A's preferred stock is valued under the rules of section 2701. A's gift is determined under the subtraction method by subtracting the value of A's preferred stock from the value of S.

(b) *Transfers and other triggering events*—(1) *Completed transfers.* Section 2701 applies to determine the existence and amount of any gift, whether or not the transfer would otherwise be a taxable gift under chapter 12 of the Code. For example, section 2701 applies to a transfer that would not otherwise be a gift under chapter 12 because it was a transfer for full and adequate consideration.

(2) *Transactions treated as transfers.* Except as provided in paragraph (b)(3) of this section, for purposes of section 2701, a transfer includes the following transactions—

(i) A contribution to the capital of a new or existing entity;

(ii) A redemption, recapitalization, or other change in the capital structure of an entity (a "capital structure transaction"), if the transferor or an applicable family member receives an applicable retained interest in the capital structure transaction;

(iii) A capital structure transaction, if either—

(A) The transferor or an applicable family member holding an applicable retained interest before the capital structure transaction receives property other than an applicable retained interest; or

(B) The fair market value of an applicable retained interest held by the transferor or an applicable family member before the capital structure transaction is increased; and

(iv) A termination of an indirect holding in an entity. See § 25.2701–6 regarding indirect holding of interests.

(3) *Excluded transactions.* For purposes of section 2701, a transfer does not include the following transaction—

(i) A capital structure transaction (other than a contribution to capital or other increase in the value of the entity), if the transferor, each applicable family member, and each member of the transferor's family holds substantially the same interest after the transaction as that individual held before the transaction. For this purpose, common stock with non-lapsing voting rights and nonvoting common stock are interests that are substantially the same;

(ii) A shift of rights occurring upon the execution of a qualified disclaimer described in section 2518; and

(iii) A shift of rights occurring upon the exercise of a power of appointment other than a general power of appointment described in section 2514, except to the extent the exercise reduces the power-holder's interest in the appointed property.

(c) *Circumstances in which section 2701 does not apply.* Section 2701 does not apply in the following cases.

(1) *Marketable transferred interests.* Section 2701 does not apply if there are readily available market quotations on an established securities market for the value of the transferred interest.

(2) *Marketable retained interests.* Section 25.2701–2 does not apply to any applicable retained interest if there are readily available market quotations on an established securities market for the value of the applicable retained interest.

(3) *Interests of the same class.* Section 2701 does not apply if the retained interest is of the same class of equity as the transferred interest or if the retained interest is of a class that is proportionally the same as the class of the transferred interest. Whether an interest is of the same class or of a class that is proportionally the same as the class of the transferred interest is determined without regard to non-lapsing differences in voting rights (or, for a partnership, non-lapsing differences with respect to management and limitations on liability). A right that lapses by reason of Federal or State law is treated as a non-lapsing right unless the Secretary determines, by regulation or by published revenue ruling, that it is necessary to treat such a right as a lapsing right to accomplish the purposes of section 2701. An interest in a partnership is not an interest in the same class as the transferred interest if the transferor or an applicable family member, acting individually or in concert, has the right to alter the liability of the transferee.

(4) *Proportionate transfers.* Section 2701 does not apply to a transfer by an individual of equity interests if the transfer results in a proportionate reduction of each class of equity interest held by the transferor and all applicable family members in the aggregate immediately before the transfer. Thus, for example, section 2701 does not apply if P owns 50 percent of each class of equity interest in a corporation and transfers a portion of each class that reduces each interest held by P and any applicable family members, in the aggregate, by 10 percent even if the transfer does not proportionately reduce P's interest in each class. See § 25.2701-6 regarding indirect holding of interests.

(d) *Family definitions*—(1) *Member of the family.* A member of the family is, with respect to any transferor—

(i) The transferor's spouse,

(ii) Any lineal descendant of the transferor or the transferor's spouse, and

(iii) The spouse of any such lineal descendant.

(2) *Applicable family member.* An applicable family member is, with respect to any transferor—

(i) The transferor's spouse,

(ii) Any ancestor of the transferor or the transferor's spouse, and

(iii) The spouse of any such ancestor.

(3) *Relationship by adoption.* For purposes of section 2701, any relationship by legal adoption is the same as a relationship by blood.

(e) *Examples.* The following examples illustrate provisions of this section.

Example 1. P, an individual, holds all the outstanding stock of X Corporation. Assume the fair market value of X is $1.5 million. X is recapitalized so that P holds 1,000 shares of $1,000 par value preferred stock bearing an annual cumulative dividend of $100 per share (the aggregate fair market value of which is assumed to be $1 million) and 1,000 shares of voting common stock. P transfers the common stock to P's child. Section 2701 applies to the transfer because P has transferred an equity interest (the common stock) to a member of P's family and immediately thereafter holds an applicable retained interest (the preferred stock). P's right to receive annual cumulative dividends is a qualified payment right and is valued for purposes of section 2701 at its fair market value of $1,000,000. The amount of P's gift, determined using the subtraction method of § 25.2701-3, is $500,000 ($1,500,000 minus $1,000,000).

Example 2. The facts are the same as in *Example 1*, except that the preferred dividend right is noncumulative. Under § 25.2701-2, P's preferred dividend right is valued at zero because it is a distribution right in a controlled entity, but is not a qualified payment right. All of P's other rights in the preferred stock are valued as if P's dividend right does not exist but otherwise without regard to section 2701. The amount of P's gift, determined using the subtraction method, is $1,500,000 ($1,500,000 minus $0). P may elect, however, to treat the dividend right as a qualified payment right as provided in § 25.2701-2(c)(2).

§ 25.2701-2 Special valuation rules for applicable retained interests.

(a) *In general.* In determining the amount of a gift under § 25.2701-3, the value of any applicable retained interest (as defined in paragraph (b)(1) of this section) held by the transferor or by an applicable family member is determined using the rules of chapter 12, with the modifications prescribed by this section. See § 25.2701-6 regarding the indirect holding of interests.

(1) *Valuing an extraordinary payment right.* Any extraordinary payment right (as defined in paragraph (b)(2) of this section) is valued at zero.

(2) *Valuing a distribution right.* Any distribution right (as defined in paragraph (b)(3) of this section) in a controlled entity is valued at zero, unless it is a qualified payment right (as defined in paragraph (b)(6) of this section). Controlled entity is defined in paragraph (b)(5) of this section.

(3) *Special rule for valuing a qualified payment right held in conjunction with an extraordinary payment right.* If one or more extraordinary payment rights exist with respect to an applicable retained interest held by the transferor or by an applicable family member, and the interest also confers a qualified payment right, the value of all these rights is determined by assuming that each extraordinary payment right is exercised in a manner that results in the lowest total value being determined for all the rights, using a consistent set of assumptions and giving due regard to the entity's net worth, prospective earning power, and other relevant factors. See §§ 20.2031-2(f) and 20.2031-3 for rules relating to the valuation of business interests generally.

(4) *Valuing other rights.* Any other right (including a qualified payment right not subject to the prior paragraph) is valued as if any right valued at zero does not exist but otherwise without regard to section 2701. Thus, if an applicable retained interest carries no rights that are valued at zero under section 2701, the value of the interest for purposes of section 2701 is its fair market value.

(5) *Example.* The following example illustrates rules of this paragraph (a).

Example. P, an individual, holds all 1,000 shares of X Corporation's $1,000 par value preferred stock bearing an annual cumulative dividend of $100 per share and holds all 1,000 shares of X's voting common stock. P has the right to put all the preferred stock to X at any time for $900,000. P transfers the common stock to P's child and immediately thereafter holds the preferred stock. Assume that at the time of the transfer, the fair market value of X is $1,500,000, and the fair market value of P's annual cumulative dividend right is $1,000,000. Because P has both an extraordinary payment right (the put right) and a qualified payment right (*i.e.*, the right to receive cumulative dividends), the special rule of paragraph (a)(3) of this section applies and the value of these rights is determined as if the put right will be exercised in a manner that results in the lowest total value being determined for the rights (in this case, by assuming that the put will be exercised immediately). The value of P's preferred stock is $900,000 (the lower of $1,000,000 or $900,000). The amount of the gift is $600,000 ($1,500,000 minus $900,000).

(b) *Definitions*—(1) *Applicable retained interest.* An applicable retained interest is any equity interest in a corporation or partnership with respect to which there is either

(i) An extraordinary payment right (as defined in paragraph (b)(2) of this section), or

(ii) In the case of a controlled entity (as defined in paragraph (b)(5) of this section), a distribution right (as defined in paragraph (b)(3) of this section).

(2) *Extraordinary payment right.* Except as provided in paragraph (b)(4) of this section, an extraordinary payment right is any put, call, or conversion right, any right to compel liquidation, or any similar right, the exercise or nonexercise of which affects the value of the transferred interest. A call right includes any warrant, option, or other right to acquire one or more equity interests.

(3) *Distribution right.* A distribution right is the right to receive distributions with respect to an equity interest. A distribution right does not include—

(i) Any right to receive distributions with respect to an interest that is of the same class as or a class that is subordinate to the transferred interest,

(ii) Any extraordinary payment right,

(iii) Any right of a partner to receive guaranteed payments of a fixed amount described in section 707(c), or

(iv) Any right described in paragraph (b)(4) of this section.

(4) *Rights that are not extraordinary payment rights or distribution rights.* Mandatory payments rights, liquidation participation rights, and non-lapsing conversion rights are neither extraordinary payment rights nor distribution rights.

(i) *Mandatory payment right.* A mandatory payment right is a right to receive a payment required to be made at a specific time for a specific amount. For example, a mandatory redemption right in preferred stock requiring that the stock be redeemed at its fixed par value

on a date certain is a mandatory payment right and therefore not an extraordinary payment right or a distribution right.

(ii) *Liquidation participation rights.* A liquidation participation right is a right to participate in a liquidating distribution. A liquidation participation right does not include the right to participate in a liquidating distribution if the transferor, members of the transferor's family, and applicable family members have the ability to compel liquidation.

(iii) *Non-lapsing conversion right*—(A) *Corporations.* A non-lapsing conversion right, in the case of a corporation, is a non-lapsing right to convert an equity interest in a corporation into a fixed number or a fixed percentage of shares of the same class as the transferred interest (or into an interest that would be of the same class but for non-lapsing differences in voting rights), that is subject to proportionate adjustments for changes in the equity ownership of the corporation and to adjustments similar to those provided in section 2701(d) for unpaid payments.

(B) *Partnerships.* A non-lapsing conversion right, in the case of a partnership, is a non-lapsing right to convert an equity interest in a partnership into a specified interest (other than an interest represented by a fixed dollar amount) of the same class as the transferred interest (or into an interest that would be of the same class but for non-lapsing differences in management rights or limitations on liability) that is subject to proportionate adjustments for changes in the equity ownership of the partnership and to adjustments similar to those provided in section 2701(d) for unpaid payments.

(C) *Proportionate adjustments in equity ownership.* For purposes of this paragraph (b)(4), an equity interest is subject to proportionate adjustments for changes in equity ownership if, in the case of a corporation, proportionate adjustments are required to be made for splits, combinations, reclassifications, and similar changes in capital stock, or, in the case of a partnership, the equity interest is protected from dilution resulting from changes in the partnership structure.

(D) *Adjustments for unpaid payments.* For purposes of this paragraph (b)(4), an equity interest is subject to adjustments similar to those provided in section 2701(d) if it provides for—

(*1*) Cumulative payments,

(*2*) Compounding of any unpaid payments at the rate specified in § 25.2701–4(c)(2), and

(*3*) Adjustment of the number or percentage of shares or the size of the interest into which it is convertible to take account of accumulated but unpaid payments.

(5) *Controlled entity*—(i) *In general.* For purposes of section 2701, a controlled entity is a corporation or partnership controlled, immediately before a transfer, by the transferor, applicable family members, and any lineal descendants of the parents of the transferor or the transferor's spouse. See § 25.2701–6 regarding indirect holding of interests.

(ii) *Corporations*—(A) *In general.* In the case of a corporation, control means the holding of at least 50 percent of the total voting power or total fair market value of the equity interests in the corporation.

(B) *Voting rights.* Equity interests that carry no right to vote other than on liquidation, merger, or a similar event are not considered to have voting rights for purposes of this paragraph (b)(5)(ii). A voting right is considered held by any individual to the extent that the individual, either alone or in conjunction with any other person, is entitled to exercise (or direct the exercise of) the right. A voting right includes a right held in a fiduciary capacity. A voting right does not include a right to vote that is subject to a contingency that has not occurred, other than a contingency that is within the control of the individual holding the right.

(iii) *Partnerships.* In the case of any partnership, control means the holding of at least 50 percent of either the capital interest or the profits interest in the partnership. Any right to guaranteed payments under section 707(c) are disregarded in making this determination. In addition, in the case of a limited partnership, control means the holding of any equity interest as a general partner.

(6) *Qualified payment right.* A qualified payment right is a right to receive qualified payments. A qualified payment is a distribution that is—

(i) A dividend payable on a periodic basis (at least annually) under any cumulative preferred stock, to the extent such dividend is determined at a fixed rate;

(ii) Any other cumulative distribution payable on a periodic basis (at least annually) with respect to an equity interest, to the extent determined at a fixed rate or as a fixed amount; or

(iii) Any distribution right for which an election has been made pursuant to paragraph (c)(2) of this section.

For this purpose, a payment is determined at a fixed rate if that rate bears a fixed relationship to a specified market interest rate.

(c) *Qualified payment elections*—(1) *Election to treat a qualified payment right as other than a qualified payment right.* Any transferor holding a qualified payment right may elect to treat any payments as payments that are not qualified payments. An election may be a partial election, in which case the election must be exercised with respect to a consistent portion of each payment.

(2) *Election to treat other distributions as qualified payments.* Any individual may elect to treat a payment pursuant to a distribution right held by that individual in a controlled entity as a qualified payment, but only to the extent—

(i) Specified in the election, and

(ii) That the payments elected are permissible under the legal instrument giving rise to the right and are consistent with the legal right of the entity to make the payment.

For purposes of valuing a distribution right for which an election under this paragraph (c)(2) has been made, the value of the distribution right may not exceed its fair market value (determined without regard to section 2701).

(3) *Elections irrevocable.* Any election under paragraph (c)(1) or (c)(2) of this section is revocable only with the consent of the Commissioner.

(4) *Treatment of certain payments to applicable family members.* Any payment described in paragraph (b)(6) of this section to an applicable family member is treated as a payment which is not a qualified payment unless the applicable family member elects (pursuant to paragraph (c)(2) of this section) to treat the payment as a qualified payment, provided that any partial election must be with respect to a consistent portion of each payment.

(5) *Time and manner of elections.* Any election under paragraph (c)(1) or (c)(2) of this section is made by attaching a statement to the Form 709, Federal Gift Tax Return, filed by the transferor on which the transfer is reported. An election filed within 60 days after publication of this regulation as a final document in the **Federal Register** for transfers made prior to its publication is effective. The statement must—

(i) Set forth the name, address, and taxpayer identification number of the electing individual and of the transferor, if different;

(ii) If the electing individual is not the transferor filing the return, state the relationship between the individual and the transferor;

(iii) Specifically identify the transfer disclosed on the return to which the election applies;

(iv) Describe in detail the distribution right to which the election applies;

(v) State the provision of the regulation under which the election is being made;

(vi) If the election is being made under paragraph (c)(2) of this section, state the amounts that the election assumes will be paid, and the times that the election assumes the payments will be made; and

(vii) If the election is being made under paragraph (c)(2) of this section, contain a statement that the electing individual understands and agrees that if payments are not made as provided in the election the individual's subsequent taxable gifts or taxable estate will, upon the occurrence of a taxable event (as defined in § 25.2701–4(b)), be increased by an amount determined under § 25.2701–4(c) and that the individual understands that he or she will be personally liable for any increase in tax attributable thereto.

(d) *Examples.* The following examples illustrate provisions of this section.

Example 1. On March 30, 1991, P transfers non-voting common stock of X Corporation to P's child, while retaining $100 par value voting preferred stock bearing a cumulative annual dividend of $10. Immediately before the transfer, P held 100 percent of the stock. Because X is a controlled entity (within the meaning of paragraph (b)(5) of this seciton), P's dividend right is a distribution right that is subject to section 2701. See § 25.2701–2(b)(3). Because the distribution right is an annual cumulative dividend, it is a qualified payment right. See § 25.2701–2(c)(2).

Example 2. Assume the same facts as in *Example 1*, except that the dividend right is non-cumulative. P's dividend right is a distribution right in a controlled entity, but is not a qualified payment right because the dividend is non-cumulative. Therefore, the non-cumulative dividend right is valued at zero under § 25.2701–1(a)(2). If the corporation were not a controlled entity, P's dividend right would be valued without regard to section 2701.

Example 3. The facts are the same as in *Example 1*. Because P holds sufficient voting power to compel liquidation of X, P's right to participate in liquidation is an extraordinary payment right under paragraph (b)(2) of this section. Because P holds an extraordinary payment right in conjunction with a qualified payment right (the right to receive cumulative dividends), the special rule of paragraph (a)(3) of this section applies.

Example 4. The facts are the same as in *Example 1*, except that immediately before the transfer, P, applicable family members of P, and members of P's family, holds 60 percent of the voting rights in X. Assume that 80 percent of the vote is required to compel liquidation of any interest in X. P's right to participate in liquidation is not an extraordinary payment right under paragraph (b)(3) of this section, because P and P's family cannot compel liquidation of X. P's preferred stock is an applicable retained interest that carries no rights that are valued at zero under section 2701. Thus, in applying the valuation method of § 25.2701–3, the value of P's preferred stock is its fair market value determined without regard to section 2701.

Example 5. L holds non-cumulative 10-percent preferred stock and common stock in a corporation that is a controlled entity. L transfers the common stock to L's child. L holds no extraordinary payment rights with respect to the preferred stock. L elects under paragraph (c)(2) of this section to treat the non-cumulative dividend right as a qualified payment right consisting of the right to receive a cumulative annual dividend of 5 percent. Under § 25.2701–2(c)(2), the value of the distribution right pursuant to the election is the lesser of (A) the fair market value of the right to receive a cumulative 5-percent dividend from the corporation, giving due regard to the corporation's net worth, prospective earning power, and dividend-paying capacity, or (B) the value of the distribution right determined without regard to section 2701 and without regard to the terms of the qualified payment election.

§ 25.2701–3 Determination of amount of gift.

(a) *In general.* The amount of the gift resulting from any transfer to which section 2701 applies is determined by a subtraction method of valuation. Under this method, the amount of the gift is determined by subtracting the values of all equity interests senior to the transferred interest from the value of the entity determined immediately before the transfer, and then appropriately allocating the balance among the transferred interests and other interests of the same class and subordinate classes. The values of the senior equity interests held by the transferor and applicable family members generally are determined under section 2701. Other senior equity interests are valued at fair market value. The value of the entity is the fair market value of the entire corporation or partnership, immediately prior to the transfer, with any appropriate adjustments to reflect the actual fragmented ownership of the entity (*e.g.*, minority discount or control premium). An equity interest is a senior equity interest if it carries a right to distributions of income or capital that is preferred to the rights of the transferred interest.

(b) *Valuation methodology.* The following methodology is used to determine the value of the transferred interest when section 2701 applies.

(1) *Step 1—Entity valuation.* Determine the value of the entity, giving effect to appropriate adjustments to reflect the actual fragmented ownership, using a consistent set of assumptions.

(2) *Step 2—Subtract the value of senior equity interests.* From the value determined in Step 1, subtract the following—

(i) The fair market value of all senior equity interests other than applicable retained interests held by the transferor or applicable family members; and

(ii) The value of all applicable retained interests (other than those included in paragraph (b)(2)(i) of this section) determined under § 25.2701–2, taking into account the adjustment described in paragraph (b)(4) of this section.

(3) *Step 3—Allocate the remaining value among the transferred interests and other interests of the same and subordinate classes.* The value remaining after Step 2 is—

(i) First, reduced by the fair market value of any equity interests of the same class as a or a subordinate class to the transferred interests held by persons other than the transferor, members of the transferor's family, and applicable family members of the transferor ("the family"); and

(ii) Second, allocated among the transferred interests and other interests of the same class or a subordinate class held by the family. The value remaining after the reduction in paragraph (b)(3)(i) of this section is allocated to those interests in a manner that would fairly approximate their value if rights valued at zero under section 2701 were not exercised or did not exist.

If there is no clearly appropriate method of allocating the remaining value pursuant to the preceding sentence, the remaining value (or the portion remaining after partial allocation pursuant to the preceding sentence) is allocated to the interests in proportion to their fair market values determined without regard to section 2701.

(4) *Valuation adjustment*—(i) *In general.* If the transferor and applicable family members hold a greater proportion of any senior equity interest than the largest proportion of any class of subordinate interest (or aggregate thereof) held by the family, the subtraction in Step 2 is modified as described in this paragraph (b)(4).

(ii) *Modification of Step 2.* For purposes of Step 2, the percentage (determined on the basis of the relative fair market values) of any class of applicable retained interest held by the transferor and by applicable family members that exceeds the family interest percentage is not valued at the value determined under § 25.2701–2 but rather is valued at the same value per share (or similar unit of interest) as interests of the same class held by individuals other than the transferor and applicable family members. If the transferor and applicable family

members hold all the applicable retained interests in any class, the percentage of the class that exceeds the family interest percentage is valued at its pro rata share of the fair market value of the entire class.

(iii) *Family interest percentage.* The family interest percentage is the highest ownership percentage (determined on the basis of relative fair market values) held by the family in—

(A) Any class of equity interest that is of the same class as or a class subordinate to the transferred interest; or

(B) All classes of equity interest of the same class as or a class subordinate to the transferred interest, valued in the aggregate.

Equity interests are considered of the same class if they possess substantially identical rights with regard to the entity, determined without regard to non-lapsing differences in voting rights (or, for a partnership, non-lapsing differences with respect to management and limitations on liability). Solely for this purpose, a class of equity interest is subordinate to the transferred interest if the distribution right of the equity interest is subordinate to the distribution right of the transferred interest.

(c) *Minimum value rule*—(1) *In general.* If section 2701 applies to the transfer of an interest in an equity, the aggregate value of all junior equity interests must not be less than 10 percent of the sum of—

(i) The total value of all equity interests in the entity, and

(ii) The total amount of any indebtedness of the entity owed to the transferor or to an applicable family member.

Junior equity interest means common stock or, in the case of a partnership, any partnership interest under which the rights to income and capital are junior to the rights of all other classes of partnership interests.

(2) *Indebtedness.* For purposes of paragraph (c)(1) of this section, short-term indebtedness incurred with respect to the current conduct of trade or business (such as amounts payable for current services) is not indebtedness of the entity. A lease of property is not indebtedness, without regard to the length of the lease term, if the lease payments are made on a current basis and represent full and adequate consideration for use of the property. A lease is considered for full and adequate consideration if a good faith effort is made to determine the fair rental value under the lease and the terms of the lease conform to the value so determined.

(d) *Examples.* The application of the subtraction method described in this section is illustrated by the following examples.

Example 1. Corporation X has outstanding 1,000 shares of $1,000 par value voting preferred stock, each share of which carries a cumulative annual dividend of 8 percent and a right to put the stock to X for its par value at any time. In addition, there are outstanding 1,000 shares of non-voting common stock. Sixty percent (determined by value) of the preferred stock and 75 percent (determined by value) of the common stock is held by A, and the balance of the preferred and common stock is held by B, a person unrelated to A. Assume the fair market value of each share of preferred stock (without regard to section 2701) is $1,000. Under § 25.2701-2, A's put right is an extraordinary payment right valued at zero, and A's cumulative dividend right, which is a qualified payment right, is valued (taking account of A's voting rights but disregarding A's put right) at $800 per share. A transfers all of A's common stock to A's child. The method for determining the amount of A's gift is as follows—

Step 1: Assume the value of X, after taking account of applicable discounts that reflect the actual fragmented ownership of the various interests, is determined to be $1.5 million.

Step 2: From the amount determined under Step 1, subtract $880,000, the sum of the following—

(a) $400,000 (the fair market value of the preferred stock held by persons other than the transferor, members of the transferor's family and applicable family members); and

(b) $480,000 (the section 2701 value of A's preferred stock; *i.e.*, 60 percent of the $800,000 value of the preferred stock computed under the "lower of" rule of § 25.2701-2(a)(4)).

The result of Step 2 is a balance of $620,000. This is the aggregate value of the common stock.

Step 3: From the value determined under Step 2, subtract the fair market value of B's common stock (assumed for this purpose to be $125,000). The difference ($495,000) is the amount of A's gift.

Example 2. The facts are the same as in *Example 1*, except that prior to the transfer A holds only 50 percent of the common stock and B holds the remaining 50 percent.

Step 1: The result of this step (determining the value of the entity) is the same as in *Example 1* ($1,500,000).

Step 2: From the amount determined under Step 1, subtract $900,000 ($400,000, the fair market value of B's preferred stock plus $500,000, the value of A's preferred stock determined under section 2701 after the valuation adjustment determined under paragraph (b)(4) of this section). A valuation adjustment is required in this example because A's percentage ownership of the preferred stock (60 percent) exceeds the family interest percentage of the common stock (50 percent). Therefore, A's shares of preferred stock are valued by assuming that the value of 100 of A's shares equals the value per share ($1,000) of B's preferred stock, or $100,000 (100 × $1,000). The balance of A's preferred stock is valued under section 2701 at $400,000 (500 shares × $800). The total value of A's preferred stock equals $500,000 ($100,000 plus $400,000). The result of Step 2 is $600,000 ($1.5 million minus $900,000) which is the aggregate value of the common stock.

Step 3: From the value determined under Step 2, subtract the fair market value of B's common stock (assumed for this purpose to be $250,000). The difference ($350,000) is the amount of the A's gift.

§ 25.2701-4 Accumulated qualified payments.

(a) *In general.* If a taxable event occurs with respect to any applicable retained interest that confers a distribution right that was previously valued as a qualified payment right (a "qualified payment interest"), the taxable estate or taxable gifts of the individual holding the interest is increased by the amount determined under paragraph (c) of this section.

(b) *Taxable event*—(1) *In general.* Except as provided in paragraph (b)(2)(ii) of this section, taxable event means the transfer of a qualified payment interest, either during life or at death, by the individual in whose hands the interest was originally valued under section 2701 (the "interest holder") or by any individual treated pursuant to paragraph (b)(2) of this section in the same manner as the interest holder. A taxable event includes any irrevocable lapse or other termination of an individual's rights with respect to a qualified payment interest. Thus, for example, if the interest holder is treated as indirectly holding a qualified payment interest held by a trust, the first to occur of the lapse (or other transfer) of the interest holder's interest in the qualified payment interest held by the trust or the disposition of the qualified payment interest by the trust is a taxable event with respect to the interest holder. See paragraph (d) of this section for a taxpayer election to treat the late payment of certain qualified payments as a taxable event.

(2) *Individual treated as interest holder*—(i) *In general.* If a taxable event involves the transfer of a qualified payment interest by the interest holder (or an individual treated as the interest holder) to an applicable family member of the individual who made the transfer to which section 2701 applied (other than the spouse of the individual transferring the qualified payment interest), the transferee applicable family member is treated in the same manner as the interest holder with respect to late or unpaid qualified payments first due after the taxable

event. Thus, for example, if an interest holder transfers during life a qualified payment interest to an applicable family member, that transfer is a taxable event with respect to the interest holder whose taxable gifts are increased for the year of the transfer as provided in paragraph (c) of this section. The transferee is treated thereafter in the same manner as the interest holder with respect to late or unpaid qualified payments first due after the taxable event.

(ii) *Transfers to spouse.* If an interest holder (or an individual treated as the interest holder) transfers a qualified payment interest, the transfer is not a taxable event to the extent a marital deduction is allowable with respect to the transfer under section 2056, 2106(a)(3), or 2523 or, in the case of a transfer during the individual's lifetime, to the extent the spouse furnishes consideration for the transfer. If this exception applies, the transferee spouse is treated as if he or she were the holder of the interest from the date the transferor spouse acquired the interest. If the surviving spouse furnishes consideration for an interest transferred at, or by reason of, the death of the interest holder (or an individual treated as the interest holder), for purposes of this section the transfer is considered a transfer with respect to which a deduction is allowable under section 2056 or section 2106(a)(3), to the extent that such a deduction is allowed to the estate. For example, assume that A bequeaths $50,000 to A's surviving spouse, B, in a manner that qualifies for deduction under section 2056, and that subsequent to A's death B purchases a qualified payment interest from A's estate for $200,000, its fair market value. The economic effect of the transaction is the equivalent of a bequest by A to B of the qualified payment interest, one-fourth of which qualifies for the marital deduction. Therefore, for purposes of this section, one-fourth of the qualified payment interest purchased by B ($50,000 ÷ $200,000) is considered a transfer of an interest with respect to which a deduction is allowable under 2056.

(c) *Amount of increase*—(1) *In general.* Except as limited by paragraph (c)(4) of this section, the amount of the increase to an individual's taxable estate or taxable gifts is the excess, if any, or—

(i) The sum of—

(A) The amount of qualified payments payable during the period beginning on the date of the transfer to which section 2701 applied (or in the case of an individual treated as the interest holder, on the date that individual acquired the interest) and ending on the date of the taxable event; and

(B) The earnings on those payments determined hypothetically as if each payment were paid on its date due and reinvested as of that date at a yield equal to the appropriate discount rate (as defined below); over

(ii) The sum of—

(A) The amount of the qualified payments actually paid during the same period;

(B) The earnings on those payments determined hypothetically as if each payment were reinvested as of the date actually paid at a yield equal to the appropriate discount rate; and

(C) To the extent required to prevent double inclusion, by an amount equal to the portion of the fair market value of the qualified payment interest solely attributable to any legal right to receive unpaid qualified payments determined as of the date of the taxable event.

(2) *Appropriate discount rate.* The appropriate discount rate is the discount rate that was applied in determining the value of the qualified payment right at the time of the transfer to which section 2701 applied.

(3) *Application of payments.* For purposes of this section, any payment of an unpaid qualified payment is applied in satisfaction of unpaid qualified payments beginning with the earliest unpaid qualified payment. Any payment in excess of the total of all unpaid qualified payments is treated as a prepayment of future qualified payments. Any payment of a qualified payment made (or treated as made) either before or during the four-year period beginning on the due date of the payment but before the date of the taxable event is treated as having been made on the due date. A payment in the form of an equity interest in the entity is not a qualified payment.

(4) *Limitation*—(i) *In general.* The amount of the increase to an individual's taxable estate or taxable gifts is limited to the applicable percentage of the excess, if any, of—

(A) The sum of—

(*1*) The fair market value of all outstanding equity interests in the entity that are subordinate to the applicable retained interest, determined as of the date of the taxable event without regard to any accrued liability attributable to unpaid qualified payments; and

(*2*) Any amounts expended by the entity to redeem or otherwise acquire any such subordinate interest during the period beginning on the date of the transfer to which section 2701 applied (or, in the case of an individual treated as an interest holder, the date that individual acquired the interest) and ending on the date of the taxable event (reduced by any amounts received on the resale or issuance of any such subordinate interest during the same period); over

(B) The fair market value of all equity interests in the entity that are subordinate to the applicable retained interest, determined as of the date of the transfer to which section 2701 applied (or in the case of an individual treated as an interest holder, as of the date that individual acquired the interest).

(ii) *Computation of limitation.* For purposes of computing the limitation applicable under this paragraph (c)(4), the aggregate fair market value of the subordinate interests in the entity are determined without regard to § 25.2701-3(c).

(iii) *Applicable percentage.* The applicable percentage is determined by dividing the number of shares or units of the applicable retained interest held by the interest holder (or an individual treated as the interest holder) on the date of the taxable event by the total number of such shares or units outstanding on the same date. If an individual holds applicable retained interests in two or more classes of interests, the applicable percentage is equal to the largest applicable percentage determined with respect to any class. For example, if T retains 40 percent of the class A preferred and 60 percent of the class B preferred in a corporation, the applicable percentage with respect to T's holdings is 60 percent.

(d) *Taxpayer election*—(1) *In general.* An interest holder (or individual treated as an interest holder) may elect to treat as a taxable event the payment of an unpaid qualified payment occurring more than four years after its due date. Under this election, the increase under paragraph (c) of this section is determined only with respect to this payment and all previous payments for which an election was available but not made. Payments for which an election applies are treated as having been paid on their due dates for purposes of subsequent taxable events. The election is revocable only with the consent of the Commissioner.

(2) *Limitation not applicable.* If a taxable event occurs by reason of an election described in paragraph (d)(1) of this section, the limitation described in paragraph (c)(4) of this section does not apply.

(3) *Time and manner of election*—(i) *Timely-filed returns.* The election may be made by attaching a statement to a Form 709, Federal Gift Tax Return, filed by the recipient of the qualified payment

on a timely basis for the year in which the qualified payment is received. In that case, the taxable event is deemed to occur on the date the qualified payment is received.

(ii) *Election on late returns.* The election may be made by attaching a statement to a Form 709, Federal Gift Tax Return, filed by the recipient of the qualified payment other than on a timely basis for the year in which the qualified payment is received. In that case, the taxable event is deemed to occur on the first day of the month immediately preceding the month in which the return is filed.

(iii) *Requirements of statement.* The statement must—

(A) Provide the name, address, and taxpayer identification number of the electing individual and the interest holder, if different;

(B) Indicate that a taxable event election is being made under paragraph (d) of this section;

(C) Disclose the exact nature of the qualified payment right to which the election applies including the due dates of the payments, the dates the payments were made, and the amounts of the payments;

(D) State the name of the transferor, the date of the transfer to which section 2701 applied, and the discount rate used in valuing the qualified payment right; and

(E) State the resulting amount of increase in taxable gifts.

(4) *Example.* The following example illustrates the rules of this paragraph (d).

Example. A holds cumulative preferred stock that A retained in a transfer to which section 2701 applied. No dividends were paid in years 1 through 5 following the transfer. In year 6, A received a qualified payment that, pursuant to paragraph (c)(3) of this section, is considered to be in satisfaction of the unpaid qualified payment of year 1. No election was made to treat that payment as a taxable event. In year 7, A receives a qualified payment that, pursuant to paragraph (c)(3) of this section, is considered to be in satisfaction of the unpaid qualified payment for year 2. A elects to treat the payment in year 7 as a taxable event. The election increases A's taxable gifts in year 7 by the amount computed under paragraph (c) of this section with respect to the payments due in both year 1 and year 2. For purposes of any future taxable events, the payments with respect to years 1 and 2 are treated as having been made on their due dates.

§ 25.2701-5 Adjustments. [Reserved]

§ 25.2701-6 Indirect holding of interests.

(a) *In general*—(1) *Attribution to individuals.* For purposes of section 2701, an individual is treated as holding any equity interest to the extent the interest is held indirectly through a corporation, partnership, estate, trust, or other entity. If an equity interest is treated as held by a particular individual in more than one capacity, the interest is treated as held by the individual in the manner that attributes the largest total ownership of the equity interest. As equity interest held by a lower-tier entity is attributed to higher-tier entities in accordance with the rules of this section. For example, if an individual is a 50-percent beneficiary of a trust that holds 50 percent of the preferred stock of a corporation, 25 percent of the preferred stock is considered held by the individual under these rules.

(2) *Corporations.* A person is considered to hold any equity interest held by or for a corporation in the proportion that the value of the stock the person holds bears to the value of all the stock in the corporation. This paragraph applies to any entity classified as a corporation or as an association taxable as a corporation for federal income tax purposes.

(3) *Partnerships.* A person is considered to hold any equity interest held by or for a partnership in the proportion that the larger of the person's profits interest or capital interest in the partnership bears to the total profits interests or capital interests in the partnership, as the case may be. This paragraph applies to any entity classified as a partnership for federal income tax purposes.

(4) *Estates, trusts and other entities*—(i) *In general.* A person is considered to hold any equity interest held by or for an estate or trust to the extent the person's beneficial interest therein may be satisfied by the property held by the estate or trust, or the income or proceeds thereof, assuming the maximum use of the equity interest to satisfy the person's rights and assuming the maximum exercise of fiduciary discretion in favor of the person. A beneficiary of an estate or trust who cannot receive any distribution with respect to an equity interest held by the estate or trust, including the income therefrom or the proceeds from the disposition thereof, is not considered the holder of the equity interest. Thus, if stock held by a decedent's estate has been specifically bequeathed to one beneficiary and the residue of the estate has been bequeathed to other beneficiaries, the stock is considered held only by the beneficiary to whom it was specifically bequeathed. However, any person who may receive distributions from a trust is considered to hold an equity interest held by the trust if the distributions may be made from current or accumulated income from or the proceeds from the disposition of the equity interest, even though under the terms of the trust the interest can never be distributed to that person. This paragraph applies to any entity that is not classified as a corporation, an association taxable as a corporation, or a partnership for federal income tax purposes.

(ii) *Special rules*—(A) Property is held by a decedent's estate if the property is subject to claims against the estate and expenses of administration.

(B) A person holds a beneficial interest in a trust or an estate so long as the person may receive distributions from the trust or the estate other than payments for full and adequate consideration.

(C) An individual holds the entirety of any equity interest held by or for a trust to the extent the individual is considered the owner of the trust (a "grantor trust") under subpart E, part 1, subchapter J of the Code (relating to grantors and others treated as substantial owners). If an individual is treated as the holder of only a fractional share of a grantor trust because there are multiple grantors, the individual holds each equity interest held by the trust, except to the extent that the fair market value of the interest exceeds the fair market value of the fractional share.

(5) *Multiple attribution*—(i) *Applicable retained interests.* If this section attributes an applicable retained interest to more than one individual in a class consisting of the transferor and one or more applicable family members, the interest is attributed within that class in the following order—

(A) If the interest is held in a grantor trust, to the individual treated as the owner thereof;

(B) To the transferor;

(C) To the transferor's spouse; or

(D) To each applicable family member on a pro rata basis.

(ii) *Subordinate interests.* If this section attributes a subordinate interest to more than one individual in a class consisting of the transferor, applicable family members, and members of the transferor's family, the interest is attributed within that class in the following order—

(A) To the transferee;

(B) To each member of the transferor's family on a pro rata basis;

(C) If the interest is held in a grantor trust, to the individual treated as the owner thereof;

(D) To the transferor;

(E) To the transferor's spouse; or

(F) To each applicable family member on a pro rata basis.

(b) *Examples.* The following examples illustrate the provisions of this section.

Example 1. A, an individual, holds 25 percent by value of each class of stock of Y Corporation. Persons unrelated to A hold the remaining stock. Y holds 50 percent of the stock of Corporation X. Under paragraph (a)(2) of this section, Y's interests in X are attributed proportionately to the shareholders of Y. Accordingly, A is considered to hold a 12.5 percent (25 percent x 50 percent) interest in X.

Example 2. Z Bank's authorized capital consists of 100 shares of common stock and 100 shares of preferred stock. A holds 60 shares of each (common and preferred) and A's child, B, holds 40 shares of common stock. Z holds the balance of its own preferred stock, 30 shares as part of a common trust fund it maintains and 10 shares permanently set aside to satisfy a deferred obligation. For purposes of section 2701, A holds 60 shares of common stock and 66 shares of preferred stock in Z, 60 shares of each class directly and 6 shares of preferred stock indirectly (60 percent of the 10 shares set aside to fund the deferred obligation).

Example 3. An irrevocable trust holds a 10-percent general partnership interest in Partnership Q. One-half of the trust income is required to be distributed to O Charity. The other one-half of the income is to be distributed to D during D's life and thereafter to E for such time as E survives D. D holds one-half of the trust's interest in Q by reason of D's present right to receive one-half of the trust's income, and E holds one-half of the trust's interest in Q by reason of E's future right to receive one-half of the trust's income. Nevertheless, no family member is treated as holding more than one-half of the trust's interest in Q because at no time will either D or E actually hold, in the aggregate, any right with respect to income or corpus greater than one-half.

Example 4. An irrevocable trust holds a 10-percent general partnership interest in partnership M. One-half of the trust income is to be paid to D for D's life. The remaining income may, in the trustee's discretion, be accumulated or paid to or for the benefit of a class that includes D's child F, in such amounts as the trustee determines. On the death of the survivor of D and F, the trust corpus is required to be distributed to O Charity. The trust's interest in M is held by the trust's beneficiaries to the extent that present and future income or corpus may be distributed to them. Accordingly, D holds one-half of the trust's interest in M because D is entitled to receive one-half of the trust income currently. F holds the entire value of the interest because F is a member of the class eligible to receive the entire trust income for such time as F survives D. See paragraph (a)(5) of this section for rules applicable in the case of multiple attribution.

Example 5. The facts are the same as in *Example 4*, except that all the income is required to be paid to O Charity for the trust's initial year. The result is the same as in *Example 4*.

§ 25.2701-7 Separate interests.

The Secretary may, by regulation, revenue ruling, notice, or other document of general application, prescribe rules under which an applicable retained interest is treated as two or more separate interests for purposes of section 2701. In addition, the Commissioner may, by ruling issued to a taxpayer upon request, treat any applicable retained interest as two or more separate interests as necessary and appropriate to carry out the purposes of section 2701.

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§ 25.2702-1 Special valuation rules in the case of transfers of interests in trust.

(a) *Scope of section 2702.* Section 2702 provides special rules to determine the amount of a gift when an individual makes a transfer in trust to (or for the benefit of) a member of his or her family and the individual or an applicable family member retains an interest in the trust. See § 25.2702-2. Section 25.2702-4 treats certain transfers of property as transfers in trust. Certain transfers, including transfers to a personal residence trust, are not subject to section 2702. See §§ 25.2702-3 and 25.2702-5.

(b) *Effect of section 2702.* Generally, if section 2702 applies to a transfer, the amount of the gift, if any, is determined by subtracting the value of any interest in the trust that the transferor or any applicable family member has retained from the value of the transferred property. If the interest in the trust retained by the transferor or applicable family member is not a qualified interest (as defined in § 25.2702-3), the retained interest is typically valued at zero, and the amount of the gift is the entire value of the property. The term member of the family is defined in § 25.2702-2(a)(1). The term applicable family member is defined in § 25.2701-1(d)(2).

(c) *Exceptions to section 2702.* Section 2702 does not apply to any of the following.

(1) *Incomplete gift.* A transfer on portion of which would be treated as a

completed gift without regard to any consideration received by the transferor. A transfer that is wholly incomplete as to an undivided fractional share of a trust is treated as an incomplete transfer as to that share.

(2) *Personal residence trust.* A transfer of an interest in a trust that meets the requirements of § 25.2702-5.

(3) *Charitable trust.* A transfer in trust to a member of the transferor's family if the remainder interest in the trust qualifies for deduction under section 2522.

(4) *Pooled income fund.* A transfer of property to a pooled income fund (as defined in section 642(c)(5)).

§ 25.2702-2 Definitions and valuation rules.

(a) *Definitions.* The following definitions apply for purposes of section 2702.

(1) *Member of the family.* With respect to any individual, member of the family means the individual's spouse, any ancestor or lineal descendant of the individual or the individual's spouse, any brother or sister of the individual, and any spouse of the foregoing.

(2) *Transfer in trust.* A transfer in trust includes a transfer to a new or existing trust and an assignment of an interest in an existing trust. Transfer in trust does not include either the exercise of a power of appointment that is not a general power of appointment (as defined in section 2514) or the execution of a qualified disclaimer (as defined in section 2518).

(3) *Retained.* Retained means held by the same individual both before and after the transfer in trust. In the case of a creation of a term interest, any interest in the property held by the transferor immediately after the transfer is treated as held both before and after the transfer.

(4) *Qualified interest.* Qualified interest means a qualified annuity interest, a qualified unitrust interest or a qualified remainder interest.

(5) *Qualified annuity interest.* Qualified annuity interest means an interest that meets all the requirements of § 25.2702-3 (b) and (d).

(6) *Qualified unitrust interest.* Qualified unitrust interest means an interest that meets all the requirements of § 25.2702-3 (c) and (d).

(7) *Qualified remainder interest.* Qualified remainder interest means an interest that meets all the requirements of § 25.2702-3(f).

(8) *Governing instrument.* Governing instrument means the instrument or instruments creating the trust arrangement.

(b) *Valuation of retained interests*—(1) *In general.* Except as provided in paragraphs (b)(2) and (b)(3) of this section, the value of any interest retained by the transferor or an applicable family member is zero.

(2) *Qualified interests.* The value of qualified annuity interests and qualified remainder interests are determined under section 7520. The value of qualified unitrust interests are determined as if they were unitrust interests described in section 664.

(3) *Certain tangible property.* The value of a term interest in tangible property that meets the requirements of paragraph (c) of this section is determined under the rules of that paragraph.

(c) *Valuation of a term interest in certain tangible property*—(1) *In general.* If section 2702 applies to a transfer in trust of property described in paragraph (c)(2) of this section, the value of a term interest in such property is not determined under section 7520 but is the amount the holder of the term interest establishes as the amount a willing buyer would pay a willing seller for the interest, each having reasonable knowledge of the relevant facts and neither being under any compulsion to buy or sell. If the taxpayer cannot establish the value of the term interest, the rules of paragraph (b) of this section (other than paragraph (b)(3) thereof) apply.

(2) *Property to which rule applies*—(i) *In general.* Except as provided in paragraph (c)(2)(ii) of this section, paragraph (c)(1) of this section applies only to transfers of tangible property—

(A) For which no deduction for depreciation or depletion would be allowable if the property were used in a trade or business or held for the production of income; and

(B) As to which the failure to exercise any rights under the term interest would not increase the value of the property passing at the end of the term interest.

(ii) *De minimis exception for depreciable property.* In determining whether property meets the requirements of this paragraph (c)(2) at the time of the transfer in trust, improvements on the property for which a deduction for depreciation would be allowable if the property were used in a trade or business or held for the production of income are not taken into account if the improvements do not increase the fair market value of the property by more than 2 percent.

(3) *Evidence of value of property.* The best evidence of the value of any term interest to which this paragraph (c) applies is actual sales or rentals that are comparable both as to the nature and character of the property and the duration of the term interest. Little weight will be accorded appraisals to establish value in the absence of evidence of actual comparable sales or rentals.

(4) *Conversion of property*—(i) *In general.* Except as provided in paragraph (c)(4)(ii) of this section, if a term interest in property is valued under this paragraph (c), and during the term the property is converted into property in which a term interest would not qualify for valuation under this paragraph (c), the conversion is treated as a transfer of the value of the unexpired portion of the term interest (determined as of the date of the original transfer).

(ii) *Conversion to qualified annuity interest.* The conversion of tangible property previously valued under this paragraph (c) into property a term interest in which would not qualify for valuation under this paragraph (c) is not a transfer of the value of the unexpired portion of the term interest if the property is thereafter held for the balance of the term holder's interest in a trust meeting the requirements of § 25.2702-5(e)(6)(ii).

(5) *Additions or improvements to property.*

(i) If an addition or improvement is made to property, a term interest in which was valued under this paragraph (c), and the addition or improvement affects the nature of the property to such an extent that the property would not be treated as property meeting the requirements of paragraph (c)(2) of this section if the property transferred had included the addition or improvement, the entire property is deemed, for purposes of paragraph (c)(4) of this section, to convert into property in which a term interest would not qualify for valuation under this paragraph (c).

(ii) If an addition or improvement is made to property, a term interest in which was valued under this paragraph (c), and the addition or improvement does not affect the nature of the property to such an extent that the property would not be treated as property meeting the requirements of this paragraph (c) if the property transferred had included the addition or improvement, the addition or improvement is treated as an additional transfer subject to section 2702.

(d) *Examples.* The following examples illustrate the rules of § 25.2702-1 and § 25.2702-2. Each example assumes that all applicable requirements of those sections not specifically described in the example are met.

Example 1. A transfers property to an irrevocable trust, retaining the right to receive the income of the trust for 10 years. On the expiration of the 10-year term, the trust is to terminate and the trust corpus is to be paid to A's child. However, if A dies during the 10-year term, the entire trust corpus is to be paid to A's estate at that time. Each retained interest is valued at zero because it is not a qualified interest. Thus, the amount of A's gift is the fair market value of the property transferred to the trust.

Example 2. A transfers property to an irrevocable trust, retaining a 10-year annuity interest that meets the requirements set forth in § 25.2702–3 for a qualified annuity interest. Upon expiration of the 10-year term, the trust is to terminate and the trust corpus is to be paid to A's child. The amount of A's gift is the fair market value of the property transferred to the trust less the value of the retained interest determined under section 7520.

Example 3. D transfers property to an irrevocable trust under which the income is payable to D's spouse for life. Upon the death of the spouse, the trust is to terminate and the trust corpus is to be paid to D's child. D retains no interest in the trust. Although the spouse is an applicable family member of D under section 2702, the spouse has not retained an interest in the trust because the spouse did not hold the interest both before and after the transfer. Section 2702 does not apply because neither the transferor nor an applicable family member has retained an interest in the trust. The result is the same whether or not D elects to treat the transfer as a transfer of qualified terminable interest property under section 2056(b)(7).

Example 4. A transfers property to an irrevocable trust, under which the income is to be paid to A for life. Upon termination of the trust, the trust corpus is to be distributed to A's child. A also retains certain powers over principal that cause the entire transfer to be incomplete for federal gift tax purposes. Section 2702 does not apply because no portion of the transfer would be treated as a completed gift.

Example 5. The facts are the same as in *Example 4*, except that the trust is divided into separate fractional shares and the powers A retains apply to only one of the shares. Section 2702 applies except with respect to the share of the trust as to which A's retained powers cause the transfer to be an incomplete gift.

Example 6. A transfers property to an irrevocable trust, retaining the right to receive the income for 10 years. Upon expiration of 10 years, the income of the trust is payable to A's spouse for 10 years. The trust provides that the remainder interest is payable to A's child. A retains the right to revoke the spouse's interest. Because the transfer of property to the trust is not incomplete as to all interests in the property (*i.e.*, A has made a completed gift of the remainder interest), section 2702 applies. Because A's retained interest is not a qualified interest, it is valued at zero. The value of the gift is the fair market value of the property transferred to the trust.

Example 7. A purchases a 10-year income interest in a painting. The painting does not possess an ascertainable useful life. B, A's child, purchases the remainder interest in the painting. A and B each pay a portion of the total purchase price ($2,000,000) determined by valuing their respective interests under section 7520. A, as holder of the term interest, is treated as acquiring the painting and transferring the remainder interest to B. See § 25.2702–4. A's income interest is not a qualified interest under § 25.2702–3. However, because of the nature of the property, A's failure to exercise A's rights with regard to the painting would not be expected to cause the value of the painting to be higher than it would otherwise be at the time it passes to B. For example, if A placed the painting in storage, foregoing A's right to realize the rental value or otherwise to enjoy A's rights in the painting, the value of the painting would not be increased at the time it passed to B. In addition, the painting would not be depreciable if it were used in a trade or business or held for the production of income. Accordingly, A's interest is valued under paragraph (c)(1) of this section. Assume that A furnishes $750,000 of the purchase price and that A establishes that a willing buyer of A's interest would pay $100,000 for the interest. The amount of A's gift is $650,000 ($750,000 minus $100,000).

Example 8. The facts are the same as in *Example 7*, except that the only evidence produced by A to establish the value of A's 10-year term interest is the amount paid by a museum for the right to use a comparable painting for 1 year. A asserts that the value of the 10-year term is 10 times the value of the 1-year term. A has not established the value of the 10-year term interest because a series of short-term rentals the aggregate duration of which equals the duration of the actual term interest does not establish what a willing buyer would pay a willing seller for the 10-year term interest. However, the value of the 10-year term interest is not less than the value of the 1-year term because it can be assumed that a willing buyer would pay no less for a 10-year term interest than a 1-year term interest.

Example 9. The facts are the same as in *Example 8*, except that after 2 years A and B sell the painting and invest the proceeds in a portfolio of securities. A continues to hold an income interest in the securities for the duration of the 10-year term. Under § 25.2702–2(c)(4) the conversion of the painting into a type of property a term interest in which would not qualify for valuation under paragraph (c)(1) of this section is treated as a transfer by A of the value of the unexpired portion of A's original interest, unless the property is thereafter held in a trust meeting the requirements of § 25.2702–5(e)(6)(ii).

§ 25.2702–3 Qualified Interests.

(a) *In general.* This section provides rules for determining if an interest is a qualified annuity interest, a qualified unitrust interest or a qualified remainder interest.

(b) *Special rules for qualified annuity interests.* An interest is a qualified annuity interest only if it meets the requirements of this paragraph and paragraph (d) of this section.

(1) *Payment of annuity amount*—(i) *In general.* A qualified annuity interest is an irrevocable right to receive a fixed amount periodically, but not less frequently than annually. The annuity amount must be payable to (or for the benefit of) the transferor or the applicable family member retaining the qualified annuity interest for each taxable year of the term. An annual noncumulative right to withdraw a stated dollar amount, or an annual noncumulative right to withdraw a fixed fraction or percentage of the initial fair market value of the trust property, is not a qualified annuity interest. The annuity payment may be made after the close of the taxable year, provided the payment is made no later than the date by which the trustee is required to file the income tax return of the trust for the taxable year (without regard to extensions).

(ii) *Fixed amount.* A fixed amount means—

(A) A stated dollar amount, but only to the extent the amount is the same for each year of the term; or

(B) A fixed fraction or percentage of the initial fair market value of the property transferred to the trust, as finally determined for federal tax purposes, but only to the extent the fraction or percentage is the same for each year of the term.

(iii) *Income in excess of the annuity amount.* An annuity interest does not fail to be a qualified annuity interest merely because the trust permits income in excess of the amount required to pay the annuity amount to be paid to or for the benefit of the transferor or the applicable family member retaining the qualified annuity interest. Nevertheless, the right to receive the excess income is not a qualified annuity amount and is not taken into account in valuing the qualified annuity interest.

(2) *Incorrect valuations of trust property.* If the annuity is stated in terms of a fraction or percentage of the initial fair market value of the trust property, the governing instrument must contain provisions meeting the requirements of § 1.664–2(a)(1)(iii) of this chapter (relating to adjustments for any incorrect determination of the fair market value of the property in the trust).

(3) *Computation of annuity amount in certain circumstances.* The governing instrument must contain provisions meeting the requirements of § 1.664–2(a)(1)(iv) of this chapter (relating to the computation of the annuity amount in the case of short taxable years and the last taxable year of the term).

(4) *Additional contributions prohibited.* The governing instrument must prohibit additional contributions to the trust.

(c) *Special rules for qualified unitrust interests.* An interest is a qualified unitrust interest only if it meets the requirements of this paragraph and paragraph (d) of this section.

(1) *Payment of unitrust amount*—(i) *In general.* A qualified unitrust interest is an irrevocable right to receive payment periodically, but not less frequently than annually, of a fixed percentage of the net fair market value of the trust assets, determined annually. For rules relating to computation of the net fair market value of the trust assets see § 25.2522(c)–3(c)(2)(vii). The unitrust amount must be payable to (or for the benefit of) the transferor or to the applicable family member retaining the qualified unitrust interest for each taxable year of the term. An annual noncumulative right to withdraw a fixed percentage of the net fair market value of the trust property, valued annually, is not a qualified unitrust interest. The payment may be made after the close of the taxable year, provided that the payment is made no later than the date by which the trustee is required to file the income tax return of the trust for the year (without regard to extensions).

(ii) *Fixed percentage.* A fixed percentage is a fraction or percentage of the net fair market value of the trust assets, determined annually, but only to the extent the fraction or percentage is the same for each year of the term.

(iii) *Income in excess of unitrust amount.* A unitrust interest does not fail to be a qualified unitrust interest merely because the trust permits income in excess of the amount required to pay the unitrust amount to be paid to or for the benefit of the transferor or the applicable family member retaining the qualified unitrust interest. Nevertheless, the right to receive the excess income is not a qualified unitrust interest and is not taken into account in valuing the qualified unitrust interest.

(2) *Incorrect valuations of trust property.* The governing instrument must contain provisions meeting the requirements of § 1.664–3(a)(1)(iii) of this chapter (relatng to the incorrect determination of the fair market value of the property in the trust).

(3) *Computation of unitrust amount in certain circumstances.* The governing instrument must contain provisions meeting the requirements of § 1.664–3(a)(1)(v) of this chapter (relating to the computation of the unitrust amount in the case of short taxable years and the last taxable year of the term).

(d) *Requirements applicable to qualified annuity interests and qualified unitrust interests*—(1) *In general.* To be a qualified interest under paragraph (a) or (b) of this section, an interest must be a qualified annuity interest in every respect or a qualified unitrust interest in every respect. For example, an interest that provides for the payment each year of the greater of a fixed amount of the initial trust assets or a fixed percentage of the annual value of the trust assets is not a qualified interest, because it permits the payment of both an annuity amount and a unitrust amount. To be a qualified interest, the interest must meet the definition of and function exclusively as a qualified interest from the creation of the trust.

(2) *Amounts payable to other persons.* The governing instrument must prohibit distributions from the trust to or for the benefit of any person other than the transferor or an applicable family member retaining a qualified interest prior to expiration of the qualified interest.

(3) *Term of the annuity or unitrust interest.* The governing instrument must fix the term of the annuity or unitrust interest. The term must be for the life of the transferor or applicable family member, for a specified term of years, or for the shorter of those periods. Successive term interests for the benefit of the same individual are treated as the same term interest.

(4) *Commutation.* The governing instrument must prohibit commutation of the interest of the transferor or applicable family member.

(e) *Examples.* The following examples illustrate the rules of paragraphs (b), (c), and (d) of this section. Each example assumes that all applicable requirements for a qualified interest are met unless otherwise specifically stated.

Example 1. A transfers property to an irrevocable trust, retaining the right to receive the greater of $10,000 or the trust income in each year for a term of 10 years. Upon expiration of the 10-year term, the trust is to terminate and the entire trust corpus is to be paid to A's child, provided that if A dies within the 10-year term the trust corpus is to be paid to A's estate. A's annual payment right is a qualified annuity interest to the extent of the right to receive $10,000 per year for 10 years or until A's prior death, and is valued under section 7520 without regard to the right to receive any income in excess of $10,000 per year. The contingent reversion is valued at zero. The amount of A's gift is the fair market value of the property transferred to the trust less the value of the qualified annuity interest.

Example 2. U transfers property to an irrevocable trust, retaining the right to receive $10,000 in each of years 1 through 3, $12,000 in each of years 4 through 6, and $15,000 in each of years 7 through 10. The interest is a qualified annuity interest only to the extent of U's right to receive $10,000 per year, because $10,000 is the amount that is fixed and payable for each year of the term.

Example 3. S transfers property to an irrevocable trust retaining the right to receive $50,000 in each of years 1 through 3 and $10,000 in each of years 4 through 10. The interest is a qualified annuity interest only to the extent of S's right to receive $10,000 per year, because $10,000 is the amount that is fixed and payable for every year of the term.

Example 4. R transfers property to an irrevocable trust retaining the right to receive annually an amount equal to the lesser of 8 percent of the initial fair market value of the trust property or the trust income for the year. R's annual payment right is not a qualified annuity interest to any extent because R does not have the irrevocable right to receive a fixed amount for each year of the term.

Example 5. A transfers property to an irrevocable trust, retaining the right to receive 5 percent of the net fair market value of the trust property, valued annually, for 10 years. If A dies within the 10-year term, the unitrust amount is to be paid to A's estate for the balance of the term. A's interest is a qualified unitrust interest for the full 10-year term.

Example 6. The facts are the same as in *Example 5,* except that if A dies within the 10-year term the unitrust amount will be paid to A's estate for an additional 35 years. A's payment right is a qualified unitrust interest only to the extent payable for the 10-year term because that is the only term that is fixed and ascertainable at the creation of the interest.

Example 7. B transfers property to an irrevocable trust retaining the right to receive annually an amount equal to 8 percent of the initial fair market value of the trust property. The governing instrument provides that income in excess of that amount may be paid to B's child in the trustee's discretion. B's interest is not a qualified annuity interest to any extent because a person other than the individual holding the term interest may receive distributions from the trust during the term.

(f) *Qualified remainder interest.*—(1) *Requirements.* An interest is a qualified remainder interest only if it—

(i) Is a qualified remainder interest in every respect;

(ii) Meets the definition of and functions exclusively as a qualified interest from the creation of the interest; and

(iii) Meets all of the following requirements—

(A) All interests in the trust, other than non-contingent remainder interests, are qualified annuity interests or qualified unitrust interests. Thus, this requirement is met only if the trust prohibits the payment to the term holder of income in excess of the annuity or unitrust amount.

(B) Each remainder interest must be a right to receive all or a fractional share of the trust property on termination of all or a fractional share of the trust. A remainder interest includes a reversion. A transferor's right to receive the original value of the trust corpus (or a

fractional share) is not a remainder interest if appreciation in the value of the corpus (or fractional share) or accumulated income may pass to any other person.

(C) Each remainder interest must be non-contingent. For this purpose, an interest is non-contingent only if it is payable to the beneficiary or the beneficiary's estate in all events.

(2) *Examples.* The following examples illustrate rules of this paragraph (f). Each example assumes that all applicable requirements of a qualified interest are met unless otherwise specifically stated.

Example 1. A transfers property to an irrevocable trust. The income of the trust is payable to A's child for life. On the death of A's child, the trust is to terminate and the trust corpus is to be paid to A. A's remainder interest is not a qualified remainder interest because the interest of A's child is neither a qualified annuity interest nor a qualified unitrust interest.

Example 2. The facts are the same as in *Example 1*, except that A's child has the right to receive the greater of the income of the trust or $10,000 per year. A's remainder interest is not a qualified remainder interest because the right of A's child to receive income in excess of the annuity amount is not a qualified interest.

Example 3. A transfers property to an irrevocable trust. The trust provides a qualified annuity interest to A's child for 12 years. An amount equal to the initial value of the trust corpus is to be paid to A at the end of that period and the balance is to be paid to A's grandchild. A's interest is not a qualified interest because appreciation in the value of the trust corpus may pass to a person other than A.

Example 4. U transfers property to an irrevocable trust. The trust provides a qualified unitrust interest to U's child for 15 years, at which time the trust terminates and the trust corpus is to be paid to U or, if U is not then living, to U's child. Because U's remainder interest is contingent, it is not a qualified remainder interest.

§ 25.2702-4 Certain property treated as held in trust.

(a) *In general.* For purposes of section 2702, a transfer of an interest in property with respect to which there are one or more term interests is treated as a transfer of an interest in trust. A term interest is one of a series of successive (as contrasted with concurrent) interests. Thus, a life interest in property or an interest in property for a term of years is a term interest. However, a term interest does not include a fee interest in property merely because it is held as a tenant in common, a tenant by the entirety or a joint tenant with right of survivorship.

(b) *Leases.* A leasehold interest in property is not a term interest to the extent the lease is for full and adequate consideration (without regard to section 2702). A lease will be considered for full and adequate consideration if a good faith effort is made to determine the fair rental value of the property and the terms of the lease conform to the value so determined.

(c) *Joint purchases.* Solely for purposes of section 2702, if an individual acquires a term interest in property and, in the same transaction or series of transactions, one or more members of the individual's family acquire an interest in the same property, the individual acquiring the term interest is treated as acquiring the entire property acquired by the individual and all members of the individual's family, and transferring to the other family members the interests acquired by the other family members in exchange for any consideration paid by the other family members. For purposes of this paragraph (c), the amount considered transferred by the individual acquiring the term interest shall not exceed the amount of consideration furnished by the individual for all interests acquired by the individual in the property.

(d) *Examples.* The following examples illustrate rules of this section.

Example 1. A purchases a 20-year term interest in an apartment building and A's child purchases the remainder interest in the property. A and A's child each provide the portion of the purchase price equal to the value of their respective interests in the property determined under section 7520. Solely for purposes of section 2702, A is treated as acquiring the entire property and transferring the remainder interest to A's child in exchange for the portion of the purchase price provided by A's child. In determining the amount of A's gift, A's retained interest is valued at zero because it is not a qualified interest.

Example 2. K holds rental estate valued at $100,000. K sells a remainder interest in the property to K's child, retaining the right to receive the income from the property for 20 years. Assume the purchase price paid by K's child for the remainder interest is equal to the value of the interest determined under section 7520. K's retained interest is not a qualified interest and is therefore valued at zero. K has made a gift in the amount of $100,000 less the consideration received from K's child.

Example 3. G and G's child each acquire a fifty percent undivided interest as tenants in common in an office building. The interests of G and G's child are not term interests to which section 2702 applies.

Example 4. B purchases a life estate in property from R, B's grandparent, for $100. Assume that the value of the life estate determined under section 7520 is $250. R transfers the remainder interest in the property to B's child by gift. B is treated as acquiring the entire property and transferring the remainder interest to B's child. However, the amount of B's gift is limited to $100, the amount of consideration furnished by B for B's interest.

§ 25.2702-5 Personal residence trusts.

(a) *In general.* Section 2702 does not apply to the transfer of an interest in a personal residence trust (as defined in paragraph (d) of this section). A qualified personal residence trust (as described in paragraph (e) of this section) is treated as a personal residence trust even though the trust may hold a limited amount of property that is not a personal residence.

(b) *Limitation on term interests in personal residence trusts.* An individual may not be the holder of a term interest (the "term holder") in more than two personal residence trusts (including qualified personal residence trusts) at any one time. A trust otherwise meeting the requirements of a personal residence trust (or a qualified personal residence trust) is not a personal residence trust (or a qualified personal residence trust) if a term holder of the trust is already the term holder in two personal residence trusts (including qualified personal residence trusts). For this purpose, a trust that has converted to a qualified annuity trust (pursuant to paragraph (e)(6)(ii) of this section) is considered a personal residence trust, and the holder of the qualified annuity interest is considered the term holder of a personal residence trust for the duration of the term.

(c) *Personal residence*—(1) *In general.* For purposes of section 2702, a personal residence of a term holder is either—

(i) The principal residence of the term holder (within the meaning of section 1034);

(ii) One other residence of the term holder (within the meaning of section 280A(d)(1)); or

(iii) An undivided fractional interest in either.

A personal residence includes appurtenant structures used for residential purposes and adjacent land not in excess of that which is reasonably appropriate for residential purposes (taking into account the residence's size and location). The fact that residential property is subject to a mortgage does not affect its status as a personal residence. The term personal residence does not include any personal property (*e.g.*, household furnishings).

(2) *Use of residence.* A residence is not a personal residence if it is used for purposes other than the term holder's residence when occupied by the term holder, except that a portion of the residence may be used for an activity meeting the requirements of section 280A(c)(1) (relating to deductibility of

expenses related to such use). A residence may be rented during a portion of a year that it is not occupied by the term holder.

(d) *Personal residence trust.* A personal residence trust is a trust the governing instrument of which prohibits the trust from holding, for the entire term of the trust, any asset other than one residence to be used as a personal residence by term holders.

(e) *Qualified personal residence trust*—(1) *In general.* A qualified personal residence trust is a trust meeting all the requirements set forth in this paragraph (e). These requirements must be met by provisions in the governing instrument, and these provisions must by their terms continue in effect during the existence of any term interest in the trust.

(2) *Distributions to other persons prohibited.* The governing instrument must prohibit distributions of income or corpus to any beneficiary other than the term holder during the period of any term interest.

(3) *Property held by the trust*—(i) *In general.* The governing instrument must prohibit the trust from holding, for the entire term of the trust, any asset other than one residence to be used as a personal residence by a term holder, except as otherwise provided in this paragraph (e)(3).

(ii) *Cash.* The governing instrument may permit the additions of cash to the trust, and may permit the trust to hold cash, but not in excess of the amount required—

(A) For payment of trust expenses (including mortgage payments) already incurred or reasonably expected to be incurred within the next three months;

(B) For improvements to the residence to be paid for within three months; and

(C) On creation of the trust, for purchase of a personal residence within the next three months, and at any other time, for the purchase of a personal residence within the next three months provided the trustee has previously entered into a contract to purchase the personal residence.

(iii) *Improvements.* Any improvement to the residence must meet the requirements of a personal residence.

(iv) *Sales and insurance proceeds.* The governing instrument may permit the trust to hold any proceeds from the sale of the personal residence (including any income thereon) for a period not to exceed two years from the date of sale, if the trustee intends to use the proceeds within that period to purchase another residence to be used as a personal residence by a term holder. Proceeds of insurance paid to the trust as a result of damage to or destruction of the personal residence may be held by the trustee for a period not to exceed two years if the trustee intends to use the proceeds for repair, improvement, or replacement of the personal residence.

(4) *Distributions of excess cash.* The governing instrument must require that cash held by the trust in excess of the amounts permitted by paragraph (e)(3) of this section be distributed at least quarterly to the term holder. In addition, the governing instrument must require that, upon termination of the term holder's interest in the trust, any cash in the trust held for the payment of expenses of the trust must be distributed outright to the term holder.

(5) *Commutation.* The governing instrument must prohibit commutation of the term holder's interest.

(6) *Cessation of use as a personal residence*—(i) *In general.* Except as provided in paragraph (e)(6)(ii) of this section, the governing instrument must require that if the residence held by the trust ceases to be a personal residence of the term holder, the trust must terminate and all trust property must be distributed outright to the term holder. Sale of the personal residence is not cessation of use as a personal residence if the proceeds of sale are used within two years from the date of sale to purchase another residence to be used by the term holder as a personal residence. If no residence is purchased within two years after the date of sale (or upon termination of the term holder's interest, if earlier), or if there are excess proceeds after another residence is purchased, the proceeds are subject to paragraph (e)(3) of this section.

(ii) *Conversion to a qualified annuity trust.* Notwithstanding paragraph (e)(6)(i) of this section, the governing instrument may provide that if the residence held by the trust ceases to be a personal residence of the term holder, the trust corpus must thereafter be held for the balance of the term interest in a trust meeting all the requirements of and functioning exclusively as a qualified annuity trust from the earlier of the date of receipt of the proceeds or the cessation of use of the residence as a personal residence of the term holder. The governing instrument must require that the amount of the annuity be no less than an amount determined by dividing the value of all interests retained by the term holder (as of the date of the original transfer or transfers) by an annuity factor determined—

(A) As of the date of the original transfer, using the rate determined under section 7520 as of that date, and

(B) For the original term of the term holder's interest.

(f) *Examples.* The following examples illustrate rules of this section. Each example assumes that all applicable requirements of a personal residence trust or a qualified personal residence trust are met unless otherwise stated.

Example 1. H transfers H's principal residence (as defined in section 1034) to an irrevocable trust, retaining the right to use the residence during H's lifetime. The governing instrument prohibits the trust from holding, for the entire term of the trust, any asset other than one residence (to be used as a personal residence by H). The trust is a personal residence trust.

Example 2. B's principal residence includes an apartment that B rents out. B transfers the residence to an irrevocable trust, retaining the right to use the residence for 20 years. The trust is not a personal residence trust because the residence is not a personal residence by reason of the rental of the apartment.

Example 3. C maintains C's principal place of business in one room of C's principal residence. The room meets the requirements of section 280A(c)(1) for deductibility of expenses related to such use. C transfers the residence to an irrevocable trust, retaining the right to use the residence during C's lifetime. The trust is a personal residence trust.

Example 4. L owns a vacation condominium that L rents out for six months of the year, but which is treated as L's residence under section 280A(d)(1) because L occupies it for at least 14 days per year. L transfers the condominium to an irrevocable trust, the terms of which meet the requirements of a *qualified* personal residence trust. L retains the right to use the condominium during L's lifetime. The trust is a qualified personal residence trust. The result would be the same if the remainder beneficiary of the trust is permitted, at the sufferance of L, to use the residence during the period of L's interest, so long as such use does not result in the residence not being treated as L's personal residence.

Example 5. W holds a 200-acre farm. The farm includes a house, barns, equipment buildings, a silo, and pens for confinement of farm animals. W transfers the farm to an irrevocable trust, retaining the use of the farm for 20 years, with the remainder to W's child. The trust is not a personal residence trust because the farm does not meet the requirements of a personal residence.

Example 6. A transfers A's principal residence to an irrevocable trust, retaining the right to use the residence for a 20-year term. In addition, A transfers the contents of the principal residence to the trust, the governing instrument of which does not prohibit the trust from holding personal property. The trust is not a personal residence trust.

§ 25.2702-6 Reduction in taxable gifts. [Reserved]

§ 25.2703-1 Property subject to restrictive arrangements.

(a) *Disregard of rights or restrictions*—(1) *In general.* For purposes of subtitle B (relating to estate, gift, and generation-skipping transfer taxes), the value of any property is determined without regard to any right or restriction relating to the property.

(2) *Right or restriction.* For purposes of this section, right or restriction means—

(i) Any option, agreement, or other right to acquire or use the property at a price less than fair market value (determined without regard to the option, agreement, or right); or

(ii) Any restriction on the right to sell or use the property.

(3) *Agreements, etc, containing rights or restrictions.* A right or restriction may be contained in a partnership agreement, articles of incorporation, corporate bylaws, a shareholders' agreement, or any other agreement. A right or restriction may be implicit in the capital structure of an entity.

(4) *Qualified easements.* A perpetual restriction on the use of real property that qualified for deduction under section 170(h) is not treated as a right or restriction.

(b) *Exceptions*—(1) *In general.* This section does not apply to any right or restriction satisfying the following three requirements—

(i) The right or restriction is a bona fide business arrangement;

(ii) The right or restriction is not a device to transfer the property to the natural objects of the transferor's bounty for less than full and adequate consideration in money or money's worth; and

(iii) At the time the right or restriction is created, the terms of the right or restriction are comparable to similar arrangements entered into by persons in an arm's length transaction.

(2) *Separate requirements.* Each of the three requirements described in paragraph (b)(1) of this section must be independently satisfied for a right or restriction to meet this exception. Thus, for example, the mere showing that a right or restriction is a bona fide business arrangement is not sufficient to establish the absence of a device to transfer property for less than full and adequate consideration.

(3) *Right or restriction among unrelated parties.* A right or restriction is considered to meet each of the three requirements described in paragraph (b)(1) of this section if it is a binding agreement exclusively among persons who are not natural objects of each others' bounty.

(4) *Similar arrangement*—(i) *In general.* A right or restriction is comparable to similar arrangements entered into by persons in an arm's length transaction if the right or restriction is one that could have been obtained in a fair bargain among unrelated parties in the same business. This determination generally will entail consideration of such factors as the expected term of the agreement, the current fair market value of the property, anticipated changes in value during the term of the arrangement, and the adequacy of any consideration given in exchange for the rights granted.

(ii) *General business practice.* A right or restriction is considered a fair bargain among unrelated parties in the same business if it conforms with the general practice of unrelated parties under negotiated agreements in the same business. While it is not necessary that the terms of a right or restriction parallel the terms of any particular agreement, evidence of general business practice is not met by showing isolated comparables. If two or more valuation methods are commonly used in a business, a right or restriction does not fail to evidence general business practice merely because it uses one of the recognized methods. In the unusual case where comparables are difficult to find because the business is unique, comparables from similar businesses may be used.

(c) *Substantial modification of a right or restriction*—(1) *In general.* A right or restriction that is substantially modified is treated as a right or restriction created on the date of the modification. Any discretionary modification of a right or restriction, whether or not authorized by the terms of the agreement, that results in other than a *de minimis* change to the quality, value, or timing of the right or restriction is a substantial modification. If the terms of the right or restriction require periodic updating, the failure to update is presumed to substantially modify the right or restriction unless it can be shown that updating would not have resulted in a substantial modification. The addition of any family member as a party to a right or restriction is considered a substantial modification (unless the addition is mandatory under the terms of the right or restriction).

(2) *Exceptions.* The following are not considered a substantial modification—

(i) A modification required by the terms of a right or restriction;

(ii) A discretionary modification of the agreement containing a right or restriction that does not change the right or restriction;

(iii) A modification of a capitalization rate used with respect to a right or restriction if the rate is modified in a manner that bears a fixed relationship to a specified market interest rate; and

(iv) A modification that results in an option price that more closely approximates fair market value.

(d) *Effective date.* Section 2703 applies to any right or restriction created or substantially modified after October 8, 1990.

PART 301—PROCEDURE AND ADMINISTRATION

Par. 9. The authority for part 301 continues to read, in part:

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

Par. 10. In § 301.6501(c)-1, new paragraph (e) is added in the appropriate place to read as follows:

§ 301.6501(c)-1 Exceptions to general period of limitations on assessment and collection.

* * * * *

(e) *Certain gifts not shown on return*—(1) *In general.* If any transfer of property subject to the special valuation rules of section 2701 or section 2702, or if the occurrence of any taxable event described in section § 25.2701-4 of this chapter, is not adequately shown on a return of tax imposed by chapter 12 of subtitle B of the Code (without regard to section 2503(b)), any tax imposed by chapter 12 of subtitle B of the Code on the transfer or resulting from the taxable event may be assessed, or a proceeding in court for the collection of the appropriate tax may be begun without assessment, at any time.

(2) *Adequately shown.* A transfer of property valued under the rules of section 2701 or section 2702 or any taxable event described in § 25.2701-4 of this chapter will be considered adequately shown on a return of tax imposed by chapter 12 of subtitle B of the Code only if, with respect to the entire transaction or series of transactions (including any transaction that affected the transferred interest) of which the transfer (or taxable event) was a part, the return provides—

(i) A description of the transactions, including a description of transferred and retained interests and the method (or methods) used to value each;

(ii) The name, address and taxpayer identification number of the transferor, transferee and all other persons participating in the transactions or holding an equity interest in any entity involved in the transaction; and

(iii) A detailed description (including all actuarial factors and discount rates used) of the method used to determine the amount of the gift arising from the transfer (or taxable event), including, in the case of an equity interest that is not actively traded, the financial and other data used in determining value. Financial data should generally include balance sheets and statements of net earnings, operating results, and dividends paid for each of the 5 years immediately before the valuation date.

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue

[FR Doc. 91-8297 Filed 4-4-91; 12:23 am]

BILLING CODE 4830-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Chapter I

[FRL-3919-8]

Negotiated Rulemaking Advisory Committee—Lead Acid Battery Recycling Rule

AGENCY: Environmental Protection Agency.

ACTION: FACA committee meeting—Negotiated Rulemaking, Committee on the Lead Acid Battery Recycling Rule.

SUMMARY: As required by section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), we are giving notice of the final meeting of the Advisory Committee to negotiate a rule to recycle lead acid batteries. The meeting is open to the public without advance registration.

The purpose of the meeting is to reach consensus on a regulatory option for recycling of lead acid batteries.

DATES: The meeting will be held on May 1, 1991 from 9 am to 5 pm.

ADDRESSES: The meeting will be held at the Key Bridge Marriott Hotel, Rosslyn, 1401 Lee Highway, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Persons needing further information on substantive aspects of the lead acid battery recycling rule should call Nancy Laurson, Office of Toxic Substances, U.S. EPA, (202) 382-7363. Persons needing further information on administrative matters such as committee arrangements or procedures should contact Deborah Dalton, EPA Regulatory Negotiation Project, (202) 382-5495 or the Committee's facilitator, John McGlennon, (617) 742-8228.

Dated: April 1, 1991.

Paul Lapsley,

Director, Regulatory Management Division, Office of Policy, Planning and Evaluation.

[FR Doc. 91-8325 Filed 4-8-91; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 37

[Docket 91-A]

RIN 2105-AB53

Transportation for Individuals With Disabilities; Public Hearings

AGENCY: Urban Mass Transportation Administration, DOT.

ACTION: Proposed rule; hearings.

SUMMARY: On April 4, 1991 (56 FR 13856), the Department of Transportation published a notice of proposed rulemaking in the **Federal Register** entitled "Transportation for Individuals with Disabilities". This notice announces a series of six public hearings to solicit comments on the Department's proposed rule. Information gathered at the public hearings will be included in the Department's ADA rulemaking docket and will be reviewed and evaluated by UMTA in conjunction with the rulemaking proceeding.

DATES: The six (6) public hearings are scheduled as follows (local time):

1. April 23, 1991, 9 a.m., Kansas City, Missouri
2. April 25, 1991, 9 a.m., Seattle, Washington
3. April 30, 1991, 9 a.m., Los Angeles, California
4. May 7, 1991, 9 a.m., New York, New York
5. May 8, 1991, 9 a.m., New Orleans, Louisiana
6. May 9, 1991, 9 a.m., Washington, District of Columbia

ADDRESSES: Written comments, including a request to speak at one of the public hearings should be addressed to the Urban Mass Transportation Administration, U.S. Department of Transportation, Office of the Chief Counsel, room 9316, ATTN: Hearings, 400 7th Street SW., room 9316, Washington, DC 20590. The locations for the public hearings are as follows:

1. Kansas City, MO: Hyatt Regency, 2345 McGee Street.
2. Seattle, WA: University of Washington, Student Union Building, West Ballroom, Stevens Way.
3. Los Angeles, CA: Westwood Plaza Holiday Inn, 10740 Wilshire Blvd.
4. New Orleans, LA: New Orleans Marriott, Canal and Chartres Street.
5. New York, NY: Jacob Javits Building, 26 Federal Plaza, 3rd Floor Meeting Room.
6. Washington, DC: U.S. Department of Labor, Great Hall, 200 Constitution Avenue, NW.

FOR FURTHER INFORMATION CONTACT: Holly Vandervort, Office of Chief Counsel, Urban Mass Transportation Administration, (202) 366-4063.

SUPPLEMENTARY INFORMATION: On March 29, 1991, the Department of Transportation (DOT) issued a notice of proposed rulemaking (NPRM) entitled "Transportation for Individuals with Disabilities" The proposed rule appears in the April 4, 1991 issue of the **Federal Register.** The NPRM proposes to implement all provisions of the Americans With Disabilities Act of 1990 (ADA). In doing so, the NPRM proposes to amend the Department's October 4, 1990 rule implementing the immediately effective provisions of the ADA dealing primarily with the definition of accessible vehicles and by proposing new sections concerning paratransit, including the contents of a paratransit plan, the definition of comparable service, criteria for requesting and receiving a waiver from providing paratransit service based on undue financial burden, criteria for establishing key stations, and transportation facilities. The NPRM also responds to comments on the October 4, 1990 rule. Further, it proposes changes in the Department's rule implementing section 504 of the Rehabilitation Act of 1973 in light of the ADA rule.

In conjunction with the NPRM, UMTA has decided to hold six public hearings. This notice provides information on the hearings. Statements made at the hearings will be included in the Department's docket on the rulemaking and will be reviewed and evaluated by UMTA. The following procedures have been established by UMTA to facilitate the hearing process:

Hearing Procedures

Each hearing will last for 8 hours, beginning at 9 a.m. Hearings may be extended to accommodate the number of witnesses. There will be a morning and afternoon break, as well as a break for lunch. Sign and oral interpretation will be available at each hearing, as well as an assistive listening device.

Individuals interested in making a statement at the hearing should contact Holly Vandervort (202) 366-4063, at least 3 days before the hearing is to be held. Individuals will be scheduled

approximately in the order in which their registration is received. Individuals may call UMTA before the hearing for an approximate time for their testimony.

UMTA encourages pre-registration. However, witnesses may register to testify on the date of the hearing at each location between 8:30 and 9 a.m., to the extent there is any time available.

An individual, whether speaking in a personal or a representative capacity on behalf of the organization, is limited to a 5-minute statement at a hearing. The amount of time for testimony may be further limited, in order to accommodate all witnesses wishing to testify. The hearings will be transcribed, and a transcript of the hearing will be included in the official rulemaking docket.

UMTA requests that individuals testifying at a hearing provide 3 copies of their prepared written statement to UMTA officials at the hearing. Written testimony may be any length, and is not limited to the five-minute presentation time. Individuals testifying at the hearing are welcome to submit additional material as well. All statements and materials received at the hearing will become part of the official rulemaking.

The hearings are designed to solicit public views and information on the proposed rule. Therefore, the hearings will be conducted in an informal and nonadversarial manner. UMTA representatives will be present at the head table to facilitate the presentation of testimony during the hearing and UMTA officials may ask questions to clarify statements made by speakers. Any statements made by UMTA officials are not intended to be, and should not be construed as a position of UMTA, with respect to the rulemaking proceeding.

Issued: April 2, 1991.

Brian W. Clymer,

Administrator.

[FR Doc. 91-8217 Filed 4-8-91; 8:45 am]

BILLING CODE 4910-57-M

National Highway Traffic Safety Administration

49 CFR Part 571

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Petition for rulemaking; denial.

SUMMARY: This notice denies a petition for rulemaking filed by Charles Campbell of Ormond Beach, Florida. Mr. Campbell sought an amendment of Standard No. 108 to require daytime running lamps on "passenger vehicles." In support, he argued that use of the lamps would provide a marked reduction in traffic accidents The agency denies his petition on the basis that insufficient justification has been shown to mandate installation of daytime running lamps.

FOR FURTHER INFORMATION CONTACT: Jere Medlin, Office of Rulemaking, NHTSA, Washington, DC (202-366-5276).

SUPPLEMENTARY INFORMATION: On December 8, 1990, Charles Campbell of Ormond Beach, Florida, petitioned NHTSA for a "Rule Requiring Daytime Running Lights on Passenger Vehicles."

Mr. Campbell believes that the daytime use of running lights "makes a significant different in conspicuity to oncoming vehicles, motorcycles, and pedestrians." He also states that "numerous scientific studies have proven a marked decrease in traffic accidents and resultant loss and property damage," and enclosed copies of three technical papers in support. He points out that use of these lamps "has already been implemented by governmental decree in Sweden, Denmark, Canada, and elsewhere."

The subject of daytime running lamps (DRLs) is one that the agency has considered for some time. It published a notice of proposed rulemaking on March 24, 1987 (54 FR 8316) under which DRLs could be provided at the manufacturer's option. A purpose of this rulemaking was to facilitate sale in the United States of vehicles manufactured in Canada where DRLs are mandatory. However, on June 23, 1988 (53 FR 23673) NHTSA terminated rulemaking on this subject, after learning that no manufacturer intended to take advantage of the option.

Recently, General Motors Corporation filed a petition with the agency, indicating its interest in providing DRLs on some of its vehicles, and asking for rulemaking similar to that instituted in 1987, under which manufacturers, at their option, could provide DRLs. The agency is currently reviewing that petition.

The level of accident reduction benefits that could be expected from use of DRLs in the United States is not clear. The experiences of Scandinavian countries with DRLs are not completely applicable to the United States. The results of the U.S. fleet study conducted by the Insurance Institute for Highway Safety were not statistically significant. NHTSA believes there may be some safety benefits in the use of DRLs in the U.S. and will carefully evaluate any new data on their effectiveness. NHTSA will address DRLs further when it acts upon the GM petition for an optional rule.

In accordance with 49 CFR part 552, the agency has completed its technical review of the petition, and has determined that there is no reasonable possibility that the requested amendment would be issued at the conclusion of a rulemaking proceeding. Therefore, the petition is denied.

Authority: 15 U.S.C. 1410a; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: April 4, 1991.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 91-8312 Filed 4-8-91; 8:45 am]

BILLING CODE 4910-59-M

Notices

Federal Register
Vol. 56, No. 68
Tuesday, April 9, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket 91-042]

Receipt of Permit Applications for Release into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that five applications for permits to release genetically engineered organisms into the environment are being reviewed by the Animal and Plant Health Inspection Service. The applications have been submitted in accordance with 7 CFR part 340, which regulates the introduction of certain genetically engineered organisms and products.

FOR FURTHER INFORMATION CONTACT: Mary Petrie, Program Analyst, Biotechnology, Biologics, and Environmental Protection, Biotechnology Permits, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 844, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests," require a person to obtain a permit before introducing [importing, moving interstate, or releasing into the environment] in the United States, certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following applications for permits to release genetically engineered organisms into the environment.

Application No.	Applicant	Date received	Organism	Field test location
91-067-01	Pioneer Hi-Bred International, Incorporated.	03-08-91	Sunflower plants genetically engineered to contain a sulphur-rich storage protein gene from Brazil nuts.	California.
91-072-01	Garst Seed Company	03-13-91	Corn plants genetically engineered to express genes from a non-pathogenic source organism.	Iowa.
91-074-01	Upjohn Company	03-15-91	Corn plants genetically engineered to express tolerance to the herbicide glufosinate.	Michigan, Puerto Rico.
91-074-03 renewal of Permit 90-059-01, issued on 05-31-90.	New York State Agricultural Experiment Station.	03-15-91	Cucumber plants genetically engineered to contain the cucumber mosaic virus (CMV) coat protein gene.	New York.
91-077-01	Harris Moran Seed Company	03-18-91	Cantaloupe plants genetically engineered to express the cucumber mosaic virus (CMV) coat protein gene.	California.

Done in Washington, DC, this 4th day of April 1991.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91-8307 Filed 4-8-91; 8:45 am]

BILLING CODE 3410-34-M

Commodity Credit Corporation

Prior Consultations With Respect to Sugar and Crystalline Fructose Marketing Allotment Regulations for Fiscal Years 1992 Through 1996

AGENCY: Commodity Credit Corporation (CCC), Department of Agriculture (USDA).

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that CCC will hold a meeting to consult with representatives of domestic sugar processors and producers with regard to implementation of the provisions of the Food, Agriculture, Conservation, and Trade Act of 1990 with respect to marketing allotments for the fiscal years of 1992 through 1996 for sugar processed from domestically-produced sugarcane and sugar beets and for crystalline fructose manufactured from corn.

TIME AND DATE: Friday April 19, 1991, from 9 a.m. until 4:30 p.m.

PLACE: Jefferson Auditorium, South Building, U.S. Department of Agriculture, 14th Street and Independence Avenue SW., Washington, DC 20250.

STATUS: This meeting will be open to the public.

FOR FURTHER INFORMATION CONTACT: Charles Shaw or Jane Phillips, Dairy and Sweeteners Group, Agricultural Stabilization and Conservation Service; telephone: (202) 447-6733.

SUPPLEMENTARY INFORMATION: Title IX of the Food, Agriculture, Conservation, and Trade Act of 1990 (Pub L. 101-624), which was enacted on November 28, 1990, amended the Agricultural Adjustment Act of 1938 (the "1938 Act") to provide, in a new part VII, for the monthly reporting of certain information with respect to the importation, distribution and stock levels of sugar and crystalline fructose and, under certain circumstances, for the establishment and allocation of

marketing allotments for sugar and crystalline fructose for fiscal years 1992 through 1996.

Section 359h(a)(2) of the 1938 Act, as amended, provides that prior to proposing any regulations to implement part VII, the Secretary shall consult with representatives of domestic sugar processors and producers with regard to ensuring that the regulations achieve the objectives of part VII. The results of the consultations are to be published in the **Federal Register**, along with the proposed regulations. Participants may also comment on the collection of marketing assessments imposed by section 1105(c) of the Omnibus Budget Reconciliation Act of 1990.

All interested parties are invited to attend this meeting. However, representatives of domestic sugar processors and producers will be given priority in the reservation of seating. In order to enable all interested persons to comment, oral presentations may be subject to time constraints. All persons who will be attending this meeting are requested to submit written statements prior to, or at the time of, the meeting. Signed this third day of April 1991, at Washington, DC.

John A. Stevenson,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 91-8213 Filed 4-8-91; 8:45 am]

BILLING CODE 3410-05-M

Forest Service

The Ouachita National Forest, Le Flore County, OK, Multiple Use Advisory Council

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: This notice set forth the schedule and proposed agenda of a meeting of The Ouachita National Forest, Le Flore County, Oklahoma, Multiple Use Advisory Council. The meeting will be open to the public. This notice also describes the functions of the Council. Notice of this meeting is required under the National Advisory Committee Act.

DATES: April 22, 1991, 7 p.m.

ADDRESSES: The meeting location is at the Kiamichi Vo Tech, located just west of Talihina, OK. Send written statements to Forest Supervisor, Ouachita National Forest, P.O. Box 1270, Hot Springs, AR 71902.

FOR FURTHER INFORMATION CONTACT: Gary Pierson, (501)-321-5281.

SUPPLEMENTARY INFORMATION: The Ouachita National Forest, Le Flore County, Oklahoma, Multiple Use Advisory Council was created by the Winding Stair Mountain National Recreation and Wilderness Area Act (16 U.S.C. 460vv-13). The Council, comprised of 20 members, appointed by the Secretary of Agriculture September 25, 1989, will meet periodically. The purpose of this Council is advisory in nature. The Council shall provide infomration and recommendations to the Secretary regarding the operation of the Ouachita National Forest in Le Flore County. The Council is composed of representatives from the local area in which the Ouachita National Forest is located, equally divided among conservation, timber, fish and wildlife, tourism and recreation, and economic development interests.

Mike Curran, Supervisor of the Ouachita National Forest will chair the meeting. Representatives of the Forest Service will attend from the Department of Agriculture including the designated officer of the Federal Government. The agenda for this meeting will include: discussion of clearcutting on the Choctaw and Kiamichi Districts in Oklahoma, the future plans for the Advisory Council, and any new business from the floor.

Dated: April 2, 1991.

R. Gary Pierson,

Acting Forest Supervisor.

[FR Doc. 91-8208 Filed 4-8-91; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Oceanic and Atmospheric Administration, Commerce.

Title: Foreign Fishing Regulations.

Form Number: None OMB—0648-0075.

Type of Request: Revision of a currently approved collection.

Burden: 220 respondents; 4,770 reporting hours; average hours per response—.33 hours.

Needs and Uses: Foreign fishing vessels must report on fishing and retain fishing logs. Radio messages are used by the Department of Commerce and the U.S. Coast Guard for real-time fisheries management, logbooks are used to determine fees that are to be paid every 3 months and for enforcement purposes. Summarized reports are used to monitor the relative abundance of fish stocks.

Affected Public: Individuals of households, business or other for-profit, small businesses or organizations.

Frequency: On occasion, weekly, annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Ronald Minsk, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230. Written comments and recommendations for the proposed information collection should be sent to Ronald Minsk, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: April 3, 1991.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 91-8261 Filed 4-8-91; 8:45 am]

BILLING CODE 3510-CW-M

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Oceanic and Atmospheric Administration, Commerce.

Title: Northeast Region Federal Fisheries Permits.

Form Number: None; OMB—0648-0202.

Type of Request: Revision of a currently approved collection.

Burden: 21,685 respondents; 6,389 reporting hours; average hours per response—.28 hours.

Needs and Uses: Fishermen in the Northeast Region wanting to participate in specified controlled fisheries must apply for permits. Information collected is required for development of management measures, and is also used for enforcement of regulations and dissemination of important information to permit holders.

Affected Public: Individuals of households, business or other for-profit, non-profit institutions, small businesses or organizations.

Frequency: On occasion, annually.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Ronald Minsk, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230. Written comments and recommendations for the proposed information collection should be sent to Ronald Minsk, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: April 8, 1991.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 91-8262 Filed 4-8-91; 8:45 am]

BILLING CODE 3510-CW-M

International Trade Administration

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of application for an amendment to an export trade certificate of review.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an amendment to an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be amended.

FOR FURTHER INFORMATION CONTACT: George Muller, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions and for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the Federal Register identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be amended. An original and five (5) copies should be submitted not later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, room 1800, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 88-2A016."

OETCA has received the following application for an amendment to Export Trade Certificate of Review No. 88-00016, issued on February 3, 1989 (54 FR 6312, February 9, 1989).

Summary of the Application

Applicant: Wood Machinery Manufacturers of America (WMMA), 1900 Arch Street Philadelphia, Pennsylvania 19103.

Contact: John S. Satagaj, WMMA Counsel, 1156 15th Street NW., suite 510, Washington, DC 20005, Telephone: (202) 639-8888.

Application no.: 88-2A016.

Date Deemed Submitted: March 26,1991.

WMMA seeks to amend its Certificate to add the following companies as "Members" of the Certificate: Carter Products Co., Inc., Grand Rapids, MI; Fletcher Machine Co., Lexington, NC; Unique Machine & Tool Co., Tempe, AZ; and VETS, Inc., Fridley, MN.

Dated: April 4, 1991.

George Muller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 91-8338 Filed 4-8-91; 8:45 am]

BILLING CODE 3510-DR-M

Short Supply Review: Certain Stainless Steel Wire Rod

AGENCY: Import Administration/International Trade Administration, Commerce.

ACTION: Notice of short-supply review and request for comments on certain type 302 HQ stainless steel wire rod.

SUMMARY: The Secretary of Commerce ("Secretary") hereby announces a review and request for comments on a short-supply request for 700 metric tons of certain Type 302 HQ stainless steel wire rod for May-December 1991, under the U.S.-EC, U.S.-Brazil, U.S.-Korea, and U.S.-Japan steel arrangements.

SHORT-SUPPLY REVIEW NUMBER: 47.

SUPPLEMENTARY INFORMATION: Pursuant to section 4(b)(3)(B) of the Steel Trade Liberalization Program Implementation Act, Public Law No. 101-221, 103 Stat. 1886 (1989) ("the Act"), and § 357.104(b) of the Department of Commerce's Short-Supply Procedures, 19 CFR 357.104(b) ("Commerce's Short-Supply Procedures"), the Secretary hereby announces that a short-supply request is under review with respect to certain Type 302 HQ stainless steel wire rod. On March 29, 1991, the Secretary received an adequate petition from Techalloy, Inc. ("Techalloy") requesting a short-supply allowance for a total of 700 metric tons of Type 302 HQ cold heading quality stainless steel wire rod. Techalloy requested short supply for the period from May 1, 1991, through December 31, 1991, under Article 8 of the Arrangement Between the Government of Brazil and the Government of the United States of America Concerning Trade in Certain Steel Products, Article 8 of the Arrangement Between the European Coal and Steel Community and the European Economic Community and the Government of the United States of America Concerning Trade in Certain Steel Products, paragraph 8 of the Arrangement Between the Government of Japan and the Government of the United States of America Concerning Trade in Certain Steel Products, and Article 8 of the Arrangement Between the Government of the Republic of Korea and the Government of the United States of America Concerning Trade in Certain Steel Products. Techalloy's short-supply request alleges that no U.S. producer is willing to supply this product and that its potential foreign suppliers have insufficient regular export licenses available during this time period.

The requested product meets the following specifications:

Scope: This specification states the requirements for stainless steel Type 302 HQ (S30430) coil, A.O.D. quality, hot rolled, annealed and pickled rod.

Diameter: .217 inch, .250 inch, .276 inch, .312 inch, .437 inch, .531 inch

Chemical Composition:

C—0.03 maximum
Mn—2.00 maximum
Si—1.00 maximum
P—0.045 maximum
S—0.030 maximum
*Cr—17.5-19.0
*Ni—8.5-10.0
Cu—3.0-4.0
Ni—0.10 maximum

* Note difference from standard.

Application: Unless otherwise specified herein, or on the purchase order, the material shall be certified to the chemistry of ASTM-A-493 Type Xm-7 (latest revision).

Mechanical Properties: The as-shipped tensile strength shall not exceed 72,000 P.S.I.

Surface: Uniform in quality and condition; surface defects such as seams, laps, cracks, gouges, pits, and other imperfections detrimental to the production of cold heading quality wire shall not exceed one percent of the diameter.

Quality: The material shall be internally clean and free of foreign materials, excessive inclusions, piping and other imperfections detrimental to the production of high-quality wire products.

Section 4(b)(4)(B)(ii) of the Act and § 357.106(b)(2) of Commerce's Short-Supply Procedures require the Secretary to make a determination with respect to a short-supply petition not later than the 30th day after the petition is filed, unless the Secretary finds that one of the following conditions exist: (1) The raw steelmaking capacity utilization in the United States equals or exceeds 90 percent; (2) the importation of additional quantities of the requested steel product was authorized by the Secretary during each of the two immediately preceding years; or (3) the requested steel product is not produced in the United States. The Secretary finds that none of these conditions exists with respect to the requested product, and therefore, the Secretary will determine whether this product is in short supply not later than April 26, 1991.

COMMENTS: Interested parties wishing to comment upon this review must send written comments not later than April 16, 1991 to the Secretary of Commerce, Attention: Import Administration, room 7866, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street NW., Washington, DC 20230. Interested parties may file replies to any comments submitted. All replies must be filed not later than 5 days after April 14, 1991. All documents submitted to the Secretary shall be accompanied by four copies. Interested parties shall certify that the factual information contained in any submission they make is accurate and complete to the best of their knowledge.

Any person who submits information in connection with a short-supply review may designate that information, or any part thereof, as proprietary, thereby requesting that the Secretary treat that information as proprietary. Information that the Secretary designates as proprietary will not be disclosed to any person (other than officers or employees of the United States Government who are directly concerned with the short-supply determination) without the consent of the submitter unless disclosure is ordered by a court of competent jurisdiction. Each submission of proprietary information shall be accompanied by a full public summary or approximated presentation of all proprietary information which will be placed in the public record. All comments concerning this review must reference the above noted short-supply review number.

FOR FURTHER INFORMATION CONTACT: Mark B. Brechtl or Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, room 7866, Pennsylvania Avenue and 14th Street NW., Washington, DC 20230 (202) 377-1386 or (202) 377-0159.

Dated: April 3, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-8274 Filed 4-8-91; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

The 1991 State/Federal Natural Resource Damage Assessment and Restoration Plan for the Exxon Valdez Oil Spill

AGENCY: National Oceanic and Atmospheric Administration and Department of Law, State of Alaska, Commerce.

ACTION: Availability of the 1991 State/Federal Natural Resource Damage Assessment and Restoration Plan.

SUMMARY: This Notice announces that the 1991 State/Federal Natural Resource Damage Assessment and Restoration Plan for the Exxon Valdez Oil Spill is now available for public review and comment. Responses to the public comments received concerning the 1990 State/Federal Plan are also available.

DATES: Comments concerning the 1991 Plan must be received by June 3, 1991.

ADDRESSES: Copies of the 1991 State/Federal Plan may be received by contacting the U.S. Forest Service Office of Public Affairs, (907) 586-8806 or Dottie Moorhous, Office of NOAA General Counsel, rm. 2038B, Department of Commerce, 14th and Constitution Avenue NW., Washington, DC 20230. All comments concerning the Plan must be written and submitted to the following address: Trustee Council, P.O. Box 22755, Juneau, Alaska 99802.

FOR FURTHER INFORMATION CONTACT: U.S. Forest Service Office of Public Affairs, telephone (907) 586-8806 or Dottie Moorhous, telephone (202) 377-1400.

SUPPLEMENTAL INFORMATION: The March 24, 1989, grounding of the T/V Exxon Valdez resulted in the discharge of approximately 11 million gallons of North Slope crude oil into Alaska's Prince William Sound and the Gulf of Alaska. The Exxon Valdez Oil Spill (EVOS) and subsequent clean up operations affected natural resources in the Sound and along the coasts of the Kenai Peninsula, Kodiak Island, Lower Cook Inlet and the Alaska Peninsula.

The natural resources Trustees (the State of Alaska, National Oceanic and Atmospheric Administration, and the Departments of Agriculture and the Interior) instituted a natural resource damage assessment process to estimate the damages as compensation for the injury, loss or destruction of natural resources and services, and, with the advice of the Environmental Protection Agency (EPA), to provide for the restoration of those resources or services, as authorized under section 311 of the Clean Water Act and section 107 of the Comprehensive Environmental Response, Compensation and Liability Act. The Trustees established a Trustee Council, based in Alaska, to manage the damage assessment and restoration processes. EPA is an advisor to the Federal Trustees and the Trustee Council and has been designated by the President to coordinate the overall long-term restoration of the affected area on behalf of the Federal Trustees. The Trustees and EPA, through the Trustee Council, prepared the 1989 and 1990 Natural Resource Damage Assessment and Restoration Plans.

Data will be analyzed and verified to ensure accuracy before presenting them to the public for review. The Trustees intend to provide scientific information to the public as data are compiled and scientifically reviewed, subject to litigation considerations. Scientific information already analyzed and verified that has been available to the public is housed in the Oil Spill Public Information Center in Anchorage, Alaska.

In 56 FR 8746 (March 1, 1991) the Trustees announced that preparations were underway on the 1991 Plan, provided a summary of the proposed activities and announced that requests for copies of the 1991 Plan would be

accepted. This Notice now announces the availability of copies of the 1991 Plan and requests comments from the public concerning these activities. Those who have not already requested a copy of the 1991 Plan may do so by contacting the U.S. Forest Service Public Affairs Office or Dottie Moorhous in the Office of NOAA General Counsel at the above addresses or phone numbers. Comments concerning the 1991 Plan must be received no later than June 3, 1991.

The public should also be aware that a separate, but related **Federal Register** document was published in 56 FR 8898 (March 1, 1991) entitled "Prince William Sound and Gulf of Alaska Restoration: Draft 1991 Restoration Work Plan." The Restoration Work Plan document discusses the overall process that the State and Federal governments intend to follow for restoration and includes restoration implementation activities being considered by the Trustees for 1991. Comments are due on the Work Plan on April 15, 1991.

Dated: April 3, 1991.

Thomas A. Campbell,

General Counsel, NOAA.

[FR Doc. 91-8263 Filed 4-8-91; 8:45 am]

BILLING CODE 3510-12-M

Gulf of Mexico Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council and its Committees will meet on April 22-25, 1991, at the Eden Roc Hotel, and Marina, 4525 Collins Avenue, Miami Beach, FL. Except as noted below, the meetings are open to the public.

Council: The Council will begin its meeting on April 24 at 8:30 a.m., and recess at 5:00 p.m. The agenda is as follows:

(1) from 8:45 a.m., to 10:30 a.m., public testimony on total allowable catch (TAC) for Gulf group king and Spanish mackerel; (2) from 10:30 a.m., to 12 p.m., committee recommendations on TAC for Gulf king and Spanish mackerel; (3) from 1:30 p.m., to 4 p.m., discussion on Mackerel Amendment #6 Options Paper; (4) from 4 p.m., to 4:30 p.m., consider the Scientific and Statistical Committee Selection report in a closed session (not open to the public); and (5) from 4:30 p.m., to 5 p.m., consider the Personnel Committee report, in closed session (not open to the public). The Council meeting will continue on April 25; (1) from 8:30 a.m., to 10 a.m., discussions on the Secretarial Shark Fishery Management Plan; (2) from 10 a.m. to 10:15 a.m., a report from the Budget Committee will be received; (3) from 10:15 a.m., to 10:30 a.m., a report of the Habitat Protection Committee; and (4) reports on Enforcement; and from the Director. Adjournment is at 12 p.m.

Committees: On April 22 at 1 p.m., the Budget, Habitat Protection and Personnel Committees will meet in closed session (not open to the public). The meeting will adjourn at 5 p.m. On April 23 at 8 a.m., the Mackerel Management Committee, the SSC Selection Committee (in closed session, not open to the public), the Shark Management Committee, and the Administrative Policy Committee will meet. Adjournment is at 5 p.m.

For more information contact Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, suite 881, Tampa, FL; telephone: (813) 228-2815.

Dated: April 3, 1991.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and National Marine Fisheries Service.

[FR Doc. 91-8260 Filed 4-8-91; 8:45 am]

BILLING CODE 3510-22-M

Gulf of Mexico Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council's Committees and its advisory entities will meet on April 16-17, 1991, at the Ramada Airport Hotel and Conference Center, 5305 West Kennedy Boulevard, Tampa, FL.

On April 16 the Mackerel Advisory Panel will meet from 9 a.m., to 4 p.m., to review the report of the Mackerel Stock Assessment Panel. On April 17 the Gulf and South Atlantic Fishery Management Councils will hold a joint public meeting of their Standing Scientific and Statistical Committees and the Gulf Council's Special Mackerel Scientific and Statistical Committee from 9 a.m., to 12 noon, to review the report of the Mackerel Stock Assessment Panel.

Also on April 17 the Gulf Council's Standing Scientific and Statistical Committee will meet with the Special Shrimp Scientific and Statistical Committee from 1 p.m., to 4 p.m., to discuss consideration of retaining White Shrimp in the Management Unit of the Shrimp Fishery Management Plan.

For more information contact Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, suite 881, Tampa, FL; telephone: (813) 228-2815.

Dated: April 3, 1991.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-8257 Filed 4-8-91; 8:45 am]

BILLING CODE 3510-22-M

North Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: The North Pacific Fishery Management Council will hold a public meeting on April 23-26, 1991, at the Westmark Hotel, in Kodiak, AK. The meeting will begin on April 23 at 1:30 p.m.

The Council will consider the following agenda items:

(1) Reports by the Alaska Department of Fish and Game, by the National Marine Fisheries Service and by the U.S. Coast Guard and on international fisheries and the management of Tanner crab hybrids; (2) review of proposed marine mammal amendments and a Steller sea lion recovery plan; (3) report from the International Pacific Halibut Commission on 1991 regulations; (4) regulatory proposals for U.S. fisheries in the Central Bering Sea; (5) options for an individual fishing quota system for the halibut fisheries; (6) review and approval for public review of an analysis on inshore/offshore allocations; (7) approval for public review of an analysis of individual fishing quota options for the sablefish fisheries; (8) a committee report on alternatives for analysis for a moratorium on the fisheries under Council jurisdiction; (9) approval of a user-fee system for submission to the Secretary of Commerce; (10) development of a bycatch amendment for the groundfish fisheries off Alaska, and a joint statement of concern over salmon bycatch; (11) approval of amendments to the Gulf of Alaska and the Bering Sea/Aleutian Islands groundfish fishery management plans for public review, and developing an amendment to allocate Bering Sea cod by quarters; (12) approval of a groundfish pot definition, apportionment of midwater trawl pollock in the Bering Sea/Aleutian Islands, and setting bycatch standards for the third and fourth quarters; (13) an emergency action request to prohibit trawling in the eastern Gulf of Alaska.

The Council's Fishery Planning Committee will meet on April 23

beginning at 8 a.m., until 12 noon, to review the inshore/offshore analysis. The Council's Advisory Panel and Scientific and Statistical Committees are scheduled to begin meeting on April 21 in Kodiak, AK, at the Fishery Industrial Technology Center, 900 Trident Way. The meetings will begin at 9 a.m., with agendas similar to the Council's. Other committee and workgroup meetings may be held on short notice during the meeting week. All meetings are open to the public, except an Executive session of the Council tentatively scheduled for April 24.

For more information contact Steve Davis, Deputy Director, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone (907) 271-2809.

Dated: April 3, 1991.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-8258 Filed 4-8-91; 8:45 am]

BILLING CODE 3510-22-M

South Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The South Atlantic Fishery Management Council will hold a public meeting of its Mackerel Advisory Panel (AP), on April 18, 1991, at the Town and Country Inn, 2008 Savannah Highway, Charleston, SC.

On April 18 the meeting will begin at 8 a.m., and adjourn at 4 p.m. The Mackerel AP will discuss and make recommendations to the Mackerel Committee on the 1991-1992 total allowable catch and bag limits for Atlantic king and Spanish mackerel. The AP will make its decisions based on the new mackerel stock assessment provided by the Council's mackerel stock assessment panel. The AP also will review and make recommendations to the Committee on the draft options paper for Amendment #6 to the Mackerel Fishery Management Plan.

The Mackerel Committee will begin developing Amendment #6 at the April Council meeting, which may include options to adjust stock assessments from an annual to a semi-annual schedule, and to adjust quotas to compensate for the previous years' quota that was exceeded before the end of the season and bag limits on dolphin.

For more information contact Carrie Knight, Public Information Officer, South Atlantic Fishery Management Council, One Southpark Circle, suite 306, Charleston, SC 29407, telephone: (803) 571-4366.

Dated: April 3, 1991.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-8259 Filed 4-8-91; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Policy Board Advisory Committee

ACTION: Notice of Advisory Committee meeting.

SUMMARY: As announced in the **Federal Register** Vol. 56, No. 47, page 10240, Monday March 11, 1991 the Defense Policy Board Advisory Committee was to have met in closed session on 2 April 1991, from 1100 until 1700 and 3-4 April 1991 from 0900 until 1700 in the Pentagon, Washington, DC. The meeting has been rescheduled for April 29, 1991 from 1100 until 1700 and April 30 and May 1 from 0900 until 1700. All other particulars in the aforementioned announcement remains the same.

Dated: April 4, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-8310 Filed 4-8-91; 8:45 am]

BILLING CODE 3810-01-M

Delegation of Federal Information Processing Standards (FIPS) Waiver Authority

AGENCY: Assistant Secretary of Defense for Command, Control, Communication, and Intelligence, DoD.

ACTION: Notice.

SUMMARY: As required by 40 U.S.C. 759(d)(3), the Department of Defense gives notice that the Secretary of Defense has redelegated to the Assistant Secretary of Defense for Command, Control, Communication, and Intelligence (ASD(C3I)) and Department of Defense senior official designated pursuant to 44 U.S.C. 3506(b), the authority to waive, under conditions specified by the Secretary of Commerce, previously issued and all subsequent FIPS that are mandatory for Federal agency use in the action and management of Federal information processing resources. Further, within the Department of Defense, the ASD(C3I) has redelegated to the senior officials, designated pursuant to 44 U.S.C. 3506(b), to each of the Military Departments of the Department of Defense, the authority to waive, under conditions specified by the Secretary of Commerce, previously issued and all subsequent FIPS that are mandatory for Federal agency use in the action and management of Federal information processing resources.

EFFECTIVE DATE: The delegation was effective February 18, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas E. Bozek, Director for Policies and Standards, Office of the Assistant Secretary of Defense for Command, Control, Communication, and Intelligence, Washington, DC 20301-1100, telephone (703) 697-9068.

Dated: April 4, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-8309 Filed 4-8-91; 8:45 am]

BILLING CODE 3810-01-M

Office of the Secretary of Defense

Meeting; Defense Intelligence Agency Advisory Board

AGENCY: Defense Intelligence Agency Advisory Board, DOD.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of subsection (d) of section 10 of Public Law 92-463, as amended by section 5 of Public Law 94-409, notice is hereby given that a closed meeting of a panel of the DIA Advisory Board has been scheduled as follows:

DATE: Thursday, May 23, 1991 (9 a.m. to 5 p.m.)

ADDRESSES: The DIAC, Bolling AFB, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel John G. Sutay, USAF, Chief, DIA Advisory Board, Washington, DC 20340-1328 (202/373-4930).

SUPPLEMENTARY INFORMATION: The entire meeting will be devoted to the discussion of classified information as defined in section 552b(c)(1), title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a special study on Advanced Air Defense.

Dated: April 3, 1991.

L. M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 91-8223 Filed 4-8-91; 8:45 am]

BILLING CODE 3810-01-M

Meeting; Nuclear Failsafe and Risk Reduction Advsiory Committee

AGENCY: Nuclear Failsafe and Risk Reduction Advisory Committee, DOD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92-463, notice is hereby given of a forthcoming meeting of the Nuclear Failsafe and Risk Reduction Review Advisory Committee. The purpose of the meeting is to conduct a comprehensive and independent review of U.S. positive measures for the prevention of unauthorized or inadvertent use of nuclear weapons and to determine the need for additonal failsafe procedures and mechanisms. This meeting will be closed to the public.

DATE: 9 May 1991, 0900-1200.

ADDRESSES: Pentagon, Room 3D1019.

FOR FURTHER INFORMATION CONTACT: COL Bill Beverley, U.S. Nuclear Command and Control System Support Staff (NSS), Skyline #3, 5201 Leesburg Pike, suite 500, Falls Church, Virginia 22041, (703) 756-8680.

Dated: April 3, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-8224 Filed 4-8-91; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Weapon Development and Production Technology; Meeting

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Science Board Task Force on Weapon Development and Production Technology will meet in open session on 30 April 1991 at the Pentagon, Washington, DC.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will receive briefings on manufacturing processes related to improving weapon development strategies.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Kimzey at (703) 695-7580.

Dated: April 3, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-8225 Filed 4-8-81; 8:45 am]

BILLING CODE 3810-01-M

Special Operations Policy Advisory Group; Meeting

The Special Operations Policy Advisory Group (SOPAG) will meet on April 18, 1991, in the Pentagon, Arlington, Virginia, to discuss sensitive, classified topics.

The mission of the SOPAG is to advise the Office of the Secretary of Defense on key policy issues related to the development and maintenance of effective Special Operations Forces.

In accordance with section 10(d) of Public Law 92-463, the "Federal Advisory Committee Act," and section 552b(c)(1) of title 5, United States Code, this meeting will be closed to the public.

Dated: April 3, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-8226 Filed 4-8-91; 8:45 am]

BILLING CODE 3810-01-M

Defense Logistics Agency

Privacy Act of 1974; Computer Matching Program Between the Air Force Accounting and Finance Center and the Defense Manpower Data Center of the Department of Defense

AGENCY: Defense Logistics Agency, DOD.

ACTION: Notice of an internal Department of Defense computer matching program between the Air Force Accounting and Finance Center (AFAFC) and the Defense Manpower Data Center of the Department of Defense.

SUMMARY: The Defense Manpower Data Center (DMDC), as the matching agency under the Privacy Act of 1974, as amended (5 U.S.C. 552a), is hereby giving constructive notice in lieu of direct notice to the record subjects of a computer matching program between AFAFC and DMDC that their records are being matched by computer. The record subjects are AFAFC delinquent debtors employed in another Federal agency or uniformed service, including retirees receiving a Federal benefit. The Air Force will use this information to initiate independent collection of those debts under the provisions of the Debt Collection Act of 1982 when voluntary payment is not forthcoming.

DATES: This proposed action will become effective May 9, 1991, and the computer matching will proceed accordingly without further notice, unless comments are received which would result in a contrary determination or if the Office of Management and Budget or Congress objects thereto. Any public comment must be received before the effective date.

ADDRESSES: Any interested party may submit written comments to the Director, Defense Privacy Office, 400 Army Navy Drive, room 205, Arlington, VA 22202-2884. Telephone (703) 614-3027.

SUPPLEMENTARY INFORMATION: Pursuant to subsection (o) of the Privacy Act of 1974, as amended (5 U.S.C. 552a), AFAFC and DMDC has concluded a Memorandum of Understanding (MOU) to conduct a computer matching program between the agencies. The purpose of this MOU between AFAFC and DMDC, is to assist the Air Force in identifying and locating those delinquent debtors employed in another Federal agency or uniformed service, including retirees receiving a Federal benefit. The Air Force will use this information to initiate independent collection of those debts under the provisions of the Debt Collection Act of 1982 when voluntary payment is not forthcoming. These collection efforts will include requests by the Air Force of other Federal agencies to apply administrative and/or salary offset procedures provided by the Debt Collection Act of 1982 until such time as the obligation is paid in full. The MOU establishes the conditions under which AFAFC agrees to disclose and maintain debtor records which will be matched with DMDC's Federal employment/compensation records to collect debts owed to the Air Force.

A copy of the MOU between AFAFC and DMDC is available to the public upon request. Requests should be submitted to the address caption above or to the Air Force Accounting and Finance Center, AFAFC/AJDS, Denver, CO 80279-5000.

Set forth below is a public notice of the establishment of the computer matching program required by paragraph (e)(12) of the Privacy Act.

The matching agreement, as required by 5 U.S.C. 552a(r) of the Privacy Act, and an advance copy of this notice was submitted on March 29, 1991, to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget pursuant to paragraph 4b of Appendix I to OMB Circular No. A-130, "Federal Agency Responsibilities for Maintaining Records about Individuals," dated December 12, 1985 (50 FR 52738, December 24, 1985). This matching

program is subject to review by OMB and Congress and shall not become effective until that review period of 30 days has elapsed.

Dated: April 4, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Internal Computer Matching Program Between the Air Force Accounting and Finance Center and the Defense Manpower Data Center of the Department of Defense for Debt Collection

A. *Participating agencies:* Participants in this computer matching program are the Air Force Accounting and Finance Center (AFAFC) and the Defense Manpower Data Center (DMDC), Department of Defense (DoD). AFAFC is the source agency, i.e., the agency disclosing the records for the purpose of the match. DMDC is the specific recipient or matching agency, i.e., the agency that actually performs the computer matching.

B. *Purpose of the match:* The purpose of this computer match between AFAFC and DMDC, is to assist the Air Force in identifying and locating those delinquent debtors employed in another Federal agency or uniformed service, including retirees receiving a Federal benefit. The Air Force will use this information to initiate independent collection of those debts under the provisions of the Debt Collection Act of 1982 when voluntary payment is not forthcoming. These collection efforts will include requests by the Air Force of other Federal agencies to apply administrative and/or salary offset procedures provided by the Debt Collection Act of 1982 until such time as the obligation is paid in full. A Memorandum of Understanding (MOU) between the parties establishes the conditions undeer which AFAFC agrees to disclose and maintain debtor records which will be matched with DMDC's Federal employment/compensation records to collect debts owed to the Air Force.

C. *Authority for conducting the match:* The legal authority for conducting the matching program is contained in the Debt Collection Act of 1982 (Pub. L. 97-365), 31 U.S.C. chapter 37, subchapter I (General) and subchapter II (Claims of the United States Government), 31 U.S.C. 3711, Collection and Compromise, 31 U.S.C. 3716-18 Administrative Offset, 5 U.S.C. 5514, Installment Deduction for Indebtedness (Salary Offset); 10 U.S.C. 136, Assistant Secretaries of Defense, Appointment Powers and Duties; section 206 of Executive Order 11222; 37 U.S.C. 1007, Military Salary Offset; Federal Claims Collection Standards (General Accounting Office—Department of Justice); 5 CFR 550.1101-550.1108, Collection by Offset from Indebted Government Employees (OPM); DoD Instruction 7045.18, Collection of Indebtedness Due the United States (32 CFR part 90); DoD Directive 7045.13, DoD Credit Management and Debt Collection Prograwm, dated October 31, 1986.

D. *Records to be matched:* The magnetic computer tape provided by AFAFC will contain information on approximately 40,000 debtors with data elements consisting of name, SSN, debtor status and debt balance.

The DMDC computer data base file contains approximately 10 million records of Federal employees and military members, active and retired. The data elements to be provided to AFAFC on the hits are set forth in the description of the match.

1. AFAFC will use records from a system of records identified as F177 AF AFCA, entitled: "Accounts Receivable Records Maintained by Accounting and Finance", last published in the **Federal Register** at 55 FR 42627, October 22, 1990.

2. DMDC will use records from a system of records identified as S322.10 DMDC, entitled: "Defense Manpower Data Center Data Base", last published in the **Federal Register** at 55 FR 42755 on October 23, 1990, and S322.11 DLA-LZ," Federal Creditor Agency Debt Collections Data Base", last published in the **Federal Register** at 52 FR 37495, October 7, 1987.

3. This computer match is internal within the DoD. The DoD is considered a single agency for routine use disclosure purposes under the Privacy Act. All routine uses published in DoD record system notices are for disclosure of records outside the DoD for a use that is compatible with the purpose for which the information was collected and maintained by DoD. The exchange of records for this match between AFAFC and DMDC is permitted under the exception of subsection (b)(1) of the Privacy Act, i.e., to those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties. Therefore, there is no requirement that either record system notice have a routine use for the match. Nevertheless, the exchange of the records is compatible with the purposes for which the information was collected and maintained in both systems. Moreover, there will be a disclosure accounting maintained by DMDC for any disclosures from the S322.11 DLAS-LZ record system.

E. *Description of computer matching program:* AFAFC, as the source agency, will provide DMDC with a magnetic tape of individuals who are indebted to the Air Force. The tape will contain data elements on individual debtors. DMDC, as the recipient agency, will perform a computer match using all nine digits of the SSN from the AFAFC file against a DMDC computer data base. Matching records, "hits" based on the SSN, will produce the member's name, service or agency, category of employee, salary or benefit amounts, and current work or home address. Records matching on the SSN will be returned to AFAFC in a standard 430 byte output record on tape. AFAFC will be responsible for verifying and determining if the data on the DMDC reply tape file are consistent with AFAFC's source file and for resolving any discrepancies or inconsistencies on an individual basis. AFAFC will be responsible for making the final determinations as to positive identification, amount of indebtedness, and recovery efforts as a result of the match. Debtors identified on the DMDC listing as in an Air Force active duty, reserve, or retired pay status are treated as in-service debtors. If the debtor is employed by another Federal agency, a request for salary or administrative offset is issued to the employing agency. Debtors identified on the DMDC listing as in an Army, Navy, or Marines active duty, reserve or retired pay status are issued a military pay offset warning letter; and, if no response is received after 30 days, a Pay Adjustment Authorization is issued to deduct monthly installments from the debtor's military pay.

F. *Individual notice and opportunity to contest:* It will be the responsibility of AFAFC to verify and determine if the data from the DMDC match are consistent with the data from the AFAFC debtor file, and to resolve any discrepancies or inconsistencies as to positive identification on an individual basis. Any discrepancies or inconsistencies furnished by DMDC, or developed as the result of the match, such as amount of indebtedness or Federal benefit payments or salaries or hits will be independently investigated and verified by AFAFC prior to any final adverse action being taken against the individual by AFAFC. There will be no adverse action on raw hits.

Individual Notice and Opportunity to Contest Air Force Debtors—There are two (2) primary types of salary offset: Military Salary Offset—under title 37 U.S.C. 1007 (Deduction from Pay), Air

Force debtors who are currently serving in the Armed Forces in an active duty, reserve, or retired pay status; and Civilian Salary Offset—under 5 U.S.C. 5514 Air Force debtors who are currently employed as a civilian or retired by a government agency.

Under subsection (c) of 37 U.S.C. 1007, an amount that a member of the Armed Forces is administratively determined to owe the United States may be deducted from the pay of the member in monthly installments. The debtor is notified in writing when collections are made under this authority. That notification includes information concerning the amount to be collected and the amount of monthly deductions. The debtor is given an opportunity to enter into a voluntary agreement to repay the debt under terms agreeable to the head of the Creditor Component or his designee. The debtor is given an opportunity to inspect and copy records related to the debt and for review of the decision related to the debt. Requests for copies of the records relating to the debt shall be made no later than 10 days from the receipt by the debtor of the notice of indebtedness. The debtor is entitled to a 30-day written notification informing the debtor of the circumstances under which the debt occurred, the amount owed, the intent to collect by deduction from pay if the amount owed is not paid in full, and an explanation of other rights of the employees under the law. The debtor is also entitled to an opportunity for a hearing concerning the existence or the amount of the debt, or when a repayment schedule is established other than by written agreement concerning the terms of the repayment schedule. The debtor shall be advised that a challenge to either the existence of the debt, the amount of the debt, or the repayment schedule, must be made within 30 days of receipt by the debtor of the notice of indebtedness or within 45 days after receipt of the records relating to the debt, if such records are requested by the debtor.

G. *Inclusive dates of the matching program:* This computer matching program is subject to review by the Office of Management and Budget and Congress. If no objections are raised by either, and the mandatory 30-day public notice period for comment has expired for this **Federal Register** notice with no significant adverse public comments in receipt resulting in contrary determination, then the computer matching program becomes effective and the respective agencies may begin the exchange of data 30 days after the date of the published notice at a mutually agreeable time and will be repeated on a semiannual basis, unless OMB or the Treasury Department requests matching more often. Under no circumstances shall the matching program be implemented before the 30-day public notice period for comment has elapsed as this time period cannot be waived. By agreement between AFAFC and DMDC, the matching program will be in effect and continue for 18 months with an option to renew for 12 additional months unless one of the parties to the agreement advises the other by written request to terminate or modify the agreement.

H. *Address for receipt of public comments or inquiries:* Director, Defense Privacy Office, 400 Army Navy Drive, room 205, Arlington, VA 22202-2884. Telephone (703) 614-3027.

[FR Doc. 91-8308 Filed 4-8-91; 8:45 am]

BILLING CODE 3810-01-M

Department of the Navy

CNO Executive Panel; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Long Range Planning Task Force will meet April 23, 1991, from 9 a.m. to 5 p.m. at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to assess the global environment issues in 10-20 years and its effect on Navy missions and requirements. The entire agenda of the meeting will consist of discussions on the future Naval operating environment and its effect on Navy missions and force structure. These matters constitute classified information that is specifically authorized by Executive Order to be kept secret in the interest of National defense and are, in fact, properly classified pursuant to such Executive Order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact: Judith A. Holden, Executive Secretary to the CNO Executive Panel, 4401 Ford Avenue, room 601, Alexandria, Virginia 22302-0268, Phone (703) 756-1205.

Dated: April 3, 1991.

Wayne T. Baucino,

Lieutenant, JAGC, USNR, Alternate Federal Register Liaison Officer.

[FR Doc. 91-8256 Filed 4-8-91; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by April 25, 1991.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection request should be addressed to Mary P. Liggett, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Mary P. Liggett, (202) 708-5174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 3517) requires that the Director of OMB provide interested Federal agencies and persons an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Office of Information Resources Management, publishes this notice with the attached proposed information collection request prior to submission of this request to OMB. This

notice contains the following information: (1) Type of review requested, e.g., new, revision, extension, existing, or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting and/or Recordkeeping burden and (6) Abstract. Because an expedited review is requested, a description of the information to be collected is also included as an attachment to this notice.

Dated: March 29, 1991.

Wallace R. McPherson, Jr.,

Acting Director, Office of Information, Resources Management.

Office of Educational Research and Improvement

Type of Review: Expedited.

Title: Fast Response Survey System—Survey of Undergraduate Institutional Reporting Capabilities.

Abstract: This survey will gather data for a feasibility study mandated by the "Student Right-to-Know and Campus Security Act of 1990". The Department will use this data to report to Congress.

Additional Information: An expedited review is requested because the report on feasibility is due to be presented by the Secretary of Education to Congress on August 1, 1991.

Frequency: One time.

Affected Public: State or local governments; businesses or other for profit; non-profit institutions.

Reporting Burden—Responses: 900; *Burden Hours:* 450.

Recordkeeping Burden—Recordkeepers: 0; *Burden Hours:* 0.

BILLING CODE 4000-01-M

UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF THE ASSISTANT SECRETARY
FOR EDUCATIONAL RESEARCH AND IMPROVEMENT

April 1991

Dear Registrar:

We request your cooperation in completing this questionnaire regarding your institution's ability to report undergraduate graduation/completion rates. The purpose of this survey is to determine postsecondary institutional capability to respond to data reporting requirements contained in the Student Right-to-Know and Campus Security Act of 1990 (P.L. 101-542). This survey was requested by the U.S. Department of Eduction, Office of Educational Research and Improvement, and the findings will be used for a feasibility report to Congress.

While your participation is voluntary, your cooperation is needed to make the results of this survey comprehensive, accurate, and timely. The information collected will be presented as aggregate statistics only, with no individually identifying information.

The survey is being conducted by our contractor, Westat, a research firm in Rockville, Maryland, using the Fast Response Survey System (FRSS). According to FRSS practice, Westat will send you a report of survey findings when they are available.

We would appreciate your completing the questionnaire and returning it to Westat within two weeks. If you have any questions about the survey, please call Mary Jo Nolin, Westat's Survey Manager, at the toll-free Westat number (800) 937-8281, or Judi Carpenter, the NCES Project Officer, at (202) 219-1333. Your cooperation is greatly appreciated.

Sincerely,

Emerson J. Elliott
Acting Commissioner

WASHINGTON, D.C. 20208

FAST RESPONSE SURVEY SYSTEM

U.S. DEPARTMENT OF EDUCATION
NATIONAL CENTER FOR EDUCATION STATISTICS
WASHINGTON, D.C. 20208-5651

Form approved
OMB No:
Exp.

SURVEY OF UNDERGRADUATE REPORTING CAPABILITY

This survey is authorized by law (20 U.S.C. 1221e-1). While you are not required to respond, your cooperation is needed to make the results of this survey comprehensive, accurate, and timely.

As you may know, a new Federal law, the "Student Right-to-Know and Campus Security Act" (P.L. 101-542), requires postsecondary education institutions to collect data on undergraduate graduation/completion rates starting on July 1, 1991, as well as statistics about campus crime. The Department of Education is trying to find out what data on these topics and what data system capabilities are currently available.

Does your institution provide any students with athletically-related student financial aid?

☐ Yes ☐ No

Does your institution currently have or is it in the process of developing a **student unit record system** for tracking undergraduate graduation/completion rates?

☐ Yes. Please give the year the first cohort* was established _____ and complete Section 1 on pages 2 and 3.

☐ In development. Please give the year the first cohort* will be established _____ and complete Section 1 on pages 2 and 3.

☐ No. Complete Section 2 on page 4. If you use an alternative to a student unit record system for reporting graduation/completion rates, please describe it.

_____

*A cohort is a group of students, identified by some common characteristic such as year first enrolled, that is tracked for the purpose of reporting statistical data.

Person completing this form: _____

Title: _____ Phone: ( ) _____

RETURN COMPLETED FORM TO:

WESTAT, INC.
1650 Research Boulevard
Rockville, Maryland 20850

Public reporting for this collection of information is estimated to average 30 minutes 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 U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and to the Office of Management and Budget, Paperwork Reduction Project 1850-New, Washington, D.C. 20503.

NCES Form No.

SECTION I

Information on tracking for graduation/completion rates and employment outcomes to be completed by institutions with currently operational student unit record systems or systems in the development stage.

		YES	NO
1.	Does (will) your system: *(Circle yes or no for each.)*		
a.	Develop graduation/completion rates by:		
1.	Gender?	1	2
2.	Race/ethnicity?	1	2
3.	Initial attendance status (full time, part time)?	1	2
4.	Age?	1	2
5.	Initial major field of study/program?	1	2
6.	Final major field of study/program?	1	2
7.	School or academic division within institution?	1	2
8.	Athletically-related student financial aid status?	1	2
9.	General student financial aid status?	1	2
10.	Residency status (in-state, out-of-state)?	1	2
11.	Participation in remedial course work?	1	2
12.	Other (*specify*)_____	1	2
b.	Compare graduation/completion rates across institutions?	1	2

2. What changes in student information are (will be) recorded each term? *(Circle yes or no for each.)*

		YES	NO
a.	Attendance status	1	2
b.	Course records	1	2
c.	Major field of study/program	1	2
d.	Student financial aid data	1	2
e.	Athletically-related student financial aid data	1	2
f.	Other (*specify*)_____	1	2

3. What is (will be) the basis for establishing new cohorts to develop graduation/completion rates? *(Circle the answer.)*

First time, first year enrollment only 1
Other entering cohort definition 2
*Specify*_____

4. What is (will be) the schedule for establishing new cohorts? *(Circle the answer.)*

Each term 1
Once each year 2
Biennially 3
Periodically (*specify*) _____ 4

5. Are (will) cohorts (be) defined by the following student registration status? *(Circle yes or no for each.)*

		YES	NO
a.	Degree/certificate seeking registrations	1	2
b.	All credit registrations	1	2
c.	Non-credit, non-degree registrations	1	2

6. Are (will) cohorts (be) defined by the following attendance statuses? *(Circle yes or no for each.)*

		YES	NO
a.	Full-time students (*define full time*)_____	1	2
b.	Part-time students	1	2
c.	Students who complete a minimum number of credits (*specify the number*)____	1	2

7. Once a cohort is established, is (will) a student ever (be) dropped from that cohort? *(Circle the answer.)*

Yes ..... 1 For what reason?_____
No 2

8. Once a cohort is established, is (will) a student ever (be) added to that cohort (e.g., a transfer student). *(Circle the answer.)*

Yes ..... 1 For what reason?_____
No 2

9 Are (will) the following (be) defined as graduates/completers? *(Circle yes or no for each.)*

		YES	NO
a.	Baccalaureate degree recipients	1	2
b.	Associate degree recipients	1	2
c.	Certificate recipients	1	2
d.	Transfers to other institutions	1	2
e.	Other (*specify*) _____	1	2

10. What is (will be) the ability of your system to track transfer students? *(Circle yes or no for each.)*

		YES	NO
a.	Able to track students to in-state public institutions	1	2
b.	Able to track students to in-state private institutions	1	2
c.	Able to track students to out-of-state institutions	1	2
d.	Students lost from the system once they leave the institution	1	2

11. What is considered to be the "normal" time to graduate from/complete a program at your institution for a full-time student enrolled continuously in your longest program?

a. For a baccalaureate degree: _____ years
b. For an associate degree: _____ years
c. For a certificate or license: _____ months/years *(circle one)*

12. What is the maximum number of years that students are (will be) tracked to determine graduation/completion status?

a.	Baccalaureate degree students:	_____ years	*OR*	☐ Not applicable
b.	Associate degree students:	_____ years	*OR*	☐ Not applicable
c.	Non-degree students:	_____ years	*OR*	☐ Not applicable
d.	Certificate students	_____ years	*OR*	☐ Not applicable

13. Does (will) your institution determine employment outcomes for graduates/completers?

Yes 1
No ..... 2 (SKIP TO QUESTION 15)

14. How are (will) employment outcomes be determined? *(Circle yes or no for each.)*

		YES	NO
a.	Through tracking individual graduates/completers for _____ additional years	1	2
b.	Through a survey of a sample of graduates/completers	1	2
c.	Through state record systems	1	2
d.	Other methods (*specify*) _____	1	2

15. Is your student unit record system part of a state-wide or multi-university system encompassing more than just this campus? *(Circle the answer.)*

Yes 1
No 2

16. What office(s) on your campus does (will) maintain your student unit record system? _____ Office

17. What do you estimate was (will be) the cost of developing and implementing the student-based tracking system at your institution? $_____

Information on crime on campus

18. Does your institution maintain statistical records on crimes committed on campus (including any building or property owned or controlled by student organizations recognized by your institution)? *(Circle the answer.)*

Yes 1
In planning stages ..... 2 To be implemented in Academic Year _____
No 3

19. Does your institution publish institutional policies or practices that address crime on campus? *(Circle the answer.)*

Yes 1
In planning stages ..... 2 To be implemented in Academic Year _____
No 3

This completes the questionnaire for institutions with current or developing reporting systems. Thank you.

Section II
To be completed by institutions without current or developing student unit record systems.

1. What is the likelihood that your institution will develop the capability to track student cohorts based on unit records in the next five years?

Very likely	1
Somewhat likely	2
Unlikely	3
Don't know	8

2. What do you estimate would be the cost of developing and implementing a student-based tracking system at your institution? $_____

3. What capabilities would likely be designed into a system at your institution? *(Circle yes or no for each.)*

		YES	NO
a.	Develop graduation/completion rates by:		
	1. Gender?	1	2
	2. Race/ethnicity?	1	2
	3. Initial attendance status (full time, part time)?	1	2
	4. Age?	1	2
	5. Initial major field of study/program?	1	2
	6. Final major field of study/program?	1	2
	7. School or academic division within institution?	1	2
	8. Athletically-related student financial aid status?	1	2
	9. General student financial aid status?	1	2
	10. Residency status (in-state, out-of-state)?	1	2
	11. Participation in remedial course work?	1	2
	12. Other (*specify*) _____	1	2
b.	Compare graduation/completion rates across institutions?	1	2
c.	Track student transfers to in-state public institutions?	1	2
d.	Track student transfers to in-state private institutions?	1	2
e.	Track student transfers to out-of-state institutions?	1	2
f.	Track student outcomes, such as job placement, job skills match, student licensure or certification, etc.?	1	2

Information on crime on campus

4. Does your institution maintain statistical records on crimes committed on campus (including any building or property owned or controlled by student organizations recognized by your institution)? *(Circle the answer.)*

Yes	1	
In planning stages	2	To be implemented in Academic Year _____
No	3	

5. Does your institution publish institutional policies or practices that address crime on campus? *(Circle the answer.)*

Yes	1	
In planning stages	2	To be implemented in Academic Year _____
No	3	

This completes the questionnaire for institutions with neither current nor developing reporting systems. Thank you.

[FR Doc. 91-7875 Filed 4-8-91; 8:45 am]
BILLING CODE 4000-01-C

Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965; Conferences on Preschool Programs and Program Improvement

ACTION: Notice of regional conferences.

SUMMARY: The Assistant Secretary for Elementary and Secondary Education of the U.S. Department of Education will convene three regional conferences to provide assistance to school personnel and others on: (1) Chapter 1 preschool initiatives with emphasis on the selection and assessment of children for Chapter 1 preschool services, the relationship of Chapter 1 preschool programs to Head Start, and the transition of children from preschool to elementary school; and (2) Chapter 1 improvement for schools.

The Assistant Secretary has notified the Chief State School Officer (CSSO) in each State of these meetings. The CSSOs will assist in inviting individuals to attend the conferences and other interested persons are welcome to attend as well. No reservations are needed for the conference. For overnight accommodations, contact hotels directly at the numbers listed below.

MEETING INFORMATION: The regional conferences are scheduled as follows:

April 10–12: St. Louis, Missouri, at the Holiday Inn Riverfront, 200 North Fourth Street, St. Louis, Missouri; (314) 621–8200.

Preschool Program: 9 a.m. April 10 to 12 noon April 11.

Program Improvement: 1 p.m. April 11 to 4 p.m. April 12.

Note: Overnight accommodations for the St. Louis conference also are available at the Days Inn at The Arch, 333 Washington Avenue, St. Louis, Missouri 63102; (314) 621–7900.

May 15–17: San Francisco, California, at the Clarion Hotel (Airport), 401 East Millbrae Avenue, Millbrae, California; (415) 692–6363.

Preschool Program: 9 a.m. May 15 to 12 noon May 16.

Program Improvement: 1 p.m. May 16 to 4 p.m. May 17.

June 5–7: Washington, DC, at the Sheraton City Centre Hotel & Towers, 1143 New Hampshire Avenue, NW., Washington, DC; (202) 775–0800.

Preschool Program: 9 a.m. June 5 to 12 noon June 6.

Program Improvement: 1 p.m. June 6 to 4 p.m. June 7.

FOR FURTHER INFORMATION CONTACT: Dr. Linda Mount, Compensatory Education Programs, 400 Maryland Avenue, SW., Washington, DC 20202–6132; telephone: (202) 401–3710. Deaf and hearing-impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

Dated: April 4, 1991.

John T. MacDonald,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 91–8344 Filed 4–8–91; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER91-325-000 et al.]

Upper Peninsula Power Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

April 1, 1991.

Take notice that the following filings have been made with the Commission:

1. Upper Peninsula Power Company

[Docket No. ER91–325–000]

Take notice that on March 18, 1991, Upper Peninsula Power Company (Upper Peninsula) tendered for filing Addendum "B" to the Agreement dated February 11, 1985 between the Village of Baraga and Upper Peninsula, Rate Schedule FERC No. 25, Supplement No. 1.

Upper Peninsula requests an effective date of April 1, 1991, and therefore requests waiver of the Commission's notice requirements.

Comment date: April 15, 1991, in accordance with Standard Paragraph E at the end of this notice.

2. Orange and Rockland Utilities, Inc.

[Docket No. ER88–112–000]

Take notice that on March 27, 1991, Orange and Rockland Utilities, Inc. (Orange and Rockland) tendered for filing pursuant to the Federal Energy Regulatory Commission's order issued January 15, 1988, in Docket No. ER88–112–000, an executed Service Agreement between Orange and Rockland and Delaware Valley Cement Block Co., Inc.

Comment date: April 15, 1991, in accordance with Standard Paragraph E at the end of this notice.

3. Central Vermont Public Service Corporation

[Docket No. ER91–328–000]

Take notice that Central Vermont Public Service Corporation (CVPS) on March 20, 1991, tendered for filing as an initial rate schedule a contract under which CVPS has agreed to sell a portion of CVPS' entitlement in the capacity and net electrical output of the Vermont Yankee Nuclear Plant and Merrimack #2 Unit to Canal Electrical Company.

CVPS requests the Commission to waive its notice of filing requirements to permit the rate schedule to become effective as of March 1, 1991.

Comment date: April 15, 1991, in accordance with Standard Paragraph E at the end of this notice.

4. Montana Power Company

[Docket No. ER91–336–000]

Take notice that on March 27, 1991, the Montana Power Company (Montana) tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13 a "Firm Energy Sales Agreement Between The Montana Power Company and The Washington Water Power Company". Montana requests that the Commission (a) accept the agreement for filing, to be effective on January 1, 1991; and (b) grant a waiver of notice pursuant to 18 CFR 35.11, so as to allow the filing of the Agreement less than 60 days prior to the date on which service under the Agreement is commenced.

A copy of the filing was served upon The Washington Water Power Company.

Comment date: April 15, 1991, in accordance with Standard Paragraph E at the end of this notice.

5. UtiliCorp United Inc. and Centel Corporation

[Docket Nos. EC91–9–000, EL91–22–000 and ES91–21–000]

Take notice that on March 26, 1991, UtiliCorp United Inc. ("UtiliCorp") and Centel Corporation ("Centel") tendered for filing in Docket No. EC91–9–000 an application pursuant to Section 203 of the Federal Power Act for an order authorizing the proposed sale and transfer by Centel of the assets and liabilities of its electric properties in Kansas and Colorado to UtiliCorp. In connection with the transaction, Centel seeks authorization to convey its 8% undivided ownership interest in certain Jeffrey Energy Center facilities (not including real property or transmission facilities) in Pottawatomie County, Kansas to an owner trustee which will hold the property on behalf of an owner participant. The owner trustee will simultaneously lease the 8% ownership interest to UtiliCorp. The owner trustee has yet to be selected; the owner participant is Citibank, N.A. or one of its wholly-owned subsidiaries. This sale and lease transaction will be undertaken to finance the use of the 8% undivided ownership interest in the Jeffrey Energy Center facilities. The sale and lease financing is to be undertaken

in connection with UtiliCorp's acquisition of Centel's electric properties located in Kansas and Colorado.

Take notice that on March 26, 1991, UtiliCorp tendered for filing in Docket No. ES91-21-000 an application under Section 204 of the Federal Power Act for action in the alternative, depending on whether securities issued in connection with the sale and lease financing of certain property at the Jeffrey Energy Center are deemed to be securities of a financial institution in the sale and lease financing or the securities of UtiliCorp. If the securities are deemed to be the securities of the financial institution, UtiliCorp seeks authorization for it to assume obligations under the lease agreement in respect to the securities (or a determination that such authorization is not needed). If the securities are deemed to be the securities of UtiliCorp, UtiliCorp seeks authorization to issue the securities.

Take notice that on March 26, 1991, UtiliCorp tendered for filing in Docket No. EL91-22-000 a petition for a declaratory order seeking a determination that, in a lease financing of Centel's 8% undivided ownership interest in certain property at the Jeffrey Energy Center, the owner trustee, the owner participant, the lenders and the indenture trustee will not become public utilities under the Federal Power Act.

Comment date: April 26, 1991, in accordance with Standard Paragraph E at the end of this notice.

6. Alabama Power Co.

[Docket No. ER91-334-000]

Take notice that on March 25, 1991, Alabama Power Company (Alabama) tendered for filing a Service Agreement with Black Warrior Electric Membership Corporation, pursuant to FERC Electric Tariff, Original Volume No. 1 of Alabama, incorporating the appropriate revision to Rate Schedule REA-1 as incorporated in Alabama's FERC Electric Tariff Original Volume 1, included as Exhibit A, a description of the proposed Sunshine 44 kV delivery point, and increased capacity specifications for each of the following eight existing delivery points: Allenville, Boligee, Folsom, Forkland, Melvin, Ralph, Silas, and Snoddy.

Alabama also included in its filing copies of the Twenty-Seventh Revised Sheet No. 37 superseding Twenty-Sixth Revised Sheet No. 37 to the Index Purchasers Section of FERC Electric Tariff, Original Volume No. 1, as filed with the Commission December 5, 1984.

Comment date: April 15, 1991, in accordance with Standard Paragraph E at the end of this notice.

7. Public Service Company of New Mexico

[Docket No. ER91-338-000]

Take notice that on March 28, 1991, Public Service Company of New Mexico (PNM) submitted for filing an Economy Energy Agreement between PNM and Utah Associated Municipal Power Systems (UAMPS). Under the Agreement PNM and UAMPS will make economy energy available to one another at rates reflecting current market conditions.

PNM requests a waiver of applicable notice requirements so that the Agreement may become effective as of March 1, 1991.

Copies of the filing have been served upon UAMPS and the New Mexico Public Service Commission.

Comment date: April 15, 1991, in accordance with Standard Paragraph E at the end of this notice.

8. Iowa-Illinois Gas and Electric Co.

[Docket No. ER91-333-000]

Take notice that on March 25, 1991, Iowa-Illinois Gas and Electric Company (Iowa-Illinois), tendered for filing pursuant to section 35.12 of the Regulations under the Federal Power Act an initial rate schedule in the form of an Interchange Agreement (the Agreement) dated February 1, 1991 between the Iowa-Illinois and Wisconsin Power & Light Company (WP&L).

Iowa-Illinois states the Agreement applies only to transactions between Iowa-Illinois and WP&L. Service Schedule A of the Agreement provides for the sale by Iowa-Illinois and purchase by WP&L of Scheduled Capacity consisting of power and associated energy subject to further agreement of the parties from time to time for an amount, a period of time and a degree of firmness. Reservation charges (demand charges) per megawatt for such power are proposed to be up to $400 per day or up to $2,400 per week Charges for energy supplied are proposed to be 110% of Iowa-Illinois' out-of-pocket costs. Service Schedule B of the Agreement provides for the sale by Iowa-Illinois and purchase by WP&L of Term Energy subject to further agreement of the parties from time to time. Term Energy will be reserved for periods of one hour or more and is intended for use by WP&L to replace higher cost energy sources thereby enabling the parties to share cost savings through more efficient use of resources. The energy charge is proposed to be up to 110% of Iowa-Illinois' out-of-pocket costs per megawatthour plus an availability charge for energy reserved of up to $25 per megawatthour. The maximum availability charge for any one day is $400 multiplied by the highest average number of megawatts delivered in any one hour. The minimum charge for each transaction pursuant to this service schedule is 100% of the out-of-pocket costs of supplying the energy for any such transaction.

Service Schedule C of the Agreement provides for the sale by WP&L and purchase by Iowa-Illinois of Negotiated Capacity consisting of capacity and associated energy subject to further agreement of the parties from time to time for an amount, a period of time and degree of firmness. Capacity charges (demand charges) for such power are proposed to be up to $124,320/MW per year for periods of one or more years, up to $10,360/MW per month for periods of three through eleven months, up to $2,100/NW per day for periods of less than one week. Charges for energy supplied are proposed to be 110% of WP&L's out-of-pocket costs. Service schedule D of the Agreement provides for the sale by WP&L and purchase by Iowa-Illinois of General Purpose Energy subject to further agreement of the parties from time to time. General Propose Energy consists of non-firm energy made available by WP&L from surplus capacity either on its system or on an interconnected system, or both. and which can by scheduled hour to hour or for one or more days, thereby enabling the parties to share costs savings through more efficient use of resources. The charge for such energy will be up to 100% of WPL's out-of-pocket costs per megawatthour plus an additional charge of up to $326.25 megawatthour. The maximum additional charge for any one day is $420 multiplied by the highest average number of megawatts delivered in any one hour. As an alternative pricing method subject to further agreement of the parties, the charge per megawatthour for energy supplied by WP&L would be computed to allocate equally among the parties the gross savings to be realized from a transaction pursuant to this service schedule is 100% of the out-of-pocket costs of supplying the energy for any such transaction.

Iowa-Illinois proposed the rate schedule to be effective on May 1, 1991 and requests waiver of the Commission's 60 day notice requirement pursuant to 18 CFR 35.11.

Copies of the filing were served upon the Illinois Commerce Commission, the Iowa State Utilities Board, the Public Commission of Wisconsin and WP&L.

Comment date: April 15, 1991, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-8235 Filed 4-8-91; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2828-001]

City of Redding, CA; Availability of Environmental Assessment

April 2, 1991.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commmission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for major license for the proposed Lake Redding Project, to be located on the Sacramento River in Shasta County, near Redding, California, and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the proposed project would constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, room 3104, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 91-8236 Filed 4-8-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP91-1645-000, et al.]

El Paso Natural Gas Co., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. El Paso Natural Gas Company, Transwestern Pipeline Company, Florida Gas Transmission Company, Northern Natural Gas Company, Equitrans, Inc., and Equitrans, Inc.

[Docket Nos. CP91-1645-000, CP91-1647-000, CP91-1648-000, CP91-1649-000, CP91-1650-000 and CP91-1651-000]

March 27, 1991.

Take notice that on March 26, 1991, Applicants filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of shippers under the blanket certificates issued to Applicants pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[1]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix A. Applicants' addresses and transportation blanket certificates are shown in the attached appendix B.

Comment date: May 13, 1991, in accordance with Standard Paragraph G at the end of this notice.

[1] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-1645-000 (3-26-91)	Texaco Gas Marketing Inc. (Marketer).	103,000 103,000 37,595,000	Any Point [1]	CO, NM	2-11-91, T-1, Interruptible.	ST91-7708-000, 2-17-91.
CP91-1647-000 (3-26-91)	Cibola Corporation (Marketer).	50,000 37,500 18,250,000	AZ, NM, OK, TX	OK, TX	2-28-91, ITS-1, Interruptible.	ST91-7713-000, 2-28-91.
CP91-1648-000 (3-26-91)	U.S. Agri-Chemicals Corporation.	712 534 260,000	Various	FL	12-1-90, PTS-1, Preferred.	ST91-7747-000, 3-2-91.
CP91-1649-000 (3-26-91)	Wes Cana Energy Marketing (U.S.) Inc. (Marketer).	50,000 37,500 18,250,000	Various	Various	2-26-91, IT, Interruptible.	ST91-7746-000, 2-26-91.
CP91-1650-000 (3-26-91)	Clinton Gas Marketing, Inc.	7,000 50 10,000	PA, WV	PA	10-25-90, ITS, Interruptible.	ST91-7721-000, 3-9-91.
CP91-1651-000 (3-26-91)	CNG Trading Company	51,205 2,000 750,000	PA	PA, WV	10-1-88, ITS, Interruptible.	ST91-7718-000, 2-1-91.

[1] Any point of receipt on El Paso's system.

Applicant's address	Blanket docket
El Paso Natural Gas Company, P.O. Box 1492, El Paso, Texas 79978	CP88-433-000
Equitrans, Inc., 3500 Park Lane, Pittsburgh, Pennsylvania 15275	CP86-553-000
Florida Gas Transmission Company, 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188	CP89-555-000
Northern Natural Gas Company, 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188	CP86-435-000
Transwestern Pipeline Company, 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188	CP88-133-000

2. Kern River Gas Transmission Company

[Docket No. CP89-2047-005]

March 28, 1991.

Take notice that on March 7, 1991, Kern River Gas Transmission Company, (Kern River) filed revised Original Volume No. 1, Original Sheet Nos. 20 and 21 to its FERC Gas Tariff, to be effective on the commencement of service on Kern River's interstate gas pipeline system.

Kern River states that the tariff sheets were filed to comply with the Commission's order dated November 2, 1990 in Docket Nos. CP89-2047-003, *et al.*, and set forth revisions to section 8 of Rate Schedule KRF-1 pertaining to the creditworthiness standards for firm transportation customers.

Kern River states that copies of the filing have been served upon each person designated on the official service list compiled by the Secretary in this proceeding.

Comment date: April 4, 1991, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

3. Transwestern Pipeline Company

[Docket No. CP91-1629-000]

March 28, 1991.

Take notice that the above referenced company (Applicant) filed in Docket No. CP91-1629-000 a prior notice request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of a shipper under its blanket certificate issued pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the prior notice request which is on file with the Commission and open to public inspection.

Information applicable to the transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket number and initiation date of the 120-day transaction under § 284.223 of the Commission's Regulations has been provided by the Applicant and is included in the attached appendix.

The Applicant also states that it would provide the service for the shipper under an executed transportation agreement, and that the Applicant would charge rates and abide by the terms and conditions of the referenced transportation rate schedule.

Comment date: May 13, 1991, in accordance with Standard Paragraph G at the end of this notice.

Docket No. (date filed)	Applicant	Shipper name	Peak day,[1] Avg, Annual	Points of		Start up date, rate schedule	Related [2] dockets
				Receipt	Delivery		
CP91-1629-000 3-22-91	Transwestern Pipeline Company, 1400 Smith St., P.O. Box 1188, Houston, TX 77251-1188.	Meridian Oil Trading, Inc..	100,000 75,000 36,500,000	AZ, NM, OK, TX	AZ, NM, OK, TX	3-1-91, ITS-1	CP88-133-000, ST91-7681-000.

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

4. Portland General Electric Company

[Docket No. CP91-1607-000]

March 28, 1991.

Take notice that on March 20, 1991, Portland General Electric Company, One World Trade Center, Portland, Oregon 97204 and KB Pipeline Company, 220 NW Second Avenue, Portland, Oregon 97209 (Applicants) filed in Docket No. CP91-1607-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of approximately 17 miles of 20-inch diameter pipeline and measuring, regulating and appurtenant facilities; and to provide certain transportation services, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The Applicants request authorization to construct the proposed pipeline and appurtenant facilities beginning at an interconnection with Northwest Pipeline Corporation's existing facilities located in Section 36, Township 9 North, Range 2 West, in Cowlitz County, Washington and extending to Portland General Electric Company's Beaver generating station located in section 15, Township 8 North, Range 4 West, in Columbia County, Oregon. The proposed facilities would be used to transport gas for Porland General Electric Company and to render transportation service to Northwest Natural Gas Company.

Applicants state that the cost of the proposed facilities is approximately $14.6 million. Portland General Electric Company proposes to fund 90 percent of this cost with revenue generated from its utility business operations. KB Pipeline Company proposes to fund the remaining 10 percent of this cost with a short term loan to be replaced with long term financing after completion of construction.

Comment date: April 18, 1991, in accordance with Standard Paragraph F at the end of this notice.

5. Algonquin Gas Transmission Company

[Docket No. CP89-661-004]

March 28, 1991.

Take notice than on March 20, 1991, Algonquin Gas Transmission Company (Algonquin), located at 1284 Soldier Field Road, Boston, Massachusetts 02135, filed in Docket No. CP89-661-004, pursuant to Section 7(c) of the Natural Gas Act a request to: (1) Amend the

certificate of public convenience and necessity issued on June 26, 1990 in Docket No. CP89-661-001 *et al.;* (2) amend the portion of its previous application filed February 28, 1989 in Docket No. CP89-661-001, that was not approved by such Commission order; and, (3) to transfer into this docket facilities that have been previously certificated by the Commission in other Algonquin dockets, all as more fully set forth in the request that is on file and open to public inspection

Specifically, Algonquin is proposing to modify its proposal for facilities and services so as to provide firm transportation service of 92,214 MMBtu per day of natural gas on behalf of New England Power Company, pursuant to proposed Rate Schedule X-38 and 78,000 MMBtu per day of natural gas on behalf of certain shippers pursuant to proposed Rate Schedule AFT-2.

Algonquin states that the total estimated cost of the facilities, both certificated and uncerficated, necessary to perform the above services is approximately 77.4 million dollars. Algonquin does not state how such cost will be financed.

Comment date: April 18, 1991, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

6. Viking Gas Transmission Company

[Docket No. CP91-1636-000]

March 28, 1991.

Take notice than on March 25, 1991, Viking Gas Transmission Company (Viking), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP91-1636-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a firm transportation service for Northern Minnesota Utilities, a Division of Utilicorp United, Inc., a local distribution company, under the blanket certificate issued in Docket No. CP90-273-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Viking states that, pursuant to an agreement dated October 1, 1990, under its Rate Schedule FT-2, it proposes to transport up to 4,028 dt per day equivalent to natural gas. Viking indicates that the gas would be transported from receipt points located in Minnesota, and would be redelivered at delivery points located in Minnesota, Wisconsin, and North Dakota. Viking further indicates that it would transport 4,028 dt on an average day and 1,470,220 dt annually.

Viking advises that service under § 284.223(a) commenced December 21, 1990, as reported in Docket No. ST91-7611.

Comment date: May 13, 1991, in accordance with Standard Paragraph G at the end of this notice.

7. Natural Gas Pipeline Company of America

[Docket No. CP91-1615-000]

March 28, 1991.

Take notice than on March 21, 1991, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois, 60148, filed in Docket No. CP91-1615-000, an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval of abandon the firm transportation service certificated in Docket No. CP84-397-000 performed by Natural under its Rate Schedule X-137 for Tennessee Gas Pipeline Company (Tennessee), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Natural states that it had performed a firm transportation service of up to 15,000 MMBtu's of natural gas per day for Tennessee pursuant to a long term gas transportation agreement dated January 20, 1984, between Natural and Tennessee (Agreement). Natural states that pursuant to the Agreement, Tennessee delivered up to 15,000 MMBtu's of natural gas per day to Natural at an existing subsea tap located in High Island Block A-416, offshore Texas. Natural further states that it then redelivered equivalent volumes, less fuel, for Tennessee's account to an existing point of interconnection between the facilities of Natural and the High Island Offshore System (HIOS) located in High Island Block A-270, offshore Texas. It is indicated that after delivery to HIOS, Tennessee's gas was then transported as part of Tennessee's entitlements in HIOS. Natural states that the term of the Agreement was five (5) years from the date of first delivery and year to year thereafter unless cancelled by either party upon one hundred and eighty (180) days advance written notice.

Natural states that pursuant to letters dated April 10, 1989 (as clarified by a letter dated June 6, 1989 of MidCon Services Corp., as agent for Natural) and November 21, 1989, Tennessee provided Natural with written notice Tennessee's election to terminate the Agreement effective August 1, 1990. Natural also states that Tennessee ceased tendering natural gas to Natural under the Agreement on July 31, 1990.

Therefore, Natural states that pursuant to Tennessee's election, Natural seeks authority in this application to abandon the firm transportation service certificated in Docket No. CP84-397-000 performed by Natural for Tennessee under the Agreement, Natural's Rate Schedule X-137.

Comment date: April 18, 1991, in accordance with Standard Paragraph F at the end of this notice.

8. Algonquin Gas Transmission Company

[Docket No. CP89-661-003]

March 28, 1991.

Take notice that on March 20, 1991, Algonquin Gas Transmission Company (Algonquin), 1284 Soldiers Field Road, Boston, Massachusetts 02135, filed a petition to amend in Docket No. CP89-661-003 so as to amend its June 26, 1990 certificate of public convenience and necessity under Section 7 of the Natural Gas Act and subpart A of part 157 of the Commission's Regulations, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Algonquin proposes in the instant petition to transport up to 120,000 MMBtu per day on a firm basis for New England Power Company (NEP). These volumes would be transported across the eleven-mile lateral that connects Algonquin's G-1 system in Dighton, Massachusetts with the proposed meter station at NEP's Brayton Point plant (Brayton Point Lateral), which will be used exclusively for service to the Brayton Point plant.[2] Algonquin will transport this gas under its proposed Rate Schedule X-37, a 100 per cent demand charge rate rate which is designed to recover the cost of service for transporting gas across the Brayton Point Lateral. Algonquin states that transportation upstream of the Brayton Point Lateral will be provided under other rate schedules, including Rate Schedule AIT-1, Algonquin's generally applicable rate for interruptible transportation service. Further, Algonquin asserts, since the transportation proposed herein is only a change in the nature of service utilizing a previously certificated facility, the proposal will not require any further environmental analysis by the Commission. Algonquin requests that the Commission act on this

[2] This lateral and meter station were approved in the Commission's order of June 26, 1990 in Docket No. CP89-637-000, *et al.* (51 FERC 61,359)

amendment no later than May 15, 1991, in order to allow Algonquin to construct the Brayton Point Lateral during the summer construction season to meet the planned November 1, 1991 in-service date requested by NEP.

Comment date: April 18, 1991, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

9. Columbia Gulf Transmission Company

[Docket Nos. CP91-1632-000 and CP91-1633-000]

March 28, 1991.

Take notice that the above referenced company (Applicant) filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[3]

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicant and is included in the attached appendix.

The Applicant also states that it would provide the service for each shipper under an executed transportation agreement, and that the Applicant would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: May 13, 1991, in accordance with Standard Paragraph G at the end of this notice.

[3] These prior notice requests are not consolidated.

Docket No. date filed	Applicant	Shipper name	Peak day,[1] avg, annual	Points of		Start up date, rate schedule	Related [2] dockets
				Receipt	Delivery		
CP91-1632-000 3-22-91	Columbia Gulf Transmission Company, P.O. Box 683, Houston, TX 77001-0683.	NGC Transportation, Inc.	50,000 30,000 10,950,000	Off LA	LA	2-6-91, ITS-2	CP86-239-000, ST91-7606-000.
CP91-1633-000 3-22-91	Columbia Gulf Transmission Company, P.O. Box 683, Houston, TX 77001-0683.	NGC Transportation, Inc.	200,000 100,000 36,500,000	LA, Off LA	LA, MS, TN, TX	2-15-91, ITS-1, ITS-2.	CP86-239-000, ST91-7042-000.

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

10. United Gas Pipe Line Company,[4] United Gas Pipe Line Company, Southern Natural Gas Company, and Southern Natural Gas Company

[Docket Nos. CP91-1640-000, CP91-1641-000, CP91-1642-000, and CP91-1643-000]

March 28, 1991.

Take notice that on March 25, 1991, Applicants filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under their blanket certificates issued pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection and in the attached appendix.

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicants and is included in the attached appendix.

Applicants state that each of the proposed services would be provided under an executed transportation agreement, and that the Applicants would charge rates and abide by the terms and conditions of the referenced transportation rate schedule(s).

Comment date: May 13, 1991, in accordance with Standard Paragraph G at the end of this notice.

[4] These prior notice requests are not consolidated.

Docket No. (date filed)	Applicant	Shipper name	Peak day,[1] average annual	Points of[2]		Start up date, rate schedule	Related [3] dockets
				Receipt	Delivery		
CP91-1640-000 (3-15-91)	United Gas Pipe Line Company, P.O. Box 1478, Houston, TX 77251-1478.	Transamerican Gas, Transmission Corporation.	154,500 154,500 56,392,500	LA, TX	FL, LA, MS, TX	2-27-91, ITS	CP88-6-000, ST91-7697-000.
CP91-1640-000 (3-15-91)	United Gas Pipe Line Company.	Tejas Power Corporation.	51,500 51,500 18,797,500	LA, MS, TX, OLA	AL, LA, MS, TX	2-11-91, ITS	CP88-6-000, ST91-7698-000.

Docket No. (date filed)	Applicant	Shipper name	Peak day,[1] average annual	Points of[2]		Start up date, rate schedule	Related[3] dockets
				Receipt	Delivery		
CP91-1641-000 (12-21-90)	Southern Natural Gas Company, P.O. Box 2563, Birmingham, AL 35202-2563.	Graniteville Company.	10,000 10,000 3,650,000	AL, LA, MS, TX, OLA, OTX.	SC	1-21-91, IT	CP88-316-000, ST91-6955-000.
CP91-1642-000 (12-21-90)	Southern Natural Gas Company.	Vulcan Materials Company.	500 29 10,800	AL, LA, MS, TX, OLA, OTX.	AL	1-21-91, IT	CP88-316-000, ST91-6956-000.

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] Offshore Louisiana and Offshore Texas are shown as OLA and OTX.
[3] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

11. United Gas Pipe Line Company

[Docket No. CP91-1635-000]

March 28, 1991.

Take notice that on March 22, 1991, United Gas Pipe Line Company (United), Post Office Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP91-1635-000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations for authorization to construct and operate approximately 600 feet of 10-inch pipeline, an eight-inch delivery tap and related facilities, under United's blanket certificate issued in Docket No. CP82-430-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United states that the proposed facilities would be located in Gregg County, Texas, and would enable United to transport an estimated average of 80,000 Mcf per day of natural gas for LaSER Marketing Company (LaSER) to serve the Knox Lee Power Plant under United's Rate Schedule ITS. United estimates that the proposed facilities would cost $301,400. It is stated that Texas Gulf South Pipeline Company, a subsidiary of LaSER, would reimburse United for all costs resulting from the proposed facilities. United indicates that it is authorized in Docket No. ST89-298 to provide all of LaSER's natural gas requirements for resale and distribution through LaSER's billing area and the adjoining area.

United states that it has sufficient capacity to provide the additional service without detriment or disadvantage to its other existing customers and that its FERC Gas Tariff does not prohibit the addition of new delivery points.

Comment date: May 13, 1991, in accordance with Standard Paragraph G at the end of this notice.

12. Southern Natural Gas Company and Tennessee Gas Pipeline Company

[Docket Nos. CP91-1653-000 and CP91-1654-000]

March 29, 1991.

Take notice that Southern Natural Gas Company, P.O. Box 2563, Birmingham, Alabama 35202-2563, and Tennessee Gas Pipeline Company, P.O. Box 2511, Houston, Texas 77252, (Applicants) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under the blanket certificates issued in Docket No. CP88-316-000 and Docket No. CP87-115-000, respectively, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[5]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix.

In Docket No. CP91-1654-000 Tennessee Gas Pipeline Company (Tennessee) proposes to construct and operate facilities consisting of a tie-in assembly and 800 feet of 2-inch pipeline in order to be able to commence the transportation service. Tennessee requests authorization for construction and operation under its blanket certificate issued in Docket No. CP82-413-000. It is stated that Tennessee has not commenced the proposed transportation service and will not do so until the proposed facilities have been installed.

Comment date: May 13, 1991, in accordance with Standard Paragraph G at the end of this notice.

[5] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt[1] points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-1653-000 (3-26-91)	Dravo Lime Company (end-user).	5,000 30 10,950	TX, LA, OLA, OTX, MS, AL.	AL	12-28-90, IT, Interruptible.	ST91-6948, 1-21-91
CP91-1654-000 (3-27-91)	Odeco Oil & Gas Company (end-user).	[2] 200 200 73,000	OLA	LA	2-19-91, IT, Interruptible.	

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.
[2] Measured in dt equivalent.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practive and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriative action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to be come a party to a proceeding or to participate as a party in any hearing therein must file a motion to invervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 91-8237 Filed 4-8-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP91-1631-000, et al.]

Equitrans, Inc., et al.; Natural Gas Certificate Filings

April 2, 1991.

Take notice that the following filings have been made with the Commission:

1. Equitrans, Inc.

[Docket No. CP91-1631-000]

Take notice that on March 22, 1991, Equitrans, Inc. (Equitrans), 3500 Park Lane, Pittsburgh, Pennsylvania 15275, filed in Docket No. CP91-1631-000 an application pursuant to Sections 7(b) and 7(c) of the Natural Gas Act for (1) Permission and approval to abandon certain production leaseholds, wells and associated facilities by transfer to Equitable Gas Company (Equitable); (2) authority to adjust the contract entitlement levels of Equitrans two Rate Schedule PLS customers; and (3) authority to acquire certain field lines, all as more fully set forth in the application on file with the Commission and open to public inspection.

Equitrans states that its proposed abandonment by transfer to Equitable of certain production leaseholds, production wells and associated facilities is expressly conditional upon Commission approval of a Joint Stipulation and Agreement filed simultaneously with this application in Docket Nos. RP90-70-000, *et al.* Equitrans proposes to reduce Equitable's daily contract entitlement levels under Equitrans' firm sales Rate Schedule PLS from 642,898 dt to 512,898 dt in each of the five months of November through March, and 249,704 dt in each of the seven months of April through October. Equitrans proposes to adjust the Rate Schedule PLS firm daily contract entitlements levels of Jefferson Gas Company from 928 dth to 1,032 dth in each of the five months of November through March, and 576 dth in each of the seven months of April through October. Equitrans also proposes to acquire certain field lines from Equitable.

Equitrans states that the proposed abandonment will in no way impair its ability to continue to serve its customers. Equitable further states that the direct transfer of these facilities will afford Equitable greater flexibility in meeting the needs of its own customers with adherence to a least reasonable cost purchasing policy that is responsive to changing market conditions.

Comment date: April 23, 1991, in accordance with Standard Paragraph F at the end of the notice.

2. Equitrans, Inc.

[Docket No. CP91-1630-000]

Take notice that on March 22, 1991, Equitrans, Inc. (Equitrans), 3500 Park Lane, Pittsburgh, Pennsylvania 15275, filed in Docket No. CP91-1630-000 an application pursuant to Section 7(c) of the Natural Gas Act, to add a new customer, Equitable Gas Company (Equitable), to its contract storage service under Rate Schedule SS-3, all as more fully set forth in the application on file with the Commission and open to public inspection.

Equitrans proposes to provide 3 BCF of firm contract storage service to Equitable under Rate Schedule SS-3 for a primary term of ten years. Equitrans states that its proposed storage service to Equitable is expressly conditional upon Commission approval of a Joint Stipulation and Agreement (Joint Stipulation) filed simultaneously with this application in Docket Nos. RP90-70-000, *et al.* Equitrans proposes providing Rate Schedule FTS firm transportation service to and from storage for Equitable under its part 284 blanket transportation certificate. Equitrans states that it will charge Equitable storage and transportation rates totalling 71 cents per dt (including 36.83 cents for storage service) which are the rates Equitrans charges all other storage customers for the combined storage and transportation services under the Joint Stipulation filed in Docket Nos. RP90-70-000, et al.

Equitrans states that the storage capacity to be provided by Equitrans is needed by Equitable to serve its customers and will allow Equitable a greater flexibility to pursue a least reasonable cost purchasing practice and to respond to changing market conditions. Equitrans states that the new storage service will have no adverse effect on supplies or capacity needed to serve Equitran's existing customers, and will benefit those customers by recovering a part of Equitran's overall cost of service.

Comment date: April 23, 1991, in accordance with Standard Paragraph F at the end of this notice.

3. Transcontinental Gas Pipe Line Corporation, Transcontinental Gas Pipe Line Corporation, and Midwestern Gas Transmission Company

[Docket Nos. CP91-1662-000,[1] CP91-1663-000, and CP91-1664-000]

Take notice that on March 28, 1991, Applicants filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under their blanket certificates issued pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection and in the attached appendix.

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicants and is included in the attached appendix.

Applicants state that each of the proposed services would be provided under an executed transportation agreement, and that the Applicants would charge rates and abide by the terms and conditions of the referenced transportation rate schedule(s).

Comment date: May 17, 1991, in accordance with Standard Paragraph G at the end of this notice.

[1] These prior notice requests are not consolidated.

Docket No. (date filed)	Applicant	Shipper name	Peak day,[1] average, annual	Points of [2]		Start-up date, rate schedule	Related dockets [3]
				Receipt	Delivery		
CP91-1662-000 (3-28-91)	Transcontinental Gas Pipe Line Corporation, P.O. Box 1396, Houston, TX 77251.	LL&E Gas Marketing, Inc.	945,000 3,000 1,095,000	LA, OLA, OTX	LA, OLA, SC, OTX	2-1-91, IT	CP88-328-000, ST91-7756-000.
CP91-1663-000 (3-28-91)	Transcontinental Gas Pipe Line Corporation.	Texas-Ohio Gas, Inc.	20,000 20,000 7,300,000	LA, MD, NJ, PA, TX	NY	2-12-91, IT	CP88-328-000, ST91-7674-000.
CP91-1664-000 (3-28-91)	Midwestern Gas Transmission Company, P.O. Box 2511, Houston, TX 77252.	CMS Gas Marketing.	50,000 50,000 18,250,000	IA, IL, KY, TN	IA, IL, KY	2-19-91, IT	CP90-174-000, ST90-7679-000.

[1] Quantities are shown in Dekatherms.
[2] Offshore Louisiana and Offshore Texas are shown as OLA and OTX.
[3] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

4. Southern Natural Gas Company

[Docket Nos. CP91-1573-000, CP91-1574-000, CP91-1575-000, and CP91-1576-000]

Take notice that on March 15, 1991, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35203, Filed in Docket Nos. CP91-1573-000, CP91-1574-000, CP91-1575-000, and C91-1576-000, applications with the Commission, pursuant to section 7(b) of the Natural Gas Act (NGA), for permission and approval to abandon a portion of its firm sales to the City of Hawkinsville, Georgia, the Gas Board of the City of Fayette, Alabama, the City of Manchester, Georgia, and Town of Fayette, Mississippi, respectively, all as more fully set forth in the applications which are open to public inspection.

Southern requests abandonment authorization for a portion of the Maximum Daily Obligation (MDO) that it sells to the respective customers. Southern indicates that all of its customers were afforded the option to reduce or convert their firm sales entitlements to firm transportation after the long-term sales service agreements between Southern and the parties expired. Since the expiration of such long-term contracts, Southern and the respective customers executed short-term agreements during an interim period whereby the customers determined their long-term requirements. Afterwards, each of Southern's respective customers decided to reduce their MDOs and each customer has executed an agreement to that effect.

Southern also requests that the abandonment authorizations granted be effective retroactively to correspond with the terms of those respective agreements.

Comment date: April 23, 1991, in accordance with Standard Paragraph F at the end of this notice.

5. United Gas Pipe Line Company, United Gas Pipe Line Company, Tennessee Gas Pipeline Company

[Docket Nos. CP91-1678-000, CP91-1679-000, and CP91-1681-000]

Take notice that United Gas Pipe Line Company, P.O. Box 1478, Houston, Texas 77251-1478, and Tennessee Gas Pipeline Company, P.O. Box 2511, Houston, Texas 77252, (Applicants) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of shippers under the blanket certificates issued in Docket Nos. CP88-6-000 and CP87-115-000, respectively, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[2]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix.

[2] These prior notice requests are not consolidated.

Comment date: May 17, 1991, in accordance with Standard Paragraph G at the end of this notice.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt [1] points	Delivery points	Contract date, rate schedule, service type	Related docket, start-up date
CP91-1678-000 ST91-7722-000 (3-29-91)	Phoenix Gas Pipeline Company (Intrastate Pipeline).	103,000 103,000 37,595,000	Various	Various	12-14-88,[2] ITS, Interruptible.	2-6-91
CP91-1679-000 (3-29-91)	Oryx Gas Marketing Limited Partnership (producer).	8,240 8,240 3,007,600	Various	Various	10-9-89,[2] FTS, Firm.	ST91-7810-000 2-19-91
CP91-1681-000 (4-1-91)	Meth Corporation (marketer).	125,000 125,000 [3] 45,625,000	OLA, TX, LA, AL, MS	LA, TX, MS, WV, PA, TN, AL.	12-20-90,[2] IT, Interruptible.	ST91-7813-000, 2-21-91

[1] Offshore Louisiana is shown as OLA.
[2] As amended.
[3] Tennessee's quantities are in Dekatherms.

6. Northwest Pipeline Corporation

[Docket No. CP91-1652-000]

Take notice that on March 26, 1991, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158-0900 filed in Docket No. CP91-1652-000 an application with the Commission, pursuant to Section 7(b) of the Natural Gas Act (NGA), for permission and approval to abandon a natural gas gathering and transportation service it provides to Texas Gas Transmission Corporation (Texas Gas), all as more fully set forth in the application which is open to public inspection.

Northwest states that it provides Texas Gas a daily natural gas gathering and transportation service of up to 10,000 Mcf, as authorized in Docket No. CP82-240-000, 20 FERC ¶62,584 (1982). Northwest states that it performs this service under its FERC Rate Schedule X-76. On September 24, 1990, Texas Gas notified Northwest that it wished to terminate their agreement since Texas Gas has no gas supply obligations that require Northwest's services. Northwest and Texas Gas further agreed to terminate their agreement with an effective date of November 1, 1990. Northwest states that no services have been rendered under its FERC Rate Schedule X-76 since 1987, and no imbalances exist under the agreement. Northwest does not propose to abandon any facilities in this proceeding.

Comment date: April 23, 1991, in accordance with Standard Paragraph F at the end of this notice.

7. Transwestern Pipeline Company, Transwestern Pipeline Company, Transwestern Pipeline Company

[Docket Nos. CP91-1637-000, CP91-1638-000 and CP91-1639-000]

Take notice that the above referenced company (Applicant) filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[3]

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicant and is included in the attached appendix.

The Applicant also states that it would provide the service for each shipper under an executed transportation agreement, and that the Applicant would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: May 17, 1991, in accordance with Standard Paragraph G at the end of this notice.

[3] These prior notice requests are not consolidated.

Docket No. (date filed)	Applicant	Shipper name	Peak day,[2] average annual	Points of Receipt	Points of Delivery	Start up date, rate schedule	Related [2] dockets
CP91-1673-000 3-27-91 [2]	Transwester Pipeline Company, P.O. Box 1188, Houston, TX 77251-1188.	Enron Gas Marketing, Inc.	50,000 37,500 18,250,000	AZ, NM, OK, TX	OK, TX	8-1-90, ITS-1	CP88-133-000 ST91-7803-000
CP91-1638-000 3-25-91	Transwestern Pipeline Company, P.O. Box 1188, Houston, TX 77251-1188.	PSI Gas Marketing, Inc.	250,000 187,500 91,250,000	AZ, NM, OK, TX	AZ, NM, OK, TX	3-10-91, ITS-1	CP88-133-000 ST91-7802-000

Docket No. (date filed)	Applicant	Shipper name	Peak day,[2] average annual	Points of		Start up date, rate schedule	Related [2] dockets
				Receipt	Delivery		
CP91-1639-000 3-27-91 [3]	Transwestern Pipeline Company, P.O. Box 1188, Houston, TX 77251-1188.	NGC Transportation, Inc.	50,000 37,500 18,250,000	AZ, NM, OK, TX	NM, OK, TX	6-1-91, ITS-1	CP88-133-000 ST91-7804-000

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.
[3] The request was tendered for filing on March 25, 1991; however, the fee required by Section 381.208 of the Commission's Rules was not paid until March 27, 1991. Section 381.103 of the Commission's Rules provides that the filing date is the date the fee is paid.

8. Tennessee Gas Pipeline Co.

[Docket No. CP91-1627-000]

Take notice that on March 21, 1991, Tennessee Gas Pipeline Company (Applicant), P.O. Box 2511, Houston, Texas, 77252, filed in Docket No. CP91-1627-000, an abbreviated application for a certificate of public convenience and necessity pursuant to Section 7(c) of the Natural Gas Act and § 157.7 of the Federal Energy Regulatory Commission's Regulations requesting authority to construct and operate: (1) Approximately 223 miles of 30-inch pipeline extending from the intersection of Applicant's main supply line 100 with the Bear Creek Storage line in Winn Parish, Louisiana, to its Station 538 in Jasper County, Mississippi; (2) two new compressor stations and the addition of an engine at existing Station 834; (3) piping modifications to existing Station 538; and (4) other ancillary facilities. The total cost of the construction is estimated to be $204.2 million, which will be financed by funds on hand, all as more fully set forth in the application on file with the Commission and open for public inspection.

Applicant states that this new pipeline, known as the "West-to-East Crossover," would provide a valuable link between its three main supply lines through which most system volumes flow. It is stated that this link is necessary to accommodate the shift in availability of gas reserves from east to west along Applicant's supply system and is required to respond to the demands for more flexible and competitive service under open-access operations. Applicant states that currently there is declining deliverability and surplus capacity behind line 500 and excess deliverability and capacity shortages behind lines 100 and 800. Applicant further states that under open-access operations, the demand to transport supplies behind lines 100 and 800 exceeds capacity and thus limits service.

Applicant states that the West-to-East Crossover would address these supply area capacity constraints by permitting up to 535 MMcf/d of gas behind the 100 and 800 lines to be diverted eastward to the 500 line, resulting in benefits to all classes of customers, including: greater access to lower cost gas supplies; greater gas supply options for customers converting from sales service to transportation service; increased reliability of service, *i.e.*, less risk of service interruptions and curtailments due to capacity constraints along western supply lines; more efficient utilization of Applicant's existing facilities; and enhanced competition in the gas markets served by its system. Applicant states that an additional advantage of linking its three major supply lines by the West-to-East Crossover is that in the event excess supplies were to develop in eastern supply areas in the future, the Crossover could be modified to reverse flows east-to-west, thus maintaining maximum system utilization. Applicant states that due to capacity limitations north of the supply area, the Crossover would not permit it to offer new firm service to the market area.

Applicant states that because the West-to-East Crossover will provide systemwide benefits, it proposes to roll in the associated costs in a future rate case. Applicant further states that it is not proposing to establish any new rates or services by its application. Applicant proposes to place the facilities in service during the fourth quarter of 1992.

The Commission advises all interested parties that it intends to hold a technical conference in this application to discuss any issues requiring Commission review that are raised by the application or by any interventions in this application. Notice of such a technical conference in Docket No. CP91-1627-000 will be issued at a later date.

Comment date: April 23, 1991, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore,

the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 91-8238 Filed 4-8-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-5-61-000]

Bayou Interstate Pipeline System; Proposed Change in Rates

April 2, 1991.

Take notice that on March 28, 1991, Bayou Interstate Pipeline System (Bayou) tendered as part of its FERC Gas Tariff, Original volume No. 1, (Tariff) Twenty-Fourth Revised Sheet No. 4 to be effective May 1, 1991.

Bayou states that the proposed tariff sheet is filed pursuant to the Purchased Gas Cost Adjustment provisions contained in section 15 of Bayou's tariff. Bayou states that a copy of this filing is being mailed to Bayou's jurisdictional customer and interested state regulatory agencies.

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 (Commission), 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211. All such motions or protests must be filed on or before April 9, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-8252 Filed 4-8-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-7-63-000]

Carnegie Natural Gas Co.; Proposed Changes in FERC Gas Tariff

April 2, 1991.

Take notice that on March 28, 1991, Carnegie Natural Gas Company ("Carnegie") tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1:

Fifth Revised Twelfth Revised Sheet No. 8
Fifth Revised Twelfth Revised Sheet No. 9

Carnegie states that pursuant to § 154.308 of the Commission's regulations and the commission's Order Nos. 483 and 483-A, it is filing an Out-of-Cycle PGA to reflect an increase in projected spot gas purchases for the months of April and May 1991, to meet an anticipated increase in sales requirements. The revised rates are proposed to become effective April 1, 1991, and reflect the following changes from Carnegie's last fully-supported PGA filing in Docket No. TQ91-6-63-000: a $0.4115 per Dth increase in the commodity component of its LVWS, LVIS and CDS rate schedules; and a $0.1340 per Dth decrease in its Standby Charge Adjustment, from $0.3186 to $0.1846 per Dth. Carnegie does not propose any change to the demand components of its sales rates.

Carnegie states that the rates subject to this filing are actually lower than the fully-supported rates subject to Carnegie's last Quarterly PGA filing. This filing therefore would qualify as an Interim PGA effective on 24-hours notice but for the fact that Carnegie proposes to modify (decrease) its Standby Charge Adjustment. Carnegie therefore requests that the Commission allow this rate change to become effective on less than 30-days notice.

Carnegie states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to intervene or protest said filing should file an intervention and/or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such pleadings should be filed on or before April 9, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-8247 Filed 4-8-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-3-2-000 and RP91-79-001]

East Tennessee Natural Gas Co.; Proposed Changes in FERC Gas Tariff

April 2, 1991.

Take notice that on March 29, 1991, East Tennessee Natural Gas Company (East Tennessee) filed Substitute First Revised Sheet No. 6 and Substitute Third Revised Sheet No. 113 to First Revised Volume No. 1 of its FERC Gas Tariff, with a proposed effective date of March 2, 1991, and Second Revised Sheet No. 6 to First Revised Volume No. 1 of its FERC Gas Tariff, with a proposed effective date of May 1, 1991.

East Tennessee states that the purpose of the tariff sheets to be effective March 2, 1991, is to revise East Tennessee's allocation to its small customers of its fixed take-or-pay charges billed to it by its upstream pipeline supplier, Tennessee Gas Pipeline Company, in accordance with the Commission's March 1, 1991 order in Docket No. RP91-79-000, and that the tariff sheets with a proposed effective date of May 1, 1991, propose to flow through the demand surcharge reflected in Tennessee's filing in Docket No. RP91-29-000.

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 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before April 9, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 91-8248 Filed 4-8-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-3-5-000 and RP91-78-002]

Midwestern Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

April 2, 1991.

Take notice that on March 29, 1991, Midwestern Gas Transmission Company (Midwestern) filed Second Substitute Fifth Revised Sheet No. 7 to

Volume No. 1 of its FERC Gas Tariff, with a proposed effective date of March 2, 1991, and Sixth Revised Sheet No. 7 to Volume No. 1 of its FERC Gas Tariff, with a proposed effective date of May 1, 1991.

Midwestern states that the purpose of the tariff sheets to be effective March 2, 1991, is to revise Midwestern's allocation to its small customers of its fixed take-or-pay charges billed to it by its upstream pipeline supplier, Tennessee Gas Pipeline Company, in accordance with the Commission's March 1, 1991 order in Docket No. RP91-78-000, and that the tariff sheets with a proposed effective date of May 1, 1991, propose to flow through the demand surcharge reflected in Tennessee's take-or-pay filing in Docket No. RP91-29-000.

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 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before April 9, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 91-8249 Filed 4-8-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-3-17-000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

April 2, 1991.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on March 29, 1991 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies of the following tariff sheets:

Thirty-second Revised Sheet No. 50.1
Thirty-third Revised Sheet No. 50.2
Twenty-third Revised Sheet No. 50A.1
Twenty-fourth Revised Sheet No. 50B.1
Twenty-fourth Revised Sheet No. 50C.1
Twenty-fourth Revised Sheet No. 50D.1

The proposed effective date of these revised tariff sheets is May 1, 1991.

Texas Eastern states that these revised tariff sheets filed herewith reflect a Demand of increase of $0.046 per Dth and a commodity decrease of $0.4569 per Dth, representing the change in Texas Eastern's projected cost of purchased gas from Texas Eastern's Annual Compliance filing as ordered in Docket No. TA91-1-17 to be effective February 1, 1991.

Texas Eastern states that the above-referenced tariff sheets are being filed in accordance with § 154.308 (quarterly PGA filing) of the Commission's Regulations and pursuant to section 23 (Purchased Gas Cost Adjustment Clause) of Texas Eastern's FERC Gas Tariff, Fifth Revised Volume No. 1 to reflect changes in Texas Eastern's rates effective May 1, 1991.

Texas Eastern states that in the event the Commission accepts Texas Eastern's alternate tariff sheets to the March 4, 1991, annual PGA filing in Docket No. TA91-1-17, Texas Eastern requests the Commission approve the following alternate tariff sheets which reflect rates established in the alternate tariff sheets filed March 4, 1991:

Alt Thirty-second Revised Sheet No. 50.1
Alt Thirty-third Revised Sheet No. 50.2
Alt Twenty-third Revised Sheet No. 50A.1
Alt 24th Revised Sheet No. 50B.1
Alt 24th Revised Sheet No. 50C.1
Alt 24th Revised Sheet No. 50D.1

Texas Eastern states that on March 15, 1991 Texas Eastern filed tariff sheets implementing the Joint Stipulation and Agreement in Docket Nos. CP90-186-001 and RP88-67-035, reflecting the abandonment of Rate Schedule WS and the implementation of new Rate Schedules SCQ, SS-1, and ISS-1. The instant PGA filing is based upon the Commission's acceptance of such March 15, 1991 filing effective on or before May 1, 1991. In the event the March 15, 1991 filing is altered in any way, Texas Eastern will file revised tariff sheets.

The proposed effective date of these revised alternate tariff sheets is May 1, 1991.

Texas Eastern states that copies of its filing have been served on all Authorized Purchasers of Natural Gas from Texas Eastern and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before April 9, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-8250 Filed 4-8-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-125-000]

CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff

April 2, 1991.

Take notice that on March 28, 1991, CNG Transmission Corporation (CNG) pursuant to Section 4 of the Natural Gas Act, the Stipulation and Agreement approved by the Commission on October 6, 1989, in Docket Nos. RP88-217, *et al.*, and Section 12.9 of the General Terms and Conditions of CNG's FERC Gas Tariff, filed the following revised tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1:

Seventh Revised Sheet No. 31
Second Revised Sheet No. 32
Second Revised Sheet No. 34
Second Revised Sheet No. 38
Second Revised Sheet No. 42
Fourth Revised Sheet No. 48
Third Revised Sheet No. 53
Third Revised Sheet No. 211

CNG states that the proposed effective date for Sheet Nos. 31, 32, 34 and 38 is May 1, 1991 and the proposed effective date for Sheet Nos. 42, 48, 53, and 211 is April 29, 1991.

CNG states that the purpose of this filing is to: (1) Make minor reductions in the "Fixed Monthly Surcharge" and the "Take-or-Pay Commodity Surcharge," to reflect a lower FERC interest rate applicable to CNG's collection of direct take-or-pay costs; and (2) to flow through changes in take-or-pay costs allocated to CNG by one of its pipeline suppliers, Texas Gas Transmission Corporation in three filings made by Texas Gas on February 27, 1991 in Docket Nos. RP91-100-000, RP91-101-000 and RP91-102-000.

CNG states that copies of the filing were served upon CNG's customers as well as interested parties.

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 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before April 9, 1991. Protests will be considered by the Commission in determining the

appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-8241 Filed 4-8-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-3-52-000]

Western Gas Interstate Co.; Proposed Changes in FERC Gas Tariff

April 2, 1991.

Take notice that on March 29, 1991, Western Gas Interstate Company ("Western"), pursuant to Section 4 of the Natural Gas Act, the Commission's regulations thereunder and Western's FERC Gas Tariff, tendered for filing proposed changes to its FERC Gas Tariff, Second Revised Volume No. 1 and First Revised Volume No. 1. The proposed effective date for the tariff sheets is May 1, 1991.

Western states that, its filing proposes changes to its rates in accordance with the terms of the Purchased Gas Adjustment Clause of its FERC Gas Tariff.

Western further states that the proposed changes provide for: (1) A decrease in the cost of purchased gas under Western's Rate Schedule CD-N of $.1699 per MMBTU; and (2) a decrease in the cost of purchased gas under Western's Rate Schedule G-S of $.1824 cents per Mcf.

Finally, Western states that copies of the filing were served upon Western's transmission system customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before April 9, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-8242 Filed 4-8-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-129-000]

Williston Basin Interstate Pipeline Co.; Proposed Changes in FERC Gas Tariffs

April 2, 1991.

Take notice that on March 29, 1991, Williston Basin Interstate Pipeline Company (Williston Basin), suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, tendered for filing certain revised tariff sheets to First Revised Volume No. 1 and Original Volume Nos. 1-A, 1-B and 2 of its FERC Gas Tariff.

Williston Basin states that the proposed revisions to the tariff sheets reflect the reallocation of costs from Rate Schedule S-2 storage service to other services on a prospective basis, consistent with the Commission's "Order Granting Rehearing in Part" issued November 23, 1990 in Docket No. RP90-2-001 and "Order Denying Rehearing and Rejecting Tariff Sheets" issued March 20, 1991 in Docket Nos. RP90-2-008 and RP90-2-010.

Williston Basin requests that the proposed tariff sheet revisions be effective May 1, 1991.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before April 9, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-8243 Filed 4-8-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-5-59-000]

Northern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

April 2, 1991.

Take notice that Northern Natural Gas Company (Northern) on March 28, 1991, tendered for filing the following tariff sheets to its FERC Gas Tariff.

Third Revised Volume No. 1

First Revised Sixtieth Revised Sheet No. 4A
Fourth Revised Ninetieth Revised Sheet No. 4B
Fourth Revised Fifty-Eighth Revised Sheet No. 4B.1
Fourth Revised Tenth Revised Sheet No. 4H

Original Volume No. 2

Fourth Revised Ninety-Seventh Revised Sheet No. 1C

Northern states that the purpose of the filing is to adjust its Base Average Gas Purchase Cost in accordance with the quarterly PGA filing requirement codified by the Commission's Order Nos. 483 and 483-A. Northern states that the instant filing reflects a Base Average Gas Purchase Cost of $1.4943 per MMBtu to be effective April 1, 1991, through June 30, 1991.

Northern states that on March 1, 1991, it filed in Docket No. TQ91-4-59 a quarterly rate adjustment for the second quarter of 1991, which was subsequently rejected. Northern asserts that the tariff sheets are being filed to establish a commodity quarterly ceiling rate to replace the rate in the aforementioned docket.

Northern states that the instant filing establishes, when necessary, new Demand rates in compliance with the above referenced PGA rulemaking. Such required Northern to adjust its PGA demand rate components on a quarterly versus annual basis. Northern states that this filing will establish a new Demand rate component of $3.854 per MMBtu. Northern further states that this rate will be effective April 1, 1991 through June 30, 1991.

Northern states that copies of the filing were served upon the company's jurisdictional sales customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before

April 9, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-8251 Filed 4-8-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-3-86-000]

Pacific Gas Transmission Co.; Change in Sales Rates Pursuant to Purchased Gas Adjustment

April 2, 1991.

Take notice that on March 29, 1991, Pacific Gas Transmission Company (PGT) submitted for filing pursuant to part 154 of the Federal Energy Regulatory Commission's (Commission) Regulations, a proposed change in rates applicable to service rendered under Rate Schedules PL-1 and S-1, affected by and subject to Paragraph 21, "Purchased Gas Cost Adjustment" (PGA), of the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1. Such rates are proposed to become effective May 1, 1991.

PGT states that copies of the filing has been served on PGT's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before April 9, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-8253 Filed 4-8-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-3-41-000]

Paiute Pipeline Co.; Proposed Change in FERC Gas Tariff

April 2, 1991.

Take notice that on March 29, 1991, Paiute Pipeline Company (Paiute) tendered for filing, pursuant to part 154 of the Commission's regulations, a Quarterly Adjustment in Rates for jurisdictional gas service rendered to sales customers served under rate schedules affected by and subject to the PGA provisions contained in Section 9 of the General Terms and Conditions of Paiute's FERC Gas Tariff, Original Volume No. 1.

Paiute tendered Nineteenth Revised Sheet No. 10 to Original Volume No. 1 of its tariff, which reflects a proposed decrease of 42.35 cents per dekatherm in its commodity sales rate compared to that in effect on February 1, 1991. The proposed effective date for the tendered tariff sheet is May 1, 1991.

Paiute states that copies of this filing have been mailed to all jurisdictional sales customers of Paiute, interested parties and affected state regulatory agencies.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 9, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-8244 Filed 4-8-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-128-000]

Viking Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

April 2, 1991.

Take notice that on March 29, 1991, Viking Gas Transmission Company (Viking) filed an original and ten copies of the following revised tariff sheets to Original Volume Nos. 1 and 2 of its FERC Gas Tariff, to be effective May 1, 1991.

Original Volume No. 1

Second Revised Sheet No. 81D
First Revised Sheet No. 81E
First Substitute Revised Sheet No. 81I
Second Substitute Revised Sheet No. 82

Original Volume No. 2

First Revised Sheet No. 54
Third Revised Sheet No. 72
Second Revised Sheet Nos. 73, 74 and 113

Viking states that the tariff changes fully conform to the provisions governing the scheduling and balancing of Viking's individually-certificated transportation services (Volume No. 2 Rate Schedules T-2, T-9 and T-11) and the scheduling of interruptible sales services (Volume No. 1 Rate Schedules AO and I-2) to the scheduling and balancing provisions for open access firm and interruptible transportation contained in article III, sections 4 and 7 of the General Terms and Conditions of Viking's tariff. Viking states further that, for purposes of clarity, it has removed the scheduling penalty provisions from article III, section 7 (e) and (f) of the General Terms and Conditions (Volume No. 1 of Viking's FERC Gas Tariff) and has placed them in a new section 8 of article III. Viking states that the proposed changes are necessary for it to operate and administer its system fairly and efficiently.

Viking states that copies of the filing have been mailed to all of its customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NW., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before April 9, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

Lois D. Cashell,

Secretary.

[FR Doc. 91-8245 Filed 4-8-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-124-000]

Williams Natural Gas Co.; Proposed Changes in FERC Gas Tariff

April 2, 1991.

Take notice that Williams Natural Gas Company (WNG) on March 28, 1991, tendered for filing First Revised

Sheet No. 201 to its FERC Gas Tariff, First Revised Volume No. 1 to be effective May 1, 1991.

WNG states that First Revised Sheet No. 201 is being filed to redefine a Large Commercial and Industrial Consumer as one whose end use at a single address or location is 1,500 Dth or more in any one billing month during the most recent twelve consecutive billing months.

WNG states that copies of its filing were served on all jurisdictional sales customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before April 9, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-8246 Filed 4-8-91; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3919-9]

Public Water System Supervision Program Revision for the State of Utah

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Public notice is hereby given in accordance with the provisions of section 1413 of the Safe Drinking Water Act as amended, 42 U.S.C. 300f et seq., and 40 CFR 142.10, the National Primary Drinking Water Regulations, that the State of Utah has revised its approved Public Water System Supervision (PWSS) Primacy Program. Utah has developed drinking water regulations for public notification that correspond to the National Primary Drinking Water Regulations for Public Notification promulgated by EPA on October 28, 1987 (52 FR 41534). EPA has determined that this State program revision is no less stringent than the corresponding federal regulations and has approved these State program revisions. This determination shall become effective May 9, 1991 and was based upon a thorough evaluation of Utah's PWSS program which has met the requirements stated in 40 CFR 142.10

Utah's PWSS program, as presented and evaluated, has indicated that it is fully capable of carrying out all of the areas required to achieve primary enforcement capability.

Any interested parties are invited to submit written comments on this determination, and may request a public hearing on or before May 9, 1991. If a public hearing is requested and granted, this determination shall not become effective until such time following the hearing that the Regional Administrator issues an order affirming or rescinding this action.

Requests for a public hearing should be addressed to: James J. Scherer, Regional Administrator, U.S. Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, CO 80202-2405.

Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request is made within thirty (30) days after this notice, a public hearing will be held.

Any request for a public hearing shall include the following (1) the name, address, and telephone number of the individual organization, or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such hearing; and (3) the signature of the individual making the requests, or, if the request is made on behalf of an organization or other entity, the signature of the responsible official of the organization or other entity.

Notice of any hearing shall be given not less than fifteen (15) days prior to the time scheduled for the hearing. Such notice will be made by the Regional Administrator in the Federal Register and in newspapers of general circulation in the State of Utah. A notice will also be sent to the person(s) requesting the hearing as well as to the State of Utah. The hearing notice will include a statement of purpose, information regarding time and location, and the address and telephone number where interested persons may obtain further information. The Regional Administrator will issue an order affirming or rescinding his determination upon review of the hearing record. Should the determination be affirmed, it will become effective as of the date of the order.

Should no timely and appropriate request for a hearing be received, and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become effective on May 9, 1991.

Please bring this notice to the attention of any persons known by you to have an interest in this determination.

ADDRESSES: All documents relating to this determination are available for inspection at the following locations: U.S. EPA Region VIII Regional Library, 999 18th Street, Denver, Colorado 80202-2405, between the hours of 10 a.m. and 4 p.m. (MST), Mon.-Fri. and the UT Department of Health, Bureau of Drinking Water and Sanitation, Salt Lake City, UT 84116, [801-538-6159] between the hours of 8 a.m. and 5 p.m. (m.s.t.), Mon.-Fri.

FOR FURTHER INFORMATION CONTACT: Bob Clement, EPA Region VIII, Public Water Supply Program Section (8WM-DW) at the Denver address given above, telephone (303) 293-1417, (FTS) 330-1417.

Dated: March 28, 1991.

James J. Scherer,

Regional Administrator, EPA, Region VIII.

[FR Doc. 91-8324 Filed 4-8-91; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Applications; Donna M. Mavritte, et al.

1. The Commission has before it the following mutually exclusive applications for a two FM stations:

Applicant, city and state	File No.	MM docket No.
A. Donna M. Mavritte; Bowling Green, VA.	BPH-891011MH	91-68
B. Advanced Radio Systems, Inc.; Bowling Green, VA.	BPH-891012ML	
C. Rappahannock Communications Group, Inc.; Bowling Green, VA.	BPH-891012NA	
Issue heading and applicants		
1. Comparative, A, B, C		
2. Ultimate, A, B, C		
A. Laughlin Broadcasting, Limited Partnership; Laughling, NV.	BPH-890913MF	91-71
B. William E. Fitts; Laughling, NV.	BPH-890913MJ	
C. First Broadcasting Corporation; Laughling, NV.	BPH-890913MO	

Applicant, city and state	File No.	MM docket No.
D. Desert Broadcasting, Inc.; Laughling, NV.	BPH-890913NA	
E. Thomas M. Eells; Laughling, NV.	BPH-890914MF	
F. Playa Del Sol Broadcasters; Laughling, NV.	BPH-890914MM	
G. Irvin Davis d/b/a Mountain View Broadcasting Company; Laughling, NV.	BPH-890914MP	
H. Patricia A. Korn; Laughling, NV.	BPH-890914MR	
I. Tuna Communications, Inc; Laughling, NV.	BPH-890914NA	
J. Southern Nevada Broadcasting, A Limited Partnership; Laughling, NV.	BPH-890914NB	
K. John Brush, Mark McVey, Jeff Linder, Diane Lysiak; Laughling, NV.	BPH-890914NE	
L. Radioactive Communications, Inc; Laughling, NV.	BPH-890914NG	
M. SOTO, Inc.; Laughling, NV.	BPH-890914NL	
N. Martin J. Kravitz, d/b/a Nevada FM Broadcasters; Laughling, NV.	BPH-890914OA	
Issue heading and applicants		
1. Environmental, C, D, E, G, J, K, L, M, N		
2. Air Hazard, F		
3. Financial, I		
4. Comparative, A-N		
5. Ultimate, A-N		

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

3. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, Downtown Copy Center, 1114 21st Street, NW., Washington, DC 20036 (telephone 202-452-1422).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 91-8342 Filed 4-8-91; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Tampa Port Authority et al.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200496.

Title: Tampa Port Authority/G & C Stevedoring Co. Terminal Agreement.

Parties:

Tampa Port Authority

G & C Stevedoring Co.

Synopsis: The Agreement, filed March 29, 1991, provides for G & C Stevedoring Co.'s lease of approximately 28,400 sq. ft. of bare land at $600 per month. The term of the Agreement is on a month-to-month basis, commencing April 1, 1991.

Agreement No.: 224-010910-002.

Title: Port of Oakland Terminal Agreement.

Parties:

Port of Oakland

Neptune Orient Lines, Ltd.

Orient Overseas Container Line, Ltd

Nippon Liner System

Snopsis: The Agreement, filed March 29, 1991, revises the compensation which will apply during the extension of the basic agreement's term on a year to year basis. Nippon Liner System has been substituted for Yamashita-Shinnihon Steamship Co., Ltd. as a joint user under the basic agreement.

By Order of the Federal Maritime Commission.

Dated: April 3, 1991.

Joseph C. Polking,

Secretary.

[FR Doc. 91-8269 Filed 4-8-91; 8:45 am]

BILLING CODE 6730-01-M

Cancellation of Inactive Domestic Offshore Tariffs

By notice served February 21, 1991, and published in the **Federal Register** on February 26, 1991, the Federal Maritime Commission notified 42 carriers of its intent to cancel their individual tariffs 30 days thereafter, in the absence of showing of good cause why such tariffs should not be cancelled.

The notice was served on the 42 carriers by certified mail on February 21, 1991; and 7 carriers replied to the notice requesting that their tariffs remain active. Accordingly, the tariffs of the 7 carriers listed in attachment A that responded to the notice will be retained in the Commission's active files.

It is misleading to the public, potentially unfair to competing carriers, and an unreasonable administrative burden on the Commission's staff for inactive tariffs to remain on file. Accordingly, the tariffs of the 35 carriers listed in attachment B to this notice that failed to respond to the February 21, 1991, notice will be cancelled.

Now, *Therefore it is Ordered,* That the tariffs of the 35 carriers listed on attachment B be cancelled.

It Is Further Ordered, That a copy of this notice be sent by certified mail to the last known address of the carriers listed in the attachments to this order.

It Is Further Ordered, That this notice be published in the **Federal Register.**

This notice is issued pursuant to the authority delegated to the Director, Bureau of Domestic Regulation by § 9.04 of Commission Order No. 1 (Revised) dated November 12, 1981.

Robert G. Drew,

Director, Bureau of Domestic Regulation.

Attachment A—Federal Maritime Commission, Bureau of Domestic Regulation, Office of Carrier Tariff and Service Contract Operations; Carriers That Responded to the Notice of Intent to Cancel Inactive Tariffs

Acronym: Boat Transit, Inc.,
DBA Name: _____,
Person Type: Non-Vessel-Operating Common Carrier,
Street: 1343 Logan Avenue,
City: Costa Mesa,
State: CA 92626,
Name No.: 006824.

Acronym: Frost Truck Lines, Inc.,
DBA Name: _____,

Person Type: Non-Vessel-Operating Common Carrier,
Street: P.O. Box 1128,
City: Burbank,
State: CA 91507,
Name No.: 006830.

Acronym: Josua Freight & Sales,
DBA Name: _____,
Person Type: Non-Vessel-Operating Common Carrier,
Street: G.P.O. Box 293,
City: San Juan,
State: PR 00936,
Name No.: 008211.

Acronym: Olympo Transport Co. of Puerto Rico, Inc.,
DBA Name: _____,
Person Type: Non-Vessel-Operating Common Carrier,
Street: P.O. Box 5512,
City: Puerto de Tierra,
State: PR 00906,
Name No.: 001715.

Acronym: Peter del Valle and Associates,
DBA Name: _____,
Person Type: Non-Vessel-Operating Common Carrier,
Street: Torrimar Palza 9–C,
City: Guaynabo,
State: PR 00657,
Name No.: 008614.

Acronym: San Juan Ocean Services, Inc.,
DBA Name: _____,
Person Type: Non-Vessel-Operating Common Carrier,
Street: P.O. Box 9129,
City: Plaza Carolina Station,
State: PR 00628,
Name No.: 008048.

Acronym: Tadotsu Saipan Co., Ltd.,
DBA Name: _____,
Person Type: Ocean Common Carrier (Vessel Operating),
Street: Nokalimi Plaza, Garagpan,
City: Saipan,
State: 96950,
Name No.: 008672.

Attachment B—Federal Maritime Commission, Bureau of Domestic Regulation, Office of Carrier Tariff and Service Contract Operations; Carriers That Failed to Respond to the Notice of Intent to Cancel Inactive Tariffs

Acronym: Allied Van Lines International Corporation,
DBA Name: _____,
Person Type: Non-Vessel-Operating Common Carrier,
Street: P.O. Box 4403,
City: Chicago,
State: IL 60680,
Name No.: 000205.

Acronym: Allports Container Service, Inc.,
DBA Name: _____,
Person Type: Non-Vessel Operating Common Carrier,
Street: 17991 Englewood Drive, suite A,
City: Middleburg Heights,
State: OH 44130,
Name No.: 007807.

Acronym: Aurora International Forwarding, Inc.
DBA Name: _____,
Person Type: Non-Vessel Operating Common Carrier,
Street: 5060 Shawline Dr,
City: San Diego,
State: CA 92111,
Name No.: 000317.

Acronym: Bekins International Lines, Inc.,
DBA Name: _____,
Person Type: Non-Vessel Operating Common Carrier,
Street: 802 So. Fries Avenue,
City: Wilmington,
State: CA 90748,
Name No.: 00358.

Acronym: Bulldog Container Lines Inc.,
DBA Name: _____,
Person Type: Non-Vessel Operating Common Carrier,
Street: 5701–1 Bellaire Blvd.,
City: Houston,
State: TX 77081,
Name No.: 008148.

Acronym: Burlington Northern Worldwide, Inc.,
DBA Name: _____,
Person Type: Non-Vessel Operating Common Carrier,
Street: 1420 E. Rochelle Blvd., suite 200,
City: Irving,
State: TX 75039,
Name No.: 008213.

Acronym: Caddo International,
DBA Name: _____,
Person Type: Non-Vessel Operating Common Carrier,
Street: 3663 Katella Ave #209, POB 739,
City: Los Alamitos,
State: CA 90720,
Name No.: 000659.

Acronym: Caribbean Pacific Lines,
DBA Name: _____,
Person Type: Non-Vessel Operating Common Carrier,
Street: 16807 So. Central Avenue,
City: Carson,
State: CA 90746,
Name No.: 002853.

Acronym: Centennial Forwarding Corporation,
DBA Name: _____,
Person Type: Non-Vessel Operating Common Carrier,
Street: P.O. Box 3473,
City: Carolina,
State: PR 00628,
Name No.: 008520.

Acronym: Diamond M. International Inc.,
DBA Name: _____,
Person Type: Non-Vessel Operating Common Carrier,
Street: Calle 151 CM No. 37,
City: Carolina,
State: PR,
Name No.: 000933.

Acronym: Emerald Distribution, Inc.,
DBA Name: _____,
Person Type: Non-Vessel Operating Common Carrier,
Street: 4949 Rusk Street,
City: Houston,
State: TX 77023,
Name No.: 007941.

Acronym: G.F.C. Enterprises, Inc.,
DBA Name: G.F.C. Intermodal Container Line,
Person Type: Non-Vessel Operating Common Carrier,
Street: 304 Barr Avenue,
City: Woodmere,
State: NY 11598,
Name No.: 008204.

Acronym: Global Shipping Corp.,
DBA Name: _____,
Person Type: Non-Vessel-Operating Common Carrier,
Street: 2600 Penhorn Avenue,
City: North Bergen,
State: NJ 07047,
Name No.: 000471.

Acronym: Gulf Puerto Rican Transport, Inc.,
DBA Name: _____,
Person Type: Ocean Common Carrier (Vessel Operating),
Street: c/o Anderson Steamship Agency, Inc., P.O. Box 2703,
City: Mobile,
State: AL 36652,
Name No.: 006837.

Acronym: Hawaii Freight Forwarders, Inc.,
DBA Name: _____,
Person Type: Non-Vessel-Operating Common Carrier,
Street: 505 S. Anaheim Blvd.,
City: Anaheim,
State: CA 92805,
Name No.: 008070.

Acronym: Hemisphere Navigation & Trading Corp.,
DBA Name: Caribbean Project Lines,
Person Type: Non-Vessel-Operating Common Carrier,
Street: 43 Park Street-2nd Floor,
City: New York,
State: NY 10007,
Name No.: 007509.

Acronym: Imperial Lines Corporation,
DBA Name: _____,
Person Type: Ocean Common Carrier (Vessel Operating),
Street: 7000 SW., 62 Avenue, Suite 555–A,
City: Miami,

State: FL 33143,
Name No.: 007649.

Acronym: Karevan, Inc.,
DBA Name: _____,
Person Type: Non-Vessel-Operating Common Carrier,
Street: 3555 Torrance Blvd, Suite 204,
City: Torrance,
State: CA 90503,
Name No.: 007428.

Acronym: Knappton Maritime Corporation;
DBA Name: _____,
Person Type: Ocean Common Carrier (Vessel Operating),
Street: P.O. Box 03018,
City: Portland,
State: OR 97203,
Name No.: 006844.

Acronym: Kyowa Shipping Co., Ltd.,
DBA Name: _____,
Person Type: Ocean Common Carrier (Vessel Operating),
Street: 2-3 Hamamatsucho 2-Chome, Minato-Ku,
City: Tokyo, 105,
State: _____,
Name No.: 001491.

Acronym: L.P. Shipping Co.,
DBA Name: _____,
Person Type: Non-Vessel-Operating Common Carrier,
Street: Box 925, Avenue E. Pol #497, La Cumbre,
City: Rio Piedras,
State: PR 00926,
Name No.: 007857.

Acronym: Marden Freight Systems, Inc.,
DBA Name: _____,
Person Type: Non-Vessel-Operating Common Carrier,
Street: 7489 NW., 7th Street,
City: Miami,
State: FL 33126,
Name No.: 006847.

Acronym: Mega Hawaiian Terminals, Inc.,
DBA Name: _____,
Person Type: Non-Vessel-Operating Common Carrier,
Street: P.O. Box 24204,
City: Seattle,
State: WA 98124,
Name No.: 008071.

Acronym: New Orleans Ocean Freight, Inc.,
DBA Name: _____,
Person Type: Non-Vessel-Operating Common Carrier,
Street: 2423 Bainbridge Street, suite 101,
City: Kenner,
State: LA 70062,
Name No.: 007798.

Acronym: P.R. Caribbean Consolidators, Inc.,
DBA Name: _____,
Person Type: Non-Vessel-Operating Common Carrier,
Street: P.O. Box 13401,
City: Santurce,
State: PR 00908,
Name No.: 006851.

Acronym: Pacific Cargo Consolidators,
DBA Name: _____,
Person Type: Non-Vessel-Operating Common Carrier,
Street: 19627 S. Santa Fe Avenue,
City: Rancho Dominquez,
State: CA 90221,
Name No.: 006890.

Acronym: Puerto Rico Marine Distribution,
DBA Name: _____,
Person Type: Non-Vessel-Operating Common Carrier,
Street: 9990 I-10 East,
City: Houston,
State: TX 77029,
Name No.: 009477.

Acronym: Quality Transportation Company,
DBA Name: _____,
Person Type: Non-Vessel-Operating Common Carrier,
Street: Darlington Building, suite 403, 1007 Munoz Rivera Avenue,
City: Rio Piedras,
State: PR 00925,
Name No.: 006343.

Acronym: San Lorenzo Express Corporation,
DBA Name: _____,
Person Type: Non-Vessel-Operating Common Carrier,
Street: 2556 W. Fullerton Avenue,
City: Chicago,
State: IL 60647,
Name No.: 001069.

Acronym: Sea Link Corporation,
DBA Name: _____,
Person Type: Non-Vessel-Operating Common Carrier,
Street: 5100 SW. 104th Avenue,
City: Ft. Lauderdale,
State: FL 33328,
Name No.: 008638.

Acronym: Texas Caribbean Consolidators, Inc.,
DBA Name: _____,
Person Type: Non-Vessel-Operating Common Carrier,
Street: 5177 Richmond Avenue, #125,
City: Houston,
State: TX 77056,
Name No.: 000517.

Acronym: Trans-Ocean Lines, Inc.,
DBA Name: _____,
Person Type: Ocean Common Carrier (Vessel Operating),
Street: 7550 SW. 57th Aven. Suite 211,
City: South Miami,
State: FL 33143,
Name No.: 007112.

Acronym: Transport Express Lines, Inc.,
DBA Name: _____,
Person Type: Ocean Common Carrier (Vessel Operating),
Street: 13900 South Broadway,
City: Los Angeles,
State: CA 90061,
Name No.: 006623.

Acronym: Tucor Services, Inc.,
DBA Name: _____,
Person Type: Non-Vessel-Operating Common Carrier,
Street: P.O. Box 4067,
City: burlingame,
State: CA 94011,
Name No.: 007437.

Acronym: World Wide Air and Marine Service, Inc.,
DBA Name: _____,
Person Type: Non-Vessel-Operating Common Carrier,
Street: 300 East Locust Street,
City: Scranton,
State: PA 18505,
Name No.: 006129.

[FR Doc. 91-8270 Filed 4-8-91; 8:45 am]
BILLING CODE 6730-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 031891 AND 032991

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Tredegar Industries, Inc., Mr. and Mrs. William A. Corn, Swing-Shift Brudi Mfg., Inc	91-0669	03/18/91
Jordan Industries, Inc., Leucadia National Corporation, Cape Craftsmen, Inc	91-0698	03/18/91
C. Itoh & Co., Ltd., John S. Ausilio, Citation Tool, Inc	91-0706	03/18/91
C. Itoh & Co., Ltd., Henry A. Bubka, Citation Tool, Inc	91-0707	03/18/91
International Business Machines Corp., CS Holding, FB Princeton Corporation, First Boston Invesco Limited	91-0626	03/21/91
Hecla Mining Company, CoCa Mines Inc., Coca Mines	91-0627	03/21/91
Koch Industries, Inc., The Jesup Group, Inc., Uniroyal Adhesives and Sealants Company, Inc	91-0662	03/21/91
Michael J. Leverson, Furr's Bishop's, Incorporated, Furr's Bishop's, Incorporated	91-0631	03/22/91
Massachusetts Mutual Life Insurance Company, Centennial Cash Reserves, Centennial Cash Reserves	91-0683	03/22/91
Massachusetts Mutual Life Insurance Company, Oppenheimer Asset Allocation Fund, Oppenheimer Asset Allocation Fund	91-0684	03/22/91
Compagnie Financiere Ehrbar, Harken Energy Corporation, E-Z Serve Corporation and Tejas Power Corporation	91-0710	03/22/91
Financial Holding Corporation, NFU Acquisition Company, NFU Acquisition Company	91-0711	03/22/91
Broad Inc., First City Bancorporation of Texas, Inc., First City Leasing Corporation	91-0712	03/22/91
IBL, S.A., RHC Holding Corp., RHC Holding Corp	91-0713	03/22/91
Trustees of TIAA Stock, Thomas J. Crocker, Crocker Plaza Associates, Ltd	91-0715	03/22/91
Compagnie Miniere de L'Ogooue (Comilog), Compagnie de Suez (Suez), Sadacem	91-0716	03/22/91
First Pacific Investments Limited, Mr. James M. Temple, Case Logic, Inc	91-0719	03/22/91
Koch Industries, Inc., S. Dean Evans, Sr., Thirteen companies	91-0720	03/22/91
Rock-Tenn Company, a Georgia corporation, McCown De Leeuw & Co., a California limited partnership, Specialty Paperboard, Inc	91-0620	03/23/91
Allied Irish Banks p.l.c., Perpetual Financial Corporation, Perpetual Financial Corporation	91-0688	03/25/91
General Motors Corporation, American Mobile Satellite Corporation, American Mobile Satellite Corporation	91-0632	03/26/91
Dominick DiMatteo, Jr., S.A.M.U. Auchen, Midfield, Inc	91-0651	03/26/91
Fay's Incorporated, Glomesh Pte. Ltd. [a Singapore company], Carls Drug Co.; Inc	91-0653	03/26/91
Mobile Telecommunication Technologies Corp., American Mobile Satellite Corporation, American Mobile Satellite Corporation	91-0658	03/26/91
Associated Insurance Companies, Inc., William B. Conner, Robinson-Conner of Nevada, Inc	91-0726	03/26/91
Allied Irish Banks, p.l.c., Far West Federal Bank, S.B., Far West Federal Bank, S.B	91-0727	03/26/91
Springs Industries, Inc., Senter Group Inc., C.S. Brooks Corporation	91-0667	03/28/91
Springs Industries, Inc., Dominion Textile, Inc., C.S. Brooks Corporation	91-0668	03/28/91
Continental Bank Corporation, Frank S. Scarpa, Celutel, Inc	91-0705	03/29/91
First USA Holdings, Inc., Hibernia Corporation, Hibernia National Bank	91-0718	03/29/91
The Berkshire Fund, a Limited Partnership, Ronald O. Perelman, Coleman RV Products, Inc. and Coleman Faulkner, Inc	91-0737	03/29/91
The Berkshire Fund, a Limited Partnership, CF Acquisition Corp., CF Acquisition Corp	91-0738	03/29/91
Ernest H. Lorch, The Dyson-Kissner-Moran Corporation, The Dyson-Kissner-Moran Corporation	91-0740	03/29/91
David R. and Kay E. Syre, Georgia-Pacific Corporation, Georgia-Pacific Corporation	91-0742	03/29/91
Atlantic American Corporation, Jungfrau Trust Leath Furniture, Inc	91-0751	03/29/91

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, or Renee A. Horton, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, room 303, Washington, DC 20580, (202)326-3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 91-8315 Filed 4-8-91; 8:45 am]

BILLING CODE 6750-01-M

[Docket No. C-2902]

Union Carbide Corp.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Modifying order.

SUMMARY: This order modifies Paragraph I.A. of the Commission's 1977 consent order (42 FR 57455) by allowing the respondent to enter into multi-year requirements contracts with several new industrial gas distribution companies ("NEWCOs").

DATES: Consent Order issued September 28, 1977. Modifying Order issued March 15, 1991.

FOR FURTHER INFORMATION CONTACT: Eric Rohlck, FTC/S-2115, Washington, DC 20580. (202) 326-2687.

SUPPLEMENTARY INFORMATION: In the Matter of Union Carbide Corporation. The prohibited trade practices and/or corrective actions, as set forth at 42 FR 57455, are changed and deleted, in part, as noted in the order that follows.

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 3, 38 Stat. 731; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 14, 18.

Order Modifying Consent Order

[Issued September 28, 1977]

On November 2, 1990, Union Carbide Corporation ("Carbide") filed a "Request to Reopen Proceeding and Modify Order" ("Request") pursuant to section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b) and § 2.51 of the Federal Trade Commission's Procedures and Rules of Practice, 16 CFR 2.51. The Request asks the Commission to reopen and modify the consent order in Docket No. C-2902 ("Order"). Carbide seeks to have Paragraph I.A. of the Order modified to permit Carbide to enter into requirements contracts for terms longer than one year with several gas distribution companies, which are to be formed from packaged gas distribution businesses in which UCIG had, as of November 1, 1990, more than a 50% interest ("NEWCOs") and are to be owned jointly by the Union Carbide Industrial Gas division ("UCIG") and its employees. The employees and management together will own more than 50% interest in each NEWCO. The Order presently requires that any requirements contracts with distributors in which Carbide does not own a "majority interest" have initial terms not longer than one year and be terminable annually on not more than 90-days notice.

The Commission has carefully considered Carbide's Request and has concluded that the public interest warrants reopening and modifying Paragraph I.A to allow Carbide to enter into requirements contracts with the NEWCOs for terms greater than one year. Carbide did not request, and the Commission has not considered, that the Order be reopened and modified on the grounds of changed conditions of fact or law. The Request was put on the public record and no comments were received.

Standard for Reopening a Final Order of the Commission

Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), provides that the Commission "shall reopen" an order to consider whether it should be modified if the respondent "makes a satisfactory showing that changed conditions of law or fact require such order to be altered, modified, or set aside in whole or in part." [1] The language of section 5(b) plainly anticipates that the burden is on the petitioner to make the satisfactory showing of changed conditions to obtain a reopening. See *Gautreaux* v. *Pierce*, 535 F.Supp. 423, 426 (N.D. Ill. 1982) (requester must show "exceptional circumstances, new, changed or unforeseen at the time the decree was entered"). The legislative history also makes clear that the requester has the burden of showing, by means other than conclusory statements, why an order should be modified.[2] If the Commission determines that the petitioner has made the necessary showing, it must reopen the order to consider whether modification is in fact required and the nature and extent of the modification.[3] The Commission is not required to reopen the order, however, if the requester fails to meet its burden of making the satisfactory showing of changed conditions required by the statute. This burden is not a light one in view of the public interest in repose and finality of the Commission's orders. *See Federated Department Stores, Inc.* v. *Moitie*, 425 U.S. 394 (1981) (strong public interest considerations support repose and finality); *Bowman Transportation, Inc.* v. *Arkansas-Best Freight System, Inc.*, 419 U.S. 281, 296 (1974) ("sound basis for * * * [not reopening] except in the most extraordinary circumstances"); *RSR Corp.* v. *FTC*, 656 F.2d 718, 721–22 (DC Cir. 1981) (applying *Bowman Transportation* standard to FTC order).

The Commission may also modify an order pursuant to section 5(b) when, although changed circumstances would not require reopening, the Commission determines that the public interest requires such action. Respondents are invited in requests to reopen to show how the public interest warrants the requested modification. 16 CFR 2.51(b). In the case of a request for modification based on this ground, a petitioner must demonstrate as a threshold matter some affirmative need to modify the order. See *Damon Corp.*, Docket No. C–2916, Letter to Joel E. Hoffman, Esq. (March 24, 1983) (unpublished) ("Damon Letter"), at 2. For example, it may be in the public interest to modify an order "to relieve any impediment to effective competition that may result from the order." *Damon Corp.*, Docket No. 2916, 101 F.T.C. 692 (1983). Once this showing of need is made, the Commission will balance the reasons favoring the requested modification against any reasons not to make the modification. See Damon Letter at 2, see, *e.g.*, *Chevron Corp.*, Docket No. C–3147, 105 F.T.C. 228 (1985) (public interest warrants modification where potential harm to respondent's ability to compete outweighs any further need for the order). The Commission will also consider whether the particular modification sought is appropriate to remedy the identified harm. Damon Letter at 4.

Requested Modification of Paragraph I.A of the Order

Carbide proposes to spin off a portion of UCIG to form approximately five new companies, the NEWCOs, that will sell packaged industrial gas in cylinders to retail distributors. The NEWCOs will take over UCIG's filling plants, calcium carbide based acetylene production facilities and packaged gas retail outlets. They will also acquire UCIG's cylinder inventory. UCIG will continue to sell industrial gas in bulk form to independent distributors and to the NEWCOs (which will become UCIG's largest bulk gas customers) which will sell packaged gas to independent distributors.

The NEWCOs will be run by current UCIG management. At least 35% of each NEWCO's voting securities will be owned by UCIG, and a majority of each NEWCO's stock will be owned by a NEWCO Employee Stock Ownership Plan ("ESOP"). The small remaining amount of stock of each NEWCO would be sold to the NEWCO management.[4] In addition, UCIG will have a warrant permitting it to purchase enough new issue stock to raise its common stock position in the NEWCO to over 50%. UCIG will not be required to exercise the warrant but may do so at any time with no constraint from the NEWCO. UCIG's stock ownership will assure it of a seat on the NEWCOs' boards, and Carbide states that it is contemplated that UCIG will have the right to approve most major decisions by the NEWCOs. Request at 11.

UCIG proposes that it will enter into a multi-year supply contract with each NEWCO for industrial gas with (1) An "evergreen" provision—a provision that renews a contract from term to term in lieu of notice by one of the parties to the contrary; and (2) a right of UCIG to meet any lower price offered by a competitor.

The Order Should be Reopened and Modified

The Commission has determined that Paragraph I.A of the Order should be reopened and modified as requested by Carbide. Carbide's currently planned restructuring is neither prohibited nor required by anything in the Order. As a consequence, the Commission is not called upon to consider whether Carbide's preference for a structure in which Carbide retains less than fifty percent ownership is a reasonable business decision. Carbide has shown, however, that its business judgment will be affected by the application for the Order to Carbide's relationships with the NEWCOs. The Order may thus cause injury to Carbide, by causing Carbide to choose a less preferred structure for the NEWCOs. Carbide has therefore shown, as a threshold matter, the potential for competitive injury if it is unable to use multi-year requirements contracts with the new companies to be spun off from UCIG. The Commission also has determined that applying the Order to Carbide's relationship with the

[1] Section 5(b) provides, in part: [T]he Commission shall reopen any such order to consider whether such order (including any affirmative relief provision contained in such order) should be altered, modified, or set aside, in whole or in part, if the person, partnership, or corporation involved files a request with the Commission which makes a satisfactory showing that changed conditions of law or fact require such order to be altered, modified, or set aside, in whole or in part.

The 1980 amendment to section 5(b) did not change the standard for order reopening and modification, but "codifie[d] existing Commission procedures by requiring the Commission to reopen an order if the specified showing is made," S. Rep. No. 96–500, 96th Cong., 2d Sess. 9–10 (1979), and added the requirement that the Commission act on petitions to reopen within 120 days of filing.

[2] The legislative history of amended section 5(b), S. Rep. No. 96-500, 96th Cong., 2d Sess. 9–10 (1979), states: Unmeritorious, time-consuming and dilatory requests are not to be condoned. A mere facial demonstration of changed facts or circumstances is not sufficient * * *. The Commission, to reemphasize, may properly decline to reopen an order if a request is merely conclusory or otherwise fails to set forth specific facts demonstrating in detail the nature of the changed conditions and the reasons why these changed conditions require the requested modification of the order.

[3] The legislative history notes: "The Commission may employ whatever procedures it deems appropriate in aid" of the decision whether to modify an order. S. Rep. No. 96–500, 96th Cong., 2d Sess. 10 (1979).

[4] Only NEWCO employees, UCIG and the ESOP will be permitted to own NEWCO stock. The NEWCOs will also be allowed to use a Linde-derived name (Linde is the trade name for UCIG gas) as a company name, use the Linde logo, enter into a reciprocal free exchange of safety information, an applications technology license and an exchange of cylinder technology. These benefits will be contingent upon the NEWCOs' continued use of UCIG gas, UCIG's continuation of ownership in the NEWCO, and maintenance of safety standards acceptable to UCIG.

NEWCOs may deter these spin-offs, a result not intended by the Order, and thus that the reasons for the modification outweigh any reasons against this modification.

1. Carbide Has Shown a Threshold Injury

Initially, Carbide asserts that it is experiencing financial difficulties in the packaged gas business and hopes that restructuring with employee-owned businesses will revitalize an otherwise stagnant business sector. The creation of the NEWCOs is not constrained by the Order. Carbide also has shown that if multi-year contracts with the NEWCOs are not permitted it may incur costs—by having to choose a less preferred structure for the NEWCOs—as a result of the Order in a way not contemplated when the Order was entered.

Carbide's decision to create the NEWCOs stems from what it claims is the generally poor performance of its packaged gas business and the hope that a new structure will increase the competitiveness of the business. Carbide attributes this poor performance to a number of factors: the lack of entrepreneurial spirit needed to compete in the retail packaged gas business; outmoded fill plants and acetylene plants; poor productivity; excess labor cost; higher salary and benefit structures than its competitors because UCIG's compensation and benefits are pegged to the chemical industry as opposed to competition in the retail packaged gas business; and high overhead costs attributable to the existing Carbide structure.

The proposed spin-offs will, Carbide hopes, revitalize its packaged industrial gas business. The NEWCOs will have lower salary and benefit schedules and lower overhead costs. According to Carbide, a key component to the creation of the NEWCOs is that an Employee Stock Ownership Plan will own over 50% of each NEWCO. First, Carbide believes that a business that is majority owned by its employees will be a more effective competitor. Request at 16. According to Carbide's ESOP expert, companies in which ESOPs own over 50 percent of the business have higher productivity and perform better than conventional firms in terms of sales growth, operating margin, return on equity, book value per share growth, long term debt as a percentage of capitalization, and return on investment in company stock See Request at Exhibit 4, Affidavit of John S. Hoffmire, III, President of Hoffmire & Associates, Ltd. Second, it is important that lenders to the ESOP for the acquisition of company stock are granted special tax incentives if the ESOP lendee owns 50% or more of the company. This allows the lender frequently to offer the majority-owning ESOP reduced rates at which it may borrow money to invest in the company's stock; if the ESOP buys less than 50 percent of NEWCO, its cost of capital will be higher. Request at 17.

In Carbide's business judgment, it must invigorate its industrial gas business, and Carbide has chosen to spin off part of its business in an effort to gain efficiencies. This spin-off proposal is not prohibited by the Order.

Although Carbide has not conditioned the spin-offs on the Commission's approval of the requested modification, it may change the form of the NEWCOs if the modification is not granted. Carbide states that it may increase its stock ownership in the NEWCOs to over 50%, thereby clearly retaining a "majority interest." Request at 17. By doing this, Carbide would be able to maintain long-term supply contracts but, in the process, the NEWCOs with minority ESOP ownership would likely forego some efficiency gains of the NEWCOs with majority ESOP ownership. Request at 17. Carbide has identified the potential efficiency losses from such a decision: The tax advantages Congress afforded to businesses that are more than 50% owned by ESOPs will be lost; the businesses' entrepreneurial incentives will be more limited; and "to the extent the NEWCOs are successful in expanding sales, this in turn would likely permit better loading of UCIG's plants and make UCIG a more effective competitor in gas production. If the ESOP's ability to acquire more than 50% of the NEWCO's stock harms NEWCO's cash flow and cost of capital—thus reducing its ability to compete—this will, in turn, adversely affect UCIG as the NEWCOs' supplier." Request at 17.[5]

The Commission has concluded that Carbide has met its threshold burden of establishing that it is suffering or may suffer some competitive injury as a result of the Order and in a way not contemplated when the Order was entered. Carbide has satisfactorily demonstrated a need for modification of the Order to enable it to use requirements contracts with terms greater than one year with the NEWCOs. Carbide's proposal to spin off the packaged industrial gas business—as opposed to entering contracts or making acquisitions that increase concentration and vertical integration—was not a concern addressed by the Complaint when the Complaint and Order were entered in 1977. The Order's prohibition against requirements contracts with terms greater than one year may deter Carbide from making what may be cost-reducing changes in its industrial gas business. Accordingly, the Order will likely impede Carbide's ability to compete vigorously and effectively in the industrial gas market.

2. The Order Should Be Modified

The Commission has determined that Carbide's showing of need for the modification outweighs any reason not to modify the Order. In this particular situation, the use of long-term contracts with the NEWCOs is consistent with the apparent general intent of the Order and does not increase the specific problems that paragraph I.A.1 was designed to remedy.

The Complaint addressed Carbide's acquisitions and plans to acquire many industrial gas distributors, which would have had the effect of foreclosing Carbide's competitors from a substantial segment of the sale and manufacture of industrial gas, impairing the ability of nonintegrated competitors and distributors to compete in the sale of industrial gases, raising barriers to entry in the sale of industrial gases to distributors, accelerating a trend towards vertical integration of suppliers and distributors of industrial gases, and eliminating Carbide as a potential entrant through internal expansion into the retail sales of industrial gases in areas where it acquired an interest in distributors. Paragraphs III and IV of the order required Carbide to obtain the prior approval of the Commission before making certain acquisitions of downstream distributors. Both Paragraphs expired in 1987.

The Complaint also alleged that Carbide required independent distributors, pursuant to a contract, agreement or understanding, to purchase from Carbide their total requirements of each industrial gas. Complaint at Paragraph 10(a). The effects of such acts were alleged to substantially lessen competition in the sale of industrial gas to independent distributors and consumers, increase entry barriers in the sales of industrial gases to distributors and deprive distributors of the opportunity of competing for sales of industrial gases to certain customers. Complaint at Paragraph 11. Paragraphs I and II of the Order curtail Carbide's non-acquisition behavior, such as multi-year contracts, that may have an effect similar to vertical acquisitions. These Paragraphs are in effect until 1997.

[5] Carbide's cost savings would not technically be efficiencies, but nonetheless could strengthen Carbide's ability to compete.

Carbide's decision to change the structure of its industrial gas business—through the creation of the NEWCOs—does not run contrary to the concerns in the Complaint. The Complaint addressed the harmful effects of Carbide's further integration of the industrial gas business through acquisitions or other contractual activities with independent distributors. Although the NEWCOs will change from formerly 100% Carbide-owned businesses to less than wholly-owned entities, Carbide will retain significant control over them. Using long-term requirements contracts with these entities, therefore, does not appear to vary significantly from Carbide's present relationship with its wholly-owned distributors. Because Carbide will not retain a majority interest in the NEWCOs, however, a modification is required to allow Carbide to pursue this particular restructuring.

Carbide's likely retention of a significant interest and effective control over many of the NEWCOs' operations does not outweigh the arguments favoring the requested Order modification. Carbide already has complete control over its wholly-owned distributors, and the proposed spinoffs cannot enhance and may somewhat reduce that control. Although denying the use of multi-year contracts with the NEWCOs might force Carbide to break totally its ties with its formerly wholly-owned distributors, a denial also might stop or impede Carbide's preferred structuring plan for the NEWCOs. The Commission concludes, therefore, that the Order's prohibition on long-term contracts should be modified in this instance.

The proposed modification narrowly outlines which entities will be allowed to have multi-year requirements contracts with Carbide. Carbide must own at least 35% of the distributor and have a warrant exercisable at its sole discretion permitting Carbide to cause the Distributor to raise Carbide's stock interest to over 50%. In addition, the proposed language limits Carbide from entering into long-term contracts with distributors unless it is with a distributor that Carbide owned outright on November 1, 1990, or a distributor that was formed to conduct a packaged gas distribution business in which Carbide had a majority interest on November 1, 1990, and a majority of the stock is owned by an ESOP. This severely limits the number of entities with which Carbide can enter into long-term contracts; no current independent distributors could be included. The modification, therefore, allows Carbide to accomplish its spinoffs, but does not alter Carbide's obligations to its current independent distributors.

Even though Carbide will be able to enter into multi-year contracts with the NEWCOs, the NEWCOs will not be able to do the same with independent distributors or end users that acquire packaged gas from them, because the NEWCOs will be successors in interest to Carbide's cylinder gas business. Similarly, UCIG's bulk sales to independent distributors will also remain subject to the multi-year contract prohibition in the Order. It is not inconsistent to treat the NEWCOs as separate entities, *i.e.*, not majority-owned subsidiaries of Carbide, for purposes of UCIG contracts with the NEWCOs, but require the NEWCOs to adhere to the Order in their contracts with independent distributors. Carbide has acknowledged that as a condition to the formation of the NEWCOs, the NEWCOs will agree to be bound by the terms of the Order.

Accordingly, *it is ordered*, that this matter be reopened and that Paragraph I.A. of the Commission's Order in Docket No. C-2902, issued on September 28, 1977, be modified, as of the date of service of this order, to add the following language to the end of Paragraph I.A.:

Provided, however, for the purpose of applying Part I.A.1 of this Order, any Distributor in which respondent owns not less than 35% of the Distributor's common stock and in which respondent has a warrant exercisable at its sole discretion permitting respondent to cause the Distributor to issue sufficient new stock to raise respondent's stock interest to more than 50% shall be treated in the same manner as a Distributor in which respondent owns a majority interest, provided that (1) Respondent owned more than 50% of the outstanding capital stock of such Distributor on November 1, 1990, or (2) such Distributor was formed to conduct a packaged gas distribution business in which respondent had a majority interest on November 1, 1990, and a majority of the stock of such Distributor is owned by an employee stock ownership plan.

By the Commission, Commissioner Azcuenaga dissenting.

Donald S. Clark,

Secretary.

Dissenting Statement of Commissioner Mary L. Azcuenage in Union Carbide Corporation, Docket C-2902

A majority of the Commission today grants the petition of Union Carbide Corporation to reopen and modify the order in Docket C-2902, although Union Carbide failed to show public interest considerations that warrant reopening.[1] The decision of the majority is inconsistent with the Commission's standards for reopening a final order, and it is manifestly unfair to the respondents that have been held to those standards. The decision also is inconsistent with the Commission's ruling on a virtually identical petition in this same matter in 1988, and it is inconsistent with a decision in another matter that the Commission is now defending in federal court.[2] The decision is arbitrary and capricious. I dissent.

I

Paragraph I.A of the order in Docket C-2902 bars Union Carbide from having supply contracts with an initial term of more than one year with industrial gas distributors "in which [Union Carbide] owns less than a majority interest." [3] The order does not restrict supply contracts between Union Carbide and distributors in which it owns a majority interest. These two alternatives would seem sufficient to address the universe of ownership interests that Union Carbide might have in distributors. But the modification granted today at Union Carbide's request creates a third category of distributors—those in which Union Carbide recently has divested its majority interest but with whom, unlike other firms in which Union Carbide also does not own a majority interest, Union Carbide is permitted to have longterm supply contracts. The only justification identified for reopening and so modifying the order is Union Carbide's preference for multi-year contracts with distributors that it formerly owned. Union Carbide's preference not to comply with a constraint to which it agreed is insufficient for reopening a final order of the Commission.

Reopening an order may be warranted in the public interest when the respondent shows as a threshold matter some affirmative need to modify the order, usually a competitive disadvantage resulting from the order that was not contemplated when the order was entered.[4] Union Carbide has

[1] Union Carbide in its petition to reopen relied solely on public interest considerations and did not allege changed conditions of law or fact. See section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b).

[2] Louisiana-Pacific Corp., Docket C-2956, *appeal filed*, No. 90-35733 (9th Cir. Aug. 16, 1990).

[3] Paragraph I.A will expire in 1997.

[4] Once such a showing is made, the Commission will consider the reasons for and against modification and whether the particular modification requested is appropriate to remedy the identified harm. See, *e.g.*, Damon Corp., Docket C-2916, 101 F.T.C. 689, 692 (1983).

not made the requisite threshold showing. Instead, Union Carbide in its Request asserts that the order's one-year limit on contracts with distributors in which Union Carbide owns less than a majority interest impedes its ability to achieve efficient distribution. Request To Reopen Proceeding and Modify Order, November 2, 1990 ("Request"), at 21. This alleged burden is the same burden Union Carbide agreed to assume in 1977 in settlement of alleged violations of law, and Union Carbide makes no showing that the competitive context of the order now is any different in nature or degree from when it agreed to the terms of the order.

Union Carbide's argument for multi-year supply contracts also is the identical argument that it made in its 1988 petition to reopen the order and that the Commission considered and rejected in 1988. Letter to Glen S. Howard, Esq., November 10, 1988. The majority does not even acknowledge the 1988 decision, much less explain why it should be overruled. This reveals a troubling inattention to the principles of law that should underlie our decisions. Like its twin in 1988, the Request should be denied.

II.

Union Carbide proposes to create several new companies ("NEWCOs") by divesting its majority interest in several gas distribution companies that are wholly owned by Union Carbide Industrial Gases, Inc., ("UCIG"), a wholly-owned subsidiary of Union Carbide, to employee stock ownership plans ("ESOP"). UCIG will retain a substantial interest in each NEWCO and the right to buy enough NEWCO shares to reacquire a majority interest.[5] The NEWCOs will acquire UCIG's cylinder gas business, and UCIG anticipates that the NEWCOs will be UCIG's largest bulk gas customers. Request at 9–12. Union Carbide hopes to achieve a number of benefits from the ESOP-owned NEWCOs, including improved entrepreneurial spirit and the ability to cut costs. Request at 8–9 & 16–17.

Union Carbide insists that multi-year supply contracts with the NEWCOs are essential because the order's one-year limit on contracts with distributors in which Union Carbide owns less than a majority interest "impedes UCIG's ability to achieve efficient distribution." Request at 21. This is the argument that the Commission rejected in 1988. Union Carbide also warns that if the requested modification is not granted, UCIG may choose to keep its majority interest in the NEWCOs. Request at 16–17.[6] Why this should be objectionable to the Commission is unexplained.

III

I agree with the majority of the Commission that nothing in the order prohibits or requires Union Carbide's proposed divestiture to the NEWCOs. The order does not contemplate any particular structure for Union Carbide.[7] Paragraph I.A of the order accords different treatment to distributors that are majority-owned by Union Carbide and those that are not, but it is indifferent to the identity of owners other than Union Carbide. I also agree with the majority that the Commission need not decide "whether Carbide's preference" to divest its majority interest in its wholly-owned distributors "is a reasonable business decision." Order Modifying Consent Order at 5. The proposed divestitures clearly are matters with which the order is not concerned.[8]

I disagree with the conclusion of the majority that Union Carbide has made a threshold showing of competitive injury resulting from the order. The majority infers injury from Union Carbide's claim that "its business judgment will be affected by the application of the Order to Carbide's relationships with the NEWCOs," *i.e.*, that the order may "caus[e] Carbide to choose a less preferred structure for the NEWCOs." [9] Order Modifying Consent Order at 5. In other words, the majority finds that the order creates an impediment to competition if the order affects Union Carbide's preference or "business judgment." This extraordinary conclusion relegates the decision whether to reopen final orders of the Commission to the business preferences of the respondent. If this is the standard, can there be a point to writing orders in the first place?

A final order of the Commission necessarily affects the business judgment of a respondent. The order is part of the legal landscape in which the respondent does business. For example, an order requiring divestiture surely affects the business judgment of a respondent. The respondent made a business judgment to acquire the assets required by the order to be divested and surely would prefer, in its business judgment, to keep them. But this is not a recognized or acceptable public interest reason for reopening and modifying the order. See *Louisiana-Pacific Corp.*, Docket C–2956, slip op. at 26 (November 15, 1989), *appeal filed*, No. 90–35733 (9th Cir. Aug. 16, 1990). Respondents subject to prior approval provisions no doubt would prefer to make acquisitions without first obtaining the Commission's approval, but we have consistently declined to substitute their business judgment for our independent review under the order. Carried to its logical extreme, the "business judgment" rule would obviate the need for orders in the first place: a respondent's business decisions to make certain acquisitions or to disseminate its preferred advertising or, indeed, to ignore the technical requirements of the Truth in Lending Act all would carry the day over the Commission's independent review under the law.

Union Carbide's arguments for reopening the order all are restatements

[5] The majority by its silence implicitly rejects Union Carbide's suggestion that its "*de facto* control" of the NEWCOs might be deemed a "majority interest" for purposes of Paragraph I.A. of the order. Request at 3 n.4. This seems correct according to the terms of the order.

[6] In a variation of this argument, Union Carbide asserts that it should "not be compelled" by its proposed divestiture "to forfeit its multi-year relationships" with its current subsidiaries. Request at 3. Although this argument has a certain facile appeal, it does not withstand examination. First, it is Union Carbide's 1988 argument in new clothes and, like the earlier petition, incorrectly assumes that the order's limit on contracts impedes Union Carbide's ability to compete in some way that was not contemplated when the order was entered. Second, the argument ignores the simple fact that the restriction to which Union Carbide objects does not and would not apply to its current subsidiaries but rather to newly organized non-subsidiaries. Third, and conversely, Union Carbide is not compelled under any scenario from forfeiting multi-year relationships with its actual subsidiaries. Finally, the word "forfeit" implies some new right to multi-year contracts with distributors in which Union Carbide owns less than a majority interest, but any such "right" was resolved by the order to which Union Carbide consented.

[7] Paragraphs III and IV of the order required Union Carbide for ten years to obtain the prior approval of the Commission before making certain acquisitions. They expired in 1987.

[8] Despite its disclaimer, the majority appears to attribute some efficiencies (or cost savings) to Union Carbide's restructuring plan. See Order Modifying Order at 6–7 & n.5. It is worth noting that it is a departure from the Commission's usual practice to accept assertions of efficiencies at face value. Further, it is not the Commission's primary concern to maximize the profitability of individual companies. If that were the case, the Commission would stand aside and allow anticompetitive mergers and, indeed, blatant price fixing to proceed unchallenged. The mode of thinking that underlies competition policy and the antitrust laws is that companies like Union Carbide generally can be expected to take care of their own interests, which leaves the Commission free to constrain any abuse of their methods and to maintain a level playing field among competitors.

[9] The majority presumably means a structure that is "less preferred" by Union Carbide, consistent with its statement that the Commission need not consider whether the proposed divestiture to the NEWCOs "is a reasonable business decision." The Commission is ill-equipped to assess the reasonableness of ESOP ownership versus other possible ownership structures.

of the argument, previously rejected by the Commission, that the one-year limit on supply contracts impedes its ability to compete. The argument has no greater credibility in the 1990 Request in application to distributors previously owned by Union Carbide than it had in 1988 to distributors that were not previously owned by Union Carbide. In this Request, as in the 1988 petition, Union Carbide fails to show, indeed, even to assert, that the limit on supply contracts impedes its ability to compete in any way that was not foreseeable when the order was entered.

The majority implicitly concludes that longterm contracts between Union Carbide and the NEWCOs will not be anticompetitive. This conclusion, of course, revisits the premises of the order and, correspondingly, revises the remedy according to our latter day perceptions of what is appropriate. This is precisely the avenue that is unavailable to us unless the standard for reopening is met. "Because a final order is presumptively valid, the continued need for the remedy imposed by the order is relevant if a need for modifying the order is demonstrated in the first instance, but the burden is on the petitioner to 'show that the * * * restraint [under the order] can no longer be justified, and that they are suffering injury, without countervailing advantage to the public interest.' " *Louisiana-Pacific Corp.*, Docket C-2956 (Nov. 15, 1989), slip op. at 9, *quoting United States* v. *Swift & Co.*, 189 F. Supp. 885, 906 (N.D. Ill. 1960), *aff'd per curiam*, 367 U.S. 909 (1961).

The gravamen of the argument in Union Carbide's Request is that the order impedes its ability to have multi-year contracts with independent distributors, *i.e.*, that the order does what it does, and Union Carbide would like to deal with some new independent distributors without that constraint. This is a classic attempt to have the cake and eat it too. It is not an argument for reopening but rather a complaint that Union Carbide does not like Paragraph I.A of the order. Regret over having consented to an order provision is not, nor should it be, a sufficient reason for the Commission to reopen a proceeding to consider modifying that provision.

IV

The standards under section 5(b) of the Federal Trade Commission Act for reopening an order are stringent, and the petitioner carries a heavy burden of proof in light of the public interest in repose and the finality of orders. *See United States* v. *Swift & Co.*, 286 U.S. 106 (1932); *United States* v. *Swift & Co.*, 276 U.S. 311 (1928); *United States* v. *Swift & Co.*, 189 F. Supp. 885 (N.D. Ill. 1960), *aff'd per curiam*, 367 U.S. 909 (1961); *Louisiana-Pacific Corp.*, Docket C-2956 (Nov. 15, 1989), *appeal filed*, No. 90-35733 (Aug. 16, 1990). These interests are threatened when the Commission reopens and modifies orders absent a satisfactory showing of changed conditions or public interest considerations that eliminate the need for the order or make continued application of the order inequitable or harmful to competition. Insubstantial or frivolous petitions may be encouraged, wasting our resources. Decisions based on inadequate showings may tend to be arbitrary, resulting in inequitable treatment and lessening respect for the Commission's enforcement program. We can avoid these dangers by adhering to the standards for reopening set forth in section 5(b) of the Federal Trade Commission Act.

Although I believe that this decision is arbitrary and capricious and would be so viewed by any court, because Union Carbide has achieved what it sought, the decision will never be tested. In that respect, this is an easy throwaway. The implications of the decision, however, betray the seriousness with which the Commission undertakes to issue orders in the first place. Both this institution and the public interest deserve better. I dissent.

[FR Doc. 91-8314 Filed 4-8-91; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Filing of Annual Reports of Federal Advisory Committees

Notice is hereby given that, pursuant to section 13 of the Federal Advisory Committee Act (5 U.S.C. app. 2), the Annual Reports prepared for the public by the committees set forth below have been filed with the Library of Congress:

Cesarean Section Patient Outcome Research Advisory Committee
Data Sources for Ambulatory Care Effectiveness Studies Advisory Committee
Gastroenteritis Patient Outcomes Research Advisory Committee
General Research Support Advisory Committee
Health Care Technology Assessment Assistance Advisory Committee
Health Care Technology Study Section
Health Services Research and Developmental Grants Review Committee
Health Services Research Dissemination and User Liaison Advisory Committee
Hospital Cost Data Base Feasibility Study Advisory Committee
Hospital Studies Program Data Support Services Advisory Committee
Medical Treatment Effectiveness Guidelines Development Support Advisory Committee
National Advisory Council for Health Care Policy, Research, and Evaluation
Patient Outcomes Research Teams Support Services Advisory Committee
Small Business Innovation Research Advisory Committee
State Medical Board Self-Assessment Protocol Advisory Committee

Copies of these reports, prepared in accordance with section 10(d) of the Federal Advisory Committee Act, are available to the public for inspection at: (1) The Library of Congress, Special Forms Reading Room, Main Building, on weekdays between 9 a.m. and 4:30 p.m.; and (2) the Department of Health and Human Services, Department Library, HHS Building, room 6400, 330 Independence Avenue, SW., Washington, DC 20201, telephone 202-245-6791.

Copies may be obtained from Mr. James E. Owens, Committee Management Officer, Agency for Health Care Policy and Research, room 18A20, 5600 Fishers Lane, Rockville, Maryland 20857.

Dated: March 28, 1991.

J. Jarrett Clinton,

Acting Administrator, Agency for Health Care Policy and Research.

[FR Doc. 91-8255 Filed 4-8-91; 8:45 am]

BILLING CODE 4160-90-M

Food and Drug Administration

[Docket No. 91N-0086]

New Monographs and Revisions of Certain Food Chemicals Codex Monographs; Opportunity for Public Comment

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on pending changes to certain Food Chemicals Codex, 3d Ed., monographs and is soliciting specification information on proposed new monographs. For certain substances used as food ingredients, revised materials consisting of new monographs and additions, changes, and corrections in several current monographs are being prepared by the National Academy of Sciences/Institute of Medicine (NAS/IOM) Committee on Food Chemicals

Codex. These revised materials will be published in a planned fourth edition of the Food Chemicals Codex.

DATES: Written comments by May 15, 1991. (The NAS/IOM Committee on Food Chemicals Codex advises that comments not received by this date cannot be considered for the fourth edition but will be considered for later supplements.).

ADDRESSES: Written comments to the NAS/IOM Committee on Food Chemicals Codex, National Academy of Sciences, 2101 Constitution Ave. NW., Washington, DC 20418.

FOR FURTHER INFORMATION CONTACT: Sanford W. Bigelow, Committee on Food Chemicals Codex, Food and Nutrition Board, National Academy of Sciences, 2101 Constitution Ave. NW., Washington, DC 20418, telephone: 202-334-2580; or Paul Kuznesof, Center for Food Safety and Applied Nutrition (HFF-415), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, telephone: 202-472-5680.

SUPPLEMENTARY INFORMATION: FDA provides research contracts to NAS/IOM to support preparation of the Food Chemicals Codex, a compilation of specifications for substances used as food ingredients. In the **Federal Register** of January 11, 1991 (56 FR 1198), FDA announced that the NAS/IOM Committee on Food Chemicals Codex was considering new monographs and monograph revisions for inclusion in the third supplement to the Food Chemicals Codex, 3d Ed. In the **Federal Register** of January 26, 1984 (49 FR 3271), FDA announced that the NAS/National Research Council Committee on Food Chemicals Codex was considering new monographs and monograph revisions for inclusion in the second supplement to the Food Chemicals Codex, 3d Ed., which has since been published. The public was invited to comment and to make suggestions for consideration and inclusion in these publications.

FDA now gives notice that the NAS/IOM Committee on Food Chemicals Codex is soliciting comments and information on proposed new monographs and proposed changes to certain current monographs.

Information received in response to this notice will be used for developing these new monographs and for determining the necessity of making the contemplated changes to the current monographs. These changes and new monographs will be published in the planned fourth edition of the Food Chemicals Codex. Copies of the proposed changes to current monographs may be obtained from NAS at the above address.

FDA emphasizes, however, that it will not consider adopting new monographs and monograph revisions until the public has had ample opportunity to comment on the changes to existing monographs and on the new monographs. Such opportunity for public comment is announced in a notice published in the **Federal Register.**

The NAS/IOM Committee on Food Chemicals Codex invites comments and suggestions by all interested parties on the proposed new monographs and proposed revisions of current monographs, which follow.

I. Proposed New Monographs

Aconitic acid
Gellan gum
Glyceryl behenate
Glyceryl monostearate
Gum ghatti
Konjac flour
Levocarnitine
Natamycin
Ox bile extract
Ozone
Potassium lactate solution
Rapeseed oil, low erucic acid (canola oil)
Rapeseed oil, superglycerinated, fully hydrogenated
Rapeseed oil, fully hydrogenated
Sodium lactate solution
Starter distillate
Sucrose

II. Current Monographs in Which NAS/IOM is proposing to Make Revisions

Calcium gluconate (recognition of hydrates)
Calcium pantothenate (assay limit and test)
Calcium pantothenate, calcium chloride double salt (assay limit and test)
Calcium pantothenate, racemic (assay limit and test)
Carnauba wax (ester value/melting range/saponification value)
Diatomaceous earth (loss on drying limit/loss on ignition limit)
Fumaric acid (arsenic limit/maleic acid test)
High fructose corn syrup (lead limit)
Lactated mono-diglycerides (arsenic limit/heavy metals limit/lead limit and test)
Malic acid (fumaric and maleic acid test)
Polydextrose (arsenic limit/heavy metals limit/lead limit)
Sodium stearyl fumarate (identification test)
Sorbitol (assay limit and test/loss on drying limit/water limit and test)
Sorbitol solution (assay limit and test/loss on drying limit/water limit and test)
Xanthan gum (assay limit/ash limit/loss on drying limit)
Xylitol (description/identification test/assay limit/loss on drying/water limit and test)

The NAS/IOM Committee on Food Chemicals Codex seeks comments regarding the lead and heavy metals limits lowered in some of the proposed monographs.

The NAS/IOM Committee on Food Chemicals Codex would also like to announce the public availability of the Food Chemicals Codex electronic bulletin board. The bulletin board will allow interested parties to gain access to information using their personal computer's communications software (requires a modem). The bulletin board contains information about NAS/IOM Committee activities on the Food Chemicals Codex, the new and revised Food Chemicals Codex monographs, and general tests adopted for public comment listed in this notice. The telephone number to access the bulletin board is (202) 334-1738. The bulletin board operates 24 hours a day, 7 days a week. Communications software needs to be set for 300, 1,200, or 2,400 bauds, 8-bit words, no parity, and 1 stop bit (8-N-1). Users can also transmit their comments electronically as a test file to the bulletin board.

Two copies of written comments regarding the monographs listed in this notice are to be submitted to NAS (address above). Comments can be submitted electronically to the bulletin board as well. Each submission should include the statement that it is in response to the **Federal Register** notice. NAS will forward a copy of each comment, submitted either electronically or in writing, to the Dockets Management Branch (HFA-305), Food and Drug Administration, room 4-62, 5600 Fishers Lane, Rockville, MD 20857, to be placed under Docket No. 91N-0086 for public review.

Dated: March 29, 1991

Douglas L. Archer,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 91-8206 Filed 4-8-91; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 91E-0036]

Determination of Regulatory Review Period for Purposes of Patent Extension; Cardiolite®

AGENCY: Food and Drug Administration, HHS

ACTION: Notice.

SUMMARY: Food and Drug Administration (FDA) has determined the regulatory review period for Cardiolite® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed 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 E. Pirt, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Cardiolite®. Cardiolite®, Kit for the preparation of Technetium Tc99m Sestamibi, is a myocardial perfusion agent that is useful in distinguishing normal from abnormal myocardium, and in the localization of the abnormality, in patients with suspected myocardial infarction. Cardiolite® is also useful in the evaluation of myocardial function using the first pass technique. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Cardiolite® (U.S. Patent No. 4,452,774) from E.I. du Pont de Nemours and Co., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. FDA, in a letter dated February 21, 1991, advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of Cardiolite® represented the first commercial marketing of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Cardiolite® is 1,660 days. Of this time, 920 days occurred during the testing phase of the regulatory review period, while 740 days occurred during the approval phase. These periods of time were derived from the following dates:

1. The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective: June 7, 1986. The applicant claims May 7, 1986, as the date the investigational new drug (IND) application became effective. However, FDA records indicate that the IND effective date was June 7, 1986, which was 30 days after FDA's receipt of the IND application.

2. The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act: December 12, 1988. The applicant claims February 22, 1988, as the date the new drug application (NDA) NDA 19-785 was filed. However, FDA records indicate that the NDA was received on March 17, 1988, and, was incomplete. FDA refused this application and notified the applicant of this fact by letter dated May 16, 1988. The completed NDA was then submitted on December 12, 1988.

3. The date the application was approved: December 21, 1990. FDA has verified the applicant's claim that NDA 19-785 was approved on December 21, 1990.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 3.73 years of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before June 10, 1991, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before October 7, 1991, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, Part 1, 98th Cong., 2d Sess., pp. 41-42, 1984.)

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 1, 1991.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 91-8254 Filed 4-8-91; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 90P-0201]

RIN 0905-AA06

Print Size and Style of Labeling for Over-the-Counter Drug Products; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending to August 5, 1991, the period for submission of comments on the notice on print size and style of labeling for over-the-counter (OTC) drug products. FDA is taking this action to allow interested persons time to consider Label Readability Guidelines, issued March

25, 1991, by the Nonprescription Drug Manufacturers Association (NDMA).

DATES: Written comments by August 5, 1991.

ADDRESSES: Submit written requests for single copies of NDMA's Label Readability Guidelines to the Division of Over-the-Counter Drug Evaluation (HFD-210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send a self-addressed, adhesive label to assist that office in processing your requests. Submit written comments on print size and style of labeling for OTC drug products to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. Requests and comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD-210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 6, 1991 (56 FR 9363), FDA issued a notice requesting comments on print size and style of labeling for OTC drug products. This notice provided an opportunity for public comment on a citizen petition filed by Pharmacists Planning Service, Inc., requesting regulatory standards for the print (optimum size and style) of OTC drug product labeling in order to maximize readability and legibility for persons with impaired or deteriorating vision. Interested persons were given until June 4, 1991, to submit comments on the notice.

On March 25, 1991, NDMA, a trade association of nonprescription drug manufacturers, issued Label Readability Guidelines that address many of the issues discussed in the agency's March 6, 1991 notice. Therefore, the agency is making available copies of NDMA's guidelines so that persons who wish to comment on FDA's March 6, 1991, notice may also consider NDMA's guidelines when making their comments.

The NDMA guidelines identify specific technical factors that can be addressed to improve the readability of OTC drug product labels. The guidelines cover major elements of readability pertaining to layout and design (e.g., design, layout and placement, hyphenation, uppercase/lowercase letters, paragraphs) and typography and printing (e.g., type size and style, contrast, printing process, color). The guidelines state that no single factor can, of itself, determine readability; many factors interact, and the total effect of all factors must be considered.

The agency considers an extension of the time for comments to be in the public interest, so that a copy of NDMA's voluntary guidelines can be obtained by those persons who wish to review them before submitting comments. A copy of NDMA's guidelines is on public display between 9 a.m. and 4 p.m., Monday through Friday, in the Dockets Management Branch. Requests for single copies of the guidelines may be submitted to the Division of OTC Drug Evaluation (address above).

Interested persons may, on or before August 5, 1991, submit to the Dockets Management Branch (address above) written comments regarding right size and style of labeling for OTC drug products. Three copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memoranda or brief. The information discussed above and any comments received may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 3, 1991.

Ronald G. Chesemore,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 91-8205 Filed 4-8-91; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR-943-4214-10; GP1-173; OR-11304]

Opening of Lands; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action will terminate the temporary segregative effect as to 15,560 acres of public and National Forest System lands included in a former application for withdrawal involving the Illinois Wild and Scenic River.

EFFECTIVE DATE: October 20, 1991.

FOR FURTHER INFORMATION CONTACT: Linda Sullivan, BLM, Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503-280-7171.

SUPPLEMENTARY INFORMATION: Pursuant to the regulations contained in 43 CFR 2310.2-1(e), at 8:30 a.m., on October 20, 1991, the following described lands will be relieved of the temporary segregative effect of former withdrawal application OR-11304:

Willamette Meridian

Those portions of the following described sections which constitute the bed or bank, or are within one-quarter mile of the bank, of the Illinois River:

T. 38 S., R. 8 W.,
Sec. 28.

Siskiyou National Forest

T. 38 S., R. 8 W.,
Secs. 7, 18, 19, 20, 29, 30, and 32.
T. 41 S., R. 8 W.,
Secs. 14 and 15.
T. 37 S., R. 9 W.,
Secs. 6, 7, 8, 16, 17, 20, 21, 28, 29, 32, and 33
T. 38 S., R. 9 W.,
Secs. 1, 2, 3, 4, 11, and 12.
T. 40 S., R. 9 W.,
Secs. 27 and 34.
T. 41 S., R. 9 W.,
Sec. 4.
T. 36 S., R. 10 W.,
Secs. 27 to 35, inclusive.
T. 37 S., R. 10 W.,
Secs. 1, 2, 3, and 12.
T. 35 S., R. 11 W.,
Secs. 17, 18, 19, 28, 29, 32, and 33.
T. 36 S., R. 11 W.,
Secs. 5, 6, 9, 16, 20, 21, 28, 29, 32, 33, 35, and 36.
T. 37 S., R. 11 W.,
Secs. 1, 2, 4, 5, 8, 9, 11, 12, 14, 15, and 16.

The areas described aggregate approximately 15,560 acres in Curry and Josephine Counties, Oregon.

Dated: March 28, 1991.

Robert E. Mollohan,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 91-8326 Filed 4-8-91; 8:45 am]

BILLING CODE 4310-33-M

[OR-943-4212-13; GP1-162; OR-15155]

Order Providing for Opening of Land; Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action will open 82.36 acres of reconveyed land to surface entry and mining. The land has been and remains open to mineral leasing.

EFFECTIVE DATE: May 13, 1991.

FOR FURTHER INFORMATION CONTACT: Linda Sullivan, BLM, Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503-280-7171.

SUPPLEMENTARY INFORMATION: Under the reversionary provisions of the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C. 869 et seq.), the following described land has been voluntarily reconveyed to the United States to be administered as

public land by the Bureau of Land Management:

Willamette Meridian

T. 22 N., R. 22 E.,
Sec. 32, lot 7 and NE¼SE¼.

The area described contains 82.36 acres in Douglas County, Washington.

At 8:30 a.m., on May 13, 1991, the above described land will be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, any segregations of record, and the requirements of applicable law. All valid applications received at or prior to 8:30 a.m., on May 13, 1991, will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

At 8:30 a.m., on May 13, 1991, the above described land will be opened to location and entry under the United States mining laws. Appropriation of any of the land described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: March 27, 1991.

Robert E. Mollohan,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 91-8327 Filed 4-8-91; 8:45 am]

BILLING CODE 4310-33-M

[ID-040-4212-11, I-25474]

Realty Action; Classification for Recreation Public Purpose Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, classification for recreation and public purposes lease of public land in Custer County, Idaho.

DATES: The effective date of this classification will be June 10, 1991.

SUMMARY: The below described public land has been identified and examined and is hereby classified as suitable for lease under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.).

T.11N. R.18E. B.M.

Section 22; E½SE¼SE¼SW¼

Containing 5 acres

The Custer County Commissioners have made application for this parcel in order to develop a solid waste collection site (dumpster). The site would serve as a collection point for household refuse from the East Fork and Clayton areas. The waste would then be hauled to the main county landfill. The lands are physically suitable for the proposed development and no significant environmental impacts are expected.

The lease will be subject to the following terms and conditions:

1. Provisions of the Recreation and Public Purposes Act and all applicable regulations of the Secretary of the Interior.

2. Development in accordance with an approved Plan of Development.

The described public lands are hereby segregated from appropriation under the public land laws except the R&PP Act and the mining laws for a period of 18 months.

SUPPLEMENTARY INFORMATION: Detailed information concerning the proposal can be obtained by contacting Mark Johnson, Challis Resource Area Manager, at (208) 756-5400.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Bureau of Land Management, P.O. Box 430, Salmon, ID 83467.

Objections will be reviewed by the State Director, who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: March 28, 1991.

Roy S. Jackson,

District Manager.

[FR Doc. 91-8210 Filed 4-8-91; 8:45 am]

BILLING CODE 4310-GG-M

[ID-030-01-4212-13]

Realty Action (I-27335); Private Exchange Involving Public Lands in Jefferson County, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Private exchange involving public lands in Jefferson County, Idaho.

The following described public land has been found suitable for disposal by exchange pursuant to Section 206 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2756, 43 U.S.C. 1716):

Boise Meridian, Idaho

T. 8 N., R. 36 E.
Sec. 28, NW¼NW¼, N½SW¼NW¼, SW¼SW¼NW¼, NW¼SE¼SW¼NW¼.

The area described contains 72.5 acres, more or less.

The publication of this notice in the **Federal Register** will segregate the public lands described above to the extent that they will not be subject to appropriation under the public land laws, including the mining laws.

The segregative effect will terminate upon issuance of patent to the exchange proponent or upon expiration of two years from the effective date, or by publication of a Notice of Termination by the Authorized Officer, whichever comes first.

In exchange for these lands the United States will acquire the following described lands in Jefferson County, Idaho from Reed Mickelsen:

Boise Meridian, Idaho

T. 8 N., R. 36 E.
Sec. 29, W½SW¼.

The area described contains 80 acres, more or less.

This exchange is consistent with BLM and local planning for the lands involved. The public interest will be well served by completing the exchange.

The value of the lands to be exchanged is equal.

The patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945).

2. A right-of-way described under Serial Number I-010162 for a highway.

Detailed information concerning the exchange, including the environmental assessment is available for review at the Idaho Falls District, Bureau of Land Management, 940 Lincoln Road, Idaho Falls, Idaho 83401.

For a period of 45 days from the date of publication of this notice, interested parties may submit comments to the District Manager, Idaho Falls District, at the above address. In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior.

Dated: April 1, 1991.

Lloyd H. Ferguson,

District Manager.

[FR Doc. 91-8328 Filed 4-8-91; 8:45 am]

BILLING CODE 4310-GG-M

[NV-930-91-4212-14; N-54230]

Realty Action; Non-Competitive Sale of Public Lands in Clark County, NV

The following described public land in Jean, Clark County, Nevada has been determined to be suitable for sale utilizing non-competitive procedures, at not less than the fair market value. Authority for the sale is Section 302 of Public Law 94-579, the Federal Land Policy and Management Act of 1976 (FLPMA). The lands will not be offered for sale until at least 60 days after the date of publication of this notice in the **Federal Register.**

Mount Diablo Meridian, Nevada

T. 25 S., R. 59 E.,
Sec. 11: E½NE¼SE¼SW¼.
Aggregating 5 acres (gross).

This parcel of land, situated in Jean is being offered as a non-competitive sale to Ewing Bros, Inc.

This land is not required for any federal purposes. The sale is consistent with the Bureau's planning system. The sale of this parcel would be in the public interest.

In the event of a sale, conveyance of the available mineral interests will occur simultaneously with the sale of the land. The mineral interests being offered for conveyance have no known mineral value. Acceptance of a direct sale offer will constitute an application for conveyance of those mineral interests. The applicant will be required to pay a $50.00 non-returnable filing fee for conveyance of the available mineral interests.

The patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.

2. Oil, gas, sodium, and potassium. and will be subject to:

1. Those rights for water pipeline purposes which have been granted to Nevada State Lands by Permit No. N-36558 under the Act of October 21, 1976.

2. Those rights for powerline purposes which have been granted to Nevada Power Company by Permit No. NEV-055838 under the Act of February 15, 1901.

3. Those rights for highway purposes which have been granted to Nevada Dept. of Transportation by Permit No. CC-020583 under the Act of November 9, 1921.

Upon publication of this notice in the **Federal Register,** the above described land will be segregated from all forms of appropriation under the public land laws, including the general mining laws. This segregation will terminate upon issuance of a patent or 270 days from the date of this publication, whichever occurs first.

For a period of 45 days from the date of publication of this notice in the **Federal Register,** interested parties may submit comments to the District Manager, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126. Any adverse comments will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior. The Bureau of Land Management may accept or reject any or all offers, or withdraw any land or interest in the land from sale, if, in the opinion of the authorized officer, consummation of the sale would not be fully consistent with Public Law 94-579, or other applicable laws.

Dated: April 1, 1991.

Ben F. Collins,

(District Manager, Las Vegas, NV).

[FR Doc. 91-8329 Filed 4-8-91; 8:45 am]

BILLING CODE 4310-HC-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before March 26, 1991. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by April 24, 1991.

Carol D. Shull,

Chief of Registration, National Register.

CALIFORNIA

Sacramento County

Fire Station No. 6, 3414 4th Ave., Sacramento, 91000484

Ventura County

Faulkner, George Washington, House, 14292 W. Telegraph Rd., Santa Paula, 91000485

KENTUCKY

Edmonson County

Bransford Spring Pumphouse, (Mammoth Cave National Park MPS), Mammoth Cave National Park, Mammoth Cave, 91000493

Colossal Cavern Entrance, (Mammoth Cave National Park MPS), Mammoth Cave National Park, Mammoth Cave, 91000491

Crystal Cave District, (Mammoth Cave National Park MPS), Mammoth Cave National Park, Mammoth Cave, 91000500

Good Spring Baptist Church and Cemetery, (Mammoth Cave National Park MPS), Mammoth Cave National Park, Mammoth Cave, 91000498

Great Onyx Cave Entrance, (Mammoth Cave National Park MPS), Mammoth Cave National Park, Mammoth Cave, 91000490

Joppa Baptist Church and Cemetery, (Mammoth Cave National Park MPS), Mammoth Cave National Park, Mammoth Cave, 91000496

Maintenance Area District, (Mammoth Cave National Park MPS), Mammoth Cave National Park, Mammoth Cave, 91000501

Mammoth Cave Baptist Church and Cemetery, (Mammoth Cave National Park MPS), Mammoth Cave National Park, Mammoth Cave, 91000497

Mammoth Cave Historic District, (Mammoth Cave National Park MPS), Mammoth Cave National Park, Mammoth Cave, 91000503

Maple Springs Ranger Station, (Mammoth Cave National Park MPS), Mammoth Cave National Park, Mammoth Cave, 91000494

Old Guide Cemetery, (Mammoth Cave National Park MPS), Mammoth Cave National Park, Mammoth Cave, 91000499

Residential Area District, (Mammoth Cave National Park MPS), Mammoth Cave National Park, Mammoth Cave, 91000502

Superintendent's House, (Mammoth Cave National Park MPS), Mammoth Cave National Park, Mammoth Cave, 91000495

Three Springs Pumphouse, (Mammoth Cave National Park MPS), Mammoth Cave National Park, Mammoth Cave, 91000492

MISSOURI

Pike County

Clarksville Historic District, (Clarksville MPS), Roughly bounded by Lewis, Front, Virginia and 3rd Sts., Clarksville, 91000489

Northern Methodist Episcopal Church of Clarksville, (Clarksville MPS), 309 Smith St., Clarksville, 91000487

Turner-Pharr House, (Clarksville MPS), 101 N. Fourth St., Clarksville, 91000488

NEW JERSEY

Gloucester County

Mullica Hill Historic District, Roughly, Main St. from Mullica Hill—Bridgeport Rd. to jct. of Commissioner's Rd, and Bridgeton Pike, Harrison Township, Mullica Hill, 91000483

TEXAS

Motley County

Traweek House, 927 Lariat St., Matador, 91000486

[FR Doc. 91-8081 Filed 4-8-91; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before March

16, 1991. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by April 24, 1991.

Carol D. Shull,

Chief of Registration, National Register.

CONNECTICUT

Hartford County

Lighthouse Archeological Site (5-37), Address Restricted, Barkhamsted, 91000445

FLORIDA

Dixie County

Garden Patch Archeological Site (8D14), Address Restricted, Horseshoe Beach vicinity, 91000454

St. Johns County

Shell Bluff Landing (8SJ32), Address Restricted, Ponte Vedra Beach vicinity, 91000455

MICHIGAN

Washtenaw County

Friend—Hack House, 775 County St., Milan, 91000441

MISSOURI

Shannon County

Reed Log House, Along Current R. S of Powder Mill Ferry, Ozark National Scenic Riverways, Eminence vicinity, 91000456

MONTANA

Ravalli County

Whaley Homestead, Wildfowl Rd. W of East Side Hwy., Lee Metcalf Wildlife Refuge, Stevensville vicinity, 91000442

NEW YORK

Greene County

Van Bergen House, Jct. of NY 9W and Schiller Park Rd., New Baltimore, 91000444

Monroe County

Morgan—Manning House, 151 Main St., Brockport, 91000443

WEST VIRGINIA

Cabell County

Thornburg House, 700 Main St., Barboursville, 91000451

Fayette County

Glen Ferris Inn, US 60 overlooking Kanawha Falls, Glen Ferris, 91000449

Whipple Company Store, Jct. of Co. Rds. 15 and 21/20, Whipple, 91000448

Kanawha County

Young—Noves House, 2122 Kanawha Ave., Charleston, 91000446

Monroe County

Lynnside Historic District, Jct. of WV 3 and Cove Cr. Rd., Sweet Springs vicinity, 91000452

McNeer House, US 219 at Gin Run, Salt Sulphur Springs vicinity, 91000453

Tyler County

Wells—Twyford House, Jct. of WV 2 and Kahle St., Sistersville vicinity, 91000447

Wood County

Tracewell House, WV 95 W of Gihon Rd., Parkersburg vicinity, 91000450

[FR Doc. 91-8088 Filed 4-8-91; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Housing Guaranty Program; Investment Opportunity

The Agency for International Development (A.I.D.) has authorized the guaranty of a loan to the Government of Tunisia ("Borrower") as part of A.I.D.'s development assistance program. The proceeds of this loan will be used to finance shelter projects for low-income families in Tunisia. The Borrower has authorized A.I.D. to request proposals from eligible lenders. The name and address of the Borrower's representative to be contacted by interested U.S. lenders or investment bankers, the amount of the loan and project number are indicated below:

Government of Tunisia

Project: 664-HG-004—$9,400,000

Attention: Mr. Abdelmajid Frej, Directeur General du Financement Exterieur, Banque Centrale de Tunisie, Tunis, Tunisia

Telex No.: BANCENTUN 15375, 13311, Telefax No.: 216-1-340615, Telephone No.: 216-1-340588, 254000

Interested lenders should submit their bids to the Borrower's representative by Tuesday, April 23, 1991, 5 p.m. Eastern Standard Time. Bids should be open for a period of 48 hours from the bid closing date. Copies of all bids should be simultaneously sent to the following:

Mr. Fathi Kraiem, RHUDO/NENA—USAID/Tunisia, c/o American Embassy, Tunis, Tunisia, (Street address: 28 Rue Suffex, Notre Dame, Tunis, Tunisia)

Telex No.: 14182 USAID TN, Telefax No.: 216-1-782464 (preferred communication), Telephone No.: 216-1-784300

Sean P. Walsh, Agency for International Development, APRE/H, room 401, SA-2, Washington, DC 20523-0214

Telex No.: 892703 AID WSA, Telefax No.: 202/663-2552 (preferred communication), Telephone No.: 202/663-2530

For your information the Borrower is currently considering the following terms:

(1) *Amount:* U.S. $9.4 million.

(2) *Term:* 30 years.

(3) *Grace Period:* Ten years on repayment of principal.

(4) *Interest Rate:* Fixed interest rate. If rates are to be quoted based on a spread over an index, the lender should use as its index, the 7 7/8% U.S. Treasury Bond due February 2021, such rate to be fixed as of 12:00 noon (EST) on April 23, 1991.

(5) *Fees:* Borrower agrees to pay all closing costs at closing from the proceeds of the loan. Lenders are requested to include all legal fees in their placement.

(6) *Closing Date:* Estimated 60 days from date of selection of lender.

Selection of investment bankers and/or lenders and the terms of the loan are initially subject to the individual discretion of the Borrower and thereafter subject to approval by A.I.D. Disbursements under the loan will be subject to certain conditions required of the Borrower by A.I.D. as set forth in agreements between A.I.D. and the Borrower.

The full repayment of the loans will be guaranteed by A.I.D. The A.I.D. guaranty will be backed by the full faith and credit of the United States of America and will be issued pursuant to authority in section 222 of the Foreign Assistance Act of 1961, as amended (the "Act").

Lenders eligible to receive an A.I.D. guaranty are those specified in section 238(c) of the Act. They are: (a) U.S. citizens; (2) domestic U.S. corporations, partnerships, or associations substantially beneficially owned by U.S. citizens; (3) foreign corporations whose share capital is at least 95 percent owned by U.S. citizens; and, (4) foreign partnerships or associations wholly owned by U.S. citizens.

To be eligible for an A.I.D. guaranty, the loans must be repayable in full no later than the thirtieth anniversary of the disbursement of the principal amount thereof.

Information as to the eligibility of lenders and other aspects of the A.I.D. housing guaranty program can be obtained from: Peter M. Kimm, Director, Office of Housing and Urban Programs, Agency for International Development, room 401, SA-2, Washington, DC 20523-0214, Telephone: 202/663-2530.

Dated: April 1, 1991.

Michael G. Kitay,

Assistant General Counsel, Bureau for Private Enterprise, Agency for International Development.

[FR Doc. 91-8346 Filed 4-8-91; 8:45 am]

BILLING CODE 6116-01-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-345 (Sub-No. 1X)]

Exemption; Duluth & Northeastern Railroad Co.—Abandonment Exemption—In Carlton and St. Louis Counties, MN

Applicant has filed a notice of exemption under 49 CFR 1152 subpart F—*Exempted Abandonments* to abandon its 9.90-mile line of railroad between milepost 1.10, near Cloquet, and milepost 11.0, near Saginaw, in Carlton and St. Louis Counties, MN.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on May 9, 1991 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 40 CFR 1152.29 must be filed by April 19, 1991.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by April 29, 1991, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Floyd D. Rudy, Rudy, Gassert, Yetka, Korman, Belfry & Doran, 123 Avenue C, Cloquet, MN 55720.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

Appliant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by April 12, 1991. Interested person may obtain a copy of the EA from SEE by writing to it (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275-7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use-rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: April 4, 1991.

By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-8340 Filed 4-8-91; 8:45 am]

BILLING CODE 7035-01-M

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

[Finance Docket No. 31858]

Exemption; CSX Transportation, Inc.—Trackage Rights Exemption—Southern Electric Generating Co.

Southern Electric Generating Company (SEGCO) has agreed to grant trackage rights to CSX Transportation, Inc. (CSX), between the junction of the CSX and SEGCO lines near Westover, AL (CSX milepost ANJ 936), and Plant Gaston, at Wilsonville, AL, a distance of approximately 7 miles. The transaction will enable CSX directly to deliver coal to, and pick up empty coal trains from, Plant Gaston. The trackage rights were to become effective on 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: Fred R. Birkholz, CSX Transportation, Inc., 100 North Charles Street, Baltimore, MD 21201.

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: April 3, 1991.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-8339 Filed 4-8-91; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Consent Judgment in Action To Enjoin Violation of the Clean Act ("CAA"); Harris and Devoe Paints Corp.

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a Consent Decree in *United States* v. *Harris & Devoe Paints Corporation* (D.P.R.), Civil Action No. 90-1892 was lodged with the United States District Court for the District of Puerto Rico on March 15, 1991. The Consent Decree provides for penalties for importation of chloroflourocarbons ("CFCs") into the United States without the requisite consumption allowances and enjoins Harris & Devoe Paints Corporation from further violations of the Clean Air Act ("CAA"), 42 U.S.C. 7401 *et seq.*, and 40 CFR part 82.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice, written comments relating to the Consent Decree. Comments should be address to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530 and should refer to *United States* v. *Harris & Devoe Paints Corporation,* D.O.J. Ref. No. 90-5-2-1-1479.

The Consent Decree may be examined at the Office of the United States

Attorney, District of Puerto Rico, Office 101, Federal Building, Carlos E. Chardon Ave., Hato Rey, Puerto Rico 00918; at the Region II office of the Environmental Protection Agency, Federal Plaza, New York, New York 10278; and the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building, NW., Washington, DC 20004 (202-347-2072). A copy of the Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004. In requesting a copy, please enclose a check in the amount of $2.50 payable to Consent Decree Library.

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91-8330 Filed 4-8-91; 8:45 am]

BILLING CODE 4410-01-M

Consent Judgment in Action To Enjoin Violation of the Clean Air Act ("CAA"); Oscar Hernandez Vinas

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029 notice is hereby given that a Consent Decree in *United States* v. *Oscar Hernandez Vinas* (D.P.R.), Civil Action No. 90-1983 was lodged with the United States District Court for the District of Puerto Rico on March 11, 1991. The Consent Decree provides for penalties for importation of chloroflourocarbons ("CFCs") into the United States without the requisite consumption allowances and enjoins Oscar Hernandez Vinas from further violations of the Clean Air Act ("CAA"), 42 U.S.C. 7401 *et seq.*, and 40 CFR part 82.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice, written comments relating to the Consent Decree. Comments should be address to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530 and should refer to *United States* v. *Oscar Hernandez Vinas*, D.O.J. Ref. No. 90-5-2-1-1477.

The Consent Decree may be examined at the Office of the United States Attorney, District of Puerto Rico, Office 101, Federal Building, Carolos E. Chardon Ave., Hato Rey, Puerto Rico 00918; at the Region II office of the Enivronemtnal Protection Agency, Federal Plaza, New York, New York 10278; and the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building NW., Washington, DC 20004 (202-347-2072). A copy of the Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004. In requesting a copy, please enclose a check in the amount of $3.50 payable to Consent Decree Library.

Richard B. Stewart,

Assistant Attorney General, Environemntal and Natural Resources Division.

[FR Doc. 91-8331 Filed 4-8-91; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information: The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable. How often the recordkeeping/reporting requirement is needed. Who will be required to or asked to report or keep records. Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions:

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, room 3208, Washington, DC 20503 (Telephone (202) 395-6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

New Collection

Bureau of Labor Statistics

Users Survey-Questions on the Bureau of Labor Statistics

International Price Program (IPP)

BLS 3006

One-time Survey

Affected Organizations: Businesses or other for profit, Federal Agencies or Employees, Non-Proft Institutions, Small Business or organizations

Total respondents 1200, total burden 220 hours, one form

The International Price Program (IPP), the nation's primary measure of import and export price change, is conducting a user's survey. The user survey is designed to determine the needs of IPP users, how IPP data is currently being used, and ways the IPP may be improved.

Extension

Mine Safety and Health Administration

Record of Examinations for Hazardous Conditions

1219-0083

Each shift

Businesses and other for profit; small businesses or organizations

2,144 respondents; 1,090,224 burden hours

Requires operators of surface coal mines and surface facilities to keep records of the results of required examinations for hazardous conditions. Records consist of the nature and location of any hazardous condition found and the actions taken to abate the hazardous condition.

Signed at Washington, DC this 4th day of April, 1991.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 91-8333 Filed 4-8-91; 8:45 am]

BILLING CODE 4510-43-M

Employment and Training Administration

[TA-W-25,140]

The Hoover Co.; North Canton, OH; Negative Determination on Reconsideration

On March 22, 1991, the Department issued an Affirmative Determination Regarding Application for Reconsideration for workers and former workers of The Hoover Company, North Canton, Ohio. This notice will soon be published in the **Federal Register**.

Local #1985 of the International Brotherhood of Electrical Workers claimed that the Department's import figures for imported vacuum cleaners were too general. The union provided official government import data for vacuum cleaners of the type produced at North Canton, 5kg and over. These data showed increased U.S. aggregate imports of vacuum cleaners for the first six months of 1990 compared to the same period in 1989.

On reconsideration, the Department found that although U.S. aggregate imports of vacuum cleaners of 5kg or larger increased, these imports did not meet the "contributed importantly test of the Group Eligibility Requirements of the Trade Act of 1974. The "contributed importantly" test is generally demonstrated through a survey of the workers' firm's customers.

The Department conducted a survey of Hoover's major declining customers. The respondents which accounted for over a major share of Hoover's 1990 sales decline indicated that they did not import vacuum cleaners in the period applicable to the petition.

Further, other investigative findings show that all of the Group Eligibility Requirements were not met in 1989 since Hoover had increased sales and production in 1989 compared to 1988. Other findings show that company imports decreased in 1989 compared to 1988 and in the first quarter of 1990 compared to the same period in 1989.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for adjustment assistance to workers and former workers of The Hoover Company, North Canton, Ohio.

Signed at Washington, DC, this 28th day of March 1991.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 91-8335 Filed 4-8-91; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-25,187]

TXO Production Corp., Shreveport, LA; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at TXO Production Corporation, Shreveport, Louisiana. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-25,187; TXO Production Corporation, Shreveport, Louisiana (March 29, 1991)

Signed at Washington, DC, this 1st day of April 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91-8336 Filed 4-8-91; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Advisory Committee on Preservation; Meeting

Notice is hereby given that the National Archives Advisory Committee on Preservation, Ad Hoc Subcommittee on Packing and Moving Objects will meet on May 14-15, 1991. The meeting will be held from 10 a.m. to 3 p.m. on Tuesday, May 14, 1991, and from 9 a.m. to 12 noon on Wednesday, May 15, 1991, in room 105 of the National Archives Building, Washington, DC.

The agenda for the meeting will be:

1. Types of objects: Textiles, framed pictures, models, glass plate negatives, etc.
2. Packing objects for moving.
3. Packing objects for storage.
4. Moving objects short distances.
5. Moving objects long distances.

This meeting is open to the public. For further information, contact Alan Calmes on (202) 501-5540.

Notice of the meeting is made in accordance with the Federal Advisory Committee Act.

Dated: April 1, 1991.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 91-8332 Filed 4-8-91; 8:45 am]

BILLING CODE 7515-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Museum Advisory Panel; Amended Notice of Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice of a meeting of the Museum Advisory Panel (Professional Development Section) to the National Council on the Arts (originally published March 15, 1991, **Federal Register** No. 56 FR 11294) which was to have been held on April 4, 1991 from 9 a.m.-5:30 p.m. has been changed to April 24, 1991. The times will remain the same.

Further information with reference to this meeting can be obtained from Ms. Martha Y. Jones, Acting Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: April 3, 1991.

Martha Y. Jones,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91-8216 Filed 4-8-91; 8:45 am]

BILLING CODE 7537-01-M

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Comments on this information collection must be submitted by May 9, 1991.

ADDRESSES: Send comments to Mr. Dan Chenok, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., room 3002, Washington, DC 20503 (202-395-7316). In addition, copies of such comments may be sent to Mrs. Anne C. Doyle, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 (202-682-5401).

FOR FURTHER INFORMATION CONTACT: Mrs. Anne C. Doyle, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 (202-682-5401) from whom copies of the documents are available.

SUPPLEMENTARY INFORMATION: The Endowment requests the review of a revision of a currently approved collection of information. This entry is issued by the Endowment and contains the following information:

(1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

Title: Literature Application Guidelines for FY 1993.

Frequency of Collection: One-time.

Respondents: Individuals or households; State or local governments; non-profit institutions.

Use: Guideline instructions and applications elicit relevant information from individual artists, non-profit organizations, and state or local arts agencies that apply for funding under specific Literature Program categories. This information is necessary for the accurate, fair, and thorough consideration of proposals in the panel review process.

Estimated Number of Respondents: 2,531.

Average Burden Hours per Response: 15.

Total Estimated Burden: 37,965.

Anne C. Doyle,

Management Analyst, Administrative Services Division, National Endowment for the Arts.

[FR Doc. 91-8218 Filed 4-8-91; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-295 and 50-304]

Commonwealth Edison Co.; Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR-39 and DPR-48, issued to Commonwealth Edison Company (the licensee) for operation of the Zion Nuclear Power Station, Units 1 and 2, located in Lake County, Illinois.

The proposed amendment would change the Zion Technical Specifications (TS), section 3.6, Containment Spray; section 3.8, Emergency Core Cooling and Core Cooling Support; section 3.15, Auxiliary Electrical Power System; section 6.6.3.B, Special Reports; and remove the Zion Confirmatory Order of February 29, 1980, Item B.6 by:

1. The incorporation of a monthly diesel generator test schedule which is based on the number of failed tests (proposed Table 4.15-2) and removal of the variable surveillance test interval for failed diesel generator tests from the Confirmatory Order, Item B.6,

2. The incorporation of the diesel generator test requirements of Regulatory Guide 1.108, Revision 1, August 1977,

3. Removal of the variable Allowable Outage Times (AOT) for failed diesel generator tests from the Confirmatory Order, Item B.6,

4. The incorporation of reporting requirements for diesel generator failures,

5. A reduction in the AOT for an inoperable diesel generator (from 7 days to 72 hours) during unit operation,

6. Reduction in applicability of the 7 day AOT for an inoperable diesel generator to only allow its use on the common (0) diesel generator when one unit is in MODE 5 or 6,

7. The incorporation of Generic Letter (GL) 84-15 recommendations to delete the requirements for testing diesel generators when an Emergency Core Cooling System is inoperable,

8. The incorporation of GL 84-15 recommendations to delete the requirements pertaining to excessive tests that result in undue wear and stress on the diesels, and

9. The incorporation of a 72-hour AOT for an inoperable off-site power source in order to minimize plant transients due to unnecessary forced shutdowns.

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 request for amendment 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.

A. The following evaluation concerns the proposed TS and Confirmatory Order changes pertaining to diesel generator testing and AOT.

1. Do not involve a significant increase in the probability or consequences of an accident previously evaluated.

a. The proposed change reduces the number of diesel generator tests in order to enhance diesel generator reliability by eliminating excessive testing which can lead to premature diesel generator failures. Since the proposed changes will serve to enhance diesel generator reliability and overall plant safety. accident initiators, accident assumptions, and off-site dose consequences will not be affected. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

b. The proposed change reduces the AOT for an inoperable diesel generator on an operating unit from 7 days (168 hours) to 72 hours. On a generic basis, the 72 hour AOT for an inoperable diesel generator has been previously reviewed and approved by the NRC in Regulatory Guide 1.93, "Availability of Electric Power Sources," December 1974, and the Westinghouse Standard Technical Specifications (WSTS), NUREG-0452, Revision 4. Since this proposed change will serve to enhance diesel generator reliability and overall plant safety, accident initiators, accident assumption, and off-site dose consequences will not be affected. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

c. The proposed change removes the Zion Confirmatory Order of February 29, 1980, Item B.6 requirements for the variable AOT and the variable Surveillance frequency as a function of diesel generator failures. The proposed change also reduces the applicability of the 7 day AOT for an inoperable diesel generator to only allow its use on the common (0) diesel generator when one unit is in MODE 5 or 5. Based upon deterministic evaluation and probabilistic risk assessment, these changes have been found acceptable with respect to overall plant risk. Since these proposed changes have been determined to be acceptable with respect to overall plant risk, accident

initiators, accident assumptions, and off-site dose consequences will not be significantly affected. Therefore, it can be additionally concluded that this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

a. The proposed change reduces the number of diesel generator tests, but does not necessitate a physical alteration of the plant (no new or different type of equipment will be installed) or changes in parameters governing normal plant operation. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated for Zion Nuclear Generating Station.

b. The proposed change, which reduces the AOT for an inoperable diesel generator from 7 days to 72 hours, does not necessitate a physical alteration of the plant (no new or different type of equipment will be installed) or changes in parameters governing normal plant operation. Thus, this proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated for the Zion Nuclear Generating Station.

c. The proposed change removes the Zion Confirmatory Order of February 29, 1980, Item B.6 requirements for the variable AOT and the variable Surveillance frequency as a function of diesel generator failures. The proposed change also reduces the applicability of the 7 day AOT for an inoperable diesel generator to only allow its use on the common (O) diesel generator when one unit is in MODE 5 or 6. Based upon deterministic evaluation and probabilistic risk assessment, these changes have been found acceptable with respect to overall plant risk. Since these proposed changes do not necessitate a physical alteration of the plant (no new or different type of equipment will be installed) or necessitate changes in parameters governing normal plant operation, this proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated for the Zion Nuclear Generating Station.

3. The proposed changes do not involve a significant reduction in the margin of safety.

a. Overall diesel generator reliability will be enhanced since the proposed change incorporates Generic Letter 84-15 recommendations for minimizing unnecessary diesel generator tests which result in undue stress and wear on the diesel generators. Furthermore, diesel generator testing when an Emergency Core Cooling System (ECCS) pump is inoperable is unnecessary since each diesel generator is already demonstrated operable under the Auxiliary Electrical Power System Technical Specifications. Therefore, this change does not reduce the margin of safety.

b. Overall plant safety will not be significantly affected by the reduced AOT for an inoperable diesel generator (from 7 days to 72 hours), since the proposed change incorporates the NRC's previously reviewed and approved recommendations pertaining to the AOT for an inoperable diesel generator provided in Regulatory Guide 1.93, "Availability of Electric Power Sources," December 1974, and the WSTS, NUREG-0452, Revision 4. Since this reduced AOT is conservative with respect to the existing TSs, it will, therefore, result in no significant reduction in the margin of safety.

c. The proposed change removes the Zion Confirmatory Order of February 29, 1980, Item B.6 requirements for the variable AOT and the variable Surveillance frequency as a function of diesel generator failures. The proposed change also reduces the applicability of the 7 day AOT for an inoperable diesel generator to only allow its use on the common (O) diesel generator when one unit is in MODE 5 or 6. Based upon deterministic evaluation and probabilistic risk assessment, these changes have been found acceptable with respect to overall plant risk. Since these proposed changes have been reviewed and found acceptable with respect to overall plant risk, they will, therefore, result in no significant reduction in the margin of safety.

B. The following evaluation concerns the proposed TS changes pertaining to the incorporation of a 72-hour AOT for an inoperable off-site power source.

1. Do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change increases the AOT for an inoperable off-site power source from 48 to 72 hours. This proposed change will serve to enhance overall plant stability and reliability by minimizing undesirable plant transients caused by forced plant shutdowns due to an inoperable off-site power source. On a generic basis, the 72-hour AOT for an inoperable off-site power source has been previously reviewed and approved by the NRC in Regulatory Guide 1.93, "Availability of Electric Power Sources," December 1974, and WSTS, NUREG-0452, Revision 4. Since this proposed license amendment request additionally includes the proposal to reduce the AOT for an inoperable emergency diesel generator 7 days to 72 hours (AOT decrease of 96 hours) and that this proposed AOT is also consistent with Regulatory Guide 1.93 and WSTS, additionally increasing the AOT for an inoperable off-site power source by 24 hours (resulting in a new AOT of 72 hours) will, therefore, result in no significant change in plant safety. Since this proposed change will result in no significant change in plant safety, accident initiators, accident assumptions, and off-site dose consequences will not be affected. It can, therefore, be concluded that changing the AOT for an off-site power source to a 72-hour period will not result in a significant increase in the probability or consequences of any accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change, which increases the AOT for an inoperable power source from 48 to 72 hours, does not necessitate a physical alteration of the plant (no new or different type of equipment will be installed) or changes in parameters governing normal plant operation. Thus, this proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated for the Zion Nuclear Generating Station.

3. The proposed changes do not involve a significant reduction in the margin of safety.

Overall plant safety will not be significantly affected by the proposed 72-hour AOT for an inoperable off-site power source, since the proposed change incorporates the NRC's previously reviewed and approved recommendations pertaining to the AOT for inoperable off-site power sources provided in Regulatory Guide 1.93, "Availability of Electric Power Sources," December 1974, and the WSTS, NUREG-0452, Revision 4. Since this proposed license amendment request additionally includes the proposal to reduce the AOT for an inoperable emergency diesel generator from 7 days to 72 hours (AOT decrease of 96 hours) and that this proposed AOT is also consistent with Regulatory Guide 1.93 and WSTS, additionally increasing the AOT for an inoperable off-site power source by 24 hours (resulting in a new AOT of 72 hours) will, therefore,

result in no significant reduction in the margin of safety. Therefore, this proposed change will not involve a significant reduction in the margin of safety.

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 May 9, 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. Request 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 Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085. 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 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 request for amendment 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 a final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. 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 Services 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 Richard J. Barrett: (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 Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690, 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 27, 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 Local Public Document Room located at the Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Dated at Rockville, Maryland, this 3rd day of April, 1991.

For the Nuclear Regulatory Commission.

Chandu P. Patel,

Project Manager, Project Directorate III-2, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 91-8322 Filed 4-8-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-213]

Connecticut Yankee Atomic Power Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-61, issued to Connecticut Yankee Atomic Power Company (CYAPCO/licensee), for operation of the Haddam Neck Plant located in Middlesex County, Connecticut.

During the upcoming refueling outage, CYAPCO will begin to use zircaloy clad fuel instead of stainless steel fuel. The proposed Technical Specification changes will allow for the storage of zircaloy clad fuel in the new and spent fuel storage racks.

Prior to 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.

By May 9, 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 request for a hearing and a 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 part 2. It 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 pre-hearing 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.

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 Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555, 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 F. Stolz: 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 Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions,

supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated March 4, 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 Local Public Document Room, Russell Library, 123 Broad Street, Middletown, Connecticut, 06457.

Dated at Rockville, Maryland, this 2nd day of April 1991.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I–4, Division of Reactor Projects–I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 91–8320 Filed 4–8–91; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–220]

Niagara Mohawk Power Corp.; Nine Mile Point Nuclear Station Unit No. 1, License No. DPR–63; Issuance of Director's Decision

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has issued a Director's Decision concerning a Petition dated July 26, 1990, filed by Rosemary S. Pooler (Petitioner) of the Atlantic States Legal Foundation, Inc., on behalf of Retire Nine Mile 1. The Petitioner requested that the Nuclear Regulatory Commission (NRC) institute a proceeding to modify, suspend, or revoke Niagara Mohawk Power Corporation's (NMPC's) license to operate Nine Mile Point Nuclear Station, Unit No. 1 (NMP–1), until such time as NMPC demonstrates that it possesses the requisite management capability to operate a nuclear power plant, until such time as the torus is repaired, and until such time as NMPC implements every outstanding NRC generic letter and bulletin relating to safety.

On August 31, 1990, the Director of the Office of Nuclear Reactor Regulation acknowledged receipt of the Petition and notified the Petitioner that this matter would be considered pursuant to 10 CFR 2.206.

The Director has determined that the Petitioner's request should be denied. The reasons for the denial are set forth in the "Director's Decision Pursuant to 10 CFR 2.206" (DD–91–2), which is available for inspection and copying in the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, and at the local public document room for the Nine Mile Point Nuclear Station at the Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

A copy of the decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206(c). As provided in 10 CFR 2.206(c), the decision will become the final action of the Commission 25 days after the date of issuance unless the Commission on its own motion institutes review of the decision within that time.

Dated at Rockville, Maryland, this 2nd day of April 1991.

For the Nuclear Regulatory Commission.

Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 91–8321 Filed 4–8–91; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Proposed Information Collection, Submitted to OMB for Expedited Clearance

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980, (44 U.S.C. chapter 35), this notice announces a request submitted to OMB for expedited clearance of OPM Form 1593, Survey of Federal Applicants and Recent Hires. This form will be used to collect quality indicator data from Federal applicants and recently hired employees. The form is part of a series of studies to assess and monitor the quality of the Federal workforce being implemented by the Office of Personnel Research and Development to meet the President's objective "* * * To improve the quality and image of the Federal service through more effective recruitment, retention, performance evaluation, and compensation practices." Expedited clearance is necessary to meet data collection deadlines required for future reports.

Approximately 100,000 Federal applicants and recently hired employees are expected to complete the questionnaire form and the form takes approximately 15 minutes to complete, for a total burden of 25,000 hours. For copies of this proposal, call Ronald Trueworthy (703) 908–8550.

OPM is requesting that OMB clear OPM Form 1593 in 14 days. Following this notice please see a draft copy of the survey questionnaire.

DATES: Comments on this proposal should be received on or before April 19, 1991.

ADDRESSES: Send or deliver comments to: Joseph Lackey, Information Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, room 3002, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Marilyn K. Gowing (202) 606–0066.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

DRAFT-NOT IN AUTOMATED FORMAT

Survey of Federal Applicants and Recently Hired Employees

We designed this questionnaire to collect important background information from Federal applicants and recently hired employees. The survey is part of a comprehensive, nationwide program to identify major trends in the American labor force. The results will help the Federal Government to plan its recruitment and employee development strategies.

Instructions

- Please do not fold, staple, tear or use a paper clip on this form.
- Please use a Number 2 lead pencil.
- Completely darken each circle you choose.
- Completely erase any mistakes or stray marks.

Please Print Your Answers in the Boxes and Fill in the Appropriate Circles

1. Last Name, FI, MI (Circles with letters go here).
2. Social Security Number (Circles with letters go here).
3. Home Zip Code (Circles with letters go here).
4. Year of Birth, Year (Circles with letters go here).
5. Sex

O Male
O Female

6. Today's Date: Month—Day—Year (Circles with letters go here).
7. What is your current Federal job status? (Choose only one.)

- O I am an APPLICANT—I am applying for a Federal job
- O I am a RECENT HIRE—I have *not* started my new Federal job
- O I am a RECENT HIRE—I have started a *new* Federal job within the past 6 months
- O Other

Educational Background

8. What is your highest level of education? (Mark only *one*.)
- O Less than high school
- O High school equivalency (GED)
- O High school graduate
- O Attended business or technical school
- O Completed business or technical school
- O Less than two years of college
- O Two or more years of college with no degree
- O Associates degree
- O Bachelors degree
- O Bachelors degree and graduate course work
- O Masters degree
- O Post-Masters course work
- O Doctorate or other graduate degree (e.g., JD, Ph.D, Ed.D)

9. When did you receive your last diploma or highest degree?

19_____

10. Are you currently enrolled in a diploma or degree program?
- O Yes
- O No

If you are, for what kind of degree?
- O GED
- O High school
- O Business/technical
- O Associates degree
- O Bachelors degree
- O Masters degree
- O Doctorate or other graduate degree

11. How closely related is your formal education and training to the jobs(s) for which you are applying or were recently hired?
- A. Very
- B. Moderately
- C. Little
- D. Not at all
- E. Do not know

12. During high school (grades 9–12) I made the honor roll:
- A. Never
- B. Once or twice
- C. Three or four times
- D. Five or six times
- E. Seven or more times
- F. Do not know or my school did not have an honor roll

13. Compared to other students in my high school classes, my most demanding teacher would most likely describe my *academic work* as:
- A. Superior
- B. Above Average
- C. Average
- D. Below average
- E. Do not know

14. My class standing in high school put me in the:
- A. Top 10%
- B. Top 33%
- C. Top 50%
- D. Bottom 50%
- E. Did not graduate from high school
- F. Do not know or my school did not compute class standings

15. The high school grade I most often received was:
- A. A
- B. B
- C. C
- D. D
- E. Do not remember

16. The number of high school clubs and organized activities (such as band, newspaper, sports, etc.) in which I participated was:
- A. Many (4 or more)
- B. Some (1,2 or 3)
- C. None

If you have not completed college, please skip to question 21.

17. What was your undergraduate overall class standing?
- A. Top 10%
- B. Top 33%
- C. Top 50%
- D. Bottom 50%
- E. Do not know or my college did not compute class standings

18. For this question, please estimate your grade point averages (GPA) to the best of your recollection. (Use a 4.0 scale where A=4, B=3, C=2, and D=1.)

GPA Overall Undergraduate	GPA in Major Field	GPA in Junior/ Senior Years
_____	_____	_____

19. What did you study in college? Choose up to two in each column below. If you attended graduate school, choose one in that column also.

Under graduate		Graduate	
Major	Minor		
O	O	O	Agriculture
O	O	O	Architecture and Environmental Design
O	O	O	Biological, Health, and Life Sciences
O	O	O	Business and Management
O	O	O	Communications
O	O	O	Computer Science
O	O	O	Education
O	O	O	Engineering
O	O	O	Fine and Applied Arts
O	O	O	Health Professions
O	O	O	Humanities
O	O	O	Law
O	O	O	Mathematics/ Statistics
O	O	O	Natural Resources
O	O	O	Physical Sciences
O	O	O	Public Affairs and Services
O	O	O	Social Sciences
O	O	O	Transportation
O	O	O	Other
O	O	O	Not Applicable

20. The number of *college* clubs and organized activities (band, newspaper, sports, etc.) in which I participated was:
- A. Many (4 or more)
- B. Some (1, 2 or 3)
- C. None

21. Within the past five years, have you had specialized training (other than college or technical school) for the job for which you are APPLYING or for which you have been RECENTLY HIRED?
- O Yes
- O No

22. Do you have a professional certificate or license (For example: CPA, State teaching certificate) *related* to the job for which you are APPLYING or for which you have been RECENTLY HIRED?
- O Yes
- O No

23. In how many languages other than English are you fluent? (Include sign language.)
- A. None
- B. 1
- C. 2
- D. 3
- E. 4 or more

Work History/Experience

24. Before applying for or accepting this position, have you ever been:

	Yes	No
A. A Federal civilian employee?	O	O
B. A private company organization employee?	O	O
C. A state or local government employee?	O	O
D. On active military duty for more than six months?	O	O
E. Self-employed?	O	O
F. A student?	(1)	(1)

1 Not applicable.

25. In the 3 months before applying for accepting this position, were you:

	Yes	No
A. A Federal civilian employee?	O	O
B. A private company organization employee?	O	O
C. A state or local government employee?	O	O
D. On active military duty for more than six months?	O	O
E. Self-employed?	O	O
F. A student?	O	O

26. Described your U.S. military service (mark all that apply).

O I did not serve
O I served before August 5, 1964
O I served during the Vietnam era, Aug. 5, 1964–May 7, 1975
O I entered active duty on or after May 8, 1975
O I am eligible for 5-point veterans' preference
O I am eligible for 10-point veterans' preference
O I am a 10% or more disabled veteran
O I am a 30% or more disabled veteran

Mark only one answer for each question unless instructed otherwise.

27. Prior to applying for this job, were you employed in similar work?

O Yes
O No
O Do not know

If yes:

a. For how long?

YEARS_____ MONTHS_____

b. When were you last employed in similar work?

MO_____ YR_____

28. Compared to my peers at my last *full-time-job*, my rate of *promotion* was:

A. Much faster than most
B. Somewhat faster than most
C. About the same as most
D. Somewhat slower than most
E. Not employed full time prior to present job or not applicable

29. On my present or most recent job, my supervisor rated me as:

A. Outstanding
B. Above average
C. Average
D. Below average
E. No rating received (or never employed)

30. Compared to my co-workers on my present or most recent job, I was recognized for superior performance:

A. Much more often than most
B. More often than most
C. About the same as most
D. Less often than most
E. Not previously employed

31. During the past three years, I was unemployed (not including time as a full-time student or on a school break):

A. 0 months
B. 1–2 months
C. 3–4 months
D. 5–6 months
E. 7 months or more

32. If you have ever been asked to leave a job, or have ever quit after being told that you would be asked to leave, what were the reasons? (Mark all that apply.)

O Have never been asked to leave
O Poor attendance or being late
O General employee cutbacks
O Lack of necessary job skills
O Supervisor/employee conflict
O Change in management
O Poor performance ratings
O Other

Work Skills

Use the following scale to respond to items 34 through 45. See the key below.

A=Superior.
B=Above average.
C=Average.
D=Below average.
E=Do not know.

My previous supervisor (or teachers if not previously employed) would most likely describe my:

	A	B	C	D	E
33. Ability to work without supervision as:	O	O	O	O	O
34. Skill at meeting deadlines under pressure as:	O	O	O	O	O
35. Skill at doing several jobs at the same time as:	O	O	O	O	O
36. Skill at thinking on my feet as:	O	O	O	O	O
37. Problem solving skills as:	O	O	O	O	O
38. Skill at planning and organizing as:	O	O	O	O	O
39. Oral communication skill as:	O	O	O	O	O
40. Written communication skill as:	O	O	O	O	O
41. Ability to propose and apply creative ideas as:	O	O	O	O	O
42. Supervisory potential as:	O	O	O	O	O
43. Self-discipline as:	O	O	O	O	O
44. Dependability as:	O	O	O	O	O
45. Commitment to service as:	O	O	O	O	O

Use the following scale to respond to items 46 through 54. Use the key below.

A=Much better than most.
B=Somewhat worse than most.
C=About the same as anyone else.
D=Somewhat worse than most.
E=Much worse than most.

My peers would most likely describe my:

	A	B	C	D	E
46. Skill at getting along with others as:	O	O	O	O	O
47. Skill at influencing people to my point of view as:	O	O	O	O	O
48. Responsiveness to the views of others as:	O	O	O	O	O
49. Self-confidence as:	O	O	O	O	O
50. Ability to lead others as:	O	O	O	O	O
51. Ability to give sound advice as:	O	O	O	O	O
52. Punctuality as:	O	O	O	O	O
53. Willingness to make an extra effort to get the job done as:	O	O	O	O	O
54. Willingness to provide helpful service to others as:	O	O	O	O	O

Work Preferences

55. Are you willing to move to a different geographical area if your job requires it?

O Yes
O No

56. Before applying for or accepting this job, the information I had about the nature of Government work:

A=None
B=Almost no information.
C=Some information.
D=Quite a bit.
E=Considerable detail.

57. How did you learn about this job? Select one *most important* response.

O Newspaper, magazine, tv, or radio
O State Employment or Unemployment Office
O Federal agency contact
O Federal recruiter
O Federal Job Information Center
O College placement office
O School counselor or college professor
O Friend or relative working for Federal Government
O Friend or relative not working for Federal Government
O Other method

58. What is *important* to you in choosing a job? Use the scale below to rate the importance of each of the following factors. Use the key below.

A=Not important.
B=Somewhat important.
C=Very important.

	A	B	C
O Pay	O	O	O
O Benefits	O	O	O
O Interesting work	O	O	O
O Opportunity for advancement	O	O	O
O Job security	O	O	O
O Flexible work schedule	O	O	O
O Job prestige	O	O	O
O Location	O	O	O
O Opportunity to work independently	O	O	O
O Opportunity to improve job skills	O	O	O
O Opportunity to help others	O	O	O
O Influence of friends or family	O	O	O
C Organizational mission	O	O	O
O Opportunity for public service	O	O	O
O Opportunity to influence people and events	O	O	O
O Opportunity to contribute to national priorities	O	O	O
O Opportunity to gain experience	O	O	O

59. Would you like to be working for the Federal Government five years from now?

O Yes
O No
O Not sure

60. Darken ONE circle for the field that best describes the type of job that you are applying for today or for which you were recently hired.

Professional and Administrative Occupations

Clerical and Office Services

O Clerk—no Typing or Stenography
O Clerk-typist
O Data Transcriber
O Secretary
O Stenographer
O Internal Revenue Service Clerical and Tax Examiner
O Computer Operation
O Other Computer-related Clerical
O Other Clerical

Administrative Careers With America (ACWA)

O Group 1—Health, Safety and Environmental
O Group 2—Writing and Public Information
O Group 3—Business, Finance, and Management
O Group 4—Personnel, Administration, and Computer
O Group 5—Benefits Review, Tax and Legal
O Group 6—Law Enforcement and Investigations
O Group 7—Positions with Positive Education Requirements (e.g., economist, psychologist, . . .)

Other (Non-ACWA)

O Accountant/Auditor
O Accounting Technician
O Air Traffic Controller
O Biological Scientist
O Border Patrol
O Computer Specialist
O Engineer
O Engineering and Physical Sciences Technician
O Forester
O Law Enforcement
O Mathematician
O Medical Technician
O Nurse
O Physical Scientist
O Other

61. Are you applying for (or were you recently hired for) a position in any of the following areas?

O Atlanta, GA
O Baltimore, MD
O Boston, MA
O Chicago, IL
O Dallas, TX
O Dayton-Springfield, OH
O Denver, CO
O Detroit, MI
O Houston, TX
O Huntsville, AL
O Kansas City, KS
O Los Angeles, CA
O New York, NY
O Norfolk-Virginia Beach-Newport News, VA
O Oklahoma City, OK
O Philadelphia, PA
O Sacramento, CA
O St. Louis, MO-IL
O Salt Lake City-Ogden, UT
O San Antonio, TX
O San Diego, CA
O San Francisco, CA
O Seattle, WA
O Washington, DC-MD-VA
O Other

Occupation-Specific Questions

If additional questions are provided with this form, please answer below.

For Agency Use Only

Indicate your four letter Central Personnel Data File (CPDF) agency code in the boxes below.

For Office Use Only

TYPE OF APPLICATION—Select the statement(s) below which describes the basis for this application. Darken the circle in front of each statement that applies:

O Assembled OPM examination (e.g., written test)
O Unassembled OPM examination (e.g., ratings of education and experience)
O ACWA GPA hire
O Direct hire authority
O Clerical examination waiver
O Delegated examining authority
O Temporary appointment authority
O Cooperative education program
O Veterans Readjustment Act appointment
O Presidential Management Intern Program applicant
O Indian Preference appointment
O Junior Fellow appointment
O Other

Collection of this information is authorized by 5 U.S.C. 1303, and 5 U.S.C. 3301. Executive Order 9397 authorizes collection of your Social Security Number. All information you give is voluntary. Your response will be kept completely confidential. Only researchers at the U.S. Office of Personnel Management will have access to completed questionnaires. Your voluntary participation in this study is greatly appreciated; however, if you do not participate, it will not affect consideration of your application or employment with the Federal Government. Some of the information on this questionnaire may be covered on other forms that you were asked to complete. However, it is important that you answer these questions to assure that all records are complete.

The public reporting burden is estimated to average 15 minutes. Send comments regarding this burden estimate or any aspect of this information collection, including suggestions for reducing the burden, to Reports and Form Management Officer, U.S. Office of Personnel Management, 1900 E Street, NW., CHP-500, Washington, DC, and to the Office of Management and Budget, Paperwork Reduction Project (3208-0040), Washington, DC 20503.

[FR Doc. 91-7800 Filed 4-8-91; 8:45 am]

BILLING CODE 6325-01-M

PROSPECTIVE PAYMENT ASSESSMENT COMMISSION

Meetings

Notice is hereby given of the meeting of the Prospective Payment Assessment Commission on Tuesday and Wednesday, April 23–24, 1991, at The Madison Hotel, 15th & M Streets, Northwest, Washington, DC.

The Full Commission will convene at 1:30 p.m. on Tuesday, April 23, 1991, and again at 8 a.m., Wednesday, April 24, 1991. The meeting will be held in Executive Chambers 1, 2 and 3 on both days. All meetings are open to the public.

Donald A. Young,

Executive Director.

[FR Doc. 91-7651 Filed 4-8-91; 8:45 am]

BILLING CODE 6820-BW-M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

SUMMARY OF PROPOSAL(S):

(1) *Collection title:* Request for Medicare Payment.

(2) *Form(s) submitted:* G-740B, G-740S, HCFA-1500.

(3) *OMB Number:* 3220-0131.

(4) *Expiration date of current OMB clearance:* Three years from date of OMB approval.

(5) *Type of request:* Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

(6) *Frequency of response:* On occasion.

(7) *Respondents:* Individuals or households, businesses or other for profit.

(8) *Estimated annual number of respondents:* See justification statement (Item 13).

(9) *Total annual responses:* 1.

(10) *Average time per response:* See justification statement (Item 13).

(11) *Total annual reporting hours:* 1.

(12) *Collection description:* The Railroad Retirement Board (RRB) administers the Medicare program for persons covered by the railroad retirement system. The collection will obtain the information needed by the Travelers Insurance Company, the RRB's carrier, to pay claims for services and supplies covered under part B of the program.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the proposed forms and supporting documents can be obtained from Dennis Eagan, the agency clearance officer (312-751-4693). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Laura Oliven (202-395-7316), Office of Management and Budget, room 3002, New Executive Office Building, Washington, DC 20503.

Dennis Eagan,

Clearance Officer.

[FR Doc. 91-8211 Filed 4-8-91; 8:45 am]

BILLING CODE 7905-01-M

RESOLUTION TRUST CORPORATION

Adoption; Policy Statement for Disposition of Residential Units Which Were Previously Subject to Rent or Securities Regulations

SUMMARY: Notice is hereby given that on February 22, 1991, the Resolution Trust Corporation adopted a Policy Statement regarding the disposition of cooperative and/or condominium residential dwelling units previously subject to state or local rent or securities regulations prior to their acquisition by the RTC as conservator or receiver of an insured depository institution.

EFFECTIVE DATE: The Policy Statement is effective February 22, 1991.

ADDRESSES: Copies of the policy can be obtained by writing to the Public Reading Room, Resolution Trust Corporation; 801 17th Street, NW., Washington, DC 20434. Requests for copies may also be made by calling the Public Reading Room (202) 416-6940.

FOR FURTHER INFORMATION CONTACT: Jose Ceppi, Senior Counsel, (202) 416-7325.

Dated at Washington, DC, this 3rd day of April, 1991.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Executive Secretary.

[FR Doc. 91-8271 Filed 4-8-91; 8:45 am]

BILLING CODE 6714-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-29032; File No. SR-Amex-90-28, Amdt. No. 2]

Self-Regulatory Organizations; Filing of Amendment to Proposed Rule by the American Stock Exchange, Inc. Relating to Equity Index Participation

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 789s(b)(1), notice is hereby given that on March 7, 1991, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change in described in Items I, II, and III below, which Items have been prepared by the Amex. 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 Rules 903F (Liquidating Index Value) 904F (Cash-Out Privilege) and 910F (Exercise of Physical Delivery or Cash-Out Privilege) applicable to Equity Index Participation ("EIPs").

The text of the proposed rule change is attached below as Exhibit A.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex 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 Amex 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 the Statutory Basis for, the Proposed Rule Change

(1) Purpose

In order to accommodate daily exercise of the cash-out privilege with respect to EIPs, the Exchange has previously proposed amendments to Amex Rules 903F (Liquidating Index Value), 904F (Cash-Out Privilege), and 910F (Exercise of Physical Delivery or Cash-Out Privilege). (*See* SR-Amex-90-28, Release No. 34-28687, December 10, 1990; Amendment No. 1, Release No. 34-28781, January 14, 1991.)

The Exchange is further amending Rules 903F and 904F to provide that the liquidating index value applicable to exercises of the quarterly physical delivery privilege or the cash-out privilege on any trading day will be derived from opening prices reported by the primary market for component EIP index stocks on the next succeeding trading day.

Rule 910F would be appropriately amended to specify procedures for notice of exercise of the physical delivery or cash-out privilege. Proposed amendments to Rules 900F(b), 902F, 905F, 911F, 912F, 914F and 916F, as set forth in SR-Amex-90-28 (Release No. 34-28687, December 10, 1990) would not be affected by the instant filing. However, proposed amendments to Rules 903F, 904F and 910F, as set forth in Amendment No. 1, are hereby superseded and replaced by the proposed amendments contained in this Amendment No. 2.

The Exchange's proposal to base the EIP liquidating index value on opening prices the next trading day is intended to minimize market risk imposed on EIP short positions by providing adequate notice of exercise to permit them to take any necessary action, (such as liquidating stock positions at the opening), in order to permit payment to holders of the liquidating index value.

The Options Clearing Corporation ("OCC") procedures relating to payment of dividend equivalents to EIP holders

by persons holding short positions will also be amended. As originally stated in File No. SR-Amex-86-10 proposing rules applicable to EIPs trading, EIP holders were entitled to receive, and persons holding short positions were required to pay, quarterly dividend equivalent payments equivalent to the amount of dividends declared during such quarter by issuers of underlying index stocks. This was accomplished on the EIP "dividend equivalent date" on each quarter by OCC crediting accounts of holders, and debiting short positions, a proportionate amount of any regular cash dividends declared on the index stocks during the quarter preceding exercise of the cash-out or delivery privilege.

The EIPs dividend equivalent payment feature would be modified to provide that an EIP holder exercising the cash-out privilege on any trading day would receive a dividend equivalent payment representing the accrued dividend equivalent from writers of the assigned short positions. The payment would reflect accumulated dividends for all stocks in the index underlying the EIPs that trade "ex-dividend" during the quarter up to and including the trading day following the date of exercise of the cash-out privilege. EIP holders exercising the quarterly physical delivery privilege, as well as holders on the day before the quarterly dividend equivalent day that do not exercise the cash-out or physical delivery privilege, likewise would receive a dividend equivalent payment from short positions, as described above.

As noted in File No. SR-Amex-90-28, the ability of holders to exercise the cash-out privilege on any trading day will assure that the index price will track the spot index value of the underlying index. The payment of accrued dividend equivalents on a daily basis is intended to further enhance the spot characteristics of EIPs by placing the EIPs holder, to the extent feasible, in the same economic position as the holder of a basket of the stocks of the index underlying the EIPs.

(2) Basis

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 the proposed rule change is designed to prevent fraudulent and manipulative acts and practices, to facilitate transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no 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 reasons for so finding or (ii) as to which the Amex 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 the Amex. All submissions should refer to the file number in the caption above and should be submitted by April 30, 1991.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: April 1, 1991.

Margaret H. McFarland,
Deputy Secretary.

Exhibit A.—American Stock Exchange, Inc.
Proposed Rule Change

(Brackets indicate proposed deletions from current Exchange rules; italics indicates proposed addition to current rules).

Liquidating Index Value

Rule 903F. The liquidating index value *applicable to exercise of the physical delivery or the cash-out privilege* in respect of a particular class of Equity Index Participations shall be derived from the opening prices reported by the primary market for the component stocks of the stock index on the first trading day following the date *of* [each quarter as of which Equity Index Participation holders are entitled to] exercise. [of the delivery privilege or the cash-out privilege.] For any component stock that does not open for trading on such day, the closing price on the last preceding day on which such stock traded on the primary market will be used for purposes of determining the liquidating index value.

Cash-Out Privilege

Rule 904F. The holder of an Equity Index Participation who has not exercised the *physical* delivery privilege with respect to such Participation shall have the right to obtain [on each cash-out time,] upon exercise *of the cash-out privilege* in accordance with the Rules of the Options Cleaning Corporation, the liquidating index value of such Equity Index Participation. *A holder may exercise the cash-out privilege on any business day.*

Exercise of Physical Delivery or Cash-Out Privilege

Rule 910F. (a) Notice of exercise of the Equity Index Participation *physical* delivery or cash-out privilege must be provided by a holder of an Equity Index Participation on or before a time specified and made public by the Exchange and *must be* [which is] in accordance with the Rules of The Options Clearing Corporation. Specific exercise cut-off times will also be delineated for Exchange member organizations. The deadline for exercising the *physical* delivery [or cash-out] privilege in respect of a class of Equity Index Participations shall be announced by the Exchange prior to the beginning of the quarter to which it is applicable. *The deadline for exercising the cash-out privilege shall also be announced by the Exchange at such times as the Exchange deems appropriate.* An exercise notice may be tendered to The Options Clearing Corporation only by the clearing member in whose account with The Options Clearing Corporation the Equity Index Participation is carried. Members and member organizations shall establish fixed procedures not inconsistent with the rules and policies of the Exchange and The Options Clearing Corporation, as to the latest hour at which they will accept exercise *instructions* [notices] from their customers.

(b) No change to current rule.

(c) The term "exercise instruction," with respect to a customer, means the notice given

to a member organization to exercise an Equity Index Participation. All such exercise instructions must be time stamped at the time they are prepared by the receiving member organization.

Notwithstanding the foregoing, member organizations may receive exercise instructions after the exercise cut-off time but prior to the *cut-off time specified by the Options Clearing Corporation with respect to the tender of Equity Index Participation exercise notices* [delivery or cash-out time] (i) in order to remedy mistakes made in good faith, (ii) to take appropriate action as the result of a failure to reconcile unmatched Exchange Equity Index Participation transactions, or (iii) where exceptional circumstances relating to a customer's ability to communicate exercise instructions to the member organization (or the member organization's ability to receive exercise instructions) prior to such time warrant such action.

[FR Doc. 91-8317 Filed 4-8-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-29034; No. SR-BSE-91-3]

Self-Regulatory Organizations; Proposed Rule Change by Boston Stock Exchange, Inc. Relating to Its Arbitration Code

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 Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to make a variety of amendments to chapter XXXII of its Rules of the Board of Governors. (1) The proposed amendments to section 2 would increase the size of the maximum claim for the availability of Simplified (single arbitrator) Arbitrations from $5,000 to claims not exceeding $10,000 and provide that claims requiring only one arbitrator would be heard by a public arbitrator rather than a securities industry arbitrator unless otherwise requested by a public customer. (2) The proposed amendment to section 8 would establish new criteria for determining the number of arbitrators that would hear a case; it would also designate the number of either securities industry or public arbitrators comprising a panel. (3) The proposed amendments to sections 9 and 11 would require disclosure of certain information to parties regarding the background of prospective arbitrators and potential conflicts of interest and require new disclosures to be made by each arbitrator regarding his or her background or possible conflicts of interest. (4) The proposed amendments to section 20 expand the discovery and subpoena processes. (5) The proposed amendments to sections 24 and 28 require that hearings be recorded and that the arbitrators render a written award containing specific information at the conclusion of an arbitration. (6) The proposed amendments to sections 30 and 32 provide new schedules of fees for filing, hearing deposits and pre-hearing conferences with arbitrators. (7) The proposed amendments to section 33 set forth the required form and content of disclosures to be made by member firms when using pre-dispute agreements to arbitrate. (8) The proposed addition of section 35 provides the Exchange with the express authority to discipline its members for failure to pay an award.

II. Self-Regulatory Organization's Statement of the Purpose of, and Stautory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purposes 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 proposed rule change is based for the most part on proposals developed by the Securities Industry Conference on Arbitration. It is designed to bring the Arbitration Code of the BSE up to date with the many changes in securities arbitration procedures since its last revision.

a. Purpose—The proposed rule change is intended to improve the efficiency of the arbitration process and to equitably reflect the costs of conducting hearings. The major changes are as follows:

Arbitration Code—The proposed change to section 1 designates the Exchange's arbitration code as "Arbitration Code" instead of as a "Rule," which it was previously called.

Simplified Arbitration—The proposed changes to section 2 are designed to enlarge the subset of claims for which Simplified Arbitration would be available by increasing the size of the maximum claim from $5,000 to $10,000. The proposed changes further provide for a hearing deposit to be filed in addition to a filing fee.

Designation of Number of Arbitrators—The proposed rule changes to section 8 provide that claims, involving non-members or public customers, in excess of $10,000 must be heard by at least 3 arbitrators, of which a majority would be public arbitrators unless securities industry arbitrators are requested by the customer or non-member. The proposed rule changes define and differentiate public and securities industry arbitrators.

Notice of Selection of Arbitrators and Disclosures Required of Arbitrators; Disqualification and Disability—The proposed rule changes to sections 9, 11 and 12 provide for the disclosure of relevant information on a prospective arbitrator's background. These disclosures are necessary to insure that the arbitrators are not unduly biased or disposed to either party and that they not have any financial stake in the outcome of an arbitration.

Initiation of Proceedings—The proposed changes to section 13 provide that the parties may join in an arbitration if there exist common questions of law or fact.

Adjournments—The proposed changes to section 18 require a party seeking an adjournment of a hearing to deposit an amount equal to the initial deposit of hearing session fees for a subsequent adjournment requested by that party. This provision distributes hearing costs more equitably than the previous rule and seeks to deter unnecessary adjournments.

General Provisions Governing Pre-hearing Proceedings—The proposed changes to section 20 would facilitate document production and other information exchanges among the parties. Pre-hearing conferences will be conducted at the request of a party or as deemed necessary by the arbitrator or director of arbitration to settle disputes and finalize discovery matters prior to the initial hearing. The section would require that the sole arbitrator selected to preside at the pre-hearing conferences be a public arbitrator, unless the customer demands a securities industry arbitrator.

Record Processing—The proposed changes to section 24 would require a stenographic or audio tape record of all arbitration hearings.

Awards—The proposed changes to section 28 would add a provison granting an arbitrator the authority to award interest and to provide for interest to be paid from the date of the award. The section further requires that monetary awards be paid within 30 days of issuance unless a motion to vacate the award has been filed in court or the arbitrators allows for different arrangements.

Agreements to Arbitrate—The proposed changes to section 30 would incorporate the arbitral provisions of the Exchange's Constitution and Rules in all agreements to arbitrate before the Exchange. Previously the incorporation provision was limited to the submission agreement.

Schedule of Fees—The proposed changes to sections 30 and 32 would establish new fee schedules. In addition to hearing deposits, non-refundable filing fee has been added for customer claimants. Claimants will be required to pay a filing fee and deposit a hearing session fee when they file their cases. The rule also sets forth schedules of fees for pre-hearing conferences.

Requirements When Using Pre-Dispute Arbitration Agreements With Customers—The proposed changes to section 33 would dictate the form and content of provisions which must be included in arbitration agreements sought from members' customers. These changes provide additional disclosure of the effects of entering into an agreement to arbitrate.

Director of Arbitration—The proposed addition to section 34 would provide for the appointment of a Director of Arbitration for the Exchange who would be responsible for administering Exchange arbitration matters.

Failure to Honor Award—The proposed addition of section 35 would allow disciplinary action to be taken by the Exchange against any member, allied member, member organization or registered representative who fails to honor an award.

b. Statutory Basis—The basis under the Act for the proposed rule changes is the set of requirements in section 6(b)(4) and section 6(b)(5) of the Act that an exchange have rules that are designed to promote just and equitable principles of trade and to protect investors and the public interest. The proposed rule change is consistent with the requirements of section 6(b)(4) of the Act, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members of the Exchange and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statements on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has neither solicited nor received comments on 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 reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the BSE. All submissions should refer to File No. SR-BSE-91-3 and should be submitted by April 30, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: April 1, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-8228 Filed 4-8-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-29035; File No. SR-CBOE-91-10]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Original Listing Fee for Dually-Listed Warrants and Other Securities (Hybrid) Products

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 21, 1991, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE, pursuant to rule 19b-4 of the Act, submitted a proposed rule change to amend its original listing fee assessed to issuers whose warrants and other securities (hybrid) products have been listed or approved for listing on the New York Stock Exchange, Inc. ("NYSE") or the American Stock Exchange, Inc. ("Annex") by setting the fee at $5,000.

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

(1) Purpose

The Exchange believes that the imposition of the full original listing fees as described in CBOE Rule 31.1 upon issuers who are seeking to dually list warrants and other securities (hybrid) products is unwarranted. Therefore, the Exchange has set an original listing fee for such dually-listed products of $5,000 per application. The dually-listed fee will apply where the warrant or other security (hybrid) product has been listed or has been approved for listing on the NYSE or the Amex.

(2) Basis

The proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(4) in particular in that it provides for the equitable allocation of reasonable fees among its members and issuers.

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 Statements 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

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to section to section 19(b)(3)(A) of the Act and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–91–10 and should be submitted by April 30, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: April 1, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–8230 Filed 4–8–91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-29037; File No. SR-CBOE-91-06]

Self-Regulatory Organizations; Order Approving Proposed Rule Change Relating to Summary Fines for Failure to Perform Certain Reporting Duties

On February 13, 1991, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and rule 19b–4 thereunder,[2] a proposed rule change to make more stringent the summary fines imposed by the CBOE on members for failure to fulfill certain transaction reporting requirements.

The proposed rule change was published for comment in Securities Exchange Act Release No. 28907 (February 21, 1991), 56 FR 8375. No comments were received on the proposal.

The CBOE proposes to amend CBOE Rule 6.51A to provide more stringent summary fine procedures for Market Makers and Floor Brokers who fail to perform certain transaction reporting duties. Specifically, the Exchange proposes to amend CBOE Rule 6.51A(b)(2), which imposes fines on Market Makers and Floor Brokers who fail to report, or who report inaccurately, the transaction time for specified percentages of their trades during a given month. In particular, for Market Makers and Floor Brokers who execute at least five transactions on each of at least ten different trading days during an applicable month, CBOE Rule 6.51A(b)(2) currently imposes the following schedule of fines: (1) $100 for Market Makers and Floor Brokers with inaccurate or omitted reports of 30% to less than 40% of their transactions; (2) $250 for Market Makers and Floor Brokers with inaccurate or omitted reports of 40% to less than 50% of their transactions; and (3) $500 for Market Makers and Floor Brokers with inaccurate or omitted reports of 50% or more of their transactions. The proposal decreases the percentage of inaccurate or omitted transactions necessary to fall with each of the three fine categories, so that, for each month after March 1, 1991, until June 1, 1991: (1) Market Makers and Floor Brokers with inaccurate or vomited reports of 25% to less than 35% of their transactions will be fined $100; (2) Market Makers and Floor Brokers with inaccurate or omitted reports of 35% to less than 45% of their transactions will be fined $250; and (3) Market Makers and Floor Brokers with inaccurate or omitted reports of 45% or more of their transactions will be fined $500. After June 1, 1991, the percentages are decreased further, so that: (1) Market Makers and Floor Brokers with inaccurate or vomited reports of 20% to less than 30% of their transactions will be fined $100; (2) Market Makers and Floor Brokers with inaccurate or omitted reports of 30% to less than 40% of their transactions will be fined $250; and (3) Market Makers and Floor Brokers with inaccurate or omitted reports of 40% or more of their transactions will be fined $500.

The Exchange also proposes to amend Exchange Rule 6.51A(c). Currently, CBOE Rule 6.51A(c) imposes a $1,000 fine on certain Market Makers and Floor Brokers who fail to submit required information to the Standard & Poors 100 Index option ("OEX") price reporter for at least 50% of their OEX sale transactions during a given month. The CBOE proposes to provide additional fines under CBOE Rule 6.51A(c) and to extend the Rule's reporting requirement to include all options sale transactions. Specifically, for Market Makers and Floor Brokers who execute at least 25 sale transactions during an applicable month, CBOE Rule 6.51A(c), as amended, will impose the following fines for applicable months prior to June 1, 1991: (1) $500 for Market Makers and

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1990).

Floor Brokers who fail to report 40% to less than 50% of their sale transactions; and (2) $1,000 for Market Makers and Floor Brokers who fail to report 50% or more of their sale transactions. For applicable months after June 1, 1991, the Rule will include an additional fine level in the amount of $300 for Market Makers and Floor Brokers who fail to report 30% to less than 40% of their sale transactions.

In addition, the Exchange proposes to extend CBOE Rule 6.51A(j)'s suspension of reporting requirements under unusual circumstances to include all sale transactions, rather than only OEX sale transactions.

The CBOE states that the proposed rule change is intended to encourage accurate price and transaction time reporting, which are significant components in the establishment of a complete audit trail for trades effected on the Exchange. Thus, the CBOE believes that the proposal will help the Exchange refine the accuracy and completeness of its audit trail.

The Commission finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of section 6(b)(1), section 6(b)(5) and section 17A(a)(1)(A) of the Act.[3] In general, the proposal broadens the scope of existing Exchange rules by (i) extending the Exchange's price reporting requirements to include all options sales transactions and (ii) amending the Exchange's summary fine schedule to decrease the monthly percentages of inaccurate or omitted transaction time reports subject to summary fines. The Commission finds, as it did when approving the CBOE's original summary fine procedures for failure to satisfy transaction reporting obligations,[4] that the fines enhance the CBOE's ability to create necessary and reliable audit trail information by deterring Exchange members from reporting transactions in an untimely manner. Accordingly, the Commission finds that the proposal to broaden the Exchange's summary fines and transaction reporting requirements is consistent with section 6(b)(1) of the Act because it will produce more complete audit trail information that will enable the CBOE to better enforce compliance by its members with the federal securities laws and CBOE rules. The Commission believes that the CBOE's increase surveillance capabilities will, in turn, prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and protect investors and the public interest, consistent with section 6(b)(5) of the Act. Moreover, the Commission finds that the proposal is consistent with section 17A(a)(1)(A) of the Act because it is designed to promote the prompt and accurate clearance and settlement of securities transactions.

It is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[5] that the proposed rule change (SR-CBOE-91-06) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Dated: April 1, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-8231 Filed 4-8-91; 8:45 am]

BILLING CODE 8010-01-M

[3] 15 U.S.C. 78f and 78q-1 (1982).

[4] *See* Securities and Exchange Act Release No. 27508 (December 6, 1989), 54 FR 51096 (order approving SR-CBOE-89-22).

[5] 15 U.S.C. 78s(b) (1982).

[6] 17 CFR 200.30-3(a)(12) (1989).

[Release No. 34-29036; No. SR-CSE-91-02]

Self-Regulatory Organizations; Proposed Rule Change by Cincinnati Stock Exchange Relating to Public Agency Order Guarantees at Opening

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 20, 1991, the Cincinnati Stock Exchange ("CSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rule 11.9(c)(v), which describes the functions of a Designated Dealer,[1] by adding the words "up to 2,099 shares" in the paragraph describing the obligation of the Dealer on the Day [2] to execute opening public agency market and marketable limit orders at the national best bid or offer. This reflects the wording of the paragraph dealing with intra-day orders and current practice as to all orders. The Exchange also proposes to amend its rule 11.9(n)(1), governing Public Agency Guarantees, by adding the words "up to 2,099 shares" in the paragraph describing public agency opening market orders and limit orders better than the opening price.[3]

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 purpose of the proposed rule change is to make explicit that a Designated Dealer's obligation, as Dealer of the Day, to guarantee the execution of public agency market and marketable limit orders extends only to orders of 2,099 shares or less. Although this has been assumed to be the general rule for public agency guarantees and is explicit in the paragraph dealing with intra-day guarantees,[4] it is not explicit in the paragraphs on opening orders.

The proposed rule change is consistent with section 6(b) of the Act, and in particular with section 6(b)(5), in that it is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

[1] A Designated Dealer is a proprietary member who maintains a minimum net capital of at least the greater of $100,000 or the amount required under rule 15c3-1 of the Act, and who has been approved by the Exchange's Securities Committee to perform market functions by entering bids and offers for securities designated by the Securities Committee to be traded in the CSE's National Securities Trading System ("designated issues") into that System. *See* CSE rule 11.9(a)(3).

[2] The CSE Rules provide that if there are two or more Designated Dealers in a designated issue, unless the Exchange's Securities Committee has approved one member as a primary Designated Dealer, the guarantee obligations under the Rules rotate among such Designated Dealers on a daily basis. *See* CSE Rule 11.9(c)(iv).

[3] *See* letter from Kevin S. Fogarty, Vice President, Market Regulation, CSE, to Mary Revell, Branch Chief, Commission, dated March 19, 1991.

[4] *See* CSE Rule 11.9(c)(iv).

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change should have no adverse impact on competition.

C. Self-Regulatory Organization's Statements on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CSE. All submissions should refer to File No. SR-CSR-91-02 and should be submitted by April 30, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: April 1, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-8229 Filed 4-8-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-29038; File No. SR-PTC-91-03]

Self-Regulatory Organizations; ParticipantsTrust Company; Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Continuation of the Interim Program

April 2, 1991.

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 18, 1991, Participants Trust Company ("PTC") 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. On March 26, 1991, PTC amended the proposed rule change to clarify that the proposed rule change continues PTC's Interim Program to cover PTC's March, 1991 settlement.[1] 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 text of the proposed rule change is in the form of a PTC Administrative Bulletin dated March 15, 1991, entitled "Results of Interim Program Initiated on February 4, 1991." This notice was distributed to participants on March 15, 1991. It restates the modifications of operational deadlines in order to continue PTC's Interim Program commenced in February 1991. The principal modifications are as follows:

(1) On the day prior to settlement, processing deadlines are advanced one hour for certain activities including bulk data input, deliveries, receipt of funds and payment of funds (*see* Exhibit A).

(2) PTC will not reprice securities on the evening prior to settlement day unless prices change more than 1%.

(3) PTC will have the discretion to exclude bulk data received from participants after 7:00 a.m.[2]

(4) Participants will be requested to receive or pay the net amount of all cash credits and debits within a Master Account.

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 PTC included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. PTC 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

In February 1991, PTC implemented an "Interim Program" [3] which modified certain operational deadlines and other features affecting the capacity of PTC's automated processing system in order to facilitate timely settlement for the February, 1991 settlement. In an Important Information notice, "PTC Interim Program to Facilitate Timely Settlement," dated January 28, 1991, PTC advised participants that the Interim Program may continue beyond the February, 1991 settlement. The purpose of this filing is to continue the Interim Program for PTC's March, 1991 settlement. PTC believes that the Interim Program was beneficial to participants and that its continuation will further relieve capacity stress and maximize the likelihood of timely settlement.

The same procedures which were implemented in the February, 1991 settlement will be implemented during the March, 1991 settlement including changes to the on-line system starting time from 8 a.m. to 7 p.m. and the bulk data input deadline from 6 a.m. to 5 a.m. (*see* Exhibit A). PTC will have the discretion to refuse to process bulk data received after 7 a.m. Under the proposed rule change, PTC's on-line processing system will be closed at 2 p.m. on the day prior to the "B" settlement, and participants will be requested to pay or receive a net debit or credit of all accounts within a master collateral account. In addition, PTC will continue to use prices from the day prior to settlement day unless there is price reduction of 1% or greater.

Since the proposed rule change promotes the prompt and accurate clearance and settlement of securities

[1] *See* letter from Alison Hoffman, Assistant Counsel, PTC, to Ester Saverson, Branch Chief, Division of Market Regulation, Commission, dated March 26, 1991.

[2] All times referred to are Eastern Time unless otherwise noted.

[3] Pursuant to section 19(b)(3)(A) of the Act, PTC filed a proposed rule change (File No. PTC-91-01) to implement and interim program to facilitate timely settlement for the PTC's February 14, 1991, GNMA "B" settlement date. Securities Exchange Act Release No. 28855 (February 5, 1991), 56 FR 6891.

transactions, it is consistent with section 17A(b)(3)(F) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

PTC does not perceive that the proposed rule change imposes any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

PTC has not solicited, and does not intend to solicit, comments on this proposed rule change. PTC has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) (A) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4 since the proposed rule change is a change in an existing service that does not adversely affect the safeguarding of securities or funds in PTC's custody or control or for which it is responsible, and the proposed rule change does not significantly affect the respective rights or obligations of PTC or its participants. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

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 PTC. All submissions should refer to File No. SR-PTC-91-03 and should be submitted by April 30, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

Exhibit A.—Schedule I

PROCESSING DEADLINES

	Non-settlement day	"B" settlement day − 1	Settlement day
Bulk input from participants.	5 a.m.	5 a.m.	5 a.m.
On-line system available.	7 a.m.	7 a.m.	7 a.m.
Delivery period ends.	3 p.m.	2 p.m.	3 p.m.
Reversal period ends.	3:30:59 p.m.	2:30:59 p.m.	3:30:59 p.m.
Incoming funds	4:15 p.m.	3:15 p.m.	4:15 p.m.
MVC begins	4:30 p.m.	3:30 p.m.	4:30 p.m.
Outgoing funds	5 p.m.	4 p.m.	5 p.m.
On-line system close.	6 p.m.	5 p.m.	6 p.m.

[FR Doc. 91-8318 Filed 4-8-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-29033; International Series Release No. 250; File No. SR-ODD-91-1]

Option Disclosure Documents; Trans Canada Options, Inc.; Order Granting Approval to Proposed Amendments to Options Disclosure Document

On March 13, 1991, Trans Canada Options, Inc. ("TCO") submitted amended copies of an options disclosure documents ("ODD") to the Commission pursuant to Rule 9b-1 of the Securities Exchange Act of 1934 ("Act"). The amended disclosure document discusses the characteristics and risks of Canadian exchange-traded put and call options available to American investors.

Previously, on October 2, 1984, the Commission approved the use and distribution of a TCO ODD which discussed the risks and uses of options on equity securities.[1] Subsequently, on August 21, 1985, the Commission approved an amended TCO ODD that incorporated discussion of the risks and uses of Canadian exchange-traded options on stock indexes and bonds.[2] Later, on May 19, 1987, the Commission approved an amended TCO ODD that, among other things, expanded the document to include a discussion of the characteristics and risks of options on the Government of Canada Treasury Bill Price Index. TCO has now further amended its disclosure document by making various minor additions and deletions to reflect changes in the Canadian options market since the disclosure document was last amended in 1987. Specifically, the amendment, among other things, has added references to an option based on the Toronto Stock Exchange 35 Composite Index, added new terms to its glossary, and deleted reference to several options which are no longer listed on a Canadian exchange.

Rule 9b-1 provides that an options market must file five preliminary copies of an amended ODD with the Commission at least 30 days prior to the date definitive copies of the ODD are furnished to customers, unless the Commission determines otherwise, having due regard to the adequacy of the information disclosed and the protection of investors. The Commission has reviewed the TCO ODD, and finds that it is consistent with the protection of investors and in the public interest to allow the distribution of the disclosure document as of the date of this order.[3]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: April 1, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-8316 Filed 4-8-91; 8:45 am]

BILLING CODE 8010-01-M

Issuer Delisting; Application to Withdraw from Listing; Alpnet, Inc., Common Stock, No Par Value (File No. 1-10449)

April 3, 1991.

Alpnet, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission") pursuant to section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2-2(d) promulgated thereunder to withdraw the above specified security from listing and registration on the

[1] Securities Exchange Act Release No. 21365 (October 2, 1984), 49 FR 39400 (October 5, 1984).

[2] Securities Exchange Act Release No. 22349 (August 21, 1985).

[3] Rule 9b-1 provides that the use of an ODD shall not be permitted unless the options class to which the document relates is the subject of an effective registration statement on Form S-20 under the Securities Act of 1933. On May 22, 1990, the Commission, pursuant to delegated authority, declared effective Post-Effective Amendment No. 10 to TCO's Form S-20 registration statement. *See* File No. 2-69458.

Boston Stock Exchange ("BSE" or "Exchange").

The reasons alleged in the application for withdrawing the security from listing and registration include the following:

The Company was informed by the BSE that there has been no trading of that securities on the Exchange since the listing and registration with BSE in January, 1990. The Company's Common Stock is traded on the NASDAQ system as well. Accordingly, the Company desires to withdraw its Common Stock from listing on the BSE in order to relieve the Company of the costs associated with being listed on the Exchange.

Any interested person may, on or before April 24, 1991, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-8319 Filed 4-8-91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18074; File No. 811-5416]

The Benham Variable Account of Monarch Life Insurance Co; Application

April 2, 1991.

AGENCY: Securities and Exchange Commission (the "Commission").

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the "1940 Act".

APPLICANT: The Benham Variable Account of Monarch Life Insurance Company ("Applicant").

RELEVANT 1940 ACT SECTIONS: Order requested under section 8(f).

SUMMARY: Applicant seeks an order under Section 8(f) of the 1940 Act declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on February 12, 1991 and amended on March 11, 1991.

HEARING OR NOTIFICATION OF A 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 Commission by 5:30 p.m. on April 29, 1991. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the Commission, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, One Monarch Place, Springfield, Massachusetts 01133.

FOR FURTHER INFORMATION CONTACT: Michael V. Wible, Staff Attorney, at (202) 272-2026, or Barry D. Miller, Senior Attorney, at (202) 272-3012 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the Commission's Public Reference Branch.

Applicant's Representations

1. The Applicant was established by its depositor, Monarch Life Insurance Company ("Monarch Life"), on December 17, 1986 as a segregated asset account for the purpose of supporting certain variable life insurance policies ("Policies").

2. The Applicant is registered under the 1940 Act as a unit investment trust. On December 16, 1987, the Applicant filed a Notification of Registration as an investment company on Form N-8A pursuant to Section 8(a) of the 1940 Act, and a registration statement on Form N-8-B2 (File No. 811-5416) pursuant to Section 8(b) of the 1940 Act. On the same date, the Applicant filed a registration statement on Form S-6 (File No. 33-19110) with the Commission pursuant to the Securities Act of 1933. The registration statement was declared effective on January 20, 1988 and the Policies were first issued on June 30, 1988.

3. On March 22, 1990, the Applicant, Monarch Life and Variable Account B of Monarch Life Insurance Company ("Variable Account B"), received an order of the Commission (Investment Company Act Release No. 17397) pursuant to Section 17(b) of the 1940 Act exempting them from the provisions of Section 17(a) to the extent necessary to permit the transfer of assets attributable to the investment base of the Policies from the Applicant to Variable Account B, and pursuant to Section 26(b) of the 1940 Act approving the substitution effected in connection with the transfer. The transfer entailed the transfer of assets attributable to the Policies from the Applicant to Variable Account B, which, through its twenty-two investment divisions, invests in the Oppenheimer Variable Account Funds and Oppenheimer Zero Coupon U.S. Treasuries Trust, Series A through E (collectively, the "Oppenheimer Portfolios"). To the extent policyowners did not specify the allocation of their investment base among Variable Account B investment divisions to be effected in connection with the transfer, the transfer involved the substitution of certain Oppenheimer Portfolios underlying Variable Account B investment divisions for the Benham Variable Insurance Trust portfolios underlying the Applicant's investment divisions.

4. Assets attributable to each policyowner's interest in the Applicant were transferred to the appropriate divisions of Variable Account B on May 11, 1990. No policyowners surrendered their Policies in connection with the transfer. The applicant has no securityholders at this time.

5. No distributions to Applicant's securityholders in connection with the winding-up of the Applicant's affairs pursuant to its termination have been made other than the distribution in cash to Monarch Life upon redemption of its interest attributable to $100,000 of seed money contributed by Monarch Life to the Applicant.

6. None of the expenses incurred by the Applicant or Variable Account B in connection with the transfer were borne by policyowners. Expenses attributable to Monarch Life were borne by Monarch Life.

7. The Applicant has no assets at this time and does not expect to have any assets in the future. The Applicant has no debts or other outstanding liabilities.

8. The Applicant is not engaged, and does not propose to engage, in any business activities except as may be necessary to wind up its affairs. All required filings of Applicant's semiannual reports on Form N-SAR have been made and will continue to be made until an order has been entered declaring that the Applicant has ceased to be an investment company.

9. The Applicant is not a party of any litigation or administrative proceeding.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-8232 Filed 4-8-91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18076; File No. 811-5625]

First Variable Annuity Fund BE of First Variable Life Insurance Co.; Application

April 2, 1991.

AGENCY: Securities and Exchange Commission (the "Commission").

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANT: First Variable Annuity Fund BE of First Variable Life Insurance Company ("Applicant").

RELEVANT 1940 ACT SECTIONS: Order requested under section 8(f).

SUMMARY: Applicant seeks an order under Section 8(f) of the 1940 Act declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on February 12, 1991 and amended on March 11, 1991.

HEARING OR NOTIFICATION OF A 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 Commission by 5:30 p.m. on April 29, 1991. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the Commission, along with proof of service by affidavit, or, for lawyers by certificate. Request notification of the date of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 111 Center Street, suite 2110, Little Rock, Arkansas 72201.

FOR FURTHER INFORMATION CONTACT: Michael V. Wible, Staff Attorney, at (202) 272-2026, or Barry D. Miller, Senior Attorney, at (202) 272-3012 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the Commission's Public Reference Branch.

Applicant's Representations

1. The Applicant was established by its depositor, First Variable Life Insurance Company ("First Variable"), on July 15, 1988 as a segregated asset account for the purpose of supporting certain variable annuity policies ("Policies").

2. The Applicant is registered under the 1940 Act as a unit investment trust. On July 28, 1988, the Applicant filed a Notification of Registration as an investment company on Form N-8A (File No. 811-5625) and a registration statement under the Securities Act of 1933 and the 1940 Act on Form N-4 (File No. 33-23352). The registration statement was declared effective on October 14, 1988 and the Policies were first issued on November 1, 1988.

3. On May 10, 1990, the Applicant, First Variable and First Variable Annuity Fund E ("Fund E") received an order of the Commission (Investment Company Act Release No. 17484) pursuant to Section 17(b) of the 1940 Act exempting them from the provisions of section 17(a) to the extent necessary to permit the transfer of assets attributable to the investment base of the Policies from the Applicant to Fund E, and pursuant to Section 26(b) of the 1940 Act approving the substitution effected in connection with the transfer. The transfer entailed the transfer of assets attributable to the Policies from the Applicant to Fund E, which, through its thirteen investment divisions invests in the Variable Investors Series Trust ("VIST"). To the extent policyowners did not specify the allocation of their aggregate value among Fund E investment divisions, the transfer involved the substitution of certain VIST portfolios underlying Fund E investment divisions for the Benham Variable Insurance Trust portfolios underlying the Applicant's investment divisions.

4. Assets attributable to each policyowner's interest in the Applicant were transferred to the appropriate divisions of Fund E on May 11, 1990. No policyowners surrendered their Policies in connection with the transfer. The applicant has no securityholders at this time.

5. No distributions to Applicant's securityholders in connection with the winding-up of the Applicant's affairs pursuant to its termination have been made.

6. None of the expenses incurred by the Applicant or Fund E in connection with the transfer were borne by policyowners. Expenses attributable to First Variable were borne by First Variable.

7. The Applicant has no assets at this time and does not expect to have any assets in the future. The Applicant has no debts or other outstanding liabilities.

8. The Applicant is not engaged, and does not propose to engage, in any business activities except as may be necessary to wind up its affairs. All required filings of Applicant's semiannual reports on Form N-SAR have been made and will continue to be made until an order has been entered declaring that the Applicant has ceased to be an investment company.

9. The Applicant is not a party of any litigation or administrative proceeding.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-8233 Filed 4-8-91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18073; 811-4726]

Patriot Group Investment Trust; Application

April 1, 1991.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

APPLICANT: Patriot Group Investment Trust.

RELEVANT 1940 ACT SECTIONS: Section 8(f).

SALARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on November 5, 1990, and amended on March 7, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 25, 1991, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, 211 Congress Street, Boston, Massachusetts 02110.

FOR FURTHER INFORMATION CONTACT: Barbara Chretien-Dar, Staff Attorney, at (202) 272-3022, or Stephanie M. Monaco, Branch Chief, at (202) 272-3030 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant, an open-end investment company organized under Massachusetts law, registered under the 1940 Act on June 30, 1986. On the same date, it filed a registration statement with respect to an indefinite number of shares under the Securities Act of 1933, which registration statement was declared effective on November 4, 1986.

2. On September 6, 1990, Applicant's board of trustees recommended that the applicant be liquidated after having considered liquidation at various times during the course of that year. Earlier that year, the applicant had ceased issuing new shares. The board finally determined that applicant was no longer a viable entity in view of competing products. After the board of trustees' decision to liquidate, Patriot Advisers, Inc., applicant's investment adviser, sold applicant's portfolio securities and maintained cash or cash equivalents in the portfolio.

3. The liquidation did not require authorization by applicant's shareholders. At the time of the board of trustees' decision to liquidate, there were 13 remaining shareholders who were contacted by officers of the applicant who recommended that the shareholders liquidate their shares. Ten shareholders liquidated their shares on September 20, 1990, and the remaining shareholders liquidated on October 4, 1990, and all of them received the net asset value of their shares. Immediately preceding the liquidating distributions, applicant had total net assets of $13,112,524 and 290,612.923 shares outstanding (per share net asset value of $45.12).

4. Applicant has filed a certificate of termination with the state of Massachusetts. Applicant retained approximately $22,540 to wind up its affairs. Expenses incurred in connection with the liquidation were approximately $2,500 and were borne by the applicant. Applicant has no other assets or liabilities. Applicant is not a party to any litigation or administrative proceedings. Applicant has no remaining shareholders.

5. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 91-8234 Filed 4-8-91; 8:45 am]
BILLING CODE 8010-01-M

DEPARTMENT OF STATE

Overseas Security Advisory Council; Closed Meeting

The Department of State announces a meeting of the U.S. State Department—Overseas Security Advisory Council on Wednesday, May 1, 1991 at 8:30 a.m. at The Hyatt Regency Dallas in Dallas, Texas. Pursuant to Section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552b (c)(4), it has been determined the meeting will be closed to the public. Matters relative to privileged commercial information will be discussed. The agenda calls for the discussion of private sector physical security policies, bomb threat statistics, and security programs at sensitive U.S. Government and private sector locations overseas.

For more information contact Marsha Thurman, Overseas Security Advisory Council, Department of State, Washington, DC 20522-1003, phone: 703/204-6185.

Dated: March 22, 1991.

Clark Dittmer,
Director of the Diplomatic Security Service.

[FR Doc. 91-8214 Filed 4-8-91; 8:45 am]
BILLING CODE 4710-24-M

[Public Notice 1373]

Shipping Coordinating Committee; Subcommittee on Safety of Life at Sea Working Group on Fire Protection; Meeting

The Working Group on Fire Protection of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting on April 26, 1991 at 9 a.m. in room 4315 at U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC.

Working Group on Fire Protection

The purpose of the meeting will be to prepare for discussions anticipated to take place at the 36th Session of the International Maritime Organization (IMO) Subcommittee on Fire Protection (FP), scheduled for June 24-28, 1991.

This meeting will focus on the fire safety of commercial vessels. Specific discussion areas include: Fire test procedures, smoke control, casualty records, fire-fighting systems (Phasing out of Halon), emergency generator space category, IBC Code, fire-protection systems, provisions for helicopters, foam concentrates, irradiated nuclear fuel stowage, ro-ro ship ventilation, fire-extinguishing gases, 1979 Torremolinos Convention, dynamically supported craft, fuel line failure, open-top container ships, deck water spray systems, marine pollution, role of human element in casualties, carriage of dangerous goods on vehicle decks, cargo oil tanks, cofferdam and void spaces, incinerator and waste stowage spaces.

Members of the public may attend up to the seating capacity of the room.

For further information regarding the meeting of the SOLAS Working Group on Fire Protection (April 26, 1991) contact Mr. Jack Booth at (202) 267-2997.

Dated: April 2, 1991.

Geoffrey Ogden,
Chairman, Shipping Coordinating Committee.

[FR Doc. 91-8212 Filed 4-8-91; 8:45 am]
BILLING CODE 4710-07-M

TENNESSEE VALLEY AUTHORITY

Environmental Impact Statement; Chip Mill Terminals on the Tennessee River

AGENCY: Tennessee Valley Authority.

ACTION: Notice of intent and scoping notice.

SUMMARY: The Tennessee Valley Authority (TVA) is issuing this notice to advise the public that it intends to prepare an environmental impact statement (EIS) for the siting of four private chip mill barge terminals proposed to be located on the Tennessee River in the vicinity of South Pittsburg, Tennessee, and Bridgeport, Alabama. TVA also requests comments on the proposed scope of this EIS. Because the demand for paper products is expected to continue, it is likely that additional chip mills will locate in the TVA region and that TVA approval of water-use facilities or access over TVA lands will be sought. TVA is therefore considering developing a policy or approach to

reviewing such requests in the future and if so, will set forth this policy in the EIS.

DATES: To be considered, scoping comments must be received by May 9, 1991. It is critical that comments be submitted by this date.

ADDRESSES: Written comments on the proposed scope of the EIS should be sent to M. Paul Schmierbach, Manager of Environmental Quality, Tennessee Valley Authority, 400 West Summit Hill Drive, SPB 2P, Knoxville, Tennessee 37902-1499.

FOR FURTHER INFORMATION CONTACT: Dale K. Fowler, Project Manager, Tennessee Valley Authority, 400 West Summit Hill Drive, SPB 2P, Knoxville, Tennessee 37902-1499. Telephone (615) 632-6716.

SUPPLEMENTARY INFORMATION: TVA has been asked to approve under section 26a of the TVA Act four proposed barge terminals which would serve adjacent wood chipping mills. The sites for these proposed facilities are in the vicinity of South Pittsburg, Tennessee, and Bridgeport, Alabama. In addition, the approval of the U.S. Army Corps of Engineers (Corps) under section 404 of the Clean Water Act and section 10 of the Rivers and Harbors Act must be obtained for these proposed facilities.

The Parker Towing facility would be located on property which TVA conveyed to the Nickajack Port Authority at New Hope, Tennessee (Marion County), in 1982 with certain restrictions. In accordance with these restrictions, the Port requested on June 22, 1990, that TVA approve the siting of Parker Towing's client business, U.S. Chips, Inc., on Port Authority lands at Tennessee River mile (TRM) 424 (left bank, facing downriver). U.S. Chips would operate a chip mill, processing 400,000 green tons per year of hardwood logs. TVA is reviewing this request as a new 26a application.

On July 25, 1990, TVA received an application from Donghae Pulp Company of Alabama, Inc., for a barge terminal and an industrial easement affecting 2.4 acres of TVA land on Guntersville Reservoir at Bridgeport, Alabama (Jackson County), approximately 12 miles downstream from Nickajack Port at TRM 412.2 (right bank, facing downriver). The company would produce 600,000 green tons per year of hardwood chips to be shipped to international paper markets. A public hearing on this application took place on January 10 in Bridgeport, and a draft EA was released to the public for review and comment.

On August 16, 1990, TVA received an application from Canal Chip Corporation, Butler, Alabama, for a barge loading facility to support a chip mill to be sited on private lands adjacent to Nickajack Port and on the same side of the river as the port at TRM 423.8 (left bank, facing downriver). A section 26a permit and an easement agreement for use of 1.6 acres of TVA lands would be needed. The company would produce 600,000 green tons of chips per year (85 percent hardwoods, 15 percent pines). An EA has not been prepared on this application nor has a hearing been held.

On September 25, 1990, TVA received an application from Boise Cascade Corporation, Jackson, Alabama, for a barge terminal to support a planned chip mill, along with an easement request for 1.2 acres of TVA land. The facility would be located across the river from South Pittsburg, Tennessee (Marion County), about halfway (6 miles) between the proposed Donghae Pulp facility and the proposed Parker Towing facility at TRM 418.3 (left bank, facing downriver). The chip mill would process 350,000 green tons per year of hardwood logs. An EA has not been prepared on this application nor has a public hearing been held.

Hardwood pulpwood is needed to meet the growing demand for paper products both in the United States and internationally. There is an abundance of low-quality hardwoods suitable for chipping and subsequent conversion to pulp in the Eastern and South-Central United States, including the Tennessee Valley region. This supply of hardwoods and access to low-cost water transporation make this region a very desirable location for hardwood chipping facilities. The four planned chip mills would chip hardwood timber harvested in the vicinities around each facility (the "sourcing area") and barge the chips to pulp and papermill facilities located elsewhere.

A typical chip mill produces 350,000 to 600,000 tons of green chips annually. This level of production requires the harvesting of timber on 13,000 to 23,000 acres of forest each year. Harvesting for chip mills is usually done by clearcutting. If constructed, the four planned chip mills would utilize a total of approximately 1.3 million acres in essentially the same sourcing area over a 20-year period. The total forested area within this area is approximately 6.7 million acres.

As mentioned previously, TVA, in cooperation with the Corps, has already initiated environmental review of the Donghae and Parker Towing barge facilities and land-use requests including public hearings. The environmental analyses done for these facilities and the public comments received to date will be used to scope and prepare the subject EIS. The Corps and, possibly, the U.S. Fish and Wildlife Service will participate as cooperating agencies in the EIS.

The EIS will evaluate the direct and indirect effects of the pending requests. This would include the potential direct effects associated with constructing and operating the four proposed barge facilities and use of the TVA property to access these facilities. These are the activities over which TVA and the Corps have regulatory authority. In addition, the EIS would evaluate as indirect effects the potential consequences associated with constructing and operating the chip mill facilities which would be served by the proposed barge facilities.

In addition to the direct and indirect effects associated with the activities requiring TVA and Corps approval, there are potential sourcing area effects (i.e., the effects associated with timber harvesting). Sourcing-area effects result from the actions of private landowners making the hardwood timber they own available for harvesting. The landowners could contract with private loggers who, in turn, sell the harvested timber to one of the proposed chip mills or with loggers who are employed by the chip mills. Neither TVA nor the Corps have regulatory authority over these private landowner actions, and authorization from TVA or the Corps is not needed before harvesting can occur.

Public comments to date, including comments made by the U.S. Fish and Wildlife Service and Region IV of the United States Environmental Protection Agency, have expressed concern about potential adverse sourcing area effects and have asked that such effects be evaluated in the EIS. Attempting to identify the location of and assess sourcing area impacts, which involve the future decisions of many private landowners, would entail a substantial amount of uncertainty. However, TVA and the Corps are also concerned about such impacts and propose to include in the EIS, to the extent reasonable, information and analyses of possible sourcing area impacts. Comments are required on doing an EIS with this proposed scope as further delineated below.

Alternatives proposed to be evaluated in the EIS include: (1) No action (denying all requests), (2) approving one or more requests as made, and (3) approving one or more requests with modifications or conditions to lessen potential environmental impacts. The availability of alternative sites and the

siting process used by the applicants, if any, will also be discussed.

TVA proposes to assess the following as potential effects associated with the construction and operation of the proposed barge terminals and adjacent chip mill facilities: (1) Navigation impacts, (2) water quality impacts, (3) air quality impacts, (4) noise impacts, (5) terrestrial and aquatic species impacts (including endangered and threatened species and wetlands), (6) cultural resource impacts, (7) flooding and floodplain impacts, (8) aesthetic impacts, (9) socioeconomic impacts, and (10) solid waste. The potential impacts associated with truck traffic in the vicinity of the chip mills will also be examined. Any cumulative impacts resulting from the construction and operation of these four facilities will be discussed.

Potential sourcing-area harvesting effects which TVA proposes to examine include: (1) Water quality and potential flooding impacts, (2) terrestrial and aquatic species impacts (including endangered and threatened species and wetlands), (3) aesthetic impacts, (4) solid waste, and (5) recreation impacts. The effect of timber harvesting on the forest resource itself would also be assessed. Any potential cumulative sourcing-area effects would be examined as well. For the reasons identified above, TVA anticipates that the ability to fully detail possible sourcing-area impacts will be limited, and comments on how this could be reasonably done are specifically requested.

Because the demand for paper products is expected to continue, it is likely that additional chip mills will locate in the TVA region and that TVA approval of water-use facilities or access over TVA lands will be sought. TVA is therefore considering developing a policy or approach for reviewing such requests in the future, and if so, this policy will be set forth in the EIS.

Because substantial public input and interagency scoping have already occurred in connection with the first two planned chip mills, including two public meetings, TVA has decided not to hold a public scope meeting. Written comments on the proposed scope of the EIS are requested. TVA does plan on holding at least one public hearing during the public comment period on the draft EIS. Details of this hearing will be announced in local and regional newspapers in the near future.

Dated: April 3, 1991.

M. Paul Schmierbach,

Manager, Environmental Quality.

[FR Doc. 91-8266 Filed 4-8-91; 8:45 am]

BILLING CODE 8120-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-91-15]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

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

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before April 29, 1991.

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

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

FOR FURTHER INFORMATION CONTACT: Miss Jean Casciano, Office of Rulemaking (AEM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-9683.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on April 1, 1991.

Denise Donohue Hall,

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

Petitions for Exemption

Docket no.: 23499.

Petitioner: Lifeline, Inc.

Sections of the FAR affected: 14 CFR 61.118(a).

Description of relief sought: To extend Exemption No. 5068, which allows petitioner's private pilots who perform flight services to be reimbursed for their fuel expenses. Exemption No. 5068 will expire on July 31, 1991.

Docket no.: 24541.

Petitioner: Boeing Commercial Airplanes.

Sections of the FAR affected: 14 CFR 91.611.

Description of relief sought: To extend Exemption No. 4467, as amended, which allows petitioner to conduct ferry flights with one engine inoperative on its Boeing-manufactured 707, 720, 727, and 747 airplanes without obtaining a special flight permit. Exemption No. 4467, as amended, will expire on July 31, 1991.

Docket no.: 25089.

Petitioner: Hawkins & Powers Aviation, Inc.

Sections of the FAR affected: 14 CFR 137.53(c)(2).

Description of relief sought: To extend Exemption No. 5075, which allows petitioner to conduct aerial applications of insecticide materials from C-118A (DC-6) aircraft, without the aircraft being equipped with a device capable of jettisoning at least one-half of the aircraft's maximum authorized load of agricultural materials within 45 seconds when operated over congested areas. Exemption No. 5075 will expire on August 31, 1991.

Docket no.: 25776.

Petitioner: Lynch Flying Service, Inc.

Sections of the FAR affected: 14 CFR 43.3(g).

Description of relief sought: To extend Exemption No. 5085, which allows pilots employed by petitioner to remove and replace passenger seats and ambulatory stretcher and base assemblies on aircraft that are used in air ambulance service. Exemption No. 5085 will expire on August 31, 1991.

Docket no.: 26320.

Petitioner: Dornier Aviation.

Sections of the FAR affected: 14 CFR 91.531(a)(3).

Description of relief sought: To allow petitioner to operate the Dornier 228-212

airplane as a commuter category aircraft with a single pilot.

Dispositions of Petitions

Docket no.: 18881.

Petitioner: International Aerobatic Club.

Sections of the FAR affected: 14 CFR 91.151(a)(1) [formerly 91.22(a)(1)].

Description of relief sought/disposition: To extend Exemption No. 2689, as amended, which allows petitioner's members to participate and practice for participation in aerobatic competitions without meeting the fuel requirements for flight under visual flight rules. Partial Grant, March 27, 1991, Exemption No. 2689F.

Docket no.: 26204.

Petitioner: Cowley County Community College.

Sections of the FAR affected: 14 CFR 147.31.

Description of relief sought/disposition: To allow petitioner to develop and teach the powerplant curriculum without being certified by the FAA as an aviation maintenance technician school. Denial, March 22, 1991, Exemption No. 5292.

Docket no.: 26279.

Petitioner: Mr. Dean E. Welsh/Charles City Aeronautics.

Sections of the FAR affected: 14 CFR 141.35 (b)(4), (c)(5)(i), and (d)(4)(i).

Description of relief sought/disposition: To allow petitioner to be designated as chief flight instructor even though he does not have the 100 hours of flight instruction experience over the last year as required by the regulations. Grant, March 26, 1991, Exemption No. 5293.

[FR Doc. 91-8305 Filed 4-8-91; 8:45 am]

BILLING CODE 4910-13-M

National Highway Traffic Safety Administration

Petition for Exemption From the Vehicle Theft Prevention Standard; General Motors Corp.

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Grant in part of petition for exemption.

SUMMARY: This notice grants in part the petition by General Motors Corporation (GM) for exemption from the parts marking requirements of the vehicle theft prevention standard for the Pontiac Bonneville (Bonneville) and Buick Park Avenue (Park Avenue) car lines for Model Year (MY) 1992, pursuant to 49 CFR part 543, Exemption from Vehicle Theft Prevention Standard, for MY 1992 and beyond. GM is required to mark only the engines and transmissions of the exempted car lines.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara A. Gray, Office of Market Incentives, NHTSA, 400 Seventh Street SW., Washington, DC 20590. Ms Gray's telephone number is (202) 366-4808.

SUPPLEMENTARY INFORMATION: On December 17, 1990, GM submitted a petition for exemption from the theft prevention standard for its Bonneville and Park Avenue car lines, pursuant to 49 CFR part 543, Exemption from Vehicle Theft Prevention Standard, for MY 1992 and beyond.

The information submitted by GM constitutes a complete petition, as required by 49 CFR 543.7, in that it meets the general requirements contained in § 543.5 and the specific content requirements of § 543.6. Accordingly, December 17, 1990 is the date on which the statutory 120 day period for processing GM's petition began.

In its petition, GM identified the system as the Personalized Automotive Security System ("PASS-Key"). Since the beginning of the 1991 model year, the Park Avenue has had "PASS-Key" as standard equipment. "PASS-Key" will not be standard on the Bonneville until the beginning of the 1992 model year. This "PASS-Key" system is identical to that on the Chevrolet Camaro and Pontiac Firebird car lines, for which the agency granted a partial exemption from theft marking beginning from MY 1990 (54 FR 33655, August 15, 1989). GM is requied to mark only the engines and transmissions on the Camaro and Firebird car lines.

The "PASS-Key" theft deterrent system utilizes an ignition key, an ignition lock cylinder and a decoder module. The conventional mechanical code permits the key to release the steering wheel and transmission shift level locks. Before the vehicle can be started, the electical resistance of a pellet embedded in the shank of the key must be sensed by elements in the lock cyliner and its value compared to a fixed resistance in the decoder module located in the instrument panel in the passenger compartment. If the key pellet has the proper resistance, the starter enable relay is energized and a discrete signal is transmitted to the electronic control module. Recognition of the signal by the electronic control module allows fuel injector pulses to begin. If a key other than the one with proper resistance for that vehicle is inserted, the decoder module will shut down for a period of two to four minutes. The time period for shut down is controlled by a timer located within the module. Variability in the length of time that the decoder is shut down is a function of the components preselected by GM for a specific timer and is not a programmable feature by the owner/operator. GM claims that any process of trial and error using various keys with different resistance pellets will cause the timer to recycle and begin again with each failed attempt to match resistance values of the key and the decoder.

The components are located in the passenger compartment behind the instrument panel, with the exception of the starter solenoid/starter motor combination which is physically located in the engine compartment. GM states that unlike many other theft deterrent systems, removing and subsequently reapplying vehicle power does not alter "PASS-Key" performance.

GM states that "PASS-Key" is passive in that the system becomes fully functional once the ignition is turned off and the key is removed. No further operator action is required for activation. GM states that because "PASS-Key" is fully operational once the engine has been turned off and the key removed, it has not provided specific visual or audio warnings, beyond the key warning buzzer, that unauthorized attempts have been made to enter or move the vehicles. However, the "PASS-Key" system includes a starter interrupt function which, when activated, makes the vehicle inoperable.

In order to draw attention to improper use of a key to start the vehicle, GM has installed a yellow "Security" list inside the passenger compartment. This light is designed to activate if the proper key with a dirty or contaminated resistor pellet is used and the vehicle does not start. If this happens, it is necessary to clean the key and delay a further attempt to start the engine until the "PASS-Key" timer has run its course (a minimum of four minutes). The "Security" light is designed to illiminate also if a key with the proper mechanical but improper electrical code is used to try and start the vehicle.

GM states that a premise for the design of any theft deterrent system in its products has been that a failure in such a system would not affect a running vehicle. Although it may not be possible to restart a vehicle after such a failure, that failure would not stop an engine that has been started. That criterion has been met in "PASS-Key." Once an "Engine Running" signal has been identified by the engine control module, a "PASS-Key" failure will not cause the engine to stop.

GM's analysis of the failure mode effects of the "PASS-Key" system indicated that the component with the highest probability for failure was the ignition lock cylinder with its key, wiring, contacts, and rotational motion. A 52,500 cycle automated bench test of the key, ignition lock cylinder, wiring, and "PASS-Key" electronics module was conducted over a temperature range of approximately −40 degrees Fahrenheit to +120 degrees Fahrenheit. GM informs this agency that for the "C" body platform, on which the Bonneville is based, tests with a total of 2,327,848 cycles were performed with one failure. GM states that this is equivalent to 1.01 defects per thousand vehicles and a one year reliability of 0.995. Since the same "PASS-Key" system is used as on the "C" body, GM applies these test results to the "H" platform, on which the Park Avenue is based.

Although the Park Avenue has had "PASS-Key" as standard equipment since the start of production for 1991, early warranty data for these vehicles is insufficient to confirm the bench test results. GM informs this agency that since failures in the "PASS-Key" system will directly affect consumer satisfaction, GM will monitor warranty data on this system. Since the Bonneville will have the "PASS-Key" as standard equipment with the beginning of production for 1992, there are not yet any warranty data for these vehicles to confirm the bench test results.

As previously stated, beginning with MY 1990, the GM Firebird and Camaro car lines were granted partial exemptions from theft marking. Since MY 1989, both car lines have had the "PASS-Key" system as standard equipment. To substantiate its statements on the "PASS-Key" antitheft system effectiveness, GM provided theft data on Firebird/Camaro theft rates for MYs 1986 through 1989. The data provided by GM is reported by the National Crime Information Center (NCIC), which is NHTSA's official source of the theft data. (See 50 FR 46666, dated November 12, 1985.) The NCIC receives reports on all thefts.

The NCIC data reported by GM showed that Firebird/Camaro theft rates (per thousand vehicles) by Model Year were: For 1986, 27.83 for the Firebird, 29.49 for the Camaro; for 1987, 30.14 for the Firebird, 26.03 for the Camaro; for 1988, 29.38 for the Firebird, 25.74 for the Camaro; and for 1989, 8.99 for the Firebird and 8.69 for the Camaro.

GM stated a belief, based on the decreases in thefts of the Firebird/Camaro car lines during the 1989 model year which occurred with the implementation of "PASS-Key" as standard equipment, that the "PASS-Key" system is "extremely effective in deterring motor vehicle theft." GM stated that it believes that such a reduction will be achieved with the Bonneville and the Park Avenue when "PASS-Key" becomes standard on those vehicles.

NHTSA believes that there is substantial evidence indicating that the antitheft system to be installed as standard equipment will likely be as effective in reducing and deterring motor vehicle theft as compliance with the requirements of the theft prevention standard (49 CFR part 541). This determination is based on the information GM submitted with its petition and on other available information. The agency believes that the device will provide all but one of the types of performance listed in § 543.6(a)(3); promoting activation; preventing defeat or circumventing of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device. The single exception is that the device lacks an alarm which would attract attention to unauthorized entries.

As required by section 605(b) of the statute and 49 CFR 543.6(a)(4), the agency also finds that GM has provided adequate reasons for its belief that the antitheft device will reduce and deter theft. This conclusion is based on the information GM provided on its device. This information included a description of reliability and functional tests conducted by GM for the antitheft system and its components. GM presented extensive data on the life cycle test results of the "PASS-Key" ignition lock system.

For the foregoing reasons, the agency hereby exempts the MY 1992 Pontiac Bonneville and Buick Park Avenue car lines in part from the requirements of 49 CFR part 541. GM will be required to mark only the engines and transmissions, and replacement engines and transmissions for these car lines. Those major parts were chosen since they are among the most interchangeable of the 14 parts for which labeling is required.

The reason for the partial grant is that the GM antitheft system for the Pontiac Bonneville and Buick Park Avenue includes neither an audio nor visual alarm function. As such, the GM system lacks an important feature that the agency has stated in its rulemaking on part 543 is one of several desirable attributes which contribute to the effectiveness of an antitheft system: Automatic activation of the device; an audible or visual signal that is connected to the hood, doors, and trunk and draws attention to vehicle tampering; and a disabling mechanism designed to prevent a thief from moving a vehicle under its own power without a key.

The agency acknowledges the fact that, for Model Year 1989, the theft rates for Pontiac Firebird/Camaro have been reduced substantially. Although the theft rates for these car lines are lower than in previous years, the agency believes that more than one year of data is needed in order to accurately evaluate the effectiveness of an antitheft device.

If GM decides not to use the partial exemptions for the MY 1992 Bonneville and Park Avenue car lines, it should formally notify the agency. If such a decision is made, these car lines must be fully marked according to the requirements under 49 CFR 541.5 and 541.6 (marking of major component parts and replacement parts).

The agency notes that the limited and apparently conflicting data on the effectiveness of the pre-standard parts marking programs continue to make it difficult to compare the effectiveness of an antitheft device with the effectiveness of compliance with the theft prevention standard. The statute clearly invites such a comparison, which the agency has made on the basis of the limited data available.

NHTSA notes that if GM wishes in the future to modify the device on which this partial exemption is based, the company may have to submit a petition to modify the exemption. Part 543.7(d) states that a part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the antitheft device on which the line's exemption was based. Further, § 543.9(c)(2) provides for the submission of petitions "(t)o modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption."

The agency wishes to minimize the administrative burden which § 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be *de minimis*. Therefore, NHTSA suggests that if GM contemplates making any changes the effects of which might be characterized as *de minimis* then the company should consult the agency before preparing and submitting a petition to modify.

Authority: 15 U.S.C. 2025, delegation of authority at 49 CFR 1.50.)

Issued on April 4, 1991.

Jerry Ralph Curry,

Administrator.

[FR Doc. 91-8313 Filed 4-8-91; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

April 2, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Office of Thirft Supervision

OMB Number: 1550-0002.

Form Number: None.

Type of Review: Revision.

Title: Annual Disclosure Report.

Description: 12 CFR 563.45 requires institutions to send an annual report disclosing financial condition and material transactions with "insiders" to voting members (owners).

Respondents: Businesses or other for-profit.

Estimated Number of Respondents: 100.

Estimated Burden Hours Per Response: 40 hours.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 4,000 hours.

OMB Number: 1550-0006.

Form Number: OTS Form 1450.

Type of Review: Revision.

Title: Application for Permission to Establish a Branch Office or Change of Location of an Office.

Description: Section 545.92 requires associations, as defined in § 516.3(b) which desires to establish or change a location of a branch office, to file an application.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents: 306.

Estimated Burden Hours Per Response: 2 hours.

Frequency of Response: Submission is made by association proposing to establish branch office or change branch location.

Estimated Total Reporting Burden: 612 hours.

OMB Number: 1550-0013.

Form Number: None.

Type of Review: Revision.

Title: Request for Service Corporation Activity.

Description: 12 CFR 545.74 requires Federal associations to obtain approval prior to operating a service corporation engaged in activities not pre-approved by regulation. The regulation also requires a recordkeeping requirement for securities brokerage services. These requirements allow the OTS the review of the activity to see that it is reasonably related and will not adversely affect the safety and soundness.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents: 25.

Estimated Burden Hours Per Response/Recordkeeping: 2 hours.

Frequency of Response: Submission required each time a service corporation is requested.

Estimated Total Recordkeeping/ Reporting Burden: 210 hours.

OMB Number: 1550-0017.

Form Number: None.

Type of Review: Revision.

Title: Request to Amend Association's Charter.

Description: 12 CFR 544.2 and 552.4 require Federal association's submission of charter amendments will be pre-approved (and the association will be required to provide a 30-day advance notice), unless the charter amendment contains an anti-takeover provision or a significant issue of law or policy.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents: 155.

Estimated Burden Hours Per Response: 2 hours.

Frequency of Response: Submission required each time association amends its charter.

Estimated Total Reporting Burden: 310 hours.

OMB Number: 1550-0018.

Form Number: None.

Type of Review: Revision.

Title: Request to Amend Association's Bylaws.

Description: 12 CFR 544.5 and 552.5 require Federal association's submissions of bylaw amendments will be pre-approved (and the association will be required to provide a 30-day advance notice), unless the bylaw amendment contains an anti-takeover provision or a significant issue of law or policy.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents: 300.

Estimated Burden Hours Per Response: 2 hours.

Frequency of Response: Submission required each time bylaws are amended.

Estimated Total Reporting Burden: 600 hours.

OMB Number: 1550-0030.

Form Number: OTS Form 1344.

Type of Review: Revision.

Title: Application for Issuance of Subordinated Debt Securities.

Description: The information provided by OTS Form No. 1344 is evaluated by the OTS to determine whether the issuance of subordinated debt securities or mandatorily redeemable preferred stock complies with applicable state and Federal laws, OTS regulations and policies, and will not have an adverse effect on the Savings Association Insurance Fund (SAIF).

Respondents: Businesses or other for-profit.

Estimated Number of Respondents: 20.

Estimated Burden Hours Per Response: 100 hours.

Frequency of Response: Submitted each time association applies to issue subordinated debt securities or mandatorily redeemable preferred stock.

Estimated Total Reporting Burden: 2,000 hours.

OMB Number: 1550-0037.

Form Number: OTS Form 1240.

Type of Review: Revision.

Title: Trust Powers Application.

Description: Section 550 requires a Federal savings association, as defined in § 516.3(b) which desires to exercise fiduciary powers, either as a trust department or through an affiliate, to file an application indicating which trust services it wishes to offer and providing the information necessary to make such determinations under § 550.2(b).

Respondents: Businesses or other for-profit.

Estimated Number of Respondents: 9.

Estimated Burden Hours Per Response: 9 hours.

Frequency of Response: Submission is made by association proposing to utilize trust powers.

Estimated Total Reporting Burden: 81 hours.

Clearance Officer: John Turner (202) 906-6840, Office of Thrift Supervision,

1700 G Street NW., 3rd Floor, Washington, DC 20552.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Irving W. Wilson, Jr.,

Departmental Reports Management Officer.

[FR Doc. 91-8219 Filed 4-8-91; 8:45 am]

BILLING CODE 4810-25-M

Office of Thrift Supervision

American Savings Bank, F.S.B.; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in 5(d)(2) (B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for American Savings Bank, F.S.B., Ada, Oklahoma, on March 21, 1991.

Dated: April 3, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR DOC. 91-8280 Filed 4-8-91; 8:45 am]

BILLING CODE 6720-01-M

AmeriFirst Federal Savings Bank; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in 5(d)(2) (B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for AmeriFirst Federal Savings Bank, Miami, Florida, on March 15, 1991.

Dated: April 2, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-8281 Filed 4-8-91; 8:45 am]

BILLING CODE 6720-01-M

Citizens Security Bank, F.A.; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Citizens Security Bank, F.A., Borger, Texas, on March 22, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-8292 Filed 4-8-91; 8:45 am]

BILLING CODE 6720-01-M

County Bank, F.S.B.; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for County Bank, F.S.B., Santa Barbara, California, on March 27, 1991.

Dated: April 3, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-8293 Filed 4-8-91; 8:45 am]

BILLING CODE 6720-01-M

Republic Savings Bank, FSB; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Republic Savings Bank, FSB, Rockville, Maryland, on March 21, 1991.

Dated: April 3, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-8294 Filed 4-8-91; 8:45 am]

BILLING CODE 6720-01-M

The Federal Savings Bank, FSB Atlanta, GA; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for The Federal Savings Bank, FSB, Atlanta, Georgia on March 22, 1991.

Dated: April 3, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-8286 Filed 4-8-91; 8:45 am]

First Federal Savings Association of Chickasha; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for First Federal Savings Association of Chickasha, Chickasha, Oklahoma, on March 21, 1991.

Dated: April 3, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-8288 Filed 4-8-91; 8:45 am]

BILLING CODE 6720-01-M

State Savings, FSB; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for State Savings, FSB, Jackson Heights, New York, on March 21, 1991.

Dated: April 3, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-8282 Filed 4-8-91; 8:45 am]

BILLING CODE 6720-01-M

United Federal Savings Association of Iowa, Des Moines, IA; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for United Federal Savings Association of Iowa, Des Moines, Iowa, on March 21, 1991.

Dated: April 3, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-8287 Filed 4-8-91; 8:45 am]

BILLING CODE 6720-01-M

American Federal Bank, A Federal Savings Bank; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owner's Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for American Federal Bank, a Federal Savings Bank, Ada, Oklahoma, OTS No. 7299, on March 21, 1991.

Dated: April 3, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-8277 Filed 4-8-91; 8:45 am]

BILLING CODE 6720-01-M

Columbia Savings and Loan Association; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) of the Home Owner's Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Columbia Savings and Loan Association, Beverly Hills, California, OTS No. 6325, on March 20, 1991.

Dated: April 3, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-8278 Filed 4-8-91; 8:45 am]

BILLING CODE 6720-01-M

The Federal Savings Bank, Swainsboro, GA; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for The Federal Savings Bank, Swainsboro, Georgia, on March 22, 1991.

Dated: April 3, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-8283 Filed 4-8-91; 8:45 am]

BILLING CODE 6720-01-M

First Federal Savings and Loan Association of Chickasha; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in Section 5(d)(2)(A) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for First Federal Savings and Loan Association of Chickasha, Chickasha, Oklahoma, OTS No. 1937, on March 21, 1991.

Dated: April 3, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-8285 Filed 4-8-91; 8:45 am]

BILLING CODE 6720-01-M

Citizens Security Bank, a Federal Savings Bank; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2)(A) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Citizens Security Bank, A Federal Savings Bank, Borger, Texas, OTS No. 7951, on March 22, 1991.

Dated: April 3, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-8291 Filed 4-8-91; 8:45 am]

BILLING CODE 6720-01-M

Mercantile Savings Bank; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2)(C) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Mercantile Savings Bank, Southaven, Mississippi, OTS No. 7598, on March 21, 1991.

Dated: April 3, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-8290 Filed 4-8-91; 8:45 am]

BILLING CODE 6720-01-M

Republic Federal Savings Bank; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in Section 5 (d)(2)(A) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Republic Federal Savings Bank, Rockville, Maryland, OTS No. 8455, on March 21, 1991.

Dated: April 3, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-8289 Filed 4-8-91; 8:45 am]

BILLING CODE 6720-01-M

State Saving, F.A.; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for State Savings, F.A., Jackson Heights, New York (OTS No. 1747), on March 21, 1991.

Dated: April 3, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-8279 Filed 4-8-91; 8:45 am]

BILLING CODE 6720-01-M

United Federal Savings Bank of Iowa, Des Moines, IA; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2)(A) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for United Federal Savings Bank of Iowa, Des Moines, Iowa, Docket Number 3228, on March 21, 1991.

Dated: April 3, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-8284 Filed 4-8-91; 8:45 am]

BILLING CODE 6720-01-M

UNITED STATES INFORMATION AGENCY

Central European Citizens Network Initiative

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: The Office of Citizen Exchanges (E/P) announces a competitive award program for private, non-profit organizations to develop projects that build a constructive linkage with counterpart institutions/groups in Poland, Hungary, the Czech and Slovak Republic, Bulgaria, Romania, and Yugoslavia, in ways supportive in the aims of the Bureau of Educational and Cultural Affairs. All communications

concerning this announcement should refer to the:

Central European Citizens Network Initiative (CNI)

Interested applicants are urged to read the complete **Federal Register** announcement before addressing inquiries to the Office or submitting their proposals.

DATES: This action is effective from the publication date of this notice through May 24, 1991, for projects whose activities commence after September 1, 1991.

Overview of the Citizens Network Initiative

For the first time in over forty years, free and open elections have been held in Central and Eastern Europe. While democratic transitions have begun, there is a great need for U.S. assistance in the development and enhancement of indigenous organizations for citizen participation: i.e., voluntary associations in the private sector that mediate between the individual and the state. The building blocks of a healthy civil society, these non-governmental institutions include social and civic organizations. Long suppressed, until recently, in Central and Eastern Europe, voluntary, civic and other associations can provide an important outlet for criticism and constructive change. They also serve as an important avenue for community participation in problem solving, quality of life enhancement, and professional development, and serve ultimately as a bulwark against despotism.

Although the quest for formal individual freedom in Central and Eastern Europe has been won or is being won, this in itself does not guarantee a just and rewarding social order, learning opportunities, or a protected environment. Positive change in a newly decentralized democratic system, therefore, may well require the political energy that comes from active participation by individual citizens working through autonomous intermediary associations, controlled neither by state nor ruling party.

A generalized American goodwill toward Central Europe is undeniable, but solutions to the problems there require a profound understanding of the political, social, and economic context. Central and Eastern Europe have not had many of the citizen-supported institutions that one takes for granted in the United States. Volunteerism and community participation as modern traditions barely exist at best, and only rarely have non-state and non-party organizations been permitted to develop. Until the changes of the last two years, leaders had been centrally selected and imposed on communities, information was tightly controlled, and edicts were issued to limit individual initiative.

The Citizen Network Initiative (CNI) of the United States Information Agency cannot construct the institutional framework of civil society in Central and Eastern Europe, but with other public and private sector initiatives, it might assist. This program will not encompass the following: The purchase or construction of buildings or other structures, the provision of long-term staff support, or computers and other hardware. Nor will it involve Americans in the decision-making process concerning foreign institutional leadership.

CNI will focus on facilitating the development of new citizen groups and associations, providing information to leaders who are trying to build these institutions and helping them pool resources to maximize their ability to deal with their nation's problems. By this means, we hope to enable people to define political purposes consonant with their values, create a basis for effective common action, and foster civic learning and public dialogue. Although American assistance should prove beneficial at the outset, the U.S. Government role should diminish considerably after the initial transfer of information is accomplished, sustainable information/training centers are set up, and community associations are established. Through international linkages, exchanges of resource materials, and follow-on visits, programs should continue beyond the life of the funded project. CNI programs should therefore focus chiefly on finding ways to use the skills and talents of Central Europeans, enabling them to move ahead in building associations with modest infrastructure support.

The development of Citizen Network programs is presumed to be supportive of the assumed interests of people in Central and Eastern Europe. U.S. support hopes to expand or enhance those interests and skills through: Exposure to parallel experiences, access to information on the design of voluntary associations and professional societies, and consultancies.

Objectives of the Citizens Network Initiative

USIA will accord highest priority in this competition to proposals for projects that encourage the development of civic and other community organizations in Poland, Hungary, and the Czech and Slovak Republic, as well as in Romania, Bulgaria, and Yugoslavia.

The proposals to be considered should contribute to the development of private sector support institutions in any one of five general thematic areas. Applicants must indicate which of the following areas is addressed in their proposal cover sheets.

1. Development and enhancement of chambers of commerce and volunteer support groups;
2. The strengthening of local, municipal, and regional government administration through voter registration leagues, and associations developed for governors, mayors, key bureaucrats, and other officials;
3. Volunteer and community association development in such areas as civic life, civic education, environment, and consumer protection;
4. Indigenous foundation development;
5. Education association development/enhancement to provide planning assistance and the provision of other services in support of associational development, citizen boards of education, and parent-teacher associations.

Program Development Recommendations

Applicants should not provide proposals that are overly ambitious and superficial. Rather, institutions should provide strong evidence of their ability to accomplish a few tasks exceptionally well.

Applicants must include a detailed description of why their project is important to the needs of the developing civil societies of Central and Eastern Europe (providing empirical evidence to support the case for their importance), what their objectives or goals are, and how they will achieve those objectives (through a carefully developed plan) and develop a sustainable and effective citizen network association. Program plans should accurately describe the level of citizen networking in existence, whole providing a credible plan for how the institutional base might be enhanced and/or expanded.

Applicants are strongly encouraged to provide confirmation that Central and Eastern European co-sponsors endorse the proposed citizen network program. Proposals should also explain how the U.S. and European cosponsors will generate additional support (fiscal, social, and political) for their model program and how initial achievements could be expanded to other audiences and locations.

Applicants should clearly indicate the resources (financial, physical, organizational and personnel) that are available to them in Europe for the expansion of voluntary associations and information networks. Proposals must describe the resources the U.S. co-sponsoring institution will bring to the project and should not rely on assistance from USIS posts once a project is underway.

The applicants should describe how they intend to carry out their project.

Institutions applying for assistance in support of citizen network development should not simply present a plan to replicate American institutions and associations, but should clearly demonstrate an in-depth understanding of European needs and how the U.S. experience is potentially relevant if reconfigured to meet those needs.

The potential recipient institution should provide evidence of its expertise in citizen network fund raising, and may wish to develop an information program for Eastern and Central European cosponsors on ways to sustain their program.

Program Design Methods or Approaches

Applicants may wish to use any or all of the following approaches to achieve their program objectives:

—The creation of formal institutional linkages that live beyond the duration of USIA funding support;

—The identification and involvement of Central and Eastern European counterpart private sector associations in the programs to increase the probability that these programs will endure;

—The development of indigenous associations to serve as magnet centers attracting community leaders from other regions or countries to share their experiences;

—The development of consortia, associations and information networks in the United States and in Central and Eastern Europe;

—A small number of hands-on study tours in the United States that may demonstrate how U.S. private sector institutions began, how they pool resources, establish objectives and by-laws, create staff structures, and find ways to acquire needed funds from their own members and from the private and public sectors. Visitors can relate their interest in citizen network development with first-hand observation of theories and concepts at work in the United States;

—The provision of a limited number of carefully crafted internships in the U.S. and extended learning programs (from six weeks to three months with considerable in-country cost-sharing);

—The extension of American citizen network professional know-how through consultations in Central Europe for periods of not less than one month on all aspects of non-profit, professional and volunteer institution development and management;

—The development of communications systems for citizen networks: e.g., the design, production and dissemination of overseas newsletters, on-line data systems, hot lines, and enhanced communication technology (including desk-top publication) to enrich and/or expand citizen network development. Modest funding support for soft-ware, learning modules, material development and/or translation and distribution may be requested.

Other Logistical Considerations: Programs will be run by the recipients independently through the mobilization of sufficient funding to insure on-site program development, and will not draw significantly upon the limited resources of USIS posts in the region. Monitoring and oversight will be provided by appropriate Agency elements.

Per diem support from host institutions during an internship component is strongly encouraged. However, for *all* internship programs, the non-profit institution should receive funds from corporate or other sponsors and use these to provide food, lodging, and pocket money for the participants. In no case may the intern receive a wage or "be hired" by the sponsoring institution. Internships should include a thematic orientation workshop in the U.S., an evaluation session at the end of the internship component, and possibly a short professional program in another location in the U.S. to include an examination of American cultural values and traditions.

Recipient institutions should try to maximize cost-sharing in all facets of their program design, and to stimulate U.S. private sector support.

Proposals for bilateral programs are subject to review and comment by the USIS post in the relevant country. In the selection of all foreign participants, USIA and USIS posts retain the right to nominate participants and to accept or deny participants recommended by the program institution. The institution should provide the names of American participants to the Office of Citizen Exchanges for information purposes.

Funding and Budget Requirements for All Submissions: The Office of Citizen Exchanges requires extensive cost-sharing for all projects. Proposals with cost sharing of less than 40 percent of the total project cost must provide exceptionally strong and convincing justification even to receive consideration and in any event would stand a low chance of being funded. Since USIA assistance constitutes only a portion of total project funding, proposals should list and provide evidence of other anticipated sources of support. Applications should demonstrate substantial financial and in-kind support using a three-column format that clearly displays cost-sharing support of proposed projects. The required format follows:

Line item	USIA support	Cost sharing	Total
Travel, per diem			
Total	$	$	$

Funding assistance is primarily limited to activities in Central and Eastern Europe including participant travel and per diem. Of the money received from USIA, no more than 20% can be used for administrative costs (salaries, benefits, other direct and indirect costs) incurred in the United States. Associations, universities, and other institutions applying for USIA support are encouraged to cost-share indirect costs and to pay the salaries of their faculty or professionals while they are providing information through consultancies and targeted workshops in Central Europe.

Given the fact that USIA posts overseas are in many cases over-extended, it is necessary for the applicant to provide evidence of institutional cosponsorship in Central and Eastern Europe and, in some cases, on-site presence to insure the logistical success of all programs.

Organizations with less than four years experience in conducting international exchange programs are limited to $60,000 of USIA support. In most cases, proposals will be considered in the range between $50,000 and $200,000 in the amount requested from USIA, although USIA reserves the right to make awards for amounts outside this range. USIA anticipates funding activities for one year, although applications should be structured so that a one year renewal is an option.

Additional Restrictions: Office of Citizen Exchanges awards are not given to support projects whose focus is limited to technical issues, or for research projects, publications funding for dissemination in the United States, individual student exchanges, film festivals or exhibits. Nor does this office provide scholarships or support for long-

term (a semester or more) academic studies. Competitions sponsored by other Bureau offices are also announced in the **Federal Register.**

Each private sector activity must maintain a non-partisan character and meet the highest professional standards.

Proposals for projects are welcome for single country or regional projects that involve two or more of the Central and Eastern European countries.

The Office does not support proposals that are essentially for conferences or seminars (i.e., one to fourteen-day programs with planary sessions, main speakers, panels, and a passive audience). Conferences can be supported only insofar as they are a minor part of a larger project that includes such elements as project planning and development, internships, consultations, study tours, and intensive workshops.

The themes addressed in these exchange programs must be of long-term importance rather than focused exclusively on current events or short-term issues. No funding is available exclusively to send U.S. citizens to conferences or conference-type seminars overseas; neither is funding available for bringing foreign nationals only to attend routine professional association meetings in the United States.

Application Deadlines

Proposals must be received in room 336 of the U.S. Information Agency by COB May 24, 1991, for projects whose activities will begin after September 1, 1991. Institutions must submit 16 copies of the final proposal and attachments. Proposals must fully accord with the terms of this Request for Proposals (RFP) as well as the Project Proposal Information Requirements (OMB #3116–0175). (See "**Technical Requirements.**") Issuance of this RPF does not constitute an award commitment on the part of the Government. The Government reserves the right to reject any or all applications received. Final award cannot be made until funds have been fully appropriated, allocated and committed through internal USIA procedures. Applications are submitted at the risk of the applicant; should circumstances prevent an award, all preparation and submission costs are at the applicant's expense.

Completed proposals should be mailed to: U.S. Information Agency, Office of the Executive Director, E/X, c/o Citizen Network Initiative (CNI), room 336, 301 4th Street SW., Washington, DC 20547.

Additional Application Requirements

Proposals must contain a narrative which includes a complete and detailed description of the proposed program activity as follows:

1. A brief statement of what the project is designed to accomplish, how it is consistent with the purposes of the USIA award program, and how it relates to USIA's mission.

2. A concise description of the project, spelling out complete program schedules, proposed itineraries, who the participants will be, where they will come from, and how they will be selected.

3. A work plan outlining the development of each component part of the institution's exchange program.

4. Detailed program agenda with justifications for program meetings, intensive workshops and other program activities.

5. Resumes of project personnel, not to exceed two pages in length and tailored for this specific program.

6. A statement of what follow-up activities are proposed, how impact will be measured, and what groups, beyond the direct participants, will benefit from the project and how they will benefit.

These statements (not including resumes) should not exceed a total of 25 pages. Excessive length of proposals will work against an applicant's probability of selection.

Review Criteria

USIA will consider proposals based on the following criteria:

1. *Quality of Program Idea:* Proposals should exhibit originality, substance, rigor, and relevance to Agency mission.

2. *Institution Reputation/Ability/Evaluation:* Institutional recipients should demonstrate potential for program excellence and/or track record of successful programs. Relevant evaluation results of previous projects are part of this assessment.

3. *Project Personnel:* Personnel's thematic and logistical expertise should be relevant to the proposed program.

4. *Program Planning:* Detailed agenda and relevant work plan should demonstrate substantive rigor and logistical capacity.

5. *Thematic Expertise:* Proposal should demonstrate expertise in the subject area which guarantees an effective sharing of information.

6. *Cross-Cultural Sensitivity/Area Expertise:* Evidence of sensitivity to historical, linguistic, and other cross-cultural factors; relevant knowledge of geographic area should be evident.

7. *Ability to Achieve Program Objectives:* Objectives should be reasonable, feasible, and flexible. Proposal should clearly demonstrate how the recipient institution will meet the program's objectives.

8. *Multiplier Effect:* Proposed programs should strengthen long-term mutual understanding, to include maximum sharing of information and establishment of long-term institutional and individual ties.

9. *Sustainability:* At the close of the activity, proposed program should leave behind an improved or enhanced institutional capacity overseas, and the development of enduring international linkages. Proposals should also provide a plan for continued exchange activities (without USIA support).

10. *Cost-Effectiveness:* The overhead and administrative components should be kept as low as possible. All other items should be necessary and appropriate to achieve the program's objectives.

Cost-Sharing: Proposals should maximize cost-sharing through other private sector support as well as institution direct funding contributions.

Technical Requirements

Proposals can only be accepted for review when they are fully in accord with the terms of this RFP as well as with Project Proposal Information Requirements (OMB #3116–0175) as follows:

1. Bureau of Educational and Cultural Affairs Grant Application Cover Sheet (OMB #3116–0173).

2. Assurance of Compliance with U.S. Information Agency Regulations under Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and Title IX of the Education Amendments of 1972 (OMB #3116–0191).

3. Certification Regarding Drug-Free Workplace Requirements for Grantees Other Than Individuals.

4. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion, Primary Covered and Lower Tier Covered Transactions, Forms IA–1279 and IA–1280.

5. Compliance with Office of Citizen Exchanges Additional Guidelines for Conferences (if applicable).

6. Compliance with Travel Guidelines for Organizations Inside and Outside Washington, DC (if and as applicable).

7. For proposals requesting $100,000 or more in grant monies, Certification for Contracts Grants and Cooperative Agreements, Form M/KG–13.

8. For proposals requesting $100,000 or more in grant monies, Disclosure of Lobbying Activities (OMB #0348–0046).

Please Note: All application forms for this announcement may be obtained by writing to the Office of Citizen Exchanges (E/P), USIA, ATTN: CNI Program, 301 4th Street SW., Washington, DC 20547. Inquiries from the Office of Citizen Exchanges concerning technical requirements are welcome prior to the submission of completed applications.

Dated: March 14, 1991.

William P. Glade,

Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 91-8240 Filed 4-8-91; 8:45 am]

BILLING CODE 8230-01-M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Structural Safety of Department of Veterans Affairs Facilities; Meeting

The Department of Veterans Affairs gives notice under Public Law 92-463 that a meeting of the Advisory Committee on Structural Safety of Department of Veterans Affairs Facilities will be held in room 442, of the Lafayette Building, 811 Vermont Avenue, NW., Washington, DC, on April 26, 1991, at 10 a.m. The committee members will review Department of Veterans Affairs construction standards and criteria relating to fire, earthquake and other disaster resistant construction.

The meeting will be open to the public up to the seating capacity of the room. Because of the limited seating capacity, it will be necessary for those wishing to attend to contact Mr. Edward F. Younger, Director, Structural Engineering Service, Office of Facilities, Department of Veterans Affairs Central Office (phone 202-233-2864) prior to April 24, 1991.

Dated: April 3, 1991.

By direction of the Secretary.

Sylvia Chavez Long,

Committee Management Officer.

[FR Doc. 91-8337 Filed 4-8-91; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 68
Tuesday, April 9, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

April 4, 1991.

TIME AND DATE: 10:00 a.m., Thursday, April 11, 1991.

PLACE: Room 600, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument on the following:

1. *Beth Energy Mines, Inc.*, et al., Docket No. PENN 88-149-R, etc. (Issues include whether the judge erred in finding that Beth Energy violated 30 CFR § 75.303(a), that three of its supervisors knowingly authorized the violation, and that the violation was the result of its unwarrantable failure.)

Any person attending this hearing who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR § 2706.150(a)(3) and § 2706.160(e).

TIME AND DATE: Immediately following oral argument.

STATUS: Closed [Pursuant to 5 U.S.C. § 552b(c)(10)].

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Beth Energy Mines, Inc.*, et al., Docket No. PENN 88-149-R, etc. (See oral argument listing).

It was determined by a unanimous vote of Commissioners that this meeting be held in closed session.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653-5629/(202) 708-9300 for TDD Relay 1-800-877-8399 Toll Free.

Jean H. Ellen,
Agenda Clerk.

[FR Doc. 91-8464 Filed 4-5-91; 2:44 pm]

BILLING CODE 6735-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, April 15, 1991.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: April 5, 1991.

William W. Wiles,
Secretary of the Board.

[FR Doc. 91-8462 Filed 4-5-91; 2:44 pm]

BILLING CODE 6210-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

AGENCY: Institute of Museum Services.

ACTION: Notice of Meeting.

SUMMARY: This notice sets forth the agenda of a forthcoming meeting of the National Museum Services Board. This notice also describes the functions of the Board. Notice of this meeting is required under the Government in the Sunshine Act (Public Law 94-409) and regulations of the Institute of Museum Services, 45 CFR 1180.84.

TIME AND DATES: 2 to 4 p.m.—Thursday, April 25 and 9 to 3 p.m.—Friday, April 26th, 1991.

STATUS: Open.

ADDRESS: Old Post Office Building, 1100 Pennsylvania Avenue NW., Main Floor—room MO7, Washington, DC 20506, (202) 786-0536.

FOR FURTHER INFORMATION CONTACT: William Laney, Executive Assistant to the National Museum Services Board, room 510, 1100 Pennsylvania Avenue NW., Washington, DC 20506 (202) 786-0536.

SUPPLEMENTARY INFORMATION: The National Museum Services Board is established under the Museum Services Act, Title II of the Arts, Humanities, and Cultural Affairs Act of 1976, Public Law 94-462. The Board has responsibility for the general policies with respect to the powers, duties, and authorities vested in the Institute under the Museum Services Act.

The meetings of April 25 and 26, 1991 will be open to the public.

If you need special accommodations due to a disability, please contact: Institute of Museum Services, room 510—1100 Pennsylvania Avenue NW., Washington, DC 20506, (202) 786-0536, TDD (202) 786-9136 at least seven (7) days prior to the meeting.

National Museum Services Board

April 25, 1991, Meeting Agenda.

I. Discussion of Eligibility Criteria for Applicants

April 26 1991, Meeting Agenda

I. NMSB Chairman's Report and Approval of Minutes of November 16, 1990 Meeting
II. IMS Director's Report
III. Agency Agenda Reports
  A. IMS Appropriations Issues
  B. IMS Program Reports
  C. IMS Public Affairs
  D. IMS Legislative Issues
IV. IMS Issues Other—Open Agenda

Dated: April 2, 1991.

Susannah S. Kent,
Director, Institute of Museum Services.

[FR Doc. 91-8386 Filed 4-5-91; 9:48 am]

BILLING CODE 7036-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of April 8, 15, 22, and 29, 1991.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of April 8

Thursday, April 11

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of April 15—Tentative

There are no meetings scheduled for the Week of April 15.

Week of April 22—Tentative

Tuesday, April 23

1:30 p.m.
Discussion/Possible Vote on Browns Ferry Unit 2 Restart (Public Meeting)

Wednesday, April 24

9:30 a.m.

Briefing on Nuclear Plant Aging Research (Public Meeting)

10:30 a.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of April 29—Tentative

Thursday, May 2

11:30 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: April 4, 1991.

William M. Hill, Jr.,

Office of the Secretary.

[FR Doc. 91–8468 Filed 4–5–91; 2:44 pm]

BILLING CODE 7590–01–M

Corrections

Federal Register
Vol. 56, No. 68
Tuesday, April 9, 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 AGRICULTURE

Farmers Home Administration

7 CFR Parts 1866 and 1951

Final Payment on Loans

Correction

In proposed rule document 91-6457 beginning on page 11520, in the issue of Tuesday, March 19, 1991, make the following correction:

On the same page, in the 3d column, in the 4th paragraph, in the 15th line, insert the following after "balances": "are no longer appropriate. Field offices may now obtain payoff balances".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

International Trade Administration

The Pennsylvania State University, et al., Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

Correction

In notice document 91-7378 appearing on page 12891 in the issue of Thursday, March 28, 1991, make the following correction:

In the fourth paragraph, in the ninth line, "0.006%" should read "0.006°/₀₀".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Statement of Organization, Functions, and Delegations of Authority; Office of Coordinated Care Policy and Planning and the Office of Prepaid Health Care Operations and Oversight

Correction

In notice document 91-6992 beginning on page 12374 in the issue of Monday, March 25, 1991, make the following correction:

On page 12376, in the second column, in the sixth line from the bottom of the page, the date should read "March 13, 1991."

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[BPD-629-FN]

RIN 0938-AE03

Medicare Program; Schedule of Limits on Home Health Agency Costs Per Visit for Cost Reporting Periods Beginning On or After July 1, 1989

Corrections

In notice document 91-7100 beginning on page 12934, in the issue of Thursday, March 28, 1991, make the following corrections:

1. On page 12937, in the third column, in the exampple at the bottom of the page, in the third line from the bottom, "+14.32" should read "+14.31".

2. On page 12939, in **TABLE II**, in the fourth column, in the third line, "1.93" should read "1.94".

3. On page 12940, in **TABLE IIIA**, in the third column, in the entry following Caugas, PR, "¹6279" should read "¹.6279"; and in the entry following Charleston, SC, "8912" should read ".8912".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No.90-ANE-06]

Amendment to Control Zone; Hartford, CT

Correction

In rule document 91-4041 appearing on page 6962 in the issue of Thursday, February 21, 1991, make the following correction:

§ 71.171 [Corrected]

In the second column, under **Hartford, CT [Revised]**, in the second line, in the Longitude description, "71" should read "72".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 91-ASO-6]

Proposed Revision of Transition Area, Pascagoula, MS

Correction

In proposed rule document 91-5414 beginning on page 9662 in the issue of Thursday, March 7, 1991, make the following corrections:

"Pascaqoula" should read "Pascagoula" in the following instances:

a. The subject line in the heading;

b. On page 9662, in the second column, under SUMMARY, in the second line;

c. On the same page, in the third column, in the second full paragraph, in the fourth line.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 90-ASW-52]

Proposed Alteration of VOR Federal Airway V-263; New Mexico

Correction

In proposed rule document 91-7077 beginning on page 12492 in the issue of Tuesday, March 26, 1991, make the following corrections:

1. On page 12492, in the second column, the subject line should read as set forth above.

2. On the same page, in the third column, in the ninth line, insert "of" between "flow" and "traffic".

3. On page 12493, in the first column, under **The Proposal**, in the first paragraph:

A. In the seventh line "charter" should read "charted".

B. In the 12th line "albuquerque" should read "Albuquerque".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[INTL-625-89]

RIN 1545-AN83

Deduction of Amounts Owed to Related Foreign Persons

Correction

In proposed rule document 91-6409 beginning on page 11531 in the issue of Tuesday, March 19, 1991, make the following correction:

On page 11531, in the third column, in the third full paragraph, in the eighth line from the bottom, "257" should read "267".

BILLING CODE 1505-01-D

federal register

Tuesday
April 9, 1991

Part II

Department of Education

Pell Grant Program; Publication of 1991-92 Award Year Zero Pell Grant Index Charts

DEPARTMENT OF EDUCATION

Pell Grant Program

AGENCY: Department of Education.

ACTION: Publication of the 1991–92 Award Year Zero Pell Grant Index (PGI) Charts.

SUMMARY: The Secretary publishes the Zero Pell Grant Index (PGI) Charts for institutions to use when verifying application information under the Pell Grant Program. The use of the Zero PGI Charts is authorized by § 668.59(a)(2) of the Student Assistance General Provisions regulations.

SUPPLEMENTARY INFORMATION: The Pell Grant Program provides grant assistance to financially needy students to help them meet the cost of postsecondary education. In order to receive a Pell Grant, a student must submit an application to the Secretary that contains both financial and non-financial information which permits the Secretary to determine the student's PGI. The PGI is an amount which the student and his or her family may reasonably be expected to contribute toward the student's cost of a postsecondary education.

The Secretary notifies the student of his or her PGI on a document called a Student Aid Report (SAR). On the SAR, the Secretary also includes the information reported by the applicant on the application. The Secretary uses some of this information to calculate the student's PGI.

In order to assure that applicants for Pell Grants provide accurate information on their applications, the Secretary may require some applicants to verify and update the information submitted on the application. The regulations governing this verification process are in the Student Assistance General Provisions regulations, 34 CFR part 668, subpart E. Generally, under these regulations if an applicant is required to change any of the information on his or her application, the applicant must make the changes on the SAR that he or she received and must resubmit that revised SAR to the Secretary.

However, there are some circumstances where the changed application information will not change the student's PGI, and, under those circumstances, the Secretary does not require the applicant to resubmit the SAR. Under § 668.59(a)(2) of the Student Assistance General Provisions regulations, the Secretary does not require an applicant to resubmit the changed SAR to the Secretary if the applicant has a PGI of zero and the institution that the applicant is attending can determine that the applicant's PGI will remain at zero using verified information and the Zero PGI Charts.

The Zero PGI Charts are a simplified version of the formula the Secretary uses in calculating an applicant's PGI. The charts may be used only if:

- The applicant's dependency status does not change, and
- The applicant's (and spouse's) income and assets and the parental income and assets of a dependent student do not exceed specified amounts.

An institution may use the Zero PGI Charts to calculate a Pell Grant applicant's PGI if the following criteria are satisfied. (These criteria are based upon sections 411A through 411F of the Higher Education Act of 1965, as amended (HEA).)

For Students Qualified to Use the Simplified Needs Test

1. The effective income of a single dependent student is less than $4,001 in calendar year 1990.
2. The effective income of a married dependent student and spouse is less than $5,701 in calendar year 1990.
3. The effective family income of an unmarried independent student without dependent children is less than $6,001 in calendar year 1990.
4. The effective family income of a married independent student without dependents is less than $7,501 in calendar year 1990, if the student does not qualify to use the full employment expense offset (EEO), or the effective family income is less than $9,001 if the student is qualified to use the full EEO.
5. The effective family income of an independent student with one dependent (other than a spouse) is less than $9,001 in calendar year 1990.

For Dependent Students [1] Using the Regular Needs Test

1. The effective income of a single dependent student is less that $4,001.
2. The effective income of a married dependent student is less than $5,701.
3. Dependent student and spouse net assets equal zero.[2]
4. Net home assets of parents are less than $30,001.[2]
5. Net business assets (exclusive of farm assets) of parents are less than $80,001.
6. Net farm (or a combination of net farm and net business assets) of parents are less than $100,001.
7. Net parental assets, other than home, farm, or business assets are less than $25,001.
8. Combined net parental business, home, and other assets (exclusive of farm assets) are less than $110.001.[2]
9. Combined net parental farm, business, home, and other assets are less than $130,001.[2]

For Independent Students [3] Using the Regular Needs Test

1. The effective family income of an unmarried independent student without dependent children is less than $6,001.
2. The effective family income of a married independent student without dependents is less than $7,501, if the student is not qualified to use the full EEO, or the effective family income is less than $9,001 if the student is qualified to use the full EEO.
3. The effective family income of an independent student with one dependent (other than spouse) is less than $9,001.
4. The assets of an unmarried independent student without dependent children are equal to zero.[4]
5. Net home assets of an unmarried independent student with a dependent, or a married independent student without dependents, or a married independent student with dependents other than the spouse are less than $30,001.[4]
6. Net business assets (exclusive of farm assets) are less than $80,001.
7. Net farm assets (or a combination of net farm and net business assets) are less than $100,001.
8. The net value of assets, other than home, farm, or business assets is less than $25,001.
9. Combined net business, home, and other assets (exclusive of farm assets) are less than $110,001.[4]
10. Combined net farm, business, home, and other assets are less than $130,001.[4]

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[1] If a student, the student's spouse or parent(s) is a dislocated worker as defined in Title III of the Job Training Partnership Act, use calendar 1991 expected year income. For all others, use income received during calendar year 1990.

[2] If a student, student's spouse or parent is a dislocated worker as defined in Title III of the Job Training Partnership Act, or displaced homemaker as defined in section 480(e) of the HEA, the net asset value of a principal residence shall be considered zero.

[3] If a student or the student's spouse is a dislocated worker as defind in Title III of the Job Training Partnership Act, use calendar year 1991 expected income. For all others, use income received in calendar year 1990.

[4] If a student or the student's spouse is a dislocated worker as defined in Title III of the Job Training Partnership Act, or a displaced homemaker as defined in section 480(e) of the HEA, the net asset value of a principal residence shall be considered zero.

ZERO PGI—CHART A

[Use if Applicant is Eligible for Full Employment Expense Offset (EEO) [1]

An Applicant's PGI is zero if:	
The correct household size is:	and the verified effective family income (EFI) is less than:
2	$9,001
3	10,701
4	13,301
5	15,501
6	17,101
7	19,001
8	20,901
9	22,801
10	24,701
11	26,601
12	28,501
13	30,401
14	32,301

[1] Use chart A if—

FOR A DEPENDENT STUDENT

(1) The parents of the student are married and both parents earned income of $3,000 or more; or

(2) The parent of the student qualified as a head of household for Federal income tax purposes and the parent earned income of $3,000 or more.

FOR AN INDEPENDENT STUDENT WITH DEPENDENTS

(1) Both the student and the spouse earned income of $3,000 or more; or

(2) The student qualified as a head of household for Federal income tax purposes and the student earned income of $3,000 or more.

ZERO PGI—CHART B

[Use if Applicant Is Not Eligible for Full Employment Expense Offset (EEO) [1]

An applicant's PGI is zero if:	
The correct household size is:	and the verified effective family income (EFI) is less than
1	$6,001
2	7,501
3	9,201
4	11,801
5	14,001
6	15,601
7	17,501
8	19,401
9	21,301
10	23,201
11	25,101
12	27,001
13	28,901
14	30,801

[1] Use this chart if you cannot use Chart A.

Effective Family Income (EFI)

Effective family income equals total income minus the sum of (1) Federal income taxes paid or payable, (2) the tax allowance calculated under the Tax Allowance Percentage Table included in this Notice, and (3) excludable income, as defined below.

Effective Income (EI)

Effective income equals the adjusted gross income of the student (and spouse) reported in the U.S. income tax return of the preceding award year, or income earned from work not reported on a U.S. income tax return in the case of non-tax filers and, the total untaxed income and benefits minus (1) any excludable income and (2) the amount of U.S. income tax paid or payable.

Total income equals the adjusted gross income (determined for tax filers from the U.S. income tax return or income earned from work not reported on a U.S. income tax return in the case of non-tax filers), the total untaxed income and benefits of the student's parents for a dependent student, or of the student and spouse for an independent student, and one-half of the student's Veterans Administration (VA) educational benefits (under chapters 34 and 35 of title 38 of the United States Code).

Excludable Income

Excludable income includes:

- For a Native American student, individual payments of $2,000 or less received by the student (and spouse and the student's parents) under the Per Capita Act or Distribution of Judgment Funds Act, or any income received under the Alaska Native Claims Settlement Act or the Maine Indian Claims Settlement Act.
- Income of a divorced or separated spouse of a student, or of a student's spouse who has died.
- Student financial assistance, except certain veterans' or social security benefits.
- Unemployment compensation received by a dislocated worker in accordance with Title III of the Job Training Partnership Act.
- Income or capital gains from the sale of a farm or business assets of the family, if the sale resulted from a voluntary or involuntary foreclosure, forfeiture, bankruptcy or involuntary liquidation.

TAX ALLOWANCE PERCENTAGE TABLE

If state, or territory of residence is—	And total income is—	
	Less than $15,000	or $15,000 or more
Alabama	.07	.06
Alaska	.03	.02
American Samoa	.04	.03
Arizona	.07	.06
Arkansas	.07	.06
California	.09	.08
Canada	.09	.08
Colorado	.08	.07
Connecticut	.08	.07
Delaware	.09	.08
District of Columbia	.11	.10
Federated States of Micronesia	.04	.03
Florida	.05	.04
Georgia	.08	.07
Guam	.04	.03

TAX ALLOWANCE PERCENTAGE TABLE—Continued

If state, or territory of residence is—	And total income is—	
	Less than $15,000	or $15,000 or more
Hawaii	.11	.10
Idaho	.09	.08
Illinois	.08	.07
Indiana	.07	.06
Iowa	.09	.08
Kansas	.08	.07
Kentucky	.08	.07
Louisiana	.04	.03
Maine	.10	.09
Marshall Islands	.04	.03
Maryland	.11	.10
Massachusetts	.11	.10
Mexico	.09	.08
Michigan	.12	.11
Minnesota	.12	.11
Mississippi	.07	.06
Missouri	.07	.06
Montana	.07	.06
Nebraska	.09	.08
Nevada	.04	.03
New Hampshire	.07	.06
New Jersey	.10	.09
New Mexico	.05	.04
New York	.14	.13
North Carolina	.09	08
North Dakota	.06	.05
Northern Mariana Islands	.04	.03
Ohio	.09	.08
Oklahoma	.07	.06
Oregon	.11	.10
Pennsylvania	.09	.08
Puerto Rico	.03	.02
Rhode Island	.11	.10
South Carolina	.09	.08
South Dakota	.05	.04
Tennessee	.05	.04
Texas	.04	.03
Utah	.09	.08
Vermont	.09	.08
Virgin Islands	.04	.03
Virginia	.09	.08
Washington	.06	.05
West Virginia	.07	.06
Wisconsin	.13	.12
Wyoming	.03	.02
Trust Territory of the Pacific Islands (Palau)	.04	.03
Blank or Invalid State	.09	.08

Sections 411B, 411C and 411D of the HEA.

FOR FURTHER INFORMATION CONTACT: Adara L. Walton, Acting Chief, or Joseph Vettickal, Program Analyst, Verification Development Section, Student Verification Branch, Division of Policy and Program Development, Office of Student Financial Assistance, Office of Postsecondary Education, U.S. Department of Education, 400 Maryland Avenue SW., ROB-3, room 4613, Washington, DC 20202-5451, Telephone: (202) 708-4601. Deaf and hearing-impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC

(202) area code, telephone 708-9300), between 8 a.m. and 7 p.m., Eastern time.

Authority: 20 U.S.C. 1094.

(Catalog of Federal Domestic Assistance No. 84.063, Pell Grant Program)

Dated: April 1, 1991.

Leonard L. Haynes III,

Assistant Secretary for Postsecondary Education.

[FR Doc. 91-8221 Filed 4-8-91; 8:45 am]

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federal register

Tuesday
April 9, 1991

Part III

Department of Education

Research in Education of Individuals With Disabilities Program; Notice

DEPARTMENT OF EDUCATION

Research in Education of Individuals With Disabilities Program

AGENCY: Department of Education.

ACTION: Notice of proposed funding priority.

SUMMARY: The Secretary proposes to establish a funding priority for fiscal year 1991 for the Research in Education of Individuals with Disabilities Program. This program is administered by the Office of Special Education Programs. The Secretary establishes this priority to ensure effective use of program funds and to direct funds to an area of identified need during fiscal year 1991.

DATES: Comments must be received on or before June 10, 1991.

FOR FURTHER INFORMATION CONTACT: Linda Glidewell, Division of Innovation and Development, Office of Special Education Programs, Department of Education, 400 Maryland Avenue SW. (Switzer Building, room 3095—M/S 2313-2640), Washington, DC 20202. Telephone: (202) 732-1099; (TDD (202) 732-6153).

SUPPLEMENTARY INFORMATION: The Research in Education of Individuals with Disabilities Program, (20 U.S.C. 1441-1443), provides support for advancing and improving the knowledge base and improving the practice of professionals, parents, and others providing early intervention, special education, and related services, including professionals who work with children and youth with disabilities in regular education environments, to provide those children effective instruction and enable them to learn successfully. This priority provides support for one or more centers designed to organize, synthesize, and disseminate current knowledge relating to children with attention deficit disorder as required by the Education of the Handicapped Act Amendments of 1990. The Conference report accompanying the Department's 1991 appropriations bill expressed the intent that these centers help educators, researchers, and parents to respond to the needs of children with attention deficit disorder (ADD). The intended effect of this priority is to provide access to current research knowledge in two specific areas by providing assistance to organize, synthesize, and disseminate information related to the needs of children with attention deficit disorder (ADD). The focus of the centers is required by the statute and not subject to public comment. However, the Department is taking public comment on the specific activities proposed in the priority to achieve the centers' purpose. This proposed priority is part of a response to the 1990 amendments. In addition to this proposed priority, support will also be provided through ongoing contracts to identify promising regular and special education efforts to respond to the educational needs of children with ADD, and to provide a national forum for disseminating this information to professionals and parent organizations.

This priority is in addition to the proposed priorities previously published in the **Federal Register** on September 25, 1990 for the Research in Education of Individuals with Disabilities Program (55 FR 39244).

Priority

The Secretary proposes to establish the following priority for the Research in Education of Individuals with Disabilities Program, CFDA No. 84.023. In accordance with the Education Department General Administrative Regulations (EDGAR, 34 CFR 75.105(c)(3)), the Secretary will give an absolute preference under this program to applications that respond to the following priority. The Secretary proposes to select for funding only those applications proposing projects that meet this priority.

Priority: Centers for Organizing and Analyzing the Research Knowledge Base for Children with Attention Deficit Disorder (CFDA 84.023)

Issue

Section 641(f)(1) of the Individuals With Disabilities Education Act (IDEA), as retitled and amended by the 1990 amendments to the Education of the Handicapped Act, require the Secretary to establish one or more centers to organize, synthesize, and disseminate current knowledge relating to children with Attention Deficit Disorder (ADD). This current knowledge must be designed to help educators, researchers, and parents respond to the educational needs of students with ADD.

During the reauthorization process, parents and advocates for children with ADD identified access to the current research knowledge base as one of the problems in meeting the needs of their children in school.

Purpose

The purpose of this priority is to organize, synthesize, and disseminate the current knowledge base related to either: (a) Assessment and identification of, or (b) interventions for, children with ADD. This priority will support up to four cooperative agreements for up to 18 months. These four centers—two for each topic area—must organize and analyze research findings; design, format, and prepare syntheses; and disseminate information to assist educators, researchers, and parents to respond to the educational needs of these children. These centers shall serve as central focal points for making current knowledge accessible to national professional and parent organizations. This information is expected to increase the awareness of educators, researchers, and parents of the current knowledge related to the assessment and identification of, and interventions for responding to, the educational needs of children with ADD. These centers shall have demonstrated knowledge concerning the disorder; proven effectiveness in performing tasks comparable to the ones specified in this priority; and the ability to conduct projects, communicate with intended consumers of information, and maintain the necessary communication with national, regional, State, and local agencies.

Activities

Each Center shall develop a procedure for, and obtain input from, educators, researchers, and parents for identifying the most critical issues related to either: (a) Assessment and identification, or (b) interventions. These critical issues must provide the focal points for organizing the current research knowledge base and designing syntheses. Identifying and prioritizing critical issues must be based on those having the greatest promise for assisting educators, researchers, and parents to respond to the needs of children with ADD. For purposes of illustration only, critical issues related to assessment and identification might be: Measurement technology for appropriately identifying children with ADD in need of assistance in regular education or of special education; or typologies of educational needs and corresponding estimates of numbers of children with ADD. Similarly, for purposes of illustration, critical issues related to interventions might be: Effective education interventions in regular classrooms for responding to the needs of children with ADD; or the nature of curricula and instructional accommodations, adaptations, and modifications needed to respond to the educational needs of children with ADD.

Designing and formatting syntheses. The critical issues must provide the focus for synthesizing the current research findings. Input must also be obtained from educators, researchers,

and parents related to their specific information needs related to each issue. In addition, procedures must be developed and implemented for obtaining feedback from these audiences on the design and format for preparing each of their syntheses. The syntheses must consistently address the characteristics and educational needs of children with ADD relevant to the literature being synthesized.

Organize and analyze current research base. Each center must develop and implement procedures for identifying and obtaining current research findings relevant to each critical issue identified for their topic focus. This information must be organized consistent with the critical issues identified for each topic focus, and need for this information by educators, researchers, and parents. The analyses of this information must address implications for professional personnel practice and preparation, service delivery, and future knowledge development and use agendas for responding to the needs of children with ADD.

National dissemination and exchange forum. Each center must cooperate with the Department in conducting a national forum. The national forum will be held during the 15th month of the award in Washington, DC. Forum participants will include representatives of national organizations representing educators, researchers, parents, and other parties having significant responsibilities and interests in responding to the educational needs of children with ADD. The centers will be responsible for presenting their syntheses and implications. The Forum participants will discuss the centers' syntheses and strength of research support related to implications. The centers shall revise their syntheses taking into account the comments received from forum participants.

Coordination. Each center must coordinate with the other centers funded under this priority, and other projects identified by the Secretary that are engaged in relevant activities for achieving the intent of Section 641(f)(1) of the Act. The Department will convene the centers to review their critical issues prior to the centers conducting their respective syntheses. All projects funded relevant to Section 641(f)(1) will be convened at the national forum. Each center must budget for participation in these two activities.

Dissemination activities. Each center shall make its syntheses available to relevant national, professional, and parent organizations. The centers shall develop and implement procedures during these activities to assure that information products are prepared that have the greatest potential for use by these organizations in their existing communication systems and member networks.

Program Authority:

20 U.S.C. 1441–1443.

(Catalog of Federal Domestic Assistance Number 84.023, Research in Education of Individuals with Disabilities Program)

Dated: April 3, 1991.

Lamar Alexander,

Secretary of Education.

[FR Doc. 91–8220 Filed 4–8–91; 8:45 am]

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federal register

Tuesday
April 9, 1991

Part IV

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

Administrative Guidelines; Limitations on Combining Other Government Assistance With HUD Housing Assistance; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N-91-3186; FR-2929-N-01]

Administrative Guidelines; Limitations on Combining Other Government Assistance With HUD Housing Assistance

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

ACTION: Notice of administrative guidelines to be applied to assistance programs of the Office of Housing.

SUMMARY: This document sets forth the administrative guidelines the Office of Housing will follow in determining, on a case-by-case basis, whether housing assistance, otherwise available to a project under one or more programs of the Office of Housing, would constitute an appropriate level of assistance when combined with Low Income Housing Tax (LIHT) Credits or with assistance from other federal or state agencies. These guidelines were designed to ensure that participants in multifamily projects do not receive excessive compensation or excessive HUD subsidies by combining HUD programs with LIHT credits, or with assistance from other federal, state or local government agencies.

The Office of Housing is already applying these guidelines in processing tax credit cases submitted under Notice 90-17, Combining Low Income Housing Tax Credit (LIHTC) with HUD Programs. (See Attachment #4.) When section 102(d) of the HUD Reform Act becomes effective, the Office of Housing also will employ these guidelines in making the certifications required by that section. Section 102(d) requires HUD to certify that any new or additional HUD assistance is "not more than is necessary to provide affordable housing after taking account of [any other government assistance to be used in connection with a project]."

DATES: *Comment due date:* June 10, 1991. effective date: As noted above, the Office of Housing is already applying these guidelines to projects submitted under Notice 90-17. HUD will consider public comments as it continues to apply these guidelines under Notice 90-17 and as it prepares procedures for rendering the section 102(d) certifications discussed above. Subpart D of the Reform Act regulations, and the regulation's changes to 24 CFR parts 207, 220, 221, 231, 232, 241, and 882, are effective for LIHT credit projects on April 15, 1991. Subpart D and the related changes to 24 CFR will be effective for projects receiving other forms of other government assistance only as provided in a subsequent **Federal Register** notice. This phased implementation does not mitigate HUD's authority to address other forms of other government assistance as permitted by existing program procedures. (Regulations on 102(d) were published March 14, 1991 at 56 FR 11032).)

ADDRESSES: Interested persons are invited to submit comments regarding this Notice to the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Communications should refer to the above docket number and title. All comments will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

As a convenience to commenters, the Rules Docket Clerk will accept brief public comments transmitted by facsimile ("FAX") machine. The telephone number of the FAX receiver is (202) 708-4337. (This is not a toll-free number.) Only public comments of six or fewer total pages will be accepted via FAX transmittal. This limitation is necessary in order to assure reasonable access to the equipment. Comments sent by FAX in excess of six pages will not be accepted. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Rules Docket Clerk/voice, (202) 708-2084) or TDD (202) 708-3259. (These are not toll-free numbers.)

FOR FURTHER INFORMATION CONTACT: For questions regarding specific programs (e.g., mortgage insurance, project-based certificates), call the contact persons listed in Attachment #3. For questions cutting across program areas, contact Michael T. Hernandez, Office of the Assistant Secretary for Housing—Federal Housing Commissioner, room 6106, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. (202) 708-2495. TDD (202) 708-4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: On June 19, 1990, the Department published a proposed rule (55 FR 25036) to implement section 102 of the Department of Housing and Urban Development Reform Act of 1989 ("the Act") (Pub. L. 101-235, approved December 15, 1989, 42 U.S.C. 3545, 103 Stat. 1990-1995.)

The proposed rule preamble discussed at length the Department's plans for implementation of section 102(d) of the Act, outlined HUD's interpretation of the certification provision, and requested public comments on the entire structure of its proposed 102(d) regulation—most particularly on the plan to issue instructions short of rule making for covered programs.

The public comments were examined and discussed with particularity in the final rule implementing section 102 of the Act, published on March 14, 1991 (56 FR 11032). However, among the comments received on that rule were a few that objected to the implementation of the section 102(d) certification process without rule making. These commenters characterized the proposed rule discussion as "an authorization for the Department to enter into improper rule making under the guise of administrative guidelines," and called the described standards-making process "inappropriate and violative of the Administrative Procedure Act."

The Department disagrees with the assertion that HUD is engaging in improper rule making under the guise of administrative guidelines. Federal agencies have the discretion to articulate their standards through case-by-case decision making, rather than through rule making (*SEC* v. *Chenery Corp.*, 332 U.S. 194, 203 (1947); *NLRB* v. *Bell Aerospace Co.*, 416 U.S. 267, 290-295 (1974).) The Department believes

that it would be very difficult, and premature, to propose substantive standards intended to have the force and effect of law to dictate the circumstances under which HUD will perform section 102(d) certifications. Clearly, standards would be desirable from the point of view of providing uniformity in decision making and giving program applicants some measure of predictability so that they might adjust their applications to increase their likelihood of obtaining the assistance for which they apply. However, while these are commendable objectives, substantive rules can further these objectives only if the standards are appropriate to the decisions being made. Because (1) the Department has had limited experience with factoring in other governmental assistance in determining the feasibility of a project, and the amount of HUD assistance that should be provided; (2) there are a wide variety of programs and programmatic structures with which the Office of Housing must deal; and (3) these types of decisions are very dependent on the facts relating to the individual project, the Office of Housing believes that it is more appropriate, at least for the immediate future, to develop its standards through case-by-case decision making. It may well turn out that, after having established its standards for some time through case-by-case decision making, the Department may find it useful and feasible to promulgate those standards as regulations.

The Administrative Guidelines set out in this document are intended to assist HUD in making its certifications. As guidelines, they would not have the force and effect of law; HUD's decisions could vary from the guidelines, based on full consideration of the fact situation presented by a particular certification decision that comes before the Department, and on the characteristics of the program under which the assistance is provided. The guidelines also would not be legally binding on a court asked to review HUD's decision in a given case.

Another commenter responding to the proposed rule noted that he saw it as an "impossible task" for HUD to develop a "sophisticated methodology" for determining when "necessary assistance" crosses the line into "too much" assistance. The commenter asked for a rule with substantially more specificity.

The Department believes that this comment underscores the appropriateness of making these certifications through case-by-case decision making, with administrative guidance, rather than to establish standards as substantive regulations. The Department, however, disagrees with the commenter's suggestion that it is "engaged in measuring entrepreneurial risk." The Department is not attempting to step into the shoes of an applicant and determine the subjective issue of whether the project is a good, bad, or indifferent risk to the investor. Rather, the Department looks at the project from the government's point of view and, by taking into account the presence of other governmental risk, determines whether HUD should provide assistance and, if so, how much.

Overview of Review Criteria

If an applicant is seeking HUD's approval of a change in ownership and the proposed transaction would not increase HUD's outlays for direct loans or subsidies, the request will be evaluated using HUD's procedures for processing changes in ownership (called "Transfer of Physical Assets" or "TPAs" in some programs). Under these procedures, HUD assesses a project's operation and current condition and requires purchasers to contribute sufficient funds to meet the project's current physical and financial needs and to adequately fund reserves for future deficits, reserves and repairs.

For all other tax credit transactions submitted under Notice 90–17 or under future Reform regulations, the Office of Housing will apply the guidelines listed later in this document. Guidelines #1 through #11 assess the reasonableness of costs and reserves included in the applicant's development proposal. Guideline #12 assesses whether the proposed equity contributions are reasonable, given the cash or tax benefits to be derived, and Guideline #13 limits the amount of cash an owner may take out of a project. Finally, Guidelines #14 and #15 restrict the rents that some projects may charge and require some projects to give HUD a share of the proceeds from any future sale of the project. If applicants propose uses that are not specifically addressed in the HUD guidelines, the Department will assess the merits of those uses on a case-by-case basis.

In applying these guidelines, the Office of Housing will review all proposed sources and uses of funds—not just those sources or uses HUD has traditionally considered in determining rents, subsidy contract amounts or mortgage insurance commitments. For example, the Department will require applicants to disclose gross syndication proceeds and syndication costs. The Department will consider all loans, grants or other funds provided by parties other than HUD and will assess the reasonableness of any escrow or reserve proposed for the project, even if such reserves do not affect the amount of mortgage insurance or subsidy allowed under current program rules.

Impact of Guidelines

An actual transaction may exceed these guidelines but, when determining how much mortgage insurance or subsidy is appropriate, the Department generally will not allow more than these guidelines permit.

Example: A project may take on a non-insured mortgage in excess of what HUD allows under these guidelines, but in computing rents or subsidies, HUD will recognize only the amount of debt service needed to support the mortgage amount HUD allowed under these guidelines.

HUD will limit its mortgage insurance or subsidy commitments to the lower of the amounts permitted under these guidelines or the amounts permitted under each program's rules. Thus, these guidelines may result in mortgage insurance or subsidy commitments that are less than commitments otherwise permitted under program rules, but the guidelines will never cause insurance or subsidy amounts to exceed amounts allowed under those rules.

Overview of Processing Steps

To assess the effect of combining LIHT credits with HUD assistance, HUD will follow the processing steps listed below.

1. Apply Guidelines 1, 2, 3, and 5 to the Uses of Funds Statement Submitted With the Application for HUD Assistance

These guidelines assess acquisition costs, any BSPRA/SPRA, builder's overhead and development costs. Generally, HUD will disallow any amount in excess of the level allowed in each guideline.

2. Complete Any Processing HUD Program Rules Require for the Type of Assistance Being Requested

If this processing involves an item that is covered by this Notice's guidelines, that item will be limited as required by the applicable guideline.

a. *Requests for Mortgage Insurance.* HUD will:

(1) Use existing criteria (debt service, replacement cost, etc) to estimate rental income and determine the maximum insurable mortgage and the operating deficit and working capital reserves allowed under guidelines #7 and #8.

(2) Edit the applicant's sources and uses of funds statement to reflect mortgage, cost or reserve changes made in this step or in Step 1 above.

(3) Compare the sources and uses resulting from Step 2a(2). If the adjusted sources exceed the adjusted uses, HUD will reduce the maximum allowable mortgage by the dollar difference. If the adjusted uses exceed the adjusted sources, HUD will annotate the sources of funds statement to show a HUD-required increase in equity in an amount equal to the "excess" uses.

(4) Determine the annual distribution allowed under Guideline #13a and any applicable HUD program rules, using adjusted amounts resulting from the processing steps set forth above.

b. *Requests for Rent Subsidies.* HUD will:

(1) Adjust the applicant's sources of funds statement to reduce grants or loans by the total dollar amount disallowed in Step 1 above. Generally, HUD will first apply these reductions against grants/loans funded directly by HUD and then to other loans, starting with the loans having the highest debt service.

(2) Compute the distributions and rents allowed by Guidelines #13a and #15a. In estimating debt service, HUD will recognize only the loan amounts remaining after any reductions required by Step 2b(1) have been made.

(3) Review any operating deficit or working capital reserve proposed by the applicant and disallow any amount in excess of the amount permitted by Guideline #7 or Guideline #8.

3. Apply Guidelines 4, 6, 9, 10, and 11 to the Uses of Funds Statement Submitted With the Application for HUD Assistance

These guidelines assess the reasonableness of any developer fee, builder profit, resident initiative fund, syndication costs or bridge loan interest included in the application. Generally, HUD will edit the sources and uses statement to:

a. Disallow any use in excess of the level allowed in the Guideline.

b. Reduce funding sources (other than equity) by the total amount disallowed in Step 3a. Generally, HUD will first apply these reductions against grants/loans funded directly by HUD and then edit the sources of funds statement to reduced other loans, starting with the loans requiring the highest debt service payments (regardless of whether the loan is insured by HUD). If HUD has already reduce a funding source in one of the previous processing steps, any reductions required by this step will be subtracted from those already reduced amounts.

4. Estimate Cash Flow and Taxable Income for Each Year of the Initial 15 Year Tax Credit Compliance Period

a. These calculations will be based upon the rents and operating expenses resulting from Step 2 above and the sources and uses resulting from Steps 1 through 3 above. In estimating debt service, HUD will recognize only the loan amounts remaining after reductions required by Steps 1 through 3 above. Both income and operating expenses will be trended upward by 3% per year.

b. Tax benefits will be estimated as described in paragraphs b(4) through b(6) under Guideline #12.

5. Compute the Equity Required by Guideline #12 and Compare That Amount to Proposed Equity

Required equity will be computed as described in Guideline #12, using the amounts computed for Step 4 above. Proposed equity will be the sum of: (1) The present value of the gross syndication proceeds shown in the application, discounted at the bridge loan interest rate HUD allows under Guideline #11; (2) any other capital contributions proposed in the application; and (3) any additional equity required by Step 2a and any applicable FHA processing procedures.

If the proposed equity is:

a. *Less than the equity required under Guideline #12,* HUD will adjust the sources of funds statement to increase equity to the amount required by Guideline #12 and reduce other funding sources by the amount the equity is increased.

(1) If HUD has already reduced a funding source in one of the previous processing steps, any reductions required by this step will be subtracted from those already reduced amounts.

(2) Generally, HUD will first apply these reductions against grants/loans funded directly by HUD and then to other loans, starting with the loans requiring the highest debt service payments (regardless of whether the loan is insured by HUD).

b. *Greater than the equity required by Guideline #12,* HUD may reduce any amount disallowed in previous processing steps for acquisition costs (per Guideline #1), developer fee (per Guideline #4), or syndication costs (per Guideline #10).

(1) HUD may reduce the total amount initially disallowed for these three costs by all or part of the "excess" equity. HUD will determine the actual adjustment on a case-by-case basis. HUD will not allow the "excess" equity to offset amounts disallowed under other guidelines.

(2) *Example:* If the applicant is proposing to contribute $3,000 more equity than Guideline #12 requires and HUD initially had disallowed $5000 in developer fees, HUD could now recognize up to $3000 of the $5000 initially disallowed.

6. Recompute Rent and Other HUD Program Limitations Affected by any Reduction in Funding Sources Required by Step 3 or Step 5 Above

HUD will:

a. Recompute maximum allowable rents or rent potential to recognize any reduction in debt service or increase in allowable distributions associated with reductions in loans to be serviced from project income.

b. Recompute any FHA limitations on soft costs that are tied to the maximum insurable mortgage amount (e.g., MIP, interest during construction, working capital, etc.)

7. Determine the Amount of HUD Subsidy (e.g., Flexible Subsidy, Section 8)

Any operating budget or sources and uses analysis will be based upon the rents computed in Step 6 and the sources and uses finally recognized in Step 5.

Administrative Guidelines

The individual guidelines are set forth below. Attachments 1 and 2 to this document provide brief comments on each guideline and define key terms used in the guidelines. Each program's forms and administrative procedures will be revised to incorporate these guidelines. The guidelines will be applied each time the amount of HUD assistance is evaluated.

Example: For applicants requesting FHA mortgage insurance, the Department will apply these guidelines during SAMA, conditional and firm commitment, and cost certification processing. All costs used in these guidelines must be audited and certified by an Independent Public Accountant (IPA) in the manner prescribed in the administrative procedures the Department will publish for each program.

Not all guidelines will apply to every project. A particular guideline will apply when the applicant's proposal includes the cost, source or other amount covered by that guideline. The guidelines, for example, do not require applicants to establish reserves or escrows that are not already required by HUD rules.

1. Acquisition Costs

a. *For Housing Development Grant projects not seeking FHA mortgage insurance,* HUD will follow the procedures set forth in Notice 89-28, Housing Development Grant Program—Settlement Procedures.

b. *For all other projects,* HUD will compare acquisition costs with the project's market value appraised on an as-is basis taking into account any existing rights and restrictions that will transfer to the purchaser. The value must be computed without considering any planned rehabilitation, any additional subsidies to be made available at the project, or any tax credits or other tax benefits the purchaser will receive. Generally, HUD will complete appraisals when FHA mortgage insurance is requested. On requests for other HUD assistance, applicants must submit appraisals.

2. Builder/Sponsor's Profit and Risk Allowance (BSPRA) Sponsor's Profit and Risk Allowance (SPRA)

HUD will use its mortgage insurance procedures to assess the reasonableness of any proposed BSPRA or SPRA.

3. Development Costs

To determine whether proposed development costs are reasonable, Housing will use cost standards included in either the FHA mortgage insurance handbooks or in the applicable subsidy program's administrative procedures.

4. Developer's Fee (Allowed only when no BSPRA or SPRA is used)

Generally, development fees may not exceed 10% of development costs, as defined in Attachment 2. (Note: Acquisition costs, builder's profit, developer's fee and BSPRA/SPRA are not included in development costs.)

5. Builder's Overhead Reimbursement

Generally, the builder's overhead reimbursement may not exceed 2% of land improvements and structural improvements that would be allowed on Lines 36 through 42 of Form HUD 92264.

6. Builder's Profit (Allowed only when no BSPRA is used.)

Generally, the builder's profit may not exceed the lower of the amount allowed under applicable HUD program rules or the amount computed below.

[development costs times percent shown below] less [developer fee initially allowed under Guideline 4]

	Rehabilitation	New construction
First 100 units	17 percent	15 percent.
Additional units	13 percent	13 percent.

7. Working Capital Reserve

a. HUD will include a working capital reserve in its cost calculations only if HUD determines that the reserve is necessary and the applicant agrees that any reserve remaining after substantial completion of construction or rehab will be deposited in a reserve for replacements or other restricted project account specified by HUD.

b. For projects seeking FHA mortgage insurance, HUD will recognize no more than FHA mortgage insurance procedures allow. For other projects, HUD generally will include no more than 2% of the amount of any new mortgages being made in conjunction with the transaction.

8. Operating Deficit Escrow

HUD will include an operating deficit escrow in its cost calculations only if HUD determines that the escrow is necessary and the applicant agrees that any escrow remaining after five years will be distributed as described in Paragraph 8b below.

a. In estimating projected operating deficits, HUD will recognize only reasonable amounts for costs related to the day-to-day operation of the project. HUD will not recognize asset management costs or costs associated with oversight of rehabilitation or construction proposed in the application.

(1) To determine what expense level is reasonable, generally HUD will apply the guidelines contained in the management fee, rent increase and financial analysis handbooks for projects having HUD-insured mortgages.

(2) Generally, HUD will not recognize more than the actual deficit projected to occur. If a lender requires a debt service escrow in excess of the projected deficit, HUD will consider recognizing the additional escrow amount only if the additional escrow will remain with the project for as long as the project remains in the lower income housing stock.

b. Any reserve remaining after five years must be applied:

(1) First, to meet any physical or financial needs HUD determines to be outstanding at the project. HUD may define financial needs to include repayment of any below-market or non-amortizing loans insured or made by the Federal government, including loans made under the Flexible Subsidy program.

(2) Any reserve remaining after the project's physical and financial needs have been met will be distributed as follows:

—On limited dividend (LD) and profit-motivated (PM) projects, any remaining reserve will be used to repay diversions outstanding at the project. Any amounts remaining thereafter may be disbursed to the owner. (Such amounts shall not be considered in computing the annual distribution available to an LD owner)

—On non-profit projects, any balance must remain with the project in a form and account acceptable to HUD for the initial 15-year tax credit compliance period or for such longer time as HUD specifies in its approval of the escrow or related transaction

9. Resident Initiative Fund

a. HUD will recognize a resident initiative fund in its cost calculation only if: (1) The fund will be used for resident management/ownership initiatives, security/drug free housing initiatives, job-training or other support services; and (2) all initiatives or services will be targeted to the residents of the project for which the fund is established.

b. Generally, HUD will include no more than 10% of contributed equity, as defined in Attachment #2. If a project is receiving substantial HUD assistance, HUD may require that any money remaining in the fund after 15 years revert to HUD.

10. Syndication Costs

Generally, HUD will recognize only up to 15% of gross syndication proceeds.

11. Bridge Loan Interest

a. If the party making the bridge loan does not have an identity-of-interest with the developer, builder, syndicator or owner, generally HUD will recognize the full amount of the bridge loan interest shown in the application.

b. If there is an identity-of-interest between the lender and a principal in the project, HUD may disallow any interest in excess of the amount HUD determines independent lenders would charge.

12. Contributed Equity

Generally, HUD will require that contributed equity, as defined in Attachment #2, at least equal the present value of the cash, tax deductions or tax credits investors will receive during the 15 year compliance period.

a. HUD initially will discount benefits at 16% but will adjust the discount rate

periodically as necessary to reflect changes in the investment market.

b. In estimating future benefits, HUD will:

(1) *Assume that rents and cash distributions are limited* as required by Guidelines #13 and #15 of this Notice.

(2) *Trend both income and expenses upward by 3% per year.*

(3) *Ignore any income or expenses associated with amounts HUD disallowed* when reviewing the applicant's proposed sources and uses of funds.

(4) *Recognize both state and federal tax benefits.* Generally, HUD will use the credit amounts submitted by the applicant but will prepare its own estimate of tax benefits, using a 7% state tax rate and the highest marginal federal tax rate. For individual investors, at the present time HUD will use a 31% federal rate and assume that the Passive Loss rule limits the amount of credits and deductions the investor may use. For corporate investors, at the present time HUD will use a 34% federal rate and assume passive losses are fully deductible. HUD will not recognize any limitations imposed by the Alternative Minimum Tax.

(5) *Ignore any tax consequence associated with* deposits to reserve accounts or investment income earned on those accounts.

(6) *Assume that the project is sold in 15 years for the mortgage balance outstanding at that time.* When calculating the 15th year's taxable income, HUD will include any gain/loss incurred upon disposition of the project and assume that all suspended passive losses are allowed. The gain or loss will be computed by subtracting the property's basis (reduced by accumulated depreciation, amortization and any operating deficit reserve or other non-depreciable assets used over the 15 years) from the total of all mortgages outstanding at time of sale.

13. Distributions of Project Operating Income

(Does not apply to Housing Development Grants that are used only to pay construction/other up-front costs for projects without FHA insured loans.)

Generally, HUD will require owners to execute agreements that provide that:

a. During the initial 15-year tax credit compliance period, distributions will be paid only from surplus cash and limited to the lowest of: (a) The amount HUD rules allow at that project; (b) 8% of owner equity as calculated by HUD; or (c) the annual distribution allowed by a state or other public entity having authority over that project. Larger amounts will be allowed only if HUD determines that such amounts are needed to preserve or increase affordable housing.

b. Surplus cash in excess of allowed distribution will be placed in a residual receipts account under HUD's control.

c. When distribution restrictions expire, any balance in the residual receipts account reverts to HUD unless HUD authorizes the owner to use the funds to extend the low-income use of the project or for other project purposes.

14. Distribution of Sales Proceeds

a. The owner must sign agreements giving HUD a share of the proceeds from any future sale of the project if:

(1) The applicant is purchasing the property from HUD through a negotiated sale; or

(2) The transaction will cause HUD to pay more subsidy for that project and the sum of any Flexible Subsidy loans or any other direct loans from HUD plus the present value of the tax credits exceeds 80% of total project cost, as defined in Attachment 2. (Present value will be computed using the discount rate in Guideline 12a and both LIHT credits and Historic Rehab tax credits will be included.)

b. For negotiated sales, generally all sales proceeds will revert to HUD. For projects that meet the guideline in Paragraph a(2) above, HUD's percent of the sales proceeds will be 2.5 times the difference between 80% and the percentage resulting from dividing total project costs into the sum in Paragraph a(2) above.

Example: If total project costs are $100 and HUD loans and the present value of the credits total $90, HUD's percent of the sales proceeds would be 25%.

$2.5 \times [(\$90/\$100) \text{ less } 80\%] = 2.5 \times [.95 - .8] = 2. \times .1 = 25\%$

15. Rent Limitations

(Applies only when the transaction will cause HUD to pay additional subsidies for that project. Applies even if no contract amendment is needed to support the increased payments.)

a. Initially, HUD will limit rents to the lower of:

(1) The amount HUD determines is necessary to support HUD-allowed debt service, operating expenses, operating and repair reserves, and owner distributions.

(2) The amount otherwise permitted under program regulations (e.g., under the AAF method and its fair market rent, rent reasonableness and rent comparability limitations).

b. When making initial rent calculations and when computing subsequent rent adjustments, HUD will:

(1) Not recognize asset management costs, costs associated with oversight of rehabilitation or construction proposed in the application, or costs associated with a mortgage or other amounts HUD considered excessive and disallowed when applying these guidelines.

(2) Apply the guidelines contained in the management fee, rent increase and financial analysis handbooks for projects having HUD-insured mortgages.

Dated: March 22, 1991.

Arthur J. Hill,

Acting Assistant Secretary for Housing-FHA Commissioner.

Attachment 1—Comments on Criteria

Acquisition costs. This guideline is designed to preclude a seller from receiving excess compensation. By using as-is market value instead of investment value, the appraisal will eliminate any value attributable to the LIHTC or other tax benefits the purchaser will receive.

BSPRA & SPRA. The FHA mortgage insurance program's Builders and Sponsors Profit and Risk Allowance (BSPRA) and Sponsors Profit and Risk Allowance (SPRA) have proven workable and are familiar to participants in the multifamily housing programs.

Development costs. Use of well-known FHA guidelines and other program-specific guidelines will limit costs to commercially-reasonable amounts and facilitate cost certifications.

Developer's fee. This guideline will permit the developer to receive commercially reasonable compensation for his/her services in arranging the transaction while precluding excessive or windfall profits.

Note: The amount actually allowed for the developer's fee will reduce the maximum amount that may be paid to the builder. See the Builder's Profit Guideline in Guideline 6 for more details on how the builder's fee and the developer's fee interact.

Builder's overhead reimbursement. This is the Builder's Overhead policy traditionally used in FHA mortgage insurance programs.

Builder's profit. This guideline ensures that the sum of the developer's regular fee and the builder's profit will never exceed the applicable percentage of development cost. In establishing these percentages, the Department relied primarily on the two sources discussed below but varied the percentages to encourage rehabilitation and smaller projects.

• *NASAA Guidelines.* The North American Securities Administrators Association (NASAA) is an association of fifty state entities responsible for

investor protection and regulatory oversight of the securities industry. NASAA guidelines recommend that the sum of developer and builder fees should not exceed 15% of all project costs other than acquisition costs. This is approximately the amount the proposed standard allows for new construction projects.

• *ICF's Draft Report: Evaluation of the Low-Income Housing Tax Credit.* ICF reported that the average development fee for tax credit projects was 13.9% of total project cost (including acquisition costs). If acquisition costs were excluded, the 13.9% would increase to approximately the percentages allowed in the proposed standard.

Working capital reserve. To preclude developers from receiving excess compensation, this guideline makes two changes to traditional FHA rules on working capital reserves.

• All uses of the reserve must be pre-approved by HUD and cost-certified. Under traditional FHA rules, reserves withdrawals are under the sole control of the mortgagee and must be cost-certified only if they cover mortgageable development costs and are made prior to the cost cut-off date.

• Any unused funds stay with the housing project. Under traditional FHA rules, funds unused one year after construction completion usually are released to the mortgagor.

Operating deficit reserve. This guideline makes two changes to traditional FHA rules on operating deficit reserves. The new standard will ensure that reserve funds are not distributed to developers/owners when projects have unmet financial needs.

• The reserve will be held longer. Under traditional mortgage insurance rules, reserves are held only until a project shows several months of positive cash flow. Hence, traditionally reserves have been released within two years after initial occupancy. Under this criterion, the reserve will be held for at least five years unless it is exhausted earlier.

• If any reserve remains at the end of the five years, that amount may be used for more than routine operating expenses. It may also be used to pay amounts due HUD, to fund inadequate replacement reserves, or to meet other physical or financial needs of the project.

By requiring that debt service escrows that exceed projected deficits remain with the project, this Guideline ensures that such escrows cannot be used to compensate a developer in excess of the amount permitted by Guideline #4.

Resident initiative fund. These funds will help project residents reduce their need for public subsidies and achieve economic independence.

Syndication costs. In a preliminary study of tax credit projects, *Evaluation of the Low-Income Housing Tax Credit,* ICF reported that syndication costs (computed as a percentage of gross syndication proceeds) averaged:

22.9%.....for public offerings
13.8%.....for private placements
17.9%.....for all syndicated units

To encourage developers to use the least costly method of raising capital, the Department has set the standard near the average for private placement.

Bridge Loan Interest

• By reserving the right to disallow unreasonable interest costs when identity-of-interest relationships exist, the Department will reduce the excess profits that could result when loans are not negotiated through arms-length transactions.

• Discounting gross syndication proceeds by the amount of any bridge interest will permit HUD to apply the same standards to proposals that require all investor contributions upfront and proposals that permit investors to spread their contribution over several payments. If bridge interest were not excluded, the Department would be required to vary the criteria according to the length of the bridge loan financing and investor pay-ins and to evaluate the reasonableness of interest and discount rates. Such calculations would be cumbersome and time consuming.

Contributed equity. HUD expects the analysis required by Guideline #12 will be less expensive and easier to administer than the alternative method of requiring developers to obtain and submit bids from several syndicators. The initial 16% discount rate is based primarily on the findings of the two studies listed below.

• *Investors, Developers and Supply-side Subsidies: How Much is Enough?* by Karl Case. In analyzing ten syndications, the writer found the median internal rate of return to be 16.3%.

• *Evaluation of the Low Income Housing Tax Credit* by ICF. When bridge financing was backed-out and no residual value was considered, the average internal rate of return reported in the study was 16%.

Distributions of project income. By limiting distributions and having future distributions revert to HUD, the Department will ensure that owners do not receive excessive returns. Since investors will receive the annual tax credit on top of the cash distribution, limiting distributions should not discourage investment in HUD-related projects.

Distribution of sales proceeds. Since the benefits stream used in Guideline 12 does not consider any sales proceeds, this guideline is needed to ensure that HUD shares in any profits created by resale of projects at which the federal government has paid a significant percentage of the rental payments and provided significant tax benefits or other assistance.

Rent limitations. By limiting rents, HUD will ensure that HUD rental subsidies do not exceed the amounts needed to operate the project and generate the rate of return and cash distributions allowed in Guidelines 12 and 13.

Attachment #2—Definitions

1. *Acquisition costs.* Direct costs necessary to acquire land or an existing housing project. Includes all amounts paid to a seller, loans assumed, amounts paid to release encumbrances on the project, and legal/consulting/acquisition fees paid in connection with the transfer of ownership.

2. *BSPRA (Builder's and Sponsor's Profit and Risk Allowance) or SPRA (Sponsor's Profit and Risk Allowance).* A credit against the equity contribution otherwise required in FHA mortgage insurance programs.

3. *Development costs.* a. Includes all costs FHA mortgage insurance or other applicable program rules would recognize for planning, oversight, relocation, demolition, construction or rehabilitation, equipment, interest and carrying charges, on-site streets and utilities, any contingency reserve, insurance premiums, and all other costs necessary to develop the housing project. (Example: Includes Line 72 less Lines 44 and 68 of Form HUD 92264.)

b. Includes Builder's Overhead Reimbursement but does not include BSPRA/SPRA, acquisition costs, builder's profit or developer's fee.

c. Amounts initially allowed may subsequently be adjusted as required by FHA or other applicable HUD cost certification procedures.

4. *Total project cost.* The total cost of the housing project. Includes acquisition costs, development costs, syndication costs, builder and developer fees, working capital reserve, operating deficit escrow, resident initiative fund, and all other costs approved by the Department.

5. *Gross syndication proceeds.* The sum of all amounts received from investors in connection with their purchase of equity interests in the project. Amounts used in this

calculation are not discounted to reflect any deferred or staged investor payments.

6. *Contributed equity.* The sum of: (a) The present value of any gross syndication proceeds, discounted at the bridge loan interest rate HUD allows under Guideline #11; and (b) any other capital contributed by the developer, sponsor or other principal to the transaction.

7. *Bridge loan interest.* All financing charges incurred by a developer on loans obtained by the pledge of investors' deferred capital contributions.

8. *Syndication costs.* All direct and indirect costs incurred in arranging a syndication or obtaining gross syndication proceeds. Includes sponsor costs and legal, accounting and broker fees related to obtaining investors' contributions. Does *not* include any profit paid to the developer.

9. *Identity-of-interest.* A financial, familial, or business relationship that permits less than arm's length transactions. Includes, but is not limited to, existence of a reimbursement program or exchange of funds; common financial interests; common officers, directors, or stockholders; or family relationships between officers, directors, or stockholders.

10. *Non-profit project.* A project at which the owner is a non-profit corporation and has agreed to take no cash distributions and to deposit all surplus cash into a restricted account under HUD's control. (See 24 CFR 221.510 for the definition of non-profit mortgagor under FHA multifamily mortgage insurance programs.)

11. *Operating deficit escrow.* An escrow established to fund net operating losses projected to occur between the date of initial occupancy (or other date specified by HUD) and the date by which the project's operating income is expected to cover replacement reserve deposits, debt service and expenses related to operation of the rental project.

12. *Working capital reserve.* A reserve established to defray the cost of initial marketing and rent-up, cover accruals that the first year's operating income is not expected to cover, and to cover shortfalls in soft costs after funds available under the construction and rehab loans are exhausted. (For FHA mortgage insurance programs, a more specific definition is provided in 24 CFR 221.540.)

Attachment #3

Questions regarding applying these guidelines to specific program areas should be addressed to the contact persons listed below. Questions cutting across program areas should be addressed to: Michael T. Hernandez, Office of the Assistant Secretary for Housing—Federal Housing Commissioner, room 6106, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. (202) 708-2495. TDD (202) 708-4594.

Note: The phone numbers presented in this Notice are not toll-free numbers.

Program area	Contact person	Phone number
Mortgage Insurance (Valuation).	Edward Winiarski.	(202) 708-0624
Mortgage Insurance (Mortgage Credit).	Kerry Mulholland.	(202) 708-0283
Project-Based Certificates.	Mary Conway..	(202) 708-2934
Moderate Rehabilitation.	Mary Maher.....	(202) 758-4969
Housing Development Grants.	Michael Levine.	(202) 755-4961
Section 202 Projects.....	Robert Wilden.	(202) 708-2730
Incentives to Extend Low Income Use.	Kevin East.....	(202) 708-2300
Transfers of Physical Assets (TPAs).	William Hill.....	(202) 708-0547
Sales of HUD-Owned Projects.	Courtland Wilson.	(202) 708-1220
Other Actions on Insured or HUD-held Projects.	William Hill.....	(202) 708-0547

Attachment #4

Notice

H 91-18 (HUD).
Issued: March 1, 1991.
Expires: March 31, 1992.

Special Attention of: All Regional Directors of Housing, All Regional Directors of Public Housing, All Coinsuring Lenders, All Public Housing Authorities (PHAs), All State Housing Finance Agencies (HFAs).

Subject: Combining Low-Income Housing Tax Credits (LIHTC) with HUD programs.

The expiration date of Notice 90-17, issued March 8, 1990, is extended to March 31, 1992.

Arthur J. Hill,

Acting Assistant Secretary for Housing—Federal Housing Commissioner.

Notice

H 90-17 (HUD).
Issued: 3/8/90.
Expires: 3/31/91.

Special Attention of: All Regional Directors of Housing, All Regional Directors of Public Housing, All Coinsuring Lenders, All Public Housing Authorities (PHAs), All State Housing Finance Agencies (HFAs).

Subject: Combining Low Income Housing Tax Credits (LIHTC) with HUD Programs.

I am asking your assistance in assuring that developers and owners do not receive excessive profits or subsidies or create undue mortgage insurance risks by combining tax credits with HUD's subsidy or mortgage insurance programs. Credits, subsidies and mortgage insurance are all limited commodities and I want to use these scarce resources to maximize production and preservation of affordable housing—not to generate excessive profits for developers or owners.

In a few instances, developers/owners have realized large profits because either: (a) They did not disclose they would receive tax credits; or (b) mortgage insurance or sibsidy processing did not recognize the tax credits' rent restrictions or the funds raised by selling ownership interests in tax credit projects. To address these deficiencies, I am asking that HUD staff, coinsuring lenders and PHAs modify processing to incorporate the procedures set forth in this notice. *Important*: Each HUD Office should mail its PHAs and HFAs a copy of this notice, with a cover letter directing them to apply these procedures to transactions they process. Headquarters is mailing this notice to all coinsuring lenders.

Effective immediately, before taking any of the actions listed in Attachment 1, HUD staff/ PHAs/ HFAs/ coinsuring lenders must: (1) Ask if the current or any prospective owner plans to utilize in the LIHTC; and (2) obtain HUD Headquarters' review of all cases that will use LIHTCs'.

- *If an owner's response is POSITIVE,* require the owner to submit the information listed in Exhibit 2.

Note: Exhibit 2 supersedes and replaces the submission requirement now included on page 4 of our February 2, 1988 memo and in Coinsuring Lender Letter 88-2 regarding processing tax credit transactions. This notice applies to all tax credit projects—not just those exceeding the 1988 40 percent threshold.

- *If an owner's response is NEGATIVE,* require the owner to sign the certification in Attachment 3 to this memo. Note that the certification requires the owner to immediately notify you if his/her plans change and the project receives or applies for tax credits.

Submit cases for Headquarters' review to the appropriate program staff before approving any of the actions listed in Attachment #1, but after you have completed all analysis required by outstanding instructions. HFAs, PHAs should submit cases through HUD Field Offices. Coinsuring lenders should

submit cases directly to HUD Headquarters. When submitting cases to Headquarters:

• Send the package to the program office having responsibility for the transaction currently being processed, but identify all HUD programs in use/expected to be used at the project.

Example: If a project is now seeking mortgage insurance but will later seek a HUD subsidy (such as section 8 LMSA), submit the case to the Office of Insured Housing Development but note in your transmittal that the applicant also plans to seek section 8. My Development staff will coordinate with the appropriate Headquarters section 8 staff.

• Send all information the owner submitted pursuant to Attachment 2 and all documents related to the financial aspects of the transaction being processed.

Note: Once Headquarters has reviewed any tax credit information and directed that processing proceed, a project must be resubmitted to Headquarters during any subsequent processing only if the tax credit information changes or Headquarters' review letter specifically required resubmission.

Title VII of the Omnibus Budget Reconciliation Act of 1989, Public Law 101-239 (12/19/89), made several changes to the LIHTC program. Attachment 4 is a copy of the legislation. Among other things, the new law: (1) Requires tax credit applicants to disclose to the tax credit agency all state, local, or federal subsidies; and (2) directs the states to develop allocation and selection criteria, consider all sources and uses of funds and limit credit allocations to the amount needed to make projects feasible. Headquarters staff will be working with Treasury and the National Council of State Housing Agencies to develop procedures for coordinating the states' underwriting with HUD's reviews. Meanwhile, I would like each HUD Regional Office to meet with all state agencies responsible for allocating tax credits in the Regions' jurisdiction. At the meeting, the Region should:

• Ask the credit agencies to describe any application and allocation procedures they now use and their plans for implementing the Budget Reconciliation Act's underwriting and allocation requirements.

• Explore how the use of HUD mortgage insurance or HUD subsidies will affect each credit agency's evaluation of a tax credit application.

• Obtain copies of any forms the agencies will use to issue preliminary approvals or to reserve or allocate credits.

• Ask the credit agencies to notify the HUD Field Office/the Coinsuring Lender/the PHA (for Mod Rehab or PBA certs)/the HFA whenever they learn that a tax credit applicant is participating in a HUD mortgage insurance or subsidy program.

• Determine if the agencies are aware that the Budget Reconciliation Act placed new restrictions on allocating 1990 credits to Section 8 Mod Rehab projects. If the agencies raise any questions on the new restrictions, suggest that they consult their tax counsel or the IRS.

Background: While section 7108(h)(5) of the legislation only precludes Mod Rehab projects from receiving the 30 percent credit, the Congressional record states that the House-Senate conferees intended to deny both the 30 percent and the 70 percent present value credit. Congressional tax staff have stated they will seek a technical correction that will prohibit both credits.

Understanding the credit agencies' procedures should help you identify which projects are likely to receive credits and the potential for excess profits. It may also give you ideas on how HUD and the credit agencies' processing can be better coordinated.

Please complete these meetings by April 2nd and send a brief summary of the meeting to Sue Donahue in room 6168 or on Fax number 755-2583. Please submit the summary by April 9th. Your report should cover the first two points listed above, include copies of any draft/official underwriting and allocation forms or procedures the credit agencies will use, and set forth any suggestions you have on coordinating the credit agencies' and HUD's processing. This reporting requirement has been approved under RMS No. MM130000458s.

Thank you for your cooperation on this important matter.

C. Austin Fitts,

Assistant Secretary for Housing-Federal Housing Commissioner.

Exhibit 1 to Attachment 4—Actions Requiring Certifications as to Participation in Lihtc Program

HUD field staff/coinsuring lenders/PHAs/HFAs must obtain an owner's certification as to whether the project will participate in the LIHTC program before taking any of the actions listed in this attachment. Mod Rehab and the PBA certificate programs are covered only in paragraphs 1 and 2 and those paragraphs apply only to those two programs. Other paragraphs may apply to more than one program—e.g., coinsurance and full insurance. These requirements apply to all HUD—related projects except nursing homes and hospitals.

1. *Project-Based Certificates:* establishing initial contract rents (including exception rents); signing AHAPS; approving transfers of property ownership or subsidy contracts; or requesting Headquarters' approval of Section 8 special rent adjustments for purposes the Field is not authorized to approve (e.g., security).

2. *Mod Rehab (Regular and SRO):* before taking any of the actions listed in paragraph 1; before adjusting rents to reflect any refinancing the owner reports to the PHA.

Note: While the 1989 Omnibus Budget Reconciliation Act put new restrictions on allocating 1990 tax credit authority to Mod Rehab projects, Mod Rehab projects that received allocations of 1989 or earlier tax credit authority may still use credits. Since some projects with these earlier credit allocations may be in the Mod Rehab pipeline for at least another 18 months, you must apply these procedures to owners seeking Mod Rehab. (See Page 3, Paragraph 5 of this notice for more on the ineligibility of Mod Rehab projects.)

3. *Mortgage Insurance:* issuing a SAMA/feasibility letter or a conditional/firm commitment under section 207, 220, 221(d)(3), 221(d)(4), 223(d), 223(f), 231, 232 Board & Care, or *241.*

4. *Ownership Changes:* issuing preliminary or final approval of TPAs; assigning subsidy contracts to new owners.

5. *Mortgage Relief:* approving or recommending approval of workouts/mortgage modifications/partial payment of claims.

6. *Refinancing:* before approving or recommending approval of any refinancing that would result in a modification of a HUD interest reduction or tenant assistance payment contract.

7. *Prepayment Plans of Action:* recommending Headquarters approval of plans of action required under 1987 or subsequent prepayment legislation.

**8. *Replacement Reserves & Residual Receipts:* Before releasing more than $1,000 per unit during any 12-month period from these or similar accounts (e.g., painting reserves or project improvement accounts other than those set up under Flexible Subsidy contracts).

**9. *Rent Increases:* Before requesting Headquarters' approval of section 8 special rent adjustments for purposes the HUD Field staff/PHA/HFA/coinsuring lender is not authorized to approve (e.g., security); before including project improvements in a budgeted rent increase.

** *EXCEPTION:* When processing actions in Item 8 or 9, no owner certification is required if: (1) a negative certification in the format of Attachment 3 is already on file; (2) that certification is dated less than 1 year before the date of the owner's current request; and (3) there is no reason to believe the owner has or intends to seek tax credits.

10. *LM or PD Section 8 (24 CFR 886, subparts A and C).* Before executing contracts for new or additional units, or reserving funds for those units. (This notice does *not* apply to renewals or cost amendments.)

11. *Flexible Subsidy:* Before recommending or approving reservations, contract increases or extensions, or new contracts. Before depositing Flexible Subsidy Funds in a working capital fund/replacement reserve account when closing-out a Flexible Subsidy contract.

12. *Foreclosure Sales:* Executing a use agreement, AHAP or HAP contract when HUD is outbid at a foreclosure sale.

13. *PD Negotiated Sales:* Before recommending Headquarters approval of any non-competitive sale. (Request the tax credit certification during your preliminary discussions.)

14. *PD Competitive Sales: (when bids are opened in the Field Office)* before executing a sales contract, AHAP or HAP contract. (Headquarters will request tax credit certification and information when bids are opened in Headquarters.)

15. *HODAG:* Amending Grant Agreements; approving an ownership change; processing a request to waive a regulation, handbook, or notice requirement.

EXHIBIT 2 to—Attachment 4 Materials LIHTC Participants Must Submit

1. Brief summary of the terms on which the owner will participate in the LIHTC program. Include:

a. the annual credit amount, the type(s) of credit (acquisition and or rehab); the date the 10-year credit period will begin; the credit percentage awarded for each type of credit; and the maximum qualified basis for each type of credit.

b. which income eligibility limit will apply (50/60 percent of median income) and how many units, if any, will be set-aside for families with incomes below 40 percent of the median income (deep-rent skewing).

c. list of units for which credits will be claimed. Give the number of units in each bedroom size and the initial tax credit rent limit for each unit size. Also indicate which units, if any, will be held for families with incomes below 40 percent of the median income.

Note: The 1989 Omnibus Reconciliation Act sets the rent limit based on the median income of "hypothetical" households having 1.5 persons per bedroom. Under previous law, rent cap was based upon the actual size of the household occupying the unit. See Page H 9396 of Attachment 4 for the new statutory language.

2. Copy of a) IRS Form 8609, *Low Income Housing Credit Allocation Certification;* or b) a report on the status of any tax credit allocation still in process and a copy of any credit agency reservation form or other document indicating agency's intent to award credits to the project.

3. Whether credit will be claimed by current owners or new owners.

4. List of all federal/state/local government insurance, loan, grant or subsidy programs in which the applicant plans to participate and any grants or below-market loans expected to be received from non-government sources. For each loan, give interest rate, monthly debt service, loan amount and loan term.

5. Sources and Uses of Funds Statement, itemizing: (a) All funds available; (b) All purposes for which funds will be disbursed; and (c) Dates any investor contributions are due. For item (a), use gross amounts available before deducting syndication, legal or other intermediary costs.

6. A Statement in which the applicant agrees to promptly notify the HUD Field Office of any change in the information provided pursuant to this attachment.

Note: The following language must be included in the submission. The applicant's signature must appear immediately below this warning.

Warning: It is a crime to knowingly make false statements to a federal agency. Penalties upon conviction can include a fine and imprisonment. For details, see Title 18 U.S. code, sections 1001 and 1010.

Public Reporting Burden. This collection of information is estimated to average ½ hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, 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:

- Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, DC 20410–3600.
- Office of Management and Budget, Paperwork Reduction Project (2502–0377), Washington, DC 20503.

Exhibit 3 to Attachment 4—Owner's Certification That Project Will Not Participate in the Low Income Housing Tax Credit (LIHTC) Program

TO: HUD Field Office/PHA/Coinsuring Lender

RE: Project No.: _____

Project Name: _____

1. I certify that neither I nor any other representative of the project identified above currently intends to participate in the LIHTC program with regard to the subject project.

2. If plans change and I or another representative of the project decide to participate in the LIHTC program with regard to the subject project, I will notify you in writing immediately following our decision to participate.

Warning: It is a crime to knowingly make false statements to a federal agency. Penalties upon conviction can include a fine and imprisonment. For details, see Title 18 U.S. code, sections 1001 and 1010.

Signature _____

Name _____

Position Title _____

Date: / / _____

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Tuesday
April 9, 1991

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Parts 25, 121, 135

Improved Access to Type III Exits; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 25, 121, and 135

[Docket No. 26530, Notice No. 91-11]

RIN 2120-AC46

Improved Access to Type III Exits

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes amendments to the Federal Aviation Regulations (FAR) which would require improved access to Type III emergency exits (typically smaller over-wing exits) in transport category airplanes with 20 or more passenger seats. These proposals are the result of tests which were conducted at the FAA's Civil Aeromedical Institute (CAMI), and are intended to improve the ability of occupants to evacuate an airplane under emergency conditions. They are applicable to air carriers, air taxi operators, and commercial operators of transport category airplanes as well as the manufacturers of such airplanes.

DATES: Comments must be received on or before October 7, 1991.

ADDRESSES: Comments on this proposal may be mailed in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-10), Docket No. 26530, 800 Independence Avenue SW., Washington, DC 20591, or delivered in triplicate to: room 915G, 800 Independence Avenue SW., Washington, DC. Comments delivered must be marked Docket No. 26530. Comments may be inspected in room 915G weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m. In addition, the FAA is maintaining an information docket of comments in the Office of the Assistant Chief Counsel (ANM-7), FAA, Northwest Mountain Region, 1601 Lind Avenue SW., Renton, Washington, 98055-4056. Comments in the information docket may be inspected in the Office of the Assistant Chief Counsel weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Franklin Tiangsing, FAA, Regulations Branch (ANM-114), Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2121.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, or economic impact that might result from adopting the proposals contained in this notice are invited. Substantive comments should be accompanied by cost estimates. Commenters should identify the regulatory docket or notice number and submit comments, in triplicate, to the Rules Docket address specified above. All comments received on or before the closing date for comments will be considered by the Administrator before taking action on this proposed rulemaking. The proposals contained in this notice may be changed in light of comments received. All comments will be available in the Rules Docket, both before and after the closing date for comments, for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 26530." The postcard will be date/time stamped and returned to the commenter.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-230, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on the mailing list for future rulemaking documents should also request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

Background

In September 1985, the FAA convened a Public Technical Conference on Emergency Evacuation of Transport Airplanes, in response to issues raised by various sectors of the public regarding the adequacy of existing regulations involved with emergency evacuation. One of the issues discussed at this conference was the access to Type III exits. As defined in § 25.807(a)(3), a Type III passenger emergency exit must have an opening which is not less than 20 inches wide by 36 inches high. It need not be rectangular in shape, provided a rectangle of these dimensions can be enscribed within the opening. The corner radii must not be greater than one-third the width of the exit. The step-up distance inside the cabin must not be more than 20 inches. Type III exits are typically over-wing exits. When so located, the step down to the wing must not be more than 27 inches. Type III exits are typically removable hatches; however, they may be hinged doors.

Access from each aisle to each Type III exit is required by § 25.813(c), although specific passageways are not defined. Additionally, § 25.813(c) requires, for airplanes with 20 or more passenger seats, that the projected opening of the Type III exit may not be obstructed and that there must be no interference (by seats, berths, etc.) in opening the exit.

As a result of questions posed at the public conference, a series of tests were conducted by CAMI to evaluate the ease with which exits can be opened and the effect of passageway width on flow through them. The CAMI Report No. DOT/FAA/AM-89/14—The Influence of Adjacent Seating Configurations on Egress Through a Type III Emergency Exit is available from the National Technical Information Service, Springfield, Virginia 22161. In addition, a copy of the report can be found in the docket for this rulemaking proceeding. The report describes the two sets of tests that were run with a total of 131 subjects, three groups of 33 each and one group of 32. The evacuation rates of the four groups evacuating through a Type III exit were measured in the first set of tests. Each group was tested in four separate runs, passing through four different access configurations on their way to the exit. This phase of the testing used the principles of Latin Square testing. (The Latin Square test, which is defined in FAA Order FS 8110.12, dated May 21, 1964, is a procedure used in evaluating two or more different exit configurations. It is used to factor out differences in test subject groups and experience gained by the groups in succeeding test runs.) The four access configurations were:

A—The current minimum access required by § 25.813(c), which resulted in an unobstructed passageway of approximately 6 inches;

B—A configuration which had a minimum of 10 inches of unobstructed passageway to the exit, with the leading edge of the seat bottom cushion of the

row of seats aft of the exit at the centerline of the exit;

C—A configuration which had a minimum of 20 inches of unobstructed passageway to the exit, with the leading edge of the seat bottom cushion of the row of seats aft of the exit protruding 5 inches forward of the projected aft vertical edge of the exit opening; and

D—A configuration which provided two passageways to the exit by centering a seat row on the exit, but with the outboard seat deleted and with the seat rows forward and aft of this seat row spaced at 32 inches (providing two, approximately 6-inch unobstructed passageways).

The data obtained from these tests were then subjected to a statistical evaluation. It was found that the egress rates of configurations C and D were approximately 14 percent better than that of configuration A, a statistically significant improvement. In addition, the rate of egress from configuration D was a statistically significant improvement over that of configuration B.

The exit preparation time, i.e., the time it took to open and dispose of the exit hatch, was measured in the second set of tests. During this testing, each of five seating locations (configuration D has two seating locations from which a person can reasonably be expected to open the exit) was evaluated with eight subjects per location. In this set of tests, the questions of where to dispose of the hatch and whether or not increased space in the vicinity of the exit would reduce the amount of time required to prepare the exit for use were studied. During the testing, the passenger information card purposely omitted any instruction as to what to do with the exit hatch after it had been removed from the side of the fuselage mock-up. This was consistent with some airline passenger information cards which do not recommend specific stowage areas. As expected, the test subjects found a variety of solutions to the question. These included laying the hatch horizontally or vertically against the back of the seat row forward of the exit or vertically in the seat position that the opener had previously occupied, throwing the hatch out the exit, and placing the hatch on the seat row forward of the exit. In some instances, the hatch was stowed in a position considered to be a possible impediment to the smooth flow of passengers to and through the exit.

Discussion

As discussed above, the tests conducted by CAMI showed that a significant improvement in egress rates could be achieved by increasing the access space to Type III exits over that currently required by part 25. This notice proposes to amend § 25.813(c) to require increased access to Type III exits from the nearest main aisle on airplanes with a seating configuration of 20 or more. The proposed rule would require that passageways be provided as described in either test configuration C or D, which are defined in proposed §§ 25.813(c)(1)(i) and (ii), respectively. These passageways are projected vertically with respect to the airplane floor.

While the CAMI tests and the proposed rules focus upon increased access to Type III exits in the area directly adjacent to such exits, the FAA will consider alternative means of increasing the flow rate from Type III exits. The goal of these proposed rules is to achieve the flow rate improvement which the CAMI tests indicate is attainable with the C and D test configurations. Specifically, the CAMI tests demonstrated that either of the alternative proposals contained in this notice would achieve an improvement of 14 percent in the rate of flow at Type III exits. Therefore, the FAA would accept any alternative seat configuration, exit procedure, or other change that would accomplish an improvement in the flow rate equal to or greater than 14 percent. An air carrier or manufacturer desiring to use such an alternative methodology would be expected to establish, through a test procedure acceptable to the Administrator, that the alternative achieves a level of safety equivalent to that which would be provided by these proposals for an improvement in passenger evacuation through Type III exits, and that it continues to comply with all other relevant regulatory requirements. The FAA requests comments on the desirability of employing this alternative methodology.

Current §§ 25.813(c) (1) and (2) are reidentified as §§ 25.813(c)(2) (i) and (ii). This relocation clearly shows that these requirements are separate from the passageway requirements of proposed §§ 25.813(c)(1) (i) and (ii). This also clearly shows that the phrase "this region" in proposed § 25.813(c)(2)(ii) refers to those areas discussed in proposed § 25.813(c)(2)(i). The phrase "excluding pilot's" has been deleted because the reader may incorrectly interpret the sentence to mean that the seats of other crewmembers, such as those of flight attendants or flight engineers, are considered to be passenger seats.

Just prior to the FAA-sponsored public conference, a Boeing 737 operated by British Airtours was destroyed on August 22, 1985, at Manchester, England. The accident occurred prior to takeoff as a result of an engine disintegration. Due to the ensuing fire, 57 of the 137 occupants were unable to escape without suffering fatal injuries. Subsequent to this accident, the British Civil Aviation Authority issued Airworthiness Notice (AN) 79 to require increased access to the Type III exits of British registered airplanes. While the provisions of AN 79 differ somewhat in detail from those proposed in this notice, the basic intent of the document was the same.

When the exit is a removable hatch, a placard would also be required to clearly indicate the method of opening the hatch and to recommend at least one stowage location. This would reduce the probability that the hatch would be left in a position which would hamper the flow to the exit. Where the hatch should be stowed in a specific airplane model would depend on the configuration of the interior in the vicinity of the exit.

Additionally, the placard would also have to indicate the weight of the hatch. This requirement is a result of observation during the phase-two tests that subjects were often overwhelmed by the unexpected weight of the exit hatch. In most instances, they would have been better prepared and positioned to handle the hatch had they known its weight beforehand.

The placard would have to be located in a prominent position in front of each seat which both faces and borders the passageways from the cabin aisle to the exit. The passengers in these seats are the most likely to open the exits in an emergency because of their proximity to the exits. In the case of a configuration D arrangement, this would typically include the passengers in the seat assembly centered on the exit and the passengers in the row aft of the exit. The requirement for the placard is proposed for § 25.813(c) rather than § 25.807(a)(3) because proper disposal of the hatch is an important factor in maintaining access to the exit.

For multi-aisle airplanes, an unobstructed 20-inch cross-aisle would be required between the aisles in the vicinity of each Type III exit, except that one cross-aisle may serve two Type III exits which are within three passenger seat rows of each other. Cross-aisles are currently required for Type A, Type I, and Type III exits by § 25.813(a). Section 25.813(a) would be revised to require that cross-aisles be provided for all exit types in multi-aisle airplanes. The cross-aisle would be required to lead directly to the passageway for a Type A exit, which must have two flows of evacuees in order to be fully utilized. For Type I,

Type II, and Type III exits, which require only one flow of evacuees in order to be fully utilized, the cross-aisle would have to lead to the immediate vicinity of the exit passageway. For purposes of this proposal, "immediate vicinity" means having at least a 5-inch overlap of the cross-aisle and the passageway to any Type II or larger exit and being within the distance of one passenger seat row (at the smallest seat pitch installed in the airplane) from the passageway for a single Type III exit. When two Type III exits are located within three passageway seat rows of each other, one cross-aisle would suffice for both exits. The cross-aisle would have to be located between the two passageways to the exits. This would eliminate the possibility that evacuees using the cross-aisle would have to bypass one Type III exit to get to the other. Notice 90–4 proposes to establish two new exit types, Type B and Type C. If a final rule is adopted establishing these two exit types, this proposal would be modified to account for that change. The crossaisle would be required to lead directly to the passageway for a Type B exit and to the immediate vicinity of the passageway for a Type C exit.

Finally, § 121.310(f)(3) would be amended to require improved access to Type III exits within 6 months after the effective date of the final rule for all airplanes type certificated after January 1, 1958, and operated under part 121. Compliance is not considered practical for airplanes type certificated prior to January 1, 1958, because of their relatively advanced age and small numbers remaining in service. The FAA is proposing a 6-month compliance period because, assuming that affected operators will elect to comply by changing seat pitch or removing a seat adjacent to the Type III exit, and given the relative ease of reconfiguring transport category airplane seat arrangements, that should provide sufficient time in which to develop the required change, procure the necessary parts, and reconfigure the airplanes.

Section 135.177 presently incorporates the provisions of § 121.310 by reference. It has come to the attention of the FAA that the practice of incorporating certain provisions of part 121 in part 135 by reference may cause confusion. In order to preclude any confusion in this regard, the provisions of § 121.310, including the changes proposed in this notice, would be included in part 135 explicitly rather than by reference.

The FAA recognizes that many factors must be evaluated in designing transport category airplanes for safe evacuations. Cabin safety rulemaking must consider the interaction between cabin size, passenger capacity, the type and number of emergency exits, exit location, distance between exits, aisle design, exit row and escape path marking and lighting, flame resistance of cabin interior materials, and other important variables. The agency considers it preferable, to the extent possible, to employ performance standards for evacuation in the future, so as not to artificially constrain design options. With the specific intent of developing the information necessary to propose such performance standards following a systems-type analysis, the FAA chartered the Aviation Rulemaking Advisory Committee on February 5, 1991. The subcommittee dealing with cabin safety will be tasked to gather the best available cabin safety expertise and undertake a comprehensive review of questions involving emergency evacuation.

I. Regulatory Evaluation

This section summarizes the full regulatory evaluation of the subject proposed rule prepared by the FAA which provides more detailed estimates of the economic consequences of this regulatory action. The full evaluation, which has been placed in the docket, quantifies, to the extent practicable, estimated costs to the private sector, consumers, Federal, state, and local government, as well as anticipated benefits and impact.

Executive Order 12291 dated February 17, 1981, directs Federal agencies to promulgate new regulations or modify existing regulations only if the potential benefits to society for the regulatory change outweigh the potential costs. The order also requires the preparation of a regulatory impact analysis of all "major" rules, except those responding to emergency situations or other narrowly defined exigencies. A "major" rule is one that is likely to result in an annual effect on the economy of $100 million or more, a major increase in consumer costs, a significant adverse effect on competition, or one that is highly controversial.

The FAA has determined that this notice of proposed rulemaking is not "major" as defined in the executive order; therefore, a full regulatory analysis, which includes the identification and evaluation of cost-reducing alternatives to the proposed rule, has not been prepared. In addition to a summary of the regulatory evaluation, this section also contains a trade impact assessment, and a regulatory flexibility determination required by the Regulatory Flexibility Act of 1980.

The requirement to have placards by the exits to provide emergency information is of minimal impact, less than $100 per airplane, and will not be addressed further in this analysis.

Benefits

The benefits of the proposed improved access to Type III exits are the avoidance of prospective casualty losses (fatalities). These benefits would ensue from the reduction in exit time that the increased space would permit when evacuating an airplane under emergency conditions. Faster evacuation time can lead to the saving of life in such conditions as fire or a water environment. The FAA Civil Aeromedical Institute (CAMI) conducted tests of current seating configurations and of those entailed by this proposal. They found that current configurations allow approximately 37 people to exit per minute through Type III exits, and the proposed configuration would allow about 42 people to exit per minute, an improvement of approximately 14 percent.

Some insight to the number of fatalities that might be avoided can be gained by reference to a study performed by the National Bureau of Standards (NBS) (Decision Analysis Model for Passenger Aircraft Fire Safety with Application to Fire-Blocking of Seats, National Bureau of Standards, March 1984, NBSTR 84–2817, DOT/FAA/OT–84–8). The NBS analyzed historical fire incidents involving fatalities during the period 1965 through 1982 and estimated the number of lives that could have been saved if passengers had additional time to escape before a major cabin fire developed, i.e., before flashover occurred.

In evaluating seat fireblocking, the NBS estimated that of 712 fatalities during the period 1965 through 1982, 109 persons could have been saved if there had been 20 additional seconds of evacuation time. This is a rate of approximately 3 lives saved per 100 million passenger enplanements. While having more time to evacuate an airplane is not the same as being able to evacuate an airplane faster, it can nevertheless serve as a proxy for estimating benefits because the end result is the same—more passengers can egress before fire or explosion makes safe egress impossible. If 3 lives per 100 million enplanements could be saved by providing 20 additional seconds of evacuation time, it follows that approximately the same number could

be saved if the rate of evacuation were improved so that the passengers could evacuate the airplane 20 seconds earlier.

Section 25.803 specifies that an evacuation demonstration must be successfully completed within a 90-second time period. Assuming that the first 10 seconds would be used for exit preparation, the actual evacuation of passengers must take place within 80 seconds. Further, assuming that improved access to Type III exits would provide a 14 percent improvement in the Type III exit evacuation rate, as estimated by CAMI, and that Type III exits provide an average of 35 percent of the evacuation capability of the domestic narrow-body fleet, the time needed for all passengers to evacuate would be reduced by approximately 3.9 seconds (14 percent × 35 percent × 80 seconds). By comparing the reduction in time needed to egress as a result of improved access to exits (3.9 seconds) with the additional time afforded by the fireblocking of seats (20 seconds), the FAA estimates that the reduction in fatalities attributable to improved access to exits would be approximately 20 percent of that due to the fireblocking of seats. The improved access can therefore be assigned a fatality reduction of 0.6 persons per 100 million enplanements (20 percent × 3 persons per 100 million enplanements).

The FAA estimates that 32 lives might be saved over the 20-year period 1993 through 2012 as a result of the proposed rule. Based on these and other estimates, the benefits would total $47.4 million, or $15.9 million discounted to present value at a discount rate of 10 percent. The derivations of these estimates are detailed in the full regulatory evaluation.

Costs

Airline operators could meet the requirements of this proposal in one of two ways. The first would be to increase the distance between the two seat rows fore and aft of the exit. The second would be to remove the outboard seat, i.e., the seat nearest the exit. The corresponding costs of these alternatives would be those resulting from adjusting cabin configurations to provide the necessary access, and the reduction in passenger-carrying capacities due to the reduction in the numbers of seats. Each alternative and its estimated cost is summarized below.

Although the FAA assumes that manufacturers and operators would likely employ the most expedient and least costly alternative to comply with these proposed rules, they may opt to design their own cabin configuration to achieve a 14 percent or better Type III exit flow rate that exceeds costs of compliance options already available. Since the nature of such designs cannot be gleaned at this time, no costs have been evaluated for this possible means of compliance.

Under the first option, affected airplane operators would increase the typical current spacing of about 8 inches between seat rows in the vicinity of Type III exits to 20 inches, an increase of 12 inches. The current spacing, or pitch, between rows is about 33 or 34 inches, and therefore the proposal would increase the pitch of one seat row to 46 inches. The approximately 12 inches of floor space that must be gained per exit to avoid losing seats could be achieved by one or more of the following means: (1) Decrease pitch slightly through the remainder of the passenger cabin; (2) reduce leg room aft of a partition; (3) reduce seat recline forward of a partition; (4) resize, relocate, or remove cabin furnishings such as closets, galleys, or lavatories; or (5) replace existing seats in the vicinity of the exits with thinner profile seats.

Adjusting cabin configurations by moving all seats a few inches would require an estimated 40 to 50 man hours per affected aircraft. Using a $30 per hour full compensation rate and a 50-hour requirement, the FAA estimates that adjusting cabin configurations in affected airplanes would result in a $5.4 million one-time cost ($375 per Type III exit), or $4.1 million when discounted to present value. Any reduction of passenger seat pitch would decrease "knee room" available to passengers, with a possible corresponding reduction of passenger comfort and convenience. The FAA requests comments on the costs, if any, resulting from possible passenger discomfort or inconvenience. The FAA believes that most carriers would choose this option rather than the option of removing seats. The FAA specifically requests comments relating to the numbers of airplanes for which reconfiguration would provide the proposed access without an accompanying loss of passenger seats and any additional costs that would be involved to achieve such reconfiguration.

Under the second option, the costs to affected operators would consist primarily of the foregone revenues, less expenses, that lost seats would have otherwise generated. Evaluating the costs of reduced seating capacities can be approached in two ways. One method is to determine how much operators are willing to pay for additional capacity. The other is to determine the revenue generated by the lost seat minus expenses involved in generating that revenue. Each method is described below.

The theoretical purchase price of an aircraft is the present value of its net future earnings stream. Included among the major price determinants are its passenger capacity, its speed, its range, and its operating costs. Although not based on a detailed analysis, a rule of thumb is that new airplanes sell for about $200,000 per seat, an airplane with 100 seats sells for about $20 million, one with 200 seats for $40 million, and one with 400 seats for $80 million. This is not a strict relationship, but can serve as a rough estimate. The theoretical annual revenue to justify this price (25-year life, 10 percent discount rate) is $22,000. Used aircraft with 10 years remaining life sell for about $50,000 per seat, justified by annual revenue of $8,000.

Another approach to calculating the marginal value of a seat is by reference to the net revenue it generates. Type III exits are mainly used on narrow-body jet aircraft. These aircraft generate about $330 in revenue per seat per day or $120,000 per year. Marginal expenses for an additional passenger, i.e., costs for passenger services (ticketing, baggage handling, food, etc.) and fuel, are estimated at 20 percent of revenue. Therefore, the net revenue per additional passenger is approximately $96,000 per year ($120,000 x 80 percent). The occupancy rate or load factor of the last seat or two, of course, will influence the net foregone revenue.

As a cross-check, the FAA asked the aviation industry for an estimate of the expected occupancy rate or load factor for the last one to four seats. One estimate was about 20 percent. Another estimate, from a major airline, indicated that revenues of about $19,600 per year would be lost per seat removed. Assuming that expenses amount to 20 percent of a seat's revenue, the net annual lost revenue per seat would be $15,700. For purpose of this analysis, the FAA assumes that the annual net revenue lost per seat is $15,700. This is less than the $22,000 per seat market price approach (sales price of an aircraft on a per seat basis) for new aircraft but nearly two times as much as that for an average used aircraft ($8,000 per seat). The FAA makes this assumption because the airline operator supplied a seemingly reasonable approach to its estimate of lost revenue per seat. In total, these estimates yield total foregone revenues of $4.57 billion, or $1.59 billion when discounted to present value, over the 20-year period (see Tables A and B of the full regulatory evaluation for details on how these foregone revenues were calculated).

In addition to lost seat revenues, costs of removing and replacing seats would be incurred. Assuming a net cost per exit of $2,000 per exit (including seats and labor), the FAA estimates that the costs of removing and replacing all affected seats would be $28.8 million, or $21.6 million discounted to present value. Further, not having to carry the seat weight would result in some fuel savings. The FAA estimates that affected operators would save about $180 per removed seat per year, or approximately $52.4 million ($18.2 million discounted) over the 20-year period.

Combining the costs of net revenue loss, the costs of seat removal and replacement, and the savings in fuel costs yields a total net cost of this option of $4.57 billion, or $1.59 billion discounted. The FAA requests that industry and the public provide information regarding the number of seats that would be lost under this proposal and the gross and net revenues that would be foregone due to the loss of seats.

Comparison of Benefits and Costs

The FAA believes that operators would do everything possible to avoid losing seats and would most likely reconfigure cabins by reducing the pitch slightly in order to provide the additional space that would be required by the proposed rules. In this event, the estimated costs at present value would be $4.1 million (discounted), which compares very favorably with the estimated $15.9 million (discounted) in benefits.

If, on the other hand, all affected operators choose to remove seats to comply with this proposed regulation, a value of at least $150.8 million would have to represent a statistical life saved in order for benefits to equal or exceed costs. As noted above, the FAA does not expect that many operators would choose the latter method, although it recognizes that some operators in some instances for various reasons may choose to do so. The FAA has no way to confidently project the number of operators that would remove seats or how many seats would be removed. The FAA requests information from industry regarding the number of seats, if any, that would be removed in order to comply with this regulation. Also, commentors maintaining that they would remove seats should indicate why they would be unable to comply with the proposed regulation by reconfiguring cabins.

II. International Trade Impact Analysis

The proposal is unlikely to have any impact on international trade. U.S. airplane manufacturers can easily configure an airplane cabin to suit a foreign customer. Generally, widebody airplanes are used in international air commerce and do not have Type III exits. U.S. carriers using these airplanes are not expected to be at a competitive disadvantage. To the extent that carriers using smaller airplanes in international operations would be unable to meet these requirements without removing seats, they would be at a competitive disadvantage by the amount of the resulting lost net revenues. Adoption of similar rules by other countries would mitigate this disadvantage (a somewhat related rule has already been adopted by the United Kingdom).

III. Regulatory Flexibility Act Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The RFA requires agencies to review rules which have "a significant economic impact on a substantial number of small entities." The proposal would have an impact on airline operators whose fleets contain Type III exits.

Only two U.S. manufacturers specialize in commercial transport category airplanes—the Boeing Company and the McDonnell Douglas Corporation. In addition, a number of general aviation entities, including Cessna Aircraft Corporation, Beech Aircraft Corporation, Gulfstream American Corporation and Gates Learjet Corporation, manufacture other transport category airplanes, such as large business jets.

The FAA size threshold for determination of a small entity for U.S. airplane manufacturers is 75 employees; any manufacturer with more than 75 employees is not considered to be a small entity. None of the transport category airplane manufacturers employs fewer than 75 employees and thus is considered to be a small entity.

The FAA size threshold for determination of a small entity for airplane operators is nine owned airplanes or fewer; that is, any airplane operator with more than nine airplanes is considered not to be a small entity. The cost thresholds in 1988 dollars are $98,274, $54,935, and $3,865 for scheduled carriers with all airplanes having over 60 seats, other scheduled carriers, and unscheduled air carriers, respectively. The lowest estimated cost impact of the proposed rules is $375 per exit. This cost impact would amount to $13,500 for an operator with nine airplanes who chooses to reconfigure cabins to meet the requirements of the proposed rule. This estimated cost exceeds the cost thresholds for small unscheduled aircraft operators and, therefore, an initial regulatory flexibility analysis follows.

IV. Initial Regulatory Flexibility Analysis

As required by sections 603(b) and (c) of the Regulatory Flexibility Act, the following analysis deals with the proposed rule as it relates to small entities.

A. *Why agency action is taken.* The reasons for agency action are detailed in the NPRM. Briefly, the proposal requires improved access to Type III emergency exits so as to facilitate the evacuation of airplanes under emergency conditions.

B. *Objective of and legal basis for the rule.* The objective of the proposed rule is to reduce prospective casualty losses by improving access to Type III exits. This objective is more thoroughly discussed in this preamble to the NPRM. The legal basis of the proposal is Sections 313, 314, and 601 through 610 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354, 1355, and 1421 through 1430), and the Department of Transportation Act (49 U.S.C. 106(g)).

C. *Description of the small entities affected by the rule.* The small entities that would be impacted by the rule would be those with nine or fewer aircraft operating under parts 121 or 135 of the Federal Aviation Regulations. This matter is further discussed in part V of the full evaluation contained in the docket.

D. *Compliance requirements of the rule.* The proposal would require each airplane operating in accordance with part 121 or 135, or certificated under part 25, to have improved access to Type III emergency exits at a date 6 months after the effective date of the regulation.

E. *Overlap of the rule with other federal regulations.* No other Federal rules duplicate, overlap, or conflict with the proposal.

F. *Alternatives to the proposal.* As part of the rulemaking process, the FAA considered several alternative approaches to the problems addressed in the proposal. Three alternative proposals were considered, and a discussion of their merits follows.

Alternative one—apply proposal only to new production airplanes. This alternative would save the operators the cost of retrofitting and allow for a more

optimum cabin configuration. The compliance cost for new production airplanes would be less than the cost of retrofitting current fleet airplanes, and thus the benefit to cost ratio would be improved. Naturally, the benefits would only be available for new production airplanes, and some operators may decide to retrofit to remain competitive in regards to safety. The FAA rejected this proposal because it would delay, up to 15 years, the reduction of casualty losses resulting from accidents of airplanes now in the fleet.

Alternative two—have different standards based on size of affected air carrier. This alternative would save small firms the compliance cost of the proposal, yet would provide protection to the majority of air travelers who utilize large air carriers. Small air carriers (fewer than nine aircraft) might implement the proposal anyway to remain competitive. Additionally, the public would not be afforded full protection. The FAA rejected this approach because it believes that all members of the traveling public should be equally protected.

A variation of this approach would be to lessen the impact on small air carriers by allowing them more time in which to comply. This approach was also rejected because there would be a period of time in which some members of the traveling public would not be afforded the protection enjoyed by persons traveling on larger carriers. Furthermore, it does not appear that delayed compliance would result in a significant overall cost reduction for the smaller carriers.

Alternative three—let the marketplace decide. Under this alternative, the public would select the airline based on competitive factors, including those of a safety nature. This would assume that the public is knowledgeable about the safety aspects of each airline. The airline would be free to implement the proposal or not and do what it considers to be in its best interest. Because the public is generally not informed about safety systems, the FAA would have to inform passengers as to the absence or presence of approved systems which meet the requirements of the proposal. Moreover, in many instances the traveling public would not have a competitive carrier available to choose over the carrier not providing the additional space. The FAA believes that this alternative would also be rejected by industry and the public and has decided it has less merit than the selected proposal. In fact, while air carriers have always been free to voluntarily comply with the substance of this proposal, to date none have chosen to do so.

Federalism Implications

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

Conclusion

For the reasons given earlier in the preamble, the FAA has determined that this is not a major regulation as defined in Executive Order 12291. As this notice concerns a matter on which there is significant public interest, the FAA has determined that this action is significant as defined in Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). In addition, the FAA has endeavored to consider feasible alternatives to this proposal which would minimize the impact on small entities. After careful consideration of these entities, the FAA has concluded that the proposal might have a significant impact on a substantial number of small entities, but it is the best course to achieve the desired safety objectives. Other alternatives and views are solicited from interested persons. They will be carefully considered by the FAA in the development of a final rule.

List of Subjects

14 CFR Part 25

Air transportation, Aircraft, Aviation safety, Safety.

14 CFR Part 121

Aviation safety, Safety, Air carriers, Air transportation, Aircraft, Airplanes, Airworthiness directives and standards, Transportation, Common carriers, Crashworthiness, Emergency evacuation.

14 CFR Part 135

Aviation safety, Safety, Air carriers, Air transportation, Aircraft, Airplanes, Cargo, Hazardous baggage, Materials, Transportation, Mail.

The Proposed Amendment

Accordingly, the FAA proposes to amend parts 25, 121, and 135 of the Federal Aviation Regulations (FAR), 14 CFR parts 25, 121, and 135 as follows:

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

1. The authority citation for part 25 continues to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1424, 1425, 1428, 1429, 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 49 CFR 1.47(a).

2. By amending § 25.813 by revising paragraphs (a) and (c) to read as follows:

§ 25.813 Emergency exit access.

(a) There must be a passageway leading from the nearest main aisle to each Type I, Type II, or Type A emergency exit and between individual passenger areas. Each passageway leading to a Type A exit must be unobstructed and at least 36 inches wide. Other passageways must be unobstructed and at least 20 inches wide. Unless there are two or more main aisles, each Type A exit must be located so that there is passenger flow along the main aisle to that exit from both the forward and aft directions. If two or more main aisles are provided, there must be unobstructed cross-aisles at least 20 inches wide between main aisles. There must be—

(1) A cross-aisle which leads directly to each passageway between the nearest main aisle and a Type A exit; and

(2) A cross-aisle which leads to the immediate vicinity of each passageway between the nearest main aisle and a Type I, Type II or Type III exit; except that when two Type III exits are located within three passenger rows of each other, a single cross-aisle may be used if it leads to the vicinity between the passageways from the nearest main aisle to each exit.

* * * * *

(c) The following must be provided for each Type III or Type IV exit—

(1) There must be access from the nearest aisle to each exit. In addition, for each Type III exit in an airplane that has a passenger seating configuration of 20 or more—

(i) Except as provided in paragraph (c)(1)(ii) of this section, the access must be provided by an unobstructed passageway that is at least 20 inches in width. The centerline of the passageway must not be displaced more than 5 inches horizontally from that of the exit.

(ii) In lieu of one 20-inch passageway, there may be two passageways, between seat rows only, that must be at least 6 inches in width and which lead to an unobstructed space adjacent to the exit. The unobstructed space adjacent to

the exit must extend vertically from the floor to the ceiling (or bottom of sidewall stowage bins), inboard from the exit for a distance not less than the width of the narrowest passenger seat installed on the airplane, and from the forward edge of the forward passageway to the aft edge of the aft passageway. The exit opening must be totally within the fore and aft bounds of the unobstructed space.

(2) In addition to the access—

(i) For airplanes that have a passenger seating configuration of 20 or more, the projected opening of the exit provided must not be obstructed and there must be no interference in opening the exit by seats, berths, or other protrusions (including any setback in the most adverse position) for a distance from that exit not less than the width of the narrowest passenger seat installed on the airplane.

(ii) For airplanes that have a passenger seating configuration of 19 or fewer, there may be minor obstructions in this region, if there are compensating factors to maintain the effectiveness of the exit.

(3) For each Type III exit, there must be placards installed which—

(i) Are readable by all persons seated adjacent to and facing a passageway to the exit;

(ii) Accurately state or illustrate the proper method of opening the exit, including the use of handholds; and

(iii) If the exit is a removable hatch, indicate an appropriate location to stow the hatch and state the weight of the hatch.

* * * * *

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

3. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1356, 1357, 1401, 1421 through 1430, 1472, 1485, and 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 49 CFR 1.47(a).

4. By amending § 121.310 by revising paragraph (f)(3) to read as follows:

§ 121.310 Additional emergency equipment.

* * * * *

(f) * * *

(3) * * *

(i) * * *

(ii) For an airplane for which the application for the type certificate was filed on or after May 1, 1972, the access must meet the emergency exit access requirements under which the airplane was type certificated; except that,

(iii) For an airplane type certificated after January 1, 1958, after [Insert date 6 months after the effective date of the final rule], the access must meet the requirements of § 25.813(c) of this chapter, effective [Insert effective date of the final rule].

* * * * *

PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATORS

5. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1356, 1357, 1401, 1421–1431, and 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 49 CFR 1.47(a).

§ 135.177 [Amended]

6. By amending § 135.177 by removing and reserving paragraph (a)(4).

7. By adding a new § 135.178 to read as follows:

§ 135.178 Additional emergency equipment.

No person may operate an airplane having a passenger seating configuration of more than 19 seats, unless it has the additional emergency equipment specified in paragraphs (a) through (l) of this section.

(a) *Means for emergency evacuation.* Each passenger-carrying landplane emergency exit (other than over-the-wing) that is more than 6 feet from the ground, with the airplane on the ground and the landing gear extended, must have an approved means to assist the occupants in descending to the ground. The assisting means for a floor-level emergency exit must meet the requirements of § 25.809(f)(1) of this chapter in effect on April 30, 1972, except that, for any airplane for which the application for the type certificate was filed after that date, it must meet the requirements under which the airplane was type certificated. An assisting means that deploys automatically must be armed during taxiing, takeoffs, and landings. However, if the Administrator finds that the design of the exit makes compliance impractical, he may grant a deviation from the requirement of automatic deployment if the assisting means automatically erects upon deployment and, with respect to required emergency exits, if an emergency evacuation demonstration is conducted in accordance with § 121.291(a) of this chapter. This paragraph does not apply to the rear window emergency exit of Douglas DC–3 airplanes operated with fewer than 36 occupants, including crewmembers, and fewer than five exits authorized for passenger use.

(b) *Interior emergency exit marking.* The following must be complied with for each passenger-carrying airplane:

(1) Each passenger emergency exit, its means of access, and its means of opening must be conspicuously marked. The identity and location of each passenger emergency exit must be recognizable from a distance equal to the width of the cabin. The location of each passenger emergency exit must be indicated by a sign visible to occupants approaching along the main passenger aisle. There must be a locating sign—

(i) Above the aisle near each over-the-wing passenger emergency exit, or at another ceiling location if it is more practical because of low headroom,

(ii) Next to each floor level passenger emergency exit, except that one sign may serve two such exits if they both can be seen readily from that sign; and

(iii) On each bulkhead or divider that prevents fore and aft vision along the passenger cabin, to indicate emergency exits beyond and obscured by it, except that if this is not possible, the sign may be placed at another appropriate location.

(2) Each passenger emergency exit marking and each locating sign must meet the following:

(i) For an airplane for which the application for the type certificate was filed prior to May 1, 1972, each passenger emergency exit marking and each locating sign must be manufactured to meet the requirements of § 25.812(b) of this chapter in effect on April 30, 1972. On these airplanes, no sign may continue to be used if its luminescence (brightness) decreases to below 100 microlamberts. The colors may be reversed if it increases the emergency illumination of the passenger compartment. However, the Administrator may authorize deviation from the 2-inch background requirements if he finds that special circumstances exist that make compliance impractical and that the proposed deviation provides an equivalent level of safety.

(ii) For an airplane for which the application for the type certificate was filed on or after May 1, 1972, each passenger emergency exit marking and each locating sign must be manufactured to meet the interior emergency exit marking requirements under which the airplane was type certificated. On these airplanes, no sign may continue to be used if its luminescence (brightness) decreases to below 250 microlamberts.

(c) *Lighting for interior emergency exit markings.* Each passenger-carrying

airplane must have an emergency lighting system, independent of the main lighting system. However, sources of general cabin illumination may be common to both the emergency and the main lighting systems if the power supply to the emergency lighting system is independent of the power supply to the main lighting system. The emergency lighting system must—

(1) Illuminate each passenger exit marking and locating sign;

(2) Provide enough general lighting in the passenger cabin so that the average illumination when measured at 40-inch intervals at seat armrest height, on the centerline of the main passenger aisle, is at least 0.05 foot-candles; and

(3) For airplane type certificated after January 1, 1958, include floor proximity emergency escape path marking which meets the requirements of § 25.812(e) of this chapter in effect on November 26, 1984.

(d) *Emergency light operation.* Except for lights forming part of emergency lighting subsystems provided in compliance with § 25.812(h) of this chapter (as prescribed in paragraph (h) of this section) that serve no more than one assist means, are independent of the airplane's main emergency lighting systems, and are automatically activated when the assist means is deployed, each light required by paragraphs (c) and (h) of this section must;

(1) Be operable manually both from the flightcrew station and from a point in the passenger compartment that is readily accessible to a normal flight attendant seat;

(2) Have a means to prevent inadvertent operation of the manual controls;

(3) When armed or turned on at either station, remain lighted or become lighted upon interruption of the airplane's normal electric power;

(4) Be armed or turned on during taxiing, takeoff, and landing. In showing compliance with this paragraph a transverse vertical separation of the fuselage need not be considered;

(5) Provide the required level of illumination for at least 10 minutes at the critical ambient conditions after emergency landing, and

(6) Have a cockpit control device that has an "on," "off," and "armed" position.

(e) *Emergency exit operating handles.* (1) For a passenger-carrying airplane for which the application for the type certificate was filed prior to May 1, 1972, the location of each passenger emergency exit operating handle, and instructions for opening the exit, must be shown by a marking on or near the exit that is readable from a distance of 30 inches. In addition, for each Type I and Type II emergency exit with a locking mechanism released by rotary motion of the handle, the instructions for opening must be shown by—

(i) A red arrow with a shaft at least three-fourths inch wide and a head twice the width of the shaft, extending along at least 70° of arc at a radius approximately equal to three-fourths of the handle length; and

(ii) The word "open" in red letters 1 inch high placed horizontally near the head of the arrow.

(2) For a passenger-carrying airplane for which the application for the type certificate was filed on or after May 1, 1972, the location of each passenger emergency exit operating handle and instructions for opening the exit must be shown in accordance with the requirements under which the airplane was type certificated. On these airplanes, no operating handle or operating handle cover may continue to be used if its luminescence (brightness) decreases to below 100 microlamberts.

(f) *Emergency exit access.* Access to emergency exits must be provided as follows for each passenger-carrying airplane.

(1) Each passageway between individual passenger areas, or leading to a Type I or Type II emergency exit, must be unobstructed and at least 20 inches wide.

(2) There must be enough space next to each Type I or Type II emergency exit to allow a crewmember to assist in the evacuation of passengers without reducing the unobstructed width of the passageway below that required in paragraph (f)(1) of this section. However, the Administrator may authorize deviation from this requirement for an airplane certificated under the provisions of part 4b of the Civil Air Regulations in effect before December 20, 1951, if he finds that special circumstances exist that provide an equivalent level of safety.

(3) There must be access from the main aisle to each Type III and Type IV exit. The access from the aisle to these exits must not be obstructed by seats, berths, or other protrusions in a manner that would reduce the effectiveness of the exit. In addition—

(i) For an airplane for which the application for the type certificate was filed prior to May 1, 1972, the access must meet the requirements of § 25.813(c) of this chapter in effect on April 30, 1972; and

(ii) For an airplane for which the application for the type certificate was filed on or after May 1, 1972, the access must meet the emergency exit access requirements under which the airplane was type certificated; except that,

(iii) For an airplane type certificated after January 1, 1958, after [Insert date 6 months after the effective date of the final rule], the access must meet the requirements of § 25.813(c) of this chapter, effective [Insert effective date of the final rule].

(4) If it is necessary to pass through a passageway between passenger compartments to reach any required emergency exit from any seat in the passenger cabin, the passageway must not be obstructed. However, curtains may be used if they allow free entry through the passageway.

(5) No door may be installed in any partition between passenger compartments.

(6) If it is necessary to pass through a doorway separating the passenger cabin from other areas to reach a required emergency exit from any passenger seat, the door must have a means to latch it in the open position, and the door must be latched open during each takeoff and landing. The latching means must be able to withstand the loads imposed upon it when the door is subjected to the ultimate inertia forces, relative to the surrounding structure, listed in § 25.561(b) of this chapter.

(g) *Exterior exit markings.* Each passenger emergency exit and the means of opening that exit from the outside must be marked on the outside of the airplane. There must be a 2-inch colored band outlining each passenger emergency exit on the side of the fuselage. Each outside marking, including the band, must be readily distinguishable from the surrounding fuselage area by contrast in color. The markings must comply with the following;

(1) If the reflectance of the darker color is 15 percent or less, the reflectance of the lighter color must be at least 45 percent.

(2) If the reflectance of the darker color is greater than 15 percent, at least a 30 percent difference between its reflectance and the reflectance of the lighter color must be provided.

(3) Exits that are not in the side of the fuselage must have the external means of opening and applicable instructions marked conspicuously in red or, if red is inconspicuous against the background color, in bright chrome yellow and, when the opening means for such an exit is located on only one side of the fuselage, a conspicuous marking to that effect must be provided on the other side. "Reflectance" is the ratio of the luminous flux reflected by a body to the luminous flux it receives.

(h) *Exterior emergency lighting and escape route.* (1) Each passenger-carrying airplane must be equipped with exterior lighting that meets the following requirements:

(i) For an airplane for which the application for the type certificate was filed prior to May 1, 1972, the requirements of § 25.812(f) and (g) of this chapter in effect on April 30, 1972.

(ii) For an airplane for which the application for the type certificate was filed on or after May 1, 1972, the exterior emergency lighting requirements under which the airplane was type certificated.

(2) Each passenger-carrying airplane must be equipped with a slip-resistant escape route that meets the following requirements:

(i) For an airplane for which the application for the type certificate was filed prior to May 1, 1972, the requirements of § 25.803(e) of this chapter in effect on April 30, 1972.

(ii) For an airplane for which the application for the type certificate was filed on or after May 1, 1972, the slip-resistant escape route requirements under which the airplane was type certificated.

(i) *Floor level exits.* Each floor level door or exit in the side of the fuselage (other than those leading into a cargo or baggage compartment that is not accessible from the passenger cabin) that is 44 or more inches high and 20 or more inches wide, but not wider than 46 inches, each passenger ventral exit (except the ventral exits on Martin 404 and Convair 240 airplanes), and each tail-cone exit, must meet the requirements of this section for floor level emergency exits. However, the Administrator may grant a deviation from this paragraph if he finds that circumstances make full compliance impractical and that an acceptable level of safety has been achieved.

(j) *Additional emergency exits.* Approved emergency exits in the passenger compartments that are in excess of the minimum number of required emergency exits must meet all of the applicable provisions of this section, except paragraphs (f)(1), (2), and (3) of this section, and must be readily accessible.

(k) *On each large passenger-carrying* turbojet-powered airplane, each ventral exit and tail-cone exit must be—

(1) Designed and constructed so that it cannot be opened during flight; and

(2) Marked with a placard readable from a distance of 30 inches and installed at a conspicuous location near the means of opening the exit, stating that the exit has been designed and constructed so that it cannot be opened during flight.

(l) *Portable lights.* No person may operate a passenger-carrying airplane unless it is equipped with flashlight stowage provisions accessible from each flight attendant seat.

Issued in Washington, DC, on April 4, 1991.

Thomas E. McSweeny,

Deputy Director, Aircraft Certification Service.

[FR Doc. 91-8265 Filed 4-4-91; 2:31 pm]

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federal register

Tuesday
April 9, 1991

Part VI

Department of Education

Rehabilitation Services Administration

Special Projects and Demonstrations for Fiscal Year 1991; Notice of Proposed Priority

DEPARTMENT OF EDUCATION

Rehabilitation Services Administration

Special Projects and Demonstrations for Fiscal Year 1991

AGENCY: Department of Education.

ACTION: Notice of proposed priority.

SUMMARY: The Secretary of Education proposes a funding priority for fiscal year 1991 for service activities to be supported under the Program of Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Individuals with Severe Handicaps.

DATES: Comments must be received on or before May 9, 1991.

ADDRESSES: All comments concerning this proposed priority should be addressed to Wallace Babington, Office of Program Operations, Rehabilitation Services Administration, Department of Education, 400 Maryland Avenue SW. (Switzer Building, Room 3033-A), Washington, DC 20202-2575.

FOR FURTHER INFORMATION CONTACT: David W. Myers, Office of Program Operations, Rehabilitation Services Administration, Department of Education, 400 Maryland Avenue SW. (Switzer Building, Room 3219), Washington, DC 20202-2575. Telephone (202) 732-1394 (voice) or (202) 732-1330 (TDD).

SUPPLEMENTARY INFORMATION: Grants under the Program of Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Individuals with Severe Handicaps are authorized by title III, section 311(a)(1) of the Rehabilitation Act of 1973, as amended. The purpose of this program is to expand and otherwise improve rehabilitation services to individuals with the most severe handicaps.

Eligible Applicants

Under the Program of Special Projects and Demonstrations, awards are made to States and other public and private nonprofit agencies and organizations.

Proposed Priority

In accordance with the Education Department General Administrative Regulations (EDGAR), 34 CFR 75.105(c)(3), the Secretary proposes to set aside funds and give an absolute preference to applications that respond to the proposed priority described in this notice for fiscal year 1991; that is, the Secretary proposes to select for funding only those applications proposing projects that meet this priority. RSA invites public comment on the merits of the proposed priority, including suggested modifications to the proposed priority.

The final priority will be announced in the **Federal Register**. The final priority will be determined by responses to this notice, available funds, and other departmental considerations. Funding of particular projects depends on the availability of funds, the nature of the final priority, and the quality of the applications received.

Priority will be given to projects that propose to provide vocational rehabilitation and other rehabilitation services, not otherwise adequately available in the geographic area proposed to be served, to maximize the vocational potential of low-functioning adults who are deaf, including those who are deaf and have secondary disabilities. A project must coordinate with other public and private nonprofit agencies and organizations to address the postsecondary education, counseling, vocational training, work transition, supported employment, job placement, follow-up, and community outreach needs of low-functioning adults who are deaf.

Projects must have or develop working relationships with existing vocational and educational programs for adult persons who are deaf, such as the Regional Postsecondary Education Programs for the Deaf (RPEPD) supported by the Department of Education. Projects must coordinate with the Rehabilitation Research and Training Center on the Rehabilitation of Low-Functioning Deaf Individuals at Northern Illinois University and the Research and Training Center on Deafness at the University of Arkansas, and the results of the projects funded under this priority must be made available to these Research and Training Centers for dissemination. Each project must also establish relationships with potential employers from the public and private sector and have access to community-based resources serving adults who are deaf (for example, organizations of persons who are deaf, groups providing special activities for persons who are deaf, and employment settings where there are workers who are deaf).

In accordance with the selection criteria in §§ 369.31(d) and 373.30(d), an applicant shall provide an evaluation plan for the project showing methods of evaluation that, to the extent possible, are objective and produce data that are quantifiable. Under § 373.30(i)(2), the applicant shall provide information that shows the potential for project findings to be effectively utilized within the State vocational rehabilitation service system and the likelihood of the project activities being successfully replicated in other locations.

The staff for the project must be experienced in the delivery of services, such as vocational evaluation, peer counseling, personal adjustment, job coaching, community-based instruction, and placement, to deaf adults who are low-functioning. The staff must also be experienced in communicating with adult persons who are deaf and who have minimal language skills.

A project must involve individuals who are deaf and representatives of RPEPDs or other appropriate service programs for individuals who are deaf in the planning, implementation, operation, and evaluation of the project and dissemination of project results. A project must provide technical assistance to facilities and agencies in areas such as outreach, using a coordinated approach to the delivery of services, and on-site training and workshops. The technical assistance must be designed to facilitate the wide dissemination of practices and materials developed by the project and to facilitate the capacity of agencies and facilities to provide improved services to deaf adults who are low-functioning.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding this proposed priority.

All comments submitted in response to this proposed priority will be available for public inspection, during and after the comment period, in Room 3219, Mary E. Switzer Building, 330 "C" Street SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

Authority: 29 U.S.C. 777a(a)(1).

(Catalog of Federal Domestic Assistance No. 84.235, Rehabilitation Services Administration)

Dated: April 4, 1991.

Lamar Alexander,

Secretary of Education.

[FR Doc. 91-8343 Filed 4-8-91; 8:45 am]

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