10-7-92
Vol. 57 No. 195
Pages 46079-46294

federal register

Wednesday
October 7, 1992

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

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The seal of the National Archives and Records Administration authenticates this issue of the **Federal Register** as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper, 24x microfiche format and magnetic tape. The annual subscription price for the **Federal Register** paper edition is $375, or $415 for a combined **Federal Register**, Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $353; and magnetic tape is $37,500. Six month subscriptions are available for one-half the annual rate. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA or MasterCard. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register**.

How To Cite This Publication: Use the volume number and the page number. Example: 57 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	**202–783–3238**
Magnetic tapes	**512–1530**
Problems with public subscriptions	**512–2303**

Single copies/back copies:

Paper or fiche	**783–3238**
Magnetic tapes	**512–1530**
Problems with public single copies	**512–2457**

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	**523–5243**
Magnetic tapes	**512–1530**
Problems with Federal agency subscriptions	**523–5243**

For other telephone numbers, see the Reader Aids section at the end of this issue.

Contents

Federal Register
Vol. 57, No. 195
Wednesday, October 7, 1992

Administrative Conference of the United States
NOTICES
Meetings:
Regulation Committee, 46147

Agricultural Marketing Service
RULES
Kiwifruit grown in California
Correction, 46243
Milk marketing orders:
Texas, 46079

Agriculture Department
See Agricultural Marketing Service
See Forest Service

American Indian, Alaskan Native and Hawaiian Native Housing, National Commission
See National Commission on American Indian, Alaskan Native and Hawaiian Native Housing

Army Department
PROPOSED RULES
Supplies and equipment; Army materiel loan and lease, 46246
NOTICES
Environmental statements; availability, etc.:
Base realignments and closures—
Army Research Laboratory, Adelphi, MD, 46152

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Centers for Disease Control
NOTICES
Grants and cooperative agreements; availability, etc.:
Diagnostic tests for R. henselae infections in humans and cats, 46173
Recombinant-derived rickettsia rickettsii vaccine for humans, 46174

Children and Families Administration
NOTICES
Agency information collection activities under OMB review, 46171–46173

Coast Guard
PROPOSED RULES
Marine occupational safety and health standards:
Asbestos exposure aboard vessels, at outer continental shelf facilities, and deepwater ports; exposure limits and control procedures, 46126

Commerce Department
See International Trade Administration
See Minority Business Development Agency
See National Oceanic and Atmospheric Administration
See National Telecommunications and Information Administration
See Patent and Trademark Office
NOTICES
Agency information collection activities under OMB review, 46147

Commodity Futures Trading Commission
RULES
Self-regulatory organizations; arbitration monetary ceiling increase, 46090
PROPOSED RULES
Commodity customer protection; risk disclosure by futures commission merchants and introducing brokers; bankruptcy disclosure, 46101
NOTICES
Chicago Board of Trade:
Non-member officials of member firms and non-member parent firms; registration, 46151

Comptroller of the Currency
RULES
Securities Exchange Act; disclosure rules, 46081

Customs Service
PROPOSED RULES
Articles conditionally free, subject to a reduced rate, etc.:
Works of art imported free of duty; declarations requirements, 46112
Exportation notice (Form 7511); proof of exportation for drawback; elimination, 46113

Defense Department
See Army Department
See Navy Department
NOTICES
Agency information collection activities under OMB review, 46152
Meetings:
Special Operations Policy Advisory Group, 46152

Drug Enforcement Administration
NOTICES
Applications, hearings, determinations, etc.:
Krulevitz, Keaciel Kenneth, M.D., 46197

Education Department
NOTICES
Educational research and improvement:
Library Services and Construction Act; Federal shares for States and territories, 46157

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Committees; establishment, renewal, termination, etc.:
American Statistical Association Committee on Energy Statistics, 46159
Floodplain and wetlands protection environmental review determinations; availability, etc.:
Savannah River Site, SC, 46158
Natural gas exportation and importation:
North Canadian Marketing Corp., 46167
Recommendations by Defense Nuclear Facilities Safety Board:
Savannah River site, SC—
HB-line; operational readiness, 46159

Environmental Protection Agency
RULES
Water pollution control:
Underground injection control program—
Hazardous waste disposal injection restrictions and requirements for Class I wells; testing and monitoring requirements, 46292
PROPOSED RULES
Air quality implementation plans:
Preparation, adoption, and submittal—
Opacity emissions from stationary sources; measurement method, 46114
NOTICES
Clean Air Act:
Acid rain provisions—
Sulfur dioxide control program; transferable allowances auctions and sales, 46167

Executive Office of the President
See Science and Technology Policy Office
See Trade Representative, Office of United States

Federal Aviation Administration
RULES
Helicopters; alternative noise certification procedure for primary, normal, transport, and restricted categories
Correction, 46243
VOR Federal airways, 46089
NOTICES
Airport noise compatibility program:
Noise exposure map—
Bismarck Municipal Airport, ND, 46233
Passenger facility charges; applications, etc.:
Steamboat Springs Airport/Bob Adams Field, CO, 46234

Federal Communications Commission
PROPOSED RULES
Radio broadcasting:
Broadcast indecency; prohibitions enforcement, 46132

Federal Energy Regulatory Commission
NOTICES
Natural gas certificate filings:
Liberty Pipeline Co. et al., 46159

Federal Maritime Commission
NOTICES
Agreements filed, etc., 46168

Federal Reserve System
NOTICES
State member banks; branch closings; policy statement, 46168
Applications, hearings, determinations, etc.:
Banc One Corp. et al., 46170
Great Lakes Financial Resources, Inc. Employee Stock Ownership Plan, et al., 46171

Federal Transit Administration
NOTICES
Environmental statements; availability, etc.:
Dallas, TX, 46235

Food and Drug Administration
NOTICES
Human drugs:
New drug applications—
Wyeth-Ayerst Laboratories, Inc., 46175

Forest Service
NOTICES
Appealable decisions; legal notice:
Pacific Southwest region, 46147

Health and Human Services Department
See Centers for Disease Control
See Children and Families Administration
See Food and Drug Administration
See Health Care Financing Administration
See Public Health Service

Health Care Financing Administration
RULES
Medicaid:
Income and eligibility verification systems, 46093
PROPOSED RULES
Medicare:
Beneficiaries in prepaid health care plans; appeal rights and procedures, 46119
NOTICES
Medicaid:
State plan amendments, reconsideration; hearings—
Tennessee, 46175
Medicare:
Skilled nursing facility inpatient routine service costs, schedule of limits, 46177

Health Resources and Services Administration
See Public Health Service

Interior Department
See Land Management Bureau
See Minerals Management Service
See National Park Service

Internal Revenue Service
RULES
Income taxes:
Allocation of allocable investment expense; original issue discount reporting requirements
Correction, 46243

International Trade Administration
NOTICES
Antidumping:
Extruded rubber thread from—
Malaysia, 46150
Professional electric cutting and sanding/grinding tools from Japan, 46148
Export trade certificates of review, 46148

International Trade Commission
NOTICES
Import investigations:
Circular, welded, non-alloy steel pipes and tubes from—
Brazil, 46194
Greater economic integration within European Community; effects on United States, 46195
Pads for woodwind instrument keys from Italy, 46194
Sulfur dyes from—
China et al., 46195
Woodworking accessories, 46196

Interstate Commerce Commission
NOTICES
Railroad services abandonment:
Wisconsin Central Ltd., 46196

Justice Department
See Drug Enforcement Administration

Land Management Bureau
NOTICES
Environmental statements; availability, etc.:
Kettle River Project-Key Project, WA, 46189
Meetings:
Rawlins District Grazing Advisory Board, 46191
Mineral interest applications:
Arizona, 46191
Openings of public lands:
Oregon, 46191
Recreation management restrictions, etc.:
Lincoln and Spokane Counties, WA; vehicular travel and camping restrictions, 46192
Spokane District, WA; vehicular travel restrictions, 46192
Vale Districts, OR, et al.; camping stay limits, 46192
Resource management plans, etc.:
Glenwood Springs Resource Area, CO, 46193

Minerals Management Service
NOTICES
Outer Continental Shelf operations:
Oil and gas lease sales; restricted joint bidders list, 46194

Minority Business Development Agency
NOTICES
Business development center program applications:
Virgin Islands, 46149

National Aeronautics and Space Administration
NOTICES
Environmental statements; availability, etc.:
Outer solar system exploration program, 46198
Meetings:
Aeronautics Advisory Committee, 46199
Space Systems and Technology Advisory Committee, 46199

National Commission on American Indian, Alaskan Native and Hawaiian Native Housing
NOTICES
Meetings, 46199

National Commission on America's Urban Families
NOTICES
Meetings, 46199

National Foundation on the Arts and the Humanities
NOTICES
Meetings:
Humanities Panel, 46199

National Highway Traffic Safety Administration
NOTICES
Motor vehicle safety standards:
Nonconforming vehicles—
Importation eligibility; determinations, 46236–46239

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Pacific Coast groundfish, 46097
PROPOSED RULES
Fishery conservation and management:
Bering Sea and Aleutian Islands groundfish, 46133
Gulf of Alaska and Bering Sea and Aleutian Islands groundfish, 46139

National Park Service
NOTICES
Meetings:
Gates of Arctic National Park Subsistence Resource Commission, 46194

National Science Foundation
NOTICES
Antarctic Conservation Act of 1978; permit applications, etc., 46199

National Telecommunications and Information Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Public telecommunications facilities planning and construction program, 46286

National Transportation Safety Board
NOTICES
Meetings; Sunshine Act, 46242

Navy Department
NOTICES
Privacy Act:
Systems of records, 46153

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Consolidated Edison Co. of New York, Inc., 46200
Meetings:
Medical Uses of Isotopes Advisory Committee, 46200
Nuclear Waste Advisory Committee, 46201
Metric system conversion; policy statement, 46202
Applications, hearings, determinations, etc.:
General Electric Co., 46202

Office of United States Trade Representative
See Trade Representative, Office of United States

Patent and Trademark Office
NOTICES
Meetings:
Trademark Affairs Public Advisory Committee; correction, 46150

Public Health Service
See Centers for Disease Control
See Food and Drug Administration
NOTICES
Organization, functions, and authority delegations:
Health Resources and Services Administration, 46176

Science and Technology Policy Office
NOTICES
Meetings:
President's Council of Advisors on Science and Technology, 46231

Securities and Exchange Commission
NOTICES
Agency information collection activities under OMB review, 46204
Self-regulatory organizations; proposed rule changes:
American Stock Exchange, Inc., 46205
Boston Stock Exchange, Inc., 46208
National Association of Securities Dealers, Inc., 46212, 46215
Self-regulatory organizations; unlisted trading privileges:
Boston Stock Exchange, Inc., 46207
Cincinnati Stock Exchange, Inc., 46211
Midwest Stock Exchange, Inc., 46211
Philadelphia Stock Exchange, Inc., 46216
Applications, hearings, determinations, etc.:
AMC Investors, Inc., 46217
American Skandia Life Assurance Corp. et al., 46218
Flagship Tax Exempt Funds Trust et al., 46219
Goldman Sachs Group, L.P., et al., 46223
Investor AB, 46225
Masters Group of Mutual Funds et al., 46226
Xerox Financial Life Insurance Co. et al., 46229

Tennessee Valley Authority
NOTICES
Privacy Act:
Systems of records, 46231

Thrift Supervision Office
RULES
Savings associations:
Securities offerings, 46085
PROPOSED RULES
Savings associations:
Capital—
Troubled, collateral-dependent loans and foreclosed assests, 46098

Trade Representative, Office of United States
NOTICES
Norway; government procurement code; United States dispute settlement proceeding results, 46232

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Federal Transit Administration
See National Highway Traffic Safety Administration

Treasury Department
See Comptroller of the Currency
See Customs Service
See Internal Revenue Service
See Thrift Supervision Office
NOTICES
Agency information collection activities under OMB review, 46240, 46241
Meetings:
Debt Management Advisory Committee, 46241

Separate Parts In This Issue

Part II
Department of Defense, Army Department, 46246

Part III
Department of Commerce, National Telecommunications and Information Administration, 46286

Part IV
Environmental Protection Agency, 46292

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
920 46243
1126 46079

12 CFR
5 46081
11 46081
16 46081
563 46085
563g 46085
Proposed Rules:
545 46098
563 46098
567 46098
571 46098

14 CFR
21 46243
36 46243
71 46089

17 CFR
180 46090
Proposed Rules:
1 46101
30 46101
33 46101
180 46101
190 46101

19 CFR
Proposed Rules:
10 46112
191 46113

26 CFR
1 46243
602 46243

32 CFR
Proposed Rules:
623 46246

40 CFR
146 46292
Proposed Rules:
51 46114

42 CFR
435 46093
Proposed Rules:
417 46119

46 CFR
Proposed Rules:
197 46126

47 CFR
Proposed Rules:
73 46132

50 CFR
663 46097
Proposed Rules:
672 46133
675 (2 documents) 46133, 46139

Rules and Regulations

Federal Register
Vol. 57, No. 195
Wednesday, October 7, 1992

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1126

[DA-92-20]

Milk in the Texas Marketing Area; Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This action suspends portions of the pool plant and producer milk definitions of the Texas order, for the months of September 1992 through July 1993. The suspension is necessary to insure that dairy farmers who have historically supplied the Texas market will continue to have their milk priced under the Texas order, thereby receiving the benefits that accrue from pooling.

EFFECTIVE DATE: September 1, 1992, through July 31, 1993.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 720-9368.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued August 24, 1992; published August 28, 1992 (57 FR 39143).

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. This action will also tend to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This final 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.

The final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This action does not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Notice of proposed rulemaking was published in the **Federal Register** (57 FR 39143) on August 28, 1992, concerning the proposed suspension of the pool plant and producer milk definitions of the order for the months of August 1992 through July 1993. The public was afforded the opportunity to comment on the notice by submitting written data, views and arguments by September 4, 1992. Two written comments were received that discussed the nature of the proposed suspension. The comments included general support of the suspension of rule, although the effective dates to be specified were not in agreement.

After consideration of all relevant material, including the proposal in the notice, the comments received, and other available information, it is hereby found and determined that for the months of September 1992 through July 1993 the following provisions of the order do not tend to effectuate the declared policy of the Act:

1. In § 1126.7(d), introductory text, the words "during the months of February through July" and the words "under paragraph (b) or (c) of this section".

2. In § 1126.7(e), introductory text, the words "and 60 percent or more of the producer milk of members of the cooperative association (excluding such milk that is received at or diverted from pool plants described in paragraphs (b), (c), and (d) of this section) is physically received during the month in the form of a bulk fluid milk product at pool plants described in paragraph (a) of this section either directly from farms or by transfer from plants of the cooperative association for which pool plant status under this paragraph has been requested".

3. In § 1126.13(e)(1), the words, "and further, during each of the months of September through January not less than 15 percent of the milk of such dairy farmer is physically received as producer milk at a pool plant".

4. In § 126.13(e)(2), the paragraph references "(a), (b), (c) and (d)".

5. In § 1126.13(e)(3), the sentence, "The total quantity of milk so diverted during the month shall not exceed one-third of the producer milk physically received at such pool plant during the month that is eligible to be diverted by the plant operator;".

Statement of Consideration

This action suspends portions of the pool plant and producer milk definitions for the Texas order. This suspension will be in effect from September 1992 through July 1993. An earlier suspension expired in July 1992. This action continues the suspension of:

(1) The 60 percent delivery standard for pool plants operated by cooperatives;

(2) The restrictions on the types of pool plants at which milk must be received to establish the maximum amount of milk that a cooperative may divert to nonpool plants;

(3) The limits on the amount of milk that a pool plant operator may divert to nonpool plants;

(4) The shipping standards that must be met by supply plants to be pooled under the order; and

(5) The individual producer performance standards that must be met

in order for a producer's milk to be eligible for diversion to a nonpool plant.

The order permits a cooperative association plant located in the marketing area to be a pool plant, if at least 60 percent of the producer milk of members of the cooperative association is physically received at pool distributing plants during the month. In addition, a cooperative association may divert to nonpool plants up to one-third of the amount of milk that the cooperative causes to be physically received during the month at handlers' pool plants. The order also provides that the operator of a pool plant may divert to nonpool plants not more than one-third of the milk that is physically received during the month at the handler's pool plant. This action inactivates the 60 percent delivery standard for plants operated by a cooperative association, allows a cooperative's deliveries to all types of pool plants to be included as a basis from which the diversion allowance would be computed, and removes the diversion limitation applicable to the operator of a pool plant.

The order also provides for regulating a supply plant each month in which it ships a sufficient percentage of its receipts to distributing plants. The order provides for pooling a supply plant that ships 15 percent of its milk receipts during August and December and 50 percent of its receipts during September through November and January. A supply plant that is pooled during each of the immediately preceding months of September through January is pooled under the order during the following months of February through July without making qualifying shipments to distributing plants. This action suspends these performance standards for September 1992 through July 1993 for supply plants that were regulated under the Texas order during each of the immediately preceding months of September through January.

The order also specifies that the milk of each producer must be physically received at a pool plant each month in order to be eligible for diversion to a nonpool plant. During the months of September through January, 15 percent of a producer's milk must be received at a pool plant for diversion eligibility. This action suspends these requirements.

Continuation of the former suspension in effect through July 1992 was requested by Associated Milk Producers, Inc., and Mid-America Dairymen, Inc., cooperative associations that represent a substantial share of the dairy farmers who supply the Texas market.

Due to the growth of milk production in the State of Texas and the inability to project production levels for 1993 and beyond, a suspension continues to be appropriate. When comparing January through July 1992, with the same period in 1991, producer receipts are 4.9 percent lower. In addition, Class I utilization is 3.6 percent lower when comparing the same two periods, with Class I utilization for the more recent period at 52.7 percent. This relationship is expected to continue.

Current indications are that there will be ample supplies of direct-ship producer milk that is located in the general area of the respective Texas distributing plants to meet the fluid needs of those plants.

In addition to the lower Class I utilization percentage than existed when these pooling standards were adopted for the Texas market, the marketing conditions that resulted in the granting of the earlier suspension still exist. The suspension is necessary to insure that dairy farmers who have historically supplied the Texas market will continue to have their milk priced under the Texas order, thereby receiving the benefits that accrue from such pooling. The suspension will also provide handlers the flexibility needed to move milk supplies in the most efficient manner and to eliminate costly and inefficient movements of milk that would be made solely for the purpose of pooling the milk of dairy farmers supplying the market.

In reference to data, views and arguments, two written comments were received that discussed the nature of the proposed suspension. Written comments were received from (1) Mid-America Dairymen, Inc. (Mid-Am) and (2) Southern Foods Group, Inc. (SFG). Mid-Am expressed support for the proposed suspension as published in the **Federal Register**. SFG supported the suspension for the months of September 1992 through July 1993, but not for the month of August 1992. SFG suggested that it would not be fair or just to issue the suspension in September to include August. SFG also suggested that the provisions suspended need to be reviewed at a hearing since they have been suspended for several years.

The suspension should apply to milk marketed during the months of September 1992 through July 1993. Although the provisions in question had been continually suspended for some time, and the proposal was a request to continue that suspension, certain handlers modified their operations to pool milk on the basis that the provisions had not yet been suspended for August. Therefore, the suspension should resume with the month of September 1992.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area, in that such action is necessary to permit the continued pooling of supply plants and the milk of dairy farmers who have historically supplied the market without the need for making costly and inefficient movements of milk;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension. Two comments in general support of the suspension were received, although there was disagreement concerning the month in which the suspension should be effective.

Therefore, good cause exists for making this order effective less than 30 days from date of publication in the **Federal Register**.

List of Subjects in 7 CFR Part 1126

Milk marketing orders.

It is therefore ordered, that the following provisions in title 7, § 1126.7 (d) and (e), and in § 1126.13(e) (1), (2) and (3) of the Texas order are hereby suspended for September 1992 through July 1993.

PART 1126—MILK IN THE TEXAS MARKETING AREA

1. The authority citation for 7 CFR part 1126 continues to read as follows:

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

§ 1126.7 [Suspended in part]

2. In § 1126.7(d) introductory text, the words "during the months of February through July" and the words "under paragraph (b) or (c) of this section".

3. In § 1126.7(e) introductory text, the words "and 60 percent or more of the producer milk of members of the cooperative association (excluding such milk that is received at or diverted from pool plants described in paragraphs (b), (c), and (d) of this section) is physically received during the month in the form of a bulk fluid milk product at pool plants described in paragraph (a) of this section either directly from farms or by

transfer from plants of the cooperative association for which pool plant status under this paragraph has been requested".

§ 1126.13 [Suspended in part]

4. In § 1126.13(e)(1), the words, "and further, during each of the months of September through January not less than 15 percent of the milk of such dairy farmer is physically received as producer milk at a pool plant".

5. In § 1126.13(e)(2), the paragraph references "(a), (b), (c) and (d)".

6. In § 1126.13(e)(3), the sentence, "The total quantity of milk so diverted during the month shall not exceed one-third of the producer milk physically received at such pool plant during the month that is eligible to be diverted by the plant operator;".

Dated: October 1, 1992.

John E. Frydenlund,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 92-24275 Filed 10-6-92; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 5, 11, and 16

[Docket No. 92-21]

RIN 1557-AA58

Securities Exchange Act Disclosure Rules

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is amending its regulations detailing registration and reporting requirements for national banks with securities required to be registered under the Securities Exchange Act of 1934. The effect of this final regulation is to incorporate through cross reference the regulations of the Securities and Exchange Commission (SEC) into the provisions of the OCC's Securities Exchange Act Disclosure Rules. Incorporation through cross reference will assure that the OCC's regulations remain substantially similar to the SEC's regulations, as required by law. The regulation also makes technical, conforming amendments to the OCC's Rules, Policies, and Procedures for Corporate Activities and Securities Offering Disclosure Rules.

EFFECTIVE DATE: November 6, 1992.

FOR FURTHER INFORMATION CONTACT: Jeff Mace, Attorney, Securities, Investments, and Fiduciary Practices Division, Office of the Comptroller of the Currency, Washington, DC 20219, (202) 874-5210.

SUPPLEMENTARY INFORMATION: Section 12(i) of the Securities Exchange Act of 1934, as amended (Exchange Act), 15 U.S.C. 781(i), grants authority to the OCC to promulgate regulations for the securities of national banks which are substantially similar to the SEC's regulations under sections 12, 13, 14(a), 14(c), 14(d), 14(f), and 16 of the Exchange Act. Section 12(i) does not, however, require the OCC to promulgate substantially similar regulations in the event that the OCC finds that implementation of such regulations is not necessary or appropriate in the public interest or for protection of investors and the OCC publishes such findings with detailed reasons therefor in the Federal Register.

The OCC proposed to amend its regulations in 12 CFR part 11 by incorporating through cross reference the regulations of the SEC. The proposal was published for comment on April 9, 1992. 57 FR 12222. The OCC received three comments in response to the proposal, all of which were supportive of the proposal. While supporting incorporation through cross reference, one commenter noted the OCC should not incorporate any regulations not presently applicable to national banks or any future SEC regulatory amendments, without a specific rulemaking by the OCC. The OCC has considered this comment but believes that the confusion and time delays arising from any requirement of a separate OCC rulemaking each and every time the SEC amends its regulations outweighs any benefit obtained from such duplicative rulemaking. As stated in its proposed rulemaking, the OCC believes the best way to assure that OCC rules remain substantially similar to the SEC rules is to incorporate through cross reference existing and future SEC regulations. However, the OCC will still retain the ability to exempt national banks, through a separate OCC rulemaking, from any particular SEC rule it determines should not apply to national banks. The OCC also retains its rulemaking authority to subject national banks to additional or different regulations where warranted. Another commenter suggested that the OCC also use incorporation by reference as a vehicle to amend its securities offering disclosure rules as found in 12 CFR part 16. Although under consideration, this suggestion is outside of the scope of this rule.

The OCC has determined to adopt the amendments to its regulation as proposed. The OCC's regulations found in part 11 generally apply only to national banks having one or more classes of securities required to be registered under the provisions of section 12 of the Exchange Act (registered national banks), except that the provisions of the existing subpart E of part 11 also apply to shareholders' meetings for all banks involved in any mergers or consolidations for which the resulting bank is a national bank. 12 CFR 5.33(b)(6)(ii). At present, there are 56 registered national banks.

Incorporation through cross reference generally makes all SEC regulations, and amendments thereto, applicable to registered national banks, unless the OCC acts to vary specific requirements applicable to such banks from the provisions of the SEC regulations. The OCC has chosen to incorporate SEC regulations through cross reference in order to simplify and clarify the scope of requirements applicable to registered national banks and their controlling persons.

Differences From Current Part 11 Regulations

Following is a discussion of the significant differences between the OCC's existing regulations and the SEC's regulations and procedures which are incorporated under this regulation. While there are other differences in the regulations, the OCC believes them to be technical or minor in nature.

A. Insider Transactions

One of the differences between the OCC's and the SEC's regulations arises from the SEC's rules recently promulgated under section 16 of the Exchange Act, 15 U.S.C. 78p, for reports of beneficial ownership to be filed by directors, officers, and shareholders holding at least ten percent of the equity of a particular issuer (insiders). A full description of the changes to the SEC's regulations under section 16 of the Exchange Act is found in SEC Release No. 34-28869, 56 FR 7242 (section 16 Rules). Under section 16(a) of the Exchange Act, 17 U.S.C. 78p(a), insiders must file statements of beneficial ownership and changes to such statements as they occur, as well as on a periodic basis. Section 16(b) of the Exchange Act, 17 U.S.C. 78p(b), seeks to limit the possibility of insider trading by requiring any profits made by insiders on a purchase and sale or sale and

purchase of an issuer's securities, within six months, to be paid to the issuer.

The changes in the SEC's section 16 Rules with the most impact on registered national banks involve the broadening of the types of persons subject to the requirements of section 16, to include all appropriate policy-making officers within the scope of the regulation. In addition, the SEC's rules contain a new requirement that issuers report—in their annual reports, proxy materials and information statements—on compliance of insiders with the reporting requirements of section 16. Rule 16a-1(f), 56 FR 7267; Form 10-K, 56 FR 7274; Item 7 of Schedule 14A, 56 FR 7265; and Item 1 of Schedule 14C, 17 CFR 240.14c-101. By incorporating through cross reference the SEC's regulations, this final rule adopts the SEC's revisions to the section 16 Rules.

B. Securities Exchange Act Industry Guide 3

A second difference involves the SEC's adoption of Securities Exchange Act Industry Guide 3, also known as Securities Act Industry Guide 3 (Guide 3), for periodic reporting requirements for bank holding companies. Guide 3 provides analytical, statistical disclosure provisions for the assets and liabilities of bank holding companies to be included in the business or management's discussion and analysis portions of registration statements under the Securities Act of 1933 or in periodic filings under the Exchange Act. These provisions specifically relate to a bank's investment and loan portfolios, sources of income, and exposures to credit, interest rate, and other risks.

While Guide 3 is not technically a "regulation," it does provide disclosures the SEC requires regarding the assets of bank holding companies and their subsidiaries and could equally be applied to disclosure by registered national banks. By incorporating through cross reference the SEC's regulations and procedures, this final rule incorporates Guide 3 into the OCC's disclosures review. The OCC believes that adopting Guide 3 for disclosures of registered national banks will provide greater information to investors without significant additional regulatory burden on registered national banks.

C. Audited Financial Statements

The SEC's regulations require financial statements included in proxy materials and information statements for shareholder meetings and annual reports to be audited by an independent auditor. Rule 14a-3, 17 CFR 240.14a-3; Rule 14c-2, 17 CFR 240.14c-2; and Form 10-K, incorporating Rule 3-01 of Regulation S-X, 17 CFR 210.3-01. Under existing rules, the OCC requires only verified financial statements, though registered national banks having audited financial statements must include them in their proxy materials and information statements and in their annual reports to shareholders. 12 CFR part 11, subpart I. By incorporating through cross reference the SEC's regulations, this final rule requires the use of audited financial statements (prepared in compliance with SEC Regulation S-X, 17 CFR part 210, including Article 9) for the 56 registered national banks (and any other banks required to register under 12 CFR part 11).[1] While the audit requirement will be new for some of the registered national banks, it will help to assure that investors are given accurate financial information concerning the bank.

D. Minimum Asset Test for Registration

The SEC's and OCC's regulations differ in the minimum total asset size of an issuing company. The company's size is used as one of the triggering events (in addition to the number of shareholders) for requiring registration of securities under section 12 of the Exchange Act. Section 12(g) of the Exchange Act, 17 U.S.C. 781(g), requires any issuing company with at least 500 shareholders and a minimum total assets of $1 million to register the class of securities, subject to limits, exemptions, and conditions prescribed by the SEC or other appropriate regulatory agency. The SEC's Rule 12g-1, 17 CFR 240.12g-1, prescribes the minimum asset test to be $5 million in total assets, whereas the OCC's regulation, 12 CFR 11.201(b), prescribes a minimum asset test of $3 million (an older limit established by the SEC). By incorporating through cross reference the SEC's regulations, this final rule adopts the SEC's threshold of $5 million.

E. Review of Proxy and Information Statements

The SEC's and the OCC's regulations differ significantly in the type of proxy and information statements subject to regulatory review prior to distribution to shareholders. The SEC requires preliminary filings of proxy and information statements, but only concerning those shareholder meetings which are other than routine annual meetings; and the SEC requires preliminary filings to be filed ten days prior to distribution to shareholders. Rule 14a-6, 17 CFR 240.14a-6; Rule 14c-5, 17 CFR 240.14c-5. The OCC, however, requires preliminary filings for all shareholder meetings, and requires that the preliminary filings be made at least ten days before routine meetings and 15 days before other than routine meetings. 12 CFR 11.506. By incorporating through cross reference the SEC's regulations, this final rule adopts the SEC's preliminary filing requirements.

F. Extensions of Credit to Insiders

Another significant difference between the SEC's and the OCC's regulations involves the minimum level of loans and other extensions of credit to insiders which are required to be disclosed in securities filings of the registrant. The SEC requires registrants to disclose, among others, all extensions of credit of more than $60,000 where there may be more than a normal risk of collectibility. Item 404(c) of Regulation S-K, 17 CFR 229.404(c). The OCC on the other hand, requires registered national banks to disclose all extensions of credit, regardless of the amount, if the credit involves more than a nominal risk of collectibility. Instruction 2(C) to 12 CFR 11.844(c). The OCC will continue to monitor loans to insiders in accordance with 12 CFR Part 31.

By incorporating through cross reference the SEC's regulations, this final rule adopts the SEC's criteria for disclosure of loans and extensions of credit to insiders.

Conforming Amendments to Parts 5 and 16

The OCC's regulations in 12 CFR parts 5 and 16 contain rules which do not correspond to SEC requirements adopted under the Exchange Act. In 12 CFR parts 5 and 16, the OCC makes certain portions of its regulations in 12 CFR part 11 applicable to national banks not otherwise subject to such rules. The incorporation through cross reference to the SEC's regulations requires conforming, technical amendments to parts 5 and 16, to change the citations from 12 CFR part 11 to the respective portions of the SEC's regulations.

Part 5 includes references to the OCC's proxy requirements for banks involved in mergers or consolidations where the resulting association is a national bank. 12 CFR 5.33(b)(6). Unless a bank is subject to the proxy

[1] The OCC also requires banks involved in mergers and consolidations to comply with the proxy and information statement requirements made applicable to registered national banks. 12 CFR 5.33(b)(6) and 16.4(b). However, as described below, this final rule does not require audited financial statements from all such banks. If such banks do have audited financial statements or are required to do so by any other provision of law or regulation, then they must use the audited financial statements in soliciting shareholder approval of the merger or consolidation.

requirements of the Board of Governors of the Federal Reserve System (12 CFR part 206) or the requirements of the Federal Deposit Insurance Corporation (12 CFR part 335), each bank involved in a merger or consolidation must comply with the proxy requirements of the OCC, pursuant to 12 CFR 5.33(b)(6). This final rule amends part 5 to specify that all such banks must comply with the proxy and information statement requirements described in the SEC's rules and regulations pursuant to section 14 of the Exchange Act, 15 U.S.C. 78n, except that such banks need not provide audited financial statements if the banks do not otherwise have an independent audit.

The OCC is not requiring all banks, regardless of the number of shareholders, to use audited financial statements. Only those banks which are by law required to have, or do in fact have, audited financial statements must use them in their disclosures to shareholders when proposing a merger or consolidation. Thus, this final rule makes no significant change in the proxy and information statement requirements for banks required to file proxy materials or information statements solely because of participation in a merger or consolidation.

Part 16 also includes several references to the provisions of part 11, namely with respect to identifying beneficial owners and compensation and transactions of management and principal security holders of a bank. This final rule simply states, through cross reference, the applicable SEC requirements that parallel the existing part 11 requirements incorporated through cross reference into the provisions of part 16. Thus, this final rule makes no significant change in the disclosure requirements for offering circulars.

Please note that the OCC is considering amending its regulations in 12 CFR part 16 to incorporate certain portions of the rules of the SEC under the Securities Act of 1933. To the extent any such proposal is adopted, the OCC will make changes to these portions of the regulations found in 12 CFR parts 5 and 16.

Use of New Forms for Filings With the OCC

This final rule requires the filing of new forms with the OCC, as of the effective date noted above. However, for any filings due between the effective date and November 15, 1992, the filing party may use either the applicable OCC form or the applicable SEC form. Any form required to be filed with the OCC under this final rule on or after November 16, 1992, must be on the applicable SEC form as found in 17 CFR part 249.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the OCC believes that this final rule will not have a significant economic impact on a substantial number of small entities. Since most of the changes arising from the amendments are technical in nature, the regulation should have a minimal impact on all registered national banks, regardless of their size.

Executive Order 12291

The OCC has determined that this regulation is not a "major rule" and therefore does not require a Regulatory Impact Analysis.

Because the OCC's current regulations are generally similar to the SEC's regulations, this incorporation through cross reference to the SEC's regulations will not alter the regulation or reporting requirements of registered national banks in any significant manner. In addition, the OCC believes that adoption of the incorporation through cross reference to the regulations of the SEC will help to clarify the reporting requirements already imposed on national banks by permitting use of the SEC's forms with which many persons are already familiar. Aside from changes arising from the SEC's section 16 Rules, there are no substantive differences between the SEC's forms and the OCC's forms.

Paperwork Reduction Act

This final rule will modify the information collection requirements in 12 CFR part 11 by abolishing separate OCC reports and directing national banks to file SEC reports with the OCC. The collections of information contained in this final rule have been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)) under control number 1557-0106. The estimated annual burden per respondent varies from 30 minutes to 60 hours, depending on the particular form and individual circumstances, with an estimated average of 31 hours.

Comments on the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Comptroller of the Currency, Legislative and Regulatory Analysis Division, 8th Floor, 250 E Street, SW., Washington, DC 20219, and to the Office of Management and Budget, Paperwork Reduction Project (1557-0106), Washington, DC 20503.

List of Subjects

12 CFR Part 5

Administrative practice and procedure, National banks, Reporting and recordkeeping requirements, Securities.

12 CFR Part 11

National banks, Reporting and recordkeeping requirements, Securities.

12 CFR Part 16

National banks, Reporting and recordkeeping requirements, Securities.

For the reasons set forth in the preamble, the OCC amends 12 CFR parts 5, 11, and 16 as follows:

PART 5—[AMENDED]

1. The authority citation for part 5 continues to read as follows:

Authority: 12 U.S.C. 1, *et seq.*; 12 U.S.C. 93a.

2. In § 5.33, paragraph (b)(6)(ii) is revised to read as follows:

§ 5.33 Merger, consolidation, purchase and assumption.

* * * * *

(b) * * *

(6) * * *

(ii) It is required that all shareholders be adequately informed of all aspects of the transaction. In this regard, banks are required to file with the Office proxy materials in conformance with the requirements of Securities and Exchange Commission Regulation 14A, 17 CFR 240.14a-1 up to but not including 240.14b-1, or information statements in conformance with the requirements of Securities and Exchange Commission Regulation 14C, 17 CFR 240.14c-1 up to but not including 240.14d-1. However, if a bank does not have an independent auditor and is not required to have an independent auditor by any provision of law or regulation other than this Section, then such bank need not provide audited financial statements as part of its proxy materials or information statements. Such a bank shall, however, provide unaudited financial statements prepared in accordance with generally accepted accounting principles (GAAP) and otherwise meeting the requirements of Regulation 14A, 17 CFR 240.14a-1 up to but not including 240.14b-1, or Regulation 14C, 17 CFR 240.14c-1 up to but not including 240.14d-1.

* * * * *

PART 11—[AMENDED]

3. The authority citation for part 11 continues to read as follows:

Authority: 12 U.S.C. 93a; 15 U.S.C. 78l, 78m, 78n, 78p, and 78w.

4. Part 11 is amended by adding §§ 11.1 through 11.4 to read as follows:

§ 11.1 Authority and OMB control number.

(a) *Authority.* The Comptroller is vested with the powers, functions, and duties otherwise vested in the Securities and Exchange Commission (Commission) to administer and enforce the provisions of sections 12, 13, 14(a), 14(c), 14(d), 14(f), and 16 of the Securities Exchange Act of 1934, as amended (1934 Act) (15 U.S.C. 78l, 78m, 78n(a), 78n(c), 78n(d), 78n(f), and 78p), regarding national banks and banks chartered in the District of Columbia with one or more classes of securities subject to the registration provisions of sections 12(b) and (g) of the 1934 Act (registered national banks). Further, the Comptroller has general rulemaking authority under 12 U.S.C. 93a, to promulgate rules and regulations concerning the activities of national banks and banks chartered in the District of Columbia.

(b) *OMB control number.* The collection of information contained in this part was approved by the Office of Management and Budget under OMB control number 1557–0106.

§ 11.2 Requirements under certain sections of the Securities Exchange Act of 1934.

(a) In general and except as otherwise provided in this part, the rules, regulations, and forms adopted by the Commission pursuant to the sections of the 1934 Act described in § 11.1 of this part apply to the securities issued by registered national banks. References to the "Commission" are deemed to refer to the "Comptroller" unless the context otherwise requires.

(b) The following list of Commission rules and regulations apply to registered national banks:

(1) Regulations adopted by the Commission under sections 12, 13, 14(a), 14(c), 14(d), and 14(f) of the 1934 Act, as codified at 17 CFR 240.12a–4 up to but not including 17 CFR 240.15a–2; and

(2) Regulations adopted by the Commission under section 16 of the 1934 Act, as codified at 17 CFR 240.16a–1 up to but not including 240.17a–1.

(c) Registered national banks required to file papers with the Comptroller pursuant to the provisions of the rules and regulations cited in paragraph (b) of this section shall use the forms and schedules adopted by the Commission, as described in the respective rules and regulations identified in paragraph (b) of this section.

§ 11.3 Filing requirements and inspection of documents.

(a) All papers required to be filed with the Comptroller pursuant to the 1934 Act or regulations thereunder shall be submitted in quadruplicate to the Securities, Investments, and Fiduciary Practices Division, Office of the Comptroller of the Currency, Washington, DC 20219. Material may be filed by delivery to the Comptroller through the mails or otherwise. The date on which papers are actually received by the Comptroller shall be the date of filing thereof, if the person or bank filing the papers has complied with all requirements regarding the filing.

(b) Copies of the registration statement, definitive proxy solicitation materials, reports, and annual reports to shareholders required by this part (exclusive of exhibits) will be available for public inspection at the Office of the Comptroller of the Currency, at the address identified in § 4.17(b) of this chapter.

§ 11.4 Filing fees.

(a) Filing fees must accompany certain filings made under the provisions of this part before the filing will be accepted for filing by the Comptroller. The applicable fee schedule is provided in the Notice of Comptroller of the Currency Fees described in § 8.8 of this chapter.

(b) Fees must be paid by check payable to the Comptroller of the Currency.

PART 16—[AMENDED]

5. The authority citation for part 16 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, and 93a.

6. In § 16.2, paragraph (g) is revised to read as follows:

§ 16.2 Definitions.

* * * * *

(g) *Beneficial ownership* shall be determined in accordance with the provisions of 17 CFR 240.13d–3.

7. In § 16.4, paragraphs (b) and (f) are revised to read as follows:

§ 16.4 Exempt transactions and abbreviated offering circular requirements.

* * * * *

(b) Any reorganization, merger, consolidation, or acquisition of assets by a bank where constituent security holders who will receive securities in the transaction are furnished with proxy materials or an information statement prepared substantially in accordance with the requirements of the Securities and Exchange Commission Regulations 14A, 17 CFR 240.14a–1 up to but not including 240.14b–1, or Regulation 14C, 17 CFR 240.14c–1 up to but not including 240.14d–1, respectively. However, if a bank does not have an independent auditor and is not required to have an independent auditor by any provision of law or regulation other than this Section, then such bank need not provide audited financial statements as part of its proxy materials or information statements. Such a bank shall, however, provide unaudited financial statements prepared in accordance with generally accepted accounting principles (GAAP) and meeting the requirements of Item 15 of § 16.6 of this part. Additionally, such proxy materials or information statement must contain information about the issuing bank which is substantially similar to that called for by Items 5 and 6 of § 16.6 of this part.

* * * * *

(f) *Abbreviated offering circular.* An existing national bank which makes an offering of its securities which, when aggregated with all other sales by the bank of its securities within the 12 months immediately preceding the commencement of the subject offering, does not exceed $2,000,000, may comply with the requirements of § 16.3(a) of this part with an offering circular which contains only the information required by the following Items of § 16.6 of this part: Items 1 through 4; Item 6, paragraphs (a) through (j), including Instructions 2 and 4; and Items 7 through 16. In responding to Item 13, the bank need only provide the information required by Item 402(a) of Regulation S–K, 17 CFR 229.402(a), and Items 404(a) and (c) of Regulation S–K, 17 CFR 229.404(a) and (c).

7. In § 16.6, Item 13 of paragraph (b) is revised to read as follows:

§ 16.6 Form and content of an offering circular of an existing national bank.

* * * * *

(b) * * *

Item 13—Remuneration and Other Transactions with Management.

Furnish the information required by Items 402 and 404(a) and 404(c) of Regulation S–K, 17 CFR 229.402 and 229.404(a) and (c).

* * * * *

Dated: August 19, 1992.

Stephen R. Steinbrink,

Acting Comptroller of the Currency.

[FR Doc. 92–23996 Filed 10–6–92; 8:45 am]

BILLING CODE 4810–33–M

Office of Thrift Supervision

12 CFR Parts 563 and 563g

[No. 92-194]

RIN 1550-AA09

Sales of Securities at Savings Association Offices

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision (the OTS) is amending and relocating its regulation relating to direct sales of securities of a savings association or its affiliates at the association's offices. The changes prohibit sales of securities of the savings association or its affiliates in any office of a savings association except for sales of stock in connection with the association's conversion from the mutual to the stock form of organization where the association will be in compliance with all of its capital requirements upon completion of the conversion. Sales of stock in a savings associations' offices will be subject to conditions in the existing rule with the addition of certain safeguards. One such safeguard is the use of a signed customer acknowledgment form before purchase. The acknowledgment form states that the securities purchaser is aware that the security is not a deposit or account, is not federally insured, and the purchaser has received an offering circular that describes the offering and its risks. The amendments are intended to minimize potential customer confusion and the danger of customer deception regarding the nature of securities sold at a savings association's offices while still preserving an effective means for a savings association to raise capital in the conversion process.

EFFECTIVE DATE: November 6, 1992.

FOR FURTHER INFORMATION CONTACT: Paul D. Glenn, Assistant Chief Counsel, (202) 906-6203, v. Gerard Comizio, Deputy Chief Counsel, (202) 906-6411, Corporate and Securities Division; Robyn Dennis, Program Manager, (202) 906-5751, Thrift Policy; Julie L. Williams, Senior Deputy Chief Counsel, (202) 906-6459; Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

A. Background

Part 563g of the OTS's securities offering regulations, 12 CFR Part 563g (Securities Offering Regulations), establishes uniform disclosure requirements for securities offering by savings associations.[1] Section 563g.17 of the Securities Offering Regulations currently specifies certain requirements where savings associations seek to sell their own securities or those of an affiliate in the savings association's office(s).[2] These present provisions prohibit payment of commissions on sales, bar offers or sales at teller counters, require that sales may be made only by regular full-time employees, and provide that for such on-premises sales to occur, the savings association must be in compliance with its regulatory capital requirements.

B. The Proposed rule

The OTS published the proposed rule in the **Federal Register** on May 3, 1990. 55 FR 18610 (May 3, 1990). The proposed rule prohibited offers or sales of debt securities of a savings association or an affiliate thereof in the offices of the savings association that are generally accessible to the public for the purpose of accepting insured deposits. Equity securities offers and sales generally were not subject to such a ban, provided the association was in compliance with its capital requirements at the time the sales took place.

The proposed rule also suggested various safeguards to enhance the awareness of customers that purchased such securities to the nature of their investment. These proposed safeguards included specified disclosures to customers, minimum denominations of any debt securities, advertising restrictions, legends on securities and selling documents, prohibited representations, limitations on sales locations, and required regulatory capital compliance by the savings association. The proposal also required the use of a form of customer acknowledgment or certification to be signed by purchasers of securities before purchase. The acknowledgment form states that the securities purchaser is aware that the security is not a deposit or account, is not federally insured, and the purchaser has received an offering circular that describes the offering and its risks.

The proposed rule requested comments on suggested safeguards as well as other suggestions designed to accomplish the goals of the proposal.

C. Public Comments

The OTS received eleven comment letters in response to the proposal. The commentators were one governmental agency, three trade associations, four savings associations or their holding companies, one broker-dealer, and two law firms. Except for the governmental agency and one trade association, most commentators generally favored adding some regulatory enhancements to the OTS's regulation, but not a flat prohibition on office sales of securities. Many commentators wanted to avoid any regulations that will make raising additional capital for savings associations more costly.

The governmental agency suggested a complete ban on the sales of securities in offices of deposit-taking institutions as the most effective form of protection against abuses. On the other hand, one trade association recommended no action at all for fear of restricting financial institutions' access to the competitive financial market place.

Four commentators recommended allowing properly registered and supervised securities personnel to sell or assist in selling securities of the association on its premises. Four commentators supported requiring some form of signed acknowledgment in the sales of securities.

One savings association holding company recommended revising the definition of securities to exclude travelers checks. The OTS has considered that suggestion but believes that no regulatory change is needed. The definition of securities is not intended to include travelers checks for purposes of the rule.

D. The Final Rule

After considering the comments received, the OTS has decided to adopt a final rule similar to, but more stringent than the proposed rule, and to include in the rule certain safeguards designed to enhance to protections of the rule. Under the final rule, only sales of common stock in connection with a conversion from the mutual to the stock

[1] Part 563g was first proposed in 1983. See FHLBB Res. No. 83-126, March 3, 1983, 48 FR 10684 (March 14, 1983). The final rule was adopted December 20, 1985, and became effective March 1, 1986, incorporating a number of technical and clarifying amendments. *See* 51 FR 8184 (March 10, 1986).

[2] In the past, the Federal Home Loan Bank Board (FHLBB) imposed various restrictions on the sales of specific securities such as subordinated debt. On January 8, 1973, the FHLBB permitted the sales of subordinated debt securities in minimum amounts of $50,000. On May 30, 1980, the FHLBB permitted sales of subordinated debt in denominations of $10,000 for such securities not offered or sold in the offices of the association or its affiliate. On December 5, 1984, the FHLBB raised the minimum denomination for subordinated debt to $100,000 but lowered to $1,000 the minimum denomination for such securities not offered or sold in the offices of the association or its affiliate. On March 1, 1986, the FHLBB repealed the minimum denomination on subordinated debt when the FHLBB adopted § 563g.17. The revised rule includes no minimum denomination requirement because the rule prohibits all sales of debt securities in offices of savings associations, including subordinated debt.

form of organization would be permitted in offices of savings associations. The amendments also are intended to minimize potential customer confusion and the danger of customer deception regarding the nature of investments offered and sold while still preserving an effective means for a savings association to raise capital in the conversion process.

1. Rule Applicability and Rule Placement

As proposed, the rule applied to all sales of securities of a savings association or its affiliates on the premises of a savings association in areas that are generally accessible to the public for the purpose of accepting insured deposits. Because this scope would not have covered other parts of an association's premises or other types of offices, where dangers of customer confusion could well arise, the final rule applies to sales in all "offices" of a savings association. An association's "office" is defined for purposes of the rule as any premises used by the association that are identified to the public through advertising or signage using the association's name, trade name, or logo. This scope will insure that the rule's safeguards are available to sales of securities of the savings association and its affiliates in all types of offices of the savings association where confusion regarding the nature of the investment sold by the association is most likely to arise, not just in the deposit-taking premises of the savings association.

In conjunction with this change, the OTS is recodifying at 12 CFR 563.76 the substance of the rule currently found at 12 CFR 563g.17. The new location for the rule, "Part 563—Operations, Subpart C—Securities and Borrowings," relates more generally to all savings associations. The present reference in 12 CFR 563g.17 will now require that direct sales of securities at an office of a savings association shall be made only in accordance with the now relocated provisions of 12 CFR 563.76.

2. Debt Securities

A principal tenet of the final rule is the prohibition of all offers and sales of debt securities of the savings association and its affiliates in offices of the savings association. Several commentators opposed prohibiting the sales of debt of a savings association or its affiliate(s) in the offices of a savings association. The OTS has concluded, however, that debt securities, which are often sold in dollar denominated amounts and with interest rates stated in a manner similar to certificates of deposit or other insured accounts, create the greatest risk of confusion on the part of savings association customers who are used to purchasing various insured deposits at savings association offices. While disclosure may mitigate the risk of confusion, experience has shown that it may not be an adequate solution. Accordingly, the final rule prohibits offers and sales of debt securities of an association and its affiliates in the association's offices.

3. Equity Securities

The final rule allows saving associations to sell equity securities of the association or an affiliate in connection with the association's conversion from the mutual to the stock form of organization. The savings association also must be in compliance with all of its current capital requirements upon completion of the conversion. The sale of equity securities in association offices must be approved as part of the conversion application process and will be permitted only if the association complies with prescribed safeguards. The request to be able to sell common stock in the office(s) of the savings association as part of a conversion will be permitted only with the authorization of the appropriate Regional Director.

The OTS recognizes the importance of preserving cost-effective means for mutual savings associations to raise capital. OTS is permitting sales of securities in offices of savings associations in connection with the conversion of a savings association from the mutual to the stock form of ownership. Since the early 1970's hundreds of savings associations have successfully used this method to sell conversion stock, with no instances of abuse having been found. One of the goals of the conversion process is to permit existing account holders the maximum opportunity to participate in ownership of the converted association, while minimizing transaction costs. This provision will provide current mutual savings association customers a convenient way to participate in the conversion of their savings association and a cost-effective means for a mutual savings association to raise capital. OTS rules will continue to provide that such sales can only be made by the savings association if the association will meet its current capital requirements upon completion of the conversion.

The following additional safeguards offered in the proposal will be adopted to supplement those safeguards existing in the former § 563g.17:

a. Acknowledgment Form

The final rule requires that each potential purchaser of securities sold in the offices of the savings association must be provided with a specified brief and unambiguous disclosure document (i) stating prominently that "I ACKNOWLEDGE THAT THIS SECURITY IS NOT A DEPOSIT OR ACCOUNT, IS NOT FEDERALLY INSURED, AND IS NOT GUARANTEED BY [insert name of savings association] OR BY THE FEDERAL GOVERNMENT," (ii) stating that if anyone asserts that this security is federally insured or guaranteed, or is as safe as an insured deposit, the potential investor should call the appropriate Regional Director of the Office of Thrift Supervision, and (iii) stating the investment's principal risks, as set forth on specified pages of the offering circular. In addition, the acknowledgment or certification form will require that each customer be provided with a copy of an offering circular for the securities before making the purchase. The text of the required certification is set forth at the end of the rule as paragraph (c).

In practice, this requirement means that each potential purchaser must be provided with a subscription order form and, separately, the new form of acknowledgment and that the potential purchaser's signature be obtained on both forms before, or at the latest simultaneously with, the purchase. Savings associations should make such completed forms available for inspection to the OTS examiners upon request. The OTS may provide further guidance in the future concerning the substance and use of the certification form.

b. Minimum Denominations

Because the final rule prohibits sales of debt securities in the savings association's offices, no minimum denomination requirements are set in this rule.[3]

c. Sales Practices and Advertising

The final rule includes a reference in paragraph (d) that fraudulent securities sales practices and misleading advertisements or other sales literature are specifically included within the scope of § 563g.10. That section establishes that fraudulent behavior in connection with any purchase or sale of any security of a savings association

[3] The OTS's Thrift Bulletin 23 presently states that Supervision generally regards "retail" sales of debt securities in denominations of less than $10,000 as an unsound practice.

constitutes an unsafe or unsound practice and thereby provides another safeguard under the current regulatory scheme.[4] The contents of all advertising literature and sales practices for such securities are subject to § 563g.10 and also may be subject to any further guidance from the OTS. As is presently the case, such materials may be submitted to the OTS's Corporate and Securities Division for review and comment in connection with a registered offering of securities.[5]

d. Prohibited Representations

The OTS has not added any specific provision to the new rule governing written materials issued in connection with the sales of securities in offices of savings associations. Nevertheless, the OTS views as fraudulent, and thus a violation of the general anti-fraud provisions of § 563g.10, the appearance in any securities certificate of the savings association or its affiliate(s) sold at the savings association's office(s), or in any advertisements and offering documents relating to the securities sold at such office(s), of the terms "guaranteed," "no risk," "account," "deposit," "withdraw," or any other terms that imply the security is insured or guaranteed by the United States government or an agency of the United States government. The use of the term "fund" or other terms that imply the security is an interest in an investment company (if it is not) would violate § 563g.10. Such terms are inherently confusing and should not be used in connection with sales of securities of an association or its affiliates in offices of the savings association, in securities, offering circulars, sales presentations, or advertisements.

e. Legend

The final rule adds another safeguard requiring a savings association to include a legend conspicuously on each security of the savings association or its affiliate(s) sold at the savings association's office(s) as well as in all advertisements and offering documents relating to the securities sold at such office(s). The legend must state that the security is not a deposit or account and is not federally insured or guaranteed. The legend must state, on the face of the security, in a prominent and plainly legible form, the following: "This security is not a deposit or account and is not federally insured or guaranteed." The legend must appear in bold or other prominent type at least as large as other textual type in the document.

Adding such a requirement to the rule will help to avoid confusion by potential purchasers of any permitted securities of the savings association or its affiliates at the office(s) of the savings association. Such disclosure would already be expected to appear on most securities that savings associations issue. As one commentator mentioned in recommending the use of legends, although they may be marginally useful, legends involve little expense or burden to use.

f. Sales Locations

The existing rule requires that no offers or sales of securities of the savings association or its affiliates be made by tellers or at the teller counter, or by comparable persons at comparable locations. This requirement remains unchanged except that the OTS has added the affirmative requirement that sales of the issuers' or affiliates' securities be made a readily identifiable segregated or separately identifiable area of the savings association's office(s) apart from the area accessible to the general public for the purpose of making or withdrawing deposits. This provision also provides comparability with the requirements applicable to savings association service corporations selling retail securities of third-party issuers in savings associations' offices.

g. Regulatory Capital Compliance by the Savings Association

The rule presently requires that securities sales be made only by savings associations that are in compliance with their regulatory capital requirements.[6] Commentators supported the proposition that savings associations should be in capital compliance to make such sales. Certain issuers of common stock in conversions from the mutual to the stock form of organization are making their sales of securities in an effort to reach compliance with one or more required capital levels. Accordingly, the final rule permits sales of equity securities by savings associations or an affiliate in connection with the associations' conversion from mutual to stock form provided the association will meet its current capital requirements upon completion of the conversion.

h. Sales Personnel

Presently, the rule requires that sales of securities of savings associations and their affiliates in the offices of savings associations may be made only by "regular, full-time employees of the savings association." The OTS is expanding the personnel who may make such securities sales to include "securities personnel who are subject to supervision by a registered broker-dealer." [7] This change will allow trained securities brokerage personnel to be engaged to assist with sales of the savings association's securities if such personnel are properly trained and subject to adequate securities sales supervision. Under the Securities and Exchange Commission's (the "SEC") general securities regulatory scheme, securities sales personnel must be under the supervision of a registered broker-dealer. The requirement helps assure that such individuals will have accountability, management resources, adequate books and records, and approved procedures to follow.

i. Sales Commissions

To help offset the possibility of misdirected sales enthusiasm, the OTS is retaining and modifying the requirement that no commissions, bonuses, or comparable payments may be paid to any employee of the savings association or its affiliates in connection with on-premises sales of securities of the association or an affiliate. The OTS is aware that commissions are a customary method of compensating many securities salespersons. Nevertheless, to avoid potential abuses and undue sales pressure from personnel who may have contact with association customers in various capacities, commissions or bonuses may not be paid to any employee of the savings association or its affiliates.

The rule has not included a prohibition on commissions, bonuses, or comparable payments to broker-dealers. The SEC has in place an established regulatory framework and enforcement

[4] For example, if the OTS discovers marketing techniques that have the effect of targeting a potentially unsophisticated segment of a savings association's customer base, e.g., older customers with large certificates of deposit coming due, the OTS may characterize such actions as an unsafe or unsound practice.

[5] Thrift Bulletin 23 has attached thereto Corporate and Securities Memorandum No. 2, dated March 21, 1989 (the "CASD Memo #2". CASD Memo #2 expresses concerns and offers guidance regarding securities advertising materials for debt offerings by savings associations, and in particular, the application of Securities and Exchange Commission rules 134 and 135 relating to advertisements (communications not deemed a prospectus) and "offers" (notice of certain proposed offerings). The OTS expects such guidance to be followed by savings associations.

[6] See, 12 CFR part 567.

[7] In this context, a registered broker-dealer means the same as used in the Securities Exchange Act of 1934, one that is registered with the U.S. Securities and Exchange Commission (including appropriately recognized self regulatory authorities) and any required state regulatory authorities.

mechanism to supervise actions of its registered broker-dealers and their affiliated persons.[8] The OTS expects that savings associations will limit their commissions or compensation to broker-dealers to amounts consistent with industry norms.

Regulatory Flexibility Act

The OTS certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

The Director of OTS has determined that this rule does not constitute a "major rule" and, therefore, will not require the preparation of a final regulatory impact analysis.

List of Subjects

12 CFR Part 563

Accounting, Advertising, Crime, Currency, Flood insurance, Investments, Reporting and recordkeeping requirements, Savings associations, Securities, Surety bonds.

12 CFR Part 563g

Reporting and recordkeeping requirements, Savings associations, Securities.

Accordingly, the Office of Thrift Supervision hereby amends parts 563 and 563g, subchapter D, chapter V, title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER D—REGULATIONS APPLICABLE TO ALL SAVINGS ASSOCIATIONS

PART 563—[AMENDED]

1. The authority citation for part 563 is revised to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1468, 1817, 1828, 3806; 42 U.S.C. 4106; Pub. L. 102-242, sec. 306, 105 Stat. 2236, 2355 (1991).

2. Section 563.76 is added to read as follows:

§ 563.76 Offers and sales of securities at an office of a savings association.

(a) A saving association may not offer or sell debt or equity securities issued by the association or an affiliate of the association at an office of the association; except that equity securities issued by the association or an affiliate in connection with the association's conversion from the mutual to stock form of organization in a conversion approved pursuant to part 563b of this subchapter may be offered and sold at the association's offices: *Provided*, That:

(1) The Regional Director does not object on supervisory grounds that the offer and sale of the securities at the offices of the association;

(2) No commissions, bonuses, or comparable payments are paid to any employee of the savings association or its affiliates or to any other person in connection with the sale of securities at an office of a savings association; except that compensation and commissions consistent with industry norms may be paid to securities personnel of registered broker-dealers;

(3) No offers or sales are made by tellers or at the teller counter, or by comparable persons at comparable locations;

(4) Sales activity is conducted in a segregated or separately identifiable area of the savings association's offices apart from the area accessible to the general public for the purposes of making or withdrawing deposits;

(5) Offers and sales are made only by regular, full-time employees of the savings association or by securities personnel who are subject to supervision by a registered broker-dealer;

(6) An acknowledgment, in the form set forth in paragraph (c) of this section, is signed by any customer to whom the security is sold in the savings association's offices prior to the sale of any such securities;

(7) A legend that the security is not a deposit or account and is not federally insured or guaranteed appears conspicuously on the security and in all offering documents and advertisements for the securities; the legend must state in bold or other prominent type at least as large as other textual type in the document that "This security is not a deposit or account and is not federally insured or guaranteed"; and

(8) The savings association will be in compliance with its current capital requirements upon completion of the conversion stock offering.

(b) Securities sales practices, advertisements, and other sales literature used in connection with offers and sales of securities by savings associations shall be subject to § 563g.10 of this subchapter.

(c) Offers and sales of securities of a savings association or its affiliates in any office of the savings association must use a one-page, unambiguous, certification in substantially the following form:

FORM OF CERTIFICATION

I ACKNOWLEDGE THAT THIS SECURITY IS NOT A DEPOSIT OR ACCOUNT AND IS NOT FEDERALLY INSURED, AND IS NOT GUARANTEED BY [insert name of savings association] OR BY THE FEDERAL GOVERNMENT.

If anyone asserts that this security is federally insured or guaranteed, or is as safe as an insured deposit, I should call the Office of Thrift Supervision Regional Director [insert Regional Director's name and telephone number with area code].

I further certify that, before purchasing the *[description of security being offered]* of *[name of issuer, name of savings association and affiliation to issuer (if different)]*, I received an offering circular.

The offering circular that I received contains disclosure concerning the nature of the security being offered and describes the risks involved in the investment, including:

[List briefly the principal risks involved and cross reference certain specified pages of the offering circular where a more complete description of the risks is made.]

Signature: _____

Date: _____

(d) For purposes of this section, an "office" of an association means any premises used by the association that are identified to the public through advertising or signage using the association's name, trade name, or logo.

PART 563g—[AMENDED]

3. The authority citation for part 563g is revised to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464; 15 U.S.C. 78c(b), 78*l*, 78m, 78n, 78p, 78w.

4. Section 563g.17 is revised to read as follows:

§ 563g.17 Sales of securities at an office of a savings association.

Sales of securities of a savings association or its affiliates at an office of a savings association may only be made in accordance with the provisions of 12 CFR 563.76.

Dated: April 30, 1992.

By the Office of Thrift Supervision.

Timonthy Ryan,

Director.

[FR Doc. 92-24205 Filed 10-6-92; 8:45 am]

BILLING CODE 6720-01-M

[8] Persons selling securities in offices of savings associations may be subject to further OTS guidance. For example, Thrift Bulletin 23 presently requires that for any retail sales of debt, savings associations must assure themselves that sales practices in their offices include safeguards of "suitability" and "know your customer" standards such as those that the National Association of Securities Dealers, Inc. (NASD) requires.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 92-AAL-1]

Alteration and Designation of VOR Federal Airways; AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action alters the descriptions of several existing VOR Federal airways, and designates several new airways, located in the State of Alaska. The FAA made an agreement with the International Civil Aviation Organization (ICAO) to remove all alternate airway segments from the National Airspace System (NAS). This action supports that agreement.

EFFECTIVE DATE: 0901 UTC, December 10, 1992.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

History

On May 12, 1992, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter the descriptions of several existing VOR Federal airways, and to designate several new airways, located in the State of Alaska (57 FR 20217). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Alaskan VOR Federal airways are published in § 71.125 of Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. The airways listed in this document will be published subsequently in the Handbook.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the descriptions of several airways and designates several new airways located in the State of Alaska. This action supports the FAA's agreement with ICAO to remove all alternate airway segments from the NAS.

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

Alaskan VOR Federal airways, Aviation safety, Incorporation by reference.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71, as follows:

PART 71—[AMENDED]

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

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

Section 71.125 Alaskan VOR Federal Airways

* * * * *

V-317 [Revised]

From Ethelda, BC, Canada, NDB via Annette Island, AK; 42 miles 12 AGL, 42 miles 52 MSL, 15 miles 12 AGL Level Island, AK; Sisters Island, AK; to INT Sisters Island 272° and Yakutat, AK, 139° radials. The airspace within Canada is excluded.

V-318 [New]

From Annette Island, AK; INT Annette Island 311° and Level Island, AK, 164° radials; Level Island.

V-319 [Revised]

From Yakutat, AK, via Johnstone Point, AK; INT Johnstone Point 286° and Anchorage, AK, 117° radials; Anchorage; Sparrevohn, AK; Bethel, AK; to Hooper Bay, AK.

V-320 [New]

From Johnstone Point, AK, INT Johnstone Point 271° and Anchorage, AK, 130° radials; to Anchorage.

* * * * *

V-440 [Revised]

From Victoria, BC, Canada. From Sandspit, BC, 83 miles 12 AGL, 115 miles 35 MSL, 55 miles 12 AGL, via Biorka Island, AK; 31 miles 12 AGL, 50 miles 47 MSL, 85 miles 20 MSL, 40 miles 12 AGL, Yakutat, AK; 67 miles 12 AGL, 82 miles 75 MSL, 56 miles 12 AGL, Middleton Island, AK; Anchorage, AK; McGrath, AK; 23 miles 12 AGL, 54 miles 55 MSL, 46 miles 40 MSL, 25 miles 12 AGL, Unalakleet, AK; 17 miles 12 AGL, 91 miles 25 MSL, 17 miles 12 AGL to Nome, AK. The airspace within Canada is excluded.

V-441 [New]

From Middleton Island, AK, via the INT of Middleton Island 298° and Anchorage, AK, 163° radials; to Anchorage.

* * * * *

V-453 [Revised]

From King Salmon, AK; Dillingham, AK; 41 miles 12 AGL, 17 miles 60 MSL INT Dillingham 308° and Bethel, AK, 143° radials; 35 miles 60 MSL, 55 miles 12 AGL Bethel.

V-454 [New]

From King Salmon, AK, via the INT of King Salmon 271° and Dillingham, AK, 120° radials; to Dillingham.

* * * * *

V-481 [Revised]

From Johnstone Point, AK, via Gulkana, AK; Big Delta, AK; to Fort Yukon, AK.

V-482 [New]

From Johnstone Point, AK, via the INT of Johnstone Point 032° and Gulkana, AK, 184° radials; to Gulkana.

* * * * *

V-486 [Revised]

From Hooper Bay, AK, via Unalakleet, AK; Galena, AK, INT Galena 074° and Tanana, AK, 260° radials; Tanana; Fairbanks, AK.

V-488 [New]

From Galena, AK, INT Galena 089° and Tanana, AK, 245° radials; to Tanana.

* * * * *

Issued in Washington, DC, on September 29, 1992.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 92-24352 Filed 10-6-92; 8:45 am]

BILLING CODE 4910-13-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 180

Amendments to Commission Regulations on Arbitration at Self-Regulatory Organizations Under Petition of the National Futures Association

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: The National Futures Association ("NFA") petitioned the Commodity Futures Trading Commission ("Commission") to amend the Commission's regulations with respect to arbitration at self-regulatory organizations ("SROs") to raise the monetary ceilings on disputes that may be subject to procedures for resolution based solely on written submissions with no right to oral hearings. The Commission has determined to amend the regulations to raise the dollar limitation for summary arbitration from $2,500 to $5,000 for disputes involving customers and to raise the dollar limitation for any such summary arbitration of disputes between or among members of an SRO and their employees to $10,000. The regulations also are amended to ensure that oral hearings may be conducted in the discretion of the appointed arbitrators in the "small claim" cases, codifying current SRO policies.

EFFECTIVE DATE: November 6, 1992.

FOR FURTHER INFORMATION CONTACT: Linda Kurjan, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581; 202-254-8955.

SUPPLEMENTARY INFORMATION:

I. Introduction

Commission Regulation 180.2(d)(1) currently allows an SRO, in providing for arbitration of customers' disputes with the SRO's members, to have a procedure for resolution of a dispute without an oral hearing through submission of written documents (*i.e.*, "summary arbitration" or "summary proceedings") if the claims and counterclaims in the proceeding are less than $2,500 in the aggregate.[1] The regulation otherwise entitles every party in an SRO arbitration to appear personally at a hearing. Under Commission Regulation 180.5, an SRO's procedures for member-to-member arbitration also must conform to provisions of Regulation 180.2(d)(1).[2] Although Regulations 180.2 and 180.5 specifically refer to contract market arbitration procedures, Commission Regulation 170.8 effectively makes the part 180 provisions also applicable to registered futures associations, *i.e.*, NFA.[3] By letters dated June 19, 1990, and April 17, 1991, NFA requested the Commission to amend the arbitration regulations by raising the $2,500 summary arbitration ceiling, which has been in effect since 1976,[4] to $5,000 for customer disputes and as high as possible (e.g., $10,000 or $20,000) for member disputes.

The Commission published a notice of proposed amendments to its regulations on November 5, 1991, in the **Federal Register.**[5] Specifically, the Commission proposed to increase the limit to $5,000 for customer summary arbitration under Regulation 180.2(d)(1) as initially proposed by NFA and to $10,000 for member summary arbitration under Regulation 180.5. Parties would continue to be entitled to appear personally at a hearing whenever an amount larger than the proposed thresholds is involved. Moreover, the SROs would not be required to adopt the higher ceilings for summary arbitration.

The Commission received two comment letters, one from NFA[6] and the other from an attorney who has had extensive experience in the area of arbitration, including as an arbitrator for NFA and other forums, as publisher of a newsletter on securities and commodities arbitration, and formerly as director of a large securities arbitration forum.[7] Both commenters supported raising the ceiling as proposed, although the attorney-commenter conditioned his support on the Commission requiring oral hearings to be available upon the demand of any party regardless of the amount in controversy.

Having considered the issues and the comment letters, the Commission has determined to adopt a modified form of the proposed amendments to part 180. As amended, Regulations 180.2(d)(1) and 180.5 raise the dollar limit for summary arbitration from $2,500 to $5,000 for disputes involving customers and to $10,000 for those not involving any customers. In addition, Regulation 180.2(d)(1) is amended to ensure, at a minimum, that arbitrators have authority to order oral hearings in proceedings otherwise subject to SRO summary arbitration procedures. The latter amendment, which reflects current SRO practice, applies to SRO procedures governing summary member-to-member arbitration under Regulation 180.5, as well as to those governing customer-related arbitration.

II. Background

Regulation 180.2(d)(1) was promulgated by the Commission in part to provide a means by which an arbitration forum could control costs in dispute resolution proceedings where the total amount in controversy did not warrant the expense of an oral hearing.[8] The Commission was particularly concerned about instances where the costs associated with a hearing could approach or exceed the amount of the claim or grievance. The Commission also sought to reduce delays in arbitration proceedings involving small claims. Most of the SROs have adopted summary arbitration procedures under Regulation 180.2(d)(1) as part of their arbitration programs.[9]

NFA, which is the most frequently used forum for the arbitration of disputes involving commodity futures and options contracts in the United States, has found that the average size of claims that it receives has increased during the past few years, while the number of submissions with claims under $2,500 has remained relatively low.[10] Consequently, NFA believes that cost and time savings normally attributable to summary proceedings effectively are being limited to a diminishing number of cases and thus are not being realized in many cases for which NFA believes summary arbitration would be appropriate.[11] The

[1] 17 CFR 180.2(d)(1).

[2] 17 CFR 180.5. An SRO's procedure for resolving member-to-member disputes may not interfere with or delay the resolution of customer claims, however.

[3] 17 CFR 170.8.

[4] See 41 FR 27520 (July 2, 1976), effective September 30, 1976.

[5] 56 FR 56482 (November 5, 1991).

[6] Letter from Daniel J. Roth, NFA General Counsel, dated December 16, 1991.

[7] Letter from Richard P. Ryder dated November 15, 1991.

[8] See 40 FR 54432 (November 24, 1975) and 41 FR 27521 (July 2, 1976).

[9] Only the Commodity Exchange, Inc., and the Minneapolis Grain Exchange have not adopted rules providing for resolution of small claims solely on written submissions.

[10] The average claim size rose from $37,247 in fiscal year 1989 to $98,788 in fiscal year 1992. In fiscal year 1992, NFA received 34 submissions with claims below $2,500, down from 68 submissions three years earlier. (NFA's fiscal year runs July 1-June 30.)

[11] Letter from Daniel J. Roth ("Roth"), NFA Secretary and General Counsel, to Andrea M. Corcoran ("Corcoran"), Director of the Commission's Division of Trading and Markets, dated June 19, 1990.

situation could intensify as the number of intra-industry submissions rises as a result of NFA's recent implementation of mandatory arbitration to its entire membership.[12]

To ameliorate the perceived inefficiency, NFA, using a two-tiered formula, has proposed amendments to its rules to increase the maximum claim amounts that qualify for summary arbitration. First, every case claiming less than $5,000 when a customer is involved, or $10,000 for intra-industry disputes, automatically would proceed "on the papers" unless a hearing is ordered by the arbitrator or NFA's Secretary.[13] Summary procedures also would become the routine for larger cases up to $10,000 when a customer is involved and $20,000 for intra-industry disputes, but an oral hearing would be available at a party's request.[14] NFA's rule proposals are inconsistent with the Commission's regulations, however, since parties would not be entitled to an oral hearing at NFA for claims between $2,500 and $5,000 in a customer-related proceeding or between $2,500 and $10,000 in an intra-industry arbitration. Consequently, NFA petitioned the Commission to amend the regulations to allow NFA's proposed procedures. After considering NFA's petition, the Commission proposed to raise the summary ceiling in part 180.

[12] NFA initiated mandatory arbitration of disputes between and among all members and associated persons (unless the parties are required, by agreement or otherwise, to submit to another forum) on March 1, 1992. NFA Member Arbitration Rules § 2. In the first five-and-a-half months under the mandatory rules, NFA received over two-and-a-half times the number of member claims made in the comparable period in 1991. Of the 13 new cases (12% of all demands filed during the recent period), none involved less than $2,500, although five (38%) would have qualified for summary arbitration under the proposed higher threshold for industry cases.

[13] Proposed amendments to NFA Code of Arbitration § 9(i)(1) (formerly 9(h)(1)), submitted by letters dated June 7, 1990, April 17 and June 11, 1991; proposed amendments to NFA Member Arbitration Rules § 9(i)(1), submitted by letters dated September 6 and November 12, 1991. Had the rule changes been in effect at NFA for arbitrations initiated during fiscal year 1992, 43 customer claims and eight intra-industry disputes, in addition to the 34 cases filed with claims less than $2,500, could have proceeded on the papers under these ceilings. The policy of authorizing arbitrators and the Secretary to order oral hearings represents no change from NFA's current rules.

[14] NFA Code of Arbitration and NFA Member Arbitration Rules § 9(i)(2), as proposed. Had the proposed provisions been in effect for arbitrations initiated at NFA during fiscal year 1992, summary procedures would have applied, with oral hearing available upon demand, in an additional 49 customer-related cases and one intra-industry proceeding.

III. Discussion

A. Ceiling Amount

The $2,500 ceiling for SRO summary arbitration procedures was adopted over 15 years ago. In contrast, other alternative dispute resolution forums that accept commodities-related claims routinely allow for resolution of larger claims based on written submissions. For example, in the Commission's reparations program, cases with claims not exceeding $10,000 routinely proceed on the papers under the summary decisional process, which allows oral testimony only in limited circumstances.[15] In setting $10,000 as the threshold for the summary decisional process, the Commission noted that it could not ignore the diminutive effect of continuous high rates of inflation on the value of the dollar and the relative sizes of claims.[16] Parties subject to summary reparations have appeal rights unavailable in arbitration, however.[17]

In addition, at the New York Stock Exchange ("NYSE"), the National Association of Securities Dealers ("NASD") and other securities industry forums, the ceiling for routine arbitration based solely on the written pleadings and evidence is $10,000 (exclusive of attendant costs and interest).[18] Under the American Arbitration Association ("AAA") securities arbitration procedures, which also may govern some futures disputes, claims up to $5,000 are resolved by submission of documents.[19] Oral hearings, however, are readily available for such disputes at these arbitration forums. The AAA provides an oral hearing in a small-claims proceeding upon the request of any party. The securities industry forums provide an oral hearing when: (1) The customer demands one; (2) all the parties consent in writing; or (3) the arbitrator orders one.[20]

In contrast, Regulation 180.2(d)(1) does not require that any provision be made for oral hearings in summary proceedings, even in special circumstances. Nevertheless, the commodities SROs having summary procedures currently permit oral hearings in certain circumstances. At some of the SROs, such as NFA, the Chicago Board of Trade ("CBOT") and the New York Mercantile Exchange ("NYMEX"), it is up to the arbitrator to call an oral hearing.[21] At others, such as the New York Futures Exchange ("NYFE") and the AMEX Commodities Corporation ("ACC"), an oral hearing is provided upon customer demand or consent.[22]

B. Oral Hearing Option

The attorney-commenter supports an increase in the summary arbitration ceiling only if the Commission ensures that parties, particularly customers, in small-claims proceedings will be entitled to oral hearings upon request. He argued, in essence, that the benefits—which include greater public confidence in commodities arbitration and enhanced public perception of fairness—outweigh the costs. He further suggested that not making oral hearings available upon request in summary arbitration serves to discourage potential claimants from filing at commodities SROs, contrary to the Commission's policy of encouraging greater use of NFA as an arbitration forum.[23]

There are various advantages to resolving disputes based solely on written submissions, especially in a proceeding involving a relatively small amount of money in controversy. A summary proceeding expedites the arbitration process and eliminates the expense of an oral hearing. Prehearing activities for summary arbitration are less time-consuming for both the parties and forum staff, and written submissions normally are reviewed and decided by the arbitrator quickly.[24]

[15] 17 CFR 12.13(b)(viii), 12.18(a)(7), 12.26(b), 12.200 through 12.210 (Subpart D). Oral testimony is permitted if, in the discretion of the presiding judgment officer upon a party's motion, such oral testimony is shown to be necessary or appropriate to resolve factual issues that are central to the proceeding. 17 CFR 12.208(b).

As an alternative, parties may elect the voluntary decisional process, which is comparable in concept to summary arbitration and is available for any size dispute. Under this procedure, parties specifically waive all opportunity for an oral hearing. 17 CFR 12.100(b).

[16] 49 FR 6613 (February 22, 1984).

[17] Parties who elect the voluntary decisional process for reparations, however, waive the right to appeal the final decision to the Commission and thereafter to the courts.

[18] NYSE rule 601; NASD code of arbitration § 13 (customer-related dispute) and 10 (intra-industry dispute); Uniform Code of the Securities Industry Conference on Arbitration § 2.

[19] AAA securities rule 37.

[20] In addition, NASD provides an oral hearing upon the request of any party in an intra-industry proceeding. NASD code of arbitration § 10(a).

[21] NFA Code of Arbitration § 9(i)(1), which also gives authority to NFA's Secretary; CBOT Rule 630.12B; NYMEX Rule 5.09.

[22] NYFE Rule 620(h); ACC Rule 819(h).

[23] See 54 FR 1662 (January 17, 1989) (adoption of amendments to Commission Regulation 180.3 to encourage greater use of NFA's arbitration forum).

[24] For example, the average processing time for summary arbitration at NFA in fiscal year 1992 was 9.7 months, compared to 15.4 months for cases involving oral hearings.

Regarding the parties' expenses, forum fees tend to be lower for cases that proceed on the papers,[25] and the parties do not have to spend time and money preparing for and attending an oral hearing.[26] Moreover, reliance on written submissions may be a valid alternative for a *pro se* party who prefers not speaking or arguing the case in person. The forum's expenses in administering summary proceedings also tend to be less.

On the other hand, the opportunity for an oral hearing may offer significant benefits in certain small-claims proceedings. Oral hearings can be integral to arbitrators in assessing the credibility of parties. In addition, small-claims cases tend to involve *pro se* parties, who frequently have difficulty presenting their cases clearly and completely in writing and thus may be at more of a disadvantage in a written proceeding than in an oral hearing, where the arbitrator could assist in eliciting and elucidating the facts and arguments before rendering a decision that is final and binding. Furthermore, parties may be more motivated to reach a mutual settlement when faced with an approaching oral hearing than in a summary proceeding.[27] Additionally, some parties, for whatever reason, exhibit a preference for an oral hearing.[28]

In light of these considerations, futures SROs, while not required to do so, permit oral hearings for small claims cases in certain circumstances, as noted earlier. A review of the experience at NFA, the largest commodities arbitration forum, however, reveals that despite the availability of oral hearings under its summary procedures (at the direction of the arbitrator or the Secretary), NFA has not received requests from any party seeking an oral hearing in a proceeding involving less than $2,500 in lieu of proceeding on the papers. It also has not received complaints that oral hearings are not available upon demand in small-claims cases. On the contrary, parties occasionally have indicated to NFA that they intentionally understate their claim amounts below $2,500 in order to take advantage of the summary process. Moreover, arbitrators have informed NFA that as the decisionmakers, they ordinarily do not need to have small cases presented in person.[29]

C. Conclusion

The inexpensiveness and speed of arbitration relative to litigation frequently are cited as major advantages of that process. The Commission continues to be concerned that arbitration remain affordable to parties, especially to customers, and that the costs associated with commodities arbitration not outweigh the benefits of the process on the whole. So long as the fairness, equitability and integrity of the arbitration procedure are not compromised and the parties are not denied due process, the Commission encourages efforts to reduce delays in small-claims proceedings and to minimize related costs. Raising the permissible ceilings on summary arbitration as proposed could help achieve these goals. Moreover, establishing a different and higher permissible ceiling for member arbitration may allow an increased number of intra-industry disputes to proceed on the papers, with less drain on SRO resources and consequently less potential for interfering with or delaying customer-related proceedings in contravention of Regulation 180.5.

To assure due process in cases subject to summary arbitration, SROs must continue to provide mechanisms under which an oral hearing would be conducted in appropriate circumstances. At a minimum, the arbitrator must have the flexibility—and authority—to order an oral hearing. The Commission is amending its regulations to make this policy, which reflects existing SRO procedures, explicit.

Just as the regulations do not require an SRO to adopt an on-the-papers procedure for small-claims, SROs are not precluded from allowing oral hearings on demand, as some SROs currently provide. A procedure based on arbitrator authority, however, is the minimum acceptable to provide balance in small-claims arbitration between promoting expeditious resolution of a dispute solely through written procedures and ensuring adequate opportunity for parties to present their cases fully and for the arbitrator to ascertain facts and assess issues such as the credibility of the parties and witnesses in order to reach a fair, just result. The rules of the commodities SROs having summary arbitration procedures currently are consistent with the amendment in that they already provide for oral hearings to be conducted in small-claims cases either upon customer demand or consent or at the direction of the arbitrator.

As part of the responsibility for educating arbitrators to perform their functions fairly and effectively, the SROs must ensure that arbitrators are aware of their authority to call an oral hearing in summary proceedings and are sensitive to situations in which the exercise of the authority could be appropriate, whether or not requested by a party. In that regard, the SROs should review training mechanisms and other relevant materials, including arbitrator manuals, to ascertain whether arbitrators receive sufficient guidance.[30]

Based on the foregoing, the Commission has determined to amend its arbitration regulations to increase the dollar ceiling on permissible summary arbitration as proposed and to clarify that, at a minimum, the arbitration panel has authority to order an oral hearing in lieu of the summary procedure in appropriate circumstances. While the SROs are not required to adopt corresponding higher dollar limits, any proposals to expand summary arbitration consistent with the Commission's amended regulations must be submitted to the Commission pursuant to section 17(j) with respect to NFA [31] and section 5a(12) of the Act

[25] For example, NFA has a sliding scale for filing fees based on claim amount. The smallest fee for customer-related proceedings ($50) applies to submissions with claims up to $2,500 (*i.e.*, summary arbitration). NFA's hearing fees, which primarily are intended to cover arbitrator compensation, similarly follow a sliding scale based in part on whether the hearing would be oral or on the papers.

[26] The cost of attending an oral hearing may include, among other things, absence from employment, as well as travel-related expenses and inconveniences for parties and their witnesses. (NFA's policy of giving preference to the customer's choice of hearing site helps minimize some of those costs; however, to attend exchange arbitration, parties must go to the city where the futures exchange is located.) In addition, parties are more likely to hire lawyers when an oral hearing is contemplated. NFA noted in its comment letter that the various costs could approach or exceed the initial claim, especially when under $5,000.

[27] For example, at the NASD, parties settle approximately half of all cases on an oral hearing track but less than 15% of the cases proceeding on the papers.

[28] At the NASD, for example, customers requested oral hearings in approximately 47% of the small-claims cases filed in 1991.

[29] The arbitrators indicated that in larger cases, where oral hearings are conducted routinely, they tend to rely more on documentary evidence and submissions than on the oral testimony.

[30] For example, NFA's arbitrator's manual currently advises only that a summary proceeding generally is not appropriate in cases where credibility is a central issue. The manual states that an oral hearing can be scheduled if credibility cannot be determined from the written submissions and if the expense of an oral hearing is justified. There is no reference to other possibly valid circumstances, such as where oral testimony is necessary or appropriate to resolve factual issues that are central to the proceeding, where a party's reasons for requesting an oral hearing are compelling, or where both claimant and respondent consent.

[31] As described *supra*, NFA submitted proposed rule changes regarding both customer arbitration and member arbitration, pending action on the Commission's regulations. Because the proposals are consistent with the amendments to part 180, the Commission concurrently has approved NFA's provisions.

and Commission Regulation 1.41 with respect to exchanges.

IV. Other Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA") requires that agencies, in proposing rules, consider the impact of those rules on small businesses.[32] The Commission previously determined that contract markets and registered futures associations, to which the amendments directly would apply, are not small entities for purposes of the RFA.[33] Moreover, the amendments do not impose changes in the SROs' rules or procedures. With respect to SRO members and other businesses or organizations that may become subject to any SRO arbitration rule changes adopted under the amendments, the Commission determined previously that futures commission merchants also are not small entities for purposes of the RFA.[34] The Commission separately stated that it would determine on a case-by-case basis whether introducing brokers, commodity pool operators, commodity trading advisors and floor brokers should be considered small entities in connection with particular rule proposals.[35] In the present context, the Commission believes that, regardless of whether such SRO members or any nonmember businesses or organizations that might be affected by SRO rules conforming to the amendments to the Commission's arbitration regulations would be considered small entities, the amendments would not result in the imposition of any additional regulatory burdens on such entities. On the contrary, such entities generally could spend less time and money to arbitrate under SRO summary procedures than to prepare for and participate in oral hearings when their disputes involve amounts not exceeding the new limits. Accordingly, the Chairman, on behalf of the Commission, certifies pursuant to 5 U.S.C. 605(b) that the action taken herein 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") 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.[36] In compliance with the PRA, the Commission submitted the proposed rule amendments to the Office of Management and Budget ("OMB"). Although the Commission believes that the new amendments do not impose any information collection requirements as defined by the PRA, OMB previously had approved the collection of information associated with Regulation 180.2 on June 29, 1990 and assigned OMB control number 3038-0022 to the group of rules that includes Regulation 180.2. The burden associated with the entire collection, including Regulation 180.2 as amended, is as follows:

Average burden hours per response: 79.83.

Number of respondents: 58,283.

Frequency of response: On occasion.

Copies of the OMB-approved information collection package associated with this rule may be obtained from Gary Waxman, Office of Management and Budget, room 3220, NEOB, Washington, DC 20503, 202-395-7340.

List of Subjects in 17 CFR Part 180

Arbitration, Claims.

For the reasons set out in the preamble and pursuant to the authority contained in the Commodity Exchange Act, in particular, sections 4c, 4d, 4f, 4k, 5a, 8a, and 17 thereof,[37] 17 CFR Part 180 is amended as set forth below.

PART 180—ARBITRATION OR OTHER DISPUTE SETTLEMENT PROCEDURES

1. The authority citation for part 180 continues to read as follows:

Authority: 7 U.S.C. 6c, 6d, 6f, 6k, 7a, 12a, and 21, unless otherwise noted.

2. Section 180.2 is amended by revising paragraph (d)(1) to read as follows:

§ 180.2 Fair and equitable procedure.

* * * * *

(d) * * *

(1) Each of the parties shall be entitled personally to appear at such hearing, unless the contract market shall have adopted a procedure for the written submission of claims or grievances (and any counterclaims applicable thereto) which in the aggregate do not exceed $5,000. If the claim or grievance (and any counterclaim applicable thereto) in the aggregate does not exceed $5,000, provision may be made for the claim or grievance to be resolved without a hearing through a submission on the basis of written documents, unless a hearing is required by the panel or other decision-maker or by rule.

* * * * *

3. Section 180.5 is revised to read as follows:

§ 180.5 Member-to-member settlement procedures.

A contract market may establish a procedure for compulsory settlement of claims and grievances or disputes which do not involve customers. If adopted, the procedure shall be independent of, and shall not interfere with or delay the resolution of, customers' claims or grievances submitted for resolution under the procedure established pursuant to the Act. Such a procedure shall provide procedural safeguards which must include, at a minimum, fair and equitable procedures conforming to those set forth in § 180.2 of this part, except that:

(a) The election of the mixed panel and the prohibition of appeal to any entity within the contract market contained in § 180.2 (a) and (f) of this part need not be required; and

(b) The dollar limitation contained in § 180.2(d)(1) of this part on a claim or grievance (and any counterclaim applicable thereto) that may be subject to resolution without a hearing through submission of written documents may not exceed $10,000 in the aggregate.

Issued in Washington, DC, on September 30, 1992, by the Commission.

Jean A. Webb,

Secretary.

[FR Doc. 92-24263 Filed 10-6-92; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 435

[MB-56-F]

RIN 0938-AGO1

Medicaid Program: Targeting Information for Income and Eligibility Verification Systems

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This final rule eliminates a requirement included in the interim final rule with comment period that we published on March 2, 1989 (54 FR 8738) that State Medicaid agencies retain a central record of all information items

[32] 5 U.S.C. 601 *et seq.* (1988).

[33] 47 FR 18618, 18619 (April 30, 1982) (contract markets); 55 FR 5023, 5024 (February 13, 1990) (registered futures associations).

[34] 47 FR 18618, 18619 (April 30, 1982).

[35] 47 FR 18618, 18620 (April 30, 1982).

[36] 44 U.S.C. 3501 *et seq.* (1988).

[37] 7 U.S.C. 6c, 6d, 6f, 6k, 7a, 12a, and 21.

received through the income and eligibility verification system (IEVS). It is aimed at simplifying program administration and granting States greater flexibility. The preamble to this rule also includes our responses to comments submitted on that interim final rule.

EFFECTIVE DATE: This rule is effective November 6, 1992.

FOR FURTHER INFORMATION CONTACT: Helaine Jeffers, 301-966-5920.

SUPPLEMENTARY INFORMATION:

I. Background

Effective April 1, 1985, section 2651 of Public Law 98-369, the Deficit Reduction Act of 1984, established section 1137 of the Social Security Act (the Act), which contains provisions aimed at ensuring that Federally-funded welfare agencies (including the Aid to Families with Dependent Children, Food Stamp and Medicaid programs) furnish benefits only to individuals eligible for them. Section 1137 requires the agencies administering these programs to have an income and eligibility verification system (IEVS) for exchanging with each other and certain Federal agencies information that may be of use in establishing or verifying eligibility or benefit amounts. The provision mandated that the agencies target the use of the information to the uses most likely to be productive in identifying and preventing ineligibility and incorrect payments.

On February 28, 1986, HCFA, the Food and Nutrition Service (FNS) and the Administration for Children and Families (ACF) (formerly the Family Support Administration) published jointly a final rule (51 FR 7178) to implement the IEVS for the Medicaid, Food Stamp and AFDC programs. The rule required agencies that administer these programs to review and compare all information received against the case file to determine whether the information affects the applicant's or recipient's eligibility or benefits. The regulations also required the agency to notify the recipient of any intended adverse action, or make an entry in the case record that no action is necessary, within 30 days of receipt of the information for 80 percent of the determinations.

Legislation

After the three agencies jointly published the final rules, the Budget Committee of the House of Representatives in its report accompanying H.R. 5300 (which was the basis for the Omnibus Budget Reconciliation Act of 1986) noted that the agencies' current rules did not permit targeting in the manner it said it intended to allow in the original statute (H.R. Rep. No. 727, 99th Cong., 2d Sess. 424-425 (1986)). According to this 1986 report, the House Budget Committee originally intended to have States utilize a variety of information sources to verify the eligibility of applicants and recipients of benefit programs, as an effective and efficient tool in preventing benefit payments from being made to individuals who are not eligible. The report states that the Committee believed that for the use of such information to be productive, States must be afforded the discretion to target their efforts in ways they determine most cost-effective.

In addition, the Committee stated its belief that requiring States to act upon the information they receive within 30 days, as prescribed in the final rules, is unrealistic and "that a 45-day requirement is more reasonable than the 30 days set forth in the final rule." (H.R. Rep. No. 727, 99th Cong., 2d Sess. 425 (1986)).

In section 9101 of the Omnibus Budget Reconciliation Act of 1986 (Public Law 99-509), Congress amended section 1137(a)(4) of the Act to prohibit the Secretary from requiring States to use all the information they receive from IEVS matches to verify the eligibility of all recipients. The House Budget Committee's directive to allow the public assistance agencies 45 days to act upon information received, however, was not included as a legislative amendment.

Revisions to the February 28, 1986 Regulations

In order to bring the regulations into conformity with the amendment to section 1137 of the Act made by Public Law 99-509, and to follow clearly expressed congressional intent on the time period for acting upon information received, we amended our regulations at 42 CFR part 435, subpart J, on March 2, 1989 (54 FR 8738) in an interim final rule with comment. We summarize the provisions of the amendments below.

Targeting the Use of Information

We added a new § 435.953 to provide that all information received through the IEVS on recipients need not be used. States instead may elect to target for followup that information they believe most useful to them.

Any agency that intends to exclude items from followup is required to submit a followup plan specifying the categories to be excluded and providing a description of the criteria defining each category. For each category, the agency must provide a reasonable justification explaining why the followup would not be cost-effective. A formal cost-benefit analysis is not required.

The rules at 42 CFR 435.948 that were in effect before the March 2, 1989 rules required State agencies to use all information concerning both applicants and recipients. In clarifying that State agencies be allowed to target information, the amendment to section 1137(a)(4) of the Act refers to "recipients" only. Therefore, we revised the regulations to permit targeting of recipients but not applicants.

Timeframe for Action on Match Results

The regulations at § 435.952 provided a 45-day period for following up on information items as a maximum time period.

Quality Control Requirements

In order to clarify that the agency is liable even for items not followed up, we amended § 435.945, General requirements, by adding paragraph (h) to require the State agencies to retain a separate central record of all the information items received, including those not followed up. The agency was required to continue to retain information in a manner that assured that it did not compromise information safeguards; the agency had to make this information available to quality control reviewers upon request. Such information must be retained for the periods specified by 45 CFR 74.20 through 74.25.

Third Party Liability

We stated in the March 2, 1989 rule that targeting does not apply to activities for establishing third party liability (TPL) benefit amounts. Section 1902(a)(25) of the Act requires that State agencies or local Medicaid agencies take all reasonable measures to ascertain the legal liability of third parties to pay for care and services provided to Medicaid recipients.

Technical Changes

We made three technical changes to § 435.952. In paragraph (a), by cross-reference, we incorporated the changes in § 435.953 that permit State agencies to limit review and comparison of information to targeted information. In paragraph (c), we reflected the correct order the State agency must follow when processing a recipient's case file under IEVS. Finally, in paragraph (e), we extended to 45 days the time within which a State agency may delay action on followup of IEVS information items.

However, the number of items that may be delayed beyond this time period remains limited to 20 percent of the items for which verification was requested.

We also changed the time period in § 433.138(g)(1)(i). We revised the time for followup for TPL purposes from 30 to 45 days to make it consistent with the time period allowed for IEVS followup. We retained the provision for limiting delaying action beyond 45 days to 20 percent of the information items when the agency does not receive requested verification.

II. Comments on the Proposed Rule

In response to our March 2, 1989 rule, we received 14 comments from 7 commenters. We set forth these comments and our responses to them below.

Targeting the Use of Information

Comment: One commenter recommended setting a $10 minimum tolerance level for asset match cases; that is, asset income under $10 would require no action.

Response: We do not agree that the regulation should contain a tolerance amount. While thresholds may be used by many States in their targeting plans, our stipulating these thresholds in regulations may place undue restrictions on States in their choices to target their efforts in ways they determine to be most cost-effective.

Comment: One commenter recommended that the regulation provide for prematch targeting so that it will not be necessary to request information on certain recipients. The commenter gave residents in psychiatric facilities as an example of individuals who could be excluded on a prematch basis.

Response: The regulations already contain a provision under § 435.948(d) for reducing the frequency at which information is requested for institutionalized individuals. This exception provides that State agencies are required to obtain information from State wage information collection agencies (SWICA) for institutionalized individuals only during the application period and once yearly; they are required to obtain the data from unemployment compensation agencies only during the application period. This final rule applies only to the targeting of information items received. We are considering further amending the regulation in the future to give States greater flexibility by allowing them to limit requests from IEVS data sources to those sources that are determined to be most cost-effective.

Comment: One commenter objected to the requirement that State agencies must justify the decisions on targeting to HCFA (under delegation from the Secretary of HHS). The commenter contended that congressional intent gave States the discretion to target on their own.

Response: Under section 1902(a)(4) of the Act, HCFA, acting for the Secretary of HHS, has the authority and responsibility to conduct activities as found necessary for proper and efficient administration of the State plans. Given the broad latitude that is provided State agencies in targeting information items, we consider it in the program's best interest for HCFA to maintain oversight and approval of State targeting plans. ACF and FNS similarly require that State targeting plans for programs they administer be approved.

Comment: Two commenters objected to excluding applicants from targeting and including only recipients. One commenter contended that his State agency's experience showed that applicants are frequently prior recipients and that the rule would preclude targeting and consequently delay processing the application while the agency awaits verification of the information on the new application.

Response: We do not agree with these comments. We believe that the time of application is the opportune time for State agencies to conduct an intensive review of all factors of the applicant's eligibility and to permit targeting at this point in the process could allow too many incorrect eligibility determinations.

Morever, under existing guidelines, State agencies are not required to wait for the verification of the information to place applicants on the rolls. The preamble to the March 2, 1989 regulations clearly states that States may not delay a pending application solely to await information if other evidence establishes the individual's eligibility for assistance.

Time Period for Action on Match Results

Comments: We received four comments on the extension to 45 days of the time allowable for action on match results. Two commenters believed the time period was too restrictive and recommended periods ranging from 60 to 180 days. Another commenter observed that followup within 45 days may be difficult because States have no control over the responses that must be requested from financial institutions. One commenter indicated that it would be particularly difficult for a State agency with a decentralized intake process to monitor the 20 percent tolerance that is permitted beyond the 45-day followup period.

Response: After serious consideration of the adequacy of the 45-day time period for following up information items received in IEVS matches, we concluded that the 45-day followup should be retained, since State agencies are permitted to limit followup to cost-beneficial cases, and they may exceed the 45-day period for 20 percent of followed up cases when verification is not received timely. We note that targeting could provide relief for State agencies with heavy followup case loads, inasmuch as targeting may be tied to staffing levels. For example, State agencies with heavy caseloads may have to establish higher followup threshold amounts because these activities may require additional hiring. If the thresholds are too low, the cost of followup may exceed the expected return.

We note, too, that although FNS has the authority to rescind the 45-day time period for cause, no State agencies have requested a waiver.

While we acknowledge that State agencies lack control over responses from financial institutions, we believe the 20 percent tolerance permitted will accommodate delayed verifications. We also recognize that monitoring the 20 percent tolerance in decentralized intake processes could be difficult for some State agencies and may require system changes to capture the data required to make this calculation. We do not consider either of these situations serious enough to warrant lengthening the followup time.

Quality Control Requirements

Comment: Three commenters objected to including in QC reviews sample cases that the agency excluded through targeting. They contended the cases were properly handled in accordance with an approved targeting plan.

Response: We do not agree that cases should be excluded from QC review because information received is not followed up. State agencies may exercise their option to target or not to target and to develop their individual targeting schemes. Exercising this prerogative and selecting the targeting levels, however, does not automatically eliminate the possibility of erroneous payment; those cases, therefore, should be subject to QC review along with other cases. Cases chosen for the QC review that have been excluded from further followup by targeting may also provide an opportunity for evaluating the cost-effectiveness of State agency

targeting plans. We will continue to subject information items that are not followed up to QC verification.

Comment: One commenter believed that State agencies should not be required to retain items not followed up, as doing so may cause a local data storage and retrieval problem.

Response: To the extent that the commenter objects to the storage of information items in individual case files, we continue to believe that items not followed up have to be retained. In order to conduct QC reviews, we have to have access to data not followed up as well as to those followed up.

However, our interpretation of this requirement was to require State agencies to keep a separate record of all items centrally as well as in individual case files. We have learned that retaining and retrieving records on information items not followed up requires States to write and maintain additional computer programs. The States need a program to identify matched cases, known as hits, and another to store and make all hits available for access to quality control reviewers. The costs added by these additional steps reduce the cost-effectiveness of these matches. Experience shows that these matches provide little, if any, additional information for quality control purposes.

We also note that, with the exception of Internal Revenue Service (IRS) data, quality control reviewers routinely check IEVS data in individual case files, apart from any central records that are maintained, to determine whether the data may be applicable to the review month. HCFA has contracted separately with the IRS to receive its data for the Federal review.

Therefore, we are amending our regulations at 42 CFR 435.945 by deleting paragraph (h) in its entirety. This amendment will remove our requirement that States keep a central log-type record of all IEVS information received.

Neither ACF nor FNS requires its State agencies to keep a central record; the agencies are only required to keep all information items in individual records. ACF regulations, however, do give States the flexibility to also maintain a central record. See 45 CFR 205.60 and 7 CFR 272.8(h), respectively, for ACF and FNS recordkeeping requirements pertinent to IEVS. Thus, our revision will also ensure that the three programs involved in the IEVS have similar requirements.

Deleting 42 CFR 435.945(h) does not change any other recordkeeping requirements. States are still required to maintain all items of information, followed up or not, in individual files in accordance with 42 CFR 431.17.

Third Party Liability

Comment: One commenter believed that third party liability (TPL) should not be excluded from targeting as provided in the targeting regulations.

Response: We do not agree with this comment. Every employment lead, no matter how small, could be a lead for health insurance, and our TPL instructions (section 3903.3 of the State Medicaid Manual) provide that if health insurance information is already in the file or is known by the State agency, additional followup is not required. Therefore, we continue to exclude TPL from targeting.

III. Summary of Revisions

Based on our evaluation of public comments and an assessment of program experience, we are revising the interim final rule we published on March 2, 1989 to remove § 435.945(h). This removes the requirement that State agencies keep a centralized record of all items received.

IV. Regulatory Impact Analysis

A. Introduction

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any proposed rule that meets one of the E.O. 12291 criteria for a "major rule"; that is, that would be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In addition, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5. U.S.C. 601 through 612), unless the Secretary certifies that a final regulation will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, States are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if this rule has a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that has fewer than 50 beds and is located outside a Metropolitan Statistical Area.

We indicated in section D of the interim final rule with comment period that we published on March 2, 1989 (54 FR 8738) that we expected the net effect not to result in a significant economic impact. Subsequent to that analysis we have eliminated our requirement that States keep a central log-type record of all IEVS information received, removing further unnecessary costs. However, we are unable to determine these savings at this time due to the lack of cost data.

We received no comments on our analysis and we believe that none of the changes incorporated into this final rule has any significant impact. Therefore, we are not preparing an analysis.

For these reasons, we have determined that the threshold criteria under E.O. 12291 are not met and a regulatory impact analysis is not required. Further, we have determined, and the Secretary certifies, that these regulations will not have a significant economic impact on a substantial number of small entities and will not have a significant impact on the operations of a substantial number of small rural hospitals. Therefore, we have not prepared a regulatory flexibility analysis or analysis of effects on small rural hospitals.

V. Collection of Information Requirements

This rule deletes an information collection requirement that was part of a group of information collection requirements subject to review by the Office of Management and Budget and approved under approval number 0938-0467.

List of Subjects in 42 CFR Part 435

Aid to Families with Dependent Children, Grant programs-health, Medicaid, Reporting and recordkeeping requirements, Supplemental Security Income (SSI), Wages.

42 CFR part 435 is amended as follows:

PART 435—ELIGIBILITY IN THE STATES, DISTRICT OF COLUMBIA, THE NORTHERN MARIANA ISLANDS, AND AMERICAN SAMOA

1. The authority citation for part 435 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

§ 435.945 [Amended]

2. Section 435.945 is amended by removing paragraph (h).

[Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program]

Dated: September 24, 1992.

William Toby,

Acting Deputy Administrator, Health Care Financing Administration.

Approved: October 1, 1992.

Louis W. Sullivan,

Secretary.

[FR Doc. 92-24319 Filed 10-6-92; 8:45 am]

BILLING CODE 4120-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 663

[Docket No. 920109-2009]

Pacific Coast Groundfish Fishery

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

ACTION: Notice of fishing restrictions, and request for comments.

SUMMARY: NOAA announces a reduction in the cumulative trip limit for thornyheads and the deepwater complex (thornyheads, Dover sole and trawl-caught sablefish) in the groundfish fishery off Washington, Oregon, and California. This action is authorized by the regulations implementing the Pacific Coast Groundfish Fishery Management Plan (FMP). The trip limit is designed to keep the catch within the 1992 harvest guideline for the species while extending the fishery as long as possible during the year.

DATES: Effective from 0001 hours (local time) October 7, 1992, until modified, superseded, or rescinded. Comments will be accepted through October 22, 1992.

ADDRESSES: Submit comments to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, Washington 98115; or Dr. Gary Matlock, Acting Director, Southwest Region, National Marine Fisheries Service, 501 West Ocean Blvd., suite 4200, Long Beach, California 90802-4213.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at (206) 526-6140; or Rodney McInnis at (310) 980-4040.

SUPPLEMENTARY INFORMATION: The FMP provides for rapid changes to specific management measures that have been designated as "routine." The trip limit for thornyheads, Dover sole, and sablefish are among those management measures that have been designated routine at 50 CFR 663.23(c)(1)(i).

The notice of 1992 groundfish fishery specifications and management measures (57 FR 1654, January 15, 1992) announced an initial 2-week cumulative trip limit for thornyheads of 25,000 pounds. At the July 1992 meeting, the Pacific Fishery Management Council (Council) found that landings were occurring at an unexpectedly high rate and recommended that the trip limit be reduced to 20,000, which occurred on July 29, 1992 (57 FR 34266; August 4, 1992). At its September 1992 meeting, the Council learned that even though the August 1992 catch had declined 16 percent (to 6,765 mt cumulatively through August 31), the 7,000-mt harvest guideline would be reached by mid-November if landing rates were not further curtailed. Consequently, the Council has recommended a further reduction of the cumulative trip limit for thornyheads to 15,000 pounds on October 7, 1992, the beginning of the next 2-week period. Thornyheads are part of the deepwater complex, which also includes sablefish and Dover sole. The Council also recommended a change in the cumulative trip limit for the deepwater complex from 55,000 pounds to 50,000 pounds, which applies to the same 2-week periods.

Secretarial Action

The Secretary of Commerce concurs with the Council's recommendation and herein modifies paragraph E.(4)(c) of the 1992 Management Measures (57 FR 1654, January 15, 1992; as modified at 57 FR 34266, August 4, 1992) so that the 2-week cumulative trip limit is reduced from 20,000 pounds to 15,000 pounds for thornyheads, and from 55,000 pounds to 50,000 pounds for the deepwater complex. All other provisions remain in effect.

Classification

This action is made under the authority of and in accordance with the regulations at 50 CFR 663.23(c).

This action is authorized by Amendment 4 to the FMP for which a Supplemental Environmental Impact Statement (SEIS) was prepared in accordance with the National Environmental Policy Act. Because this action and its impacts have not changed significantly from those considered in the SEIS, this action is categorically excluded from the requirement to prepare an environmental assessment in accordance with section 6.02c.3.(f) of NOAA Administrative Order 216-6.

This action is in compliance with Executive Order 12291. The public has had the opportunity to comment on this action. The public participated in the Groundfish Management Team, Groundfish Advisory Subpanel, Scientific and Statistical Committee, and Council meetings in September 1992 that resulted in the recommendation to take this action.

The aggregate data upon which the determination is based are available for public inspection at the Office of the Director, Northwest Region (see **ADDRESSES**) during business hours until October 21, 1992.

List of Subjects in 50 CFR Part 663

Administrative practice and procedure, Fisheries, Fishing, and Recordkeeping and reporting requirements.

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

Dated: October 1, 1992.

Richard H. Schaefer,

Director of Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-24280 Filed 10-6-92; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 57, No. 195
Wednesday, October 7, 1992

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 THE TREASURY

Office of Thrift Supervision

12 CFR Parts 545, 563, 567, and 571

[No. 92-283]

RIN 1550-AA50

Classification, Valuation and Regulatory Capital Treatment of Troubled, Collateral-Dependent Loans and Foreclosed Assets

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Proposed rule.

SUMMARY: The Office of Thrift Supervision (OTS) proposes to revise its guidance regarding the classification, valuation and regulatory capital treatment of troubled, collateral-dependent loans and foreclosed assets. OTS seeks comment before issuing a final policy statement on the classification and valuation of troubled, collateral-dependent loans and foreclosed assets and making conforming amendments to the classification of assets regulation and other regulations in order to implement the proposed policy. OTS also proposes to amend the risk-based capital regulation to conform with this change in policy.

DATES: Comments requested must be received on or before December 7, 1992.

ADDRESSES: Send comments to Director, Information Services Division, Public Affairs, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention Docket No. 92-283. These submissions may be hand delivered to 1700 G Street, NW., from 9 a.m. to 5 p.m. on business days; they may be sent by facsimile transmission to FAX Number (202) 906-7753 or (202) 906-7755. Submissions must be received by 5 p.m. on the day they are due in order to be considered by the OTS. Late-filed, misaddressed or misidentified submissions will not be considered in this rulemaking. Comments will be available for inspection at 1776 G Street, NW., Street Level.

FOR FURTHER INFORMATION CONTACT: Robert J. Fishman, Program Manager, (202) 906-5672, Deirdre G. Kvartunas, Program Analyst (202) 906-7933, Timothy J. Stier, Deputy Chief Accountant, (202) 906-5699, Office of Thrift Supervision, 1700 G St., NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Introduction

Under current policy (and under the policy followed by OTS's predecessor, the Federal Home Loan Bank Board), the OTS permits savings associations to value and to determine appropriate charge offs and specific valuation allowances (SVAs) for troubled, collateral-dependent loans based on the net realizable value (NRV) of the collateral that secures such loans. SVAs or charge offs are used to adjust the carrying value of such assets for estimated losses.[1]

Foreclosed assets, including real estate owned and "in-substance" foreclosures, are initially valued at the fair value of the underlying collateral. Charge offs are required for the difference between the recorded investment in the loan and the fair value of the underlying collateral. Thereafter, savings associations are permitted to use NRV to determine whether additional SVAs or charge offs must be established.

Section 4 of the Home Owners' Loan Act (HOLA) requires the Director of the OTS to establish accounting standards that incorporate generally accepted accounting principles (GAAP) to the same degree that such principles are used to determine compliance with regulations prescribed by the Federal banking agencies. HOLA also authorizes the Director of OTS to prescribe more stringent standards. Furthermore, it mandates that all regulations and policies of the Director that govern the safe and sound operation of savings associations shall be no less stringent than those established by the Office of the Comptroller of the Currency (OCC) for national banks.

Based on the statutory mandate, and to ensure that the classification standards used by savings associations are closely tied to losses incurred, the OTS proposes to adopt revised guidance on the classification, valuation and regulatory capital treatment of troubled, collateral-dependent loans and foreclosed assets.

II. Proposed Policy on the Classification, Valuation and Regulatory Capital Treatment of Troubled, Collateral-Dependent Loans and Foreclosed Assets

The OTS today proposes three new policies: (a) The use of fair value for the valuation of troubled, collateral-dependent loans and foreclosed assets; (b) the use of charge offs for amounts classified "loss"; and (c) the removal of the 200 percent risk-weight category for foreclosed assets.

These policies will affect savings associations in several ways. First, under a fair value accounting standard the required level of SVAs/charge offs for savings associations will increase because losses will be recognized earlier. Second, the removal of the 200% risk-weight category for foreclosed assets will reduce the risk-based capital requirement for savings associations and result in a treatment of these assets similar to that of the OCC. Because SVAs and charge offs have the same impact on capital adequacy, the requirement to use charge offs will not adversely affect savings associations' capital positions.

A. The Use of Fair Value

A collateral-dependent loan is a loan where proceeds for repayment can be expected to come only from the operation and sale of the collateral. This would not include loans that are adequately protected by a financially responsible guarantor that has both the ability and willingness to provide support for the loan.

For troubled, collateral-dependent loans where collection in full is not anticipated, any excess of the recorded investment in the loan over the fair value[2] of the underlying collateral

[1] Whether it results in a specific valuation allowance or a charge off, a "loss" classification reduces the carrying value of the loan. A "loss" classification resulting in a SVA is reflected in the financial statements as a contra-asset account. On the other hand, a "loss" classification resulting in a charge off is reflected in the financial statements as a direct reduction in the recorded investment in the loan. For purposes of determining capital adequacy, however, SVAs and charge offs have the same effect.

[2] Fair value should not be based solely on the current performance of the real estate, or on

Continued

would be classified "loss." Collection in full is not anticipated when either: (1) The projected cash flows (on an undiscounted basis) from the operation and sale of the collateral over the intermediate term (e.g., no greater than five years) are less than required payments of principal and interest, according to the contractual terms; or (2) the loan's original contractual terms have been significantly modified because of collectibility concerns.

For troubled, collateral-dependent loans where collection in full is possible, but not reasonably assured, any excess of the recorded investment in the loan over the fair value of the underlying collateral would be classified "doubtful." Collection in full might be possible, but not reasonably assured, when neither conditions (1) nor (2), above, is present. In such case, the recorded investment may be greater than the fair value due to a current collateral value shortfall, the problematic timing of collection, or other problems that lead to the characterization of the loan as troubled.

For a troubled, collateral-dependent loan, in either of the above cases, the portion of the loan not classified as either "doubtful" or "loss" would be classified "substandard" where well-defined weaknesses are present with respect to the remaining portion of the loan.[3]

Under current policy, assets or portions of assets classified "loss" must be charged off or a SVA must be provided. As noted in section B below, the OTS is also proposing to discontinue use of the SVA.

For portions of troubled, collateral-dependent loans classified "doubtful" or "substandard," as for any other asset classified "doubtful" or "substandard," a general valuation allowance would be required.

This proposed policy differs from current OTS policy in two respects: (1) Savings associations would be required to use fair value, rather than net realizable value, in the valuation of troubled, collateral-dependent loans; and (2) savings associations would be required to compare the projected cash flows and the contractual obligation (principal and interest) associated with troubled, collateral-dependent loans to determine whether collection in full is anticipated.

The OTS also proposes to revise the current guidance on foreclosed assets to require savings associations to use fair value both at the initial valuation and thereafter. Foreclosed assets, including real estate, would be carried at the lower of cost or fair value, based on the assumption that such assets are held for sale. This policy regarding foreclosed assets will also apply to in-substance foreclosures. As a result, OTS policy will conform with the recently issued Statement of Position (SOP) 92-3, "Accounting for Foreclosed Assets" by the American Institute of Certified Public Accountants (AICPA). Under this SOP, there is a rebuttable presumption that foreclosed assets are held for sale. The SOP recommends that foreclosed assets held for sale be carried at the lower of (a) fair value minus estimated costs to sell or (b) cost. This SOP should be applied to foreclosed assets in annual financial statements for periods ending on or after December 15, 1992.

The OTS also recognizes that the Financial Accounting Standards Board (FASB) has under development an exposure draft on the accounting for impaired loans. Any final action by the FASB on this issue will be addressed by the OTS in our issuance of final guidance on troubled, collateral-dependent loans.

These policies are appropriate to adopt for the following reasons:

- They are applied only where the recovery of principal and interest on the loan in question is solely dependent upon operation and sale of the collateral.
- They focus on the underlying economics of the lending arrangement, including cash flows, and underlying collateral to estimate losses.
- They comport with the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) mandate that OTS prescribe standards no less stringent than those used by national banks and with the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) mandate that OTS have standards that are consistent with GAAP.
- They are consistent with the approach articulated in the March 1, 1991 "Joint Supervisory Policies" statement and the November 7, 1991 "Interagency Policy Statement on the Review and Classification of Commercial Real Estate Loans" jointly issued by the OTS, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the Federal Reserve Board. As stated in these releases, the evaluation of real estate loans is based on the ability of the collateral to general cash flow over time, not upon its liquidation value.

B. Charge Offs

The OTS also proposes to remove the current authority for savings associations to use SVAs. The proposed change would require associations to use charge offs for amounts classified as "loss" because such amounts are generally deemed to be uncollectible. As stated above, this change will not impact the capital adequacy calculations for savings associations. The adoption of this proposed policy would align OTS policy with the policies of the bank regulatory agencies.

C. Removal of 200 Percent Risk-Weight Category

In light of the proposed adoption of a fair value methodology, the OTS also proposes to amend its current minimum capital requirements at 12 CFR 567.6(a)(1)(v). The current minimum capital requirements include a risk-based capital standard that assigns assets to risk-weight categories based on their relative credit risk. The current rule includes a 200% risk-weight category for all repossessed assets or assets more than 90 days past due (and equity investments that the OTS determines to have the same risk characteristics as real estate owned). There is an exception to the 200% risk-weight category for 1-4 family residential real estate that is more than 90 days past due, which is placed in the 100% risk-weight category.

The 200% risk-weight category was established because a savings association could carry such assets at the lower of their cost of NRV. See 54 FR 48845, 48853 (Nov. 8, 1989). Because the OTS proposes to require the use of fair value instead of NRV, it is appropriate to remove the 200% risk-weight category. Thus, assets that are currently placed in the 200% risk-weight category would be placed in the 100% risk-weight category.

D. Miscellaneous Conforming Amendments

OTS is also proposing conforming amendments to various regulatory provisions to implement the policy that would require savings associations to use charge offs. These amendments would delete any references to SVAs as an alternative to the use of a charge off.

III. Transition Period

The OTS is considering the use of a transition period in the adoption of the

liquidation value. Absent a completed, arms-length sale of the subject real estate, the best estimate of its fair value is that based on an independent appraisal. The discounted cash flow approach, often used by the appraiser, emphasizes the long-term ability of the real estate to generate income, and to increase in value over time. Fair value is to include a reduction for the seller's disposition costs.

[3] The remaining portion of the loan is the lower of the recorded investment in the loan or the fair value of the underlying collateral.

proposed policy on the classification, valuation and regulatory capital treatment of troubled, collateral-dependent loans and foreclosed assets in lieu of an immediate adoption of the proposed policy. The OTS specifically requests comment on whether to adopt a transition provision and, if so, what structure it should take.

One option the OTS specifically requests comment on is the application of these new policies beginning with the quarter ending December 31, 1992. That date would coincide with the AICPA's SOP 92-3 implementation date for the accounting for foreclosed assets for many institutions. It also provides institutions with a period of time to put in place new procedures to comport with the proposed new policies.

IV. Implementation

The OTS proposes to implement the proposed policy on the classification and valuation of troubled, collateral-dependent loans and foreclosed assets by issuing guidance to OTS regional staff and to savings associations in addition to making the modifications to its regulations contained in today's proposal. All comments received regarding the issues presented in this proposal will be considered when formulating such guidance and final modifications to regulations.

Implementation of the requirement to use charge offs and the revision of the risk-based capital regulations will be made by promulgation of a final rule.

V. Request for Comment

The OTS requests comments from all interested parties on the items discussed in this preamble and proposed rule. OTS specifically requests comment on the following issues:

1. Is the proposed policy on the classification, valuation and regulatory capital treatment of troubled, collateral-dependent loans and foreclosed assets appropriate for savings association? Will it improve the likelihood that the anticipation of loss associated with troubled, collateral-dependent loans is reported in a manner that enhances safety and soundness? Should restructured loans (Troubled Debt Restructurings) be included in this policy?

2. How does the proposed policy on the classification, valuation and regulatory capital treatment of troubled, collateral-dependent loans and foreclosed assets compare with that used by the bank regulatory agencies, particularly the Office of the Comptroller of the Currency?

3. Is the proposal to remove the authority for savings associations to use SVAs appropriate? What are the benefits and costs of the ability to establish SVAs?

4. Should OTS adopt a transition period for the new requirements? If so, how should OTS structure such a transition? How will any transition adopted by the OTS comport with the requirement for savings associations to recognize losses under GAAP? Is the use of December 31, 1992 as the implementation date appropriate?

5. Is the proposed revision to the risk-based capital standards appropriate?

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, the Office certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

The Office has determined that this proposed rule does not constitute a "major rule"; therefore, a regulatory impact analysis is not required.

List of Subjects

12 CFR Part 545

Accounting, Consumer protection, Credit, Electronic funds transfers, Investments, Manufactured homes, Mortgages, Reporting and recordkeeping requirements, Saving associations.

12 CFR Part 563

Accounting, Advertising, Crime, Currency, Flood insurance, Investments, Reporting and recordkeeping requirements, Savings associations, Securities, Surety bonds.

12 CFR Part 567

Capital, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 571

Accounting, Conflicts of interest, Gold, Investments, Reporting and recordkeeping requirements, Savings associations.

Accordingly, the Director, Office of Thrift Supervision, hereby proposes to amend parts 545, 563, 567, and 571, chapter V, title 12, Code of Federal Regulations, as set forth below:

SUBCHAPTER C—REGULATIONS FOR FEDERAL SAVINGS ASSOCIATIONS

PART 545—OPERATIONS

1. The authority citation for part 545 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1828.

2. Section 545.73 is amended by revising paragraph (a) to read as follows:

§ 545.73 Inter-American Savings and Loan Bank.

* * * * *

(a) The Federal savings association's regulatory capital meets the requirements of § 567.2 of this chapter, including any individual minimum capital requirement established under § 567.3 of this chapter or by a capital directive issued pursuant to § 567.4 of this chapter, and all losses have been offset by charge offs to the extent required by § 563.172 of this chapter;

* * * * *

3. Section 545.111 is revised to read as follows:

§ 545.111 Adjustments to book value of assets.

If the Director determines that an asset's stated book value exceeds its value or that documentation in the Federal savings association's loan file is inadequate to demonstrate that an investment made under 12 U.S.C. 1464(c)(3)(C)–(D) is sound, it may require the Federal savings association to charge off the asset immediately.

SUBCHAPTER D—REGULATIONS APPLICABLE TO ALL SAVINGS ASSOCIATIONS

PART 563—OPERATIONS

4. The authority citation for part 563 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1468, 1817, 1828, 3806; 42 U.S.C. 4106; Pub. L. 102-242, sec. 306, 105 Stat. 2236, 2355 (1991).

5. Section 563.160 is amended by revising paragraphs (c)(3) and (d)(2) to read as follows:

§ 563.160 Classification of certain assets.

* * * * *

(c) *Implementation of classification system.* * * *

* * * * *

(3) In its quarterly reports to the Office, each savings association shall include aggregate totals of assets that the savings association has classified in each of the three asset classification categories, and the aggregate general valuation allowances established.

(d) *Effect of classification.* * * *

(2) When, pursuant to this section, either a savings association or an examiner has classified one or more assets or portions thereof Loss, the savings association shall charge off such amount.

* * * * *

PART 567—CAPITAL

6. The authority citation for part 567 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a.

7. Section 567.6 is amended by revising the section heading; by removing the period located at the end of paragraph (a)(1)(iv)(Q) and by adding in lieu thereof a semicolon; by adding new paragraphs (a)(1)(iv)(R) and (a)(1)(iv)(S); and by removing and reserving paragraph (a)(1)(v) to read as follows:

§ 567.6 Risk-based capital credit risk-weight categories.

(a) *Risk-weighted Assets.* * * *

(1) *On-Balance Sheet Assets:* * * *

* * * * *

(iv) 100 percent Risk Weight (Category 4). * * *

* * * * *

(R) All repossessed assets or assets that are more than 90 days past due; and

(S) Equity investments that the Office determines have the same risk characteristics as foreclosed real estate by the savings association.

* * * * *

PART 571—STATEMENTS OF POLICY

8. The authority citation for part 571 continues to read as follows:

Authority: 5 U.S.C. 552, 559; 12 U.S.C. 1462a, 1463, 1464.

9. Section 571.26 is amended by removing paragraph (b)(3) and by revising paragraphs (c) and (d)(2) to read as follows:

§ 571.26 Classification of certain assets.

* * * * *

(c) *Loss.* An asset classified Loss is considered uncollectible and of such little value that continuance as an asset of the savings association is not warranted. A loss classification does not mean that an asset does not have recovery or salvage value, but simply that it is not practical or desirable to defer writing off all or a portion of a basically worthless asset, even though partial recovery may be effected in the future.

(d) *Effect of classification.* * * *

(2) When, pursuant to § 563.160 of this subchapter, either a savings association or an examiner has classified one or more assets or portions thereof Loss, the savings association shall charge off such amount.

* * * * *

Dated: June 25, 1992.

By the Office of Thrift Supervision.

Timothy Ryan,

Director.

[FR Doc. 92-24273 Filed 10-6-92; 8:45 am]

BILLING CODE 6720-01-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 30, 33, 180 and 190

Protection of Commodity Customers; Risk Disclosure by Futures Commission Merchants and Introducing Brokers to Customers; Bankruptcy Disclosure

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rules.

SUMMARY: As part of its comprehensive review of disclosure requirements applicable to futures and commodity option transactions, the Commodity Futures Trading Commission ("Commission" or "CFTC") is proposing to revise various rules to simplify and render more effective the risk disclosure process in several respects. The proposed amendments would: (1) Provide a consolidated risk disclosure statement applicable to domestic futures transactions as well as foreign futures and option transactions; (2) provide that the Commission may approve a risk disclosure statement that has been approved by a foreign jurisdiction or foreign self-regulatory organization in lieu of its own in appropriate circumstances; (3) clarify the requirement that the risk disclosure statement constitute a "separate" document; (4) permit, for accounts of specified categories of customers, a single acknowledgment format in lieu of the multiple acknowledgments and elections currently required; and (5) eliminate the acknowledgment requirement with respect to the disclosure concerning non-cash margin. Other proposed amendments would simplify bulk transfers of customer accounts and clarify the existing notice requirement to assure that the Commission will receive early warning of substantial bulk transfers of customer accounts. The Commission is also requesting comment on a number of additional issues relating to the disclosure process.

DATES: Comments must be submitted on or before December 7, 1992.

ADDRESSES: Comments should be sent to Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, Attention: Secretariat. Reference should be made to Risk Disclosure Rules.

FOR FURTHER INFORMATION CONTACT: Susan C. Ervin, Deputy Director/Chief Counsel, or Lawrence B. Patent, Associate Chief Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581; telephone: (202) 254-8955.

SUPPLEMENTARY INFORMATION:

I. Background

The Commission is reviewing the disclosure requirements currently applicable to futures and commodity option transactions with the objective of rendering the disclosure process more effective in light of developing trends toward increased crossborder trading, establishment of electronic trading systems and interest in the formulation of special disclosure documents for users of such systems. The Commission is seeking public comment on a number of broad issues relating to the disclosure process and on a number of specific proposals designed to simplify required disclosures.

A. Rule 1.55

Commission Rule 1.55(a), 17 CFR 1.55(a) (1992),[1] requires an FCM or, in the case of an introduced account, an IB, to provide each new customer with a risk disclosure statement containing the language set forth in Rule 1.55(b). An acknowledgment, signed and dated by the customer, confirming that he received and understood the disclosure statement must be received by the FCM or, with respect to introduced accounts, the IB, before a commodity futures account may be opened for the customer.[2] The Commission adopted Rule 1.55, in connection with the implementation of its customer protection rules, to assure that futures customers are provided a simple, succinct and prominent disclosure of the risks of commodity futures trading. 43 FR 31886, 31888 (July 24, 1978). As explained by the Commission in adopting Rule 1.55, such a risk disclosure statement generally is intended to "advise new customers of the substantial risk of loss inherent in trading commodity futures." *Id.* The risk disclosure statement also is designed "to

[1] Commission regulations are found in Title 17 of the Code of Federal Regulations.

[2] Rule 1.55(c) requires the FCM or, in the case of an introduced account, the IB, to retain the acknowledgment in accordance with Rule 1.31. Because of the other proposed amendments to Rule 1.55 discussed herein, that paragraph would be redesignated as paragraph (e) but otherwise unchanged.

alert prospective customers to the possibility that futures trading may not be suitable for them in light of their financial condition." *Id.*

In adopting Rule 1.55, the Commission made clear that the prescribed disclosure statement was not meant to be an exhaustive explanation of the mechanics and risks of futures trading but, instead, to highlight some of the inherent generic risks of futures trading for new customers. Therefore, as Rule 1.55(d) expressly provides, furnishing a customer with a risk disclosure statement does not relieve an FCM or an IB from any other disclosure obligation it may have under applicable law. 50 FR 5380, 5382 (February 8, 1985). The disclosure obligations of FCMs and IBs include the obligation to disclose all material information to their customers. *Id.* at 5381.

B. Rule 30.6

Rule 30.6(a)(1) requires an FCM or, in the case of an introduced account, an IB, to provide each new foreign futures or option customer with a risk disclosure statement containing the text specified in that provision prior to opening a foreign futures or foreign option account for such customer. Rule 30.6(a)(2) requires an FCM or, in the case of an introduced account, an IB, who has received general discretionary authority to engage in foreign futures or foreign option trading on behalf of a foreign futures or foreign option customer, to receive a separate acknowledgment, signed and dated by such customer, that he has received and understood the risk disclosure statement.[3] Currently, this acknowledgment can be included in the grant of discretion for which a signature would be otherwise required in any event or in the risk disclosure statement.

The Commission adopted Rule 30.6 to enhance customer protection in the context of foreign futures and foreign option trading. The purpose of Rule 30.6 is to assure that futures customers are provided a brief but prominent disclosure of the risks of foreign futures and option trading. Specifically, Rule 30.6 highlights the following inherent risks of foreign futures and option trading: (1) participation in foreign futures and option trading involves the execution and clearance of trades on or subject to the rules of a foreign board of trade; (2) neither the Commission, the National Futures Association ("NFA") or any domestic exchange regulates the activities of foreign boards of trade or has the power to compel enforcement of the rules of such foreign boards of trade or applicable foreign laws; (3) foreign futures and option customers may not be afforded certain remedial mechanisms available to customers trading commodity futures and options domestically, including alternative methods to resolve futures-related disputes such as reparation proceedings before the Commission and arbitration proceedings before the NFA or domestic futures exchanges; and (4) the price of any foreign futures or option contract and, therefore, the potential profit and loss thereon, may be affected by variations in the foreign exchange rate over time.

C. Rule 190.10

Part 190 of the Commission's regulations implements Subchapter IV of Chapter 7 of the Bankruptcy Reform Act of 1978, which applies to commodity broker liquidations. 48 FR 8716 (March 1, 1983). Rule 190.10(c) prohibits FCMs and other commodity brokers within the meaning of Rule 190.01(f),[4] except clearing organizations, from accepting property other than cash from or for the account of a customer to margin, guarantee, or secure a futures contract unless the commodity broker first furnishes the customer with the disclosure statement prescribed in paragraph 190.10(c)(2). The FCM or other commodity broker must also receive a signed acknowledgment from the customer that he received and understood the contents of such disclosure statement or, if the statement is contained in the customer agreement, the customer must separately endorse the page on which the disclosure statement appears.

The disclosure statement required by Rule 190.10(c) states, in part, that in the event of a commodity broker bankruptcy, customer property, including property specifically traceable to the customer, will be returned to the customer only to the extent of the customer's pro rata share of all property available for distribution to customers.[5] The Rule 190.10(c) disclosure requirement was designed to assure that customers depositing property other than cash, such as securities, to margin a futures contract understand that the return of such property is subject to the pro rata distribution provisions of the Bankruptcy Code and that such property thus might not be returnable in full even if identified as property deposited by a specific customer. 48 FR 28977, 28979 (June 24, 1983); 48 FR 8716, 8738 (March 1, 1983).

II. Commission Proposals

A. Risk Disclosure Enhancement

Currently, at the time of opening an account, commodity futures and options customers are provided the risk disclosure statements described above in addition to various risk disclosure statements required by self-regulatory organizations. Risk disclosure requirements applicable to foreign futures and options have been promulgated by the NFA (Compliance Rule 2-28), the Chicago Mercantile Exchange (Rule 874) and the Commodity Exchange, Inc. (Rule 5.14) as a result of the development of trading linkages between domestic and foreign futures exchanges.[6] These rules require disclosure of the risks of foreign futures and foreign option trading and thus are designed to serve objectives similar to those of the risk disclosure requirements of Commission Rule 30.6.[7]

A number of Commission registrants have urged the Commission to reduce the number of required risk disclosure statements and required disclosure acknowledgments by futures customers.[8] The Commission has

[3] Rule 30.6(c) provides that in instances where such a separate acknowledgment is required the FCM or IB must retain such acknowledgment in accordance with Rule 1.31.

[4] Rule 190.01(f) defines "commodity broker" as any person who is registered or required to register as an FCM under the Commodity Exchange Act ("Act"), including a person registered or required to be registered as such under Parts 32 and 33 of the Commission's regulations, a commodity options dealer, a foreign futures commission merchant, a clearing organization and a leverage transaction merchant with respect to which there is a customer.

[5] The requisite disclosure statement also states that notice concerning the terms for the return of specifically identifiable property will be provided by publication in a newspaper of general circulation and that the Commission's regulations concerning commodity broker bankruptcies can be found at 17 Code of Federal Regulations part 190. Rule 190.10(c).

[6] These linkages operate such that a trade executed on one exchange liquidates or establishes a position on the other exchange. *See* Agreement for the Creation of a Mutual Offset System Between the Chicago Mercantile Exchange and The Singapore International Monetary Exchange Limited, dated as of June 28, 1984; Linkage Agreement Between the Commodity Exchange, Inc. and the Sydney Futures Exchange, Limited, dated February 1, 1985.

[7] National Futures Association Compliance Rule 2-28, Chicago Mercantile Exchange Rule 874 and Commodity Exchange, Inc. Rule 5.14 require that disclosure be made on a customer authorization document, executed by the customer prior to effecting any transaction on a foreign board of trade, which authorizes the member or member firm to effect such a transaction on the customer's behalf. Such authorizations must be maintained on file with the relevant member firm. Each of these rules provides that its requirements may be satisfied by including in the customer authorization document the language set forth in the risk disclosure statement specified in Commission Rule 30.6.

[8] As the preceding text makes clear, however, several risk disclosure statements required in particular contexts are mandated by self-regulatory organizations rather than by the Commission.

initiated this rulemaking proceeding for the purpose of better achieving the customer protection functions of existing disclosure rules by simplifying the risk disclosure process for Commission registrants. Among other things, the proposed rule amendments would consolidate the risk disclosure statements prescribed by Rules 1.55 and 30.6 and eliminate the acknowledgment requirement of Rule 190.10 except in instances where the Rule 190.10(c)(2) disclosure statement incorporates a subordination agreement executed by a customer depositing margin in foreign currencies in foreign depositories and the subordination agreement is not separately executed.[9] In addition, these rule amendments would permit the use of a risk disclosure document approved by a foreign jurisdiction (or multiple foreign jurisdictions) in lieu of the risk disclosure document required by Rule 1.55, provided that that document had been approved for U.S. customers by the Commission. In addition, the proposed amendments would eliminate the requirement of separate customer acknowledgments of the risk disclosure statements required by Rules 1.55, 30.6, 33.7 and of elections required under Rules 180.3 and 190.06(d) for specified categories of customers.

1. Consolidation of 1.55 and 30.6 Disclosure Statements

With respect to Rules 1.55 and 30.6, the Commission believes that a consolidated risk disclosure statement that warns of the risks of domestic futures trading and foreign futures and option trading may provide simpler and equally or even more effective risk disclosure than multiple statements. Such consolidation should preserve the substance of such disclosure and its effectiveness for customer protection purposes and also serve to alleviate certain burdens on firms. The proposed consolidated risk disclosure statement incorporates the bulk of the language of the Rule 1.55 and Rule 30.6 risk disclosure statements, with editorial revisions, such as the omission of duplicative language, for greater clarity and economy.[10] The consolidated risk disclosure statement would provide the same substantive information to customers as the risk disclosure statements currently prescribed by Rules 1.55 and 30.6 and would be consistent with the purposes of those rules, *i.e.*, to provide customers with a clear, succinct and prominent disclosure of the risks of domestic futures trading and foreign futures and option trading.[11]

The Commission emphasizes that providing the revised risk disclosure statement set forth in the proposed amendments to Rule 1.55 would satisfy a firm's obligation to provide a risk disclosure statement with respect to domestic futures and foreign futures and options trading. Consequently, the Commission proposes to modify Rule 30.6(a) to require that the Rule 1.55 risk disclosure statement, which will include the consolidated risk disclosures for foreign and domestic futures and options trading, be provided. Further, the Commission believes that the revised risk disclosure statement should obviate special linked market disclosures currently required by CME Rule 874, which permits the use of the language contained in Rule 30.6.[12]

The Commission intends that the consolidated risk disclosure statement may be presented to a non-English speaking customer in a foreign language that such customer understands rather than in English, provided that the disclosure statement provided is an accurate translation of the English version and that the English text is provided upon request. Delivery of the consolidated risk disclosure statement to a foreign customer would not preclude delivery to that customer of any additional disclosure documents required by a foreign regulator. However, at least in some instances, the consolidated risk disclosure statement may satisfy the risk disclosure concerns of foreign regulators and potentially may be useable as a substitute for the risk disclosure statements otherwise required in the foreign jurisdiction.

2. Use of Foreign Risk Disclosure Statement To Satisfy Rule 1.55

To reduce the duplication of required generic risk disclosures in the international markets, the Commission also is proposing to provide a mechanism for substitution of certain foreign risk disclosure statements or multi-jurisdiction risk disclosure statements for the Rule 1.55 statement. New paragraph (c) of Rule 1.55 would permit an FCM doing business in several jurisdictions to use a common risk disclosure document for purposes of satisfying the Rule 1.55 and 30.6 risk disclosure requirements, provided the Commission and the applicable foreign jurisdiction had previously approved the use of the statement for such purposes. Thus, foreign and U.S.-based firms could use essentially the same disclosure document, and hence a single document, for foreign and U.S. customers. Proposed Rule 1.55(c) contemplates that the Commission would, upon application of a firm or foreign regulatory or self-regulatory organization, review the foreign risk disclosure statement to determine whether it provides disclosures comparable in substance to those provided by the statements required by Rules 1.55 and 30.6 or the consolidated statement proposed herein. The Commission believes that it is desirable to reduce duplicative disclosure requirements resulting from cross-border futures transactions provided that, as appropriate, any special risks of foreign trading are disclosed. This rule contemplates a mechanism for eventually substituting a uniform disclosure format, accepted internationally, that could be used on a general basis and supplemented as

[9] See Financial and Segregation Interpretation No. 12—"Deposit of Customer Funds in Foreign Depositories," 53 FR 46911 (November 21, 1988). The Commission stated that the subordination agreement discussed in Financial and Segregation Interpretation No. 12 may be incorporated into the Rule 190.10(c) bankruptcy disclosure document or separately executed. *Id.* at 46913–46914.

[10] Examples of such revisions include: (i) paragraph (2) of the current Rule 1.55 risk disclosure statement ("Under certain market conditions, you may find it difficult or impossible to liquidate a position. This can occur, for example, when the market makes a 'limit move' ") would be revised to read "Under certain market conditions, you may find it difficult or impossible to liquidate a position. This can occur, for example, when the market *reaches a daily price fluctuation limit ('limit move')* (emphasis added); (ii) paragraph (3) of the current Rule 1.55 risk disclosure statement ("Placing contingent orders, such as 'stop-loss' or 'stop-limit' orders, will not necessarily limit your losses to the intended amounts, since market conditions may make it impossible to execute such orders") would be revised to read "Placing contingent orders, such as 'stop-loss' or 'stop-limit' orders, will not necessarily limit your losses to the intended amounts, since market conditions *on the exchange where the order is placed* may make it impossible to execute such orders." (emphasis added); (iii) part of paragraph (3) of the Rule 30.6 risk disclosure statement ("Therefore, you should obtain as much information as possible from your account executive concerning the foreign rules which will apply to your particular transaction") would be revised to read "Before you trade, you should familiarize yourself with the foreign rules which will apply to your particular transaction."; (iv) the first sentence ("This statement is furnished to you because rule 1.55 of the Commodity Futures Trading Commission requires it.") and the last sentence ("You should therefore carefully study futures trading before you trade.") of the current 1.55 risk disclosure statement would be omitted. Other technical revisions of an editorial nature to facilitate consolidation of the Rule 1.55 and 30.6 disclosure documents without modifying the substance of the required disclosures would also be made.

[11] This proposal does not affect the risk disclosure requirements of Rule 33.7 with regard to domestic exchange-traded options trading but comment is requested as to how such disclosure could be made more effective in the context of these proposed changes. Proposed amendments to Rule 33.7, discussed *infra*, address disclosure procedures in the context of bulk transfers of customer accounts.

[12] *See* footnote 7 *supra*.

warranted for particular kinds of transactions or special markets.

Delivery of the proposed consolidated risk disclosure statement, like delivery of the current Rule 1.55 risk disclosure statement, would remain subject to the proviso that Rule 1.55 "does not relieve a futures commission merchant or introducing broker from any other disclosure obligation it may have under applicable law." [13] Similarly, Rule 30.6(e) of the Commission's foreign futures rules states that Rule 30.6 does not relieve an FCM, IB, commodity pool operator or commodity trading advisor "from any other disclosure obligation it may have under applicable law or regulation." Differences between products may warrant such additional disclosure. For example, the Commission has required additional disclosure with respect to foreign options offered on exchanges that employ futures-style margining, due to the fact, among others, that such margins will affect options pricing. *See, e.g.*, 54 FR 50348, Exhibit B (December 6, 1989); 54 FR 50356, Exhibit B (December 6, 1989).

3. Elimination of 190.10(c) Acknowledgment

To further simplify the risk disclosure process, the Commission is proposing to eliminate the acknowledgment requirement of Rule 190.10(c)(2). In adopting Rule 190.10(c)(2) in 1983, the Commission stressed the special need for disclosure concerning the treatment of non-cash margin in FCM bankruptcies. Such disclosure was warranted "[i]n view of the prior treatment of specifically identifiable securities in the bankruptcy of securities firms" and the resulting likelihood that customers might believe that their right to the return of non-cash margin would be unaffected by the pro rata distribution provisions of the Bankruptcy Code, which apply equally to cash and non-cash customer property. 48 FR 8716, 8738 (March 1, 1983).

However, as the commodity broker provisions of the Bankruptcy Code have now been in effect for approximately fifteen years and the Commission's bankruptcy rules for nearly ten years, the Commission believes that the Rule 190.10(c)(2) disclosure concerning the bankruptcy treatment of non-cash margin, while still appropriate, may no longer warrant the increased burdens created by the separate acknowledgment requirement. Accordingly, the Commission believes that the acknowledgment requirement of Rule 190.10(c)(1)(ii) can be eliminated without materially reducing customer protection. This proposal to delete the separate acknowledgment requirement would not apply, however, to the extent that a Rule 190.10(c)(2) disclosure statement incorporates a subordination agreement for a customer depositing margin in foreign depositories.[14] Separate acknowledgment of the 190.10(c)(2) disclosure statement in this context is a substitute for execution of a separate subordination agreement. A separate acknowledgment also would continue to be necessary where subordination is required for certain purposes such as cross-margining relative to bankruptcy of the firm at which the affected customer does business. This is because to be effective, such subordination requires a contract to be executed by the customer. *See* Financial and Segregation Interpretation No. 12, *supra* note 9.

4. Single Signature Acknowledgment Format for Specified Customers

The Commission has received a number of requests from FCMs to reduce or eliminate the requirement of separate customer acknowledgments of the risk disclosure statements required by Rules 1.55, 30.6, 33.7 and 190.10. In response to requests from FCMs who have sought relief from these requirements for certain institutional customers on the ground that multiple customer acknowledgments are unnecessarily burdensome for sophisticated market users, the Commission's Division of Trading and Markets ("Division") previously has provided "no-action" relief to simplify the account opening process for specified categories of customers. Most recently, on April 14, 1992, the Division issued to the Law and Compliance Division of the Futures Industry Association, on behalf of all FCMs, "no-action" relief with respect to the use of simplified account opening procedures for certain customers.[15] The simplified format permitted under the Division's no-action position allows FCMs, with respect to customers in specified categories, to obtain a single acknowledgment at the end of the customer agreement or on a separate checkoff page in lieu of the requirement to obtain separate customer acknowledgments of disclosure documents required under Rules 1.55, 30.6, 33.7 and 190.10 and the elections required by Rules 180.3 and 190.06(d).[16] The no-action relief currently is granted on an omnibus basis to FCMs opening accounts for: (1) customers who qualify for exclusion from the definition of commodity pool operator pursuant to Rule 4.5, *i.e.*, (i) registered investment companies, (ii) state regulated insurance companies, (iii) state or federally regulated financial depository institutions, and (iv) certain pension plans subject to regulation under the Employee Retirement Income Security Act of 1974 ("ERISA");[17] and (2) customers constituting qualified eligible participants ("QEPs") as set forth in Rule 4.7 [18] (which was then in proposed

[13] This proviso is currently contained in paragraph (d) of Rule 1.55. Because of the other proposed amendments to Rule 1.55 discussed herein, that paragraph would be redesignated as paragraph (f) but otherwise unchanged.

[14] *See* note 9, *supra*.

[15] *See* CFTC Interpretative Letter No. 92-5 [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,272 (April 14, 1992).

[16] Under the following Commission rules, an FCM (or, where applicable, an introducing broker) is prohibited from opening a commodity interest account without first providing the customer with certain disclosure statements and receiving a signed customer acknowledgment form stating that the risk disclosure statements have been received and understood by the customer: Rule 1.55 (domestic futures trading risk disclosure statement); Rule 30.6 (foreign futures and options risk disclosure statement); Rule 33.7 (domestic exchange-traded commodity options risk disclosure statement); and Rule 190.10 (bankruptcy disclosure statement for non-cash margin).

Rule 180.3 provides, among other things, that if an arbitration or other customer dispute settlement agreement between a commodity professional and its customer is contained as a clause or clauses within a broader agreement, the customer must separately endorse the clause or clauses constituting the arbitration or dispute settlement agreement and the cautionary language specified in the rule. Rule 190.06(d) requires a commodity broker to provide each customer the opportunity, when undertaking its first hedging contract, to specify whether in the event of a bankruptcy such customer prefers that open contracts held in a hedging account be liquidated without seeking customer instructions in the event of bankruptcy.

[17] The procedure available under proposed Rule 1.55(d) would be available to any of these entities regardless of whether they operate a "qualifying entity" under Rule 4.5(b) (1)–(4). In addition, comparably regulated foreign entities would be entitled to use the proposed procedure.

[18] Generally, under final Rule 4.7, the term qualified eligible participant ("QEP") includes the following categories of customers: (1) brokers or dealers registered under the Securities and Exchange Act, FCMs and certain commodity pool operators ("CPOs") and commodity trading advisors ("CTAs") registered under the Commodity Exchange Act. To be QEPs, CPOs and CTAs must have been registered and active as such for two years. Alternatively, CPOs must operate pools which contain in the aggregate total assets in excess of $5,000,000 and CTAs must provide commodity interest trading advice to commodity accounts which contain in the aggregate total assets in excess of $5,000,000 deposited at one or more FCMs. QEPs also include: (1) Natural persons and entities, including certain corporations, partnerships or similar entities, commodity pools, banks, savings and loan associations, insurance companies, registered investment companies, and employee benefit plans, which meet a portfolio requirement and in certain instances other requirements with respect to total assets, net worth or annual income; (2) certain non-United States persons; and (3)

Continued

form).[19] Essentially, the general no-action position expanded relief previously provided by the Division on a case-by-case basis.[20]

The Commission is proposing to codify the no-action relief granted by the Division's April 14, 1992 letter in a new paragraph (d) of Rule 1.55. The simplified format permitted under the proposed provision would allow FCMs to obtain a single acknowledgment for the disclosure statements required by Rule 1.55, 30.6, 33.7 and the elections required under Rule 180.3 and 190.06 from customers in specified categories.[21] The proposed rule would be limited to FCMs opening accounts for customers in the following categories: persons or entities constituting eligible persons under Rule 4.5(a) or "qualified eligible participants" ("QEPs") under Rule 4.7. Entities qualifying for relief under Rule 4.5 are, by definition, institutions that are subject to extensive federal or state regulation, *i.e.*, otherwise regulated entities. Similarly, under Rule 4.7, QEP status is dependent upon indicia of investment expertise and experience, such as the registered status of certain investment professionals or, in addition to satisfaction of the financial qualifications requisite to accredited investor status under SEC Regulation D, ownership of an investment portfolio of sufficient size to indicate a high degree of sophistication with regard to investments as well as financial resources to withstand the risks of commodity pool investments.[22] These criteria support the conclusion that such categories of customers should not need the protections afforded by separate acknowledgments of the various risk disclosure statements. The single signature format is appropriate for foreign persons, who are not required to be either accredited investors under SEC Regulation D or to meet a portfolio requirement in order to constitute QEPs under Rule 4.7, because the Commission's disclosure rules are focused on protection of United States customers.

Proposed Rule 1.55(d) contemplates that an FCM or IB would include on a separate page or incorporate in the customer agreement a list of all required disclosure statements and elections, which the customer would acknowledge by checking a box next to the appropriate acknowledgment and election and by signing a single signature line at the bottom of the page to acknowledge receipt of all such disclosure statements and to indicate assent to the noted elections. The required wording of the various risk disclosure statements and elections would remain unchanged.

The Commission requests comment as to whether, for purposes of this proposal, customer type distinctions are meaningful. Do separate acknowledgments in fact more clearly and compellingly convey the required disclosures to retail customers or should a single acknowledgment be considered sufficient in all cases for acknowledgment of delivery of the multiple disclosures required? Commenters may wish to address each type of acknowledgment specifically.

In any event, these proposed modifications of the Commission's acknowledgment requirements would not reduce any other obligations applicable under the Act or Commission regulations. For example, the proposed amendment would not affect an FCM's or IB's obligation to obtain separate acknowledgments for all other categories of customers. Similarly, the proposed rule would not affect the obligation of an FCM or an IB to obtain, by instrument separate and apart from the customer agreement, a customer's consent that the FCM may knowingly take the other side of a customer's order[23] or a power of attorney to engage in discretionary trades pursuant to Rule 166.2.[24]

In the event that these proposed amendments to Rules 1.55, 30.6, 33.7, 180.3, 190.06 and 190.10 are adopted, their effect would be prospective only. FCMs and IBs who have complied with the current requirements of these rules will be deemed to be in compliance with the amended rules. Consequently, firms will not be required to revise existing account documents until (and unless) they wish to print new customer account forms.

B. Clarification of the "Separate Statement" Requirement of Rule 1.55

Rule 1.55 provides that the risk disclosure statement required by that rule must be furnished to each customer as "a separate written disclosure statement containing only the language set forth in paragraph (b) of this section (except for nonsubstantive additions such as captions)". With respect to the "separate statement" requirement of Rule 1.55, the Commission is proposing an amendment of the rule to clarify its holding in *Batra* v. *E. F. Hutton & Company, Inc.*, [1986–1987 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 23,937 at 34,283 (CFTC September 30, 1987) ("Batra").

In *Batra*, the Commission addressed the issue whether a risk disclosure statement appearing on the bottom half of a page that also contained a client financial statement complied with the requirement of Rule 1.55 that the customer be furnished "a separate written disclosure statement containing only the language" specified in Rule 1.55(b). *Id.* at 34,286. The page containing the risk disclosure statement was perforated to permit the disclosure statement to be detached and presented to the customer as a separate document. In *Batra*, the Administrative Law Judge found that the FCM had not detached the portion of the perforated page containing the prescribed risk disclosure statement prior to presenting it to the customer. The Commission held on appeal that the FCM therefore had not provided the customer with a separate written disclosure statement containing only the language set forth in Rule 1.55(b).

In *Batra*, the Commission rejected the respondent FCM's contention that the disclosure statement was "visually

---

entities in which all the equity owners are QEPs. With respect to category (1) above, the QEP definition includes a portfolio requirement which requires that the person or entity: (i) own in excess of $2 million in securities of unaffiliated issuers and other investment property; (ii) have had on deposit at an FCM at any time during the preceding six months in excess of $200,000 in exchange-specified initial margin and option premiums for commodity interest trading; or (iii) own portfolio comprised of a combination of (i) and (ii). *See* 57 Fed. Reg. 34853 (August 7, 1992).

[19] *See* 57 FR 3148 (January 28, 1992).

[20] In two prior no-action letters the Division had addressed the use of customer agreements providing for only one signature for acknowledgment of all required risk disclosure statements by certain sophisticated institutional customers. In a July 1987 letter, the Division stated that it would not recommend enforcement action against an FCM solely for using a single signature and acknowledgment line format in its customer account documents for financial institutions identified in Commission Rule 4.5(a) (1)–(4). *See* letter from Andrea M. Corcoran, Director, Division of Trading and Markets, Commodity Futures Trading Commission to Philip McBride Johnson, Esq., dated July 22, 1987 (unpublished). In a second no-action letter, the Division granted comparable relief in the context of certain foreign trading vehicles regulated in a manner equivalent to Rule 4.5 trading vehicles, organized under the laws of specified jurisdictions and having assets of $250 million or more. *See* letter from Susan C. Ervin, Chief Counsel, Division of Trading and Markets, Commodity Futures Trading Commission to Stephen F. Selig, Esq., dated September 21, 1989 (unpublished).

[21] Proposed Rule 1.55(d) will not apply to the acknowledgment required under Rule 190.10(c) due to the Commission's proposal, set forth herein, to eliminate the acknowledgment requirement contained in Rule 190.10(c)(2).

[22] *See* 57 FR 3148 (January 28, 1992).

[23] See Commission Rule 155.3(b)(2) and Division of Trading and Markets Interpretative Letter No. 83-7, [1982–1984 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 21,907 (October 25, 1983).

[24] See Commission Rule 166.2(b).

distinct" and therefore achieved the regulatory objectives of Rule 1.55 even without physical detachment. The Commission held that a "simple, straight- forward interpretation of the regulatory language is that to be 'separate' a risk disclosure statement must be physically distinct from other account opening documents." *Id.* at 34,286.[25] Consequently, the disclosure statement in question, which had not been separated at the perforation prior to its presentation to the customer, failed to comply with Rule 1.55. The Commission noted that "it is neither administratively nor economically burdensome to require physical separation." *Id.* at 34,286.

Following the Commission's decision in *Batra*, a number of Commission registrants inquired concerning the permissibility of including the required risk disclosure statement in a booklet of customer account documents without violating the "separateness" requirement of Rule 1.55. Some registrants have argued that use of a booklet containing all required risk disclosure statements including the option disclosure statement and other customer account documents facilitates compliance efforts by assuring that all required disclosures are provided at the time at which an account is opened and facilitating maintenance of records of such disclosures with other account documentation. Proponents of a booklet disclosure format also contend that inclusion of the risk disclosure statement in a bound collection of documents presented to the customer helps to assure that the customer reads the risk disclosure statement at the time that the account is opened. Conversely, it is argued, a separate risk disclosure statement could be overlooked or not presented contemporaneously with the signing of the account agreement, when it would be most likely to serve its intended function.

The purpose of the separateness requirement of Rule 1.55 is to ensure that the prescribed risk disclosure statement is prominently brought to the customer's attention and is not obscured or reduced in apparent importance by inclusion on the same page as other text. Presentation of a separate risk disclosure statement to the customer highlights the importance of the required disclosures. The Commission believes that this purpose can also be accomplished, however, in the context of a booklet or packet containing risk disclosures as well as other futures account materials, provided that the Rule 1.55 risk disclosure statement appears on the cover page or the first page of such booklet or packet and is the only material included on such cover or first page. Consequently, the Commission is proposing to amend Rule 1.55 to make clear that FCMs and IBs may, in compliance with Rule 1.55, deliver the prescribed risk disclosure statement by either of the following methods: (1) Presenting the Rule 1.55 risk disclosure statement as a physically separate document; or (2) including the risk disclosure statement in a booklet or packet containing other commodity interest account materials, *e.g.*, the options disclosure statement required by Rule 33.7, provided that the Rule 1.55 risk disclosure statement appears as the cover page or first page and is the only material on such page, of such booklet or packet.

C. Account Transfers

1. Disclosure Requirements

The Commission receives frequent inquiries from FCMs and IBs planning to make bulk transfers of accounts, *i.e.*, transfers of accounts not requested by customers, concerning the effect of assignment clauses in customer account agreements and the extent to which new customer account documentation must be obtained in connection with bulk transfers. The customer's consent must be obtained prior to the transfer of the customer's account from one FCM to another.[26] Therefore, absent a provision in the customer account agreement that evidences the customer's prospective consent to transfer of his account to another FCM, there must be express consent by the customer to movement of the account. Where the account agreement contains an "assignment" clause pursuant to which the customer authorizes the FCM to transfer the account to an assignee firm, the Division has generally considered "implied" or "negative" consent of the customer, consisting of the customer's lack of objection to the proposed transfer within a reasonable time after notice of the proposed transfer, sufficient.[27] Such negative consent letters are designed to advise affected customers of the intended transfer, afford them sufficient opportunity to object to the proposed transfer or to request a transfer to another firm before the transfer occurs, and notify them that a failure to object to the transfer will be construed as consent to the transfer. As a matter of law, whether or not a negative consent letter operates to secure valid customer consent will depend upon whether the customer in fact receives the letter or whether reasonable efforts have been made to notify the customer, such as through mailing or delivery to the customer's last known address by the U.S. Postal Service, an overnight service of proven reliability, or by facsimile.[28]

With respect to compliance with the risk disclosure requirements, the Division generally has advised registrants that it would not be inconsistent with Rules 1.55, 30.6, 33.7, and 190.10 for a transferee FCM or, in the case of introduced accounts, a transferee IB, to open a customer account without providing new risk disclosure statements and receiving signed acknowledgments thereof provided that: (1) The customer agreement with the transferor firm includes a valid "assignment clause" by which the customer consents to future transfers of his or her account to another firm; and (2) the transferor FCM or IB, prior to effecting such transfer of accounts, delivers to such customers an appropriate "negative consent" letter. Although the Division has stated that in these circumstances the transferee FCM or IB may not be required to provide

[25] The Commission's holding in Batra is consistent with the recommendations of the Advisory Committee on Commodity Futures Trading Professionals ("Advisory Committee") which was established by the Commission on August 5, 1975 for the purpose of considering and making recommendations with respect to the standards for regulation under the Act of domestic and foreign commodity futures professionals. The Advisory Committee reported on August 5, 1976 that to be effective the Rule 1.55 risk disclosure statement "must be conspicuously brought to the customer's full attention when it is transmitted to him." 42 FR 44742, 44747 (September 6, 1977).

[26] No commodity interest transaction may be effected for a customer without customer authorization. Rule 166.2.

[27] Generally, the Division has indicated that a letter will be appropriate to obtain customer consent to an account transfer based upon negative or' implied consent where: (1) The letter clearly advises customers of the proposed transfer and the reasons for the transfer; (2) the letter expressly advises customers that they need not accept the proposed transferee firm but instead may direct the transferor firm either to liquidate the account or transfer the account to a different firm of the customer's choice; (3) the letter expressly notifies customers that the failure to respond to the letter will be construed as consent to the transfer; and (4) the letter affords customers a reasonable period (taking into account transmittal time) to respond to the request. What will constitute a reasonable period may be affected by the particular context of the transfer, including such factors as the number of customer accounts, customer location, reason for and extent of advance knowledge of the need to transfer, and the time required for delivery of the transfer notice and the response thereto. Commission staff has generally required at least ten business days for customer responses when the transfer was not occasioned by a financial emergency.

[28] To assure prompt receipt, FCMs should consider sending such letters by an overnight delivery service of proven reliability.

customers with new risk disclosure statements, the Division has recommended delivery of new risk disclosure statements within a reasonable time period following the transfer as a matter of customer protection and sound business practice. Generally, firms seek new account agreements from transferred customers so that all customer accounts with a firm are uniformly documented.

If the customer agreement with the transferor FCM or IB does not contain a valid assignment clause, Rules 1.55, 30.6, and 33.7 require that the transferee FCM or, in the case of introduced accounts the transferee IB,[29] provide customers with new risk disclosure statements and obtain the requisite customer acknowledgments before opening an account for a customer, as would be the case for any other new account. A transferee FCM also would be required to provide and obtain acknowledgment of the disclosure required by Rule 190.10 prior to the acceptance of non-cash margin from a customer whose account is transferred. FCMs and IBs who are unable to comply with Rule 1.55 prior to receiving a bulk transfer of customer accounts generally request that the Division provide "no-action" relief to permit such transfers of accounts to be made expeditiously and requisite disclosure acknowledgments to be obtained after the transfer. Where such relief has been granted, the Division has required the FCM or IB to whom such accounts were transferred to provide affected customers with actual advance notification of the transfer and to deliver to such customers the disclosure statements required by Rules 1.55, 30.6, 33.7 and, for FCMs only, Rule 190.10, shortly after the transfer, typically within thirty to sixty days.

To relieve FCMs and IBs of the necessity of requesting "no-action" relief on a case-by-case basis in view of the fact that such relief is routinely given, the Commission is proposing to amend Rules 1.55, 33.7 and 190.10 to establish by rule that compliance with the above risk disclosure requirements is not required prior to a bulk transfer but must be completed within sixty days following the transfer. Therefore, in the event of a bulk transfer of accounts from one FCM or IB to another, the Commission registrant to whom such accounts are transferred would be required to deliver to the holders of such accounts the risk disclosure statements required by Rules 1.55, 33.7 and 190.10 (FCMs only) and to receive from such customers the signed acknowledgment required by those rules within sixty (60) days of the transfer. This requirement would apply without regard to whether the account agreements between the transferor firm and affected customers contained an assignment clause. However, the delivery and acknowledgment requirements of Rules 1.55 and 33.7 would not apply in the context of a transfer of accounts from one IB to another IB where both IBs are guaranteed by the same FCM pursuant to a guarantee agreement satisfying the requirements of Rule 1.10(j) and the guarantor FCM maintains the acknowledgment required by Rules 1.55 (a) and 33.7(a).

The transfer of accounts proposal with respect to Rules 1.55 and 33.7 applies only in the context of a transfer of accounts from one FCM to another FCM, where such accounts are not introduced by an IB, and to transfers from one IB to another IB. If there is to be a bulk transfer of introduced accounts from one FCM to another FCM but the IB introducing the accounts remains the same, there may be no need for delivery of new risk disclosure statements under Rules 1.55 band 33.7 because, in this context, it is the IB's duty in the first instance to provide such statements.[30] The FCM carrying the account may need to use due diligence to assure such fact. However, a new disclosure statement concerning non-cash margin would be required in such circumstances pursuant to Rule 190.10(c) because the FCM is responsible for compliance with Rule 190.10(c).

The proposed bulk transfer amendments would apply in all cases where an account transfer is made other than at the customer's request, without regard to whether the customer's account agreement contains an assignment clause or other provision evidencing the customer's consent to account transfers.

The Commission believes that these proposed rule amendments will not impose any additional burdens upon FCMs or IBs and will facilitate the bulk transfer process, enhance futures customers' ability to continue their transaction business as efficiently as possible notwithstanding the fact of a bulk transfer, and assure that required disclosures are made promptly to affected customers.

2. Notice to Commission of Bulk Transfers

In conjunction with the Commission's proposals to reduce the disclosure burdens attendant upon account transfers, the Commission is proposing to clarify and refine its existing requirement that transferor firms give advance notice to the Commission of transfers which are not in the ordinary course of business. The current requirement could be read to require notice in any case where the account was moved for reasons outside of the ordinary course of business and not only in the case of transfers that are substantial in the context of the business of the FCM as a whole. Notice of account transfers is currently required by Rule 190.06 when an FCM or person required to be registered as an FCM intends to make any transfer of customer accounts that is not at the customer's request or "in the ordinary course of business." Rule 190.06(b). Although the Rule 190.06 notice requirement would be construed to cover most of the circumstances in which the Commission would wish to be apprised of bulk transfers, it appears that many firms are unaware that the notice requirement applies outside of the bankruptcy context as well as subsequent to a bankruptcy filing. Consequently, a separate notice requirement outside of the Commission's bankruptcy rules may be more readily accessible to and understood by market participants without increasing any regulatory burden. Moreover, as the proposed rule to simplify disclosure procedures in the context of bulk transfers would eliminate the necessity for firms to contact the Commission to request no-action relief as to disclosure compliance for specific transfers, absent clarification of the notice requirement the proposed rules may have the consequence of reducing the frequency with which the Commission receives notice of bulk transfers that occur outside of bankruptcy.

To assure that the Commission receives notice of bulk transfers of significant size, which may signal potential financial, sales practice or other incipient regulatory problems at a firm,[31] the Commission is proposing a more specific notice requirement that would require notice to the Commission of all transfers made other than at the customer's instance that involve twenty-five percent or more of the total number of customer accounts carried or

[29] However, an FCM may have residual responsibilities with regard to risk disclosure for introduced accounts and nothing herein is intended to alter such responsibilities. *See* 48 FR 35248, 35273 (August 3, 1983).

[30] *See* 48 FR 35248, 35273 (August 3, 1983).

[31] *Cf.* Rule 1.12(b), establishing an "early warning" requirement with respect to FCM adjusted net capital.

introduced by the transferor FCM or IB. If twenty-five percent of the firm's total customer accounts constitute fewer than one hundred accounts, notice will be required for transfers involving fifty percent of the firm's total customer accounts. The computation of the number and percentage of accounts would be based on the number of accounts of the transferor firm, irrespective of whether such accounts are transferred to a single firm or multiple transferees. The proposed rule would require filing of a notice with the Commission five business days prior to the transfer or, where such advance notice is impracticable, as soon as possible and in any event no later than the day of the transfer.

The proposed rule, which would be codified as new Regulation 1.65, is intended to provide the Commission with early notice of significant account movements which could reflect incipient financial difficulties at a registrant or have other customer protection implications. The rule would provide the Commission with information useful to it in discharging its oversight responsibilities but would not in itself require Commission concurrence in the transfer. Proposed Rule 1.65 would clarify and refine the notice requirement contained in Rule 190.06(b) by making clearer when notice is required and limiting the duty to give notice to those situations in which a substantial bulk transfer is involved, when the transfer in effect serves as an early warning of other problems at a firm. Because the transfers are substantial, generally they will signal a significant change in business or the inability to continue in business, matters of importance to the Commission as part of its ongoing surveillance. The Rule 190.06(b) notice requirement would be modified to apply only to transfers to be made after the filing of a bankruptcy petition. This requirement is necessary because the Commission must receive notice of all bulk transfers effected post-bankruptcy in order to preserve its ability to disapprove of such transfers.

The Commission believes that the burdens imposed by the proposed filing requirement would be minimal and would in many cases apply in situations in which the Rule 190.06(b) notice requirement already exists. The notice requirement would be triggered only by sizeable transfers and would encompass only summary information concerning the transferor and transferee firms, the name of the designated self-regulatory organization for the transferor and transferee firms, a brief statement as to the reasons for the transfer, a statement of the number of accounts to be transferred and a copy of the notice sent to customers advising them of the proposed transfer. Most, if not all, of this information is routinely provided to the Commission in the context of requests for no-action relief with respect to disclosure requirements applicable in the bulk transfer context and should be readily available to the FCM or IB contemplating a bulk transfer.

D. Other Disclosure Issues

The Commission recently has received many inquiries from industry participants concerning other issues relevant to the risk disclosure process. Although the Commission has not yet determined to take action with respect to these issues, the Commission requests comment concerning the appropriateness and desirability of modifying its risk disclosure requirements in several respects suggested by commentators.

Disclosure Concerning Electronic Trading Systems. The advent of electronic trading systems has given rise to concerns that particularized written disclosures concerning the operation of such systems is necessary. Specialized disclosure documents relating to such systems have been drafted by self-regulatory organizations to supplement the disclosures specified in Commission Rule 1.55. The Commission requests comment as to whether it is necessary or appropriate for the Commission to develop a regulatory approach to enable market participants to avoid the use of multiple disclosure documents to address specific trading systems. Such approaches could include, for example, development of a uniform electronic trading system disclosure statement or revision of the Rule 1.55 disclosure statement to address such systems. The Commission requests comment concerning any specific regulatory initiatives that might be undertaken to address the disclosure concerns raised by electronic trading systems, the specific areas in which additional disclosures are appropriate or necessary, and as to whether a generic disclosure statement for electronic trading systems would be appropriate or meaningful in light of differences in such systems.

Simplified Options Disclosure. The Commission is not at this time proposing to consolidate the options disclosure statement required by Rule 33.7 with the Rule 1.55 and 30.6 disclosure statements, which due to space constraints would result in elimination of disclosures specific to options or preclude use of a one-page format. However, the Commission is considering development of a "plain language" options disclosure statement to streamline and make more readable the required disclosures in this area. The Commission requests comment as to the desirability of a simpler options disclosure format, as to the potential costs and benefits of specific approaches, and as to other possible improvements of options disclosure.

Protection of Customer Funds. Further, the Commission has received unsolicited comments from several industry participants suggesting that some futures customers may not fully understand the nature of the protections afforded customer funds under the Act, the Bankruptcy Code and Commission regulations. Such commenters have suggested, for example, that customers may not realize that no public insurance program exists for the protection of futures customer funds and that the Commission should require some form of disclosure concerning the nature and limitations of existing safeguards. Some foreign jurisdictions, *e.g.*, New Zealand, Ireland and Canada, require disclosure to customers concerning the treatment of customer funds in the event of the bankruptcy of a commodity broker. The Commission requests comment as to the relative costs and benefits of requiring additional disclosures concerning the scope of the protections afforded by segregation of customer funds and the financial status of the FCM holding such funds, particularly in light of the relatively small incidence of FCM insolvencies.

III. Related Matters

A. 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 Paperwork Reduction Act. In compliance with the PRA, the Commission has submitted the proposed rule amendments and the proposed rule and their associated information collection requirements to the Office of Management and Budget. The proposed amendments to Rules 30.6, 33.7, 190.06 and 190.10 do not change the burdens associated with those rules. The groups of rules of which they are a part have the following burdens:

Rule 30.6–(3038–0035)
Average Burden Hours per Response—18.50
Number of Respondents—420
Frequency of Response—occasionally
Rule 33.7–(3038–0007)

Average Burden Hours per Response—50.59
Number of Respondents—190,370
Frequency of Response—occasionally

Rules 190.06 and 190.10–(3038–0021)
Average Burden Hours per Response—.30
Number of Respondents—402
Frequency of Response—occasionally

The burden associated with the group of rules which encompasses Rules 1.55, 180.3 and Proposed Rule 1.65 is:

Rules 1.55, 180.3 and Proposed Rule 1.65–(3038–0022)
Average Burden Hours per Response—81.83
Number of Respondents—1342
Frequency of Response—occasionally

No additional burden is associated with the proposed amendments to Rule 1.55. The burden associated with Proposed Rule 1.65 (3038–0024) is borne by FCMs and IBs and is as follows:

Average Burden Hours per Response—1.0
Number of Respondents—20
Frequency of Response—occasionally

Persons wishing to comment on the estimated paperwork burdens associated with these proposed rule amendments and proposed rule should contact 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 Joseph F. Mink, CFTC Clearance Officer, 2033 K Street NW., Washington, DC 20581, (202) 254–9735.

B. 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 businesses. In this connection, the Commission previously has determined that FCMs should not be considered small entities for purposes of the RFA.[32] With respect to IBs, the Commission has stated that it would evaluate within the context of a particular rule proposal whether all or some IBs should be considered small entities, and if so, that it would analyze the economic impact on them of any rule.[33] Because the proposed amendment to the Commission's rules discussed herein will not result in any significant additional burdens to the above-mentioned registrants and may in practice result in a reduction of certain existing burdens, the Commission believes that the proposed rule amendment will not have a significant economic impact on such entities. Therefore, pursuant to section 3(a) of the RFA, 5 U.S.C. § 605(b), the Chairman of the Commission certifies that this proposed rule amendment will not have a significant economic impact on a substantial number of small entities.

List of Subjects

17 CFR Part 1

Customer protection, Risk disclosure statements.

17 CFR Part 30

Foreign futures and option transactions, Customer protection, Risk disclosure statements.

17 CFR Part 33

Domestic exchange-traded commodity option transactions.

17 CFR Part 180

Arbitration or other dispute settlement procedures.

17 CFR Part 190

Bankruptcy Rules

In consideration of the foregoing and pursuant to the authority contained in the Commodity Exchange Act, and in particular, Sections 2(a)(1), 4b, 4d, 4f and 8a of the Act, as amended, 7 U.S.C. §§ 2, 6b, 6d, 6f and 12a, the Commission hereby proposes to amend 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: Sections 2(a)(1), 4, 4a, 4b, 4c, 4d, 4e, 4f, 4g, 4h, 4i, 4j, 4k, 4l, 4m, 4n, 4o, 5, 5a, 6(a), 6(b), 6b, 6c, 8, 8a, 8c, 12, 15, 17, and 20 of the Commodity Exchange Act, 7 U.S.C. §§ 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 7, 7a, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 19, 21 and 24.

2. Section 1.55 is proposed to be amended by revising paragraphs (a) and (b), redesignating paragraphs (c) and (d) as paragraphs (e) and (f) and by adding new paragraphs (c) and (d) to read as follows:

§ 1.55 Distribution of "Risk Disclosure Statement" by futures commission merchants and introducing brokers.

(a)(1) No futures commission merchant or, in the case of an introduced account, no introducing broker may open a commodity futures account for a customer unless the futures commission merchant or introducing broker first:

(i) Furnishes the customer with a separate written disclosure statement containing only the language set forth in paragraph (b) of this section (except for nonsubstantive additions such as captions); *Provided, however,* that the risk disclosure statement may be attached to other documents as the cover page or the first page of such documents and as the only material on such page; and

(ii) Subject to paragraph (d) of this section, receives from the customer an acknowledgment signed and dated by the customer that he received and understood the disclosure statement.

(2) Where customer accounts are transferred from one futures commission merchant to another futures commission merchant or, in the case of introduced accounts, from one introducing broker to another introducing broker, other than at the customer's request, such transferee registrant must provide each customer whose account is transferred with the risk disclosure statement prescribed in this section and receive the acknowledgment required in paragraph (a)(1)(ii) of this section within sixty days of the transfer of such accounts. This requirement shall not apply if the transfer of accounts is made from one introducing broker to another introducing broker guaranteed by the same futures commission merchant pursuant to a guarantee agreement in accordance with the requirements of § 1.10(j) and such futures commission merchant maintains the acknowledgment required by paragraph (a)(1)(ii) of this section.

(b) The language set forth in the written disclosure document required by paragraph (a) of this section shall be as follows:

Risk Disclosure Statement

The risk of loss in trading commodity futures contracts can be substantial. You should, therefore, carefully consider whether such trading is suitable for you in light of your circumstances and financial resources. You should be aware of the following points:

(1) You may sustain a total loss of the funds that you deposit with your broker to establish or maintain a position in the commodity futures market, and you may incur losses beyond these amounts. If the market moves against your position, you may be called upon by your broker to deposit a substantial amount of additional margin funds, on short notice, in order to maintain your position. If you do not provide the required funds within the time required by your broker, your position may be liquidated at a loss, and you will be liable for any resulting deficit in your account.

[32] 47 FR 18618–18620 (April 30, 1982).

[33] 47 FR 18618–18620 (April 30, 1982) (commodity trading advisors and floor brokers); 48 FR 35248, 35276 (August 3, 1983) (introducing brokers).

(2) Under certain market conditions, you may find it difficult or impossible to liquidate a position. This can occur, for example, when the market reaches a daily price fluctuation limit ("limit move").

(3) Placing contingent orders, such as "stop-loss" or "stop-limit" orders, will not necessarily limit your losses to the intended amounts, since market conditions on the exchange where the order is placed may make it impossible to execute such orders.

(4) All futures positions involve risk, and a "spread" position may not be less risky than an outright "long" or "short" position.

(5) The high degree of leverage (gearing) that is often obtainable in futures trading because of the small margin requirements can work against you as well as for you. Leverage (gearing) can lead to large losses as well as gains.

All of the points noted above apply to all futures trading whether foreign or domestic. In addition, if you are contemplating trading foreign futures or options contracts, you should be aware of the following additional risks:

(6) Foreign futures transactions involve executing and clearing trades on a foreign exchange. This is the case even if the foreign exchange is formally "linked" to a domestic exchange, whereby a trade executed on one exchange liquidates or establishes a position on the other exchange. No domestic organization regulates the activities of a foreign exchange, including the execution, delivery, and clearing of transactions on such an exchange, and no domestic regulator has the power to compel enforcement of the rules of the foreign exchange or the laws of the foreign country. Moreover, such laws or regulations will vary depending on the foreign country in which the transaction occurs. For these reasons, customers who trade on foreign exchanges may not be afforded certain of the protections which apply to domestic transactions, including the right to use domestic alternative dispute resolution procedures. In particular, funds received from customers to margin foreign futures transactions may not be provided the same protections as funds received to margin futures transactions on domestic exchanges. Before you trade, you should familiarize yourself with the foreign rules which will apply to your particular transaction.

(7) Finally, you should be aware that the price of any foreign futures or option contract and, therefore, the potential profit and loss resulting therefrom, may be affected by any fluctuation in the foreign exchange rate between the time the order is placed and the foreign futures contract is liquidated or the foreign option contract is liquidated or exercised.

This brief statement cannot, of course, disclose all the risks and other aspects of the commodity markets.

I hereby acknowledge that I have received and understood this risk disclosure statement.

_____

Date

_____

Signature of Customer

(c) The Commission may approve for use in lieu of the risk disclosure document required by paragraph (a) of this section, a risk disclosure statement approved by a foreign regulatory agency or self-regulatory organization if the Commission determines that such risk disclosure statement is reasonably calculated to provide the disclosure required by paragraph (b) of this section. Notice of foreign jurisdiction risk disclosure statement approvals will be published in the **Federal Register**.

(d)(1) Any futures commission merchant or, in the case of an introduced account any introducing broker, may open a commodity futures account for a customer specified in paragraph (d)(2) of this section without obtaining the separate acknowledgments of disclosure and elections required by this section and by §§ 30.6, 33.7, 180.3, 190.06 of this chapter, provided that:

(i) Prior to the opening of such account, the futures commission merchant or introducing broker obtains an acknowledgment from the customer, which may consist of a single signature at the end of the futures commission merchant's or introducing broker's customer account agreement, or on a separate page, of the disclosure statements and elections specified in § 1.55 and §§ 30.6, 33.7, 180.3, and 190.06 of this chapter, as listed above the signature line, provided the customer has acknowledged by check or other indication next to the specified disclosure statement or election that reflects the customer's receipt of such disclosure statement or assent to such election;

(ii) The acknowledgment referred to in paragraph (d)(1)(i) of this section must be accompanied or preceded by delivery of the required disclosures and elective provisions as specified in § 1.55 and §§ 30.6, 33.7, 180.3, and 190.06 of this chapter;

(2) The provisions of this subparagraph are applicable only to the opening of a commodity futures or options account for a customer who is:

(i) An entity that qualifies for relief under § 4.5(a) of this chapter; or

(ii) An entity that is a "qualified eligible participant" as defined in § 4.7 of this chapter; or

(iii) A foreign entity that is comparable to and subject to a regulatory framework comparable to any entity specified in § 4.5 of this chapter.

* * * * *

4. Section 1.65 is proposed to be added to read as follows:

§ 1.65 Notice of account transfers.

(a) Each futures commission merchant or introducing broker shall file with the Commission, at least five business days in advance of the transfer, notice of any transfer of customer accounts carried or introduced by such futures commission merchant or introducing broker which is not initiated at the request of the customer and where the transfer involves the lesser of:

(1) 25 percent of the total number of customer accounts carried or introduced by such firm if that percentage represents at least 100 of these accounts; or

(2) 50 percent or more of the total number of customer accounts carried or introduced by such firm.

The computation of the percentage and number of accounts must be based on the accounts of the transferor futures commission merchant or introducing broker, irrespective of whether such accounts are transferred to a single or multiple transferees.

(b) The notice required by this section shall include:

(1) The name, principal business address and telephone number of the transferor futures commission merchant or introducing broker;

(2) The name, principal business address and telephone number of the transferee futures commission merchant or introducing broker;

(3) The designated self-regulatory organization for the transferor and transferee firms;

(4) A brief statement as to the reasons for the transfer;

(5) A copy of the notice to customers informing them of the proposed transfer and providing an opportunity to object to such transfer; and

(6) A statement of the number of accounts to be transferred and the estimated liquidating equity of the accounts to be transferred.

(c) The notice required by this section shall be filed with the Chief Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581; the National Futures Association (ATTN: Vice President-Compliance); and the designated self-regulatory organization for the transferor firm.

(d) In the event that the notice required by this section cannot be filed with the Commission at least five days prior to the account transfer, the transferee futures commission merchant or introducing broker shall file such notice as soon as practicable and no later than the day of the transfer. Such

notice shall include a brief statement explaining the circumstances necessitating the delay in filing.

(e) The requirements of this section shall not affect the obligations of a futures commission merchant or introducing broker under the rules of a self-regulatory organization or applicable customer account agreement with respect to transfer of accounts.

(f) If a proposed transfer is not completed in accordance with the notice required to be filed by this section, a corrective notice shall be filed within five business days of the date such proposed transfer was to occur explaining why the proposed transfer was not completed.

PART 30—FOREIGN FUTURES AND FOREIGN OPTIONS TRANSACTIONS

5. The authority citation for Part 30 continues to read as follows:

Authority: Sections 2(a)(1)(A), 4, 4c, and 8a of the Commodity Exchange Act, 7 U.S.C. §§ 2, 4, 6, 6c, and 12(a).

6. Section 30.6 is proposed to be amended by revising paragraph (a) to read as follows:

§ 30.6 Disclosure.

(a) *Futures commission merchants and introducing brokers.*

(1) No futures commission merchant or, in the case of an introduced account, no introducing broker may open a foreign futures or option account for a foreign futures or option customer unless the futures commission merchant or introducing broker first furnishes the customer with a separate written disclosure statement containing only the language set forth in § 1.55(b) of this chapter (except for nonsubstantive additions such as captions); *Provided, however,* that the risk disclosure statement may be attached to other documents as the cover page or the first page of such documents and as the only material on such page.

(2) If a futures commission merchant or introducing broker, or any associated person of such futures commission merchant or introducing broker, has received general discretionary authority to engage in foreign futures or foreign options transactions on behalf of a foreign futures or foreign options customer, the futures commission merchant or introducing broker must receive a separate acknowledgment signed and dated by the customer that the customer has received and understood the disclosure statement set forth in § 1.55(b) of this chapter. With respect to customers specified in § 1.55(d)(2) of this chapter, such futures commission merchant or introducing broker may obtain such acknowledgment as provided in § 1.55(d)(1) of this chapter or in a power of attorney required by § 166.2 of this chapter.

* * * * *

PART 33—REGULATION OF DOMESTIC EXCHANGE-TRADED COMMODITY OPTION TRANSACTIONS

9. The authority citation for Part 33 continues to read as follows:

Authority: 7 U.S.C. 2, 2a, 4, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 7, 7a, 7b, 8, 9, 11, 12a, 12c, 13a, 13a-1, 13b, 19, and 21, unless otherwise noted.

10. Section 33.7 is proposed to be amended by revising paragraph (a) to read as follows:

§ 33.7 Disclosure.

(a)(1) No futures commission merchant or, in the case of an introduced account, no introducing broker may open or cause the opening of a commodity option account for an option customer unless the futures commission merchant or introducing broker first:

(i) Furnishes the option customer with a separate written disclosure statement as set forth in this section or includes such statement in a booklet containing the customer account agreement and other disclosure statements required by Commission rules and;

(ii) Subject to the provisions of § 1.55(c) of this chapter, receives from the option customer an acknowledgment signed and dated by the option customer that he received and understood the disclosure statement.

(2) The disclosure statement and the acknowledgment shall be retained by the futures commission merchant or the introducing broker in accordance with § 1.31 of this chapter. The disclosure statement must be as set forth in paragraph (b) of this section, typed or printed in type of not less than 10-point size, and where indicated, in all capital letters.

(3) Where option customer accounts are transferred from one futures commission merchant to another futures commission merchant or, in the case of introduced accounts, from one introducing broker to another introducing broker, other than at the customer's request, such transferee firm must provide each option customer whose account is transferred with the risk disclosure statement prescribed in this section and receive the acknowledgment required in paragraph (a)(1)(ii) of this section within sixty days of the transfer of such accounts. This requirement shall not apply if the transfer of accounts is made from one introducing broker to another introducing broker guaranteed by the same futures commission merchant pursuant to a guarantee agreement in accordance with the requirements of § 1.10(j) of this chapter and such futures commission merchant maintains the acknowledgment required by paragraph (a)(1)(ii) of this section.

* * * * *

PART 180—ARBITRATION OR OTHER DISPUTE SETTLEMENT PROCEDURES

11. The authority citation for Part 180 continues to read as follows:

Authority: 7 U.S.C. 6c, 6d, 6k, 7a, 12a, and 21 unless otherwise noted.

12. Section 180.3 is proposed to be amended by revising paragraph (b)(2) to read as follows:

§ 180.3 Voluntary procedure and compulsory payments.

* * * * *

(b) * * *

(2) If the agreement is contained as a clause or clauses of a broader agreement, the customer must separately endorse the clause or clauses containing the cautionary language and provisions specified in this section. This subparagraph shall not apply to any futures commission merchant or, in the case of an introduced account, any introducing broker opening an account with respect to customers specified in § 1.55(d)(2) of this chapter. Such futures commission merchant or introducing broker may obtain such endorsement as provided in § 1.55(d)(1) of this chapter.

* * * * *

PART 190—BANKRUPTCY

13. The authority citation for Part 190 continues to read as follows:

Authority: 7 U.S.C. §§ 2, 4a, 6c, 6g, 7, 7a, 12, 19, 23, and 24 and 11 U.S.C. §§ 362, 546, 548, 556 and 761-766.

14. Section 190.06 is proposed to be amended by revising paragraphs (b) and (d)(1) to read as follows:

§ 190.06 Transfers.

* * * * *

(b) *Notice.* Unless notice has been filed pursuant to § 190.02(a)(2), if a futures commission merchant, or a person required to be registered as a futures commission merchant, intends to transfer commodity contracts held by or

for a commodity broker from or for the account of a customer to another person registered as a futures commission merchant after a petition in bankruptcy has been filed by or against such commodity broker and such transfer is not made upon the request of that customer or in the ordinary course of business, the transferor must notify the Commission no later than is required under § 190.02(a)(2) of this part.

* * * * *

(d) *Customer instructions.* (1) *Customer instructions.* A commodity broker must provide an opportunity for each customer to specify when undertaking its first hedging contract whether, in the event of bankruptcy, such customer prefers that open commodity contracts held in a hedging account be liquidated by the trustee without seeking customer instructions. With respect to customers specified in § 1.55(d)(2) of this chapter, such commodity broker may obtain the customer instruction as provided in § 1.55(d)(1) of this chapter.

* * * * *

15. Section 190.10 is proposed to be amended by revising paragraphs (c)(1)(i) and (c)(1)(ii) to read as follows:

§ 190.10 General.

* * * * *

(c) * * *

(1) * * *

(i) The commodity broker first furnishes the customer with the disclosure statement set forth in paragraph (c)(2) of this section in boldfaced print in at least ten point type, which may be provided as either a separate, written document or incorporated into the customer agreement; and

(ii) Where customer accounts are transferred from one commodity broker to another commodity broker other than at the customer's request, such transferee commodity broker must provide each customer whose account is transferred with the risk disclosure statement prescribed in this section within sixty days of the transfer of such accounts.

* * * * *

Issued in Washington, DC, on September 29, 1992, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 92-23986 Filed 10-6-92; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 10

Declarations Required To Be Filed With Certain Imported Works of Art Entered Free of Duty

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: The Customs Regulations require that works of art entered free of duty under certain provisions of the Harmonized Tariff Schedule of the United States shall have a declaration filed with the entry by the artist who produced the articles showing whether the articles are originals, replicas, reproductions, or copies; or a declaration by the seller or shipper with the same information if the declaration by the artist is not available. This document proposes that 19 CFR 10.48 be amended to make it easier for importers to satisfy the declaration requirements and to reduce the instances in which a declaration will be required.

DATES: Comments must be received on or before December 7, 1992.

ADDRESSES: Comments (preferably in triplicate) may be submitted to and inspected at the Regulations and Disclosure Law Branch, room 2119, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Steven Bratcher, Commercial Rulings Division, Office of Regulations and Rulings, (202) 566-8181.

SUPPLEMENTARY INFORMATION:

Background

The Harmonized Tariff Schedule of the United States Annotated (HTSUSA), 19 U.S.C. 1202, provides in subheadings 9701.90.00, 9702.00.00 and 9703.00.00, for the classification of various "works of art" which are entitled to duty-free entry if classified therein. Section 10.48, Customs Regulations (19 CFR 10.48), sets forth procedures to assist Customs in making the determination whether merchandise so claimed is actually a "work of art" and thus properly classified in the above cited provisions. Section 10.48 states that Customs field personnel may require that a declaration be filed with an entry by the artist who produced the articles showing whether the articles are originals, replicas, reproductions, or copies; or a declaration by the seller or shipper with the same information if the declaration by the artist is not available. The regulation also states that, whereas the declarations of these parties may be waived upon a showing of impossibility, the declaration of the importer shall be required in all cases.

One purpose of this proposal is to facilitate the movement of merchandise and save the importers time and money by making it easier to provide the declaration, when one is deemed necessary by Customs, and by providing Customs with greater flexibility not to require a declaration. This document also proposes modifications to 19 CFR 10.48 to eliminate inconsistencies that exist between the regulation and the provisions of the HTSUSA (and applicable interpretative notes) which the regulation is intended to help implement. The elimination of inconsistencies in this instance has the effect of further reducing requirements placed on importers by eliminating an entire series of merchandise, i.e., merchandise classified in subheading 9701.90.00, HTSUSA, from the merchandise for which Customs may require a declaration.

Explanation of Changes

1. The section heading change is necessary because "drawings" are specifically provided for in subheading 9701.10.00, HTSUSA; 19 CFR 10.48 does not apply to subheading 9701.10.00.

2. The change to § 10.48(a) is based on the fact that subheading 9701.90.00, HTSUSA, is the provision in which "collages and similar decorative plaques" are classified. There is no requirement that these items be original works of art (see Explanatory Note 97.01(B)); a declaration should never be required when an item is entered under subheading 9701.90.00.

3. The changes to § 10.48(b) are intended to accomplish two goals: First, the language is changed to make it easier for the parties involved in the importation, i.e., the importer, artist, seller and shipper, to provide a declaration, if required, by providing each of the parties with equal authority to make and provide the declaration. Secondly, the regulation is harmonized with Additional U.S. Note 1 to Chapter 97, HTSUSA, and the Explanatory Notes to Chapter 97. Those interpretative notes refer to the first twelve (12) castings, replicas or reproductions as being classifiable in heading 9703 rather than the first ten (10) as presently required in the regulation.

4. Section 10.48(c) is changed to provide Customs personnel with greater flexibility to waive the requirement of a declaration.

5. The removal of paragraph (e) is necessitated by the change (in number 2.

above) which removes subheading 9701.90.00 merchandise from the impact of 19 CFR 10.48.

Comments

Before making a determination in this matter, Customs will consider any written comments timely submitted. Comments will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations and Disclosure Law Branch, room 2119, Customs Headquarters, 1301 Constitution Avenue, NW., Washington, DC.

Regulatory Flexibility Act

For the reasons set forth in the preamble and pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is hereby certified that the proposed amendments set forth in this document, if adopted, will not have a significant economic impact on a substantial number of small entities. Accordingly, they are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in Executive Order 12291. Accordingly, a regulatory impact analysis is not required.

Drafting Information

The principal author of this document was Steven Bratcher, Commercial Rulings Division, Office of Regulations and Rulings. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 10

Customs duties and inspections, Reporting and record keeping requirement, Exports, Caribbean Basin Initiative.

Proposed Amendment

It is proposed to amend part 10, Customs Regulations (19 CFR part 10), as set forth below:

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The general authority citation for part 10 continues to read as follows:

Authority: 19 U.S.C. 66, 1202, 1481, 1484, 1498, 1508, 1623, 1624;

* * * * *

2. It is proposed to revise § 10.48 to read as follows:

§ 10.48 Engravings, sculptures, etc.

(a) Invoices covering works of art claimed to be free of duty under subheadings 9702.00.00 and 9703.00.00, HTSUS, shall show whether they are originals, replicas, reproductions, or copies, and also the name of the artist who produced them, unless upon examination the appraiser is satisfied that such statement is not necessary to a proper determination of the facts.

(b) The following evidence shall be filed in connection with the entry: A declaration in the following form by the artist who produced the article, or by the seller, shipper or importer, showing whether it is original, or in the case of sculpture, the original work or model, or one of the first twelve castings, replicas, or reproductions made from the original work or model; and in the case of etchings, engravings, woodcuts, lithographs, or prints made by other hand-transfer processes, that they were printed by hand from hand-etched, hand-drawn, or hand-engraved plates, stones, or blocks:

I, _____, do hereby declare that I am the producer, seller, shipper or importer of certain works of art, namely _____ covered by the annexed invoice dated _____; that any mosaics included in that invoice are originals; that any sculptures or statuary included in that invoice are the original works or models or one of the first twelve castings, replicas, or reproductions made from the sculptor's original work or model; and that any etchings, engravings, woodcuts, lithographs, or prints made by other hand-transfer processes included in that invoice were printed by hand from hand-etched, hand-drawn, or hand-engraved plates, stones, or blocks.

(c) The district director may waive the declaration requirement set forth in paragraph (b) of this section.

(d) Artists' proof etchings, engravings, woodcuts, lithographs, or prints made by other hand transfer processes should bear the genuine signature or mark of the artist as evidence of their authenticity. In the absence of such a signature or mark, other evidence shall be required which will establish the authenticity of the work to the satisfaction of the district director.

Michael H. Lane,

Acting Commissioner of Customs.

Approved: October 1, 1992.

Peter K. Nunez,

Assistant Secretary of the Treasury.

FR Doc. 92-24365 Filed 10-6-92; 8:45 am]

BILLING CODE 4820-02-M

19 CFR Part 191

Eliminate Notice of Exportation, Customs Form 7511, as Proof of Exportation for Drawback

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations to eliminate the requirement that the Notice of Exportation, CF 7511, be submitted to Customs as proof of exportation for the purpose of obtaining drawback. Other documentation would be allowed to be used as proof. Currently, to issue a CF 7511, a Customs officer must compare it with the information on the drawback claimant's outbound manifest, and the shipper's export declaration or the ocean/airway export bill to verify its accuracy. By eliminating the form and allowing other proof of exportation, time will be saved by both the drawback claimant and Customs.

DATES: Comments must be received on or before December 7, 1992.

ADDRESSES: Written comments (preferably in triplicate) may be addressed to and inspected at the Regulations and Disclosure Law Branch, room 2119, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Bruce Friedman, Office of Trade Operations, Entry Division, 202-927-0916.

SUPPLEMENTARY INFORMATION:

Background

Drawback is defined in § 191.2(a) of the Customs Regulations (19 CFR 191.2(a)), as a refund or remission, in whole or part, of a customs duty, internal revenue tax, or fee lawfully assessed or collected, because of a particular use made of the merchandise on which the duty, tax, or fee was assessed or collected. To obtain drawback, a claimant must show that the eligible merchandise was exported. Sections 191.51(a) and 191.52 of the Customs Regulations (19 CFR 191.51(a) and 191.52), require a drawback claimant to file a notice of exportation on a Customs Form (CF) 7511, for each shipment of merchandise, in order to receive drawback. When filing the CF 7511, the exporter-claimant simultaneously files the shipper's export declaration or the ocean/airway export bill of lading. A Customs officer reviews both forms to determine whether the information contained on the CF 7511 is

accurate. Upon receipt of the outbound manifest, the Customs officer also compares that document with the CF 7511 to verify the facts of exportation. Upon compliance with this procedure the Customs officer issues the CF 7511. Elimination of this process would save time for both the claimant and Customs.

The information required on a CF 7511 is the name of the exporting vessel or carrier, the number and kinds of packages and their marks and numbers, a description of the merchandise, the name of the exporter, and the country of ultimate destination. This information is also available from paperwork that is generated internally in the process of trade.

Comments

Before making a determination in this matter, Customs will consider any written comments timely submitted. Comments will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations and Disclosure Law Branch, room 2119, Customs Headquarters, 1301 Constitution Avenue, NW., Washington, DC.

Regulatory Flexibility Act

Based on the discussion above, and pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the proposed amendments set forth in this document, if adopted, will not have a significant economic impact on a substantial number of small entities. Accordingly, the amendments are not subject to the regulatory analysis requirements of 5 U.S.C. 603 and 604.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in E.O. 12291. Accordingly, a regulatory impact analysis is not required.

Drafting Information

The principal author of this document was Sheryl Rosenow, Entry Rulings Branch, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

List of Subjects in 19 CFR Part 191

Claims, Customs duties and inspection, Exports, Reporting and record keeping requirements.

Proposed Amendments

It is proposed to amend part 191 of the Customs Regulations (19 CFR part 191) as set forth below:

PART 191—DRAWBACK

1. The general authority citation for part 191 would continue to read as follows:

Authority: 5.U.S.C. 301, 19 U.S.C. 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1313, 1624.

2. It is proposed to amend § 191.51, Customs Regulations (19 CFR 191.51), by revising paragraph (a) to read as follows:

§ 191.51 Alternative procedures.

Exportation of articles for drawback purposes shall be established by complying with one of the following procedures:

(a) Documentary evidence, § 191.52;

* * * * *

3. It is proposed to revise the heading and text of § 191.52 to read as follows:

§ 191.52 Documentary evidence.

A drawback claimant may support the drawback claim by documentary evidence of exportation, such as the bill of lading, air waybill, freight waybill, cargo manifest, or certified copies thereof, issued by the exporting carrier. The preceding documentary evidence shall be accompanied by an export invoice or packing list annotating the merchandise being exported with benefit of drawback.

Michael H. Lane,

Acting Commissioner of Customs.

Approved: September 8, 1992.

Nancy L. Worthington,

Acting Assistant Secretary of the Treasury.

[FR Doc. 92-24331 Filed 10-6-92; 8:45 am]

BILLING CODE 4820-02-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[AD-FRL 3987-7

Approval and Promulgation of Implementation Plans; Appendix M, Addition of Method for Measurement of Opacity Emissions From Stationary Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and notice of public hearing.

SUMMARY: In this notice, the EPA proposes to add test Method 203, for the measurement of opacity from stationary sources, to appendix M [Example Test Methods for State implementation plans (SIP's)] in 40 CFR part 51. This action provides States with an instrumental test method which can be used in determining, on a continuous basis, compliance with stationary source opacity emission limitations.

A public hearing will be held, if requested, to provide interested persons an opportunity for oral presentation of data, views, or arguments concerning the proposed rule.

DATES: *Comments.* Comments must be received on or before December 7, 1992.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by October 28, 1992 a public hearing will be held on November 6, 1992 beginning at 10 a.m. Persons interested in attending the hearing should call the contact mentioned under **ADDRESSES** to verify that a hearing will be held.

Request to Speak at Hearing. Persons wishing to present oral testimony must contact EPA by October 28, 1992.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate if possible) to: Air Docket Section (LE-131), Attention: Docket Number A-91-08, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Public Hearing. If anyone contacts EPA requesting a public hearing, it will be held at EPA's Emission Measurement Laboratory Building, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should contact Anthony P. Wayne, Emission Measurement Branch (MD-19), Technical Support Division, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone (919) 541-3576.

Docket. Docket Number A-91-08, containing materials relevant to this rulemaking, is available for public inspection and copying between 8:30 a.m. and noon, and 1:30 and 3:30 p.m., Monday through Friday, at EPA's Air Docket Section, room M1500, First Floor, Waterside Mall, Gallery 1, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For information concerning the standard, contact Peter R. Westlin or Anthony P. Wayne at (919) 541-3576, Emission Measurement Branch (MD-19), Technical Support Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: The following outline is provided to aid in reading the preamble to the proposed method.

I. Background
A. Introduction
B. 1990 Promulgation of Methods 201 and 201A
II. Proposed Revisions
A. Summary of Proposed Revisions
B. Rational for Proposal as an Example Method in part 51
C. Existing Regulatory Requirements
III. Administrative Requirements
A. Public Hearing
B. Docket
C. Office of Management and Budget Reviews
D. Regulatory Flexibility Act Compliance

I. Background

A. Introduction

Section 110 of the Clean Air Act, as amended by the Clean Air Act Amendments of 1990 ("the Act") (42 U.S.C. 7410), specifies that States are to submit State Implementation Plans (SIPs) to EPA for approval that provide for the attainment and maintenance of ambient air quality standards. These standards will necessarily include emission limits and other control programs directed at sources of the pollutants involved. Many SIPs include regulations limiting pollutant emissions by limiting opacity (i.e., visible emissions).

Subpart K of 40 CFR part 51 requires that States include enforceable test methods in their SIPs for each emission limit (40 CFR 51.212(c)). Appendix M to 40 CFR part 51, which is entitled "Example Test Methods For State Implementation Plans," is designated as the repository for example test methods for SIPs. In order to assist States, local agencies and the public with guidance on how a widely accepted source test methodology can be applied to measure opacity, EPA, in this notice, is proposing to add a instrumental continuous opacity test method to Appendix M.

B. 1990 Promulgation of Methods 201 and 201A

On April 17, 1990 (55 FR 14246), EPA promulgated Methods 201 and 201A for the measurement of stack particulate matter. These methods were included in appendix M of 40 CFR part 51. Under the same action, EPA also revised subpart K to 40 CFR part 51, to direct States to the test methods in Appendix M, and to reiterate that SIPs must include enforceable test methods for each emission limit.

The example test methods in Appendix M are methods that are not specifically required by Federal regulations, but are proposed and promulgated by EPA for use by the States. States may now incorporate appropriate appendix M test methods into their SIPs; or they may choose other methods (including methods in appendix A, part 60), which will be subjected to normal plan review process as stated at 40 CFR 50.212(c). The test method being proposed today is to be included as an example test method in appendix M.

II. Proposed Revisions

A. Summary of Proposed Revisions

Today's action proposes to make Test Method 203 applicable for determining the opacity of emissions from stationary sources. Method 203 uses a continuous opacity monitoring system (COMS) that is based on technology involving the principle of transmissometry.

The way this technology works is that light having specific spectral characteristics is projected from a lamp through the effluent in the stack or duct, and the intensity of the projected light is measured by a sensor. The projected light is attenuated because of absorption and scatter by the particulate manner in the effluent; the percentage of light attenuated is defined as the opacity of the emission. Transparent stack emissions that do not attenuate light will have a transmittance of 100 percent or an opacity of zero percent. Opaque stack emissions that attenuate all of the light will have a transmittance of zero percent or an opacity of 100 percent.

Method 203 requires that the COMS comply with all of the installation, design, and other specifications of PS-1, 40 CFR part 60, appendix B, in order to use opacity monitoring data to determine compliance with opacity standards. In addition, Method 203 specifies quality assurance requirements and procedures that must be performed by the COMS operator after the initial demonstration of compliance with PS-1 requirements. The procedures indicate that data obtained during periods when the monitor is considered "out-of-control" may not be used for compliance determinations. The statement is not to be viewed as a disincentive for a source owner or operator to perform required quality assurance and control activities called for in the Method 203 procedures. Failure to meet the requirements of these procedures should be considered a violation of the monitoring requirements called for. Though the procedures indicate caution on the use of the data during "out-of-control" periods, the use of data collected during these periods is left to the discretion of the appropriate regulatory agency.

The method identifies a valid data average for purpose of recognizing quality assurance activities which result in less than 100 percent data capture. A data average is valid if it contains 83 percent of the required measurement cycles. At a minimum, a cycle is 10 seconds in which a measurement is made. Opacity averages can be for example, a 1-minute average made up of six 10-second cycles. The 83 percent equates to 5 out of the required 6 cycles. In addition, a 95 percent valid data average capture requirement is also specified. Taken together, a minimum of 95 percent of the total opacity averaging periods available, determined by the sources operating time, must be obtained. Each averaging period must be comprised of 83 percent of the required 10-second cycles which make up the averaging period. The values are valid if the quality assurance criteria specified in this procedure are met.

B. Rationale for Proposal as an Example Method in Part 51

As described above, appendix M is the designated repository for example test methods for use in SIPs.

The test methods in appendix M are available for States to reference in their SIPs without further EPA review of the method. The EPA has revised subpart K to emphasize that States must include enforceable test methods in their SIPs for each emission limit, and has directed States to appendix M for example test methods to be used in determining compliance (55 FR 14249, April 17, 1990). Today's proposed Method 203 is an example test method intended for use in SIPs, and, therefore, clearly should be included in appendix M. The inclusion of test methods with SIP standards will ensure that standards are set with full consideration, given to test method procedures and accuracy. The type of test method and the error associated with it can affect both the standard chosen audits stringency.

C. Existing Regulatory Requirements

Test Method 203 is currently being informally provided as an example test method for use by State and local agencies in the development of their PM_{10} SIPs pursuant to the Act, and to enhance existing total suspended particulate requirements. The EPA advises State and local agencies to review the applicability of this method to a particular source as they would any other compliance determination method. Note in so doing, that Test Method 203 is intended as an addition to existing visible emission test methods such as Test Method 9 of 40 CFR part 60, to be

used by regulatory agencies as a part of their overall program of applying compliance determination methodologies. Situations exist where Test Method 9 would need to continue as an applicable compliance method, e.g., where wet scrubbers are used for particulate control, however, Method 203 may replace Method 9 where a regulatory agency sees a benefit in its application. The regulatory agency continues to be responsible for the proper application and designation of compliance methods.

III. Administrative Requirements

A. Public Hearing

In accordance with section 307(d)(5) of the Act, a public hearing will be held, if requested, to discuss the proposed Test Method 203. Persons wishing to make oral presentations should contact EPA at the address given in the **ADDRESSES** section of this preamble. Oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement with EPA before, during, or within 30 days after the hearing. Written statements should be addressed to the Air Docket Section address given in the **ADDRESSES** section of this preamble.

A verbatim transcript of the hearing and written statements will be available for public inspection and copying during normal working hours at EPA's Air Docket Section in Washington, DC (see **ADDRESSES** section of this preamble).

B. Docket

The docket is an organized and complete file for all information submitted or otherwise considered by EPA in the development of this proposed rulemaking. The principal purposes of the docket are: (1) To allow interested parties to identify and locate documents so that they can effectively participate in the rulemaking process and (2) to serve as the record in case of judicial review (except for interagency review materials) [section 307(d)(7)(A)].

C. Office of Management and Budget Review

Executive Order 12291 Review. Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a regulatory impact analysis. This rulemaking is not major because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices; and there will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

D. Regulatory Flexibility Act Compliance

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this attached rule, if promulgated, will not have an economic impact on small entities because no additional cost will be incurred.

This proposed rule does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 51

Administrative practice and procedure, air pollution control, particulate matter.

The EPA proposes to amend title 40, chapter I, part 51 of the Code of Federal Regulations as follows:

PART 51—[AMENDED]

1. The authority citation for part 51 continues to read as follows:

Authority: 42 U.S.C. 7401(b)(1), 7410, 7470–7479, 7501–7508, and 7601(a), unless otherwise noted.

Appendix M—[Amended]

2. Appendix M is amended by adding method 203 to read as follows:

* * * * *

Method 203—Determination of the Opacity of Emissions From Stationary Sources by Continuous Opacity Monitoring Systems

1. Applicability and Principle

1.1 Applicability. This method applies to the measurement of the opacity of emissions from stationary sources by continuous opacity monitoring systems (COMS), in order to determine compliance with an opacity emission standard. The method is not applicable where water droplets are present in the exhaust gas stream being measured.

1.2 Principle. The opacity of emissions from a stationary source is continuously measured and recorded using a COMS that meets all the requirements of Performance Specification 1 (PS–1) of 40 CFR part 60, appendix B. Minimum quality control (QC) and quality assurance (QA) requirements are specified to assess and assure the quality of COMS performance. Daily zero and span checks, quarterly performance audits, and annual zero alignment checks are required in order to assure the proper functioning of the COMS and the accuracy of the COMS data.

Because control and corrective action encompasses a variety of policies, specifications, standards, and corrective measures, this method treats QC requirements in general terms to allow the development of a QC system that is most effective and efficient for the circumstances.

2. Definitions

2.1 Continuous Opacity Monitoring System (COMS). The total equipment required for the determination of the opacity of emissions which meets the minimum requirements of Performance Specification 1 of 40 CFR part 60.

2.2 Simulated Zero Check. Method or device used to provide a simulated zero opacity (or low-level value between zero and 20 percent of the applicable opacity standard).

2.3 Out-of-Control Periods.

2.3.1 Daily Assessments. Whenever the calibration drift (CD) exceeds twice the specification of PS–1, the COMS is out-of-control. The beginning of the out-of-control period is the time corresponding to the last successful drift check. The end of the out-of-control period is the time corresponding to the completion of appropriate adjustment and subsequent successful CD assessment.

2.3.2 Quarterly and Annual Assessment. Whenever a quarterly performance audit or annual zero alignment audit indicates unacceptable results, the COMS is "out-of-control." The beginning of the out-of-control period is the time corresponding to the completion of the performance audit indicating an unacceptable performance. The end of the out-of-control period is the time corresponding to the completion of appropriate corrective actions and subsequent successful audit (or, if applicable, partial audit).

2.4 Upscale Opacity Condition. Method or device used to provide a simulated upscale opacity (50 to 100 percent of the opacity standard).

2.5 External Zeroing Device (Zero-Jig). An external, removable device for simulating or checking the cross-stack zero alignment of the COMS.

3. COMS Installations, Design, and Performance Specifications

In addition to the installation, design, and performance requirements of PS–1, the following are added:

3.1 External Calibration Filter Access. The COMS must be designed to allow for the evaluation of both linearity and accuracy relative to a simulated zero value and provide a check of all system components. The design must accommodate a calibration filter assembly and permit periodic use of external (i.e., not intrinsic to the instrument) neutral density filters.

3.2 Data Reduction/Recording. The COMS shall be designed to allow for the data reduction, recording, and reporting in accordance with the applicable opacity standards. Monitors that automatically adjust the data to the corrected calibration value must be capable of recording the amount of adjustment that is applied to the exhaust gas stream measurement. Data recorded during periods of COMS breakdowns, repairs, calibration checks, and adjustments shall not be used in the data averages of Section 3.4.

3.3 Zero and Upscale Calibration Evaluations. All COMS installed pursuant to

these procedures shall include a method for producing a simulated zero opacity condition and an upscale opacity condition using a certified neutral density filter to produce an known obscuration of light. Such procedures shall provide a system check of the analyzer internal optical surfaces and all active electronic circuitry including the lamp and photodetector assembly used in the measurement mode.

3.4 Data Averages. All COMS installed pursuant to these requirements shall complete a minimum of one cycle of sampling and analyzing for each successive 10-second period and one cycle of data recording for each specified data average, e.g., 6-minute average. An arithmetic or integrated average of all data should be used.

4. Opacity Measurement

4.1 The opacity of emissions shall be continuously measured and recorded in units of percent opacity, and shall be expressed in the averaging period specified in the applicable regulation.

4.2 The COMS shall be operated, maintained and calibrated in accordance with the instructions provided by the instrument manufacturer.

4.3 Except for COMS breakdowns, repairs, calibration checks, zero and span checks, and other QA activities, the COMS shall be in continuous operation during all periods of source operation.

4.4 A data average shall be considered valid if no less than 83 percent of the required cycles of opacity readings upon which the data average is based are obtained.

4.5 Any and all valid data averages may be used to determine compliance with the applicable opacity standard. Data obtained during "out-of-control" periods may not be used for compliance determinations; however, it can be used for identifying periods of failure to meet quality assurance and control criteria.

5. Quality Control (QC) Requirements

5.1 Calibration Drift (CD) Assessment. The COMS shall be checked, at least once daily and the CD quantified and recorded at zero (or low-level) and upscale-level opacity. The COMS shall be adjusted whenever the CD exceeds the specification of PS–1, and the COMS shall be declared "out-of-control" when the CD exceeds twice the specification of PS–1. Corrective actions, followed by a validating CD check are required when the COMS is out-of-control.

5.2 Fault Indicators Assessment. At least daily, the fault lamp indicators, data acquisition system error messages, and other system self diagnostic indicators shall be checked. The appropriate corrective actions should be taken when the COMS is operating outside preset limits. All COMS data recorded during periods in which fault indicators are illuminated shall be considered invalid.

5.3 Performance Audits. Checks of the individual COMS components and factors affecting the accuracy of the monitoring data, as described below, shall be conducted on a quarterly basis. Examples of detailed audit procedures may be found in Reference 1, "Performance Audit Procedures for Opacity Monitors," and Reference 2, "CEMS pilot Project: Evaluation of CEMS Reliability and QA Procedures Volume 1." The following identify the absolute minimum checks included in the performance audit:

5.3.1 Optical Alignment Assessment. The status of the optical alignment of the monitor components shall be checked and recorded according to the procedures specified by the monitor manufacturer. Realign as necessary.

5.3.2 Optical Surface Dust Accumulation Assessment. The apparent effluent opacity shall be compared and recorded before and after cleaning each of the exposed optical surfaces. The total optical surface dust accumulation shall be determined by summing the apparent reductions in opacity for all of the optical surfaces that are cleaned. Caution should be employed in performing this check since fluctuations in effluent opacity occurring during the cleaning cycle may adversely affect the results.

5.3.3 Zero and Upscale Response Assessment. The zero and upscale response errors shall be determined and recorded according to the CD procedures. The error is defined as the difference (in percent opacity) between the correct value and the observed value for the zero and high-level calibration checks.

5.3.4 Zero Compensation Assessment. The value of the zero compensation applied at the time of the audit shall be calculated as equivalent opacity, corrected to stack exit conditions, according to the procedures specified by the manufacturer. The compensation applied to the effluent recorded by the monitor system shall be recorded.

5.3.5 Stack Exit Correlation Error Assessment. The optical pathlength correction ratio (OPLR) shall be computed from the monitor pathlength and stack exit diameter and shall be compared, and the difference recorded, to the monitor setup value. The stack exit correlation error shall be determined as the absolute value of the difference between the measured value and the correct value, expressed as a percentage of the correct value.

5.3.6 Calibration Error Assessment. A three-point calibration error test of the COMS shall be conducted. For either calibration error test methods identified below. three neutral density filters meeting the requirements of PS–1, shall be placed in the COMS light beam path five consecutive times, and the monitor responses shall be independently recorded from the COMS permanent data recorder. Additional guidance for conducting this test is included in section 7.0 of PS–1. The low-, mid-, and high-range calibration error results shall be computed as the mean difference and 95 percent confidence interval for the difference between the expected and actual responses of the monitor as corrected to stack exit conditions. These values shall be calculated using the procedures of Section 8.0 of PS–1.

5.3.6.1 Primary Calibration Error Method. The calibration error test requires the installation of an external calibration audit device (zero-jig). The zero-jig shall be adjusted to provide the same zero response as the monitors simulated zero.

5.3.6.2 Alternative Calibration Error Method. Conduct an incremental calibration test by superimposing the neutral density filters over the effluent opacity and comparing the COMS responses to the expected value calculated from the filter and opacity values immediately preceding the superimposing. Record both the stack effluent opacity and the calibration filter value prior to each test. This method is sensitive to fluctuations in the effluent opacity during the test.

5.3.6.3 Attenuators. Use calibration attenuators (i.e., neutral density filters or screens) with values that have been determined according to section 7.1.3, "Attenuator Calibration" of PS–1, and produce simulated opacities (as corrected to stack exit conditions) in the ranges listed in Table 1 below. For visible emission standards of 10 percent (or less) opacity, attenuator selection may be based on a 10 percent opacity standard.

5.3.6.4 Attenuator Stability. The stability of the attenuator values shall be checked at least once per year according to the procedures specified in PS–1. The attenuators shall be recalibrated if the stability checks indicate a change of 2 percent opacity or greater.

TABLE 1.—FILTER RANGES FOR COMS PERFORMANCE AUDITS

Audit Point	Audit Filter Range (% Op)
1	20–60 Percent of the Emission Limit (low).
2	80–120 Percent of the Emission Limit (mid).
3	150–200 Percent of the Emission Limit (high).

5.4 Zero Alignment Assessment. Compare the COMSs simulated zero to the actual clear path zero of the installation annually. The audit may be conducted in conjunction with, but prior to, a performance audit.

5.4.1 Primary Zero Alignment Method. The primary zero alignment shall be performed under clear path conditions. This may be accomplished if the process is not operating and the monitor pathlength is free of particulate matter or the monitor may be removed from its installation and set up under clear path conditions. The absence of particulate matter shall be demonstrated prior to conducting the test at the installed site. No adjustment to the monitor is allowed other than the establishment of the proper monitor pathlength and correct optical alignment of the COMS components. Record the COMS response to a clear condition and to the COMSs simulated zero condition as percent opacity corrected to stack exit conditions. For COMSs with automatic zero compensation, disconnect or disable the zero compensation mechanism or record the amount of correction applied to the COMSs simulated zero condition. The response difference in percent opacity to the clear path and simulated zero conditions shall be recorded as the zero alignment error. Adjust the COMSs simulated zero device to provide the same response as the clear path condition. Restore the COMS to its operating mode.

5.4.2 Alternative Zero Alignment Method. Monitors capable of allowing the installation of an external, removable zero-jig, may use the equipment for an alternative zero alignment, provided that the zero-jig setting has been established for the monitor pathlength and recorded for the specific COMS by comparison of the COMS responses to the installed zero-jig and to the clear path condition; the zero-jig is demonstrated to be capable of producing a consistent zero response when it is repeatedly (i.e., three consecutive installations and removals prior to conducting the final zero alignment check) installed on the COMS. The zero-jig setting shall be permanently set at the time of initial zeroing to the clear path zero value and protected when not in use to ensure that the setting equivalent to zero opacity does not change. The zero-jig setting shall be checked and recorded prior to initiating the zero alignment. Source owners and operators that employ a zero-jig shall perform a primary zero alignment audit once every 3 years.

5.5 Monitor Acceptance Criteria.

5.5.1 Performance Assessment. The following criteria are to be used for determining acceptable performance of and out-of-control periods for the COMS:

TABLE 2.—PERFORMANCE AUDIT CRITERIA

Stack Exit Correlation Error.	≤2 percent.
Fault Indicators	Inactive—no error messages.
Zero and Upscale Responses.	≤2 percent opacity.
Zero Compensation	≤4 percent opacity.
Optical Alignment	Misalignment error, ≤2 percent opacity.
Optical Surface Dust Accumulation.	≤4 percent opacity.
Calibration Error	≤2 percent opacity.
Zero Alignment	≤5 percent opacity for one check. ≤2 percent opacity for three consecutive checks.
Valid Data Average Capture.	>95 percent of source operating time.

5.5.2 Zero Alignment. The zero alignment is acceptable if the error at the simulated zero check is less than 2 percent opacity prior to adjustment. The simulated zero check shall be adjusted to provide the correct response each time the zero alignment check is performed.

5.5.3 Unacceptable Results—Single Performance Assessment. The COMS is out-of-control whenever the results of a quarterly performance audit indicate noncompliance with any of the performance assessment criteria of TABLE 2 of § 5.5.1 above. If the COMS is out-of-control, take necessary corrective action to eliminate the problem. Following corrective action, the source owner or operator must reconduct the appropriate failed portion of the audit and other applicable portions to determine whether the COMS is operating properly and within specifications. The COMS owner or operator shall record both audit results showing the COMS to be out-of-control and the results following corrective action. COMS data obtained during any out-of-control period may not be used for compliance determination or to meet the data capture requirement of § 5.5.6, however the data can be used for identifying periods where there has been a failure to meet quality assurance and control criteria.

5.5.4 Unacceptable Results—Multiple Performance Assessments. Repeated audit failures (i.e., out-of-control conditions resulting from the quarterly audits) indicate that the QC procedures are inadequate or the COMS is incapable of providing quality data. The source owner or operator shall increase the frequency of the above QC procedures until the performance criteria is maintained or modify or replace the COMS whenever two consecutive quarters of unacceptable performance occurs.

5.5.5 Unacceptable Zero Alignment. If the error of the simulated zero check prior to adjustment exceeds 5 percent opacity for any zero check, or exceeds 5 percent opacity for any zero check, or exceeds the 2 percent opacity acceptance criterion for three consecutive checks, the performance of the COMS is unacceptable. The source owner or operator shall take corrective action to resolve the problem and improve the stability of the simulated zero check method or device or replace the COMS. If the COMS is not replaced, zero alignment audits must be conducted at least biannually during nonconsecutive quarters.

5.5.6 Unacceptable Results—Insufficient Data Capture. Compliance with the 95 percent valid data capture requirement shall be determined by considering COMS downtime for all causes (e.g., monitor malfunctions, data system failures, preventive maintenance, unknown causes, etc.) except for downtime associated with routine zero and span checks and QA/QC activities required by this method. Failure of a COMS to obtain valid opacity data for at least 95 percent of the sources operating time during any reporting period (e.g., day, month, quarter, semiannual period, etc.) indicates that the QC/QA procedures are not sufficient or that the COMS is not capable of continuously providing quality data. Whenever less than 95 percent of the valid data averages are obtained for a reporting period, the source owner or operator shall either: (1) Perform such additional QC/QA activities as deemed necessary to assure acceptable data capture; or (2) modify or replace the COMS. Additional QC/QA procedures include, but are not limited to: Implementation or revision of a QC program, maintenance of a spare-parts inventory, conducting more frequent system performance audits.

6. Calculations for COMS Assessments

6.1 Performance Audit Calculations. The calculations contained in Section 8 of PS-1 shall be followed.

6.2 Zero Alignment Checks. The procedures contained in Reference 1, Section 10, Zero Alignment Checks, shall be followed.

7. Reporting Requirements

At the reporting frequency and in the format specified in the applicable regulation, report on a quarterly basis the performance and accuracy results from Section 5.0. The quarterly performance and accuracy report must contain the drift and audit result information as a Data Assessment Report (DAR), Figure 1. A copy of the quarterly DAR should be included as a separate report with the periodic reports of emissions required under applicable regulatory requirements. As a minimum, the DAR must contain the following information:

1. Source owner and operator name and address.
2. Identification (by serial number) and location of the monitors in the COMS.
3. Manufacturer and model of each monitor in the COMS.
4. Results of COMS performance and date of assessment as determined by performance audit or zero alignment audit, including performance audit results for each of the tests described in sections 5.3 and 5.4, the calculation of these results, as well as the zero error and its calculation. If the performance audit results show the COMS to be out-of-control, the COMS owner or operator must report both the audit results showing the COMS to be out-of-control and the results of the audit following corrective action showing the COMS to be operating within specification.
5. Summary of all corrective actions taken when COMS were determined to be out-of-control, as described in Sections 5.5.

8. Bibliography

8.1 "CEMS Pilot Project: Evaluation of CEMS Reliability and QA Procedures Volume 1," EPA-340/1-86-009a. May 1986. U.S. EPA, Office of Air Quality Planning and Standards, Washington, DC 20460.

8.2 "Performance Audit Procedures For Opacity Monitors," EPA-600/8-87-025. April 1987. U.S. EPA, Environmental Monitoring Systems Laboratory, Research Triangle Park, NC 27711.

8.3 Specification and Test Procedures for Opacity Continuous Emission Monitoring Systems in Stationary Sources, Performance Specification 1, 40 CFR part 60, appendix B.

8.4 Procedure 1. Quality Assurance Requirements for Gas Continuous Emission Monitoring Systems Used for Compliance Determination, 40 CFR part 60, appendix F.

Example COMS Data Assessment report

Period ending date: _____
Year: _____
Company Name: _____
Plant Name: _____
Unit No.: _____
COMS Manufacturer: _____
Model: _____
COMS Serial No.(s): _____

I. Performance Audit

1. Stack Exit Correlation Error
   a. Actual pathlength correction factor _____
   b. Correct pathlength correction factor _____
   c. Stack exit Correlation Error _____
2. Active Fault Indicators: error messages present:

3. Zero and Upscale Calibration Check Responses

	Correct value	Response	Difference
Zero			
Upscale			

4. Zero Compensation Value (percent opacity):

5. Optical Alignment Status: _____
6. Dust Accumulation on Optical Surfaces

	Initial opacity	Final opacity	Difference
Window 1			
Window 2			
Total			

7. Calibration Error
a. Filter Values (equivalent opacity)
Low: _____
Mid: _____
High: _____
b. Test Results

	Low	Mid	High
1.			
2.			
3.			
4.			
5.			

c. Calibration Error
Low: _____
Mid: _____
High: _____
8. Corrective Action for Unacceptable Performance Out-of-control periods:
Date(s) and Time(s): _____
Number of hours: _____
Corrective action taken: _____
Results of audit (or partial audit) following corrective action.
(Use format, as applicable, as shown in I–8 above)
II. Zero Alignment Audit
1. Clear Path Zero Response: _____ percent opacity
2. Simulated Zero Response: _____ percent opacity
3. Zero Alignment Error: _____ percent opacity
4. Zero Error of Previous Two(2) Assessments: _____
III. Calibration Drift Assessment
Out-of-control periods:
Date(s): _____
Number of days: _____
Corrective action taken: _____
Results of CD after corrective action. (Use format above)
IV. Data Capture Assessment
1. Source operating hours: _____
2. Total hours of valid COMS data: _____ (During source operating hours, *including* valid data obtained during routine calibration checks and QA/QC activities required by this method.)
3. Percent data capture: _____
V. Calculations (Include on a separate page.)
Figure 1. Example format for COMS data Assessment Report.

[FR Doc. 92–24343 Filed 10–6–92; 8:45 am]
BILLING CODE 6560–50–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 417

[OCC–20–P]

RIN 0938–AD79

Medicare Program; Appeal Rights and Procedures for Beneficiaries Enrolled in Prepaid Health Care Plans

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This proposed rule would modify or establish administrative review procedures for Medicare beneficiaries who are enrolled in health maintenance organizations (HMOs), competitive medical plans (CMPs) and health care prepayment plans (HCPPs). Specifically, the proposed rule would (1) impose a 60-calendar-day time limit for an HMO and CMP to complete a reconsideration request by a Medicare enrollee for denied services or claims; (2) extend to HMO and CMP members the right to request immediate review by a Utilization and Quality Control Peer Review Organization (PRO) of an HMO or CMP or hospital determination that inpatient hospital stay is no longer necessary; and (3) require HCPPs to establish administrative review procedures for their Medicare enrollees who are dissatisfied with decisions on denied services or claims.

These proposed changes are necessary to improve efficiency in the administration of the Medicare program and to provide Medicare beneficiaries equitable administrative review rights, regardless of their enrollment status.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on December 7, 1992.

ADDRESSES: Mail written comments to the following address:
Health Care Financing Administration, Department of Health and Human Services, Attention: OCC–20–P, P.O. Box 26676, Baltimore, Maryland 21207.

For comments that relate to information collection requirements, mail a copy of comments to:
Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3002, New Executive Office Building, Attention: Allison Herron Eydt, Washington, DC 20503.

If you prefer, you may deliver your written comments to one of the following locations:
Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or
Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, MD 21207.

Due to staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code OCC–20–P. Timely comments will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in room 309–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone (202) 245–7890).

FOR FURTHER INFORMATION, CONTACT:
Jean LeMasurier, (202) 619–1063, for matters on PRO appeals.
Jennifer Richmond, (202) 619–2755, for matters regarding reconsiderations and HCPP appeals.

SUPPLEMENTARY INFORMATION:

I. General Background

Generally, payment for services provided to Medicare beneficiaries under title XVIII of the Social Security Act (the Act) may be made on a fee-for-service basis or on a prepayment basis. Under the fee-for-service system, payment is made after a service is furnished. Claims for payments are submitted by providers, physicians, suppliers, or beneficiaries to intermediaries and carriers who, under contract with HCFA, determine whether payment is appropriate. Under the prepayment method, eligible organizations, such as health maintenance organizations (HMOs) and competitive medical plans (CMPs), and health care prepayment plans (HCPPs), enter into contracts or agreements with HCFA to provide a range of services to Medicare beneficiaries who voluntarily enroll in these plans. This proposed rule deals with Medicare services provided to beneficiaries by entities paid on a prepayment basis. We refer to these entities collectively as "prepaid health care organizations."

Section 1876 of the Act provides the authority for HCFA to enter into contracts with eligible HMOs and CMPs

to provide Medicare covered services to beneficiaries and specifies the requirements that must be met by the eligible HMO or CMP. Eligible HMOs and CMPs may be paid on either a (1) risk basis, under which the HMO or CMP is paid a prospectively determined per capita monthly payment, or (2) a cost basis under which interim per capita payments are made on the basis of a budget, and a retrospective cost settlement occurs to reflect the reasonable costs incurred by the HMO or CMP for the covered services it actually furnishes to enrolled members.

Section 1833 of the Act provides the basis for regulations under which HCFA enters into written agreements with HCPPs to furnish or arrange to have furnished covered Medicare Part B services only to a defined population on a prepayment basis.

Implementing Federal regulations for the organization and operation of prepaid health care organizations, contract requirements, and conditions for payments are located in 42 CFR Part 417.

Generally, this proposed rule would amend the Medicare regulations governing the administrative review rights and procedures for Medicare enrollees in prepaid health care organizations. We propose to: (1) Impose a 60-calendar day time limit for an HMO or CMP to complete a reconsideration requested by a Medicare enrollee (or authorized representative) for denied services or claims; (2) permit an HMO or CMP enrollee (or authorized representative) to request immediate PRO review of an HMO, CMP, or hospital notice of a determination that an inpatient hospital stay is no longer necessary; and (3) require HCPPs to establish administrative review procedures for Medicare enrollees similar to those that we require HMOs and CMPs to establish for Medicare enrollees.

II. Time Limit for Completing a Reconsideration

Section 1876(c)(5)(A) of the Act requires certain prepaid health care organizations to establish procedures for hearing and resolving grievances between the organization and its Medicare enrollees. Section 1876(c)(5)(B) provides specific administrative and judicial review rights to Medicare enrollees of HMOs and CMPs that contract with HCFA and who are dissatisfied with determinations by the HMO or CMP regarding services and claims. These rights are similar to those available to beneficiaries in the fee-for-service system, except that under the regulations at §§ 417.614 and 417.620, the initial level of review is by the HMO or CMP rather than by a PRO, intermediary, or carrier. Issues that are subject to the full scope of administrative and judicial review are those in which beneficiaries believe they: (1) Have been denied access to a service to which they are entitled; or (2) are required to pay an amount that is the responsibility of the HMO or CMP. (Other issues are only subject to the HMO's or CMP's internal grievance procedures.) Regulations at 42 CFR 417.600 through 417.638 describe the administrative and judicial review process. Under the first step of the process, the rules provide that within 60 days of the request for payment or for furnishing of services, the HMO or CMP must make a determination and explain the reasons for the determination. If the decision is unfavorable (in full or part), the beneficiary (or his or her authorized representative) may request that the HMO or CMP reconsider the decision. (The beneficiary must request reconsideration before proceeding to the next step in the review process.) An organization may issue a reconsidered determination on a case only if the reconsidered determination is entirely favorable to the beneficiary. If the organization reaffirms its denial of payment or services, in whole or in part, the organization may not issue a reconsidered decision to the beneficiary. Instead, the organization must prepare a written explanation and refer the case to HCFA, along with a justification for its initial denial, so that HCFA may make a new and independent determination concerning coverage of the services at issue. This step is considered to be part of the reconsideration process. If HCFA's reconsideration determination is not fully favorable to the beneficiary, the beneficiary has a right to request a hearing before an administrative law judge (ALJ) of the Social Security Administration (SSA) if the amount remaining in controversy is $100 or more. If the ALJ hearing does not result in a fully favorable determination, the beneficiary may request Appeals Council review of the ALJ decision. Following the administrative review process, the beneficiary is entitled to judicial review of the final determination of the Secretary if the amount remaining in controversy is $1,000 or more.

Currently, the regulations do not establish time limits for an HMO or CMP to complete a reconsideration. However, a beneficiary may not proceed to the next level of administrative review until the HMO or CMP issues its decision or refers the matter to HCFA. If the HMO or CMP unreasonably delays completing a reconsideration, the beneficiary is deprived of a timely opportunity for a hearing by an independent third party and, in the event the reconsidered decision is favorable to the beneficiary, payment or the provision of services is delayed. Therefore, we propose to revise the regulations containing the administrative review procedures to ensure that the process becomes more efficient.

Specifically, we propose to require that an HMO or CMP make a reconsidered decision (or submit the matter to HCFA if it cannot issue a totally favorable reconsidered decision) within 60 calendar days from the date of receipt of the beneficiary's request for reconsideration. We believe that 60 days is sufficient since the HMO or CMP has already made a determination and has all the necessary records. This timeframe is consistent with the time allowed for issuing the organization's wholly or partially adverse determination that is being reconsidered. If the reconsidered decision made by the organization is entirely favorable to the beneficiary, the organization must notify the beneficiary within the 60-calendar-day period. If the organization makes a reconsidered decision that is unfavorable, in whole or in part, the organization must automatically submit the case file to HCFA (or its designated agent) within the 60-calendar-day period for a reconsidered decision. HCFA's reconsidered determination is not subject to the 60-calendar-day time limit because it does involve review by an independent third party, and HCFA may need to request additional information from the HMO or CMP.

We propose to amend § 417.620 to establish the 60-calendar-day time limit for an HMO or CMP to complete a reconsideration and require the HMO or CMP to notify the enrollee if it refers the matter to HCFA for action.

III. Requests for Immediate PRO Review of Decisions for Hospital Discharges

Section 1154(e) of the Act, as amended by section 9351 of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99–509), provides Medicare beneficiaries with the right to an immediate review by a PRO and, in some cases, certain concurrent financial protections when a hospital, with the concurrence of the attending physician, determines that the beneficiary no longer requires inpatient hospital care. To exercise the immediate review right, after receiving the hospital's notice of

noncoverage, the beneficiary must request (by telephone or in writing) that the PRO review the validity of the hospital's decision. The beneficiary must make such a request by noon of the first working day after receipt of the notice. The PRO then must determine the appropriateness of the hospital's decision that the beneficiary no longer requires covered inpatient services within 1 full working day of the request (and receipt of pertinent information and/or records from the hospital). The hospital cannot charge the beneficiary for the cost of additional hospital days until noon of the day after receipt of the PRO's determination that the hospital's decision was correct.

HMOs and CMPs generally have the option to retain control of the hospital discharge decision or to delegate the discharge decision to the hospital and the attending physician. (In emergency situations, however, the "antidumping" provisions of the statute make the hospital responsible for determining that the patient is medically stable for discharge.) Often the discharge decision is linked to how hospital bills for HMO or CMP patients are paid. For example, most HMOs paid on a cost basis permit the hospital to bill Medicare intermediaries directly on the HMO's behalf. While all HMOs paid on a risk basis are responsible for paying hospital bills directly, some choose, as part of their contract with the hospital, to delegate the discharge decision to the hospital and attending physician. Other risk contractors, particularly staff model HMOs and HMOs that own their own hospitals, retain responsibility for the discharge decision, including the issuing of the discharge notice to the beneficiary.

Under current law, if the hospital (rather than the HMO or CMP) sends the discharge notice, the beneficiary is entitled to request immediate review by a PRO whether or not he or she is enrolled in an HMO or CMP. However, while a beneficiary enrolled in an HMO or CMP may be protected from being charged by the hospital, he or she is not necessarily protected from potential financial liability. If the PRO upholds the hospital's notice of noncoverage, there is no regulation prohibiting the HMO or CMP from billing the beneficiary for the extra days of care while the PRO is reviewing the case, if the extra days result in additional costs to the HMO or CMP. (Depending on the payment arrangement with the hospital, it is possible that the HMO or CMP will not incur any additional costs by virtue of the patient's additional days in the hospital. For example, if there is no contract between the HMO and the hospital, the hospital may not charge more than the amount Medicare would pay. Under the prospective payment system (PPS), that amount remains the same regardless of the length of the hospital stay, unless outlier days are involved. Similarly, a contract between an HMO and a hospital might provide that the hospital is paid on a basis similar to PPS, rather than on a per diem basis.)

In addition, if the HMO or CMP, rather than the hospital, makes the determination of noncoverage, the regulations do not specifically afford an immediate PRO review right to the enrollees. This results in inequitable treatment of HMO and CMP enrollees based on which organization issues the written notice.

We do not believe that Congress intended this result, and propose to exercise our authority under section 1871 of the Act to eliminate this difference. We are proposing to amend the Medicare regulations at §§ 417.440, 417.454, and 417.604 and add a new § 417.605 to provide the Medicare HMO or CMP enrollee with the same administrative review rights and financial protection as are available to beneficiaries in the fee-for-service system.

Under § 417.440(f), we propose to require that an HMO or CMP that has not delegated the discharge decision to the hospital and attending physician must: (1) Have the concurrence of the attending physician before making a determination that an enrollee no longer needs inpatient hospital care; and (2) provide the beneficiary with a written notice of noncoverage that specifies the effective date of the beneficiary's liability and reason why the HMO or CMP believes the patient no longer requires a hospital level of care and explains immediate review procedures.

We propose to revise the beneficiary administrative review procedures under § 417.604(a) and add a new § 417.605 to offer an immediate review by the PRO with which the hospital has an agreement under § 466.78 of the HCFA rules. We propose to adopt the same timeframes for immediate PRO reviews for HMO and CMP enrollees that are applicable to fee-for-service beneficiaries. Upon receiving a written notice from the HMO or CMP or a hospital of a determination that an inpatient hospital stay is no longer necessary, the enrollee (or authorized representative) would have until noon of the first working day after receipt of the notice to file a request for immediate PRO review. The request for immediate PRO review may be made by telephone or in writing. The PRO would notify the HMO or CMP that an appeal has been filed and require that the HMO or CMP provide any pertinent records or information by close of business of the first working day immediately following the day the beneficiary made the appeal. Further, in response to a request from the HMO or CMP, the hospital would be required to submit medical records and other pertinent information to the PRO by close of business of the first full working day immediately following the day the HMO or CMP makes its request. The PRO would also solicit the views of the enrollee who requested immediate PRO review (or the enrollee's authorized representative). The PRO would have 1 working day after receipt of the information from the HMO or CMP to make a determination. The HMO or CMP would be financially liable for the costs of the hospital stay until noon of the calendar day following receipt of the PRO determination.

In addition, we also propose to amend § 417.454 to prohibit the HMO or CMP from billing the Medicare beneficiary for the added cost of hospital days during the immediate review process. An enrollee who requests immediate PRO review would not be entitled to any subsequent review, under the HMO's or CMP's administrative review process, of the issue of whether hospitalization was still needed. However, the PRO determination would be subject to appeal under the administrative and judicial review process set forth in 42 CFR part 473 (that is, PRO reconsiderations and hearings and judicial review of PRO reconsiderations). As under the current fee-for-service system, the beneficiary who requests that a PRO reconsider its determination would not be protected from financial liability.

Under this proposed rule, the hospital is not required to be a concurring party in a discharge decision where the HMO or CMP issues the notice of noncoverage. However, the hospital may submit the request to the PRO for immediate review on behalf of the HMO or CMP enrollee. We propose to clarify (in § 417.605) that, with one exception, the HMO or CMP is financially responsible for the cost of the continued hospital stay until noon of the calendar day following the day the PRO notifies the enrollee of its review determination. Under the exception, a hospital may not charge the HMO or CMP (or the beneficiary) for the costs of the continued hospital stay during the PRO review process if the hospital files the request for immediate PRO review on

behalf of a beneficiary and the PRO upholds the noncoverage determination made by the HMO or CMP.

We are proposing these changes because the present regulations governing the administrative review process for Medicare beneficiaries who are enrolled in HMOs and CMPs with Medicare contracts does not provide the same right of immediate access to independent review of a notice of a determination that a beneficiary no longer requires inpatient hospital care nor the protection from financial liability that is provided to Medicare beneficiaries under the fee-for-service system. Without this proposed change, hospitalized beneficiaries who receive a notice of noncoverage from an HMO or CMP must use the more lengthy HMO and CMP administrative review process, and they would not be protected from being billed for the costs of the intervening days.

We considered the alternative of permitting the HMO or CMP, rather than the PRO, to conduct an immediate review. However, we believe that Congress intended that all hospital discharge decisions be reviewed by a PRO. The PRO that conducts the immediate review for the hospital's fee-for-service patients conducts the immediate review for the hospital's HMO and CMP enrollees. We do not expect this change to significantly add to the workload of existing PROs because current Medicare membership in the HMOs and CMPs to which this rule would apply is low (approximately 3 percent of the total Medicare population).

We also considered allowing the attending physician to request PRO review of an HMO/CMP noncoverage decision if the physician disagrees with the decision. However, except in emergency situations, the attending physician is acting as the representative of the HMO or CMP. We believe an internal disagreement between an HMO or CMP participating physician and the HMO or CMP should be resolved before a notice is issued to the beneficiary. Thus, we propose to require concurrence of the attending physician prior to patient notification. The HMO or CMP is responsible for obtaining the concurrence of the HMO or CMP attending physician. If there are disputes, the HMO or CMP is responsible for resolving any issues and may use binding arbitration or other dispute resolution mechanisms as appropriate.

Finally, we considered requiring in all circumstances that the HMO or CMP be financially liable for the cost of the hospital days during the expedited review process. However, we propose to make hospitals requesting reviews on behalf of HMO or CMP enrollees financially liable when the PRO upholds the HMO's or CMP's notice of noncoverage. Othervise the hospital might have an incentive to appeal every case.

IV. Providing Administrative Review Rights to HCPP Members

Section 1833(a)(1)(A) of the Social Security Act provides that an organization that provides services on a prepayment basis may elect to receive payment for Part B services on a reasonable cost basis rather than a reasonable charge basis. There is no indication that Congress intended to deny Medicare beneficiaries enrolled in these organizations (referred to in these regulations as health care prepayment plans (HCPPs)) their full administrative review rights under section 1869 of the Act simply because they receive services through an organization that chooses this alternate payment option. Unlike the regulations governing HMOs and CMPs, the regulations at 42 CFR part 417, subpart D, applicable to HCPPs, do not specifically address administrative review rights for Medicare enrollees of HCPPs in the event there are disputes with the HCPP over coverage and reimbursement of Part B services. As a result, an HCPP could refuse to provide a Medicare-covered service to one of its enrollees and the enrollee would have no recourse other than to obtain the service from a physician not associated with the HCPP and have the service billed to the Medicare carrier. The disadvantage to the beneficiary in this situation is that the beneficiary is required to pay applicable coinsurance and perhaps an amount to meet the Part B deductible. The beneficiary already has paid a premium to the HCPP to cover the coinsurance and deductible amounts for Medicare Part B services the HCPP should have provided. Thus, the Medicare enrollee would be forced to make double payment. There is also the possibility that the beneficiary would go to a physician who does not accept assignment for the service and be required to pay an amount beyond the Medicare reasonable charge, which would not have occurred had the HCPP provided the service.

The fact that existing regulations do not specifically provide for administrative review of HCPP decisions is an oversight that we propose to correct in these proposed regulations. We propose to amend § 417.801 and add new §§ 417.830 through 417.840 to establish administrative review procedures for Medicare enrollees of HCPPs who are dissatisfied with denied services or claims. We propose to adopt under these sections administrative review procedures for HCPP enrollees that are the same as those for HMO and CMP enrollees. We believe this is appropriate because the method by which beneficiaries receive services in HCPPs more closely resembles the HMO and CMP context than fee-for-service methods.

V. Other Changes

We are proposing to make several clarifying technical changes to the regulations relating to administrative reviews for HMO or CMP enrollees:

- Subpart Q, §§ 417.600, 417.604, 417.606, 417.608, 417.610, 417.612, 417.614, 417.616, 416.618, 416.620, 417.622, and 417.638—We propose to change the term "initial determination" to "organization determination" to distinguish between a determination made by the HMO or CMP and one made by HFCA. Our use of the term "initial determination" in the HMO/CMP regulations under Subpart Q when referring to determinations made by the HMO or CMP has led to misunderstanding and confusion. We also propose to delete references to carriers and intermediaries making determinations on behalf of HMOs and CMPs. Carriers and intermediaries now only make fee-for-service determinations.
- Section 417.604—General provisions. We propose to revise § 417.604(a)(4) to clarify that physicians and other individuals who furnish items or services under arrangements with an organization do not have a right to appeal under the regulations. We propose to make a conforming change to § 417.610(b). These changes are necessary because the existing regulations are intended to prevent physicians or suppliers from billing both a beneficiary and the HMO to which he or she belongs for a service.
- Section 417.614—Right to reconsideration. We propose to clarify the language by making a distinction between an original determination and a revised or reopened determination.
- Section 417.630—Right to a hearing. We propose to clarify that the reference to the "amount in controversy" as a condition for a party to request a hearing is the amount "remaining" in controversy, not the amount of the total bill. For example, an HMO pays $80 of a $100 bill and the beneficiary appeals for full payment. The amount remaining in controversy is $20, not $100. We also propose to add a phrase to clarify that

when beneficiaries combine bills to meet the amount in controversy requirements, they can use both Part A and Part B bills.

VI. Response to Public Comments

Because of the large number of items of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date and time specified in the **DATES** section of this preamble, and respond to the comments in the preamble to the final rule that follows this proposed rule.

VII. Paperwork Burden

Sections 417.440(f), 417.605, 417.620(a), and 417.836 of this proposed rule contain additional requirements that are subject to review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35). HMOs and CMPs would be required to notify beneficiaries if the HMO or CMP refers a request for reconsideration to HCFA. We estimate that this reporting burden will be approximately 5 minutes per case. HMOs and CMPs also would be required to provide Medicare enrollees with a written notice of a determination that an enrollee's inpatient hospital stay is no longer necessary prior to a hospital discharge. We estimate that the reporting burden for an HMO or CMP that has not delegated the discharge decision to the hospital to provide the written notice of noncoverage to be approximately 10 minutes per notice; for a Medicare enrollee of an HMO or CMP to complete a request for immediate PRO review of a notice of a determination that an inpatient hospital stay is no longer necessary to be approximately 10 minutes per request; for the HMO or CMP to submit requested medical information to the PRO, to be approximately 1/2 hour per response. HCPPs would be required to develop appeal procedures and inform Medicare enrollees of appeal rights. We estimate that it will take an HCPP 40 hours to develop these appeal procedures and 1 hour to process each appeal. A notice will be published in the **Federal Register** when OMB approval is obtained.

VIII. Regulatory Impact

Executive Order (E.O.) 12291 requires us to prepare and publish an initial regulatory impact analysis for any proposed rule that meets one of the E.O. 12291 criteria for a "major rule"; that is, that would be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In addition, we generally prepare an initial regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a proposed rule would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we consider all HMOs, CMPs, and HCPPs to be small entities.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any proposed rule that may have a significant impact on the operation of a substantial number of small rural hospitals. Such analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital which is located outside a Metropolitan Statistical Area and has fewer than 50 beds.

These proposed changes provide the Medicare HMO or CMP enrollee with the same administrative review rights and financial protections as are available to beneficiaries in the fee-for-service system. To the extent that current Medicare membership in HMOs, CMPs, and HCPPs to which this rule would apply is low (approximately 6 percent of the total Medicare population), we do not expect any significant increased costs.

For these reasons, we have determined that the threshold criteria of E.O. 12291 would not be met, and a regulatory impact analysis is not required. Further, we have determined and the Secretary certifies, that these proposed regulations would not have a significant economic impact on a substantial number of small entities and would not have a significant impact on the operations of a substantial number of small rural hospitals.

List of Subjects in 42 CFR Part 417

Administrative practice and procedure, Health maintenance organization (HMO), Medicare, Reporting and recordkeeping requirements.

42 CFR part 417 would be amended as follows:

PART 417—HEALTH MAINTENANCE ORGANIZATIONS, COMPETITIVE MEDICAL PLANS, AND HEALTH CARE PREPAYMENT PLANS

1. The authority citation for part 417 continues to read as follows:

Authority: Secs. 1102, 1833(a)(l)(A), 1861(s)(2)(H), 1871, 1874, and 1876 of the Social Security Act (42 U.S.C. 1302, 13951(a)(l)(A), 1395x(s)(2)(H), 1395hh, 1395kk, and 1395mm); sec. 114(c) of Pub. L. 97-248 (42 U.S.C. 1395mm note); 31 U.S.C. 9701; and secs. 215, 353, and 1301 through 1318 of the Public Health Service Act (42 U.S.C. 216, 263a, and 300e through 300e-17), unless otherwise noted.

2. The table of contents of part 417 is amended by revising the titles of §§ 417.440, 417.606, 417.608, 417.610, 417.612, and 417.620, adding a new § 417.605 under Subpart Q, and by adding new §§ 417.830, 417.832, 417.834, 417.836, 417.838, and 417.840 at the end of Subpart U to read as follows:

Sec.

* * * * *

417.440 Entitlement to health care services from an HMO or CMP.

Subpart Q—Beneficiary Appeals

* * * * *

417.605 Immediate PRO review of a determination of noncoverage of hospital care.
417.606 Organization determinations.
417.608 Notice of adverse organization determination.
417.610 Parties to the organization determination.
416.612 Effect of organization determination.

* * * * *

417.620 Responsibility for reconsideration; Time limits.

* * * * *

Subpart U—Health Care Prepayment Plans

* * * * *

417.830 Scope of regulations on beneficiary appeals.
417.832 Applicability of regulations and procedures.
417.834 Responsibility for establishing administrative review procedures.
417.836 Written description of administrative review procedures.
417.838 Organization determinations.
417.840 Administrative review procedures.

3. In § 417.440, the heading is revised and a new paragraph (f) is added to read as follows:

§ 417.440 Entitlement to health care services from an HMO or CMP.

* * * * *

(f) Notice of noncoverage of inpatient hospital care.

(1) If an enrollee is an inpatient of a hospital, entitlement to inpatient

hospital care continues until he or she receives notice of noncoverage of that care.

(2) Before giving notice of noncoverage, the HMO or CMP must obtain the concurrence of the attending physician.

(3) The HMO or CMP must give the enrollee written notice that includes—

(i) The reason why inpatient hospital care is no longer needed;

(ii) The effective date of the enrollee's liability for continued inpatient care; and

(iii) The enrollee's appeal rights.

(4) If the HMO or CMP delegates to the hospital the determination of noncoverage of inpatient care, the hospital obtains the concurrence of the attending physician and sends notice, following the procedures set forth in § 412.42(c) (3) of this chapter.

4. Section 417.454 is amended by revising paragraph (a) and adding a paragraph heading to paragraph (b) to read as follows:

§ 417.454 Charges to Medicare enrollees.

(a) *Limit on charges for inpatient hospital care.* If a Medicare enrollee who is an inpatient of a hospital requests immediate PRO review (as provided in § 417.605) of any determination by the hospital furnishing services or the HMO or CMP that the inpatient hospital services will no longer be covered, the HMO or CMP may not charge the enrollee for any inpatient care costs incurred before noon of the first working day after the PRO issues its review decision.

(b) Reporting requirements. * * *

§§ 417.600, 417.612, 417.614 [Amended]

5. Nomenclature change: In the following sections of subpart Q, the term "initial determination" or "initial determinations" is changed to read "organization determination" or "organization determinations", respectively, wherever it appears:

a. Section 417.600

b. Section 417.612, section title and text

c. Section 417.614

6. Section 417.604 is amended by revising paragraphs (a) and (b) to read as follows:

§ 417.604 General provisions.

(a) *Applicability.* The appeals procedures set forth in §§ 417.604 through 417.638 apply to organization determinations as defined in § 417.606, with the following exceptions:

(1) If an enrollee requests immediate PRO review (as provided in § 417.605) of a determination of noncoverage of inpatient hospital care—

(i) The enrollee is not entitled to subsequent review of that issue under this subpart.

(ii) The PRO review decision is subject to the appeals procedures set forth in Part 473 of this chapter.

(2) Any determination regarding services that were furnished by the HMO or CMP, either directly or under arrangement, for which the enrollee has no further liability for payment are not subject to appeal.

(3) Services included in an optional supplemental plan (see § 417.440(b)(2)) are subject only to a grievance procedure under § 417.436(a)(2).

(4) Physicians and other individuals who furnish items or services under arrangement with an HMO or CMP have no right of appeal under this subpart.

(5) The provisions of Subpart R of 20 CFR Part 404 dealing with representation of parties under title II of the Act are, unless otherwise provided in this subpart, also applicable to appeals under this subpart.

(b) *Responsibility for establishing appeals procedures.* The organization is responsible for establishing and maintaining the appeals procedures that are specified in §§ 417.604 through 417.638.

* * * * *

7. A new § 417.605 is added to read as follows:

§ 417.605 Immediate PRO review of a determination of noncoverage of inpatient hospital care.

(a) *Right to review.* A Medicare enrollee who disagrees with a determination made by an HMO, CMP, or a hospital that an inpatient hospital stay is no longer necessary may remain in the hospital and may (directly or through his or her authorized representative) request immediate PRO review of the determination.

(b) *Procedures.* For the immediate PRO review process, the following rules apply:

(1) The enrollee or authorized representative must submit the request for immediate review—

(i) To the PRO that has a contract with the hospital under § 466.78 of this chapter;

(ii) In writing or by telephone; and

(iii) By noon of the first working day after receipt of the written notice of the determination that the hospital stay is no longer necessary.

(2) On the date it receives the enrollee's request, the PRO notifies the HMO or CMP that a request for immediate review has been filed.

(3) The HMO or CMP must supply any information that the PRO requires to conduct its review and must make it available, by phone or in writing, by the close of business of the first full working day immediately following the day the enrollee submits the request for review.

(4) In response to a request from the HMO or CMP, the hospital must submit medical records and other pertinent information to the PRO by close of business of the first full working day immediately following the day the HMO or CMP makes its request.

(5) The PRO must solicit the views of the enrollee who requested the immediate PRO review (or the enrollee's representative).

(6) The PRO must make a determination and notify the enrollee, the hospital, and the HMO or CMP by close of business of the first working day after it receives the information from the hospital, or the HMO or CMP, or both.

(c) *Financial responsibility*—(1) *General rule.* Except as provided in paragraph (c)(2) of this section, the HMO or CMP continues to be financially responsible for the costs of the hospital stay until noon of the calendar day following the day the PRO notifies the enrollee of its review determination.

(2) *Exception.* The hospital may not charge the HMO or CMP (or the enrollee) if—

(i) It was the hospital (acting on behalf of the enrollee) that filed the request for immediate PRO review; and

(ii) The PRO upholds the noncoverage determination made by the HMO or CMP.

8. Section 417.606 is revised to read as follows:

§ 417.606 Organization determinations.

(a) *Actions that are organization determinations.* An organization determination is any determination made by an HMO or CMP with respect to—

(1) Reimbursement for emergency or urgently needed services;

(2) Any other health services furnished by a provider or supplier other than the organization that the enrollee believes—

(i) Are covered under Medicare; and

(ii) Should have been furnished, arranged for, or reimbursed by the organization.

(3) The organization's refusal to provide services that the enrollee believes should be furnished or arranged for by the organization and the enrollee has not received the services outside the organization.

(b) *Actions that are not organization determinations.* The following are not organization determinations for purposes of this subpart:

(1) A determination regarding services that were furnished by the organization, either directly or under arrangement, for which the enrollee has no further obligation for payment.

(2) A determination regarding services included in an optional supplemental plan (see § 417.440(b)(2)).

(c) *Relation to grievances.* A determination that is not an organization determination is subject only to a grievance procedure under § 417.436(a)(2).

9. Section 417.608 is amended by revising the section heading and paragraphs (a) and (c) to read as follows:

§ 417.608 Notice of adverse organization determination.

(a) If an organization makes an organization determination that is partially or fully adverse to the enrollee, it must notify the enrollee of the determination within 60 days of receiving the enrollee's request for payment for services.

* * * * *

(c) The failure to provide the enrollee with timely notification of an adverse organization determination constitutes an adverse organization determination and may be appealed.

10. In § 417.610, the section heading is revised, the undesignated introductory text is republished, and paragraph (b) is revised to read as follows:

§ 417.610 Parties to the organization determination.

The parties to the organization determination are—

* * * * *

(b) An assignee of the enrollee (that is, a physician or other supplier who has provided a service to the enrollee and formally agrees to waive any right to payment from the enrollee for that service);

* * * * *

11. Section 417.614 is revised to read as follows:

§ 417.614 Right to reconsideration.

Any party who is dissatisfied with an organization determination or with one that has been reopened and revised may request reconsideration of the determination in accordance with the procedures of § 417.616.

12. In § 417.616, the introductory text of paragraph (a) is republished, and paragraphs (a)(1), (b), (c)(1) and (2), and (d) are revised to read as follows:

§ 417.616 Request for reconsideration.

(a) *Method and place for filing a request.* A request for reconsideration must be made in writing and filed with—

(1) The organization that made the organization determination;

* * * * *

(b) *Time for filing a request.* Except as provided in paragraph (c) of this section, the request for reconsideration must be filed within 60 days from the date of the notice of the organization determination.

(c) *Extension of time to file a request.* (1) *Rule.* If good cause is shown, the organization that made the organization determination may extend the time for filing the request for reconsideration.

(2) *Method of requesting an extension.* If the time limit in paragraph (b) of this section has expired, a party to the organization determination may file a request for reconsideration with the organization, HCFA, SSA, or, in the case of a qualified railroad retirement beneficiary, an RRB office. The request to extend the time limit must—

(i) Be in writing; and

(ii) State why the request for reconsideration was not filed timely.

(d) *Parties to the reconsideration.* The parties to the reconsideration are the parties to the organization determination as described in § 417.610, and any other person or entity whose rights with respect to the organization determination may be affected by the reconsideration, as determined by the entity that conducts the reconsideration.

* * * * *

13. Section 417.618 is revised to read as follows:

§ 417.618 Opportunity to submit evidence.

The organization must provide the parties to the reconsideration reasonable opportunity to present evidence and allegations of fact or law, related to the issue in dispute, in person as well as in writing.

14. Section 417.620 is revised to read as follows:

§ 417.620 Responsibility for reconsideration; time limits.

(a) If the HMO or CMP can make a reconsidered determination that is completely favorable to the enrollee, the HMO or CMP issues the reconsidered determination.

(b) If the HMO or CMP recommends partial or complete affirmation of its adverse determination, the HMO or CMP must prepare a written explanation and send the entire case to HCFA. HCFA makes the reconsidered determination.

(c) The HMO or CMP must issue the reconsidered determination to the enrollee, or submit the explanation and file to HCFA, within 60 calendar days from the date of receipt of the request for reconsideration.

(d) If the HMO or CMP refers the matter to HCFA, it must concurrently notify the beneficiary of that action.

15. Section 417.622 is revised to read as follows:

§ 417.622 Reconsidered determination.

A reconsidered determination is a new determination that—

(a) Is based on a review of the organization determination, the evidence and findings upon which it was based, and any other evidence submitted by the parties, or obtained by HFCA or the organization; and

(b) Is made by a person or persons who were not involved in making the organization determination.

16. Section 417.630 is revised to read as follows:

§ 417.630 Right to a hearing.

Any party to the reconsideration who is dissatisfied with the reconsidered determination has a right to a hearing if the amount remaining in controversy is $100 or more. (The amount remaining in controversy, which can include any combination of Part A and Part B services, is to be computed in accordance with § 405.740 of this chapter for Part A services and § 405.820(b) of this chapter for Part B services. When the basis for the appeal is the refusal of services, the projected value of those services must be used in computing the amount remaining in controversy.)

17. Section 417.638 is revised to read as follows:

§ 417.638 Reopening determinations and decisions.

An organization, reconsidered, or revised determination made by an organization or HCFA, or a decision or revised decision of an ALJ or the Appeals Council, may be reopened in accordance with the provisions of § 405.750 of this chapter.

18. In § 417.801, the introductory language of paragraph (b) is republished, paragraph (b)(4) is revised, paragraph (b)(5) is redesignated as paragraph (b)(6), and a new paragraph (b)(5) is added to read as follows:

§ 417.801 Agreements between HCFA and health care prepayment plans.

* * * * *

(b) *Terms.* The agreement must provide that the HCPP agrees to—

* * * * *

(4) Not impose any limitations on the acceptance of Medicare enrollees or beneficiaries for care and treatment that

it does not impose on all other individuals;

(5) Establish administrative review procedures in accordance with §§ 417.830 through 417.840 for Medicare enrollees who are dissatisfied with denied services or claims; and

* * * * *

19. New §§ 417.830, 417.832, 417.834, 417.836, 417.838, and 417.840 are added under Subpart U to read as follows:

§ 417.830 Scope of regulations on beneficiary appeals.

Sections 417.832 through 417.840 establish procedures for the presentation and resolution of organization determinations, reconsiderations, hearings, Appeals Council review, court reviews, and finality of decisions that are applicable to Medicare enrollees of an HCPP.

§ 417.832 Applicability of requirements and procedures.

(a) The administrative review rights and procedures specified in §§ 417.834 through 417.840 pertain to disputes involving an organization determination, as defined in § 417.838, with which the enrollee is dissatisfied.

(b) Physicians and other individuals who furnish items or services under arrangements with an HCPP have no right of administrative review under §§ 417.834 through 417.840.

(c) The provisions of subpart R of 20 CFR part 404 dealing with representation of parties under title II of the Act are, unless otherwise provided, also applicable.

§ 417.834 Responsibility for establishing administrative review procedures.

The HCPP is responsible for establishing and maintaining the administrative review procedures that are specified in § 417.830 through 417.840.

§ 417.836 Written description of administrative review procedures.

Each HCPP is responsible for ensuring that all Medicare enrollees are informed in writing of the administrative review procedures that are available to them.

§ 417.838 Organization determinations.

(a) *Actions that are organization determinations.* For purposes of §§ 417.830 through 417.840, an organization determination is a refusal to furnish or arrange for services, or reimburse the party for services provided to the beneficiary, on the grounds that the services are not covered by Medicare.

(b) *Actions that are not organization determinations.* The following are not organization determinations for purposes of §§ 417.830 through 417.840:

(1) A determination regarding services that were furnished by the HCPP, either directly or under arrangement, for which the enrollee has no further obligation for payment.

(2) A determination regarding services that are not covered under the HCPP's agreement with HCFA.

§ 417.840 Administrative review procedures.

The HCPP must apply §§ 417.608 through 417.638 to organization determinations that affect its Medicare enrollees, and to reconsideration, hearings, Appeals Council review, and judicial review of those organization determinations.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance)

Dated: May 12, 1992.

William Toby,

Acting Administrator, Health Care Financing Administration.

Approved: May 12, 1992.

Louis W. Sullivan,

Secretary.

[FR Doc. 92-24199 Filed 10-6-92; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 197

[CGD 88-103]

RIN 2115-AD16

Controlling the Marine Asbestos Hazard

AGENCY: Coast Guard, DOT.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Coast Guard is considering incorporating into its regulations the guidance it has issued as advisories on exposure to asbestos aboard certain vessels and at outer continental shelf (OCS) facilities and deepwater ports. Since asbestos is a carcinogen, any exposure to its airborne fibers may be hazardous. If adopted as a final rule, the regulations will establish both limits on exposure and procedures for controlling exposure.

DATES: Comments must be received on or before February 4, 1993.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G-LRA/3406) [CGD 88-103], U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001, or may be delivered to room 3406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Charles F. Barker, Project Manager, Office of Merchant Marine Safety, Security, and Environmental Protection (G-MVI-2), (202) 267-1181.

SUPPLEMENTARY INFORMATION:

Request for Comments

Interested persons may participate in this rulemaking at this stage by submitting written data, views, or arguments. Each letter should include the name and address of the person submitting the comments and a reference to the docket number (CGD 88-103), identify the specific section of this advance notice of proposed rulemaking (ANPRM) to which each comment applies, and give the reasons for each comment. Each person submitting a comment and wishing acknowledgment of receipt should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received by the close of the comment period before it acts further on this rulemaking. It may change the proposal in view of the comments received.

Drafting Information

The principal persons involved in drafting this ANPRM are Lieutenant Commander Mark A. Grossetti and Lieutenant Commander Mark G. VanHaverbeke, former Project Managers, Office of Marine Safety, Security, and Environmental Protection, and Donald W. Faleris, Project Counsel, Office of Chief Counsel.

Related Rulemakings

On September 1, 1989, the Coast Guard published a final rule (54 FR 36315) that removed from 46 CFR part 164 references to asbestos as an acceptable noncombustible material for the construction of merchant vessels. The final rule also removed from part 56 references to asbestos gaskets for piping systems. The Coast Guard no longer issues approvals for structural fire protection materials containing

asbestos, and does not permit the use of such materials in the construction of merchant vessels. The final rule of September 1989 made the regulations in parts 164 and 56 consistent with established practice of industry and established policy of the Coast Guard.

Background

"Asbestos" is a general term describing a group of fibrous minerals that do not burn and are excellent thermal insulators. For this ANPRM "asbestos" includes chrysotile, amosite, crocidolite, tremolite asbestos, anthophyllite asbestos, actinolite asbestos, and any of these minerals that have been chemically treated or altered.

In the past four decades asbestos has found many uses, with two-thirds of it being consumed in construction and shipbuilding. Its noncombustible features have made it an attractive material for structural fire protection and for insulation aboard vessels. These features, along with its strength and non-reactivity, have also led to many other uses, such as linings for brakes and clutches and as high-temperature or high-pressure gaskets. These uses have been largely curtailed since the hazards of asbestos have been identified. But there are still many vessels inspected and certificated by the Coast Guard ("inspected vessels"), mobile offshore drilling units (MODUs), OCS facilities, and a deepwater port which may have asbestos installed. Also, no adequate substitute may be available for some uses, particularly as linings for brakes and clutches.

Exposure to airborne asbestos fibers (AAF) significantly increases the risk of incurring four serious diseases: Lung cancer; pulmonary fibrosis, or asbestosis (a progressively debilitating lung disease that impairs breathing and increases the risk of serious illness and infections); mesothelioma (a cancer of the linings of the chest and abdominal cavities); and certain gastro-intestinal cancers, such as colon cancer. There is often a long period of latency, 10–40 years, between first exposure to asbestos and the development of disease.

In 1971 the Occupational Safety and Health Administration (OSHA) adopted a permissible exposure limit (PEL) for AAF of 12 fibers per cubic centimeter (f/cc). Since then, OSHA has decreased the PEL in stages to the current level, adopted in 1986, of 0.2 f/cc for an 8-hour time-weighted average (TWA). The Department of Labor determined that this limit reduces significant risk from exposure and is considered by OSHA, based upon substantial evidence in the record as a whole, to be the lowest level feasible. Therefore, on June 20, 1986, OSHA published this PEL (51 FR 22612). At the same time, OSHA adopted regulations concerning safe work practices and air monitoring as well as, in cases of exposures of over 0.1 f/cc, training and medical surveillance. The rate of 0.1 f/cc is known as the "action level" because exceeding it activates added regulatory requirements.

The Maritime Administration (MARAD) conducted several studies of levels of exposure to AAF aboard merchant vessels from 1979 to 1982. (The results are summarized in Table I, below; copies of the studies are in the rulemaking docket.) Samples were taken both by stationing sampling devices in appropriate locations (area samples) and by attaching devices to workers so that the sampled air was drawn from their breathing zones (personal samples). The studies showed that seamen were not generally overexposed to AAF using OSHA's old shoreside PEL of 2.0 f/cc. However, the studies also showed that exposure in excess of 2.0 f/cc would occur during maintenance and repair unless safe work practices were observed. With OSHA's decrease of the PEL to 0.2 f/cc, chronic exposure of crew members aboard inspected vessels and at OCS facilities and deepwater ports ("industrial maritime environment"), at even low levels of AAF, becomes a greater concern since exposure can occur over 24 hours a day, 7 days a week.

TABLE 1.—RESULTS OF STUDIES OF ASBESTOS BY MARAD

Activity	Eight-hour TWA (f/cc)	Type sample
Normal Engineroom...	0.00–1.00	Area.
Normal Engineroom...	0.01–0.11	Personal.
Repair of Pipe and Lagging.	0.08–0.35	Personal.
Cleanup after Repair of Pipe and Lagging.	0.24–3.30	Personal.
Repair of Valves, Cutting of Gaskets.	0.17	Personal.
Brake Repair.....	2.00–70.0	Area.
Brake Operation (Enclosed Space).	2.09	Area.
Accommodation Areas (Inactive Ready Reserve Vessels).	0.00–0.07	Area.

Memoranda of Understanding between the Coast Guard and OSHA, dated March 8, 1983 and December 19, 1979, respectively, (and contained in Volume X of the Marine Safety Manual, Commandant Instruction M16000.15), affirm that the Coast Guard is the dominant federal agency with statutory authority to prescribe and enforce standards or regulations affecting (1) the occupational safety and health of seamen aboard inspected vessels and (2) working conditions on the Outer Continental Shelf of the United States. Coast Guard Navigation and Vessel Inspection Circular (NVIC) 5–80 and later NVIC 6–87 published recommended procedures for controlling the asbestos hazard in the industrial maritime environment. Each NVIC provided a detailed, comprehensive program through which owners and operators of these vessels, OCS facilities, and deepwater ports could reduce and control exposure to asbestos, though neither took full account of circumstances peculiar to this industrial maritime environment.

Through its NVICs, the Coast Guard has recommended applying OSHA's shoreside standards to control the hazard of asbestos in the industrial maritime environment. This approach has been supposed to provide a level of safety equivalent to that of OSHA's shoreside standards. In the course of this regulatory proposal, the Coast Guard will (1) evaluate the appropriateness of those standards for the industrial maritime environment and (2) seek refinements to the procedures recommended in NVIC 6–87. This regulatory proposal would apply to crew members in the industrial maritime environment ("industrial maritime employees"). It would not apply to certain shore-based personnel, such as shipyard workers, even while they are working aboard inspected vessels. OSHA's regulations apply to them.

Purpose

The purpose of this regulatory project, starting with this ANPRM, is to limit the exposure to AAF of industrial maritime employees to levels commensurate with those encountered by personnel shoreside. To accomplish this purpose, the Coast Guard is relying on OSHA's technical expertise in this field, and on data in support of OSHA's PEL of 0.2 f/cc, published on June 20, 1986 (51 FR 22612).

Approach

After evaluating the conditions in the industrial maritime environment and possible strategies for reducing the exposure to AAF, the Coast Guard is considering adopting into regulation either NVIC 6–87, with some modifications intended to address the issues that arise in the adaptation of OSHA's standards to the industrial maritime environment, or one of several other alternatives discussed below, under "Regulatory Evaluation."

The modifications to NVIC 6–87, prior to incorporating it into Coast Guard regulations, might include the provisions addressing the appropriateness of OSHA's PEL and its regular procedures for air monitoring; the maintenance of medical records; and the establishment of training requirements, safe work practices, and engineering controls. This alternative may also require that, during repairs or maintenance, materials containing asbestos be replaced with materials free of asbestos, where suitable substitutes are available.

Specifically, the alternative based on NVIC 6–87 would apply to the industrial maritime environment and would—

(1) Define an "industrial maritime" PEL commensurate with that for personnel shoreside;

(2) Define an "industrial maritime" action level below the PEL and require medical surveillance of industrial maritime employees who are exposed to levels of AAF above the action level;

(3) Require periodic air monitoring if conditions such as frequent disturbance of the asbestos itself or the presence of friable asbestos suggest that the action level might be routinely exceeded;

(4) Define safe work practices in the industrial maritime environment for industrial maritime employees who undertake repairs or other operations involving materials containing asbestos, similar to the work practices described in certain of OSHA's rules, appendices F and G of 29 CFR 1926.58;

(5) Require training sufficient to institute safe work practices in the industrial maritime environment; and

(6) Upon maintenance or repair, confine the use of materials containing asbestos to instances where a material that does not contain asbestos is not available as a suitable substitute.

The alternative based on NVIC 6–87 would not in itself require the removal of materials containing asbestos. It would leave the choice of asbestos control alternatives to each owner or operator of an inspected vessel, OCS facility, or deepwater port who employs one or more crew members aboard an inspected vessel or at an OCS facility or deepwater port ("industrial maritime employer").

The alternative based on NVIC 6–87, fully implemented, would establish PELs for the industrial maritime environment comparable to those of OSHA for shoreside industry. Further, by requiring asbestos-related training and the observance of safe work practices regardless of the exposure level, this alternative would impose routine safety standards—in some cases above those of OSHA. The methods of reducing exposure to hazardous substances, short of eliminating the substances themselves, fall into three broad categories: safe work practices, engineering controls (*e.g.*, improved ventilation), and personal protective devices. OSHA allows any combination of the first two methods to bring the level of AAF below the PEL and allows the use of personal protective devices only to the extent that other methods are not sufficient. This alternative would use that same flexible approach except that safe work practices would be mandatory in all instances regardless of the other methods or of the level of AAF. Requiring safe work practices, along with the training necessary to implement them in each case of potential hazard from asbestos, would mitigate the actual hazard of occasional short-term exposures to high levels of AAF. This approach may be imperative because the industrial maritime environment is not so structured as its counterpart ashore and because testing the level of short-term exposure may not be practicable, particularly at sea.

The Coast Guard anticipates that the industrial maritime PEL, and most often the industrial maritime action level as well, can be met through the exercise of safe work practices by trained personnel and through engineering controls. However, air sampling is included in the alternative based on NVIC 6–87 as a check on the effectiveness of these measures and as a way of identifying any excessive chronic exposure due to deteriorating materials containing asbestos.

Assumptions

OSHA's PEL of 0.2 f/cc, as currently recommended by NVIC 6–87, assumes exposure to AAF over 8 hours a day, 5 days a week. The Coast Guard is considering a refinement in the application by NVIC 6–87 of OSHA's PEL to the industrial maritime environment. This refinement rests on the following two assumptions:

(1) Because exposures to AAF afford no significant "recovery period" during which the body exhales, excretes, or metabolizes the foreign substance, the hazards due to different levels and periods of exposure to AAF may be equated by cumulative doses. Given this, OSHA's TWA shoreside PEL of 0.2 f/cc for an 8-hour day, 5-day week, is equal to an industrial maritime TWA PEL of 0.05 f/cc for a 24-hour day, 7-day week. Likewise, OSHA's TWA shoreside action level of 0.1 f/cc for an 8-hour day, 5-day week, is equal to an industrial maritime TWA action level of 0.025 f/cc for a 24-hour day, 7-day week.

(2) An economically feasible means can be developed to measure levels of AAF below 0.1 f/cc.

OSHA and the National Institute for Occupational Safety and Health (NIOSH) confirm informally that the first assumption is probably valid. They also indicate that the second assumption may be valid for the industrial maritime environment—especially since industrial maritime employees may spend a majority of time in the "clean" atmosphere of the accommodation spaces where samples of large volumes of air may be taken without clogging the filter in the sample pump with particulates other than asbestos.

Detailed Discussion of the Proposed Adoption of NVIC 6–87 into Coast Guard Regulations

(1) Permissible Exposure Level (PEL)

The Coast Guard is considering a refinement of NVIC 6–87 through the establishment of an industrial maritime PEL based upon a 24-hour time-weighted average (TWA). This PEL—0.05 f/cc—multiplied by a 24-hour day and 7-day week, yields the cumulative dose normal for personnel at sea; this dose approximates the cumulative dose that would be received by personnel ashore exposed to OSHA's PEL, of 0.2 f/cc over a 40-hour work week. OSHA's ratio for establishing an action level, one-half of the PEL, yields an action level of 0.025 f/cc. The Coast Guard is rounding this off to 0.03 f/cc in deference to the limitations of the testing methods.

This industrial maritime PEL of 0.05 f/cc appears to be significantly more stringent than the shoreside PEL, but it is intended to provide protection equivalent to that afforded by the OSHA shoreside PEL. Industrial maritime employees may not get the daily respite from exposure that employees ashore get during non-working hours. Variations feasible for an industrial maritime environment may include (1) prescribing three tiers of exposure based upon the time spent in the industrial maritime environment (8, 12, or 24 hours) and (2) establishing separate PELs for living spaces and working spaces.

(2) Medical Surveillance for Exposures Above the Action Level

NVIC 6–87 recommends that seamen receiving exposures to AAF at or above the action level enter a program of medical surveillance like that required by OSHA. The Coast Guard is considering a further refinement of this recommendation through the establishment of a program of medical

surveillance for the industrial maritime environment along the same lines as OSHA's program for the construction industry. In inaugurating the latter program, OSHA recognized the high turnover of employees and the fluctuation of available work. Similarly, industrial maritime employers may hire seamen out of a labor hall and generally maintain a level of AAF below the industrial maritime action level except in unusual circumstances, such as emergency repairs.

As OSHA's program of medical surveillance applies to employees of the construction industry, the program of the alternative based on NVIC 6–87 would apply to industrial maritime employees who are engaged in work involving levels of AAF at or above the industrial maritime action level for 30 or more days a year or who are required to wear negative-pressure respirators. The program under consideration would also resemble OSHA's in that the threshold of 30 days would depend upon the worksite level of AAF rather than upon the length of employment of a particular crew member; that is, industrial maritime employees' turnover could not serve as a means of industrial maritime employers "complying with" the industrial maritime PEL and avoiding the medical surveillance program. OSHA adopted the worksite-specific approach to medical surveillance because OSHA had concluded that employees' turnover would actually increase the absolute risk among the larger number of employees exposed for less than their working lifetimes, compared with the risk predicted for a constant number of employees exposed throughout their working lifetimes. The Coast Guard, relying on OSHA's expertise, is considering this approach.

The Coast Guard is assessing a different requirement for maintenance of medical records from that imposed by OSHA. OSHA makes employers responsible for maintaining employees' records over 30 years. Employers in the construction industry may use the services of competent organizations, such as trade groups or unions, to maintain the records. OSHA's requirement is justified in that the retained records may become part of a data base for future studies of the effects of occupational exposure to AAF. Yet, because of the relatively low number of industrial maritime employees and the significant decline in the number of commercial vessels with asbestos installed that can be expected over the next 20 years, the central retention of these employees' records, even for the full 30 years, would not add much to the "asbestos exposure" data base. The Coast Guard therefore leans towards making industrial maritime employers maintain medical records throughout the employment of an industrial maritime employee, plus 3 years. Like their counterparts in the construction industry, these employers could use the services of a competent organization to maintain the records.

The Coast Guard recognizes that instituting a program of medical surveillance would be an administrative burden, particularly for employers with a high turnover, but the resulting reduction in diseases due to asbestos is a worthwhile social benefit which offsets this burden. Industrial maritime employers could also avoid the medical surveillance program by curtailing the levels of AAF in the industrial maritime environment.

(3) Monitoring of Air

The Coast Guard is considering a requirement for the monitoring of air at 1-year intervals unless an industrial maritime employer can establish that its employees' potential for exposure to AAF above the action level is minimal. Tracking the level of AAF is necessary to verify the effectiveness of the safe work practices and of the engineering controls instituted to reduce the hazard.

For example, the owner or operator of an older vessel with asbestos bulkhead panels in accommodation spaces and with asbestos insulation in machinery spaces may have to test all spaces where crew members normally are quartered or are turned to work. The owner or operator would have to test while the vessel is underway, handling cargo, or doing whatever else produces the greatest disturbance in a particular space. Spaces without asbestos would not be required to be tested unless there is a reason to suspect that a hazard exists.

The Coast Guard recognizes that sampling and analyzing levels of AAF below 0.1 f/cc with accuracy is difficult and may prove to be cost-prohibitive. The common method of determining the level of AAF, phase-contrast microscopy, uses optical methods and is relatively inexpensive. For these reasons it was chosen by OSHA as the reference method. However, this method cannot distinguish between asbestos and other types of fibers, such as those of fiberglass; its accuracy grows questionable below 0.1 f/cc; and the filters may become clogged by a dirty environment, particularly diesel exhaust. (Of course, industrial maritime employees may spend 16 hours of every day in the accommodation spaces, where "clean" air lends itself to measurement at much lower levels of contamination without filters becoming clogged.) An alternative method, transmission-electron microscopy, can analyze samples with greater accuracy and on that account might be preferable even though relatively expensive.

The Coast Guard is weighing two other variables in sampling: "Area sampling", for which a sampling device is fixed at a specific site, and "personal sampling", for which a sampling device is worn that draws air from the breathing zone. Personal sampling gives a more accurate indication of what the wearer actually inhales and is the method specified by OSHA. But area sampling is more helpful in tracing the source of contamination by AAF; and it may also help in precisely evaluating low levels of contamination, such as may be encountered in an accommodation space, or help in reliably determining that a space is free of AAF.

The air sampling procedures being weighed do not include a short-term exposure limit (STEL), though NVIC 6–87 does. STELs are intended to further reduce the risk to employees whose exposure to AAF occurs in short "bursts" that may fall within a TWA PEL. The greatest beneficiaries of STELs would be employees with undetectable background exposure to AAF, whose only detectable exposure is in "bursts." In the industrial maritime environment these "bursts" would most likely occur at infrequent intervals—when periodic maintenance or repairs are performed, often when testing facilities were unavailable. Rather than impose STELs, the procedures being considered would restrict exposures occurring in "bursts" by requiring the use of safe work practices during repairs and maintenance.

(4) Safe Work Practices for Asbestos-Related Operations

The Coast Guard is considering mandatory safe work practices (including hygiene facilities, where necessary) for industrial maritime employees along the lines of those options allowed or required by OSHA for the construction industry (29 CFR 1926.58 (g), (i), and (j), and illustrated in appendices F and G of those regulations; reproduced in NVIC 6–87). The MARAD studies cited previously suggest that safe work practices alone would reduce most industrial maritime employees' exposures to below the action level, increasing safety. As part of the alternative based on NVIC 6–87, the Coast Guard is deliberating whether to include a specific prohibition, similar to

OSHA's, against general use of compressed air for cleaning asbestos-laden gear, such as brake drums. Data from both OSHA and MARAD indicate that this use of compressed air produces extremely high levels of AAF.

The alternative based on NVIC 6–87 differs from OSHA's standards in that it would require safe work practices in all instances in which industrial maritime employees must work with materials containing asbestos. Other than restricting the use of compressed air, OSHA does not require safe work practices if the level of AAF is below the action level. Nevertheless, a requirement for safe work practices in all work involving materials containing asbestos may be justifiable in the industrial maritime environment because it would bring about an immediate decrease in the exposure of industrial maritime employees to AAF, whether through direct contact or through passive exposure, such as would result from fibers carried on clothing. The immediate proximity of living areas to working areas aboard vessels and at OCS facilities and deepwater ports may be further reason to require safe work practices in all work involving materials containing asbestos.

As discussed earlier, a requirement for safe work practices also warrants not implementing a STEL. Safe work practices should keep even "bursts" of AAF to a minimum, obviating the need for a STEL (which may be impracticable in the industrial maritime environment).

(5) Training in Safe Work Practices

The Coast Guard is evaluating a requirement that each industrial maritime employer institute a training program commensurate with the potential for exposure to AAF at the unit. For instance, the program would have to be more extensive on a vessel outfitted with bulkhead panels, insulation, or gaskets containing asbestos than on one with only asbestos linings for brakes and clutches. A training program might be required to cover (1) the permissible levels for exposure and action, (2) safe work practices, and (3) medical surveillance. To be most effective, it might have to be provided for the entire crew because of the widespread use of brakes and clutches in deck machinery. (The training program's extent would vary according to the potential of individual crew members for exposure.)

The alternative based on NVIC 6–87 varies from OSHA's standards for shoreside industries by containing a requirement for training programs for the industrial maritime environment which has materials containing asbestos, regardless of the level of AAF. Like mandatory safe work practices, mandatory training would bring about a direct reduction in the level of exposure to AAF of industrial maritime employees.

(6) Limits on Use of Asbestos Where Suitable Substitutes are Available

Suitable substitutes for asbestos are available for most uses, the possible exceptions being when asbestos is used for brake linings, clutch linings, and gaskets. (The Coast Guard has informally received conflicting opinions on the suitability of materials free of asbestos for use as brake linings and as components of high temperature gaskets in systems designed for the use of materials containing asbestos.) The Coast Guard is considering requiring, during repairs or maintenance, the replacement of materials containing asbestos with materials free of asbestos where suitable substitutes are available. However, the requirement would not apply to materials containing asbestos that are not disturbed and that are still serviceable.

Regulatory Evaluation

This proposal is not major under Executive Order 12291 and is not significant under DOT's Regulatory Policies and Procedures published on February 26, 1979 (44 FR 11034).

To evaluate the economic impact of this rulemaking, the Coast Guard analyzed the following six alternatives:

(1) Require the measures detailed above;

(2) Initiate no new regulatory measures;

(3) Require only that industrial maritime employers implement training programs and institute safe work practices;

(4) Establish an industrial maritime PEL without more detailed requirements;

(5) Limit industrial maritime employees to performing only emergency repairs when materials containing asbestos are involved; and

(6) Require the removal from the industrial maritime environment of all materials containing asbestos, except brake linings, clutch linings, and gaskets.

The Coast Guard made the following assumptions or relied on the following premises in conducting the regulatory evaluation (the rationales for these assumptions appear in an initial regulatory evaluation, which is contained in the docket):

(1) The use of materials containing asbestos in the construction of inspected vessels, OCS facilities, and deepwater ports diminished or ceased after 1982;

(2) The cumulative exposure for a crew member at sea whose duties consist mostly or entirely of engineering aboard a vessel of more than 1,000 gross tons built before 1982, is equivalent to that of an employee ashore working 8 hours a day, 40 hours a week, in an atmosphere where AAF concentrates to a level of 0.25 f/cc;

(3) The cumulative exposure for every other industrial maritime employee is equivalent to that of an employee ashore working 8 hours a day, 40 hours a week, in an atmosphere where AAF concentrates to a level of less than 0.1 f/cc;

(4) The cost of instituting a program of safe work practices is $3,000 initially for every inspected vessel, OCS facility, or deepwater port. It is then $500 annually for each inspected vessel of over 1,000 gross tons built before 1982 and $250 annually for every other vessel, OCS facility, or deepwater port;

(5) The cost of monitoring for airborne asbestos fibers is $1,000 annually for each inspected vessel, OCS facility, or deepwater port;

(6) The cost of medical surveillance is $500 annually for each crew member; and

(7) The cost of training is about $500 annually for each inspected vessel of more than 1,000 gross tons built before 1982. It is about $250 annually for every other inspected vessel, OCS facility, or deepwater port.

These assumptions and premises yield the following costs and benefits for the first four alternatives:

TABLE II.—COSTS AND BENEFITS

Alternative	Average annual cost (million $)	Average annual benefit (lives saved)	Cost/benefit (million $/lives saved)
(1) Modified NVIC as Regulation	2.520–3.252	1.3–1.1	2.000–2.956
(2) Current NVIC	0.325	0.1	2.954
(3) Work Practices	1.681	0.5	3.362
(4) PEL Only	2.446	0.4	6.115

The quantified assessment of costs and benefits does not account for the risk of asbestos-induced pulmonary fibrosis, or asbestosis. Affected workers may die with asbestosis but not of it, so it will seldom appear on a death certificate as the primary cause of death. While asbestosis may not kill, it may

diminish the quality of life in later years. An advance case of asbestosis may result in shortness of breath even for a person sitting. OSHA's best estimate is that reducing the exposure over a working lifetime (45 years) from 2 f/cc to 0.2 f/cc, or the proposed "industrial maritime" PEL equivalent of 0.05 f/cc for a 24-hour day, 7-day week, would reduce the incidence of asbestosis from 5 percent to 0.5 percent.

Nor does the assessment account for the benefits to industry and society as a whole accruing from the lower rates of morbidity and mortality. These benefits would assume the form of less litigation: lower disability compensation, and lower medical costs.

If the value of a human life is at least $2,000,000, the quantifiable, quantified benefits alone, of the alternative based on NVIC 6–87, will exceed the costs. But there are drawbacks associated with each alternative, including this one.

The first alternative, that based on NVIC 6–87, imposes the greatest regulatory burden, and possibly the highest costs, short of complete removal of asbestos. Because of this burden, its implementation and enforcement would be among the most difficult. At the same time, it would prevent the most cases of asbestosis-related illnesses (quite apart from asbestosis) and, correspondingly, would save the greatest number of lives.

The second alternative, initiating no new regulatory measures, would leave only NVIC 6–87, other Coast Guard policy, and voluntary compliance by industrial maritime employers to protect industrial maritime employees. The NVIC provides a detailed, comprehensive asbestos control program through which these owners and operators could implement suitable programs for controlling asbestos and protecting their employees against exposure. However, use of the NVIC in its current form, without any modifications, raises issues regarding the application of OSHA's shoreside standards to the industrial maritime environment. The current shoreside PEL recommended in the NVIC may be too high (not protective enough) for some industrial maritime employees, particularly for those who live in the industrial maritime environment. Because of the long period of latency, 10–40 years for asbestos-related illnesses, the Coast Guard will not be able to determine the success of a voluntary program for a long time—at the end of which it would be too late to act. Further, even if the NVIC were amended, while this voluntary program might provide a significantly lower level of exposure, there have been instances reported in which the response by an owner or operator was less than adequate.

The third alternative, requiring only that industrial maritime employers implement training programs and institute safe work practices, is attractive in cost and in relative ease of implementation and might prove as beneficial as the alternative based on NVIC 6–87. The Coast Guard could make training programs and safe work practices mandatory through regulation and provide recommended practices through another NVIC. This alternative would provide greater flexibility in the adapting of the regulations to individual situations and to changing technology. It would also avoid the issues of an equivalent 24-hour industrial maritime PEL and of air monitoring, although it would still lack a means of verifying that the level of AAF is acceptable. The U.S. Navy has addressed these issues for several years. Its experience has been that training programs and safe work practices, coupled with the proper equipment and with good housekeeping, can bring the level of AAF down to the lower detectable limit for optical methods.

The fourth alternative, establishing a PEL without more detailed requirements, would remain silent on verifying the level of AAF, but by its very silence would raise the issues of where, when, and by whom air monitoring should be performed. Further, the program would not be conducted and monitored by a crew trained in the hazards of asbestos and the need for monitoring. This approach would not produce the benefits that mandatory training programs and safe work practices would for those employees exposed to AAF in "bursts" governed by the time-weighted PEL.

Both the fifth and sixth alternatives—respectively limiting industrial maritime employees to performing only emergency repairs when materials containing asbestos are involved and requiring the removal from the industrial maritime environment of all materials containing asbestos, except brake linings, clutch linings, and gaskets—appeared unworkable, so the Coast Guard did not calculate their costs. Limiting crew members to performing only emergency repairs around asbestos would delay routine preventive maintenance, which in turn could cause inadequate maintenance of existing installations of asbestos. This limitation also could give rise to other more numerous and more urgent repairs. Requiring the complete removal of all materials containing asbestos would be extremely expensive and could result in the sale overseas of most older inspected vessels. Complete removal would also bring about contamination by AAF throughout the vessel, OCS facility, or deepwater port.

As shown in Table II, the alternative based on NVIC 6–87, Alternative (1), would across almost its whole range return the best cost/benefit ratio. The most cost-effective means of implementing Alternative (1), *i.e.*, controlling any sources of AAF rather than practicing a program of medical surveillance, would improve the cost/benefit ratio to $2,000,000 spent for each life saved.

Most inspected vessels of over 1,000 gross tons were built without limits on the use of materials containing asbestos. As those vessels continue to age, the condition of the asbestos aboard will continue to deteriorate and the likelihood of fibers being released into the air will continue to climb, increasing the health hazard. The replacement of the older vessels in the near future is not likely. As the Jones Act restricts coastwise trade in the U.S. to vessels built in the U.S., owners tend to operate these vessels longer. Further weakening the impetus to scrap older vessels is the fact that the presence of asbestos in large quantities aboard them diminishes their value, making them more economic to operate than to sell.

A copy of an initial regulatory evaluation is in the rulemaking docket. This evaluation contains further details of the assumptions, premises, methodology, and data used in determining the costs and benefits of this proposed rulemaking. For information about inspecting and copying this evaluation, refer to "**ADDRESSES**" above. For mailed copies of it, write or call the person listed under "**FOR FURTHER INFORMATION CONTACT.**"

Small Entities and Collection of Information

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether proposed regulations will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

Under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) reviews

each proposed rule which contains a collection of information requirement to determine whether the practical value of the information is worth the burden imposed by its collection. Collection of information requirements include reporting, recordkeeping, notification, and other similar requirements.

The Coast Guard is requesting specific information, suggestions, and comments, with supporting data and examples where possible, which will help it to evaluate the six alternatives discussed above, on the basis of "paperwork burden" and "economic impact" for affected persons. This will enable the Coast Guard to better evaluate these options.

Environmental Assessment

The alternative based on NVIC 6–87 is intended to protect industrial maritime employees from exposure to hazardous levels of AAF and would not affect the level of AAF released into the atmosphere. However, if the replacement of affected materials containing asbestos with materials free of asbestos is required under this alternative, during maintenance or repair, along with safe work practices and training, there may be a positive effect on the environment, although it may not be significant. Evaluation of all of the alternatives, from an environmental protection standpoint, is invited to better enable the Coast Guard to evaluate the six alternatives described above.

Questions

The Coast Guard solicits input from the public regarding all of the alternatives set forth in this advanced notice of proposed rulemaking, including suggestions for use of any of the alternatives with some modification. Suggestions for other possible approaches may be helpful, also.

In addition to general and specific comments on the several alternatives, other approaches, the assumptions, the initial regulatory evaluation, potential administrative and economic burdens, paperwork burdens, and the initial environmental assessment, the Coast Guard requests specific responses to the following questions to assist in developing a notice of proposed rulemaking:

(1) The alternatives described above would apply to the "industrial maritime environment", "industrial maritime employers", and "industrial maritime employees". OSHA governs uninspected vessels and shoreside activities. These proposals would affect only the industrial maritime environment. Is the scope of the alternatives (the vessels, facilities, ports, employers, and employees affected) over- or under-inclusive? Are the terms used sufficiently clear?

(2) When did shipyards stop installing materials containing asbestos, other than for brake linings, clutch linings, and gaskets, aboard inspected vessels?

(3) What results have shipyards and industrial maritime employers obtained while monitoring air for AAF? Furnish details, if available, on the age of each vessel, OCS facility, or deepwater port; the type of sample (personal or area); the place of the sample; the circumstances of the sample; and the procedural standard followed (*e.g.*, NIOSH 7400). Raw data may be furnished (flow rate, time, number of fields and fibers counted, and so forth.) Also, indicate any problems encountered, such as filters becoming clogged.

(4) What steps have industrial maritime employers taken to reduce the level of AAF? Why (*i.e.*, because of visual problems, because of air monitoring, or as a precautionary measure), and with what results?

(5) What costs have arisen from monitoring, abatement, or medical surveillance and maintenance of medical records?

(6) What requirements should the Coast Guard impose on the conditions under which air monitoring may be performed and by whom? From the data available, it appears that the only requirements should be that the persons monitored carry out their normal duties under normal circumstances. In principle, the monitoring could be performed by anyone with appropriate training, possibly both reducing the cost of obtaining technical assistance and providing greater flexibility.

(7) What are the experiences in the industrial maritime environment with substitutes for brake linings, clutch linings, and gaskets containing asbestos? Specific reports on and experiences with substitutes for asbestos in these systems are welcome.

Dated: October 1, 1992.

A.E. Henn,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 92–24313 Filed 10–6–92; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[GC Docket No. 92–223; FCC 92–445]

Enforcement of Prohibitions Against Broadcast Indecency in 18 U.S.C. 1464

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is proposing to adopt a rule which will prohibit the broadcast of indecent material between the hours of 6 a.m. and 10 p.m. on public broadcast stations that go off the air at or before 12 midnight, and which will prohibit the broadcast of indecent programming on all other broadcast stations between 6 a.m. and 12 midnight. The rule will prohibit obscene broadcasts at all times. This proposal is in response to legislation enacted by Congress.

DATES: Comments must be filed on or before November 6, 1992, and reply comments on or before November 23, 1992.

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

FOR FURTHER INFORMATION CONTACT: Peter Tenhula, Office of General Counsel, at 202–254–6530.

SUPPLEMENTARY INFORMATION:

1. This is a summary of the Notice of Proposed Rule Making in GC Docket No. 92–223, adopted September 17, 1992, and released October 5, 1992. The full text of this document is available for inspection and copying, Monday through Friday, 9 a.m. to 4:30 p.m. in the FCC Dockets Reference Room (room 239), 1919 M St. NW., Washington DC 20554, and may be purchased from the Commission's copy contractor, Downtown Copy Center, 202–452–1422, 1114 21st St. NW., Washington, DC 20036.

2. On August 26, 1992, the President signed into law the Public Telecommunications Act of 1991, Pub. L. 202–356, which generally concerns the authorization of appropriations for the Corporation for Public Broadcasting. Section 16(a) of the Act contains the following provision:

The Federal Communications Commission shall promulgate regulations to prohibit the broadcasting of indecent programming—

(1) Between 6 a.m. and 10 p.m. on any day by any public radio station or public television station that goes off the air at or before 12 midnight; and

(2) Between 6 a.m. and 12 midnight on any day for any radio or television broadcast station not described in paragraph (1).

Id. section 16(a). The provision further states that the regulations required under this subsection shall be promulgated in accordance with section 553 of the Administrative Procedure Act, 5 U.S.C. 553, and shall become final not later than 180 days after the date of enactment of the Act. In conformity with the statute, we propose to adopt the rule set forth in the Amendatory Text.

3. The focus of this proceeding is quite narrow and will be confined to the matter of updating the Commission's record pertaining to the governmental interest in restricting the broadcasting of indecent material. Accordingly, we invite the public to update the data considered in the Commission's 1990 Report on broadcast indecency (5 FCC Rcd 5297) with regard to the presence of children in the viewing and listening audience.

4. *Initial Regulatory Flexibility Analysis.* As required by Section 603 of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. section 601 *et seq.* (1981)), the Commission has prepared the following Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document.

Reason for Action: This proceeding is being initiated pursuant to Public Law 102–356, section 16(a) and seeks public comment on the implementation of that statutory provision.

Objectives: Our goal in this proceeding is to supplement the Commission's record to support the implementation of Congress' enactment of a "safe harbor" time period for the broadcast of indecent material.

Legal Basis. Authority for this proposed rule making is contained in Sections 4(i) and (j), 303 and 312 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and (j), 303, 312, and in Section 16(a) of the Public Telecommunications Act of 1991, Pub. L. No. 102–356 (1992).

Reporting, Recordkeeping and other Compliance Requirements: None

Federal Rules that Overlap, Duplicate or Conflict with Proposed Rule: None.

Description, Potential Impact, and Number of Small Entities Involved: The rules proposed in this proceeding could effect certain small entities including radio and television broadcasters who choose to air indecent broadcast materials at times which will subject them to enforcement action by the Commission.

Any Significant Alternatives Minimizing the Impact on Small Entities Consistent with the Stated Objectives: None.

Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of this Notice of Proposed Rule Making, but they must have a separate and distinct heading, designating them as responses to the Initial Regulatory Flexibility Analysis. The Secretary shall send a copy of this Notice of Proposed Rule Making, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration is accordance with paragraph 603(a) of the Regulatory Flexibility Act.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

List of Subjects in 47 CFR Part 73

Radio broadcasting and Television broadcasting.

Proposed Rule Changes

Part 73 of chapter I of title 47 of the Code of Federal Regulations is proposed to be amended as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

2. Section 73.3999 is revised to read as follows:

§ 73.3999 Enforcement of 18 U.S.C. 1464 (restrictions on the transmission of obscene and indecent material).

(a) No licensee of a radio or television broadcast station shall broadcast any material which is obscene.

(b) No licensee of a public broadcast station, as defined in 47 U.S.C. 397(6), that goes off the air at or before 12 midnight shall broadcast on any day between 6 a.m. and 10 p.m. any material which is indecent.

(c) No licensee of a radio or television broadcast station not described in paragraph (b) of this section shall broadcast on any day between 6 a.m. and 12 midnight any material which is indecent.

[FR Doc. 92–24457 Filed 10–6–92; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration (NOAA)

50 CFR Parts 672 and 675

[Docket No. 911215–2251]

RIN 0648–AD50

Groundfish of the Gulf of Alaska; Groundfish Fishery of the Bering Sea and Aleutian Islands Area

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

ACTION: Proposed rule; proposed regulatory amendment; request for comments.

SUMMARY: NMFS publishes a proposed rule that would implement a revision of Amendment 18 to the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands (BSAI) if the amendment is approved by the Secretary of Commerce (Secretary) after review and consideration of public comments. Revised Amendment 18 to the FMP was prepared by the North Pacific Fishery Management Council (Council) and has been submitted to the Secretary for review under provisions of the Magnuson Fishery Conservation and Management Act (Mugnuson Act).

In addition, NMFS publishes a proposed regulatory amendment to clarify regulations that were published June 3, 1992 (57 FR 23321), implementing portions of Amendment 18 to the BSAI FMP and Amendment 23 to the FMP for Groundfish of the Gulf of Alaska (GOA).

The proposed rule would continue an allocation of pollock between inshore and offshore components in the BSAI during the years 1993 through 1995. Also, these proposed regulations would revise the catcher vessel operational area (CVOA) established in the BSAI (57 FR 23321, June 3, 1992) to allow only catcher vessels and motherships to operate within the CVOA during the non-roe (or "B") season (June 1–December 31). The Council intends these actions to promote management and conservation of groundfish and other fish resources and to further the goals and objectives contained in the FMPs that govern these fisheries.

DATES: Comments are invited on or before November 4, 1992.

ADDRESSES: Comments may be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802 or delivered to the Federal Building Annex, Suite 6, 9109 Mendenhall Mall

Road, Juneau, Alaska. Individual copies of the revision of Amendment 18 and the regulatory impact review/initial regulatory flexibility analysis (RIR/IRFA) may be obtained from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510.

FOR FURTHER INFORMATION CONTACT: Jay J. C. Ginter, Fishery Management Biologist, Alaska Region, NMFS at 907-586-7228.

SUPPLEMENTARY INFORMATION:

Background

Domestic and foreign groundfish fisheries in the exclusive economic zone (EEZ) off Alaska are managed in accordance with the BSAI and GOA FMPs. Both FMPs were prepared by the Council under authority of the Magnuson Act. The GOA FMP is implemented by regulations appearing at 50 CFR 611.92 for the foreign fishery and at 50 CFR part 672 for the U.S. fishery. The BSAI FMP is implemented by regulations appearing at 50 CFR 611.93 and 50 CFR part 675. General regulations that also pertain to U.S. fisheries appear at 50 CFR part 620. The fishery for walleye pollock (*Theragra chalcogramma*) and the affected human environment are described in the FMPs and in the environmental impact statements prepared by the Council for each FMP and the RIR/IRFA prepared for this action.

The problems and issues resulting in Amendments 18/23 are discussed in the proposed rule notice for the amendments (56 FR 66009, December 20, 1991; corrected at 57 2814, January 23, 1992) and the final rule implementing Amendment 23 and the approved portions of Amendment 18 (57 FR 23321, June 3, 1992). Briefly, early in 1989, several catcher/processor vessels harvested substantial amounts of pollock from the GOA. This contributed to an early closure of the GOA pollock fishery and prevented inshore components from realizing their anticipated economic benefit from pollock later in the fishing year. At the April 1989 Council meeting, fishermen and processors from Kodiak Island requested that the Council consider inshore-offshore allocations to prevent future preemption of resources by one industry sector over another. The Council considered the issues of coastal community development and shoreside preference, and in December 1989 adopted management alternatives for analysis. The Council amended the alternatives and continued its analysis, review, and discussion throughout 1990 and early 1991. After receiving advice from its advisory bodies and hearing public testimony at its meeting of June 24-29, 1991, the Council adopted its preferred alternative.

As originally proposed by the Council, Amendments 18/23 allocated the total allowable catch (TAC) of pollock between inshore and offshore sectors in the BSAI and GOA in the years 1992 through 1995 as follows:

	Inshore (percent)	Offshore (percent)
BSAI:		
1992	35	65
1993	40	60
1994	45	55
1995	45	55
GOA All years	100	0

Secretarial review of the amendments began on December 1, 1991. Public comment on the proposed rule ended February 3, 1992. On March 4, 1992, the Secretary approved the proposed pollock and Pacific cod allocations for the GOA and the proposed pollock allocation for the BSAI for 1992. These allocations were implemented on June 1, 1992 (57 FR 23321, June 3, 1992). The proposed pollock allocations for the BSAI in 1993 through 1995 were disapproved.

The action of the Under Secretary for Oceans and Atmosphere (Under Secretary) disapproving the 1993-1995 BSAI pollock allocations was based, in part, on a cost-benefit analysis prepared by NMFS that indicated a significant net economic loss under these proposed allocations. The Council had not supplied sufficient evidence of social or other benefits to offset that loss. As a result, the disapproved measures violated national standard 7 and E.O. 12291. In a March 4, 1992, letter to the Council, the Under Secretary stated that the net economic effects in 1993 through 1995 were "not fully understood" at the time the Council took its action, and that it would be necessary for the Council to evaluate further the economic effects of each reasonable alternative before the additional years could be approved.

Under section 304(b) of the Magnuson Act, The Council may submit a revised amendment to the Secretary for consideration under an expedited review schedule. At its April 21-26, 1992, meeting, the Council considered the actions and recommendations of the Secretary and decided to submit a revised Amendment 18. The Council supplemented its previous analysis of management alternatives for the original Amendments 18/23. The allocation alternatives considered for revised Amendment 18 included (1) no action, (2) allocations in 1993 through 1995 or 30 percent and 70 percent to inshore and offshore components, respectively, and (3) inshore and offshore allocations, respectively, of 35 and 65 percent in 1993, 40 and 60 percent in 1994, and 45 and 55 percent in 1995. The Council reviewed the draft analysis of these alternatives at its meeting of June 22-28, 1992. The draft analysis was made available for public review on July 10, 1992.

At a special meeting to discuss the issue of allocation August 4-5, 1992, the Council again considered the comments of its advisory bodies and the public, and adopted its preferred alternative, recommended to the Secretary as revised Amendment 18. The preferred alternative would make allocations of pollock in the BSAI area between inshore and offshore components, respectively, of 35 and 65 percent in 1993, and of 37.5 and 62.5 percent in 1994 and 1995. In addition, the Council elected to create a CVOA for pollock only in the "B" season in the years 1993 through 1995. Further, the Council recommended allowing vessels in the offshore component that process only (i.e., motherships) to operate in the CVOA, so the catcher vessels that deliver to these vessels can also operate in the CVOA.

The Council has submitted revised Amendment 18 to the Secretary for review, approval, and implementation under section 304(b) of the Magnuson Act. A notice of availability of revised Amendment 18 and request for public comment was published on October 2, 1992. Preliminary determination that revised Amendment 18 is adequate to initiate Secretarial review should not be interpreted to mean that this amendment will be approved by the Secretary. Public comments on the consistency of the amendment and the proposed regulations with the Magnuson Act's national standards and other applicable law are invited. Comments are specifically requested on the adequacy of the analysis in the RIR/IRFA to support findings of compliance with national standards 4 (fair and equitable allocations), 5 (justification for economic allocations), and 7 (net benefits to the Nation). Information and analysis that bolster or contradict the conclusions in any of the supporting documents are also requested.

In addition, changes are proposed to clarify and improve the effectiveness of existing regulations that implement Amendments 18 and 23. Public comment is requested on the proposed changes.

Description of Proposed Management Measures

Revised Amendment 18

The definitions of "inshore" and "offshore" components of the industry remain unchanged from those implementing Amendment 23 in the GOA and the approved pollock allocation in the BSAI area for 1992. In addition, this action proposes no change to the western Alaska community development quota (CDQ) program. Proposed regulations to implement CDQ allocations of pollock in the BSAI area are the subject of a separate rulemaking ([*insert citation to CDQ proposed rule notice if known*]).

The principal new provisions of revised Amendment 18 include (1) the proportional allocation of the pollock TAC between inshore and offshore components, and (2) the CVOA.

1. Inshore-Offshore Allocation of Pollock in the BSAI Area

Under revised Amendment 18, the BSAI pollock TAC would be allocated between the inshore and offshore components for a 3-year period, 1993 through 1995. The amount of TAC to be allocated to each component would be calculated after a reserve (§ 675.20(a)(3)) is subtracted. The reserve is specified annually as 15 percent of the TAC of all species categories. One half of this amount (7.5 percent) would be designated as the CDQ reserve and made available to western Alaska communities under the approved CDQ program. If it appears that the CDQ program will not be able to harvest the amount designated for this program, the reserve would be reapportioned to the non-CDQ fishery in accordance with the specified proportional allocation for that year. In addition, if, during a fishing year, the Director of the Alaska Region, NMFS (Regional Director), determines that either the inshore or offshore component will not be able to catch and process the entire amount of pollock allocated to it, then the amount that the Regional Director projects will be unused by the component will be reallocated to the other component by notice in the **Federal Register.**

The proposed allocations of pollock for each subarea in the BSAI area and each pollock season defined at § 675.20(a)(2) are as follows:

	Inshore (percent)	Offshore (percent)
BSAI:		
1993	35.0	65.0
1994	37.5	62.5
1995	37.5	62.5

The allocation percentages developed in revised Amendment 18 are intended to achieve an equitable apportionment of the pollock resource without needlessly impeding the efficiency of either component.

During Secretarial review of the original Amendments 18/23, NOAA expressed concern that the analysis of potential economic effects of the allocations was not complete. The Council assessed the potential distributive effects of the proposed allocations and qualitatively described the potential net benefits to the Nation. The Secretary subsequently performed a quantitative economic analysis, which concluded there would be a total net loss to the Nation of $178 million during the last half of 1992 and 1993 through 1995.

For the GOA alone, the Secretary calculated a potential net economic loss of about $23 million. This potential economic loss under the proposed allocation of Amendment 23 was offset by nonquantified, positive social benefits to coastal communities in the GOA. This finding was not possible for the allocations proposed in Amendment 18 for the BSAI in 1993–1995. In partially disapproving Amendment 18, the Under Secretary urged the Council to identify countervailing social or other benefits or modify the allocation to minimize economic loss to the Nation if it submitted a revised Amendment 18.

2. Analysis Submitted by the Council for Revised Amendment 18

The RIR/IRFA prepared by the Council in consideration of the revised Amendment 18 alternatives again demonstrates a potential net loss to the Nation of $34 to $60 million depending on whether transfer of benefits to foreign entities is included in the estimates (RIR/IRFA Table 8.1). However, the RIR/IRFA and public testimony to the Council include other information that the Council believes offsets any potential economic losses to the Nation.

NOAA notes that some assumptions and parameters were changed between those used in section 2.0 of the RIR/IRFA and those used in section 8.0. The key variables in the analysis in section 2.0 are described in section 2.4 of the RIR/IRFA. The summary in Table 8.1 uses essentially the same parameters as those used in Tables 2.10 and 2.11 except for three changes made in response to recommendations of the Council's Scientific and Statistical Committee. These changes affect the estimates presented in Table 8.1 in that the underlying data and model assumptions for Table 8.1 as compared to those used in Chapter 2: (a) Do not assume a surplus or loss to fishing vessel crews; (b) assume a different discard rate for inshore processors that corrects a calculation error in the earlier analysis; and (c) assume different prices for certain pollock products that represent new and corrected price information not previously available to the analytical team.

The estimates in Table 8.6 are based on three changes in Table 8.1. These additional changes: (d) Assume an equal roe recovery rate between inshore and offshore processors; (e) assume a lower product recovery rate for surimi produced by offshore processors; and (f) assume higher variable costs in the offshore component, by increasing the variable costs from the 1989–90 OMB survey by 4 percent based on the Producer Price Index to update their value to 1991. If the effects of foreign ownership in processing firms are discounted, the estimates presented in Table 8.6 appear to show that net benefits to the Nation are possible. The RIR/IRFA analysis demonstrates that the calculation of net economic benefits is highly sensitive to assumptions made about the relative processing efficiency in the inshore and offshore components, the mix of products produced, their values in foreign and domestic markets, the effect of foreign ownership of fish processing firms, and the treatment of at-sea labor in the cost-benefit model. The impact of changing certain assumptions and parameters used to model the potential costs and benefits is illustrated in Tables 8.3 and 8.4 of the RIR/IRFA. The analytical team as a whole did not have the opportunity to review or endorse the data input changes suggested by the inshore industry. Public comment on the basis for and appropriateness of these changes in parameters and assumptions is requested.

3. Other Considerations Regarding the Allocations

Although offsetting social benefits are not as readily apparent for the BSAI as they were for the GOA, an established allocation to the inshore component operating in the BSAI area could foster social stability in several western Aleutian coastal communities. The Council received public testimony that the seafood processing industry accounts for about 49 percent of the

total employment and 65 percent of the total private employment in the Aleutians area. Communities that currently have a transient work force could develop year-round employment from the stability of an assured inshore allocation. Such development could stimulate demand for goods and services that could provide social benefits in those communities and the region. In addition, state and local fish landings taxes and fisheries-related property taxes apparently are shared by other coastal communities. For example, the Council heard that groundfish processing in Akutan provided about 37 percent of the Aleutians East Borough's total tax revenues in fiscal year 1991. These revenues presumably were shared with other communities in the borough such as King Cove, Sand Point, and others. The Secretary is particularly interested in the amounts of fish tax revenues collected and their distribution to coastal communities.

Finally, the fact that the Secretary had approved an inshore allocation of 35 percent of the pollock "B" season TAC for 1992 was a significant factor in the decision calculus. In his March 4, 1992, letter to the Council, the Under Secretary observed that a 35 percent allocation to the inshore sector for the 1992 "B" season only "* * * does not appear to result in significant economic losses." NMFS catch data indicate that the "B" season harvests of pollock by the shoreside operations increased from about 15 percent of the total "B" season pollock harvest in 1990 to about 29 percent of the total "B" season pollock harvest in 1991. At this rate of increase, the inshore component probably could have been predicted to harvest about 35 percent of the "B" season pollock in 1992 even without an inshore allocation.

For all of 1990, shoreside operations harvested about 16 percent of the total pollock harvest and in 1991, this proportion increased to about 28 percent. The growth rate of this increase in shoreside harvest between 1990 and 1991 was about 74 percent. To achieve a 35 percent share of the total pollock harvest in 1992, shoreside harvests would need to realize a growth rate of only about 20 percent between 1991 and 1992.

4. Catcher Vessel Operational Area (CVOA)

Revised Amendment 18 would establish a CVOA between 163° and 168° W. longitude, south of 56° N. latitude, and north of the Aleutian Islands. Offshore catcher-processors would not be allowed to conduct directed fishing operations for pollock in the CVOA during the pollock "B" season (June 1 through December 31). Access to this area would be unrestricted during the pollock roe or "A" season (January 1–April 15). This proposed CVOA is similar to that established by the approved portion of original Amendment 18 with the following two important differences.

First, under revised Amendment 18, the CVOA would exist only during the pollock "B" season instead of during the "A" and "B" seasons as originally proposed. This represents a compromise between an exclusive, year-round CVOA, and no CVOA. The compromise is based on compelling arguments made by representatives of the offshore fleet that closing the CVOA during the "A" season would deprive it of prime fishing grounds on the largest roe-bearing fish, particularly since the Bogoslof area (adjacent to, and west of, the CVOA) fishery had been closed. Further, the ice edge would cause congestion and gear conflicts between factory trawlers and vessels using longlines and pots. They also reasoned that moving factory trawlers north of 56° N. latitude would result in lower recovery rates and higher discard of small pollock. The Council retained the CVOA during the "B" season because catcher vessels that deliver their pollock catch to shore-based processing plants in the Aleutian Islands have a limited range compared with catcher/processor vessels that can harvest pollock resources north and west of the CVOA. In addition, public testimony indicated the possibility of overcrowding and grounds preemption within the CVOA by the catcher/processor fleet.

Second, motherships operating in the offshore component would be allowed to operate in the CVOA under revised Amendment 18. This was not allowed during the "B" season in 1992 because the original Amendment 18 established this area exclusively for catcher vessels. The current regulations do not prohibit operators of catcher vessels from harvesting pollock in the CVOA and delivering their catch to motherships outside the area. This is impractical, however, because catcher vessels working with motherships cannot tow cod ends large distances. The Council was also concerned with safety. During the winter, the combination of ice edge, icing conditions, and severe storms are very hazardous for the catcher-boat fleet to operate outside the CVOA.

Proposed Regulatory Amendment

Experience in implementing inshore-offshore allocations under Amendments 18 and 23 during 1992 has prompted NMFS to propose several changes to existing regulations. The following changes are suggested to improve clarity and understanding of the regulations and their effectiveness. Descriptions of the proposed changes follow.

1. The "inshore component" definition currently at §§ 672.2 and 675.2 would be changed by reordering the sequence of types of processing operations that qualify as "inshore." The category of processor vessels operating at a single location within State of Alaska waters would be identified third instead of second. This change would juxtapose this category of processor vessels with the succeeding sentence, which explains how a single location would be determined.

2. The "prohibitions" section at §§ 672.7 and 675.7 would be changed by substituting a paragraph prohibiting the use of any vessel in more than one of the three categories included in the definition of "inshore component" during any fishing year for the paragraph regarding the first single location of processing by "inshore" processing vessels in Alaska State waters. This change would delete regulatory text that is redundant with the "inshore component" definition. Instead, the change would clarify that the category in which a vessel begins operating in an "inshore" directed fishery for Pacific cod harvested in the GOA or pollock harvested in either the GOA or BSAI area is the category that the vessel must continue to operate in for the remainder of the fishing year whenever it processes these species. For example, this would prevent a processor vessel that operates at a single location in Alaska State waters processing pollock, harvested in a directed fishery for pollock, from subsequently processing pollock or GOA Pacific cod in a different location as a "shoreside processing operation."

In the past, the Alaska Region, NMFS, has allowed vessel operators voluntarily to surrender permits, which relieves the operator of various obligations and responsibilities under 50 CFR parts 620, 672, and 675. By surrendering a permit, a vessel would not qualify as a "processor vessel," under existing regulations at §§ 672.2 and 675.2, during the same fishing year that it earlier qualified as such a vessel. This could result in a processor vessel being able to avoid the "single location" requirement specified at §§ 672.20 and 675.20 for processor vessels operating in State of Alaska waters and processing pollock and Pacific cod harvested under the inshore-offshore allocation regime. The Council intended to prevent this kind of mobility by processor vessels in the inshore component to assure equity between

processor vessels and stationary, shoreside processing plants. This change would also prevent a processor vessel from starting the fishing year as a non-permitted "shoreside processing operation" and then applying for and receiving a permit later that year to process groundfish in State waters at a single location other than the one used while the vessel was a "shoreside processing operation." This change would not prevent a processor vessel used in the offshore component from surrendering its permit to operate in the inshore component as a "shoreside operation." Rather, such a transition would be prevented by §§ 672.7(h) and 675.7(i), which prohibit operating in the "inshore" and "offshore" components during the same fishing year.

3. Finally, regulatory text at §§ 672.20 and 675.20 would be changed to clarify that allocations of pollock and Pacific cod would be made to vessels that catch pollock (or GOA Pacific cod) for processing by the inshore or offshore components. It follows from this clarification that vessels that catch these species are subject to the directed fishing allowances and retention prohibitions that the Regional Director is authorized to establish for either the inshore or offshore components. Without this change, such directed fishing allowances and retention prohibitions could be confusing when applied to a processor vessel that does not actually fish. The proposed change, however, clearly places the burden of complying with such prohibitions on the vessels that actually catch fish.

Classification

The schedule established by section 304(b)(3) of the Magnuson Act requires the Secretary promptly to publish regulations proposed by the Council to implement a revised fishery management plan amendment. At this time, the Secretary has initially determined that the amendment these regulations would implement is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making final determinations, will take into account the data and comments received during the comment period.

A final supplemental environmental impact statement (FSEIS) was prepared for Amendments 18 and 23, and was reviewed under the requirements of the National Environmental Policy Act. Since the impacts of revised Amendment 18 are within the scope of the FSEIS, this proposed rule is categorically excluded from the requirement to prepare an environmental assessment under section 6.02.c.3(f) of NOAA Administrative Order 216-6. A copy of the FSEIS may be obtained from the council (see **ADDRESSES**).

This proposed rule is exempt from the procedures of E.O. 12291 under section 8(a)(2) of that order. Deadlines imposed under the Magnuson Act, as amended, require the Secretary to publish this proposed rule 10 days after its receipt. The proposed rule is being reported to the Director, Office of Management and Budget, with an explanation of why it is not possible to follow procedures of the order.

The Assistant Administrator for fisheries, NOAA (Assistant Administrator), has initially determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under E.O. 12291. This determination is based on the revised RIR/IRFA prepared by the Council. The revised RIR/IRFA concludes that (1) the projected net effect on the economy is less than $100 million annually over the 3-year period, (2) the amendment does not directly affect the technical efficiency of processing operations, (3) consumer prices are unlikely to experience major changes, and (4) the proposed allocation of resource shares is not expected to lead to significant changes in the overall competitiveness or innovative capabilities of the industry, in either the domestic or international market. A copy of the revised RIR/IRFA may be obtained from the Council (see **ADDRESSES**).

The Assistant Administrator concludes that this proposed rule, if adopted, would have a significant economic impact on a substantial number of small entities. This determination is based on the revised RIR/IRFA prepared by the Council. The harvesting sector of this industry has expanded under an open access policy, to a point where capacity far exceeds what is necessary to take the TAC. Costs are high, and for many vessels, returns are marginal. For some vessels in the offshore component, revenue losses would likely induce business failure. The analysis in the revised RIR indicates that these revenue losses could be in excess of $20 million, in the aggregate. A copy of this document may be obtained from the Council (see **ADDRESSES**).

The proposed rule does not involve a collection-of-information requirement under the Paperwork Reduction Act.

The Council determined that this rule, if adopted, will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal management program of the State of Alaska. This determination has been submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act.

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

NMFS has previously conducted a formal consultation on the original Amendment 18 under section 7 of the Endangered Species Act (ESA). The resulting biological opinion, dated March 4, 1992, concluded that the Amendment was not likely to jeopardize the continued existence of any endangered or threatened species or critical habitat. Since revised Amendment 18 is not expected to result in any effects to listed species that were not considered in the March 4, biological opinion, further consultation under section 7 is not required. NMFS will continue to evaluate the suitability of the existing management measures in the southeastern Bering Sea shelf to ensure adequate protection for Steller sea lions.

List of Subjects in 50 CFR Parts 672 and 675

Fisheries, Reporting and recordkeeping requirements.

Dated: October 2, 1992.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 672 and 675 are proposed to be amended as follows:

PART 672—GROUNDFISH OF THE GULF OF ALASKA

1. The authority citation for 50 CFR part 672 continues to read as follows:

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

2. In § 672.2, the existing definition of "inshore component" is revised to read as follows:

§ 672.2 Definitions.

* * * * *

Inshore component (applicable through December 31, 1995) means that part of the U.S. groundfish fishery off Alaska that includes:

(1) All shoreside processing operations;

(2) All processor vessels that process, on a daily average during any weekly reporting period, less than 18 metric tons of Pacific cod harvested in the Gulf of Alaska and pollock in aggregate round weight equivalents, and are less than 125 feet (38.1 m) in length overall; and

(3) All processor vessels in Alaska State waters (waters adjacent to the State of Alaska and shoreward of the EEZ) that process, at a single geographic location during a fishing year, pollock harvested in a directed fishery for pollock, or Pacific cod harvested in a directed fishery for Pacific cod in the Gulf of Alaska, and that submit a check-in notice and weekly production report as required at § 672.5(c) of this part. For purposes of this definition, a single geographic location will be determined by the geographic coordinates reported on a check-in notice submitted by the vessel operator when that vessel engages in a directed fishery for Pacific cod in the Gulf of Alaska or pollock for the first time in a fishing year.

* * * * *

3. In § 672.7, paragraph (h)(1) is revised to read as follows:

§ 672.7 Prohibitions.

* * * * *

(h) * * *

(1) Operate any vessel in more than one of the three categories included in the definition of "inshore component," at § 672.2 of this part, during any fishing year.

* * * * *

4. Section 672.20 is amended by removing paragraph (a)(2)(v)(C), and revising paragraphs (a)(2)(v) (A) and (B) to read as follows:

§ 672.20 General limitations.

(a) * * *

(2) * * *

(v) * * *

(A) The DAP apportionment of pollock in all regulatory areas and for each quarterly reporting period described in paragraph (a)(2)(iv) of this section will be allocated entirely to vessels catching pollock for processing by the inshore component after subtraction of an amount that is projected by the Regional Director to be caught by, or delivered to, the offshore component incidental to directed fishing for other groundfish species. The Regional Director may establish separate directed fishing allowances and prohibitions authorized under paragraph (c)(2) of this section for vessels catching pollock for processing by the inshore component and for vessels catching pollock for processing by the offshore component. If the Regional Director determines that the inshore component will not be able to process the entire amount of pollock allocated to vessels catching pollock for processing by the inshore component during a fishing year, then NMFS will publish a notice in the **Federal Register** that reallocates the projected unused amount of pollock to vessels catching pollock for processing by the offshore component.

(B) The DAP apportionment of Pacific cod in all regulatory areas will be allocated 90 percent to vessels catching Pacific cod for processing by the inshore component and 10 percent to vessels catching Pacific cod for processing by the offshore component. The Regional Director may establish separate directed fishing allowances and prohibitions authorized under paragraph (c)(2) of this section for vessels catching Pacific cod for processing by the inshore component and for vessels catching Pacific cod for processing by the offshore component. If, during a fishing year, the Regional Director determines that either the inshore or offshore component will not be able to process the entire amount of Pacific cod allocated to vessels catching Pacific cod for processing by that component, then NMFS will publish a notice in the **Federal Register** That reallocates the projected unused amount of Pacific cod to vessels catching Pacific cod for processing by the other component.

* * * * *

PART 675—GROUNDFISH OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

5. The authority citation for 50 CFR part 675 continues to read as follows:

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

6. In § 675.2, the definitions of "inshore component" and "offshore component" are revised to read as follows:

§ 675.2 Definitions

* * * * *

Inshore component (applicable through December 31, 1995) means that part of the U.S. groundfish fishery off Alaska that includes:

(1) All shoreside processing operations;

(2) All processor vessels that process, on a daily average during any weekly reporting period, less than 18 mt of Pacific cod harvested in the Gulf of Alaska and pollock in aggregate round weight equivalents, and are less than 125 feet (38.1 m) in length overall; and

(3) All processor vessels in Alaska State waters (waters adjacent to the State of Alaska and shoreward of the EEZ) that process, at a single geographic location during a fishing year, pollock harvested in a directed fishery for pollock, or Pacific cod harvested in a directed fishery for Pacific cod in the Gulf of Alaska, and that submit a check-in notice and weekly production report as required at § 672.5(c) of this part. For purposes of this definition, a single geographic location will be determined by the geographic coordinates reported on a check-in notice submitted by the vessel operator when that vessel engages in a directed fishery for Pacific cod in the Gulf of Alaska or pollock for the first time in a fishing year.

* * * * *

Offshore component (applicable through December 31, 1995) means all processor vessels in the U.S. groundfish fisheries off Alaska not included in the definition of "inshore component."

* * * * *

7. In § 675.7, the heading of paragraph (i) and paragraph (i)(1) are revised to read as follows:

§ 675.7 Prohibitions.

* * * * *

(i) *Applicable through December 31, 1995.* (1) Operate any vessel in more than one of the three categories included in the definition of "inshore component," at § 675.2 of this part, during any fishing year.

* * * * *

8. In § 675.20, paragraph (a)(2)(iii) is revised to read as follows:

§ 675.20 General limitations.

(a) * * *

(2) * * *

(iii) *Applicable through December 31, 1995.* The 1993 DAP apportionment of pollock in each subarea, and for each seasonal allowance defined in paragraph (a)(2)(ii) of this section, will be allocated 35 percent to vessels catching pollock for processing by the inshore component and 65 percent to vessels catching pollock for processing by the offshore component. The 1994 and 1995 DAP apportionment of pollock in each subarea, and for each seasonal allowance defined in paragraph (a)(2)(ii) of this section, will be allocated 37.5 percent to vessels catching pollock for processing by the inshore component and 62.5 percent to vessels catching pollock for processing by the offshore component. The Regional Director may establish separate directed fishing allowances and prohibitions authorized under paragraphs (a)(8) and (a)(9) of this section for vessels catching pollock for processing by the inshore component and for vessels catching pollock for processing by the offshore component. If, during a fishing year, the Regional Director determines that either the inshore or offshore component will not be able to process the entire amount of pollock allocated to vessels catching pollock for processing by that component, then NMFS will publish a notice in the **Federal Register** that

reallocates the projected unused amount of pollock to vessels catching pollock for processing by the other component.

* * * * *

9. In § 675.22, existing paragraph (g) is revised to read as follows:

§ 675.22 Time and area closures.

* * * * *

(g) *Catcher vessel operational area (applicable through December 31, 1995).* Processor vessels in the "offshore component," defined at § 675.2 of this part, may not catch pollock in excess of the directed fishing standard for pollock during the second seasonal allowance of pollock, defined in paragraph (a)(2)(ii) of this section, in the Bering Sea subarea south of 56°00′ N. latitude, and between 163°00′ and 168°00′ W. longitude. Processor vessels in the "offshore component" that do not catch groundfish but process pollock that is caught in a directed fishery for pollock by catcher vessels, may operate within this area to process the second seasonal allowance of pollock. Offshore processor vessels that catch or process groundfish in directed fisheries for species other than pollock, may operate within this area.

[FR Doc. 92-24362 Filed 10-5-92; 10:14 am]
BILLING CODE 3510-22-M

---

50 CFR Part 675

[Docket No. 920944-2244]

RIN 0648-AE80

Groundfish Fishery of the Bering Sea and Aleutian Islands Area

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement the Western Alaska Community Development Quota (CDQ) program pursuant to Amendment 18 to the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands (BSAI) Area. This action is necessary to describe management of the CDQ program. It is intended to promote the goals and objectives of the North Pacific Fishery Management Council (Council) with respect to groundfish management in the BSAI area.

DATES: Comments on the implementation of this proposed rule during the balance of 1992 and for the year 1993 are invited until October 23, 1992. Comments on the implementation of this proposed rule during the years 1994–1995 are invited until November 16, 1992.

ADDRESSES: Comments may be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802 or delivered to the Federal Building Annex, Suite 6, 9109 Mendenhall Mall Road, Juneau, AK. Individual copies of the environmental assessment/regulatory impact review/initial regulatory flexibility analysis (EA/RIR/IRFA) may also be obtained from this address. Comments on the environmental assessment are requested.

FOR FURTHER INFORMATION CONTACT: David C. Ham, Fishery Management Biologist, Alaska Region, NMFS, 907-586-7229.

SUPPLEMENTARY INFORMATION:

Background

Domestic and foreign groundfish fisheries in the exclusive economic zone of the BSAI area are managed by the Secretary of Commerce (Secretary) in accordance with the BSAI FMP. The FMP was prepared by the Council under the Magnuson Fishery Conservation and Management Act (Magnuson Act) and is implemented by regulations for the foreign fishery at 50 CFR 611.93 and for the U.S. fishery at 50 CFR part 675. General regulations that also pertain to the U.S. fishery appear at 50 CFR part 620.

The FMP allows certain measures to be changed by regulatory amendments without amending the FMP itself. This action proposes a regulatory amendment which would implement the CDQ program that was approved in concept as part of Amendment 18 to the FMP for the BSAI area.

Amendment 18, or the "inshore/offshore" amendment for the BSAI, was partially disapproved by the Secretary on March 4, 1992. The approved portion of Amendment 18 included inshore/offshore allocations for 1992 and the CDQ program, in concept, for a temporary period from 1992 through 1995.

The final rule implementing Amendment 18 (57 FR 23321, June 3, 1992) provided only for the basic allocation of pollock for the CDQ program. The CDQ allocation provides for 7.5 percent of the pollock total allowable catch (TAC), or one-half of the non-specific reserve, for each BSAI subarea to be set aside for the CDQ program. This regulatory amendment would implement the CDQ program by providing regulations that specify the contents of Community Development Plans (CDPs) and the criteria and procedures for apppoval by the Secretary. Approval of a CDP by the Secretary would result in allocations of portions of the "CDQ reserve" to specific western Alaska communities.

The CDQ program was proposed to help develop commercial fisheries in western Alaska communities. These communities are isolated and have few natural resources with which to develop their economies. Unemployment rates are high, resulting in substantial social problems. However, these communities are geographically located near the fisheries resources of the Bering Sea, and have the possibility of developing a commercial fishing industry. Although fisheries resources exist adjacent to these communities, the ability to participate in these fisheries is difficult without start-up support. This CDQ program is intended to provide the means to start regional commercial fishing projects that could develop into ongoing commercial fishing industries.

Current regulations require publication of proposed and final specifications of the pollock TAC in the **Federal Register** under 50 CFR 675.20(a). Regulations at § 675.20(a)(3) require 15 percent of the amount of the TAC specified for pollock in each subarea defined at § 675.2 to be placed automatically in a reserve that is not specific to any species. Under the proposed CDQ program, one-half of this reserve amount for each subarea would be assigned to the CDQ reserve. During the years 1993, 1994, and 1995, the Secretary, consultation with the Council, would publish proposed and final seasonal allowances of the CDQ reserve in the **Federal Register** under procedures provided for at § 675.20(a)(7). For the 1992 fishing year, the CDQ reserve would be 101,445 metric tons (mt), which is one-half of the pollock component of the non-specific reserve established for 1992. Once established, the CDQ amounts will be separate from proposed and final seasonal allowances of the pollock TAC provided for in § 675.20(a)(7).

Vessels conducting directed fishing for any CDQ reserve would be subject to all regulations in 50 CFR part 675. Unless prohibited by regulations, vessel operators may conduct directed fishing for a CDQ reserve during times and in areas closed to directed fishing for pollock TAC. The Secretary, in consultation with the Council, may limit the amounts of CDQ reserve that may be harvested during the roe or "A" season (January 1–April 15) and the non-roe or "B" season (June 1–December 31) provided at § 675.20(a)(2)(ii). For 1992, all of the 101,445 mt CDQ reserve would

be available from the effective date of the final rule until December 31, 1992, subject to other regulatory actions.

The communities could use their CDQ allocation by harvesting the fish with their own vessels and selling or processing the fish, or by entering into partnerships with harvesting vessels that would pay the CDQ communities in return for harvesting the communities' pollock allocation. Because most of the communities lack much of the infrastructure necessary to harvest pollock directly, many communities may initially sell their allocation of CDQ pollock to operators of vessels in the existing pollock fleet. The resulting income could be used to develop a pollock fishing infrastructure, or could be used to develop other BSAI fisheries. The types of fishery projects that could be funded by selling the harvesting of CDQ allocation could be any project that promotes development of the communities' commercial fishing industries. For example, proceeds from the sale of the CDQ allocation could be used to develop the harvesting of underutilized species, hook-and-line fisheries, processing capabilities, or basic fishery infrastructure to support the harvest of pollock or other species.

The following information outlines the proposed Federal CDQ Program regulations and explains their intent in more detail.

Eligible Community

NMFS is proposing the following criteria to identify communities eligible to apply for approval of CDPs with CDQ allocations of pollock. The criteria were developed by the Governor of the State of Alaska (Governor), in consultation with the Council. The Secretary has determined that the communities listed in Table 1 at § 675.27 meet these criteria; however, communities that may be eligible for CDPs and CDQ allocations of pollock are not limited to those listed in this table.

(1) For a community to be eligible, it must be located within 50 nautical miles from the baseline from which the breadth of the territorial sea is measured along the Bering Sea coast from the Bering Strait to the western most of the Aleutian Islands, or on an island within the Bering Sea. A community is not eligible if it is located on the Gulf of Alaska coast of the North Pacific Ocean even if it is within 50 nautical miles of the baseline of the Bering Sea.

(2) The community must be certified by the Secretary of the Interior pursuant to the Native Claims Settlement Act (Publ. L. 92–203) to be a native village.

(3) The residents of the community must collectively conduct more than one-half of their current commercial or subsistence fishing effort in the waters of the Bering Sea.

(4) The community must not have previously developed harvesting or processing capability sufficient to support substantial fisheries participation in the BSAI, except if the community can show that CDQ benefits would be the only way to realize a return from previous investments. Unalaska and Akutan are the only two communities at this time that would be excluded under this provision.

Prior to approval of the Governor's recommendations for approval of CDPs and CDQ allocations of pollock, the Secretary would review the Governor's findings as to how the communities meet these criteria.

CDP Application Contents

Under the proposed regulations, a qualified applicant from an eligible community or group of communities may apply for approval of a CDP but may not concurrently be a recipient of more than one CDQ allocation. To prevent monopolization of CDQ allocations and ensure an adequate distribution of benefits from the CDQ program, the Secretary would allocate no more than 33 percent of the total CDQ reserve of the BSAI to any approved CDP application. A CDP would consist of three parts: (1) Community development information; (2) business information; and (3) a statement of the managing organization's qualifications.

Community development information includes goals, objectives and information concerning the project(s) that will develop the fishing industry in the community(ies). The business information section of a CDP includes information about the catching and harvesting of CDQ pollock, and information about the business aspects of the fisheries development project(s) of the community(ies). The statement of the managing organization's qualifications includes information to ensure that he managing organization, whether it is the CDP applicant or a group contracted by the CDP applicant, is qualified and has the ability to properly manage the harvesting of the CDQ pollock and the fisheries development project(s) of the community(ies).

The intent of these regulations is that all applications for CDPs, which include requests for CDQs, would be similarly structured to facilitate their review and comparison. These standards are expected to reduce the need for follow-up information and should minimize administrative expenses for application review and evaluation.

Secretarial Review and Approval of Community Development Plans

The Governor, after consultation with the Council, would recommend specific CDPs to the Secretary. The Governor's recommendations may support all or part of the percentage of CDQ pollock and the number of years of CDQ allocation requested by an applicant. The total CDQ allocation included in the CDPs recommended by the Governor may not exceed the total amount of CDQ reserve.

Upon receipt by the Secretary of the Governor's recommendations, including his set of findings that the CDPs meet the requirements of these regulations and the Alaska Coastal Management Program, the Secretary will review the record of the Governor's findings, the transcript or summary of the public hearings held by the Governor in making the recommendations, and other information deemed relevant to the Secretary to determine if the eligibility conditions and approval criteria set forth in these regulations have been met. The Secretary shall then approve or disapprove the Governor's recommendations.

In the event of approval, the Secretary shall prepare a set of findings with respect to the requirements of these regulations. The Governor and the Council shall be notified in writing of the Secretary's decision, including the findings. Publication of the decision, including the allocation of portions of the CDQ reserve for each subarea to the specific CDPs and the availability of the findings, will appear in the **Federal Register**.

In the event the Secretary disapproves the recommendation of the Governor, the Secretary shall advise the Governor and the Council in writing, including the reasons therefor. Publication of the decision will appear in the **Federal Register**.

Monitoring of CDPs

A CDP could include single or multi-year pollock allocations representing a percentage of the TAC for each BSAI subarea. For single year allocations, a final report would be required to be submitted by June 30 annually to the Governor showing how the CDP's goals and objectives were met as set forth at § 675.27(e)(1). For multi-year allocations, annual reports would also be required to be submitted by June 30 to the Governor. Failure to submit an annual report could result in suspension or termination of a CDP. The Governor would then review

the status of the project and determine whether the project is being managed according to the provisions of the original CDP, and submit an annual report with recommendations on whether to continue the multi-year allocation to the Secretary for approval.

The Governor must be notified of and approve amendments to an approved CDP and submit a recommendation for approval of the amendment to the Secretary. Amendments to a CDP of which the Governor must be notified are those set forth at § 675.27(e)(3)(i) and include any change in the relationships among the business partners, the profit sharing arrangements, the CDP budget, the management structure, or audit procedures or control.

Suspension or Termination of a CDP

If any applicant fails to notify the Governor of an amendment to a CDP or if a multi-year CDP appears unlikely to meet its goals and objectives or the recipient of a CDQ is deviating from the approved CDP, the Governor may submit a recommendation to the Secretary that the CDP be suspended or terminated. The Governor must set out in writing his reasons for recommending suspension or termination of the CDP. After review of the Governor's recommendation and reasons, the Secretary would notify the Governor in writing of her approval or disapproval of his recommendation. If the Secretary approves the Governor's recommendation, NMFS would publish a notice in the **Federal Register** that the CDP has been suspended or terminated, with reasons for the Secretary's decision. The Secretary may also suspend or terminate any CDP at any time if the Secretary finds that a recipient of a CDQ allocation is not complying with these regulations or any other regulations and provisions of the Magnuson Act or other applicable law, or if the FMP is amended.

Recordkeeping and Reporting

The harvest of CDQ pollock would be tracked through the existing Federal recordkeeping and reporting system. A unique CDQ number would be issued to each approved CDP at the time CDQ allocations are made. This number would be written on existing forms that would identify each landing as a CDQ landing to be entered into the Federal fisheries landing database. The vessel operator would be required to write the CDQ number on the Daily Fishing Logbook, and the processor would be required to write the CDQ number on the Daily Cumulative Production Logbook and the Weekly Production Report that currently are required at § 675.5.

Operators of Federally permitted vessels harvesting CDQ pollock would be required to comply with existing regulations at 50 CFR part 675. The Council may consider, and the Secretary may implement, additional regulatory amendments that might apply to CDQ pollock harvesting. An approved CDP with an allocation of CDQ pollock does not guarantee a specific amount of pollock to approved CDP's. Instead, a CDQ allocation under an approved CDP provides an exclusive harvest privilege that may be fulfilled at the discretion of the Secretary and only in compliance with all fishery regulations.

NMFS preliminarily has determined that the CDQ program is consistent with the FMP and proposes this regulatory amendment. The State of Alaska is implementing regulations that will be compatible with these proposed Federal regulations. The State of Alaska regulations will serve as the standards and criteria for the Governor's development of CDPs and his recommendation to the Secretary for approval. State of Alaska regulations would be in effect on or before a date that the Secretary approves these regulations. The State's regulations will include provisions for notifying the public when the Governor is accepting CDP applications.

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has initially determined that this proposed rule is necessary for the conservation and management of the groundfish fishery off Alaska and that it is consistent with the Magnuson Act and other applicable law.

The Alaska Region, NMFS, prepared an EA for this proposed rule that discusses the impacts on the environment as a result of this rule. The public may obtain a copy of the EA from the Fisheries Management Division, Alaska Region, and comments on it are requested (see **ADDRESSES**).

The initial regulatory flexibility analysis (IRFA), prepared as part of the EA/RIR/IRFA, concludes that this proposed rule, if adopted, would have significant effects on small entities. Information contained in the IRFA is summarized below.

This proposed rule would transfer 7.5 percent of the Bering Sea and Aleutian Islands pollock TACs to western Alaskan communities. In 1992, 7.5 percent of these TACs amounts to 101,370 metric tons. If this is valued at an ex-vessel price of $0.107 per pound (0.45 kilograms), the total is about $24 million. If the resource rent is 10 percent, the potential proceeds accruing to disadvantaged western Alaskan communities would be approximately $2.4 million. These proceeds would be used to fund fisheries development projects in order to establish a permanent commercial fishing industry, which would be a basis for future regional economic growth.

A copy of this document may be obtained from the Fisheries Management Division, Alaska Region (see **ADDRESSES**).

NMFS concluded formal section 7 consultations on Amendment 18 to the BSAI FMP on March 4, 1992. The biological opinion issued for the consultation concluded that operation of the fishery under this amendment proposal, including the CDQ program, is not likely to jeopardize the continued existence and recovery of any endangered or threatened species. Adoption of the management measures described in this proposed rule will not affect listed species in a way that was not already considered in the aforementioned biological opinion. Therefore, NMFS has determined that no further section 7 consultation is required for adoption of this action.

This proposed rule and its implementing regulations will not have a significant impact on marine mammals that has not already been considered under the Endangered Species Act.

The Assistant Administrator has initially determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under E.O. 12291. The proposed rule, if adopted, is not likely to result in an annual effect on the economy of $100 million or more: a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies or geographic regions; or a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. Based on the socioeconomic impacts discussed in the EA/RIR/IRFA prepared by the Alaska Region, NMFS concluded that none of the proposed measures in this rule would cause impacts considered significant for purposes of E.O. 12291.

This rule involves collection-of-information requirements subject to the Paperwork Reduction Act (PRA) of 1980 (44 U.S.C. 3501 *et seq.*) that have been approved by the Office of Management and Budget (OMB) under control number 0648–0213. The rule also contains new requirements and a request for approval has been submitted to OMB. Public reporting burden for the new collections is estimated to average 160 hours per

response for applications, 40 hours per response for amendments, and 40 hours for annual report submissions. This includes 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 these burden estimates or any other aspect of the data requirements, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (ATTN: NOAA Desk Officer).

NMFS has determined that this proposed rule, if adopted, will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal management program of the State of Alaska. This determination has been submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act.

The Department of Commerce's Federal Officer has determined that this proposed rule has sufficient federalism implications to warrant preparation of a federalism assessment (FA) under E.O. 12612. An FA has been prepared, which concludes that there are no provisions or elements of this proposed rule that are inconsistent with the principles, criteria, and requirements set forth in section 2 through 5 of E.O. 12612. Further, this proposed rule does not affect Alaska's ability to discharge traditional state governmental functions, or other aspects of state sovereignty.

List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

Dated: October 1, 1992.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 675 is proposed to be amended as follows:

PART 675—GROUNDFISH OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

1. The authority citation for 50 CFR part 675 continues to read as follows:

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

2. In § 675.2, new definitions of "Community Development Plan," "Community Development Quota," "Community Development Quota Program," "Community Development Quota Reserve," and "Governor" are added in alphabetical order to read as follows:

§ 675.2 Definitions.

* * * * *

Community Development Plan (CDP) (applicable through December 31, 1995) means a plan for a specific Western Alaska community or group of communities approved by the Governor of the State of Alaska and recommended to the Secretary under § 675.27 of this part.

Community Development Quota (CDO) (applicable through December 31, 1995) means a western Alaska community development quota for pollock assigned to an approved CDP. All CDQs, in the aggregate, equal one-half of 15 percent of the total allowable catch specified for pollock that is placed in reserve under § 675.20(a)(3) of this part.

Community Development Quota Program (CDO Program) (applicable through December 31, 1995) means the Western Alaska Community Development Program implemented under § 675.27 of this part.

Community Development Quota Reserve (CDO reserve) (applicable through December 31, 1995) means one-half of 15 percent of the total allowable catch specified for pollock in each subarea that is placed in reserve under § 675.20(a)(3) of this part.

* * * * *

Governor means the Governor of the State of Alaska.

* * * * *

3. In § 675.7, paragraphs (j) and (k) are redesignated as (k) and (l), respectively, and a new paragraph (j) is added to read as follows:

§ 675.7 Prohibitions.

* * * * *

(j) *Applicable through December 31, 1995.* Participate in a Western Alaska Community Development Quota program in violation of § 675.27 of this part or submit information that is false or inaccurate with a CDP application or request for an amendment.

* * * * *

4. In § 675.20, paragraphs (a)(3)(i), (a)(3)(ii), (a)(3)(iii), the first sentence of (a)(7)(i), and the first sentence of (a)(7)(ii), are revised and a new paragraph (e)(2)(iv) is added to read as follows:

§ 675.20 General limitations.

(a) * * *

(3) * * *

(i) *Applicable through December 31, 1995.* Any amounts of the nonspecific reserve that are reapportioned to pollock as provided by paragraph (b) of this section must be apportioned between inshore and offshore components in the same proportion specified in paragraph (a)(2)(iii) of this section.

(ii) *Applicable through December 31, 1995.* In the publications of proposed and final harvest limit specifications required under § 675.20(a) of this part, one half of the pollock TAC placed in the reserve for each subarea will be assigned to a CDQ reserve for each subarea. NMFS may add any amount of a CDQ reserve back to the nonspecific reserve if, after September 30, the Regional Director determines that amount will not be used during the remainder of the fishing year.

(iii) *Applicable through December 31, 1995—Applicationion for approval of a CDP and CDQ allocation.* In accordance with Secretarial action under § 675.27 of this part, NMFS may allocate portions of the CDQ reserve for each subarea to one or more eligible communities or groups of communities that have an approved CDP. Applications for a CDP and CDQ allocations of pollock must contain the information described in § 675.27(c) of this part. In addition to the requirements in § 675.27, vessels participating in the CDQ program must comply with regulations in this part.

* * * * *

(7) * * *

(i) *Proposed specifications and interim harvest amounts.* As soon as practicable after consultation with the Council, NMFS will publish an action in the **Federal Register** specifying, for the succeeding fishing year, proposed annual TAC and initial TAC amounts for each target species and "other species" category and apportionments thereof among DAP, JVP, and TALFF; prohibited species catch allowances established under § 675.21(b) of this part; seasonal allowances of the pollock TAC; and seasonal allowances of the pollock CDQ reserve. * * *

(ii) *Final specifications.* NMFS will consider comments on the proposed specifications received during the comment period and, after consultation with the Council, will publish an action in the **Federal Register** specifying the final annual TAC for each target species and the "other species" category and apportionments thereof, final prohibited species catch allowances established under § 675.21(b) of this part, final seasonal allowances of the pollock TAC; and seasonal allowances of the pollock CDQ reserve. * * *

* * * * *

(e) * * *

(2) * * *

(iv) Exceeding a CDQ as defined at § 675.2 of this part.

* * * * *

5. A new § 675.27 is added to read as follows:

§ 675.27 Western Alaska Community Development Quota Program (Applicable Through December 31, 1995).

(a) *State of Alaska CDO regulations.* (1) The State of Alaska must be able to ensure implementation of the CDPs once approved by the Secretary. To accomplish this, the State must establish a monitoring system that defines what constitutes compliance and non-compliance.

(2) Prior to granting approval of a CDP by the Governor, the Secretary shall find that the Governor developed and approved the CDP after conducting at least one public hearing, at an appropriate time and location in the geographical area concerned, so as to allow all interested persons an opportunity to be heard. The hearing(s) on the CDP do not have to be held on the actual document submitted to the Governor under section § 675.27(b). Such hearing(s) must cover the substance and content of the proposed CDP in such a manner that the general public, and particularly the affected parties, have a reasonable opportunity to understand the impact of the CDP. The Governor must provide reasonable public notice of hearing date(s) and location(s). The Governor must make available for public review, at the time of public notice of the hearing, all state materials pertinent to the hearing(s). The Governor must include a transcript or summary of the public hearing(s) with the Governor's recommendations to the Secretary in accordance with § 675.27. At the same time this transcript is submitted to the Secretary, it must be made available, upon request, to the public. The public hearing held by the Governor will serve as the public hearing for purposes of Secretarial review under § 675.27(c).

(b) *CDP application.* The Governor, after consultation with the Council, shall include in his written findings to the Secretary recommending approval of a single or multi-year CDP, that the CDP meets the requirements of these regulations, the Magnuson Act, the Alaska Coastal Management Program, and other applicable law. At a minimum, the submission must discuss the determination of a community as eligible; information regarding community development, including goals and objectives; business information; and a statement of the managing organization's qualifications. For purposes of this section, an eligible community includes any community or group of communities that meets the critria set out in paragraph (d)(2) of this section. Applications for a CDP must include the following information:

(1) *Community development information.* Community development information includes:

(i) The goals and objectives of the CDP;

(ii) The allocation of CDQ pollock requested for each subarea defined at § 675.2;

(iii) The length of time the CDP and allocation will be necessary to achieve the goals and objectives of the CDP, including a project schedule with measurable milestones for determining progress;

(iv) The number of individuals to be employed under the CDP, the nature of the work provided, the number of employee-hours anticipated per year, and the availability of labor from the applicant's community(ies);

(v) Description of the vocational and educational training programs that a CDQ allocation under the CDP would generate;

(vi) Description of existing fishery-related infrastructure and how the CDP would use or enhance existing harvesting or processing capabilities, support facilities, and human resources;

(vii) Description of how the CDP would generate new capital or equity for the applicant's fishing or processing operations;

(viii) A plan and schedule for transition from reliance on the CDQ allocation under the CDP to self-sufficiency in fisheries; and

(ix) A description of short- and long-term benefits to the applicant from the CDQ allocation.

(2) *Business information.* Business information includes:

(i) Description of the intended method of harvesting the CDQ allocation, including the types of products to be produced; amounts to be harvested; when, where, and how harvesting is to be conducted; and names and permit numbers of the vessels that will be used to harvest a CDQ allocation.

(ii) Description of the target market for sale of products and competition existing or known to be developing in the target market;

(iii) Description of business relationships between all business partners or with other business interests, if any, including arrangements for management, audit control, and a plan to prevent quota overages. For this section, business partners means all individuals who have a financial interest in the CDQ project.

(iv) Description of profit sharing arrangements;

(v) Description of all funding and financing plans;

(vi) Description of joint venture arrangements, loans, or other partnership arrangements, including the distribution of proceeds among the parties;

(vii) A budget for implementing the CDP;

(viii) A list of all capital equipment;

(ix) A cash flow and break-even analysis; and

(x) A balance sheet and income statement, including profit, loss, and return on investment on all business ventures within the previous 12 months by the applicant and/or the managing organization.

(3) *Statement of managing organization's qualifications.* (i) Statement of the managing organization's qualifications includes information regarding its management structure and key personnel, such as resumes and references;

(ii) Description of how the managing organization is qualified to manage a CDQ allocation and prevent quota overages; For purposes of this section, a qualified managing organization means any organization or firm that would assume responsibility for managing all or part of the CDP and would meet the following criteria:

(A) Documentation of support from each community represented by the applicant for a CDP through an official letter of support approved by the governing body of the community;

(B) Documentation of a legal relationship between the CDP applicant and the managing organization, which clearly describes the responsibilities and obligations of each party as demonstrated through a contract or other legally binding agreement; and

(C) Demonstration of management and technical expertise necessary to carry out the CDP as proposed by the CDP application.

(c) *Secretarial review and approval of CDPs.* (1) Upon receipt by the Secretary of the Governor's recommendation for approval of proposed CDPs, the Secretary will review the record to determine whether the community eligibility criteria and the evaluation criteria set forth in paragraph (d) of this section have been met. The Secretary shall then approve or disapprove the Governor's recommendation within 45 days of its receipt. In the event of approval, the Secretary shall notify the Governor and the Council in writing that the Governor's recommendations for CDPs are consistent with the community

eligibility conditions and evaluation criteria under paragraph (d) of this section and other applicable law, including the Secretary's reasons for approval. Publication of the decision, including the percentage of the CDQ reserve for each subarea allocated under the CDPs, and the availability of the findings will appear in the **Federal Register**. The Secretary will allocate no more than 33 percent of the total CDQ to any approved CDP application. A community may not concurrently receive more than one pollock CDQ allocation, and only one CDP per community will be accepted.

(2) If the Secretary finds that the Governor's recommendations for CDQ allocations are not consistent with the criteria set forth in these regulations and disapproves the Governor's recommendations, the Secretary shall so advise the Governor and the Council in writing, including the reasons therefor. Publication of the decision will appear in the **Federal Register**. The CDP applicant may submit a revised CDP to the Governor for submission to the Secretary. Review by the Secretary of a revised CDP application will be in accordance with the provisions set forth in this section.

(d) *Evaluation criteria*. The Secretary will approve the Governor's recommendations for CDPs if the Secretary finds the CDP is consistent with the requirements of these regulations, including the following:

(1) Each CDP application is submitted in compliance with the application procedures described in § 675.27(b);

(2) Prior to approval of a CDP recommended by the Governor, the Secretary will review the Governor's findings as to how each community(ies) meet the following criteria for an eligible community:

(i) For a community to be eligible, it must be located within 50 nautical miles from the baseline from which the breadth of the territorial sea is measured along the Bering Sea coast from the Bering Strait to the western most of the Aleutian Islands, or on an island within the Bering sea. A community is not eligible if it is located on the Gulf of Alaska coast of the North Pacific ocean even if it is within 50 nautical miles of the baseline of the Bering Sea.

(ii) The community must be certified by the Secretary of the Interior pursuant to the Native Claims Settlement Act (Pub. L. 92–203) to be a native village.

(iii) The residents of the community must conduct more than one-half of their current commercial or subsistence fishing effort in the waters of the Bering Sea.

(iv) The community must not have previously developed harvesting or processing capability sufficient to support substantial fisheries participation in the BSAI, except if the community can show that benefits from an approved CDP would be the only way to realize a return from previous investments. The communities of Unalaska and Akutan are excluded under this provision.

(3) Each CDP application demonstrates that a qualified managing organization will be responsible for the harvest and use of the CDQ allocation pursuant to the CDP;

(4) Each CDP application demonstrates that its managing organization can effectively prevent exceeding the CDQ allocation; and

(5) The Governor has found for each recommended CDP that:

(i) The CDP and the managing organization are fully described in the CDQ application, and have the ability to successfully meet the project milestones and schedule;

(ii) The managing organization has an adequate budget for implementing the CDP, and that the CDP is likely to be successful;

(iii) A qualified applicant has submitted the CDP application and that the applicant and managing organization have the support of each community participating in the proposed CDQ project as demonstrated through an official letter approved by the governing body of each such community; and

(iv) That the following factors have been considered:

(A) The number of individuals from applicant communities who will be employed under the CDP, the nature of their work, and career advancement;

(B) The number and percentage of low income persons residing in the applicant communities, and the economic opportunities provided to them through employment under the CDP;

(C) The number of communities cooperating in the application; and

(D) The relative benefits to be derived by participating communities and the specific plans for developing a selfsustained fisheries economy.

(6) For purposes of this paragraph, "qualified applicant"means:.

(i) A local fishermen's organization from an eligible community, or group of eligible communities, that is incorporated under the laws of the State of Alaska, or under Federal law, and whose board of directors is composed of at least 75 percent resident fishermen of the community (or group of communities) that is (are) making an application; or

(ii) A local economic development organization incorporated under the laws of the State of Alaska, or under Federal law, specifically for the purpose of designing and implementing a CDQ project, and that has a board of directors composed of at least 75 percent resident fishermen of the community (or group of communities) that is (are) making an application.

(7) For the purpose of this paragraph, "resident fisherman" means an individual with documented commercial or subsistence fishing activity who maintains a mailing address and permanent domicile in the community and is eligible to receive an Alaska Permanent Fund dividend at that address.

(8) If a qualified applicant represents more than one community, the board of directors of the applicant must include at least one member from each of the communities represented.

(e) *Monitoring of CDPs (applicable through December 31, 1995)*. (1) Applicants for single-year CDPs are required to submit final reports and applicants for multi-year CDPs are required to submit annual reports to the Governor by June 30 of the year following CDP approval and CDQ allocation. Multi-year CDP annual reports will include information describing how the CDP has met its milestones, goals, and objectives. The Governor will submit an annual report to the Secretary on the final status of all single-year CDPs, and recommend whether multi-year CDPs should be continued. The Secretary must notify the Governor in writing within 45 days of receipt of the Governor's annual report, accepting or rejecting the annual report and the Governor's recommendations on multi-year CDQ projects. If the Secretary rejects the Governor's annual report, the Secretary will return the Governor's annual report for revision and resubmission to the Secretary. The Governor's annual report will be deemed approved if the Secretary does not notify the Governor in writing within 45 days of receipt of the Governor's annual report.

(2) If an applicant requests an increase in CDQ allocation under a multi-year CDP, the applicant must submit a new CDP application for review by the Governor and approval by the Secretary as described in paragraphs (b) and (c) of this section.

(3) Amendments to a CDP will require written notification to the Governor and subsequent approval by the Governor and the Secretary before any change in CDP can occur. The Governor may recommend to the Secretary that the

request for an amendment be approved. The Secretary may notify the Governor in writing of approval or disapproval of the amendment within 30 days of receipt of the Governor's recommendation. The Governor's recommendation for approval of an amendment will be deemed approved if the Secretary does not notify the Governor in writing within 30 days of receipt of the Governor's recommendation. If the Secretary determines that the CDP, if changed, would no longer meet the criteria under paragraph (d) of this section, or if any of the requirements under § 675.27 would not be met, the Secretary shall notify the Governor in writing of the reasons why the amendment cannot be approved.

(i) For the purposes of this section, amendments are defined as substantial changes in a CDP, including, but not limited to, the following:

(A) Any change in the relationships among the business partners;

(B) Any change in the profit sharing arrangements among the business partners, or any change to the budget for the CDP; or

(C) Any change in management structure of the project, including any change in audit procedures or control.

(ii) Notification of an amendment to a CDP shall include the following information:

(A) Description of the proposed change, including specific pages and text of the CDP that will be changed if the amendment is approved by the Secretary; and

(B) Explanation of why the change is necessary and appropriate. The explanation should identify which findings, if any, made by the Secretary in approving the CDP may need to be modified if the amendment is approved.

(f) *Suspension or termination of a CDP (applicable through December 31, 1995).* (1) The Secretary may, at any time, partially suspend, suspend, or terminate any CDP upon written recommendation of the Governor setting out his reasons, that the CDP recipient is not complying with these regulations. After review of the Governor's recommendation and reasons for a partial suspension, suspension, or termination of a CDP, the Secretary will notify the Governor in writing of approval or disapproval of his recommendation within 45 days of its receipt. In the event of approval of the Governor's recommendation, the Secretary will publish an announcement in the **Federal Register** that the CDP has been partially suspended, suspended, or terminated along with reasons therefor.

(2) The Secretary also may partially suspend, suspend, or terminate any CDP at any time if the Secretary finds a recipient of a CDQ allocation pursuant to the CDP is not complying with these regulations or other regulations or provisions of the Magnuson Act or other applicable law or if the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area is amended. Publication of suspension or termination will appear in the **Federal Register** along with the reasons therefor.

(3) The annual report for multi-year CDPs, which is required under paragraph (e) of this section, will be used by the Governor to review each CDP to determine if the CDP and CDQ allocation thereunder should be continued, decreased, partially suspended, suspended, or terminated under the following circumstances:

(i) If the Governor determines that the CDP will successfully meet its goals and objectives, the CDP may continue without any Secretarial action.

(ii) If the Governor recommends to the Secretary that an allocation be decreased, the Governor's recommendation for decrease will be deemed approved if the Secretary does not notify the Governor in writing within 30 days of receipt of the Governor's recommendation.

(iii) If the Governor determines that a CDP has not successfully met its goals and objectives, or appears unlikely to become successful, the Governor may submit a recommendation to the Secretary that the CDP be partially suspended, suspended, or terminated. The Governor must set out in writing his reasons for recommending suspension or termination of the CDP. After review of the Governor's recommendation and reasons therefor, the Secretary will notify the Governor in writing of approval or disapproval of his recommendation within 30 days of its receipt. The Secretary would publish a notice in the **Federal Register** that the CDP has been suspended or, with reasons therefor, terminated.

(g) *CDQ fishing requirements.* All processors and vessels will be responsible for the following recordkeeping and reporting requirements in addition to existing regulations at § 675.5:

(1) Operators of all vessels fishing CDQs must list all CDQ catch on a Daily Fishing Logbook sheet, as required in § 675.5(b)(2), and clearly write their CDQ identification number on the sheet. A separate sheet must be used for CDQ catch.

(2) A processor receiving CDQ landings must list all CDQ landings on a Daily Cumulative Production Logbook sheet, as required in § 675.5(b)(3), and clearly write the CDQ identification number on the sheet. A separate sheet must be used for CDQ landings.

(3) A processor receiving CDQ landings must list all CDQ landings on a Weekly Production Report sheet, as required in § 675.5(c)(2), and clearly write the CDQ identification number on the sheet. A separate sheet must be used for CDQ landings.

Table 1.—Communities Initially Determined To Be Eligible To Apply for Community Development Quotas

Aleutian Region

1. Atka
2. False Pass
3. Nelson Lagoon
4. Nikolski
5. St. George
6. St. Paul

Bering Strait

1. Brevig Mission
2. Diomede/Inalik
3. Elim
4. Gambell
5. Golovin
6. Koyuk
7. Nome
8. Savoonga
9. Shaktoolik
10. St. Michael
11. Stebbins
12. Teller
13. Unalakleet
14. Wales
15. White Mountain

Bristol Bay

1. Alegnagik
2. Clark's Point
3. Dillingham
4. Egegik
5. Ekuk
6. Manokotak
7. Naknek
8. Pilot Point/Ugashik
9. Port Heiden/Meschick
10. South Naknek
11. Sovonoski/King Salmon
12. Togiak
13. Twin Hills

Southwest Coastal Lowlands

1. Alakanuk
2. Chefornak
3. Chevak
4. Eek
5. Emmonak
6. Goodnews Bay
7. Hooper Bay
8. Kipnuk
9. Kongiganak
10. Kotlik
11. Kwigillingok
12. Mekoryuk
13. Newtok
14. Nightmute

15. Platinum
16. Quinhagak
17. Scammon Bay
18. Sheldon's Point
19. Toksook Bay
20. Tununak
21. Tuntutuliak

[FR Doc. 92-24254 Filed 10-2-92; 9:59 am]
BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 57, No. 195
Wednesday, October 7, 1992

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.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Regulation; Public Meetings

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of three meetings of the Committee on Regulation of the Administrative Conference of the United States.

First Meeting

Date: Friday, October 9, 1992.
Time: 11:30 a.m.–3 p.m.

Second Meeting

Date: Thursday, October 22, 1992.
Time: 10 a.m.–1:30 p.m.

Third Meeting

Date: Friday, November 6, 1992.
Time: 10 a.m.–1:30 p.m.

Location: All three meetings will be held at the Administrative Conference of the United States (Library), 2120 L Street, NW., Suite 500, Washington, DC.

Agenda: At each of these meetings, the committee will discuss a study and possible recommendations on De Minimis Settlements Under Superfund. The study was prepared for the Conference by Professors Lewis Kornhauser and Richard L. Revesz, New York University School of Law. The committee may also discuss other pending research projects, as well as the current status of earlier Conference recommendations in connection with a general review of Conference recommendations.

Contact: David M. Pritzker, 202–254–7020.

Public Participation: Attendance at the committee meetings is open to the public, but limited to the space available. Persons wishing to attend should notify the contact person at least one day in advance of the meeting. The committee chairman may permit members of the public to present oral statements at meetings. Any member of the public may file a written statement with a committee before, during, or after a meeting. Minutes of the meetings will be available on request to the contact person. The contact person's mailing address is: Administrative Conference of the United States, 2120 L Street, NW., Suite 500, Washington, DC 20037.

Dated: October 2, 1992.

Michael W. Bowers,
Deputy Research Director.

[FR Doc. 92–24396 Filed 10–6–92; 8:45 am]

BILLING CODE 6110–01–M

DEPARTMENT OF AGRICULTURE

Forest Service

Pacific Southwest Region, California; Legal Appealable Decisions

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: On April 2, 1991 (Vol. 56 No. 63, p. 13448), the Pacific Southwest Region published a list of newspapers in which decisions would be published in accordance with 36 CFR 217.5(d). This list must be updated twice annually.

The April 2, 1991 Pacific Southwest Region list will remain unchanged except for the Angeles National Forest, Arroyo-Seco and Valyermo Ranger Districts. District Decisions will be published in the legal notice section of the newspaper listed in the Supplemental Information section of this notice.

The April 2, 1991 notice lists the newspapers that will be used by all ranger districts, forests, and the Regional Office of the Pacific Southwest Region to publish legal notice of all decisions subject to appeal under 36 CFR 217.

The intended effect of this action is to inform interested members of the public which newspapers will be used to publish legal notices of decisions, thereby allowing them to receive constructive notice of a decision, to provide clear evidence of timely notice, and to achieve consistency in administering the appeals process.

DATES: The list of newspapers will remain in effect until April 1993 when another notice will be published in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Sue Danner, Acting Regional Appeals Coordinator, Pacific Southwest Region, 630 Sansome Street, San Francisco, CA 94111, phone: (415) 705–2553.

SUPPLEMENTARY INFORMATION: On March, 1990, an interim rule amending the administrative appeal procedures at 36 CFR part 217 was published requiring publication of legal notice of decisions subject to appeal. On February 6, 1991, a notice was published in the Federal Register finalizing the interim rule. This newspaper publication of notices of decisions is in addition to direct notice to those who have requested notice in writing and to those known to be interested and affected by a specific decision.

The legal notice is to identify: the decision by title and subject matter; the date of the decision; the name and title of the official making the decision; and how to obtain copies of the decision. In addition, the notice is to state and date the appeal period begins is the day following publication of the notice.

In addition to the principal newspaper listed for each unit, some Forest Supervisors and District Rangers have listed newspapers providing additional notice of their decisions. The timeframe for appeal shall be based on the date of publication of the notice in the first (principal) newspaper listed for each unit.

Angeles National Forest, California

Arroyo-Seco District Ranger decisions:
- Pasadena Star News, Pasadena, California
- Newspaper providing additional notice of Arroyo-Seco decisions:
- Daily News, Los Angeles California

Valyermo District Ranger decisions:
- Antelope Valley Press, Palmdale California

Dated: September 29, 1992.

Joyce T. Muraoka,
Deputy Regional Forester.

[FR Doc. 92–24330 Filed 10–6–92; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (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: Bureau of the Census.

Title: 1993 Annual Survey of Government Employment.

Form Number(s): E–1, E–2, E–3, E–4, E–6, E–7, E–9.

Agency Approval Number: 0607–0452.

Type of Request: Reinstatement of a previously approved collection for which approval has expired.

Burden: 17,646 hours.

Number of Respondents: 27,965.

Avg Hours Per Response: 37 minutes.

Needs and Uses: This is a request for approval of seven data collection forms for use in the 1993 Annual Survey of Government Employment. Data are collected on state and local government employment and wages. Each form is tailored to the particular size and type of government to be surveyed. The Bureau of Economic Analysis uses these data to develop the public sector components of the gross national product and national income accounts, and to develop personal income statistics. The Department of Housing and Urban Development determines the allocation of operating subsidies to local housing authorities based on this survey. The Bureau of Labor Statistics uses data from this survey to assist in the benchmarking of state and local government components of its monthly employment and earnings statistics. In addition, state and local government officials, public interest groups, and professional organizations use these data for analysis and study.

Affected Public: State or local governments.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: October 1, 1992.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 92–24370 Filed 10–6–92; 8:45 am]

BILLING CODE 3510-07-F

International Trade Administration

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Initiation of Process of Revoke Export Trade Certificate of Review No. 89–00004.

SUMMARY: The Secretary of Commerce issued an export trade certificate of review to KIAD International Trading Company, Inc. Because this certificate holder has failed to file an annual report as required by law, the Department is initiating proceedings to revoke the certificate. This notice summarizes the notification letter sent to KIAD International Trading Company, Inc.

FOR FURTHER INFORMATION CONTACT: George Muller, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") [15 U.S.C. 4011–21] authorized the Secretary of Commerce to issue export trade certificates of review. The regulations implementing title III ["the Regulations"] are found at 15 CFR part 325. Pursuant to this authority, a certificate of review was issued on May 16, 1989 to KIAD International Trading Company, Inc.

A certificate holder is required by law (section 308 of the Act, 15 U.S.C. 4018) to submit to the Department of Commerce annual reports that update financial and other information relating to business activities covered by its certificate. The annual report is due within 45 days after the anniversary date of the issuance of the certificate of review [sections 325.14 (a) and (b) of the Regulations]. Failure to submit a complete annual report may be the basis for revocation [sections 325.10(a) and 325.14(c) of the Regulations].

The Department of Commerce sent to KIAD International Trading Company, Inc. on May 6, 1992 a letter containing annual report questions with a reminder that its annual report was due on June 30, 1992. Additional reminders were sent on August 11, 1992, and on September 2, 1992. The Department has received no written response to any of these letters.

On October 2, 1992, and in accordance with section 325.10(c)[2] of the Regulations, a letter was sent by certified mail to notify KIAD International Trading Company, Inc. that the Department was formally initiating the process to revoke its certificate. The letter stated that this action is being taken for the certificate holder's failure to file an annual report.

In accordance with section 325.10(c)(2) of the Regulations, each certificate holder has thirty days from the day after its receipt of the notification letter in which to respond. The certificate holder is deemed to have received this letter as of the date on which this notice is published in the **Federal Register**. For good cause shown, the Department of Commerce can, at its discretion, grant a thirty-day extension for a response.

If the certificate holder decides to respond, it must specifically address the Department's statement in the notification letter that it has failed to file an annual report. It should state in detail why the facts, conduct, or circumstances described in the notification letter are not true, or if they are, why they do not warrant revoking the certificate. If the certificate holder does not respond within the specified period, it will be considered an admission of the statements contained in the notification letter (section 325.10(c)[2] of the Regulations).

If the answer demonstrates that material facts are in dispute, the Department of Commerce and the Department of Justice shall, upon request, meet informally with the certificate holder. Either Department may require the certificate holder to provide the documents or information that are necessary to support its contentions (section 325.10(c)[3] of the Regulations).

The Department shall publish a notice in the **Federal Register** of the revocation or modification or a decision not to revoke or modify (section 325.10(c)[4] of the Regulations). If there is a determination to revoke a certificate, any person aggrieved by such final decision may appeal to an appropriate U.S. district court within 30 days from the date on which the Department's final determination is published in the **Federal Register** (sections 325.10(c)(4) and 325.11 of the Regulations).

Dated: October 2, 1992.

George Muller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 92–24302 Filed 10–6–92; 8.45 am]

BILLING CODE 3510-DR-M

[A-588-823]

Postponement of Preliminary Antidumping Duty Determinations: Professional Electric Cutting Tools (PECTs) and Professional Electric Sanding/Grinding Tools (PESGTs) From Japan

AGENCY: Import Administration, International Trade Administration, Commerce.

EFFECTIVE DATE: October 7, 1992.

FOR FURTHER INFORMATION CONTACT: Brian Smith, Office of Antidumping

Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, at (202) 482-1766.

Postponement

On June 18, 1992, the Department of Commerce (the Department) initiated antidumping duty investigations on PECTs and PESGTs from Japan. The notice stated that we would issue our preliminary determinations on or before November 5, 1992 (57 FR 28483, June 25, 1992).

On September 18, 1992, we notified petitioner and respondent that we intended to postpone the preliminary determinations by 50 days. In accordance with 19 CFR 353.15(b), we find these investigations extraordinarily complicated by reason of respondent's large number of sales transactions, the complex nature of the products under investigation, and novel issues raised such as the class or kind of merchandise issue. Additionally, we find that the respondent is cooperating in these investigations. Therefore, we are postponing the date of the preliminary determinations in these investigations until not later than December 28, 1992. The U.S. International Trade Commission is being advised of this postponement in accordance with section 733(f) of the Tariff Act of 1930, as amended (the Act)

This notice is published pursuant to section 733f(c)(2) of the Act and 19 CFR 353.15(d).

Dated: September 30, 1992.

Rolf Th. Lundberg, Jr.,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 92-24253 Filed 10-6-92; 8:45 am]

BILLING CODE 3510-DS-M

Minority Business Development Agency

Business Development Center Applications: U.S. Virgin Islands Service Area

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625, the Minority Business Development Agency (MBDA) is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for approximately a 3-year period, subject to Agency priorities, recipient performance and the availability of funds. The cost of performance for the first Budget period (12 months) is estimated at $169,125 in Federal funds, and a minimum of $29,846 in non-Federal (cost sharing) contribution, from April 1, 1993 to March 31, 1994. Cost-sharing contributions, may be in the form of cash contributions, client fees, in-kind contributions or contributions thereof. The MBDC will operate in the State of Connecticut SMSA geographic service area.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can identify and coordinate public and private sector resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated initially by regional staff on the following criteria: The experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies to performing the work requirements included in the application (20 points); and the firm's estimate cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive. The selection of an application for further processing by MBDA will be made by the Director based on a determination of the application most likely to further the purpose of the MBDC Program. The application will then be forwarded to the Department for final processing and approval, if appropriate. The Director will consider past performance of the applicant on previous Federal awards.

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist them in this effort, MBDCs may charge client fees for management and technical assistance (M&%TA) rendered. Based on a standard rate of $50 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less, and 35% of the total cost for firms with gross sales of over $500,000.

MBDCs performing satisfactorily may continue to operate after the initial competitive year for up to 2 additional budget periods. MBDCs with year-to-date "commendable" and "excellent" performance ratings may continue to be funded for up to 3 or 4 additional budget periods, respectively. Under no circumstances shall an MBDC be funded for more than 5 consecutive budget periods without competition. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's performance, the availability of funds and the Agency priorities.

Awards under this program shall be subject to all Federal and Departmental regulations, policies, and procedures applicable to Federal assistance awards.

In accordance with QMB Circular A-129, "Managing Federal Credit Programs," applicants who have an outstanding account receivable with the Federal Government may not be considered for funding until these debts have been paid or arrangements satisfactory to the Department of Commerce are made to pay the debt.

Applicants are subject to Governmentwide Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26. The departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the MBDC has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of MBDC work requirements; and reporting inaccurate or inflated claims of client assistance or client certification. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

On November 18, 1988, Congress enacted the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, title V, subtitle D). The statute requires contractors and grantees of Federal agencies to certify that they will provide a drug-free workplace. Pursuant to these requirements, the applicable certification form must be completed by

each applicant as a precondition for receiving Federal grant or cooperative agreement awards. False information on the application can be grounds for denying or terminating funding.

"Certification for Contracts, Grants, Loans, and Cooperative Agreements" and SF-LLL, the "Disclosure of Lobbying Activities" (if applicable) is required in accordance with section 319 of Public Law 101-121, which generally prohibits recipients of Federal contracts, grants, and loans from using legislative Branches of the Federal Government in connection with a specific contract, grant or loan.

15 CFR part 28 is applicable and prohibits recipients of Federal contracts, grants, and cooperative agreements form using appropriated funds for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a specific contract, grant, or cooperative agreement. Form CD-511, "Certifications regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying" and, when applicable, the SF-LLL, "Disclosure of Lobbying Activities," are required.

CLOSING DATE: The closing date for application is November 23, 1992. Applications must be postmarked on or before November 23, 1992.

The mailing address for submission is:

ADDRESSES: New York Regional Office, Minority Business Development Agency, Jacob K. Javits Federal Building, rm. 3720, New York, New York 10278, Area Code/Telephone Number: (212) 265-3262.

FOR FURTHER INFORMATION CONTACT; John F. Iglehart, Regional Director, New York Regional Office.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372 "Inter-governmental Review of Federal Programs" is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above New York address. A Pre-application Conference to assist all interested applicants will be held on November 4, 1992, from 10 a.m. to 3 p.m. in St. Thomas, U.S. Virgin Islands at the Federal Building Conference Room No. 110.

For information, please contact the MBDA Regional Office at (212) 264-3262.

11.800 Minority Business Development
(Catalog of Federal Domestic Assistance)

Dated: September 28, 1992.

William R. Fuller,

Deputy Regional Director, New York Regional Office.

[FR Doc. 92-24266 Filed 10-6-92; 8:45 am]

BILLING CODE 3510-21-M

Patent and Trademark Office

Public Advisory Committee for Trademark Affairs; Meeting

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Correction notice.

SUMMARY: This Office proposes to change the time of the meeting of the Public Advisory Committee for Trademark Affairs, published in the issue of Wednesday, September 16, 1992, on page 42740. Please make the following correction: The meeting will begin at 9 a.m. and conclude at 4 p.m. on October 27, 1992.

Dated: September 29, 1992.

Douglas B. Comer,

Acting Assistant Secretary and Acting Commissioner of Patents and Trademarks.

[FR Doc. 92-24255 Filed 10-6-92; 8:45 am]

BILLING CODE 3510-16-M

International Trade Administration

[A-557-805]

Antidumping Duty Order and Amendment of Final Determination of Sales at Less Than Fair Value: Extruded Rubber Thread From Malaysia

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: October 7, 1992.

FOR FURTHER INFORMATION CONTACT: Vincent Kane or Gary Bettger, Office of Countervailing Investigations, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, at (202) 482-2815 or 482-2239, respectively.

Order

Scope of Order

The product covered by this order is extruded rubber thread from Malaysia. Extruded rubber thread is defined as vulcanized rubber thread obtained by extrusion of sable or concentrated natural rubber latex of any cross sectional shape, measuring from 0.18 mm, which is 0.007 inch or 140 gauge, to 1.42 mm, which is 0.056 inch or 16 gauge, in diameter. Extruded rubber thread is currently classified under subheading 4007.00.00 of the Harmonized Tariff Schedule (HTS). Although the HTS subheading is provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Antidumping Duty Order

In accordance with section 735(a) of the Tariff Act of 1930, as amended (the Act), on August 25, 1992, the Department of Commerce (the Department) made its final determination that extruded rubber thread from Malaysia is being sold at less than fair value (57 FR 38465). On September 26, 1992, in accordance with section 735(d) of the Act, the International Trade Commission (ITC) notified the Department that such imports materially injure a U.S. industry.

Therefore, in accordance with section 736 of the Act, the Department will direct the Customs Service to assess, upon further advice by the administering authority, antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of extruded rubber thread from Malaysia. These antidumping duties will be assessed on all entries of extruded rubber thread from Malaysia entered, or withdrawn from warehouse, for consumption on or after April 2, 1992, the date of publication of our preliminary determination in the Federal Register (57 FR 11287). Customs officers must require, at the same time as importers would normally deposit estimated duties, a cash deposit equal to the estimated weighted-average antidumping duty margins as follows:

Producer/manufacturer/exporter	Margin percentage
Heveafil/Filmax Sdn. Bhd	10.68
Rubberflex Sdn. Bhd	20.38
All others	15.16

In its final determination, the Department made an affirmative determination with respect to critical circumstances for Rubberflex. However, the ITC in its final determination found that retroactive imposition of antidumping duties appears not to be necessary to prevent recurrence of material injury that was caused by massive imports of the subject merchandise over a short period of time. Therefore, we shall order Customs to terminate the retroactive suspension of liquidation under section 735(c)(4)(B), and to release any bond or other security and refund any cash deposit

required under section 733(d)(2) with respect to merchandise entered, or withdrawn from warehouse, for consumption prior to April 2, 1992.

This notice constitutes the antidumping duty order with respect to extruded rubber thread from Malaysia, pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, Room B-099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

Correction Ministerial Error

On September 15, 1992, Rubberflex Sdn. Bhd. (Rubberflex), one of the two respondents in the antidumping investigation, alleged that the Department made a ministerial error in calculating the less than fair value margin percentage for Rubberflex. Rubberflex alleged that the Department failed to use cost data which the company had supplied for food grade and heat resistant rubber thread and for certain other gauges of rubber thread, and used instead the best information available.

We agree in part with Rubberflex's allegations of ministerial error. We found that complete cost information was, in fact, on the record for food grade and heat resistant extruded rubber thread, and that this information had also been submitted on computer tape format, as requested by the Department. Although the coding used to identify these grades differed in the cost files from the coding used in the sales files, respondent had provided an explanation of the coding differences. Therefore, we recalculated the margin on these grades using respondent's cost information. The margin percentage for Rubberflex in this notice reflects this recalculation for food grade and heat resistant rubber thread.

For certain other gauges of rubber thread, Rubberflex provided neither complete cost of production nor constructed value information as requested by the Department in its original antidumping questionnaire and in a later supplemental questionnaire. Therefore, for these gauges, we did not recalculate the less than fair value margins but retained the fair value calculations as described in the final determination of sales at less than fair value. These calculations were based on the best information available rather than the incomplete information in the responses.

Treatment of Countervailing Duties to Offset Export Subsidies

On August 25, 1992, the Department published in a companion investigation a Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Extruded Rubber Thread from Malaysia, 57 FR 38472, which ordered a deposit of countervailing duties on the subject merchandise in the amount of 9.63 percent.

All of the subsidies to be offset by the countervailing duties in that case were export subsidies.

In accordance with section 772(d)(1)(D) of the Act, we normally increase the United States price by the amount of any countervailing duties imposed to offset export subsidies. In this case, however, no adjustment to the Untied States price for countervailing duties was required because the export subsidies did not affect the margin calculations. Foreign market value was based on sales for export to Hong Kong and on constructed value. On exports to Hong Kong, respondents received the same export subsidies as on exports to the Untied States. Because the export subsidies were reflected in both the U.S. price (USP) and foreign market value (FMV), the subsidies did not affect margin calculations using third country sales. See, Final Determination of Sales at Less Than Fair Value: Ball Bearings and Parts Thereof from Singapore, 54 FR 19112 (May 3, 1989). For those sales where constructed value was used for foreign market value, we based constructed value on costs which reflected the export subsidies. Because the export subsidies were reflected in both USP and FMV, the subsidies did not affect the margin calculations using constructed value.

This order is published in accordance with section 736(a) of the Act and 19 CFR 353.21.

Dated: October 5, 1992.

Rolf Th. Lundberg, Jr.,

Acting Assistant Secretary for Import Administration.

[FR Doc. 92-24525 Filed 10-6-92; 8:45 am]

BILLING CODE 3510-DS-M

COMMODITY FUTURES TRADING COMMISSION

Chicago Board of Trade Proposal To Register Certain Non-Member Officials of Member Firms and To Require Membership of Certain Non-Member Parent Firms

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed contract market rule changes.

SUMMARY: The Chicago Board of Trade ("CBT") has submitted a proposed new rule which would establish procedures to register certain non-member officials of member firms and to require membership of certain non-member parent firms. Acting pursuant to the authority delegated by Commission Regulation 140.96, the Director of the Division of Trading and Markets has determined to publish the CBT proposal for public comment. The Division believes that publication of the CBT proposal is in the public interest and will assist the Commission in considering the views of interested persons.

DATES: Comments must be received on or before November 6, 1992.

FOR FURTHER INFORMATION CONTACT: David Van Wagner, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Telephone: (202) 254-8955.

SUPPLEMENTARY INFORMATION:

I. Description of Proposed Rules and Rule Amendments

By a letter dated September 18, 1992, the CBT submitted a proposed new rule pursuant to section 5a(12) of the Commodity Exchange Act ("Act") and Commission Regulation 1.41(c) which would establish procedures requiring registration of certain non-member officials of member firms and application for membership by certain non-member parent firms.[1]

Under the proposal, certain non-member officers of member firms would be required to register with the CBT as "designated persons" of the member firm. A registered designated person would be personally responsible to the CBT for the member firm's compliance with CBT rules.

The proposal also would require any non-member individual who holds more than a ten percent financial interest in a member firm or exercises control over the management of the firm, but is not registered as a designated person, to consent to CBT jurisdiction.

Finally, the proposal would require any non-member firm that holds more than a ten percent financial interest in a member firm to also become a member firm. U.S. domiciled firms with adjusted net capital in excess of $100,000,000 would automatically be exempted from this requirement, and other firms could request exemption from the CBT.

[1] The CBT originally submitted its proposal on July 29, 1992. The Division of Trading and Markets remitted the submission pursuant to the authority delegated by Commission Regulation 1.41a(a)(1) and raised certain questions. The CBT responded to the questions and resubmitted the proposal in the September 18, 1992, letter.

II. Request for Comments

The Commission requests comments on any aspect of the CBT's proposed new rule that members of the public believe may raise issues under the Act or Commission regulations.

Copies of the proposed rule and related materials are available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Copies also may be obtained through the Office of the Secretariat at the above address or by telephoning (202) 254-6314. Some materials may be subject to confidential treatment pursuant to 17 CFR 145.5 or 145.9.

Any person interested in submitting written data, views, or arguments on the proposed rule should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, by the specified date.

Issued in Washington, DC, on October 1, 1992.

Alan L. Seifert,

Deputy Director.

[FR Doc. 92-24334 Filed 10-6-92; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Special Operations Policy Advisory Group, Meeting

The Special Operations Policy Advisory Group (SOPAG) will meet on Thursday, October 22, 1992 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 and Low-Intensity Conflict 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: October 1, 1992.

L.M. Bynum,

Alternate OSD Federal Liaison Officer, Department of Defense.

[FR Doc. 92-24265 Filed 10-06-92; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Transition Assistance Survey, OMB No. 0701-0123

Type of Request: Expedited Submission—Approval Date Requested: 30 days following publication in the **Federal Register**

Average Burden Hours/Minutes Per Response: 15 minutes

Responses Per Respondent: 1

Number of Respondents: 8,750

Annual Burden Hours: 2,187

Annual Responses: 8,750

Needs and Uses: This survey is being conducted on Air Force personnel who were discharged or retired between July 1, 1991, and June 30, 1992. The group will be asked about their employment status and opinions about the Transition Assistance Program. The collected data will be used to improve services to future departing members.

Affected Public: Individuals or households

Frequency: On occasion

Respondent's Obligation: Voluntary

OMB Desk Officer: Mr. Edward C. Springer. Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce. Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, Virginia 22202-4302.

Dated: October 1, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92-24264 Filed 10-6-92; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Environmental Assessment for Base Realignment at Adelphi, MD

AGENCY: United States Army, Department of Defense.

ACTION: Finding of no significant impact.

SUMMARY: The proposed action is to transfer various research functions to the newly established Army Research Laboratory (ARL) at Adelphi, Laboratory Center (ALC), Maryland. The transferring research functions to be realigned at ALC include the Electronics Technology and Devices Laboratory (ETDL) from Fort Monmouth, New Jersey; a portion of the Atmospheric Sciences Laboratory from White Sands Missile Range (WSMR), New Mexico; the research mission from the Harry Diamond Laboratories (HDL) at Woodbridge, Virginia; and the Directed Energy and Sensors Basic and Applied Research element of the Night Vision and Electro-optics Directorate (NVEOD) from Fort Belvoir, Virginia. Project construction would begin in 1993 and the move-in would be complete in 1997.

The relocation of functions from ETDL, WSMR, and NVEOD will move approximately 461 jobs, primarily civilian, to ALC. Approximately 128 positions will transfer out of ALC or be contracted out. An estimated 17 relocations to the newly established ARL will result in an overall net loss of 35 ARL positions at ALC.

Alternatives considered in this Environmental Assessment (EA) include the No-Action Alternative, accommodation with existing on-post facilities, constructing facilities or leasing space off post, and renovation and construction of new facilities on post. The No-Action Alternative would be inconsistent with the Defense Base Closure and Realignment Act, and the off-post space alternatives would not be cost effective and would not achieve the realignment objective of centralizing research activities. The ARL facilities could not be accommodated by existing on-post facilities, or by renovation of existing facilities without new construction. Therefore, renovation and construction of new facilities at ALC was identified as the Proposed Action.

Five alternative site plans were evaluated to determine the environmental impact of new construction and renovation at ALC. Site Plan No. 1 consists of constructing facilities in the north and south parking lots and renovating 200 Area laboratory facilities. Site Plan No. 2 is similar to Site Plan No. 1, but includes

construction in a grassy area west of the north parking lot. Site Plan Nos. 3 and 4 consist of construction of new laboratory facilities in the 400 Area, and construction of facilities in the north parking lot or the south parking lot. Site Plan No. 5 consists of renovation and vertical expansion of 200 Area laboratories, and constructing new facilities in the north and south parking lots. Because of the potential for impacts from the clearing of presently wooded land, operational difficulties, and the potential need for utility line construction, Site Plan Nos. 3 and 4 were dropped from further consideration. The differences among Site Plan Nos. 1, 2, and 5 with regard to potential environmental impacts are minor.

In general, implementation of the Proposed Action would not substantially alter baseline environmental conditions at ALC. During construction, there would be (1) minor disruption of existing activities in the 200 Area of ALC, including increased noise levels; (2) increased traffic and disruption of on-post parking; (3) clearing a small, grassy area west of the north parking lot for the waste water pretreatment plant (under Site Plan No. 2). The Naval Reserve Training Center would experience minor noise disturbance during construction of the parking structure in the south parking lot (Site Plan Nos. 1, 2, and 5). Construction of the ARL facilities at ALC would result in increases in employment levels, regional sales volume, and regional income in Prince George's and Montgomery Counties, but the increases would not be regionally significant.

Implementation of the Proposed Action would have no effect on groundwater since groundwater is not used as a potable supply at ALC. There would be a very minor increase in storm water runoff to Paint Branch Creek and in air emissions from laboratory fume hoods and boiler stacks. There would be no change in noise levels. There would be no change in the types of hazardous and toxic materials handled and hazardous and toxic waste generated, but the volumes would increase. There would be no change in ALC's status as a Resource Conservation and Recovery Act (RCRA) storage facility. ALC's RCRA Consent Agreement would be modified to accommodate the Proposed Action. Industrial waste waters would undergo pretreatment prior to discharge to the municipal waste water treatment system. There would be no increase in domestic waste water flow.

Implementation of the Proposed Action would not affect wetlands, since there are no wetlands in the proposed construction areas. There would be no significant impacts on flora, fauna, or on threatened or endangered species. Phase I cultural resources investigations have been conducted in the area west of the north parking lot (Site Plan No. 2) and in the 400 Area (Site Plan Nos. 3 and 4). All archaeological surveys will be completed prior to site preparation and clearing, and requirements for compliance with the National Historic Preservation Act (NHPA) will be met.

Based on the environmental impact analysis found in the EA, which is hereby incorporated into this Finding of No Significant Impact (FNSI), it has been determined that implementation of the Proposed Action under Site Plan Nos. 1, 2, and 5 would not have a significant impact on the quality of the natural or the human environment. Because there would be no significant environmental impacts resulting from implementation of the Proposed Action, an Environmental Impact Statement (EIS) is not required and will not be prepared.

SUPPLEMENTARY INFORMATION: There is a 30-day waiting period for the public prior to implementation.

ADDRESSES: A request for a copy of the EA and comments may be forwarded to: Commander, U.S. Army Corps of Engineers, P.O. Box 1715, Baltimore, Maryland 21203–1715.

FOR FURTHER INFORMATION CONTACT: Questions concerning this FNSI may be directed to Mr. Jack Butler, (410) 962–4937.

Dated: October 1, 1992.

Lewis D. Walker,

Deputy Assistant Secretary of the Army (Environment, Safety & Occupational Health), OASA (I, L&E).

[FR Doc. 92–24363 Filed 10–6–92; 8:45 am]

BILLING CODE 3710–08–M

Department of the Navy

Privacy Act of 1974; Amend and Delete Record Systems

AGENCY: Department of the Navy, DOD.

ACTION: Amend and delete record systems.

SUMMARY: The Department of the Navy proposes to amend three existing systems of records and delete one to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The amendments will be effective on November 6, 1992, unless comments are received that would result in a contrary determination. The deletion is effective October 7, 1992.

ADDRESSES: Send comments to the Head, PA/FOIA Branch, Office of the Chief of Naval Operations (N09B30), Department of the Navy, The Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Gwendolyn Aitken at (703) 614–2004.

SUPPLEMENTARY INFORMATION: The Department of the Navy systems of records notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, were published in the Federal Register as follows:

51 FR 12908, April 16, 1986
51 FR 18086, May 16, 1986 (DON Compilation changes follow)
51 FR 19884, June 3, 1986
51 FR 30377, August 26, 1986
51 FR 30393, August 26, 1986
51 FR 45931, December 23, 1986
52 FR 2147, January 20, 1987
52 FR 2149, January 20, 1987
52 FR 8500, March 18, 1987
52 FR 15530, April 29, 1987
52 FR 22671, June 15, 1987
52 FR 45846, December 2, 1987
53 FR 17240, May 16, 1988
53 FR 21512, June 8, 1988
53 FR 25363, July 6, 1988
53 FR 39499, October 7, 1988
53 FR 41224, October 20, 1988
54 FR 8322, February 28, 1989
54 FR 14378, April 11, 1989
54 FR 32682, August 9, 1989
54 FR 40160, September 29, 1989
54 FR 41495, October 10, 1989
54 FR 43453, October 25, 1989
54 FR 45781, October 31, 1989
54 FR 48131, November 21, 1989
54 FR 51784, December 18, 1989
54 FR 52976, December 26, 1989
55 FR 21910, May 30, 1990 (Updated Mailing Addresses)
55 FR 37930, September 14, 1990
55 FR 42758, October 23, 1990
55 FR 47508, November 14, 1990
55 FR 48678, November 21, 1990
55 FR 53167, December 27, 1991
56 FR 424, January 4, 1991
56 FR 12721, March 27, 1991
56 FR 27503, June 14, 1991
55 FR 28144, June 19, 1991
56 FR 31394, July 10, 1991 (DOD Updated Indexes)
56 FR 40877, August 16, 1991
56 FR 46167, September 10, 1991
56 FR 59217, November 25, 1991
56 FR 63503, December 4, 1991
57 FR 2719, January 23, 1992
57 FR 2726, January 23, 1992
57 FR 2898, January 24, 1992
57 FR 5430, February 14, 1992
57 FR 9246, March 17, 1992
57 FR 12914, April 14, 1992
57 FR 14698, April 22, 1992
57 FR 18472, April 30, 1992
57 FR 26422, June 10, 1992
57 FR 26821, June 18, 1992

57 FR 28499, June 25, 1992
57 FR 28502, June 25, 1992
57 FR 31700, July 17, 1992
57 FR 33326, July 28, 1992
57 FR 34127, August 3, 1992
57 FR 37791, August 20, 1992
57 FR 42741, September 16, 1992

The amendments and the deletion are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of altered systems reports. The specific changes to the systems of records are set forth below followed by the systems of records notices published in their entirety, as amended.

Dated: September 30, 1992.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DELETION
N10570-1

SYSTEM NAME: Pet Registration, (51 FR 18210, May 16, 1986).

Reason: DoD Directive 6015.5 assigns responsibility for DoD Veterinary Services under the cognizance of the Department of the Army, therefore, the system is no longer needed. See Department of the Army system of records notice A0040-905DASG, "Privately Owned Animal Record Files".

AMENDMENTS
N01001-5

SYSTEM NAME:

MSC Civilian and Naval Reserve Personnel Data File, (51 FR 18089, May 16, 1986).

CHANGES:

* * * * *

SYSTEM NAME:

Delete entry and replace with "MSC Masters and Chief Engineers Data File".

SYSTEM LOCATION:

Delete entry and replace with "Military Sealift Command, Department of the Navy, Washington, DC 20398-5100."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with "MSC Masters and Chief Engineers aboard civil service manned ships."

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with "Biographical and professional information which may include name, rank, Social Security Number, designation, date and place of birth, home address and phone number, active duty training, education, correspondence courses taken, active military service, civilian employment experience, training for sea, maritime licenses held, commercial shipboard and shoreside experience, marital status, number of children and their names and ages, highlights of merchant marine career, special skills and accomplishments, hobbies, community activity and association membership."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

At end of entry add "and Executive Order 9397."

PURPOSE(S):

Delete entry and replace with "To maintain personnel data on MSC Masters and Chief Engineers and maintain biographical information for MSC civil service mariners. Such information is used to identify location and provide biographical information on civil service mariners in response to media and internal requests for information prior to public appearances, press releases, or courtesy calls to MSC ships by MSC personnel and members of other organizations or commands."

* * * * *

RETRIEVABILITY:

Delete entry and replace with "Name."

SAFEGUARDS:

Delete entry and replace with "Files are maintained in areas accessible to authorized personnel only, who are properly screened, cleared and trained for proper use of the data stored. Building employs security guards. Civil service mariner files are stored in the Employment and Labor Relations Division."

RETENTION AND DISPOSAL:

Delete entry and replace with "Civil service mariner records are maintained for the duration of employment with MSC. Outdated files are destroyed when updated information is received and the entire file is destroyed immediately upon the employee's separation or retirement from the Command."

* * * * *

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Commander, Military Sealift Command, Department of the Navy, Washington, DC 20398-5100.

Written requests should contain full name of the individual, military grade or rate, and date of birth. For personal visits, the individual should be able to provide some acceptable means of identification."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Commander, Military Sealift Command, Department of the Navy, Washington, DC 20398-5100.

Written requests should contain full name of the individual, military grade or rate, and date of birth. For personal visits, the individual should be able to provide some acceptable means of identification."

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The Department of the Navy rules for accessing records and contesting contents and appealing determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager."

RECORD SOURCE CATEGORIES:

Delete entry and replace with "Individual."

* * * * *

N01001-5

SYSTEM NAME:

MSC Masters and Chief Engineers Data File.

SYSTEM LOCATION:

Military Sealift Command, Department of the Navy, Washington, DC 20398-5100.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

MSC Masters and Chief Engineers aboard civil service manned ships.

CATEGORIES OF RECORDS IN THE SYSTEM:

Biographical and professional information which may include name, rank, Social Security Number, designation, date and place of birth, home address and phone number, active duty training, education, correspondence courses taken, active military service, civilian employment experience, training for sea, maritime licenses held, commercial shipboard and shoreside experience, marital status, number of children and their names and ages, highlights of merchant marine career, special skills and accomplishments, hobbies, community activity and association membership.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and Executive Order 9397.

PURPOSE(S):

To maintain personnel data on MSC Masters and Chief Engineers and maintain biographical information for MSC civil service mariners. Such information is used to identify location and provide biographical information on civil service mariners in response to media and internal requests for information prior to public appearances, press releases, or courtesy calls to MSC ships by MSC personnel and members of other organizations or commands.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS:

STORAGE:

Data cards or paper file folders stored in file cabinets.

RETRIEVABILITY:

Name.

SAFEGUARDS:

Files are maintained in areas accessible to authorized personnel only, who are properly screened, cleared and trained for proper use of the data stored. Building employs security guards. Civil service mariner files are stored in the Employment and Labor Relations Division.

RETENTION AND DISPOSAL:

Civil service mariner records are maintained for the duration of employment with MSC. Outdated files are destroyed when updated information is received and the entire file is destroyed immediately upon the employee's separation or retirement from the Command.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Military Sealift Command, Department of the Navy, Washington, DC 20398-5100.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Commander, Military Sealift Command, Department of the Navy, Washington, DC 20398-5100.

Written requests should contain full name of the individual, military grade or rate, and date of birth. For personal visits, the individual should be able to provide some acceptable means of identification.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Commander, Military Sealift Command, Department of the Navy, Washington, DC 20398-5100.

Written requests should contain full name of the individual, military grade or rate, and date of birth. For personal visits, the individual should be able to provide some acceptable means of identification.

CONTESTING RECORD PROCEDURES:

The Department of the Navy rules for accessing records and contesting contents and appealing determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N05210-1

SYSTEM NAME:

Correspondence Files, (51 FR 18145, May 16, 1986).

CHANGES:

SYSTEM NAME:

Add "General" to the beginning of the entry.

SYSTEM LOCATION:

Delete entry and replace with "Organizational elements of the Department of the Navy. Official mailing addresses are published as an appendix to the Navy's compilation of system of record notices."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with "Individuals who have initiated correspondence with the Department of the Navy."

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with "Incoming correspondence which may include name, address, telephone number, organization, date of birth, and Social Security Number of correspondent and supporting documentation. Files also contain copy of response letter and documentation required to prepare the response."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

At end of entry add "and Executive Order 9397."

PURPOSE(S):

Delete entry and replace with "To maintain a record of correspondence received and responses made."

* * * * *

STORAGE:

Delete entry and replace with "Paper and automated records."

RETRIEVABILITY:

Delete entry and replace with "Name, organization, and date of correspondence."

SAFEGUARDS:

Delete entry and replace with "Access provided on a need to know basis only. Records are maintained in a locked and/or guarded office."

RETENTION AND DISPOSAL:

Delete entry and replace with "Retained for two years and then destroyed."

* * * * *

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of system of record notices.

The request should contain full name and date individual wrote to the Navy or received a response. Request must be signed."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of system of record notices.

The request should contain full name and date individual wrote to the Navy or received a response. Request must be signed."

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of

the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager."

RECORD SOURCE CATEGORIES:

Delete entry and replace with "Individual concerned and records collected by the activity to respond to the request."

* * * * *

N05210-1

SYSTEM NAME:

General Correspondence Files.

SYSTEM LOCATION:

Organizational elements of the Department of the Navy. Official mailing addresses are published as an appendix to the Navy's compilation of system of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have initiated correspondence with the Department of the Navy.

CATEGORIES OF RECORDS IN THE SYSTEM:

Incoming correspondence which may include name, address, telephone number, organization, date of birth, and Social Security Number of correspondent and supporting documentation. Files also contain copy of response letter and documentation required to prepare the response.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and Executive Order 9397.

PURPOSE(S):

To maintain a record of correspondence received and responses made.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of systems notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS:

STORAGE:

Paper and automated records.

RETRIEVABILITY:

Name, organization, and date of correspondence.

SAFEGUARDS:

Access provided on a need to know basis only. Records are maintained in a locked and/or guarded office.

RETENTION AND DISPOSAL:

Retained for two years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of system of record notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of system of records notices.

The request should contain full name and date individual wrote to the Navy or received a response. Request must be signed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of system of record notices.

The request should contain full name and date individual wrote to the Navy or received a response. Request must be signed.

CONTESTING RECORD PROCEDURES:

The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual concerned and records collected by the activity to respond to the request.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N11012-1

SYSTEM NAME:

Navy Personnel Billeting System (NPBS), (51 FR 18210, May 16, 1986).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with "Naval Computer and Telecommunications Station, San Diego, Code N8, Building 1482, Naval Air Station, North Island, San Diego, CA 92135-5110."

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 5013; and Executive Order 9397."

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Commanding Officer, Naval Computer and Telecommunications Station, San Diego, Code N8, Building 1482, Naval Air Station, North Island, San Diego, CA 92135-5110."

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Commanding Officer, Naval Computer and Telecommunications Station, San Diego, Code N8, Building 1482, Naval Air Station, North Island, San Diego, CA 92135-5110.

Requesting individuals should specify their full names. Visitors should be able to identify themselves by any commonly recognized evidence of identity. Written requests must be signed by the requesting individual."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Commanding Officer, Naval Computer and Telecommunications Station, San Diego, Code N8, Building 1482, Naval Air Station, North Island, San Diego, CA 92135-5110.

Requesting individuals should specify their full names. Visitors should be able to identify themselves by any commonly recognized evidence of identity. Written requests must be signed by the requesting individual."

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager."

* * * * *

N11012-1

SYSTEM NAME:

Navy Personnel Billeting System (NPBS).

SYSTEM LOCATION:

Naval Computer and Telecommunications Station, San Diego, Code N8, Building 1482, Naval Air Station, North Island, San Diego, CA 92135-5110.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All bachelor military (officers and enlisted) and bachelor civilian personnel requesting berthing currently or in the future at a command where this system is installed may be covered by this system.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's Social Security Number, name, duty station, forwarding address and home address.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 5013; and Executive Order 9397.

PURPOSE(S):

To manage the BEQ/BOQ complex; to report status of berthing availability, furniture and maintenance associated with a BEQ/BOQ complex.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of systems notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS:

STORAGE:

Records are maintained on magnetic disk, magnetic tape, and hard copy reports.

RETRIEVABILITY:

Name and/or Social Security Number.

SAFEGUARDS:

Access to computer room, software and storage media requires special positive identification clear through security department. System access from remote terminals is controlled by user site ID's.

RETENTION AND DISPOSAL:

An individual's reservation record is maintained on disk for six months and is then system deleted.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding Officer, Naval Computer and Telecommunications Station, San Diego, Code N8, Building 1482, Naval Air Station, North Island, San Diego, CA 92135-5110.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Commanding Officer, Naval Computer and Telecommunications Station, San Diego, Code N8, Building 1482, Naval Air Station, North Island, San Diego, CA 92135-5110.

Requesting individuals should specify their full names. Visitors should be able to identify themselves by any commonly recognized evidence of identity. Written requests must be signed by the requesting individual.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Commanding Officer, Naval Computer and Telecommunications Station, San Diego, Code N8, Building 1482, Naval Air Station, North Island, San Diego, CA 92135-5110.

Requesting individuals should specify their full names. Visitors should be able to identify themselves by any commonly recognized evidence of identity. Written requests must be signed by the requesting individual.

CONTESTING RECORD PROCEDURES:

The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information in this system comes from the individual to whom it applies in the form of Navy messages and/or travel orders.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 92-24274 Filed 10-06-92; 8:45 am]

BILLING CODE 3810-01-F

DEPARTMENT OF EDUCATION

Office of Educational Research and Improvement; Library Services and Construction Act; Promulgation of Federal Shares

Section 7(b) of the Library Services and Construction Act, Public Law 84-597, as amended (20 U.S.C. 351 *et seq.*), requires the Secretary of Education to promulgate the Federal share for each State every second fiscal year beginning with fiscal year 1971. The Federal shares are in proportion to the State's per capita income and range from 33 to 66 percent. Per capita income data from the Department of Commerce for the years 1989, 1990, and 1991 have been used to establish the Federal shares applicable to titles I and II of the act. The Federal shares published in the table below are effective for the fiscal years ending September 30, 1994 and September 30, 1995.

Dated: October 1, 1992.

Diane Ravitch,

Assistant Secretary for Educational Research and Improvement.

State	Federal share (percent)
Alabama	60.02
Alaska	44.37
Arizona	56.47
Arkansas	62.33
California	44.86
Colorado	49.61
Connecticut	33.00
Delaware	45.16
Florida	49.87
Georgia	54.34
Hawaii	45.40
Idaho	59.80
Illinois	45.60
Indiana	54.96
Iowa	54.86
Kansas	52.58
Kentucky	59.80
Louisiana	61.62
Maine	54.03
Maryland	41.42
Massachusetts	39.26
Michigan	50.76
Minnesota	49.80
Mississippi	65.72
Missouri	53.24
Montana	59.89
Nebraska	54.04
Nevada	47.46
New Hampshire	42.99
New Jersey	33.00
New Mexico	62.12
New York	41.01
North Carolina	55.99
North Dakota	59.95
Ohio	53.35
Oklahoma	59.44
Oregon	54.13
Pennsylvania	49.78
Rhode Island	49.37
South Carolina	59.91
South Dakota	58.84

State	Federal share (percent)
Tennessee	57.28
Texas	55.39
Utah	62.25
Vermont	52.60
Virginia	46.99
Washington	49.58
West Virginia	63.27
Wisconsin	53.14
Wyoming	56.30
District of Columbia	37.19
Puerto Rico	66.00
American Samoa	66.00
Northern Marianas	66.00
Guam	66.00
Virgin Islands	66.00
Palau	100.00

[FR Doc. 92-24287 Filed 10-6-92; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Floodplain/Wetlands Involvement Notification for DOE Permission for Off-Loading Activities To Support the Movement of Millstone Unit 2 Steam Generator Sub-Assemblies Across the Savannah River Site (SRS)

AGENCY: Department of Energy.

ACTION: Notice of floodplain/wetlands involvement and solicitation of comments.

SUMMARY: Regulations at 10 CFR part 1022 require DOE to evaluate actions that may be taken in a floodplain or wetland in order to ensure consideration of protection of floodplains and wetlands in the decision-making process. As soon as practicable after a determination that a floodplain and/or wetland may be involved, the regulations require that a public notice be published in the **Federal Register**, including a description of the proposed action and its location.

DOE proposes to grant permission to Chem-Nuclear Services, Inc. (CNSI) to modify the SRS boat ramp at river mile 157 on the Savannah River to facilitate off-loading and movement of two recommissioned Millstone Unit 2 nuclear steam generator subassembly packages (SGSA) over SRS roads for disposal at the CNSI low-level radioactive waste burial facility in Barnwell County, South Carolina. Two trips would be necessary. Modifications to an existing 15-foot wide SRS boat ramp, which was built in the 1950's would be to remove upland vegetative growth and silt that has accumulated on and adjacent to the ramp so a 40-foot wide access is provided to the ramp area for the barge to dock and off-load the SGSAs. The silt and soil including shrubs and small trees, after monitoring and sampling for contamination as necessary, would be disposed at an approved landfill on SRS. CNSI estimates approximately 17 cubic yards of sediment would be dredged 20 feet on either side of the centerline of the SRS boat ramp. In order to maintain compliance with the Corps of Engineers nationwide permit, CNSI has stated that in no case would more than 25 cubic yards of material be removed from below the Savannah River ordinary high water mark. During the time frame between the two proposed SGSA trips, the area around the SRS boat ramp would be protected from the effects of erosion by the use of erosion mats. At the termination of the project, CNSI would restore the affected floodplain contours above the ordinary high water mark to preproject conditions. Adherence to a DOE approved soil erosion control plan by CNSI would be required before this proposed work is initiated. No wetlands on the SRS would be affected by this project.

In accordance with DOE regulations for compliance with floodplain/wetland environmental review requirements (10 CFR part 1022), DOE will prepare a floodplain/wetland assessment for the proposed action and the alternatives. This assessment will be included as an appendix to the Environmental Assessment for DOE Permission for Off-Loading Activities to Support the Movement of Millstone Unit 2 Steam Generator Sub-Assemblies Across the Savannah River Site (DOE/EA-0818). The Statement of Findings for this action will be issued in accordance with 10 CFR part 1022.

DATES: Comments on the proposed actions are due on or before October 22, 1992.

ADDRESSES: Send comments to: Floodplain/Wetlands Comments, Mr. Stephen R. Wright, U.S. Department of Energy, Savannah River Field Office, P.O. Box A, Aiken, South Carolina 29802, phone number (803) 725-3957. Fax comments to: (803) 725-8434.

FOR FURTHER INFORMATION CONTACT: Ms. Carol M. Borgstrom, Director, Office of NEPA Oversight (EH-25), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington DC 20585, phone number (202) 586-4600 or (800) 472-2756.

SUPPLEMENTARY INFORMATION: The Millstone Unit 2 in Waterford, Connecticut, is retiring its two steam generators. Each steam generator sub-assembly (SGSA) would be seal-welded, filled with concrete, and moved to the CNSI facility located in Barnwell County, South Carolina for disposal as low-level radioactive waste. Each SGSA package would consist of a steam generator vessel, top hat, tubes, tube supports and concrete, and would have a total radioactivity calculated at 1403 curies. The major radionuclides are Cobalt-60/58, Iron-55, and Nickle-63. Each SGSA package would be loaded on a trailer and then on to a barge in Connecticut and transported to CNSI separately. The loaded truck-trailer combination would be 116 feet long, 18 ft. wide, 20 ft. high, and weigh 1,150,350 pounds. The loaded barge would be approximately 200 ft. long and 40 ft. wide, draw 4 ft. of water, and be pushed by two tugboats.

CNSI requests DOE's permission to modify and use the SRS boat ramp facility and SRS roads to dock and move each SGSA package across SRS to the CNSI facility. There is no other ramp on the upper Savannah River on the South Carolina side which will accommodate overweight loads. The Georgia side facilities cannot be used because the Savannah River bridges cannot handle the weight. Therefore other means of barge transport or rail movement are not reasonable alternatives. Overland transportation of the SGSAs is also considered unreasonable because of the bridges inability to support the weight. CNSI has contacted the State of South Carolina for a permit for oversize/overweight loads in order to transport the steam generators over state roads after off-loading at SRS to the CNSI burial site in Barnwell County, South Carolina. The U.S. Nuclear Regulatory Commission has granted a certificate of compliance, dated June 3, 1992, to Northeast Nuclear Energy Company for authority to use the package for shipment and for the package to be shipped.

Using specialized equipment, CNSI's contractor, would off-load the barge containing the SGSA package by pushing the bow of the barge against the boat ramp, placing transition beams on the bow of the barge and driving the equipment off the barge and moving it across SRS. Special operational controls would be used during movement of the SGSA packages. The movement of the SGSAs would require spanning two SRS bridges with transition beams in order to accommodate the additional weight. All activities on SRS related to the proposed project would occur in controlled-access areas on federally-owned property.

A location map showing the boat ramp site and further information can be obtained from the Savannah River Field Office (see "**ADDRESSES**" above).

Issued in Washington, DC, on October 5, 1992.

Everet Beckner,

Deputy Assistant Secretary for Defense Programs.

[FR Doc. 92-24523 Filed 10-6-92; 8:45 am]

BILLING CODE 6450-01-M

Renewal of the Charter of the American Statistical Association Committee on Energy Statistics

Pursuant to the Federal Advisory Committee Act (Public Law 92-463), I hereby certify that the renewal of the charter of the American Statistical Association Committee on Energy Statistics is in the public interest in connection with the performance of duties imposed on the Department of Energy by law. This determination follows consultation with the Committee Management Secretariat of the General Services Administration, pursuant to 41 CFR section 101-6.1029.

The purpose of the Committee is to provide advice on a continuing basis to the Administrator of the Energy Information Administration (EIA), including:

1. Periodic reviews of the elements of EIA information collection and analysis programs and the provision of recommendations;

2. Advice on priorities of technical and methodological issues in the planning, operation, and review of EIA statistical programs; and

3. Advice on matters concerning improved energy modeling and forecasting tools, particularly regarding their functioning, relevancy, and results.

Further information concerning this Committee can be obtained from Rachel Murphy (202) 586-3279.

Issued in Washington, DC, on October 2, 1992.

Howard H. Raiken,

Advisory Committee Management Officer.

[FR Doc. 92-24359 Filed 10-6-92; 8:45 am]

BILLING CODE 6450-01-M

DOE Response to Recommendation 92-3 of the Defense Nuclear Facilities Safety Board Concerning the Conduct of Operational Readiness Reviews Prior to Restart of the HB-Line at the Savannah River Site

AGENCY: Department of Energy.

ACTION: Notice and Request for Public Comment.

SUMMARY: Pursuant to section 315(b) of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2286d(b), the Department of Energy (DOE) hereby publishes notice of a response of the Secretary of Energy (Secretary) to Recommendation 92-3 of the Defense Nuclear Facilities Safety Board, published in the **Federal Register** on June 4, 1992, (57 FR 23578) concerning the conduct of Operational Readiness Reviews prior to restart of the HB-Line at the Savannah River Site in the State of South Carolina.

DATES: Comments, data, views, or arguments concerning the Secretary's response are due on or before November 6, 1992.

ADDRESSES: Send comments, data, views, or arguments concerning the Secretary's response to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., suite 700, Washington, DC. 20004.

FOR FURTHER INFORMATION CONTACT: Mr. Donald F. Knuth, Deputy Assistant Secretary for Operations, Defense Programs, Department of Energy, 1000 Independence Avenue SW., Washington DC 20585.

Issued in Washington, DC, on September 27, 1992.

Mario Fiori,

Departmental Representative to the Defense Nuclear Facilities Safety Board.

[FR Doc. 92-24360 Filed 10-6-92; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. CP92-715-000, et al.]

Liberty Pipeline Co., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Liberty Pipeline Co.

[Docket No. CP92-715-000]

September 25, 1992.

Take notice that on September 21, 1992, Liberty Pipeline Company (Applicant) Transco Tower, 2800 Post Oak Boulevard, Houston Texas 77056, filed pursuant to Section 7(c) of the Natural Gas Act (NGA), and Section 157.6 of the Commission's Regulations application for Certificates of Public Convenience and Necessity for authorization to:

(1) Construct, own and operate approximately 38.2 miles of 30-inch O.D. pipeline and related facilities;

(2) Be granted a blanket certificate of public convenience and necessity under Subpart F of part 157 of the Commission's Regulation's authorizing certain construction and operation of facilities and certificate amendments and abandonment under Section 7 of the NGA; and

(3) Be granted a blanket certificate of public convenience and necessity under Subpart G of Part 284 of the Commission's regulations authorizing the transportation of natural gas for others.

Applicant is a partnership consisting of six partners: ANR Atlantic Pipeline Company, a wholly owned subsidiary of ANR Pipeline Company (ANR); Edison Liberty Transmission Corporation, a wholly owned subsidiary of Consolidated Edison Corporation of New York, Inc. (ConEd); North East Liberty Co., Inc., a wholly owned subsidiary of the Brooklyn Union Gas Company (BUG); LBX Transmission Corporation, a wholly owned subsidiary of Long Island Lighting Company (LILCO); Texas Eastern Liberty Inc., a wholly owned subsidiary of Texas Eastern Transmission Corporation (TETCO); and Transco Liberty Pipeline Company, a wholly owned subsidiary of Transco Gas Company (Transco).

Applicant proposes to construct, own and operate approximately 38.2 miles of new 30-inch O.D. pipeline extending from proposed points of receipt with TETCO and Transcontinental Gas Pipeline Company (TGPL) to be located in the Town of South Amboy, Middlesex County, New Jersey, across Raritan Bay and Lower New York Bay to a point offshore proximate to Rockaway, Long Island, New York. The pipeline will come onshore on Long Island at Rockaway Beach, proceed through Far Rockaway, cross the extreme southwestern corner of Nassau County, skirt the southern edge of John F. Kennedy International Airport and then terminate at a proposed interconnection with the New York Facilities System (NYFS) downstream of a metering and regulating station proposed to be installed by Applicant near Howard Beach in Queens County, New York. This interconnection will be the proposed primary point of delivery to the NYFS. The NYFS is owned and operated by three local distribution companies (LDCs), BUG, Con Ed and LILCO, all of which have executed precedent agreements for transportation service to be provided by Liberty.

In addition to providing transportation services to the LDCs that serve the New York metropolitan area, Applicant will also provide transportation services to other shippers, including the Power Authority of the State of New York, KIAC Partners (KIAC) and Nissequoge Cogen Partners (NCP), all of which have executed precedent agreements for transportation service to be provided by

Applicant. KIAC and NCP are proposed cogeneration facilities. It is claimed that Liberty will have the ability to deliver substantial new incremental quantities of domestic natural gas. Applicant states further that it is the intent of the LDC shippers to use Applicant as an alternate point of delivery for supplies which are presently authorized to be delivered by TETCO and TGPL through existing delivery points.

Applicant is a transportation only pipeline which will be connected directly to two existing interstate pipeline systems, TETCO and TGPL, and indirectly to the other major interstate pipeline systems of ANR, Panhandle Eastern Pipe Line Company (Panhandle), Texas Gas Transmission Corporation (TGT) and Trunkline Gas Company (Trunkline). Applicant's shippers have contracted with the aforementioned interstate pipelines to provide upstream transportation service. TETCO, TGT, TGPL and Trunkline will submit complementary applications for authorization to construct and operate facilities necessary for this transportation service. ANR and Panhandle will transport quantities of natural gas for various of the Applicant's shippers using existing capacity and under their respective blanket authorizations.

Applicant's facilities have been designed to deliver up to 500,000 dt per day on a firm basis. Applicant states that this capacity has been fully subscribed.

Applicant will be a project financed pipeline and it is anticipated that the Applicant's capital structure will consist of 75% debt and 25% equity. Applicant has provided a *pro forma* tariff which reflects a straight fixed variable rate design, includes provisions for capacity release and assignment, flexible receipt and delivery points and limitations on abandonment.

Applicant requests expedited approval of its application and the related applications filed by TETCO, TGPL, TGT and Trunkline so that all related facilities and services may be in place by November 2, 1994.

Comment date: October 16, 1992, in accordance with Standard Paragraph F at the end of this notice.

2. Texas Eastern Transmission Corp.

[Docket No. CP92-716-000]

September 25, 1992.

Take notice that on September 21, 1992 Texas Eastern Transmission Corporation (Applicant), P.O. Box 1642, Houston, Texas, 77251-1642, filed under section 7(c) of the Natural Gas Act and § 157.7 of the Federal Energy Regulatory Commission's (Commission) regulations for a certificate of Public Convenience and Necessity authorizing Applicant to: (a) Perform a new firm incremental transportation service for certain customers; and (b) construct and operate the associated incremental facilities required to perform the service, and perform incremental open-access transportation on such facilities.

Applicant requests authorization to provide a new firm transportation service pursuant to proposed Rate Schedule FTS-10 for Elizabethtown Gas Company (Elizabethtown), a local distribution company, and Eastern Shore Natural Gas Company (Eastern Shore), an interstate pipeline.

Applicant proposes to render the firm incremental transportation service for Elizabethtown from the point of receipt at the interconnect of Trunkline Gas Company (Trunkline) and Applicant at M&R 2770 near Applicant's mainline compressor station at Lebanon, Ohio. Applicant proposes to transport and deliver up to 29,000 Dth per day (Dth/d) to Elizabethtown at the Applicant's existing Woodbine M&R Station No. 275 in Middlesex County, New Jersey. Applicant states that the receipt point on its system for Eastern Shore's volumes would be the interconnection of its system and various pipeline systems near its mainline compressor station at Lebanon, Ohio. Applicant would then transport up to 1,000 Dth/d for the account of Eastern Shore at an existing point of interconnection between Applicant and facilities of Columbia Gas Transmission Corporation (Columbia) at M&R 70011 located near Eagle, Pennsylvania and/or M&R 71528 located near Lancaster, Pennsylvania.

Applicant also requests authorization to construct, install, own and operate facilities including 20.56 miles of pipeline and modify Applicant's existing metering and regulating Station No. 275 in the States of Ohio, Pennsylvania and New Jersey. Applicant proposes to complete the construction and installation of the proposed facilities by November 1, 1994. The estimated cost of the facilities is $39,355,400.

Applicant proposes to charge Elizabethtown and Eastern Shore initial rates including a monthly demand charge of $22.408 per dth. Any authorized overrun would be charged at a rate equivalent to Applicant's currently effective Rate Schedule IT rate. Applicant requests that the Commission authorize these initial rates designed on a 100% demand charge basis, for the proposed service.

Comment date: October 16, 1992, in accordance with Standard Paragraph F at the end of this notice.

3. Transcontinental Gas Pipe Line Corp.

[Docket No. CP92-721-000]

September 25, 1992.

Take notice that on September 21, 1992 Transcontinental Gas Pipe Line Corporation (Applicant), Post Office Box 1396, Houston, Texas, 77251, filed an application pursuant to section 7(c) of the Natural Gas Act, as amended, for a certificate of public convenience and necessity authorizing (1) the construction, installation, and operation of certain facilities, including pipeline loop and related compression facilities and certain market area facilities, and (2) firm transportation service of up to the dekatherm equivalent of 115,000 Mcf per day, all as more fully set forth in the Application which is on file with the Commission and open to public inspection.

Applicant states that under the instant Application, it would provide firm transportation service from a proposed interconnect with Texas Eastern Transmission Corporation at Leidy, Clinton County, Pennsylvania to a proposed interconnect with Liberty Pipeline Company (Liberty) near South Amboy, New Jersey. In order to effectuate the instant proposal, and in conjunction with various other related applications being filed concurrently and services to be provided under existing authorizations, shippers shall contract directly with suppliers of natural gas and will arrange for the delivery of these purchase quantities to points of receipt on the systems of Texas Gas Transmission Corporation (Texas Gas) and ANR Pipeline Company (ANR). Shippers would deliver or cause to be delivered a maximum total volume of 115,000 Mcf of gas per day (plus downstream fuel) to Texas Gas and ANR. Such quantities will be transported by Texas Gas and ANR to an existing interconnection with Texas Eastern Transmission Corporation (TETCO) at Lebanon, Ohio, and TETCO will then transport the volumes to a proposed interconnection with Applicant at Leidy, Pennsylvania for delivery by Applicant to Liberty at the Applicant's South Amboy interconnect under the instant proposal. The shippers who have contracted with Applicant for upstream transportation service for deliveries to Liberty are Consolidated Edison Company of New York, Inc., The Brooklyn Union Gas Company, Long Island Lighting Company, KIAC Partners and Nissequogue Cogen Partners.

Applicant states that in order to effectuate the delivery of 115,000 Mcf per day on a firm basis, new pipeline,

pipeline looping, compression facilities, and market area facilities must be constructed on the Applicant's system. The proposed new facilities include:

(a) New 16-inch tap on 24-inch "A" M.P. 194.06, to receive volumes from TETCO in Clinton County, Pennsylvania;

(b) 10.51 mile 36-inch Leidy Loop from M.P. 161.29—M.P. 171.80 in Lycoming and Clinton Counties, Pennsylvania;

(c) 6.67 mile 36-inch Leidy Loop from M.P. 142.74—M.P. 149.41 in Lycoming County, Pennsylvania;

(d) 12,000 HP of additional compression and regulation at Station 205 at M.P. 1773.40 in Lawrence Township, New Jersey;

(e) Regulator Station Expansion at Milltown Regulatory Station M.P. 1790.84, North Brunswick, New Jersey;

(f) 1.10 mile 26-inch pipeline segment from the existing M&R Station in Morgan, New Jersey northward to a proposed M&R Station near South Amboy, New Jersey;

(g) New Delivery Point, including an M&R Station in South Amboy, New Jersey.

Applicant states that the proposed facilities are estimated to cost $71,971,887.00 which will be financed initially through short-term loans and funds on hand, with permanent financing to be arranged as part of Applicant's overall long-term financing program.

Applicant proposes to charge a rate under proposed Rate Schedule FT-2P based on an incremental cost of service and a straight fixed-variable rate design methodology and will charge an initial monthly reservation rate of $10.28 per Mcf of capacity for the proposed firm transportation service.

Comment date: October 16, 1992, in accordance with Standard Paragraph F at the end of the notice.

4. Texas Eastern Transmission Corp.

[Docket No. CP92-719-000]

September 25, 1992.

Take notice that on September 21, 1992, pursuant to section 7(c) of the Natural Gas Act, as amended (NGA) and the Federal Energy Regulatory Commission's (Commission) Regulations (18 CFR 157.7), Texas Eastern Transmission Corporation (Applicant), P.O. Box 1642, Houston Texas, 77251-1642, filed for a certificate of public convenience and necessity authorizing applicant to: (a) construct and operate certain pipeline additions to its existing pipeline system, and (b) to transport natural gas on a firm incremental basis for certain shippers via those facilities under new Rate Schedule FTS-9.

Applicant requests authorizations to transport a total of 115,811 dth on a firm incremental basis under its new Rate Schedule FTS-9 from Lebanon, Ohio to Leidy, Pennsylvania for five shippers. These shippers will also receive transportation service on the proposed Liberty Pipeline Company's (Liberty) facilities. The gas to be transported will be received by Applicant at Lebanon, Ohio from Texas Gas Transmission Corporation (Texas Gas) and ANR Pieipline Company (ANR) and will be transported by Applicant to the Transcontinental Gas Pipe Line Corporation (Transco) system for further transportation by Transco to Liberty's facilities at South Amboy, New Jersey.

Applicant's proposal in this docket is part of one of the two upstream pipeline strings which will provide transportation of natural gas from domestic sources of supply to the proposed facilities of Liberty. The facilities of Liberty will consist of a pipeline extending from the points of interconnection with the Transco system, and that of the Applicant near South Amboy, New Jersey to an interconnection with the facilities of the New York Facilities Group (Consolidated Edison of New York, Inc., The Brooklyn Union Gas Company, and Long Island Lighting Company) near the John F. Kennedy International Airport, Queens New York.

The proposed facilities in this Application include;

(a) Approximately 2.5 miles of 30" pipeline loop and 5.07 miles of 24" pipeline replacement between Lebanon, Ohio and Five Points, Ohio;

(b) Approximately 22.4 miles of 30" pipeline loop between Five Points, Ohio and Somerset, Ohio;

(c) Approximately 2.94 miles of 36" pipeline loop between Berne, Ohio and Holbrook, Pennsylvania;

(d) Approximately 6.5 miles of 36" pipeline loop between Holbrook, Pennsylvania and Uniontown, Pennsylvania;

(e) Approximately 4.71 miles of 36" pipeline loop between Uniontown, Pennsylvania and Delmont, Pennsylvania;

(f) Approximately 9.07 miles of 36" pipeline loop between Delmont, Pennsylvania and Arnagh, Pennsylvania;

(g) Approximately 5.52 miles of 36" pipeline loop between Lilly, Pennsylvania and Entriken, Pennsylvania;

(h) Approximately 5,350 horsepower of additional compression at the Lebanon Compressor Station, Ohio and piping upgrade at the Somerset Compressor Station, Ohio;

(i) Approximately 1,650 horsepower of additional compression at the five points Compressor Station, Ohio;

(j) Approximately 4,600 horsepower of compression at the proposed Leidy Compressor Station, Pennsylvania;

(k) Pipe modification and new impeller for the existing 4,800 horsepower compressor at the Perulack Compressor Station, Pennsylvania;

(l) A new metering and regulating station at the proposed interconnection of Applicant's and Transco's pipelines near Leidy, Pennsylvania.

These proposed facilities include approximately 58.71 miles of pipeline, and 11,600 horsepower of compression. The cost of these additions is estimated to be $104,197,400. With these facilities Applicant requests authority to transport up to 115,811 dth of natural gas per day for five shippers. The shippers are; Consolidated Edison Company of New York, Inc., The Brooklyn Union Gas Company, Long Island Lighting Company, Nissequogue Cogen Partners and KIAC Partners.

The proposed rates under Rate Schedule FTS-9 is a one-part 100% demand rate of $16.742 per dth and an excess natural gas transportation rate of $0.5504 per dth. Applicant states that the FTS-9 Rate Schedule provides for capacity reallocation by the FTS-9 shippers.

Comment date: October 16, 1992, in accordance with Standard Paragraph F at the end of this notice.

5. Texas Eastern Transmission Corp.

[Docket No. CP92-720-000]

September 25, 1992

Take notice that on September 21, 1992, pursuant to section 7(c) of the Natural Gas Act, as amended (NGA) and the Federal Energy Regulatory Commission's (Commission) Regulations (18 CFR 157.7), Texas Eastern Transmission Corporation (Applicant), P.O. Box 1642, Houston, Texas, 77251-1642, filed an application for a certificate of public convenience and necessity authorizing (a) construction and operation of certain pipeline additions to its existing pipeline system, (b) transportation of natural gas on a firm incremental basis for certain shippers under a new Rate Schedule, (c) shifting delivery of natural gas currently being delivered to New York area distribution companies at Goethal's Bridge (M&R058) to the proposed South Amboy, New Jersey delivery point.

Applicant requests authorization to transport 128,333 dth per day on a firm incremental basis under new Rate Schedule FTS-6 from Lebanon, Ohio to South Amboy, New Jersey for five

shippers who would also receive transportation service on the proposed Liberty Pipeline Company (Liberty). The gas received by Applicant at Lebanon, Ohio will be transported upstream by Trunkline Gas Company (Trunkline), Panhandle Eastern Pipe Line Company (Panhandle), Texas Gas Transmission Corporation (Texas Gas) and ANR Pipeline Company (ANR). Applicant's proposed transportation, together with transportation on Trunkline, Panhandle, Texas Gas, and ANR upstream of Lebanon, Ohio, will provide upstream transportation for volumes to be delivered to the Liberty system. Applicant's proposal in this docket is part of one of the two upstream pipeline strings which will provide transportation of gas from domestic sources of supply to the proposed facilities of Liberty.

The facilities which the Applicant proposes to construct in this application are;

(a) Approximately 12.74 miles of 30" pipeline loop between Five Points, Ohio and Somerset, Ohio;

(b) Approximately 10.79 miles of 36" pipeline replacement between Somerset, Ohio, and Summerfield, Ohio;

(c) Approximately 10.5 miles of 36" pipeline loop between Holbrook, Pennsylvania, and Uniontown, Pennsylvania;

(d) Approximately 9.40 miles of 36" pipeline replacement between Uniontown, Pennsylvania, and Bedford, Pennsylvania;

(e) Approximately 8.31 miles of 36" pipeline replacement between Bedford, Pennsylvania, and Chambersburg, Pennsylvania;

(f) Approximately 7.02 miles of 36" pipeline replacement between Eagle, Pennsylvania, and Lambertville, New Jersey;

(g) Approximately 2.09 miles of 42" pipeline loop between Lambertville, New Jersey, and Linden, New Jersey;

(h) Approximately 11.7 miles of 24" pipeline connecting Applicant's existing pipeline system in South Plainsfield, New Jersey to a proposed point of interconnection with Liberty's pipeline near South Amboy, New Jersey;

(i) Approximately 1,650 horsepower of additional compression at the Somerset Compressor Station;

(j) Approximately 11,000 horsepower of additional compression at the Holbrook Compressor Station, Pennsylvania;

(k) Approximately 1,650 horsepower of additional compression at the Uniontown Compressor Station, Pennsylvania;

(l) Approximately 15,000 horsepower of additional compression at the Marietta Compressor Station, Pennsylvania;

(m) 1 new meter station near South Amboy, New Jersey, for delivery into Liberty's proposed pipeline;

(n) Replace impeller on two (2) existing 2750 horsepower units at the Hanover Compressor station.

These additions include approximately 72.10 miles of pipeline and 29,300 horsepower of compression. The cost of these facilities is estimated to be $166,045,400. Applicant requests authorization to transport a total of 128,333 dth per day for the following shippers; Consolidated Edison Company of New York Inc., The Brooklyn Union Gas Company, Long Island Lighting Company, Power Authority of the State of New York and Nissequoque Cogen Partners.

Applicant proposes to have the facilities in place so as to begin service by November 1, 1994, or such later date as the Liberty facilities and necessary upstream facilities are completed and placed in service.

Applicant proposes under Rate Schedule FTS-6 a one-part 100% demand rate of $24.788 per dth and an excess natural gas transportation rate of $0.8149 per dth. It is stated that the FTS-6 Rate Schedule provides for capacity reallocation by FTS-6 shippers.

Comment date: October 16, 1992, in accordance with Standard Paragraph F at the end of the notice.

6. Texas Eastern Transmission Corp. and Trunkline Gas Co.

[Docket No. CP92-717-000 and CP92-718-000]

September 25, 1992

Take notice that on September 21, 1992 Texas Eastern Transmission Corporation (Texas Eastern) and Trunkline Gas Company (Trunkline), both located at P.O. Box 1642, Houston, Texas, 77251-1642, filed a joint application in Dockets Nos. CP92-717-000, and CP92-718-000 pursuant to section 7(c) of the Natural Gas Act and § 157.7 of the Federal Energy Regulatory Commission's (Commission) regulations under the Natural Gas Act for authorization for Texas Eastern or Trunkline to construct, install, own, and operate the associated facilities required to perform firm and interruptible open access blanket transportation services.

Texas Eastern is concurrently filing two applications for authorization to provide new incremental transportation services on its mainline system pursuant to proposed Rate Schedule FTS-6 and FTS-10. Certain of the Rate Schedule FTS-6 and FTS-10 shippers have elected upstream transportation by Panhandle Eastern and Trunkline and it is stated that they will require further transportation through the Lebanon Lateral to arrive at Texas Eastern's system. It is claimed that the authorized capacity of the Lebanon Lateral must be increased in order to accommodate fully delivery of the volumes to Texas Eastern.

Pursuant to section 7(c) of the NGA and § 157.7 of the Commission's regulations, applicants seek authority to allow, as appropriate, either Texas Eastern or Trunkline to increase the size of the second unit already certificated and authorized to be installed and operated at Gas City from 2,300 horsepower to 3,400 horsepower. In addition, authorization is requested to install and operate a 5,350 horsepower gas turbine compressor to be located near Glen Karn, Ohio. This additional compression on the Lebanon Lateral is required to provide increased transportation capacity for delivery of natural gas to Texas Eastern's mainline system at its Lebanon, Ohio compressor station. The estimated cost of the facilities is approximately $22,313,400.

Applicants state that inclusion of the facilities and related capacity proposed would result in an annual net economic benefit of approximately $1,371,479 to existing Texas Eastern shippers on the Lebanon Lateral. Texas Eastern proposes to perform transportation services under pending Rate Schedules LLT-1 and LLT-2 as proposed in Texas Eastern Docket No. CP92-459-000 and Trunkline Docket No. CP92-460-000. Rate Schedule LLT-1 will provide for firm, incremental open-access transportation service. Texas Eastern is not proposing to increase the proposed initial rates under LLT-1 and LLT-2.

Comment date: October 16, 1992, in accordance with Standard Paragraph F at the end of this notice.

7. El Paso Natural Gas Co.

[Docket No. CP90-2214-004]

September 28, 1992

Take notice that on September 18, 1992, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas, 79978, filed a motion at Docket No. CP90-2214-004, pursuant to section 7(c) of the Natural Gas Act and Rules 212 and 2002, *et seq.*, of the Commission's Rules of Practice and Procedure, requesting the Commission to amend the order issued August 1, 1991 at Docket No. CP90-2214-001 to reflect the facilities actually constructed, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

El Paso states that the Commission's order issued August 1, 1991 at Docket

No. CP90-2214-001 granted certificate authorization to construct and operate the facilities comprising its North System Expansion. It is stated that the new facilities will enable El Paso to transport increased volumes of gas from the San Juan Basin through El Paso's San Juan Mainline and Permian-San Juan Crossover Systems.

El Paso further states that it has completed construction of the facilities identified above and placed such facilities into service as of April 1, 1992. However, subsequent to receiving authorization El Paso determined that it would be more advantageous to install different compressor units at the White Rock and Dilkon Compressor Stations.

El Paso states that it proposed to install a 12,000 ISO horsepower Solar Mars gas turbine compressor unit at both the White Rock and Dilkon Compressor Stations. However, El Paso identified two (2) 14,000 ISO horsepower General Electric ("GE") Frame 3 compressor units, which if rebuilt, could be available for installation at the White Rock and Dilkon Compressor Stations. Rather than purchase new Solar Mars compressor units, El Paso elected to rebuild and install the available GE units at a lower total cost.

El Paso states that no adverse effects will result from the substitution of the GE Frame 3 for the Solar Mars units. The substitution of compressor units with a different horsepower rating will result in no change to the overall project design delivery capacity of 400 MMcf/d to the west-end of El Paso's system. El Paso's air quality permits for the White Rock and Dilkon Compressor Stations were based on a 14,000 ISO horsepower compressor unit. Finally, El Paso states there will be no adverse effects to noise levels from the substitution of the compressor units.

Comment date: October 19, 1992, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

8. Trunkline Gas Co.

[Docket No. CP92-704-000]

September 28, 1992

Take notice that on September 15, 1992, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP92-704-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon sales service provided to Illinois Power Company (Illinois Power), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Trunkline states that it is requesting authorization to abandon sales service provided to Illinois Power pursuant to Trunkline's Rate Schedule P-1 of its FERC Gas Tariff, Original Volume No. 1 and a contract dated October 12, 1961. Trunkline indicates that under Rate Schedule P-1, Trunkline provided firm sales service to Illinois Power of up to 25,000 Mcf/d. Trunkline states that Illinois Power provided, and Trunkline accepted, notice of its intent to terminate the agreement on November 1, 1986. Trunkline, therefore, requests abandonment authorization, effective on the date of issuance of any Commission order granting abandonment authorization herein of its contractually terminated firm sales service obligation provided to Illinois Power under Rate Schedule P-1. Trunkline states that no facilities are proposed to be abandoned in the instant application.

Comment date: October 19, 1992, in accordance with Standard Paragraph F at the end of this notice.

9. Texas Gas Transmission Corp.

[Docket No. CP92-730-000]

September 8, 1992

Take notice that on September 24, 1992, pursuant to section 7(c) of the Natural Gas Act, Texas Gas Transmission Corporation (Applicant), P.O. Box 1160, Owensboro, Kentucky 42302, filed an Application for a Certificate of Public Convenience and Necessity to authorize the construction and operation of facilities necessary to render firm transportation service for consolidated Edison Company of New York Inc. (Con Ed), Long Island Lighting Company, The Brooklyn Union Gas Company (BUG) and KIAC Partners, an affiliate of BUG (KIAC).

Applicant states that it is seeking authority to construct and operate facilities to expand its mainline system in order to accommodate an additional 102,239 MMBtu per day for firm upstream transformation for the Liberty Shippers.[1] Applicant will receive gas at various points on its system, and transport this gas under § 284.223 of the Commission's Regulations and its blanket certificate issued in Docket No. CP88-686-000, to Texas Eastern Transmission Corporation (TETCO) at an existing interconnection at Lebanon, Ohio. This gas would then be delivered to Liberty Pipeline Company (Liberty).

Applicant requests authority to construct and operate the following additions ot its system:

(A) 10.10 Miles of 36-inch pipeline looping on Applicant's 26-inch Main Lines and extending Northward to the south end of previously approved 36-inch loop, Ohio, Hancock and Breckinridge Counties, Kentucky;

(B) 6.0 Miles of 36-inch pipeline looping on Applicant's 26-inch Main Lines, beginning at the South end of the Existing 36-inch No. 1 Line and extending southward in Jefferson County, Kentucky;

(C) 13.70 Miles of 36-inch pipeline looping on Applicant's 26-inch Main Lines, beginning at the North End of previously approved 36-inch loop line and extending Northward in Oldham County, Kentucky; and

(D) 10.90 Miles of 36-inch pipeGasline looping Applicant's 26-inch Main Lines, beginning at the Southend of previously approved 36-inch loop Line and extending southward in Butler County, Ohio.

The estimated cost of these facilities is $54,000,000.

Applicant states that, although the proposed in service date is November 1, 1994, it has been agreed that the Liberty Shippers will not incur any demand charge responsibility on any transportation segment until the overall project is complete and in service. Thus, Applicant requests authority to capitalize interest on or after November 1, 1994, associated with the facilities which are complete and would be placed in service except for delays associated with the completion of the other segments comprising the overall project.

Comment date: October 19, 1992, in accordance with Standard Paragraph F at the end of the notice.

10. South Georgia Natural Gas Co.

[Docket No. CP92-709-000]

September 28, 1992

Take notice that on September 15, 1992, South Georgia Natural Gas Company (South Georgia), Post Office box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP92-709-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a portion of

[1] Applicant's application, along with the applications of other pipelines providing upstream transportation service, is part of a project to bring additional domestic gas supplies to various markets in the Northeast. In addition to various upstream transportation arrangements, this project involves the construction of a new natural gas pipeline by a partnership known as Liberty Pipeline Company, extending from points of receipt with Transcontinental Gas Pipe Line Company and Texas Eastern Gas Transmission Corporation near South Amboy, New Jersey, across lower New York Bay to a new delivery point located near the John F. Kennedy International Airport.

firm transportation service performed for five existing customers, all as more fully set forth in the application on file with the Commission and open to public inspection.

South Georgia states that all of its firm sales customers have converted all of their maximum daily quantities to firm transportation service on South Georgia pursuant to § 284.10 of the Commission's Regulations. South Georgia also states that in conjunction with their respective elections to convert, five of the converting customers request reductions in the level of firm transportation service they acquired as a result of the conversions. It is stated that the five customers request a reduction of firm transportation as follows:

Customer	Sales volume converted to firm transportation Mcfd	Requested reduction in firm transportation Mcfd	New level of firm transportation Mcfd
City of Andersonville, GA	122	61	61
City of Colquitt, GA	249	49	200
Decatur County, GA	250	100	150
Town of Meigs, GA	244	64	180
City of Shellman, GA	250	65	185

South Georgia requests that the partial abandonment of firm transportation service for the Town of Meigs, Georgia, be effective on March 1, 1992. South Georgia further requests that the partial abandonment of firm transportation service for the Cities of Andersonville, Colquitt and Shellman, Georgia and Decatur County, Georgia, be effective on May 5, 1992.

Comment date: October 19, 1992, in accordance with Standard Paragraph F at the end of this notice.

11. Williams Natural Gas Co.

[Docket No. CP92-727-000]

September 28, 1992

Take notice that on September 23, 1992, that Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP92-727-000 a request pursuant to §§ 157.205 and 157.216 of the Regulations under the Natural Gas Act (18 CFR 157.205 and 157.216) for authorization to abandon the transportation of natural gas for direct sale to the City of Garden City, Kansas (Garden City) and to reclaim measuring and appurtenant facilities located in Finney County, Kansas, under WNG's blanket authorization issued in Docket No. CP82-479-000, all as more fully set forth in the request on file with the Commission and open to public inspection.

WNG seeks authorization to abandon the transportation of gas for direct sale to Garden City for use at the old city solid waste dump site and to reclaim measuring and appurtenant facilities located in Section 36, Township 24 South, Range 33 West, Finney County, Kansas.

WNG states that Garden City notified WNG that they no longer required gas at the city's former solid waste dump site.

WNG states that the cost to reclaim measuring, regulating and appurtenant facilities is estimated to be approximately $510.

Comment date: November 12, 1992, in accordance with Standard Paragraph G at the end of this notice.

12. Williams Natural Gas Co.

[Docket No. CP92-728-000]

September 28, 1992

Take notice that on September 23, 1992, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP92-728-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to abandon the transportation of gas for direct sale to Melvin Garey (MG) and the facilities installed for the delivery of the gas, under Williams' blanket certificate issued in Docket No. CP82-479-000, all as more fully described in the request which is on file with the Commission and open to public inspection.

Williams proposes to abandon the transportation of natural gas for MG and the associated facilities located in Stanton County, Kansas. It is stated that the gas was used in a grain dryer. It is asserted that Williams would reclaim measuring, regulating and appurtenant facilities used for the deliveries. It is explained that MG no longer requires gas service for the grain dryer and the letter requesting the abandonment is included in the request. The cost of the abandonment is estimated at $350.

Comment date: November 12, 1992, in accordance with Standard Paragraph G at the end of this notice.

13. Northwest Pipeline Corp.

[Docket No. CP92-729-000]

September 28, 1992

Take notice that on September 23, 1992, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed in Docket No. CP92-729-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205), for authorization to construct and operate the Nicholas Wash meter station which would consist of a 6-inch orifice meter, a 4-inch hot tap and appurtenances to allow natural gas deliveries for Rocky Mountain Natural Gas Company (Rocky Mountain), an intrastate pipeline serving communities in Colorado, under the certification issued in Docket No. CP82-433-000 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.

Northwest states that the Nicholas Wash meter station will be located on its Nucla Lateral in San Miguel County, Colorado, and will have a design capacity of 6,500 MMBtu per day at 220 psig. Northwest also states that the cost of the meter station is estimated to be $248,878 and that, pursuant to the facilities reimbursement provisions of its transportation tariff, Northwest will not now request Rocky Mountain to provide any reimbursement for the facilities. In addition, it is stated that deliveries to the Nicholas Wash meter station will occur under Rocky Mountain's existing firm transportation agreement and under interruptible transportation agreements with various shippers, all as authorized under part 284 of the Commission's Regulations.

Comment date: November 12, 1992, in accordance with Standard Paragraph G at the end of this notice.

14. Texas Gas Transmission Corp.

[Docket No. CP92-726-000]

September 29, 1992

Take notice that on September 23, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP92-726-000 an application pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a delivery point for Protein Technologies International, Inc. (Protein Technologies), in Shelby County, Tennessee, under Texas Gas' blanket certificate issued in Docket No. CP82-407-000 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.

Texas Gas states that Protein Technologies currently receives gas service from Memphis Light, Gas and Water Division (Memphis), a local municipal distribution company. Texas Gas also states that over the past year, Protein Technologies has negotiated with Memphis in an effort to obtain a more economical natural gas service and was unable to do so. In view of this, it is stated, Protein Technologies requested Texas Gas to add the proposed delivery point in order to receive gas directly from Texas Gas.

It is stated that Protein Technologies is requesting 500 MMBtu per day of firm service (with an annual D-2 billing quantity of 182,500) for a primary term of two years and year to year thereafter, and 9,500 MMBtu per day of interruptible service on a month-to-month basis. It is claimed that these services would be provided by Texas Gas pursuant to its blanket certificate issued in Docket No. CP88-686-000 and Section 284.223 of the Regulations. Texas Gas also states that the applicable rate schedules are FT and IT Rate Schedules as contained in its FERC Gas Tariff.

Texas Gas further states that its maximum day and annual transportation volumes would not be significantly affected.

Comment date: November 12, 1992, in accordance with Standard Paragraph G at the end of this notice.

15. Columbia Gas Transmission Corp.

[Docket No. CP92-687-000]

September 29, 1992

Take notice that on September 1, 1992, Columbia Gas Transmission Corporation (Columbia) 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed an abbreviated application pursuant to Section 7(c) of the Natural Gas Act (NGA), as amended, and Part 157 of the Commission's Regulations for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities subject to the jurisdiction of the Federal Energy Regulatory Commission (Commission) to be utilized for firm transportation service, under part 284 of the Commission's Regulations, of 16,200 Dth per day of natural gas for Indeck-Olean Limited Partnership (Indeck). Volumes will be received by Columbia at an existing interconnection between Columbia and ANR Pipeline Company (ANR) and delivered by Columbia to Empire Exploration, Inc. (Empire), an intrastate pipeline, at a proposed interconnection between Columbia and Empire in Cattaraugus County, New York for transportation and re-delivery by Empire to the Indeck cogeneration facility in Olean, New York, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

This application is being renoticed because Staff inadvertently omitted the following facility enhancements that Columbia will make pursuant to § 2.55(a) of the Commission's regulations (18 CFR 2.55(a)), as well as constructions that will be performed by Empire and Indeck:

Item 2.55-1 Lewis Run—Overpressure Protection from Line 1862 (1,000 psig MAOP) to Line 4226 (770 psig MAOP). Facilities include a 6-inch regulator with a 6-inch bypass. Located in McKean County, Pa.

Item 2.255-2 Emporium Compressor Station—Install compressor remot stop capability. Located in Cameron County, Pa.

Item 2.55-3 Tamarack—Overpressure protection from Line 1818 (990 MAOP) to Line 1862 (755 MAOP). Facilities include an 8-inch regulator. Located in Clinton County, Pa.

Empire will construct a 900-horsepower compressor station at the proposed point of interconnection between Columbia and Empire, near Hartzfeld Mountain. Empire will also construct an 8-inch pipeline from its new compressor station to its existing 8-inch pipeline, approximately 800 feet away. Indeck will construct approximately 1,000 feet of 8-inch service line from an interconnection with Empire to its new cogeneration facility.

Columbia requests authority to construct and operate the following facilities to provide the service described above:

(1) Delmont Compressor Station—Install one 650-horsepower unit and related equipment and buildings in Westmoreland County, PA.

(2) Empire Measuring Station—Establish a point of interconnection with Empire, for firm transportation service to Indeck.

The cost of facilities for which Columbia seeks specific authorization is estimated to be $3,774,440. Indeck will make advance contributions in-aid-of-construction equal to Columbia's facility costs, plus applicable "gross up" for tax purposes. Columbia's cost will be limited to the filing fee of $39,440.

Comment date: October 20, 1992, in accordance with Standard Paragraph F at the end of this notice.

16. National Fuel Gas Supply Corporation

[Docket No. CP92-732-000]

September 29, 1992

Take notice that on September 25, 1992, National Fuel Gas Supply Corporation (National), 10 Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP92-732-000 a request pursuant to §§ 157.205, 157.211, 157.212, and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211, 157.212, 157.216) for authorization to construct and operate sales taps, add a delivery point, and abandon a pipeline lateral under National's blanket certificate issued in Docket No. CP83-4-000 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.

National proposes to construct and operate 7 sales tap connections to attach new residential customers of National Fuel Distribution Company, an existing (RQ) wholesale customer, all of which are located in Pennsylvania.

Name	Line	County	Annual Mcf
Donald E. Schultz	T-3	Clarion	150
Daryl McKinney	S	Venango	150
Daryl L. Kittel	L	Warren	150
John F. Quirke	N-M47	Mercer	150
Raymond Kavinski	H	Warren	150
Rocky Ridge Park	S	Venango	2,900
Fred Yocca	K-2	Clarion	150

National proposes to add a delivery point required to provide a new firm (FT) transportation service to Distribution at an interconnection with Columbia Gas of Pennsylvania, Inc., in Warren County, Pennsylvania. National estimates that the deliveries would be 10,000 Mcf on a peak day and 3,650,000 Mcf annually.

National proposes to abandon in place approximately 5,200 feet of an 8-inch lateral line know as Line S. National states that the line is located in Venango County, Pennsylvania, and was certificated at Docket No. G-328. National further states that although there was one customer served from this line, National has been unable to contact that customer; the customer has not used any gas for at least 10 years; and the facility served is a seasonal dwelling in a remote location.

Comment date: November 13, 1992, in accordance with Standard Paragraph G at the end of this notice.

17. ANR Pipeline Co.

[Docket No. CP92-725-000]

September 29, 1992

Take notice that on September 23, 1992, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP92-725-000 an application pursuant to Section 7(b) of the Natural Gas Act for an order granting permission and approval to abandon a transportation service for Natural Gas Pipeline Company of America (Natural) effective November 9, 1992, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

ANR states that by order issued October 31, 1972, as amended September 24, 1974, in Docket No. CP72-296, the Commission authorized a transportation agreement between ANR and Natural dated April 10, 1972, as amended October 15, 1973 and August 16, 1974. ANR further states that the service is designated as ANR's Rate Schedule X-31.

ANR says that the term of the agreement was to extend for 20 years, and year-to-year thereafter unless terminated by at least six months' written notice. ANR indicates that the initial term expires November 9, 1992. ANR states that Natural has requested termination of the agreement to be effective November 9, 1992.

Comment date: October 20, 1992, in accordance with Standard Paragraph F at the end of the notice.

18. Williams Natural Gas Co.

[Docket No. CP92-735-000]

September 29, 1992

Take notice that on September 25, 1992, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP92-735-000 a request pursuant to §§ 157.205 and 157.216(b) of the Commission's Regulations under the Natural Gas Act for authorization to abandon the transportation of natural gas for direct sale to George Schlosser (Schlosser) located in Jackson County, Missouri and the facilities necessary to make that sale under its blanket certificate issued in Docket No. CP82-479-000, all as more fully set forth in the request on file with the Commission and open to public inspection.

WNG states that Schlosser has requested the abandonment of the sale and facilities.

Comment date: November 13, 1992, in accordance with Standard Paragraph G at the end of this notice.

19. Texas Gas Transmission Corp.

[Docket No. CP92-734-000]

September 29, 1992

Take notice that on September 25, 1992, pursuant to section 7 of the Natural Gas Act (NGA) Texas Gas Transmission Corporation (Applicant), P.O. Box 1160, Owensboro, Kentucky 42302, filed in the above-referenced docket an Abbreviated Application for a Certificate of Public Convenience and Necessity to authorize the construction and operation of certain facilities necessary to provide firm transportation service for the Power Authority of the State of New York (NYPA).

Applicant states that it seeks to construct and operate facilities to expand its mainline system in order to transport an additional 35,176 MMBtu per day for NYPA.[2] Applicant will receive the gas at various receipt points on its pipeline system and transport the gas, pursuant to Section 284.223 of the Commission's regulations, to Texas Eastern Transmission Corporation (TETCO) at Lebanon, Ohio where an existing interconnection is present.

Applicant proposes to construct and operate the following additions to its Pipe Line system:

1. 3.05 miles of 36-inch pipeline looping Applicant's 26-inch main line, extending north to the south end of previously filed 36-inch loop, Ohio County, Kentucky.

2. 2.68 miles of 36-inch pipe line looping Applicant's 26-inch main lines, extending north to the south end of previously filed 36-inch loop, Jefferson County, Kentucky.

3. 2.37 miles of 36-inch pipe line looping Applicant's 26-inch main lines, beginning at the North end of previously filed 36-inch loop line, and extending the line north to Oldham and Trimble Counties, Kentucky.

4. 2.79 miles of 36-inch pipe line looping Applicant's 26-inch main lines, beginning at the Dillsboro Compressor Station, and extending northward to Dearborn County, Indiana.[3]

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said 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

[2] Applicant's application along with the Applications of other pipelines providing upstream transportation service, is a part of an integrated project to bring additional domestic gas supplies to various incremental markets in the Northeast, known as "The Liberty Project." In addition to various upstream transportation arrangements, this project involves the construction of a new natural gas pipeline by a partnership known as Liberty Pipeline Company, extending from points of receipt with Transcontinental Gas Pipe Line Company and Texas Eastern Gas Transmission Corporation near South Amboy, New Jersey, across lower New York Bay to a new delivery point located near the John F. Kennedy International Airport.

[3] the "previously filed" 36-inch loops referred to in the description of facilities are those loops for which authorization is being sought by Applicant in Docket No. CP92-730-000.

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. 92-24276 Filed 10-6-92; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 92-92-NG]

North Canadian Marketing Corp.; Order Granting Blanket Authorization to Import and Export Natural Gas From and to Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of an order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting North Canadian Marketing Corporation blanket authorization to import up to 146 Bcf and to export up to 40 Bcf of natural gas from and to Canada over a two-year term, beginning on the date of first import or export after December 31, 1992.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, October 1, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-24361 Filed 10-6-92; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4519-8]

Clean Air Act; Acid Rain Provisions

AGENCY: Environmental Protection Agency.

ACTION: Notice of delegation of administration of auctions and sales under section 416 of the Clean Air Act from the Administrator of the Environmental Protection Agency to the Chicago Board of Trade.

SUMMARY: Pursuant to title IV of the Clean Air Act ("the Act"), the Administrator must promulgate regulations to reduce emissions of sulfur dioxide (SO_2) and nitrogen oxides (NOx), precursors of acid rain. The centerpiece of the SO_2 control program is the allocation of transferable allowances, or authorizations to emit SO_2 which are distributed in limited quantities for existing utility units and which eventually must be held by all utility units to cover their SO_2 emissions. These allowances may be transferred among polluting sources and others, so that market forces may govern their ultimate use and distribution, resulting in the most cost-effective sharing of the emissions control burden. In addition, the Administrator is directed under section 416 of the Act to conduct annual auctions and sales of allowances. Auctions and sales are expected to stimulate and support such a market in allowances and to provide a public source of allowances, particularly to new units for which no allowances are allocated. Today, the Administrator is giving notice of a delegation of authority that permits the Chicago Board of Trade to administer such auctions and sales on EPA's behalf.

EFFECTIVE DATE: This delegation of authority is effective October 7, 1992.

FOR FURTHER INFORMATION CONTACT: Linda Reidt Critchfield, Environmental Protection Agency, OAIAP/Acid Rain Division (6204J), 401 M St., SW., Washington DC 20460, (202) 233-9087.

SUPPLEMENTARY INFORMATION:

I. Authority

Pursuant to section 416(f) of the Clean Air Act, the Administrator may delegate or contract for the conduct of auctions or sales under the Administrator's supervision by other departments or agencies of the United states Government or by nongovernmental agencies, groups, or organizations.

II. Background

EPA chose to delegate the administration of the auctions and sales to an organization with knowledge and experience in such areas. This decision was supported by the Acid Rain Advisory Committee (ARAC) and others who desired EPA to find a knowledgeable organization to conduct the auctions and sales.

EPA began the delegation process by requesting, in the December 17, 1991 **Federal Register**, proposals to administer the auctions and sales. EPA received proposals from three organizations: The Chicago Board of Trade, the New York Mercantile Exchange, and Cantor & Fitzgerald Brokerage Corporation. EPA followed an objective selection process that evaluated each applicant on criteria such as the entities: (1) Ability to process and manage financial instruments; (2) experience in developing and using transactional information systems; and (3) knowledge of section 416 of title IV of the Clean Air Act. Based on evaluation of the proposals, EPA selected the Chicago Board of Trade (CBOT) as likely to be the most capable administrator of the EPA auctions and sales. CBOT was chosen because they not only met, but exceeded, all of the evaluation criteria, specified their plans to implement the auctions and sales, and demonstrated an excellent working knowledge of the Acid Rain Program. Also, EPA believes a significant benefit for the allowance market is created by having an auctioneer who is active in facilitating the allowance market.

II. Terms of the Delegation

The delegation of authority to the CBOT will take effect today and continue for three years with a possibility of extension. The Administrator of EPA reserves the right to revoke the delegation at any time, but the delegation affords the CBOT the same privilege, provided CBOT notifies EPA no later than 12 months prior to termination of the delegation. The authority being delegated to the CBOT relates only to the ministerial aspects of the auctions and sales, such as the collection and processing of auction bids and direct sale applications. Functions relating to policy, the transfer of allowances, and disbursement of money will be retained by the EPA. CBOT will

perform the administration of the auctions and sales without compensation from EPA, nor will CBOT be allowed to charge fees for these functions. CBOT must also refrain from submitting bids for allowances in the annual auctions and comply with stringent confidentiality requirements for administration of the auctions. Lastly, CBOT will be required to adhere strictly to the requirements of section 416 of the Act and 40 CFR part 73.

Dated: September 25, 1992.

William K. Reilly,

Administrator.

[FR Doc. 92-24345 Filed 10-6-92; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; Port of Houston, et al.

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and 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, 800 N. Capitol Street. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in §§ 560.6 and/or 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.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 224-200698.

Title: Port of Houston/Schroder Marine Services, Inc. Terminal Agreement.

Parties:

Port of Houston Authority ("Port")
Schroder Marine Services, Inc. ("Schroder")

Filing Party: Martha T. Williams, Staff Counsel, Port of Houston Authority, Post Office Box 2562, Houston, Texas 77252.

Synopsis: The agreement provides for the allocation of space within the Port facility to Schroder for its use to accommodate cargo which it handles, and for compensation to the Port. The Agreement expires December 31, 1993.

Dated: October 1, 1992.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 92-24260 Filed 10-6-92; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

[Docket No. R-0777]

Branch Closings

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed policy statement.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is seeking comment on a proposed policy statement regarding branch closings by state member banks. The proposed policy statement provides guidance concerning the branch closing provisions of section 228 of the Federal Deposit Insurance Corporation Improvement Act (FDICIA), specifically the requirements that insured depository institutions, including state member banks, adopt policies for branch closings and provide notice before closing any branch.

DATES: Comments must be submitted on or before December 4, 1992.

ADDRESSES: Comments, which should refer to Docket No. R-0777, may be mailed to Mr. William Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and Constitution Avenue NW., Washington, DC 20551. Comments addressed to Mr. Wiles may also be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in room B-1122 between 9 a.m. and 5 p.m., except as provided in § 261.8 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8.

FOR FURTHER INFORMATION CONTACT: Oliver I. Ireland, Associate General Counsel (202/452-3625), Gregory A. Baer, Senior Attorney (202/452-3236), Legal Division; Glenn E. Loney, Assistant Director (202/452-3585), Beverly C. Smith, Review Examiner (202/452-3946), Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Background Information

Section 228 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) added a new section 39 to the Federal Deposit Insurance Act (FDI Act).[1] New section 39 took effect upon enactment of FDICIA on December 19, 1991. The law requires each insured depository institution, including state member banks, to give 90 days prior written notice of any branch closing to its federal regulator and to branch customers, to post notice at the branch site at least 30 days prior to closing, and to develop a policy with respect to branch closings. The notice to the regulator must include a detailed statement of the reasons for the decision to close the branch and information in support of those reasons.

The Board has developed a proposed policy statement applying section 39 to state member banks, and the Board is seeking public comment on that proposal. Because section 39 applies to all insured depository institutions, each of the Federal banking agencies will be required to monitor compliance with its requirements. Accordingly the Board has worked with the other Federal banking agencies to develop a consistent approach to section 39, and these efforts will continue in developing a final policy statement. At the same time, however, each agency also has existing rules, regulations, and policies that are affected by section 39, and the policies of the agencies will differ accordingly.

Issues for Specific Comment

The Board seeks comments on all aspects of its proposed policy statement. In addition, the Board invites comments on the following specific issues:

1. *Definition of "branch."* Section 39 requires any insured depository institution that proposes to close a branch to provide prior notice to its Federal banking agency and the customers of the branch. The proposed policy statement defines "branch" in the same manner as the FDI Act defines "domestic branch," thereby including

[1] Due to an error in drafting, section 132 of FDICIA also adds a new section 39 to the FDI Act. The section 39 of the FDI Act added by section 228 of FDICIA is codified at 12 U.S.C. 1831p.

any domestic facility of a state member bank, other than its main office, where deposits are received, checks are paid, or money is lent. In addition to traditional brick and mortar branches, the Board believes that the law applies to closings of other types of domestic facilities that constitute branches, including ATMs, drive-in facilities, and mobile branches.

2. *Branch relocations.* Because section 39 applies only to plans to "close" a branch, the Board is not interpreting section 39 to require notice in case of a branch relocation. The Board's regulations currently provide that an application to establish a branch need not be filed in the case of a "mere relocation of an existing branch in the immediate neighborhood without affecting the nature of its business or customers served." *See* 12 CFR 208.9(b)(7); *see* also F.R.R.S. 3-419. The Board is proposing to adopt the same test for relocation for purposes of branch closings as it currently employs for applications to establish branches. Thus, if a branch relocation occurs under circumstances such that no application to establish a branch would be required, then no branch closing notice would be required.

3. *Operation of branches during option period.* Under the standard agreements of the FDIC and RTC, an acquirer that assumes some or all of the assets and liabilities of an institution placed into conservatorship or receivership may also operate one or more of the branches of the failed institution temporarily until it decides, during an option period (generally 90-180 days), whether to purchase or lease the branch or to transfer it back to the FDIC or RTC.

The question has arisen whether an acquirer that decides not to exercise such an option has closed a branch for purposes of section 39. The language of the statute is ambiguous on this point, and application of the notice requirement in such cases would appear to defeat rather than serve the purposes of the statute. The RTC and FDIC encourage an acquirer to occupy temporarily any branch that the acquirer is unsure about acquiring permanently; this temporary arrangement not only may lead the acquirer eventually to decide to take the branch, it also serves as a convenience to customers. However, if section 39 were interpreted to require an acquirer to remain in the branch 90 days after a decision that it does not wish to acquire the branch, then acquirers would be more reluctant to occupy a branch temporarily, or would reprice their bids (at a cost to the government) to reflect the additional cost imposed by the notice requirement.

Under the proposed policy statement, the 90-day notice requirement does not apply when an acquiring state member bank operates branches of a failed institution on an interim basis, so long as the branches are closed prior to expiration of the acquirer's branch acquisition option period. If a state member bank were to exercise its branch acquisition option and acquire such a branch, the bank would be required to comply with the statutory notice requirements if it later decided to close the branch.

4. *Identifying customers of the branch.* The proposed policy statement permits each state member bank to determine which of its patrons will be identified as customers of a particular branch. The proposed policy statement requires a good faith determination using a reasonable method developed by the bank. One reasonable method that a state member bank could use is to allocate a customer to a branch based on where the customer opened his or her deposit or loan account.

Proposed Policy Statement for State Member Banks Concerning Branch Closing Notices and Policies

Purpose

This policy statement provides guidance to state member banks concerning the statutory requirements that a bank provide prior notice of any branch closing and establish internal policies for branch closings.

Background

The Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) was enacted on December 19, 1991. Section 228 of the FDICIA adds a new section 39 to the Federal Deposit Insurance Act (FDI Act) and imposes notice requirements on insured depository institutions[2] that propose branch closings. The provision became effective on December 19, 1991. As the federal banking agency that supervises state member banks, the Board is charged with administering section 39 for those institutions.

The law requires an insured depository institution to submit a notice of any proposed branch closing to the appropriate Federal banking agency no later than 90 days prior to the date of the proposed branch closing. The required notice must include a detailed statement of the reasons for the decision to close the branch and statistical or other information in support of such reasons.

The law also requires an insured depository institution to notify its customers of the proposed closing. The institution must mail the notice to the customers of the branch proposed to be closed at least 90 days prior to the proposed closing. The institution also must post a notice to customers in a conspicuous manner on the premises of the branch proposed to be closed at least 30 days prior to the proposed closing.

Additionally, the law requires each institution to adopt policies regarding closings of branches of the institution.

Applicability

Under section 3 of the FDI Act, a "branch" is defined as any domestic facility of an insured depository institution, other than its main office, where deposits are received, checks are paid, or money is lent. Thus, in addition to a traditional brick and mortar branch, section 39 of FDICIA applies to the closing of any facility that constitutes a branch, including an automated teller machine (ATM), drive-in facility, and mobile branch.

A state member bank must file a branch closing notice for a branch closing occurring in the context of a merger, consolidation or other form of acquisition, whether or not such transaction is subject to expedited approval under the Bank Merger Act (12 U.S.C. 1828). The parties to such a transaction should determine which party will give the notice. Thus, for example, the purchaser may give the notice prior to consummation of the transaction where the purchaser intends to close a branch following consummation, or the seller may give the notice because it intends to close a branch at or prior to consummation. In the latter example, if the transaction were to close ahead of schedule, the purchaser, if authorized by the Board, could operate the branch to complete compliance with the 90-day requirement without the need for an additional notice.

Section 39 would not apply to an interruption of service caused by an event beyond the institution's control (*e.g.*, act of God, fire), as the state member bank would not have closed the branch. Section 39 would apply, however, if the state member bank were to decide to close or not reopen the branch following the incident. Although prior notice would not be possible in such a case, the bank should notify the

[2] An insured depository institution means any bank or savings association, as defined in Section 3 of the FDI Act, the deposits of which are insured by the Federal Deposit Insurance Corporation (FDIC). The term includes state member banks.

customers of the branch and the Board in the manner specified by section 39 as soon as possible after the decision to close the branch has been made.

The law does not apply where a branch undergoes a change in name, location, or services but continues to meet the definition of branch and any change in location is within the same immediate neighborhood and does not affect the nature of the business or customers served. Thus, the law does not apply to:

• Mergers, consolidations, or other acquisitions, including branch sales, which will not result in any branch closings;

• Change of services at a branch so long as the remaining facility constitutes a branch, such as where loan services are removed from a branch that will continue to offer deposit services, or where a traditional brick and mortar branch is converted to an ATM;

• A branch relocation, within the meaning of the Board's existing regulation, 12 CFR 208.9(b)(7).

In addition, section 39 does not apply when a branch ceases operation but is not closed by a state member bank. Thus, the law does not apply to:

• A temporary interruption of service caused by an event beyond the institution's control, if the insured depository institution plans to restore branching services at the site in a timely manner;

• Transferring back to the FDIC or Resolution Trust Corporation, pursuant to the terms of an acquisition agreement, a branch of a failed bank or savings association operated on an interim basis in connection with the acquisition of all or part of a failed bank or savings association.

Notice of Branch Closing to the Board

The law requires an insured depository institution to give notice of any proposed branch closing to the appropriate Federal banking agency no later than 90 days prior to the date of the proposed branch closing. The required notice must include the following:

• Identification of the branch to be closed;

• The proposed date of closing;

• A detailed statement of the reasons for the decision to close the branch; and

• Statistical or other information in support of such reasons consistent with the institution's written policy for branch closings.

If a state member bank believes certain information included in the notice is confidential in nature, the bank should prepare such information separately and request confidential treatment. The Board will decide whether to treat such information confidentially under the Freedom of Information Act (5 U.S.C. 552).

Notice of Branch Closing to Customers

The law requires a state member bank that proposes to close a branch to provide notice of the proposed closing to the customers of the branch. A customer of a branch is a patron of a state member bank who has been identified with a particular branch by such institution through use, in good faith, of a reasonable method for allocating customers to specific branches. A state member bank that allocates customers to its branches based on where a customer opened his or her deposit or loan account will be presumed to have reasonably identified each customer of a branch. A state member bank need not change its recordkeeping system in order to make a reasonable determination of who is a customer of a branch. If a state member bank cannot reasonably identify the customers of a particular branch using its current recordkeeping system, it may satisfy the requirements of section 39 by notifying all of its deposit and loan customers.

Under section 39, the bank must include a customer notice at least 90 days in advance of the proposed closing in at least one of the regular account statements mailed to customers, or in a separate mailing. If the branch closing occurs after the proposed date of closing, no additional notice is required to be mailed to customers (or provided to the Board) if the state member bank acted in good faith in projecting the date for closing and in subsequently delaying the closing.

The mailed customer notice should state the location of the branch to be closed, the proposed date of closing, and either identify where customers may obtain service following the closing date or provide a telephone number for customers to call to determine such alternative sites.

Under section 39, a bank also must post notice to branch customers in a conspicuous manner on the branch premises at least 30 days prior to the proposed closing. This notice should state the proposed date of closing and identify where customers may obtain service following that date or provide a telephone number for customers to call to determine such alternative sites. A bank may revise the notice to extend the projected date of closing without triggering a new 30-day notice period.

In some situations, a bank, in its discretion and to expedite transactions, may mail and post notices to customers of a proposed branch closing that is contingent upon an event. For example, in the case of a proposed merger or acquisition, a bank may notify customers of its intent to close a branch upon approval by the appropriate Federal banking agency of the proposed merger or acquisition.

Policies for Branch Closings

The law requires all insured depository institutions to adopt policies for branch closings. Each state member bank with one or more branches must adopt such a policy. If a bank currently has no branches, it must adopt a policy for branch closing before it establishes its first branch. The policy should be in writing and meet the size and needs of the state member bank.

Each branch closing policy adopted pursuant to section 39 should include factors for determining which branch to close and which customers to notify, and procedures for providing the notices required by the statute.

Compliance

As part of each Community Reinvestment Act (CRA) examination, the Board will examine for compliance with section 39 of FDICIA to determine whether the state member bank has adopted a branch closing policy and whether the state member bank provided the required notices when it closed a branch. If a state member bank fails to comply with section 39, the Board may make adverse findings in the CRA evaluation or take appropriate enforcement action.

Board of Governors of the Federal Reserve System, October 1, 1992.

William W. Wiles,

Secretary of the Board.

[FR Doc. 92-24307 Filed 10-6-92; 8:45 am]

BILLING CODE 6210-01-F

Banc One Corporation, et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies; and Acquisitions of Nonbanking Companies

The companies listed in this notice have applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed companies have also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation

Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The applications are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 29, 1992.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Banc One Corporation, Columbus, Ohio, and Banc One Alpha Corporation, Columbus, Ohio; to merge with Valley National Corporation, Phoenix, Arizona, and thereby indirectly acquire The Valley National Bank of Arizona, Phoenix, Arizona; Valley Bank & Trust Company, N.A., Salt Lake City, Utah; Valley Central Bank, Salt Lake City, Utah; and California Valley Bank, N.A., Fresno, California. In connection with this application, Banc One Alpha Corporation has also applied to become a bank holding company.

Applicants also propose to acquire Concho Insurance Agency, Inc., Phoenix, Arizona, and thereby engage in the sale of credit-related insurance in connection with extensions of credit by affiliated banks pursuant to § 225.25(b)(8)(i); VNC Investment Corporation, Phoenix, Arizona, and thereby engage in making or arranging commercial loans pursuant to § 225.25(b)(1); and investing in five percent or less of the outstanding shares or other interests of unrelated entities pursuant to § 225.22(c)(5) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, October 1, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-24305 Filed 10-6-92; 8:45 am]

BILLING CODE 6210-01-F

Great Lakes Financial Resources, Inc. Employee Stock Ownership Plan, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 29, 1992.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Great Lakes Financial Resources, Inc. Employee Stock Ownership Plan, Homewood, Illinois; to acquire 1.26 percent of the voting shares of Great Lakes Financial Resources, Inc., Homewood, Illinois, for a total of 42.81 percent, and thereby indirectly acquire First National Bank of Blue Island, Blue Island, Illinois; Bank of Matteson, Matteson, Illinois; and Bank of Homewood, Homewood, Illinois.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Worthen Financial Corporation, Little Rock, Arkansas; to become a bank holding company by acquiring 100 percent of the voting shares of The Union of Arkansas Corporation, Little Rock, Arkansas, and thereby indirectly acquire Union National Bank of Arkansas, Little Rock, Arkansas, and Union National Bank, Austin, Texas.

C. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Finlayson Bancshares, Inc., Finlayson, Minnesota; to acquire 100 percent of the voting shares of Barrett Bancorporation, Inc., Barrett, Minnesota, and thereby indirectly acquire Citizens State Bank of Barrett, Barrett, Minnesota.

Board of Governors of the Federal Reserve System, October 1, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-24306 Filed 10-6-92; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Agency Information Collection Under OMB Review

AGENCY: Administration for Children and Families, Office of Refugee Resettlement, HHS.

Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), we have submitted to the Office of Management and Budget (OMB) a request for approval of a new information collection entitled "U.S. Repatriate Program, Privacy Act Statement and Repayment Agreement" for the Office of Refugee Resettlement (ORR) of the Administration for Children and Families (ACF).

ADDRESSES: Copies of the information collection request may be obtained from Steve Smith, Office of Information Systems Management, by calling (202) 401-9235.

Written comments and questions regarding the requested approval for information collection should be sent directly to: Kristina Emanuels, OMB Desk Officer for ACF, OMB Reports Management Branch, New Executive Office Building, Room 3002, 725 17th Street, NW., Washington, DC 20503, (202) 395-7316.

Information on Document

Title: U.S. Repatriate Program, Privacy Act Statement and Repayment Agreement (Form ACF-120).

OMB No.: 0970- (new request).

Description: This information collection request provides basic identifying information on recipients of repatriation assistance authorized under section 1113 of the Social Security Act. This provision of the Act authorizes the Department of Health and Human Services to operate a program of temporary assistance to U.S. citizens and their dependents who are certified by the Department of State as repatriates and returned to the United States from a foreign country as a result of destitution, illness, war or other violence, or natural disaster. The assistance is in the form of a loan from the United States Government to the repatriate and must be repaid.

The personal identification information (Name, Address, Social Security Number, and Telephone Number) provided by the recipient of the repatriation assistance will enable the Office of Refugee Resettlement of the Administration for Children and Families to make collection of the assistance repayments more efficiently. ACF proposes to collect this information for documentation and debt collection purposes. The information may also be shared with other agencies for purposes of collecting the debts of recipients under the Department's debt collection regulations, including the use of tax offset procedures developed with the Internal Revenue Service.

Annual Number of Respondents: 500
Annual Frequency: 1
Average Burden Hours Per Response: 2 min.
Total Burden Hours: 17

Dated: September 22, 1992.

Larry Guerrero,

Deputy Director, Office of Information Systems Management.

[FR Doc. 92-24256 Filed 10-6-92; 8:45 am]

BILLING CODE 4130-01-M

Agency Information Collection Under OMB Review

AGENCY: Administration for Children and Families, Administration on Children, Youth and Families, Head Start Bureau, HHS.

Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), we have submitted to the Office of Management and Budget (OMB) a request for approval of a new information collection requirement for the Evaluation of the National Head Start/Public School Early Childhood Transition Demonstration Project. This request is a Congressionally mandated evaluation study (H.R. 4151-17) made by the Department of Health and Human Services' Head Start Bureau within the Administration for Children and Families (ACF).

ADDRESSES: Copies of the information collection request may be obtained from Steve Smith, Office of Information Systems Management, ACF, by calling (202) 401-9235.

Written comments and questions regarding the requested approval for information collection should be sent directly to: Kristina Emanuels, OMB Desk Officer for ACF, OMB Reports Management Branch, New Executive Office Building, room 3002, 725 17th Street, NW., Washington, DC 20503, (202) 395-7316.

Information on Document

Title: Evaluation of the National Head Start/Public School Early Childhood Transition Demonstration Project.

OMB No.: New request.

Description: This study will provide essential data regarding the effectiveness of providing comprehensive, continuous, and coordinated services to Head Start families and children from the time of Head Start enrollment, to kindergarten and through the third grade of public school. The research and evaluation on the National Head Start/Public School Early Childhood Transition Demonstration Project include both a national study and a study by the 32 local projects throughout the country. Each local project is intended to serve as an independent study of the effectiveness of providing federally mandated services in four major areas: (1) Developmentally appropriate curriculum; (2) health services; (3) parent involvement; and (4) a social service component. The National Head Start/Public School Early Childhood Transition Study is designed to study the success of the program nationally. In addition, the national study serves the critical function of establishing scientific standards ensuring that a national core data set would be collected at each site. That is, each local project is to use the information gathered for the national study in the evaluation of their local demonstration project. Also, the evaluation must provide for longitudinal follow-up of all Head Start demonstration and control/comparison children and families who are enrolled in Head Start and kindergarten in the fall of 1992 through the third grade.

The results of the study will be reported annually to the U.S. Congress, as mandated by H.R. 4151-17 and provide the Head Start Bureau, the Administration on Children, Youth and Families and the Department with information on the impact and effectiveness of program strategies of the demonstration projects. The study findings will also be available to the general research community, early childhood educators and professionals, and special interest groups on early childhood development.

	First year	Second year
Annual Number of Respondents.	13,500	26,600
Annual Frequency	1-2	1-2
Average Burden Hours Per Response.	12-75m	12-75m
Total Burden Hours	21,325	34,983

Dated: September 22, 1992.

Larry Guerrero,

Deputy Director, Office of Information Systems Management.

[FR Doc. 92-24257 Filed 10-6-92; 8:45 am]

BILLING CODE 4130-01-M

Agency Information Collection Under OMB Review

AGENCY: Administration for Children and Families, HHS.

Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), we have submitted to the Office of Management and Budget (OMB) a request for approval of a continuation of an information collection, Small Business Innovation Research (SBIR) Program for the Administration for Children and Families (ACF).

ADDRESSES: Copies of the information collection request may be obtained from Steve Smith, Office of Information Systems Management, ACF, by calling (202) 401-9235.

Written comments and questions regarding the requested approval for information collection should be sent directly to: Kristina Emanuels, OMB Desk Officer for ACF, OMB Reports Management Branch, New Executive Office Building, room 3002, 725 17th Street, NW., Washington, DC 20503, (202) 395-7316.

Information on Document

Title: Small Business Innovation Research (SBIR) Program's Phase 1 Proposal Cover Sheet and Abstract of Research Plan.

OMB No.: 0980-0193.

Description: In July 1982, the Small Business Act was amended to

strengthen the role of small, innovative firms in federally-funded research and development, and to utilize federal research and development as a base for technological innovation to meet agency needs and to contribute to the growth and strength of the Nation's economy.

Section 4 of Public Law 97-219 amended section 9(b) of the Small Business Act and directs the Small Business Administration (SBA) to issue policy directives for the general conduct of the SBIR program within the government.

The applicants for the SBIR awards provide a variety of data (e.g. project title, name and address of the firm, small business certification, etc.) which are used by the federal government to comply with the statutory and policy directive requirements as well as monitor the effectiveness of the SBIR program. The Department will use this information to provide an annual report to the Office of Science and Technology Policy.

Annual Number of Respondents: 500
Annual Frequency: 1
Average Burden Hours Per Response: 4
Total Burden Hours: 2,000

Dated: September 22, 1992.

Larry Guerrero,

Deputy Director, Office of Information Systems Management.

[FR Doc. 92-24258 Filed 10-6-92; 8:45 am]

BILLING CODE 4130-01-M

Agency Information Collection Under OMB Review

AGENCY: Administration for Children and Families, Administration on Children, Youth and Families, Head Start Bureau, HHS.

Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), we have submitted to the Office of Management and Budget (OMB) a request for approval of a new information collection requirement for a national study on the Evaluation of the Head Start Family Service Center Demonstration Projects.

ADDRESSES: Copies of the information collection request may be obtained from Steve Smith, Office of Information Systems Management, ACF, by calling (202) 401-9235.

Written comments and questions regarding the requested approval for information collection should be sent directly to: Kristina Emanuels, OMB Desk Officer for ACF, OMB Reports Management Branch, New Executive Office Building, room 3002, 725 17th Street, NW., Washington, DC 20503, (202) 395-7316.

Information on Document

Title: Evaluation of the Head Start Family Service Center Demonstration Projects.

OMB No.: (New request).

Description: This study will provide information on the implementation and effectiveness of the Head Start Family Service Center Demonstration Projects (FSC). The Head Start Bureau of the Administration on Children, Youth and Families has funded 41 FSC projects since 1990. FSC demonstration projects must provide an approach and set of services to address problems in one of the three focus areas of literacy, substance abuse and employment. In addition, the FSC demonstration projects are required to have a comprehensive needs assessment strategy in place, use a case management approach to working with families, and have established a collaboration with community groups. Thus, the FSC demonstration projects have included an array of comprehensive and new services to confront the changing patterns of disadvantaged families.

The information collection activity of the national evaluation study will collect summative and impact information on the implementation and effectiveness on a common set of variables across all of the 41 demonstration projects.

Annual Number of Response: 3,164
Annual Frequency: 2
Average Burden Hours Per Response: 1
Total Burden Hours: 6,328

Dated: September 22, 1992.

Larry Guerrero,

Deputy Director, Office of Information Systems Management.

[FR Doc. 92-24259 Filed 10-6-92; 8:45 am]

BILLING CODE 4130-01-M

Centers for Disease Control

[CRADA 92-06]

Cooperative Research and Development Agreement

AGENCY: Centers for Disease Control (CDC), Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The Centers for Disease Control (CDC), National Center for Infectious Diseases, and other investigators have evidence that suggests that *Rochalimaea henselae* causes bacillary angiomatosis, peliosis hepatis and bacteremia in humans. Emerging evidence also suggests that *R. henselae* may be associated with cat scratch disease in humans. Epidemiologic evidence suggests that bacillary angiomatosis and cat scratch disease are transmitted by bites or scratches of cats. CDC desires to enter into a Cooperative Research and Development Agreement (CRADA) to develop and evaluate diagnostic tests for *R. henselae* infections in humans and cats and to use these tests to determine the epidemiology of diseases caused by *R. henselae.* In the process of diagnostic test development, we expect that specific immunodominant proteins will be identified that may serve as potential vaccine candidates. CDC further desires to develop, evaluate and commercialize any promising protein vaccines.

It is anticipated that all inventions that may arise from this CRADA will be jointly owned and licensed on a royalty-bearing basis exclusively to the collaborator with which the CRADA is made. The CRADA will be executed for two years from date of signature with the possibility of renewal.

Because CRADA's are designed to facilitate the development of scientific and technological knowledge into useful, marketable products, a great deal of freedom is given to Federal agencies in implementing collaborative research. The CDC may accept staff, facilities, equipment, supplies, and money from the other participants in a CRADA; CDC may provide staff, facilities, equipment, and supplies to the project. There is a single restriction in this exchange: CDC MAY NOT PROVIDE FUNDS to the other participants in a CRADA.

DATES: This opportunity is available until November 6, 1992. Respondents may be provided a longer period of time to furnish additional information if CDC finds this necessary.

FOR FURTHER INFORMATION CONTACT:

Technical: Russell Regnery, Ph.D., National Center for Infectious Diseases, Centers for Disease Control, 1600 Clifton Road, NE., Mailstop G-13, Atlanta, GA 30333, telephone (404) 639-1075.

Business: Lisa Blake-Dispigna, National Center for Infectious Diseases, Centers for Disease Control, 1600 Clifton Road, NE., Mailstop C-19, Atlanta, GA 30333, telephone (404) 639-3227.

SUPPLEMENTARY INFORMATION: The collaborators and CDC will jointly support research aimed at development of diagnostics for *Rochalimaea henselae* infections. CDC has identified *Rochalimaea* antigens and has produced monoclonal antibodies against them. Some of these antibodies do not react with antigens from numerous other closely related bacteria. Thus, we believe that these antigens might be unique to *Rochalimaea* species.

Furthermore, CDC data show that in a case-control study of cat scratch disease of residents owning cats in Connecticut, 81% (39/48) of case-cat sera and 46% (6/13) of control-cat sera were positive for antibody to *Rochalimaea henselae* ($p<0.05$). Studies in Georgia, Maryland, Kansas and Maine have shown that 59% (80/136) of cats being treated by collaborating veterinarians have antibodies against the *Rochalimaea* antigens, indicating widespread and common infection with *Rochalimaea*. As a result of these studies CDC is developing animal models of *R. henselae* infections to develop diagnostic capabilities and investigate the potential for vaccination against infection.

CDC will provide the antigen in sufficient quantities or the technology to produce it. The collaborator will utilize its expertise in diagnostic and vaccine development and evaluation, as indicated.

Diagnostic development shall include characterization of the antigens and antibodies developed and employed in assays and include extensive epidemiologic evaluation. Vaccine development would entail the physicochemical characterization of the protein, large-scale production, possible conjugation with another protein carrier and animal (mouse, guinea pig and cat) protection studies.

Respondents should provide evidence of expertise in the development and evaluation of human and veterinary diagnostics, and/or veterinary vaccines, experience in commercialization of diagnostics and/or vaccine products, and supporting data (e.g. publications, proficiency testing, certifications, resumes, etc.) of qualifications for the laboratory director and laboratory personnel who would be involved in the CRADA. The respondent will develop the final research plan in collaboration with CDC, but should provide an outline of a research plan for review by CDC in judging applications.

Applicants will be judged according to the following criteria:

1. Soundness of the research plan;
2. Adequacy of the staff to develop the vaccine;
3. Adequacy and availability of the facilities and equipment;
4. Evidence of scientific credibility; and
5. Evidence of commitment and ability to develop diagnostic tests capable of detecting infection with *R. henselae* and/or a vaccine that will protect against *Rochalimaea henselae* infection.

This CRADA is proposed and implemented under the 1986 Federal Technology Transfer Act: Public Law 99-502.

The responses must be made to: Nancy C. Hirsch, Technology Transfer Coordinator, National Center for Infectious Diseases, Centers for Disease Control, 1600 Clifton Road, NE., Mailstop C-19, Atlanta, GA 30333.

Dated: September 25, 1992.

Robert L. Foster

Acting Associate Director for Management and Operations, Centers for Disease Control.

[FR Doc. 92-24314 Filed 10-6-92; 8:45 am]

BILLING CODE 4160-18-M

[CRADA 92-05]

Cooperative Research and Development Agreement

AGENCY: Centers for Disease Control (CDC), Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The Centers for Disease Control (CDC), National Center for Infectious Diseases announces the opportunity for potential collaborators to enter into a Cooperative Research and Development Agreement (CRADA) to develop a recombinant-derived *Rickettsia rickettsii* vaccine for humans.

It is anticipated that all inventions which may arise from this CRADA will be jointly owned and licensed on a royalty-bearing basis exclusively to the collaborator with which the CRADA is made. The CRADA will be executed for one year from date of signature with the possibility of renewal.

Because CRADAs are designed to facilitate the development of scientific and technological knowledge into useful, marketable products, a great deal of freedom is given to Federal agencies in implementing collaborative research. The CDC may accept staff, facilities, equipment, supplies, and money from the other participants in a CRADA; CDC may provide staff, facilities, equipment, and supplies to the project. There is a single restriction in this exchange: CDC MAY NOT PROVIDE FUNDS to the other participants in a CRADA.

DATES: This opportunity is available until November 6, 1992. Respondents may be provided a longer period of time to furnish additional information if CDC finds this necessary.

FOR FURTHER INFORMATION CONTACT:

Technical: Burt Anderson, Ph.D., Division of Viral and Rickettsial Diseases, National Center for Infectious Diseases, Centers for Disease Control, 1600 Clifton Road, NE., Mailstop G-13, Atlanta, GA 30333, telephone (404) 639-1075.

Business: Lisa Blake-DiSpigna, Technology Transfer Representative, National Center for Infectious Diseases, Centers for Disease Control, 1600 Clifton Road, NE., Mailstop C-19, Atlanta, GA 30333, telephone (404) 639-2897.

SUPPLEMENTARY INFORMATION: The collaborator and CDC will jointly support research aimed at the development and evaluation of a Rocky Mountain Spotted Fever (RMSF) vaccine using a *R. rickettsii* protein expressed from a cloned gene construct assembled at CDC.

CDC has assembled the complete gene of an *R. rickettsii* protein and cloned this gene into a recombinant expression system. The resulting recombinant appears to express the protein in a manner that is similar, if not identical, to expression in *R. rickettsii*. Previous work by other researchers suggests that a recombinant expressing a portion of this protein can be used to successfully vaccinate guinea pigs, conferring protection against challenge with live *R. rickettsii*. The dog is a suitable animal model for RMSF, therefore, we anticipate testing any potential candidate vaccine in the dog prior to human trials.

CDC will provide the recombinant-derived protein in a crude form or the technology to produce it. The collaborator will utilize its expertise in vaccine development and evaluation.

Vaccine development shall entail some characterization of the recombinant-derived protein, large scale production, guinea pig protection studies and vaccine trials to determine if immunized dogs survive challenge with live *R. rickettsii*.

Respondents should provide evidence of expertise in the development and evaluation of vaccines, evidence of experience in commercialization of vaccines, and supporting data (e.g. publications, proficiency testing, certifications, resumes, etc.) of qualifications for the laboratory director and laboratory personnel who would be involved in the CRADA. The respondent will develop the final research plan in collaboration with CDC but should provide an outline of a research plan for review by CDC in judging applications.

Applicants will be judged according to the following criteria:

1. Soundness of the analytic approach and research plan;
2. Evidence of appropriate personnel to complete the project in a timely fashion or evidence of a plan to recruit and fund personnel appropriate for the project;
3. Evidence of scientific credibility; and

4. Evidence of commitment and ability to develop and evaluate recombinant-derived vaccines.

This CRADA is proposed and implemented under the 1986 Federal Technology Transfer Act: Public Law 99–502.

The responses must be made to: Nancy C. Hirsch, Technology Transfer Coordinator, National Center for Infectious Diseases, Centers for Disease Control, 1600 Clifton Road, NE., Mailstop C–19, Atlanta, GA 30333.

Dated: September 25, 1992.

Robert L. Foster,

Acting Associate Director for Management and Operations, Centers for Disease Control.

[FR Doc. 92–24316 Filed 10–6–92; 8:45 am]

BILLING CODE 4160–18–M

Food and Drug Administration

[Docket No. 91N–0085]

Wyeth-Ayerst Laboratories, Inc.; Revocation of Notice Withdrawing Approval of Portions of Two New Drug Applications for Phenergan

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is revoking a previous notice that withdrew approval of those portions of two new drug applications (NDA's) that provide for over-the-counter (OTC) marketing of two Phenergan syrup products. The previous action was based on the written request of the applicant, Wyeth-Ayerst Laboratories, Inc., P.O. Box 8299, Philadelphia, PA 19101 (Wyeth-Ayerst). Wyeth-Ayerst rescinded the request and the agency inadvertently overlooked this rescission.

DATES: This revocation is effective October 7, 1992.

FOR FURTHER INFORMATION CONTACT: Diane M. Sullivan, Center for Drug Evaluation and Research (HFD–366), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8041.

SUPPLEMENTARY INFORMATION: On August 11, 1988, FDA conditionally approved supplements to NDA's 8–604 and 11–265, held by Wyeth-Ayerst, to provide for the OTC labeling and marketing of Phenergan VC Syrup and Phenergan with Dextromethorphan Syrup. These OTC, promethazine hydrochloride-containing products were indicated for the relief of symptoms associated with the common cold. These OTC products were never marketed.

In a notice published in the **Federal Register** of March 14, 1991 (56 FR 10904), FDA withdrew approval of the NDA supplements. The withdrawal action was based on the written request by Wyeth-Ayerst that approval of the supplemental NDA's be withdrawn. However, before publication of the withdrawal order, Wyeth-Ayerst rescinded its request for withdrawal. The Center for Drug Evaluation and Research inadvertently overlooked Wyeth-Ayerst 's rescission letter and withdrew approval of the NDA supplements.

Accordingly, the Director of the Center for Drug Evaluation and Research hereby revokes the March 14, 1991, notice of withdrawal with respect to the NDA's listed above. The conditional approval of those portions of NDA's 8–604 and 11–625 that provide for OTC Phenergan VC Syrup and OTC Phenergan with Dextromethorphan Syrup is hereby reinstated.

This reinstatement, however, does not permit the OTC marketing of the Phenergan syrup products at this time. FDA's approval of the Phenergan syrup products for OTC use was conditioned on Wyeth-Ayerst's agreement to abide by the agency's conclusions about the OTC marketing of promethazine-containing products rendered under the agency's OTC Drug Review (Docket No. 76N–052G).

At the present time, the safety of promethazine for OTC use is under evaluation as part of the OTC Drug Review. In a policy statement published in the **Federal Register** of September 5, 1989 (54 FR 36762), FDA announced that cold, cough, allergy, bronchodilator, and antiasthmatic combination drug products containing promethazine hydrochloride may not be marketed OTC at this time.

In accordance with the approval agreements pertaining to Wyeth-Ayerst's OTC Phenergan syrup products, the September 5, 1989, **Federal Register** notice that stopped the OTC marketing of combination drug products containing promethazine hydrochloride currently prohibits the OTC marketing of Phenergan VC Syrup and Phenergan DM Syrup. Wyeth-Ayerst has also confirmed to FDA that it will refrain from marketing the products OTC until their status is resolved by the agency.

The reinstatement of the conditional approval of the supplements that provide for the OTC Phenergan syrup products also does not, at this time, change the status of Wyeth-Ayerst's prescription Phenergan products. Wyeth-Ayerst may continue to market its Phenergan products for prescription use under NDA's 8–604 and 11–265. Prescription marketing may continue until such time, if ever, that the agency determines that such marketing is inconsistent with conditions establishing OTC marketing of promethazine-containing products.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 505(f) (21 U.S.C. 355(f))), 21 CFR 314.160, and under authority delegated to the Director of the Center for Drug Evaluation and Research (21 CFR 5.82).

Dated: September 18, 1992.

D. B. Burlington,

Acting Director, Center for Drug Evaluation and Research.

[FR Doc. 92–24371 Filed 10–6–92; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

Hearing: Reconsideration of Disapproval of Tennessee State Plan Amendment (SPA)

AGENCY: Health Care Financing Administration, HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on November 17, 1992, in room 702, 101 Marietta Street, Atlanta, Georgia to reconsider our decision to disapprove Tennessee SPA 92–19.

CLOSING DATE: Requests to participate in the hearing as a party must be received by the Docket Clerk by October 22, 1992.

FOR FURTHER INFORMATION CONTACT: Docket Clerk, HCFA Hearing Staff, 1849 Gwynn Oak Avenue, Meadowwood East Building, Groundfloor, Baltimore, Maryland 21207, telephone: (410) 597–3013.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove Tennessee State plan amendment (SPA) number 92–19.

Section 1116 of the Social Security Act (the Act) and 42 CFR part 430 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. The Health Care Financing Administration (HCFA) is required to publish a copy of the notice to a State Medicaid agency that informs the agency of the time and place of the hearing and the issues to be considered. If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.

Any individual or group that wants to participate in the hearing as a party

must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins in accordance with the requirements contained at 42 CFR 430.76(c).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

Tennessee SPA 92-19 contains a list of Medicaid obstetrical and pediatric (Ob/Ped) payment rates and information on the average Statewide payment rates for the second previous year.

The issue is whether Tennessee SPA 92-19 meets the statutory requirements of section 1926 of the Act, and thus also complies with section 1902(a)(30)(A) of the Act.

Section 1926 of the Act as added by section 6402 of the Omnibus Budget Reconciliation Act of 1989, Public Law 101-239, requires that by no later than April 1 of each year (beginning in 1990) States are to submit plan amendments specifying their payment rates for Ob/Ped practitioner services. States also must provide specific information to document that those payment rates are sufficient to enlist enough providers such that Ob/Ped services are available to Medicaid recipients at least to the extent that such services are available to the general population in the geographic area (section 1902(a)(30)(A) the Act). In addition, States must submit data to document that payments to health maintenance organizations (HMO) take into account payment rates for fee-for-service Ob/Ped services and data on the average Statewide Medicaid payments for Ob/Ped services for the second previous year by procedure and by practitioner.

HCFA has determined, on the basis of the statute and Congressional intent, that for Ob/Ped rate SPAs to be approvable under section 1926 of the Act, they must include the following:

1. Payment rates for July 1, 1992 through June 30, 1993 for Ob/Ped services, specified by procedure;

2. Data that document that payment rates for Ob/Ped services are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area;

3. Data that document that payment rates to HMOs under section 1903(m) of the Act take into account the payment rates specified in number 1 above; and

4. Average Statewide Medicaid payments for Ob/Ped services for the second previous year (the period July 1, 1990 through June 30, 1991 for SPAs due April 1, 1992) by procedure and by practitioner. The data must be provided separately for each metropolitan statistical area (or similar area) in the State and for the remainder of the State.

HCFA has also developed several guidelines that, if met by the State, would provide supporting evidence that the State is in compliance with the statutory requirements of section 1926 of the Act.

Based upon the data submitted, HCFA has determined that Tennessee's amendment does not comply with the statutory requirements of section 1926 of the Act and thus, also does not comply with section 1902(a)(30)(A) of the Act. Tennessee did not submit data relating to how rates established for payments to HMOs under section 1903(m) of the Act take into account payment rates for fee-for-service Ob/Ped services. While the State did provide a list of Medicaid Ob/Ped payment rates, it did not provide complete data on the average statewide Medicaid payments for Ob/Ped services for the second previous year. These data are incomplete in that the data are not provided by practitioner type or by metropolitan statistical area (or similar area) as required by sections 1926 (b) and (c) of the Act. In addition, there is no substantiation that the data submitted are for the correct time period of July 1, 1990 through June 30, 1991. Also, the SPA submission utilized the same reimbursement methodology that was submitted under SPA number 91-13 and Ob/Ped SPA number 91-14 and was disapproved.

The notice to Tennessee announcing an administrative hearing to reconsider the disapproval of its SPA reads as follows:

Mr. Manny Martins,
Assistant Commissioner,
Bureau of Medicaid, 729 Church Street, Nashville, Tennessee 37247-6501.

Dear Mr. Martins: I am responding to your request for reconsideration of the decision to disapprove Tennessee State Plan Amendment (SPA) 92-19.

Section 1926 of the Social Security Act (the Act) as added by section 6402 of the Omnibus Budget Reconciliation Act of 1989, Public Law 101-239, requires that by no later than April 1 of each year (beginning in 1990) States are to submit plan amendments specifying their payment rates for obstetrical and pediatric (Ob/Ped) practitioner services. States also must provide specific information to document that those payment rates are sufficient to enlist enough providers such that Ob/Ped services are available to Medicaid recipients at least to the extent that such services are available to the general population in the geographic area (section 1902(a)(30)(A) of the Act). In addition, States must submit data to document that payments to health maintenance organizations take into account payment rates for fee-for-service Ob/Ped services and data on the average statewide Medicaid payments for Ob/Ped services for the second previous year by procedure and by practitioner.

The issue here is whether the plan amendment meets the statutory requirements of section 1926 of the Act, and thus also complies with section 1902(a)(30)(A) of the Act.

I am scheduling a hearing on your request for reconsideration to be held on November 17, 1992, in Room 702, 101 Marietta Street, Atlanta, Georgia. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed at 42 CFR Part 430.

I am designating Mr. Stanley Katz as the presiding officer. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (410) 597-3013.

Sincerely,

William Toby, Jr.,
Acting Deputy Administrator.

Authority: Sec. 1116 of the Social Security Act (42 U.S.C. 1316); 42 CFR 430.18.

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: September 30, 1992.

William Toby, Jr.,
Acting Deputy Administrator, Health Care Financing Administration.

[FR Doc. 92-24262 Filed 10-6-92; 8:45 am]

BILLING CODE 4120-03-M

Public Health Service

Health Resources and Services Administration; Services for Children of Substance Abusers Part M, Title III of the Public Health Service Act; Delegation of Authority

Notice is hereby given that in furtherance of the delegation of authority to the Assistant Secretary for Health on January 14, 1981, (46 FR 10016), by the Secretary of Health and Human Services, the Assistant Secretary for Health has delegated to the Administrator, Health Resources and Services Administration, with authority to redelegate, the authority under part M of title III of the Public Health Service (PHS) Act, as amended, pertaining to the Services for Children of Substance Abusers. Previous delegations and redelegations made to

officials within PHS of authorities under title III of the PHS Act may continue in effect provided they are consistent with this delegation.

The above delegation was effective on September 21, 1992.

Dated: September 21, 1992.

James O. Mason,

Assistant Secretary for Health.

[FR Doc. 92-24304 Filed 10-6-92; 8:45 am]

BILLING CODE 4160-15-M

Health Care Financing Administration

[BPD-743-NC]

RIN 0938-AF77

Medicare Program; Schedule of Limits for Skilled Nursing Facility Inpatient Routine Service Costs

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final notice with comment period.

SUMMARY: This final notice with comment period sets forth an updated schedule of limits on skilled nursing facility routine service costs for which payment may be made under the Medicare program. Section 1888(a) of the Social Security Act requires that for cost reporting periods beginning on or after October 1, 1992, and every two years thereafter, the Secretary update the per diem cost limits for skilled nursing facility routine service costs.

DATES: *Effective date:* The schedule of limits is effective for cost reporting periods beginning on or after October 1, 1992.

Comment date: Written comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on December 7, 1992.

ADDRESSES: Mail comments to the following address:

Health Care Financing Administration, Department of Health and Human Services, Attn: BPD-743-NC, PO Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC 20201, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

Due to staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

In commenting, please refer to file code BPD-743-NC. Comments will be available for public inspection as they are received, beginning approximately three weeks after publication of this document, in Room 309-G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (Phone: 202-690-7890).

Copies: To order copies of the Federal Register containing this document, send your request to:

Government Printing Office, ATTN: New Order, P.O. Box 371954, Pittsburgh, PA 15250-7954.

Specify the date of the issue requested and enclose a check payable to the Superintendent of Documents, or enclose your Visa or MasterCard number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 783-3238 or by faxing to (202) 275-6802. The cost for each copy (in paper or microfiche form) is $4.50. In addition, you may view and photocopy the Federal Register document at most libraries designated as U.S. Government Depository Libraries and at many other public and academic libraries throughout the country that receive the Federal Register. The order desk operator will be able to tell you the location of U.S. Government Depository Libraries.

FOR FURTHER INFORMATION CONTACT: Robert Kuhl (410) 966-4597.

SUPPLEMENTARY INFORMATION:

I. Background

Sections 1861(v)(1)(A) and 1888 of the Social Security Act (the Act) authorize the Secretary to set limits on allowable costs incurred by a provider of services for which payment may be made under Medicare. These limits are based on estimates of the costs necessary for the efficient delivery of needed health services. Implementing regulations appear at 42 CFR 413.30. Section 1888 of the Act directs the Secretary to set limits on per diem inpatient routine service costs for hospital-based and freestanding skilled nursing facilities (SNFs) by urban or rural area location. Section 4008(e)(2) of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101-508) amended section 1888(a) of the Act to require the Secretary to update the per diem SNF cost limits for cost reporting periods beginning on or after October 1, 1992, and every 2 years thereafter.

Under the authority of section 1888 of the Act, we published a final notice on April 1, 1991 (56 FR 13317) announcing a schedule of limits for freestanding and hospital-based SNFs effective for cost reporting periods beginning on or after October 1, 1989. The limits were computed using data from cost reporting periods ending on or after January 31, 1988, through December 31, 1988, as mandated by section 4008(e)(1) of Public Law 101-508.

That final notice contained provisions relating to: (1) Separate group limits for labor-related and nonlabor-related components of SNF per diem routine service costs; (2) adjustments to the cost limits by an area wage index developed from hospital industry wages; (3) a "market basket" index developed to reflect changes in the price of goods and services purchased by SNFs; (4) application of the adjusted hospital wage index to employee benefits, health service costs, costs of business services, and other miscellaneous expenses; (5) freestanding SNF cost limits set at 112 percent of the average per diem labor-related and nonlabor-related costs; (6) hospital-based SNF cost limits set at the limit for freestanding SNFs, plus 50 percent of the difference between the freestanding limit and 112 percent of the average per diem routine service costs of hospital-based SNFs, and an add-on for administrative and general (A&G) costs; (7) cost-of-living adjustments for Alaska, Hawaii, Puerto Rico, and the Virgin Islands; (8) exceptions to the cost limits; (9) a classification system based on whether the SNF is hospital-based or freestanding and whether it is located in an urban or rural area.

In addition to the above provisions, the April 1, 1991 final notice also provided for a per diem add-on to recognize the costs incurred by SNFs in complying with the additional requirements of section 1819 of the Act (including the costs of conducting nurse aide training and competency evaluations), as added by section 4201(a) of the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100-203). Section 1861(v)(1)(E) of the Act, as amended by section 4201(b) of Public Law 100-203, provides for Medicare payment for costs incurred by SNFs in complying with the requirements of section 1819 of the Act.

II. Update of Limits

In developing the limits set forth in this notice, we have retained the same provisions and the same basic methodology as in the limits effective for cost reporting periods beginning on or after October 1, 1989. We have updated the SNF cost report data using the most recent projections of the rates of increase in the costs included in the SNF market basket.

We are continuing to use the HCFA hospital wage index to account for area

wage differences. This is necessary because industry-specific data needed to calculate a wage index for SNFs are not available. We believe that a hospital wage index, based on geographic variations in hospital wages, provides the best measure of comparable wages that would also be paid by SNFs since hospitals and SNFs generally compete in the same labor market for employees. In setting the previous schedule of limits (that is, the schedule of limits applicable to cost reporting periods beginning on or after October 1, 1989), we used the HCFA hospital wage index that was developed based on 1984 hospital salary data from a survey conducted by HCFA. The methodology used to compute that wage index was described in the April 1, 1991, final notice (56 FR 13317).

For the schedule of limits effective with this notice, we are using a wage index based on 1988 hospital wage data. With the exception of those indices that may be affected by recent corrections to the 1988 wage data, this wage index uses the same wage data as are used to compute the wage index for the hospital prospective payment system for discharges occurring on and after October 1, 1991. However, this wage index does not reflect changes in geographic classification for certain rural hospitals required under section 1886(d)(8)(B) of the Act or geographic reclassifications based on decisions of the Medicare Geographic Classification Review Board or the Secretary under section 1886(d)(10) of the Act. Sections 1886(d)(8)(B) and 1886(d)(10) of the Act pertain to payment for the operating costs of inpatient hospital services, as defined in section 1886(a)(4) of the Act. These sections of the Act do not apply to payment for items and services furnished by a SNF, as defined in section 1861(h) of the Act, even if the items and services are furnished by a hospital-based SNF. Accordingly, it would not be appropriate to recognize changes in the geographic classification of hospitals for purposes of computing the SNF cost limits.

In all other respects, the methodology used to compute this wage index is the same as that used for the hospital prospective payment system. A detailed description of the methodology used to compute the hospital prospective payment wage index is set forth in the August 30, 1991, **Federal Register** (56 FR 43196).

III. Provisions of the Limits

The schedule of limits set forth below applies to all SNFs, including those low Medicare volume SNFs that are eligible to receive the optional prospective payment rate for routine services. Under section 1888(d) of the Act, a SNF's prospective payment rate, excluding capital-related costs, cannot exceed its routine service cost limits. The SNF prospective payment system for low Medicare volume SNFs is described in section 2820 of the Provider Reimbursement Manual (HCFA Pub. 15–1).

As required by section 1888 of the Act, this schedule of limits is effective for cost reporting periods beginning on or after October 1, 1992. The data used to compute the limits set forth in this notice are from the most recent settled SNF cost reports. These reports cover cost reporting periods ending on or after June 30, 1989, through May 31, 1990, for freestanding SNFs and on or after October 31, 1988, through September 30, 1989, for hospital-based SNFs.

In the April 1, 1991, notice setting cost limits for cost reporting periods beginning on or after October 1, 1989, we explained that our database, for the most part, contained data from unaudited (not settled for Medicare purposes) cost reports and therefore might include unallowable Medicare costs and/or Medicare inpatient days. In that notice we stated that we would develop and apply a cost report settlement adjustment factor to the unsettled cost report data with respect to future sets of limits.

These updated limits effective October 1, 1992, are based on data from only settled cost reports. We are using only settled cost report data in this notice because the use of the settled cost reports allows us to eliminate misstated data including nonallowable costs and noncovered inpatient days that inevitably resulted from using as-submitted cost reports. Current Contractor Performance Evaluation Program (CPEP) standards require Medicare fiscal intermediaries to settle the SNF cost reports sooner than was required under the former standards. Consequently, settled cost data are available much sooner than in previous cost years, and thus more accurately reflect current conditions in the health care industry. Therefore, in developing the limits in this notice, a settlement adjustment factor is not necessary.

This schedule of limits provides for the following:

A. Separate Group Limits for Labor-Related and Non-Labor-Related Components of Per Diem Routine Service Costs

We are retaining separate group limits for the labor-related and non-labor-related components of per diem routine service costs. We calculate these separate limits as follows:

1. Actual SNF per diem inpatient routine service cost data are obtained for each SNF.
2. To make the data reflect current conditions more accurately, the cost data are adjusted by the SNF market basket index from the midpoints of the cost reporting periods represented in the data collection to the midpoint of the initial cost reporting period to which the limits apply.
3. Each SNF's per diem cost is separated into labor-related and non-labor-related portions. The labor-related portion (83.1 percent) is divided by the wage index for the SNF's location (see Tables II and III).
4. Finally, separate group means are computed for the labor-related and non-labor-related components. Each group mean is multiplied by 112 percent.

B. Adjustment of SNF Cost Data by Wage Index

We are using a wage index based on 1988 hospital wage data, as described above, to adjust for area wage differences. We are continuing to use the same methodology for this adjustment.

C. Use of SNF Market Basket

We will continue to base the cost limits on routine service costs adjusted for actual and projected cost increases by applying the SNF market basket index. This market basket index is used to adjust the SNF cost data to reflect cost increases occurring between the cost reporting periods represented in the data collection to the midpoints of the cost reporting periods to which the limits apply.

The market basket index is comprised of the most commonly used categories of SNF routine service expenses. The categories are based primarily on those used by the National Center for Health Statistics in its National Nursing Home Surveys.

The categories of expenses are weighted according to the estimated proportion of SNF routine service costs attributable to each category (see Table V). The weights for all major categories of SNF costs are based on the National Nursing Home Surveys of 1973/1974 and 1977, conducted by the Office of Health Research, Statistics and Technology, National Center for Health Statistics of the Public Health Service. (As noted in footnote 1 at the end of Table V, the 1973/1974 survey contained 1972 cost data and the 1977 survey contained a combination of 1972 and 1976 cost data.) These are the most current and comprehensive sources of national data on the distribution of costs in SNFs.

(The second column of Table V specifies the weights used for each category.)

In developing the market basket index, we obtained historical and projected rates of increase in the price of goods and services in each category. The third column of the market basket index (Table V) identifies the price variables used and the source of the forecast.

The market basket index also provides for adjustments in the limits if our forecasts of economic trends prove erroneous. If the final rate of change in the market basket index for a year differs from the estimated rate of change by at least 0.3 of one percentage point, we will adjust the limits. We will advise the Medicare intermediaries to use the actual rate to adjust each SNF's limit retroactively.

D. Application of the Adjusted Hospital Wage Index to Wages, Employee Benefits, Health Service Costs, Costs of Business Services, and Other Miscellaneous Expenses

In developing the schedule of limits effective for cost reporting periods beginning on or after October 1, 1989, we applied the wage index to five categories of labor-related costs: wages, employee benefits, health service costs, business service costs, and other miscellaneous costs. We have used the same methodology in developing this schedule of limits.

For purposes of applying the wage index, employee benefits include such items as FICA tax, health insurance, life insurance, facility contributions to employee retirement funds, and all other compensation that the SNF records in the "employee health and welfare" cost center on its Medicare cost report.

Health service costs is a category used by the National Nursing Home Survey conducted in 1977, noted above. This category includes the costs of routine services that are purchased under arrangement from outside sources. Business service costs include costs of banking, contract laundry, telephone, and other services that SNFs purchase at retail from outside suppliers. Other miscellaneous costs include various types of routine operating costs not allocated to any other category of the market basket.

Thus, we are continuing to apply the wage index to the total portion of cost (83.1 percent attributable to wages, fringe benefits, health service costs, business service costs, and other miscellaneous expenses) rather than to the wage portion (64 percent) only. We are continuing to use this method because our analysis of the data shows that area variations in routine per diem costs in these additional categories are closely related to area variations in prevailing wage levels. We believe that applying the wage index to the other categories of labor-related costs specified above, rather than to wages only, results in individual limits that are more equitable and more appropriate to each SNF's actual market environment. Accordingly, the proportion of adjusted routine service costs that we will adjust by the wage index is 83.1 percent for cost reporting periods beginning on or after October 1, 1992.

E. Freestanding SNF Limits Set at 112 Percent of Mean

For cost reporting periods beginning on or after October 1, 1992, we are continuing to maintain the limits for freestanding SNFs at 112 percent of the average labor-related and average nonlabor-related costs of each group. We will continue to use the same methodology for freestanding SNFs as described in the April 1, 1991, notice.

F. Hospital-Based SNF Limits

For cost reporting periods beginning on or after October 1, 1992, the hospital-based limit will continue to equal the freestanding limit plus 50 percent of the difference between the freestanding limit and 112 percent of the mean per diem routine service costs of hospital-based SNFs. The methodology for hospital-based SNFs will be the same as that used for current hospital-based SNF limits, effective for cost reporting periods beginning on or after October 1, 1989, as described in the previous notice. We are continuing to provide an add-on adjustment for A&G costs for hospital-based SNFs. The purpose of this add-on is to make an adjustment for the allocation of costs in the A&G cost center.

G. Cost-of-Living Adjustments for Alaska, Hawaii, Puerto Rico, and the Virgin Islands

To avoid disadvantaging SNFs located in Alaska, Hawaii, Puerto Rico, and the Virgin Islands, we will continue to provide a cost-of-living adjustment for these areas. This is an adjustment of the nonlabor-related component of the limit that applies to these areas, based on the amount of the most recently determined cost-of-living differentials developed by the Office of Personnel Management. Since we adjust the labor-related component by the applicable wage index as discussed above, this cost-of-living adjustment will apply only to the nonlabor-related component.

H. Exemption or Exception to Cost Limits

Under § 413.30(e)(2), a new provider of skilled nursing services may request an exemption from the cost limits. In addition, a SNF may request an exception to the cost limits under the provisions of § 413.30(f). In either case, the SNF must make the request to HCFA central office through the appropriate Medicare fiscal intermediary.

I. Classification System

We will retain the classification system based on whether a SNF is located within an MSA, as defined by the Office of Management and Budget (OMB), with exceptions for certain New England County Metropolitan Areas as described in the April 1, 1991, notice (56 FR 13319).

IV. Methodology for Determining Per Diem Routine Service Cost Limit

A. Development of Limits

1. Data

As discussed in section III above, we used actual freestanding and hospital-based SNF inpatient routine service cost data, less capital-related costs allocated to general inpatient routine services, obtained from the latest settled Medicare cost reports available. These cost reports cover cost reporting periods ending on or after June 30, 1989, through May 31, 1990, for freestanding SNFs and on or after October 31, 1988, through September 30, 1989, for hospital-based SNFs.

We adjusted these data using the market basket index discussed above to inflate costs from the midpoints of the cost reporting periods in the data base to the midpoint of the first cost reporting period to which the limits will apply.

The annual percentage increases in the market basket over the previous year that we used for this projection are:

1988	5.1
1989	6.6
1990	6.3
1991	[1] 4.3
1992	[1] 4.6
1993	[1] 5.2
1994	[1] 5.2
1995	[1] 5.3

[1] Forecasted increase.

An adjustment will be made to the limits if the forecasted market basket rate differs from the actual rate by at least 0.3 of one percentage point. Following the end of each year that the limits are in effect, we will determine the actual rate of increase or decrease in the market basket for that year. The

data necessary to make this determination are usually available in the second quarter of the following year.

If the forecasted market basket rate differs from the actual rate by at least 0.3 of one percentage point, we will notify the Medicare intermediaries of the actual rate of increase or decrease and advise them to adjust each SNF cost limit retroactively.

2. Use of Wage Index to Adjust Cost Data

We divided each SNF's adjusted per diem routine service costs into labor-related and nonlabor-related portions. We determined the labor-related portion by multiplying each SNF's adjusted per diem routine service cost by 83.1 percent, which is the labor-related portion of cost from the market basket. We then divided the labor-related portion of each SNF's per diem cost by the wage index value applicable to the SNF's location (see Tables II and III) to arrive at an adjusted labor-related portion of routine cost.

3. Group Means

We calculated separate means of labor-related and nonlabor-related adjusted routine service costs for each SNF group, that is, freestanding or hospital-based and MSA or non-MSA location.

4. Components of Limit

For each freestanding group, we multiplied the mean labor-related and mean nonlabor-related costs by 112 percent to arrive at the freestanding limits (Table I). We then subtracted the freestanding limit for each group from 112 percent of the hospital-based mean for each group and multiplied the result by 50 percent. To arrive at the hospital-based limit (Table I), the 50 percent amount described above is added to the appropriate freestanding limit.

COST LIMIT DATA—HOSPITAL-BASED SNFS

112 percent of hospital-based mean cost	Urban (MSA)	Rural (non-MSA)
Labor	$144.88	$124.86
Nonlabor	30.50	20.56
Total	175.38	145.42

CALCULATION OF 50 PERCENT OF DIFFERENCE BETWEEN 112 PERCENT OF HOSPITAL-BASED MEAN COST AND FREESTANDING LIMIT

	Labor	Nonlabor
Urban (MSA)		
112 Percent of Hospital-Based Mean Cost	$144.88	$30.50
Freestanding Limit (Table I)	79.56	17.08
Difference	65.32	13.42
50 Percent of Difference	32.66	6.71
Plus Freestanding Limit	79.56	17.08
Hospital-Based Limit (MSA)	112.22	23.79
Rural (MSA)		
112 Percent of Hospital-Based Mean Cost	$124.86	$20.56
Freestanding Limit (Table I)	80.79	13.64
Difference	44.07	6.92
Percent of Difference	22.04	3.46
Plus Freestanding Limit	80.79	13.64
Hospital-Based Limit (Non-MSA)	102.83	17.10

	Urban	Rural
A&G Difference		
1. Hospital-Based SNF A&G Mean [1]	$10.67	$9.62
2. Freestanding SNF A&G Mean [1]	7.18	7.07
3. Difference	3.49	2.55
Amount of A&G included in the 50 percent difference between 112 percent of the hospital-based mean costs and the freestanding limit:		
4. A&G Difference (line 3)	3.49	2.55
5. 112 Percent of Hospital-Based Mean Cost (Total)	175.38	145.42
6. Average Routine Cost (line 5 divided by 112 percent)	156.59	129.84
7. Percent of A&G Difference to Average Routine Cost (line 4 divided by line 6)	2.23	1.96
8. 50 Percent of Difference between 112 Percent of Hospital-Based SNF Mean Cost and Freestanding SNF Limit	39.37	25.50
9. Amount of A&G Difference Included in line 8 (line 7 times line 8)	0.88	0.50
A&G Add-on		
10. A&G Difference from line 3	3.49	2.55
11. Less Amount from line 9	0.88	0.50
12. A&G Add-on (line 10 less line 11)	2.61	2.05
13. Labor-Related Component of A&G Add-on (Line 12 times 83.1 percent)	2.17	1.70
14. Nonlabor-Related Component of A&G Add-on (Line 12 times 16.9 percent)	0.44	0.35

[1] Wage deflated means.

B. Adjustment of Limits

1. Adjustment of Labor-Related Component by Wage Index

a. *Freestanding SNFs.* To arrive at a labor-adjusted limit for each SNF, we multiply the labor-related component of the limit for the SNF's group by the wage index developed from wage levels for hospital workers in the area in which the SNF is located (see Tables II and III). The adjusted limit that applies to a SNF is the sum of the non-labor-related component, plus the adjusted labor-related component, plus the nursing home reform and Occupational Safety and Health Administration (OSHA) per diem add-on discussed in section V below. Finally, the cost reporting year adjustment discussed in section IV.B.2. below may apply.

Example—Calculation of Adjusted Limit for a Freestanding SNF (A) Located in Dallas, Texas:

Labor-Related Component.	$79.56	(Table I).
Wage Index	×0.9638	(Table II).
Adjusted Labor Component.	76.68	
Non-Labor-Related Component.	+17.08	(Table I).
Nursing Home Reform and OSHA Per Diem Add-On.	+1.98	
Adjusted Limit	95.74	

b. *Hospital-Based SNFs.* To arrive at a labor-adjusted limit for each hospital-based SNF, we add the labor-related component of the limit and the labor-related component of the A&G add-on for the hospital-based SNF's group and multiply the sum by the wage index developed from wage levels for hospital workers in the area in which the hospital-based SNF is located (see Tables II and III). The adjusted limit that applies to a hospital-based SNF is the sum of the adjusted labor-related component and A&G add-on, plus the non-labor-related component and A&G add-on, plus the nursing home reform and OSHA per diem add-on discussed in section V below. Finally, the cost reporting year adjustment discussed below in section IV.B.2 may apply.

Example—Calculation of Adjusted Limit for a Hospital-Based SNF (B) Located in Scranton, Pennsylvania:

Labor-Related Component:		
Limit	$112.22	(Table I).
A&G Add-on	+2.17	(Table I).
	114.39	
Wage Index	×0.8952	(Table II).
Adjusted Labor Component.	102.40	
Non-Labor-Related Component:		
Limit	23.79	(Table I).
A&G Add-on	0.44	(Table I).
Nursing Home Reform and OSHA Per Diem Add-on.	+1.98	
Adjusted Limit	128.61	

2. Adjustment for Cost Reporting Period

If a facility has a cost reporting period beginning in a month after October 1992, the intermediary will increase the limit that otherwise would apply to the SNF by the factor from Table IV that corresponds to the month and year in which the cost reporting period begins. Each factor represents the compounded monthly increase derived from the projected annual increase in the market basket index and will be used to account for inflation in costs that will occur after the date on which the limits are effective.

Cost Reporting Year End Adjustment

Example: The following is a computation of a revised hospital-based limit for the previously cited SNF (B). Hospital-based SNF (B) has a cost reporting period beginning November 1, 1992. The base adjusted limit for SNF (B) is $128.61. The revised limit for SNF (B) applicable to its cost reporting period is $129.17.

Individual SNF Adjusted Base Limit	$128.61
Adjustment Factor from Table IV	×1.00431
Revised Limit	129.17

If a facility uses a cost reporting period that is not 12 months in duration, a special adjustment factor will be calculated. This is necessary because projections are computed to the midpoint of a cost reporting period and the adjustment factors in Table IV are based on an assumed 12-month reporting period. For cost reporting periods of other than 12 months, the calculation must be done for the midpoint of the specific cost reporting period. The SNF's intermediary will obtain this adjustment factor from HCFA central office.

V. Per Diem Add-On to the Cost Limits Effective for Cost Reporting Periods Beginning On or After October 1, 1992

In the April 1, 1991, final notice of SNF limits, we described a per diem add-on to the limits effective for cost reporting periods beginning on or after October 1, 1990. This per diem add-on was developed to take into account the costs associated with the additional requirements placed on SNFs by the nursing home reform provisions in section 1819 of the Act, as added by section 4201(a) of Pub. L. 100–203. (These requirements include conducting nurse aide training and competency evaluation programs.) Section 4201(b) of Pub. L. 100–203 amended section 1861(v)(1)(E) of the Act to provide for Medicare payment for costs incurred by SNFs in complying with these requirements.

In the April 1, 1991 notice we described the methodology used to compute the per diem add-on. We calculated the per diem add-on based on data from the 36 State Medicaid plans that had been approved by HCFA as of October 1, 1990. We also allowed for an adjustment to the cost limit when a provider's actual reasonable and verified costs incurred in implementing the additional requirements exceeded the per diem add-on.

We will continue to provide a per diem add-on to recognize the costs that must be incurred to comply with the nursing home reform provisions specified in section 1819 of the Act. The methodology used to compute the per diem add-on is the same as that described in the April 1, 1991, final notice. However, we are now basing the per diem add-on on data from the approved Medicaid State plans for 50 States and the District of Columbia. The average per diem increase amounted to $1.46. Since this amount is for services furnished on or after October 1, 1990, we have inflated the $1.46 for the per diem add-on effective for cost reporting periods beginning on or after October 1, 1992, by using the SNF market basket index described in this notice, which results in an average per diem increase of $1.61.

In addition, we are aware that SNFs are now incurring additional costs due to the universal precaution requirements of the Occupational Safety and Health Administration (OSHA). OSHA published a final rule in the **Federal Register** on December 6, 1991 (54 FR 64004) that set forth a standard under section 6(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655) to eliminate or minimize occupational exposure to bloodborne pathogens. The rule includes requirements relating to employee vaccinations against bloodborne diseases, staff training on universal precautions, and the use of protective equipment (gloves, aprons, masks, etc.). While the limits set forth in this notice use the most recent cost report data available, we recognize that the new OSHA standards, which were effective March 6, 1992, will result in some SNFs incurring costs that are not reflected in the cost limits. We understand that all SNFs must comply with these regulations. Based on the technical data supporting the OSHA rule, we have computed that, on the average, a SNF will incur costs of $.16 per inpatient day in implementing this OSHA requirement. Therefore, we are adding $.16 to the $1.61 average per diem increase described above, resulting in a total increase of $1.77 per day. This represents the average total cost of compliance with both the nursing home reform and OSHA requirements.

As described in the April 1, 1991 notice, we will continue to compute the per diem add-on by using the same methodology as that used to compute the basic Medicare SNF cost limits. That is, the per diem add-on has been set at 112 percent of the average total cost of compliance with both the nursing home reform and OSHA requirements. Therefore, for cost reporting periods beginning on or after October 1, 1992, the per diem add-on is $1.98 (112 percent of $1.77). If an SNF's per diem routine costs exceed the cost limit and it has incurred costs in excess of the per diem add-on of $1.98 as a result of compliance with the nursing home reform and the OSHA requirements, the SNF may seek an adjustment to the cost limit. An adjustment will be made to the extent the costs in excess of the limit are reasonable, actually incurred in the implementation of the additional requirements, separately identified by the SNF, and verified by the intermediary.

When HCFA updates the SNF cost limits using a later data base that includes the costs of complying with the additional nursing home reform and OSHA requirements, a per diem add-on will no longer be needed because those updated limits would include these costs in the basic routine cost limit.

VI. Regulatory Impact Statement

A. Executive Order 12291

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any final notice that meets one of the E.O. criteria for a "major rule"; that is, that will be likely to result in—

An annual effect on the economy of $100 million or more;

A major increase in costs or prices for consumers, individuals, industries, Federal, State, or local government agencies, or geographic regions, or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under this final notice with comment period, the schedule of limits on payments for SNF inpatient routine services has been revised to reflect more recent cost report and wage index data. We estimate that the revised schedule of limits will result in the following savings on payments for SNF services under the Medicare program.

Fiscal year	Savings [1]
1993	$10
1994	20
1995	20
1996	20
1997	30

[1] Rounded to nearest $10 million.

These savings represent the effect of implementing the new limits effective for cost reporting periods beginning on or after October 1, 1992, compared with the effects of updating the previous limits by the market basket index. The savings from updating the previous limits by the market basket index is 5.6 percent of total SNF costs. The savings from implementing the new limits is 6.0 percent of total SNF costs. Therefore, these new limits decrease SNF reimbursement by 0.4 percent compared with the slightly higher limits that would have been in effect under the updating provisions of the 1989 limits.

Since this notice with comment period will not have an annual effect on the economy of $100 million or more or meet the other criteria of E.O. 12291, a final regulatory impact analysis is not required.

B. Regulatory Flexibility Act

For final notices such as this, we prepare and publish a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that the notice will not have a significant economic impact on a substantial number of small entities. We consider all SNFs to be small entities under the RFA.

A small number of SNFs will be affected by this notice. Specifically, the revised cost limits will result in a small increase in the number of SNFs exceeding the SNF limits in all categories, as follows:

	Total SNFs	Exceeding old limits	Exceeding new limits
Freestanding SNFs:			
Urban	4074	680	706
Rural	1266	203	220
Hospital-Based SNFs:			
Urban	455	289	298
Rural	453	203	205

However, it is our practice not to consider an economic impact on small entities to be significant unless the annual total costs or revenues of a substantial number of entities will be increased or decreased by at least 3 percent. The revised limits will not result in a significant number of facilities' total revenues being increased or reduced by 3 percent or more over the October 1, 1989, limits adjusted for inflation since Medicare does not account for a high proportion of SNF utilization or revenue. Therefore, we have determined, and the Secretary certifies, that this final notice will not have a significant economic impact on a substantial number of small entities. Thus, we have not prepared a regulatory flexibility analysis.

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a final notice such as this may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 100 beds located outside of a Metropolitan Statistical Area.

We have not prepared a rural impact statement since we have determined and the Secretary certifies that this final notice will not have a significant economic impact on the operations of a substantial number of small rural hospitals.

VII. Other Required Information

A. Paperwork Burden

This final notice with comment period does not impose information collection requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 through 3511).

B. Waiver of Proposed Notice

In adopting notices such as this, we ordinarily publish a proposed notice in the **Federal Register** with a 60-day period for public comment as required under section 1871(b)(1) of the Act.

As discussed in section IV above, we have used the same methodology to develop this schedule of limits that was used in setting the limits published for public comment on April 1, 1991. This notice also conforms to the clear direction provided in sections 1861(v)(1) and 1888 of the Act and the implementing regulations at § 413.30. The final cost reporting data on which these limits are based was not available from the Medicare fiscal intermediaries until September 30, 1991. We completed the data collection process in December 1991, and, between December 1991 and April 1992, we reviewed the data and developed the limits set forth in this notice. Section 4008(e)(2) of Public Law 101–508 specifies that this schedule of limits is effective for cost reporting periods beginning October 1, 1992. Given these time constraints, it would not have been possible to publish a proposed notice and still implement the new cost limits effective October 1, 1992. To do so would have been impracticable, unnecessary, and contrary to the public interest. Therefore, we find good cause to waive publication of a proposed notice.

C. Waiver of 30-Day Delay in Effective Date

We normally provide a delay of 30 days in the effective date for documents such as this. However, if adherence to this procedure would be impracticable, unnecessary, or contrary to the public interest, we may waive the delay in the effective date.

Sections 1861(v)(1)(A) and 1888 of the Social Security Act (the Act) authorize the Secretary to set limits on allowable costs incurred by a provider of services for which payment may be made under Medicare. Also, the clear direction of section 4008(e)(2) of Public Law 101–508 requires that the Secretary update the per diem SNF cost limits for cost reporting periods beginning on or after October 1, 1992, and every 2 years thereafter. If SNFs are to receive timely the benefits of the overall increase in Medicare payments using the revised cost limits, it is necessary that these

limits be effective for cost reporting periods beginning on or after October 1, 1992. Thus, we believe that a delay in the effective date of these cost limits would be contrary to the public interest. Therefore, we find good cause to waive the usual 30-day delay in the effective date of this notice with comment period.

D. Public Comments

Because of the large number of items of correspondence we normally receive, we are not able to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date and time specified in the "Date" section of the preamble to this notice. If we make any changes to this notice, we" will respond to the comments in the preamble to the notice that incorporates the changes.

VIII. Schedule of Limits

Under the authority of sections 1861(v)(1)(A) and 1888 of the Act, the following group per diem limits will apply to the adjusted SNF inpatient routine service costs paid for under Medicare for cost reporting periods beginning on or after October 1, 1992. Medicare fiscal intermediaries will compute the adjusted limits for SNFs using the methodology set forth in this notice and will notify each SNF of its applicable limit. These limits, as adjusted by the applicable wage indexes and the cost reporting year adjustments, and also adjusted by a per diem add-on to recognize the cost of implementing the nursing home reform and OSHA requirements described above, will remain in effect for cost reporting periods beginning on or after October 1, 1992.

TABLE I.—SNF GROUP LIMITS

[Cost reporting periods beginning on or after 10/1/92]

Location	Labor-related component	Non-labor [1] related component
Freestanding:		
MSA	$79.56	$17.08
Non-MSA	80.79	13.64
Hospital-based MSA:		
Limit	112.22	23.79
A&G add-on	2.17	0.44
Non-MSA:		
Limit	102.83	17.10
A&G add-on	1.70	0.35

[1] The nonlabor portion of the limits for SNFs located in the States of Alaska and Hawaii, the Commonwealth of Puerto Rico, and the Virgin Islands will be increased by the following cost-of-living adjustments:

	Adjustment factor
Alaska	1.250
Hawaii:	
Oahu	1.225
Kauai	1.175
Maui, Lanai and Molokai	1.200
Hawaii (island)	1.150
Puerto Rico	1.100
Virgin Islands	1.125

TABLE II.—WAGE INDEX FOR URBAN AREAS

Urban area (Constituent counties or county equivalents)	Wage index
Abilene, TX	0.9220
Taylor, TX	
Aguadilla, PR	0.4568
Aguada, PR.	
Aguadilla, PR	
Isabella, PR	
Moca, PR	
Akron, OH	0.9493
Portage, OH	
Summit, OH	
Albany, GA	0.8050
Dougherty, GA	
Lee, GA	
Albany-Schenectady-Troy, NY	0.8922
Albany, NY	
Greene, NY	
Montgomery, NY	
Rensselaer, NY	
Saratoga, NY	
Schenectady, NY	
Albuquerque, NM	1.0123
Bernalillo, NM	
Alexandria, LA	0.8275
Rapides, LA	
Allentown-Bethlehem, PA-NJ	0.9857
Warren, NJ	
Carbon, PA	
Lehigh, PA	
Northampton, PA	
Altoona, PA	0.9238
Blair, PA	
Amarillo, TX	0.8739
Potter, TX	
Randall, TX	
Anaheim-Santa Ana, CA	1.2130
Orange, CA	
Anchorage, AK	1.4176
Anchorage, AK	
Anderson, IN	0.9583
Madison, IN	
Anderson, SC	0.7258
Anderson, SC	
Ann Arbor, MI	1.1384
Washtenaw, MI	
Anniston, AL	0.7931
Calhoun, AL	
Appleton-Oshkosh-Neenah, WI	0.9179
Calumet, WI	
Outagamie, WI	
Winnebago, WI	
Arecibo, PR	0.3953
Arecibo, PR	
Camuy, PR	
Hatillo, PR	
Quebradillas, PR	
Asheville, NC	0.8739
Buncombe, NC	
Athens, GA	0.8209
Clarke, GA	
Jackson, GA	
Madison, GA	
Oconee, GA	
Atlanta, GA	0.9596
Barrow, GA	

TABLE II.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (Constituent counties or county equivalents)	Wage index
Butts, GA	
Cherokee, GA	
Clayton, GA	
Cobb, GA	
Coweta, GA	
De Kalb, GA	
Douglas, GA	
Fayette, GA	
Forsyth, GA	
Fulton, GA	
Gwinnett, GA	
Henry, GA	
Newton, GA	
Paulding, GA	
Rockdale, GA	
Spalding, GA	
Walton, GA	
Atlantic City, NJ	1.0507
Atlantic, NJ	
Cape May, NJ	
Augusta, GA-SC	0.9401
Columbia, GA	
McDuffie, GA	
Richmond, GA	
Aiken, SC	
Aurora-Elgin, IL	0.9665
Kane, IL	
Kendall, IL	
Austin, TX	0.9599
Hays, TX	
Travis, TX	
Williamson, TX	
Bakersfield, CA	1.0868
Kern, CA	
Baltimore, MD	1.0156
Anne Arundel, MD	
Baltimore, MD	
Baltimore City, MD	
Carroll, MD	
Harford, MD	
Howard, MD	
Queen Annes, MD	
Bangor, ME	0.9064
Penobscot, ME	
Baton Rouge, LA	0.9089
Ascension, LA	
East Baton Rouge, LA	
Livingston, LA	
West Baton Rouge, LA	
Battle Creek, MI	0.9465
Calhoun, MI	
Beaumont-Port Arthur, TX	0.9604
Hardin, TX	
Jefferson, TX	
Orange, TX	
Beaver County, PA	1.0165
Beaver, PA	
Bellingham, WA	1.0497
Whatcom, WA	
Benton Harbor, MI	0.8406
Berrien, MI	
Bergen-Passaic, NJ	1.0295
Bergen, NJ	
Passaic, NJ	
Billings, MT	0.9325
Yellowstone, MT	
Biloxi-Gulfport, MS	0.8062
Hancock, MS	
Harrison, MS	
Binghamton, NY	0.9260
Broome, NY	
Tioga, NY	
Birmingham, AL	0.8769
Blount, AL	
Jefferson, AL	
Saint Clair, AL	
Shelby, AL	

TABLE II.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (Constituent counties or county equivalents)	Wage index
Walker, AL	
Bismarck, ND	0.8812
Burleigh, ND	
Morton, ND	
Bloomington, IN	0.8639
Monroe, IN	
Bloomington-Normal, IL	0.8658
McLean, IL	
Boise City, ID	0.9757
Ada, ID	
Boston-Lawrence-Salem-Lowell-Brockton, MA	1.1809
Essex, MA	
Middlesex, MA	
Norfolk, MA	
Plymouth, MA	
Suffolk, MA	
Boulder-Longmont, CO	1.0149
Boulder, CO	
Bradenton, FL	0.9262
Manatee, FL	
Brazoria, TX	0.9314
Brazoria, TX	
Bremerton, WA	0.9535
Kitsap, WA	
Bridgeport-Stamford-Norwalk-Danbury, CT	1.2032
Fairfield, CT	
Brownsville-Harlingen, TX	0.8601
Cameron, TX	
Bryan-College Station, TX	0.9489
Brazos, TX	
Buffalo, NY	0.8908
Erie, NY	
Burlington, NC	0.7986
Alamance, NC	
Burlington, VT	0.9358
Chittenden, VT	
Grand Isle, VT	
Caguas, PR	0.4479
Caguas, PR	
Gurabo, PR	
San Lorenz, PR	
Aguas Buenas, PR	
Cayey, PR	
Cidra, PR	
Canton, OH	0.8811
Carroll, OH	
Stark, OH	
Casper, WY	0.8891
Natrona, WY	
Cedar Rapids, IA	0.8907
Linn, IA	
Champaign-Urbana-Rantoul, IL	0.8745
Champaign, IL	
Charleston, SC	0.8331
Berkeley, SC	
Charleston, SC	
Dorchester, SC	
Charleston, WV	0.9692
Kanawha, WV	
Putnam, WV	
Charlotte-Gastonia-Rock Hill, NC-SC	0.9486
Cabarrus, NC	
Gaston, NC	
Lincoln, NC	
Mecklenburg, NC	
Rowan, NC	
Union, NC	
York, SC	
Charlottesville, VA	0.9615
Albermarle, VA	
Charlottesville City, VA	
Fluvanna, VA	
Greene, VA	
Chattanooga, TN-GA	0.9198
Catoosa, GA	
Dade, GA	

TABLE II.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (Constituent counties or county equivalents)	Wage index
Walker, GA	
Hamilton, TN	
Marion, TN	
Sequatchie, TN	
Cheyenne, WY	0.7908
Laramie, WY	
Chicago, IL	1.0518
Cook, IL	
Du Page, IL	
McHenry, IL	
Chico, CA	1.0981
Butte, CA	
Cincinnati, OH-KY-IN	0.9821
Dearborn, IN	
Boone, KY	
Campbell, KY	
Kenton, KY	
Clermont, OH	
Hamilton, OH	
Warren, OH	
Clarksville-Hopkinsville, TN-KY	0.7319
Christian, KY	
Montgomery, TN	
Cleveland, OH	1.0739
Cuyahoga, OH	
Geauga, OH	
Lake, OH	
Medina, OH	
Colorado Springs, CO	0.9816
El Paso, CO	
Columbia, MO	0.9506
Boone, MO	
Columbia, SC	0.8940
Lexington, SC	
Richland, SC	
Columbus, GA-AL	0.7482
Russell, AL	
Chattanoochee, GA	
Muscogee, GA	
Columbus, OH	0.9673
Delaware, OH	
Fairfield, OH	
Franklin, OH	
Licking, OH	
Madison, OH	
Pickaway, OH	
Union, OH	
Corpus Christi, TX	0.8594
Nueces, TX	
San Patricio, TX	
Cumberland, MD-WV	0.8188
Allegany, MD	
Mineral, WV	
Dallas, TX	0.9638
Collin, TX	
Dallas, TX	
Denton, TX	
Ellis, TX	
Kaufman, TX	
Rockwall, TX	
Danville, VA	0.7506
Danville City, VA	
Pittsylvania, VA	
Davenport-Rock Island-Moline, IA-IL	0.8471
Scott, IA	
Henry, IL	
Rock Island, IL	
Dayton-Springfield, OH	0.9664
Clark, OH	
Greene, OH	
Miami, OH	
Montgomery, OH	
Daytona Beach, FL	0.8943
Volusia, FL	
Decatur, AL	0.7487
Lawrence, AL	
Morgan, AL	

TABLE II.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (Constituent counties or county equivalents)	Wage index
Decatur, IL	0.8286
Macon, IL	
Denver, CO	1.0758
Adams, CO	
Arapahoe, CO	
Denver, CO	
Douglas, CO	
Jefferson, CO	
Des Moines, IA	0.9171
Dallas, IA	
Polk, IA	
Warren, IA	
Detroit, MI	1.0824
Lapeer, MI	
Livingston, MI	
Macomb, MI	
Monroe, MI	
Oakland, MI	
Saint Clair, MI	
Wayne, MI	
Dothan, AL	0.7555
Dale, AL	
Houston, AL	
Dubuque, IA	0.8374
Dubuque, IA	
Duluth, MN-WI	0.9517
St. Louis, MN	
Douglas, WI	
Eau Claire, WI	0.8478
Chippewa, WI	
Eau Claire, WI	
El Paso, TX	0.8714
El Paso, TX	
Elkhart-Goshen, IN	0.8949
Elkhart, IN	
Elmira, NY	0.8810
Chemung, NY	
Enid, OK	0.8912
Garfield, OK	
Erie, PA	0.9155
Erie, PA	
Eugene-Springfield, OR	1.0164
Lane, OR	
Evansville, IN-KY	0.9276
Posey, IN	
Vanderburgh, IN	
Warrick, IN	
Henderson, KY	
Fargo-Moorhead, ND-MN	0.9707
Clay, MN	
Cass, ND	
Fayetteville, NC	0.8296
Cumberland, NC	
Fayetteville-Springdale, AR	0.7990
Washington, AR	
Flint, MI	1.1544
Genesee, MI	
Florence, AL	0.7679
Colbert, AL	
Lauderdale, AL	
Florence, SC	0.8429
Florence, SC	
Fort Collins-Loveland, CO	1.0238
Larimer, CO	
Ft Lauderdale-Hollywood-Pompano Beach, FL	1.0356
Broward, FL	
Fort Myers-Cape Coral, FL	0.9799
Lee, FL	
Fort Pierce, FL	1.1041
Martin, FL	
St. Lucie, FL	
Fort Smith, AR-OK	0.7931
Crawford, AR	
Sebastian, AR	
Sequoyah, OK	
Fort Walton Beach, FL	0.8916

TABLE II.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (Constituent counties or county equivalents)	Wage index
Okaloosa, FL	
Fort Wayne, IN	0.8901
Allen, IN	
De Kalb, IN	
Whitley, IN	
Fort Worth-Arlington, TX	0.9747
Johnson, TX	
Parker, TX	
Tarrant, TX	
Fresno, CA	1.0737
Fresno, CA	
Gadsden, AL	0.8199
Etowah, AL	
Gainesville, FL	0.8798
Alachua, FL	
Bradford, FL	
Galveston-Texas City, TX	0.9431
Galveston, TX	
Gary-Hammond, IN	0.9866
Lake, IN	
Porter, IN	
Glens Falls, NY	0.9231
Warren, NY	
Washington, NY	
Grand Forks, ND	0.9577
Grand Forks, ND	
Grand Rapids, MI	0.9883
Kent, MI	
Ottawa, MI	
Great Falls, MT	0.9992
Cascade, MT	
Greeley, CO	0.9358
Weld, CO	
Green Bay, WI	0.9585
Brown, WI	
Greensboro-Winston-Salem-High Point, NC	0.9165
Davidson, NC	
Davie, NC	
Forsyth, NC	
Guilford, NC	
Randolph, NC	
Stokes, NC	
Yadkin, NC	
Greenville-Spartanburg, SC	0.8923
Greenville, SC	
Pickens, SC	
Spartanburg, SC	
Hagerstown, MD	0.9157
Washington, MD	
Hamilton-Middletown, OH	0.9384
Butler, OH	
Harrisburg-Lebanon-Carlisle, PA	0.9919
Cumberland, PA	
Dauphin, PA	
Lebanon, PA	
Perry, PA	
Hartford-Middletown-New Britain-Bristol, CT	1.1916
Hartford, CT	
Litchfield, CT	
Middlesex, CT	
Tolland, CT	
Hickory, NC	0.8741
Alexander, NC	
Burke, NC	
Catawba, NC	
Honolulu, HI	1.1580
Honolulu, HI	
Houma-Thibodaux, LA	0.7344
Lafourche, LA	
Terrebonne, LA	
Houston, TX	0.9935
Fort Bend, TX	
Harris, TX	
Liberty, TX	
Montgomery, TX	
Waller, TX	

TABLE II.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (Constituent counties or county equivalents)	Wage index
Huntington-Ashland, WV-KY-OH	0.9438
Boyd, KY	
Carter, KY	
Greenup, KY	
Lawrence, OH	
Cabell, WV	
Wayne, WV	
Huntsville, AL	0.8835
Madison, AL	
Indianapolis, IN	0.9663
Boone, IN	
Hamilton, IN	
Hancock, IN	
Hendricks, IN	
Johnson, IN	
Marion, IN	
Morgan, IN	
Shelby, IN	
Iowa City, IA	0.9528
Johnson, IA	
Jackson, MI	0.9664
Jackson, MI	
Jackson, MS	0.7733
Hinds, MS	
Madison, MS	
Rankin, MS	
Jackson, TN	0.7910
Madison, TN	
Jacksonville, FL	0.9051
Clay, FL	
Duval, FL	
Nassau, FL	
St. Johns, FL	
Jacksonville, NC	0.7154
Onslow, NC	
Jamestown-Dunkirk, NY	0.7735
Chautauqua, NY	
Janesville-Beloit, WI	0.8466
Rock, WI	
Jersey City, NJ	1.0526
Hudson, NJ	
Johnson City-Kingsport-Bristol, TN-VA	0.8668
Carter, TN	
Hawkins, TN	
Sullivan, TN	
Unicoi, TN	
Washington, TN	
Bristol City, VA	
Scott, VA	
Washington, VA	
Johnstown, PA	0.9067
Cambria, PA	
Somerset, PA	
Joliet, IL	1.0278
Grundy, IL	
Will, IL	
Joplin, MO	0.7957
Jasper, MO	
Newton, MO	
Kalamazoo, MI	1.1709
Kalamazoo, MI	
Kankakee, IL	0.8489
Kankakee, IL	
Kansas City, KS-MO	0.9588
Johnson, KS	
Leavenworth, KS	
Miami, KS	
Wyandotte, KS	
Cass, MO	
Clay, MO	
Jackson, MO	
Lafayette, MO	
Platte, MO	
Ray, MO	
Kenosha, WI	0.8855
Kenosha, WI	
Killeen-Temple, TX	1.1295

TABLE II.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (Constituent counties or county equivalents)	Wage index
Bell, TX	
Coryell, TX	
Knoxville, TN	0.8693
Anderson, TN	
Blount, TN	
Grainger, TN	
Jefferson, TN	
Knox, TN	
Sevier, TN	
Union, TN	
Kokomo, IN	0.9435
Howard, IN	
Tipton, IN	
LaCrosse, WI	0.8956
LaCrosse, WI	
Lafayette, LA	0.8227
Lafayette, LA	
St. Martin, LA	
Lafayette, IN	0.8432
Tippecanoe, IN	
Lake Charles, LA	0.8374
Calcasieu, LA	
Lake County, IL	0.9994
Lake, IL	
Lakeland-Winter Haven, FL	0.8171
Polk, FL	
Lancaster, PA	0.9258
Lancaster, PA	
Lansing-East Lansing, MI	1.0222
Clinton, MI	
Eaton, MI	
Ingham, MI	
Laredo, TX	0.7278
Webb, TX	
Las Cruces, NM	0.7909
Dona Ana, NM	
Las Vegas, NV	1.0631
Clark, NV	
Lawrence, KS	0.8937
Douglas, KS	
Lawton, OK	0.8388
Comanche, OK	
Lewiston-Auburn, ME	0.9057
Androscoggin, ME	
Lexington-Fayette, KY	0.8446
Bourbon, KY	
Clark, KY	
Fayette, KY	
Jessamine, KY	
Scott, KY	
Woodford, KY	
Lima, OH	0.8062
Allen, OH	
Auglaize, OH	
Lincoln, NE	0.8956
Lancaster, NE	
Little Rock-North Little Rock, AR	0.8420
Faulkner, AR	
Lonoke, AR	
Pulaski, AR	
Saline, AR	
Longview-Marshall, TX	0.8691
Gregg, TX	
Harrison, TX	
Lorain-Elyria, OH	0.8969
Lorain, OH	
Los Angeles-Long Beach, CA	1.2354
Los Angeles, CA	
Louisville, KY-IN	0.9092
Clark, IN	
Floyd, IN	
Harrison, IN	
Bullitt, KY	
Jefferson, KY	
Oldham, KY	
Shelby, KY	
Lubbock, TX	0.8790

TABLE II.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (Constituent counties or county equivalents)	Wage index
Lubbock, TX	
Lynchburg, VA	0.8544
Amherst, VA	
Campbell, VA	
Lynchburg City, VA	
Macon-Warner Robins, GA	0.8804
Bibb, GA	
Houston, GA	
Jones, GA	
Peach, GA	
Madison, WI	1.0311
Dane, WI	
Manchester-Nashua, NH	1.0261
Hillsborough, NH	
Merrimack, NH	
Mansfield, OH	0.8392
Richland, OH	
Mayaguez, PR	0.4771
Anasco, PR	
Cabo Rojo, PR	
Hormigueros, PR	
Mayaguez, PR	
San German, PR	
McAllen-Edinburg-Mission, TX	0.7715
Hidalgo, TX	
Medford, OR	1.0045
Jackson, OR	
Melbourne-Titusville Fl	0.9199
Brevard, Fl	
Memphis, TN-AR-MS	0.9060
Crittenden, AR	
De Soto, MS	
Shelby, TN	
Tipton, TN	
Merced, CA	1.0312
Merced, CA	
Miami-Hialeah, FL	1.0188
Dade, FL	
Middlesex-Somerset-Hunterdon, NJ	1.0401
Hunterdon, NJ	
Middlesex, NJ	
Somerset, NJ	
Midland, TX	1.0377
Midland, TX	
Milwaukee, WI	0.9719
Milwaukee, WI	
Ozaukee, WI	
Washington, WI	
Waukesha, WI	
Minneapolis-St Paul, MN-WI	1.0818
Anoka, MN	
Carver, MN	
Chisago, MN	
Dakota, MN	
Hennepin, MN	
Isanti, MN	
Ramsey, MN	
Scott, MN	
Washington, MN	
Wright, MN	
St. Croix, WI	
Mobile, AL	0.8319
Baldwin, AL	
Mobile, AL	
Modesto, CA	1.1577
Stanislaus, CA	
Monmouth-Ocean, NJ	0.9900
Monmouth, NJ	
Ocean, NJ	
Monroe, LA	0.7864
Ouachita, LA	
Montgomery, AL	0.7738
Autauga, AL	
Elmore, AL	
Montgomery, AL	
Muncie, IN	0.8068
Delaware, IN	
Muskegon, MI	0.9568
Muskegon, MI	
Naples, FL	1.0324
Collier, FL	
Nashville, TN	0.9397
Cheatham, TN	
Davidson, TN	
Dickson, TN	
Robertson, TN	
Rutherford, TN	
Sumner, TN	
Williamson, TN	
Wilson, TN	
Nassau-Suffolk, NY	1.2938
Nassau, NY	
Suffolk, NY	
New Bedford-Fall River-Attleboro, MA	1.0002
Bristol, MA	
New Haven Waterbury-Meriden, CT	1.2095
New Haven, CT	
New London, London-Norwich	1.1571
New London, CT	
New Orleans, LA	0.8908
Jefferson, LA	
Orleans, LA	
St. Bernard, LA	
St. Charles, LA	
St. John The Baptist, LA	
St. Tammany, LA	
New York, NY	1.3460
Bronx, NY	
Kings, NY	
New York City, NY	
Putnam, NY	
Queens, NY	
Richmond, NY	
Rockland, NY	
Westchester, NY	
Newark, NJ	1.1232
Essex, NJ	
Morris, NJ	
Sussex, NJ	
Union, NJ	
Niagara Falls, NY	0.8382
Niagara, NY	
Norfolk-Virginia Beach-Newport News, VA	0.8515
Chesapeake City, VA	
Gloucester, VA	
Hampton City, VA	
James City Co., VA	
Newport News City, VA	
Norfolk City, VA	
Poquoson, VA	
Portsmouth City, VA	
Suffolk City, VA	
Virginia Beach City, VA	
Williamsburg City, VA	
York, VA	
Oakland, CA	1.4283
Alameda, CA	
Contra Costa, CA	
Ocala, FL	0.8614
Marion, FL	
Odessa, TX	1.0817
Ector, TX	
Oklahoma City, OK	0.9145
Canadian, OK	
Cleveland, OK	
Logan, OK	
McClain, OK	
Oklahoma, OK	
Pottawatomie, OK	
Olympia, WA	1.1002
Thurston, WA	
Omaha, NE-IA	0.8989
Pottawattamie, IA	
Douglas, NE	
Sarpy, NE	
Washington, NE	
Orange County, NY	0.9653
Orange, NY	
Orlando, FL	0.9621
Orange, FL	
Osceola, FL	
Seminole, FL	
Owensboro, KY	0.8114
Daviess, KY	
Oxnard-Ventura, CA	1.2309
Ventura, CA	
Panama City, FL	0.8632
Bay, FL	
Parkersburg-Marietta, WV-OH	0.8540
Washington, OH	
Wood, WV	
Pascagoula, MS	0.8755
Jackson, MS	
Pensacola, FL	0.8623
Escambia, FL	
Santa Rosa, FL	
Peoria, IL	0.8710
Peoria, IL	
Tazewell, IL	
Woodford, IL	
Philadelphia, PA-NJ	1.0952
Burlington, NJ	
Camden, NJ	
Gloucester, NJ	
Bucks, PA	
Chester, PA	
Delaware, PA	
Montgomery, PA	
Philadelphia, PA	
Phoenix, AZ	1 0429
Maricopa, AZ	
Pine Bluff, AR	0.7672
Jefferson, AR	
Pittsburgh, PA	1.0127
Allegheny, PA	
Fayette, PA	
Washington, PA	
Westmoreland, PA	
Pittsfield, MA	1.0782
Berkshire, MA	
Ponce, PR	0.4601
Juana Diaz, PR	
Ponce, PR	
Portland, ME	0.9292
Cumberland, ME	
Sagadahoc, ME	
York, ME	
Portland, OR	1.1576
Clackamas, OR	
Multnomah, OR	
Washington, OR	
Yamhill, OR	
Portsmouth-Dover-Rochester, NH	1.0080
Rockingham, NH	
Strafford, NH	
Poughkeepsie, NY	1.0447
Dutchess, NY	
Providence-Pawtucket-Woonsocket, RI	1.0630
Bristol, RI	
Kent, RI	
Newport, RI	
Providence, RI	
Washington, RI	
Provo-Orem, UT	1.0230
Utah, UT	
Pueblo, CO	0.8722
Pueblo, CO	
Racine, WI	0.8849
Racine, WI	
Raleigh-Durham, NC	0.9465
Durham, NC	

TABLE II.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (Constituent counties or county equivalents)	Wage index
Franklin, NC	
Orange, NC	
Wake, NC	
Rapid City, SD	0.8400
Pennington, SD	
Reading, PA	0.8814
Berks, PA	
Redding, CA	1.0549
Shasta, CA	
Reno, NV	1.1618
Washoe, NV	
Richland-Kennewick, WA	0.9402
Benton, WA	
Franklin, WA	
Richmond-Petersburg, VA	0.9417
Charles City Co., VA	
Chesterfield, VA	
Colonial Heights City, VA	
Dinwiddie, VA	
Goochland, VA	
Hanover, VA	
Henrico, VA	
Hopewell City, VA	
New Kent, VA	
Petersburg City, VA	
Powhatan, VA	
Prince George, VA	
Richmond City, VA	
Riverside-San Bernardino, CA	1.1160
Riverside, CA	
San Bernardino, CA	
Roanoke, VA	0.8284
Botetourt, VA	
Roanoke, VA	
Roanoke City, VA	
Salem City, VA	
Rochester, MN	1.1030
Olmsted, MN	
Rochester, NY	0.9710
Livingston, NY	
Monroe, NY	
Ontario, NY	
Orleans, NY	
Wayne, NY	
Rockford, IL	0.9283
Boone, IL	
Winnebago, IL	
Sacramento, CA	1.2232
Eldorado, CA	
Placer, CA	
Sacramento, CA	
Yolo, CA	
Saginaw-Bay City-Midland, MI	1.0451
Bay, MI	
Midland, MI	
Saginaw, MI	
St. Cloud, MN	0.9420
Benton, MN	
Sherburne, MN	
Stearns, MN	
St. Joseph, MO	0.9414
Buchanan, MO	
St. Louis, MO-IL	0.9388
Clinton, IL	
Jersey, IL	
Madison, IL	
Monroe, IL	
St. Clair, IL	
Franklin, MO	
Jefferson, MO	
St. Charles, MO	
St. Louis, MO	
St. Louis City, MO	
Sullivan City, MO	
Salem, OR	1.0445
Marion, OR	
Polk, OR	

TABLE II.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (Constituent counties or county equivalents)	Wage index
Salinas-Seaside-Monterey, CA	1.3041
Monterey, CA	
Salt Lake City-Ogden, UT	0.9932
Davis, UT	
Salt Lake, UT	
Weber, UT	
San Angelo, TX	0.8139
Tom Green, TX	
San Antonio, TX	0.8452
Bexar, TX	
Comal, TX	
Guadalupe, TX	
San Diego, CA	1.1934
San Diego, CA	
San Francisco, CA	1.4539
Marin, CA	
San Francisco, CA	
San Mateo, CA	
San Jose, CA	1.4900
Santa Clara, CA	
San Juan, PR	0.4987
Barcelona, PR	
Bayoman, PR	
Canovanas, PR	
Carolina, PR	
Catano, PR	
Corozal, PR	
Dorado, PR	
Fajardo, PR	
Florida, PR	
Guaynabo, PR	
Humacao, PR	
Juncos, PR	
Los Piedras, PR	
Loiza, PR	
Luguillo, PR	
Manati, PR	
Naranjito, PR	
Rio Grande, PR	
San Juan, PR	
Toa Alta, PR	
Toa Baja, PR	
Trojillo Alto, PR	
Vega Alta, PR	
Vega Baja, PR	
Santa Barbara-Santa Maria-Lompoc, CA	1.1768
Santa Barbara, CA	
Santa Cruz, CA	1.2784
Santa Cruz, CA	
Santa Fe, NM	0.9139
Los Alamos, NM	
Santa Fe, NM	
Santa Rosa-Petaluma, CA	1.2957
Sonoma, CA	
Sarasota, FL	0.9781
Sarasota, FL	
Savannah, GA	0.8327
Chatham, GA	
Effingham, GA	
Scranton, Wilkes Barre, PA	0.8952
Columbia, PA	
Lackawanna, PA	
Luzerne, PA	
Monroe, PA	
Wyoming, PA	
Seattle, WA	1.0871
King, WA	
Snohomish, WA	
Sharon, PA	0.9061
Mercer, PA	
Sheboygan, WI	0.8872
Sheboygan, WI	
Sherman-Denison, TX	0.9089
Grayson, TX	
Shreveport, LA	0.9299
Bossier, LA	
Caddo, LA	

TABLE II.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (Constituent counties or county equivalents)	Wage index
Sioux City, IA-NE	0.8504
Woodbury, IA	
Dakota, NE	
Sioux Falls, SD	0.8833
Minnehaha, SD	
South Bend-Mishawaka, IN	1.0067
St. Joseph, IN	
Spokane, WA	1.0691
Spokane, WA	
Springfield, IL	0.9295
Menard, IL	
Sangamon, IL	
Springfield, MO	0.8082
Christian, MO	
Greene, MO	
Springfield, MA	1.0316
Hampden, MA	
Hampshire, MA	
State College, PA	0.9901
Centre, PA	
Steubenville-Weirton, OH-WV	0.8712
Jefferson, OH	
Brooke, WV	
Hancock, WV	
Stockton, CA	1.1612
San Joaquin, CA	
Syracuse, NY	0.9917
Madison, NY	
Onondaga, NY	
Oswego, NY	
Tacoma, WA	1.0317
Pierce, WA	
Tallahassee, FL	0.9220
Gadsden, FL	
Leon, FL	
Tampa-St. Petersburg-Clearwater, FL	0.9188
Hernando, FL	
Hillsborough, FL	
Pasco, FL	
Pinellas, FL	
Terre Haute, IN	0.8758
Clay, IN	
Vigo, IN	
Texarkana-TX-AR	0.7892
Miller, AR	
Bowie, TX	
Toledo, OH	1.0097
Fulton, OH	
Lucas, OH	
Wood, OH	
Topeka, KS	0.9302
Shawnee, KS	
Trenton, NJ	1.0038
Mercer, NJ	
Tucson, AZ	0.9591
Pima, AZ	
Tulsa, OK	0.8532
Creeks, OK	
Osage, OK	
Rogers, OK	
Tulsa, OK	
Wagoner, OK	
Tuscaloosa, AL	0.8521
Tuscaloosa, AL	
Tyler, TX	0.9838
Smith, TX	
Utica-Rome, NY	0.8512
Herkimer, NY	
Oneida, NY	
Vallejo-Fairfield-Napa, CA	1.3203
Napa, CA	
Solano, CA	
Vancouver, WA	1.0798
Clark, WA	
Victoria, TX	0.8994
Victoria, TX	
Vineland-Millville-Bridgeton, NJ	0.9760

TABLE II.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (Constituent counties or county equivalents)	Wage index
Cumberland, NJ	
Visalia-Tulare-Porterville, CA	1.0392
Tulare, CA	
Waco, TX	0.7814
McLennan, TX	
Washington, DC-MD-VA	1.0941
District of Columbia, DC	
Calvert, MD	
Charles, MD	
Frederick, MD	
Montgomery, MD	
Prince Georges, MD	
Alexandria City, VA	
Arlington, VA	
Fairfax, VA	
Fairfax City, VA	
Falls Church City, VA	
Loudoun, VA	
Manassas City, VA	
Manassas Park City, VA	
Prince William, VA	
Stafford, VA	
Waterloo-Cedar Falls, IA	0.8642
Black Hawk, IA	
Bremer, IA	
Wausau, WI	0.9748
Marathon, WI	
West Palm Beach-Boca Raton-Delray Beach, FL	1.0135
Palm Beach, FL	
Wheeling, WV-OH	0.8067
Belmont, OH	
Marshall, WV	
Ohio, WV	
Wichita, KS	0.9809
Butler, KS	
Harvey, KS	
Sedgwick, KS	
Wichita Falls, TX	0.8172
Wichita, TX	
Williamsport, PA	0.8864
Lycoming, PA	
Wilmington, DE-NJ-MD	1.0869
New Castle, DE	
Cecil, MD	
Salem, NJ	
Wilmington, NC	0.8712
New Hanover, NC	
Worcester-Fitchburg-Leominster, MA	1.0826
Worcester, MA	
Yakima, WA	1.0111
Yakima, WA	
York, PA	0.9021
Adams, PA	
York, PA	
Youngstown-Warren, OH	0.9866
Mahoning, OH	
Trumbull, OH	
Yuba City, CA	1.0167
Sutter, CA	
Yuba, CA	
Yuma, AZ	0.8885
Yuma, AZ	

TABLE III.—WAGE INDEX FOR RURAL AREAS

Non-Urban areas	Wage index
Alabama	0.7121
Alaska	1.3426
Arizona	0.8747
Arkansas	0.6966
California	1.0142
Colorado	0.8415
Connecticut	1.1905
Delaware	0.8572
Florida	0.8730
Georgia	0.7767
Hawaii	0.9618
Idaho	0.8953
Illinois	0.7700
Indiana	0.7806
Iowa	0.7532
Kansas	0.7446
Kentucky	0.7793
Louisiana	0.7384
Maine	0.8328
Maryland	0.8061
Massachusetts	1.1654
Michigan	0.8826
Minnesota	0.8309
Mississippi	0.6957
Missouri	0.7249
Montana	0.8255
Nebraska	0.6995
Nevada	0.9702
New Hampshire	0.9547
New Jersey	(1)
New Mexico	0.8318
New York	0.8402
North Carolina	0.7936
North Dakota	0.7719
Ohio	0.8453
Oklahoma	0.7400
Oregon	0.9607
Pennsylvania	0.8613
Puerto Rico	[2] 0.4333
Rhode Island	(1)
South Carolina	0.7650
South Dakota	0.7168
Tennessee	0.7340
Texas	0.7591
Utah	0.8983
Vermont	0.9035
Virginia	0.7815
Virgin Islands	[2] 0.5734
Washington	0.9635
West Virginia	0.8488
Wisconsin	0.8447
Wyoming	0.8457

[1] All counties within State are classified urban.
[2] Approximate value for area.

TABLE IV.—COST REPORTING YEAR ADJUSTMENT FACTORS [1]

[Effective October 1, 1992]

If a SNF cost reporting period begins	The adjustment factor is
November 1, 1992	1.00431
December 1, 1992	1.00851
January 1, 1993	1.01286
February 1, 1993	1.01723
March 1, 1993	1.02119
April 1, 1993	1.02560
May 1, 1993	1.02988
June 1, 1993	1.03433
July 1, 1993	1.03864
August 1, 1993	1.04313
September 1, 1993	1.04763
October 1, 1993	1.05200
November 1, 1993	1.05654
December 1, 1993	1.06095
January 1, 1994	1.06553
February 1, 1994	1.07021
March 1, 1994	1.07446
April 1, 1994	1.07919
May 1, 1994	1.08378
June 1, 1994	1.08854
July 1, 1994	1.09317
August 1, 1994	1.09798
September 1, 1994	1.10280

[1] Based on compounded projected market basket inflation rates of 5.2 percent for 1993, 5.2 percent for 1994, and 5.3 percent for 1995. These adjustment factors are subject to change based on later estimates of cost increases or decreases.

If for any reason we do not publish a new schedule of limits to be effective October 1, 1994 or do not announce other changes in the current schedule by that date, the current limits will continue in effect with the last adjustment factor above multiplied by 1.00442 (5.3 percent projected market basket inflation rate for 1995 divided by 12 plus 1.00000 for compounding) once for each month between September 1, 1994 and the month in which the cost reporting period begins, until a new schedule of limits or other provision is issued. For example, if the cost reporting period begins on November 1, 1994, 1.10280 would be multiplied by 1.00442 twice and the resulting factor would equal 1.11257 ($1.10280 \times 1.00442 \times 1.00442 = 1.11257$).

TABLE V.—DERIVATION OF "MARKET BASKET" INDEX FOR SNF ROUTINE SERVICE COSTS

Category of costs	Relative [1] importance 1993	Price variable used [2]
Payroll Expenses	64.0	Percentage changes in average hourly earnings of employees in nursing and personal care facility. (SIC 805) Source: U S Dept. of Labor, Bureau of Labor Statistics, *Employment and Earnings* (monthly), Table C-2.
Employee Benefits	7.8	Supplements to wages and salaries per worker in nonagricultural establishments.

TABLE V.—DERIVATION OF "MARKET BASKET" INDEX FOR SNF ROUTINE SERVICE COSTS—Continued

Category of costs	Relative [1] importance 1993	Price variable used [2]
		For supplements to wages. Source: U.S. Dept. of Commerce, Bureau of Economic Analysis, *Survey of Current Business*, Table 1.11.
		For total employment. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Employment and Earnings* (monthly), Table B-4.
Food	7.6	Processed foods and feeds component of producer price index. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Monthly Labor Review*, Table 23.
		Food and beverage component of Consumer Price Index, all urban. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Monthly Labor Review*, Table 22.
Other business services.	5.1	Services component of Consumer Price Index, all urban, Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Monthly Labor Review*, Table 23.
Fuel and other utilities	4.0	A. Implicit price deflator-consumption of fuel oil and coal (derived from fuel oil component of Consumer Price Index). Source: U.S. Dept. of Commerce, Bureau of Economic Analysis, *Survey of Current Business*, (monthly), Table 7.11.
		B. Implicit price deflator-consumer of electricity (derived from electricity component of Consumer Price Index). Source: U.S. Dept. of Commerce, Bureau of Economic Analysis.
		C. Implicit price deflator for natural gas (derived from utility (piped) gas component of Consumer Price Index). Source: Same as electricity above.
		D. Water and sewage maintenance component of the Consumer Price Index. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Monthly Labor Review, Table 23.*
Supplies	3.1	All Item Consumer Price Index, all urban. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Monthly Labor Review*, Table 23.
Drugs	2.2	Pharmaceutical preparations, ethical component of producer price index. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Producer Prices and Price Indexes*, (monthly), Table 6.
Health services	1.6	Physician services component of Consumer Price Index for all urban consumers. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Monthly Labor Review*, Table 23.
Miscellaneous	4.6	All Item Consumer Price Index, all urban. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Monthly Labor Review*, Table 23.

[1] The basic weights for all major categories of skilled nursing home costs were obtained from the DHEW-National Center for Health Statistics (NCHS) National Nursing Home Surveys (NNHS) for 1972 and 1976 for home certified for participation in the Medicare program. See *Nursing Home Costs 1972, United States: National Nursing Home Survey, August 1973–April 1974, DHEW, NCHS: National Nursing Home Survey: 1977 Summary for the United States, Vital and Health Statistics, Series 13, Number 43.*

A Laspeyres price index was constructed using 1977 weights and price variables indicated in this table. In calendar year 1977 each "price" variable has an index of 100.0. The relative routine service cost weights change each period in accordance with price changes for each price variable. Cost categories with relatively higher "price" increases get relatively higher cost weights and vice versa.

[2] Forecasted by DRI/McGraw Hill, Health Care Costs, First Quarter, 1992, 1750 K St., NW, Washington, D.C. 20006

Authority: (Sections 1102, 1814(b), 1861(v)(1), 1866(a), 1871, and 1888 of the Social Security Act (42 U.S.C. 1302, 1395f(b), 1395x(v)(1), 1395cc(a), 1395hh, and 1395yy); section 6024 of Pub. L. 101-239 (42 U.S.C. 1395yy note); and 42 CFR 413.30)

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance Program)

Dated: August 31, 1992.

William Toby, Jr.,

Acting Deputy Administator, Health Care Financing Administration.

Approved: September 9, 1992.

Louis W. Sullivan,

Secretary.

[FR Doc. 92-24169 Filed 10-1-92; 11:17 am]

BILLING CODE 4120-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR-130-4130-15; GP3-001; WMP-130-88-008B]

Kettle River Project—Key Expansion Plan of Operations, Final Environmental Impact Statement Record of Decision

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of availability of record of decision for the Kettle River Project—Key Expansion Plan of Operations.

SUMMARY: In accordance with 43 CFR 1610.5 and section 102(2)(c) of the National Environmental Policy Act of 1969 (40 CFR 1505.2), the Department of the Interior, Bureau of Land Management, notice is hereby given of the issuance of the Record of Decision for the Kettle River Project—Key Project Expansion Plan of Operations, District Serial Number WMP-130-88-008B. Initiation of actions which implement this plan can begin on October 12, 1992, thirty days after the Notice of Availability of the FEIS appeared in the **Federal Register** (40 CFR 1506.10).

DATES: The Record of Decision was signed on September 30, 1992, by Joseph K. Buesing, District Manager, Spokane District, Washington, and will become effective on October 12, 1992. Copies of that document have been mailed to those people who received the draft and final EIS documents. The final EIS was made available to the public on August 27, 1992, and the notice of availability of this document (EIS No. 920362) was published in the **Federal Register** on September 11, 1992, by the Colville National Forest through the Environmental Protection Agency.

ADDRESSES: Requests for copies of the approved Kettle River Project—Key Project Expansion Plan of Operations, District Serial Number WMP-130-88-008B, Final Environmental Impact Statement Record of Decision should be addressed to Ann Aldrich, Border Area Manager, Bureau of Land Management, Spokane District, East 4217 Main Avenue, Spokane, Washington 99202.

SUPPLEMENTARY INFORMATION: The Record of Decision documents the decision for the Bureau of Land Management (BLM) regarding the Kettle River Project, including the Key Project Expansion (Key Expansion). The Record of Decision applies only to the existing (Overlook and Belcher subunits) and proposed (Key subunit) activities under the plan of operations on lands managed by the BLM. The plan of operations combines previously separate project areas established under notices of operations in one project area. The analysis began by publishing a Notice of Intent to prepare an EIS which appeared in the **Federal Register**, Vol 56, No. 197, on October 10, 1991. A Draft EIS (DEIS) was prepared and released to the public in May 1992. The Final Key Expansion EIS (FEIS) was released for public review in August, 1992. The document was the result of public involvement,

data collection, and analysis. Other State and Federal Agencies participated in the analysis process. The Washington State Department of Ecology (DOE) served as the lead State agency for the EIS. The U.S. Department of Agriculture—Forest Service was the lead Federal agency. The cooperating agencies included the U.S. Department of the Interior—Bureau of Land Management and the Washington State Department of Natural Resources.

Alternatives Considered

Four alternatives were considered in detail, including the No Action Alternative, to address the major issues associated with this project. Several other alternatives were considered but eliminated from detailed study, including two alternative access routes. The three action alternatives differed from each other in the type, configuration and location of various project components.

Alternatives Examined and Eliminated from Further Consideration include two possible Key Expansion haul routes which both involved more disturbances of BLM-administered public lands, greater impacts to other resources, and greater construction and operating costs, with limited offsetting benefits. One route involved constructing a new road over previously undisturbed land at a higher elevation, requiring the greatest amount of surface disturbance of all routes, with in excess of 30 percent greater excavation. Visual impact would have been greater due to the higher placement of the road. The second route involved constructing a road from Lambert Creek to the Key Expansion area along an existing primitive road alignment. This route would have significantly increased the travel distance to the Key Mill, with substantial increases in the fuel consumed and the associated pollutants from vehicle operation and road construction and maintenance. This route also had greater nuisance impacts to residences from noise, dust, etc., and greater potential for danger to wildlife and human safety.

The Selected Alternative (Alternative A) involves the following principal new components: Two open pit mining areas, the Key East and Key West pits; a single waste rock disposal facility, located entirely on private land southwest of the Key East pit; a main access haul road and internal mine haul roads connecting the Key Project site with Echo Bay's existing processing facilities at the Key Mill; topsoil stockpile areas; and surface water control installations including sediment ponds.

Alterative B is similar to Alternative A, but involves about 15% more new disturbance and incorporates separate waste rock disposal areas for each pit site. Alternative B involves no difference in the haul road configuration. As a result, associated with five waste rock disposal areas, including more disturbance on National Forest lands. Alternative B has greater potential to cause off-site impacts than Alternative A.

Alternative C involves a project configuration similar to Alternative B. Alternative C involves operational procedures and ancillary facilities (including the haul road) that are identical to Alternative A. Alternative C differs from Alternative A in that one open pit mine would be considerably larger, and five waste rock disposal areas would be developed rather than one, resulting in about 60 percent more new disturbance than Alternative A. Alternative C also has greater potential to cause off-site impacts than Alternative A.

Alternative D, the No Action Alternative, is considered as a requirement of the NEPA and SEPA regulations, and involves continuation of the existing management. Alternative D would eliminate those negative impacts potentially associated with the Key Expansion. This alternative provides a basis against which to compare the impacts of the other alternatives including the proposed action. Existing operations from the Kettle River Project would remain in place.

The Environmentally Preferred Alternative is identified in accordance with the requirement of Federal regulations (40 CFR 1505.2(b)). The environmentally preferred alternative is defined as the alternative causing the least impact to the biological and physical environment. Alternative D (No Action) is the environmentally preferred alternative.

Decision

Based on the analysis in the Final Environment Impact Statement (FEIS) for the Key Project, it is my decision to select and implement Alternative A as described in the FEIS, with supplemental mitigation measures identified in this decision. This Decision applies only to the portions of the Kettle River Project that take place on BLM-administered lands.

Alternative A includes open-pit mining for gold from two pit areas, an overburden or waste rock disposal facility, topsoil stockpile areas, surface water control installations including sediment ponds, haul roads, and ancillary facilities. BLM-administered lands affected by this decision include a portion of the Key haul road (2 acres), and lands previously disturbed under notices of operation at the Overlook Mine (4.8 acres) and Belcher area (1.4 acres). Reclamation work is already in progress at the Overlook Mine and Belcher area based on prior arrangements under the notices and the previous State EIS.

This Record of Decision completes the NEPA compliance which is required prior to approval of the plan of operations. The U.S. Forest Service, Washington State Department of Ecology, Washington State Department of Natural Resources, Department of Social Health Services, and Ferry County will be issuing separate permits as required by their agencies.

All practical means to avoid or minimize environmental harm from implementation of the selected alternative, Alternative A, are adopted as part of this decision (43 CFR 3809.0–6). Mitigation measures and monitoring detailed in the FEIS in Section 5, Appendix B, Appendix C, Appendix D, and Appendix E are adopted as part of the decision. In addition, the following site-specific measures are required for named subunits of the Kettle River Project:

Belcher Area

The operator shall seed the road at the northernmost Belcher site with the grass seed and fertilizer mixture evaluated in the FEIS. The operator shall close access road at the northernmost Belcher site with a substantial earth berm at least five feet in height across the full width of the road and shoulder, and twenty feet in depth. As an alternative, the road and shoulder shall be blocked with a substantial pile of timber at least five feet in height and fifty feet in length. Slash, if used, shall be obtained by relocating an existing slash pile. The closure point shall be on public land near the base of mountain.

Overlook Area

Mitigation measures and monitoring for operations and reclamation, as detailed in the FEIS Kettle River Project, in the Section "Environmental Analysis", Appendix B, Appendix D, Appendix G, and Appendix I are adopted as part of the decision. Except for the one through access road, all exploration roads or disturbance on public lands in this project subunit shall be recontoured to conform to or emulate the original topography. The operator shall seed the disturbed areas with the

grass seed and fertilizer mixture evaluated in the FEIS.

Key Area

During the life of the project, interim stabilization shall include seeding, fertilizing and otherwise revegetating cut banks, berms and other disturbed areas using the mixtures identified in the Key Expansion FEIS. During the life of the project, the operator shall obtain prior written approval from the Washington Department of Ecology and the BLM before use of any chemicals or other substances for dust control on the main access haul road. Reclamation of the main haul road shall include recontouring and revegetation to a condition which approximates the configuration of the pre-existing primitive road. The road shall be restored to a single lane, with culverts removed and road berms outsloped and revegetated.

Revegetation will be considered successful when sustained growth after at least two full growing seasons produces vegetation density comparable to surrounding undisturbed lands, and the vegetation diversity is equivalent to the proportions of the seed mixture. The adopted mitigation measures have been developed to minimize the impacts from project development and to maintain the quality of the natural resources and improvements in the Kettle River Project area. The mitigation measures will be applied during all phases of project implementation and reclamation.

Monitoring will determine the compliance of the project with this FEIS and the Plan of Operations and will validate projected environmental effects of the project. The BLM will be responsible for monitoring activities on lands within its jurisdiction. Activities on other lands will be monitored by the Forest Service, Mine Health and Safety Administration, Washington State Department of Ecology and Department of Natural Resources, and Ferry County.

Dated: September 30, 1992.

Joseph K. Buesing,

District Manager.

[FR Doc. 92-24268 Filed 10-6-92; 8:45 am]

BILLING CODE 4310-33-M

[WY-030-03-4320-14]

Rawlins District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Rawlins District Grazing Advisory Board Meeting.

SUMMARY: Notice is hereby given in accordance with Public Law 92-463 and 94-5799 that a meeting of the Rawlins District Grazing Advisory Board will be held. This notice sets forth the schedule and proposed agenda for the meeting.

DATES: November 19, 1992.

ADDRESSES: Bureau of Land Management, Lander Resource Area Office, 125 Sunflower, P.O. Box 589, Lander, Wyoming, 82520 (307) 332-7822.

FOR FURTHER INFORMATION CONTACT: John Spehar, District Range Conservationist, Rawlins District Office, Bureau of Land Management, P.O. Box 670, Rawlins, Wyoming, 82301, (307) 324-7171.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include:

1. Introduction and opening remarks.
2. Election of Chairman and Vice-chairman for Fiscal Year 1993.
3. Opportunity for the public to present information or make statements.
4. Review of the 1992 range improvement program.
5. Presentation of the proposed 1993 range improvements.
6. Wild Horse Program Update.
7. Other.

The meeting is open to the public. Individuals interested in attending the meeting or making an oral presentation to the Board must notify the District Manager by November 13, 1992. Written statements may also be filed for the Board's consideration. Summary minutes of this meeting will be on file in the Rawlins District Office and available for public inspection (during regular business hours) within 30 days of the meeting.

Dated: September 28, 1992.

Al Pierson,

District Manager.

[FR Doc. 92-24303 Filed 10-6-92; 8:45 am]

BILLING CODE 4310-22-M

[AZ-040-4212-24; AZA 27169]

Receipt of Application for the Conveyance of Federally-Owned Mineral Interests; Safford District, AZ

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of receipt of conveyance of mineral interest application in Santa Cruz County.

SUMMARY: Notice is hereby given that pursuant to Section 209 of the Act of October 21, 1976, 90 Stat. 2757, Stewart Title and Trust of Tucson, an Arizona Corporation, as Trustee Under Trust No. 3411, c/o Sidney N. Mendelsohn, Jr., Esq., has applied to purchase the mineral estate described as follows:

Gila and Salt River Meridian, Arizona

T. 20 S., R. 13 E.,

Sec. 12, N½N½, N½SE¼, SE¼SE¼.

Containing 280.00 acres, more or less.

Upon publication of this notice in the **Federal Register**, the mineral interests described above will be segregated to the extent that they will not be open to appropriation under the public land laws including the mining laws and the mineral leasing laws. The segregative effect of the application shall terminate either upon issuance of a patent or other document of conveyance of such mineral interest, upon final rejection of the application or two years from the date of filing of the application, August 5, 1992, whichever occurs first.

SUPPLEMENTARY INFORMATION: Additional information concerning this application may be obtained from the District Realty Specialist, Safford District Office, 425 E. 4th Street, Safford, AZ 85546.

Dated: September 28, 1992.

William T. Civish,

District Manager.

[FR Doc. 92-24296 Filed 10-6-92; 8:45 am]

BILLING CODE 4310-32-M

[OR-943-4212-13; GP2-467; OR-44592]

Conveyance of Public Land; Order Providing for Opening of Lands; OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action informs the public of the conveyance of 560 acres of public land out of Federal ownership. This action will also open 3,459.19 acres of reconveyed lands to surface entry, and 1,199 acres to mining and mineral leasing. The 2,260.19-acre balance is not in Federal ownership.

EFFECTIVE DATE: November 13, 1992.

FOR FURTHER INFORMATION CONTACT: Linda Sullivan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503-280-7171.

SUPPLEMENTARY INFORMATION:

1. Notice is hereby given that in an exchange of lands made pursuant to section 206 of the Act of October 21, 1976, 43 U.S.C. 1716, a patent has been issued transferring 560 acres in Wheeler County, Oregon, from Federal ownership to private ownership.

2. In the exchange, the following described lands have been reconveyed to the United States:

Willamette Meridian

T. 11 S., R. 20 E.,
Sec. 2, lots 1, 2, 3, and 4, SW¼NE¼, S½ NW¼, and SW¼;
Sec. 3, lots 1, 2, and 3, S½NE¼, E½SW¼, and SE¼;
Sec. 11, S½NE¼, W½, and SE¼;
Sec. 12, lots 1 to 16, inclusive;
Sec. 13, lots 1 to 16, inclusive.
T. 10 S., R,. 21 E.,
Sec. 31, those portions of the S½NE½and SE¼lying northerly and easterly of Bridge Creek County Road No. 14.
T. 11 S., R. 21 E.,
Sec. 7, lots 2, 3, and 4, S½NE¼, SE¼ NW¼, E½SW¼, and SE¼EXCEPTING those portions lying within the limits of the Painted Hills County Road No. 16 and Bridge Creek Road No. 14 rights-of-way.

The areas described aggregate approximately 3,459.19 acres in Wheeler County.

3. At 8:30 a.m., on November 13, 1992, the lands described in paragraph 2 will be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid existing applications received at or prior to 8:30 a.m., on November 13, 1992, will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

4. At 8:30 a.m., on November 13, 1992, the following described lands will be opened to location and entry under the United States mining laws. Appropriation of land 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. Sec. 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:

Willamette Meridian

T. 11 S., R. 20 E.,
Sec. 2, lots 1, 2, 3, and 4, SW¼NE¼, S½ NW¼, and SW¼;
Sec. 3, E½SW¼;
Sec. 12, lots 1 to 16, inclusive.

5. At 8:30 a.m., on November 13, 1992, the lands described in paragraph 4 will be opened to applications and offers under the mineral leasing laws.

Dated: September 29, 1992.

Robert E. Mollohan,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 92-24293 Filed 10-6-92; 8:45 am]

BILLING CODE 4310-33-M

[OR130 4333-01 GP3-002]

Emergency Road Closures and Restrictions; Fishtrap Lake

AGENCY: Bureau of Land Management, Spokane District.

ACTION: Public notice.

SUMMARY: Upon acquisition of the Fishtrap Lake (Miller Ranch) by BLM in Lincoln and Spokane Counties, vehicular travel including bicycles will be restricted to designated roads from the time of acquisition until completion of the Management Plan (tentatively scheduled for completion by October 1, 1994). Overnight camping will be authorized by permit only.

These restrictions are necessary to prevent resource damage to the soil, vegetation, including spread of noxious weeds and possible damage to cultural resources. Limitations are also necessary to reduce the development of trails/roads due to unregulated cross country travel. Vehicles used for administrative, emergency and law enforcement purposes will be exempt from these restrictions (43 CFR 8341.2).

SUPPLEMENTARY INFORMATION: Motorized vehicles are limited to designated roads for the 2 year period on public land in T. 21 N. R. 39 E. Sections 1, 2, 11, 12, NW¼ of Sec. 14, SE¼ of Sec. 10; Public lands east of the Burlington Northern Railroad Line in T. 22 N. R. 39 E. Sections 35, 26; T. 22 N. R. 40 E. S½NE¼, and SE¼NW¼ of Section 25, SE¼ of Section 24, W½ of Section 36, W½E½ of Section 36, NE¼NE¼ of Section 36, E½E½ of Section 36; T. 22 N. R. 40 E. S½ of Section 19, W½ of Section 30, NW¼SE¼ of Section 30.

Any person who fails to comply with this closure/restriction order is subject to the penalties provided in 8360.0-7. Violations are punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months.

For more information contact: Spokane District, Border Resource Area Manager, Ann Aldrich, E. 4217 Main Avenue, Spokane, Washington 99202; 509-353-2570.

Dated: October 1, 1992.

Ann Aldrich,

Border Resource Area Manager.

[FR Doc. 92-24366 Filed 10-6-92; 8:45 am]

BILLING CODE 4310-33-M

[OR130-4333-01-GP3-003]

Emergency Road Closures and Restrictions; Lincoln County Washington

AGENCY: Bureau of Land Management, Spokane District.

ACTION: Public notice.

SUMMARY: Certain roads within the Spokane District's Upper Crab Creek Management Area (i.e. Lincoln County) will be either closed or restricted to vehicular travel, including bicycles, for a period from October 15, 1992, until March 15, 1993. These restrictions are necessary to prevent resource damage to the soil, and vegetation including spread of noxious weeds. Limitations are also necessary to reduce the development of trails/roads due to unregulated cross country travel until road maintenance activities can be completed in the Spring of 1993. Vehicles used for administrative, emergency and for law enforcement purposes will be exempt from these restrictions (43 CFR 8341.2).

SUPPLEMENTARY INFORMATION: The BLM administered roads closed to motorized vehicle travel by this order for the 152 day period include all those in T. 21 N., R. 36 E., Sections 15, 19, 20, 21, and 22 W.M.

Motorized vehicles are limited to designated roads in T. 22 N., R. 32 E. Sections 2, 4, 8, 9, 10, 11, 12, 15, 16, 26, 34, 35, & 36 W.M.; T. 21 N., R. 36 E. Section 1, 2, 3, & 4 W.M.; T. 22 N., R. 33 E. Sections 5, 6, 7, & 8 W.M.

Any person who fails to comply with this closure/restriction order is subject to the penalties provided in 8360.0-7. Violations are punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months.

FOR FURTHER INFORMATION CONTACT: Spokane District, Border Resource Area Manager, Ann Aldrich, E. 4217 Main Avenue, Spokane Washington 99202; 509-353-2570.

Dated: October 1, 1992.

Ann Aldrich,

Border Resource Area Manager.

[FR Doc. 92-24367 Filed 10-6-92; 8:45 am]

BILLING CODE 4310-33-M

[OR-030-02-4333-04; G2-464]

Recreation Management; Camping Stay Limits; Oregon and Washington

AGENCY: Vale District, Bureau of Land Management, Interior.

ACTION: Establishment of camping stay limits for BLM lands in the Vale District, Oregon.

SUMMARY: Person(s) may camp within designated campgrounds, developed recreation sites or on public lands not closed or otherwise restricted to camping within the Vale District, Oregon for a period of not more than 14 days within any period of 28 consecutive days. The 14-day limit may be reached either through a number of separate visits or through a period of continuous occupation on public lands. After the 14th day of camping person(s) must move outside of a 14-mile radius of the previous location. When the camping limit has been reached, use of a site shall not occur again until at least 14 days have elapsed from the last day of use.

Under special circumstances and upon request, the authorized officer may give written permission for extensions to the 14-day camping limit.

Additionally, no person may leave personal property unattended in designated campgrounds or recreation developed site for a period of more than 72 hours, or elsewhere on public lands within the Vale District for a period of more than 10 days without written permission from the authorized officer.

DEFINITIONS: As used in these supplementary rules, the term:

a. *Camping* is defined as preparing a sleeping bag or other bedding material for use, or the erecting of a tent or shelter of natural or synthetic material, or parking of a motor vehicle, motor home, or trailer for overnight occupancy. Occupation of a site within a designated fee area during any portion of the night period of 10 p.m. to 6 a.m. will be considered overnight camping for the purpose of fee collection.

b. *Occupation* means the taking or holding possession of a camp or residence on public land.

c. *Public lands* means any lands or interest in lands owned by the United States and administered by the Bureau of Land Management.

d. *Authorized Officer* means any employee of the BLM who has been delegated the authority to perform under Title 43 Code of Federal Regulations.

e. *Developed Site* means sites that contain structures or capital improvements primarily used by the public for recreation purposes.

EFFECTIVE DATE: These supplementary rules will go into effect on January 1, 1993.

SUPPLEMENTARY INFORMATION: This restriction order is necessary to:

(1) Preclude any individual or group from camping for an excessively long period, thereby denying others recreation opportunities;

(2) Prevent or reduce the incidence of unauthorized, long term occupancy of areas from occurring under the guise of recreational use;

(3) Prevent unacceptable sanitary and solid waste disposal conditions;

(4) Preserve and protect the natural, cultural, and scenic resource values of areas that are typically being used for camping purposes; and

(5) Provide consistency to visitors moving from one BLM district to another.

Authority for implementing this camping stay limit is contained in the Code of Federal Regulations, Title 43, Chapter II part 8360, Subparts 8364 and 8365.

Violations of this camping stay limit are punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months.

FOR FURTHER INFORMATION CONTACT: Rich Conrad, Bureau of Land Management, 100 Oregon Street, Vale, OR 97918, Telephone (503) 473-3144.

James E. May,

District Manager.

[FR Doc. 92-24294 Filed 10-6-92; 8:45 am]

BILLING CODE 4310-33-M

[CO-070-4410-08]

Glenwood Springs Resource Area Resource Management Plan; Notice of Intent

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice; intent to prepare an Integrated Activity Plan and environmental assessment to consider an amendment to the Glenwood Springs Resources Management Plan.

SUMMARY: The Bureau of Land Management, Glenwood Springs Resource area, is preparing a detailed management plan, referred to as an Integrated Activity Plan (IAP), for the Sheep Creek area. The Sheep Creek IAP area is bounded by the Colorado River on the east side, the White River National Forest on the north side, and Sweetwater Creek on the southwest side. The IAP is being written to resolve resource user conflicts in the Sheep Creek area. The IAP could change prior decisions made in the Glenwood Springs Resource Management Plan. As required by 43 CFR 1610.5-5, RMP decisions may be changed through a plan amendment, and the plan amendment may be made through an environmental assessment of the proposed changes. Public involvement is also required for a plan amendment. A 30-day public comment period is being held to help identify issues and conflicts that need to be resolved.

EFFECTIVE DATE: Public comments to identify issues in the Sheep Creek IAP area are being accepted on November 6, 1992. Written comments should be submitted to the Area Manager, Glenwood Springs Resource Area, at the address shown below.

SUPPLEMENTARY INFORMATION: Approximately 28,000 acres in Eagle and Garfield County are included in the boundaries of the IAP area. The IAP will address issues identified by the BLM, other agencies, and the public through initial scoping meetings held in March 1992. Identified issues include management of big game winter range and grazing to achieve vegetation management objectives, travel management, recreation use, and watershed damage. The IAP will propose management on former State lands which have been transferred to the BLM and also incorporate current Washington Office planning guidance for resource management plans. Analysis of the issues, concerns, and proposed actions will be conducted using an integrated approach, and it is felt resolution of most of the conflicts can be achieved within the parameters of the existing RMP. Those RMP decisions that could change as a result of the Sheep Creek IAP primarily involve recreation management and could change the off-highway vehicle (OHV) use designation. Disciplines represented on the IAP team include wildlife, range, fire management, recreation, lands, forestry, watershed, fisheries, and riparian.

A draft Sheep Creek Integrated Activity Plan and Environmental Assessment will be available for public review and comment in spring or summer 1993. The draft plan and environmental assessment will include legal descriptions of the affected public lands. News releases will be issued to inform the public of plan progress, dates, times, and locations of any meetings, and availability of the draft plan and environmental assessment.

FOR FURTHER INFORMATION CONTACT: Michael S. Mottice, Area Manager, Glenwood Springs Resource Area Office, 50629 Highway 6 and 24, P.O. Box 1009, Glenwood Springs, Colorado 81602, (303) 945-2941; Tim Hartzell, District Manager, Grand Junction

District, 2815 H Road, Grand Junction, Colorado 81506, (303) 244-3000.

Tim Hartzell,

District Manager.

[FR Doc. 92-24297 Filed 10-6-92; 8:45 am]

BILLING CODE 4310-JB-M

Minerals Management Service

Outer Continental Shelf Oil and Gas Lease Sales; List of Restricted Joint Bidders

Pursuant to the authority vested in the Director of the Minerals Management Service by the joint bidding provisions of 30 CFR 256.41, each entity within one of the following groups shall be restricted from bidding with any entity in any other of the following groups at Outer Congressional Shelf oil and gas lease sales to be held during the bidding period from November 1, 1992, through April 30, 1993. The List of Restricted Joint Bidders published in the **Federal Register** on April 28, 1992, at 57 FR 17928 covered by period of May 1 through October 31, 1992.

Group I. Chevron Corporation; Chevron U.S.A. Inc.

Group II. Exxon Corp.; Exxon San Joaquin Production Co.

Group III. Shell Oil Co.; Shell Offshore Inc.; Shell Western E&P Inc.; Shell Frontier Oil & Gas Inc.

Group IV. Mobil Oil Corp.; Mobil Oil Exploration and Producing Southeast Inc.; Mobil Producing Texas and New Mexico Inc.; Mobil Exploration and Producing North America Inc.

Group V. BP America Inc.; The Standard Oil Co.; BP Exploration & Oil Inc.; BP Exploration (Alaska) Inc.

Dated: October 1, 1992.

Scott Sewell,

Director, Minerals Management Service.

[FR Doc. 92-24277 Filed 10-6-92; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Subsistence Resource Commission Meeting

AGENCY: National Park Service, Interior.

ACTION: Subsistence Resource Commission meeting.

SUMMARY: The Superintendent of Gates of the Arctic National Park and the Chairperson of the Subsistence Resource Commission for Gates of the Arctic National Park announce a forthcoming meeting of the Gates of the Arctic National Park Subsistence Resource Commission.

The following agenda items will be discussed:

(1) Roll call and review of agenda.

(2) Approval of Minutes.

(3) Superintendent's welcome:

a. Introduction of guests.

b. Review of SRC function and purpose.

(4) SRC Member Subsistence Reports.

(5) Federal Subsistence Management Program:

a. Subsistence Resource Advisory Council Program status report.

b. Federal Board actions.

(6) Hunting recommendations work session:

a. Status report on hunting plan recommendation submitted to the Secretary.

b. Status report on Hunting Plan.

c. Review previous SRC resolutions.

d. Develop new draft hunting plan recommendations.

(7) Superintendent's Report.

(8) Public and other agency comments.

(9) Set time and place of next SRC meeting.

DATES: The meeting will begin at 9 a.m. on Saturday, October 24, 1992, and conclude around 5 p.m. The meeting will reconvene at 9 a.m. on Sunday, October 25, 1992, and conclude around 5 p.m.

LOCATION: The meeting will be held in the Chart Room at the Captain Bartlett Inn in Fairbanks, Alaska.

FOR FURTHER INFORMATION CONTACT: Roger Siglin, Superintendent, P.O. Box 74680, Fairbanks, Alaska 99707. Phone (907) 456-0281.

SUPPLEMENTARY INFORMATION: The Subsistence Resource Commissions are authorized under title VIII, section 808, of the Alaska National Interest Lands Conservation Act, Public Law 96-487, and operate in accordance with the provisions of the Federal Advisory Committees Act.

Paul F. Haertel,

Acting Regional Director.

[FR Doc. 92-24292 Filed 10-6-92; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-626 (Preliminary)]

Pads for Woodwind Instrument Keys from Italy

AGENCY: United States International Trade Commission.

ACTION: Notice of withdrawal of petition in antidumping investigation.

SUMMARY: On September 29, 1992, the petitioner in the subject investigation (Prestini Musical Instruments Corp., Nogales, AZ) sent a letter to the U.S. Department of Commerce withdrawing its petition. A copy of that letter was sent by petitioner to the U.S. International Trade Commission on September 30, 1992. Commerce has not initiated an investigation as provided in section 732(c) of the Tariff Act of 1930 (19 U.S.C. 1673a(c)). Accordingly, the Commission gives notice that its antidumping investigation concerning pads for woodwind instrument keys from Italy (investigation No. 731-TA-626 (Preliminary)) is discontinued.

EFFECTIVE DATE: September 30, 1992.

FOR FURTHER INFORMATION CONTACT: Woodley Timberlake (202-205-3188), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810.

Issued: October 1, 1992.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 92-24342 Filed 10-6-92; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 701-TA-311 (Final)]

Certain Circular, Welded, Non-alloy Steel Pipes and Tubes From Brazil

AGENCY: United States International Trade Commission.

ACTION: Termination of investigation.

SUMMARY: On September 17, 1992, the U.S. Department of Commerce published notice in the **Federal Register** of a negative final determination of subsidies in connection with the subject investigation. Accordingly, pursuant to § 207.40(a) of the Commission's Rules of Practice and Procedure (19 CFR 207.40(a)), the countervailing duty investigation concerning certain circular, welded, non-alloy steel pipes and tubes from Brazil (investigation No. 701-TA-311 (Final)) is terminated.

EFFECTIVE DATE: September 30, 1992.

FOR FURTHER INFORMATION CONTACT: Douglas Corkran (202-205-3177), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments

who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000.

Authority: This investigation is being terminated under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 201.10 of the Commission's rules (19 CFR 201.10).

Issued: September 30, 1992.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 92-24341 Filed 10-6-92; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 332-267]

The Effects of Greater Economic Integration Within the European Community on the United States

AGENCY: United States International Trade Commission.

ACTION: Deadline for submissions in connection with the fifth followup report.

SUMMARY: The Commission has commenced work on the fifth in a series of followup reports updating its initial report issued in July 1989 in connection with investigation No. 332-267, The Effects of Greater Economic Integration Within the European Community on the United States. The reports were requested under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) by the House Committee on Ways and Means and the Senate Committee on Finance in a letter received on October 13, 1988. Notice of the institution of the investigation and scheduling of a public hearing was published in the **Federal Register** of December 21, 1988 (53 FR 51328), and notice of the procedure to be followed in followup reports was published in the **Federal Register** of September 20, 1989 (54 FR 38751).

The report on the initial phase of the investigation was sent to the Committees on July 17, 1989. Followup reports were sent to the Committees on March 30, 1990, September 28, 1990, March 29, 1991, and April 30, 1992. Copies of the reports, The Effects of Greater Economic Integration Within the European Community on the United States, may be obtained by calling 202-205-1807, or from the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Requests can also be faxed to 202-205-2186.

The fifth followup report will be sent to the Committees on April 30, 1993.

EFFECTIVE DATE: September 24, 1992.

FOR FURTHER INFORMATION CONTACT: For further information on the investigation contact Ms. Joanne Guth at 202-205-3264.

WRITTEN SUBMISSIONS: Interested persons are invited to submit written statements concerning the investigation. Written submissions to be considered by the Commission for the fifth followup report should be received by the close of business on December 11, 1992. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be available for inspection by interested persons. All submissions should be addressed to the Secretary at the Commission's office in Washington, DC.

Hearing impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810.

Issued: October 1, 1992.

By order of the Commission.

Paul Bardos,

Acting Secretary.

[FR Doc. 92-24339 Filed 10-6-92; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 731-TA-548 and 551 (Final)]

Sulfur Dyes from China and the United Kingdom

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of final antidumping investigations.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigations Nos. 731-TA-548 and 551 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from China and the United Kingdom of sulfur dyes,[1] provided for in subheadings 3204.15, 3204.19.30, 3204.19.40, and 3204.19.50 of the Harmonized Tariff Schedule of the United States.

For further information concerning the conduct of these investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: September 21, 1992.

FOR FURTHER INFORMATION CONTACT: Diane J. Mazur (202-205-3184), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000.

SUPPLEMENTARY INFORMATION:

Background. These investigations are being instituted as a result of affirmative preliminary determinations by the Department of Commerce that imports of sulfur dyes from China and the United Kingdom are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigations were requested in a petition filed on April 10, 1992, by Sandoz Chemicals Corporation, Charlotte, NC.

Participation in the investigations and public service list. Persons wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, not later than twenty-one (21) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an

---

[1] Sulfur dyes are synthetic organic coloring matter containing sulfur. Sulfur dyes are obtained by high temperature sulfurization of organic material containing hydroxy, nitro, or amino groups, or by reaction of sulfur or alkaline sulfide with aromatic hydrocarbons. For purposes of these investigations, sulfur dyes include, but are not limited to, sulfur vat dyes with the following color index numbers: Vat Blue 42, 43, 44, 45, 47, 49, and 50 and Reduced Vat Blue 42 and 43. Sulfur vat dyes also have the properties described above. All forms of sulfur dyes are covered, including the reduced (leuco) or oxidized state, presscake, paste, powder, concentrate, or so-called "pre-reduced, liquid ready-to-dye" forms.

administrative protective order (APO) and BPI service list. Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these final investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made not later than twenty-one (21) days after the publication of this notice in the **Federal Register.** A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report. The prehearing staff report in these investigations will be placed in the nonpublic record on November 20, 1992, and a public version will be issued thereafter, pursuant to § 207.21 of the Commission's rules.

Hearing. The Commission will hold a hearing in connection with these investigations beginning at 9:30 a.m. on December 9, 1992, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before November 30, 1992. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on December 2, 1992, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§ 201.6(b)(2), 201.13(f), and 207.23(b) of the Commission's rules.

Written submissions. Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.22 of the Commission's rules; the deadline for filing is December 4, 1992. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.24 of the Commission's rules. The deadline for filing posthearing briefs is December 16, 1992; witness testimony must be filed no later than three (3) days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before December 16, 1992. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate to service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules.

Issued: September 28, 1992.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 92-24340 Filed 10-6-92; 8:45 am]

BILLING CODE 7020-02-M

[Investigation 337-TA-333]

Certain Woodworking Accessories; Receipt of Initial Determination Terminating Respondents on the Basis of Consent Order Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above captioned investigation terminating the following respondents on the basis of a consent order agreement: Taiwan Zest Industrial Co., Ltd. and Trend-lines, Inc.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon parties on October 1, 1992.

Copies of the initial determination, the consent order agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205-2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1820.

WRITTEN COMMENTS: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such documents must be filed with the Secretary to the Commission, 500 E Street, SW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register.** Any person desiring to submit a document (or portions thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone (202) 205-1802.

Issued: October 1, 1992.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 92-24330 Filed 10-6-92; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-303 (Sub-No. 10X)]

Wisconsin Central Ltd.—Abandonment Exemption—in Douglas County, WI

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903-10904 the abandonment by Wisconsin Central Ltd. of 33.14 miles of rail line between milepost 454.64, near Ambridge, and milepost 421.50, near Gordon, in Douglas County, WI, subject to historic preservation, public use, and standard labor protective conditions. In addition, a notice of interim trail use has been issued for portions of the line.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on October 22, 1992. Formal expressions of intent to file an offer [1] of financial assistance

[1] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

under 49 CFR 1152.27(c)(2), requests for public use conditions, and petitions to reopen must be filed by October 19, 1992. Petitions to stay must be filed by October 12, 1992.

ADDRESSES: Send pleadings referring to Docket No. AB-303 (Sub-No. 10X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423. and

Petitioner's representative: Janet H. Gilbert, Wisconsin Central Ltd., 6250 N. River Road, Rosemont, IL 60018-5062.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder (202) 927-5610 [TDD for hearing impaired (202) 927-5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pickup in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927-5721].

Decided: September 29, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-24315 Filed 10-6-92; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 92-6]

Keaciel Kenneth Krulevitz, M.D.; Revocation of Registration

On September 27, 1991, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Keaciel Kenneth Krulevitz, M.D., of 7538 Holabird Avenue, Dundalk, Maryland 21222 (Respondent), proposing to revoke his DEA Certificate of Registration, AK1522196, as a practitioner under 21 U.S.C. 823(f) and 824(a)(2). The Order to Show Cause alleged that Respondent's continued registration would be inconsistent with the public interest as that term is used in 21 U.S.C. 824(a)(4).

By letter dated October 23, 1991, Respondent, through counsel, requested a hearing on the issues raised by the Order to Show Cause and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. Following prehearing procedures, a hearing was held before Judge Bittner in Washington, DC, on January 21, 1992. On July 13, 1992, the administrative law judge issued her opinion and recommended ruling, findings of fact, conclusions of law and decision. On August 17, 1992, the Respondent, having been granted an extension of time, submitted exceptions to Judge Bittner's opinion and recommended ruling. On August 21, 1992, the administrative law judge transmitted the record of these proceedings, including the Respondent's exceptions, to the Administrator. The Administrator has considered the record in its entirety and pursuant to 21 CFR 1316.67 hereby issues his final order in this matter, adopting the administrative law judge's findings of fact and conclusions of law in their entirety.

The administrative law judge found that Respondent had practiced in the Baltimore, Maryland area since 1946, and that his prescribing of Ativan, the trade name for lorazepam, a Schedule III controlled substance, had doubled or tripled during the period from September 1986 through February 1987. The administrative law judge found that an investigation of the Respondent was initiated by the Medicaid Fraud Control Unit of the Maryland Attorney General's Office in early 1987, and that the investigation revealed that the Respondent had written prescriptions for Ativan on prescriptions billable to Maryland Medical Assistance. The investigation conducted by the Medicaid Fraud Control Unit indicated that most of the prescriptions which the Respondent wrote for Ativan were not for a legitimate medical purpose.

The administrative law judge further found that Respondent employed at least one drug addict to maintain order in his office and to keep records for him, while at the same time receiving treatment from the Respondent. The administrative law judge found that the evidence demonstrated that the Respondent billed Medicaid for services not performed and that he billed all patient visits at levels of service which were not rendered.

The administrative law judge found that the Respondent entered a plea of guilty in State court on May 16, 1988, to one felony count of Medicaid fraud, with the plea being entered under the terms of *North Carolina* v. *Alford*, 400 U.S.C. 25 (1970). The Respondent was placed on probation for two years, with the probation being lifted after six months. The evidence showed that the Respondent was fined $5,000.00 and ordered to pay $30,540.63 in restitution to the Maryland Medicaid program with approximately $8,400.00 of that amount representing drugs prescribed by the Respondent for no legitimate medical purpose. The administrative law judge noted that the Respondent had been disqualified from participation in the Maryland Medicaid program as of May 24, 1988.

The administrative law judge found that Respondent's only defense to the prescriptions which he admitted writing was his attempt to wean drug and alcohol dependent patients from the narcotics and alcohol to which they were addicted. Of specific interest were medical journal articles which the Respondent presented in his own defense which, ironically, demonstrated that the Respondent's practice was directly contrary to advised medical practice when prescribing benzodiazepines such as Ativan.

In evaluating whether Respondent's continued registration by the Drug Enforcement Administration would be inconsistent with the public interest, as that term is used in 21 U.S.C. 824(a)(4), the Administrator considers the factors enumerated in 21 U.S.C. 823(f). They are as follows:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

In determining whether a registrant's continued registration is inconsistent with the public interest, the Administrator is not required to make findings with respect to each of the factors listed above. Instead, the Administrator has the discretion to give each factor the weight he deems appropriate, depending upon the facts and circumstances of each case. See *David E. Trawick, D.D.S.*, Docket No. 88-69, 53 FR 5326 (1988).

The administrative law judge found that the Government made a prima facie showing of the factors found in 21 U.S.C. 823(f)(2), (3), (4) and (5), as referenced by 21 U.S.C. 824(a)(4). In so finding, the administrative law judge found that the Respondent dispensed Ativan without a legitimate medical purpose, that the Respondent undisputedly had pled

guilty to Medicaid fraud, that the Respondent had billed Medicaid for patient visits that did not occur and for services that were not rendered, and that the Respondent's actions posed a threat to the public health and safety.

The Administrator finds that a clear showing was made of Respondent's illegal behavior, and that the behavior of the Respondent indeed posed a threat to the public health and safety. The Administrator, in reaching this conclusion, considered the Respondent's exceptions to Judge Bittner's opinion. The Respondent's exceptions failed to persuade the Administrator that the Government had acted in a dilatory or discriminatory manner, and failed to persuade the Administrator that the administrative law judge had either misconstrued or misinterpreted the evidence presented. While the Respondent may have maintained good intentions in his treatment of drug and alcohol dependent patients, it is clear that he was unfamiliar with the necessary indications for the legitimate prescribing of benzodiazepines. The Respondent further breached the public trust by taking advantage of a reimbursement program intended to aid those in need in receiving legitimate and competent medical care. The public was not only exposed to irresponsible prescribing practices, but to a fraudulent scheme of billing which deprived the Respondent's patients of adequate medical care for their specific medical problems. The Administrator determines that, based on the evidence in the record, the Respondent's DEA Certification of Registration must be revoked.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him under the provisions of 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration, AK1522196, previously issued to Keaciel Kenneth Krulevitz, M.D., be, and it hereby is, revoked. It is further ordered that any pending applications for renewal of that registration be, and they hereby are, denied. This order is effective November 6, 1992.

Dated: October 1, 1992.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 92-24349 Filed 10-6-92; 8:45 am]

BILLING CODE 4410-09-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 92-58]

National Environmental Policy Act; Outer Solar System Exploration Program

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Information update.

SUMMARY: On February 27, 1991, NASA published in the **Federal Register** (56 FR 8219) a notice of intent (NOI) to prepare an environmental impact statement (EIS) for NASA's Outer Solar System Exploration (OSSE) Program. The notice was issued in accordance with the National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et. seq.*) and implementing Council on Environmental Quality and NASA regulations. Because of the events described in the Supplementary Information, the EIS will focus only on the proposed Cassini mission, one element of the OSSE Program. This notice's sole purpose is to keep the public informed about the evolution of NASA's ongoing environmental review process. No comments are solicited at this time.

FOR FURTHER INFORMATION CONTACT: Mr. Howard Wright, Cassini Program Manager, Office of Space Science and Applications, Code SL, National Aeronautics and Space Administration, Washington, DC 20546, 202-358-0315.

SUPPLEMENTARY INFORMATION: The February 27, 1991, NOI described the purpose and structure of the EIS for the OSSE Program. NASA intended that the EIS (1) serve as a programmatic EIS for NASA's future OSSE Program activities, and (2) specifically address the planned Comet Rendezvous Asteroid Flyby (CRAF) and Cassini missions. Program elements, including CRAF and Cassini, shared a number of common requirements including launch energy, on-board propulsion, power, communications, data handling, navigation, guidance and control, and electrical power needs. NASA was designing a modular spacecraft—the Mariner Mark II—to satisfy these common spacecraft configuration requirements and reduce the overall costs of each mission in the OSSE Program.

Since the publication of the NOI, changes have occurred in NASA's plan. In January 1992, the CRAF mission was deleted from the President's budget proposal for fiscal year 1993. Other potential OSSE Program missions that were mentioned in the NOI such as the Comet Nucleus Sample Return and Neptune Orbiter-Triton Probe are undergoing reassessment within NASA. In addition, the Agency has redirected its efforts from use of the multi-purpose Mariner Mark II spacecraft to the development of less expensive and lighter mission-specific spacecraft. Accordingly, the Cassini mission, as presently proposed, would utilize a redesigned Cassini mission-specific spacecraft.

The Cassini spacecraft, including its European Space Agency-developed Huygens Probe, is being designed to explore the planet Saturn and its environs. The Huygens Probe would be released from the Saturn Orbiter spacecraft into the atmosphere of Saturn's largest moon, Titan. The Saturn Orbiter would conduct a 4-year tour of Saturn and its satellites, rings, and magnetosphere. The present plan is to launch the spacecraft from Cape Canaveral Air Force Station, Florida, using a Titan IV/Centaur launch vehicle configuration. October 1997 is the projected launch date.

The changes that have occurred in the OSSE Program, especially the new focus on less expensive and lighter mission-specific spacecraft, have removed CRAF-specific requirements. Small changes have occurred in launch energy needs, on-board power, communications, data handling, navigation, and guidance and control requirements. Because of the elimination of the CRAF mission and the ongoing reassessment of other missions in the OSSE Program, it has been determined that a programmatic EIS will no longer be appropriate. Consequently, the initial environmental review efforts have been refocused toward preparing an EIS which will only address the Cassini mission.

The relevant environmental issues and alternatives noted in the February 27, 1991, NOI will be addressed in the Cassini, EIS. Furthermore, publish input and comment from the scoping process initiated by the NOI will be taken into account in the preparation of the Cassini EIS.

Dated: September 29, 1992.

Benita A. Cooper,

Associate Administrator for Management Systems and Facilities.

[FR Doc. 92-24298 Filed 10-06-92; 8:45 am]

BILLING CODE 7510-01-M

[Notice 92-59]

NASA Advisory Council (NAC), Aeronautics Committee (AAC); Meeting on Materials and Structures

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a NAC, Aeronautics Advisory Committee meeting on materials and structures.

DATES: November 4, 1992, 1 p.m. to 5 p.m.; and November 5, 1992, 8 a.m. to 4:30 p.m.

ADDRESSES: National Aeronautics and Space Administration, Langley Research Center, room 124, Building 1229, Hampton, VA 23681.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Blankenship, National Aeronautics and Space Administration, Langley Research Center, Hampton, VA 23681, 804/864-6005.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Research and Technology Overview.
—Aging Aircraft Program Overview.
—High Temperature Program Overview.
—Advanced Composites Technology Program Overview.
—High Speed Research Program Status.

Dated: October 1, 1992.

Philip D. Waller,

Deputy Director, Management Operations Division.

[FR Doc. 92-24299 Filed 10-6-92; 8:45 am]

BILLING CODE 7510-01-M

[Notice 92-60]

NASA Advisory Council (NAC), Space Systems and Technology Advisory Committee (SSTAC); Meeting on Materials, Structures and Flight Performance

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a NAC, Space Systems and Technology Advisory Committee meeting on materials, structures and flight performance.

DATES: October 28, 1992, 8:30 a.m. to 5 p.m.; and October 29, 1992, 8 a.m. to 5 p.m.

ADDRESSES: National Aeronautics and Space Administration, Langley Research Center, room 205, Building 1218, Hampton, VA 23665.

FOR FURTHER INFORMATION CONTACT: Mr. Willard Weaver, National Aeronautics and Space Administration, Langley Research Center, Hampton, VA 23665, 804/864-6053.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Structures and Materials Program Overview.
—Aerothermodynamis Program Overview.
—Flight Systems Program Overview.

Dated: October 1, 1992.

Philip D. Waller,

Deputy Director, Management Operations Division.

[FR Doc. 92-24300 Filed 10-6-92; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL COMMISSION ON AMERICAN INDIAN, ALASKA NATIVE, AND NATIVE HAWAIIAN HOUSING

Meeting

AGENCY: The National Commission on American Indian, Alaska Native, and Native Hawaiian Housing.

ACTION: Notice of public hearings and meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Commission on American Indian, Alaska Native, and Native Hawaiian Housing announces the forthcoming public hearings and meeting of the Commission.

DATES: October 14, 1992, 9 a.m. to 5 p.m.

ADDRESSES: The Board Room, Stouffer Mayflower Hotel, 1127 Connecticut Ave., NW., Washington, DC (202) 347-3000.

FOR FURTHER INFORMATION CONTACT: Lois V. Toliver, Administrative Officer, (202) 275-0045.

SUPPLEMENTARY INFORMATION:

Type of Meeting

Open.

Agenda

Call to Order
Roll Call
Chairman's Message
Update of Commission Activities
Committee Reports
Commission Strategy Session

Lois V. Toliver,

Administrative Officer.

[FR Doc. 92-24333 Filed 10-6-92; 8:45 am]

BILLING CODE 6820-07-M

NATIONAL COMMISSION ON AMERICA'S URBAN FAMILIES

Meeting

Notice is hereby given, pursuant to Public Law 92-463, that the National Commission on America's Urban Families will hold a meeting in Dallas, Texas, on Thursday, October 22, Center for Community Cooperation, 2900 Live Oak Street, (Brazos room) Dallas, Texas 75204. The purpose of the meeting is to discuss the Commission's ongoing work. For the exact time please contact the Commission two days prior to the event at 202-690-6462.

Records shall be kept of all Commission proceedings and shall be available for public inspection at 200 Independence Avenue, SW., room 305-F, Washington, DC 20201.

Anna Kondratas,

Executive Director.

[FR Doc. 92-24261 Filed 10-6-92; 8:45 am]

BILLING CODE 4150-04-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Cancellation of Meeting for Humanities Panel

The meeting of the Humanities Panel scheduled for October 26, 1992, and published in the **Federal Register** on September 17, 1992, at page 43032 has been cancelled. The panel was to review applications for Public Humanities Projects, submitted to the Division of Public Programs.

David C. Fisher, Jr.

Advisory Committee Management Officer.

[FR Doc. 92-24288 Filed 10-06-92; 8:45 am]

BILLING CODE 7536-01-M

NATIONAL SCIENCE FOUNDATION

Permit Issued Under the Antarctic Conservation Act of 1978

September 30, 1992

AGENCY: National Science Foundation.

ACTION: Notice of permit issued under the Antarctic Conservation Act of 1978, Public Law 95-541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Thomas F. Forhan, Permit Office, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

SUPPLEMENTARY INFORMATION: On August 27, 1992, the National Science Foundation published a notice in the **Federal Register** of permit applications received. A permit was issued to Dr. Arthur L. DeVries, on September 30, 1992.

Thomas F. Forhan,

Permit Office, Division of Polar Programs.

[FR Doc. 92-24254 Filed 10-6-92; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-247]

Consolidated Edison Company of New York, Inc. Indian Point Nuclear Generating Unit No. 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-26 issued to the Consolidated Edison Company of New York, Inc. (the licensee) for operation of the Indian Point Nuclear Generating Unit No. 2, located in Westchester County, New York.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would include provisions in the Technical Specifications (TS) 5.3, Reactor Core, which allows for an increase in reload fuel enrichment from 4.3 weight percent U-235 to 5.0 weight percent U-235 and in addition, TS 5.4, Fuel Storage, to allow for storage of 5.0 weight percent U-235 fuel assemblies in the new fuel storage rack.

The proposed action is in accordance with the licensee's application for amendment dated February 6, 1992, as supplemented September 17, 1992.

The Need for the Proposed Action

The proposed changes are needed so that the licensee can use higher fuel enrichment to provide the flexibility of extending the fuel irradiation and to permit operation for longer fuel cycles.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revisions to the TS. The proposed revisions would permit use of fuel enriched to a nominal 5.0 weight percent uranium 235. The safety considerations associated with reactor operation with higher enrichment and extended irradiation have been evaluated by the NRC staff. The staff has concluded that such changes would not adversely affect plant safety. The proposed changes have no adverse effect on the probability of any accident. The higher enrichment, with fuel burnup to 60,000 megawatt day per metric ton uranium, may slightly change the mix of fission products that might be released in the event of a serious accident, but such changes would not significantly affect the consequences of serious accidents. No changes are being made in the types or amounts of any radiological effluents that may be released offsite. There is no significant increase in the allowable individual or cumulative occupational radiation exposure.

With regard to potential nonradiological impacts of reactor operations with higher enrichment and extended irradiation, the proposed changes to the TS involve systems located within the restricted area, as defined in 10 CFR part 20. They do not affect nonradiological plant effluents and have no other environmental impact.

The environmental impacts of transportation resulting from the use of higher enrichment fuel and extended irradiation were published and discussed in the staff assessment entitled, "NRC Assessment of the Environmental Effects of Transportation Resulting from Extended Fuel Enrichment and Irradiation," dated July 7, 1988, and published in the **Federal Register** on August 11, 1988 (53 FR 30355), as corrected on August 24, 1988 (53 FR 32322), in connection with the Shearon Harris Nuclear Power Plant, Unit 1, Environmental Assessment and Finding of No Significant Impact. As indicated therein, the environmental cost contribution of the proposed increase in the fuel enrichment and irradiation limits are either unchanged or may, in fact, be reduced from those summarized in Table S-4 as set forth in 10 CFR 51.52(c). This finding is applicable to the proposed change for Indian Point 2.

Therefore, the Commission concludes that there are no significant radiological or nonradiological environmental impacts associated with the proposed amendment.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any other alternatives would have equal or greater environmental impacts and need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce the environmental impacts of plant operations and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statements related to operation of the Indian Point Nuclear Generating Unit No. 2.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, the Commission has concluded that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated February 6, 1992, as supplemented September 17, 1992, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the local public document room located at the White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Dated at Rockville, Maryland, this 30th day of September 1992.

For the Nuclear Regulatory Commission.

Robert A. Capra,

Director, Project Directorate I-1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 92-24309 Filed 10-6-92; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on the Medical Uses of Isotopes: Meeting Notice

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The Advisory Committee on Medical Uses of Isotopes (ACMUI) will hold its next meeting on October 22 and 23, 1992. At this meeting, the NRC staff will provide the ACMUI with a medical issues document; status reports on a petition for rulemaking regarding the practice of radiopharmacy; resolution of petitions regarding patient release criteria; administration of byproduct material or radiation from byproduct material to women who are pregnant or breast feeding; abnormal occurrence criteria; and administrative issues concerned with ACMUI communication.

DATES: The meeting will begin at 8 a.m., on October 22 and 23, 1992. The entire meeting will be open to the public.

ADDRESSES: The U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

FOR FURTHER INFORMATION CONTACT: Larry W. Camper, Office of Nuclear Material Safety and Safeguards, MS 6-H-3, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone 301-504-3417.

SUPPLEMENTARY INFORMATION: The following information is provided concerning the topics to be discussed at the meeting:

Administrative Issues

The Commission has directed the ACMUI to review and possibly revise certain committee operating procedures regarding ACMUI communication with NRC staff and the Commission.

Medical Issues

The NRC staff has begun a reassessment of the medical use program. The staff has prepared an "issues" paper regarding certain program areas that should be reviewed to determine if changes would improve the medical use program. The paper contains many open-ended questions for which the staff is soliciting input. In addition, the staff is soliciting topics that are not addressed in the paper.

American College of Nuclear Physicians/Society of Nuclear Medicine (ACNP/SNM) Radiopharmaceutical Petition

On June 15, 1989, the ACNP/SNM filed a petition with NRC addressing five issues relating to the preparation and use of radiopharmaceuticals. On August 23, 1990, NRC published the Interim Final Rule addressing two issues in the petition. The remaining issues to be resolved are: The practice of nuclear pharmacy, including compounding; the use of radiolabeled biologics; and the use of byproduct material for human research.

Patient Release Criteria

In response to three petitions for rulemaking, one from Carol S. Marcus, M.D. (February 6, 1991), and two from the American College of Nuclear Medicine (January 14, 1992, and April 21, 1992), regarding criteria for the release of patients administered byproduct material. The staff will review the issues and provide an approach to resolving these petitions.

Pregnancy and Breast-feeding

The staff will provide a brief status report on issues and recommendations concerning unintended radiation doses or dosages to an embryo, fetus, or nursing infant, resulting from administration of radiopharmaceuticals or radiation to pregnant or breast-feeding patients.

Abnormal Occurrence Criteria

The Quality Management Rule revised the criteria for medical use misadministrations. The staff will provide a brief status report on staff efforts to re-examine the existing criteria for selection of misadministration reports as abnormal occurrences.

Conduct of the Meeting

Barry Siegel, M.D. will chair the meeting. Dr. Siegel will conduct the meeting in a manner that will facilitate the orderly conduct of business. The following procedures apply to public participation in the meeting:

1. Persons who wish to provide a written statement should submit a reproducible copy to Larry W. Camper (address listed above). Comments must be received by October 13, 1992, to ensure consideration at the meeting. The transcript of the meeting will be kept open until October 28, 1992, for inclusion of written comments.

2. Persons who wish to make oral statements should inform Mr. Camper, in writing, by October 15, 1992. Statements must pertain to the topics at hand. The Chairman will rule on requests to make oral statements. Opportunity for members of the public to make oral statements will be based on the order in which requests are received. In general, oral statements should be limited to approximately 5 minutes. Oral statements must be supplemented by detailed written statements, for the record. Rulings on who may speak, the order of presentation, and time allotments may be obtained by calling Mr. Camper, 301-504-3417, between 9 a.m. and 5 p.m. EST, on October 20, 1992.

3. At the meeting, questions from attendees other than committee members, NRC consultants, and NRC staff will be permitted at the discretion of the Chairman.

4. The transcript, minutes of the meeting, and written comments will be available for inspection, and copying for a fee, at the NRC Public Document Room,. 2120 L Street NW., Lower Level, Washington, DC 20555, on or about November 2, 1992.

5. Seating for the public will be on a first-come, first-served basis.

This meeting will be held in accordance with the Atomic Energy Act of 1954, as amended (primarily Section 161a); the Federal Advisory Act (5 U.S.C. App); and the Commission's regulations in title 10, Code of Federal Regulations, part 7.

Dated: October 1, 1992.

Joyce C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 92-24310 Filed 10-6-92; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Nuclear Waste; Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 47th meeting on Wednesday, October 21, 1992, 8:30 a.m. until 6 p.m., at the St. Tropez Hotel, 455 East Harmon Avenue, Las Vegas, NV.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

A. Continue discussions of a supplemental request from Chairman Selin made on a systems-analysis approach to reviewing the overall high-level waste program.

B. Review comments on the proposed high-level waste repository from State, Local and Indian Tribes representatives.

C. Invite DOE to discuss work in progress, results and strategy for setting priorities at the proposed Yucca Mountain High-Level Waste Repository Site.

D. Hear a briefing by DOE and its contractors on the Accelerated Seismic Initiative, and be provided information on the June 29, 1992, earthquake that occurred near the proposed Yucca Mountain High-Level Waste Repository Site.

E. Hear a report from the Chairman of the ACNW Natural Resources Working Group on a meeting held on October 20, 1992.

F. Discuss administrative matters related to Committee activities and items that were not completed at previous meetings as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on June 6, 1988 (53 FR 20699). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and staff. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the ACNW Chairman. The office of the ACRS is providing staff support for the ACNW. Persons desiring to make oral statements should notify the Executive Director of the office of the ACRS as far in advance as practical so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the Executive Director of the office of the ACRS, Mr. Raymond F. Fraley (telephone 301/492-4516), prior to the meeting. In view of the possibility that the schedule of ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director or call the recording (301/492-4600) for the current schedule if such reschedulng would result in major inconvenience.

Dated: October 1, 1992.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 92-24311 Filed 10-6-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-70]

Renewal of Facility License No. TR-1; General Electric Co

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 16 to Facility License No. TR-1, issued to the General Electric Company (the Licensee), Which renews the possession only license for the facility located on the Vallecitos Nuclear Center in Alemeda County, California. The renewed license will expire on January 26, 2016.

The amended license complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commissions regulations in 10 CFR chapter I. Those findings are set forth in the license amendment. Opportunity for hearing was afforded in the notice of proposed issuance of this renewal in the **Federal Register** on August 31, 1992, (57 FR 39408). No request for a hearing or petition for leave to intervene was filed following notice of the proposed action.

The Commission has prepared a related Safety Evaluation, for the renewal of Facility License No. TR-1 and has, based on that evaluation, concluded that the facility can continue to be maintained by the licensee without endangering the health and safety of the public.

The Commission also has prepared an Environmental Assessment which was published in the **Federal Register** on September 11, 1992, (57 FR 41792) for the renewal of Facility License No. TR-1 and has concluded that this action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see: (1) The application for amendment dated July 9, 1990, as supplemented on December 17, 1990, and August 7, 1992; (2) Amendment No. 16 to Facility License No. TR-1; (3) the related Safety Evaluation; and (4) the Environmental Assessment. These items are available for public inspections at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555.

Dated at Rockville, Maryland, this 30th day of September 1992.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactors, Decommissioning and Environmental Project Directorate, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 92-24308 Filed 10-6-92; 8:45 am]

BILLING CODE 7590-01-M

Conversion to the Metric System

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy statement.

SUMMARY: The Nuclear Regulatory Commission (NRC) is issuing its policy on metrication. This action is in response to the Omnibus Trade and Competitiveness Act of 1988, Executive Order 12770 of July 25, 1991, as well as concerns of certain NRC licensees and other interested parties. The policy, which affects the NRC's licensees and applicants, is designed to allow them to respond to market forces in determining the extent and timing for their use of the metric system of measurement. The policy also affects the NRC in that the NRC will adhere to the Federal Acquisition Regulation and the General Services Administration (GSA) metrication program for its own purchases. The policy affirms that use of the metric system of measurement by Commission licensees is in accordance with protection of the public health and safety.

EFFECTIVE DATE: October 7, 1992.

ADDRESSES: Documents referenced in this policy statement are available for inspection in the NRC Public Document Room, 2120 L Street, NW., (Lower level), Washington, DC between 7:45 am and 4:15 pm.

FOR FURTHER INFORMATION CONTACT: Dr. Frank A. Costanzi, Chairman, NRC Metrication Oversight Committee, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 492-3760.

SUPPLEMENTARY INFORMATION:

Background

On August 10, 1988, Congress passed the Omnibus Trade and Competitiveness Act (the Act), (19 USC 2901 et seq.), which amended the Metric Conversion Act of 1975, (15 USC 205a et seq.). Section 5164 of the Act (15 USC 205a) designates the metric system as the preferred system of weights and measures for United States trade and commerce. The Act also requires that all Federal agencies convert to the metric system of measurement in their procurements, grants, and other business-related activities by the end of fiscal year (FY), 1992, "except to the extent that such use is impractical or is likely to cause significant inefficiencies or loss of markets to United States firm, such as when foreign competitors are producing competing products in non-metric units, " (section 5614(b)(2)).

Summary of Public Comments

In response to the Act, the NRC published a metrication policy statement for comment in the **Federal Register** on February 10, 1992 (57 FR 4891). As a result, comments were provided by twelve responders, including five power reactor licensees, three standards organizations, one comment each from a reactor vendor, a materials licensee, the Nuclear Management and Resources Council (NUMARC), and a joint letter submitted by three individuals. All commenters supported the policy. However, the materials licensee strongly

advocated rulemaking to require licensees to use the metric system of measurement. The analysis of the advantages and disadvantages of a policy statement versus a rulemaking was presented in the **Federal Register** notice issuing the draft policy statement for comment. The basis of the NRC's position was that no corresponding improvement in the public health and safety would result, but costs would be incurred without benefit, if metrication were made mandatory by a rulemaking. The commenter's argument was not persuasive, and the NRC continues to believe that rulemaking is not appropriate at this time.

NUMARC argued that because most of the analytical codes, references, and resource data, as well as standards for component sizes (i.e., pipe sizes, fasteners, etc.) still generally use the English system in this country, the primary units shown in regulatory documents presenting dual units should be the measurement system in which the parameter was derived, with the secondary unit clearly labeled and shown parenthetically. Three of the utilities commenting endorsed the NUMARC letter. However, the Commission believes that the English units should be provided in brackets after the use of the International System of Units (SI) since the SI system has been mandated by Congress to be the preferred system of weights and measures for U.S. trade and Commerce.

A Letter submitted by three individuals also supported the policy statement. While they supported the statement, they called for strong incentives such as requiring all future licensing of "new" applicants in the industry to be in metric. For the NRC to require this type of action, it would need to show that the benefit of the action, such as the reduction of risk or improvement in administrative efficiency, would outweigh its costs. The NRC believes that his activity is best determined by the market forces, and not by the NRC requiring the action, especially if the action is not initiated in response to an issue involving public health and safety. These commenters also asked that any new self-supporting units at existing plants be licensed only in the metric system. However, even if the self-supporting unit were designed and built in metric, the emergency response activity is station-wide and, therefore, must be in English units. These individuals also suggested that the NRC only grant licenses to parties operating in metric after the year 2000. Again, this type of requirement could only be accomplished by the NRC if it could demonstrate that the action provided a safety or other benefit commensurate with the cost. The NRC does not believe that to be the case, and again believes that the market forces are the best guides for this type of action.

A tax incentive for licensees converting to the metric system before the year 2000 was also suggested by these individuals. This recommendation is not possible for the NRC to pursue because the NRC does not have taxing authority.

Lastly, the commenters suggested that the NRC make grants available to parties requiring financial help and who choose to voluntarily convert to the metric system. The NRC's grants are research and development related and are meant to focus on new and improved technologies. The NRC believes conversion to metric is market driven, and use of grant funds for this purpose is not in keeping with the spirit of either the NRC program or this action.

Upon publication of the draft policy statement, the NRC sought comment from several organizations involved in developing national consensus standards. Specifically, the NRC inquired as to the impact of metrication on NRC regulations as it relates to National and International Standards, including the extent to which sufficient guidance is presently available to licensees and prospective applicants on the selection of metric equivalents of common mechanical and electrical components that have safety-related functions. Letters were sent to the American National Standards Institute (ANSI), the American Society for Testing and Materials (ASTM), the American Society of Mechanical Engineers (ASME), and the Institute of Electrical and Electronics Engineers, Inc. (IEEE).

ASME and IEEE responded that they supported the policy. Although ASTM noted that it could not schedule the appropriate committees to meet and discuss the NRC's policy until after the comment period expired, the ASTM indicated that it requires the inclusion of metric (SI) units in all 9,000 ASTM standards, allowing the technical committees to decide whether SI or English units are the preferred unit of measurement used in the committee's document. If both units of measurement are used in the document, the order in which they appear is determined by the committee preparing the document.

The IEEE stated that its policy is to provide technical literature and standards in the measurement system that the industry requires. Further, the IEEE stated that it is studying the need to provide more or all of its technical literature and standards in metric (SI) units and that the decision will be heavily influenced by the desires of the users of its standards, such as the NRC and electric utility industry.

None of the standards organizations commented on the availability of hardware.

ANSI did not respond and when contacted by telephone indicated that it did not intend to comment.

For clarity, the Commission has decided to list which documents will be published in dual units. These documents include new regulations, major amendments to regulations, regulatory guides, NUREG-series documents, policy statements, information notices, generic letters, bulletins, and all written communications directed to the public.

Paperwork Reduction Act Statement

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

Statement of Policy

The NRC supports and encourages the use of the metric system of measurement by licensed nuclear industry. In order to facilitate the use of the metric system by licensees and applicants, beginning January 7, 1993, the NRC will publish the following documents in dual units: New regulations, major amendments to existing regulations, regulatory guides, NUREG-series documents, policy statements, information notices, generic letters, bulletins, and all written communications directed to the public. Documents specific to a licensee, such as inspection reports and docketed material dealing with a particular license, will be in the system of units employed by the licensee. This protocol reflects a general approach that only documents applicable to all licensees, or to all licensees of a given type in which a licensee may operate in the metric system will contain dual units, otherwise English or metric units alone are permissible. In dual-unit documents, the first unit presented will be in the International System of Units with the English unit shown in brackets. The NRC will modify existing documents and procedures as needed to facilitate use of the metric system by licensees and applicants. In addition, the NRC will provide staff training as needed. Further, through its participation in national, international, professional, and industry standards organizations and

committees and through its work with other industry organizations and groups, the NRC will encourage and further the use of the metric system in formulating and adopting standards and policies for the licensed nuclear industry. However, should the NRC conclude that the use of any particular system of measurement be detrimental to the public health and safety, the Commission will proscribe, by regulation, order, or other appropriate means, the use of that system. In particular, all event reporting and emergency response communications between licensees, the NRC, and State and local authorities will be in the English system of measurement. After 3 years, the Commission will assess the state of metric use by the licensed nuclear industry in the United States to determine whether this policy should be modified. Lastly, the NRC will follow the Federal Acquisition Regulation and the General Services Administration metrication program in executing procurements.

Dated at Rockville, Maryland this 30th day of September 1992.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 92-24312 Filed 10-6-92; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

Requests Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142.

Upon written request copies available from: Securities and Exchange Commission, Office of Filings, Information and Consumer Services, 450 Fifth Street, NW., Washington, DC 20549.

Extension

Rule 6c-6, File No. 270-160
Rule 10f-3, File No. 270-237
Rule 17j-1, File No. 270-239
Rule 1(c), Form U5S, File No. 270-168
Part 257, File No. 270-252

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval Rules 6c-6, 10f-3, and 17j-1 under the Investment Company Act of 1940 (1940 Act). Also submitted for extension of OMB approval is Rule 1(c), Form U5S and part 257 under the Public Utility Holding Company Act of 1935 (Act).

Rule 6c-6 continues exemptive relief received by Commission order to certain investment companies that respond to Revenue Ruling 81-225 by organizing new companies and substituting them for existing companies without prior Commission approval. All of the respondents, together, incur an estimated one burden hour annually complying with the rule.

Rule 10f-3 permits, under certain conditions, purchases of securities from underwriting syndicates whose members include affiliated persons of the purchasing investment company. Each of the 600 respondents spends about two hours per year complying with the rule.

Rule 17j-1 furthers the objective set forth in section 17(j) of the 1940 Act, which makes it unlawful for any affiliated person of a registered investment company to engage in certain types of fraudulent practices. The rule requires that companies adopt codes of ethics designed to prevent such fraudulent practices. The 4,612 recordkeepers each incur an estimated six hours annually complying with the rule.

Rule 1(c) and Form U5S implement section 14 of the Act, and require registered public utility holding companies to file such annual and other periodic and special reports as the Commission may prescribe to keep current information relevant to compliance with substantive provisions of that Act. Each of the 14 respondents annually incurs an estimated 8.46 burden hours to comply with this requirement.

The rules under 17 CFR part 257 implement sections of the Act that require registered holding companies and their subsidiary service companies to preserve records for periods specified by Commission rule. The 14 recordkeepers, together, incur about one annual burden hour to comply with requirements.

The estimated average burden hours are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with Securities and Exchange Commission rules and forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, and Gary Waxman, Clearance Officer, Office of Management and Budget, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: September 21, 1992.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-24279 Filed 10-6-92; 8:45 am]

BILLING CODE 8010-01-M

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142.

Upon Written Request Copy Available From: Securities and Exchange Commission, Office of Filings, Information and Consumer Services, 450 Fifth St, NW, Washington, DC 20549.

New Collection; Revisions of Currently Approved Collections

Form SB-1, File No. 270-374
Form SB-2, File No. 270-366
Form S-2, File No. 270-60
Form S-4, File No. 270-287
Regulation A, File No. 270-110
Form 10-SB, File No. 270-367
Form 10-KSB, File No. 270-368
Form 10-QSB, File No. 270-369
Form 8-K, File No. 270-50

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission has submitted for OMB approval Form SB-1, a form to register securities for sale under the Securities Act of 1933 and for revisions of currently approved collections in Forms SB-2, S-2, and S-4, forms to register securities for sale under the Securities Act, Regulation A, an exemption from the registration requirements of the Securities Act of 1933 and Forms 10-SB, 10-KSB, 10-QSB and 8-K for registration of a class of securities, annual, quarterly and periodic reporting respectively, under the Securities Exchange Act of 1934. The new form and revisions to existing forms constitute changes to the integrated registration and reporting system for small business issuers; revisions to other collections are a result of the use of this new system.

Each of the estimated 250 respondents using Form SB-1 incurs an average estimated 760 burden hours to comply with the Form requirements.

Each of the 259 respondents using Form SB-2 incurs an average 925 burden hours to comply with the Form requirements.

Each of the 84 respondents using Form S-2 incurs an average 500 burden hours to comply with the Form requirements.

Each of the 505 respondents using Form S-4 incurs an average 1,250 burden hours to comply with the Form requirements.

Each of the 201 respondents using Regulation A (Forms 1-A and 2-A) incurs an average 620 burden hours to comply with the Form requirements.

Each of the 65 respondents using Form 10-SB incurs an average 92 burden hours to comply with Form requirements.

Each of the 3,275 respondents using Form 10-KSB incurs an average 1,220 burden hours to comply with Form requirements.

Each of the 3,516 respondents using Form 10-QSB incurs an average 131 burden hours to comply with Form requirements.

Each of the 12,100 respondents using Form 8-K incurs an average 5 burden hours to comply with Form requirements.

The estimated average burden hours are solely for purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even representative sample or study of the costs of the Securities and Exchange Commission's rules or forms.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with SEC forms to Kenneth A. Fogash, Deputy Executive Director, 450 Fifth Street, NW., Washington, DC 20549, and Gary Waxman, Clearance Officer, Office of Management and Budget [Paperwork Reduction Projects OMB Number not yet assigned, Form SB-1; 3235-0418—Form SB-2; 3235-0072—Form S-2; 3235-0324—Form S-4; 3235-0286—Regulation A; 3235-0419—Form 10-SB; 3235-0420—Form 10-KSB; 3235-0416—Form 10-QSB; 3235-0060—Form 8-K], room 3208 New Executive Office Building, Washington, DC 20543.

Dated: September 23, 1992.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-24278 Filed 10-6-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-31255; File No. SR-Amex-92-30]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the American Stock Exchange, Inc. Relating to Options on the Retail Index

September 29, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 27, 1992, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex, pursuant to rule 19b-4 under the Act, proposes to trade options on the Retail Index ("Index"), a new stock index developed by the Amex based on retail industry stocks or American Depository Receipts ("ADRs") thereon, which are traded on the Amex, the New York Stock Exchange, Inc. ("NYSE"), or through the facilities of the National Association of Securities Dealers Automated Quotation system and are reported national market system securities ("NASDAQ/NMS").

The text of the proposed rule change is available at the Office of the Secretary, Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and statutory 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 organizations 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 Amex has developed a new industry specific index called The Retail Index, based entirely on shares of widely held retail industry stocks or ADRs which are exchange or NASDAQ/NMS listed. A list of the current fifteen component stocks ("component stocks") is available at the places specified in Item IV below. It is intended that the Amex trade option contracts on the newly developed Index.

The Index contains securities of highly-capitalized companies in the retail industry whose primary business involves merchandising. Included in this group are companies which own and/or operate department stores, apparel retail outlets, specialty stores (*e.g.*, toy stores, electronic stores, retail building supplies stores, etc.), general merchandise chains, drugstores, and discount retail outlets.

Index calculation. The Index is calculated using an "equal-dollar weighting" methodology designed to ensure that each of the component securities is represented in an approximately "equal" dollar amount in the Index. The Exchange proposes to use this method of calculation since, even among the largest companies in the retail industry, there is a great disparity in size. For example, although the stocks included in the Index represent many of the most highly capitalized companies in the retail industry, Wal-Mart Stores, Inc. currently represents over 35% of the aggregate market value of the Index. It has been the Exchange's experience that options on market value weighted indexes dominated by one component stock are less beneficial to investors, since the index will tend to represent the largest component and not the industry as a whole.

In addition, while currently there is not as much disparity in the prices of the stocks included in the Index, the Exchange believes that a price-weighted method of calculating the Index's value is not preferred, since the prices of retail stocks can fluctuate significantly as a result of corporate actions (*e.g.*, a stock split or distribution) rather than as a result of stock performance, causing the relative weighting of a stock within the index to fluctuate significantly. In contrast, with an index calculated using the equal-dollar weighting method, a stock split will have no effect on the weighting of component stocks within the index since, for example, a two for one stock split will result in twice as many shares of that component stock in the index's portfolio, but at half the price.

The following is a description of how the equal-dollar weighting calculation method works. As of the market close on July 17, 1992, a portfolio of retail stocks was established representing an investment of $10,000 in the stocks (to the nearest whole share) of each of the companies in the Index. The value of the Index equals the current market value (*i.e.*, based on U.S. primary market prices) of the sum of the assigned number of shares of each of the stocks in the Index portfolio divided by the

current Index divisor. The Index divisor was initially calculated to yield a benchmark value of 200.00 at the close of trading on July 17, 1992. Each quarter thereafter, following the close of trading on the third Friday of January, April, July and October, the Index portfolio will be adjusted by changing the number of whole shares of each component stock so that each company is again represented in equal dollar amounts. The Exchange has chosen to rebalance following the close of trading on the quarterly expiration because it allows an option contract to be held for up to three months without a change in the Index portfolio while, at the same time, maintaining the equal dollar weighting feature of the Index. If necessary, a divisor adjustment will be made to ensure continuity of the Index's value. The newly adjusted portfolio will become the basis for the Index's value on the first trading day following the quarterly adjustment.

The Exchange has made regular quarterly adjustments to a number of its indexes and has encountered little or no investor confusion regarding the adjustments, since they are done on a regular basis and investors are given proper notice. In addition, the Exchange represents that it will distribute information circulars to all its members on a quarterly basis notifying them of the changes to the Index. These circulars also will be sent by facsimile to the Exchange's contacts at the major options firms, mailed to the approximately fifteen thousand recipients of the Exchange's options related information circulars, and made available to subscribers of the Options News Network. The Exchange also will include in its promotional and marketing materials for the Index a description of the equal dollar weighting methodology.

The number of shares of each component stock in the Index portfolio will remain fixed between quarterly reviews except, however, in the event of certain types of corporate actions such as the payment of a dividend (other than an ordinary cash dividend), stock distribution, stock split, reverse stock split, rights offering, distribution, reorganization, recapitalization, or similar event with respect to a component stock, or merger, consolidation, dissolution or liquidation of the issuer of a component stock. In these instances, the number of shares of the "adjusted" security in the portfolio may be changed, to the nearest whole share, to maintain the component's relative weight in the Index at the level immediately prior to the corporate action. In the event of a stock replacement, the average dollar value of the remaining portfolio components will be calculated and that amount invested in the stock of a new component, to the nearest whole share. In both cases, the divisor will be adjusted, if necessary, to ensure Index continuity.

The Amex will calculate and maintain the Index and, pursuant to Exchange Rule 901C(b), may at any time substitute component stocks, or adjust the number of component stocks included in the Index, based on changing conditions in the retail industry. However, in the event the Exchange determines to increase the number of Index component stocks to greater than twenty or reduce the number of component stocks to fewer than ten, the Exchange will submit a rule filing pursuant to section 19(b) of the Act. In selecting securities to be included in the Index, the Exchange will be guided by a number of factors including market value of outstanding shares and trading activity. The eligibility standards for Index components are described below.

Similar to other stock index values published by the Exchange, the value of the Index will be calculated continuously and disseminated every 15 seconds over the Consolidated Tape Association's Network B.

Expiration and Settlement

The proposed options on the Index will be European style (*i.e.*, exercises are permitted at expiration only) and cash settled. Standard option trading hours (9:30 a.m. to 4:10 p.m. New York time) will apply.

The options on the Index will expire on the Saturday following the third Friday of the expiration month ("Expiration Friday"). The last trading day in an option series will normally be the second to last business day preceding the Saturday following the third Friday of the expiration month (normally a Thursday). Trading in expiring options will cease at the close of trading on the last trading day.

In addition, the Exchange also plans to list, pursuant to Amex Rule 903C(a)(iii), option series on the Index having up to 36 months to expiration ("LEAPs"). These long term option series will be traded along with the series of Index options with expirations in the three near-term calendar months and in the two additional calendar months in the January cycle. The Exchange, in lieu of long term options on a full value Retail Index, may also choose to list long-term, reduced value put and call options on the Index ("Retail LEAPs"). Retail LEAPs will be based on a reduced value of the Index, equal to one-tenth of the Index's full value, and have expirations of up to 36 months. The interval between expiration months for both a full value and a reduced value long-term option will not be less than six months (*i.e.*, during any given year there will only be two long-term options listed; for example, after the expiration in December 1992, the Exchange will be trading both the June 1995 and the December 1995 long-term options.) Retail LEAPs would trade independent of, and in addition to, the regular Index options, would have European-style exercise and be subject to the same rules which govern the trading of all the Exchange's index options, including sales practice rules, margin requirements and floor trading procedures. Position limits on the Retail LEAPs will be equivalent to the position limits for regular Index options and will be aggregated with such options (for example, if the position limit for the Index options is 6,000 contracts on the same side of the market, then the position limit for the Retail LEAPs will be 60,000 contracts on the same side of the market).

The Index value for purposes of settling a specific Retail Index option will be calculated based upon the regular way opening sale prices for the component stocks on their respective primary markets. In the case of securities traded through the NASDAQ system, the first reported sale price will be used. As trading begins in each of the Index's component securities, its opening sale price on its primary exchange will be captured for use in the calculation. Once all of the component stocks have opened, the value of the Index will be determined and that value will be used as the settlement value for expiring Index options. If any of the component stocks do not open for trading on the primary exchange on the last trading day before expiration, then the prior day's last sale price is used in the calculation.

Eligibility Standards for Index Components

Exchange rule 901C specifies criteria for inclusion of stocks in an index on which options will be traded on the Exchange. In choosing among retail industry stocks that meet the minimum criteria set forth in Rule 901C, the Exchange will focus only on stocks that are traded on either the NYSE, Amex (subject to the limitations of Amex Rule 901C) or NASDAQ/NMS. In addition, the Exchange intends to focus on stocks that: (1) have a minimum market value

(in U.S. dollars) of at least $100 million;[1] and (2) have an average monthly trading volume in the U.S. markets over the previous six month period of not less than 1,000,000 shares (or ADRs). Although the stocks currently selected for inclusion in the Index meet or surpass the above additional criteria, the Exchange intends the above criteria to be used as guidelines only and reserves the right to include stocks in the Index that may not meet these guidelines, but do meet the criteria of Rule 901C.

The Index currently has fifteen component stocks, all of which are eligible for, and the subject of, standardized options trading. However, to address concerns about the possibility of manipulation of an index containing a large percentage of stocks that do not meet the eligibility standards applicable to stocks eligible for standardized option trading, at each quarterly rebalancing, stocks that meet the then current criteria for standardized option trading set forth in Exchange Rule 915 will be required to account for at least 90% of the Index's numerical index value. This requirement is proposed to be reflected in Commentary .01 to Exchange Rule 901C.

Exchange rules applicable to stock Index options. Amex rules 900C through 980C will apply to the trading of option contracts based on the Index. These Rules cover issues such as surveillance, exercise prices, and position limits. Surveillance procedures currently used to monitor trading in each of the Exchange's other index options will also be used to monitor trading in options on the Index. The Index options are deemed to be Stock Index Options under Amex Rule 901C(a) and the Index is deemed to be a Stock Index Industry Group under Rule 900C(b)(1). Under Amex Rule 903C, the Exchange intends to list up to three near-term calendar months and two additional calendar months in three month intervals from the January cycle. Exchange expects that the review required by Amex Rule 904C(c) will result in a position limit of 8,000 contracts for the Index options.

(2) Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(5), in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and the national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either 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 self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number of the caption above and should be submitted by October 16, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-24280 Filed 10-7-92; 8:45 am]

BILLING CODE 8010-01-M

[1] In the case of ADRs, this represents market value as measured by total world-wide shares outstanding.

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Boston Stock Exchange, Incorporated

October 1, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Computervision Corp.
Common Stock, $.01 Par Value (File No. 7-9195)
Horsham Corporation
Subordinated Voting Shares, No Par Value (File No. 7-9196)
North American Mortgage Co.
Common Stock, $.01 Par Value (File No. 7-9197)
Tadiran, Ltd.
Ordinary Shares, NIS 6.2 (File No. 7-9198)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before October 23, 1992, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-24281 Filed 10-6-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 31268; File No. SR-BSE-92-04]

September 30, 1992.

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendments No. 1, No. 2 and No. 3 by the Boston Stock Exchange, Inc. Relating to its Specialist Performance Evaluation Program

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 April 23, 1992, 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. On May 26, 1992, the BSE submitted to the Commission Amendment No. 1 to the proposed rule change. On July 27, 1992, BSE submitted a further amendment to the proposed rule change.[1] On September 28, 1992, the BSE submitted Amendment No. 3 to the proposed rule change.[2] 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

BSE seeks to amend its Specialist Performance Evaluation Program ("SPEP") through the incorporation of objective measures of performance.

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.

The text of the proposed rule is as follows:

Chapter XV of the BSE's Rules of the Board of Governors *new language*: [deleted language]

¶*2156* [2155.03] Specialist Performance [Improvement] *Evaluation Program*

The [Dealer-]Specialist Performance Evaluation Program is a [12]*16*-month pilot program. All [Dealer-]Specialists shall be subject to regular performance evaluation designed to identify areas of performance needing improvement. The [Dealer-]Specialist Performance Evaluation Program shall be administered by the Exchange, subject to the supervision of the Market Performance Committee. Any [Dealer] Specialist whose performance [as a specialist] is below acceptable [performance] levels established by the market Performance Committee shall be subject to specific improvement actions as determined by the Market Performance Committee *as set forth in Paragraphs 2156.10 through 2156.60.* [Such actions may include, but are not limited to, the following sanctions: Withdrawal of approval to act as a specialist in one or more stocks, limitations on the privilege of protecting stocks from assignment to new specialists and the loss of the right to maintain trading accounts.]

In the event that the performance of a [Dealer-]Specialist is below acceptable performance levels, notice of such fact shall be given to the [Dealer-]Specialist.

Set forth below are the conditions warranting performance improvement [sessions] *action:*

[Condition for Requesting a Specialist to Attend a meeting With Performance Improvement Action Subcommittee.	[Condition Requiring a Hearing Before the Market Performance Committee.
[QUESTIONNAIRE]	
[Average grade below "4.5".	[Two out of three successive review periods.
Average grade below "4.5" for one question for two out of three successive review periods].	One out of two review periods subsequent to meeting condition for review with subcommittee.]

Any Specialist who receives a deficient score in one objective measure for two out of three consecutive review periods shall be deemed to have a deficient performance, and shall be required [A deficient specialist is initially requested] to attend an informal meeting with the Performance Improvement Action [Subcommittee. The Subcommittee] *to* discuss[es with the specialist] possible methods of improving his/her performance. [The specialist may elect not to attend this meeting.] *Any specialist who receives a deficient score in any one objective measure for three out of four consecutive review periods may be referred to the Market Performance Committee by the Performance Improvement Action Committee if it feels that improvement can be and should have been made. The Market Performance Committee shall take such actions as it deems necessary and appropriate to address the deficient score, including imposing [san]actions as specified in the Supplemental Material.*

Those Specialists that comprise the bottom ten percent of the overall performance evaluation ranking for two out of three consecutive evaluation review periods shall be required to appear before the Market Performance Committee. The Market Performance Committee shall take such actions it deems necessary and appropriate to address the deficient performance. (See Supplemental Material for possible [san]actions.)

[A deficient specialist that meets a condition requiring review] *The Specialist* shall be notified in writing of the basis for such action[. The member] *and* shall have an opportunity to submit a written reply no later than ten days after the receipt of such notice.

The *Specialist* [member] shall also have an opportunity to be heard upon the specific grounds to be considered before the Market Performance Committee and a written record of any such hearing shall be maintained. Following any such proceeding, the Market Performance Committee will inform the *Specialist* [member] in writing of its decision *and any [san]actions to be imposed,* and *its* reasons *therefor.* The decision of a majority of the members of that Committee shall be final, subject to the power of the Board of Governors to review such decision in accordance with the provisions of Article III, Section 2 of the Constitution.

.03(i) Exceptions. Where Specialists that comprise the bottom ten percent have threshold scores in each measure at the following levels (subject to change pursuant to SEC approval), they will be deemed to have adequately performed:

Overall Evaluation Score—at or above weighted score of 4.05

Turnaround time—below 31.0 seconds (6 points)

Holding Orders Without Action—below 26.0% (6 points)

Trades Between the Quote—at or above 21.0% (4 points)

[1] See letter from Karen Aluise, Attorney, BSE, to Sharon Lawson, Assistant Director, SEC, dated July 27, 1992 ("Amendment No. 2").

[2] See letter from Karen Aluise, Attorney, BSE, to Diana Luka-Hopson, Branch Chief, SEC, dated September 28, 1992 ("Amendment No. 3").

Size Larger than the BBO—at or above 71.0% (5 points)

Questionnaire—at or above weighted score of 50 (4 points)

Supplemental Material: .10 Stock Reallocation—Notice of Particular Stock—Together with written notice of the specific grounds to be considered as the basis for withdrawal of approval, the Market Performance Committee will give the member written notice of the particular stock or stocks to be considered for withdrawal of approval and give a written explanation of the basis on which the stock or stocks were selected.

.20 Stock Reallocation—Selection of Particular Stocks—In designating a particular stock or stocks to be considered as the basis for withdrawal of approval, the Markets Performance Committee shall consider indications of weaknesses in specialist performance in individual stocks to the extent such indications are available. Such indications of weak performance may include, among other factors, references to *a* particular stock by those responding to initial or supplemental evaluation questionnaires, [and] references in such questionnaires to weaknesses in performance of a type which relate to *a* particular stock or groups of stocks, *and/or indications of weaknesses as demonstrated by the objective measures in such stock or stocks.*

When the available measures of *S*[s]pecialist performance indicate weak performance generally, and not precisely in any particular stock or stocks, the Market Performance Committee may decide nonetheless to withdraw approval for a particular stock or stocks. In any case, the Market Performance Committee will exercise its best judgment to select a stock or stocks as to which a reallocation by the *Stock Allocation* [Market Performance] Committee is likely to result in improved *S*[s]pecialist performance.

[.30 Limiting Protected Stocks—All specialists are obligated to make available ten percent of the Dealer-Specialist's specialty stocks for acquisition by new Dealer-Specialists developing a book.

A Dealer-Specialist whose performance is below acceptable levels as determined by the Market Performance Committee may be required to make available more than the ten percent of the stocks in which he or she is registered.]

.3[4]0 Trading *and/or Alternative Specialist* Account Suspension—A *S*[s]pecialist that meets a condition for review *after one review period resulting in a deficient score for the overall evaluation period or for two review periods with a deficient score in any one objective measure* [subject to the Specialist Performance Evaluation Program criteria] shall be put on notice that approval for his or her trading account *or Alternate Specialist Account* may be suspended if the *S*[s]pecialist [remains in the bottom ten percentile] [a condition for review is met] *receives a deficient score* in the subsequent *review* period and may continue until the *S*[s]pecialist's [grades are within acceptable guidelines] *rank is above the bottom ten percentile or meets the provisions of Paragraph 2155.03(i), or the Specialist receives an adequate score in the one objective measure brought under review.*

.4[5]0 Other Action—the Market Performance Committee, in addition to the foregoing actions, may take such other action as it deems appropriate to address deficient performance of a *S*[s]pecialist.

.50 While reallocated stocks will not be restored upon the improved performance of a Specialist, a Specialist may, with the approval of the Market Performance Committee, have his/her status as an alternate and/or his/her trading account restored. He/she will also be in good standing regarding the application for and allocation of new stocks.

.60 The Market Performance Committee, in determining which [san]action(s) should be applied against a deficient Specialist, will use the following guidelines to determine the order of [san]actions, but in its discretion may apply them in any order or may apply more than one in a given situation:

(i) Suspension of trading account privilege.

(ii) Suspension of alternate specialist account privilege.

(iii) Stock reallocation.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) The purpose of the proposed rule change is to incorporate certain objective measures into the Exchange's Specialist Performance Evaluation Questionnaire ("SPEP"). The evaluation program, using the BEACON system, looks at all incoming orders routed to a Specialist for execution. A record of all action on these orders is accumulated in a separate file from which four calculations are run.

Selection criteria for eligible orders *in BEACON* includes regular buy and sell market and marketable limit orders only. Orders marked buy minus or sell plus are excluded *from the evaluation program,* as are crosses and all orders with qualifiers, (*e.g.,* market-on-close, stop, stop limit, all or none, etc.). The order entry date must equal the execution date.

For each of the measures *evaluated,* including the Specialist Performance Evaluation Questionnaire ("SPEQ"), a ten point scale will be applied to a range of scores. Based on the raw score for each measure, the respective specialist will receive an associated score between 1 and 10 points, which will be weighted as indicated for each measure.

The first measure is Turnaround Time, which calculates the average number of seconds for all eligible orders based on the number of seconds between the receipt of a market or marketable limit order in BEACON and the execution, partial execution, stopping or cancellation of the order. An order that is moved from the auto-ex screen to the manual screen will accumulate time until executed, partially executed, stopped or cancelled. This calculation will not be in effect until the individual stock has opened on the primary market. Certain situations, such as trading halts and periods where the BEACON system is off auto-ex floorwide, will result in blocks of time being excluded from the calculation. A specialist who averaged a raw score of 25 seconds will receive 7 points since it falls in the 21 to 25 second range. This calculation will comprise 15% of the overall evaluation program.

Turnaround Time

Time in seconds	Points
1-10	10
11-15	9
16-20	8
21-25	7
26-30	6
31-35	5
36-40	4
41-45	3
46-50	2
51 and up	1

The second measure is Holding Orders Without Action, which measures the number of market and marketable limit orders (all sizes included) that are held without action for greater than twenty-five (25) seconds. As in the Turnaround Time calculation, a stop, cancellation, execution or partial execution stops the clock. The same exclusions which apply in the Turnaround Time calculation also apply here. Thus, if a specialist receives a total of 100 market and marketable limit

orders and holds ten (10) of them for more than 25 seconds, his/her raw score of 10% would receive 9 points because it falls in the 6 to 10 percent range. This calculation will comprise 15% of the overall evaluation program.

Holding Orders Without Action

Percentage of orders	Points
0-5	10
6-10	9
11-15	8
16-20	7
21-25	6
26-30	5
31-35	4
36-40	3
41-45	2
46 and up	1

The third measure is Trading Between the Quote, which measures the number of market and marketable limit orders that are executed between the best consolidated bid and offer where the spread is greater than ⅛. Thus, if a specialist receives ten market and marketable limit orders where the spread between the best consolidated bid and offer is greater than ⅛, and such specialist executes five of the orders between the bid and offer, his/her raw score would be 50% and would receive 9 points since it falls in the 46 to 50 percent range. This calculation will comprise 25% of the overall evaluation program.

Trading Between the Quote

Percentage of orders	Points
51 and up	10
46-50	9
41-45	8
36-40	7
31-35	6
26-30	5
21-25	4
16-20	3
11-15	2
0-10	1

The fourth measure is Executions in Size >BBO, which measures the number of market and marketable limit orders which exceed the BBO size and are executed in size larger than the BBO size. Thus, if a specialist receives a total of 10 market and marketable limit orders which exceed the BBO size and executes nine of the orders in size larger than the BBO size, his/her raw score would be 90% and would receive 8 points since it falls in the 86 to 90 percent range. This calculation will comprise 25% of the overall evaluation program.

Filling Orders Greater Than BBO size

Percentage of orders	Points
96-100	10
91-95	9
86-90	8
81-85	7
76-80	6
71-75	5
66-70	4
61-65	3
56-60	2
55 and below	1

In addition, several changes have been made to the questionnaire in view of the adoption of the objective measures which have made some questions obsolete. The minimum acceptable raw score for each question remains at 4.5. Thus, if a specialist receives a raw score of 4.5 for each question for a weighted raw score (based on the weights for each question within the questionnaire) of 50.0052, he/she would receive 4 points since it falls in the 50 to 54 weighted raw score range. The questionnaire will comprise 20% of the overall evaluation program.

Questionnaire

Weighted raw score	Points
83 and above	10
77-82	9
72-76	8
66-71	7
61-65	6
55-60	5
50-54	4
44-49	3
38-43	2
37 and below	1

Using the examples from each measure above, the following weighted point totals would result in an overall program score of 7.45:

Measure	Points	Weighted points
Turnabout Time (15%)	7	1.05
Holding Orders Without Action (15%)	9	1.35
Trading Between the Quote (25%)	9	2.25
Executions in Size >BO (25%)	8	2.00
Questionnaire (20%)	4	*0.80*
		7.45

As discussed below, the rule specifically states at what score performance is deemed adequate in each measure. The rule has been amended to reflect that any Specialist who is deficient in any one of the objective measures for two out of three consecutive review periods will be required to appear before the Performance Improvement Action Committee to discuss ways of improving performance. If performance does not improve in the subsequent period, the Specialist will appear before the Market Performance Committee for appropriate action as described below.

Any specialist who is ranked in the bottom ten percent of the overall evaluation program for two out of three consecutive review periods will be required to appear before the Market Performance Committee and the Committee will take action to address the deficient performance as provided for in Paragraphs 2156.10–.60. However, the following threshold scores have been set at which a Specialist will be deemed to have adequately performed:

Overall Program—at or above weighted score of 4.05

Turnaround Time—below 3.10 seconds (6 points)

Holding Orders Without Action—below 26.0% (6 points)

Trades Between the Quote—at or above 21.0% (4 points)

Size Large than the BBO—at or above 71.0% (5 points)

Questionnaire—at or above weighted score of 50 (4 points)

A specialist who is deficient on the questionnaire alone will not be subject to review due to the subjectiveness of the questionnaire. However, a deficient score on the questionnaire may result in performance improvement action where it lowers the overall program score below 4.05.

The Exchange requests that the Commission approve this filing on a 16-month pilot basis effective for the September-December 1992 review period, at which point the BSE's current performance evaluation pilot (File No. SR-BSE-84-04) would cease to exist as a separate evaluation program.[3] This 16-month period will enable the Exchange to determine the appropriateness of the measures and their respective weights, as well as the effectiveness of the overall evaluation program.

[3] The Commission initially approved the BSE's SPEP pilot program in Securities Exchange Act Release No. 22993 (March 10, 1986), 51 FR 8928 (March 14, 1986) (File No. SR-BSE-84-04). The Commission subsequently extended the SPEP pilot program in Securities Exchange Act Release Nos. 26162 (October 6, 1988), 53 FR 40301 (October 14, 1988) (File No. SR-BSE-87-6); 27656 (January 30, 1990), 55 FR 4296 (February 7, 1990) (File No. SR-BSE-90-01); 28919 (February 26, 1991), 56 FR 9990 (March 8, 1991) (File No. SR-BSE-91-01); and 30401 (February 24, 1992), 57 FR 7413 (March 2, 1992) (File No. SR-BSE-91-01). The Commission's approval of BSE's current specialist evaluation pilot program expires on February 26, 1993.

(b) The basis under the Act for the proposed rule change is Section 6(b)(5) in that the SPEP results weigh heavily in stock allocation decisions and, as a result, Specialists are encouraged to improve their market quality and administrative duties, thereby promoting just the equitable principles of trade and aiding in the perfection of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

No burden on competition is perceived by the adoption of the proposed rule change.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments have neither been solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the 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 person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 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-92-4 and should be submitted by October 28, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-24320 Filed 10-6-92; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for hearing; Cincinnati Stock Exchange, Incorporated

October 1, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Brown-Forman Corp.
$.40 Cum. Pfd. $10.00 Par Value (File No. 7-9211)
Buckeye Partners, L.P.
Common Stock, No Par Value (File No. 7-9212)
Brunham Pacific Properties, Inc.
Common Stock, No Par Value (File No. 7-9213)
Cabletron Systems, Inc.
Common Stock, $.01 Par Value (File No. 7-9214)
Cabot Oil & Gas Corp.
Class A Common Stock, $.10 Par Value (File No. 7-9215)
Callahan Mining Corp.
Common Stock, $1.00 Par Value (File No. 7-9216)
Canal Capital Corp.
Common Stock, $.01 Par Value (File No. 7-9217)
Canal Capital Corp.
$1.30 Exch. Pfd. $.01 Par Value (File No. 7-9218)
Capital Holding Corp.
Adj. Rte. Cum. Pfd. Ser. F $5.00 Par Value (File No. 7-9219)
Capstead Mortgage Corp.
Common Stock, $.01 Par Value (File No. 7-9220)
Carpenter Technology Corp.
Common Stock, $5.00 Par Value (File No. 7-9221)
Carriage Industries, Inc.
Common Stock, $.02 Par Value (File No. 7-9222)
Cascade Natural Gas Corp.
Common Stock, $1.00 Par Value (File No. 7-9223)
Cash America Investments, Inc.
Common Stock, $.10 Par Value (File No. 7-9224)
CBS, Inc.
$1.00 Conv. Pfd., Ser. A $1.00 Par Value (File No. 7-9225)
Central Hudson Gas & Electric Corp.
Dep. Pfd. Shares, $100.00 Par Value (File No. 7-9226)
CF Income Partners, LP
Depositary Units, No Par Value (File No. 7-9227)
Health Equity Properties, Inc.
Common Stock, $.01 Par Value (File No. 7-9228)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before October 23, 1992, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-24282 Filed 10-6-92; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Incorporated

October 1, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Devon Energy Corporation
Common Stock, $.10 Par Value (File No 7-9181)
Income Opportunities Fund 1999, Inc.
Common Stock, $.10 Par Value (File No. 7-9182)
MuniYield Quality Fund II, Inc.
Common Stock, $.10 Par Value (File No. 7-9183)
Neveen Select Maturities Municipal Fund
Shares of Beneficial Interest, $.01 Par Value (File No. 7-9184)
Nuveen Select Tax Free Income Portfolio 4

Shares of Beneficial Interest, $.01 Par Value (File No. 7-9185)
Rexnord Corp.
Common Stock, $.01 Par Value (File No. 7-9186)
Servico, Inc.
Common Stock, $.01 Par Value (File No. 7-9187)
Tee-Com Electronics, Inc.
Common Stock, No Par Value (File No. 7-9188)
Tommy Hilfiger Corp.
Ordinary Shares, $.01 Par Value (File No. 7-9189)
Banco Latino Americano De Exportaciones, S.A.
Class E Common Stock, No Par Value (File No. 7-9190)
USX-Delhi Corp.
Common Stock, $1.00 Par Value (File No. 7-9191)
Intercapital Quality Municipal Income Trust
Common Shares of Beneficial Interest, $.01 Par Value (File No. 7-9192)
John Alden Financial Corporation
Common Stock, $.01 Par Value (File No. 7-9193)
Metro Bancshares, Inc.
Common Stock, $.01 Par Value (File No. 7-9194)

These securities are listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before October 23, 1992, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-24283 Filed 10-6-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-31272; File No. SR-NASD-91-61]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Close-Out Procedures and Customer Account Transfers

October 1, 1992.

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 November 20, 1991,[1] the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD has proposed to amend sections 59 and 65 of the Uniform Practice Code ("UPC"). Below is the text of the proposed rule change. Proposed language is italicized; proposed deletions are in brackets.

Close-Out Procedure "Buying-in"

Sec. 59

(a)-(h) Text unchanged.

Failure to Deliver and Liability Notice Procedures

(i)(1)*(A)* Text unchanged.

(B) If the contract is for a deliverable instrument with an exercise provision, and the exercise may be accomplished on a daily basis, and the settlement date of the contract to purchase the instrument is on or before the requested exercise date, the receiving member may deliver a Liability Notice to the delivering member no later than 11:00 A.M. on the day the exercise is to be effected. Notice may be redelivered immediately to another member but no later than noon on the same day. Such notice must be issued using written or comparable electronic media having immediate receipt capabilities. If the contract remains undelivered at expiration, and has not been cancelled by mutual consent, the receiving member shall notify the defaulting member of the exact amount of the liability on the next business day.

(C) In all cases, members must be prepared to document request for which a Liability Notice is initiated.

(i)(2)—(i)(4) Text unchanged.

(j)-(m) Text unchanged.

* * *

Customer Account Transfer Contracts

Sec. 65

(a)-(b) Text unchanged.

Transfer instructions

(c)(1)(A)-(B) Text unchanged.

(C) With respect to transfers of securities accounts other than retirement plan securities accounts, the customer affirms that he or she has destroyed or returned to the carrying member any credit/debit cards and/or unused checks issued in connection with the account.

For purposes of this rule, a "nontransferable asset" shall mean an asset that is incapable of being transferred from the carrying member to the receiving member because it is:

(i)-(iv) Text unchanged.

(v) An asset that is an issue for which the proper denominations cannot be obtained pursuant to governmental regulation or the issuance terms of the product (e.g., foreign securities, baby bonds, etc.)

(vi) limited partnership interests in retail accounts.

(D) The carrying member and the receiving member must promptly resolve and reverse any nontransferable assets which were not properly identified during validation. In all cases, each member shall promptly update its records and bookkeeping systems and notify the customer of the action taken.

(2)-(3) Text unchanged.

Validation of transfer instructions

(d)(1) Upon [receipt] *validation* of a transfer instruction, a carrying member must "freeze" the account to be transferred, i.e., all open orders, *with the exception of option positions which expire within seven (7) business days,* must be cancelled and no new orders may be taken.

(2) A carrying member may not take exception to a transfer instruction, and therefore deny validation of the transfer instruction, because of a dispute over securities positions or the money balance in the account to be transferred. Such alleged discrepancies notwithstanding, the carrying member must transfer the securities positions and/or money balance reflected on its books for the account.

[1] The NASD filed Amendments No. 1, 2, and 3, to the filing on April 9, 1992, August 26, 1992, and September 16, 1992, respectively. The terms of substance of these amendments are provided herein.

(3) A carrying member may take exception to a transfer instruction only if:

(A) it has no record of the account on its books;

(B) the transfer instruction is incomplete; [or]

(C) the transfer instruction contains an improper signature [.];

(D) the account is "flat" and reflects no transferrable assets;

(E) the account number is incorrect; or

(F) it is a duplicate request.

If a carrying member takes exception to a transfer instruction because the account is "flat," as provided in (D), the receiving member may re-submit the transfer instruction only if the most recent customer statement is attached.

(4)–(7) Text unchanged.

Completion of the transfer

(e) Within five (5) business days following the validation of a transfer instruction, the carrying member must complete the transfer of the account(s) to the receiving member. The receiving member and the carrying member must immediately establish fail-to-receive and fail-to-deliver contracts at then-current market values upon their respective books of account against the long/short positions [(including options)] in the customer's account(s) that have not been physically delivered/received and the receiving/carrying member must debit/credit the related money amount. The customer's account(s) shall thereupon be deemed transferred.

Fail contracts established

(f)(1) Any fail contracts resulting from this account transfer procedure [must be closed out promptly.] *shall be included in a member's fail file and shall be subject to applicable close-out and liability procedures.*

(2) A carrying member may not reject ("DK") a fail contract, including a *Receive/Deliver Instruction* [balance order] generated by an automated customer account transfer system, in connection with assets in an account transferred that have not been delivered to the receiving member.

(3) All fail contracts established pursuant to the requirements of this rule should be clearly marked or captioned as such. *This subsection will not apply if a fail contract participates in a repricing and reconfirmation service offered by a registered clearing agency.*

(4)–(9) Text unchanged.

Prompt resolution of discrepancies

(g)*(1)* Text unchanged.

(2) The carrying member must promptly distribute to the receiving member any transferrable assets which accrue to the account after the transfer of a customer's securities account.

Close-out procedures

(h) A valued fail contract in a security, for which there are no established close-out procedures, and which has not been completed by the carrying member, may be closed by the member not sooner than the third business day following the date delivery was due, in accordance with the following procedure:

(1) Written notice shall be delivered to the carrying member at his office not later than 12 noon, his time, two business days preceding the execution of the proposed "close-out".

(2)(A) Every notice of "close-out" shall state the settlement date, the quantity and contract price of the securities covered by said contract, and shall state further that unless delivery is effected at or before a certain specified time, which may not be prior to 3:00 P.M. local time in the community where the carrying member maintains his office, the security may be "closed-out" on the date specified for the account of the carrying member.

(B) Original notices may only be issued pursuant to fail contracts marked or captioned as fails established pursuant to subsection (f)(3) of this rule.

(C) Notice may be redelivered immediately to another member from whom the securities involved are due in the form of a re-transmitted notice. A re-transmitted notice must be delivered to subsequent members not later than 12 noon one business day preceding the original date of execution of the proposed close-out.

(D) Re-transmitted notices may be issued against any fail contract regardless of its origin.

(3)(A) On failure of the carrying member to effect delivery in accordance with the notice, or to obtain a stay as hereinafter provided, the receiving member may close the contract by purchasing the securities necessary to complete the contract. Such execution will also operate to close-out all contracts covered under re-transmitted notices.

(B) The party executing the "close-out" shall immediately upon execution, but no later than the close of business local time, where the seller maintains his office, notify the member for whose account the securities were bought as to the quantity purchased and the price paid. Such notification should be in written or electronic form having immediate receipt capabilities. If a medium with immediate receipt capabilities is not available, the telephone shall be used for the purpose of same day notification, and written or similar electronic notification having next day receipt capabilities must be sent out simultaneously. In either case formal confirmation of purchase along with a billing or payment (depending upon which is applicable) should be forwarded as promptly as possible after the execution of the "close-out". Notification of the execution of the "close-out" shall be given to succeeding members to whom a re-transmitted notice was issued using the same procedures stated herein.

(C) If prior to the closing of a contract on which a "close-out" notice has been given, the receiving member receives from the carrying member written notice stating that the securities are (1) in transfer; (2) in transit; (3) being shipped that day; or (4) due from a depository and include the certificate numbers, then the receiving member must extend the execution date of the "close-out" for a period of seven (7) calendar days from the date delivery was due the under "close-out", except for those securities due from a depository.

(4) In the event that a "close-out" is not completed on the day specified in the notice, said notice shall expire at the close of business on the day specified in the notice, or if extended, at the close of business on the last day of the extension.

Sell-out procedures

(i)(1) Upon failure of the receiving member to accept delivery in accordance with the term of the contract, and lacking a (1) properly executed Uniform Reclamation Form; (2) depository generated rejection advice; or (3) valid Reversal Form, the carrying member may, without notice, "sell-out" in the best available market, for the liability of the party in default, all or any part of the securities due or deliverable under the contract.

(2) The party executing a "sell-out" as prescribed above shall notify, no later than the close of business (local time where the receiving member maintains his office) on the day of execution, the member, for whose account and liability such securities were sold, of the quantity sold and the price received. Such notification should be in written or electronic form having immediate receipt capabilities. A formal confirmation of such sale should be forwarded as promptly as possible after the execution of the "sell-out".

(h)–(1) redesignated as (j)–(n).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

(a) The NASD is proposing to amend section 59 to provide fail to deliver and liability notice procedures for foreign currency and index warrants and other similar instruments. These new instruments may be exercised at any time and do not provide for a guaranteed post-expiration period for the buyer to deliver the physical certificates. Moreover, because the decision to exercise these instruments is based on the performance of a currency, index, or other standard, the buyer's exercise instruction to the agent may occur at any time and cannot be delayed. Because the buyer of foreign currency and/or index warrants has no protection under current UPC liability rules, the NASD, in conjunction with other securities industry groups, proposes to initiate a Liability Notice for these types of instruments.[2]

The change to subsection 59(i) is proposed to establish a procedure for using a Liability Notice for index warrants and other similar instruments. The amendment permits immediate origination and retransmission of Liability Notices, requires that the Notice be written or transmitted through an electronic device having immediate receipt capabilities, requires mutual consent prior to the cancellation of a Liability Notice, and cautions members to retain documentation relating to exercise requests.

Section 65 of the UPC establishes procedures for the processing and timely transfer of customer accounts. The NASD proposes to amend subsection 65(c) to address additional types of nontransferable assets such as foreign securities, baby bonds, and certain limited partnerships; to clarify the members' responsibility to resolve and reverse transfers of improperly identified assets; and to require members to update their records and notify customers of such action.

The NASD also proposes changes to subsections 65(d)–(f) to clarify the application of those provisions. Section (d) is proposed to be amended in the following ways: (1) Add an exception for option positions that expire within 7 days, (2) permit members to take exception to the transfer instruction if the account is flat, the account number is incorrect, or the instruction is a duplicate request, and (3) provide for the resubmission of transfer instructions which were rejected because the account was deemed "flat." Subsection (e) is proposed to be amended to delete the reference to options. Subsection (f) is proposed to be amended to require that all fail contracts be reflected in members' fail files and be subject to both close-out and liability procedures and, further, to provide an exemption for fail contracts participating in a repricing and reconfirmation service offered by a registered clearing agency.

The NASD also proposes to amend Subsection 65(g), expanding it to require the prompt transfer or distribution of assets which accrue (i.e., dividends, bond interest) to the customer's account after the initial transfer has been completed.

The NASD further proposes to add subsections 65(h)–(i) to establish procedures for closeout and sell-out fails, respectively, in instruments that do not currently have such procedures (i.e., zero coupon bonds, mutual funds, limited partnerships). The rule amendment is proposed to provide a means of closing-out or selling-out instruments that previously had remained outstanding for extended periods of time and prevented an account from transferring completely.

The new subsection (h) proposes procedures to permit the receiving member to close a valued fail contract not sooner than the third business day following the delivery due date pursuant to required written notification. Furthermore, this new subsection is proposed to permit redelivery of a notice, in the form of a re-transmission, against any existing fail, regardless of its origin, to facilitate the completion of the transfer and greatly reduce the member's general fail file. These procedures are based on Uniform Practice Code Section 59 Buy-In rules.

The new subsection (i) proposes notification and sell-out procedures to permit the carrying member to sell any and all securities due or deliverable under contract in the best available market, where the receiving member failed to accept delivery, or where a properly executed Uniform Reclamation Form, a depository generated rejection advice, or a valid Reversal Form is lacking.

(b) The NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act, which require that the rules of the NASD be designed to foster cooperation with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating, transactions in securities.

B. Self-Regulatory organization's Statement on Burden on Competition

The NASD 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, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 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

[2] The NASD proposal was developed in conjunction with the national Securities Clearing Corporation and the Midwest Clearing Corporation to the extent that the other clearing agencies and the NASD agreed that such liability notice procedures were needed, desirable, and should be adopted.

communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by [insert date 21 days from the date of publication.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Jonathan G. Katz,

Secretary.

[FR Doc. 92-24328 Filed 10-6-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-31264 ; File No. SR-NASD-92-39]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to an Interim Extension of the OTC Bulletin Board Service through December 31, 1992.

September 30, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 18, 1992, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is simultaneously approving the proposal.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

On June 1, 1990, the NASD initiated operation of the OTC Bulletin Board Service ("OTCBB Service" or "Service") in accord with the Commission's approval of file No. SR-NASD-88-19, as amended.[1] The OTCBB Service provides a real-time quotation medium that NASD member firms can elect to use to enter, update, and retrieve quotation information (including unpriced indications of interest) for securities traded over-the-counter that are not included in the Nasdaq System nor listed on a registered national securities exchange (collectively referred to as "unlisted securities"). Essentially, the Service supports NASD members' market making in unlisted securities through authorized Nasdaq Workstation units. Real-time access to quotation information captured in the Service is available to subscribers of Level 2/3 Nasdaq service as well as subscribers of vendor-sponsored services that now include OTC Bulletin Board data. The Service is currently operating under an interim approval that expires on October 1, 1992.[2]

The NASD hereby files this proposed rule change, pursuant to section 19(b)(1) of the Act and Rule 19b-4 thereunder, to obtain authorization for an interim extension of the Service through December 31, 1992. During this interval, there will be no material change in the Bulletin Board's operational features.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this filing is to ensure continuity in the operation of the OTCBB Service while the Commission considers an earlier NASD rule filing (File No. SR-NASD-92-7) that requested permanent approval of the Service. For the month of August 1992, the Service reflected 11,679 market making positions based on 297 NASD member firms displaying quotations/indications of interest in 4,069 unlisted securities.[3]

During the proposed extension, foreign securities and American Depository Shares (or Receipts) (collectively, "foreign/ADS issues") will remain subject to the twice-daily, update limitation that traces back to the Commission's original approval of the OTCBB Service's operation. As a result, all priced bids/offers displayed in the Service for foreign/ADS issues will remain indicative.

In conjunction with the launch of the Service in 1990, the NASD implemented a filing requirement (under section 4 of Schedule H to the NASD By-Laws) and review procedures to verify member firms' compliance with Rule 15c2-11 under the Act. During the proposed extension, this review process will continue to be an important component of the NASD's self-regulatory oversight of broker-dealers' market making in unlisted securities. The NASD also expects to work closely with the Commission staff in developing further enhancements to the Service to fulfill the market structure requirements mandated by the Securities Enforcement Remedies and Penny Stock Reform Act of 1990 ("Reform Act"). The NASD notes that implementation of the Reform Act entails Commission rulemaking in several areas, including the development of mechanisms for gathering and disseminating reliable quotation/transaction information for "penny stocks."

The NASD relies on sections 11A(a)(1), 15A(b) (6) and (11), and section 17B of the Act as the statutory basis for the instant rule change proposal. Section 11A(a)(1) sets forth the Congressional findings and policy goals respecting operational enhancements to the securities markets. Basically, the Congress found that new data processing and communications techniques should be applied to improve the efficiency of market operations, broaden the distribution of market information, and foster competition among market participants. Section 15A(b)(6) requires, *inter alia*, that the NASD's rules promote just and equitable principles of trade, facilitate securities transactions, and protect public investors. Subsection (11) thereunder authorizes the NASD to adopt rules governing the form and content of quotations for securities traded over-the-counter for the purposes of producing fair and informative quotations, preventing misleading quotations, and promoting orderly procedures for collecting and disseminating quotations. Finally, section 17B contains Congressional findings and directives respecting the collection and distribution of quotation information on low-priced equity securities that are neither Nasdaq nor exchange-listed.

---

[1] Securities Exchange Act Release No. 27975 (May 1, 1990), 55 FR 19124.

[2] Securities Exchange Act Release No. 30885 (July 2, 1992), 57 FR 30522.

[3] These are average daily figures calculated for the entire month.

The NASD submits that extension of the Service through December 31, 1992 is fully consistent with the foregoing provisions of the Act.

B. Self-Regulatory Organization's Statement on the Burden on Competition

The NASD does not believe any burden will be placed on competition as a result of this filing.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NASD requests that the Commission find good cause, pursuant to section 19(b)(2) of the Act, for approving the proposed rule change prior to the 30th day after its publication in the **Federal Register** to avoid any interruption of the Service. The current authorization for the Service extends through October 1, 1992. Hence, it is imperative that the Commission approve the instant filing on or before that date. Otherwise, the NASD will be required to suspend operation of the Service pending Commission action on the proposed extension.

The NASD believes that accelerated approval is appropriate to ensure continuity in the Service's operation pending a determination on permanent status for the Service, as requested in File No. SR-NASD-92-7. Continued operation of the Service will ensure the availability of an electronic quotation medium to support members firms' market making in approximately 4,100 unlisted equity securities and the widespread dissemination of quotation information on these securities. The Service's operation also expedites price discovery and facilitates the execution of customer orders at the best available price. From a regulatory standpoint, the NASD's capture of quotation data from participating market makers supplements the price and volume data reported by member firms pursuant to section 2 of Schedule H to the NASD By-Laws.

The Commission finds that approval of this proposed rule change is consistent with the Act and the rules and regulations thereunder, and, in particular, with the requirements of section 15A(b)(11) of the Act, which provides that the rules of the NASD relating to quotations must be designed to produce fair and informative quotations, prevent fictitious or misleading quotations, and promote orderly procedures for collecting, distributing, an publishing quotations.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publishing notice of the filing thereof. Accelerated approval of the NASD's proposal is appropriate to ensure continuity in the Service's operation as an electronic quotation medium that supports NASD members' market making in these securities and that facilitates price discovery and the execution of customer orders at the best available price. Additionally, continued operation of the Service will materially assist the NASD's surveillance of trading in unlisted securities that are eligible and quoted in the Service.

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 Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by October 28, 1992.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved for a three month period, inclusive of December 31, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Jonathan G. Katz,

Secretary.

[FR Doc. 92-24329 Filed 10-6-92; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Incorporated

October 1, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Nuveen Select Maturities Municipal Fund
Shares of Beneficial Interest, $.01 Par Value (File No. 7-9199)
Real Estate Investment Trust of California
Common Stock, No Par Value (File No. 7-9200)
Medchem Products, Inc.
Common Stock, $0.01 Par Value (File No. 7-9201)
Intercapital Quality Municipal Income Trust
Common Shares of Beneficial Interest, $.01 Par Value (File No. 7-9202)
Heller Financial, Inc.
8⅛ Pc Cum. Perpetual Senior Pfd Stock Series A, $.01 Par Value (File No. 7-9203)
Income Opportunities Fund 1999, Inc.
Common Stock, $.10 Par Value (File No. 7-9204)
Tommy Hilfiger Corporation
Common Stock, $.01 Par Value (File No. 7-9205)
John Alden Financial Corporation
Common Stock, $.01 Par Value (File No. 7-9206)
Royal Bank of Scotland Group Plc
American Depositary Shares Series C (File No. 7-9207)
USX Delhi Group
Common Stock, $1.00 Par Value (File No. 7-9208)
Georgia Power Company
$1.9375 Class A Pfd Stock, No Par Value (File No. 7-9209)
Servico, Inc.
Common Stock, $0.01 Par Value (File No. 7-9210)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before October 23, 1992, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are

consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-24284 Filed 10-6-92; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18986; 811-2972]

AMC Investors, Inc.; Application for Deregistration

September 30, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: AMC Investors, Inc. ("AMC").

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on July 13, 1992, and amended on September 14, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 28, 1992, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, c/o LEVCO, Plaza 46, West Paterson, New Jersey 07422.

FOR FURTHER INFORMATION CONTACT: Marc Duffy, Staff Attorney, (202) 272-2511, or C. David Messman, Branch Chief, (202) 272-3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. AMC is a diversified closed-end management investment company incorporated under the laws of New York. In December, 1979, AMC (then known as Aberdeen Manufacturing Corporation) sold substantially all of its assets to Henry Crown and Company for approximately $18.7 million. Following this transaction, AMC made a cash tender offer for its securities. As a result of the asset sale and tender offer, several members of the same family, who had owned approximately 50% of the outstanding AMC shares prior to the asset sale, became the owners of approximately 93% of the AMC common shares outstanding following the tender offer. On March 26, 1980, AMC registered with the SEC as a closed-end management investment company.

2. On January 2, 1992, AMC and T. Rowe Price Tax-Free High Yield, Inc. ("TRP") entered into an Agreement and Plan of Reorganization (the "Plan"). The Plan called for AMC to transfer substantially all of its assets to TRP, other than Washington Public Power Supply System Generating Facilities Revenue Bonds Nuclear Projects Nos. 4 and 5 in aggregate market value of $117,686 owned by AMC (the "WPPSS Bonds"). AMC agreed to transfer the WPPSS Bonds to a liquidating trust (the "Liquidating Trust") for the benefit of AMC's shareholders.

3. On February 28, 1992, the board of directors of AMC approved the Plan and the transfer of the WPPSS Bonds to the Liquidating Trust. On March 13, 1992, a Prospectus/Proxy Statement related to the Plan and the transfer of the WPPSS Bonds was mailed to AMC's shareholders and was filed with the SEC. On April 13, 1992, the holders of over two-thirds of AMC's shares approved the Plan and the transfer of the WPPSS Bonds.

4. As of the close of business on April 10, 1992, the day AMC last valued its portfolio, AMC had outstanding 688,281 shares with a total net asset value of $8,478,972 and a net asset value per share of $12.32. On April 13, 1992, AMC transferred substantially all of its assets to TRP, other than the WPPSS Bonds (the "Reorganization"). On this same date, AMC transferred all of its right, title, and interest in and to the WPPSS Bonds to the Liquidating Trust. As a result of the Reorganization, AMC's shareholders received TRP shares having a net asset value equal to the net asset value of their AMC shares transferred to TRP. AMC also retained sufficient cash to pay any remaining expenses related to the Reorganization.

5. AMC is a member of the plaintiff class in lawsuits filed against various parties alleging violations of the federal and state securities laws in connection with the sale of WPPSS Bonds (the "WPPSS Lawsuits"). A settlement has been reached in the WPPSS Lawsuits and, in February, 1992, the United States Court of Appeals for the Ninth Circuit affirmed the settlement. Once all available rights of appeal to the settlement have been exhausted, AMC shareholders are expected to receive approximately $200,000. No determination has been reached, however, regarding the amount of funds, if any, which ultimately will be allocated to AMC's shareholders. AMC created the Liquidating Trust to hold the WPPSS Bonds and to collect any amounts to be paid to its shareholders in settlement of the WPPSS Lawsuits. The Liquidating Trust shall terminate upon the earlier of payment to AMC's shareholders on a *pro rata* basis of the moneys in the Liquidating Trust, distribution to AMC's shareholders of the WPPSS Bonds on a *pro rata* basis, or expiration of the term of the Liquidating Trust, which is April 13, 1995.

6. AMC was contingently liable on certain leases related to the sale of its former business in 1979. In connection with the Reorganization, certain of AMC's shareholders agreed to indemnify TRP for these contingent liabilities.

7. Each party was responsible for its own expenses in connection with the Reorganization. AMC incurred approximately $193,000 in expenses in connection with the Plan and Reorganization. Such expenses consisted of approximately $120,000 for legal fees, $44,000 for accounting fees, $18,000 for officers' salaries, and $11,000 for office expenses.

8. AMC has no shareholders and is not a party to any litigation or administrative proceedings except the WPPSS Lawsuits. Except for any distributions that may be made pursuant to the terms of the Liquidating Trust, there are no shareholders to whom distribution in complete liquidation of their interest have not been made. AMC is not engaged in, nor does it propose to engage, in, any business activities other than those necessary for the winding up of its affairs.

9. AMC filed a Certificate of Dissolution with the State of Maryland on June 30, 1992.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-24285 Filed 10-6-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-18991; File No. 812-8046]

American Skandia Life Assurance Corporation, et al.

September 30, 1992.

AGENCY: Securities and Exchange Commission (the "Commission" or the "SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: American Skandia Life Assurance Corporation ("Skandia Life"), American Skandia Life Assurance Corporation Separate Account E (the "Account"), and Skandia Life Equity Sales Corporation ("SLESCO").

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) for exemptions from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order permitting the deduction of a mortality and expense risk charge from the assets of the Account, which funds flexible premium tax deferred variable annuity contracts (the "Contracts").

FILING DATES: The application was filed on August 14, 1992, and amended on September 14, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 26, 1992, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Applicants, c/o American Skandia Life Assurance Corporation, One Corporate Drive, Shelton, Connecticut 06484.

FOR FURTHER INFORMATION CONTACT: C. Christopher Sprague, Senior Counsel, at (202) 504-2802, or Michael V. Wible, Special Counsel, at (202) 272-2060, Office of Insurance Products (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. Skandia Life is a stock life insurance company that was incorporated in 1969 under the laws of Connecticut. It is engaged principally in the sale of annuities. On May 25, 1988, all the issued and outstanding stock of Skandia Life was acquired by Skandia U.S. Investment Holding Corporation, whose indirect parent is Skandia Group Insurance Company Ltd.

2. The Account was established by Skandia Life as a separate account under the laws of Connecticut on August 5, 1992, pursuant to a resolution of Skandia Life's Board of Directors. The Account is being registered under the 1940 Act as a unit investment trust, and is the funding vehicle for the Contracts. No sales load is imposed on purchases or redemptions of the Contracts.

3. SLESCO, a wholly-owned subsidiary of Skandia U.S. Investment Holding Corporation, will serve as the distributor and principal underwriter of the Contracts, and will bear the costs of such distribution. SLESCO is registered under the Securities exchange Act of 1934 as a broker-dealer and is a member of the National Association of Securities Dealers, Inc.

4. The Contracts are flexible premium tax deferred variable annuity contracts. A contract owner can allocate purchase payments to one or more subaccounts of the Account, each of which will invest in shares of a portfolio of the Galaxy VIP Fund (the "Fund"). The Fund is an open-end management investment company that presently offers four portfolios: Equity Growth, High-Quality Bond, Money Market, and Asset Allocation.

5. Skandia Life will deduct from the Account's assets, on a daily basis, an administration fee equal to 0.15% per annum of the average daily total value of the Account. Skandia Life will deduct an annual maintenance fee equal to the lesser of $30 or 2% of Account Value prior to the Annuity Date and upon surrender if the Account Value is less than $50,000 for certain maintenance services it provides to Contractowners. The maintenance fee is deducted from each of the Contract owner's sub-accounts according to the ratio that the value of such sub-account bears to the owner's total Contract value. Skandia Life believes that the administration fee and maintenance fee will not be greater than its total anticipated costs. Skandia Life also will charge a $25 set-up fee if the initial purchase payment is less than $10,000.

6. No deduction or charge will be made from purchase payments for sales or distribution expenses, or upon withdrawal, surrender, or annuitization. Distribution expenses for the Contracts are anticipated to be less than those incurred with respect to other annuities sold by Skandia Life. Skandia Life may or may not recover its distribution expenses depending upon its mortality and expense experience.

7. A mortality and expense risk charge equal to an annual rate of 0.40% of the net asset value of the Account will be deducted daily from the Account's net assets. Of that amount, approximately 0.30% is allocable to Skandia Life's assumption of mortality risks and 0.10% is allocable to Skandia Life's assumption of expense risks. Where a life annuity payment option is selected, the mortality risk borne by Skandia Life arises by virtue of minimum annuity rates incorporated in the Contracts which cannot be changed, and the provision of the minimum death benefit guarantee for deaths occurring prior to annuitization. The expense risk undertaken by Skandia Life is that the administration and maintenance fees, which may not be increased for current Contract owners, may be insufficient to cover Skandia Life's actual costs of maintaining the Contracts and the Account. If the 0.40% charge proves more than sufficient to cover such mortality and expense risks, the excess will result in a profit to Skandia Life. Any such profit, as well as any other profit realized by Skandia Life and held in its general account (which supports insurance and annuity obligations), would be available for any proper corporate purpose, including, but not limited to, payment of sales and distribution expenses.

Applicants' Legal Analysis

8. Applicants request an exemption from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to the extent relief is necessary to permit the deduction of the mortality and expense risk charge from the assets of the Account. Section 27(c)(2) of the 1940 Act prohibits any registered investment company issuing periodic payment plan certificates, and any depositor of or underwriter for such company, from selling any such certificate unless, among other things, the proceeds of all payments on such certificates (excluding sales loads) are held by a qualified trustee or custodian

under an indenture or agreement containing, in substance, the provisions required by sections 26(a)(2) and 26(a)(3) for trust indentures of unit investment trusts. Among the provisions required to be included in such an indenture or agreement is the proviso in section 26(a)(2)(C) that permits the trustee or custodian to deduct from the assets of the trust as an expense only bookkeeping and other administrative services charges not exceeding such reasonable amount as the Commission may prescribe. Thus, the proposed mortality and expense risk charge is not the type of expense permitted by section 26(a)(2)(C), and Applicants therefore seek an order of exemption.

9. Skandia Life represents that the charge of 0.40% for the mortality and expense risks it assumes is within the range of industry practice with respect to comparable annuity products. This representation is based on Skandia Life's analysis of publicly available information about similar industry products, taking into consideration such factors as current charge levels, the existence of charge level guarantees, and guaranteed annuity rates. Skandia Life will maintain at its administrative offices, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, its comparative survey.

10. Applicants acknowledge that if a profit is realized from the mortality and expense risk charge, all or a portion of such profit may be viewed as being offset by distribution expenses. Skandia Life has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Account and the Contract owners. The basis for such conclusion is set forth in a memorandum, which will be maintained by Skandia Life at its administrative offices and will be available to the Commission.

11. Skandia Life represents that the Account will only invest in management investment companies which undertake to have boards of directors or trustees, a majority of whom are not "interested persons" of such companies, approve any plan adopted under Rule 12b-1 under the 1940 Act.

Conclusion

12. Applicants assert that for the reasons and upon the facts set forth above, the requested exemption from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-24332 Filed 10-6-92; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18903; 812-7889]

Flagship Tax Exempt Funds Trust, et al.; Notice of Application

October 1, 1992.

AGENCY: Securities and Exchange Commission (the "SEC" or "Commission").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Flagship Tax Exempt Funds Trust, Flagship Pennsylvania Triple Tax Exempt Fund, Flagship Admiral Funds Inc., (the "Funds"), Flagship Financial Inc. (the "Advisor"), and Flagship Funds Inc. (the "Distributor").

RELEVANT 1940 ACT SECTIONS: Conditional order requested under section 6(c) for an exemption from the provisions of section 2(a)(32), 2(a)(35), 18(f), 18(g), 18(i), 22(c), and 22(d) of the Act and rule 22c-1 thereunder.

SUMMARY OF APPLICATION: Applicants seek a conditional order permitting the Funds, series of the Funds, and certain future series and funds to: (a) Issue four classes of shares representing interests in the same portfolio of securities and (b) assess and, under certain circumstances, waive a contingent deferred sales load on certain redemptions of the shares of two of the classes.

FILING DATES: The application was filed on March 19, 1992 and amended on July 20, 1992, August 25, 1992, and September 25, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 26, 1992, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons 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. Applicants, One First National Plaza, 130 W. Second Street, Dayton, Ohio 45402-1506.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 272-3026, or Elizabeth G. Osterman, Branch Chief, at (202) 272-3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicants seek a conditional order under section 6(c) of the Act on behalf of the Funds and any future sub-trust or series of the Funds, or any future registered open-end investment companies and any future sub-trust or series thereof that are part of the same "group of investment companies," as defined in rule 11a-3 under the Act, and (a) whose investment adviser (i) is the Adviser or (ii) directly or indirectly controls, controlled by, or under common control with the Adviser, (b) whose principal underwriter is the Distributor or is directly or indirectly controlling, controlled by, or under common control with the Distributor, (c) that hold themselves out to investors as being related for purposes of investment and investor services, and (d) whose shares are divided into up to four classes of securities whose sales load, contingent deferred sales load ("CDSL"), rate of distribution fees, exchange privileges, conversion feature, and differences in voting rights are substantially identical to those applicable to the Class A shares, Class B shares, Class C shares, and Class D shares, described below. Any such series or investment company will be subject to each of the conditions contained in the application.

2. The Funds are open-end management investment companies registered under the Act. The Adviser acts as the Funds' investment adviser. The Distributor acts as principal underwriter of the Funds' shares. The shares of each of the Funds' series are [1] currently offered at net asset value plus a front-end sales load. In addition, the Funds have each adopted a distribution plan pursuant to rule 12b-1 under the Act.

[1] Any description or representation regarding a "series" of any of the Funds also refers to any of the Funds which do not have separate series outstanding.

3. Applicants propose to establish a multiple distribution system (the "Multiple Distribution System") enabling each of the Funds' series to offer four classes of shares and to assess and, under certain circumstances, waive a CDSL on certain redemptions of Class B and Class C shares.

A. The Multiple Distribution System

1. Under the Multiple Distribution System, all of their current shares outstanding of each series of the Funds will be redesignated as "Class A" shares. In addition, each series will create up to three additional classes of shares, referred to herein as "Class B," "Class C," and "Class D."

2. Class A shares will be sold at net asset value plus a front-end sales load. The sales load will be subject to reductions for larger purchases under a combined purchase privilege, under a right of accumulation, or under a letter of intent. The sales load will be subject to other reductions permitted by section 22(d) of the Act and set forth in the Funds' prospectuses. Pursuant to the Funds' 12b-1 distribution plan, the Funds will be able to spend up to .40% per year of the average daily net assets attributable to the Funds' Class A shares for distribution-related expenses.

3. Class B shares will be sold at net asset value per share without the imposition of a sales load at the time of purchase (the "Deferred Option"). Up to 1% per year of the average daily net assets attributable to the Class B shares will be subject to the Funds' 12b-1 distribution plan. An investor's proceeds from a redemption of Class B shares made within a specified period of years following their purchase (which will be at least four years but will not exceed ten years) generally will be subject to a CDSL payable to the Distributor. The CDSL is expected to range from 3% to 6% on Class B shares redeemed during the first year after purchase and will be reduced each year over the applicable CDSL period.

4. Class C shares will be sold at net asset value without the imposition of a front-end sales load (the "Level-Load Option"). An investor's proceeds from a redemption of Class C shares made within one year of the date of purchase will be subject to a CDSL of 1%, with no CDSL charged for any redemptions after one year. Up to 1% per year of the average daily net assets attributable to the Class C shares will be subject to the Funds' 12b–1 distribution plan.

5. Class D shares will be sold to institutional investors without a front-end sales load, a CDSL, or a rule 12b–1 fee (the "No Fee/No Load Option").

6. All Class B shares, other than those purchased through the reinvestment of dividends and distributions, automatically will convert to Class A shares after a certain number of years (which shall be at least four but not more than ten years) after the end of the calendar month in which the shareholder's order to purchase was accepted. Shares purchased through the reinvestment of dividends and other distributions paid in respect of Class B shares will be treated as Class B shares for purposes of determining the applicable distribution fee. For purposes of conversion to Class A shares, however, such Class B shares will be considered to be held in a separate sub-account. Each time any Class B shares in the shareholders's account, other than those in the sub-account, convert to Class A shares, a proportionate number of Class B shares in the sub-account also will convert to Class A shares.

7. All expenses incurred by each series of the Funds will be allocated daily to each class of shares based on the percentage of net assets at the beginning of the day, except for the distribution expenses incurred pursuant to the Fund's rule 12b–1 distribution plan, and the incremental transfer agency costs to be borne by the Class B shares and the Class C shares. Because of the additional expenses borne by Class B shares and Class C shares, the net income attributable to and the dividends payable on Class B shares and Class C shares may be lower than the net income attributable to and the dividends payable on Class A shares and Class D shares. As Class D shares have no Rule 12b–1 Plan or sales loads, the income attributable to Class D shares will not be lower than on Class A shares and is expected to be higher than that of Class B and Class C shares.

8. Class A shares of each series of the Funds will be exchangeable for shares of the other funds which are sold subject to a front-end sales load, and for shares of money market funds distributed by the Distributor that offer an exchange privilege. Shareholders of other funds sponsored by the Distributor that are sold subject to a front-end sales load (or a holder of money market fund shares acquired through an exchange of such shares were such funds to be offered) and offer an exchange privilege will be able to exchange their shares for Class A shares of any series of the Funds. Class B shares of any series of the Funds will be exchangeable only for shares offered pursuant to a Deferred Option by any other series or fund in the complex which offers an exchange privilege. Class C shares of any series of the Funds will be exchangeable only for shares offered pursuant to a Level-Load Deferred Option by any other series or fund in the complex which offers an exchange privilege. Similarly, Class D shares of any series of the Funds will be exchangeable only for shares offered pursuant to a No Fee/No Load Option by any other series or fund in the complex which offers an exchange privilege. The exchange privilege for all classes of shares of the Funds will comply with the provisions of rule 11a–3 under the Act.

B. The CDSL

1. The Class B shares and Class C shares will be sold subject to a CDSL. The amount of the CDSL charged will vary depending on the length of time shares have been held and the net asset value of the shares at the time of redemption. The amount of any CDSL will be calculated as the lessor of the amount that represents a specified percentage of the net asset value of the shares at the time of purchase, or the amount that represents a specified percentage of the net asset value of the shares at the time of redemption.

2. The CDSL will not be imposed on redemptions of (a) Class B shares purchased more than ten years prior to their redemption or Class C shares purchased more than one year prior to their redemption (the "CDSL Period"), (b) Class B shares or Class C shares derived from the reinvestment of distributions, or (c) an amount which represents an increase in the value of the shareholder's account resulting from capital appreciation above the amount paid for shares purchased during the CDSL period. In determining whether a CDSL is applicable, it will be assumed that a redemption is made first of Class B or Class C shares derived from reinvestment of dividends and distributions, second of Class B or Class C shares held for a period longer than the CDSL Period, third of any Class A shares in the shareholder's Fund account, and fourth of Class B or Class C shares held for a period not longer than the CDSL Period.

3. The Funds propose to waive the CDSL on redemptions of Class B or Class C shares (a) following the death of a shareholder and (b) with respect to distributions from an Individual Retirement Account, a custodial account maintained pursuant to Section 403(b)(7) of the Internal Revenue Code (the "Code"), or a qualified pension or profit-sharing plan, (i) in connection with a lump-sum or other distribution after attaining age 59½ or, in the case of a qualified pension or profit-sharing plan, after termination of employment after

age 55, (ii) on any redemption which results from the tax-free return of an excess contribution pursuant to section 408(d)(4) or (5) of the Code, (iii) on the return of excess deferral amounts pursuant to section 401(i)(8) or 402(g)(2) of the Code, or (iv) from the death or disability of the employee.

4. If a series waives or reduces the CDSL, such waiver or reduction will be uniformly applied to all Class B or Class C shareholders, respectively, of such series. In waiving or reducing a CDSL, the Funds will comply with the requirements of rule 22d-1 under the Act as if such CDSL were a sales load.

5. If the trustees or directors of the Funds determine to discontinue the waiver of the CDSL, the disclosure in the affected Fund's prospectus will be appropriately revised. Class B shares and Class C shares purchased prior to the termination of such waiver will be able to have the CDSI waived as provided in that Fund's prospectus at the time of the purchase of such shares. Any changes in the annual rate of reduction with respect to the CDSL or any variation in the period over which the CDSL is charged will be reflected in the affected Funds' prospectus, and any such change or changes will not affect shares that have already been issued.

Applicants' Legal Analysis

A. The Multiple Distribution System

1. Applicants seek an exemption from sections 18(g), 18(f)(1), and 18(i) of the Act to the extent the Multiple Distribution System may result in the issuance and sale of a senior security, as defined by section 18(g), which would be prohibited by section 18(f)(1), and to the extent the allocation of voting rights under the Multiple Distribution System may violate the provisions of section 18(i). The proposal does not involve borrowings and will not affect the Funds' assets or reserves. Nor will the proposed arrangement increase the speculative character of the shares of the Funds since all shares will participate equally as a class in all of a Fund's income and expenses with the exception of the differing rule 12b-1 distribution expenses and transfer agency costs.

2. Applicants believe that the issuance and sale of each class of shares by the Funds will better enable the Funds to meet the competitive demands of today's financial services industry and that the Multiple Distribution System will both facilitate the distribution of their securities and provide investors with a choice as to the appropriate method of purchasing shares without assuming excessive accounting and bookkeeping costs or unnecessary investment risks. In addition, applicants believe owners of all classes of shares may be relieved of a portion of the fixed costs normally associated with mutual funds since such costs will, potentially, be spread over a great number of shares than they would be otherwise. Finally, the conversion feature will benefit long-term Class B shareholders by relieving them from most of the burden of distribution-related expenses.

3. Applicants believe that the allocation of expenses and voting rights relating to the rule 12b-1 distribution plans in the manner described above is equitable and would not discriminate against any group of shareholders. In addition, the proposed arrangement should not give rise to any conflict of interest because the rights and privileges of each class of shares are substantially identical and the interests of each respective class of shareholders will be adequately protected since the rule 12b-1 plans will conform to the requirements of rule 12b-1, including the requirement that the plans be approved and continued on an annual basis by the trustees or directors of the Funds.

4. Applicants argue that investors will not be given misleading impressions as to the safety or risk of any classes of shares because each class of shares will be redeemable at all times. No class of shares will have any preference or priority over any other class in the Fund in the usual sense (that is, no class will have distribution or liquidation preference with respect to particular assets, no class will have any right to require that lapsed dividends be paid before dividends are declared on the other classes, and no class will be protected by any reserve or other account). The similarities and the dissimilarities of the classes will be fully disclosed in the Funds' prospectuses and statements of additional information.

B. The CDSL

1. Applicants also seek an exemption from the provisions of sections 2(a)(32), 2(a)(35), 22(c), and 22(d) of the Act, and rule 22c-1 thereunder to permit the Funds to assess a CDSL on certain redemptions of Class B shares and Class C shares, and to permit the Funds to waive the CDSL for certain types of redemptions.

2. Section 2(a)(32) of the Act defines redeemable security to be a security that, upon presentation to the issuer or to a person designated by the issuer, entitles the shareholder to receive approximately his proportionate share of the issuer's current net assets. Applicants assert that the imposition of the CDSL will not restrict a shareholder from receiving his proportionate share of the current net assets of a series of a Fund, but merely defers the deduction of a sales charge and makes it contingent upon an event which may never occur. However, to avoid uncertainty in this regard, applicants request an exemption from the operation of section 2(a)(32) of the Act to the extent necessary to permit implementation of the proposed CDSL.

3. Applicants believe that the proposed CDSL qualifies as a "sales load" within the meaning of section 2(a)(35) of the Act. Applicants believe that the CDSL is functionally a sales charge because it is paid to the Distributor to reimburse it for expenses related to offering shares for sale to the public. Applicants contend that the deferral of the sales charge, and its contingency upon the occurrence of an event that may not occur, does not change the basic nature of this charge, which is in every other respect a sales charge. Nevertheless, in view of the possibility that section 2(a)(35) might be construed to apply only to sales loads charged at the time of purchase, applicants request an exemption from the provisions of section 2(a)(35) to the extent necessary or appropriate to implement the proposed CDSL.

4. Section 22(c) of the Act and rule 22c-1 thereunder require that the price of a redeemable security issued by a registered investment company for purposes of sale, redemption, or repurchase be based on the company's current net asset value. When a redemption of the Funds' shares is effected, the price of such shares on redemption will be based on current net asset value. The CDSL will be deducted at the time of redemption in arriving at the shareholder's proportionate redemption proceeds. However, to avoid any question as to the potential applicability of section 22(c) and rule 22c-1, applicants request an exemption from rule 22c-1 to the extent necessary to permit applicants to impose the proposed CDSL.

5. Section 22(d) of the Act requires a registered investment company, principal underwriter, or dealer to sell a redeemable security only at a current offering price described in the company's prospectus. Rule 22d-1, in substance, permits variation or

elimination of sales loads to particular classes of investors, provided that such variation is described in the investment company's registration statement. The CDSL and the waivers therefrom will be applied as described in the Funds' registration statements. Nonetheless, to preclude any assertion that rule 22d–1 is inapplicable to the CDSL, applicants request an exemption from section 22(d) to the extent necessary or appropriate to implement the CDSL and waivers therefrom as described above.

Applicants' Conditions

Applicants agree that any order granting the requested relief shall be subject to the following conditions:

A. Conditions Relating to the Multiple Distribution System

1. Class A shares, Class B shares, Class C shares, and Class D shares will represent interests in the same portfolio of investments of each series of each Fund, and be identical in all respects, except as set forth below. The only difference between Class A shares, Class B shares, Class C shares, and Class D shares will relate solely to (i) the impact of the disproportionate rule 12b–1 distribution plan payments allocated to each of the holders of Class A shares, Class B shares, and Class C shares of each series of each Fund, the incremental transfer agency costs attributable to the Class B shares and Class C shares of each series of each Fund resulting from the Deferred Option arrangements, and any other incremental expenses subsequently identified that should be properly allocated to one class of shares which shall be approved by the Commission pursuant to an amended order; (ii) the Class B shares will be subject to a CDSL, the Class A shares will be sold subject to a front-end sales load, the Class C shares will be subject to a short-term low CDSL, and the Class D shares will not be subject to any sales load or distribution fee; (iii) the fact that each class of shares that is subject to a rule 12b–1 distribution expense will vote separately as a class with respect to each series of each Fund's rule 12b–1 distribution plan; (iv) different exchange privileges of the Class A shares, Class B shares, Class C shares, and Class D shares; (v) the fact that only Class B shares will have a conversion feature; (vi) the fact that the designation of each class of shares of the respective series of the Funds will differ; and (vii) the fact that the Class D shares will only be offered to institutional investors.

2. The trustees or directors, including a majority of the independent trustees or independent directors, will approve the Multiple Distribution System. The minutes of the meetings of the trustees or directors regarding the deliberations of the trustees or directors with respect to the approvals necessary to implement the Multiple Distribution System will reflect in detail the reasons for the trustees' or directors' determination that the proposed Multiple Distribution System is in the best interests of both the individual Fund and its shareholders.

3. On an ongoing basis, the trustees or directors, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor each series of each Fund for the existence of any material conflicts between the interests of the four classes of shares of each such series. The trustees or directors, including a majority of the independent trustees or independent directors, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. The adviser and the distributor will be responsible for reporting any potential or existing conflicts to the trustees or directors. If a conflict arises, the adviser and the distributor at their own cost will remedy such conflict up to and including establishing a new registered management investment company.

4. Any rule 12b–1 plan adopted or amended by a series of any Fund to permit the assessment of a rule 12b–1 fee on any class of shares which has not had its rule 12b–1 plan approved by the public shareholders of that class of shares of such Fund will be submitted to the public shareholders of such class for approval at the next meeting of such shareholders after the initial issuance of the class of shares if such approval is still required by the Commission. If still required, such meeting is to be held within 16 months of the date that the registration statement relating to such class first becomes effective or, if applicable, the date that the amendment to the registration statement necessary to offer such class first becomes effective.

5. The trustees or directors will receive quarterly and annual statements concerning distribution expenditures complying with paragraph (b)(3)(ii) of rule 12b–1, as it may be amended from time to time. In the statements, only distribution expenditures properly attributable to the sale of a particular class of shares will be used to justify the distribution fee charged to that class. Expenditures not related to the sale of a particular class of shares will not be presented to the trustees or directors to justify the distribution fee attributable to that class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the independent trustees or independent directors in the exercise of their fiduciary duties.

6. Dividends paid by any series of any Fund will respect to its Class A shares, Class B shares, Class C shares, and Class D shares, to the extent any dividends are paid, will be calculated in the same manner, at the same time, on the same day, and will be in the same amount, except that distribution fee payments relating to each class of shares subject to such an expense will be borne exclusively by that class and any incremental transfer agency costs relating to Class B shares or Class C shares will be borne exclusively by that class.

7. The methodology and procedures for calculating the net asset value and dividends and distributions of the four classes and the proper allocation of expenses between the four classes will be reviewed by an expert, who has rendered a report to applicants, which has been provided to the staff of the Commission, that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. On an ongoing basis, the expert, or an appropriate substitute expert, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually reports to the Funds that the calculations and allocations are being made properly. The reports of the expert shall be filed as part of the periodic reports filed with the Commission pursuant to sections 30(a) and 30(b)(1) of the Act. The work papers of the expert with respect to such reports, following request by the Funds (which the Funds agree to provide), will be available for inspection by the Commission staff upon the written request to a Fund for such work papers by a senior member of the Division of Investment Management, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director and any Regional Administrators or Associate and Assistant Administrators. The initial report of the expert is a "Special Purpose" report on the "Design of a System," and the ongoing reports will be "Special Purpose" reports on the "Design of a System and Certain Compliance Tests" as defined and described in SAS No. 44 of the AICPA, as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

8. To ensure that the net asset value per share of each class of shares of any series of any Fund that will maintain a constant-dollar net asset value does not deviate from the net asset value per share of the other classes as a result of variations in net income among the classes from day to day, no class of any such series of any Fund will on any day bear any accrued class expenses that would cause the accrued expenses of such class for such day to exceed its allocated gross income. To accomplish this, any series of any Fund maintaining a constant-dollar net asset value will obtain undertakings from its service providers stating that, if necessary to prevent accrued class expenses of any class from exceeding the allocated gross incomes of such class on any given day, they will waive some or all of the payments to which they otherwise would have been entitled. In this manner, the net asset value per share of each class of shares in any such series of any Fund will remain the same.

9. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends and distributions of the four classes of shares and the proper allocation of expenses between the four classes of shares, and this representation is expected to be concurred with by the expert in the initial report referred to in condition (7) above and will be concurred with by the expert, or an appropriate substitute expert, on an ongoing basis at least annually in the ongoing reports referred to in condition (7) above. Applicants will take immediate corrective measures if this representation is not concurred in by the expert or appropriate substitute expert.

10. The prospectuses of the Funds will contain a statement to the effect that a salesperson and any other person entitled to receive compensation for selling Fund shares may receive different compensation for selling one particular class of shares over another in the Funds.

11. The distributor will adopt compliance standards as to when Class A shares, Class B shares, Class C shares, and Class D shares may appropriately be sold to particular investors. Applicants will require all persons selling shares of any series of any Fund to agree to conform to such standards.

12. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the trustees or directors with respect to the Multiple Distribution System will be set forth in guidelines which will be furnished to the trustees or directors.

13. The Funds will disclose the respective expenses, performance data, distribution arrangements, services, fees, sales loads, deferred sales loads and exchange privileges applicable to each class of shares in every prospectus, regardless of whether all classes of shares are offered through each prospectus. The Funds will disclose with respect to each series the respective expenses and performance data applicable to all classes of shares in every shareholder report. To the extent any advertisement of sales literature describes the expenses or performance data applicable to any class of shares, it will also disclose the respective expenses and/or performance data applicable to all classes of shares. The information provided by applicants for publication in any newspaper or similar listing of the series of the Funds' net asset value and public offering price will present each class of shares separately.

14. Applicants acknowledge that the grant of the exemptive order requested by the application will not imply Commission approval, authorization or acquiescence in any particular level of payments that any Fund may make pursuant to its rule 12b-1 distribution plan in reliance on the exemptive order.

15. In the circumstances and subject to the qualifications described in the application [2], after four but not more than ten years from the date on which a shareholder purchases Class B shares, such shares will convert into Class A shares on the basis of the relative net asset values of the two classes, without the imposition of any sales load, fee or other charge.

B. Condition Relating to the CDSL

1. Applicants will comply with the provisions of proposed rule 6c-10 under the Act, Investment Company Act Release No. 16619 (Nov. 2, 1988), as such rule is currently proposed and as it may be reproposed, adopted or amended.

[2] The Funds will obtain a revenue ruling from the Internal Revenue Service that the assessment of the higher distribution expenses and transfer agency costs and any other special allocations described above with respect to Class B shares, Class C shares, and Class D shares does not result in any dividends or distribution constituting "preferential dividends" under the Internal Revenue Code of 1986, as amended ("IRC"), and that the conversion of Class B shares to Class A shares does not constitute a taxable event under current federal income tax law. The conversion of Class B shares to Class A shares might be suspended if such a ruling was no longer available at the time such conversion was to occur. In that event, no further conversions of Class B shares would occur, and such shares might continue to be subject to the additional distribution fee for an indefinite period which might extend beyond the time at which the conversion of the shares would otherwise have occurred.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-24322 Filed 10-06-92; 8:45 am]

BILLING CODE 8010-01-M

[Investment Company Act Rel. No. 18994; 812-8042]

The Goldman Sachs Group, L.P., et al.; Application

October 1, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("Act").

Applicants: The Goldman Sachs Group, L.P. ("GS Group"), Goldman Sachs & Co., Goldman Sachs Funds Management, L.P., Goldman Sachs Asset Management International, and any persons who may from time to time be limited partners of GS Group.

Relevant Act Sections: Exemption requested under section 6(c) from the provision of section 2(a)(3).[1]

Summary of Application: Applicants seek an order exempting certain institutional limited partners from the definition of "affiliated person" where the limited partners do not own, control, or hold with the power to vote 5% or more of the outstanding voting securities of the partnership. The requested relief would permit the limited partners to sell commercial paper and other financial instruments to, and to engage in certain transactions with, registered investment companies advised or distributed by affiliated persons of GS Group.

Filing Date: The application was filed on August 13, 1992.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 26, 1992, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested.

[1] In the alternative, applicants requested relief from sections 10(f) and 17(a), and to permit certain joint transactions pursuant to rule 17d-1. Because relief from section 2(a)(3) is proposed to be granted, the alternative request is not being acted upon and is not discussed herein.

Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, D.C. 20549. Applicants, 85 Broad Street, New York, New York 10006.

FOR FURTHER INFORMATION CONTACT: James E. Anderson, Law Clerk, at (202) 272-7027, or C. David Messman, Branch Chief, at (202) 272-3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations:

1. The Goldman Sachs Group, L.P. (the "GS Group") and its consolidated corporate and partnership subsidiaries are an international investment banking organization. GS Group is a limited partnership with more than 125 general partners and over 100 limited partners and over 100 limited partners, including certain institutional limited partners. All of the institutional limited partners, except Sumitomo Bank Capital Markets, Inc. ("Sumitomo") and Royal Hawaiian Shopping Center, Inc. ("Royal"), receive a fixed return on their capital contributions (the institutional limited partners other than Sumitomo and Royal are collectively referred to herein as the "Institutional Limited Partners").

2. Most of the investment banking activities of GS Group are conducted through Goldman Sachs & Co. ("GS&Co"). GS&Co, a limited partnership, is registered as a broker-dealer under the Securities Exchange Act of 1934, and as an investment adviser under the Investment Advisers Act of 1940. GS Group is a general partner of GS&Co, with a 99% interest in GS&Co's profits and losses, and GS Group's general partners are the other general partners of GS&Co. Sumitomo is the sole limited partner of GS&Co.

3. The Institutional Limited Partners, primarily insurance companies and insurance holding companies, are passive investors. The Institutional Limited Partners: (a) Do not and cannot participate in the management of the partnership; (b) do not share partnership profits or the risk of loss; (c) each hold less than 5% of the total partner's capital of GS Group; and (d) do not have any direct or indirect interest in the profits and losses of GS&Co. The Institutional Limited Partners are active participants in the financial markets as: (a) issuers of commercial paper, long-term securities, and insurance products; (b) dealers and traders in securities and financial instruments; and (c) financial intermediaries in securities and related transactions.

4. Each of Goldman Sachs Fund Management, L.P., Goldman Sachs Asset Management International, and GS&Co, through its operating division Goldman Sachs Asset Management, serve as investment adviser or sub-adviser to certain investment companies (the "Funds"). The Funds seek the ability to purchase financial instruments, such as commercial paper or other debt securities and guaranteed investment contracts, from the Institutional Limited Partners and to engage in a variety of transactions, meeting the Funds various investment objectives, policies, and other investment criteria, with the Institutional Limited Partners.

5. Applicants seek to exempt the Institutional Limited Partners from the definition of "affiliated person" contained in section 2(a)(3) because of their concern that the proposed transactions would otherwise violate sections 10(f) and 17(a) and rule 17d-1 because the Institutional Limited Partners would be deemed affiliated persons of the Funds' investment advisers by virtue of their status as limited partners of GS Group. Only those limited partners owning, controlling, or holding with the power to vote less than 5% of GS Group's outstanding voting securities and who are affiliated with GS Group solely because they are limited partners of GS Group will be exempt from the definition of "affiliated persons."

Applicants' Legal Conclusions:

1. Section 2(a)(3) defines an "affiliated person" of another person as, among other things, any person directly or indirectly controlling that person, and a partner or copartner of such person. Applicants are concerned that unless the Institutional Limited Partners are exempted from the provisions of section 2(a)(3), to the extent that the Institutional Limited Partners would be deemed affiliated persons of GS Group because they are limited partners of GS Group, and to the extent that GS Group might be deemed to be an affiliated person of the Funds because of its control over GS&Co, the proposed transactions would violate sections 10(f), 17(a), and 17(d).

2. Section 10(f) prohibits registered investment companies from knowingly purchasing, during the existence of an underwriting syndicate, any security a principal underwriter of which is, among other things, an affiliated person of the investment company's adviser. Section 17(a) prohibits, among other things, an affiliated person of a registered investment company from selling securities or other property to, or purchasing securities or other property from, such company. Section 17(d) makes it unlawful for any affiliated person of a registered investment company or any affiliated person of such person acting as principal to effect any transaction in which the investment company is a joint participant or a joint and several participant with such person or persons in contravention of such rules and regulations as the SEC may prescribe. Rule 17d-1, among other things, requires a registered investment company to obtain an exemptive order prior to engaging in any joint transaction with an affiliated person or any affiliated person of an affiliated person.

3. Although organized as a limited partnership, GS Group is the structural holding company of GS&Co, and the Institutional Limited Partners are, in most respects, similar to preferred shareholders of the holding company of an investment banking organization. Unlike shareholders, who often enjoy the right to vote on the affairs of and participate in the profits and losses of the corporation, the Institutional Limited Partners have no ability whatsoever to control or bind GS Group. Yet, unless they hold 5% or more of a company's outstanding voting securities, shareholders are expressly exempted from the definition of affiliated person by section 2(a)(3)(A). The Act does not, however, contain a corresponding exception for limited partners whose only basis of affiliation is ownership of less than a 5% beneficial interest in a partnership. Consequently, the Institutional Limited Partners fall within the definition of affiliated persons notwithstanding the amount of their beneficial interest in GS Group.

4. Applicants contend that the question of affiliation and the applicability of related prohibitions should not turn on the mere form of organization of the entity. The Institutional Limited Partners should not be deemed to be "affiliated persons" of GS Group merely because they are partners with limited rights—rights that as a matter of law prohibit them from taking part in the management and control of the limited partnership. The requested relief will place Institutional Limited Partners on a footing more equal with shareholders who are not considered affiliates of a corporate entity merely because they are own less than 5% of the voting securities of that entity. The requested relief is appropriate in the public interest and consistent with the protection of

investors and the purposes fairly intended by the Act.

5. The Commission has frequently granted exemptions similar to the exemptive relief requested herein in the context of business development companies. Applicants believe that their situation more strongly favors exemption because the Institutional Limited Partners have fewer rights in respect of the affairs of GS Group than common stockholders with equity investments of similar proportion in a corporation. Moreover, the Institutional Limited Partners are limited partners of the parent company of the parent of the investment advisers of the Funds, and thus are much further removed from the investment company than the business development company applicants previously granted exemptive relief.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-24321 Filed 10-6-92; 8:45 am]

BILLING CODE 8010-01-M

[Investment Company Act Rel. No. 19089; International Series Rel. No. 466; 812-7970]

Investor AB; Application

September 30, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("Act").

APPLICANT: Investor AB ("Investor").

RELEVANT ACT SECTION: Section 2(a)(9).

SUMMARY OF APPLICATION: Applicant owns approximately 13% of the voting securities of Astra, and approximately 23% of the voting securities of both STORA and Atlas Copco. Applicant seeks an order declaring that it controls Astra, STORA, and Atlas Copco, notwithstanding that an owner of less than 25% of the voting securities of a company is presumed by the Act not to control such company.

FILING DATE: The application was filed on June 30, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 26, 1992, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reasons for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, S-10332, Stockholm, Sweden.

FOR FURTHER INFORMATION CONTACT: James E. Anderson, Law Clerk, at (202) 272-7027, or C. David Messman, Branch Chief, at (202) 272-3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Investor is a Swedish diversified industrial holding company. Investor owns a controlling interest in, among other things, eight of the largest Swedish companies operating internationally, as well as all of the outstanding equity securities of Saab-Scania AB, a large Swedish manufacturing and technology company. Investor is not registered under the Act by virtue of its reliance on rule 3a-1.[1]

2. Astra is one of the 30 largest pharmaceutical companies in the world. Investor owns approximately 13% of Astra's voting securities and is Astra's largest shareholder. Astra's next largest shareholder owns 6.3% of Astra's voting securities. Six of Astra's eleven directors, including the chairman and vice chairman of Astra, are directors of Investor. An Investor director also serves as Astra's president. Investor's officers and directors play an active role in setting Astra's general policies and provide support to Astra's management.

3. STORA is one of the world's largest forestry concerns. Investor owns approximately 23% of STORA's voting securities and is STORA's largest shareholder. STORA's next largest shareholder owns 4.5% of STORA's voting securities. Five of STORA's ten directors, including the chairman and vice chairman of STORA, are directors of Investor. An Investor director is also STORA's chief executive officer. Investor's officers and directors play an active role in setting STORA's general policies and provide support to STORA's management.

4. Atlas Copco is an international contractor and manufacturer of compressors, mining and contracting equipment, and industrial production equipment. Investor owns approximately 23% of Atlas Copco's voting securities and is Atlas Copco's largest shareholder. Atlas Copco's next largest shareholder, a mutual fund without board representation, owns 18.5% of Atlas Copco's voting securities. Six of Atlas Copco's fifteen directors, including the chairman and two vice chairmen of Atlas Copco, are directors of Investor. Investor's officers and directors play an active role in setting Atlas Copco's general policies and provide support to Atlas Copco's management.

Applicant's Legal Analysis

1. Section 2(a)(9) defines "control" as "the power to exercise a controlling influence over the management or policies of a company." Section 2(a)(9) also creates a presumption that owners of 25% or more of a company's voting securities control such company, and that owners of less than 25% of a company's voting securities do not control such company. A securityholder may obtain a Commission order rebutting either presumption by producing evidence to the contrary.

2. Investor seeks an order of the Commission declaring that it controls Astra, STORA, and Atlas Copco notwithstanding the presumption under the Act that ownership of less than 25% of a company's voting securities is insufficient to establish control.[2]

3. The facts set forth in the application are sufficient to support a finding that Investor controls Astra, STORA, and Atlas Copco. In each case, Investor holds the largest share of the company's voting securities and has significant representation on its board of directors. Moreover, Investor has used its position to influence the policies and management of each company.

---

[1] Rule 3a-1 provides that an issuer meeting the statutory definition of an investment company is not an investment company if: (a) no more than 45% of the value of its total assets (exclusive of government securities and cash items) consists of securities other than government securities, securities issued by employed securities companies, securities of certain majority-owned subsidiaries, and securities issued by companies under the primary control of the issuer which are not investment companies; and (b) no more than 45% of its income after taxes (over the last four fiscal quarters combined) is received from such securities.

[2] The commission notes that any order will not determine whether Investor meets the requirement of "primary control" in rule 3a-1, or otherwise determine whether Investor is an investment company under the Act.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-24286 Filed 10-6-92; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18990; 812-7910]

The Masters Group of Mutual Funds et al.; Notice of Application

September 30, 1992

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: The Masters Group of Mutual Funds (the "Trust"), First Tennessee Bank National Association ("First Tennessee"), and National Financial Services Corporation ("National").

RELEVANT ACT SECTIONS: Exemption requested pursuant to section 6(c) from the provisions of sections 18(f)(1), 18(g), and 18(i) of the Act.

SUMMARY OF APPLICATION: Applicants seek an order to permit the Trust to issue and sell separate classes of securities representing interests in its investment portfolios. The classes would be identical in all respects except for differences relating to distribution expenses or shareholder servicing fees, voting rights relating to rule 12b-1 plans and shareholder service plans, the impact of any incremental transfer agency and other fees directly attributable to a particular class of shares, any difference in dividends and net asset value resulting from differences in rule 12b-1 plan or shareholder servicing fees or certain class expenses, and exchange privileges.

FILING DATE: The application was filed on April 27, 1992, and amended on September 22, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 26, 1992, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington DC 20549. Applicants, the Trust and National, 82 Devonshire Street, Boston, Massachusetts 02109; First Tennessee, 165 Madison Avenue, Memphis, Tennessee 38103.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 272-3026, or Nancy M. Rappa, Branch Chief, at (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Trust is organized as a Massachusetts business trust and filed an initial registration statement as an open-end management investment company on March 11, 1992. The registration statement was declared effective by the Commission on September 14, 1992. The Trust intends initially to offer three series of shares representing interests in three investment portfolios: Municipal Money Market Portfolio, U.S. Government Money Market Portfolio, and U.S. Treasury Money Market Portfolio.

2. First Tennessee, investment adviser to the Trust, has hired Provident Institutional Management Corporation ("PIMC") as the sub-adviser of each portfolio to provide investment management and advisory services to the portfolios. PIMC is a wholly-owned subsidiary of Provident National Bank.

3. National, a wholly-owned subsidiary of Fidelity Brokerage Services, Inc., is the Trust's administrator and distributor.

4. Each currently existing portfolio is a money market portfolio ("Money Market Portfolio"). The existing shares of the portfolios ("Class I Shares") are designed exclusively for investment of short-term monies held in trust, fiduciary, advisory, agency, custodial, or similar accounts held by financial institutions or business organizations. Applicants propose that the Trust issue additional, separate classes of shares ("New Shares").

5. Class I shares are sold and redeemed daily at net asset value without a sales or redemption charge imposed by the Trust. Income dividends of each portfolio are declared daily and paid monthly.

6. Each portfolio may offer several classes of New Shares (a) in connection with a plan of distribution adopted pursuant to rule 12b-1 under the Act (the "12b-1 Plan"), and/or (b) in connection with a non-rule 12b-1 shareholder services plan (the "Shareholder Services Plan") (collectively, the "12b-1 Plan and the Shareholder Services Plan are the "Plans"). The Trust may offer an unlimited number of different classes of shares, in connection with either, both, or none of the Plans. All classes will be consistent with the conditions and representations contained herein. The Trust may also impose a sales charge or a contingent deferred sales charge in the future with respect to the New Shares. However, any contingent deferred sales charge will not be imposed, prior to the adoption of proposed rule 6c-10, without first obtaining an order from the Commission.

7. Applicants plan to use a structure under which New Shares could be created without having to establish corresponding separate portfolios. Under this arrangement, each New Share or Class I Share in a particular portfolio, regardless of class, would represent an interest in the same portfolio of investments and would have identical voting, dividend, liquidation and other rights, preferences, powers, restrictions, limitations, qualifications, designations, and terms and conditions, except that: (a) each class of New Shares would have a different class designation; (b) each class of New Shares offered in connection with a plan (or plans) would bear the expense of the service payments that would be made under the service agreements that have been entered into with respect to such class; (c) each class of New Shares would also bear certain other expenses ("Class Expenses") that are directly attributable only to the class; (d) only the holders of the New Shares of the class or classes involved would be entitled to vote on matters pertaining to a plan and any related agreements relating to such class or classes (for example, the adoption, amendment, or termination of a 12b-1 Plan); and (e) each class would have different exchange privileges.

8. Under a 12b-1 Plan or the Shareholder Services Plan, either the Trust (on behalf of a portfolio) or National (such election to be at the discretion of the Trust) would enter into servicing agreements ("Service Agreements") with banks, broker-dealers or other institutions ("Service Organizations") concerning the provision of certain account administration services to the customers of the Service Organization who may beneficially own shares which are offered pursuant to a particular plan.

9. Service payments paid to a Service Organization pursuant to the 12b–1 Plan would not exceed 0.75% per annum of the average daily net asset value of the 12b–1 Plan shares beneficially owned by customers of the Service Organization. Currently, the amount of such service payments is expected to be up to 0.17% per annum. Service payments to Shareholder Services Plan would not exceed 0.25% per annum of the average daily net asset value of the Service Plan shares owned by customers of the Service Organization. Currently, such service payments are expected to be up to 0.25% per annum. In addition to any amounts received under a Service Agreement, Service Organizations may charge other fees to their customers who are the beneficial owners of New Shares in connection with their customer accounts.

10. Applicants currently propose three classes of shares, including the existing Class I Shares. Class II shares would adopt both a 12b–1 Plan and a Shareholder Services Plan. The 12b–1 Plan would compensate the Trust's principal underwriter or an affiliated broker-dealer, in its capacity as a Service Organization, at the annual rate of 0.07% of net assets of the class for advertising, marketing, and promotional services described above. The Shareholder Services Plan would pay Service Organizations, at an annual rate of up to 0.25% of net assets attributable to such parties for shareholder services described above. Annual Class II expenses under the Plans would total 0.32%. Class III shares would adopt (a) a 12b–1 Plan compensating the Trust's principal underwriter at the annual rate of 0.17% of net assets of the class for advertising, marketing, and promotional services and authorizing reimbursement of expenses, including asset based commission payments to third party broker-dealers and (b) a Shareholder Services Plan paying up to 0.25% of net assets for shareholder services described above. Annual Class III expenses under the Plan would total 0.42% of net assets.

11. Each class of shares may be exchanged only for shares of the same class in another portfolio, except exchanges among classes may be made when a shareholder of a class becomes eligible to purchase shares of another class and ineligible to purchase shares of the class originally held.

12. Expenses of the Trust that cannot be attributed directly to any one portfolio will be allocated to each portfolio either based on the relative net assets of such portfolio or upon the number of shareholders of such portfolio. Gross income of a portfolio and expenses of a portfolio that are not attributable to a particular class, would be borne on the basis of relative net asset values of the classes of that portfolio. All Class Expenses incurred by a class of shares would be borne on a *pro rata* basis by the outstanding shares of such class.

13. Because of the service payments and Class Expenses that may be borne by each class of shares, the net income of (and dividends payable to) each class may be different from the net income of the other classes of shares in the same portfolio.

14. Applications request that relief be extended to the Trust and all other investment companies and any series thereof that are in the same group of investment companies, as defined in rule 11a-3 under the Act.

Applicants' Legal Analysis

1. Applicants request an exemptive order to the extent that the proposed issuance and sale of the Trust's New Shares might be deemed: (a) to result in a "senior security" within the meaning of section 18(g) of the Act and to be prohibited by section 18(f)(1) of the Act; and (b) to violate the equal voting provisions of section 18(i) of the Act. The creation of New Shares may result in shares of a class having "priority over [another] class as to * * * payment of dividends" and having unequal voting rights because under the proposed arrangement certain classes of shares in the same portfolio would bear the expenses of service payments and Class Expenses and enjoy exclusive voting rights with respect to matters concerning the Plans.

2. Applicants believe that the proposed allocation of expenses and voting rights relating to the Plans is equitable and would not discriminate against any group of shareholders. Although investors purchasing shares offered in connection with a Plan would bear the costs associated with the related services, they would also enjoy exclusive shareholder voting rights with respect to matters affecting such Plan. Conversely, investors purchasing shares that are not covered by such a Plan would not be burdened with such expenses or enjoy such voting rights.

3. Proposed arrangement does not involve borrowings and does not affect the Trust's existing assets or reserves. Nor will the proposed arrangement increase the speculative character of the shares in a portfolio, since all shares, including those sold subject to a 12b–1 Plan or a Shareholder Services Plan, will participate *pro rata* in all of the portfolio's income and all of the portfolios's expenses (with the exception of the service payments and other expenses which can only be attributed to a particular class). The Trust's capital structure under the proposed arrangement will not induce any group of shareholders to invest in risky securities to the detriment of any other group of shareholders since the investment risks of each portfolio will be borne equally by all of the portfolio's shareholders.

4. If New Shares are created and Plans adopted as described, the Trust will be able to address more precisely the needs of the particular investors and to cause the associated expense to be borne by such investors. While this objective might be achieved through the ongoing organization of identical but separate investment portfolios, the Trust believes that it would be inefficient, and probably economically or operationally unfeasible, to organize a separate investment portfolio corresponding to each class of New Shares to be created. Not only would excessive accounting, bookkeeping, and legal costs be incurred in organizing and operating such new portfolios, but management of the new portfolios as well as any existing portfolios, might be hampered. Moreover, owners of all shares also would have the additional investment safety and stability resulting from their ability to invest in sizeable investment portfolios and may be relieved of a portion of the fixed costs normally associated with open-end companies since such costs potentially would be spread over a greater number of shares and a larger asset base than they would be otherwise.

Applicants' Conditions

Applicants agree that any order granting the requested relief shall be subject to the following conditions:

1. Each class of shares of a portfolio will represent interests in the same portfolio of investments, and be identical in all respects, except as set forth below. The only differences between the classes of shares of a portfolio will relate solely to: (a) The method of financing certain Class Expenses, which are limited to any or all of the following: (i) Transfer agency fees identified by applicants as being attributable to a specific class of shares, (ii) printing and postage expense related to preparing and distributing materials such as shareholder reports, prospectuses and proxy statements to current shareholders of a specific class, (iii) blue sky registration fees incurred by a class of shares, (iv) Commission registration fees incurred by a class of

shares, (v) the expense of administrative personnel and services as required to support the shareholders of a specific class; (vi) trustees' fees or expenses incurred as a result of issues relating to one class of shares, and (vii) accounting expenses relating solely to one class of shares; (b) expenses assessed to a class pursuant to a Shareholder Services Plan and/or 12b–1 Plan with respect to a class; (c) the fact that the classes will vote separately with respect to the Trust's Shareholder Services Plan and/or 12b–1 Plan; (d) the different exchange privileges of the classes of shares; and (e) the designation of each class of shares of the Trust. Any additional incremental expenses not specifically identified above which are subsequently identified and determined to be properly allocated to one class of shares shall not be so allocated unless and until approved by the Commission pursuant to an amended order.

2. The trustees of the Trust, including a majority of the trustees who are not interested persons of the Trust, as that term is defined in section 2(a)(19) of the Act (the "Independent Trustees") will approve the offering of different classes of New Shares (the "Multi-Class System") prior to the implementation of that system by the Trust. The minutes of the meetings of the trustees of the Trust regarding the deliberations of the trustees with respect to the approvals necessary to implement the Multi-Class System will reflect in detail the reasons for the trustees' determination that the proposed Multi-Class System is in the best interests of the Trust and its shareholders.

3. The initial determination of the Class Expenses that will be allocated to a particular class and any subsequent changes thereto will be reviewed and approved by a vote of the board of trustees of the Trust, including a majority of Independent Trustees. Any person authorized to direct the allocation and disposition of monies paid or payable by the Trust to meet Class Expenses shall provide to the board of trustees and the trustees shall review, at least quarterly, a written report of the amounts so expended and the purposes for which such expenditures were made.

4. On an ongoing basis, the trustees of the Trust, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor the Trust for the existence of any material conflicts between the interests of the two classes of shares. The trustees, including a majority of the Independent Trustees, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. The distributor and the investment adviser will be responsible for reporting any potential or existing conflicts to the trustees. If a conflict arises, the distributor and the investment adviser, at their own cost, will remedy such conflict up to and including establishing a new registered management investment company.

5. Any rule 12b–1 plan adopted or amended to permit the assessment of a rule 12b–1 fee on any class of shares which has not had its rule 12b–1 plan approved by the public shareholders of that class will be submitted to the public shareholders of such class for approval at the next meeting of shareholders after the initial issuance of the class of shares. Such meeting is to be held within 16 months of the date that the registration statement relating to such class first becomes effective or, if applicable, the date that the amendment to the registration statement necessary to offer such class first becomes effective, or within such other period as required by the Commission staff via undertaking in the registration statement relating to such class or, if applicable, in the amendment to the registration statement offering such class.

6. The distributor will adopt compliance standards as to when each class of shares may appropriately be sold to particular investors. Applicants will require all persons selling shares of the Trust to agree to conform to such standards.

7. The Shareholder Services Plans will be adopted and operated in accordance with the procedures set forth in rule 12b–1(b) through (f) as if the expenditures made thereunder were subject to rule 12b–1, except that shareholders need not enjoy the voting rights specified in rule 12b–1. In evaluating the Shareholder Services Plan, the trustees will specifically consider whether (a) such plans are in the best interest of the applicable classes and their respective shareholders, (b) the services to be performed pursuant to the Shareholder Services Plan are required for the operation of the applicable classes, (c) the Service Organizations can provide services at least equal, in nature and quality, to those provided by others, including the Trust, providing similar services and (d) the fees for such services are fair and reasonable in light of the usual and customary charges made by other entities, especially non-affiliated entities, for services of the same nature and quality.

8. Each Service Agreement entered into pursuant to the Shareholder Services Plan will contain a representation by the Service Organization that any compensation payable to the Service Organization in connection with the investment of its customers' assets in the Trust (a) will be disclosed by it to its customers, (b) will be authorized by its customers, and (c) will not result in an excessive fee to the Service Organization.

9. Each Service Agreement entered into pursuant to the Shareholder Services Plan will provide that, in the event an issue pertaining to the Shareholder Services Plan is submitted for shareholder approval, the Service Organization will vote any shares held for its own account in the same proportion as the vote of those shares held for its customers' accounts.

10. The trustees will receive quarterly and annual statements concerning the amounts expended under the Shareholder Services Plans and 12b–1 Plans and the related Service Agreements complying with paragraph (b)(3)(ii) of rule 12b–1, as it may be amended from time to time. In the statements, only expenditures properly attributable to the sale or servicing of a particular class of shares will be used to justify any distribution or servicing fee charged to that class. Expenditures not related to the sale or servicing of a particular class will not be presented to the trustees to justify any fee attributable to that class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the independent trustees in the exercise of their fiduciary duties.

11. Dividends paid by the Trust with respect to each class of its shares, to the extent any dividends are paid, will be calculated in the same manner, at the same time, on the same day, and will be in the same amount, except that service payments made by a class under a Plan and any Class Expenses will be borne exclusively by that class.

12. The methodology and procedures for calculating the net asset value and dividends and distributions of the classes and the proper allocation of expenses among the classes has been reviewed by an expert (the "Expert") who has rendered a report to the applicants, which has been provided to the staff of the Commission, that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. On an ongoing basis, the Expert, or an appropriate substitute Expert, will monitor the manner in which the calculations and allocations are being

made and, based upon such review, will render at least annually a report to the Trust that the calculations and allocations are being made properly. The reports of the Expert shall be filed as part of the periodic reports filed with the SEC pursuant to sections 30(a) and 30(b)(1) of the Act. The work papers of the Expert with respect to such reports, following request by the Trust (which the Trust agrees to provide), will be available for inspection by the Commission staff upon the written request to the Trust for such work papers by a senior member of the Division of Investment Management, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director, and any Regional Administrators or Associate and Assistant Administrators. The initial report of the Expert is a "Special Purpose" report on the "Design of a System" and ongoing reports will be "Special Purpose" reports on the "Design of a System and Certain Compliance Tests" as defined and described in SAS No. 44 of the AICPA, as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

13. The applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends and distributions of the classes of shares and the proper allocation of expenses among the classes of shares and this representation will be concurred with by the Expert in the initial report referred to in condition (12) above and will be concurred with by the Expert, or an appropriate substitute Expert, on an ongoing basis at least annually in the ongoing reports referred to in condition (12) above. Applicants will take immediate corrective action if this representation is not concurred in by the Expert or appropriate substitute Expert.

14. The prospectus of each class of shares will contain a statement to the effect that a salesperson and any other person entitled to receive compensation for selling or servicing Trust shares may receive different compensation with respect to one particular class of shares over another in the Trust.

15. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the trustees of the Trust with respect to the Multi-Class System will be set forth in guidelines which will be furnished to the trustees.

16. The Trust will disclose the respective expenses, performance data, distribution arrangements, services, fees, sales loads, deferred sales loads, and exchange privileges applicable to each class of shares in every prospectus, regardless of whether all classes of shares are offered through each prospectus. The Trust will disclose the respective expenses and performance data applicable to all classes of shares in every shareholder report. To the extent any advertisement or sales literature describes the expenses or performance data applicable to any class of shares of a portfolio, it will also disclose the respective expenses and/or performance data applicable to all classes of shares of such portfolio. The information provided by applicants for publication in any newspaper or similar listing of the Trust's net asset value and public offering price will present each class of shares separately.

17. Applicants acknowledge that the grant of the exemptive order requested by the application will not imply Commission approval, authorization of or acquiescence in any particular level of payments that the Trust may make pursuant to its rule 12b–1 distribution plan or Shareholder Services Plan in reliance on the exemptive order.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–24323 Filed 10–6–92; 8:45 am]

BILLING CODE 8010–01–M

[Rel. NO. IC–18992; 812–8020]

Xerox Financial Life Insurance Company, et al

September 30, 1992.

AGENCY: Securities and Exchange Commission (the "Commission" or "SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Xerox Financial Life Insurance Company ("Company"), Xerox Variable Annuity Account Five (the "Separate Account"), and Xerox Life Sales Company.

RELEVANT 1940 ACT SECTIONS: Order requested under section 6(c) for exemptions from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order permitting the deduction of a mortality and expense risk charge from the assets of the Separate Account under certain individual deferred variable annuity contracts (the "Contracts").

FILING DATE: The application was filed on July 29, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on the application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on October 26, 1992 and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, by certificate. Hearing requests should state the nature of the interest, the reason for the request and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o Dean H. Goossen, Esq., Xerox Financial Life Insurance Company, One Parkview Plaza, Oakbrook Terrace, IL 60181.

FOR FURTHER INFORMATION CONTACT: Joyce M. Pickholz, Attorney, at (202) 272–3046 or Wendell M. Faria, Deputy Chief, at (202) 272–2060, Office of Insurance Products (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.

Applicants' Representations

1. The Company is a stock life insurance company which was originally incorporated in 1972 as Industrial Indemnity Life Insurance Company, a California corporation. The Company is a wholly-owned subsidiary of Industrial Indemnity Company, an indirect subsidiary of Xerox Corporation.

2. The Separate Account is registered with the Commission as a unit investment trust under the 1940 Act. The Separate Account currently is divided into sub-accounts which will invest in shares of the portfolios of Van Kampen Merritt Series Trust or Lord Abbett Series Fund, Inc.

3. The Contracts will be distributed through Xerox Life Sales Company, an affiliate of the Company.

4. The Contracts are individual flexible purchase payment deferred variable annuity contracts which are available in connection with retirement plans which may or may not qualify for federal tax advantages. The minimum

payment is $5,000 for a nonqualified contract and $2,000 for a qualified contract. Additional purchase payments must be at least $2,000.

5. Any premium or other taxes payable to a state or other governmental entity will be charged against the Contract Values. The Company intends to deduct state premium taxes, which range from 0% to 4%, at the time annuity payments begin or upon surrender if it is unable to receive a refund. However, the company reserves the right to deduct the premium taxes when incurred. The Company does not currently maintain a provision for federal income taxes with respect to the Separate Account but reserves the right to establish a provision for income tax incurred as a result of the operation of the Separate Account. The Company will deduct for income tax incurred by it as a result of the operation of the Separate Account whether or not there was a provision for taxes and whether or not it was sufficient.[1]

6. Contract owners may transfer all or part of their interest in a sub-account to another sub-account of the Separate Account. The Company will deduct a transfer fee from the amount which is transferred which will be equal to the lesser of $25 or 2% of the amount transferred if there have been more than 12 transfers in the contract year. After annuity payments begin, the Contract owner may make one transfer per contract year.

7. The Company will deduct an annual contract maintenance charge of $30 from the contract value on each contract anniversary, at the time a Contract is surrendered and, after the annuity date, on a monthly basis. Applicants represent that the charge has not been set at a level greater than its cost and contains no element of profit.

8. In addition, the Company deducts on each valuation date an administrative expense charge which is equal, on an annual basis, to .15% of the daily net asset value of the Separate Account. This charge is designed to cover the shortfall in revenues from the contract maintenance charge. The Company does not intend to profit from this administrative expense charge. This charge will be reduced to the extent that the amount of the charge is in excess of that necessary to reimburse the Company for its administrative expenses. Should this charge prove to be insufficient, the Company will not increase this charge and will incur the loss. Applicants are relying upon Rule 26a-1 with respect to the deduction of this charge.

9. The Contracts do not provide for a front-end sales charge. Instead, a withdrawal charge (sale load) is imposed on withdrawals of contract values attributable to purchase payments that have not been held for longer than five contract years. The withdrawal charge is equal to 5% of the purchase payment withdrawn. Subject to certain conditions noted in the application, up to 10% of purchase payments may be withdrawn free of the withdrawal charge on a noncumulative basis once each contract year.

10. The Company assumes mortality and expense risks under the Contracts. The mortality risks arise from the contractual obligation to make annuity payments after the annuity date for the life of the annuitant and to waive the withdrawal charge in the event of the death of the annuitant or contract owner (as applicable). The expense risk assumed by the Company is that all actual expenses involved in administering the Contracts, including contract maintenance costs, administrative fees, mailing costs, data processing costs, legal fees, accounting fees, filing fees and the costs of other services may exceed the amount recovered from the contract maintenance charge and the administrative expense charge. To compensate it for assuming these risks, the Company deducts on each valuation date a mortality and expense risk charge, the amount of which is equal, on an annual basis to 1.25% (consisting of approximately .90% for mortality risks and approximately .35% for expense risks) of the daily net asset value of the separate account.

Applicants' Legal Analysis and Conditions

1. Applicants request an exemption from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to the extent relief is necessary to permit the deduction from the Separate Account of the mortality and expense risk charge under the contracts. Sections 26(a)(2)(C) and 27(c)(2), as herein pertinent, prohibit a registered unit investment trust and any depositor thereof or underwriter therefor from selling periodic payment plan certificates unless the proceeds of all payments (other than sales load) are deposited with a qualified bank as trustee or custodian and held under arrangements which prohibit any payment to the depositor or principal underwriter except a fee, not exceeding such reasonable amounts as the Commission may prescribe, for performing bookkeeping and other administrative services.

2. Applicants submit that the Company is entitled to reasonable compensation for its assumption of mortality and expense risks and represent that the mortality and expense risk charge is within the range of industry practice for comparable variable annuity contracts. Applicants state that these representations are based upon an analysis of the mortality risks, taking into consideration such factors as the guaranteed annuity purchase rates, the expense risks taking into account the existence of charges against Separate Account assets for other than mortality and expense risks, the estimated costs, now and in the future, for certain product features, and industry practice with respect to comparable variable annuity contracts. The Company will maintain at its principal office, available to the Commission, a memorandum setting forth in detail the products analyzed and the methodology and results of this analysis.

3. Applicants state that if the mortality and expense risk charge is insufficient to cover the actual costs, the loss will be borne by the Company. Conversely, if the amount deducted proves more than sufficient, the excess will be a profit to the Company. The mortality and expense risk charge is guaranteed by the Company and cannot be increased.

4. Applicants acknowledge that the withdrawal charge may be insufficient to cover all costs relating to the distribution of the Contracts and that if a profit is realized from the mortality and expense risk charge, all or a portion of such profit may be offset by distribution expenses not reimbursed by the withdrawal charge. In such circumstances a portion of the mortality and expense risk charge might be viewed as providing for a portion of the costs relating to distribution of the Contracts. Notwithstanding the foregoing, the Company has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements made with respect to the Contracts will benefit the Separate Account and the Contract owners. The basis for such conclusion is set forth in a memorandum which will be maintained by the Company at its principal office and will be available to the Commission.

5. Applicants represent that the Separate Account will invest only in underlying mutual funds that undertake, in the event they should adopt any plan under Rule 12b-1 under the 1940 Act to

[1] *See* File No. 33-50174, Form N-4 registration statement for the Separate Account, which Applicants have incorporated herein by reference.

finance distribution expenses, to have such plan formulated and approved by a board of directors or a board of trustees, a majority of the members of which are not "interested persons" of such funds within the meaning of section 2(a)(19) of the 1940 Act.

Conclusion

Applicants assert that for the reasons and upon the facts set forth above, the requested exemptions from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to deduct the mortality and expense risk charge under the Contracts meet the standards in section 6(c) of the 1940 Act. In this regard, Applicants assert that the exemptions are necessary and appropriate in the public interest and consistent with the protection of investors and the policies and purposes of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-24327 Filed 10-6-92; 8:45 am]

BILLING CODE 8010-01-M

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Meeting of the President's Council of Advisors on Science and Technology

ACTION: Notice of meeting.

SUMMARY: The President's Council of Advisors on Science and Technology will meet on October 22-23, 1992. The meeting will begin with an open session at approximately 10 a.m. on Thursday, October 22, 1992, in the Conference Room, Points of Light Foundation, 736 Jackson Place, NW., Washington, DC, with one substantive agenda item to be discussed. This open session will end at approximately 12 noon. On Thursday afternoon, at approximately 1 p.m., the Council will continue its open session with two substantive agenda items to be discussed. This session will end at approximately 4:30 p.m. On Friday, October 23, 1992, the Council will reconvene in closed session at approximately 9 a.m. with two substantive agenda item to be discussed. This closed session will end at approximately 12 noon on Friday.

TYPE OF MEETING: Open and Closed.

AGENDA: On Thursday, October 22, there will be a discussion of the report on the U.S. Research Intensive Colleges and Universities Project. On Thursday afternoon, the Council will discuss possible panel and study topics for 1993. The Council will also hold a joint meeting with the Canadian National Advisory Board on Science and Technology, beginning at approximately 2:15 p.m.

During the closed session on Friday, October 23, the Council will be briefed on, and hold a discussion regarding, the prospects of impact of the upcoming new Office of Management and Budget Circular A-21. The Council will also finalize any remaining panel or study reports for 1992. This portion of the meeting will be closed to the public, pursuant to Title 5, U.S. Code, section 552b(c) (4), (6) & (9)(B).

For information regarding time, place and agenda, and for those wishing to attend the open portion of the meeting, please contact Ms. Ann Barnett, (202 395-4692, prior to 3 p.m. on October 21, 1992. Other questions can be directed to Dr. Alicia K. Dustira, (202) 395-4692.

Dated: October 2, 1992.

Vickie V. Sutton,

Assistant Director, Office of Science and Technology Policy.

[FR Doc. 92-24348 Filed 10-6-92; 8:45 am]

BILLING CODE 3170-01-M

TENNESSEE VALLEY AUTHORITY

Privacy Act of 1974; New System of Records

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Notice of new system of records.

SUMMARY: In accordance with 5 U.S.C. 552a(e)(4), TVA is publishing a notice of the existence and character of a new system of records entitled TVA-36, "Section 26a Permit Application Records—TVA."

FOR FURTHER INFORMATION CONTACT: Mark R. Winter, Tennessee Valley Authority, 1101 Market Street (MR 2F), Chattanooga, TN 37402-2801; telephone: (615) 751-2523.

SUPPLEMENTARY INFORMATION: On July 28, 1992 (57 FR 33382-33383) TVA published notice of a proposed new system of records entitled TVA-36, "Section 26a Permit Application Records—TVA." Reports were submitted to Congress and the Office of Management and Budget (OMB) on July 16, 1992, pursuant to the Privacy Act and OMB Circular No. A-130. No comments were received in response to the reports. In addition, no public comments were received on any aspect of the proposed new system of records notice for TVA-36. Accordingly, TVA is today publishing a notice of this new system of records. The text of TVA's notices covering its other systems of records appears at:

55 FR 34816-34840 (August 24, 1990), Compilation.
55 FR 41171 (October 9, 1990), Correction to compilation.
56 FR 4119-4120 (February 1, 1991), New routine uses for TVA-12.
56 FR 19137-19138 (April 25, 1991), New routine uses for TVA-2 and TVA-26.
56 FR 22902 (May 17, 1991), New routine uses for TVA-2 and TVA-11.
56 FR 30860 (August 1, 1991), New routine use for TVA-2.

This document gives notice that the following new TVA system of records is in effect:

TVA-36

SYSTEM NAME:

Section 26a Permit Application Records—TVA.

SYSTEM LOCATION:

For applications involving private facilities located on TVA reservoirs, such as boathouses, piers, docks, launching ramps, marine railways, beaches, utilities, and ground improvements, the records are maintained in the following locations:

—Manager, Property Management, Eastern Land Resources District, TVA, 2611 West Andrew Johnson Highway, Morristown, TN 37814.
—Manager, Property Management, Central Land Resources District, TVA, P.O. Box 606, Athens, TN 37303.
—Manager, Property Management, Southern Land Resources District, TVA, 170 Office Service Warehouse Annex, Muscle Shoals, AL 35660.
—Manager, Property Management, Western Land Resources District, TVA, P.O. Box 280, Paris, TN 38242.

For applications involving other facilities, the records are maintained by the Manager, Property Management and Administration Department, Land Resources, TVA, Ridgeway Road, Norris, TN 37828.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system includes individuals who have filed a Section 26a application for approval of construction of such things as boat ramps, docks, bridges, and dams located along, across, or in the Tennessee River and its tributaries. Also included in this system may be individuals whose structures do not have Section 26a permits, or whose approved structures have deteriorated so as to pose a threat to navigation, flood control, public lands or reservations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Section 26a permit applications made by individuals, businesses and industries, utilities, and federal, state, county and city government agencies.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831dd.

PURPOSE(S):

Section 26a of the Tennessee Valley Authority Act of 1933, as amended, requires that TVA review and approve plans for the construction, operation, and maintenance of any dam, appurtenant works, or other obstruction affecting navigation, flood control, or public lands or reservations across, along, or in the Tennessee River or any of its tributaries. The information collected is used to assess the impact of the proposed project on the statutory TVA programs and the environment and determine if the project can be approved. Rules on the application for review and approval of such plans are published in 18 CFR part 1304, Approval of Construction in the Tennessee River System and Regulation of Structures.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To State or other Federal agencies for use in program evaluation, providing assistance to program participants, or engaged at TVA's direction in providing support services to the program, to the extent necessary to the performance of those services.

To TVA consultants, contractors, subcontractors or individuals who contract or subcontract with TVA, who are engaged in studies and evaluation of TVA's administration or other matters involving its Section 26a program or who are providing support services to the program, to the extent necessary to the performance of the contract.

To provide information to a Federal, State, or local entity, in response to its request, in connection with the letting of a contract, or issuance of a license, grant, or other benefit by the requesting entity to the extent that the information is relevant and necessary to the requesting agency's decision on such matters.

To respond to a request from a Member of Congress regarding the status of a specific application.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

To refer, where there is an indication of a violation of statute, regulation, order, or similar requirement, whether criminal, civil, or regulatory in nature, to the appropriate entity, including Federal, State, or local agencies or other entities charged with enforcement, investigative, or oversight responsibility.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on automated data storage devices, on microfilm, and in hardcopy files.

RETRIEVABILITY:

Records in the Property Management and Administration Department, Norris, Tennessee, may be retrieved by personal identifier (name of applicant), land tract number, or Section 26a application number, stream location, reservoir, county, or subdivision. Records in field offices are interfiled with land tract records and are retrieved by land tract number.

SAFEGUARDS:

Access to and use of these records are limited through physical, administrative, and computer system safeguards to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

Records are retained in accordance with approved TVA records retention schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Manger, Property Management and Administration Department, Land Resources, TVA, Norris, TN 37828.

NOTIFICATION PROCEDURE:

Individuals seeking to learn if information on them is maintained in this system of records should address inquiries to the system manager named above. Requests should include the individual's full name. A land tract number, Section 26a permit application number, stream location or legal property description is not required but may expedite TVA's response.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about them in this system of records should contact the system manager named above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information about them maintained in this system should direct their request to the system manager named above.

RECORD SOURCE CATEGORIES:

Information in this system is solicited from the individual to whom the record pertains. Information may also be obtained from other Federal, state, county or city government agencies; public records and directories; landowners, tenants, and other individuals and business entities, including financial institutions, having an interest in or knowledge related to land ownership, appraisal, or title history; and TVA personnel and contractors including independent appraisers and commercial title companies.

Michael L. Scalf,

TVA Archivist.

[FR Doc. 92–24295 Filed 10–6–92; 8:45 am]

BILLING CODE 8120–08

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Result of Dispute Settlement Proceeding Initiated Against Norway under the GATT Agreement on Government Procurement Pursuant to Title VII of the Omnibus Trade and Competitiveness Act of 1988

AGENCY: Office of the United States Trade Representative.

ACTION: Publication of Results of Dispute Settlement Proceeding.

SUMMARY: The purpose or this notice is to provide the results of the dispute settlement proceeding that the United States initiated against Norway under the GATT Agreement on Government Procurement (Code). USTR initiated the case following the identification of Norway as a country apparently in violation of its Code obligations in the April 1991 Title VII review of foreign country discrimination in government procurement against U.S. products or services. This notice is published pursuant to section 305(j)(1)(a) of the Trade Agreements Act of 1979 (1979 Act), as amended (19 U.S.C. 2515(j)(1)(A)).

On May 13, 1992, the Code Committee on Government Procurement formally adopted a dispute settlement panel report, which concluded that Norway had violated its obligations in the procurement of an electronic toll collection system for the city of

Trondheim and recommended that Norway ensure that its procuring entitles conduct their procurement in accordance with its findings. On May 13, 1992, Norway agreed to comply with the panel's recommendations, and on June 12, 1992, Norway provided to the United States a written description of the measures it has taken to ensure that it conducts its procurement in accordance with the panel's findings, steps which the President found satisfactory. Pursuant to section 305(f)(2)(B) of the 1979 Act, therefore, the President will take no action to limit government procurement from Norway with respect to this matter.

FOR FURTHER INFORMATION CONTACT: Douglas Newkirk, Assistant United States Trade Representative for GATT Affairs, at (202) 395-6843, or Sanford Reback, Assistant General Counsel, at (202) 395-7203.

SUPPLEMENTARY INFORMATION: Title VII of the Omnibus Trade and Competitiveness Act of 1988 (1988 Act) amended section 305 of the 1979 Act to require, among other things, the Administration to review discrimination against U.S. goods or services in foreign government procurements markets. In the April 1991 Title VII review, the Administration identified Norway as a country apparently in violation of its Code obligations. Norway had excluded U.S. suppliers from the procurement of an electronic toll collection system for the city of Trondheim. Instead, Norway had apparently sole-sourced the equipment required from a Norwegian supplier. The United States believed that this action was inconsistent with several of Norway's obligations under the Code, including the obligation not to discriminate against the products and suppliers of other signatories to the Code.

Pursuant to the requirements of Title VII, and in accordance with procedures outlined in the Code, on April 26, 1991, the United States requested consultations with Norway in an attempt to resolve the dispute. When these consultations did not prove successful in addressing U.S. concerns within the 60-day period specified in the statute, the United States initiated formal dispute settlement proceedings under the Code, in accordance with the statute. The United States originally requested the formation of a dispute settlement panel in this matter on June 20, 1991. At that time, Norway availed itself of the three-month period provided under the Code to allow the Committee on Government Procurement to examine the matter further. Following the expiration of the three-month period, the United States again requested the formation of a panel to examine the dispute, and the panel was formed on September 23, 1991.

On April 6, 1992, the panel submitted its report on the dispute to the United States and Norway. In accordance with Code procedures, the report was circulated to other Code signatories on April 28, 1992, and was formally considered by the Code Committee on May 13, 1992.

The report concluded that Norway had violated its obligations under the Code in its conduct of the Trondheim procurement. Although Norway attempted to justify its actions in the procurement as allowable on the basis that is was procuring in the context of a research and development project, the panel agreed with the U.S. contention that the principal purpose of the Norwegian procurement was the acquisition of toll collection equipment for the city of Trondheim, not research and development *per se*. Thus, Norway's action in single tendering the procurement to a particular Norwegian supplier violated the basic obligation of the Code the signatories may not discriminate against the products or suppliers of other signatories in procurements subject to the obligations of the Code.

The panel recommended that Norway take actions to ensure that its procuring entities conduct their procurement in accordance with its findings, and on May 13, 1992, Norway agreed to accept the recommendations of the Panel. On June 12, 1992, Norway provided the United States with written documentation of the steps that it has taken to comply with the panel report.

Section 305(f)(2)(B) of the 1979 Act specifies that the President shall take no action to limit procurement from Norway in this instance if Norway takes the actions recommended as a result of the dispute settlement proceedings "to the satisfaction of the President." The President has decided that Norway's actions in implementing the panel's recommendations are satisfactory. Thus, the United States will take no action to limit government procurement from Norway with respect to this matter under Title VII.

Julius L. Katz,

Acting United States Trade Representative.

[FR Doc. 92-24346 Filed 10-6-92; 8:45 am]

BILLING CODE 3190-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice, Receipt of Noise Compatibility Program and Request for Review; Bismarck Municipal Airport, Bismarck, ND

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the City of Bismarck for Bismarck Municipal Airport under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Bismarck Municipal Airport under part 150 in conjunction with the noise exposure map, and that this program will be approved or disapproved on or before March 10, 1993.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is September 11, 1992. The public comment period ends November 10, 1992.

FOR FURTHER INFORMATION CONTACT: William J. Flanagan, Federal Aviation Administration, Airports District Office, Room 102, 6020 28th Avenue South, Minneapolis, Minnesota 55450, (612) 725-4463. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Bismarck Municipal Airport are in compliance with applicable requirements of part 150, effective September 11, 1992. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before March 10, 1993. This notice also announces the availability of this program for public review and comment.

Under section 103 of title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft

operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The City of Bismarck submitted to the FAA on June 3, 1991 noise exposure maps, descriptions and other documentation which were produced during the F.A.R. part 150 Noise Compatibility Study from September 1989 to June 1991. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the City of Bismarck. The specific maps under consideration are the 1989 existing Noise Exposure Map and the 1995 future Noise Exposure Map. The FAA has determined that these maps for Bismarck Municipal Airport are in compliance with applicable requirements. This determination is effective on September 11, 1992.

FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting those noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detail overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR part 150, that the statutorily required consolation has been accomplished.

The FAA has formally received the noise compatibility program for Bismarck Municipal Airport, also effective on September 11, 1992. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before March 10, 1993.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, section 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, Minneapolis Airports district Office, Room 102, 6020 28th Avenue South, Minneapolis, Minnesota 55450.

Bismarck Municipal Airport, Airport Administration, 2301 University, Building 22, Bismarck, North Dakota 58504.

City of Bismarck, City Auditors Office, 221 North 5th, Bismarck, North Dakota 58501.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Minneapolis, Minnesota, September 11, 1992.

Franklin D. Benson,

Manager, Minneapolis Airports district Office FAA Great lakes Region.

[FR Doc. 92-24356 Filed 10-6-92; 8:45 am]

BILLING CODE 4310-13-M

Notice of Intent To Rule on Application To Impose and Use Revenue From a Passenger Facility Charge (PFC) at the Steamboat Springs Airport/Bob Adams Field, Steamboat Springs, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at the Steamboat Springs Airport/Bob Adams Field under the provision of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101-508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before November 6, 1992.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Alan E. Wiechmann, Manager, Denver Airports District Office, DEN-ADO, Federal Aviation Administration, 5440 Roslyn Street, suite 300, Denver, Colorado 80216-6026.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Harvey M. Rose of the Steamboat Springs Airport/Bob Adams Field at the following address: P.O. Box 775088, Steamboat Springs, Colorado 80477.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to the City of Steamboat Springs under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Bradley S. Davis, Colorado State Engineer, Denver Airports District Office, 5440 Roslyn Street, suite 300, Denver, Colorado 80216-6026. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at the Steamboat Springs Airport/Bob Adams Field under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On September 28, 1992, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Steamboat Springs, Steamboat Springs, Colorado was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later then January 20, 1993.

The following is a brief overview of the application.

Level of the Proposed PFC: $3.

Proposed charge effective date: March 1, 1993.

Proposed charge expiration date: March 1, 2012.

Total estimated PFC revenue: $1,887,337.

Brief description of proposed projects: Construct terminal building; construct terminal complex access road; utility extensions to terminal site; terminal building parking lot; rehabilitate air carrier apron and taxiway; tenant improvements at terminal; and land reimbursement.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Carriers as described in part 135 of the FAA Rules and Regulations.

Any person may inspect the application in person at the FAA office listed above under "**FOR FURTHER INFORMATION CONTACT**" and at the FAA Regional Airports office located at: Federal Aviation Administration, Airports Division, 1601 Lind Avenue, SW., suite 540, Renton, WA 98055-4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Steamboat Springs Airport/Bob Adams Field, Steamboat Springs, Colorado.

Issued in Renton, Washington on September 28, 1992.

Edward G. Tatum,

Manager, Airports Division Northwest Mountain Region.

[FR Doc. 92-24353 Filed 10-6-92; 8:45 am]

BILLING CODE 4910-13-M

Federal Transit Administration

Environmental Impact Statement for the North Central Corridor Project, North of Park Lane in Dallas, TX

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The Federal Transit Administration (FTA) and Dallas Area Rapid Transit (DART) intend to prepare an Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act (NEPA) for transit improvements in the North Central Corridor, north of Park Lane. The EIS will include an evaluation of a No-Build alternative, two Transportation System Management (TSM) alternatives, including High Occupancy Vehicle (HOV) options, an extension of the light rail transit system from the terminus of the line now under construction at Park Lane to the East Plano Transit Center at Parker Road, and any additional alternatives which result from the scoping process. Scoping will be accomplished through correspondence with interested persons, organizations, and Federal, State, and local agencies, and through three public meetings.

FOR FURTHER INFORMATION CONTACT: Ms. Peggy Crist, FTA Region VI, 819 Taylor Street, suite 9A-32, Fort Worth, Texas 76102, telephone (817) 334-3787. Written materials on the proposed alternatives may be requested from Ms. Amy Coleman, Dallas Area Rapid Transit, 601 Pacific Avenue, Dallas, Texas 75202; telephone (214) 658-6314 until November 6, 1992. After November 6, Ms. Coleman can be contacted at (214) 749-2777, 1300 Pacific Avenue, Dallas Texas, 75201.

DATES: Written comments on the scope of alternatives and impacts to be considered must be received by FTA or DART on or before November 6, 1992. Public scoping meetings will be held on October 26, 1992 at the Richardson Civic Center, on October 28,1992 at the Plano City Hall and October 29, 1992 at the Hillcrest High School. Interested persons may view exhibits describing the North Central Corridor north of Park Lane beginning one hour before each meeting. See addresses below.

ADDRESSES: Written comments on the project scope should be sent to Ms. Amy Coleman, Dallas Area Rapid Transit, P.O. Box 660163, Dallas, Texas 75266. Scoping meetings will be held at the following locations:

1. Monday, October 26, 1992: 6 pm exhibit viewing; 7:00 pm—public meeting, Richardson Civic Center, 411 Arapaho, (The Parks Room).
2. Wednesday, October 28, 1992: 6 pm exhibit viewing; 7:00 pm—public meeting, Plano City Hall, 1520 Avenue K.
3. Thursday, October 29, 1992: 6 pm exhibit viewing; 7:00 pm—public meeting, Hillcrest High School Auditorium, 9924 Hillcrest.

SUPPLEMENTARY INFORMATION:

Scoping

Members of the public and affected Federal, State of Texas, and local agencies are invited to attend public meetings to be held on October 26, 28, and 29, 1992 at the times and locations indicated under Dates and Addresses, to participate in defining the alternatives to be evaluated in the EIS, and identifying any significant social, economic, or environmental issues related to the alternatives. Comments on the appropriateness of the alternatives and impact issues listed in this notice are encouraged. Specific suggestions on additional alternatives to be examined and issues to be addressed are welcome and will be given serious consideration in developing the final study scope.

Additional information on the EIS process, alternatives and environmental impact issues to be addressed by the study is contained in a "Scoping Information" document. Copies have been sent to affected Federal, State and local government agencies and interested parties on record, and are available from the DART contact listed above. Others may request the scoping material by contacting Ms. Amy Coleman at the above address or by calling her office at 214/658-6314. Scoping comments may be made verbally at any of the public scoping meetings or in writing. During scoping, comments should focus on identifying special social, economic, or environmental impacts to be evaluated, and suggesting alternatives which are less costly or less environmentally damaging while achieving similar transit objectives.

Scoping should not indicate a preference for a particular alternative. Comments or preferences should be communicated after the Draft EIS has been completed. If you wish to be placed on a mailing list to receive further information as the project develops, contact Ms. Amy Coleman as previously described.

These meetings are not formal public hearings. Public hearings will be held after the Draft EIS is completed. DART

staff will be present to describe project alternatives, answer questions and receive comments.

Description of Study Area and Project Need

In June 1989, the DART Board of Directors adopted a Transit System Plan with 66 miles of light rail transit, 37 miles of high occupancy vehicle lanes and 18 miles of commuter rail. The adopted plan includes light rail transit in the study corridor. The corridor includes portions of three cities: Dallas, Richardson, and Plano. The corridor's southern boundary is the Park Lane station, which is located north of Northwest Highway along the former Southern Pacific railroad. Spring Creek Parkway is considered the northern boundary, Preston Road is the western and Jupiter Road is the eastern boundary. The corridor is 11.2 miles in length from Park Lane to Spring Creek Parkway and is home to several major activity and employment centers, including educational institutions and hospitals. An examination of employment growth patterns shows that the North Central corridor will continue to support high density development including retail centers, office complexes, and large scale regional activity centers.

Alternatives

Other alternatives proposed for consideration in the EIS are as follows:

No Build. The No Build alternative expands current bus service to meet anticipated year 2010 demand. Programmed high occupancy vehicle (HOV) lanes on LBJ (I.H. 635) and North Central Expressway (U.S. 75) are assumed to be committed. Highway and thoroughfare improvements are also assumed. The committed light rail starter system to Park Lane Station is also included.

TSM–NC HOV. This Transportation Systems Management (TSM) alternative includes the projects in the No Build alternative along with operational and relatively low cost physical improvements such as roadway and intersection modifications, expanded park-and-ride facilities, signalization improvements, and bus route restructuring.

The committed North Central HOV included in the No Build alternative is a one-way reversible HOV lane in the median of North Central Expressway between LBJ and Parker Road. The TSM–NC HOV alternative adds two one-way, concurrent flow lanes in the median of U.S. 75 south of LBJ to the Dallas CBD.

TSM–SP HOV. The TSM–SP HOV alternative is similar to the TSM–NC HOV alternative with the exception of the HOV element. In place of the North Central HOV extension south of LBJ, the HOV element of the TSM–SP HOV alternative consists of a two-way HOV in DART right-of-way (formerly Southern Pacific Railroad right-of-way). The HOV lanes originate at the Park Lane Station, and serve the Richardson Transit Center near Arapaho Road, and the East Plano Transit Center near Parker Road.

LRT–Parker Road. This alternative includes the projects in the No Build alternative along with light rail transit (LRT) in DART right-of-way. This LRT alternative originates at the Park Lane Station and terminates at the East Plano Transit Center at Parker Road.

LRT–Arapaho Road. This alternative is similar to the LRT–Parker Road alternative except that it terminates at the Richardson Transit Center near Arapaho Road. This length of extension is considered to be the Minimum Operable Segment (MOS), or the shortest reasonable extension to be considered.

Potential Impacts for Analysis

For all alternatives, the EIS will evaluate the following:

- Transit financial implications;
- Local and regional economic concerns;
- Transportation service, including future capacity of the corridor, transit cost, transit service, transit ridership change and effect on traffic movements;
- Community impacts, including land use, noise, neighborhood compatibility and aesthetics;
- Cultural resource impacts, including effects on historic and archaeological resources;
- Natural resource impacts, including air quality, noise and vibration, wetlands and parkland impacts and water resources and quality.

The proposed impact assessment and its evaluation criteria will take into account both positive and negative impacts, direct and indirect impacts, short-term (construction) and long-term impacts, and site-specific and corridor-wide impacts. Evaluation criteria will be consistent with the applicable Federal, State of Texas, and local standards, criteria, regulations, and policies.

Mitigation measures will be explored for any adverse impacts that are identified as part of the analysis.

FTA Procedures

In accordance with the Federal Transit Act and current FTA policy, the Draft EIS will be prepared in conjunction with an Alternatives Analysis, and the Final EIS in conjunction with Preliminary Engineering. After its publication, the Draft EIS will be available for public and agency review and comment, and a public hearing will be held. On the basis of the Draft EIS and the comments received, DART will select a locally preferred alternative and seek approval from FTA to continue with Preliminary Engineering and preparation of the Final EIS.

Issued on: October 1, 1992.

Lee O. Waddleton,

Area Director.

[FR Doc. 92–24269 Filed 10–6–92; 8:45 am]

BILLING CODE 4910–57–M

National Highway Traffic Safety Administration

[Docket No. 92–54; Notice 1]

Receipt of Petition for Determination that Nonconforming 1986 BMW 316 Passenger Cars are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for determination that nonconforming 1986 BMW 316 passenger cars are eligible for importation.

SUMMARY: This notice requests comments on a petition submitted to the National Highway Traffic Safety Administration (NHTSA) for a determination that a 1986 BMW 316 passenger car that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily modified to conform to the standards.

DATES: The closing date for comments on the petition is November 6, 1992.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. [Docket hours are from 9:30 am to 4 pm].

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that:

(I) the motor vehicle is * * * substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 [of the Act], and of the same model year * * * as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards * * *.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register.**

Wallace Environmental Testing Laboratories, Inc. of Houston, Texas ("WETL") (Registered Importer No. R-90-005) has petitioned NHTSA to determine whether 1986 BMW 316 passenger cars are eligible for importation into the United States. The vehicle that WETL believes is substantially similar is the 1986 BMW 325 that was manufactured for importation into and sale in the United States and that was certified by its manufacturer, Bayerische Motoren-Werke A.G., as complying with all applicable Federal motor vehicle safety standards.

The petitioner stated that it performed a careful evaluation of the 1986 BMW 316, and determined that it is substantially similar to the 1986 BMW 325. Based on this evaluation, the petitioner contends that the 1986 BMW 316, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as the 1986 BMW 325, or is capable of being readily modified to conform to those standards.

Specifically, the petitioner claims that the two models are identical with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence* * * *, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 107 *Reflecting Surfaces*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 118 *Power Window Systems*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 203 *Impact Protection for the Driver From the Steering Control System*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 211 *Wheel Nuts, Wheel Discs and Hubcaps*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, and 302 *Flammability of Interior Materials*.

Petitioner also contends that the 1986 BMW 316 is capable of being readily modified to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays*:

(a) Substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp;

(b) Recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment*:

(a) Installation of U.S.-model headlights;

(b) Installation of sidemarkers and reflectors;

(c) Installation of a high mounted stop lamp.

Standard No. 110 *Tire Selection and Rims*: Installation of a tire information placard.

Standard No. 111 *Rearview Mirrors*: Replacement of the passenger's outside rearview mirror with one bearing the required warning statement.

Standard No. 114 *Theft Protection*: Installation of a buzzer microswitch in the steering lock assembly, and a warning buzzer.

Standard No. 115 *Vehicle Identification Number*: Installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 208 *Occupant Crash Protection*:

(a) Installation of a seat belt warning system;

(b) Replacement of the seat belt latch with one containing a microswitch to activate the seat belt warning system.

Standard No. 214 *Side Door Strength*: Installation of reinforcing beams.

Standard No. 301 *Fuel System Integrity*: Installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

Additionally, the petitioner states that depending on the country for which it was originally manufactured, the 1986 BMW 316 may require replacement or reinforcement of its bumpers to comply with the Bumper Standard found in 49 CFR part 581. The petitioner further states that a certification label must be affixed to the vehicle to comply with vehicle certification requirements found in 49 CFR part 567.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5106, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: November 6, 1992.

Authority: 15 U.S.C. 1397(c)(3)(A)(i)(I) and (C)(ii); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: September 30, 1992.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 92-24270 Filed 10-6-92; 8:45 am]

BILLING CODE 4910-59-M

[Docket No. 92-53; Notice 1]

Receipt of Petition for Determination That Nonconforming 1991 BMW 730i Passenger Cars are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for determination that nonconforming 1991 BMW 730i passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a determination that a 1991 BMW

730i that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily modified to conform to the standards.

DATES: The closing date for comments on the petition is November 6, 1992.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9:30 a.m. to 4 p.m.]

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202-366-5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the Untied States on and after January 31, 1990, unless NHTSA has determined that:

> (I) the motor vehicle is * * * substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 [of the Act], and of the same model year * * * as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards * * *.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register.**

Champagne Imports Inc. of Lansdale, Pennsylvania (Registered Importer No. R-90-009) has petitioned NHTSA to determine whether 1991 BMW 730i passenger cars are eligible for importation into the United States. The vehicle which Champagne believes is substantially similar is the 1991 BMW 735i. Champagne has submitted information indicating that Bayerische Motoren-Werke A.G., the company that manufactured the 1991 BMW 735i, certified that vehicle as conforming to all applicable Federal motor vehicle safety standards and offered it for sale in the United States.

The petitioner contends that the 730i is substantially similar to the 735i, and differs mainly in engine size and "minor options which go with it." In accounting for the differences between the two vehicles, the petitioner observed that manufacturers such as Bayerische Motoren-Werke A.G. "generally design only a few basic body shell designs which they then equip with a multitude or engine-size and cosmetic or comfort options." The petitioner further surmised that the 730i's absence from the United States market could be attributed to "salability considerations or legislative restrictions such as the strict emission control requirements in the United States."

Champagne submitted information with its petition intended to demonstrate that the 1991 model 730i, vehicle safety standards in the same manner as the 1991 model 735i that was offered for sale in the United States, or is capable of being readily modified to conform to those standards.

Specifically, the petitioner claims that the 1991 model 730i is identical to the certified 1991 model 735i with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence* * * *, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 107 *Reflecting Surfaces*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 203 *Impact Protection for the Driver From the Steering Control System*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 211 *Wheel Nuts, Wheel Discs and Hubcaps*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, and 302 *Flammability of Interior Materials*.

Petitioner also contends that the vehicle is capable of being readily modified to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:*

(a) Substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp;

(b) Installation of a seat belt warning lamp;

(c) Recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:*

(a) Installation of U.S.-model headlamp assemblies which incorporate sealed beam headlamps and front sidemarkers;

(b) Installation of U.S.-model taillamp assemblies which incorporate rear sidemarkers;

(c) Installation of a high mounted stop lamp.

Standard No. 110 *Tire Selection and Rims:* Installation of a tire information placard.

Standard No. 111 *Rearview Mirrors:* Replacement of the passenger's outside rearview mirror, which is convex but does not bear the required warning statement.

Standard No. 114 *Theft Protection:* Installation of a buzzer mircoswitch in the steering lock assembly, and a warning buzzer.

Standard No. 115 *Vehicle Identification Number:* Installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 208 *Occupant Crash Protection:*

(a) Installation of either a U.S.-model seat belt in the driver's position or a belt webbing-actuated microswitch in the driver's seat belt retractor to activate the seat belt warning system;

(b) Installation of an ignition switch-actuated seat belt warning lamp and buzzer. The petitioner states that the 1991 model 730i is equipped with a passive restraint system, consisting of a driver side airbag, knee bolster, and control unit, and that those components have identical part numbers to the ones that are found on the 1991 model 735i.

Standard No. 214 *Side Door Strength:* Installation of reinforcing beams.

Standard No. 301 *Fuel System Integrity:* Installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

Additionally, the petitioner states that the bumpers on the 1991 model 730i must be reinforced to comply with the Bumper Standard found in 49 CFR part 581.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: November 6, 1992.

Authority: 15 U.S.C. 1397(c)(3)(A)(i)(I) and (C)(ii); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: September 30, 1992.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 92-24271 Filed 10-6-92; 8:45 am]

BILLING CODE 4910-59-M

[Docket No. 92-52; Notice 1]

Receipt of Petition for Determination That Nonconforming 1989 Mercedes Benz 500SL Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for determination that nonconforming 1989 1989 Mercedes Benz 500SL passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a determination that a 1989 Mercedes Benz 500SL that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily modified to conform to the standards.

DATES: The closing date for comments on the petition is November 6, 1992.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. [Docket hours are from 9:30 a.m. to 4 p.m.]

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202-366-5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that:

> (I) the motor vehicle is * * * substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 [of the Act], and of the same model year * * * as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards. * * *

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register.**

Champagne Imports Inc. of Lansdale, Pennsylvania (Registered Importer No. R-90-009) has petitioned NHTSA to determine whether 1989 Mercedes Benz 500SL (Model ID 129.066) passenger cars are eligible for importation into the United States. The vehicle which Champagne believes is substantially similar is the 1989 Mercedes Benz 560SL (Model ID 107.048). Champagne has submitted information indicating that Daimler Benz A.G., the company that manufactured the 1989 Mercedes Benz 560SL, certified that vehicle as conforming to all applicable Federal motor vehicle safety standards and offered it for sale in the United States.

The petitioner contends that the 500SL is substantially similar to the 560SL, and differs mainly in engine size "and minor options which go with it." In accounting for the differences between the two vehicles, the petitioner observed that manufacturers such as Daimler Benz A.G. "generally design only a few basic body shell designs which they then equip with a multitude of engine-size and cosmetic or comfort options." The petitioner further surmised that the 500SL's absence from the United States market could be attributed to "salability considerations, or legislative restrictions such as the strict emission control requirements in the United States."

Champagne submitted information with its petition intended to demonstrate that the 1989 model 500SL, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as the 1989 model 560SL that was offered for sale in the United States, or is capable of being readily modified to conform to those standards.

Specifically, the petitioner claims that the 1989 model 500SL is identical to the certified 1989 model 560SL with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence* * * *, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 107 *Reflecting Surfaces*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 203 *Impact Protection for the Driver From the Steering Control System*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 211 *Wheel Nuts, Wheel Discs and Hubcaps*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, and 302 *Flammability of Interior Materials.*

Additionally, the petitioner claims that the 1989 model 500SL complies with the Bumper Standard found in 49 CFR part 581.

Petitioner also contends that the vehicle is capable of being readily modified to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:*

(a) Substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp;

(b) Installation of a seat belt warning lamp that displays the seat belt symbol;

(c) Recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:*

(a) Installation of U.S.-model headlamp assemblies which incorporate sealed beam headlamps and front sidemarkers;

(b) Installation of U.S.-model taillamp assemblies which incorporate rear sidemarkers;

(c) Installation of a high mounted stop lamp.

Standard No. 110 *Tire Selection and Rims:* Installation of a tire information placard.

Standard No. 111 *Rearview Mirrors:* Replacement of the passenger's outside rearview mirror, which is convex but does not bear the required warning statement.

Standard No. 114 *Theft Protection:* Installation of a buzzer microswitch in the steering lock assembly, and a warning buzzer.

Standard No. 115 *Vehicle Identification Number:* Installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 118 *Power Window Systems:* Rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection:*

(a) Installation of either a U.S.-model seat belt in the driver's position or a belt webbing-actuated microswitch in the driver's seat belt retractor to activate the seat belt warning system;

(b) Installation of an ignition switch-actuated seat belt warning lamp and buzzer.

Standard No. 214 *Side Door Strength:* Installation of reinforcing beams.

Standard No. 301 *Fuel System Integrity:* Installation of a rollover valve in the fuel tank vent line between the fuel and the evaporative emissions collection canister.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of the final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: November 6, 1992.

Authority: 15 U.S.C. 1397(c)(3)(A)(i)(I) and (C)(ii); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: September 30, 1992.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 92-24272 Filed 10-6-92; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: October 1, 1992.

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.

Internal Revenue Service

OMB Number: New.

Form Number: IRS Form W-5.

Type of Review: New collection.

Title: Earned Income Credit Advance Payment Certificate.

Description: Form W-5 is used by employees to see if they are eligible for the earned income credit and to request part of the credit in advance with their pay. Eligible employees who want advance payments must give Form W-5 to their employers.

Respondents: Individuals or households.

Estimated Number of Respondents/Recordkeepers: 8,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—7 minutes

Learning about the law or the form—8 minutes

Preparing the form—49 minutes

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 8,480 hours.

OMB Number: 1545-0245

Form Number: IRS Form 6627.

Type of Review: Revision.

Title: Environmental Taxes.

Description: Form 6627 is attached to Form 720 to compute and collect tax on petroleum, chemicals, imported chemical substances, and ozone-depleting chemicals.

Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents/Recordkeepers: 2,445.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—21 hours, 45 minutes

Learning about the law or the form—6 minutes

Preparing, copying, assembling, and sending the form to the IRS—28 minutes

Frequency of Response: Quarterly.

Estimated Total Reporting/Recordkeeping Burden: 34,035.

Clearance Officer: Garrick Shear (202) 622-3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 92-24407 Filed 10-16-92; 8:45 am]

BILLING CODE 4830-01-M

Public Information Collection Requirements Submitted to OMB for Review

The Department of Treasury has made revisions and resubmitted 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 submissions(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.

Internal Revenue Service

OMB Number: 1545-1277.

Form Number: IRS Form 1040-TEL.

Type of Review: Resubmission.

Title: TeleFile Income Tax Return for Singles Filers With No Dependents.

Description: State of Ohio 1040EZ filers will have the option of filing Form 1040-TEL, in which they will enter their

tax information on a Touch-Tone telephone. IRS will use the information collected to figure the filer's tax, and refund or balance due.

Respondents: Individuals or households.

Estimated Number of Respondents/Recordkeepers: 200,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—7 minutes

Learning about the law or the form—5 minutes

Preparing the Worksheet—14 minutes

TeleFile phone call—7 minutes

Copying, assembling, and sending the voucher to IRS if you owe tax—7 minutes

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 119,025 hours.

Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 92-24408 Filed 10-6-92; 8:45 am]

BILLING CODE 4830-01-M

Public Information Collection Requirements Submitted to OMB for Review

Date: October 1, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512-0222.

Form Number: ATF F 5640.2.

Type of Review: Extension.

Title: Officer in compromise of Liability Incurred Under the Federal Alcohol Administration Act.

Description: Persons who have committed violations of the FAA Act may submit an offer in compromise. The offer is a request by the party in violation to settle liabilities for the violations in lieu of civil or criminal action. ATF F 5640.2 identifies the violations(s) to be compromised by the person committing them, and the amount of the offer, plus a justification for acceptance of the offer.

Respondents: Businesses or other for-profit.

Estimated Number of Recordkeepers: 34.

Estimated Burden Hours Per Respondent: 2 hours.

Frequency of Response: On occasion.

Estimated Total Recordkeeping Burden: 68 hours.

Clearance Officer: Robert N. Hogarth (202) 927-8930, Bureau of Alcohol, Tobacco and Firearms, room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 92-24336 Filed 10-6-92; 8:45 am]

BILLING CODE 4810-31-M

Debt Management Advisory Committee; Meeting

Notice is hereby given, pursuant to section 10 of Public Law 92-463, that a meeting will be held at the U.S. Treasury Department in Washington, D.C. on November 2 and 3, 1992, of the following debt management advisory committee:

Public Securities Association Treasury Borrowing Advisory Committee

The agenda for the Public Securities Association Treasury Borrowing Advisory Committee meeting provides for a working session on November 2 and the preparation of a written report to the Secretary of the Treasury on November 3, 1992.

Pursuant to the authority placed in Heads of Departments by section 10(d) of Public Law 92-463, and vested in me by Treasury Department Order 101-05, I hereby determine that this meeting is concerned with information exempt from disclosure under subsection 552b(c)(9)(A) of Title 5 of the United States Code, and that the public interest requires that such meetings be closed to the public.

My reasons for this determination are as follows. The Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decision on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community, which committees have been utilized by the Department at meetings called by representatives of the Secretary. When so utilized, such a committee is recognized to be an advisory committee under Public Law 92-463.

Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of an advisory committee, premature disclosure of these reports would lead to significant financial speculation in the securities market. Thus, these meetings fall within the exemption covered by subsection 552b(c)(9)(A) of title 5 of the United States Code.

The Assistant Secretary (Domestic Finance) shall be responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of committee activities and such other matters as may be informative to the public consistent with the policy of section 552b of title 5 of the United States Code.

Dated: October 1, 1992.

John C. Dugan,

Assistant Secretary (Domestic Finance).

[FR Doc. 92-24301 Filed 10-6-92; 8:45 am]

BILLING CODE 4810-25-M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 195
Wednesday, October 7, 1992

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).

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m., Wednesday, October 14, 1992.

PLACE: The Board Room, 5th Floor, 490 L'Enfant Plaza, S.W., Washington, D.C. 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

5841—Safety Study: Alcohol and Other Drug Involvement in Fatal Aviation Accidents, 1983 through 1988.

NEWS MEDIA CONTACT: Telephone (202) 382-0660.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382-6525.

Dated: October 5, 1992.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 92-24524 Filed 10-6-92; 8:45 am]

BILLING CODE 7533-01-M

Corrections

Federal Register
Vol. 57, No. 195
Wednesday, October 7, 1992

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

Agricultural Marketing Service

7 CFR Part 920

[Docket No. FV-92-660IFR]

Kiwifruit Grown in California; Relaxation of Quality Requirements

Correction

In rule document 92-22043 beginning on page 41853 in the issue of Monday, September 14, 1992, make the following correction:

§ 920.302 [Corrected]

On page 41854, in the second column, in § 920.302(b)(1), in the fourth line from the bottom, the period after "misshapen" should be a comma and after the close quotation marks insert "and an additional tolerance of 7 percent is provided for kiwifruit that is 'badly misshapen'. "

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 36

[Docket No. 26910; Amendment Nos. 21-71, and 36-20]

RIN 2120-AE50

Alternative Noise Certification Procedure for Primary, Normal, Transport, and Restricted Category of Helicopter not Exceeding 6,000 Pounds Maximum Takeoff Weight

Correction

In rule document 92-22382 beginning on page 42846 in the issue of Wednesday, September 16, 1992, make the following corrections:

1. On page 42851, in the 2d column, in the 12th line, "chapter II." should read "chapter 11.".

2. On page 42852, in the second column, in the first full paragraph, in the fifth line, "of" should read "or".

Appendix J [Corrected]

3. On page 42856, in the second column, in appendix J, in section J36.101(d)(3), in the third line from the bottom, "these" should read "those".

4. On page 42857, in the first column, in appendix J, in section J36.109(b)(4), in the first line, "is" should read "in".

5. On the same page, in the second column, in appendix J, in section J36.109(e)(1), in the fourth line, "mut" should read "must".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8431]

Allocation of Allocable Investment Expense; Original Issue Discount Reporting Requirements

Correction

In rule document 92-21153 beginning on page 40319 in the issue of Thursday, September 3, 1992, make the following corrections:

1. On page 40319, in the second column, in the third line, after "1.1275-3" insert "(c), (d), and (e)".

2. On the same page, in the same column, under **SUPPLEMENTARY INFORMATION**, in the second full paragraph, in the third line, "§ 1.67-(f)(1)" should read "§ 1.67-3(f)(1)".

3. On the same page, in the third column, in the third line from the bottom, "(54 FR 37102)" should read "(54 FR 37103)".

4. On page 40320, in the second column, in the fourth line from the bottom, the second "or" should read "on".

§ 1.1275-3 [Corrected]

5. On page 40322, in the 2d column, in § 1.1275-3(c)(1), in the 12th line, insert ")" after "1992".

§ 1.6049-7 [Corrected]

6. On the same page, in the third column, in § 1.6049-7(g), in the eighth line, "(f)2(i)(G)(2)" should read "(f)(2)(i)(G)(2)".

BILLING CODE 1505-01-D

federal register

Wednesday
October 7, 1992

Part II

Department of Defense

Department of the Army

32 CFR Part 623

Loan and Lease of Army Materiel; Proposed Rule

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 623

Loan and Lease of Army Materiel

AGENCY: Army Logistics Evaluation Agency, DOD.

ACTION: Proposed rule.

SUMMARY: The Department of the Army as represented by the U.S. Army Logistics Evaluation Agency, Office of the Deputy Chief of Staff for Logistics, proposes to revise 32 CFR Part 623. This part on the loan and lease of Army materiel describes the policies, request submissions, accounting procedures, reimbursement, and reporting requirements. It includes policy and procedures for granting loans and leases to Army units and activities, non-Department of Defense Federal agencies, civilian law enforcement officials, civilian activities, and corporations.

DATES: Comments must be received on or before December 7, 1992.

ADDRESSES: Comments are to be submitted in writing only to: Commander, U.S. Army Logistics Evaluation Agency, ATTN: LOEA-IM/ Ms. Virginia Bunce, New Cumberland, Pennsylvania 17070-5007.

FOR FURTHER INFORMATION CONTACT: Ms. Virginia Bunce, U.S. Army Logistics Evaluation Agency, New Cumberland, PA 17070-5007. Telephonic inquiries will not be accepted.

SUPPLEMENTARY INFORMATION: This part, which is contained in Army Regulation 700-131, sets policies and procedures for the loan of Army materiel to both Department of Defense and non-Department of Defense activities of the Federal Government; and loan or lease of materiel to non-Federal civilian activities and agencies. It outlines when loans and leases of Army materiel can be made. Loans under 31 U.S.C. 1535 (The Economy Act) are limited to agencies of the Federal Government. Leases under 10 U.S.C. 2667 (The Leasing Statute) may be made to entities outside the Federal Government. Both the loans and leases just mentioned are distinguishable from statutory loan authorities which apply to specific organizations outside the Federal Government such as the American Red Cross and the Boy Scouts of America. This part provides procedures for requesting and processing loans and sets forth responsibilities, including requirements for reimbursement.

Publications and forms prescribed by this part are not stocked by the Army Logistics Evaluation Agency for public consumption but may be obtained from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.

Executive Order 12291

This proposed rule has been reviewed under Executive Order 12291 and the Secretary of the Army has classified this action as nonmajor meaning that the effect on the economy will be less than $100 million.

Regulatory Flexibility Act

This proposed rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C., § 601-612) and the Secretary of the Army has certified that this action does not have an adverse impact on small entities. The primary objective of this part is to establish an efficient program for the loan and lease of Army materiel and to describe the policies, request submissions, accounting procedures, reimbursement, and reporting requirements of the program. These requirements are not designed to preclude participation by small businesses. It is not anticipated that there will be any adverse effects on small businesses by the establishment of this program. Comments should be forwarded to the address provided in this part.

Paperwork Reduction Act

This proposed rule was previously approved by the Office of Management and Budget as required under the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

List of Subjects in 32 CFR Part 623

Intergovernmental relations, Surplus government property.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

Accordingly, 32 CFR part 623 is revised as follows:

PART 623—LOAN OF ARMY MATERIEL

Subpart A—Introduction

Sec.
623.1 Purpose.
623.2 References.
623.3 Explanation of abbreviations and terms.
623.4 Responsibilities.
623.5 Approving authorities.

Subpart B—Loan Policies

Basic Loan and Lease Approval Policy

623.6 Basic policies.
623.7 Loans to Army activities and other DOD activities.
623.8 Government furnished equipment.
623.9 Loans to Federal departments.
623.10 Lease to activities outside the Federal Government.
623.11 Loans for special purpose or with special authority.
623.12 Loan or lease agreements.
623.13 Surety bonds.
623.14 Loan or lease duration.
623.15 Managing the provisions of loan agreements after approval.
623.16 Types of DA materiel available for loan or lease.
623.17 Loan of certain property.

Submission of Requests for Loan or Lease of Army Materiel

623.18 General.
623.19 Procedures for requesting loan or lease of materiel.
623.20 Actions by approving authorities.
623.21 Action by loaning or leasing activity

Subpart C—Accounting Procedures

623.22 Loan or lease document format.
623.23 Shipment of loaned or leased materiel.
623.24 Receipt of borrowed property.
623.25 Accounting by borrower.
623.26 Return of borrowed materiel.
623.27 Loan inventories.
623.28 Lost, damaged, or destroyed materiel.

Subpart D—Loan or Lease of Arms and Accouterments

623.29 General.
623.30 Loans or leases to civilian activities (other than rifle clubs and educational institutions).
623.31 Loans to rifle clubs and educational institutions.

Subpart E—Reimbursement for Loan or Lease of Army Materiel

623.32 Reimbursement policies and procedures.
623.33 Reimbursable costs.
623.34 Nonreimbursable costs.
623.35 Funding records.
623.36 Determination of charges and settlement.
623.37 Delinquent and uncollectable accounts.

Subpart F—Reports

623.38 General.
623.39 Aircraft piracy.
623.40 Civilian rifle clubs and schools.
623.41 Civil disturbances.
623.42 Disaster assistance.
623.43 Loans to civilian law enforcement officials.
623.44 United States Secret Service.
623.45 Other reports.
Appendix A to Part 623—References
Appendix B to Part 623—Approving Authority Action Office Addresses/Telephone Numbers
Appendix C to Part 623—Glossary
Appendix D to Part 623—Forms

Authority: 10 USC 2571, 2667 and 31 USC 1535.

Subpart A—Introduction

§ 623.1 Purpose.

This regulation sets policies and procedures for loan of Army materiel to both Department of Defense (DOD) and non-DOD activities of the Federal Government; and loan or lease of materiel to non-Federal civilian activities and agencies. It outlines when loans and leases of Army materiel can be made. Loans under 31 USC 1535 (The Economy Act) are limited to agencies of the Federal Government. Leases under 10 USC 2667 (The Leasing Statute) may be made to entities outside the Federal Government. Both the loans and leases just mentioned are distinguishable from statutory loan authorities which apply to specific organizations outside the Federal Government such as the American Red Cross and the Boy Scouts of America. This regulation provides procedures for requesting and processing loans and sets forth responsibilities, including requirements for reimbursement.

§ 623.2 References.

Required and related publications and prescribed and referenced forms are listed in appendix A to this part.

§ 623.3 Explanation of abbreviations and terms.

Abbreviations and special terms used in this regulation are explained in the glossary (Appendix C to this part).

§ 623.4 Responsibilities.

(a) The Secretary of the Army (SA) has statutory authority to approve loans and leases of Army materiel. The Secretary has also been designated as the DOD Executive Agent for civil disturbance operations.

(b) The Under Secretary of the Army has been delegated authority by the SA to act in his behalf for civil disturbance operations.

(c) The Assistant Secretary of the Army (Installations, Logistics, and Environment) has been delegated the authority to act for the SA in logistics matters.

(d) The Director of Civilian Marksmanship (DCM) is responsible for management of the Army/Civilian Marksmanship Program.

(e) The Deputy Chief of Staff for Logistics (DCSLOG) has Army Staff responsibility for policy and procedures concerning the loan and lease of Army materiel.

(1) The Chief, Integrated Logistic and Troop Support Division (DALO–SMS), Directorate of Supply and Maintenance has been delegated the responsibility within the Office of the Deputy Chief of Staff for Logistics (ODCSLOG) as the proponent for loan and lease of Army materiel.

(2) The Chief, War Reserve Division (DALO–SMW), Directorate of Supply and Maintenance provides specific guidance for loan of Army materiel held in war reserves or designated operational project stocks.

(3) The Chief, Security Assistance Policy Coordinating Office (DALO–SAZ–A) is responsible for lease of equipment to commercial concerns for demonstration in connection with international programs, and for leases (or loans) to foreign countries or international organizations under the Arms Export Control Act (AECA).

(4) Heads of ODCSLOG Commodity Offices are responsible for approving requests for loans of materiel from Army or other DOD agencies in accordance with procedures established by this regulation. The various ODCSLOG offices handle requests for loan or lease of equipment only. When a request for loan/lease of equipment involves people, ODCSOPS (DAMO–ODS) is responsible for lead action.

(f) The Director of Military Support (DOMS), Office of the Deputy Chief of Staff for Operations and Plans (ODCSOPS) has been designated—

(1) The lead Army staff action office for support of the Federal Emergency Management Agency (FEMA), other Federal agencies, and the American National Red Cross (ANRC) in disaster assistance matters.

(2) To act for the SA or the Under Secretary of the Army in civil disturbance matters.

(3) DOD Executive Agent for support to the Federal Bureau of Investigation (FBI) in combatting terrorism.

(4) Army Staff proponent for cooperation with civilian law enforcement officials.

(5) Action office for those requests which involve people and equipment, or people only (to operate loaned or leased equipment).

(g) The Surgeon General (TSG) is responsible for loans of medical materiel controlled by the Office of The Surgeon General (OTSG).

(h) The Chief, Military History is responsible for approving requests for loan or lease of historical properties and military art.

(i) Program Executive Offices, under the Assistant Secretary of the Army (Research, Development, and Acquisition), are responsible for the development of additional equipment requirements to satisfy known or projected needs in support of testing, product improvement, configuration management, and contractual commitments and the loaning or leasing of equipment under their purview.

(j) The Commanding General, U.S. Forces Command (CG, FORSCOM), has been delegated authority by the SA to act on his behalf for Army materiel support of disaster relief operations within the continental United States.

(k) Commanders of unified commands are responsible for disaster relief operations in Alaska, Hawaii, U.S. possessions and trust territories.

(l) The Chief, Transportation Division (AMCLG–MT) has the responsibility for acting on loan and lease requests and loan and lease extensions forwarded for MACOM review by AMC MSCs. In addition, the office takes action to resolve delinquent loans and leases forwarded for resolution by AMC subordinate activities.

(m) Major subordinate commands (MSCs) of the U.S. Army Materiel Command (AMC) are responsible for approving requests for loan or lease of equipment belonging to the wholesale logistics system in accordance with procedures established by this regulation.

(n) CG, U.S. Army Armament, Munitions and Chemical Command (AMCCOM), is responsible for keeping a centralized serial number visibility record for all small arms made for the Army.

(o) Commanders of major Army commands (MACOMs) Active Army installations are responsible for approving requests for loan or lease of materiel under their control in accordance with procedures established by this regulation.

(p) Commander, U.S. Army Medical Materiel Agency (USAMMA) is responsible for approving requests for loan or lease of principal medical end items in accordance with procedures established by this regulation and AR 40–61.

(q) Commanders of medical treatment facilities are responsible for approving requests for loan of military medical equipment to authorized military health care recipients in accordance with procedures established by this regulation and AR 40–61.

(r) The Commander, U.S. Army Communications-Electronics Command. Communications Security Logistics Activity (USACCSLA) is responsible for approving loan of COMSEC equipment for one year or less.

(s) The Army National Guard Bureau is responsible for reviewing requests for loans and leases of Army National

Guard (ARNG) equipment that require DA approval.

(1) The Chief, Office of Military Support (NGB–MS) is responsible for acting on all emergency requests, and those involving law/drug enforcement, civil disturbances, terrorism, disaster relief, or environmental protection.

(2) The Chief, Aviation Division (NGB–AVN–O) is responsible for acting on all requests for loan or lease of ARNG aircraft.

(3) The Chief, Public Affairs Office (NGB–PA) is responsible for all requests concerning community relations or domestic action programs.

(4) The Chief, Logistics Division (NGB–ARL–SM) will act on all other requests for loan or lease of ARNG equipment.

(t) State Adjutants General (ARNG) are responsible for approving loans and leases in accordance with procedures established by this regulation.

(u) The Chief of Engineers is responsible for the loan or leasing of all equipment incident to his Civil Works and Prime Power management functions and, specifically, the loan/lease of—

(1) U.S. Army Corps of Engineers (USACE) owned equipment/supplies for emergency flood fighting operations.

(2) Plant and equipment used in support of authorized improvements/maintenance for river, harbor and flood control.

(3) Prime power generation transmission/distribution equipment for authorized contingencies.

(v) Regional Logistical Support Offices (RLSOs) will provide local, state, and regional offices of Federal drug law enforcement agencies (DLEAs) and civilian law enforcement agencies a focal point for requesting equipment and training support from DOD.

§ 623.5 Approving authorities.

A list of approving authority addresses is at appendix B to this part.

Subpart B—Loan Policies

Basic Loan and Lease Approval Policy

§ 623.6 Basic policies.

(a) Army materiel is intended for use in support of the Army's mission. However, when compelling circumstances exist, supported by general or specific statutory authority, materiel not immediately needed to support mission requirements may be loaned or leased to the following elements under the conditions prescribed herein:

(1) Army and other DOD elements.

(2) Non-DOD Federal departments and agencies.

(3) Civil governments (State and local).

(4) Special activities, agencies, and others.

(b) Table 2–1 in § 623.21 lists various types of Army materiel for loan or lease. There are three basic statutes (Federal) laws that authorize the loan or lease of Army property. There are also numerous specific statutes that authorize particular types of loans and leases in limited situations. Unless there is a reason to use the specific statute, one of the basic statutes will be used. (The statutes are cited by title, United States Code (USC), and section.)

(c) The following are the basic statutes:

(1) 10 USC 2571 (Interchange of property and services-Authority for loan of property within DOD.

(2) 10 USC 2667 (The Leasing Statute)—Authority for leases.

(3) 31 USC 1535 (The Economy Act)—Authority for loans to other Federal departments and agencies.

(d) Some of the specific authorizing statutes are listed below.

(1) 10 USC 331—Federal aid for State governments as result of insurrection.

(2) 10 USC 332—Use of militia and Armed Forces to enforce Federal authority.

(3) 10 USC 333—Use of militia or Armed Forces to suppress interference with state and Federal law.

(4) 10 USC 372 et. seq. (PL 97–86)—Military cooperation with civilian law enforcement officials.

(5) 10 USC 2541—Loan of equipment and barracks to national veterans organizations.

(6) 10 USC 2542—Loan of equipment to the American National Red Cross for instruction and practice.

(7) 10 USC 2543—Loan of equipment to US Presidential Inaugural Committee.

(8) 10 USC 2544 (PL 92–249)—Loan of equipment (e.g., cots, blankets, commissary equipment, flags, refrigerators) and services to the Boy Scouts of America for national and world jamborees.

(9) 10 USC 2572—(See AR 870–20). Loan of books, manuscripts, works of art, drawings, plans, models, and condemned or obsolete combat materiel not needed to—

(i) A municipal corporation.

(ii) A soldiers' monument association.

(iii) A State museum.

(iv) A nonprofit incorporated museum.

(v) Posts of Veterans of Foreign Wars of the USA.

(vi) American Legion Posts.

(vii) A local unit of any other recognized war veterans' association.

(10) 10 USC 4307—Authorizes the establishment of a Director of Civilian Marksmanship (DCM).

(11) 10 USC 4308—Establishment and support of civilian rifle ranges.

(12) 10 USC 4311—Issue of rifles and ammunition for conducting rifle instruction and practice.

(13) 10 USC 4506—Sale, loan, or gift of certain property (see § 623.17).

(14) 10 USC 4651—Issue of arms, tentage, and equipment to support educational institutions that do not have Reserve Officers' Training Corps (ROTC) but maintain a course in military training prescribed by the Secretary of the Army.

(15) 10 USC 4652—Loan of rifles and issue ammunition for target practice to educational institutions having corps of cadets.

(16) 10 USC 4653—Issue of ordnance and ordnance stores to District of Columbia high schools.

(17) 10 USC 4654—Issue of quartermaster supplies at educational institutions that maintain a camp for military instruction for their students.

(18) 10 USC 4655—Loan of arms and their accouterments, and issue ammunition to other agencies and departments of the U.S. Government.

(19) 10 USC 4656—Loan of aircraft and ancillary equipment to accredited civilian aviation schools at which Army or Air Force personnel pursue courses of instruction.

(20) 10 USC 4683—Loan of obsolete or condemned rifles and accouterments to local units of recognized national veterans organizations for certain ceremonial purposes.

(21) 10 USC 4685—Loan of obsolete ordnance to educational institutions and State soldiers' and sailors' orphans' homes for purpose of drill and instruction.

(22) 18 USC 1385—Unlawful use of Armed Forces in local law enforcement (Posse Comitatus Act).

(23) 18 USC 3056 (as amended by Pub. L. 91–651)—Powers, authorities and duties of United States Secret Service.

(24) 32 USC 702—Issue of supplies to State National Guard.

(25) 33 USC 575—Limits operation of power driven boats or vessels to Government business.

(26) 33 USC 701n (Pub. L. 84–99 as amended)—Flood emergency preparation; emergency supplies of drinking water.

(27) 33 USC 1251 et. seq. (Pub. L. 92–5000)—Federal Water Pollution Control Act.

(28) 42 USC 5121 et. seq. (Pub. L. 93–288)—Disaster Relief Act.

(e) The use of equipment loan procedures to issue new items of equipment to the field which are not fully supportable, or have not received a materiel release from the materiel developer, are not authorized.

(f) Loans or leases will be approved or disapproved based on the purpose, duration of the loan or lease, and consideration of the following factors that can take precedence over any loan or lease:

(1) Military requirements and priorities.

(2) Continuity of military operations, troop survival, and the rehabilitation of essential military bases.

(3) Stocks and programed Army requirements. This includes prepositioned mobilization reserve stocks.

(4) Type classification with pending changes.

(5) Minimum diversion of Army stocks.

(6) The adequacy of the borrower's resources. Requesters will be encouraged to use their own resources.

(7) The availability of alternative sources such as commercial lessors.

(g) Requests from civilian authorities or activities for lease will normally enter Army channels at the installation or major Army command (MACOM) levels. If on-post or off-post units receive lease requests, they will refer them at once to unit's supporting installation commander or higher headquarters as appropriate. ARNG units will refer all such requests to the state USPFO. USAR units will refer requests to the principal logistics staff officer at the Major United States Army Reserve Command (MUSARC) headquarters exercising command over the USAR unit. The principal logistics staff officer at the MUSARC will have the same approval authority as the "Installation Commander" for Active Army units. Emergency lease requests will be relayed by telephone or electrically transmitted message.

(h) When routine handling of a loan or lease request would result in loss of human life, grave bodily harm, or major destruction of property, and when the lack of communication facilities prevents use of normal procedures, loans or leases otherwise permitted by this AR can be made with local approval. However, normal policy should be followed to the extent possible. If procedural requirements cannot be fully complied with, they must be met promptly after the loan or lease is made.

(i) Army materiel loaned or leased under this regulation will be made available to borrower "as is, where is."

(j) Stocks in the "least serviceable condition" suitable for the purpose will be loaned or leased. Priority of equipment for loan or lease will be from condition code C, followed by condition code B, and then condition code A. (See AR 725-50, paragraph C-28, Federal Condition Codes.)

(k) Commanders of medical treatment facilities are subject to all the requirements of this AR, including the requirement for reimbursement.

(1) Emergency loans of medical supplies (drugs, vaccines, etc.) may not be made without reimbursement and the loan may not exceed 30 days. Reimbursement may take the form of replacement in kind by the borrowing agency or activity.

(2) Emergency loans of medical equipment not to exceed 15 days may be approved by the local medical facility commander without reimbursement if it is the practice in the community for other hospitals to make such loans. Equipment loans or leases that exceed 15 days must be approved, in writing, by the major medical command commander (U.S. Army Health Services Command in CONUS) and are subject to all the requirements of 10 USC 2667, including reimbursement.

(3) The requirement for surety bonding and formal lease or loan agreements for emergency loans of medical supplies or equipment are waived where the loan does not exceed 15 days if such is normal community practice. Minimum documentation for such loans will include a signed receipt from the borrowing official that identifies the loaned materiel and its condition.

(l) Army property loaned or leased to any activity will not be further loaned or leased nor can it be shipped or transferred without the written approval of the original approving authority.

(m) There will be no procurement or redistribution of assets to offset the effects of loans or leases. Materiel will not be set aside, earmarked, assembled, or stockpiled to be available for use related to loans or leases.

(n) Army materiel may be recalled from the borrower at any time to meet Army requirements.

(o) Stock record accounting and financial transactions for loans or leases will conform with existing regulations.

(p) Borrowers are responsible for the care, custody, and proper use of borrowed materiel. Except as stated in this regulation, reimbursement will be required for damage, destruction, loss, fair depreciation in value, costs to restore equipment to the condition that existed when original loan or lease of equipment commenced and for any Army repair, care, issue and turn-in inspection labor costs, packing, crating, transportation, preservation, and protection of loaned or leased equipment.

(q) Care, renovation, and repair of borrowed materiel will conform with the loan or lease agreement.

(r) Equipment may not be modified or altered by the borrower.

(s) Army property loaned or leased for demonstration purposes (table 2-1 in § 623.21) will not deviate from the approved demonstration unless specifically approved by HQDA.

(t) Loans or leases normally approved by ODCSLOG commodity offices that affect Department of the Army Master Priority List (DAMPL) issues or unit readiness require the concurrence of ODCSOPS prior to approval.

(u) As indicated in table 2-2 in § 623.21, borrowers must provide signed loan or lease agreements, provide surety bonds, and vehicular insurance prior to receipt of materiel. Loan or lease agreements and bonds will be prepared per §§ 623.12 and 623.13.

(v) Support of International Logistics (IL) programs/requirements/ initiatives when required, will be supported by wholesale owned equipment provided on a lease basis only. Wholesale assets will not be loaned to support IL requirements. When government furnished equipment (GFE) is provided pursuant to a contract, the sole basis of which is to provide a product or service in support of IL programs, the contract must include a lease clause, and provide a lease agreement which requires the user to reimburse the government for the use of the equipment.

(w) The loan or lease of military equipment (end items and secondary items) for the following purposes is prohibited:

(1) State Defense Forces authorized under section 109(c) of title 32, United States Code.

(2) Events or activities which appear, directly or indirectly, to endorse, favor or selectively benefit private individuals, groups, commercial ventures, sects, political and fraternal groups, private or solely civilian religious or ideological movements, or activities or individuals associated with solicitation of votes in an election. (Note: Service or luncheon clubs such as Kiwanis International, Lions International, Optimists, Rotary International, and Toastmasters International are not considered fraternal groups.)

(3) Events that are not open to the general public, or where admission is charged for profit purposes.

(4) Where the use of loaned or leased equipment would deny the employment of civilians in their regular profession.

(5) Production of nongovernment motion/television pictures (except where authorized by DODD 5410.15 or DODI 5410.16).

(6) Participation in, or support of fund raising events where the sponsoring cause is not a member of a United, Federal, or joint campaign.

(x) Equipment programmed for issue, or rebuild and issue to the Reserve Component will not be diverted, withdrawn, or reduced without prior approval of the Secretary of Defense. Such proposals will be forwarded to the Office of the Assistant Secretary of Defense (Reserve Affairs—Materiel Directorate), and should contain a projected replacement program for the removed equipment.

(y) The Chief of Engineers will loan equipment incident to his Civil Works responsibilities IAW the guidance of ASA(CW) and established engineer regulations. Normally, requests for this equipment should be directed to the appropriate District Commander (see appendix B to this part).

(z) The Chief of Engineers will loan Prime Power Program assets in accordance with the provisions of AR 700–128. Loans of Corps of Engineer equipment to include plant equipment, flood fighting equipment, and Prime Power equipment is normally executed on a reimbursable basis.

§ 623.7 Loans to Army activities and other DOD activities.

Army materiel may be loaned to Army activities and other DOD activities for temporary and nonrecurring requirements that support basic functions of the borrowing activity. Examples are field exercises, maneuvers, training exercises, including annual training of Reserve Components. These loans will normally be for a maximum 1-year period. Any request for extension beyond this 1-year period will be forwarded to the applicable ODCSLOG/OTSG commodity office for approval. An exception to this policy is materiel for research, development, test, and evaluation efforts that may be loaned for an initial 2-year period. If required for longer than 2 years, approval must be obtained from the applicable ODCSLOG/OTSG commodity office. As a matter of policy, equipment required for longer than 1 year (2 years for RDTE efforts) will be documented on unit MTOE/TDA/JTA per AR 71–13. Directors of Materiel Management may approve, following review of unfilled Army equipment requirements, a one-time 90-day loan extension to Army borrowers of wholesale equipment who request the extension, in order to permit the borrower time to submit the appropriate TAADS (The Army Authorization Documents System) change.

(a) Loans for 1 year or less of equipment belonging to MACOMs are approved at installation commander level. State AG's will approve loans of ARNG equipment. The Senior Logistics Officer at MUSARC headquarters will approve the loan of USAR equipment where authority is provided to the installation commander for Active Army units. (See table 2–1 in § 623.21.)

(b) Loans of equipment belonging to the wholesale logistics system are approved as follows:

(1) Major end items may be approved by the Director of Materiel Management of an AMC MSC, unless loan would interfere with issue against DAMPL priorities. In such cases, requests will be forwarded to the applicable ODCSLOG commodity office for approval. Concurrence in loan approval by HQDA (DAMO–ODR) is required.

(2) Principal medical end items in wholesale level inventories may be approved for loan by the Commander, U.S. Army Medical Materiel Agency (USAMMA) unless the loan would at any time interfere with issue against DAMPL priorities. In such cases, requests will be forwarded to HQDA (DASG–HCL), 5109 Leesburg Pike, Falls Church, VA 22041–3258 for approval. HQDA (DASG–HCL) will do any DA staff coordination required. Minor medical materiel in wholesale level inventories may be approved for loan by the commander of USAMMA.

(3) Materiels other than end items may be approved by the Director of Materiel Management of an AMC MSC.

§ 623.8 Government furnished equipment.

Government furnished equipment is Army materiel, furnished on a contractual basis when required for performance of a government contract, and where the contract specifies the requirements.

(a) Prior to commitment of Army resources as GFE to PMs, materiel developers and contractors, the responsible PM or individuals acting for the materiel developer must coordinate in advance with the Item Manager at the managing NICP to ensure higher priority claimants for materiel are not superseded. Records of coordination must be maintained. A simple certification of availability identifying the following items will be provided to the contracting officer who will prepare the contract committing the GFE: item nomenclature, quantity, NSN, date of coordination of office symbol, and name and phone number of Army item manager with whom coordination was accomplished.

(b) PMs and individuals acting on behalf of materiel developers are responsible for early identification of additional equipment requirements to satisfy known and projected loan needs in support of training, testing, product improvement, configuration management, and contractual commitments.

(1) Equipment requirements for loans discussed above should be managed under the AMC Interchange Process wherever possible, and programmed under AMP/POM procedures.

(2) When the procedure described in paragraph (b)(1) of this section is not practical, PMs and materiel developers should program funds for transfer to the item manager(s) for procurement of the required materiel.

§ 623.9 Loans to Federal departments.

Loans to Federal activities outside DOD are usually provided under the provisions of The Economy Act (31 USC 1535). Federal agencies borrowing DOD materiel under this act are responsible for reimbursing DOD for all DOD costs incident to the delivery, return, and repair of the materiel. Additionally, the borrower is responsible for reimbursing DOD for the full purchase price for consumable or nondurable items (such as batteries) and for depreciation if the depreciation cost is significant. Applicable costs are shown in subpart E of this part. Government agencies requesting loan extensions after the first year should provide in the request an explanation of what action has been taken to budget for or purchase the equipment by the borrowing agency. Approval authority for various categories of equipment are shown below.

(a) Arms, ammunition, combat vehicles, vessels, and aircraft are approved by the SA or his designee.

(b) Other equipment for retention on loan in excess of 180 days is approved by HQDA (DALO–SMS).

(c) Other equipment for less than 180 days is approved by installation commanders for Active Army owned equipment, State AG for ARNG equipment, Senior Logistics State Officer at MUSARC headquarters for USAR equipment, or directors of materiel management, AMC MSCs for items from the wholesale logistics system.

(d) Medical equipment loaned by a U.S. Army Medical Center or medical department activity (MEDCEN/

MEDDAC) for a period of less than 180 days is approved by the installation commander. Medical equipment in the wholesale inventory is approved by the commander of USAMMA. Loans of ARNG medical equipment are approved by the State AG.

(e) Medical equipment for retention on loan in excess of 180 days is approved by HQDA (DASG-HCL).

(f) If approval of equipment loans in paragraphs (c) and (d) of this section would impact DAMPL issues, HQDA approval is required.

§ 623.10 Lease to activities outside the Federal Government.

(a) Section 2667 of Title 10, USC, authorizes the lease of Army materiel to non-DOD elements or individuals when it is determined that the materiel is not, for the period of the lease, needed for public use; is not excess property; and the lease will promote the national defense or be in the public interest. (See AR 360-61.) Leases to civilian non-Federal law enforcement agencies will be made when they have been determined to be consistent with national security. Army policy is that leases of military equipment will not be made for which a counterpart exists on the commercial market place.

(b) If leases are approved under this paragraph, they must not be for more than 5 years, and they must provide that the lessee will pay consideration in an amount that is not less than the fair market value of the lease interest, and maintain, protect, repair, or restore the Government property. Lease fees will not be waived. Army policy requires a surety bond for all leases in lieu of insurance. Exceptions to this policy will be made on a case-by-case basis. Activities preparing and executing lease agreements will ensure that lease fees are charged according to the terms of 10 USC 2667. The delegation of authority to lease is AFARS, paragraph 1-9101 (SARDA 84-4, 7 Aug 84), and the prescribed lease agreement in AFARS, paragraph 45-390 (SARDA 84-4) Delegation of authority states: "The rental shall, in any event, be such as to prevent the leasee from obtaining an unfair competitive advantage over competitors by reason thereof." Review for specific items cited below is required prior to execution of the lease agreement.

(1) Arms, combat/tactical vehicles, vessels, and aircraft are approved by SA or designee.

(2) Other equipment for retention on lease in excess of 180 days is approved by HQDA (DALO-SMS).

(3) Other military equipment for less than 180 days is approved by the installation commanders for Active Army equipment, the State AG for ARNG equipment, the Senior Logistics Staff Officer at the MUSARC headquarters for USAR equipment, or commanders of AMC MSCs for items from the wholesale logistics system.

(4) Medical equipment for retention on lease in excess of 180 days is approved by HQDA (DASG-HCL).

(5) Medical equipment for less than 180 days is approved by the installation commander, the State AG for ARNG medical equipment, or commander of USAMMA for items from the wholesale logistics systems.

(6) For military equipment for lease to commercial sources for demonstrations in support of international programs, requests must be submitted to HQDA (DALO-SAA), WASH DC 20310-0512. Specific approval authorities are listed in table 2-1, in § 623.21.

(7) Loan of Government equipment acquired for research and development. Heads of contracting activities may authorize the loan of Government equipment acquired for research and development to a private industrial firm or educational institution for use in privately financed research and development programs, provided that—

(i) The programs are of interest to the Government.

(ii) The results of the research will be furnished to the Government without additional cost.

(iii) The loan shall be reflected in a written agreement which sets forth the terms of the loan and the benefits to be derived by the Government therefrom. (AFARS 45.191)

(c) This paragraph applies to leases with State and local governments as well as private and public activities or individuals.

§ 623.11 Loans for special purpose or with special authority.

(a) Disaster relief.

(1) In disaster situations, local civil authorities normally must furnish relief from their own resources. If this is not sufficient, and the American National Red Cross (ANRC) has a team at the disaster, requests for further assistance should be made to them. If the President has declared a major disaster or emergency, requests should be made to the regional director of FEMA. (See AR 500-60.)

(2) Commanding General, U.S. Forces Command (CG, FORSCOM), acting for the SA is responsible for Army materiel support of disaster relief operations within the continental United States (CONUS) and the District of Columbia. Unified commands are responsible for disaster relief operations in Alaska, Hawaii, U.S. possessions and trust territories. These commanders are authorized to task DOD agencies and commands, consistent with defense priorities, to furnish materiel in support of operations. A military representative will be appointed by the appropriate command to act as the DOD point of contact with the FEMA Federal coordinating officer when military assistance is required during a Presidential declared disaster or emergency. When a disaster or emergency is of such magnitude, the disaster area may be geographically subdivided and a military representative will then be appointed to assist each Federal coordinating officer. All requests for military assistance will be passed through the Federal coordinating office to the military representative at the disaster area.

(3) The Director of Military Support, ODCSOPS, acts as the DOD point of contact for the Administrator, FEMA, other Federal agencies, and ANRC in all disaster assistance matters.

(4) The Department of State is responsible for deciding when emergency foreign disaster relief operations will be undertaken. This authority is delegated to Chiefs of Diplomatic Missions for disaster relief operations whose total costs will not exceed $25,000. Send queries on foreign disaster relief to HQDA(DAMO-ODS), WASH DC 20310-0440.

(5) In case of flooding or coastal storm emergencies or other emergencies, major subordinate elements under Chief of Engineers are authorized to provide flood fighting equipment, and Plant and Prime Power supplies and equipment to state and local civil authorities. Assistance is authorized only when the situation is beyond control of state and local capabilities. Requests may be verbal with the formal request to follow as soon as possible.

(b) Civil disturbances. The maintenance of law and order is primarily the responsibility of local and State authorities. In civil disturbance situations, a basic goal of the Federal Government is to minimize the involvement of active military forces. One of the most effective means of minimizing that involvement is to loan or lease U.S. Army civil disturbance type equipment to Federal, State, and local law enforcement agencies and also to the National Guard. (For specific guidance, see AR 500-50.)

(1) Requests for loan of Army materiel during or for expected civil disturbances are of three types, with approval authority as follows:

(i) Group one. Personnel, arms, ammunition, combat/tactical vehicles, vessels, and aircraft. Loans or leases are approved by the SA or his designee.

(ii) Group two. Riot control agents, concertina wire, and similar military equipment that is not included in group one. Loans or leases are approved by the DOD Executive Agent or his designee (Under Secretary of the Army or the Director of Military Support, ODCSOPS) or when designated by the DOD Executive Agent, by an Army task force commander employed at an objective area during a civil disturbance.

(iii) Group three. Firefighting resources (including operating personnel); protective equipment such as masks and helmets; body armor; other equipment not included in group one or two such as clothing, communications equipment, and searchlights; and the use of DOD facilities. Such loans or leases are approved by installation commanders; Commanding General, U.S. Army Military District of Washington; by commanders-in-chief of unified commands outside CONUS as applicable; or by the Directors of Materiel Management, AMC MSCs for materiel belonging to the wholesale logistics system. The State AG is the approving authority for group three equipment issued to the Army National Guard. (Note: Firefighting equipment will not be used for riot control.)

(2) Queries concerning loans or leases in support of civil disturbances will be forwarded to HQDA(DAMO-ODS), WASH DC 20310-0440.

(3) There is no specific statutory authority to loan or lease equipment for use in civil disturbance situations. Equipment described above may be loaned to Federal agencies under the Economy Act (31 USC 1535). Equipment for non-Federal Law Enforcement Agencies must be leased, which includes requirement for payment of rental fees, under the leasing statute 10 USC 2667.

(c) Terrorism.

(1) The Department of the Army (DA) is the DOD Executive Agent for support to the Federal Bureau of Investigation (FBI) in combating terrorism. Existing civil disturbance loan procedures, including categories of equipment, apply to equipment loans to the FBI for combating terrorism. Military resources will be furnished only upon request of the Director of the FBI or the senior FBI official present at the scene of a terrorist incident. It may be difficult in some situations to determine whether a practical incident fits the definition of terrorism. In these cases, commanders are authorized to accept the judgment of the FBI official making the request if supported by available facts. (See table 2-1 in § 623.21.)

(2) As an exception to table 2-1 in § 623.21, item 8a, for requests from the FBI in connection with terrorist incidents, any commander in the chain of command down to and including commanders of active military installations and State Adjutants General for National Guard resources are authorized to approve loans of group two and group three resources. Requests for equipment that involve technical or operating personnel, excluding firefighting equipment and explosive ordnance disposal, will be processed as a group one resource.

(d) Aircraft piracy. Assistance to other federal agencies in the protection of airways is provided through loans under guidance contained in table 2-1 in § 623.21. Specific limitations on such support are covered in AR 500-1.

(e) Leases to civilian law enforcement officials. Equipment may be leased to civilian, non-Federal law enforcement officials for purposes other than civil disturbances. Requests for these leases fall into three separate categories with approval authority as follows:

(1) Arms, combat/tactical vehicles, vessels, and aircraft requests, regardless of duration of requirement, will be submitted to HQDA(DALO-SMS) for approval by the SA or his designee. Ammunition, by definition, cannot be leased to non-Federal agencies.

(2) Requests for all other equipment required in excess of 180 days will be submitted to HQDA(DALO-SMS), WASH DC 20310-0547 (or HQDA(DASG-HCL) for medical equipment) for approval.

(3) Requests for all other equipment required for less than 180 days may be approved by the active installation commander, State AG, principal logistics offices at the MUSARC headquarters (USAR equipment), and AMC MSC or the commander of USAMMA for equipment belonging to the wholesale logistics system provided DAMPL issues will not be affected. If diversion of DAMPL issue assets is required, the request must be forwarded to HQDA(DALO-SMS) or HQDA (DASC-HCL) as appropriate.

§ 623.12 Loan or lease agreements.

(a) Upon approval of a DA Form 4881-6-R (Request and Approval for Loan or Lease and Loan or Lease Agreement) and before shipment or issue of the materiel, the approving authority will direct that a written agreement be completed. In all cases, the statutory basis for the loan or lease will be cited. The approving authority is acting for the DOD on loans to other Federal agencies, and for the United States on leases to civil authorities and special activities. The agreement will be signed by the appropriate official of the loaning or leasing activity and an appropriate official of the borrowing activity. When emergency loans or leases have been made as authorized by this AR, follow-up action will be taken at once to formalize the action by completing a loan or lease agreement.

(b) Loan or lease agreements are mutually developed by the approving authority and the chief of the borrowing activity (or their designees). The agreements identify the responsibilities of all parties and include terms and conditions of the loan or lease. DA Form 4881-R (Agreement for Loan or U.S. Army Materiel), DA Form 4881-1-R (Certificate for Signature by an Alternate), DA Form 4881-2-R (Military Property of the United States—Exhibit 1), DA Form 4881-5-R (Agreement for Lease of U.S. Army Materiel), and DA Form 4881-6-R are located in Appendix D to this part and will be locally reproduced on 8½- by 11-inch paper.

(c) Loan or lease agreements will be held by the issuing activity until termination and final settlement of each loan or lease.

(d) If the loan or lease agreement is signed by someone other than the chief borrowing official, then a DA Form 4881-1-R will be completed. It will be attached to the signed (by the borrower) copy of the agreement that is retained by the loaning or leasing activity.

(e) When the borrowing agency's authorized representative is transferred, etc., the lending agency must be notified in writing to include the replacement's name, title, and telephone number.

§ 623.13 Surety bonds.

(a) Some borrowers of Army materiel must post a surety bond. (See section § 623.6(u) and DA Form 4881-3-R (Surety Bond) and DA Form 4881-4-R (Power of Attorney) which are located in Appendix D to this part and will be locally reproduced on 8½- by 11-inch paper.) Bonds insure safe return of the borrowed materiel or reimbursement for any loss of, or damage to, the materiel. The bond will consist of—

(1) A properly executed surety bond with a certified bank check, cash, or negotiable U.S. Treasury bonds.

(2) A notice of bond by a reputable bonding company deposited with the lending or leasing accountable property officer for the loan or lease. Bonds will equal the total price of the borrowed items as shown in exhibit I to the loan

agreement. A "double" bond (bond equal to twice the value of the borrowed item(s)) will be required—

(i) For Army materiel loaned to the ANRC for instruction and practice to aid the Army, Navy, or Air Force in time of war (10 USC 2542).

(ii) For ordnance and ordnance stores loaned to high schools in the District of Columbia (10 USC 4653).

(b) The bond does not have to be posted by the borrowing agency itself. The source of originating agency for the bond is immaterial if the bond is valid. For example, to secure a lease, a State may post bond on behalf of a city, county, or other governmental body or authority within the State.

(c) In an emergency, when posting a bond would delay issue of equipment for an urgent loan or lease, the approval authority may approve the issue prior to the posting of the bond. The bond must be posted within 5 days.

(d) Bond forfeitures or exceptions to mandatory forfeitures can only be made with the approval of the SA. Forfeitures will be based on actual expense incurred by the Army. Forfeitures do not release the borrowing agency from returning borrowed materiel or affect ownership. Bonds normally are forfeited under the following conditions:

(1) Materiel is not returned at the end of a loan or lease period or when return has been directed by the Army.

(2) The borrowing agent refuses to pay for damages or other Army expenses.

(e) Surety bonds will be held by the loaning or leasing activity until the loan or lease is ended and final settlement is made. At that time, the bond will be returned to the borrower.

(f) If U.S. treasury bonds are posted as surety bond, the borrower must complete a power of attorney. This will enable cashing of the treasury bonds if some forfeiture is required. A sample of a power of attorney is shown at figure 2–1.

Figure 2–1. Sample of a Power of Attorney

Instructions

The lettered blank portions of the Power of Attorney are to be completed as specified in the following paragraphs with the same letters:

(a) Enter the name of the Federal agency, authority, (local governmental body), or special activity which borrowed the Army materiel.

(b) Further identify the borrower by entering here the type of activity that it is; i.e., Federal agency, civil government, corporation (Boy Scouts of America), etc.

(c) Enter the name of the city.

(d) Enter the name of the state.

(e) Enter the name of the Army installation handling the account.

(f) Enter the name and rank of the commanding officer of the Army installation handling the account.

(g) Describe the U.S. Treasury bonds that have been posted as bond to include type, serial numbers, and interest rates if applicable.

(h) Enter date on which payment of the Treasury bonds becomes due if applicable. If it is not applicable enter "NA."

(i) Enter the date on which the agreement between the borrower and the U.S. Government was signed.

(j) Enter title of the borrowing activities' chief executive; e.g., governor, chief scout executive, national commander VFW, etc.

(k) Enter here, "comptroller," "Treasurer," etc. as appropriate.

(l) Enter date on which the Power of Attorney is signed.

(m) Enter month in which Power of Attorney is signed.

(n) Enter year in which Power of Attorney is signed.

(o) Enter name and title of chief executive of borrowing activity.

(p) Enter, if appropriate, the names and title of the comptroller or treasurer of the borrowing activity.

(q) Enter the name of the county in which the Power of Attorney is being signed.

(r) Enter the name of the state in which the power of Attorney is being signed.

(s) Enter the name of the chief executive of the borrowing activity.

(t) Signature of the Notary Public.

§ 623.14 Loan or lease duration.

(a) Loan or lease periods and extensions are shown in table 2–1.

(b) Materiel will be loaned or leased only for the number of days needed for the specific purpose for which borrowed. Loan or lease extensions must be justified. The reasons why other means or other than Army materiel cannot be used must be included. Approval of loan extensions will be based on the merit of the reasons given.

(c) If a requirement exists for longer than the normal loan or lease period, the original request must include justification for the entire period. If approved, no additional justification is required during the duration of the agreement.

§ 623.15 Managing the provisions of loan agreements after approval.

(a) The loaning command will establish a centralized management office within the loaning command. This office will have overall responsibility to monitor loans and act as a liaison between the loaner and the borrower.

(b) Loan agreements will provide for an annual inspection for all assets on loan. Inspections will ensure the condition of loaned equipment and that no unauthorized modifications have been made.

§ 623.16 Types of DA materiel available for loan or lease.

(a) Examples of types of items that may be loaned or leased, and examples of the types of organizations that may borrow Army materiel, are listed in table 2–1 in § 623.21. Loans will be nonexpendable items.

(b) Loan and lease of secondary items from wholesale stocks is not normally authorized. Secondary items include investment items (such as engines and transmissions) and Supply Management Army (SMA), Defense Business Operations Fund (DBOF) items (repair parts and expendable items). Only under rare circumstances such as testing by RDTE activities/PMs will exceptions be considered.

(c) Secondary items will be provided to other Federal agencies under the Economy Act as a sale based on prior certification of funds, or receipt of monies by the supporting NICP. Agencies desiring to return materiel previously purchased will follow the materiel returns procedures outlined in AR 725–50, chapter 7.

(d) Secondary items will be made available to non-DOD/non-Federal agencies and activities, on a reimbursable basis subject to the Army's ability to first satisfy its own operational requirements.

(e) The Director of Materiel Management at the managing NICP may approve the loan of secondary item stocks on a short term emergency basis to other services to support repair/replacement programs.

(f) Secondary items, including investment items and spare parts, will be loaned as GFE only when the part is not readily available from other sources of supply.

(g) The Director of Materiel Management at the managing NICP will be approving authority for the loan of secondary items.

§ 623.17 Loan of certain property.

(a) Heads of contracting activities are authorized to lend such samples, drawings, and manufacturing or other information as are considered in the interest of the national defense to—

(1) Any contractor for Army supplies under approved production plans.

(2) Any person likely to manufacture or supply Army supplies under approved production plans.

These loans will require a loan agreement. Generally, classified materiel will not be sold, loaned, or given.

(b) In determining whether to loan property under the authority in this

paragraph, consideration will be given to—

(1) The current or probable future need of the Government for the property.

(2) The residual value of the property.

(3) Expenses incident to handling and storage of the property.

(4) The probable cost of reproduction of the property in the event of future procurement. (See AFARS 45.190.)

Submission of Requests for Loan or Lease of Army Materiel

§ 623.18 General.

(a) Loan or lease requests will be expedited according to the situation's urgency. A situation may be so serious that waiting for instructions or approval from higher authority is unwarranted. Commanders will then take action as required to save human life, prevent human suffering, or reduce property damage or destruction. Such emergency actions will be reported at once to higher authority in accordance with subpart F.

(b) Requests to the U.S. Army for loan, lease, or extension will be promptly sent by the Army element that received the request through supply channels (property book and supporting stock record account) to the action office shown in table 2–1 in § 623.21 or as specified in appropriate regulations. All requests for loan of ARNG equipment that require HQDA action/approval will be routed through the NGB.

(c) Army activities will assist requesting civil law enforcement officials asking for materiel belonging to another Service. If there are no local activities (for example, Air Force base, Navy installations) in the immediate geographical area, the agency should be given an Air Force or Navy point of contact. (See appendix B to this part.)

§ 623.19 Procedures for requesting loan or lease of materiel.

(a) Army activities. Requests for materiel for loan to an Army activity, as well as extensions in excess of 1 year (2 years for RDTE efforts), that are sent to HQDA will be submitted on DA Form 4881–6–R. DA Form 4881–6–R should be sent through NGB for ARNG equipment, or through the appropriate MACOM or MUSARC to the proper AMC MSC for wholesale materiel, or other source of supply if known. Routine requests for loan or lease of Army materiel will be sent in writing 45 days prior to the date that the materiel is required. The form will include the following:

(1) Line item number/national stock number (LIN/NSN) and nomenclature of requested item.

(2) Quantity required.

(3) Requesting activity (title and unit identification code (UIC)).

(4) Shipping address including DOD Activity Address Code (DODAAC), or COMSEC account number for COMSEC equipment.

(5) Justification including statement that loan is to support an approved research and development effort, if applicable. RDTE efforts must specify test schedule, to include any anticipated movement of borrowed materiel.

(6) Fund citation for transportation, packing, crating, and so forth (not required for COMSEC loans).

(7) For extensions—

(i) Date of original loan and approving authority.

(ii) Loaning activity.

(iii) Dates of any previous extensions and approval authority.

(b) DOD activities. Requests for materiel from another DOD activity, or an Army activity to other DOD agencies, should be submitted to the approval authority (table 2–1 in § 623.21) in writing, and must include the following information:

(1) Requesting activity (full organizational name).

(2) Name and address of individual who will sign the loan agreement.

(3) Complete shipping address, including DODAAC, or COMSEC account number, where equipment is to be shipped.

(4) Complete identification of materiel to include NSN/LIN, as appropriate, and quantity required.

(5) Detailed justification for loan to include urgency of need.

(6) Duration of loan.

(7) Funds to defray transportation and handling including accounting classification code.

(8) Serviceability requirements.

(9) Additional instructions for delivery of equipment.

(c) Other Federal agencies.

(1) Non-DOD Federal agencies will request routine loan of Army materiel 45 days before the materiel is required from the action office listed in table 2–1 in § 623.21. Requests will be submitted by letter to include the following:

(i) Date request is submitted.

(ii) Title of requesting agency and/or person authorized to receive or pick up the borrowed materiel. Be specific; e.g., Special Agent in Charge John Doe, FBI, Anytown, USA (telephone number with area code).

(iii) Justification for loan to include anticipated use.

(iv) Statement that none of the requested materiel is internally available to the requesting activity.

(v) Statement that this support is not reasonably available from local government or commercial sources.

(vi) Authority for loan (if known); e.g., public law, U.S. code, executive order. (See table 2–1 in § 623.21.)

(vii) Positive identification of the type and quantity of items required. If the NSN and nomenclature are not available, identify the items needed by type, model, size, capacity, caliber, and so forth.

(viii) Geographic location where the materiel will be located and used.

(ix) Proposed duration of the loan.

(x) Statement that the agency has, or will acquire capability to properly operate, maintain, secure, and care for the borrowed materiel.

(xi) If firearms are requested, a statement that adequate facilities are available to secure the arms. (See § 623.28(d)).

(xii) The borrower hereby assumes all responsibilities, liabilities, and costs related to the movement, use, care, security, loss, damage, maintenance, and repair of the loaned materiel.

(xiii) A statement that funds are available to cover reimbursable costs.

(xiv) A statement that the loan agreement prepared by the Army will be signed by the "responsible official" of the borrowing activity (or designee).

(xv) Name, address, and telephone number of the person who will serve as the point of contact for the requesting agency, authority, or activity.

(xvi) Complete instructions for delivery of the equipment to ensure that shipping instructions in the request are consistent with the urgency of the situation. State whether a small quantity shipped by air, express, or other fast means will satisfy immediate needs until bulk shipments can arrive. Also state quantity immediately required.

(xvii) If applicable, the number of persons to be accommodated.

(2) Urgent requests may be made to meet unexpected or actual emergencies. Such requests may be made by telephone or by electrically transmitted message. Include information required by the above paragraphs to the extent possible. The request will be presented to the action office shown in table 2–1 in § 623.21. The borrower will then send a complete written request to formalize the emergency request.

(d) Non-Federal activities. Non-Federal activities will send routine requests for loan or lease of Army materiel by letter 45 days before the materiel is required to the action office listed in table 2–1 in § 623.21; for ARNG equipment, to the state USPFO; and for USAR equipment to the Senior Logistics

Officer at the supporting MUSARC headquarters. Requests will include—

(1) Date request is submitted.

(2) Title of requesting agency and/or person authorized to receive or pick up the borrowed materiel. Be specific; e.g., Sheriff, Any County, Anytown, USA, (telephone number with area code).

(3) Type of lease or loan; e.g., Boy Scout National Jamboree, American Legion Convention, etc. (with a short summary of circumstances).

(4) Statement that none of the requested materiel is internally available to the requesting activity.

(5) Statement that this support is not reasonably available from local government or commercial sources.

(6) Authority for the lease or loan (if known); e.g., public law, US code, Executive Order. (See table 2–1 in § 623.21.)

(7) Positive identification of the type and quantity of items required. If NSN and nomenclature are not available, identify the items needed by type, model, size, capacity, caliber, serial number, and other visible means of identification.

(8) Geographic location where the materiel will be located and used.

(9) Proposed duration of the lease or loan.

(10) Statement that the agency has, or will ensure capability to properly operate, maintain, secure, and care for the borrowed materiel.

(11) If firearms are requested, a statement that adequate facilities are available to secure the arms. (See § 623.28(d)).

(12) A statement that the borrowing activity will assume all responsibilities, liabilities, and costs related to the movement, use, care, security, loss, damage, and repair of the loaned or leased materiel.

(13) A statement that funds are available to cover reimbursable costs. Also, a statement that an adequate bond will be furnished, if required.

(14) A statement that the loan or lease agreement prepared by the Army will be signed by the "responsible official" of the borrowing activity (or designee).

(15) Name, address, and telephone number of the person who will serve as the point of contact for the requesting agency, authority, or activity.

(16) Although materiel is loaned or leased in as is, where is condition, arrangements can be made to have materiel shipped provided the recipient pays all costs. In this instance, ensure that the instructions for delivery of the equipment are complete and consistent with the urgency of the situation. State whether a small quantity shipped by air, express, or other fast means will satisfy immediate needs until bulk shipments can arrive. Also state the quantity immediately required.

(17) If applicable, state the number of persons to be accommodated.

§ 623.20 Actions by approving authorities.

(a) Each level within the approval chain must carefully weigh the impact of diverting equipment from authorized Army claimants before granting approval for loans or leases.

(b) Any equipment whose diversion will create an adverse impact on force readiness will be granted only with the concurrence of the appropriate operational element at that level (for example, installation Director of Plans and Training, G–3, DCSOPS).

(c) Equipment loaned to Army activities must be carefully reviewed to ensure that the requirements outlined by The Army Authorization Document System are not bypassed using loan procedures. Equipment on loan or lease is not an authorized requirement in the authorized acquisition objective; therefore, the Army cannot procure replacement items to offset the effects of the loan or lease. This results in shortages to authorized claimants.

(d) The information below is required for approval decisions at HQDA or higher. Since the information must be obtained from the applicable AMC MSC for requests received directly at HQDA, MACOM, and subordinate elements should determine this information and forward it to HQDA with the loan or lease request if received at that level.

(1) Availability of substitute, less critical items to satisfy the requirement.

(2) Asset posture (authorized and on hand) within the wholesale logistics system.

(3) AMC MSC recommendation on source of equipment if the loan or lease is approved.

(4) Alternate source of equipment if recommended source is not selected.

(5) Impact on Army to include payback data if procurement will offset impact prior to loan or lease termination.

(e) Notification of approval or disapproval will be provided by the appropriate action office to the requester and appropriate loaning or leasing activity. If approved, the notification will provide the appropriate point of contact within the AMC MSC, medical activity, or other agency for the borrower to contact to consummate the loan or lease agreement.

(f) For COMSEC items, approving authorities must obtain National Security Agency approval in compliance with NACSI No. 2007 and USCB 14–2.

§ 623.21 Action by loaning or leasing activity.

(a) An audit trail will be established by all activities who loan or lease equipment. Detailed accounting procedures are provided in subpart C.

(b) Documents establishing the loan or lease agreement to other than Army agencies will contain a "hold harmless" clause similar to that clause provided in paragraph 4e of DA Form 4881–R.

(c) If materiel is not returned at the end of the loan or lease period, the owning activity should correspond directly with the responsible individual who signed the loan or lease agreement. Coordination should be effected with Command Counsel as to appropriate action which may be initiated.

(d) Failure to return Army materiel upon demand will be cause for the loaning activity to elevate requests for resolution through the chain of command.

TABLE 2-1.—LOAN OR LEASE APPROVAL AUTHORITY

Requester	Category of equipment	Loan period/extension	Action office	Approval authority
Army activities and other DOD activities	MACOM owned	1 year/none	Installation	Installation commander.
	ARNG owned	1 year/none	USPFO	State AG.
	Prime Power Program	1 year/1 year	HQDA (DAEN-ZCM)	HQDA (DAEN-ZCA-A).
	Floating plant	As negotiated	Water Resource Support Center	HQDA (DAEN-ZCA-A).
	COMSEC	1 year/none	USACCSLA	Commander, USACCSLA.
	Wholesale (no DAMPL impact).	1 year/none	AMC MSC	Director, Materiel Management, AMC MSC.
	Wholesale (DAMPL impact).	1 year/none	HQDA ODCSLOG Commodity Office.	HQDA ODCSLOG Commodity Office.
	All equipment	Over 1 year	HQDA ODCSLOG Commodity Office.	HQDA ODCSLOG Commodity Office.

TABLE 2-1.—LOAN OR LEASE APPROVAL AUTHORITY—Continued

Requester	Category of equipment	Loan period/extension	Action office	Approval authority
Army research, development, test, evaluation activities; or Army procurement agencies for use by contractor personnel or Government contract.	Whole (no DAMPL impact).	2 years/none	AMC MSC	Commander, AMC MSC
	Wholesale (DAMPL impact).	2 year/none	HQDA ODCSLOG Commodity Office.	HQDA ODCSLOG Commodity Office.
	Prime Power Program	1 year/1 year	HQDA (DAEN-ZCM)	HQDA (DAEN-ZCZ-A).
	COMSEC	2 years/none	USACCSLA	Commander, USACCSLA
	Floating plant	As negotiated	Water Resource Support Center	HQDA (DAEN-ZCZ-A).
Federal departments and agencies	Arms, ammo, combat/tactical vehicles, vessels and aircraft.	As required	HQDA (DALO-SMS)	ASA(I,L&E).
	Prime Power Program	1 year/1 year	HQDA (DAEN-ZCM)	HQDA (DAEN-ZCZ-A).
	Floating plant	As negotiated	Water Resource Support Center	HQDA (DAEN-ZCZ-A)
	Medical	Over 180 days	HQDA (DASG-HCL)	HQDA (DASG-HCL).
	Medical (MACOM owned).	Less than 180 days	Commander, MEDCEN/MEDDAC.	Installation commander
	Medical (ARNG owned)	Less than 180 days	USPFO	State AG.
	Medical (wholesale)	Less than 180 days	U.S. Army Medical Materiel Agency (USAMMA).	Commander, USAMMA
	Other equipment	Over 180 days	HQDA (DALO-SMS)	HQDA (DALO-SMS).
	Other equipment (MACOM owned).	Less than 180 days	Installation	Installation commander
	Other equipment (ARNG owned).	Less than 180 days	USPFO	State AG.
	Other equipment (wholesale).	Less than 180 days	AMC MSC	Director, Materiel Management, AMC MSC.
Activities outside Federal Government:				
State, local government agencies; schools; churches; private individuals; commercial activities.	Arms, combat/tactical vehicles, vessels, and aircraft.	As required	HQDA (DALO-SMS)	ASA(I,L&E).
	Industrial	As required	HQ AMC (AMCPD-IP) or AMC MSC.	ASA(RDA), Head of Contracting Activity, or designee.
	Industrial (wholesale)	Less than 180 days	AMC MSC	Director, Materiel Management, AMC MSC.
	Medical	Over 180 days	HQDA (DASG-HCL)	HQDA (DASG-HCL).
	Medical (MACOM owned).	Less than 180 days	MEDCEN/MEDDAC	Installation commander.
	Medical (wholesale)	Less than 180 days	USAMMA	Commander, USAMMA
	Other equipment	Over 180 days	HQDA (DALO-SMS)	HQDA (DALO-SMS).
	Other equipment (MACOM owned).	Less than 180 days	Installation	Installation commander
	Other equipment (ARNG owned).	Less than 180 days	USPFO	State AG.
Manufacturers for lease of previously produced materiel for demonstration purposes outside the United States.	All equipment (except aircraft).	As required	HQDA (DALO-SSA)	ASA(RDA) or designee Director, DSAA.
	Aircraft	As required	HQDA (DALO-SAA)	ASA(I,L&E).
Department of Agriculture.				
U.S. Forest Service	Protection against wildlife.	90 days/90 days	HQDA (DAMO-ODS)	ASA(I,L&E).
	Avalanche control	As required	HQDA (DALO-SMS)	ASA(I,L&E).
Animal Disease Eradication Program.	All equipment	90 days	HQDA (DAMO-ODS)	Director of Military Support, ODCSOPS.
Department of Justice, FBI	Aircraft piracy	Minimum essential	HQDA (DAMO-ODS)	DOD General Counsel or designee; in urgent cases, Deputy Director for Operations.
Department of Treasury, Secret Service	All equipment	Minimum	HQDA (DAMO-ODS)	Executive Secretary of U.S., the Department of Defense Military Assistant to the President.
Civilian law enforcement.				
Civil disturbances and terrorism	Personnel, arms, combat/tactical vehicles, vessels, and aircraft.	15 days/15 days	HQDA (DAMO-ODS)	ASA(I,L&E).
	Riot control agents, concertina wire, and other equipment to be employed in control of civil disturbances.	15 days/15 days	HQDA (DAMO-ODS)	DOD Executive Agent Under Secretary of the Army or HQDA (DAMO-ODS)
	Fire fighting resources and equipment of a protective nature (masks, helmets, body armor, vests) and use of Army facilities.	15 days/15 days	Installation	Installation commander, State AG Commander, MDW/CINC Unified Commands (OCONUS)/Director of Materiel Management, AMC MSC

TABLE 2-1.—LOAN OR LEASE APPROVAL AUTHORITY—Continued

Requester	Category of equipment	Loan period/extension	Action office	Approval authority
Other law/drug enforcement activities.	Arms, combat/tactical vehicles, vessels, and aircraft.	As required	HQDA (DALO-SMS)	ASA(I,L&E).
	Medical	Over 180 days	HQDA (DASG-HCL)	HQDA (DASG-HCL).
	Medical (MACOM owned).	Less than 180 days	Commander (MEDCEN/MEDDAC).	Installation commander.
	Medical (ARNG owned)	Less than 180 days	USPFO	State AG.
	Medical (wholesale)	Less than 180 days	USAMMA	Commander, USAMMA.
	Other equipment	Over 180 days	HQDA (DALO-SMS)	HQDA (DALO-SMS).
	Other equipment (MACOM owned).	Less than 180 days	Installation	Installation commander
	Other equipment (wholesale).	Less than 180 days	AMC MSC	Director, Materiel Management, AMC MSC.
	Other equipment (ARNG owned).	Less than 180 days	USPFO	State AG.
Federal Law Enforcement Agencies (only).	Ammunition	As required	HQDA (DALO-SMS)	ASA(I,L&E).
Red Cross (aid to DOD in time of war)	Administrative and general support.	As required	HQDA (DALO-SMS)	ASA(IL&EFM).
Foreign governments	All equipment	As required, not to exceed 5 years.	HQDA (DALO-SAC)	Director, DSAA.
Youth groups:				
Boy and Girl Scouts of America (world or national Patrol; Camp Fire Girls, jamborees); Civil Air Inc; YMCA; YWCA; Boy's Club of America; Four H Clubs; and similar groups.	MACOM owned	As required for event	Installation	Installation commander.
	Wholesale	As required for event	AMC MSC	Director, Materiel Management, AMC MSC.
	ARNG owned	As required for event	USPFO	State AG.
Army Flying Clubs	Army aircraft	As negotiated	Installation/AMC MSC	ASA(IL&E) CG, FORSCOM.
Veterans organizations	Convention assistance (furniture).	15 days/15 days	Installation	Installation commander.
	Furniture (ARNG owned).	15 days/15 days	USPFO	State AG.
	Furniture (wholesale)	15 days/15 days	AMC MSC	Director, Materiel Management, AMC MSC.
	Burial functions (obsolete rifles).	As required	HQDA (DALO-SMS)	ASA(I,L&E).
Aid to District of Columbia Government in combating crime.	Materiel and supplies	As negotiated	HQDA (DAMO-ODS)	ASA(I,L&E)
Disaster relief:	Materiel and supplies	For minimum essential period.	HQDA (DAMO-ODS)	CG, FORSCOM or CINC of UCOM for OCONUS.
	For rehabilitation reconstruction (bridges, etc).	For minimum or essential period when requested by FEMA.	HQDA (DALO-SMS)	ASA(I,L&E).
	Flood fighting equipment and supplies.	For minimum essential period.	USACE District	USACE District Commander.
American National Red Cross in support of local civilian Government disaster relief.	Materiel and supplies	For minimum essential period.	Installation	Installation commander.
	ARNG owned	For minimum essential period.	USPFO	State AG.
Environmental Protection Agency and U.S. Coast Guard (oil and petroleum spills).	Materiel, supplies, and equipment.	For minimum essential period.	HQDA (DAMO-ODS)	ASA(I,L&E).
Environmental Protection Agency and U.S. Coast Guard.	Equipment/supplies	For minimum essential period.	HQDA (DAMO-ODS)	ASD(P&L).
Foreign Disaster Assistance	Equipment/supplies	For minimum essential period.	Through Department of State to HQDA (DAMO-ODS).	ASD (International Security Affairs).
Civil Defense	Equipment/supplies	For minimum essential period.	Installation	CG, FORSCOM.
Private individuals or activities	Historical properties	As needed for period of lease.	HQDA (DAMH-HS)	HQDA (DAMH-ZA).
	Military art	Not to exceed 2 years	HQDA (DAMH-HS)	HQDA (DAMH-ZA).
Civilian marksmanship (clubs and schools).	Arms and accouterments.	1 year/1 year	Director of Civilian Marksmanship.	ASA(I,L&E).
Community relations and domestic action programs (Youth Conservation Corps).	Equipment for instructional purposes.	As negotiated	Installation	Installation commander.
	ARNG owned	As negotiated	USPFO	State AG.
Civilian educational institutions	Quartermaster supplies	As negotiated	HQDA (DALO-SMS)	ASA(I,L&E).
Authorized military health care recipients.	Military	As required	HQDA (DASG-HCL)	HQDA (DASG-HCL).

TABLE 2-2.—AGREEMENTS, BONDS, AND INSURANCE REQUIREMENTS

Borrower	Loan or lease agreement required	Surety bond required	Vehicular insurance required
Army or other DOD activities.	See note (1).	No	No.
Non-DOD Federal Department and agencies.	Yes	No	No.
Civil authorities (State and local governments).	Yes	Yes (2)	Yes (2).
Civilian activities (veterans' organizations, youth groups, etc.).	Yes	Yes	Yes.
Corporations	Yes	Yes (3)	Yes.

(1) A hand receipt or other document assigning responsibility will suffice for retail ies. A loan agreement will be required for material on loan from wholesale activities.

(2) In emergency disaster relief cases, bonds and insurance may be provided after receipt of the materiel.

(3) This applies when FAR Part 45 is not applicable.

Subpart C—Accounting Procedures

§ 629.22 Loan or lease document format.

(a) When the lending or leasing accountable property officer receives copies of the request, the agreement, the surety bond (if required), and the written loan or lease authorization from the approving authority, the request will be converted to Military Standard Requisitioning and Issue Procedures (MILSTRIP) requisition format (DD Form 1348) shown in table 3-1 in § 623.28. In emergencies, requests and authorization for loans or leases may be made by telephone. The formal request, agreement, bond, and authorization will follow.

(b) Loaned or leased property will be kept on the accountable records of the owning property account. The entry showing the quantities will be supported by DD Form 1348-1 (DOD Single Line Item Release/Receipt Document), and copies of the loan or lease agreement and surety bond (if required). A self-addressed envelope and instructions for the receiving official to sign the DD Form 1348-1 will be included with the shipment.

(c) Loans and leases will be processed by accountable property officers according to normal supply procedures except as modified by this regulation.

(d) Accountable property officers, including the PBO of the borrowing activity and/or the SRO of the installation SSA, will keep files to provide an audit trail for transactions and a single source of accounting and billing for reimbursement. No separate property book accounts will be set up for these items. Items, with dates shipped, will be identified by use of "loan or lease control numbers" in loan or lease files and in supporting documentation. The files will include as a minimum—

(1) The loan or lease request. If the request was made by telephone (urgent), a copy of the Memorandum for Record prepared to summarize the call will be used.

(2) The approving authorization to make the loan or lease.

(3) The loan or lease agreement.

(4) A copy of the surety bond document (certified check, U.S. Treasury bonds, or adequate bond from a bonding company).

(5) DD Form 1348-1 used for shipping the items and a signed copy verifying receipt.

(e) In addition, a master loan or lease register with the control number and shipping document number will be maintained.

(f) Loaned COMSEC equipment records are maintained in the Army COMSEC Commodity Logistics Accounting Information Management System (ACCLAIMS) at USACSLA. COMSEC equipment is shipped to Army COMSEC accounts by the Armed Forces Courier Service (ARFCOS) as prescribed in AR 66-5. Standard Form 153 is used to ship classified COMSEC equipment; DD 1348-1 is used to ship controlled cryptographic items (CCI), and a signed copy, returned to the shipper, serves as verification of receipt. CCI must be reported in accordance with AR 710-3.

§ 629.23 Shipment of loaned or leased materiel.

(a) Army materiel will be shipped only to the chief of the borrowing activity or to a designee authorized to receive and sign for the materiel. To keep the materiel out of unauthorized hands, consignees (receivers) will be advised by the shipping activity of—

(1) The items and quantities to be provided.

(2) The source of supply.

(3) Whether the items are to be picked up or shipped.

(4) Shipments made.

(b) All shipments of loaned or leased equipment will be documented on DD Form 1348-1 or SF Form 153 (Classified COMSEC Equipment). DD Form 1348-1 or SF Form 153 will be generated by the shipping depot where materiel is stored in accordance with AR 725-50 and TB 380-41. They will include required special instructions, i.e., accounting classification or other data for charging transportation cost to borrower, and serial numbers (if applicable) of items shipped. The receipt certificate (not applicable to classified COMSEC) shown at figure 3-1 will be typed on two copies of the DD Form 1348-1 and included with the depot shipment. The depot will also include a self-addressed envelope for return of the signed document to the AMC MSC.

I certify receipt of and assume responsibility for the Army materiel listed on this document. The items were received in good condition except as noted. Serial numbers have been verified (omit if not applicable).

(Signature of responsible officer).
(Typed name of responsible officer and date).

Figure 3-1. Sample receipt certificate

(c) One copy of each signed DD Form 1348-1, or SF 153 (for classified COMSEC) will be returned to the shipper; one copy of each form will be kept in the borrower's file.

(d) The installation or depot transportation officer is responsible for coordinating movement of the items that must be shipped.

(e) Shipments, including those to foreign countries, will be made on commercial bills of lading (CBL). Freight charges will be paid by the borrower. The CBL will cite proper project codes. **Note:** In emergencies where use of CBL would delay shipment, Government bills of lading (GBL) may be used subject to later reimbursement. Shipments to Boy Scout World Jamborees in foreign countries will be by GBL unless otherwise specified by the Boy Scouts.

(f) Shipments will be consolidated to the maximum extent possible to obtain the lowest charges available.

(g) Separate shipping instructions will be furnished for each recipient, convention, jamboree, and so forth, to ensure correct consignee address.

(h) Transportation will be at no expense to the Government. The Defense Transportation Services (Military Sealift Command, Military Airlift Command (MAC), and Military Traffic Management Command (MTMC)) will send all billings for such transportation costs to the U.S. Army Finance and Accounting Center (USAFAC). USAFAC will then bill the fiscal station servicing the accountable property office that made the loan. This fiscal station will then bill the borrower for these transportation costs. Army materiel loaned or leased to non-DOD activities is not authorized for overseas movement on a space available basis by

Military Sealift Command or MAC without their prior approval.

(i) Detailed procedures for the shipment, security, accounting, reporting, and loss of CCI are contained in DA Pam 25-380-2.

§ 623.24 Receipt of borrowed property.

(a) The person authorized to receive the materiel (whether shipped or picked up) will check the quantities received against the quantities shown on the DD Form 1348-1. This person will also verify the condition of the materiel. Any variation in quantity or condition must be resolved at once. If the shortage or damage is not due to a common carrier, the borrower will submit, through the approving official, an SF 364, Report of Discrepancy (ROD) per AR 735-11-2. A copy of the ROD will be provided to the loaning official at the NICP in order to expedite resolution.

(b) When a DD Form 1348-1 has not been received by the borrower and does not accompany the shipment, an informal report will be made at once to the accountable property officer. The report will include the nomenclature, quantities, condition, and, if applicable, the model numbers and serial number(s) of all materiel received.

(c) When shipment has been verified, the borrower (or designee) will enter the quantity received on two copies of the DD Form 1348-1. Serial numbers will also be entered for serial numbered items. The completed copies of the DD Form 1348-1 will be signed by the authorized person. One copy of the DD Form 1348-1 will be returned to the accountable property officer.

(d) If shipments are received damaged or short, take action described in § 623.27.

(e) Classified COMSEC equipment is transferred between COMSEC accounts using SF 153 (see TB 380-41-3). The recipient of the equipment will return the signed SF 153 to the shipper immediately. It is the responsibility of the shipper to follow up with the receiving COMSEC account if 30 days have elapsed from the date of shipment and the signed SF 153 has not been returned. The follow-up may be extended to 45 days when shipment is from CONUS to overseas, overseas to CONUS, or from theater to theater. If the shipper cannot obtain or otherwise resolve confirmation of receipt on the first follow-up, the problem will be referred to USACCSLA, ATTN: SELCL-KP.

§ 623.26 Accounting by borrower.

Army borrowing activities should maintain suspense files that include copies of all documents that authorize the loan of materiel and relate to loan transactions. Such files will assist in returning materiel within the approved loan period. Files should be retained for audit or any other purpose as required. These files may be destroyed after return of the borrowed materiel and final completion of all accounting requirements including reimbursement for Army costs related to the loan. Non-Army borrowers are encouraged to conform to the requirements above.

§ 623.26 Return of borrowed materiel.

(a) General.

(1) Borrowed materiel will be returned to the Army in the condition received, less fair wear and tear, unless the terms of agreement specify otherwise.

(2) Property for which repair cost is claimed will be held at the Army depot or installation until final charges are determined and a release is given by respective property officers.

(3) Return of materiel loaned to rifle clubs and schools will conform with subpart D.

(4) Commodity managers will direct returned materiel to the nearest available depot. The materiel will be returned using the NICP assigned loan document number.

(b) Accountable property officer actions.

(1) At the end of a loan or lease period, recall, or upon notice by the borrower that the materiel is no longer needed, the accountable property officer will send a letter of instruction to the borrower for return of the materiel. He or she will verify or modify the turn-in instructions provided in the original agreement.

(2) The procedures below will be used by accountable property officers to terminate loan or lease agreements.

(i) For loans or leases up to 30 days, no specific termination action is necessary except when materiel is not returned by the due date. Then, a written termination notice will be sent to the borrower. A followup notice will be sent every 30 days until the materiel is returned or other settlement is made.

(ii) For all other loans or leases, a termination notice will be sent 30 days before the end of the period by the lending activity to the borrower verifying (or modifying) the turn-in instructions.

(iii) Follow up of the termination notice will be made at 30-day intervals at succeeding levels of command until the materiel is returned or other settlement is made. When reasonable efforts have been made (at least three followups, one of which has been signed at the General Officer or Senior Executive Service level) to satisfactorily conclude the loan or lease, assistance will be requested from higher headquarters. If all MACOM echelons are unsuccessful, a full report of all actions and circumstances should be forwarded to HQDA(DALO-SMS), WASH DC 20310-0547, with accompanying correspondence.

(3) After receiving inspection reports (c below) and final shipment receipts, the accountable property officer will clear the records.

(4) The accountable property officer will notify the servicing finance and accounting office (FAO) of any reimbursement required.

(c) Actions by the receiving installation, depot, or arsenal.

(1) The installation, depot, or arsenal receiving activities will inspect returned materiel.

(i) If the quantity received differs from the quantity shipped, the actual quantity received will be entered on the DD Form 1348-1. A Report of Discrepancy will be initiated for quantity variances. Evidence of negligence or willful misconduct will be reported to support report of survey investigation. If the quantity of classified COMSEC equipment received differs from the quantity shipped, the depot will send a corrected SF 153 to the COMSEC account that made the shipment. If the variance cannot be resolved, a report of survey will be initiated.

(ii) If the condition of the property differs from that noted on the DD Form 1348-1, the variation will be stated.

(2) Loaned or leased materiel returned in an unserviceable condition will be inspected by qualified technical inspectors at installation level and by quality assurance activities at depots to determine condition code.

(i) If the condition of returned materiel is the same as noted on the receipt document or the prepositioned materiel receipt card, the item will be processed as a normal receipt.

(ii) If there is a discrepancy between the actual condition of the item and the assigned condition code on the receipt document, obtain an estimate of repair cost and continue normal receipt documentation processing.

(iii) The receiving depot or installation will prepare an inspection and surveillance report on DA Form 3590 (Request for Disposition or Waiver) for each returned item that needs repair. Documentation will also be prepared for shortages and will include the cost of equipment repair or the value of shortage using standard prices. Two copies of each report will be sent to the proper accountable property officer.

§ 623.27 Loan inventories.

(a) If a loan or lease has been approved or extended for a period longer than 1 year, the correspondence advising the customer of the approval will also advise the customer to conduct an annual inventory. The borrower will report the results of the inventory to the accountable property officer of the loaning or leasing activity.

(b) If no discrepancies are noted, the accountable property officer will file the signed annual inventory form in the borrower's memorandum receipt file.

(c) If the borrower's annual inventory shows that amounts and kinds of Army materiel for which the borrower is responsible differ from that actually in his or her possession, the accountable property officer will take the following actions:

(1) For overages, assume accountability for the overages noted on the annual inventory form. Use a copy of the annual inventory form as a debit voucher to the account. No approval of this voucher is needed.

(2) For shortages, act to obtain reimbursement for the value of the missing property or to adjust the discrepancy by report of survey.

§ 623.28 Lost, damaged, or destroyed materiel.

(a) When materiel is lost or damaged during shipment, DOD and Federal agencies will refer to AR 55–38 for specific instructions. Non-Federal agencies will contact the shipper for guidance.

(b) Damage or loss that is the fault of the carrier will be billed to the carrier after reconciliation.

(c) Army materiel lost, damaged, or destroyed while in the possession of rifle clubs or schools will be handled as described in subpart D.

(d) Any Army materiel loaned at the request of an FEMA regional director that is not returned according to instructions in this chapter will be reported to the regional director who will arrange for proper reconciliation and reimbursement.

(e) Reports of survey for damaged or lost property will be submitted by borrowing Army units as directed by AR 735.

TABLE 3–1.—MILSTRIP REQUISITION FORMAT

Card columns	Code or data
1–3	"AOE."
4–6	Routing identifier code (lender).
7	Media and status code.
8–22	National stock number.

TABLE 3–1.—MILSTRIP REQUISITION FORMAT—Continued

Card columns	Code or data
23–24	Unit of issue.
25–29	Quantity.
30–43	Document number.
(30–35)	DODAAC of the requisitioner, if applicable, otherwise DODAAC of accountable property officer/MSC (lender).
(36–39)	Julian date.
(40–43)	Serial number.
44	"N" for nonrecurring demand.
45–50	Supplemental address (loanee DODAAC) for DOD units. For non-DOD activities enter Y00000 destination.
51	"M."
52–53	"G4" for loans to nonresearch and nondevelopment activities. "G6" for loans to research and development activities.
54–56	Blank.
57–59	Project code if applicable.
60–61	Priority.
62–64	Required delivery date.
65–66	Blank.
67–69	Depot routing identifier code.
70	Purpose code.
71	Condition Code.
72	Management code.
73–80	Blank.

Subpart D—Loan or Lease of Arms and Accouterments

§ 623.29 General.

(a) Loan or lease of arms and accouterments requires special processing and handling. Loans or leases to DOD and non-DOD activities will be handled as a normal loan or lease according to instructions in this subpart with the added requirement of maintaining serial number visibility.

(b) The Commanding General, U.S. Army Armament, Munitions and Chemical Command (AMCCOM) has been designated by AMC to maintain a centralized serial number visibility record for all small arms made for the Army. AMCCOM (AMSMC–MMD) maintains accountable property records for loans to organizations such as the Director of Civilian Marksmanship (DCM) and for loans and leases to non-DOD activities such as the FBI, United States Secret Service, rifle clubs, educational institutions, and veterans' organizations.

(c) Requests for loan or lease of arms that are type classified standard (logistics control code A or B) will be filled with the lowest type classified items available.

(d) Borrowers of Army arms will be fully responsible for the care, custody, and proper use of loaned materiel. Physical security measures must be equal to or greater than the minimum requirements in AR 190–11.

(e) If borrowed arms are lost, stolen, or unaccounted for, the borrower must inform the lender (accountable property officer), local security office or military police station, the local police, and the FBI within 24 hours after discovery.

(f) This regulation does not apply to arms issued to ROTC units under the National Defense Act. (AR 710–2 is applicable.)

§ 623.30 Loans or leases to civilian activities (other than rifle clubs and educational institutions).

(a) Arms and accouterments may be loaned by the Army to civilian authorities and to civilian activities as shown below. (Section 623.30 covers rifle clubs and institutions.)

(1) For use by Federal agencies or departments in protection of public money and property (10 U.S.C 4655).

(2) Obsolete or condemned rifles (not more than 10), slings, and cartridge belts may be loaned to local units of any national veteran's organization for use by that unit in ceremonies; for example, a funeral for a former member of the Armed Forces. The organization must be recognized by the Veterans' Administration (10 U.S.C. 4683).

(3) Arms and accouterments loaned to organizations listed in section 623.30(a) for a period of 1 year or less will be accounted for by AMCCOM. Loans of items that exceed 1 year will be accounted for by the DCM under § 623.30.

(b) Approved requests will be sent to AMCCOM, Rock Island, IL 61299, for completion of a formal loan agreement and issue of items. (See appendix B to this part.) Serial number control data will be entered in the DOD Small Arms Serialization Program.

(c) Shipments and returns are described in chapter 3 except as follows:

(1) Shipment of arms and ammunition will conform to all security requirements. (See AR 190–49.) The responsible property officer (borrowing activity) for materiel on loan or lease will request disposition instructions from the accountable property officer when materiel is no longer needed or at the end of the loan or lease period. Loaned or leased materiel may be withdrawn from the borrowing activity at any time to satisfy military requirements.

(2) The accountable property officer will—

(i) Issue shipping instructions for the return of property to a designated installation. The letter of instruction will contain a MILSTRIP document number

(AR 725–50, paragraph C–4) for each line item scheduled for return to be used for the shipment. The shipper will be directed to cite this document number on the shipping document.

(ii) Prepare and submit to the receiving installation a prepositioned materiel receipt card, DD Form 1486 (DOD Materiel Receipt Document) (Document Identifier DWC), as advance notice of the shipment. Exception data will be annotated as follows: "Return of Loan from Other Government Agency-Report Receipt of Arms and Accouterments Accountable Property Officer, ATTN: AMSMC-MMD." A copy of the letter of shipping instructions ((a) above) will be enclosed with the prepositioned materiel receipt card for information.

(3) Upon receipt at the receiving installation, property will immediately be inspected. Cost of repairing unserviceable items and cost of replacement, if irreparable, will be determined at time of inspection. The MILSTRIP receipt card will be mailed to the accountable property officer with estimated cost of repairing damage and detailed materiel condition as exception data.

(4) Upon notification of materiel receipt, the accountable property officer will clear the loan record with a credit entry verifying return of materiel, and file the receipt document with the other records.

§ 623.31 Loans to rifle clubs and educational institutions.

(a) Authorization. Arms and accouterments may be loaned to rifle clubs and educational institutions for periods established in table 2–1 in § 623.21 (see items 18 and 20) under the following conditions:

(1) Rifled arms may be loaned to civilian rifle clubs for promotion of marksmanship training among able-bodied U.S. citizens (10 USC 4308).

(2) Arms, tentage, and equipment, as the SA deems necessary, may be loaned to an educational institution to provide proper military training where there is no ROTC, but there is a course in military training prescribed by the SA. The educational institution must have at least 100 physically fit males over 14 years of age (10 USC 4651).

(3) Magazine rifles and appendages may be loaned to schools having a uniformed corps of cadets of sufficient number for target practice. Models loaned must not be in use at the time, or needed for a proper reserve supply (10 USC 4652).

(4) Ordnance and ordnance stores may be loaned to Washington, DC high schools for military instruction and practice (10 USC 4653).

(5) Obsolete ordnance and ordnance stores may be loaned to educational institutions and to State soldiers', sailors', and orphans' homes for drill and instruction if recommended by the Governor of the State or territory concerned (10 USC 4685).

(b) Director of Civilian Marksmanship (DCM). The President may detail an officer of the Army or Marine Corps as DCM (10 USC 4307). The DCM is responsible for—

(1) Control and accountability of Army materiel issued to civilian rifle clubs.

(2) Policies and procedures for the issue of arms and ammunition to civilian rifle clubs.

(3) Ensuring proper bonding of clubs before issue of Army materiel. The SA has further made the DCM similarly responsible for loans to institutions (schools).

(c) Property transactions. AMCCOM will transfer accountability for materiel shipped to civilian rifle clubs and institutions to the DCM. The DCM will keep a mission stock record account for these items as shown in AR 710–2. In addition, the account will note all property transactions between the DCM and civilian rifle clubs and institutions as follows:

(1) Loan and return of arms and accouterments to (from) civilian rifle clubs and institutions will not be posted to the accountable record as loss or gain vouchers. They will be posted as "loan transactions" with the DCM retaining accountability. In addition to debit, credit, and adjustment voucher files, the DCM accountable property officer will keep a "loan voucher" file in two sections: active and terminated.

(i) The active section (suspense for items on loan) will contain DD Form 1348–1 or a letter acknowledging receipt of the items. (The signature of the borrower will be in accordance with paragraph (d)(5) or (d)(6) of this section.) This section will contain a folder for each activity serviced by the DCM. The active loan vouchers will be filed in NSN and voucher number sequence. This section serves as the DCM loan record.

(ii) The terminated section (for items no longer on loan) will contain the original loan shipping document (loan voucher). The return receipt document that terminates the loan will be attached. The receipt document will contain the original shipping document number and the return advice code "IQ."

(2) Shipments of expendable items (e.g., ammunition and targets) will be posted as a credit to the accountable record. Accountability will be dropped. (These items are deemed to have been consumed at the time of issue.)

(3) Expendable items returned by rifle clubs and institutions will be posted to the accountable record as a debit voucher. The DCM will determine disposition of these items.

(d) Requisition procedures.

(1) The DCM will prepare requisitions based on information from the rifle clubs or institutions. DA Form 1273 (Requisition for Articles Authorized for Issue to Civilian Rifle Clubs) or DD Form 1348–1 will be used. Two completed copies of the requisition will be sent to the requester.

(2) The rifle club or institution will complete the required form and return one signed copy to the DCM (app B), and keep one copy for file.

(3) On receipt of the signed copy of DA Form 1273 or DD Form 1348–1, the DCM will take proper issue action. When more arms are required by the DCM, a DD Form 1348 will be prepared and sent to the SA for approval (AR 725–50).

(4) The supply source responsible for the loan will ship the materiel directly to the rifle club or school.

(5) Three copies of the DD Form 1348–1 received with the shipment or by mail will be annotated and signed by the person authorized to receive and sign for property for the rifle club or school. The quantity and condition of the items received will be entered thereon: This entry will be based on a physical check and inspection of the materiel. Serial numbers of items received, if applicable and not noted, will also be entered on the form. Two completed copies of DD Form 1348–1 will be mailed to the DCM. The third completed copy will be kept in the unit's file.

(6) If a DD Form 1348–1 is not received with the shipment or is not received by mail, a receipt letter will be sent to the DCM. It will set forth the nomenclature, quantities, condition, and serial numbers (of serial-numbered items) of all property received. This letter will be sent promptly after receipt of the property. The receipt letter will be used by the DCM as a loan voucher, recorded in the voucher register, and placed in the voucher file. The loan action will be posted to the DCM stock record account.

(e) Property returns.

(1) When property is ready to be returned by civilian rifle clubs or institutions, the DCM will prepare seven copies of the DD Form 1348–1. Five copies will be mailed to the rifle club or institution; one will be kept in suspense in the club's or institution's jacket file; and one will be sent to the US Army

Management Systems Support Agency, WASH DC 20310, to update the "rifles intransit program." The rifle club or institution will enter on the five copies the shipment date, how shipped, the quantity shipped, and other necessary data not entered by the DCM and distribute the five copies as follows:

(i) Two copies to the consignee (receiving depot, arsenal, or installation). One copy of the DD Form 1348-1 received by the consignee will be used to tally the shipment and to account for property received. The other copy will be signed by the accountable property officer (or representative) and will be sent to the DCM to terminate the oper receipt in the loan voucher file.

(ii) One copy with the shipment.

(iii) One copy to the DCM, accompanied by the bill of lading (where available).

(iv) One copy retained by the rifle club or institution.

(f) Lost, damaged, or destroyed property. Loss, damage or destruction of property in the possession of a rifle club or institution will be reported within 24 hours by telephone to the DCM (WATS 202-272-0810), the local police, and the FBI. All public and local laws must be complied with. Rifles and other equipment (except ammunition) that become unserviceable will be reported to the DCM by the club or institution. The DCM will give instructions for return of the equipment without expense to the Government. Any equipment damage or loss that is the fault of the club or institution will be determined by a report of survey (AR 735-5). The club or institution must then reimburse the DCM. The DCM may replace damaged equipment after reimbursement. Government property lost or destroyed without fault or neglect on the club's part will be replaced, if replacements are available. The club will pay only shipping and handling charges.

Subpart E—Reimbursement for Loan or Lease of Army Materiel

§ 623.32 Reimbursement policies and procedures.

(a) Policies.

(1) DA elements do not program for costs related to loan or lease of Army materiel. Lost, damaged, or destroyed property will be accounted for per AR 735-5.

(2) Loans to non-DOD Federal activities are made on the basis that there will be no extra cost to the Army. Costs that are in addition to normal Army operating expenses (incremental costs) will be reimbursed by the borrower. This provision will be part of the loan agreement.

(3) In cases of aircraft piracy, civil disturbance, disaster relief, or protection of the President or visiting dignitaries, emergency support will not be withheld for lack of a formal reimbursement agreement. In these cases, the supporting Army element will absorb initial costs (within existing fund availability). Reimbursement for other than United States Secret Service costs for protection of the President will be coordinated later.

(4) Leases made under 10 USC 2667 provide that the borrower must pay a fair monetary rental in addition to paying all incremental costs discussed in paragraph (a)(2) of this section. The fair monetary rental will be determined on the basis of prevailing commercial rates or computed by sound commercial accounting practices including a return on capital investment and administrative cost as well as depreciation. Leases made under this section will include a provision establishing the rental cost of the materiel and method of payment.

(5) Support to the United States Secret Service will be on a reimbursable basis except for costs directly related to protection of the President or Vice President or line of succession. Requests for reimbursement for all other support for United States Secret Service will be per AR 37-1.

(6) The cost of emergency support will be billed directly to the recipient.

(7) User charges will conform to AR 37-60, DODI 7230.7, and this chapter.

(8) User charges for non-civilian law enforcement actions may be waived or reduced when:

(i) The recipient of the benefits is engaged in nonprofit activity designed for the public safety, health, or welfare.

(ii) Payment of the full fee by a state, local government, or nonprofit group would not be in the interest of the program.

(iii) Furnishing of the service without charge is an appropriate courtesy to a foreign country or international organization, or comparable fees are set on a reciprocal basis with a foreign country.

(iv) The incremental cost of collecting the fees would be an unduly large part of the receipts from the activity.

(9) The Army must be reimbursed for equipment damaged or destroyed by the borrowing agency (regardless of cost) prior to committing a replacement item to the borrower (Federal) or the lessee (non-Federal).

(b) Procedures.

(1) The Army accountable property officer handling the loan or lease of Defense Logistics Agency (DLA) stock fund items from an Army activity will coordinate DLA billings and borrower reimbursement to ensure that Army incremental costs are reimbursed. Requests for loan or lease of DLA-owned and stored materiel should be submitted directly to Director, Defense Logistics Agency, ATTN: DLA-OSC, Cameron Station, ALEX VA 22314.

(2) Installation financial accounting for "accounts receivable or payable (bonds)" will conform to AR 37-108.

(3) The FAO supporting the supplying accountable property officer will record all charges, including accounts receivable of DBOF offices (or branch offices), in separate ledger accounts for each borrower.

(4) Charges and collections recorded in each loan or lease account will be reported per Army regulations and directives prescribing the reporting of the fund status in any current fiscal year.

(5) Billing will be initiated on SF 1080 (Voucher for Transfer Between Appropriations and/or Funds), and sent to the borrower within 45 days of turn-in of materiel and loan or lease termination. For loans of arms and accouterments and issue of ammunition per 10 USC 4655, the SF 1080 will be annotated to show that collections are to reimburse DA appropriations.

(6) Special appropriations established to support disaster relief will be used promptly by Army commanders concerned to ensure that all direct expenses are charged to the special appropriation. Exclude those charges subject to reimbursement by the ANRC. The ANRC reimburses for supplies, materiel, and services for which they are responsible in the disaster area.

§ 623.33 Reimbursable costs.

Unless specifically stated, borrowing agencies, authorities, and activities will reimburse the Army for all costs related to loan or lease of Army materiel to include but not limited to the following:

(a) Any overtime pay and pay of additional civilian personnel required to accompany, operate, maintain, or safeguard borrowed equipment.

(b) Travel and per diem expenses of Army personnel (military and civilian).

(c) Packing, crating, handling, and shipping from supply source to destination and return. This includes port loading and offloading.

(d) All transportation including return for repair or renovation.

(e) Hourly rate for the use of Army aircraft.

(f) Petroleum, oils, and lubricants (including aviation fuel).

(g) The cost of materiel lost, destroyed, or damaged beyond

economical repair except for Army aircraft, motor vehicles, or motor craft used in connection with law enforcement efforts involving aircraft piracy.

(h) Utilities (gas, water, heat, and electricity). Charges will be based on meter readings or other fair method.

(i) Any modification or rehabilitation of Army real property that affects its future use by DA. In such cases the borrower will also bear the cost of restoring the facility to its original form.

(j) Overhaul of returned materiel. Renovation and repair will conform to agreement between the Army and the borrower. (See § 623.35(a)).

(k) Repair parts used in maintenance or renovation.

(l) Price decline of borrowed stock fund materiel at which returned property can be sold.

(m) Issue and turn-in inspection labor costs.

(n) Salaries for personnel who process/maintain loans.

(o) Reimburse shipping, receiving, and materiel release order (MRO) handling and inventory changes associated with loan.

§ 623.34 Nonreimbursable costs.

The following costs are normal operating expenses of the Army for which no reimbursement is required:

(a) Regular pay and allowances of Army personnel (except travel and per diem costs).

(b) Administrative overhead costs.

(c) Annual and sick leave, retirement, and other military or civilian benefits except as provided in certain cases; for example, Army Industrial Fund regulations.

(d) Telephone, telegram, or other electrical means used to requisition items, replenish depot stocks, or coordinate the loan.

(e) Charges for the use of Army motor vehicles and watercraft except POL and per diem costs (section 623.33).

(f) The use of real property (except as required for utilities, modification, etc.).

§ 623.35 Funding records.

(a) Records of all costs (other than normal operating expenses), related to loans or leases of Army materiel, will be kept at the accountable property officer level by the supporting FAO. This will be done within existing Army financial accounting systems.

(b) Separate subsidiary general ledger accounts and/or files of documents showing the total value of all issues and materiel returned for credit, and supporting documentation will be set up by the FAO. The accounts will be kept current for each transaction so reports may be made as prescribed; and that accounts receivable can be processed for billing and collection action.

§ 623.36 Determination of charges and settlement.

(a) Returned materiel will be promptly classified by a qualified inspector with action as follows:

(1) Materiel classified as unserviceable, uneconomically reparable will be billed at replacement cost minus depreciation.

(2) Materiel classified as unserviceable, economically reparable will be billed for reduced utility (if appropriate) as well as for overhaul costs.

(3) The depreciation of returned materiel will be determined by technical inspectors per AR 735–5. When qualified inspectors are not available, returned property will be received with "condition" shown as "subject to final classification by DA." Accountable property officers will complete classification promptly so charges and billing can be made within 30 days of return of materiel.

(4) Determination of loss or damage due to negligence, willful misconduct, or theft will be reported immediately to the appropriate accountable property officer.

(b) All returned property that needs repair will be examined by a technical inspector to determine cost of repair. Then the accountable property officer will prepare a property transaction record with supporting documents. These records will be sent to the proper MACOM commander or unified command CINC for final review. They will include—

(1) A statement on the transaction record identifying the financial account to which the reimbursement money is to be deposited.

(2) A statement on the transaction record (if appropriate) as follows: "The losses and/or damages shown on the Property Transaction Record in the amount of $_____ represent the total claim by the U.S. Army for property loaned or leased to _____. Upon settlement and deposit to the proper account, lender releases from further obligations."

(3) A description of the type and degree of repair (separate addendum).

(c) After final review, the servicing FAO will be notified via an approved list of charges of the existence of the receivable. The property will be released for repair and return to stock.

(d) The FAO will send a letter to the borrower requesting payment (payable to the Treasurer of the United States). Upon payment, collection documents will be prepared and fiscal accounts credited. The MACOM or unified command Surgeon will ensure the stock fund is reimbursed for expendable medical supply losses reported.

(e) The FAO will advise the appropriate accountable property officer that settlement has been made. Property transaction records will be closed.

(f) The approving authority will then return the bond to the borrower.

(g) The value of supplies and equipment returned to the Army will be credited to the account originally debited at the time of issue. FEMA regional directors may find that it is not in the public interest to return borrowed materiel that has not been consumed, lost, or damaged. They will negotiate with the CONUS Army concerned for proper reimbursement for the borrowed materiel not returned.

§ 623.37 Delinquent and uncollectable accounts.

(a) In cases of unsatisfactory settlement, bond proceeds will be used to satisfy the claim.

(b) If this does not settle the account and further collection efforts are unsuccessful then receivables will be referred to USAFAC per AR 37–108, chapter 6. The accountable property officer will notify HQDA (DALO–SMS) that the account has been referred to USAFAC. USFPOs will notify HQDA of delinquent account transfers through NGB–ARL–S.

(c) Appropriations available to the accountable property officer will reimburse the applicable business area within the DBOF. Any later reimbursements received will be credited to the appropriation from which payment was made.

(d) On receipt of the accounts in paragraph (b) of this section. USAFAC will take appropriate action under their normal operating procedures. All further collection action will be the responsibility of USAFAC. If further collection action fails, these accounts will be referred to the Justice Department.

Subpart F—Reports

§ 623.38 General.

Reports of Army materiel loaned or leased to non-DOD activities must be forwarded as described in this subpart.

§ 623.39 Aircraft piracy.

(a) Commands and agencies providing support for incidents involving aircraft piracy will initially report through command channels by telephone to HQDA(DAMO–ODS) (appendix B to this part). Confirmation will be made by

electrically transmitted message to HQDA(DAMO–ODS). These reports are exempt from reports control under AR 335–15. Initial reports will include all available details. The following is a guide for content of reports:

(1) Supporting unit or agency.

(2) Home station of supporting unit or agency.

(3) Support provided and duration of requirement.

(4) Changes, if any, in support requested or duration of requirement as made by the Federal civil official in charge.

(5) Additional remarks.

(b) A final report noting termination of support will be made.

§ 623.40 Civilian rifle clubs and schools.

(a) Each affiliated club and institution (school) must file an annual report on the anniversary date of the loan with the DCM. The following forms will be used:

(1) DA Form 1277 (Annual Statistical Report of Civilian Rifle Club). (See AR 920–20 for guidance.)

(2) OSA Form 119 (Roster of Club Members).

(b) The roster (OSA Form 119) will list each member required to fire annually. It will include the full name, address, and age; the DCM course; score; and the date the member fired for record.

(c) A description of the club's procedures and facilities for safekeeping arms and ammunition will be appended to the OSA Form 119.

§ 623.41 Civil disturbances.

(a) Approving authorities, other than the SA, will prepare reports (RCS DD–A(AR)1112) on all requests for loan of Army materiel to support civil disturbances. The reports will be sent within 2 work days after receipt of the request. They will be prepared in the format shown in AR 500–50. They will also serve as "the request" when no other written request is available.

(b) The reports will be sent through channels to HQDA(DAMO–ODS), WASH DC 20310–0440. When reports are received from unified or specified commands, ODCSOPS will send an information copy to the Joint Chiefs of Staff, National Military Command Center.

(c) The SA will send information copies of civil disorder reports to the DOD General Counsel and the U.S. Deputy Attorney General.

(d) Reports of civil disturbance operation costs (RCS DD–A(AR)1112) also will be prepared as shown in AR 500–50.

§ 623.42 Disaster assistance.

When Army materiel is loaned, or when the ARNG is federalized in support of disaster assistance, CONUS Army commanders and unified command CINCs will send reports as follows:

(a) Initial reports. Initial reports will be made by telephone to the CG, FORSCOM (AUTOVON 588–3912), who will, in turn, telephone the report to the Military Support Division, ODCSOPS, AUTOVON 225–2003 or 7045). This will be followed within 12 hours by a Tempest Rapid Report (RCS DD–A–(AR)1114) in message form and sent electrically. The message report will be prepared per AR 500–60.

(b) Daily message reports. Daily Tempest Rapid Reports of Army materiel loaned to support disaster relief will also be sent by electrically transmitted message. The reports will cover the 24-hour period from 0601Z to 0600Z. The reports must arrive at HQDA(DAMO–ODS), HQDA(DACA–BU), and FORSCOM (AFOP–COF) by 1100Z the same day. Daily reports will be sent per the format in AR 500–60 except that Part III may be omitted. Also, "no change reports" may be made by telephone. On the day that the last daily message report is issued, include the words FINAL DAILY REPORT in the subject line of the message.

(c) Final reports. In addition to the final Tempest Rapid Report, a final report on military assistance provided will be sent within 90 working days of termination of disaster assistance. The CONUS Army Commander will send the report by first class mail through the CG, FORSCOM to HQDA(DAMO–ODS). The final report will include—

(1) An historic account of the disaster.

(2) Cumulative totals of support given.

(3) A statement of accomplishments.

(4) Actual or estimated expenses excluding costs incurred by the Corps of Engineers under PL 84–99. Costs will be reported by Service, by appropriation, using three columns to identify normal costs, incremental costs, and total costs.

(5) The status of reimbursements requested from borrowing Federal agencies, and civilian authorities and activities. If reimbursement has not been completed by the date of the final report, a separate cost report will be sent upon final reimbursement payment.

(6) Lessons learned.

(d) Information copies. Information copies of all reports will be sent to the proper FEMA Office.

(e) Additional information. Additional information may be needed by Federal officials. Normally, such requests will be telephoned by HQDA(DAMO–ODS) to the CG, FORSCOM.

(f) Pollution spills. The CG, FORSCOM will report committal of Army resources to HQDA(DAMO–ODS) by the fastest means. Daily and final Tempest Rapid Reports will be sent with "not applicable" shown in paragraphs 8, 9, and 10 of the report.

§ 623.43 Loans to civilian law enforcement officials.

Active installations, MACOMs (including MUSARCs) and Army Staff agencies are required to submit a quarterly report of assistance requested by civilian law enforcement officials (RCS DD–M(Q)1595). This data will be consolidated by MACOM and submitted as required by AR 500–51.

§ 623.44 United States Secret Service.

Army commands and agencies providing materiel support (routine or urgent) to the United States Secret Service will report at once any significant problems or deviation from approved procedures. Reports will be telephoned through command channels to HQDA (DAMO–ODS), WASH DC 20310–0440.

§ 623.45 Other reports.

Active Army accountable property officers will make semiannual reports on loans or leases that have expired and for which the materiel has not been returned. The reports will be prepared as of the last day of June and December. They will be sent by the 15th day of the following month. These reports will include a narrative on the circumstances, a copy of the loan or lease agreement, and the steps taken to resolve the issue. Reports will be forwarded through command channels to HQDA (DALO–SMS), WASH DC 20310–0545. Negative reports are not required.

Appendix A to Part 623—References

Required Publications

(**Note:** Publications and forms referenced in this Appendix may be obtained from the National Technical Information Services, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.)

AFARS
Army Federal Acquisition Regulation Supplement. (Cited in § 623.10)

AR 37–1
Army Accounting and Fund Control. (Cited in § 623.31)

AR 37–60
Pricing for Materiel and Services. (Cited in § 623.31)

AR 36–108
General Accounting and Reporting for Finance and Accounting Offices. (Cited in § 623.31 and 623.36)

AR 66–5

Armed Forces Courier Service. (Cited in § 623.21)
AR 71–13
The Department of the Army Equipment Authorization and Usage Program. (Cited in § 623.7)
AR 190–11
Physical Security of Arms, Ammunition, and Explosives. (Cited in § 623.28)
AR 335–15
Management Information Control System. (Cited in § 623.38)
AR 360–61
Community Relations. (Cited in § 623.10 and the glossary)
AR 500–1
Aircraft Piracy Emergencies. (Cited in § 623.11)
AR 500–50
Civil Disturbances. (Cited in § 623.11 and 623.39)
AR 500–51
Support to Civilian Law Enforcement Officials. (Cited in § 623.41)
AR 500–60
Disaster Relief. (Cited in § 623.11, 623.12 and 623.40)
AR 700–128
Prime Power Program. (Cited in § 623.6)
AR 710–2
Supply Policy Below the Wholesale Level. (Cited in § 623.28 and 623.30)
AR 710–3
Asset and Transaction Reporting System. (Cited in § 623.21)
AR 725–50
Requisitioning, Receipt, and Issue System. (Cited in § 623.6 and 623.30)
AR 735–5
Policies and Procedures for Property Accountability. (Cited in § 623.27, 623.30, 623.31, and 623.35)
AR 735–11–2
Reporting of Item and Packaging Discrepancies. (Cited in § 623.23)
AR 870–20
Museums and Historical Artifacts. (Cited in § 623.6)
AR 920–20
Promotion of Practice with Rifled Arms. (Cited in § 623.39)
DODD 5410.15
Delineation of DOD Audio-Visual Public Affairs Responsibilities and Policies. (Cited in § 623.6)
DODI 5410.16
DOD Assistance to Non-Government, Entertainment-Oriented Motion Picture, Television, and Video Productions. (Cited in 623.6)
DODI 7230.7
User Charges. (Cited in § 623.31)
FAR
Federal Acquisition Regulation. (Cited in table 2–2 in § 623.21)
TB 380–41
Procedures for Safeguarding, Accounting and Supply Control of COMSEC Material. (Cited in § 623.23(e))

Related Publications

A related publication is merely a source of additional information. The user does not have to read it to understand this regulation.

AR 1–4
Employment of DA Resources in Support of the U.S. Secret Service.
AR 12–8
Security Assistance—Policy, Objectives and Responsibilities.
AR 28–19
Department of the Army Domestic Action Program.
AR 15–17
Army Representation on Office of Preparedness/General Service Administration (OP/GSA) Regional Field Boards in Crisis Management Operations.
AR 37–44
Accounting Procedures for Guaranteed Loans.
AR 37–111
Working Capital Funds: Army Stock Fund, Uniform Policies, Principles, and Procedures Governing Army Stock Fund Operations.
AR 40–61
Medical Logistics Policies and Procedures.
AR 55–38
Reporting of Transportation Discrepancies in Shipments.
AR 58–1
Management, Acquisition and Use of Administrative Use Motor Vehicles.
AR 130–400
Logistical Policies for Support.
AR 215–1
Administration of Army Morale, Welfare, and Recreation Activities and Nonappropriated Fund Instrumentalities.
AR 350–7
Training and Evaluation of Forces for Civil Disturbances.
AR 500–2
Search and Rescue (SAR) Operations.
AR 500–70
Military Support of Civil Defense.
AR 525–90
Wartime Search and Rescue (SAR) Procedures.
AR 700–32
Logistics Support of U.S. Nongovernmental, Nonmilitary Agencies, and Individuals in Overseas Military Commands.
AR 700–43
Management of Defense-Owned Industrial Plant Equipment.
AR 700–49
Loan of DLA Stock Fund Materiel.
AR 700–83
Army Support of United Seamen's Service.
AR 700–90
Army Industrial Preparedness Program.
AR 710–1
Centralized Inventory Management of the Army Supply System.
AR 725–1
Special Authorization and Procedures for Issues, Sales, and Loans.
AR 870–15
Army Art Collection Program.
AR 920–15
National Board for the Promotion of Rifle Practice and the Office of the Director of Civilian Marksmanship.
AR 920–25
Rifles, M14M and M14N for Civilian Marksmanship Use.
AR 930–5
American National Red Cross Service Program and Army Utilization.
DA Pam 25–380–2
Security Procedures for Controlled Cryptographic Items (CCI)
FM 20–150
National Search and Rescue Manual.

Prescribed Forms

DA Form 1277
Annual Statistical Report of Civilian Rifle Club. (Prescribed in § 623.39)
DA Form 4881–R
Agreement for Loan of U.S. Army Materiel. (Prescribed in § 623.12(b))
DA Form 4881–1–R
Certificate for Signature by an Alternate. (Prescribed in § 623.12(b))
DA Form 4881–2–R
Military Property of the United States—Exhibit 1. (Prescribed in § 623.12(b))
DA Form 4881–3–R
Surety Bond. (Prescribed in § 623.13(a))
DA Form 4881–4–R
Power of Attorney. (Prescribed in § 623.13(a))
DA Form 4881–5–R
Agreement for Lease of U.S. Army Materiel. (Prescribed in § 623.12(b))
DA Form 4881–6–R
Request and Approval for Loan or Lease and Loan or Lease Agreement. (Prescribed in § 623.12(a) and 623.17)
DD Form 1486
DOD Materiel Receipt Document. (Prescribed in § 623.29)
OSA Form 119
Roster of Club Members. (Prescribed in § 623.39)
Standard Form (SF) 153
COMSEC Materiel Report. (Prescribed in §§ 623.21, 623.22, 623.23, 623.25)
Standard Form (SF) 1080
Voucher for Transfer Between Appropriations and/or Funds. (Prescribed in § 623.31)

Referenced Forms

DA Form 1273–R
Requisition for Articles Authorized for Issue to Civilian Rifle Clubs.
DA Form 3590
Request for Disposition or Waiver.
DA Form 4610–R
Equipment Changes in MTOE/TDA.
DD Form 1348–1
DOD Single Line Item Release/Receipt Document.

Appendix B to Part 623—Approving Authority Action Office Addresses/Telephone Numbers

HQPA(DALO–SAA)

WASH DC 20310–0512
Telephone: DSN 224–3762
WATS 202–694–3762

HQDA(DALO–SMS)

WASH DC 20310–0547
Telephone: DSN 227–4330
WATS 202–697–4330

ODCSLOG Commodity Offices

HQDA(DALO–XXX)

Ammunition and Chemical Equipment (DALO–SMA)
WASH DC 20310–0541
Telephone: DSN 227–8455
WATS 202–697–8455

Aviation Items (DALO-AV)
WASH DC 20310-0505
Telephone: PSN 227-0487
WATS 202-697-0487
Communications/Electronic Equipment (DALO-SMC)
WASH DC 20310-0542
Telephone: DSN 225-3280
WATS 202-695-3280
Tank-Automotive Equipment (DALO-SMT)
WASH DC 20310-0548
Telephone: DSN 225-2881
WATS 202-695-2881
Missile/Weapons Logistics Office (DALO-SMA)
WASH DC 20310-0544
Telephone: DSN 224-0538
WATS 202-694-0538
Troop Support Equipment (less nontactical vehicles, watercraft) (DALO-SMS)
WASH DC 20310-0545
Telephone: DSN 224-7051
WATS 202-614-7051
Troop Support Equipment (watercraft) (DALO-TSM)
WASH DC 20310-0562
Telephone: PSN 224-4128
WATS 202-614-4128
Organizational Clothing and Individual Equipment (OCIE) (CTA 50-900) (DALO-TST)
WASH DC 20310-0564
Telephone: DSN 225-2711
WATS 202-695-2711

HQDA(DALO-SMW)

War Reserve Division
WASH DC 20310-0549
Telephone: DSN 224-5010
WATS 202-695-5010

HQDA(DAMO-ODS)

WASH DC 20310-0440
Telephone: DSN 225-2003
WATS 202-695-2003

HQDA (DASC-HCL)

5109 Leesburg Pike
Falls Church, VA 22041-3258
Telephone:

Director, Civilian Marksmanship
20 Massachusetts Avenue, NW
Room 1205, Pulaski Building
WASH DC 20314
Telephone: DSN 285-0810
WATS 202-272-0810
Director, Defense Security Assistance Agency
WASH DC 20310
Telephone: WATS 202-695-3291

Commander in Chief
U.S. Army, Europe and Seventh Army
Office of the Deputy Chief of Staff, Logistics (AEAGD-SM)
APO New York 09403
Telephone: DSN 370-6249
HDE MIL 2121-6249

Commander
U.S. Army, Pacific
ATTN: APLG-MM
Fort Shafter, HI 96858-5100
Telephone: (808)438-8627

Commander
First U.S. Army
Fort George G. Meade, MD 20755
Telephone: DSN 923-6508
WATS 301-677-6508

Commander
Fifth U.S. Army
Fort Sam Houston, TX 78234
Telephone: DSN 471-2009
WATS 512-221-2009

Commander
Sixth U.S. Army
Presidio of San Francisco, CA 94129
Telephone: DSN 486-4110
WATS 415-561-4110

Commander
U.S. Army Armament, Munitions and Chemical Command
ATTN: AMSMC-MMD-IC
Rock Island, IL 61299-6000
Telephone: DSN 793-4253/4862

Commander
U.S. Army Communications—Electronics Command
ATTN: AMSEL-MMD-IBDFRD (loans) or AMSEL-LC-MMD-IB (extensions)
Fort Monmouth, NJ 07703-5000
Telephone: DSN 992-1501

Commander
U.S. Army Communications-Electronics Command
Communications Security Logistics Activity
ATTN: SELCL
Fort Huachuca, AZ 86513-7090

Commander
U.S. Forces Command
ATTN: FCJ4-POO
Fort McPherson, GA 30330-6000
Telephone: DSN 367-6141
WATS 404-669-6141

Commander
U.S. Army Health Services Command
Fort Sam Houston, TX 78234

HQDA (DAMH-HS)

WASH DC 20314

Commander
U.S. Army Military District of Washington
Fort Leslie J. McNair
Washington, DC 20319

Commander
U.S. Army Missile Command
ATTN: AMSMI-SSDCIA
Redstone Arsenal, AL 35809
Telephone: DSN 746-2745/2631

Commander
U.S. Army Medical Material Agency
Frederick, MD 21701

Commander
U.S. Army Security Assistance Command
ATTN: AMSAC
5001 Eisenhower Avenue
Alexandria, VA 22333
Telephone: DSN 284-9638
WATS 202-274-9638

Commander
U.S. Army Tank—Automotive Command
ATTN: AMSTA-FTWI
Warren, MI 48397-5000
Telephone: DSN 786-5991

Commander
U.S. Army Test and Evaluation Command
Aberdeen Proving Ground, MD 21005-5055

Commander
U.S. Army Training and Doctrine Command
Fort Monroe, VA 23651
Telephone: DSN 680-3007
WATS 804-727-3007

Commander
U.S. Army Aviation and Troop Command
ATTN: AMSAV-SDIR
4300 Goodfellow Boulevard
St. Louis, MO 63120-1798
Telephone: DSN 693-2971

Commander
U.S. Army Aviation and Troop Command
ATTN: AMSTR-SDIR
4300 Goodfellow Boulevard
St. Louis, MO 63120-1798
Telephone: DSN 693-3485

Commander
U.S. Army Materiel Command
ATTN: AMCLG-MT
5001 Eisenhower Avenue
Alexandria, VA 22333-0001
Telephone: DSN 284-9674

Department of the Air Force
ATTN: LOLSM
Wright Patterson AFB, OH 45433
Telephone: DSN 787-6485

Chief of Naval Operations
Navy Dept—Duty Captain
WASH DC 20310
Telephone: DSN 225-0237

NGB Offices
(NGB-XXX)

All emergency requests; law/drug enforcement; civil disturbances; terrorism; disaster relief; and environmental protection (NGB-MS)

WASH DC 20310-2500
Telephone: DSN 227-4338
WATS 202-697-4338
Aviation (NGB-AVN-O)
WASH DC 20310-2500
Telephone: DSN 584-8144
WATS 301-671-8144
Community relations; domestic action programs (NGB-PA)
WASH DC 20310-2500
Telephone: DSN 225-0421
WATS 202-695-0421
All others (NGB-ARL-SM)
WASH DC 20310-2500
Telephone: DSN 225-4478
WATS 202-695-4478

Alabama

P.O. Box 3715
Montgomery, AL 36192-4801

Alaska

Camp Denali, Pouch B
Fort Richardson, AK 99505-5000

Arizona

5636 E. McDowell Road
Phoenix, AZ 85008-3495

Arkansas

Camp Robinson
North Little Rock, AR 72118-2200

California

P.O. Box 8104
San Luis Obispo, CA 93403-8104

Colorado

Camp George West
Golden, CO 80401-3997

Connecticut

State Armory
360 Broad St.
Hartford, CT 06105-3997

Delaware

Grier Building
1161 River Road
New Castle, DE 19720–5199

District of Columbia

Building 350
Anacostia Naval Air Station
Wash DC 20315–0001

Florida

State Arsenal
St. Augustine, FL 32085–1008

Georgia

P.O. Box 17882
Atlanta, GA 30316–0886

Guam

Fort Juan Muna
Tamuning, GU 96911–4421

Hawaii

3949 Diamond Head Road
Honolulu, HI 96816–4495

Idaho

P.O. Box 45
Boise, ID 83707–4501

Illinois

1301 N. MacArthur Blvd.
Springfield, IL 62702–2399

Indiana

P.O. Box 41346
Indianapolis, IN 46241–0346

Iowa

Camp Dodge
7700 NW Beaver Dr.
Johnston, IA 50131–1902

Kansas

P.O. Box 2099
Topeka, KS 66601–2099

Kentucky

Boone National Guard Center
Frankfurt, KY 40601–6192

Louisiana

Jackson Barracks
New Orleans, LA 70146–0330

Maine

Camp Keyes
Augusta, ME 04333–0032

Maryland

State Military Reservation
Havre de Grace, MD 21078–0206

Massachusetts

143 Speen Street
Natick, MA 01760–2599

Michigan

3111 W. Saint Joseph Street
Lansing, MI 48913–5102

Minnesota

P.O. Box 288
Camp Ripley
Little Falls, MN 56345–0286

Mississippi

P.O. Box 4447
Jackson, MS 39216–0447

Missouri

1715 Industrial Drive
Jefferson City, MO 65101–1468

Montana

P.O. Box 1157
Helena, MT 59624–1157

Nebraska

1234 Military Road
Lincoln, NE 68508–1092

Nevada

2601 S. Carson Street
Carson City, NV 89701–5596

New Hampshire

P.O. Box 2003
Concord, NH 03301–2003

New Jersey

P.O. Box 2000
Trenton, NJ 08607–2000

New Mexico

P.O. Box 4277
Santa Fe, NM 87502–4277

New York

State Campus
Building No. 4
Albany, NY 12226–5100

North Carolina

4201 Reedy Creek Road
Raleigh, NC 27607–6412

North Dakota

P.O. Box 5511
Bismarck, ND 58502–5511

Ohio

2811 West Granville Road
Worthington, OH 43085–2712

Oklahoma

3501 Military Circle, N.E.
Oklahoma City, OK 73111–4398

Oregon

2150 Fairgrounds Road, N.E.
Salem, OR 97303–3241

Pennsylvania

Department of Military Affairs
Annville, PA 17003–5003

Puerto Rico

P.O. Box 3786
San Juan, PR 00904–3786

Rhode Island

330 Camp Street
Providence, RI 02906–1954

South Carolina

P.O. Box 1090
Columbia, SC 29202–1090

South Dakota

Camp Rapid
Rapid City, SD 57702–8186

Tennessee

Powell Avenue
P.O. Box 40748
Nashville, TN 37204–0748

Texas

P.O. Box 5218
Austin, TX 78763–5218

Utah

P.O. Box 8000
Salt Lake City, UT 84108–0900

Vermont

Building 1
Camp Johnson
Winooski, VT 05404–1697

Virgin Islands

P.O. Box 1050
St. Croix, VI 00820–1050

Virginia

501 East Franklin Street
Richmond, VA 23219–2317

Washington

Camp Murray
Tacoma, WA 98430–5000

West Virginia

Buckannon, WV 26201–2396

Wisconsin

Camp Douglas, WI 54618–9002

Wyoming

P.O. Box 1709
Cheyenne, WY 82003–1709

U.S. Army Corps of Engineers
District Engineer Offices

U.S. Army Corps of Engr Dist, Mobile
P.O. Box 2288
Mobile, AL 36628–0001

U.S. Army Corps of Engr Dist, Alaska
P.O. Box 898
Anchorage, AK 99506–0898
Telephone: (907) 753–2504

U.S. Army Corps of Engr Dist, Little Rock
P.O. Box 867
Little Rock, AR 72203–0867
Telephone: (501) 378–5531

U.S. Army Corps of Engr Dist, Los Angeles
P.O. Box 2711
Los Angeles, CA 90053–2325
Telephone: (213) 894–5300

U.S. Army Corps of Engr Dist, Sacramento
670 Capitol Mall
Sacramento, CA 95814–4794
Telephone: (916) 551–2005

U.S. Army Corps of Engr Dist, San Francisco
211 Main Street
San Francisco, CA 94105–1905
Telephone: (415) 974–0358

HQ USACE (DAEN–CWO–EM)
WASH DC 20314–1000
Telephone: DSN 285–0830
(202) 272–0830

U.S. Army Corps of Engr Dist, Jacksonville
P.O. Box 4970
Jacksonville, FL 32232–0019
Telephone: (904) 791–2241

U.S. Army Corps of Engr Dist, Savannah
P.O. Box 889
Savannah, GA 31402–0889

U.S. Army Corps of Engr Dist, Chicago
219 S. Dearborn Street
Chicago, IL 60604–1797
Telephone: (312) 353–6400

U.S. Army Corps of Engr Dist, Rock Island
P.O. Box 2004
Clock Tower Building
Rock Island, IL 61204–2004
Telephone: (309) 788–6361 Ex 224

U.S. Army Corps of Engr Dist, Louisville
P.O. Box 59
Louisville, KY 40201–0059

Telephone: (502) 582-5601

U.S. Army Corps of Engr Dist, New Orleans
P.O. 60267
New Orleans, LA 70160-0267
Telephone: (504) 862-1121

U.S. Army Corps of Engr Dist, Baltimore
P.O. Box 1717
Baltimore, MD 21203-1717
Telephone: (301) 962-4545

U.S. Army Corps of Engr Dist, Detroit
P.O. Box 1027
Detroit, MI 48231-1027
Telephone: (313) 226-6762

U.S. Army Corps of Engr Dist, St. Paul
1135 USPO & Custom House
St. Paul, MN 55101-1479
Telephone: (612) 725-7501

U.S. Army Corps of Engr Dist, Kansas City
700 Federal Building
Kansas City, MO 64106-2896
Telephone: (816) 374-3201

U.S. Army Corps of Engr Dist, St. Louis
210 Tucker Blvd, N.
St. Louis, MO 63101-1986
Telephone: (314) 263-5660

U.S.Army Corps of Engr Dist, Vicksburg
P.O. Box 60
Vicksburg, MS 39180-0060
Telephone: (601) 634-5010

U.S. Army Corps of Engr Dist, Wilmington
P.O.Box 1890
Wilmington, NC 28402-1890
Telephone: (919) 343-4501

U.S. Army Corps of Engr Dist, Omaha
Rm 6014 USPO & Courthouse
Omaha, NE 63102-4978
Telephone: (402) 221-3900

U.S. Army Corps of Engr Dist, Albuquerque
P.O. Box 1580
Albuquerque, NM 87103-1580
Telephone: (505) 766-2732

U.S. Army Corps of Engr Dist, Buffalo
1776 Niagara Street
Buffalo, NY 14207-3199
Telephone: (716) 876-5454 Ex 2200

U.S. Army Corps of Engr Dist, New York
26 Federal Plaza
New York, NY 10278
Telephone: (212) 264-0100

U.S. Army Corps of Engr Dist, Tulsa
P.O. Box 61
Tulsa, OK 74121-0061
Telephone: (918) 581-7311

U.S. Army Corps of Engr Dist, Portland
P.O. Box 2946
Portland, OR 97208-2946
Telephone: (503) 221-6000

U.S. Army Corps of Engr Dist, Philadelphia
U.S. Custom House
2d and Chestnut Streets
Philadelphia, PA 19106-2991
Telephone: (215) 597-4848

U.S. Army Corps of Engr Dist, Pittsburgh
William S. Moorehead Federal Building
1000 Liberty Avenue
Pittsburgh, PA 15222-4186
Telephone: (412) 644-6800

U.S. Army Corps of Engr Dist, Charleston
P.O. Box 919
Charleston, SC 29402-0919
Telephone: ((803) 724-4229

U.S. Army Corps of Engr Dist, Nashville
P.O. Box 1070
Nashville, TN 37202-1070
Telephone: (615) 251-5626

U.S. Army Corps of Engr Dist, Fort Worth
P.O. Box 17300
Fort Worth, TX 76102-0300
Telephone: (817) 334-2300

U.S. Army Corps of Engr Dist, Galveston
P.O. Box 1229
Galveston, TX 77553-1229
Telephone: (409) 766-3002

U.S. Army Corps of Engr Dist, Memphis
B-202 Clifford Davis Federal Building
Memphis, TN 38103-1894
Telephone: (901) 521-3221

U.S. Army Corps of Engr Dist, Norfolk
803 Front Street
Norfolk, VA 23510-1096

U.S. Army Corps of Engr Dist, Seattle
P.O. Box C-3755
Seattle, WA 98124-2255
Telephone: (206) 764-3690

U.S. Army Corps of Engr Dist, Walla Walla
Building 602, City-County Airport
Walla Walla, WA 99362-9265
Telephone: (509) 522-6506

U.S. Army Corps of Engr Dist, Huntington
502 8th Street
Huntington, WV 25701-2070
Telephone: ((513) 684-8694

Regional Logistical Support Offices

Officer in Charge
Regional Logistical Support Office
501 West Ocean Boulevard
Suite 800
Long Beach, CA 90822

Officer in Charge
Regional Logistical Support Office
6 Fountain Plaza
Suite 300
Buffalo, NY 14202

Officer in Charge
Regional Logistical Support Office
Brickell Plaza Federal Building
909 Southeast First Avenue
Room 432
Miami, FL 33131-3050

Officer in Charge
Regional Logistical Support Office
P.O. Box 8051
El Paso, TX 79908-8051

Note: Numbers are provided for principal loan and lease approving authorities and agencies responsible for specific loans or leases per table 2-1 in § 623.21.

Appendix C to Part 623—Glossary

Abbreviations

ACCLAIMS
Army COMSEC Commodity Logistics Accounting Information Management System

AECA
Arms Export Control Act

AFARS
Army Federal Acquisition Regulation Supplement

AG
Adjutant General

AMC
U.S. Army Materiel Command

AMCCOM
U.S. Army Armament, Munitions, and Chemical Command

AMC MSC
U.S. Army Materiel Command major subordinate command

AMDF
Army Master Data File

ANRC
American National Red Cross

ARC
Accounting requirements code

ARFCOS
Armed Forces Courier Service

ARNG
Army National Guard

ASA (IL&E)
Assistant Secretary of the Army (Installations, Logistics, and Environment)

ASA (RDA)
Assistant Secretary of the Army (Research, Development, and Acquisition)

CBL
Commercial bill of lading

CINC
Commander in Chief

COMSEC
Communications security

CONUS
Continental United States

DA
Department of the Army

DAMPL
Department of the Army Master Priority List

DBOF
Defense Business Operations Fund

DCM
Director of Civilian Marksmanship

DLA
Defense Logistics Agency

DLEA
Drug law enforcement agency

DOD
Department of Defense

DODAAC
DOD activity address code

DOMS
Director of Military Support (HQDA, ODCSOPS, DAMO-ODS)

DSAA
Defense Security Assistance Agency

DSN
Defense Switched Network

FAO
Finance and accounting office(r)

FAR
Federal Acquisition Regulation

FBI
Federal Bureau of Investigation

FDAA
Federal Disaster Assistance Administration

FEMA
Federal Emergency Management Agency

FORSCOM
U.S. Forces Command

FSC
Federal supply classification

GBL
Government bill of lading

GFE
Government furnished equipment

HQDA
Headquarters, Department of the Army

HUD
Housing Urban Development
IL
International Logistics
JTA
Joint table of allowances
LIN
Line item number
MAC
Military Airlift Command
MACOM
Major Army command
MDW
Military District of Washington
MEDCEN
U.S. Army Medical Center
MEDDAC
Medical department activity
MILSTRIP
Military Standard Requisitioning and Issue Procedures
MOU
Memorandum of Understanding
MSC
Major subordinate command
MTMC
Military Traffic Management Command
MTOE
Modification table of organization and equipment
MUSARC
Major United States Army Reserve Command
NGB
National Guard Bureau
NMCC
National Military Command Center
NSN
National stock number
OCIE
Organizational clothing and individual equipment
OCONUS
Outside continental United States
ODCSLOG
Office of the Deputy Chief of Staff for Logistics
ODCSOPS
Office of the Deputy Chief of Staff for Operations and Plans
OTSG
Office of The Surgeon General
PBO
Property book officer
POMCUS
Prepositioned materiel configured to unit sets
RDTE
Research, development, test, and evaluation
RLSO
Regional Logistical Support Office
ROTC
Reserve Officers' Training Corps
SA
Secretary of the Army
SMA
Supply Management Army
SRO
Stock record officer
SSA
Supply support activity
TAADS
The Army Authorization Documents System
TDA
Tables of distribution and allowances
UIC
Unit identification code
USACE
U.S. Army Corps of Engineers
USACCSLA
U.S. Army Communications-Electronics Command, Communications Security Logistics Activity
USAFAC
U.S. Army Finance and Accounting Center
USAMMA
U.S. Army Medical Materiel Agency
USAR
U.S. Army Reserve
USC
United States Code
USPFO
United States Property and Fiscal Officer

Terms

Accouterments

Equipment that is associated with small arms characterized as personal and individual that is available from Army stocks.

Approving Authority

The person (or designee) authorized to approve specific types of loans of Army materiel. (See table 2-1 and app B.)

Arms

Weapons for use in war.

Army COMSEC Account

An administrative entity, identified by a six-character alphanumeric number, responsible for maintaining custody and control of COMSEC material.

Civil Authorities

Those elected and appointed public officials and employees who govern the 50 States, District of Columbia, Commonwealth of Puerto Rico, U.S. possessions and territories, and governmental subdivisions thereof.

Civil Defense

All those activities and measures designed or undertaken to:

a. Minimize the effects upon the civilian population caused, or which would be caused, by an enemy attack upon the United States.

b. Deal with immediate emergency conditions which would be created by any such attack.

c. Effect emergency repairs to, or the emergency restoration of, vital utilities and facilities destroyed or damaged by any such attack.

Civil Disturbance

Group acts of violence and disorders prejudiced to public law and order.

Civilian Law Enforcement Officials

An officer or employee of a civilian agency with responsibility for enforcement of the law within the jurisdiction of the agency.

Community Relations Program

A program of action, to earn public understanding and acceptance, conducted at all levels of military command wherever stationed. The program includes participation in public events, humane acts, and cooperation with public officials and civil leaders.

Communications Security (COMSEC)

The protection resulting from the application of cryptosecurity, transmission security and emission security measures to telecommunications, and from the application of physical security measures to COMSEC information. These measures are taken to deny unauthorized persons information of value which might be derived from the possession and study of such telecommunications.

COMSEC Equipment

End items (major items), major assemblies, tools, test and support equipment managed, controlled, stocked and distributed through the COMSEC Logistics System.

Domestic Action Program

A program of assistance to local, State, and Federal agencies for the continued improvement and development of society.

Emergency

Any catastrophe in any part of the United States that in the determination of the President requires Federal supplementary emergency assistance.

Emergency Medical Treatment

The immediate application of medical procedures to wounded, injured, or sick, by trained professional medical personnel.

Executive Agent

That individual or his or her designee authorized to act as the U.S. Government's agent in making certain loans of Government materiel. The President of the United States has delegated to the Secretary of the Army (or to his designee, the Assistant Secretary of the Army (Installations, Logistics, and Environment)) authority, as Executive Agent, to approve certain loans of DOD materiel to non-DOD activities. Other "approving authorities" act as "Executive Agents" for the U.S. Government, but do not have that title.

Expendable Item

An item of Army property coded with an accounting requirements code (ARC) of "X" in the Army Master Data File (AMDF). An expendable item requires no formal accountability after issue from a stock record account. Commercial and fabricated items similar to items coded "X" in the AMDF are considered expendable items. Note: This category consists of those items that are consumed during normal usage such as paint, rations, gasoline, office supplies, etc., or are merged into another entity when used for their intended purpose such as nuts and bolts, construction material, repair parts, components and assemblies, etc. This includes all class 1, 3, 5 (except 5L), and 9 items, and those class 2, 4, and 10 items that are not end items or have a unit price of less than $100. This category also includes office furniture of Federal Supply Classification (FSC) 7110, 7125, and 7195 with a unit cost of less than $300. Organizational clothing and individual equipment (OCIE) authorized by

CTA 50-900 will be accounted for in the same manner as nonexpendable property regardless of the (ARC) reflected in the AMDF.

Federal Agency

Any department, independent establishment, Government corporation, or other agency of the executive branch of the Federal Government, except the American National Red Cross.

Federal Coordinating Officer

The person appointed by the President to operate under the HUD Regional Director for Federal Emergency Management Agency (FEMA) to coordinate Federal assistance in Presidentially declared emergency or major disaster.

Federal Emergency Management Agency

The agency delegated the disaster relief responsibilities previously assigned to the Federal Disaster Assistance Administration (FDAA).

Federal Function

Any function, operation, or action carried out under the laws of the United States by any department, agency, or instrumentality of the United States or by an officer or employee thereof.

Federal Property

Property that is owned, leased, possessed, or occupied by the Federal Government.

Imminent Serious Condition

Any disaster or civil disturbance that is of such severity that immediate assistance is required to save human life, prevent immediate human suffering, or reduce destruction or damage to property.

Lease

The granting of temporary possession or use of property or materiel for which payment of a rental fee is required.

Loan

The granting of temporary possession or use of property or materiel for which payment of a rental fee is not required.

Local Government

Any county, parish, city, village, town, district, Indian tribe or authorized tribal organization, Alaskan native village or organization, or other political subdivision of any State.

Major Disaster

Any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, earthquake, drought, fire, or other catastrophe which, in the determination of the President, is or threatens to be of sufficient severity and magnitude to warrant disaster assistance by the Federal Government. This assistance supplements the efforts and available resources of States, local governments, and relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.

Nonexpendable Item

An item of Army property coded with an ARC of "N" in the AMDF. A nonexpendable item requires property book accountability after issue from the stock record account. Commercial and fabricated items, similar to items coded "N" in the AMDF, are considered nonexpendable items. Note: This category consists of end items of equipment that are separately identified. It includes all class 7 items assigned an LIN in SB 700-20 other than office furniture in FSC 7110, 7125, and 7195 with a unit cost of less than $300, and other selected class 2, 4, and 10 end items. OCIE authorized by CTA 50-900 will be accounted for in the same manner as nonexpendable supplies regardless of the ARC reflected in the AMDF.

Objective Area

A specific geographical location where a civil disturbance, disaster, or counter-drug operation is occurring or is anticipated.

Other Loan Requesters

Other loan requesters not listed in table 2-1 include: Junior and Senior ROTC, tribal (Indian) organizations, and the Alaska Native Corporation.

Routine Requests

Requests resulting from situations that are reasonably predictable or do not require immediate action to prevent or reduce loss of life, property, or essential services. Reduced efficiency of the requester's operation is not in itself grounds for classifying a request higher than routine.

Small Arms

Hand and shoulder weapons for use in war.

Surety Bond

A bond, including dollar deposit, guaranteeing performance of a contract or obligations.

Terrorist Incident

A form of civil disturbance that is a distinct criminal act committed or threatened to be committed by a group or single individual in order to advance a political or other objective, thus endangering safety of individuals or property. This definition does not include aircraft piracy emergencies.

Threatened Major Disaster

Any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, earthquake, drought, fire, or other catastrophe which, in the determination of the Administrator, FDAA, threatens to be of severity and magnitude sufficient to warrant disaster assistance by the Federal Government. This assistance will be used to avert or lessen the effects of such disaster before its actual occurrence.

Urgent Requests

Those resulting from unforeseeable circumstances, civil disturbances, civil defense needs, aircraft piracy, secret service requirements, and disasters when immediate action is necessary to prevent loss of life, physical injury, destruction of property, or disruption of essential functions.

Youth Groups

Groups such as the Boy Scouts and Girl Scouts of the United States of America; Civil Air Patrol; Camp Fire Girls, Incorporated; the Boy's Club of America; Young Men's Christian Association; Young Women's Christian Association; 4-H Clubs; and similar groups.

Appendix P to Part 623—Forms

Attached at this appendix are the forms referred to in this part.

(a) DA Form 4881-R—Agreement for the Loan of US Army Materiel.

(b) DA Form 4881-1-R—Certificate for Signature by an Alternate.

(c) DA Form 4881-2-R—Military Property of the United States—Exhibit 1.

(d) DA Form 4881-3-R—Surety Bond for Safekeeping of Public Property and Guaranteeing Reimbursement to the Government for Expenses Incident to the Loan of Army Materiel—Exhibit II.

(e) DA Form 4881-4-R—Power of Attorney.

(f) DA Form 4881-5-R—Agreement for the Lease of US Army Materiel.

(g) DA Form 4881-6-R—Request and Approval for Loan or Lease of Equipment and Loan or Lease Agreement.

BILLING CODE 3710-08-M

AGREEMENT FOR THE LOAN OF US ARMY MATERIEL

For use of this form, see AR 700-131; the proponent agency is DCSLOG.

This form will be used to enter into agreements relative to the loan of Army materiel between the United States Army and —

1. Non-DOD Federal departments and agencies. 2. Civilian activities specifically authorized to receive Army materiel on loan. Paragraphs below are applicable to cases, as cited above, unless otherwise specified at the beginning of each paragraph.

This loan agreement is entered into, by, and between the United States of America, hereinafter called "the lender,"

represented by (b) _____

for the purpose of entering into this agreement; and (a) _____

hereinafter called "the borrower," represented by (c) _____

for the purpose of entering into this agreement.

1. PURPOSE. Under the authority of (d) _____, the lender hereby lends to the borrower and the borrower hereby borrows from the lender the Government materiel, hereinafter called " the materiel," listed and described in Exhibit 1 hereto attached and incorporated by reference into

the terms of this agreement, which materiel is required by the borrower for (e) _____

_____.

2. TERM. This loan of materiel is intended to meet a temporary need covered by federal law. The borrower will keep

the materiel only for the period of (f) _____. Loans may be renewed, if justified, and requested by the borrower and approved by the lender. Nevertheless, the lender may revoke and terminate this agreement and demand return of the materiel in whole or in part at any time.

3. CONDITIONS. This agreement is predicated upon the following conditions:

a. The lender will make every effort to ensure that each item of the materiel is furnished to the borrower in a serviceable and usable condition according to its originally intended purpose. However, if the use for which the materiel is loaned will permit, materiel of a lesser condition will be loaned. This lesser condition will be noted on the appropriate loan documents. Nevertheless, the lender makes no warranty or guarantee of fitness of any of the materiel for a particular purpose or use; or warranty of any type whatsoever.

b. The borrower will appoint a representative for the purpose of making joint inspection and inventory of all materiel when the borrower physically picks up or returns the borrowed materiel. Upon pickup *(or receipt after shipment)* of the borrowed materiel, the chief of the borrowing activity *(or his authorized representative)* will sign the appropriate documents acknowledging receipt and possession of the materiel. Upon return of the materiel to the Army, the borrower will certify that "the quantities listed in the shipping document(s) are correct." In instances where borrower representatives, authorized to receive and sign for borrowed materiel, are not available when the materiel is delivered, all claims for costs related to the loan will be valid.

c. The borrower is responsible for care and maintenance of borrowed materiel during the term of the loan. The borrower will provide sufficient personnel and facilities to adequately operate, maintain, protect, and secure the borrowed materiel. The borrower will maintain the materiel in a serviceable condition and ascertain that it is returned to the Army in as good a condition as when it was loaned *(fair wear and tear excepted)*. Records of maintenance performed will be kept and returned to the Army with the borrowed materiel. *(NOTE: When appropriate, the borrowing activity will place the materiel in a "properly preserved" status prior to or upon return.)*

d. The borrower will store, safeguard, and secure high value items, or arms in a manner consistent with common practice, public law, and local ordinances.

e. The borrower will prevent misuse of borrowed materiel; or its use by unauthorized persons.

f. The borrower will neither make nor permit any modification or alteration of any borrowed materiel except with permission of the approving authority for the loan.

g. The borrower will not mortgage, pledge, assign, transfer, sublet, or part with possession of any borrowed materiel in any manner to any third party either directly or indirectly except with the prior written approval of the lender.

h. At all times the lender shall have free access to all loaned materiel for the purpose of inspecting or inventorying it.

i. The borrower will return borrowed materiel to a location designated by the lender when the materiel is no longer needed; upon termination of the loan period *(including any approved extension)*; or upon demand therefore by the lender. The lender will provide documents to be used by the borrower to return the materiel.

j. (Applicable to agreements involving the loan of an Army building.) The building will not be moved. Upon termination of its use, the borrowing activity will vacate the premises, remove its own property therefrom, and turn in all Government property.

4. PAYMENT. The borrower will reimburse the lender for expenses incurred in connection with this loan as provided below:

a. (Applicable to loan agreements with civil authorities — except for FDAA requested disaster assistance — and civilian activities only.) Before delivery of any materiel by the lender, the borrower will post with the approving authority a surety bond and a certified bank check, US Treasury bonds, or bonding company bond in the amount of the total value of the materiel as shown in Exhibit I. *(See paragraphs 2-7 a(2)(a) and 2-7 a(2)(b), AR 700-131, for exceptions where a "double bond" is required.)* The bond, marked Exhibit II, *(properly executed surety bond and evidence of deposit with the approving authority of certified check, United States of America Treasury bonds, or bonding company bond in the amount of the grand total shown on Exhibit II,* is hereto attached and incorporated by reference into the terms of this agreement.

b. (Applicable to loan agreements with civil authorities — except for FDAA requested disaster assistance — and civilian activities only.) Should the borrower fail to return any of the borrowed materiel or fail to reimburse the lender within 30 days after receiving a request for payment of expenses, the bond shall be forfeited as liquidated damages in an amount equal to the expense to the Government.

c. (Applicable to loan agreements with civil authorities — except for FDAA requested disaster assistance — and civilian activities only.) Payment of liquidated damages by forfeiture of any portion of the bond to the Government shall not operate as a sale to the borrower of any of the materiel available to be returned, but not returned to the lender, nor to extinguish the lender's right to have the available missing materiel returned. Should the borrower later return to the lender any of the missing materiel on account of which a portion of the bond was forfeited as liquidated damages, the borrower shall be entitled to recoup from the lender a sum equal to 90 percent of the price of the returned materiel as shown on Exhibit I, less an amount in payment for expenses, if any, computed in accordance with Chapter 6, AR 700-131, and less an amount for depreciation.

d. (Applicable to loan agreements with civil authorities and civilian activities only.) If the normal life expectancy of borrowed materiel can be determined by reference to applicable military publications, the amount to be assessed for depreciation shall be computed by the straight line method using the price shown on Exhibit I and the date of expiration or termination of this loan as initial points. When normal life expectancy is not established by applicable military publications, the amount for depreciation shall be computed by the same method, applying a uniform depreciation rate of 50 percent per annum.

e. (Applicable to loan agreements with civil authorities and civilian activities only.) The borrower will assume all responsibility for Army claims arising from the possession, use, or transportation of the borrowed materiel; and, agrees to hold the lender harmless from any such claims and liability. The borrower will protect the interests of the lender by procuring comprehensive insurance for all borrowed materiel to include coverage for liability, property damage, fire, and theft; and deductible collision insurance for motorized vehicles. The borrower will file duplicate copies of such insurance policy(ies) with the lender and prepare accident reports in accordance with existing laws and local ordinances.

f. The borrower will bear the cost of pickup and return of borrowed materiel; and, will reimburse the lender for costs incurred incident to packing, crating, handling, movement, and transportation of the materiel.

g. The borrower will reimburse the lender for any expenses necessary to repair, rehabilitate, or preserve the materiel following its return to the lender. *(NOTE: Of any borrowed materiel, unless depreciation is significant.)*

h. The borrower will reimburse the lender *(as indicated and at the price shown on Exhibit I)* for the cost of all of the expendable materiel *(including, but not limited to, petroleum, oil, and other lubricants)* used or consumed during this loan.

i. The borrower will reimburse the lender for costs incident to the pay of Army personnel who may be temporarily required to operate, maintain, guard, or otherwise attend to borrowed Army materiel. This includes travel and per diem costs for both Army uniformed and civilian personnel, and regular salary and overtime costs for Army civilians.

j. The borrower will reimburse the lender for any other expense to the lender arising in connection with the loan of Army materiel.

k. (Applicable to loan agreements with Federal departments and agencies only.) The lender will indicate the specific accounting classification(s) against which any charges as enumerated above will be charged.

5. OFFICIALS NOT TO BENEFIT. No member of or delegate to Congress shall be admitted to any share or part of this loan or to any benefit arising in connection with it.

6. CONTINGENCY FEES. No person or agency acting for or on behalf of the borrower to solicit or obtain this loan shall be paid any commission, percentage, brokerage, or contingent fee in any way connected with this loan.

7. DISPUTES. Any disputes concerning a question or fact arising under this loan agreement which are not mutually disposed of by the lender and the borrower shall be decided by the Secretary of the Army as the Government's Executive Agent, or by his designee.

Done at (g) _____ this _____

TYPED NAME, GRADE/RANK OF ARMY APPROVING AUTHORITY FOR THE LOAN, OR HIS DESIGNEE	SIGNATURE OF APPROVING AUTHORITY OR HIS DESIGNEE
TYPED NAME OF CHIEF EXECUTIVE OR HIS AUTHORIZED DESIGNEE OF THE BORROWING AGENCY, AUTHORITY, OR ACTIVITY	SIGNATURE OF CHIEF EXECUTIVE OR HIS DESIGNEE

INSTRUCTIONS: The lettered blank portions of the loan agreement are to be completed as specified in the following paragraphs with the same letters.

(a) Enter, as appropriate, the name of the Federal agency; city, county, state, or other civil governmental body; or special activity (e.g., Boy Scouts of America, American Legion) which is borrowing the Army materiel.

(b) Enter name and title of the Army approving authority for the loan, or his designee.

(c) Enter name and title of the borrowing activity's chief executive (e.g., John Doe - Secretary of the Treasury, Governor of the State of Iowa, National Commander of the American Legion, etc.) or his authorized (in writing) designee.

(d) Enter the appropriate authority for the loan from table 2-1, this regulation (e.g., Public Law, US code, DODD).

(e) State the purpose of the loan (use to which the borrowed materiel will be put); e.g., disaster relief activities in support of the Johnstown, PA, flood; National American Legion Convention at Chicago, IL; etc.

(f) Enter the calendar period (duration of the loan; e.g., 1 March 1978 to 15 April 1979).

(g) Enter location, day, month, and year that the agreement was signed.

(h) Signature of the Army approving authority for the loan, or his designee.

(i) Signature of the chief executive, or his authorized (in writing) designee, of the borrowing agency, authority, or activity.

NOTE: Exhibits I and II will be prepared as attachments to the loan agreement.

AGREEMENT FOR THE LOAN OF US ARMY MATERIEL

CERTIFICATE FOR SIGNATURE BY AN ALTERNATE

For use of this form, see AR 700-131; the proponent agency is DCSLOG.

I, the (a) _____

of the (b) _____ named as the

borrower in this loan agreement, certify that (c) _____

who signed this agreement on behalf of the borrower, was then (d) _____

_____ of (b) _____

and that this loan agreement was duly signed on behalf of (b) _____

_____ by authority of its governing or directing

body and is within the scope of its lawful powers. In witness whereof I have hereunto

affixed my hand and seal of (b) _____

this (e) _____ day of (f) _____, 19(g) ___ .

(OFFICIAL SEAL)

_____
(Name and title of certifying officer)

_____
(Signature)

INSTRUCTIONS: The lettered blank portions of the certificate are to be completed as specified in the following paragraph with the same letters.

(a) Enter the title of the chief officer of the borrowing activity; e.g., Governor, Chief Scout Executive, National Commander American Legion, etc.; (b) Enter the name of the Federal agency, civil authority, or the civilian activity borrowing the materiel; (c) Enter the name of the person who signed the agreement; (d) Enter the title of the person who signed the agreement; (e) Enter the date (e.g., 5th) of the month on which the certificate was signed; (f) Enter the month (e.g., July) in which the certificate was signed; (g) Enter the year (e.g., 1978) in which the certificate was signed.

DA Form 4881-1-R, Sep 84 EDITION OF MAY 80 IS OBSOLETE

MILITARY PROPERTY OF THE UNITED STATES – EXHIBIT I

For use of this form, see AR 700-131; the proponent agency is DCSLOG.

NATIONAL STOCK NO.	NOMENCLATURE	QUANTITY	CONDITION CODE	PRICE EACH	TOTAL PRICE
				GRAND TOTAL	

DA Form 4881-2-R, 1 May 80

SURETY BOND FOR SAFEKEEPING OF PUBLIC PROPERTY AND GUARANTEEING REIMBURSEMENT TO THE GOVERNMENT FOR EXPENSES INCIDENT TO THE LOAN OF ARMY MATERIEL – EXHIBIT II

For use of this form, see AR 700-131, the proponent agency is DCSLOG.

Know all men by these presents, that the (a) _____,

a (b) _____ having its principal office in the city of (c) _____

and the state of (d) _____, as the obligor, is held and firmly bound into the United States of America in the

penal sum of (e) _____, lawful securities of the United States, payment of which sum, will be made to the United States, without relief from evaluation or appraisement laws, said organization binds itself, its successors and assigns firmly by these presents.

The condition of the above obligation is such, that whereas the (a) _____ is

a (b) _____ to which the Secretary of Defense is authorized to lend such materiel as may be necessary for accommodation of the requirement, subject to the provision that before delivering such materiel he

shall take from the (a) _____ a good and sufficient bond for the safe return of such property in good order and condition and the whole without expense to the United States.

Now, therefore, as to all the property of the United States to be loaned to the (a) _____,

said (a) _____ shall take good care of, safely keep and account for, and shall, when required by the Secretary of Defense or his authorized representative, safely return to Department of the Army all said property

issued and covered by this bond within (f) _____ days from the conclusion of said requirement the whole without expense to the United States, in as good order and in the same condition as that in which the equipment and property existed at the date of delivery, reasonable wear excepted, or upon formal demand make adequate monetary compensation for items lost or damaged as well as for costs of depreciation *(Note: "Depreciation" will not be included in bonds related to loans to other Federal agencies.)*, renovation, or repair of items accomplished at Government repair facilities, and all transportation

provided as set forth and defined in the agreement dated (g) _____ between the United States of America and the

(a) _____

The above bounded obligor, in order to more fully secure the United States in the payment of the aforementioned sum, hereby pledges as security therefor, in accordance with the provisions of Section 1126 of the Revenue Act of 1926, as amended,

United States of America Treasury bonds, in the principal amount of (e) _____ which are numbered serially, are in the denominations and amounts, are otherwise more particularly described as follows

United States of America Treasury bonds (h) _____ due (i) _____

_____ _____

_____ _____

Interest on said Treasury bonds shall accrue and be paid to the (a) _____ except and unless there occurs a default as defined herein and said securities are sold and applied to the satisfaction of such default as provided herein. Said Treasury bond(s) *(cash or certified check)* have/has this day been deposited with the

Finance and Accounting Officer (j) _____ and his receipt taken therefor

NOTE: If cash or a certified bank check is provided as bond instead of US of America Treasury bonds, the two paragraphs above will be crossed out and the following paragraph will apply

CONTINUED ON REVERSE

DA Form 4881-3-R, Sep 84 EDITION OF MAY 80 OBSOLETE

The above bonded obligor, in order to more fully secure the United States in the payment of the aforementioned sum, hereby pledges as security, therefore, in accordance with the provisions of section 1126 of the Revenue Act of 1926, as amended,

cash *(cashier's check)* in the amount of (e) _____. Said cash *(cashier's check)* has this day been deposited

with the Finance and Accounting Officer (j) _____ and his receipt taken therefor.

Contemporaneously herewith the undersigned have also executed an irrevocable power of attorney and agreement in favor of

the Finance and Accounting Officer, (j) _____, acting for and in behalf of the US Government authorizing and empowering said officer as such attorney to disburse said bond so deposited, or any part thereof, in case of any default in the performance of any of the above named conditions or stipulations.

In Witness Whereof, this bond has been signed, sealed, and delivered by the above named obligor, this

(k) _____ day of (l) _____ 19 (m) _____

(a) _____

(n) _____ SEAL

(o) _____ SEAL

Signed, sealed, and delivered in the presence of

(p) _____ (q) _____
(Name) *(Address)*

(p) _____ (q) _____
(Name) *(Address)*

Before me, the undersigned, a Notary Public within and for the county of (r) _____,

in the State of (s) _____, personally appear (t) _____,

(n) _____ and for and in behalf of said (a) _____,

a (b) _____ acknowledged the execution of the foregoing bond.

Witness my hand and notarial seal this (u) _____ day of (v) _____, 19 (w) _____

Notarial Seal (x) _____
(Notary Public)

My commission expires (y) _____
(Date)

DA Form 4881-3-R, Sep 84

INSTRUCTIONS

The lettered blank portions of the surety bond are to be completed as specified in the following paragraphs with the same letters:

(a) Enter the name of the Federal agency, authority (local governmental body), or special activity which borrowed the Army materiel, or is providing the bond.

(b) Further identify the borrower by entering here the type of activity that it is, e.g., Federal agency, civil government, corporation (Boy Scouts of America), etc.

(c) Enter the name of the city

(d) Enter the name of the State

(e) Enter the amount of the bond

(f) Enter the number of days, or period, for which loan of the materiel is authorized.

(g) Enter the date on which the loan agreement between the borrower and the US Government was signed.

(h) Enter rate of interest paid on the bonds

(i) Enter date on which bonds are due for redemption.

(j) Enter name of the Army installation (e.g., Fort Hood, TX) or US Army number (e.g., Fifth US Army) at which the servicing Finance and Accounting Office is located.

(k) Enter date on which bond is signed

(l) Enter month in which bond is signed

(m) Enter year in which bond is signed

(n) Enter title of the borrowing activity's chief executive, e.g., governor, chief scout executive, national commander VFW etc

(o) Enter, if appropriate, the names and title of the comptroller or treasurer of the borrowing activity

(p) Enter name of person witnessing signature

(q) Enter address of person witnessing signature

(r) Enter the name of the county in which the power of attorney is being signed

(s) Enter the name of the State in which the Power of Attorney is being signed

(t) Enter name of the borrowing activity's chief executive.

(u) Enter date on which the power of attorney is signed

(v) Enter month in which power of attorney is signed.

(w) Enter year in which power of attorney is signed

(x) Signature of Notary Public.

(y) Enter date that the Notary Public's commission expires

PO· 'ER OF ATTORNEY *(For Transactions Involving Treasury Bonds)*

For use of this form, see AR 700-131 the proponent agency is DCSLOG.

Know all men by these presents, that the (a) _____ is a (b) _____

having its principal office in the city of (c) _____ State of (d) _____, does hereby constitute

and appoint the finance and accounting officer, (e) _____, acting for and on behalf of the

(f) _____, and his successors in office, as attorney for said (a) _____, or its authorized representatives, for and in the name of said corporation to collect or to sell, assign, and transfer certain US Treasury bonds described as follows

(g) _____ due (h) _____

Such Treasury bonds have been deposited by (a) _____, pursuant to authority conferred by section 1126 of the Revenue Act of 1926, as amended, and subject to the provisions there of and of Treasury Department Circular No. 154, dated February 6, 1935, as security for the faithful performance of any and all of the conditions or stipulations

of a certain agreement entered into by (a) _____ with the United States, under date of

(i) _____ which is hereby made a part hereof as Inclosure 1. The undersigned agrees that, in case of any default in performance of any of the conditions and stipulations of such or any part thereof the finance and accounting officer

(e) _____ may sell, assign, and transfer said Treasury bonds or any part thereof without notice, at public or private sale, free from equity of redemption and without appraisement or evaluation, notice of right to redeem being waived, and may apply the proceeds of such sale or collection in whole or in part, to the satisfaction of such default. The undersigned further agree that the authority herein granted in irrevocable.

And such (a) _____ hereby for itself, its successors and assigns, ratifies and confirms such proper action taken within the scope of this power.

In witness whereof, the (a) _____, the (b) _____

herein above named by its (j) _____ and (k) _____ duly authorized

to act in the premises, has executed this instrument and caused the seal of the (a) _____

to be affixed this (l) _____ day of (m) _____ 19 (n) _____.

(a) _____

By: (o) _____ By: (p) _____

(Name and title) *(Name and title (Comptroller))*

Before me, the undersigned, a Notary Public within and for the County of (q) _____

in the State of (r) _____, personally appeared (s) _____, (j) _____,

and (p) _____, comptroller, and for an on behalf of said (a) _____,

a (b) _____, acknowledged the execution of the foregoing power of attorney.

Witness my hand and notarial seal this (l) _____ day of (m) _____, 19(n) _____.

Notarial Seal (t) _____

(Notary Public)

DA Form 4881-4-R, Sep 84 EDITION OF MAY 80 IS OBSOLETE.

INSTRUCTIONS

The lettered blank portions of the Power of Attorney are to be completed as specified in the following paragraphs with the same letters:

(a) Enter the name of the Federal agency, authority, (local governmental body), or special activity which borrowed the Army materiel.

(b) Further identify the borrower by entering here the type of activity that it is, i.e., Federal agency, civil government, corporation (Boy Scouts of America), etc.

(c) Enter the name of the city.

(d) Enter the name of the state.

(e) Enter the name of the Army installation handling the account

(f) Enter the name and rank of the commanding officer of the Army installation handling the account.

(g) Describe the US Treasury bonds that have been posted as bond to include type, serial numbers, and interest rates if applicable.

(h) Enter date on which payment of the Treasury bonds becomes due if applicable. If it is not applicable enter "NA."

(i) Enter the date on which the agreement between the borrower and the US Government was signed.

(j) Enter title of the borrowing activities' chief executive; e.g., governor, chief scout executive, national commander VFW, etc.

(k) Enter here, "Comptroller " "Treasurer," etc. as appropriate.

(l) Enter date on which the Power of Attorney is signed.

(m) Enter month in which Power of Attorney is signed.

(n) Enter year in which Power of Attorney is signed

(o) Enter name and title of chief executive of borrowing activity

(p) Enter, if appropriate, the names and title of the comptroller or treasurer of the borrowing activity.

(q) Enter the name of the county in which the Power of Attorney is being signed

(r) Enter the name of the state in which the Power of Attorney is being signed

(s) Enter the name of the chief executive of the borrowing activity.

(t) Signature of the Notary Public.

AGREEMENT FOR THE LEASE OF US ARMY MATERIAL

For use of this form, see AR 700-131, the proponent agency is DCSLOG.

NOTE: The format below is prescribed for any lease of Army materiel under the authority of 10 U.S.C. 2667.

This form will be used to enter into agreements relative to the lease of Army materiel between the United States Army and - 1. State and local government agencies; 2. Private individuals; and 3. Commercial activities.

LESSEE AND ADDRESS

PROPERTY TO BE USED AT

PAYMENT

To be made to _____

United States Army, at _____

This lease is authorized by 10 U.S.C. 2667

This LEASE AGREEMENT, entered into this _____ day of _____ 19____ by and between the UNITED STATES OF AMERICA, hereinafter called the Government, represented by the Contracting Officer executing this agreement, and _____

*a corporation organized and existing under the laws of the State/City/County of _____

*joint venture consisting of _____

*partnership consisting of _____

*an individual trading as _____

of the City of _____ in the State of _____

hereinafter called the Lessee

Witnesseth That,

1. The Government hereby leases to the Lessee and the Lessee hereby hires from the Government, upon the terms and conditions hereinafter set forth, the personal property listed in Schedule A which is attached hereto and made a part hereof.

2. This lease is subject to the approval of _____ and shall not be binding until so approved. The term of this lease shall commence on the _____ day following the mailing of written notice to the Lessee that the lease has been so approved and that the property is ready for delivery, and shall continue for a period of _____ [days, months, or years] or until sooner terminated or revoked in accordance with the provisions hereof.

3. At any time during the term, either party may terminate this lease in whole or in part effective not less than 90 days after receipt by the other party of written notice thereof without further liability to either party. However, the Secretary of the Army may revoke this lease in whole or in part at any time.

4. Upon commencement of the term of this lease, the Lessee shall take possession of the leased property at _____ as is, without warranty express or implied, on the part of the Government as to condition or fitness for any purpose

5. The Lessee shall pay rent during the term of this lease at the rate prescribed in Schedule A. The rental accrued at the end of any calendar month, or at the expiration, termination or revocation of this lease, shall be paid to the Government on or before the 10th day thereafter.

6. The Lessee at its own expense shall maintain the property in good condition and repair and make all necessary replacements of components and parts during the term of this lease. In addition, AR 700-131, Chapter 5, provides examples of reimbursable costs required to be paid by the Lessee to the Army for the lease of property. The Lessee shall make no changes or alterations in the property without the written consent of the Contracting Officer

7. The Lessee shall not mortgage, pledge, assign, transfer, sublet, or part with possession of any of the property in any manner to any third party either directly or indirectly, except that this provision shall not preclude the Lessee from permitting the use of the property by a third party with the prior written approval of the Contracting Officer; and the Lessee shall not do or suffer anything whereby any of the property shall or may be encumbered, seized, taken in execution, attached, destroyed, or injured.

8. After taking possession as provided in clause 4, the Lessee shall be solely responsible for the property until it is returned to the Government as provided for in this lease. The property shall be returned in as good condition as when received, reasonable wear and tear excepted. If the Lessee fails to return the property, the Lessee shall pay to the Government the amount specified in Schedule A (prepared by the Contracting Officer and appended to this agreement) as the value of the property less the amount determined by the Contracting Officer to represent reasonable wear and tear for the period during which the property was usable If the Lessee returns the property in other than as good condition as when received, reasonable wear and tear excepted, the Lessee shall pay to the Government the amount necessary to place the property in such condition, or if it is determined by the Contracting Officer that the property cannot be placed in such condition, the Lessee shall pay to the Government the amount specified in Schedule A as the value of the property less both the amount determined by the Contracting Officer to represent reasonable wear and tear for the period during which the property was usable and the scrap value of the property

9. The Lessee shall take all steps necessary to protect the interest of the Government in the property, and the Contracting Officer may require the Lessee, at its own expense, to take such specific measure, including but not limited to the procurement of insurance, as may be necessary to protect such interest

10. On or before the last day of the term of this lease the Lessee shall return the property to the Government at _____ _____ or such other place as the Contracting Officer may designate, except that in the event of revocation of this lease the Lessee shall return the property to the Government at the designated place as soon after such revocation as the same can be accomplished. The Lessee shall reimburse the Government immediately, upon presentation of a statement thereof, for all packing and handling costs incurred by the Government in performance of this lease. The Lessee shall also pay all other packing, handling, and transportation charges, including the expenses of reinstalling the property or processing it for extended storage, except that the Lessee's responsibility for return transportation charges shall not exceed the amount required to return the property to the place specifically named above. Further, if the Contracting Officer designates a place to which the property is to be returned other than that specifically named above and if the time required to return the property to such other place exceeds the time required to return the property to the place specifically named above, then the time for which the Lessee must pay rent under Clause 5 shall be reduced by the amount of such excess.

11 The property is leased without operators. Any operator deemed incompetent by the Contracting Officer shall be removed from the property.

12. Upon request of the Lessee, the Contracting Officer shall furnish without charge, copies of such drawings, specifications or instructions as the Lessee may require for the operation or repair of the property and as may in the discretion of the Contracting Officer be reasonably available.

13. The Government shall not be responsible for damages to property of the Lessee or property of others, or for personal injuries to the Lessee's officers, agents, servants, or employees, or to other persons, arising from or incident to the use of the property herein leased, and the Lessee shall save the Government harmless from any and all such claims; provided, that nothing contained in this Clause 13 shall be deemed to affect any liability of the Government to its own employees.

14. At all times the Contracting Officer shall have access to the job site whereon any of the property is situated, for the purposes of inspecting or inventorying the same, or for the purpose of removing the same in the event of the termination of this lease.

15. CONTROL OF GOVERNMENT PROPERTY. The provisions of Subpart 45.5 of the Federal Acquisition Regulation (FAR) and the DOD FAR Supplement which set forth requirements for establishing and maintaining control over Government Property are incorporated by reference and made a part hereof.

16. OFFICIALS NOT TO BENEFIT No member or delegate to Congress, or resident commissioner, shall be admitted to any share or part of the lease, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this lease, if made with a corporation for its general benefit.

17. COVENANT AGAINST CONTINGENT FEES. The Lessee warrants that no person or selling agency has been employed or retained to solicit or secure this lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Lessee for the purpose of securing business. For breach or violation of this warranty the Government shall have the right to annul this lease without liability or in its discretion to require the Lessee to pay, in addition to the contract price or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

18. DISPUTES (APR 1984)

(a) This lease is subject to the Contract Disputes Act of 1978 (41 U.S.C. 601-613) (the Act).

(b) Except as provided in the Act, all disputes arising under or relating to this lease shall be resolved under this clause.

(c) "Claim," as used in this clause, means a written demand or written assertion by one of the parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of lease terms, or other relief arising under or relating to this lease. A claim arising under a lease, unlike a claim relating to that lease, is a claim that can be resolved under a lease clause that provides for the relief sought by the claimant. However, a written demand or written assertion by the Lessee seeking the payment of money exceeding $50,000 is not a claim under the Act until certified as required by subparagraph (d)(2) below. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

(d) (1) A claim by the Lessee shall be made in writing and submitted to the Contracting Officer for a written decision. A claim by the Government against the Lessee shall be subject to a written decision by the Contracting Officer.

(2) For Lessee claims exceeding $50,000, the Lessee shall submit with the claim a certification that—

(i) The claim is made in good faith.

(ii) Supporting data are accurate and complete to the best of the Lessee's knowledge and belief; and

(iii) The amount requested accurately reflects the adjustment for which the Lessee believes the Government is liable.

(3) (i) If the Lessee is an individual, the certification shall be executed by that individual.

(ii) If the Lessee is not an individual, the certification shall be executed by—

(A) A senior company official in charge at the Lessee's plant or location involved; or

(B) An officer or genera l partner of the Lessee having overall responsibility for the conduct of the Lessee's affairs.

(e) For Lessee claims of $50,000 or less, the Contracting Officer must, if requested in writing by the Lessee, render a decision within 60 days of the request. For Lessee-certified claims over $50,000 the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.

(f) The Contracting Officer's decision shall be final unless the Lessee appeals or files a suit as provided in the Act.

(g) The Government shall pay interest on the amount due and unpaid from (1) the date the Contracting Officer receives the claim (property certified if required), or (2) the date payment otherwise would be due, if that date is later, until the date of the payment. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

19. ADJUSTMENT OF RENTALS—STATE OR LOCAL TAXATION. Except as may be otherwise provided, the rental rates established in this lease do not include any State or local tax on the property herein leased. If and to the extent that such property is hereafter made taxable by State and local government by Act of Congress, then in such event the lease shall be renegotiated.

20. Except as otherwise specified in this lease, all notices to either of the parties to this lease shall be sufficient if mailed in a sealed postpaid envelope addressed as follows:

To the Lessee

_____
(Name)

_____
(Address)

To the Government

_____
(Name)

_____
(Title)

_____
(Address)

M TAB TAB TAB TAB

REQUEST AND APPROVAL FOR LOAN OR LEASE OF EQUIPMENT AND LOAN OR LEASE AGREEMENT

For use of this form, see AR 700-131; the proponent agency is DCSLOG.

PAGE NO.	NO. OF PAGES
REQUIRED DELIVERY DATE	

LOAN OR LEASE (Check one) [ ] LOAN [ ] LEASE	LOAN/LEASE AGREEMENT NUMBER (When Approved)
ADDRESS OF ACCOUNTABLE OFFICER	EXPIRATION DATE OF LOAN/LEASE

SECTION A - (To be completed by Requester/Lessee)

1. NAME AND ADDRESS OF ACTIVITY (Include UIC)

2. ITEM DESCRIPTION (Include LIN and NSN and Quantity Required)

3. OTHER ITEMS REQUIRED (Show item, page no. of request and agency to which request was submitted. A separate request is required for each item.)

4. EQUIPMENT TO BE SHIPPED TO (include DODAAC, if applicable)

5. FUND CITE FOR PC&H AND TRANSPORTATION COSTS

6. COMPLETE JUSTIFICATION INCLUDING PROPOSED DURATION OF LOAN/LEASE (If additional space is needed, use reverse)

7. CERTIFICATION

I certify that I am the authorized individual to request loan/lease of Army equipment, and if this request is approved, agree to pay all authorized charges including PC&H, transportation, and repair costs for other than fair wear and tear, and agree to abide by all conditions specified for Loan/Lease of Army materiel by AR 700-131.

8. TYPED NAME, GRADE, AND TITLE OF AUTHORIZED REPRESENTATIVE	8a. SIGNATURE	8b. DATE

SECTION B - (To be completed by the activity having custody of item)

9. NAME AND ADDRESS OF ACTIVITY

10. REQUESTED ITEM [ ] (Enter NSN) SUBSTITUTE ITEM [ ] (Enter NSN)	10a. AVAILABILITY (Check one) WITH DAMPL IMPACT [ ] WITHOUT DAMPL IMPACT [ ] NOT AVAILABLE [ ]

10b. APPROVAL AUTHORITY FOR LOAN/LEASE (Based upon above data and Table 2-1, AR 700-131)

11. FOR LOANS/LEASES WITH DAMPL IMPACT (Provide the following information to HQDA)

11a. AUTHORIZED	ON HAND (Worldwide)	QTY D/I PER MONTH PRODUCED OVERHAULED
11b. QTY O/H CONUS DEPOT BY PURPOSE CODE		11c. QTY BACKORDERED BY MACOM

11d. IMPACT OF LOAN/LEASE APPROVAL AND ACTIVITY RECOMMENDATION

12. TYPED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	12a. SIGNATURE	12b. DATE

SECTION C - (Action by final approval authority)

13. [ ] APPROVED [ ] DENIED [ ] OTHER (SEE REVERSE)

14. TYPED NAME AND TITLE OF APPROVING AUTHORITY	14a. SIGNATURE	14b. DATE

DA FORM 4881-6-R, SEP 84

[FR Doc. 92-23011 Filed 10-6-92; 8:45 am]

BILLING CODE 3710-08-C

federal register

Wednesday
October 7, 1992

Part III

Department of Commerce

National Telecommunications and Information Administration

Public Telecommunications Facilities Program: Closing Date for Applications; Notice

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket No. 920807-2207]

Public Telecommunications Facilities Program: Closing Date for Applications

AGENCY: National Telecommunications and Information Administration (NTIA), Commerce.

ACTION: Notice of closing date for applications.

SUMMARY: The National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce, announces that applications are available for planning and construction grants for public telecommunications facilities under the Public Telecommunications Facilities Program administered by NTIA.

Congress has not completed action on the appropriation for this program. If, however, funds are made available for the program for the fiscal year, NTIA anticipates making grant awards by late summer 1993.

The amount of a grant award will vary depending on the project of the applicant. NTIA awarded $21.2 million in funds to 122 projects for fiscal year 1992. The awards ranged from $3,100 to $1,227,974.

Final Rules and Policy Statement for the Public Telecommunications Facilities Program were published on November 22, 1991 (56 FR 59168–59192, No. 226). Those rules will be in effect for 1993 applications.

EFFECTIVE DATES: November 6, 1992. Applications for PTFP must be received on or before 5 p.m., January 14, 1993.

ADDRESSES: Department of Commerce, Office of Telecommunications Applications, NTIA/DOC, 14th Street and Constitution Avenue, NW., room H-4625, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Dennis R. Connoes, Associate Administrator, telephone (202) 482-5802.

SUPPLEMENTARY INFORMATION:

I. Eligibility

A. To be eligible to apply for and receive a construction grant, an applicant must be:

(1) A public or noncommercial educational broadcast station;

(2) A noncommercial telecommunications entity;

(3) A system of public telecommunications entities;

(4) A nonprofit foundation, corporation, institution, or association organized primarily for educational or cultural purposes; or

(5) A state or local government or agency, or a political or special purpose subdivision of a state.

B. To be eligible to apply for and receive a planning grant, an applicant must be:

(1) Any of the organizations described in paragraph A of this section; or,

(2) A nonprofit foundation, corporation, institution, or association organized for any purpose except primarily religious.

C. An applicant that is eligible under paragraphs A or B of this section may file an application with the Agency for a planning or construction grant to achieve the following:

(1) The provision of new public telecommunications facilities to extend service to areas currently not receiving public telecommunications services;

(2) The expansion of the service areas of existing public telecommunications entities;

(3) The establishment of new public telecommunications entities serving areas currently receiving public telecommunications services; or,

(4) The improvement of the capabilities of existing licensed public broadcast stations to provide public telecommunications services.

D. Applicants must certify whether they are delinquent on any Federal debt. No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either:

(1) The delinquent account is paid in full,

(2) A negotiated repayment schedule is established and at least one payment is received, or

(3) Other arrangements satisfactory to the Department of Commerce are made. Delinquent accounts include debts incurred by sub-units of the applicant other than the sub-unit that is applying to NTIA, and includes debts owed to any agency of the Federal government, not just to the Department or NTIA.

E. An applicant whose proposal requires an authorization from the FCC must be eligible to receive such authorization.

II. Closing Date

Pursuant to § 2301.5(c) of the PTFP Final Rules (56 FR 59176 (1991), codified at 15 CFR part 2301), the Administrator of NTIA hereby establishes the closing date for the filing of applications for grants under the PTFP. The closing date selected for the submission of applications for 1993 is January 14, 1993.

III. Program Goals and Priorities

The Goals of this program as stated in section 390 of the Communications Act (47 U.S.C. 300) are:

"To assist through matching grants, in the planning and construction of public telecommunications facilities in order to achieve the following objectives:

(1) Extend delivery of public telecommunications services to as many citizens of the United States as possible by the most efficient and economical means, including the use of broadcast and nonbroadcast technologies;

(2) Increase public telecommunications services and facilities available to, operated by, and owned by minorities and women; and

(3) Strengthen the capability of existing public television and radio stations to provide public telecommunications services to the public."

The Agency has established the following priorities for the PTFP:

Special Applications

NTIA possesses the discretionary authority to recommend awarding grants to eligible broadcast and nonbroadcast applicants whose proposals are so unique or innovative that they do not clearly fall within the priorities listed below. Innovative projects submitted under this category must address demonstrated and substantial community needs (*e.g.*, service to identifiable ethnic or linguistic minority audiences, service to the blind or deaf, electronic text, and nonbroadcast projects offering educational or instructional services).

Priority 1—Provision of Public Telecommunications Facilities for First Radio and Television Signals to a Geographic Area

There are three subcategories:

A. Projects That Include Local Origination Capacity

This subcategory includes the planning or construction of new facilities that can provide a full range of radio and/or television programs including material that is locally produced.

B. Projects That do not Include Local Origination Capacity

C. Projects That Provide First Nationally Distributed Programming

This subcategory includes projects that provide satellite downlink facilities to noncommercial radio and television stations that would bring nationally

distributed programming to a geographic area for the first time.

Priority 1 and its subcategories apply only to grant applicants proposing to plan or construct new facilities to bring public telecommunications services to geographic areas that are presently unserved.

Priority 2—Replacement and Basic Equipment of Existing Essential Broadcast Stations

Projects eligible for consideration under this category include the urgent replacement of obsolete or worn out equipment in existing broadcast stations that provide either the only public telecommunications signal or the only locally originated public telecommunications signal to a geographic area.

Priority 3—Establishment of a First Local Origination Capacity in a Geographical Area

Projects in this category include the planning or construction of facilities to bring the first local origination capacity to an area already receiving public telecommunications service.

Priority 4—Replacement and Improvement of Basic Equipment for Existing Broadcast Stations

Projects eligible for consideration under this category include the replacement of obsolete or worn-out equipment and the upgrading of existing origination or delivery capacity to current industry performance standards. There are two subcategories:

A. Under Priority 4A, NTIA will consider applications to replace urgently needed equipment from public broadcasting stations that do not meet the Priority 2 criteria. NTIA will also consider applications that improve as well as replace urgently needed production-related equipment at public radio and television stations that do not qualify for Priority 2 consideration but that produce, on a continuing basis, significant amounts of programming distributed nationally to public radio or television stations.

This subcategory will also enable the acquisition of satellite downlinks for public radio stations in areas already served by one or more full-service public radio stations. The applicant must demonstrate that it will broadcast a program schedule that does not merely duplicate what is already available in its service area.

The final projects included in this subcategory would enable the acquisition of the necessary items of equipment to bring the inventory of an already-operation station to the basic level of equipment requirements established by PTFP.

B. This subcategory includes the improvement and non-urgent replacement of equipment at any public broadcasting station.

Priority 5—Augmentation of Existing Broadcast Stations

Projects in this category would equip an existing station beyond a basic capacity to broadcast programming from distant sources and to originate local programming.

A. Projects To Equip Auxiliary Studios at Remote Locations, or To Provide Mobile Origination Facilities.

An applicant must demonstrate that significant expansion in public participation in programming will result.

B. Projects To Augment Production Capacity Beyond basic Level in Order To Provide Programming or Related Materials for Other Than Local Distribution

This subcategory would provide equipment for the production of programming for regional or national use.

IV. Application Forms and Regulations

To apply for a PTFP grant, an applicant must file a timely and complete application on a current form approved by the Agency. No previous versions of the PTFP Application Form may be used. (In accordance with the Paperwork Reduction Act, the current application form has been cleared under OMB control no. 0660-0003.)

All persons and organizations on the PTFP's mailing list will be sent a copy of the current application form and the Final Rules. Those not on the mailing list may obtain copies by contacting the PTFP at the address above. Prospective applicants should read the Final Rules carefully before submitting applications. Applicants whose applications were deferred will be mailed pertinent PTFP materials and instructions for requesting reactivation.

Applicants should note that they must comply with the provisions of Executive Order 12372, "Intergovernmental Review of Federal Programs." The Executive Order requires applicants for financial assistance under this program to file a copy of their application with the Single Points of Contact (SPOC) of all states relevant to the project. Applicants are required to serve a copy of their completed application on the appropriate SPOC on or before January 14, 1993. Applicants are encouraged to contact the appropriate SPOC well before the NTIA closing date.

NTIA requires that all applicants whose proposed projects need authorization from the Federal Communications Commission (FCC) must tender an application to the FCC for such authority on or before January 14, 1993. (A application is tendered to the FCC when it has been received by Secretary of the FCC.) However, applicants are urged to submit it with as much lead time before the PTFP closing date as possible. The greater the lead time, the better the chance the FCC application will be processed to coincide with NTLA's grant cycle. NTIA will return the application of any applicant which fails to tender an application to the FCC for any necessary authority on or before January 14, 1993.

Effective October 1, 1988, OMB Circular A-102, as it applies to grant recipients, has been superseded by Department of Commerce regulations, Uniform Administrative Requirements for Grants and Cooperative Agreements with State and Local Governments (53 FR 8034, codified at 15 CFR 24 (1988)). Applicants should note that PTFP grant recipients, depending on their type of organization, are subject to the provisions of diverse Office of Management and Budget (OMB) Circulars; i.e., A-87 "Cost Principles for State and Local Governments," A-21 "Cost Principles for Educational Institutions," A-110, A-122, A-128, as implemented by 15 CFR part 29a, and A-133, as implemented by 15 CFR part 29b.

All non-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or is presently facing charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management honesty or financial integrity. Potential grant recipient organizations may also be subject to reviews of Dun and Bradstreet data or other similar credit checks.

All primary applicants must submit a completed Form CD-511, "Certifications Regarding Debarment, Suspension, and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying. Applicants are further advised that:

(1) Nonprocurement Debarment and Suspension

Prospective participants (as defined at 15 CFR part 26, section 105) are subject to 15 CFR part 26, "Nonprocurement Debarment and Suspension" and the related sectional of the certification form;

(2) Drug-Free Workplace

Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR part 26, subpart F, "Government wide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form;

(3) Anti-Lobbying

Persons (as defined at 15 CFR Part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form which applies to applicants/bids for grants, cooperative agreements, and contracts for more than $100,000; and

(4) Anti-Lobbying Disclosures

Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, appendix B.

For awards granted by NTIA, the recipient shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the grant award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to the Department. SF–LLL completed by any tier recipient or subrecipient should be submitted to the Department in accordance with the instructions contained in the award document.

If an application is selected for funding, the Department of Commerce has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of the Department.

Awards granted under this program shall be subject to all Federal and Departmental regulations, policies, and procedures applicable to Federal assistance awards. In addition, unsatisfactory performance by the applicant under prior Federal awards may result in the application not being considered for funding.

Applicants are reminded that a false statement on the application may be grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment.

V. Funding Criteria

All PTFP funding criteria are equal in weight. In determining whether to approve or defer a construction grant application, in whole or in part, and the amount of such grant, the Agency will evaluate all the information in the application file and consider, in no order of priority, the following factors:

(a) The extent to which the project meets the program purposes set forth in the Final Rules, 15 CFR 2301.2, as well as the specific program priorities set forth in the appendix of those Rules;

(b) The adequacy and continuity of financial resources for long-term operational support;

(c) The extent to which non-Federal funds will be used to meet the total cost of the project;

(d) The extent to which the applicant has:

(1) Assessed specific educational, informational, and cultural needs of the community(-ies) to be served, and the extent to which the proposed service will not duplicate service already available;

(2) Evaluated alternative technologies and the basis upon which the technology was selected;

(3) Provided significant documentation of its equipment requirements, and the urgency of acquisition or replacement;

(4) Provided documentation of an increasing pattern of substantial non-Federal financial support;

(5) Provided other evidence of community support, such as letters from elected or appointed policy-making officials, and from agencies for whom the applicant produces or will produce programs or other materials;

(e) The extent to which the evidence supplied in the application reasonably assures an increase in public telecommunications services and facilities available to, operated by, and owned or controlled by minorities and women;

(f) The extent to which various items of eligible apparatus proposed are necessary to, and capable of, achieving the objectives of the project and will permit the most efficient use of the grant funds;

(g) The extent to which the eligible equipment requested meets current broadcast industry performance standards;

(h) The extent to which the applicant will have available sufficient qualified staff to operate and maintain the facility and provide services of professional quality;

(i) The extent to which the applicant has planned and coordinated the proposed services with other telecommunications entities in the service area;

(j) The extent to which the project implements local, statewide or regional public telecommunications systems plans, if any; and

(k) The readiness of the FCC to grant any necessary authorization.

In determining whether to approve or defer a planning grant application, in whole or in part, and the amount of such grant, the Agency will evaluate all the information in the application file and consider, in no order of priority, the following factors:

(a) The extent to which the applicant's interests and purposes are consistent with the purposes of the Act and the priorities of the Agency;

(b) The qualifications of the proposed project planner;

(c) The extent to which the project's proposed procedural design assures that the applicant would adequately:

(1) Obtain financial, human and support resources necessary to conduct the plan;

(2) Coordinate with other telecommunications entities at the local, state, regional and national levels;

(3) Evaluate alternative technologies and existing services; and

(4) Receive participation by the public to be served (and by minorities and women in particular) in the project planning;

(d) Any pre-planning studies conducted by the applicant showing the technical feasibility of the proposed planning project (such as the availability of a frequency assignment, if necessary, for the project); and

(e) The feasibility of the proposed procedure and timetable for achieving the expected results.

VI. Matching Requirements

(a) Planning grants. A Federal grant for the planning of a public telecommunications facility shall be in an amount determined by the Agency and set forth in the award document and the attachments thereto. The Agency may provide up to 100 percent of the funds necessary for the planning of a public telecommunications construction project.

(b) Construction grants.

(I) A Federal grant award for the construction of a public telecommunications facility shall be an amount determined by the Agency and set forth in the award document. Such amount may not exceed 75 percent of the amount determined by the Agency to be the reasonable and necessary cost of such project.

Special Note: At the time the 1987 Final Rules for PTFP were adopted, NTIA announced a policy which did not require any rule change, but which is intended to encourage stations reporting substantial non-Federal revenues to increase the matching percentage in their proposals for replacement of equipment from 25% to 50%. The Agency emphasized that applicants proposing to provide first service to a geographic area encounter considerable ineligible costs, including construction or renovation of buildings or other similar expenses. NTIA, therefore, expects to continue funding projects to extend service at up to 75% of the total project cost. Applicants from small community-licensed stations, or those who can show that a station licensed to a large institution cannot obtain direct or in-kind support from the larger institution, also will not be subject to this preference. Otherwise, a showing of extraordinary need or emergency situation will be taken into consideration as justification for grants of up to 75% of the project cost, but the presumption of 50% funding will be the general rule for replacement applications.

(2) No part of the grantee's matching share of the eligible project costs may be met with funds paid by the Federal government, except where the use of such funds to meet a Federal matching requirement is specifically and expressly authorized by Federal statute.

(3) Funds supplied to an applicant by the Corporation for Public Broadcasting may not be used for the required non-Federal matching purposes, except upon a clear and compelling showing of need.

(4) The expenditure of any local matching funds prior to the Closing Date will be disallowed.

(5) The Applicants should note that expenditure of local matching funds prior to the award of a grant is at the applicant's own risk. The exact amount of the match will not be known with certainty until the final award agreement is negotiated. Therefore, should the applicant's expenditure of non-Federal funds exceed the non-Federal share which will be established in the final award agreement, then either the Federal share of the total project cost may be reduced by a corresponding amount, or no Federal award may be offered.

VII. Selection Process and Project Period

PTFP grants are awarded on the basis of a competitive review process. This includes several grant review panels, which apply the Funding Criteria listed in section V above. The Agency determines the selection of grantees according to the Priorities listed in Section III above and the evaluation of the applications by the various review panels.

Planning grant award periods customarily do not exceed one year, whereas construction grant award periods commonly range up to two years. Although these time frames are generally applied to the award of all PTFP grants, variances in project periods may be based on specific circumstances of an individual proposal.

VIII. Filing Applications

Applications delivered by mail must be received no later than 5 p.m., January 14, 1993, and must be addressed to: Public Telecommunications Facilities Program, NTIA/DOC, Room H-4625, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Applications delivered by hand must be delivered to the above address between 8:30 a.m. and 5 p.m. on or before January 14, 1993. Applicants whose applications are not received by 5 p.m., January 14, 1993, will be notified that their applications will not be considered in the current grant cycle and will be returned.

Authority: The Public Telecommunications Financing Act of 1978, 47 U.S.C. 390–394, 397–399b (Act), as amended by the Public Broadcasting Amendments of 1981, Public Law 97–35, 95 Stat. 82, 117 (1986).

(Catalog of Federal Domestic Assistance No. 11.550)

Dennis R. Connors,

Associate Administrator, Office of Telecommunications Applications.

[FR Doc. 92–24168 Filed 10–6–92; 8:45 am]

BILLING CODE 3510-60-M

federal register

Wednesday
October 7, 1992

Part IV

Environmental Protection Agency

40 CFR Part 146

Underground Injection Control Program; Hazardous Waste Disposal Injection Restrictions and Requirements for Class I Wells; Revision of Testing and Monitoring Requirements; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 146

[FRL 4154-4]

Underground Injection Control Program; Hazardous Waste Disposal Injection Restrictions and Requirements for Class I Wells; Revision of Testing and Monitoring Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is promulgating a revision to the testing and monitoring requirements for Class I hazardous waste injection wells. These requirements were originally published on July 26, 1988 (53 FR 28118), and a proposed revision was published on August 19, 1991 (56 FR 41108). Specifically, the Agency is changing the timing requirement for the Casing Inspection Log (CIL) as required under 40 CFR 146.68(d)(4). Rather than running the test on a fixed schedule every five years, this rule requires that the log be run whenever a well workover involves the pulling of the injection tubing, unless the Underground Injection Control (UIC) Program Director waives the requirement because satisfactory results from the test were obtained within the previous five years. However, the Director may still require the log to be run on a fixed five-year schedule, in certain cases.

EFFECTIVE DATE: This rule revision becomes effective on November 6, 1992.

ADDRESSES: All comments received for this rulemaking are contained in the Public Docket. Any inquiries concerning the docket, or requests to review the material for this rule should be addressed to Bruce J. Kobelski, U.S. Environmental Protection Agency, Office of Ground Water and Drinking Water (WH-550G), 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Bruce J. Kobelski, EPA, Office of Ground Water and Drinking Water, (202) 260-7275.

SUPPLEMENTARY INFORMATION:

Preamble Outline

I. Background
- A. Summary of UIC Land Ban Requirements
- B. Part 146 Technical Requirements
- C. Settlement Agreement on Casing Inspection Log

II. Summary of Today's Rulemaking
- A. Description of Testing Method
- B. Agency Response to Comments
- C. Justification of Rule Revision
- D. Timing Considerations

III. Regulatory Requirements
- A. Regulatory Impact Analysis
- B. Regulatory Flexibility Act
- C. Paperwork Reduction Act

I. Background

A. Summary of UIC Land Ban Requirements

In response to the Hazardous and Solid Waste Amendments of 1984 (HSWA), on July 26, 1988, the Agency promulgated its approach to implementing the statutorily mandated prohibitions on the underground injection of hazardous waste. See 53 FR 28118. EPA promulgated one set of regulations governing hazardous waste injection wells under the authority of both the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6921, *et seq.* and the Safe Drinking Water Act (SDWA), 42 U.S.C. 300f-300j. This rulemaking codified at 40 CFR Part 148, for hazardous waste disposed of in Class I injection wells, the directly applicable sections of part 268, the Agency's regulatory framework for implementing the land disposal restrictions under section 3004 of RCRA; 42 U.S.C. 36924. See 51 FR 40572, November 7, 1986, for a further discussion. Part 148 also specifies the effective dates of the restrictions on the injection of hazardous wastes.

The July 26, 1988, rulemaking also codified under part 148, the procedure, or petition process, whereby an injection well operator may continue to inject untreated hazardous waste when he has demonstrated to the Administrator to a reasonable degree of certainty, that there will be no migration of hazardous constituents from the injection zone for as long as the wastes remain hazardous. See RCRA Sections 3004 (d)(1), (e)(1), (g)(5), 42 U.S.C. 6924 (d)(1), (e)(1), (g)(5). Upon a successful demonstration, the Agency will grant the owner or operator an exemption from the land ban prohibitions.

B. Part 146 Technical Requirements

The July 26, 1988, rule also promulgated amendments to the technical requirements for Class I hazardous waste injection wells pursuant to the SDWA. Both previously existing, and new technical requirements applicable to Class I wells were codified under part 146, subpart G of the UIC regulations. These requirements include appropriate siting standards, well construction requirements, area of review evaluation, corrective action, operating requirements, reporting, closure and post closure care, and testing and monitoring requirements, for Class I hazardous waste injection wells. Under 40 CFR 146.68 (testing and monitoring requirements), periodic mechanical integrity testing (MIT) of a well's tubular goods, and an assessment of the existence of movement of fluid along the borehole, must be conducted to fulfill the requirements of § 146.8 in the UIC regulations (which requires a satisfactory demonstration of mechanical integrity at least once every 5 years). A casing inspection log (CIL) must be run once every five years in order to meet these requirements for Class I hazardous waste injection wells.

C. Settlement Agreement on Casing Inspection Log

The July 26, 1988, rule was challenged by both industry and environmental groups in *NRDC* v. *EPA* No. 88-1657 and cons. cases (D.C. Cir.). EPA signed a partial settlement agreement with the Chemical Manufacturers Association (CMA) concerning minor issues in that litigation. One of the minor issues was the requirement to run a casing inspection log every five years. This method of casing evaluation requires the pulling of well tubing. CMA argued that a better approach would be to require such casing inspection to coincide with normal well workover operations. Such an approach would also avoid placing undue stress on injection well components. Well workovers occur at a reasonable frequency, but not necessarily every five years. A review of the methods used in assessing the mechanical integrity of a well, and new alternative methods which did not require that tubing be pulled from the well, were factors the Agency weighed in determining whether to revise the CIL scheduling requirement. Based on these considerations, EPA agreed to propose an amendment to 40 CFR Part 146, which it did on August 19, 1991, solicit and respond to public comments, and promulgate a final revision by July 30, 1992.

II. Summary of Today's Rulemaking

A. Description of Testing Method

The casing inspection log is a down-hole tool using variations in measured electromagnetic flux to record the thickness of the injection well casing. It has the distinct advantage of being a predictive tool in that it not only can indicate the presence of small holes or breaks in the metal casing, but it can also reveal any developing weaknesses, or pitting, which may be a precursor to a

hole or breach in the casing caused by corrosion. Interaction of the metal well casing with a highly corrosive waste stream, such as highly saline formation waters, is an example of what can cause the eventual loss of the well's mechanical integrity.

B. Justification of Rule Revision

The Agency has now assessed its position on the schedule for running the CIL in light of the public comments, and has decided to revise the original requirement in today's rulemaking. The Agency's original requirement was premised on the assumption that tubing always had to be pulled every 5 years in order to perform the required mechanical integrity test.

However, the procedures for conducting noise and temperature logging and more documentation regarding the efficacy of temperature and noise logging inside tubing, for evaluating the external mechanical integrity of a well, was reviewed and evaluated by the Agency. Additionally, a new mechanical integrity tool for assessing well fluid movement along the well bore, the Oxygen-Activation (OA) Method, has been approved by the Agency. This logging method, which can be used inside tubing, received final approval on January 10, 1992 (55 FR 1176). All of these factors, either combined or in part, negate the necessity of the operator's pulling the injection tubing at regular five-year intervals.

For detecting leaks in the injection well, the Agency already requires continuous pressure monitoring and annual pressure testing. The added information provided by the CIL is important as a predictive method, but it is a redundant protection factor with regard to assessing potential well leaks and any possible threat these leaks may pose to ground water resources. The CIL can help in assuring that no leaks would ever occur, but a leak of fluid from the long-string casing would probably not lead to any endangerment to drinking water as long as the injection tubing and packer had mechanical integrity.

Therefore, in order to balance industry concerns with any potential threats to human health and the environment, the Agency believes that it would be more practical to require running the CIL whenever the well is being worked over, rather than require the operators to pull the injection string on a fixed five-year interval. The Director may waive the casing inspection log requirement due to well construction or other factors which may limit the test's reliability, or based upon successful results from a CIL run within the previous five years. However, because in some limited cases such as where a corrosive wastestream may have come into contact with the well's casing, or in areas where formation fluids which come into contact with the casing are known to cause rapid degradation of a well's casing, or where other natural processes or man-made events may effect the casing integrity, the Director of the UIC program may still require a fixed five-year CIL schedule.

C. Agency Response to Comments

All of the comments received by the Agency supported the proposed rule revision for running a CIL. Many of the commenters supported the rule language as proposed and the Agency's justification for the change. However, several commenters objected to the Agency's justification for the change in timing requirement for conducting a casing inspection log based on the Agency's earlier 1988 interim approval of the Oxygen-Activation (OA) Method. See 53 FR 37294. As mentioned earlier, in most cases, the OA logging method does not require the well operator to remove the well tubing in order to conduct the test. With the supplemental information received by the Agency for noise and temperature logging, the Agency agrees that satisfactory mechanical integrity testing results may also be obtained without pulling tubing. And it is in consideration of all these developments, that the Agency is now changing the part 146 regulations as promulgated on July 26, 1988. See 53 FR 28118.

The Agency agrees, however, with the commenters that approval of the OA log was not a condition for today's rule revision, even though the OA log had already received interim approval for its use on September 26, 1988 (53 FR 37294). At this time, the Agency will reiterate that running an Oxygen Activation log is not the only prerequisite for assessing fluid flow behind pipe. Any EPA-approved MIT for assessing fluid flow behind pipe acceptable to the Director is satisfactory.

One commenter believed that the proposed rule revision language for the CIL could be misinterpreted, and that an operator may be required to run a CIL more frequently than every five years if a well was worked over more frequently. The commenter was also concerned that if a well was worked over, and a CIL had been run within the previous five years, a formal waiver process, which may potentially be time-consuming and disruptive to injection operations would be required by the Director before the well would be allowed to be brought back into service.

In response to this comment, the Agency does not believe that it is necessary, in most situations, to run a CIL more frequently than every five years. As indicated in the proposed rule, if a well were to be worked over more frequently than planned, and if a casing inspection log had been run within the previous five years, with results satisfactory to the Director, an additional CIL is probably unnecessary. It is our expectation that after review of previous data obtained from running a CIL, the Director will waive an additional CIL. The requirements and format, whether written or oral, for such a waiver are left to the Director's discretion. But the Agency is suggesting that waivers for a CIL should be granted quickly enough after a workover so as not to impede the overall efficiency of the injection facility.

Finally, one commenter suggested that the Agency provide a definition for the term "workover". Generally, in oil production and injection well field operations, workover is a fairly broad term defining any mechanical repair or maintenance operation related to well components, such as tubing, casing, or packer. As the term is widely understood and accepted for field practices, the Agency does not believe that any confusion will result when implementing today's rule.

The Agency will promulgate this rule revision with minor descriptive changes more clearly encompassing the events which may adversely affect the long string casing.

D. Timing Considerations

All new part 146 technical requirements for Class I hazardous waste injection wells became effective August 25, 1988. EPA has interpreted the timing requirement in 40 CFR 146.68(d)(4) for a casing inspection log as five years from this effective date. Therefore, the current regulations require a CIL beginning on August 25, 1993, for existing wells.

The Agency is promulgating this final rule revision now, in order to allow operators to schedule their well testing accordingly, and to allow the Primacy States adequate time to adopt this change. All Primacy States affected by the new Class I requirements promulgated in the July 26, 1988, rulemaking were to have conformed with the new part 146 regulations by April 26, 1989. See SDWA section 1422(b)(1), 42 U.S.C. 300h-1.

III. Regulatory Requirements

A. Regulatory Impact Analysis

Under Executive Order 12291 EPA must determine whether a regulation is "major", and therefore subject to the requirement of a Regulatory Impact Analysis. The overall effect of today's rule, is to allow greater flexibility for requirements of part 146 testing and monitoring requirements for Class I hazardous waste injection wells. There are no additional requirements to the existing UIC rules. The net effect of this rule is to allow the UIC Director more discretion in the timing requirements for running the casing inspection log.

For some injection facilities, the changing of the timing requirement, or the obtaining of a waiver may result in cost savings to owners or operators by avoiding certain operational disruptions. However, for others, additional costs may be incurred from running the tool on an alternate schedule from the already required annual and five-year mechanical integrity tests, thus offsetting any potential savings. Consequently, as the Agency cannot estimate the exact number, or which injection facilities may benefit from this rule change, we have assumed that there will be no net change in costs or burden for the overall hazardous waste injection well population. Therefore, no additional regulatory impact analysis is required.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a General Notice of Rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). This analysis is unnecessary, however, if the agency's administrator certifies that the rule will not have a significant economic effect on a substantial number of small entities.

Owners and operators of hazardous waste injection wells are generally major chemical, petrochemical, and other manufacturing companies. This rule is deregulatory in nature and thus could provide beneficial opportunities to facilities that may be affected by the rule. The Agency is not aware of any small entities that would be directly affected by this rule. Accordingly, the Administrator certifies that this rule will not have significant economic effects on a substantial number of small businesses. As a result of this finding, EPA has not prepared a formal Regulatory Flexibility Analysis.

C. Paperwork Reduction Act

There are no additional reporting, notification, or recordkeeping provisions proposed in this rule. Such provisions, were they included, would be submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

The information collection requirements for the UIC Program have been approved by the Office of Management and Budget.

List of Subjects in 40 CFR Part 146

Administrative practice and procedure, Hazardous materials, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control, Water supply.

Dated: September 30, 1992.

William K. Reilly,

Administrator.

Therefore chapter I of title 40 is amended as follows:

PART 146—UNDERGROUND INJECTION CONTROL PROGRAM: CRITERIA AND STANDARDS

1. The authority citation for part 146 continues to read as follows:

Authority: Safe Drinking Water Act, 42 U.S.C. 300f et seq.; Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq.

2. Section 146.68 is amended by revising paragraph (d)(4), to read as follows:

§ 146.68 Testing and monitoring requirements.

* * * * *

(d) * * *

(4) Casing inspection logs shall be run whenever the owner or operator conducts a workover in which the injection string is pulled, unless the Director waives this requirement due to well construction or other factors which limit the test's reliability, or based upon the satisfactory results of a casing inspection log run within the previous five years. The Director may require that a casing inspection log be run every five years, if he has reason to believe that the integrity of the long string casing of the well may be adversely affected by naturally-occurring or man-made events;

* * * * *

[FR Doc. 92–24344 Filed 10–6–92; 8:45 am]

BILLING CODE 6560–50–M

Reader Aids

Federal Register

Vol. 57, No. 195

Wednesday, October 7, 1992

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	202-523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-3187
Machine readable documents	523-3447

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	512-1557

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Data base and machine readable specifications	523-3447
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the hearing impaired	523-5229

FEDERAL REGISTER PAGES AND DATES, OCTOBER

45261–45558 1
45559–45708 2
45709–45972 5
45973–46078 6
46079–46294 7

CFR PARTS AFFECTED DURING OCTOBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
6482 45961
6483 45963
6484 45965

Executive Orders:
12775 (Continued by Notice of September 30, 1992) 45557
12779 (Continued by Notice of September 30, 1992) 45557
12813 (Amended by EO 12815) 45709
12815 45709

Administrative Orders:

Notices:
September 30, 1992 45557

5 CFR

630 45261

Proposed Rules:
835 45753

7 CFR

916 45559
917 45559
920 ..... 45973, 46243
948 45560
955 45974
987 45975
1065 ..... 45562, 45563
1126 46079
1137 45564
1494 45262
1980 45968

Proposed Rules:
735 45993
736 45993
737 45993
738 45993
739 45993
740 45993
741 45993
742 45993
910 45581
944 45754
958 45993
1106 45583
1030 45995
1098 45996

10 CFR

30 45566
35 45566

12 CFR

5 46081
11 46081
16 46081
327 45263
328 45977
506 45977
563 ..... 45977, 46085
563g 46085

Proposed Rules:
1 45756
545 46098
563 46098
567 ..... 45757, 46098
571 46098
935 45338
940 45338

14 CFR

21 46243
36 46243
71 ..... 45981–45983, 46089

Proposed Rules:
39 45584–45586
71 ..... 45660, 45997

16 CFR

Proposed Rules:
4 45676
435 45998

17 CFR

180 46090
210 45287
240 45287
249 45287
259 45287
274 45287

Proposed Rules:
1 ..... 45999, 46101
30 46101
33 46101
180 46101
190 46101

19 CFR

Proposed Rules:
10 ..... 45758, 46112
191 46113

20 CFR

404 45878

21 CFR

5 45294
310 ..... 45310, 46067
510 45984
520 45984

Proposed Rules:
864 46068
872 46068
1401 45353

24 CFR

91 46068

888 45468

26 CFR

1 ..... 45568, 45660, 45711, 45878, 46243
43 45713
602 ..... 45711, 46243
Proposed Rules:
1 45587
301 45759

27 CFR

Proposed Rules:
9 45588
17 45357
19 45357
70 45357
170 45357
194 45357
197 45357
250 45357

29 CFR

1602 45570
2602 45713

30 CFR

914 45985
917 45295

32 CFR

Proposed Rules:
623 46246

33 CFR

100 ..... 45570, 45985
Proposed Rules:
151 45591
164 45662–45667
165 45596

37 CFR

202 45307

39 CFR

20 45570
111 45882

40 CFR

35 45311
52 45715
146 46292
271 ..... 45514, 45717–45722
272 45575
Proposed Rules:
Ch. I 45597
51 46114
52 ..... 45358, 45360
58 46003
63 45363
300 ..... 45597, 45599

42 CFR

57 45725
435 46093
Proposed Rules:
417 46119

43 CFR

Public Land Orders:
1567 (Revoked in part by PLO 6948) 45325
5712 (Revoked by PLO 6946) 45322
6944 45321
6946 45322
6948 45324
6949 45576
6950 45725

45 CFR

1224 45325

46 CFR

Proposed Rules:
35 45667
197 46126

47 CFR

0 45747
73 45577–45579
87 45748
90 45751
Proposed Rules:
73 ..... 45601, 46132

48 CFR

30 45422
52 45878
202 45422
204 45422
208 45422
210 45422
214 45326
215 45422
216 45422
219 45422
223 45422
225 45422
226 45422
227 45422
228 45422
231 45422
232 45422
236 45422
237 45422
239 45422
242 45422
245 45422
252 45422
253 45422
Proposed Rules:
1512 46007
1516 46007
1552 46007
5415 45759
5452 45759

49 CFR

107 45446
171 ..... 45442, 45446
172 45446
173 45446
174 45446
176 45446
177 45446
178 45446
179 45446
180 45446
214 45446
571 ..... 45327, 45422
1023 45751
Proposed Rules:
552 45759
571 45760
1039 45602

50 CFR

17 45328
227 45986
285 45579
661 45751
663 ..... 45987, 46097
672 ..... 45580, 45988
685 45989
Proposed Rules:
17 ..... 45761, 45762, 46007
672 46133
675 ..... 45602, 46133, 46139

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202-523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202-512-2470).

H.R. 5373/P.L. 102-377

Energy and Water Development Appropriations Act, 1993 (Oct. 2, 1992; 106 Stat. 1315; 31 pages)

H.R. 2850/P.L. 102-378

Technical and Miscellaneous Civil Service Amendments Act of 1992 (Oct. 2, 1992; 106 Stat. 1346; 16 pages)

Last List October 6, 1992

ELECTRONIC BULLETIN BOARD

Free **Electronic Bulletin Board** Service for Public Law Numbers is available on 202-275-1538 or 275-0920.