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Rules and Regulations

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

RIN 3206-AD23

Federal Employees Health Benefits Program—Opportunity for Certain Annuitants to Reenroll

AGENCY: Office of Personnel Management.

ACTION: Final regulations.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations to revise its Federal Employees Health Benefits (FEHB) Program to permit annuitants and former spouses to reenroll in FEHB when they disenroll from a prepaid health plan under sections 1833 or 1876 of the Social Security Act. The regulations will result in a savings to the Government and to enrollees by eliminating duplicative premium costs.

EFFECTIVE DATE: November 23, 1992.

FOR FURTHER INFORMATION CONTACT: Abby L. Block, (202) 606-0191.

SUPPLEMENTARY INFORMATION: On April 17, 1992, OPM published proposed regulations (57 FR 13667) to permit reenrollment in FEHB for certain annuitants and former spouses. We received comments from four FEHB plans, two health care associations, and three agencies. We also considered comments received from four FEHB plans, one employee and one retiree organization, and two agencies on the August 8, 1988, proposed regulations, published in 53 FR 29686 and later withdrawn (54 FR 46621).

Eight of the nine commenters on the April 17, 1992, proposed regulations either are in favor of or offered minor suggestions for administering the regulatory provisions. The dissenting commenter offers three reasons for opposing the regulations. First, the respondent believes OPM should not publish these regulations until the recommendations on the treatment of annuitants with Medicare contained in the consultants' report to the Committee on Post Office and Civil Service are carefully evaluated. We disagree, since further delay in publishing the regulations would defer the savings to the Government and enrollees. If suggested changes in annuitant coverage in the consultants' report result in legislative changes to the FEHB statute, we will, of course, make conforming regulatory changes at that time. Second, the dissenter believes that the regulations will lead to risk segmentation, since only the healthy will leave FEHB to enroll in a Medicare HMO, resulting in higher premiums for remaining plan enrollees. We find no data or information to support this belief. The third reason cited by the dissenter is that, once a Medicare HMO enrollee becomes seriously ill, he or she will opt to return to FEHB where he or she can choose a physician and hospital rather than remain in the HMO. Again, we find no evidence to support this assertion.

Several commenters suggested that all references to a "Medicare risk or cost contract" be changed or broadened to encompass Health Care Prepayment Plans. We agree and are substituting "prepaid health plan under sections 1833 or 1876 of the Social Security Act" for our original language. This reference is all inclusive.

In addition, we are making several other perfecting changes to clarify the regulations, including deleting a now obsolete reference to Part 891 in § 890.301(g). Several commenters also suggested some procedural provisions for implementing the regulations and reconciling enrollment records for affected annuitants. These suggestions will be considered by appropriate OPM offices.

With respect to comments received on the August 8, 1988, proposed regulations, we noted that many commenters suggested that voluntary disenrollees from risk or cost plans should be allowed to reenroll in FEHB. That suggestion was incorporated in the "new" proposed regulations and in these final regulations.

Executive Order 12291, Federal Regulation

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

Regulatory Flexibility Act

I certify that these regulations would not have a significant economic impact on a substantial number of small entities because they relate to Federal employees and annuitants.

List of Subjects in 5 CFR Part 890

Administrative practice and procedure, Government employees, Health facilities, Health insurance, Health professions, Reporting and recordkeeping requirements, Retirement.

Office of Personnel Management.

Douglas A. Brook,
Acting Director.

Accordingly, OPM is amending 5 CFR part 890 as follows:

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

1. The authority citation for Part 890 continues to read as follows:

Authority: 5 U.S.C. 8913; sec. 890.803 also issued under 50 U.S.C. 403p. 22 U.S.C. 4069c and 4069c-1; subpart L. also issued under sec. 599C of Public Law 101-513, 104 Stat. 2064, as amended.

2. Section 890.301 is amended by adding paragraph (d)(3)(iii), revising paragraph (g)(1), introductory text, and adding paragraph (g)(6) to read as follows:

§ 890.301 Opportunities to register to enroll and change enrollment.

* * * * *

(d) * * *

(3) * * *

(iii) An annuitant or a former spouse, as defined in 5 U.S.C. 8901(10), who canceled enrollment under this part for the purpose of enrolling in a prepaid health plan under sections 1833 or 1876 of the Social Security Act may register to reenroll.

* * * * *

(g) *Loss of coverage under Federal programs.* (1) An employee who is not enrolled, but is covered by another federally-sponsored health benefits program, and whose coverage or enrollment terminates under the other

federally-sponsored program, may register to be enrolled:

* * * * *

(6) An employee annuitant who had been covered under this part since his or her first opportunity to enroll or for the 5 years immediately preceding the commencing date of his or her annuity or monthly compensation, whichever is shorter, a survivor annuitant who had been enrolled or was otherwise eligible to enroll for coverage under this part, or a former spouse who had been enrolled for coverage under this part who cancels enrollment for the purpose of enrolling in a prepaid health plan under sections 1833 or 1876 of the Social Security Act and is subsequently disenrolled from the prepaid health plan, may register to reenroll in any available plan or option. Voluntary disenrollment from a prepaid health plan must be made in conjunction with reenrollment during the next available open season to assure continuing, uninterrupted health plan coverage. Involuntary disenrollment provides an opportunity to immediately reenroll under this part at any time beginning 31 days before and ending 31 days after the disenrollment.

* * * * *

3. In section 890.304, paragraph (d) is amended by adding the following two sentences immediately after the second sentence to read as follows:

§ 890.304 Termination of enrollment.

* * * * *

(d) *Cancellation.* * * * If an annuitant submits documentation that the cancellation is for the purpose of enrolling in a prepaid health plan under sections 1833 or 1876 of the Social Security Act, the cancellation becomes effective on the day before the enrollment under the prepaid health plan takes effect. Such documentation must be submitted to the employing office within the period beginning 31 days before and ending 31 days after the prepaid health plan enrollment takes effect. * * *

* * * * *

4. Section 890.306 is amended by adding a new paragraph (n) to read as follows:

§ 890.306 Effective dates.

* * * * *

(n) *Reenrollment of annuitant.* The effective date of an annuitant's reenrollment under § 890.301(g)(6) is, for an involuntary disenrollment from a prepaid health plan under sections 1833 or 1876 of the Social Security Act, the date shown on the documentation from the plan. For a voluntary disenrollment, the effective date of reenrollment is the first day of the first pay period which begins in January of the next following year.

5. Section 890.806 is amended by redesignating paragraph (b) as paragraph (c) and adding a new paragraph (b) to read as follows:

§ 890.806 Effective dates of coverage.

* * * * *

(b) *Reenrollment.* The effective date of a reenrollment under § 890.301(g)(6) is, for an involuntary disenrollment from a prepaid health plan under sections 1833 or 1876 of the Social Security Act, the date shown on the documentation from the plan. For a voluntary disenrollment, the effective date of reenrollment is the first day of the first pay period which begins in January of the next following year.

* * * * *

6. In Section 890.807, paragraph (e) is amended by adding the following four sentences immediately after the second sentence to read as follows:

§ 890.807 Termination of enrollment.

* * * * *

(e) *Cancellation.* * * * If a former spouse submits documentation that the cancellation is for the purpose of enrolling in a prepaid health plan under sections 1833 or 1876 of the Social Security Act, the cancellation becomes effective on the day before the coverage under the prepaid health plan takes effect. Such documentation must be submitted to the employing office within the period beginning 31 days before and ending 31 days after the prepaid health plan enrollment takes effect. The former spouse and family members, if any, are not entitled to the temporary extension of coverage for conversion or to convert to an individual contract for health benefits. Except for former spouses who provide documentation that they are canceling for the purpose of enrolling in a prepaid health plan under sections 1833 or 1876 of the Social Security Act, a former spouse who cancels his or her enrollment may not later reenroll. * * *

[FR Doc. 92-25614 Filed 10-21-92; 8:45 am]
BILLING CODE 6325-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 520

Animal Drugs, Feeds, and Related Products; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for three new animal drug applications (NADA's) from Purina Mills, Inc., to Pet Products Plus, Inc.

EFFECTIVE DATE: October 22, 1992.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV-130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-295-8646.

SUPPLEMENTARY INFORMATION: Purina Mills, Inc., P.O. Box 66812, St. Louis, MO 63166-6812, has informed FDA that it has transferred ownership of, and all rights and interests in, approved NADA's 101-331, 125-730, and 139-191 to Pet Products Plus, Inc., 45 Corporate Woods Dr., Bridgeton, MO 63044. Accordingly, FDA is amending the regulations in 21 CFR 520.1806, 520.2041, and 520.2042 to reflect the change of sponsor. Furthermore, the agency is amending 21 CFR 510.600(c)(1) and (c)(2) by adding a new entry for Pet Products Plus, Inc.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 520 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 376).

2. Section 510.600 is amended in the table in paragraph (c)(1) by alphabetically adding a new entry for "Pet Products Plus, Inc.," and in the table in paragraph (c)(2) by numerically adding a new entry for "059447" to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * * *	
Pet Products Plus, Inc., 45 Corporate Woods Dr., Bridgeton, MO 63044	059447
* * * * *	

(2) * * *

Drug labeler code	Firm name and address
* * * * *	
059447	Pet Products Plus, Inc., 45 Corporate Woods Dr., Bridgeton, MO 63044

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

3. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

§ 520.1806 [Amended]

4. Section 520.1806 *Piperazine monohydrochloride liquid* is amended in paragraph (b) by removing "017800" and adding in its place "059447".

§ 520.2041 [Amended]

5. Section 520.2041 *Pyrantel pamoate chewable tablets* is amended in paragraph (b) by removing "017800" and adding in its place "059447".

§ 520.2042 [Amended]

6. Section 520.2042 *Pyrantel pamoate tablets* is amended in paragraph (b) by removing "017800" and adding in its place "059447".

Dated: October 15, 1992.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 92-25567 Filed 10-21-92; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 31 and 602

[T.D. 8443]

RIN 1545-AR00

Direct Rollovers and 20 Percent Withholding Upon Eligible Rollover Distributions From Qualified Plans

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains Temporary Income Tax Regulations relating to eligible rollover distributions from tax-qualified retirement plans and section 403(b) annuities. These temporary regulations reflect the changes made by the Unemployment Compensation Amendments of 1992. These temporary regulations affect the administrators, sponsors, payors of, and participants in, tax-qualified retirement plans and section 403(b) annuities. The text of the temporary regulations set forth in this document also serves as the text of the notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register.**

EFFECTIVE DATE: These temporary regulations are effective on January 1, 1993.

FOR FURTHER INFORMATION CONTACT: John Tolleris, (202) 622-4606 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedures Act (5 U.S.C. 553). For this reason, the collection of information requirement contained in these temporary regulations has been reviewed, and pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under control number 1545-1341. The estimated annual burden per plan administrator/payor/recordkeeper varies from .05 hour to 330 hours depending upon individual employers' circumstances, with an estimated annual average of .50 hour.

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

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

Statutory Authority

This document contains temporary regulations under sections 401(a)(31), 402(c), 402(f), 403(b), and 3405(c) of the Internal Revenue Code of 1986 (Code). The temporary regulations reflect the enactment of sections 521 and 522 of the Unemployment Compensation Amendments of 1992 (UCA), Public Law No. 102-318, 106 Stat 290.

Need for Temporary Regulations

The provisions contained in this Treasury Decision are needed immediately to provide guidance to the public concerning the direct rollover and 20-percent income tax withholding provisions of UCA because these provisions apply to eligible rollover distributions made after December 31, 1992. Therefore, it is found impracticable and contrary to the public interest to issue this Treasury decision with prior notice under section 553(b) of title 5 of the United States Code.

Explanation of Provisions

Background

The Unemployment Compensation Amendments of 1992 (UCA), which was signed into law on July 3, 1992, significantly changed the treatment of distributions from qualified plans and section 403(b) annuities. First, UCA amended section 402 to expand the types of distributions with regard to which income tax can be deferred by a rollover to an individual retirement account or annuity (IRA), another qualified plan, or a section 403(b) annuity. Under prior law, a distribution could be rolled over only if it was a "qualified total distribution" or a partial distribution equal to at least 50 percent of the balance to the credit of the employee. Under UCA, all taxable distributions from qualified plans and section 403(b) annuities are "eligible" rollover distributions," except (1) annuities paid over life or life expectancy, (2) installments for a period spanning ten years or more, and (3) required minimum distributions under section 401(a)(9).

Second, UCA added a new plan qualification provision under section 401(a)(31) that requires qualified plans to provide employees with a direct rollover option. Similarly, section

403(b)(10), as amended by UCA, requires that section 403(b) annuities also provide a direct rollover option. Under a direct rollover option, an employee may elect to have an eligible rollover distribution paid directly to an IRA, or, as applicable, to another qualified plan or a section 403(b) annuity that accepts rollovers (collectively referred to as eligible retirement plans). The direct rollover option is provided in addition to the regular rollover provisions under section 402. Thus, an employee who does not elect a direct rollover still has the option to subsequently roll over the distribution to an eligible retirement plan within 60 days of receipt.

Third, UCA amended section 3405 to impose mandatory 20-percent income tax withholding on any eligible rollover distribution that the employee does not elect to have paid in a direct rollover. This withholding applies even if the employee receives a distribution and then rolls it over within the 60-day period. In the case of a taxable distribution (or any portion of a distribution) that is not an eligible rollover distribution, the elective withholding rules under section 3405 and § 35.3405–1 continue to apply.

Finally, in conjunction with the changes described above, UCA amended section 402(f), which previously required that the plan administrator provide an employee with a written explanation of the special tax rules applicable to certain distributions. As amended, section 402(f) now requires that, within a reasonable time before making a distribution, the plan administrator give a written explanation to the employee of (1) the availability of the direct rollover option; (2) the rules that require income tax withholding on distributions; (3) the rules under which the employee may roll over the distribution within 60 days of receipt; and (4) if applicable, the other special tax rules (e.g., five-year averaging) that may apply to the distribution.

UCA requirements generally apply to distributions from qualified plans and section 403(b) annuities that are made after December 31, 1992. Thus, if a series of payments began prior to the effective date, any payments that are made after December 31, 1992, generally are subject to the new requirements. A special delayed effective date applies to certain section 403(b) annuities sponsored by state or local governments.

Given the general 1993 effective date and the significance of the changes made by UCA, these regulations are being issued as soon as practicable, and in question and answer format, in order to provide employers and administrators with immediate guidance. Because these regulations are intended primarily to address the important issues that require resolution in order to facilitate compliance by the effective date, the regulations are not comprehensive. While the Service and Treasury intend to issue final regulations as soon as practicable, employers and administrators must follow reasonable, good faith interpretations of the statutory provisions to the extent that an issue is not covered by these regulations.

Overview of Regulations

These regulations include guidance on the items discussed below.

Determination of Eligible Rollover Distributions

The regulations provide that the principles that apply in interpreting section 72(t)(2)(A)(iv) also generally apply in determining whether a distribution is part of a series of substantially equal payments for a specified period that would exclude the distribution from being an eligible rollover distribution. Thus, the principles set forth in Notice 89–25, 1989–1 C.B. 662, for purposes of section 72(t), generally apply.

The regulations also provide that the determination of whether payments are substantially equal for a specified period is made at the time distributions commence and without regard to any contingencies or modifications that have not yet occurred (such as the employee's death). If a contingency or modification occurs that causes subsequent payments to fail to be substantially equal to prior payments, however, a new determination must be made as to whether the subsequent payments are eligible rollover distributions, without regard to any payments prior to the contingency or modification. In addition, the regulations provide that social security supplements and other "social security leveling options" do not cause distributions to fail to be substantially equal.

Exceptions for Corrective Payments and Deemed Distributions

The regulations except certain corrective payments and deemed distributions from the definition of an eligible rollover distribution. These exceptions include returns of excess contributions and excess deferrals under section 401(k) plans; deemed distributions of "P.S. 58" costs; and deemed distributions upon the default of an employee loan. Because these amounts are not eligible rollover distributions, they are not subject to the direct rollover option, they cannot be rolled over by the employee, and they are not subject to the 20-percent withholding requirement.

Exception for Distributions Under $200

Employers and administrators may find it impractical to make a direct rollover of small distributions. The regulations provide that an employer may, but need not, exclude eligible rollover distributions that are less than $200 from the direct rollover option. This $200 de minimis rule is consistent with the exception currently provided in the voluntary withholding regulations under section 3405 and applies to the new mandatory 20-percent withholding requirement. However, because the $200 de minimis rule is not a general exception from the definition of an eligible rollover distribution, these amounts may still be eligible for rollover by the employee within 60 days after receipt.

Procedures for Providing Section 402(f) Notice

As discussed above, section 402(f) requires that the plan administrator give a written explanation of the direct rollover option and related tax rules. In conjunction with these regulations, the Service is publishing a notice which includes a model section 402(f) notice that employers can use as a safe harbor.

The statute provides that the section 402(f) notice must be provided within "a reasonable period of time before making an eligible rollover distribution." Final regulations under section 411(a)(11) already prescribe a time period for providing notices to employees regarding their distribution options and other rights. Those regulations require that a general description of distribution options must be given no less than 30 days and no more than 90 days before the annuity starting date. Therefore, this same time frame will apply to section 402(f) notices relating to distributions that are subject to the section 411(a)(11) consent requirements. These regulations provide that a plan administrator satisfies the section 402(f) reasonable time period requirement only if an employee receives the section 402(f) notice within the same time period in which the plan administrator also must provide the general description of the employee's distribution options and other rights under the plan.

In the case of distributions not subject to section 411(a)(11), such as a distribution to a participant who has reached the plan's normal retirement age (if not less than 62) or a cashout of a benefit that does not exceed $3,500,

these regulations provide that the time period under section 411(a)(11) also will apply to the section 402(f) notice. In these cases, employees may waive the application of the 30-day time period by affirmatively electing to make or not make a direct rollover.

The approach taken in the regulations is intended to ensure that employees will receive the section 402(f) notice before making an election to receive a distribution and, thus, will have adequate information upon which to base a considered decision concerning the disposition of their retirement savings. This approach is also intended to ensure that employees have adequate time after receiving the notice to consider their options and, if desired, consult with a professional tax advisor or other parties. In addition, the Service and Treasury believe that it is appropriate to establish a time period for the section 402(f) notice that is consistent with the section 411(a)(11) time period in which employers are required to provide other distribution information to employees. Because this approach gives greater significance to the time period provided in the section 411(a)(11) regulations, however, the Service and Treasury are considering whether the 90/30-day time period continues to be appropriate for purposes of section 411(a)(11). Comments on this time-period requirement are specifically requested with regard to both the section 411(a)(11) consent requirements and the section 402(f) notice.

The regulations also clarify that the payor of a section 403(b) annuity must provide an explanation of the direct rollover option and the income tax withholding rules within a reasonable period of time prior to making an eligible rollover distribution. Comments are specifically requested as to whether this requirement presents special compliance issues for section 403(b) annuities subject to the seven-day redemption rule of section 22(e) of the Investment Company Act of 1940.

Procedures for Accomplishing a Direct Rollover

The regulations permit the employer to accomplish an employee's direct rollover by any reasonable means of delivery to the eligible retirement plan. The regulations specifically provide that a reasonable means of delivery includes delivery of a check to the eligible retirement plan by the employee, provided that the payee line of the check is made out in a manner that will ensure that the check is negotiable solely by the trustee of the recipient plan. Comments are specifically requested on the potential benefits and burdens of a possible requirement that a standard notation, such as "Direct Rollover", appear on the face of any check provided to an employee for delivery.

The Service and the Treasury believe that allowing a direct rollover to be accomplished via the employee's delivery of a check will, in certain circumstances, simplify the administration of the direct rollover option and reduce the likelihood of errors. Moreover, because the check must be negotiable only by the trustee of the eligible retirement plan, the Service and the Treasury do not anticipate that allowing delivery by the employee will result in significant noncompliance.

Division of a Direct Rollover Distribution

The regulations clarify that an employer cannot preclude an employee from dividing an eligible rollover distribution by electing to make a direct rollover of a portion of the distribution and to receive a distribution of the remaining portion. For purposes of administrative convenience, however, the regulations provide that an employer may preclude an employee from electing to have a portion of an eligible rollover distribution paid in a direct rollover if that portion is less than $500.

Payment of a Direct Rollover to More Than One Recipient Plan

The regulations provide that an employer need not allow employees to have a direct rollover paid to more than one recipient plan. If an employee wishes to diversify an IRA investment, for example, the employee can subsequently roll over a distribution to another IRA or utilize an IRA trustee-to-trustee transfer.

Withholding on Property and Employer Securities

The regulations confirm that the special rules for withholding on property, including the special rules for employer securities, that are provided in the voluntary withholding regulations under section 3405 also apply under the 20-percent mandatory withholding requirement. Under these rules, if property (other than employer securities) is distributed and the cash in the distribution will not satisfy the withholding obligation, an employer must either sell the property or receive cash from the employee in amounts sufficient to pay the withholding. The regulations also confirm that, as under prior law, employer securities need not be sold to satisfy income tax withholding.

Reliance on "Adequate Information"

The regulations provide that a plan administrator will not be liable for failing to withhold on an eligible rollover distribution that is not in fact paid to an eligible retirement plan if the plan administrator reasonably relied on adequate information provided by the employee who elected the direct rollover. For this purpose, adequate information includes the name of the recipient plan, a representation that the recipient plan is an eligible retirement plan, and any other information necessary to accomplish the direct rollover by the means selected for delivery. For example, where the direct rollover is to be accomplished by mailing a check to an IRA, adequate information also would include the name and address of the IRA trustee.

Reporting of Direct Rollover Distributions

The regulations apply the same reporting requirements to direct rollovers that are currently in effect for distributions made by a qualified plan and paid directly by the plan to an IRA. Thus, the regulations provide that a distributing plan making a direct rollover will report the amount paid in the direct rollover on Form 1099–R. The Service currently anticipates that a new code on the Form 1099–R will identify the distribution as either a direct rollover to an IRA or a direct rollover to a qualified plan or section 403(b) annuity. If the distribution is paid to an IRA, the IRA trustee will file a corresponding Form 5498. As under current rules, no Form 5498 will be required of a qualified plan that receives a direct rollover.

Transition Relief

To facilitate compliance, the regulations provide transition relief for purposes of complying with section 402(f) and for purposes of complying with the new mandatory withholding requirements. In the case where the regulations would require a section 402(f) notice during 1992 for a distribution that will be made in 1993, the regulations provide that employers and administrators may rely on a reasonable, good faith interpretation of section 402(f).

In addition, under certain circumstances, the regulations provide that an employer need not withhold 20 percent of any distribution that is made during the first three months of 1993, provided that the withholding is "made up" prior to December 31, 1993. This withholding transition relief is available only to the extent that, under the same

principles stated in the voluntary withholding regulations under Q&A G-6 of § 31.3405-1, immediate compliance with the new mandatory withholding would result in undue hardship for the payor. Also, this transition relief applies only if there is reason to expect that there will be subsequent distributions made to the employee during 1993 from which the additional amounts can be withheld.

Any penalties for failure to withhold income taxes required by section 3405(c), as amended by UCA, from eligible rollover distributions made after December 31, 1992, and before July 1, 1993, will automatically be abated if the plan administrator or payor has acted diligently and in good faith in attempting to comply with the requirements of section 3405(c) and § 31.3405(c)-1T.

Deposits of Income Tax Withheld

UCA did not change the requirements for depositing income tax withholding on distributions from qualified plans. Thus, the payor or plan administrator must continue to deposit amounts withheld in accordance with section 6302 and the regulations thereunder, regardless whether the elective or mandatory withholding rules apply. However, payors and plan administrators should be aware that, as described in Announcement 84-40, 1984-17 I.R.B. 31, there are three alternative methods of depositing withholding on distributions. First, the payor or plan administrator may aggregate the withholding with all other amounts under its control and report the withholding on the same report that it uses for the wages of its employees. Second, the payor or plan administrator may request a separate Employer Identification Number (EIN) solely for the purpose of reporting the withholding on all plan distributions under its control. Third, the payor or plan administrator may use the EIN of each plan to report separately the withholding on distributions from each plan.

Model Plan Amendment

The Service intends to publish additional guidance that will assist plan sponsors in amending their plans to comply with the direct rollover requirements of section 401(a)(31). This guidance will contain a model amendment that, if adopted, will not require a new opinion or determination letter as to whether the plan, as amended, satisfies the qualification requirements of section 401(a).

Special Analyses

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

Drafting Information

The principal authors of these regulations are Marjorie Hoffman and John A. Tollerjs, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations), Internal Revenue Service. However, other personnel from the Service and the Treasury Department participated in their development.

List of Subjects

26 CFR 1.401-0 through 1.419A-2T

Bonds, Employee benefit plans, Income taxes, Pensions, Reporting and recorkdeeping requirements, Securities, Trusts and trustees.

26 CFR Part 31

Employment taxes, Fishing vessels, Gambling, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

26 CFR part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1, 31, and 602 are amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

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

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

§ 1.401(a)(31)-1T Optional direct rollover of eligible rollover distributions (temporary).

The following questions and answers concern the qualification requirement provided in section 401(a)(31) of the Internal Revenue Code of 1986, relating to eligible rollover distributions from pension, profit-sharing, and stock bonus plans qualified under section 401(a). Section 401(a)(31) was added by section 522(a) of the Unemployment Compensation Amendments of 1992, Public Law No. 102-318 (UCA). See § 1.402(c)-2T, § 1.403(b)-2T, and § 31.3405(c)-1T for guidance concerning amendments to sections 402, 403, and 3405 by UCA.

Q-1: How did the Unemployment Compensation Amendments of 1992 (UCA) change the qualification requirements for pension, profit-sharing, and stock bonus plans qualified under section 401(a)?

A-1: (a) *General rule.* Section 401(a)(31) contains an additional qualification requirement for pension, profit sharing, and stock bonus plans. To satisfy section 401(a)(31), a plan must provide that if the distributee of any eligible rollover distribution elects to have the distribution paid directly to an eligible retirement plan, and specifies the eligible retirement plan to which the distribution is to be paid, then the distribution will be paid to that eligible retirement plan in a direct rollover described in Q&A-3 and Q&A-4 of this section. Thus, the plan must give the distributee the option of having his or her distribution paid in a direct rollover to an eligible retirement plan specified by the distributee. See section 402(c)(8)(B) and Q&A-2 of this section for the definition of an eligible retirement plan. See section 402(c)(4) and Q&A-3 through Q&A-8 of § 1.402(c)-2T for provisions concerning what constitutes an eligible rollover distribution under the expanded rollover rules of section 402, after amendment by section 521 of UCA.

(b) *Related Code provisions*—(1) *Mandatory withholding.* If a distributee of an eligible rollover distribution does not elect to have the eligible rollover distribution paid directly from the plan to an eligible retirement plan in a direct rollover under section 401(a)(31), the eligible rollover distribution is subject to 20-percent income tax withholding under section 3405(c), as enacted by section 522(b) of UCA. See § 31.3405(c)-1T of this chapter for provisions relating to the withholding requirements applicable to eligible rollover distributions.

(2) *Notice requirement.* Section 402(f), as amended by section 521 of UCA, requires the plan administrator of a qualified plan to provide, within a reasonable time before making an eligible rollover distribution, a written explanation to the distributee of the distributee's right to elect a direct rollover and the withholding consequences of not making the election. The explanation also is required to provide certain other relevant information. See Q&A-11 through QA-15 of § 1.402(c)-2T for further guidance concerning the written explanation required under section 402(f).

(3) *Section 403(b) annuities.* Section 403(b)(10), as amended by section 522(a)(3) of UCA, provides that requirements similar to those provided in section 401(a)(31) apply to annuities described in section 403(b). See § 1.403(b)-2T for provisions relating to eligible rollover distributions from annuities described in section 403(b).

(c) *Effective date.* Section 401(a)(31) and this § 1.401(a)(31)-1T are applicable to eligible rollover distributions made after December 31, 1992. Consequently, a distributee must be given the option to have any eligible rollover distribution made after December 31, 1992, paid to an eligible retirement plan in a direct rollover, even if the event giving rise to the distribution occurs on or before January 1, 1993 (*e.g.* termination of the employee's employment with the employer maintaining the plan before January 1, 1993), and even if the eligible rollover distribution is part of a series of payments that began before January 1, 1993.

Q-2: What is an "eligible retirement plan"?

A-2: An eligible retirement plan, as defined under section 402(c)(8)(B), means an individual retirement plan or a qualified plan. An individual retirement plan is an individual retirement account (IRA) described in section 408(a) or an individual retirement annuity (other than an endowment contract) described in section 408(b). A qualified plan is a qualified trust described in section 401(a) (with the limitations described in section 401(a)(31)(D)) or an annuity plan described in section 403(a).

Q-3: What is a "direct rollover" that satisfies section 401(a)(31), and how is it accomplished?

A-3: A direct rollover that satisfies section 401(a)(31) is an eligible rollover distribution that is paid directly to an eligible retirement plan for the benefit of the distributee. A direct rollover may be accomplished by any reasonable means of direct payment to an eligible retirement plan. Reasonable means of direct payment include, for example, a wire transfer or the mailing of a check to the eligible retirement plan. If payment is made by check, the check must be negotiable only by the trustee of the eligible retirement plan. If the payment is made by wire transfer, the wire transfer must be directed only to the trustee of the eligible retirement plan. In the case of an eligible retirement plan that does not have a trustee (such as an individual retirement annuity), the custodian of the plan or issuer of the contract under the plan, as appropriate, should be substituted for the trustee for purposes of this Q&A-3 and QA-4 of this section.

Q-4: Is providing a distributee with a check for delivery to an eligible retirement plan a reasonable means of accomplishing a direct rollover?

A-4: Providing the distributee with a check and instructing the distributee to deliver the check to the eligible retirement plan is a reasonable means of direct payment, provided that the check is made payable as follows: [Name of the trustee] as trustee of [name of the eligible retirement plan]. For example, if the name of the eligible retirement plan is "Individual Retirement Account of John Q. Smith," and the name of the trustee is "ABC Bank," the payee line of a check would read "ABC Bank as trustee of Individual Retirement Account of John Q. Smith." Unless the name of the distributee is included in the name of the eligible retirement plan, the check also must indicate that it is for the benefit of the distributee. If the eligible retirement plan is not an individual retirement account or an individual retirement annuity, the payee line of the check need not identify the trustee by name. For example, the payee line of a check for the benefit of distributee Jane Doe might read, "Trustee of XYZ Corporation Savings Plan FBO Jane Doe."

Q-5: Is an eligible rollover distribution that is paid to an eligible retirement plan in a direct rollover includible in gross income?

A-5: No. An eligible rollover distribution that is paid to an eligible retirement plan in a direct rollover is excludible from the distributee's gross income under section 402 and is exempt from the 20-percent withholding imposed under section 3405(c)(2). However, when any portion of the eligible rollover distribution is subsequently distributed from the eligible retirement plan, that portion will be includible in gross income to the extent required under sections 402, 403, or 408.

Q-6: What procedures may a plan administrator prescribe for electing a direct rollover, and what information may the plan administrator require a distributee electing a direct rollover to provide?

A-6: The plan administrator may prescribe any procedure for a distributee to elect a direct rollover under section 401(a)(31), provided that the procedure is reasonable. The procedure may include any reasonable requirement for information or documentation from the distributee in addition to the items of "adequate information" specified in Q&A-7 of § 31.3405(c)-1T. For example, it would be reasonable for the plan administrator to require the distributee to provide a statement from the plan designated by the distributee that it is, or is intended to be, an individual retirement account, an individual retirement annuity, a qualified trust described in section 401(a) (with the limitations described in section 401(a)(31)(D)), or a qualified annuity plan described in section 403(a) as applicable, and that it will accept the direct rollover for the benefit of the distributee. It would not be reasonable, however, for the plan administrator to require information or documentation or to establish procedures that effectively eliminate the distributee's ability to elect a direct rollover. For example, it would not be reasonable for the plan administrator to require the distributee to obtain an opinion from his or her lawyer that the eligible retirement plan receiving the rollover is a qualified plan or individual retirement account.

Q-7: May the plan administrator treat a distributee as having made an election under a default procedure where the distributee does not affirmatively elect to make or not make a direct rollover within a certain time period?

A-7: Yes, the plan administrator may establish a default procedure whereby a distributee who fails to make an affirmative election is treated as having either made or not made a direct rollover election. However, the plan administrator may not make a distribution under any default procedure unless the distributee has received an explanation of the direct rollover option required under section 402(f) and Q&A-11 of § 1.402(c)-2T, and the "reasonable time" requirements described in Q&A-12 through Q&A-15 have been satisfied.

Q-8: May the plan administrator establish a deadline after which the distributee may not revoke an election to make or not make a direct rollover?

A-8: Yes, but the plan administrator is not permitted to prescribe any deadline or time period that is more restrictive for the distributee than that which otherwise applies under the plan to

revocation of the form of distribution elected by the distributee.

Q-9: Must the plan administrator permit a distributee to elect to have a portion of an eligible rollover distribution paid to an eligible retirement plan in a direct rollover and to have the remainder of that distribution paid to the distributee?

A-9: Yes, the plan administrator must permit a distributee to elect to have a portion of an eligible rollover distribution paid to an eligible retirement plan in a direct rollover and to have the remainder paid the distributee. However, the plan administrator is permitted to require that, if the distributee elects to have only a portion of an eligible rollover distribution paid to an eligible retirement plan in a direct rollover, that portion be equal to at least $500. If the entire amount of the eligible rollover distribution is $500 or less, the plan administrator need not allow the distributee to divide the distribution.

Q-10: Must the plan administrator allow a distributee to divide an eligible rollover distribution into two or more separate distributions to be paid in direct rollovers to two or more eligible retirement plans?

A-10: No. The plan administrator is not required (but is permitted) to allow the distributee to divide an eligible rollover distribution into separate distributions to be paid to two or more eligible retirement plans in direct rollovers. Instead, the plan administrator is permitted to limit the distributee to a single direct rollover for each eligible rollover distribution. Thus, the plan administrator may require that the eligible rollover distribution (or portion thereof) to be distributed in a direct rollover be paid to a single eligible retirement plan selected by the distributee.

Q-11: Will a plan satisfy section 401(a)(31) if the plan does not permit a distributee to elect a direct rollover if his or her eligible rollover distributions during a year are reasonably expected to total less then $200?

A-11: Yes. A plan will satisfy section 401(a)(31) even though the plan does not permit a distributee to elect a direct rollover with respect to eligible rollover distributions during a year that are reasonably expected to total less then $200 or any lower minimum amount specified by the plan administrator. The criteria described in Q&A-10 of § 31.3405(c)-1T of this chapter (relating to whether withholding under section 3405(c) applies to an eligible rollover distribution that is less than $200) also apply for purposes of determining whether a direct rollover election under section 401(a)(31) must be provided for an eligible rollover distribution that is less than $200.

Q-12: Is a plan permitted to treat a distributee's election to make or not make a direct rollover with respect to one payment in a series of periodic payments as applying to all subsequent payments in the series?

A-12: Yes. A plan is permitted to treat a distributee's election to make or not make a direct rollover with respect to one payment in a series of periodic payments as applying to all subsequent payments in the series, provided that:

(a) The employee is permitted at any time to change, with respect to subsequent payments, a previous election to make or not make a direct rollover; and

(b) The written explanation provided under section 402(f) explains that the election to make or not make a direct rollover will apply to all future payments unless the employee subsequently changes the election.

Q-13: Is the eligible retirement plan designated by a distributee to receive a direct rollover distribution required to accept the distribution?

A-13: No. Although section 401(a)(31) requires qualified plans to provide distributees the option to make a direct rollover of their eligible rollover distributions to an eligible retirement plan, it imposes no requirement that any eligible retirement plan accept rollovers. Thus, a plan can refuse to accept rollovers. Alternatively, a plan can limit the circumstances under which it will accept rollovers. For example, a plan can limit the types of plans from which it will accept a rollover or limit the types of assets it will accept in a rollover (such as only cash or its equivalent).

Q-14: For purposes of applying the plan qualification requirements of section 401(a), is an eligible rollover distribution that is paid to an eligible retirement plan in a direct rollover a distribution and rollover or it is a transfer of assets and liabilities?

A-14: For purposes of applying the qualification requirements of section 401(a), a direct rollover is a distribution and rollover of the eligible rollover distribution and not a transfer of assets and liabilities. For example, if the consent requirements under section 411(a)(11) or sections 401(a)(11) and 417(a)(2) apply to the distribution, they must be satisfied before the eligible rollover distribution may be distributed in a direct rollover. Similarly, the direct rollover is not a transfer of assets and liabilities that must satisfy the requirements of section 414(l). Finally, a direct rollover is not a transfer of benefits for purposes of applying the requirements under section 411(d)(6), as described in Q&A-3 of § 1.411(d)-4. Therefore, for example, the eligible retirement plan is not required to provide, with respect to amounts paid to it in a direct rollover, the same optional forms of benefits that were provided under the plan that made the direct rollover. The enactment of UCA and the direct rollover requirements of section 401(a)(31) do not affect the ability of a qualified plan to make an elective or nonelective transfer of assets and liabilities to another qualified plan in accordance with applicable law (such as section 414(l)).

Q-15: When must a qualified plan be amended to comply with section 401(a)(31)?

A-15: Under section 523 of UCA, even though section 401(a)(31) applies to distributions from qualified plans made after December 31, 1992, a qualified plan is not required to be amended before the last day of the first plan year beginning on or after January 1, 1994, (or, if later, the last day by which amendments must be made to comply with the Tax Reform Act of 1986 and related provisions, as permitted in other administrative guidance of general applicability), provided that:

(a) In the interim period between January 1, 1993, and the date on which the plan is amended, the plan is operated in compliance with the requirements of section 401(a)(31); and

(b) The amendment applies retroactively to January 1, 1993.

Par. 3. Section 1.402(c)-2T is added to read as follows:

§ 1.402(c)-2T Eligible rollover distributions; Questions and Answers (temporary).

The following questions and answers relate to eligible rollover distributions under section 402(c) of the Internal Revenue Code of 1986, as amended by sections 521 and 522 of the Unemployment Compensation Amendments of 1992 (Public Law 102-318). Q&A-1 through Q&A-10 relate to rules for eligible rollover distributions. Q&A-11 through Q&A-15 relate to rules for the written explanation required under section 402(f).

Q-1: How did the Unemployment Compensation Amendments of 1992 (UCA) change the law regarding distributions from qualified plans that may be rolled over to an eligible retirement plan?

A-1: (a) *General rule.* Section 402(c), as amended by section 521 of UCA, expands the range of distributions from qualified plans (including qualified annuities under section 403(a)) that are

eligible to be rolled over. Under section 402(c), as amended, any portion of an eligible rollover distribution, described in section 402(c)(4), may be rolled over to an eligible retirement plan described in section 402(c)(8)(B). See Q&A-2 of this section concerning what is an eligible retirement plan. See Q&A-3 through Q&A-8 of this section concerning distributions that are eligible rollover distributions. See Q&A-9 of this section for rules that apply when a distributee receives an eligible rollover distribution and then rolls over the distribution and Q&A-10 of this section concerning an eligible rollover distribution to a distributee who is not an employee.

(b) *Related Code provisions*—(1) *District rollover option.* Section 401(a)(31), added by section 522(a) of UCA, requires qualified plans to provide a distributee of an eligible rollover distribution the option to elect to have the distribution paid directly to an eligible retirement plan in a direct rollover. See § 1.401(a)(31)-1T for further guidance concerning this direct rollover option.

(2) *Mandatory income tax withholding.* If a distributee of an eligible rollover distribution does not elect to have the eligible rollover distribution paid directly from the plan to an eligible retirement plan in a direct rollover under 401(a)(31), the eligible rollover distribution is subject to 20-percent income tax withholding under section 3405(c), as enacted by section 522(b) of UCA. See § 31.3405(c)-1T of this chapter for provisions relating to the withholding requirements applicable to eligible rollover distributions.

(3) *Section 403(b) annuities.* See § 1.403(b)-2T for similar provisions relating to eligible rollover distributions from section 403(b) annuities.

(c) *Effective date.* Section 402(c), as amended by section 521 of UCA, and this § 1.402(c)-2T apply to eligible rollover distributions made after December 31, 1992. Consequently, section 402(c), as amended by section 521 of UCA, and this § 1.402(c)-2T apply to any eligible rollover distribution made after December 31, 1992, even if the event giving rise to the distribution occurs on or before January 1, 1993 (*e.g.* termination of the employee's employment with the employer maintaining the plan before January 1, 1993), and even if the eligible rollover distribution is part of a series of payments that began before January 1, 1993.

Q-2: What is an "eligible retirement plan"?

A-2: An eligible retirement plan, as defined under section 402(c)(8)(B), means an individual retirement plan or a qualified plan. An individual retirement plan is an individual retirement account (IRA) described in section 408(a) or an individual retirement annuity (other than an endowment contract) described in section 408(b). A qualified plan is a qualified trust described in section 401(a) or an annuity plan described in section 403(a).

Q-3: What is "eligible rollover distribution"?

A-3: (a) *General rule.* Except as otherwise provided in paragraph (b), an "eligible rollover distribution" means any distribution of all or any portion of the balance to the credit of the employee in a qualified plan.

(b) *Exceptions.* An eligible rollover distribution does not include the following:

(1) Any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made over any one of the following periods: the life of the employee (or the joint lives of the employee and the employee's designated beneficiary), the life expectancy of the employee (or the joint life and last survivor expectancy of the employee and the employee's designated beneficiary), or a specified period of ten years or more;

(2) Any distribution to the extent the distribution is required under section 401(a)(9), relating to the minimum distribution requirements; or

(3) The portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation described in section 402(e)(4)). Thus, for example, an eligible rollover distribution does not include the portion of any distribution that is excludible from gross income under section 72 as a return of the employee's investment in the contract (e.g., a return of the employee's after-tax contributions), but an eligible rollover distribution does include net unrealized appreciation.

Q-4: Are there other amounts that are not eligible rollover distributions?

A-4: Yes. The following amounts are not eligible rollover distributions:

(a) Returns of section 401(k) elective deferrals described in § 1.415-6(b)(6)(iv) that are returned as a result of the section 415 limitations;

(b) Corrective distributions of excess contributions and excess deferrals under qualified cash-or-deferred arrangements as described in §§ 1.401(k)-1(f)(4) and 1.402(g)-1(e)(3), respectively, and corrective distributions of excess aggregate contributions as described in § 1.401(m)-1(e)(3), together with the income allocable to these corrective distributions;

(c) Loans treated as distributions under section 72(p) and not excepted by section 72(p)(2);

(d) Loans in default that are deemed distributions (by contrast to the amounts allowed in Q&A-8);

(e) Dividends paid on employer securities as described in section 404(k);

(f) The costs of life insurance coverage ("P.S. 58" costs); and

(g) Similar items designated by the Commissioner in revenue rulings, notices, and other guidance of general applicability.

Q-5: For purposes of determining whether a distribution is an eligible rollover distribution, how is it determined whether a series of payments is a series of substantially equal periodic payments over a period specified in paragraph (b)(1) of Q&A-3 of this section?

A-5: (a) *General rule.* Whether a series of payments is a series of substantially equal periodic payments over a specified period is generally determined at the time payments begin without regard to contingencies or modifications that have not yet occurred. Thus, for example, a joint and survivor annuity with a 50-percent survivor annuity to the employee's spouse will be treated as a series of substantially equal payments at the time payments commence, as will a joint and survivor annuity that provides for increased payments to the participant if the participant's spouse dies before the participant. Whether a series of payments is a series of substantially equal periodic payments generally is determined by following the principles of 72(t)(2)(A)(iv).

(b) *Certain supplements disregarded.* For purposes of determining whether a distribution is one of a series of payments that are substantially equal, social security supplements described in section 411(a)(9) are disregarded. For example, if a distributee receives a life annuity of $500 per month, plus a social security supplement consisting of payments of $200 per month until the distributee reaches the age at which social security benefits begin, the $200 supplemental payments are disregarded and, therefore, each monthly payment of $700 made before the social security age and each monthly payment of $500 made after the social security age is treated as one of a series of substantially equal periodic payments for life. Similarly, a series of payments that is not substantially equal but that generally produces a series of substantially equal

payments when expected social security payments are taken into account, is treated as substantially equal for purposes of determining whether a distribution is an eligible rollover distribution.

(c) *Changes in the amount of payments.* If the amount (or, if applicable, the method of calculating the amount) of the payments changes so that subsequent payments are not substantially equal to prior payments, a new determination must be made as to whether the remaining payments are a series of substantially equal periodic payments over a period specified in paragraph (b)(1) of Q&A-3 of this section. This determination is made without taking into account payments made prior to the change.

(d) *Series of payments beginning before January 1, 1993.* Except as provided in paragraph (c) of this Q&A, if a series of periodic payments began before January 1, 1993, the determination of whether the post-December 31, 1992 payments are a series of substantially equal periodic payments over a specified period is made by taking into account all payments made, including payments made before January 1, 1993. For example, if a series of substantially equal periodic payments beginning on January 1, 1983, is scheduled to be paid over a period of 15 years, payments in the series that are made after December 31, 1992 will not be eligible rollover distributions even though they will continue for only five years after December 31, 1992, because the pre-January 1, 1993 payments are taken into account in determining the specified period.

Q-6: If a payment is independent of a series of substantially equal periodic payments that are not eligible rollover distributions, is that payment an eligible rollover distribution?

A-6: Yes. For this purpose, a payment is treated as independent of the payments in a series if the payment is substantially larger or smaller than the other payments in the series. Thus, an independent payment is an eligible rollover distribution if it is not otherwise excepted from the definition of eligible rollover distribution. This is the case regardless whether the payment is made before, with, or after payments in the series. For example, if a distributee elects a single payment of half of the account balance with the remainder of the account balance paid over the life expectancy of the distributee, the single payment is treated as independent of the payments in the series and is an eligible rollover distribution unless otherwise excepted. Similarly, if a participant's surviving spouse receives a survivor life annuity of $1,000 per month plus a single payment of $5,000, the single payment is treated as independent of the payments in the annuity and is an eligible rollover distribution unless otherwise excepted.

Q-7: When is a distribution from a plan a required distribution under section 401(a)(9) and thus not an eligible rollover distribution?

A-7: (a) *General rule.* If a minimum distribution is required for a calendar year, all amounts distributed during that calendar year are treated as required distributions under section 401(a)(9) (and thus are not eligible rollover distributions) as long as the total required minimum distribution under section 401(a)(9) for that calendar year has not been made. If the total amount that is required to be distributed for a calendar year in order to satisfy section 401(a)(9) is not distributed in that calendar year (*e.g.*, when the distribution for the calendar year in which the employee reaches age 70½ is made on the following April 1), the amount that was required but not distributed is added to the amount required to be distributed for the next calendar year in determining the portion of any distribution in the next calendar year that is a required distribution.

(b) *Determination of designated beneficiary.* For purposes of satisfying section 401(a)(31) and section 3405(c), the plan administrator is permitted to determine the amount of the minimum distribution required to satisfy section 401(a)(9)(A) for any calendar year by assuming that there is no designated beneficiary. If the employee determines that the amount required to be distributed to satisfy section 402(a)(9) is less than the amount determined by the plan administrator under this paragraph (b) (for example by taking into account the beneficiary's life expectancy), the employee may roll over the difference to an eligible retirement plan.

Q-8. Can an eligible rollover distribution include an amount equal to the employee's unpaid loan balance that is treated as distributed when there is a termination of employment with the employer maintaining the plan?

A-8. Yes. An amount equal to the employee's unpaid loan balance is an eligible rollover distribution, if it otherwise qualifies, where the plan offsets the account balance and treats the distributee as having been distributed an amount equal to the unpaid loan balance.

Q-9: If an eligible rollover distribution is paid to a distributee instead of being paid directly to an eligible retirement plan in a direct rollover under section 401(a)(31), and the distributee contributes the eligible rollover distribution (or any portion of the eligible rollover distribution) to an eligible retirement plan, is the amount contributed excluded from gross income?

A-9: Yes, the amount contributed is excluded from gross income, provided that it is contributed to the eligible retirement plan no later than the 60th day following the day on which the distributee received the distribution. Because the amount withheld as income tax under section 3405(c) is considered an amount distributed under section 402(c), an amount equal to all or any portion of the amount withheld can be contributed as a rollover to an eligible retirement plan within the 60-day period, in addition to the net amount actually received by the distributee. However, if all or any portion of an amount equal to the amount withheld is not contributed as a rollover, it is included in the distributee's gross income to the extent required under section 402(a), and also may be subject to the 10-percent additional income tax under section 72(t).

Q-10: How do the provisions of sections 402(c) and 401(a)(31) apply to a distributee who is not the employee?

A-10: (a) *Spousal distributee.* If any distribution attributable to an employee is paid to the employee's surviving spouse, section 402(c) applies to the distribution in the same manner as if the spouse were the employee. The same rule applies if any distribution attributable to an employee is paid to a spouse or former spouse by reason of being an alternate payee under a qualified domestic relations order. Therefore, a distribution to the surviving spouse of an employee (or to a spouse or former spouse by reason of being an alternate payee under a qualified domestic relations order) is an eligible rollover distribution if it meets the requirements of section 402(c) (2) and (4) and Q&A-3 through Q&A-8 of this section. However, a qualified plan (as defined in Q&A-2 of this section) is not treated as an eligible retirement plan with respect to the distribution to a surviving spouse. Only an individual retirement plan (as defined in Q&A-2 of this section) is treated as an eligible retirement plan with respect to the surviving spouse's eligible rollover distribution.

(b) *Non-spousal distributee.* A distributee other than the employee or the employee's surviving spouse (or spouse or former spouse by reason of being an alternate payee under a qualified domestic relations order) is not permitted to roll over distributions from

a qualified plan. Therefore, those distributions do not constitute eligible rollover distributions under section 402(c)(4) and, thus, are not subject to the 20-percent income tax withholding under section 3405(c).

Q-11: What are the requirements for a written explanation under section 402(f), as amended by section 521 of UCA?

A-11: (a) *General rule.* Under section 402(f), as amended by section 521 of UCA, the plan administrator of a qualified plan is required, within a reasonable period of time before making an eligible rollover distribution, to provide the distributee with the written explanation described in section 402(f) (section 402(f) notice). The section 402(f) notice must be designed to be easily understood and must explain the following: the rules under which the distributee may have the distribution paid in a direct rollover to an eligible retirement plan; the rules that require the withholding of tax on the distribution if it is not paid in a direct rollover; the rules under which the distributee will not be subject to tax if the distribution is contributed in a rollover to an eligible retirement plan within 60 days of the distribution; and if applicable, certain special rules regarding the taxation of the distribution as described in section 402 (d) and (e). In addition, if, as permitted under Q&A-12 of § 1.401(a)(31)-1T, the plan administrator intends to treat a distributee's election to make or not make a direct rollover with respect to one payment in a series of periodic payments as applicable to all subsequent payments in the series unless the distributee subsequently changes the election, this treatment must be explained in the section 402(f) notice.

(b) *Model section 402(f) notice.* The plan administrator will be deemed to have complied with the requirements of section 402(f) if the plan administrator provides the model section 402(f) notice published by the Service for this purpose in a revenue ruling, notice, or other guidance of general applicability.

Q-12: When must the plan administrator provide the section 402(f) notice to a distributee?

A-12: Section 402(f) provides that the plan administrator must provide the section 402(f) notice to a distributee within a reasonable period of time before making an eligible rollover distribution. This "reasonable time" requirement is satisfied only if the plan administrator provides the section 402(f) notice within the same time period in which the plan is required under the consent requirements § 1.411(a)-11(c) to provide the general description of the distributee's distribution options and notice of the distributee's other rights, if any, under the plan to defer receipt of the distribution.

Q-13: How does the "reasonable time" requirement described in Q&A-12 of this section apply in the case of a distribution for which the plan administrator is not required to provide the general description of the distributee's distribution options and other rights under the plan?

A-13: In the case of a distribution for which the plan administrator is not required under § 1.411(a)-11(c) to provide the general description of the distributee's distribution options and other rights under the plan (for example, a cashout of a vested benefit that does not exceed $3,500), the plan administrator must provide the section 402(f) notice to the distributee no earlier than 90 days and no later than 30 days before the distribution is made. However, if, after receiving the section 402(f) notice, the distributee affirmatively elects to make or not make a direct rollover, the distribution may be made immediately without causing a violation of the "reasonable time" requirement.

Q-14: Must the plan administrator provide a separate section 402(f) notice for each distribution in a series of periodic payments that are eligible rollover distributions?

A-14: No. In the case of a series of periodic payments that are eligible rollover distributions, the plan administrator is permitted to satisfy section 402(f) with respect to each payment in the series by providing the section 402(f) notice prior to the first payment in the series, in accordance with the rules in Q&A-12 and Q&A-13 of this section, and also by providing the notice at least once annually for as long as the payments continue.

Q-15: How does the plan administrator comply with section 402(f) with respect to a section 402(f) notice that would be required to be provided prior to January 1, 1993, with respect to a distribution on or after that date, pursuant to Q&A-12 and Q&A-13 of this section?

A-15: In the case of a section 402(f) notice that would be required to be provided prior to January 1, 1993, pursuant to Q&A-12 and Q&A-13 of this section, the plan administrator may comply with section 402(f) on the basis of a reasonable, good faith interpretation of section 402(f).

Par. 4. Section 1.402(f)-2T is added to read as follows:

§ 1.402(f)-2T Required explanation of eligible rollover distributions; Questions and Answers (temporary).

See Q&A-11 through Q&A-15 of § 1.402(c)-2T for guidance concerning the written explanation required under section 402(f), as amended by section 521 of the Unemployment Compensation Amendments of 1992 (Public Law 102-318) (UCA), including guidance concerning when the explanation must be provided and what information must be included in the explanation.

Par. 5. Section 1.403(b)-2T is added to read as follows:

§ 1.403(b)-2T Eligible rollover distributions; Questions and Answers (temporary).

The following questions and answers relate to eligible rollover distributions from annuities, custodial accounts, and retirement income accounts described in section 403(b) of the Internal Revenue Code of 1986, as amended by sections 521 and 522 of the Unemployment Compensation Amendments of 1992 (Public Law 102-318) (UCA).

Q-1: How did the "Unemployment Compensation Amendments of 1992" (UCA) change the rollover requirements for certain distributions from annuities, custodial accounts, and retirement income accounts described in section 403(b)?

A-1: Section 403(b)(8), as amended by sections 521 and 522 of UCA, expands the range of distributions from annuity contracts, custodial accounts, and retirement income accounts described in section 403(b) (section 403(b) annuities) that are eligible for rollover by providing rules that are similar to the rollover rules for qualified plans in section 402(c), as amended by section 521(a) of UCA. Under section 403(b)(8), as amended, any eligible rollover distribution is permitted to be rolled over to an eligible retirement plan. For purposes of section 403(b)(8) and this section, an eligible retirement plan means another section 403(b) annuity or an individual retirement plan (as defined in Q&A-2 of § 1.401(a)(31)-1T) and does not include a qualified plan (as defined in Q&A-2 of § 1.402(c)-2T). An eligible rollover distribution from a section 403(b) annuity is an eligible rollover distribution described in section 402(c) (2) and (4) and Q&A-3 through Q&A-8 of § 1.402(c)-2T, except that the distribution is from a section 403(b) annuity rather than a qualified plan. The rules with respect to rollovers in sections 402(c)(1), (c)(3), and (c)(9) and Q&A-9 and Q&A-10 of § 1.402(c)-2T also apply to eligible rollover

distributions from section 403(b) annuities.

Q-2: Is a section 403(b) annuity required to provide the direct rollover option described in section 401(a)(31) as a distribution option?

A-2: (a) *General Rule.* Yes. Pursuant to section 403(b)(10), as amended by section 522 of UCA, section 403(b) does not apply to an annuity contract, custodial account or retirement income account unless the annuity contract, custodial account, or retirement income account provides that if the distributee of any eligible rollover distribution elects to have the distribution paid directly to an eligible retirement plan (as defined in Q&A-1 of this section) and specifies the eligible retirement plan to which the distribution is to be paid, then the distribution will be paid to that eligible retirement plan in a direct rollover. For purposes of determining whether a section 403(b) annuity has satisfied this direct rollover requirement, the provisions of § 1.401(a)(31)-1T apply to the section 403(b) annuity as though it were a plan qualified under section 401(a) unless otherwise provided in this section. (In applying the provisions of § 1.401(a)(31)-1T, the payor of the eligible rollover distribution is treated as the plan administrator.) For example, as described in Q&A-14 of § 1.401(a)(31)-1T, a direct rollover from a section 403(b) annuity to another section 403(b) annuity is a distribution and a rollover and not a transfer of funds between section 403(b) annuities and, thus, does not affect the applicable law governing transfers of funds between section 403(b) annuities.

(b) *Mandatory withholding.* As in the case of an eligible rollover distribution from a qualified plan, if a distributee of an eligible rollover distribution from a section 403(b) annuity does not elect to have the eligible rollover distribution paid directly to an eligible retirement plan in a direct rollover, the eligible rollover distribution is subject to 20-percent income tax withholding imposed under section 3405(c), as enacted by section 522(b) of UCA. See § 31.3405(c)-1T of this chapter for provisions regarding the withholding requirements relating to eligible rollover distributions.

Q-3: Is the payor of a section 403(b) annuity required to provide a distributee of an eligible rollover distribution with an explanation of the direct rollover option?

A-3: Yes. In order to ensure that the distributee of an eligible rollover distribution from a section 403(b) annuity has a meaningful right to elect a direct rollover, the distributee must be informed of the option. Thus, within a reasonable time period before making an eligible rollover distribution, the payor must provide an explanation to the distributee of his or her right to elect a direct rollover and the income tax withholding consequences of not electing a direct rollover.

Q-4: When do section 403(b)(8), as amended by section 521 of UCA, section 403(b)(10), as amended by section 522 of UCA, and this § 1.403(b)-2T apply to distributions from section 403(b) annuities?

A-4: (a) *General Rule.* Except as otherwise provided in paragraph (b) of this Q&A, section 403(b)(8), as amended by section 521 of UCA, section 403(b)(10), as amended by section 522 of UCA, and this § 1.403(b)-2T apply to distributions from section 403(b) annuities made after December 31, 1992. In addition, except as otherwise provided in paragraph (b) of this Q&A, the underlying document of a section 403(b) annuity must be amended at the time provided in, and the amendment and operation of the section 403(b) annuity must satisfy the requirements of, Q&A-15 of § 1.401(a)(31)-1T.

(b) *Special rule for government section 403(b) annuities.* If, as of July 1, 1992, a state law prohibits a direct rollover from a section 403(b) annuity purchased for an employee by an employer which is a State or a political subdivision thereof (or an agency or instrumentality of one or more of either), the direct rollover requirements of section 401(a)(31) and Q&A-2 and Q&A-3 of this § 1.403(b)-2T do not apply to distributions from that section 403(b) annuity made before the earlier of—

(1) 90 days after the first day after July 1, 1992 on which a direct rollover is allowed under state law; or

(2) January 1, 1994.

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX UPON SOURCE

Par. 6. The authority citation for part 31 continues to read in part as follows:

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

Par. 7. Section 31.3405(c)-1T is added to read as follows:

§ 31.3405(c)-1T Withholding on eligible rollover distributions; questions and answers (temporary).

The following questions and answers relate to withholding on eligible rollover distributions under section 3405(c) of the Internal Revenue Code of 1986, as amended by section 522(b) of the Unemployment Compensation Amendments of 1992 (Public Law 102-318) (UCA). Q&A-1 through Q&A-10 relate to general rules for withholding on eligible rollover distributions. Q&A-11 through Q&A-13 relate to reporting and recordkeeping.

Q-1: How did the Unemployment Compensation Amendments of 1992 (UCA) change the law on withholding requirements under section 3405 for distributions from qualified plans and section 403(b) annuities?

A-1: (a) *General rule.* Section 3405(c), as enacted by section 522(b) of UCA, provides that any designated distribution that is an eligible rollover distribution from a qualified plan or a section 403(b) annuity is subject to income tax withholding at the rate of 20 percent unless the distributee of the eligible rollover distribution elects to have the distribution paid directly to an eligible retirement plan in a direct rollover. For purposes of section 3405 and this section, a qualified plan is a trust qualified under section 401(a) or annuity plan described in section 403(a), and a section 403(b) annuity is an annuity contract, a custodial account or a retirement income account described in section 403(b). If a designated distribution is not an eligible rollover distribution, it is subject to the elective withholding provisions of section 3405 (a) and (b) and § 35.3405-1 of this chapter and is not subject to the mandatory withholding provisions of section 3405(c) and this section.

(b) *Application of other statutory provisions.* See § 1.401(a)(31)-1T of this chapter and Q&A-2 of § 1.403(b)-2T of this chapter concerning the requirements for a direct rollover option under section 401(a)(31) and the procedures for electing it. See section 402(c)(2) and (4), Q&A-3 through Q&A-8 of § 1.402(c)-2T of this chapter, and Q&A-1 of § 1.403(b)-2T of this chapter for provisions for determining what constitutes an eligible rollover distribution. See section 402(c)(8)(B) and Q&A-2 of § 1.402(c)-2T of this chapter, and Q&A-1 of § 1.403(b)-2T of this chapter for the meaning of eligible retirement plan. See Q&A-11 through Q&A-15 of § 1.402(c)-2T of this chapter and Q&A-3 of § 1.403(b)-2T of this chapter concerning the explanation required to inform a distributee of an eligible rollover distribution of the direct rollover option and the consequences of not electing the option.

(c) *Effective date*—(1) *General rule.* Except as otherwise provided in paragraph (c)(2) of this Q&A, section 3405(c), as added by section 522 of UCA, and this § 31.3405(c)-1T apply to eligible rollover distributions made after December 31, 1992, Consequently, section 3405(c) and this § 31.3405(c)-1T apply to any eligible rollover distribution made after December 31,

1992, even if the employee's employment with the employer maintaining the plan terminated before January 1, 1993 and even if the eligible rollover distribution is part of a series of payments that began before January 1, 1993.

(2) *Transition rule.* A special transition rule applies in the case of eligible rollover distributions made after December 31, 1992, and before April 1, 1993, if timely compliance with the withholding requirements in section 3405(c) and this § 31.3405(c)–1T would cause undue hardship for the plan administrator or payor. In this case, the plan administrator or payor may delay the application of the 20-percent withholding requirement on eligible rollover distributions, using the following "catch-up withholding" method. If 20-percent withholding on an eligible rollover distribution made after December 31, 1992, and before April 1, 1993, is required under section 3405(c) and this § 31.3405(c)–1T, the dollar amount required to be withheld from the distribution may be withheld instead from any one or more later distributions from the plan with respect to the distributee that are made before January 1, 1994. The amount of this delayed withholding may be added to the amount (if any) that would otherwise be required to be withheld from the later distribution, whether or not the later distribution is paid in a direct rollover to an eligible retirement plan. Thus, the "catch-up withholding" method may be used only if there is reason to expect that one or more later distributions sufficient to satisfy the prior withholding requirement will be made before January 1, 1994. For purposes of this paragraph, whether there would be undue hardship for the plan administrator or payor will be determined under the principles set forth in Q&A G–6 of § 35.3405–1. If a plan administrator or payor can establish that the undue hardship requirement for use of the "catch-up withholding" method is satisfied, prior approval from the Internal Revenue Service is not required and should not be requested.

(3) *Special rule for government section 403(b) annuities.* If, as of July 1, 1992, a state law prohibits a direct rollover from a section 403(b) annuity purchased for an employee by an employer which is a State or a political subdivision thereof (or an agency or instrumentality of one or more of either), section 3405(c) and this § 31.3405(c)–1T do not apply to distributions from that section 403(b) annuity made before the earlier of:

(i) 90 days after the first day after July 1, 1992 on which a direct rollover is allowed under state law; or

(ii) January 1, 1994.

Q–2: May a distributee elect under section 3405(c) not to have Federal income tax withheld from an eligible rollover distribution?

A–2: No. The 20-percent income tax withholding imposed under section 3405(c)(1) applies to an eligible rollover distribution unless the distributee elects under section 401(a)(31) to have the eligible rollover distribution paid directly to an eligible retirement plan in a direct rollover. See § 1.401(a)(31)–1T of this chapter and Q&A–2 of § 1.403(b)–2T of this chapter for provisions concerning the requirement that a distributee of an eligible rollover distribution be permitted to elect a distribution in the form of a direct rollover.

Q–3: Who has responsibility for complying with section 3405(c) relating to the 20-percent income tax withholding on eligible rollover distributions?

A–3: Section 3405(d) generally requires the plan administrator of a qualified plan and the payor of a section 403(b) annuity to withhold under section 3405(c)(1) an amount equal of 20 percent of the portion of an eligible rollover distribution that the distributee does not elect to have paid in a direct rollover.

Q–4: May the plan administrator shift the withholding responsibility to the payor and, if so, how?

A–4: Yes. The plan administrator may shift the withholding responsibility to the payor by following the procedures set forth in Q&A A–13 and Q&A E–2 of § 35.3405–1 of this chapter (relating to elective withholding on pensions, annuities and certain other deferred income) with appropriate adjustments.

Q–5: How does the 20-percent withholding requirement under section 3405(c) apply if a distributee elects to have a portion of an eligible rollover distribution paid to an eligible retirement plan in a direct rollover and to have the remainder of that distribution paid to the distributee?

A–5: If a distributee elects to have a portion of an eligible rollover distribution paid to an eligible retirement plan in a direct rollover and to receive the remainder of the distribution, the 20-percent withholding requirement under section 3405(c) applies only to the portion of the eligible rollover distribution that the distributee receives and not to the portion that is paid in a direct rollover.

Q–6: Will the plan administrator be subject to liability for tax, interest, or penalties for failure to withhold 20 percent from an eligible rollover distribution that, because of erroneous information provided by a distributee, is not paid to an eligible retirement plan even though the distributee elected a direct rollover?

A–6: If the plan administrator reasonably relied on adequate information provided by the distributee (as described in Q&A–7 of this section), the plan administrator will not be subject to liability for taxes, interest, or penalties for failure to withhold income tax from an eligible rollover distribution solely because the distribution is paid to an account or plan that is not an eligible retirement plan (as defined in sections 401(a)(31)(D) and 402(c)(8)(B) and Q&A–2 of § 1.401(a)(31)–1T of this chapter). Although the plan administrator is not required to verify independently the accuracy of information provided by the distributee, the plan administrator's reliance on the information furnished must be reasonable. For example, it is not reasonable for the plan administrator to rely on information that is clearly erroneous on its face.

Q–7: What constitutes "adequate information" on which the plan administrator may reasonably rely in making a direct rollover?

A–7: The plan administrator has obtained from the distributee adequate information that the account or plan to which the eligible rollover distribution was paid was an eligible retirement plan if the distributee furnishes to the plan administrator the name of the eligible retirement plan; represents that the recipient plan is an individual retirement plan, a qualified plan, or a section 403(b) annuity, as appropriate; and furnishes to the plan administrator any other information that is necessary in order to permit the plan administrator to accomplish the direct rollover by the means it has selected. This information must include any information needed to comply with the specific requirements of Q&A–3 and Q&A–4 of § 1.401(a)(31)–1T of this chapter. For example, if the direct rollover is to be made by mailing a check to the trustee of an individual retirement account, the plan administrator must obtain, in addition to the name of the individual retirement account and the representation described above, the name and address of the trustee of the individual retirement account.

Q–8: If property other than cash is distributed, how is the 20-percent income tax withholding required under section 3405(c) accomplished?

A–8: When all or a portion of an eligible rollover distribution subject to 20-percent income tax withholding

under section 3405(c) consists of property other than cash, the plan administrator or payor must apply the provisions of Q&A F-1 through F-3 of § 35.3405-1 of this chapter.

Q-9: Is there an exception from the 20-percent withholding requirement for employer securities distributed in an eligible rollover distribution?

A-9: Yes. Section 3405(d)(8), as amended by section 521(b) of UCA, provides that the maximum amount to be withheld on any designated distribution (including any eligible rollover distribution) must not exceed the sum of the cash and the fair market value of other property (excluding employer securities) received in the distribution. In addition, if the distribution consists solely of employer securities and cash (not is excess of $200) in lieu of fractional shares, no amount is required to be withheld as income tax from the distribution under section 3405 (including section 3405(c) and this section). For purposes of section 3405 and this section, employer securities means securities of the employer corporation within the meaning of section 402(e)(4)(E).

Q-10: Must a payor or plan administrator withhold tax from an eligible rollover distribution for which a direct rollover election was not made if the amount of the distribution is less than $200?

A-10: No. However, all eligible rollover distributions received within one taxable year of the distributee under the same plan must be aggregated for purposes of determining whether the $200 floor is reached. If the plan administrator or payor does not know at the time of the first distribution (that is less than $200) whether there will be additional eligible rollover distributions during the year for which aggregation is required, the plan administrator need not withhold from the first distribution. If distributions are made within one taxable year under more than one plan of an employer, the plan administrator or payor may, but need not, aggregate distributions for purposes of determining whether the $200 floor is reached.

Q-11: If eligible rollover distributions are made from a qualified plan, who has responsibility for making the returns and reports required under these regulations?

A-11: Generally, the plan administrator, as defined in section 414(g), is responsible for maintaining the records and making the required reports with respect to eligible rollover distributions from qualified plans. However, if the plan administrator fails to keep the required records and make the required reports, the employer maintaining the plan is responsible for the reports and returns.

Q-12: What eligible rollover distributions must be reported on Form 1099-R?

A-12: Each eligible rollover distribution, including each eligible rollover distribution that is paid directly to an eligible retirement plan in a direct rollover, must be reported on Form 1099-R in accordance with the instructions for Form 1099-R. For purposes of the reporting required under section 6047(e), a direct rollover is treated as a distribution that is immediately rolled over to an eligible retirement plan. Distributions that are not eligible rollover distributions are subject to the reporting requirements set forth in § 35.3405-1 of this chapter and applicable forms and instructions.

Q-13: Must the plan administrator, trustee or custodian of the eligible retirement plan report amounts received in a direct rollover?

A-13: (a) *Individual retirement plan.* If a distributee elects to have an eligible rollover distribution paid to an individual retirement plan in a direct rollover, the eligible rollover distribution is reported on Form 5498 as a rollover contribution to the individual retirement plan, in accordance with the instructions for Form 5498.

(b) *Qualified plan or section 403(b) annuity.* If a distributee elects to have an eligible rollover distribution paid to a qualified plan or section 403(b) annuity, the recipient plan or annuity is not required to report the receipt of the rollover contribution.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 8. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 9. Section 602.101(c) is amended by adding the following entries to the table:

§ 602.101 OMB control numbers under the Paperwork Reduction Act.

* * * * *

(c) * * *

CFR part or section where identified or described	Current OMB control No.
* * * *	*
1.401(a)(31)-1T	1545-1341
* * *	*
1.402(c)-2T	1545-1341
* * *	*
1.402(f)-2T	1545-1341
* * *	*
1.403(b)-2T	1545-1341
* * *	*
31.3405(c)-1T	1545-1341
* * *	*

Shirley D. Peterson,

Commissioner of Internal Revenue.

Approved: October 5, 1992.

Fred T. Goldberg, Jr.,

Assistant Secretary of the Treasury.

[FR Doc. 92-25431 Filed 10-20-92; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 40, 43, 44, 46, 48, 49, 51, 52, 145, 148, 150, and 602

[T.D. 8442]

RIN 1545-AO97; 1545-AQ04

Procedural Rules for Excise Taxes Currently Reportable on Form 720

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations and removal of obsolete regulations.

SUMMARY: This document contains final regulations relating to requirements for returns, payments, and deposits of tax for excise taxes currently reportable on Form 720, including special rules for use of Government depositaries under chapter 33 of the Internal Revenue Code. Existing procedural regulations under 26 CFR parts 43, 46, 48, 49, and 52 are amended and consolidated in a new part 40. These regulations also reflect changes to the law made by the Omnibus Budget Reconciliation Acts of 1989 and 1990. The regulations affect persons required to report liability for excise taxes currently reportable on Form 720. This document also removes various obsolete excise tax regulations.

EFFECTIVE DATES: These regulations are effective April 1, 1991, except that §§ 40.6302(c)-1(c)(2)(iii), 40.6302(c)-1(c)(2)(iv), 40.6302(c)-1(c)(3), 40.6302(c)-1(e)(3), 40.6302(c)-2(b)(3), and 40.6302(c)-3 are effective January 1, 1993.

FOR FURTHER INFORMATION CONTACT: Ruth Hoffman, (202) 622-3130 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in these final regulations 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 1545–1296. The estimated average annual burden per recordkeeper is 60 hours. The estimated average annual burden per respondent is 0.5 hour.

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

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

Background

On September 6, 1990, temporary regulations (T.D. 8311) relating to returns, payments, and deposits of tax under sections 4681 and 4682 (relating to the tax imposed on ozone-depleting chemicals) were published in the **Federal Register** (55 FR 36612). A notice of proposed rulemaking (PS–73–89) cross-referencing the temporary regulations was published in the **Federal Register** for the same day (55 FR 36659). A public hearing was not requested and none was held.

On October 12, 1990, temporary regulations (T.D. 8314) relating to returns, payments, and deposits of tax under section 4471 (relating to the tax imposed on transportation by water) were published in the **Federal Register** (55 FR 41519). A notice of proposed rulemaking (PS–3–90) cross-referencing the temporary regulations was published in the **Federal Register** for the same day (55 FR 41546). A public hearing was held on April 8, 1991.

On January 3, 1991, temporary regulations (T.D. 8328) relating to returns, payments, and deposits of taxes under subtitle D (relating to miscellaneous excise taxes) were published in the **Federal Register** (56 FR 179). A notice of proposed rulemaking (PS–65–90) cross-referencing the temporary regulations was published in the **Federal Register** for the same day (56 FR 233). A public hearing was not requested and none was held.

On January 31, 1992, a notice of proposed rulemaking (PS–27–91) relating to special rules for deposits of taxes imposed under chapter 33 (relating to communications services and air transportation) was published in the **Federal Register** (57 FR 3734). A public hearing was scheduled, but the sole request to speak was withdrawn and the public hearing was not held.

Written comments responding to the notices were received. After consideration of all the comments, the regulations proposed by PS–65–90 and PS–27–91, and the procedural regulations proposed as part of PS–73–89 and PS–3–90 are adopted as revised by this Treasury decision and the corresponding temporary regulations are withdrawn. The revisions are discussed below.

Explanation of Revisions

Final Return Based on Change in Law

The proposed regulations provide for the filing of a final return when a person liable for tax has permanently ceased all operations with respect to which liability for tax was incurred. The final regulations clarify that a person that is still conducting the same operations but is no longer liable for tax because of a change in the law also files a final return. For example, a final return is filed by a person that is no longer liable for a tax because the point of imposition of the tax has moved (assuming that the person has no other tax liability reportable on Form 720).

Books Kept on a Monthly Basis

The proposed regulations do not require books to be kept on a semimonthly basis, but do not explain how semimonthly liability is to be calculated if a person keeps books on a monthly basis. To reflect the common business practice of keeping books on a monthly basis, the final regulations clarify that the liability for a semimonthly period is equal to one-half of monthly liability if this method of determining semimonthly liability is used consistently for the entire quarter.

De Minimis Exception to the Deposit Requirement

The proposed regulations require deposits of tax to be made on a semimonthly basis, no matter how small the tax liability, unless the special rule for one-time filers applies or no deposit of that tax is required. Commenters suggested that persons with small tax liabilities be exempted from the deposit requirement.

The final regulations provide that the deposit requirement does not apply if the net tax liability for the quarter does not exceed $2,000. The de minimis exception is effective for deposits that relate to calendar quarters beginning after December 31, 1992.

Safe Harbor Rules

Under the proposed regulations, deposits of tax for a semimonthly period generally must equal the amount of tax liability incurred (or in the case of collected taxes, the amount of tax collected) during that semimonthly period. However, the proposed regulations provide one general safe harbor rule, and one special safe harbor rule for new filers based on current liability. The general safe harbor rule applies to persons that have filed a Form 720 reporting tax for the look-back quarter (the second calendar quarter preceding the current calendar quarter). Under this safe harbor rule, a person is considered to have met the semimonthly deposit requirement if the person's deposit for each semimonthly period in the current quarter is not less than ⅙ of the total net tax liability reported on Form 720 for the look-back quarter.

The special safe harbor rule applies to persons (generally new return filers) that did not file a Form 720 reporting tax for the look-back quarter. Under this safe harbor rule, a person is considered to have met the semimonthly deposit requirement if the person's deposit for each semimonthly period in the current quarter is not less than 90 percent of the net tax liability incurred during the semimonthly period.

Modification of Safe Harbor Based on Current Liability

Commenters requested that the special safe harbor rule based on current liability be extended to all filers.

The final regulations extend to all filers a safe harbor rule based on current net tax liability. However, the safe harbor rule provided by the final regulations is based on 95 percent of the liability for a semimonthly period. Thus, under the final regulations, a person is considered to have met the semimonthly deposit requirement for the current quarter if the deposit for each semimonthly period in the current quarter is not less than 95 percent of the net tax liability incurred during the semimonthly period. The new current liability safe harbor is effective for deposits that relate to calendar quarters beginning after December 31, 1992.

Modification of Safe Harbor Based on Look-back Quarter Liability To Adjust for Tax Rate Increases

Under the proposed regulations, an increase in the rate of a tax generally is not reflected in deposits made by persons using the look-back quarter safe

harbor rule until the second quarter after the quarter for which the increased rate is effective (although the increased rate is reflected in catch-up payments for each quarter). There is an exception in the case of ozone-depleting chemicals taxes; for purposes of the safe harbor, the look-back quarter liability is modified to take into account increases in tax liability due to increases in the base tax amount or due to the phase-in of tax on Halons and ozone-depleting chemicals used in the manufacture of rigid foam insulation.

The final regulations extend the tax rate increase rule to other taxes. Under the final regulations, the safe harbor deposit amounts for the first and second quarters beginning on or after the effective date of a tax rate increase must be calculated as if the new tax rate had been in effect during the look-back quarter. Thus, persons using the safe harbor in these quarters must deposit ⅙ of the amount for which they would have been liable in the look-back quarter had the higher rate applied at that time. This rule ensures that the statutory effective date of tax rate changes will be appropriately reflected in deposits.

Look-back quarter liability is adjusted for safe harbor purposes only where tax rates are increased, not where there is some other change that would have resulted in higher taxes in the look-back quarter. The change is effective for deposits that relate to calendar quarters beginning after December 31, 1992.

Withdrawal of Right To Use Safe Harbor Rules

The Internal Revenue Service may withdraw the right to make deposits of tax using safe harbor rules from any person that does not comply with the conditions of those rules.

Special Rules for Use of Government Depositaries Under Chapter 33

Currently, special rules for deposits of taxes imposed on communications services and air transportation by chapter 33 (the "considered collected" method) are provided under § 49.6302(c)–1(a)(1). The considered collected method, including the semimonthly deposit exceptions, continues to apply until January 1, 1993, the effective date of § 40.6302(c)–3 of the final regulations.

PS–65–90 did not propose any changes to the special rules for chapter 33 filers. Proposed changes to the considered collected method are contained in PS–27–91. The proposed regulations provide that the amount of the deposit of tax under chapter 33 for each semimonthly period may be computed based on amounts billed or tickets sold (the "alternative method").

As proposed, the alternative method does not provide any safe harbor rules. Commenters on PS–27–91 requested that the safe harbor rules proposed by PS–65–90 for other excise taxes be extended to chapter 33 filers. The final regulations provide the same safe harbor rules for chapter 33 filers using the alternative method as are provided for other filers.

The regulations set forth in PS–27–91 were proposed to be effective July 1, 1992. Contrary to the proposed effective date, the special rules provided under § 40.6302(c)–3 of the final regulations are effective January 1, 1993, for deposits of taxes that are considered as collected after December 31, 1992, (i.e., tax with respect to amounts billed or tickets sold after November 30, 1992), and for returns of tax for quarters beginning after September 30, 1992.

Penalty Calculations

Failure-to-deposit penalties under section 6656 may apply if required deposits are not timely made in the correct amount with an authorized Government depositary.

Commenters suggested that, as illustrated in the examples provided in the proposed regulations, the calculation of penalties might have overly harsh results, particularly when a deposit is only late by a day or is only short by a few dollars.

The final regulations do not provide any examples of the application of section 6656 to excise tax deposits. Instead, the new Penalty Handbook published by the Internal Revenue Service provides uniform guidance on the application of section 6656.

Gasoline Tax Deposits for the Period September 16th–22nd

Section 6302(f) provides that a deposit of gasoline tax must be made for the period September 16th–22nd and that this additional deposit generally is due by September 27. The proposed regulations do not provide guidance with respect to the calculation of the amount of gasoline tax to deposit for the period September 16th–22nd. The final regulations provide that guidance.

Under the final regulations, a person liable for the gasoline tax must make one gasoline tax deposit for the period September 16th–22nd and a second gasoline tax deposit for the period September 23rd–30th. In general, the deposit for each of those periods must be not less than the amount of net gasoline tax liability for that period.

The final regulations also modify the safe harbor rules for these September gasoline deposits. In general, persons using the look-back quarter liability safe harbor must make two separate deposits of 1/12 of the look-back quarter liability for the class of tax that includes the gasoline tax, and persons using the current liability safe harbor must make two separate deposits of 47.5 percent of their gasoline tax liability for the second semimonthly period in September. The safe harbors are effective after December 31, 1992.

Special Analyses

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

Drafting Information

The principal author of these regulations is Ruth Hoffman, Office of Assistant Chief Counsel (Passthroughs and Special Industries), Internal Revenue Service. However, personnel from other offices of the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR part 40

Administrative practice and procedure, Excise taxes.

26 CFR part 43

Excise taxes, Gambling, Transportation by Water, Vessels.

26 CFR part 44

Excise taxes, Gambling.

26 CFR part 46

Banks and banking, Excise taxes, Insurance.

26 CFR part 48

Agriculture, Aircraft, Boats, Coal, Excise taxes, Furs, Jewelry, Motor fuels, Motor vehicles, Sporting goods, Tires.

26 CFR part 49

Excise taxes, Telegraph, Telephone, Transportation.

26 CFR part 51

Crude Oil Windfall Profit Tax Act of 1980, Excise taxes, Petroleum.

26 CFR part 52

Chemicals, Excise taxes, Petroleum

26 CFR part 145

Excise taxes, Excise Tax Reduction Act of 1965.

26 CFR part 148

Excise taxes, Excise Tax Technical Changes Act of 1958.

26 CFR part 150

Crude Oil Windfall Profit Tax Act of 1980, Excise taxes, Petroleum.

26 CFR part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 40, 43, 44, 46, 48, 49, 51, 52, 145, 148, 150, and 602 are amended as follows:

Paragraph 1. Part 40 is revised to read as follows:

PART 40—EXCISE TAX PROCEDURAL REGULATIONS

Sec.

40.0–1 Introduction.
40.6011(a)–1 Returns.
40.6011(a)–2 Final returns.
40.6071(a)–1 Time for filing returns.
40.6071(a)–2 Time for filing quarterly returns under chapter 33 and sections 4681 and 4682(h).
40.6091–1 Place for filing returns.
40.6101–1 Period covered by returns.
40.6109(a)–1 Identifying numbers.
40.6151(a)–1 Time and place for paying tax shown on return.
40.6302(c)–0 Table of contents.
40.6302(c)–1 Use of Government depositaries.
40.6302(c)–2 Special rules for use of Government depositories under section 4681.
40.6302(c)–3 Special rules for use of Government depositaries under chapter 33.
40.6302(c)–4 Special rule for use of Government depositaries under section 4081.
40.9999–1 Examples.

Authority: 26 U.S.C. 7805.

Sections 40.6011(a)–1 and 40.6011(a)–2 also issued under 26 U.S.C. 6011(a).

Sections 40.6071(a)–1 and 40.6071(a)–2 also issued under 26 U.S.C. 6071(a).

Section 40.6091–1 also issued under 26 U.S.C. 6091.

Section 40.6101–1 also issued under 26 U.S.C. 6101.

Section 40.6109(a)–1 also issued under 26 U.S.C. 6109(a).

Sections 40.6302(c)–1, 40.6302(c)–2, 40.6302(c)–3, and 40.6302(c)–4 also issued under 26 U.S.C. 6302(a).

§ 40.0–1 Introduction.

(a) *In general.* The regulations in this part 40 are designated "Excise Tax Procedural Regulations." The regulations set forth administrative provisions relating to the excise taxes imposed by chapters 31, 32, 33, 34, 36, 38, and 39 (except for the chapter 32 tax imposed by section 4181 (firearms tax) and the chapter 36 taxes imposed by sections 4461 (harbor maintenance tax), 4481 (heavy vehicle use tax), and 4495 (deep seabed mineral removal tax)). Chapter 31 relates to retail excise taxes; chapter 32 to manufacturers' excise taxes; chapter 33 to taxes imposed on communications services and air transportation; chapter 34 to taxes imposed on policies issued by foreign insurers; chapter 36 to taxes imposed on transportation by water; chapter 38 to environmental taxes; and chapter 39 to taxes imposed on registration-required obligations. See parts 43, 46, 48, 49, and 52 of this chapter for regulations relating to the imposition of tax.

(b) *References to forms.* Any reference for form in this part is also a reference to any other form designated for the same use by the Commissioner after October 22, 1992.

(c) *Definition of semimonthly period.* The term "semimonthly period" means the first 15 days of a calendar month (the "first semimonthly period") or the portion of a calendar month following the 15th day of the month (the "second semimonthly period").

(d) *Examples.* See § 40.9999–1 for examples illustrating the rules of this part 40.

(e) *Cross references.* For provisions relating to penalties for failure to file a return to pay tax, see section 6651. For provisions relating to penalties for failure to make deposit of taxes, see section 6656. For provisions relating to timely mailing treated as timely filing and paying, see section 7502. For provisions relating to time for performance of acts where the last day for performance falls on Saturday, Sunday, or a legal holiday, see section 7503.

(f) *Effective date.* Except as otherwise provided, this part is effective April 1, 1991, for returns that relate to calendar quarters beginning after December 31, 1990, and are filed after March 31, 1991, and for deposits that relate to calendar quarters beginning after March 31, 1991. In the case of taxes for which rules are provided in this part, the administrative provisions that apply to such taxes before the effective date of this part are contained in 26 CFR parts 43, 46, 48, 49 and 52 (each revised as of April 1, 1992).

§ 40.6011(a)–1 Returns.

(a) *In general*—(1) *Return required.* The return of any tax to which this part 40 applies must be made on Form 720, *Quarterly Federal Excise Tax Return,* according to the instructions applicable to the form. The requirement for filing a return under this part 40 applies separately to each tax listed by IRS Number on Form 720. Except as provided in this paragraph (a)(1), an entry must be made on the line for the IRS Number in order to file a return of the tax corresponding to that number. The entry on an IRS Number line of the word "none," "zero," or comparable entry clearly indicating a denial of liability constitutes a return of that tax. The entry of the word "none" across the return or in the summary portion, provided it clearly indicates a denial of liability for all taxes, constitutes a return of all taxes listed on Form 720.

(2) *Period covered by return*—(i) *In general.* Except as provided in paragraph (b) of this section, the return must be made for a period of one calendar quarter. A return must be filed for the first calendar quarter in which liability for tax is incurred (or in which tax must be collected and paid over) and for each subsequent calendar quarter, whether or not liability is incurred (or tax must be collected and paid over) during that subsequent quarter, until a final return under § 40.6011(a)–2 is filed. In the case of one-time filings (as defined in § 40.6011(a)–2(b)) and returns of floor stocks taxes under § 40.6011(a)–2(c), a first return is also a final return.

(ii) *First return.* A person's return is a first return if the person was not required under this part 40 to file a return (other than a final return) for the preceding period.

(3) *Person required to file the return.* Except in the case of a tax required to be collected and paid over, the person incurring liability for tax must file the return. In the case of a tax required to be collected and paid over, the person required to collect the tax (and not the person incurring liability) must file the return.

(b) *Monthly and semimonthly returns.* If the district director determines that any person that is required under this section to file returns has failed to comply in a timely manner with the requirements of this part 40 relating to returns, payments, and deposits of tax, that person will be required, if so notified in writing by the district director, to make a return for a monthly or semimonthly period (as defined in § 40.0–1(c)). Each person so notified by the district director must make a return

for the calendar month or semimonthly period in which the notice is received and for each calendar month or semimonthly period thereafter until the person has filed a final return or until the person is notified by the district director to resume making quarterly returns.

(c) *Cross reference.* For provisions relating to the time to file returns, see §§ 40.6071(a)–1 and 40.6071(a)–2. For provisions relating to the place for filing returns, see § 40.6091–1. For provisions relating to time and place for paying tax, see § 40.6151(a)–1. For provisions relating to use of Government depositaries, see §§ 40.6302(c)–1, 40.6302(c)–2, 40.6302(c)–3, and 40.6302(c)–4.

(d) *Effective date.* This section is effective April 1, 1991, for returns that relate to calendar quarters beginning after December 31, 1990, and are filed after March 31, 1991.

§ 40.6011(a)–2 Final returns.

(a) *In general*—(1) *Permanent cessation of operations.* Any person that is required under § 40.6011(a)–1 to make returns and that permanently ceases all operations with respect to which liability for tax was incurred (or with respect to which tax had to be collected and paid over) must make a final return in accordance with the instructions applicable to the form on which the return is made. A person does not make a final return if only a temporary or partial cessation of such operations occurs and must continue to file returns as required under § 40.6011(a)–1.

(2) *Change in law without cessation of operations.* Any person that is required under § 40.6011(a)–1 to make returns must make a final return in accordance with the instructions applicable to the form on which the return is made if, by reason of a change in law, that person is no longer liable for any tax (or, in the case of a collected tax, is no longer responsible for collecting and paying over any tax). For example, if the tax on a product is changed from a retail tax to a manufacturers tax, a retailer formerly liable for the tax but now buying the product tax-paid from its supplier must make a final return (assuming that the retailer has no other tax liability reportable on the return).

(b) *Special rule for one-time filings*—(1) *In general.* A first return is also a final return if it is a one-time filing. A return is a one-time filing if the person reporting tax does not engage in any activity with respect to which tax is reportable on the return in the course of a trade or business.

(2) *Deposits not required.* See § 40.6302(c)–1(e)(2) for a rule providing that no deposit of taxes reported on a one-time filing is required.

(c) *Special rule for floor stocks taxes.* A first return reporting only floor stocks taxes under this part 40 is also a final return.

(d) *Effective date.* This section is effective April 1, 1991, for returns that relate to calendar quarters beginning after December 31, 1990, and are filed after March 31, 1991.

§ 40.6071(a)–1 Time for filing returns.

(a) *Quarterly returns*—(1) *In general.* Except as provided in paragraph (a)(2) of this section and in § 40.6071(a)–2 (relating to quarterly returns under chapter 33 and sections 4681 and 4682(h)), each quarterly return required under § 40.6011(a)–1(a)(2) must be filed by the last day of the first calendar month following the quarter for which it is made.

(2) *Special rule.* A person must file only one return for a quarter. If under § 40.6071(a)–2 a person is required to file a return for a quarter by a date that is later than the date provided in paragraph (a)(1) of this section, the person must file a single return for the quarter by the filing date provided under § 40.6071(a)–2. This rule does not extend the time for making deposits or paying any excise tax.

(b) *Monthly and semimonthly returns*—(1) *Monthly returns.* Each monthly return required under § 40.6011(a)–1(b) must be filed by the fifteenth day of the month following the month for which it is made.

(2) *Semimonthly returns.* Each semimonthly return required under § 40.6011(a)–1(b) must be filed by the ninth day of the semimonthly period (as defined in § 40.0–1(c)) following the semimonthly period for which it is made.

(c) *Effective date.* This section is effective April 1, 1991, for returns that relate to calendar quarters beginning after December 31, 1990, and are filed after March 31, 1991.

§ 40.6071(a)–2 Time for filing quarterly returns under chapter 33 and sections 4681 and 4682(h).

(a) *In general.* In the case of return of tax imposed by chapter 33 (relating to communications services and air transportation) or section 4681 (relating to ozone-depleting chemicals), each quarterly return required under § 40.6011(a)–1(a)(2) must be filed by the last day of the second calendar month following the quarter for which it is made.

(b) *Special rule for floor stocks tax imposed by section 4682(h).* In the case of floor stocks taxes imposed by section 4682(h) on January 1 of a calendar year, each return required under § 40.6011(a)–1(a) must be filed by August 31 of the year the tax is imposed. Each of these returns will be a return for the second calendar quarter of the year in which the tax is imposed.

(c) *Effective date.* This section is effective April 1, 1991, for returns that relate to calendar quarters beginning after December 31, 1990, and are filed after March 31, 1991.

§ 40.6091–1 Place for filing returns.

(a) *Quarterly returns.* Except as provided in paragraph (b) of this section, quarterly returns must be filed in accordance with the instructions applicable to the form on which the return is made.

(b) *Hand-carried returns*—(1) *Persons other than corporations.* Returns of persons other than corporations that are filed by hand carrying must be filed with the district director for the Internal Revenue district in which is located the principal place of business or legal residence of the person.

(2) *Corporations.* Returns of corporations that are filed by hand carrying must be filed with the district director for the Internal Revenue district in which is located the principal place of business or principal office or agency of the corporation.

(c) *Monthly and semimonthly returns.* Monthly and semimonthly returns required under § 40.6011(a)–1(b) must be filed in accordance with the instructions of the district director requiring that filing.

(d) *Effective date.* This section is effective April 1, 1991, for returns that relate to calendar quarters beginning after December 31, 1990, and are filed after March 31, 1991.

§ 40.6101–1 Period covered by returns.

(a) *In general.* See § 40.6011(a)–1(a)(2) for the rules relating to the period covered by the return.

(b) *Effective date.* This section is effective April 1, 1991, for returns that relate to calendar quarters beginning after December 31, 1990, and are filed after March 31, 1991.

§ 40.6109(a)–1 Identifying numbers.

(a) *In general.* Every person required under § 40.6011(a)–1 to make a return must provide the identifying number required by the instructions applicable to the form on which the return is made.

(b) *Effective date.* This section is effective April 1, 1991, for returns that relate to calendar quarters beginning after December 31, 1990, and are filed after March 31, 1991.

§ 40.6151(a)-1 Time and place for paying tax shown on return.

(a) *In general.* Except as provided by statute, the tax must be paid at the time prescribed in § 40.6071(a)-1 or 40.6071(a)-2 for filing the return, and at the place prescribed in § 40.6091-1 for filing the return.

(b) *Special rule for floor stocks tax imposed by section 4682(h).* The floor stocks tax imposed by section 4682(h) (relating to ozone-depleting chemicals) on January 1 of a calendar year, must be paid by June 30 of the year the tax is imposed. Payments must be accompanied by Form 8109, *Federal Tax Deposit Coupon*, and deposited in accordance with the instructions applicable to that form. In accordance with the instructions to Form 8109, mark the boxes on Form 8109 for "720" and "2nd Quarter."

(c) *Cross reference.* For provisions relating to use of Government depositaries, see §§ 40.6302(c)-1, 40.6302(c)-2, 40.6302(c)-3, and 40.6302(c)-4.

(d) *Effective date.* This section is effective April 1, 1991, for returns that relate to calendar quarters beginning after December 31, 1990, and are filed after March 31, 1991.

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This section lists captions contained in §§ 40.6302(c)-1, 40.6302-2(c)-1, 40.6302(c)-3, and 40.6302(c)-4.

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§ 40.6302(c)-1 Use of Government depositaries.

(a) *Overview.* This section sets forth the general rule that any person required to file a quarterly return under § 40.6011(a)-1(a)(2) must make deposits of taxes reported on the return. Rules relating to the time for making a deposit and its amount are provided, including safe harbor rules for computing the amount of a deposit. Return filers generally have an obligation to make semimonthly deposits of tax in advance of the due date of the return. Under this section, taxes that are required to be deposited on the same schedule are grouped together into classes of tax and referred to collectively as "9-day rule taxes," "30-day rule taxes," "alternative method taxes," or "14-day rule taxes." Paragraph (b)(6) of this section sets forth the general rule that the deposit of tax for a semimonthly period is due by the ninth day of the following semimonthly period (the "9-day rule"). Most of the taxes to which this part 40 relates are required to be deposited in accordance with this rule (the "9-day rule taxes"). Exceptions to the 9-day rule are set forth in other sections. Unless otherwise provided, the safe harbor rules set forth in this section apply as well to deposits of alternative method and 14-day rule taxes. Section 40.6302(c)-2 (relating to taxes imposed on ozone-depleting chemicals by section 4681) provides special rules for the time to make deposits of section 4681 taxes (the "30-day rule" and "30-day rule taxes") and the safe harbor rules for computing the amount of those deposits. Section 40.6302(c)-3 (relating to taxes imposed on communications services and air transportation by chapter 33) provides an alternative method for computing the amount of deposits of chapter 33 taxes (the "alternative method" and "alternative method taxes"). Section 40.6302(c)-4 (relating to taxes imposed on gasoline by section 4081) provides a special rule under which qualified persons may make deposits of section 4081 taxes (the "14-day rule" and "14-day rule taxes").

(b) *In general—(1) Semimonthly deposits required—*(i) *General rule.* Except as provided by statute or by paragraph (e) of this section, each person required under § 40.6011(a)-1(a)(2) to file a quarterly return must make a deposit of tax for each semimonthly period (as defined in § 40.0-1(c)) in which liability is incurred.

(ii) *Special rule for gasoline tax deposits for September.* In the case of deposits of taxes imposed by section 4081 (relating to gasoline) for the second semimonthly period in September, separate deposits are required for the period September 16th–22nd and the period September 23rd–30th.

(iii) *Treatment of taxes imposed by chapter 33.* For purposes of this part 40, a tax imposed by chapter 33 (relating to communications services and air transportation) is treated as a tax liability incurred during the semimonthly period in which that tax is collected (or, in the case of the alternative method, is considered as collected).

(2) *Definition of net tax liability.* The term "net tax liability" means the tax liability for the specified period plus or minus any adjustments allowable in accordance with the instructions applicable to the form on which the return is made.

(3) *Computation of net tax liability.* The net tax liability for a semimonthly period may be computed by dividing by two the net tax liability incurred during the calendar month that includes that semimonthly period, provided that this method of computation is used for all semimonthly periods in the calendar quarter.

(4) *Failure to comply with deposit requirements.* If a person fails to make deposits as required under this part 40, that failure may be reported to the appropriate district director and the Internal Revenue Service may withdraw the person's right to use the safe harbor rules of paragraph (c) of this section and § 40.6302(c)–2(b)(2) and (3) in computing deposits.

(5) *Amount of deposit*—(i) *In general.* The deposit of tax for each semimonthly period must be not less than the amount of net tax liability incurred during that semimonthly period. Except as provided under paragraph (c)(2) of this section and § 40.6302(c)–2(b)(2) (relating to safe harbor rules based on look-back quarter liability), no deposit is required for any semimonthly period in which no tax liability is incurred.

(ii) *Special rule for gasoline tax deposits for September.* Each deposit of taxes imposed by section 4081 (relating to gasoline) for the periods September 16th–22nd and September 23rd–30th must be not less than the amount of net tax liability incurred under section 4081 during the period. However, if net tax liability is computed on the basis of the rule provided in paragraph (b)(3) of this section, the deposit for each period must not be less than one-fourth of the September net tax liability under section 4081.

(iii) *Exceptions; cross references.* Special rules for determining the amount to deposit are provided in paragraph (c) of this section (relating to safe harbor rules), paragraph (e)(3) of this section (relating to the de minimis exception), § 40.6302(c)–2(b)(2) and (3) (relating to safe harbor rules for section 4681 taxes), and § 40.6302(c)–3(d) (relating to the alternative method for chapter 33 taxes).

(6) *Time to deposit*—(i) *In general.* The deposit of tax for any semimonthly period must be made by the ninth day of the following semimonthly period (the "9-day rule"). Thus, under the 9-day rule generally, the deposit of tax for the first semimonthly period in a month is due by the 24th day of that month and the deposit of tax for the second semimonthly period in a month is due by the 9th day of the following month.

(ii) *Exceptions; cross references.* The 9-day rule does not apply to deposits for which rules are prescribed by paragraph (b)(6)(iii) of this section (relating to deposits of gasoline tax for September), § 40.6302(c)–2 (relating to deposits of section 4681 taxes ("30-day rule taxes")), § 40.6302(c)–3 (relating to the alternative method for computing deposits of chapter 33 taxes ("alternative method taxes")), or § 40.6302(c)–4 (relating to deposits by qualified persons of section 4081 taxes ("14-day rule taxes")).

(iii) *Special rule for gasoline tax deposits for September*—(A) The deposit of taxes imposed by section 4081 (relating to gasoline) for the period September 16th–22nd is due by September 27th. If September 27th falls on a Saturday, Sunday, or legal holiday in the District of Columbia, the due date of the deposit is the immediately preceding day which is not a Saturday, Sunday, or legal holiday in the District of Columbia. Section 40.6302(c)–4 (relating to the 14-day rule) does not apply to extend the due date of this deposit.

(B) The deposit of taxes imposed by section 4081 (relating to gasoline) for the period September 23rd–30th is due as provided under paragraph (b)(6)(i) of this section or § 40.6302(c)–4.

(c) *Amount of deposit; safe harbor rules*—(1) *Applicability*—(i) *In general.* This paragraph (c) provides the safe harbor rules for deposits of 9-day rule taxes, alternative method taxes, and 14-day rule taxes.

(ii) *Separate applicability to each class of tax.* The rules of this paragraph (c) are applied separately to each class of tax. For this purpose, all 9-day rule taxes are treated as one class of tax, all alternative method taxes are treated as a second class of tax, and all 14-day rule taxes are treated as a third class of tax.

(2) *Safe harbor rule based on look-back quarter liability*—(i) *In general.* Except as provided in paragraph (c)(2)(iii) of this section, any person that made a return of tax reporting a class of tax to which this paragraph (c) applies for the second preceding calendar quarter (the "look-back quarter") is considered to have complied with the requirement of this part 40 for deposit of taxes in that class for the current calendar quarter if—

(A) The deposit of those taxes for each semimonthly period in the current calendar quarter is not less than ⅙ (16.67 percent) of the net tax liability reported for the class of tax for the look-back quarter;

(B) Each deposit is made on time;

(C) In any case in which the due date of the return is extended under § 40.6071(a)–1(a)(2) (relating to filing a single return), a special deposit (the amount of which is determined under paragraph (c)(2)(ii) of this section) is made by the last day of the first calendar month following the end of the quarter; and

(D) The amount of any underpayment of those taxes is paid by the due date of the return.

(ii) *Amount of special deposit.* The amount of the special deposit required under paragraph (c)(2)(i)(C) of this section with respect to a class of tax is not less than the lesser of—

(A) The amount by which net tax liability with respect to taxes in that class (other than taxes imposed by chapter 33) for the current calendar quarter exceeds that net tax liability for the look-back quarter; and

(B) The amount of any underpayment of taxes in that class for the current calendar quarter.

(iii) *Modification for tax rate increase*—(A) *Applicability.* The safe harbor rule of paragraph (c)(2)(i) of this section is modified for the first and second calendar quarters beginning on or after the effective date of an increase in the rate of any tax to which this part 40 applies.

(B) *Modification.* The safe harbor rule of paragraph (c)(2)(i) of this section does not apply to a class of tax for those calendar quarters unless the deposit of taxes in that class for each semimonthly period in the calendar quarter is not less than ⅙ (16.67 percent) of the tax liability the person would have had with respect to that class for the look-back quarter if the increased rate of tax had been in effect for that look-back quarter.

(C) *Effective date.* This paragraph (c)(2)(iii) is effective for deposits that relate to calendar quarters beginning after December 31, 1992.

(iv) *Modification for gasoline tax deposits for September*—(A) *Applicability.* In the case of a class of tax that includes taxes imposed by section 4081 (relating to gasoline), the safe harbor rule of paragraph (c)(2)(i) of this section is modified for deposits of tax for the second semimonthly period in September.

(B) *Modification.* The safe harbor rule in paragraph (c)(2)(i) of this section does not apply to that class of tax for the third calendar quarter unless each deposit of taxes in that class for the periods September 16th–22nd and September 23rd–30th is not less than 1/12 (8.34 percent) of the net tax liability reported for that class of tax for the look-back quarter.

(C) *Effective date.* This paragraph (c)(2)(iv) is effective for deposits that relate to calendar quarters beginning after December 31, 1992.

(3) *Safe harbor rule based on current liability*—(i) *In general.* A person is considered to have complied with the requirement of this part 40 for deposit of a class of tax to which this paragraph (c) applies for a calendar quarter if—

(A) The deposit of those taxes for each semimonthly period in the calendar quarter is not less than 95 percent of the net tax liability incurred with respect to those taxes during the semimonthly period;

(B) Each deposit is made on time; and

(C) In any case in which the due date of the return is extended under § 40.6071(a)–1(a)(2) (relating to filing a single return), a special deposit (the amount of which is determined under paragraph (c)(3)(ii) of this section) is made by the last day of the first calendar month following the end of the quarter; and

(D) The amount of any underpayment of those taxes is paid by the due date of the return.

(ii) *Amount of special deposit.* The amount of the special deposit required under paragraph (c)(3)(i)(C) of this section with respect to a class of tax is not less than the lesser of—

(A) An amount equal to 5 percent of net tax liability with respect to taxes in that class (other than taxes imposed by chapter 33) for the current calendar quarter; and

(B) The amount of any underpayment of taxes in that class for the current calendar quarter.

(iii) *Modification for gasoline tax deposits for September*—(A) *Applicability.* In the case of a class of tax that includes taxes imposed by section 4081 (relating to gasoline), the safe harbor rule of paragraph (c)(3)(i) of this section is modified for deposits for the second semimonthly period in September.

(B) *Modification.* The safe harbor rule of paragraph (c)(3)(i) of this section does not apply to that class of tax for the third calendar quarter unless—

(*1*) The deposit of taxes in that class for the period September 16th–22nd is not less than 47.5 percent of the net tax liability for section 4081 taxes for the second semimonthly period in September; and

(*2*) The total deposit of taxes in that class for the semimonthly period is not less than 95 percent of the net tax liability for that class of tax for the semimonthly period.

(iv) *Effective date.* This paragraph (c)(3) is effective for deposits that relate to calendar quarters beginning after December 31, 1992.

(d) *Remittance of deposits.* A completed Form 8109, *Federal Tax Deposit Coupon,* must accompany each deposit. The deposit must be remitted, in accordance with the instructions applicable to the form, to a financial institution authorized as a depositary for federal taxes (as provided in 31 CFR part 214) or to a Federal Reserve bank.

(e) *Exceptions*—(1) *Taxes excluded.* No deposit is required in the case of the taxes imposed by section 4042 (relating to fuel used on inland waterways), section 4161 (relating to sport fishing equipment and bows and arrows), and section 4682(h) (relating to floor stocks tax on ozone-depleting chemicals).

(2) *One-time filings.* No deposit is required in the case or any taxes reportable on a one-time filing (as defined in § 40.6011(a)–2(b)).

(3) *De minimis exception*—(i) *In general.* For any calendar quarter, no deposit is required if the net tax liability for the quarter does not exceed $2,000.

(ii) *Effective date.* This paragraph (e)(3) is effective for deposits that relate to calendar quarters beginning after December 31, 1992.

(f) *Cross references.* For provisions relating to penalties for failure to make deposit of taxes, see section 6656.

(g) *Effective date.* Except as otherwise provided, this section is effective April 1, 1991, for deposits that relate to calendar quarters beginning after March 31, 1991.

§ 40.6302(c)–2 Special rules for use of Government depositaries under section 4681.

(a) *Overview.* This section sets forth special rules for deposits of tax imposed by section 4681 (relating to ozone-depleting chemicals), including rules relating to the time to deposit and safe harbors. The general rules relating to deposits are set forth in § 40.6302(c)–1 and apply unless inconsistent with the rules set forth below.

(b) *In general*—(1) *Time to deposit.* In the case of tax imposed by section 4681 (section 4681 tax), the deposit of tax for a semimonthly period must be made by the last day of the second following semimonthly period (the "30-day rule"). Thus, under the 30-day rule generally, the deposit of tax for the first semimonthly period in a month is due by the 15th day of the following month and the deposit of tax for the second semimonthly period in a month is due by the end of the following month.

(2) *Amount of deposit; safe harbor rule based on look-back quarter liability*—(i) *In general.* Except as provided in paragraph (b)(2)(ii) of this section, any person that made a return of section 4681 tax for the second preceding calendar quarter (the "look-back quarter") is considered to have complied with the requirement of this part 40 for deposit of that tax for the current calendar quarter if—

(A) The deposit of that tax for each semimonthly period in the current calendar quarter is not less than 1/6 (16.67 percent) of the net tax liability under section 4681 reported for the look-back quarter;

(B) Each deposit is made on time; and

(C) The amount of any underpayment of that tax for the current calendar quarter is paid by the due date of the return.

(ii) *Modification for tax rate increases*—(A) *Applicability.* The safe harbor rule of paragraph (b)(2)(i) of this section is modified for the first and second calendar quarters beginning on or after the effective date of—

(*1*) An increase in the base tax amount under section 4681(b); or

(*2*) A change in the tax treatment of ozone-depleting chemicals that are described in section 4682(g).

(B) *Modification.* The safe harbor rule in paragraph (b)(2)(i) of this section does not apply for those calendar quarters unless the deposit of section 4681 taxes for each semimonthly period in the calendar quarter is not less than 1/6 (16.67 percent) of the tax liability the person would have had under section 4681 for the look-back quarter if the increased base tax amount or the change in treatment had been in effect for that look-back quarter.

(3) *Amount of deposit; safe harbor rule based on current liability*—(i) *In general.* A person is considered to have complied with the requirement of this part 40 for deposit of section 4681 tax for a calendar quarter if—

(A) The deposit of that tax for each semimonthly period in the calendar

quarter is not less than 95 percent of the net tax liability incurred under section 4681 during the semimonthly period;

(B) Each deposit is made on time; and

(C) The amount of any underpayment of that tax for the calendar quarter is paid by the due date of the return.

(ii) *Effective date.* This paragraph (b)(3) is effective for deposits that relate to calendar quarters beginning after December 31, 1992.

(c) *Effective date.* Except as otherwise provided, this section is effective April 1, 1991, for deposits that relate to calendar quarters beginning after March 31, 1991.

§ 40.6302(c)–3 Special rules for use of Government depositaries under chapter 33.

(a) *Overview.* This section sets forth an alternative method for computing the amount of deposits of taxes imposed by chapter 33, and provides rules relating to the time for making a deposit and the amount of tax to be reported on the return of tax for each quarter by persons using the alternative method. The safe harbor rules for computing deposits of tax using the alternative method and the general rules relating to deposits are set forth in § 40.6302(c)–1 and apply unless inconsistent with the rules set forth below.

(b) *Alternative method for computing deposits*—(1) *In general*—(i) *Alternative method.* Any person required to collect and pay over any tax imposed by chapter 33 may compute the amount of that tax to be deposited on the basis of amounts considered as collected (the "alternative method") instead of on the basis of actual collections of tax.

(ii) *Using more than one method to compute deposits.* A person may compute deposits of tax imposed by one or more sections of chapter 33 using the alternative method provided by this section and compute deposits to taxes imposed by other sections of chapter 33 on the basis of amounts actually collected using the 9-day rule of § 40.6302(c)–1(b)(6). For purposes of this paragraph (b)(1)(ii), the taxes imposed by section 4261(a) and (b) are treated as taxes imposed by the same section.

(2) *Applicability*—(i) *In general.* A person may use the alternative method with respect to a tax only if the person—

(A) Separately accounts for the tax in accordance with paragraph (b)(2)(ii) of this section; and

(B) Makes a return of the tax on the basis of the amount of the tax that is considered as collected.

(ii) *Separate account.* The account required under paragraph (b)(2)(i)(A) of this section (the "separate account") must reflect for each month—

(A) All items of the tax that are included in amounts billed or tickets sold to customers during the month; and

(B) Items of adjustment (including bad debts and errors) relating to the tax for prior months within the period of limitations on credits or refunds.

(iii) *Change of method.* The method of computing deposits of tax imposed by a section of chapter 33 (as described in paragraph (b)(1)(ii) of this section) may be changed only at the beginning of a calendar quarter. Before a person changes the method used to compute the amount of tax to be deposited and reported for a calendar quarter, the person must notify the Commissioner so that proper adjustments may be made in order to properly reflect that person's collections of excise tax.

(3) *Period during which tax is considered as collected.* For purposes of this section, the tax included in amounts billed or tickets sold during a semimonthly period (as defined in § 40.0–1(c)) is considered as collected during the first seven days of the second following semimonthly period. Thus, the tax included in amounts billed or tickets sold during the first semimonthly period of a calendar month is considered as collected during the period of the 1st day through the 7th day of the following month; the tax included in amounts billed or tickets sold during the second semimonthly period of a calendar month is considered as collected during the period of the 6th day through the 22nd day of the following month.

(4) *When amounts are billed.* For purposes of this section, an amount is billed on the earlier of the date the amount is received or the date a bill for the amount is rendered.

(c) *Time to deposit.* Under the alternative method, the deposit of tax for any semimonthly period must be made by the third banking day after the seventh day of that semimonthly period. Thus, for example, the deposit for the semimonthly period beginning on January 1, 1993 (relating to amounts billed between December 1st and December 15, 1992) is due by January 12, 1993, three banking days after January 7, the seventh day of the semimonthly period.

(d) *Amount of deposit.* Under the alternative method, the deposit of tax for any semimonthly period must be not less than the net amount of tax that is considered as collected during that semimonthly period. The net amount of tax that is considered as collected during the semimonthly period must be either the net amount of tax reflected in the separate account for the corresponding semimonthly period of the preceding month or one-half the net amount of tax reflected in the separate account for the preceding month.

(e) *Reporting of tax.* If a tax is deposited under the alternative method for a calendar quarter, the return of tax for the quarter must report the net amount of the tax that is considered as collected during the quarter and not the amount of the tax that is actually collected during the quarter. The amount to be reported for each month is the net amount of tax reflected in the separate account for the preceding month. For example, amounts billed in December, January, and February are considered as collected during January, February, and March, and are reported as the collections of tax for January, February, and March (the first calendar quarter). Thus, the net amount of tax reflected in the separate accounts for December, January, and February is the amount reported as collections for the first quarter.

(f) *Transitional rule for first calendar quarter of 1993*—(1) *Applicability.* This paragraph (f) applies to a chapter 33 tax if the person—

(i) Erroneously applied the "considered collected" method provided under § 49.6302(c)–1(a)(1) of this chapter in the fourth calendar quarter of 1992 by calculating deposits of that tax on the basis of amounts billed or tickets sold during the quarter rather than on the basis of taxes considered as collected during the quarter; and

(ii) Uses the alternative method provided under this section to calculate deposits and make a return of that tax for the first quarter of 1993.

(2) *Rule.*—(i) *Crediting of deposits.* If this paragraph (f) applies to a tax, any deposits of the tax computed on the basis of amounts billed or tickets sold during December 1992 are credited to the first calendar quarter of 1993.

(ii) *Return of tax for fourth calendar quarter of 1992.* If this paragraph (f) applies to a tax, the amount of the tax to be reported on the person's return for the fourth calendar quarter of 1992 must be the amount of the tax included in amounts billed or tickets sold in October and November 1992.

(3) *Example.* The application of this paragraph (f) may be illustrated by the following example:

(a) *Facts.* (i) X, a corporation, has been providing air transportation subject to tax under section 4261 (a) and (b) for several years and is required to collect and pay over these taxes. X maintains a separate account in which all items of these taxes are recorded. For calendar quarters beginning before January 1, 1993, including the fourth quarter of 1992, X erroneously applied the "considered collected" method of computing

deposits of these taxes by treating the tickets sold during each quarter as the collections for the quarter. For quarters beginning after December 31, 1992, X uses the alternative method provided by this section for computing deposits of these taxes.

(ii) For the period September 1, 1992, through December 31, 1992, X's separate account reflects the following amounts of tax:

Sept. 1st–15th	$4,000
Sept. 16th–30th	4,000
Oct. 1st–15th	7,000
Oct. 16th–31st	7,000
Nov. 1st–15th	5,000
Nov. 16th–30th	5,000
Dec. 1st–15th	9,000
Dec. 16th–31st	9,000

(iii) During the period October 1992 through January 1993, X made the following deposits:

Date	Amount
Oct. 13th	$4,000
Oct. 27th	4,000
Nov. 12th	7,000
Nov. 26th	7,000
Dec. 10th	5,000
Dec. 28th	5,000
Jan. 12th	9,000
Jan. 27th	9,000

(iv) X credited the October deposits (relating to tickets sold in September) to the third quarter of 1992 and reported the tax included in tickets sold in September as third quarter collections on the Form 720 for the third quarter. Following the same procedure, X credited the November, December, and January deposits (relating to the October, November, and December tickets sold) to the fourth quarter.

(b) *Transitional rule.* In order to use the alternative method beginning with the first calendar quarter of 1993, X must deposit and report the amount of tax that is considered as collected in the quarter rather than the amount of tax included in tickets sold during the quarter. Under paragraph (f)(2)(i) of this section, X's January deposits (relating to the tickets sold in December) will be credited to the first quarter of 1993. X must report on the Form 720 for the fourth quarter only the $24,000 of tax included in the October and November tickets sold. The amount of tax included in the tickets sold in December must be reported on the Form 720 for the first quarter of 1993.

(g) *Effective date.* This section is effective January 1, 1993, for deposits of taxes that are considered as collected after December 31, 1992. (i.e., tax with respect to amounts billed or tickets sold after November 30, 1992), and for returns of tax for quarters beginning after September 30, 1992. The provisions that apply in the case of semimonthly deposits under the considered collected method before the effective date of this section are contained in 26 CFR § 49.6302(c)–1(a)(1) (revised as of April 1, 1992).

§ 40.6302(c)–4 Special rule for use of Government depositaries under section 4081.

(a) *Overview.* This section set forth a special rule for deposits of taxes imposed by section 4081 (relating to gasoline). This section does not apply to the deposit for the period September 16th–22nd required under § 40.6302(c)–1(b)(6)(iii). The general rules, including the amount to deposit and safe harbors, are set forth in § 40.6302(c)–1 and apply unless inconsistent with the rules set forth below.

(b) *Time to deposit under the 14-day rule*—(1) In the case of taxes imposed by section 4081, a qualified person may make deposits of the tax for a semimonthly period by the fourteenth day following the semimonthly period if the deposit is made by transfer between accounts with the same Government depositary (the "14-day rule"). Thus, under the 14-day rule generally, the deposit of tax for the first semimonthly period in a month is due by the 29th day of that month and the deposit of tax for the second semimonthly period in a month is due by the 14th day of the following month.

(2) If the due date under paragraph (b)(1) of this section falls on a Saturday, Sunday, or legal holiday in the District of Columbia, the due date of the deposit is the immediately preceding day which is not a Saturday, Sunday, or legal holiday in the District of Columbia.

(c) *Qualified person defined*—(1) *In general.* The term "qualified person" means—

(i) Any independent refiner (within the meaning of section 4995(b)(4) (as in effect on January 6, 1983)); or

(ii) Any person whose average daily production of crude oil for the preceding calendar quarter did not exceed 1,000 barrels.

(2) *Related groups.* In determining whether a person's production exceeds 1,000 barrels per day, the rules of section 4992(e) (as in effect on January 6, 1983) relating to allocation within related groups shall apply. Thus, for persons who are members of the same related group (within the meaning of section 4992(e)(2)) at any time during the preceding calendar quarter, the 1,000 barrel amount will be reduced for each such person by allocating that amount among all such persons in accordance with the rules of section 4992(e).

(d) *Effective date and termination date.* This section is effective April 1, 1991, for deposits that relate to calendar quarters beginning after March 31, 1991. This section terminates on the date that section 518 of the Highway Act of 1982 terminates.

§ 40.9999–1 Examples.

The following examples illustrate the rules of this part 40.

Example 1. Luxury tax; one-time filing. (i) *Facts.* On March 20, 1991, A, an individual, purchases a new automobile outside the United States for $102,000. In April of 1991, A imports the automobile into the U.S. and uses it for personal use. At the time of importation, the automobile's retail value is $100,000. Thus, A is liable for the luxury tax imposed by section 4001. The amount of A's section 4001 tax liability is $7,000, 10% of the amount by which the $100,000 retail value exceeds $30,000. The liability is incurred in the second calendar quarter of 1991, the quarter during which the automobile is imported and used. The fuel economy of the automobile's model type is at least 22.5 miles per gallon, so that A is not liable for the gas guzzler tax imposed by section 4064. A did not import the automobile in the course of its trade or business, does not engage in any activities with respect to which tax is reportable on Form 720 in the course of a trade or business, and was not required to file a Form 720 for the preceding calendar quarter.

(ii) *Filing requirement.* A must file a return of the luxury tax on Form 720 (§ 40.6011(a)–1(a)(1)) for the second calendar quarter of 1991 (§ 40.6011(a)–1(a)(2)) reporting A's $7,000 luxury tax liability. The Form 720 is due by July 31, 1991, the last day of the first month following the calendar quarter (§ 40.6071(a)–1(a)(1)). A's Form 720 for the second calendar quarter of 1991 is a first return (§ 40.6011(a)–1(a)(2)(ii)). Because A did not import the automobile in the course of its trade or business and is not otherwise required to file a Form 720 for the calendar quarter on account of transactions in the course of a trade or business, the return is a one-time filing (§ 40.6011(a)–2(b)). As a one-time filing, A's Form 720 also constitutes a final return. Therefore, in accordance with the instructions for Form 720, A checks the box marked "Final Return."

(iii) *Payment requirement.* Because A's Form 720 is a one-time filing, A is not required to make deposits of tax (§ 40.6302(c)–1(e)(2)). Instead, A pays the $7,000 of tax with the return.

Example 2. Luxury tax; deposit requirement; safe harbor based on current liability. (i) *Facts.* On March 16, 1993, B, an individual in the business of automobile dealing, sells in a first retail sale a new automobile subject to the luxury tax imposed by section 4001. The amount of B's section 4001 tax liability is $12,000. The sale of the automobile is in the course of B's business, but B does not expect to sell any other automobiles subject to the luxury tax. B is not required to file a Form 720 for the first calendar quarter of 1993 by reason of any other activity, and has not in the past filed a Form 720.

(ii) *Filing requirement.* B must file a return of the luxury tax (§ 40.6011(a)–1(a)(1)) on Form 720 for the first calendar quarter of 1993 (§ 40.6011(a)–1(a)(2)) reporting B's $12,000 luxury tax liability. The Form 720 is due by April 30, 1993, the last day of the first month following the calendar quarter (§ 40.6071(a)–

1(a)(1)). Although B does not ordinarily engage in transactions giving rise to a luxury tax liability in B's business, the tax is due with respect to a transaction engaged in by B in the course of a trade or business. Thus, the return is not a one-time filing under § 40.6011(a)–2(b), and B must file a Form 720 for each subsequent calendar quarter until B files a final return in accordance with § 40.6011(a)–2 (§ 40.6011(a)–1(a)(2)). However, if B does not expect to incur liability for luxury tax in subsequent quarters (i.e., has permanently ceased all operations with respect to which liability for tax was incurred), B's Form 720 also constitutes a final return (§ 40.6011(a)–2(a)(1)), and B is not required to file a return reporting zero tax liability in subsequent quarters. If B's Form 720 is also a final return, B checks the box marked "Final Return" in accordance with the instructions for the return.

(iii) *Deposit requirement; in general.* Because the return is not a one-time filing, B is required to make a deposit of tax (§ 40.6302(c)–1(b)(1)(i)) for the semimonthly period in which the liability was incurred. Under § 40.6302(c)–1(b)(5)(i), B must deposit an amount not less than the net tax liability incurred during the semimonthly period, in this case $12,000. Deposits of luxury tax for a semimonthly period are due by the 9th day of the following semimonthly period (the 9-day rule under § 40.6302(c)–1(b)(6)(i)). Thus, B must deposit the $12,000 by April 9, 1993. Form 8109, *Federal Tax Deposit Coupon,* completed in accordance with the instructions to the form must accompany the deposit (§ 40.6302(c)–1(d)).

(iv) *Deposit requirement; safe harbor.* B may also meet the deposit requirement by using a safe harbor rule. B did not file a return for the second preceding calendar quarter, so B does not qualify for the safe harbor based on look-back quarter liability (§ 40.6302(c)–1(c)(2)(i)), but B may use the safe harbor based on current liability (§ 40.6302(c)–1(c)(3)(i)). Under this safe harbor, B's deposit for the semimonthly period must be at least 95% of B's net tax liability for the semimonthly period (§ 40.6302(c)–1(c)(3)(i)(A)), B's deposit must be timely (§ 40.6302(c)–1(c)(3)(i)(B)), and B must pay the amount of any underpayment of tax by the due date of the return (§ 40.6302(c)–1(c)(3)(i)(D)). B meets this safe harbor by depositing $11,400 (95% of $12,000) by April 9, 1993, and by paying $600 (the amount of the underpayment ($12,000 minus $11,400)) with the return by April 30, 1993.

Example 3. Classes of tax (diesel fuel tax, foreign insurance tax, ozone-depleting chemicals tax); books kept on a monthly basis; deposit requirement; safe harbor based on look-back quarter liability. (i) *Facts.* (1) M, a corporation, is a diesel fuel wholesaler registered under section 4101 with respect to the tax imposed by section 4091, and is therefore treated as a producer for purposes of the section 4091 tax on the sale of diesel fuel by its producer. M's net diesel fuel tax liability in the fourth quarter of 1990 was $36,000. The diesel fuel tax liability incurred by M during each calendar month in the second calendar quarter of 1991 is as follows:

Apr. 1st–30th	$10,000
May 1st–31st	15,000
Jun. 1st–30th	12,000
Total	$37,000

(2) M also purchases insurance from a foreign insurer, thereby incurring liability for the tax imposed by section 4371 on policies issued by a foreign insurer. M's net section 4371 tax liability in the fourth quarter of 1990 was $6,000. The section 4371 liability incurred by M during each calendar month in the second calendar quarter of 1991, is as follows:

Apr. 1st–30th	$0
May 1st–31st	0
June 1st–30th	6,000
Total	$6,000

(3) In addition, M imports into the United States and sells CFC–12, an ozone-depleting chemical subject to tax under section 4681. M's net ozone-depleting chemicals tax liability for the fourth calendar quarter of 1990 was $3,300. The ozone-depleting chemicals tax liability incurred by M during each calendar month in the second calendar quarter of 1991 as follows:

Apr. 1st–30th	$1,300
May 1st–31st	1,500
June 1st–30th	1,500
Total	$4,300

(4) M keeps its books on a monthly basis. M makes deposits and files Form 720 each quarter to report liability for the diesel fuel tax, the section 4371 tax, and the ozone-depleting chemicals tax. M's total net tax liability for the second calendar quarter of 1991 is $47,300.

(ii) *Filing requirement.* Because M must report ozone-depleting chemicals tax, M's Form 720 for the second calendar quarter of 1991 is due by Tuesday, September 3, 1991. The Form 720 would ordinarily be due by August 31st (the last day of the second month after the end of the calendar quarter (§ 40.6071(a)–2(a)), but August 31, 1991 is a Saturday, and Monday, September 2, 1991, is Labor Day, a legal holiday. Thus, under section 7503, M has additional time to file. If M had reported only diesel fuel and section 4371 tax liability on M's Form 720 for the second calendar quarter of 1991, the Form 720 would have been due by July 31, 1991, the last day of the first month after the end of the calendar quarter (§ 40.6071(a)–1(a)(1)). However, only one Form 720 is filed for a calendar quarter (§ 40.6071(a)–1(a)(2)). Thus, M's responsibility for reporting ozone-depleting chemicals tax allows M to delay the filing of the Form 720. Although M may delay the filing of its Form 720 until two months after the quarter ends, M must deposit the full amount of the diesel fuel tax and foreign insurance tax for the quarter by the date the return of those taxes would ordinarily be due (i.e. July 31, 1991) (§ 40.6071(a)–1(a)(2)). Under § 40.6011(a)–1(a)(2), M must continue to file a Form 720 for each calendar quarter until M files a final return in accordance with § 40.6011(a)–2.

(iii) *Deposit requirement; in general.* M is required to make a deposit of tax for each semimonthly period in which liability is incurred (§ 40.6302(c)–1(b)(1)(i)). M is required to make deposits of tax because M's liability for the quarter exceeds $2,000 (§ 40.6302(c)–1(e)(3)). Deposits of diesel fuel tax and section 4371 tax for a semimonthly period are due by the 9th day of the following semimonthly period (the 9-day rule under § 40.6302(c)–1(b)(6)(i)). The 9-day rule does not apply to ozone-depleting chemicals tax (§ 40.6302(c)–1(b)(6)(ii)). Deposits of ozone-depleting chemicals tax for a semimonthly period are due by the last day of the second following semimonthly period (the 30-day rule under § 40.6302(c)–2(b)(1)). M uses the rule provided under § 40.6302(c)–1(b)(3) to compute its net tax liability for each semimonthly period. Thus, M divides monthly net tax liability for each tax by two to determine its semimonthly liability. The amount of M's deposit for a semimonthly period under the 9-day rule must be not less than the total net tax liability for 9-day rule taxes incurred during the semimonthly period (§ 40.6302(c)–1(b)(5)(i)). The amount of M's deposit for a semimonthly period under the 30-day rule must be not less than the total net tax liability for 30-day rule taxes incurred during the semimonthly period (§ 40.6302(c)–1(b)(5)(i)). Accordingly, M meets the deposit requirement if M makes the following deposits:

Deposit due by	Amount	Class of tax
Apr. 24th	$5,000	9-day rule
May 9th	5,000	9-day rule
May 15th	650	30-day rule
May 24th	7,500	9-day rule
May 31st	650	30-day rule
June 10th	7,500	9-day rule
June 17th	750	30-day rule
June 24th	9,000	9-day rule
July 1st	750	30-day rule
July 9th	9,000	9-day rule
July 15th	750	30-day rule
July 31st	750	30-day rule

The deposit due on Monday, June 10th would ordinarily be due on June 9th, but June 9, 1991, is a Sunday, Thus, under section 7503, M has additional time to make the required deposit. Similarly, the deposits otherwise due on June 15th and June 30th are due under section 7503 on the next succeeding day that is not a Saturday or Sunday.

(iv) *Deposit requirements; safe harbor.* M may also meet the deposit requirement by using a safe harbor rule. M uses the safe harbor based on look-back quarter liability for both the diesel fuel and section 4371 taxes (9-day rule taxes) and the ozone-depleting chemicals tax (30-day rule tax). This is permitted because M filed a return reporting both of those classes of tax for the fourth quarter of 1990 (the look-back quarter under §§ 40.6302(c)–1(c)(2)(i) and 40.6302(c)–2(b)(2)(i)). The safe harbor rules apply separately to 9-day rule and 30-day rule taxes (§ 40.6302(c)–1(c)(1)(ii)). Therefore, M must compute the amount to deposit separately for each class of tax.

(1) M's combined net tax liability in the look-back quarter for 9-day rule taxes was $42,000. M computes the amount to deposit for 9-day rule taxes based on M's combined look-back quarter liability for those taxes. Accordingly, M meets the safe harbor for 9-day rule taxes by—

(A) Depositing $7,000 (⅙ of $42,000, M's combined net 9-day rule tax liability for the fourth calendar quarter of 1990 (§ 40.6302(c)-1(c)(2)(i)(A))) by the due dates specified above for 9-day rule taxes (§ 40.6302(c)-1(c)(2)(i)(B)); and

(B) Depositing $1,000 (the amount by which the net 9-day rule tax liability for the second calendar quarter of 1991 ($43,000) exceeds the net 9-day rule tax liability for the look-back quarter ($42,000) by July 31, 1991 (§ 40.6302(c)-1(c)(2)(i)(C)).

(2) M's net tax liability in the look-back quarter for 30-day rule taxes was $3,300. Accordingly, M meets the safe harbor for 30-day rule taxes by—

(A) Depositing $550 (⅙ of $3,300, M's ozone-depleting chemicals tax liability for the fourth calendar quarter of 1990 (§ 40.6302(c)-2(b)(2)(i)(A))) by the due dates specified above for 30-day rule taxes (§ 40.6302(c)-2(b)(2)(i)(B)); and

(B) Paying $1,000 (the amount by which the net 30-day rule tax liability for the second calendar quarter of 1991 ($4,300) exceeds the net 30-day rule tax liability for the look-back quarter ($3,300)) by September 3, 1991, the due date of the return (§ 40.6302(c)-2(b)(2)(i)(C)).

Example 4. Air transportation tax; deposits and reporting based on alternative method. (i) *Facts.* (1) P, a corporation engaged in providing air transportation subject to tax under section 4261 (a) and (b), is responsible for collecting and paying over that tax. P maintains a separate account in which all items of air transportation tax included in tickets sold are recorded and makes returns of tax on the basis of amounts considered as collected. P does not compute the amount of deposits of tax on the basis of actual collections. P files Form 720 on a quarterly basis to report the tax. P reported $54,000 of section 4261 (a) and (b) tax for the third calendar quarter of 1992. P is not required to report any other taxes on its Form 720.

(2) For the last month of 1992 and the first two months of 1993, P's separate account reflects the following:

Tickets sold during	Tax
Dec. 1st-15th	$11,000
Dec. 16th-31st	11,000
Jan. 1st-15th	7,500
Jan. 16th-31st	7,500
Feb. 1st-15th	9,500
Feb. 16th-28th	9,500
Total	$56,000

(3) The tax is considered as collected during the first week of the second semimonthly period following the semimonthly period in which the tickets were sold to the customers. Accordingly, the tax included in tickets sold during the period December 1992 through February 1993 is considered as collected as follows:

For tickets sold during	Tax is considered as collected during
Dec. 1st-15th	Jan. 1st-7th
Dec. 16th-31st	Jan. 16th-22nd
Jan. 1st-15th	Feb. 1st-7th
Jan. 16th-31st	Feb. 16th-22nd
Feb. 1st-15th	Mar. 1st-7th
Feb. 16th-28th	Mar. 16th-22nd

(ii) *Filing requirement.* Because P is responsible for collecting and paying over air transportation tax, P must file the return of that tax (§ 40.6011(a)-1(a)(3)). P's Form 720 for the first calendar quarter of 1993 is due by Tuesday, June 1, 1993. P's Form 720 would ordinarily be due by May 31, 1993 (the last day of the second month after the end of the calendar quarter (§ 40.6071(a)-2(a)), but May 31, 1993, is Memorial Day, a legal holiday. Thus, under section 7503, P has additional time to file. Under § 40.6011(a)-1(a)(2), P must continue to file a Form 720 for each calendar quarter until P files a final return under § 40.6011(a)-2.

(iii) *Deposit requirement; in general.* Because P maintains the separate account required under § 40.6302(c)-3(b)(2)(ii) and makes returns of tax on the basis of amounts of tax considered as collected, P may use the alternative method to compute the amount of tax to be deposited (§ 40.6302(c)-3(b)(2)). P is required to make a deposit of tax for each semimonthly period in which tax is considered as collected (§ 40.6302(c)-1(b)(1)(iii)). P must deposit an amount not less than the net amount of tax that is considered as collected during the semimonthly period (§ 40.6302(c)-3(d)). Under the alternative method, deposits of air transportation tax are due by the third banking day after the end of the week during which the tax is considered as collected (§ 40.6302(c)-3(c)). Accordingly, P meets the deposit requirement for the first quarter of 1993 if P makes the following deposits:

By Jan. 12th	$11,000
By Jan. 27th	11,000
By Feb. 10th	7,500
By Feb. 25th	7,500
By Mar. 10th	9,500
By Mar. 25th	9,500

(iv) *Deposit requirement; safe harbor.* P may also meet the deposit requirement by using a safe harbor rule (§ 40.6302(c)-1(c)(1)(i)). P uses the safe harbor based on look-back quarter liability. This is permitted because P filed a return reporting tax imposed on air transportation under section 4261 (a) and (b) for the third quarter of 1992 (the look-back quarter under § 40.6302(c)-1(c)(2)(i)). P meets this safe harbor by—

(1) Depositing $9,000 (⅙ of $54,000, P's net tax liability for the third calendar quarter of 1992 (§ 40.6302(c)-1(c)(2)(i)(A)) by the due dates specified above (§ 40.6302(c)-1(c)(2)(i)(B)); and

(2) Paying $2,000 (the amount by which the net tax liability for the first calendar quarter of 1993 ($56,000) exceeds the net tax liability for the look-back quarter ($54,000)) by June 1, 1993, the due date of the return (§ 40.6302(c)-1(c)(2)(i)(D)).

(v) *Reporting requirement.* Under the alternative method, P's Form 720 for the first quarter of 1993 reports the $56,000 of air transportation taxes considered as collected during that quarter (§ 40.6302(c)-3(e)).

PART 43—EXCISE TAX ON TRANSPORTATION BY WATER

Par. 2. Part 43 is amended as follows:

1. The authority citation is revised to read:

Authority: 26 U.S.C. 7805.

2. Section 43.0-1 is revised to read:

§ 43.0-1 Introduction.

The regulations in this part 43 are designated "Excise Tax on Transportation by Water." The regulations relate to the taxes on transportation by water imposed by section 4471 of the Internal Revenue Code. See part 40 of this chapter for regulations relating to returns, payments, and deposits of taxes imposed by section 4471.

3. Sections 43.6011(a)-1T, 43.6011(a)-2T, 43.6071(a)-1T, 43.6091-1T, 43.6101-1T, 43.6109(a)-1T, 43.6151(a)-1T, and 43.6302(c)-1T are removed.

PART 44—TAXES ON WAGERING; EFFECTIVE JANUARY 1, 1995

Par. 3. Part 44 is amended as follows:

1. The authority citation is revised to read:

Authority: 26 U.S.C. 7805.

2. Section 44.4402-1T is redesignated as § 44.4402-1 and the word "(temporary)" is removed from the section heading.

3. The authority citation following § 44.6091-1 is removed.

PART 46—EXCISE TAX ON POLICIES ISSUED BY FOREIGN INSURERS AND OBLIGATIONS NOT IN REGISTERED FORM

Par. 4. Part 46 is amended as follows:

1. The authority citation is revised to read:

Authority: 26 U.S.C. 7805.

2. Section 46.0-1T is removed and § 46.0-1 is added to read:

§ 46.0-1 Introduction.

The regulations in this part 46 relate to the taxes on policies issued by foreign insurers imposed by chapter 34 of the Internal Revenue Code and the tax on the issuer of registration-required obligations not issued in registered form imposed by chapter 39 of the Internal Revenue Code. See part 40 of this chapter for regulations relating to

returns, payments, and deposits of taxes imposed by chapters 34 and 39.

3. The authority citation at the beginning of subpart B is removed.

4. The authority citation at the end of § 46.4371-4 is removed.

5. Subparts D and E are removed.

PART 48—MANUFACTURERS AND RETAILERS EXCISE TAXES

Par. 5. Part 48 is amended as follows:

1. The general authority citation is revised to read:

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

§ 48.0-1T [Removed]

2. Section 48.0-1T is removed and § 48.0-1 is added to read:

§ 48.0-1 Introduction.

The regulations in this part 48 are designated "Manufacturers and Retailers Excise Tax Regulations." The regulations relate to the excise taxes imposed by chapter 31 and 32 of the Internal Revenue Code. Chapter 31 (relating to retail taxes) imposes tax on certain luxury items, special fuels, fuel used in commercial transportation on inland waterways, and heavy trucks and trailers. Chapter 32 (relating to manufacturers taxes) imposes tax on gas guzzler automobiles, highway-type tires, gasoline, diesel and aviation fuel, coal, certain vaccines, and sporting goods. Although chapter 32 also imposes a tax on firearms, this tax is under the jurisdiction of the Bureau of Alcohol, Tobacco, and Firearms. See part 40 of this chapter for regulations relating to returns, payments, and deposits of taxes imposed by chapters 31 and 32 (other than the tax on firearms imposed by section 4181).

3. The authority citation following § 48.4041-2T is removed.

§ § 48.4042-2(d) and 48.4051-1T [Removed]

4. Sections 48.4042-2(d) and 48.4051-1T are removed.

5. The heading for subpart H is revised to read:

Subpart H—Motor Vehicles, Tires, Tubes, Tread Rubber, and Gasoline

6. The undesignated center heading preceding § 48.4091 is removed.

§ § 48.4091, 48.4091-0, 48.4091-1, 48.4091-2, 48.4091-3, 48.4091-4, 48.4091-5, 48.4092-1, 48.4093-1 and 48.4093-2 [Removed]

7. Sections 48.4091, 48.4091-0, 48.4091-1, 48.4091-2, 48.4091-3, 48.4091-4, 48.4091-5, 48.4092-1, 48.4093-1, and 48.4093-2 are removed.

§ 48.4121-1 [Amended]

8. Section 48.4121-1 is amended by removing paragraph (e).

9. The heading for subpart I is added to read:

Subpart I—Coal

10. Section 48.4121-1 is removed from subpart H and added to subpart I.

11. The heading for subpart K is revised to read:

Subpart K—Sporting Goods

12. The undesignated center heading preceding § 48.4161(a) is removed.

§§ 48.4181-1, 48.4181-2, 48.4182-1 and 48.4182-2 [Removed]

13. Sections 48.4181-1, 48.4181-2, 48.4182-1, and 48.4182-2 are removed.

§§ 48.6011(a)-1, 48.6011(a)-2, 48.6071(a)-1, 48.6081(a)-1, 48.6091-1, 48.6101-1, 48.6109-1, 48.6151-1, 48.6151-1T, 48.6161(a)-1, 48.6302(c)-1, 48.6302(c)-2, 48.6402(a)-1, and 48.6404(a)-1 [Removed]

14. Sections 48.6011(a)-1, 48.6011(a)-2, 48.6071(a)-1, 48.6081(a)-1, 48.6091-1, 48.6101-1, 48.6109-1, 48.6151-1, 48.6151-1T, 48.6161(a)-1, 48.6302(c)-1, 48.6302(c)-2, 48.6402(a)-1, and 48.6404(a)-1 are removed.

PART 49—FACILITIES AND SERVICES EXCISE TAXES

Par. 6. Part 49 is amended as follows:

1. The authority citation is revised to read:

Authority: 26 U.S.C. 7805.

2. Section 49.0-1T is removed and § 49.0-1 is added to read:

§ 49.0-1 Introduction.

The regulations in this part 49 are designated "Facilities and Services Excise Taxes." The regulations relate to the taxes on communications and transportation by air imposed by chapter 33 of the Internal Revenue Code. See part 40 of this chapter for regulations relating to returns, payments, and deposits of taxes imposed by chapter 33.

3. Section 49.4251-2(c) is revised to read:

§ 49.4251-2 Rate and application of tax.

* * * * *

(c) *Liability for, and return of, tax.* The taxes imposed by section 4251 are payable by the person paying for the services rendered, and must be paid to the person rendering the services who is required to collect the tax and return and pay over the tax.

§ 49.4271-1T [Redesignated as § 49.4271-1 and Amended]

4. Section 49.4271-1T is amended by:

a. Redesignating the section as § 49.4271-1 are removing the word "(temporary)" from the section heading.

b. Removing the authority citation at the end of the section.

5. The heading for subpart E is amended by removing the word "[Reserved]".

6. Section 49.4271-1 is removed from subpart D and added to subpart E.

Subparts F and G [Removed]

7. Subparts F and G are removed.

PART 51—[REMOVED]

Par. 7. Part 51 is removed.

PART 52—ENVIRONMENTAL TAXES

Par. 8. Part 52 is amended as follows:

1. The authority citation is revised to read:

Authority: 26 U.S.C. 7805.

Section 52.4682-3 also issued under 26 U.S.C. 4682(c)(2).

§ 52.0-1T [Removed]

2. Section 52.0-1T is removed and § 52.0-1 is added to read:

§ 52.0-1 Introduction.

The regulations in this part 52 are designated "Environmental Tax Regulations." The regulations relate to the environmental taxes imposed by chapter 38 of the Internal Revenue Code. See part 40 of this chapter for regulations relating to returns, payments, and deposits of taxes imposed by chapter 38.

3. Section 52.4681-1(b)(4) is revised to read:

§ 52.4681-1 Taxes imposed with respect to ozone-depleting chemicals.

* * * * *

(b) * * *

(4) *Returns, payments, and deposits of tax.* Rules requiring returns reporting the taxes imposed by sections 4681 and 4682 are contained in part 40 of this chapter. Part 40 of this chapter also provides rules relating to the use of Government depositaries and to the time for filing returns and making payments of tax.

* * * * *

§§ 52.6011(a)-1T, 52.6011(a)-2T, 52.6071(a)-1, 52.6071(a)-2T, 52.6071(a)-3T, 52.6091-1T, 52.6101-1T, 52.6109(a)-1T, 52.6151(a)-1T, 52.6302(c)-1, and 52.6302(c)-2T [Removed]

4. Sections 52.6011(a)-1T, 52.6011(a)-2T, 52.6071(a)-1, 52.6071(a)-2T, 52.6071(a)-3T, 52.6091-1T, 52.6101-1T.

52.6109(a)-1T, 52.6151(a)-1T, 52.6302(c)-1, and 52.6302(c)-2T are removed.

PART 145—TEMPORARY EXCISE TAX REGULATIONS UNDER THE HIGHWAY REVENUE ACT OF 1982 (PUB. L. 97-424)

Par. 9. Part 145 is amended as follows:

1. The authority citation is revised to read:

Authority: 26 U.S.C. 7805.

Sections 145.4051-1 and 145.4052-1 also issued under 26 U.S.C. 4051 and 4052.

§ 145.9000-1 [Removed]

2. Section 145.9000-1 is removed.

PART 148—CERTAIN EXCISE TAX MATTERS UNDER THE EXCISE TAX TECHNICAL CHANGES ACT OF 1958

Par. 10. Part 148 is amended as follows:

1. The authority citation is revised to read:

Authority: 26 U.S.C. 7805.

§§ 148.1-3 and 148.1-4 [Removed]

2. Sections 148.1-3 and 148.1-4 are removed.

PART 150—[REMOVED]

Par. 11. Part 150 is removed.

Appendix to Subchapter D—[Removed]

Par. 12. The appendix to subchapter D is removed.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 13. Part 602 is amended as follows:

1. The authority citation continues to read:

Authority: 26 U.S.C. 7805.

2. Section 602.101(c) is amended by:

a. Removing the following entries from the table:

§ 602.101 OMB control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control number
* * * *	*
46.6011(a)-1	1545-0023
46.6011(a)-2	1545-0023
46.6061-1	1545-0023
46.6065-1	1545-0023
46.6071(a)-1	1545-0023 1545-0257
46.6109-1	1545-0003
46.6151-1	1545-0257
* * * *	*
48.4051-1T	1545-0143
* * * *	*
48.4091-0	1545-0725
48.4091-1	1545-0725
48.4091-2	1545-0725
48.4091-3	1545-0725
48.4091-4	1545-0725
48.4091-5	1545-0725
48.4092-1	1545-0725
48.4093-1	1545-0725
* * * *	*
48.4181-1	1545-1076
48.4181-2	1545-0723
48.4182-1	1545-0023 1545-0723
48.4182-2	1545-0723
* * * *	*
48.6011(a)-1	1545-0723
48.6011(a)-2	1545-0023 1545-0723
48.6071(a)-1	1545-0257 1545-0723
48.6081(a)-1	1545-0723
48.6091-1	1545-0723
48.6101-1	1545-0723
48.6109-1	1545-0023 1545-0723
48.6151-1	1545-0257
48.6151-1T	1545-0143
48.6302(c)-1	1545-0023
* * * *	*
49.6011(a)-1	1545-0029
49.6011(a)-2	1545-0023
49.6109-1	1545-0029
49.6151-1	1545-0257
49.6302(c)-1	1545-0257
51.4988-2	1545-0222 1545-0226
51.4993-1	1545-0230
51.4993-2	1545-0230
51.4993-3	1545-0230
51.4993-4	1545-0230
51.4994-1	1545-0224 1545-0226 1545-0912
51.4995-1	1545-0230
51.4995-2	1545-0230 1545-0912
51.4995-3	1545-0023 1545-0257
51.4995-4	1545-0023 1545-0230
51.4995-5	1545-0230
51.4996-1	1545-0023
51.4997-1	1545-0222 1545-0224 1545-0225
51.4997-2	1545-0222 1545-0224 1545-0230
51.6402-1	1545-0226
* * * *	*
52.6302(c)-1	1545-0023 1545-0257
* * * *	*
148.1-3	1545-0014
148.1-4	1545-0230
150.4969-1	1545-0230
150.4993-1	1545-0230
150.4995-2	1545-0230
150.4995-3	1545-0023 1545-0257
150.4995-4	1545-0023 1545-0230
150.4995-5	1545-0230
150.4996-1	1545-0023
150.4997-1	1545-0222
150.4997-2	1545-0222 1545-0224
150.6050C-1	1545-0222
150.6076-1	1545-0222
150.6232(c)-1	1545-0224
150.6232(c)-2	1545-0224
150.6232(c)-3	1545-0224
150.6232(c)-4	1545-0224
150.6232(c)-5	1545-0224
150.6402-1	1545-0226 1545-0678 1545-0685
* * * *	*

b. Adding the following entries to the table:

§ 602.101 OMB control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control number
* * * *	*
40.6302(c)-3(b)(2)(ii)	1545-1296
40.6302(c)-3(b)(2)(iii)	1545-1296
40.6302(c)-3(e)	1545-1296
40.6302(c)-3(f)(2)(ii)	1545-1296
* * * *	*
46.4371-4	1545-0023
* * * *	*
49.4271-1(d)	1545-0685
* * * *	*

Dated: September 29, 1992.

Shirley D. Peterson,

Commissioner of Internal Revenue.

Fred T. Goldberg, Jr.,

Assistant Secretary of the Treasury.

[FR Doc. 92-25429 Filed 10-21-92; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Parts 67 and 179

Placement of Reserve Component Units in Local Communities and the Use of Contractor and DoD Resources for Maintenance of Materiel

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: The Department of Defense removes 32 CFR parts 67 and 179 concerning placement of reserve component units in local communities and the use of contractor and DoD resources for maintenance of materiel. These parts have served the purpose for which they issued and are no longer valid.

EFFECTIVE DATE: October 22, 1992.

FOR FURTHER INFORMATION CONTACT: L.M. Bynum, Correspondence and Directives Directorate, 1155 Defense Pentagon, Washington, DC 20301-1155, telephone 703-697-411.

List of Subjects

32 CFR Part 67

Armed forces and reserves, Intergovenmental relations.

32 CFR Part 179

Aircraft, Armed forces; Arms and munitions, Government procurement, Government property management, Vessels.

PART 67—[Removed]

PART 179—[Removed]

Accordingly, by the authority of 10 U.S.C. 136, 32 CFR parts 67 and 179 are removed.

Dated: October 16, 1992.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 92-25574 Filed 10-21-92; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD1 92-125]

Safety Zone; Boston Main Channel, Boston Inner Harbor, Boston, MA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone in the waters of Boston Harbor between the Subaru Terminal in South Boston and Bird Island Flats (the southwest corner of Logan Airport) in East Boston. Vessel movements within this safety zone are permitted under the criteria set forth in this regulation. This action is necessary to protect the maritime community from the possible dangers and hazards to navigation associated with the extensive blasting and dredging operations which are being conducted in conjunction with the construction of the Third Harbor Tunnel.

EFFECTIVE DATE: This regulation is effective on October 1, 1992 at 12:02 a.m. and terminates at 12:01 a.m., May 1, 1993.

ADDRESSES: The docket for this rulemaking is available for inspection or copying at room 234, U.S. Coast Guard Marine Safety Office, 455 Commercial Street, Boston, MA 02109-1045, between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Chris Oelschlegel, USCG Marine Safety Office Boston, at (167) 223-3000.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Lieutenant Commander Chris Oelschlegel, project officer for the Captain of the Port Boston, and Lieutenant Commander Jeffrey Stieb, project attorney, First Coast Guard District Legal Office.

Regulatory History

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Third Harbor Tunnel marine construction activities have been ongoing in the Boston Main Channel, Boston Inner Harbor since January 1992. Dredging and marine underwater blasting operations were supposed to have been completed, initially, in March 1992. In support of the construction, the Coast Guard established a safety zone in the Boston Main Channel (57 FR 347). Due to unforeseen delays in the start-up of construction activity, the Coast Guard, at the request of the Massachusetts Highway Department, the project coordinators, extended the effective date of the rulemaking (57 FR 14486), until 12:01 a.m. July 1, 1992. On June 24, 1992, the Coast Guard received another request from the Massachusetts Highway Department asking that the safety zone in effect for Boston Harbor be extended again. The Coast Guard implemented a new safety zone (57 FR 30648) that was effective from July 1, 1992 and terminates it at 12:01 a.m. October 1, 1992. All drilling, blasting and dredging activity was suspended during the Sail Boston activities from 1-17 July, 1992. Upon resuming dredging activities, the contractor encountered "high spots" in areas of blasted bedrock in the main channel. These spots required re-blasting by the contractor. Additional delays were encountered in removing large amounts of aggregate to the Spectacle Island disposal site from the South Boston tunnel transition zone/dike areas in preparation for final blasting. On September 24, 1992 the Coast Guard received yet another request from the Massachusetts Highway Department asking that the safety zone once again be extended through May 1, 1993. This request was made in order to facilitate final safe completion of all drilling, blasting and dredging portions of the Third Harbor Tunnel project.

The Coast Guard wishes to work cooperatively with the Massachusetts Highway Department and to support the needs of the Third Harbor Tunnel construction project to the greatest extent possible in order to ensure safety. Accordingly, the Coast Guard will allow the current safety zone to lapse and, at 12:02 a.m., October 1, 1992, will implement a new safety zone to remain in effect until 12:01 a.m. May 1, 1993. During this seven month period the Coast Guard will reassess the status of Third Harbor Tunnel marine drilling, blasting and dredging and determine whether the need for a safety zone still exists.

Because contractors for this project intend now to continue dredging and blasting operations in the Boston Main Channel after October 1, 1992, the Coast Guard will establish a safety zone in Boston Harbor to support the contractor's change in plans. The wording of the text of this temporary final rule parallels the text of the safety zone as it appears in the **Federal Register** of July 10, 1992. The Coast Guard believes the port community is well acquainted with the restrictions on vessel traffic that are already in place and is best served by not imposing any additional changes that would confuse the matter. The Coast Guard has been in close contact with waterway users (pilots, commuter boat operators) throughout the period of this safety zone. There have been no significant disruptions or vessel delays reported to the Coast Guard as related to the Third Harbor Tunnel blasting/dredging operations.

Publishing an NPRM and delaying the effective date of this rulemaking would be contrary to the public interest since immediate action is needed to prevent injury to the persons and vessels involved.

Background and Purpose

The U.S. Coast Guard is establishing a safety zone to enhance vessel safety during the extensive construction project for the Third Harbor Tunnel being undertaken by the contractors Morrison/Knudsen-Interbeton-White. The tunnel is part of a larger multi-year effort aimed at reducing automobile congestion within the city of Boston. The contractors anticipate finishing construction of the tunnel in mid-1994. The initial stage of construction involves

blasting and dredging. The Coast Guard views the blasting portion of the construction as a concern for mariners, while contractors blast bedrock located beneath the subsurface of the main channel on a line between the southwest corner of Logan Airport in East Boston and the Subaru Pier in South Boston. The purpose of the blasting is to form a trench across the subsurface of the main channel into which prefabricated sections of the tunnel can be placed. The blasting portion of the tunnel construction has not proceeded on schedule due to unforeseen delays. Termination of blasting on October 1, 1992, will cause an undue and costly delay in the overall tunnel construction. It is therefore necessary to implement a safety zone until 12:01 a.m. May 1, 1993, to ensure that the blasting and dredging operations that will occur in Boston Harbor until then are conducted safely.

A typical marine underwater blast will cause a 2–3 foot wave on the surface of the water in the immediate vicinity. No rock will be sprayed into the air due to the blast. The vibration shock of underwater blasting can potentially damage the hulls of vessels located too close to the operation. This zone will ensure that vessels transiting in the vicinity of the blasting area will maintain a safe distance to eliminate this risk. The safety zone also ensures that communication is established between the contractors and vessels transiting the waters within the safety zone. With proper communication among all parties, the contractor is assured of having ample time to comply with a request to move his operation temporarily to allow a vessel to navigate through the zone safely.

Description of the Blasting

The blasting operation will be taking place 24 hours a day, 7 day per week. No blasting will take place when there is restricted visibility (the contractor must have ½ mile visibility beyond the safety zone). Before each blast, personnel onboard the barge CGA–100 (100 feet × 52 feet × 12 feet) will drill ten holes (the width of the tunnel) and load the holes with the explosives. After retreating to a safe distance, the contractors will remotely detonate the explosives in the holes and then move ten feet down (across channel) to the next set of holes to be drilled. Operations will begin first on the East Boston side of the zone and move toward the South Boston side.

Description of the Dredging

The dredging operation will be taking place 24 hours per day, 7 days per week. In preparation for blasting operations, contractors will dredge the soft bottom of the subsurface of areas to be blasted until they reach bedrock. Performing the dredging will be the SUPERSCOOP (a clamshell dredge—225 feet × 75 feet), working with four bin barges and two offshore barges into which dredged spoils will be placed. In general, the SUPERSCOOP will be positioned ahead of the CGA–100, also working from East to South Boston. During blasting operations, these vessels too will retreat to a safe distance from the blast. If there is a "high spot" of dredged material on the sea bed resulting from the blast, the SUPERSCOOP will swing around and remove that material immediately after the blast. After all blasting is complete, the SUPERSCOOP will conduct a final dredging pass across the channel.

Obstruction of the Channel

The CGA–100 will be positioned in line with the shipping channel. When in the channel, it will cause an obstruction of 60–65 feet (the width of the barge (52 feet) + 10–15 feet overhang from drills on the edge of the barge). The CGA–100 will be held in place by six anchors, which will extend outward 500 feet in all directions. Each anchor will be marked with a white buoy equipped with radar reflectors and lighted at night with blinking white lights (60 flashes per minute). The navigational hazard associated with the anchoring system can be minimized, however, as the anchor wires can be "dropped" and made to lie on the bottom within 10 minutes after contractor's receipt of a notification of an impending vessel movement. Accordingly, it is essential that mariners passing between the barge and the anchor buoys communicate with the contractors to ensure that the anchor wires are "dropped" in order to minimize this navigational hazard. The dredge SUPERSCOOP will also be positioned parallel to the channel. When in the channel, it will cause an obstruction of about 130 feet (the width of the SUPERSCOOP (75 feet) + (48 feet)—the width of the largest scows receiving dredged material (connected to the dredge by wire cables)). The SUPERSCOOP will be held in place by four anchors extending outward 500 feet in all directions, with the same "drop" capability as the blasting barge. Each anchor will be marked similarly with white buoys equipped with radar reflectors and blinking white lights (60 flashes per minute). Again, communications are essential for mariners passing between the dredge and its anchor buoys to ensure that the anchor wire can be "dropped" by the contractor if necessary. Though the dredge and the barge are being operated by the same contractor, all communications should be initiated with the SUPERSCOOP since that vessel has control over the entire project.

Notification of Blasting

Two hours, one hour, forty-five minutes, thirty minutes, and fifteen minutes prior to blasting, the contractors will broadcast on Channels 9, 13, and 16 VHF–FM their intention to conduct blasting operations. Approximately fifteen minutes before a blast round is to be fired, the blaster will sound four clearly audible prolonged (4–6 seconds) horn/whistle signals to indicate that the blast area is being secured. Two work boats will be available for security of the immediate blast area. One boat will be placed approximately 1,500 feet west of the blast area. The second boat will be placed 1,500 feet east of the blast area. These boats will patrol and warn any vessel traffic of the impending blast. When the area is determined to be secure by the contractor, the blaster will signal with four clearly audible short (approximately one second duration) horn/whistle signals to indicate that the blast is going to be fired in one minute. The blast round will then be fired unless there is a last minute breakdown in the security of the blast area. If a vessel not involved with the blasting operation is within the safety zone at this point, the contractor will not blast. Immediately following the blast, the blaster will inspect the area and determine that it is clear to resume operations. At this point an all clear signal (4–6 second horn/whistle signal) will be given.

This safety zone is necessary to protect vessel traffic operating in Boston Harbor from the hazards associated with the blasting operations and hazards to navigation due to the presence of contractor vessels in proximity to the Boston Main Channel, Boston Inner Harbor. Notice of this safety zone will be published in the Local Notice to Mariners and Safety Marine Information Broadcasts. Entry into this safety zone during blasting operations will be prohibited, unless authorized by the Captain of the Port Boston.

Regulatory Evaluation

This rule is not major under Executive Order 12291 on Federal Regulation and not significant under Department of Transportation Regulatory Policies and Procedures (44 CFR 11034; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a Regulatory Evaluation is unnecessary. Costs to the shipping industry from these regulations, if any,

will be minor and have no significant adverse financial effect on vessel operators. Deep draft vessel traffic, fishing vessels, and commuter or tour boats may experience slight delays (a few minutes) in departures or arrivals while waiting for the blast to occur; however, mariners can time their transit through the safety zone with contractors to minimize delays by communicating with the contractors using bridge to bridge marine radios.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the Coast Guard must consider whether this rule 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 a "small businesses concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Since this action will cause only slight, intermittent delays in transits by deep draft vessel traffic, fishing vessels, and commuter or tour boats and scheduling of transits and blasting operations can be adjusted as necessary in most cases to accommodate all parties, no significant adverse economic impact should result from this rulemaking. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of entities.

Collection of Information

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

Federalism

The Coast Guard has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 12612, and has determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded under section 2.B.2.C of Commandant Instruction M16475.1B, this rulemaking is categorically excluded from further environmental documentation. An Environmental Impact Statement on construction of the Third Harbor Tunnel has already been issued by the Federal Highway Administration. In fact, implementation of this rulemaking should help to reduce the risk of collision or other marine accidents. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under "**ADDRESSES.**"

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

Regulation: In consideration of the foregoing, part 165 of title 33, Code of Federal Regulations is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5.

2. A new temporary section 165.T01-125 is added to read as follows:

§ 165.T01-125 Safety Zone: Boston Main Channel, Boston Inner Harbor, Boston, MA.

(a) Location. The following area is a safety zone: All waters of the Boston Inner Harbor within an area described between two lines: One boundary line on the east extending across the Boston Main Channel from the easternmost of the Massport North Jetty dock, South Boston, to the landside point in East Boston abeam Boston Main Channel; Lighted Buoy "12"; and another boundary line on the west extending across the Boston Main Channel from the northwest corner of the Boston Fish Pier, South Boston to Cashman's drydock, East Boston.

(b) Regulations. (1) Except with permission of the Captain of the Port, all vessels must:

(i) Remain outside the safety zone (i.e., not operate or anchor within the area between the two boundary lines for the safety zone) once the dredge SUPERSCOOP has given the final warning that a blast will occur (four clearly audible short, one second duration, horn/whistle signals one minute prior to the blast) and remain outside of the zone until the dredge SUPERSCOOP has given the all-clear signal (a horn/whistle signal sounded for a prolonged, 4-6 seconds duration). Vessels moored at the Massport North Jetty dock in South Boston, Chashman's drydock in East Boston, or the north face of the Boston Fish Pier in South Boston may remain inside the safety zone provided they are securely moored.

(ii) Maintain at all times at least 100 yards distance from the blasting barge CGA-100, the dredge SUPERSCOOP, and all attending scows or tugs made fast to the SUPERSCOOP or CGA-100.

(iii) Maintain at all times a safe distance from anchors and anchor buoys deployed by the blasting barge CGA-100 and the dredge SUPERSCOOP.

(iv) Communicate with the SUPERSCOOP (the vessel in charge of the contractor's operation) on Channels 9, 13, or 16 VHF-FM to arrange for safe passage when the CGA-100 or SUPERSCOOP (or their anchors) are in the Boston Main Channel; and if requesting barge CGA-100 and dredge SUPERSCOOP to slack anchor lines, provide at least 10 minutes notification of vessel transit to allow the barge and dredge to slack their anchor lines.

(v) Provide the contractor at least 4 hours advance notice (i.e., Channels 9, 13, or 16 VHF-FM or cellular phone (617-966-1670)) to move/suspend his operations in any case where the transiting vessel operator believes the safe passage of his vessel is jeopardized by the presence/operation of the CGA-100 or SUPERSCOOP.

(2) Except with the permission of the Captain of the Port, vessels involved with the Third Harbor Tunnel blasting and dredging operation must:

(i) CGA-100 and SUPERSCOOP: Mark anchors with white buoys, lighted at night with a white light (60 flashes per minute); and slack anchor lines to the bottom of the channel within 10 minutes after receipt of a request to do so from any vessel operator intending to transit the safety zone.

(ii) All vessels: Move/suspend operations and relocate to a safe position within four hours after receipt of a request to do so from any vessel operator expressing concern about the safety of any impending transit through the safety zone.

(iii) SUPERSCOOP: Communicate with and arrange safe passage through the safety zone for all vessels not involved in Third Harbor Tunnel blasting/dredging operations.

(iv) SUPERSCOOP: Initiate appropriate broadcast notice and warning signals to local mariners prior to and after conducting blasting operations. Two hours, one hour, forty-five minutes, and thirty minutes prior to blasting, broadcast on Channels 9, 13, and 16 VHF-FM the intention to conduct blasting operations. Approximately fifteen minutes before a blast round is to be detonated, give a signal of four clearly audible prolonged (4-6 seconds) horn/whistle signals to indicate that the blast area is being secured. Determine the blast area to be secured. Signal with four clearly audible short (approximately one second) horn/

whistle signals to indicate that the blast is going to be detonated in one minute. Do not blast if a vessel not involved with the blasting operation is within the safety zone with exception of vessels moored as described in paragraph (b)(1)(i). Immediately following the blast, inspect/survey the blast area to determine whether it is clear to resume operations. Remove any debris whether it is clear to resume operations. Remove any debris that lessens the channel depth. Give all clear signal (4–6 second horn/whistle signal) after area is determined to be clear to resume normal operations.

(v) All vessels: Relocate to a safe distance prior to conducting blasting operations.

(3) The Captain of the Port may, upon request, authorize a deviation from any rules in this section if he determines that the proposed operations can be done safely.

(4) The Captain of the Port may direct the movement of any vessel within the safety zone as appropriate to ensure the safe navigation of vessels throughout the safety zone.

(c) Effective date. This regulation becomes effective at 12:02 a.m., October 1, 1992 and terminates at 12:01 a.m., May 1, 1993.

Dated: September 30, 1992.

G.W. Abrams,

Captain, U.S. Coast Guard, Captain of the Port, Boston, Massachusetts.

[FR Doc. 92–25525 Filed 10–21–92; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[PR Docket No. 89–552; DA 92–1373]

Private Land Mobile Radio Services

AGENCY: Federal Communications Commission.

ACTION: Final rule; clarification.

SUMMARY: The Chief, Private Radio Bureau released this Order extending the submission date for the additional showings required of applicants for non-commercial nationwide 220–222 MHz licenses. This action was required because a Petition for Reconsideration was filed raising issues concerning the non-commercial channels which must be addressed before the additional submissions may be made.

EFFECTIVE DATE: October 13, 1992.

FOR FURTHER INFORMATION CONTACT: Karen Kincaid, Private Radio Bureau, Rules Branch, (202) 634–2443.

SUPPLEMENTARY INFORMATION:

Order

Adopted: October 1, 1992.

Released: October 13, 1992.

By the Chief, Private Radio Bureau:

In the matter of amendment of part 90 of the Commission's rules to provide for the use of the 220–222 MHz band by the Private Land Mobile Radio Services.

1. On June 18, 1992, the Commission adopted a Memorandum Opinion and Order addressing numerous issues raised on reconsideration of the Report and Order [1] in PR Docket No. 89–552, as well as the questions presented in the Further Notice of Proposed Rule Making [2] issued in the same proceeding. In the Memorandum Opinion and Order, the Commission adopted several rule changes designed to strengthen the construction and operational requirements applicable to non-commercial nationwide 220–222 MHz licensees to ensure that the non-commercial channels will be used as envisioned to satisfy the communications needs of entities with nationwide internal communications requirements. The additional submissions required of non-commercial applicants as the result of these rule changes, as well as certain additional submissions required of commercial nationwide applicants, are currently due to the Commission on November 19, 1992.

2. On August 21, 1992, United Parcel Service International, Inc. (UPS) filed a request for clarification or petition for reconsideration of certain aspects of the Memorandum Opinion and Order pertaining to non-commercial nationwide applicants. As a result of this outstanding petition, we are extending the submission date for non-commercial nationwide 220–222 MHz applicants until thirty days after the effective date of the Commission decision resolving UPS's petition for reconsideration.

3. This action is taken pursuant to the provisions of section 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(j) and sections 0.131 and 0.331 of the Commission's Rules, 47 CFR 0.131 and 0.331.

4. For further information, contact Karen Kincaid, Rules Branch, Private Radio Bureau, (202) 634–2443.

List of Subjects in 47 CFR Part 90

Radio, Reporting and recordkeeping requirements.

[1] Report and Order, PR Docket No. 89–552, 6 FCC Rcd 2356 (1991).

[2] Further Notice of Proposed Rule Making, PR Docket No. 89–552, 7 FCC Rcd 898 (1992).

Federal Communications Commission.

Ralph A. Haller,

Chief, Private Radio Bureau.

[FR Doc. 92–25615 Filed 10–21–92; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 662

[Docket No. 920809–2260]

Northern Anchovy Fishery

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

ACTION: Final determination of harvest quotas.

SUMMARY: NMFS announces the estimated spawning biomass and final determination of harvest quotas for the northern anchovy fishery in the exclusive economic zone (EEZ) south of Point Reyes, California, for the 1992–93 fishing season. The harvest quotas have been determined by application of the formulas in the Northern Anchovy Fishery Management Plan (FMP) and its implementing regulations. The optimum yield is set at 4,900 metric tons (mt), which includes a 4,900-mt non-reduction quota, plus an unspecified amount for use as live bait. There is no reduction quota for the 1992–93 fishing season.

EFFECTIVE DATE: October 19, 1992.

FOR FURTHER INFORMATION CONTACT: James J. Morgan, Fisheries Operations, Southwest Region, NMFS, Long Beach, California, (310) 980–4036.

SUPPLEMENTARY INFORMATION: In consultation with the California Department of Fish and Game and the NMFS Southwest Fisheries Center, the Director of the Southwest Region, NMFS (Regional Director), has estimated that the spawning biomass of the central subpopulation of northern anchovy, *Engraulis mordax*, is 208,000 mt—about 80 percent of the 1991–1992 biomass estimate of 261,000 mt. The biomass estimate is derived from a stock synthesis model using spawning biomass estimated by the egg production method for calendar years 1980 to 1985, an egg production index, fish spotter data, total landings and catch data, and mean January to February sea surface temperatures. Documentation of the spawning biomass estimate is contained in Administrative Report LJ–92–24, published by the Southwest Fisheries Science Center, NMFS.

The preliminary biomass estimate was published in the **Federal Register** on August 26, 1992 (57 FR 38657). At that time the biomass was estimated to be 167,000 mt; however, following a review of this estimate by the Pacific Fishery Management Council, the Council took the advice of its Scientific and Statistical Committee and recommended the inclusion of an additional fish spotter datum that had been deleted from the analysis. Including the additional datum and rerunning the model increased the estimated biomass to 208,000 mt. The new estimate does not change the quotas previously announced. No other comments have been received.

The Regional Director has made the following determinations for the 1992–1993 fishing season by applying the formulas in the FMP and in § 662.20 of the implementing rules.

1. The total U.S. harvest quota for northern anchovy is 4,900 mt, plus an unspecified amount for use as live bait. The overall optimum yield (OY) in the U.S. and Mexican fisheries zones is 7,000 mt. The total U.S. harvest quota is equal to 70 percent of the overall OY (70 percent of 7,000 mt) available for harvest by the United States and Mexico.

2. The total U.S. harvest quota for reduction purposes is zero. No reduction quota is permitted when the spawning biomass is 300,000 mt or less.

3. The U.S. harvest allocation for non-reduction fishing (i.e., fishing for anchovy for use as dead bait and human consumption) is 4,900 mt (as set by the Federal anchovy regulations at § 662.20).

4. There is no U.S. harvest limit for the live bait fishery.

5. The domestic annual processing capacity (DAP) is 4,202 mt. The FMP states that this amount is the maximum level of reduction plus non-reduction processing during the previous 3 years.

6. The amount allocated to joint venture processing (JVP) is zero because there is no history of, nor are there applications for, joint ventures.

7. Domestic annual harvest capacity (DAH) is 4,202 mt. DAH is the sum of DAP and JVP.

8. The total allowable level of foreign fishing (TALFF) is zero. The TALFF in the EEZ is based on the U.S. portion of the OY (4,900 mt) minus the DAH (4,202 mt), then minus that amount of the expected harvest in the Mexican fishery zone that is in excess of the Mexican portion of the overall OY (78,723 mt). The expected harvest in the Mexican fishery zone is 80,823 mt, which is the largest Mexican harvest in the past 3 years. The FMP specifies that the Mexican portion of the overall OY is 30 percent (30% of 7,000 equals 2,100 mt).

Classification

This action is authorized by 50 CFR part 662 and complies with Executive Order 12291.

List of Subjects in 50 CFR Part 662

Fisheries.

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

Dated: October 16, 1992.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 92–25655 Filed 10–19–92; 3:53 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 57, No. 205
Thursday, October 22, 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 TRANSPORTATION

Office of the Secretary

14 CFR Parts 207, 208, 212, 294, 298, 380, 389

[Docket No. 48341]

RIN 2105-AB91

Aviation Charter Rules

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: Extension of comment period.

SUMMARY: The Office of the Secretary announces its decision to extend the time it will accept comments to the docket from October 16, 1992, to November 16, 1992, and will authorize the filing of reply comments on or before December 1, 1992.

This action is taken as the result of a petition by the National Air Carrier Association (NACA) to allow additional time for organizations and individuals to prepare comments concerning the notice of proposed rulemaking.

DATES: Comments must be received on or before November 16, 1992, and reply comments must be received on or before December 1, 1992.

ADDRESSES: Submit written, signed comments to Docket Section (C-55), room 4107, Office of the Secretary, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 (202) 366-9322. All comments received will be available for examination at the above address from 9 a.m. to 5 p.m. Monday through Friday, except holidays. Those designing notification of receipt of comments must include a self-addressed, stamped, postcard.

FOR FURTHER INFORMATION CONTACT: Charles W. McGuire, Chief, Regulatory Analysis Division (P-57), Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 (202) 366-1037. Office hours are from 8 a.m. to 5 p.m., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: On September 16, 1992, the Office of the Secretary published a notice of proposed rulemaking (NPRM) which, if promulgated, would amend the charter air transportation regulations of the Department and would remove unnecessary burdens on charter operators and airlines in order to foster competition and facilitate low-cost air transportation for the public. See 57 FR 42864. The NPRM provided a 30 day comment period, which closes October 16, 1992.

On September 28, 1992, the National Air Carrier Association (NACA), an organization of small scheduled airlines and charter air carriers, asked the Department to extend the comment period until October 31, 1992, and authorize the filing of reply comments until November 15, 1992. NACA requested the extension because it is submitting comments on behalf of its members, a procedure which requires extensive coordination in the processing and preparation of their views on this important matter. The Department also received numerous informal requests for a 30-day extension of the comment period.

The Department is aware that the air charter industry is composed primarily of small operators who may find it difficult to respond fully to the NPRM within the 30 days originally allocated. The financial security alternatives alone will require considerable effort on the part of industry commenters. Because the Department has received informal requests for a 30-day extension of the comment period, and because it is interested in receiving fully developed and innovative ideas on a number of proposed changes in the NPRM, it has decided to extend the comment period beyond that requested by NACA. The Department has decided to provide an additional 30 days for filing comments beyond the current October 16, 1992, deadline. Comments will be due November 15, 1992, and reply comments will be due 15 days later, on December 1, 1992.

The U.S. Small Business Administration, in a September 28, 1992, letter to the Assistant Secretary for Policy and International Affairs informed the Department that the NPRM published on September 16, 1992, (57 FR 42864) inadvertently failed to include a certification of the impact of the proposed rule on small business entities, as required by the Regulatory Flexibility Act. Based on our evaluation that the proposed amendments would have a modest economic impact on approximately 400 small business entities, the Department certifies that the amendments would not have a significant economic impact on a substantial number of small entities. In so doing, the Department has fulfilled its requirements under the RFA.

Issued in Washington, DC, on October 16, 1992.

Jeffrey N. Shane,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 92-25633 Filed 10-21-92; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[EE-43-92]

RIN 1545-AR01

Direct Rollover and 20 Percent Withholding Upon Eligible Rollover Distributions From Qualified Plans, etc.; Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations relating to eligible rollover distributions from tax-qualified retirement plans and section 403(b) annuities.

DATES: The public hearing will be held on Friday, January 15, 1993, beginning at 10 a.m. Requests to speak and outlines of oral comments must be received by Monday, December 28, 1992.

ADDRESSES: The public hearing will be held in the Internal Revenue Service Auditorium, Seventh floor, 7400 Corridor, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC. Requests to speak and outlines of oral comments should be submitted to: Internal Revenue Service, P.O. Box 7604, Ben Franklin, Station, Attn: CC: CORP:T:R,

(EE-43-92), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Carol Savage of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622-8452 or (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under sections 401, 402, 403, and 3405 of the Internal Revenue Code. The proposed regulations appear elsewhere in this issue of the **Federal Register**.

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Monday, December 28, 1992, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

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

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

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

By direction of the Commissioner of Internal Revenue.

Dale D. Goode,

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

[FR Doc. 92-25427 Filed 10-20-92; 8:45 am]

BILLING CODE 4830-01-M

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26 CFR Part 1

[EE-43-92]

RIN 1545-AR01

Direct Rollover and 20 Percent Withholding Upon Eligible Rollover Distributions From Qualified Plans, etc.

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross reference to temporary regulations.

SUMMARY: This document provides proposed regulations relating to eligible rollover distributions from tax-qualified retirement plans and section 403(b) annuities. These proposed regulations reflect the changes made by the Unemployment Compensation Amendments of 1992. In the Rules and Regulations portion of this issue of the **Federal Register**, the Internal Revenue Service is issuing Temporary Income Tax Regulations relating to eligible rollover distributions from tax-qualified retirement plans and section 403(b) annuities. These temporary regulations reflect the changes made by Unemployment Compensation Amendments of 1992. These temporary regulations affect the administrators, sponsors, payors of, and participants in, tax-qualified retirement plans and section 403(b) annuities. The text of the temporary regulations set forth in this document also serves as the text for this notice of proposed rulemaking.

DATES: Written comments, requests to appear, and outlines of oral comments to be presented at a public hearing scheduled for January 15, 1992, at 10 a.m., must be received by December 28, 1992.

ADDRESSES: Please send comments, requests to appear at the public hearing, and outlines to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R (EE-43-92), Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, John Tolleris, (202) 622-4606 (not a toll-free number). Concerning the hearing, Carol Savage, Regulations Unit, at (202) 622-8452 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

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

The collections of information in these regulations are contained in § 1.401(a)(31)-1T, § 1.402(c)-2T, and § 31.3405(c)-1T. This information will be used to enable plan administrator/payor/recordkeepers to ensure that certain rollover distributions are properly paid in direct rollovers to other eligible retirement plans and to enable the Internal Revenue Service to verify taxpayers' compliance with the rollover provisions of the Unemployment Compensation Amendments of 1992. The taxpayers affected are employers, plan administrators, payors of certain annuities, and distributees from certain qualified plans and annuities.

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

Estimated total annual reporting burden: 2,116,300 hours.

The estimated average annual burden associated with the collection of information for § 1.401(a)(31)-1T is .167 hour per respondent. The estimated average annual burden associated with the collection of information for § 1.402(c)-2T is .50 hour per respondent. The estimated average annual burden associated with the collection of information for § 31.3405(c)-1T is reflected in the estimated burden with respect to Forms 1099-R and 5498.

Estimated total number of respondents: 10,160,000.

Estimated annual frequency of responses: 1.

Background

The Unemployment Compensation Amendments of 1992 (UCA), which was signed into law on July 3, 1992, significantly changed the treatment of distributions from qualified plans and section 403(b) arrangements. First, the UCA amended section 402 to expand the types of distributions with regard to which income tax can be deferred by a rollover to an individual retirement account or annuity (IRA), another qualified plan, or a section 403(b) arrangement. Under UCA, all taxable distributions from qualified plans and section 403(b) arrangements are "eligible rollover distributions," except (1) annuities paid over life or life expectancy, (2) installments for a period spanning ten years or more, and (3) required minimum distributions under section 401(a)(9).

Second, UCA added a new plan qualification provision under section 401(a)(31) that requires qualified plans to provide employees with a direct rollover option. Similarly, section 403(b)(10), as amended by UCA, requires that section 403(b) arrangements also provide a direct

rollover option. Under a direct rollover option, a distributee may elect to have an eligible rollover distribution paid directly to an IRA, or, as applicable, to another qualified plan or a section 403(b) arrangement that accepts rollovers (collectively referred to as eligible retirement plans). The direct rollover option is provided in addition to the regular rollover provisions under section 402. Thus, an employee who does not elect a direct rollover still has the option to subsequently roll over the distribution to an eligible retirement plan within 60 days of receipt.

Third, UCA amended section 3405 to impose mandatory 20-percent income tax withholding on any eligible rollover distribution that the employee does not elect to have paid in a direct rollover. This withholding applies even if the employee receives a distribution and then rolls it over within the 60-day period. For a distribution (or any portion of a distribution) that is not an eligible rollover distribution, the elective withholding rules under section 3504 and § 35.3405–1 continue to apply.

Finally, in conjunction with the changes described above, the UCA amended section 402(f), which previously required that the plan administrator provide a distributee with a written explanation of the special tax rules applicable to certain distributions. As amended, section 402(f) now requires that, within a reasonable time before making an eligible rollover distribution, the plan administrator give a written explanation to the distributee of (1) the availability of the direct rollover option; (2) the rules that require income tax withholding on eligible rollover distributions; (3) the rules under which the distributee may roll over the distribution within 60 days of receipt; and (4) if applicable, the other special tax rules (e.g., five-year averaging) that may apply to the distribution.

The UCA requirements generally apply to distributions from qualified plans and section 403(b) arrangements that are made after December 31, 1992. Thus, if a series of payments began prior to the effective date, any payments that are made after December 31, 1992 generally are subject to the new requirements. A special delayed effective date applies to certain section 403(b) annuities sponsored by state or local governments.

Comments and Requests to Appear at a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are timely submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying in their entirety. A public hearing has been scheduled. See the notice of public hearing published elsewhere in this issue of the Federal Register.

Special Analyses

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

Drafting Information

The principal authors of these regulations are Marjorie Hoffman and John A. Tolleris, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations), Internal Revenue Service. However, other personnel from the Service and the Treasury Department participated in their development.

List of Subjects

26 CFR 1.401–0 through 1.419A–2T

Income taxes, Employee benefit plan, Pensions, Stock options, Individual retirement accounts, Employee stock ownership plans.

26 CFR Part 31

Employment taxes, Income taxes, Lotteries, Railroad retirement, Social security, Unemployment tax, Withholding.

26 CFR Part 602

Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

The temporary regulations, [T.D. 8443] published in the Rules and Regulations portion of this issue of the Federal Register are hereby also proposed as final regulations under title 26, parts 1, 31, and 602 of the Code of Federal Regulations.

Shirley D. Peterson,

Commissioner of Internal Revenue.

[FR Doc. 92–25430 Filed 10–20–92; 8:45 am]

BILLING CODE 4830–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 264, 265, 270 and 271

[FRL–4525–4; 530–Z–92–016]

Corrective Action for Solid Waste Management Units (SWMUs) at Hazardous Waste Management Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of data availability and request for comments.

SUMMARY: The Environmental Protection Agency announces the availability of preliminary information that has been developed by the Agency in support of final rules for Corrective Action Management Units (CAMUs). Since publication of the proposed rules, EPA has conducted additional analyses of the proposed CAMU provisions, and specific alternative regulatory approaches for such units in preparation for final CAMU rules. The Agency believes that it is appropriate to make this information available for public review and comment, and to consider those comments, before promulgating final regulations for CAMUs.

DATES: Comments on this report must be submitted on or before November 23, 1992.

ADDRESSES: Copies of the report may be obtained by calling or visiting the RCRA Docket. The RCRA docket is located in room M2427 at EPA Headquarters and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Requests for obtaining the document by telephone may be made by calling (202) 260–9327. Copies cost $0.15 per page. Charges under $25.00 are waived.

Comments on the information in the document must be submitted to the docket clerk at the following address: U.S. Environmental Protection Agency, RCRA Docket (OS–305), 401 M Street SW., Washington, DC 20460. One original and two copies should be sent and identified by regulatory docket reference number F–92–CASA–FFFFF.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA/Superfund Hotline, Office of

Solid Waste, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, telephone (800) 424-9346, TDD (800) 553-7672 (hearing impaired); in the Washington, DC metropolitan area the number is (703) 920-9810, TDD (703) 486-3323. For technical information regarding remedy selection, contact Guy Tomassoni, Office of Solid Waste (OS-341), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, telephone (202) 260-6785. For technical information regarding the Regulatory Impact Analysis, contact Mark Ralston (OS-341), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, telephone (202) 260-2791.

SUPPLEMENTARY INFORMATION: Proposed rules on CAMUs were published on July 27, 1990 as part of a comprehensive rulemaking (subpart S) specifying corrective action requirements for facilities regulated under Subtitle C of the Resource Conservation and Recovery Act (RCRA) (55 FR 30798, July 27, 1990). EPA expects to issue final rules pertaining to CAMUs over the next several months, prior to promulgation of the comprehensive Subpart S regulations. As part of developing the final CAMU rules, EPA has conducted additional analyses of the proposed CAMU provisions and specific alternatives to the proposed approach. The preliminary results of these analyses are presented in the document entitled "Supplemental Information on Corrective Action Management United (CAMU)".

Remedial actions at most RCRA facilities as well as at Superfund sites can involve excavation and on-site management of contaminated soils, sludges and other remediation-related wastes that are subject to the RCRA Subtitle C hazardous waste regulations. Experience in the RCRA and Superfund remedial programs has shown that strict application of RCRA hazardous waste regulations, such as the RCRA land disposal restrictions (LDRs) and minimum technology requirements (MTRs) to contaminated media and other remediation wastes, may limit the types of remedial options available at sites, as well as affect the specific technologies that may be used, the volumes of materials that are managed, and the ability to utilize innovative remedial technologies. The applicability of many of these requirements turns on how the RCRA regulated "unit" is defined. Recognizing that strict application of RCRA requirements may limit or constrain desirable and protective remedies, the Agency solicited comment on several options for defining a new remedial unit (the "CAMU") in the July 1990 proposal. See 55 FR 30844 (July 27, 1990). EPA has completed preliminary analyses of the potential cost impacts, and the potential human health and environmental impacts of various options and intends to use this analysis in developing the final CAMU rule.

Dated: October 16, 1992.

Don Clay,

Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 92-25603 Filed 10-21-92; 8:45 am]

BILLING CODE 6560-50-M

Notices

Federal Register
Vol. 57, No. 205
Thursday, October 22, 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.

DEPARTMENT OF AGRICULTURE

Forest Service

Exemption of the Upper West Fork Recovery and Salvage Project From Appeal

AGENCY: USDA, Forest Service, Northern Region.

ACTION: Notification that a resource recovery and timber salvage project is exempt from appeals under provisions of 36 CFR part 217.

SUMMARY: A Douglas-fir bark beetle epidemic has killed trees in the upper West Fork of the Bitterroot drainage on the Bitterroot National Forest. During the winter of 1991, the West Fork District Ranger proposed a timber sale salvage project to recover dead timber and to reforest the affected areas. The District Ranger has determined, through an environmental analysis documented in the Upper West Fork analysis file and Decision Memo, that there is good cause to expedite these actions in order to rehabilitate National Forest System lands and recover damaged resources. Salvage of commercial sawtimber within the affected area must be accomplished quickly to avoid further deterioration of sawtimber and to reduce the risk of catastrophic wildfire and further bark beetle infestations.

EFFECTIVE DATE: Effective on October 22, 1992.

FOR FURTHER INFORMATION CONTACT: Nora B. Rasure, District Ranger, West Fork Ranger District, Bitterroot National Forest, 6735 West Fork Road, Darby, MT 59829.

SUPPLEMENTARY INFORMATION: Stands of timber on the West Fork Ranger District have been, and continue to be, at risk of epidemic outbreaks of forest pests caused by suppression of wildfires and overstocking. These factors have resulted in increased mortality of trees caused by Douglas-fir bark beetles. In December of 1991, the West Fork District Ranger, Bitterroot National Forest, proposed salvage of dead timber and rehabilitation of the affected areas. Areas affected by the bark beetle epidemic are located within lands designated as suitable for timber management and assigned to Management Areas 1, 2, and 3a (Bitterroot Forest Plan, September 1986). This proposal was designed to meet the following needs; (a) reduce existing populations of bark beetles that will eventually attack adjacent stands of healthy green timber; using integrated pest management prescriptions; (b) reduce wildfire hazard by reducing fuel loading; (c) rehabilitate timber stands that are understocked through site preparation and planting; and (d) salvage merchantable timber products needed by local industry and the nation, which will otherwise deteriorate in use and value.

An interdisciplinary team was convened, and scoping began in 1991. Scoping efforts, including public meetings and meetings with local groups, were used to make minor modifications in the proposal and to guide analysis of the project's effects. This action will salvage 950 MBF of dead and damaged timber from approximately 220 acres. All salvage areas are either accessible from existing roads (no road construction or reconstruction will occur) or will be yarded using helicopters.

The West Fork Recovery and Salvage Project is designed to accomplish the objectives as quickly as possible to minimize risk of additional tree mortality from bark beetles, reduce the potential for catastrophic wildfire, and to recover merchantable saw timber before it deteriorates and removal becomes infeasible.

To expedite implementation of this decision, procedures outlined in 36 CFR 217(a) are being followed. Under this Regulation the following may be exempt from appeal:

> Decisions related to rehabilitation of National Forest System lands and recovery of Forest Resources from natural disasters or other natural phenomena, * * * when the Regional Forester * * * determines and gives notice in the **Federal Register** that good cause exists to exempt such decisions from review under this part.

Based on the environmental analysis documented in the Upper West Fork Recovery Project Analysis File and the District Ranger's Decision Memo for this project, I have determined that good cause exists to exempt this decision from administrative review. Therefore, upon publication of this notice, this project will not be subject to review under 36 CFR part 217.

Dated: October 15, 1992.

John M. Hughes,
Deputy Regional Forester, Northern Region.

[FR Doc. 92-25540 Filed 10-21-92; 8:45 am]
BILLING CODE 3410-11-M

Exemption of Three Mile Timber Salvage Project From Appeal

AGENCY: USDA, Forest Service, Northern Region.

ACTION: Notification that a timber salvage project designed to recover fire damaged timber is exempted from appeals under provisions of 36 CFR part 217.

SUMMARY: In August 1992, the Three Mile fire burned approximately 740 acres on the Ashland Ranger District of the Custer National Forest. Immediately following the fire, the Ashland District Ranger proposed a timber salvage project to recover damaged sawtimber in the affected area. The District Ranger has determined, through an environmental analysis documented in the Three Mile analysis file and Decision Memo, that there is good cause to expedite these actions in order to rehabilitate National Forest System lands and recover damaged resources. Salvage of commercial sawtimber within the affected area must be accomplished quickly to avoid deterioration of sawtimber and to reduce the risk of insect infestation that could damage adjacent healthy timber stands.

EFFECTIVE DATE: Effective on October 22, 1992.

FOR FURTHER INFORMATION CONTACT: William Ott, District Ranger, Ashland Ranger District, Custer National Forest, P.O. Box 168, Ashland, MT 59003.

SUPPLEMENTARY INFORMATION: In August 1992, a wildfire burned approximately 740 acres in the Three Mile Creek area. Following the fire, the Ashland District Ranger, Custer National Forest, proposed the salvage harvest of some areas damaged by the

fire. The salvage proposal is located on the 210 acres determined in the Custer Forest Plan (October 1987) to be suitable for timber management (Management Area B). This proposal was designed to meet the following needs, (a) reduce the risk of insect damage to adjacent timber stands, (b) salvage merchantable timber products before weather and insects render the wood unmerchantable, and (c) to rehabilitate, through site preparation and planting, timber stands that are understocked.

In September 1992, an interdisciplinary team was convened, and scoping began. Based on public and agency comments, the team identified two environmental issues that served as the foundation for the analysis and refinement of the salvage proposal. This action will salvage approximately 150,000 board feet of dead and damaged timber from approximately 250 acres. No new permanent road construction is necessary. Approximately one mile of temporary road is required to access harvest areas and for log removal. The road will be located on slopes less than 20% and will be closed and revegetated following use.

The timber salvage project is designed to accomplish the objectives as quickly as possible to minimize the risk of insect infestation in adjacent stands of timber and to recover merchantable sawtimber before it deteriorates and removal becomes infeasible.

To expedite implementation of this decision, procedures outlined in 36 CFR part 217(a)(11) are being followed. Under this Regulation the following may be exempt from appeal:

> Decisions related to rehabilitation of National Forest System lands and recovery of Forest Resources from natural disasters or other natural phenomena, such as * * * wildfires * * * when the Regional Forester * * * determines and gives notice in the Federal Register that good causes exists to exempt such decisions from review under this part

Based on the environmental analysis documented in the Three Mile Salvage Sale Decision Memo for this project, I have determined that good cause exists to exempt this decision from administrative review. Therefore, upon publication of this notice, this project will not be subject to review under 36 CFR part 217

Dated: October 15, 1992

John M. Hughes,

Deputy Regional Forester, Northern Region.

[FR Doc. 92-25541 Filed 10-21-92; 8:45 am]

BILLING CODE 3410-11-M

Boulder and Wyman Gulch Vegetation Management (Timber Sale and Prescribed Burning); Deerlodge National Forest, Granite County, Montana

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare environmental impact statement.

SUMMARY: The Forest Service will prepare an Environmental Impact Statement (EIS) to document the analysis and disclose the environmental impacts of proposed actions to manage the vegetation through timber harvest and prescribed burning in the Boulder Creek and Wyman Gulch drainages which are tributaries of Flint Creek. The timber harvest proposal includes road construction and regenerating new stands of trees. The project area is located approximately 5 air miles northeast of Philipsburg, Montana (45 miles southeast of Missoula, Montana). Portions of the proposed actions are located within the 60,177 acre Flint Range/Dolus Lakes Roadless Areas (01-428, 01-429).

The Forest Service proposes to harvest 11.6 million board feet of timber using a variety of harvest methods on approximately 1600 acres of Forest land. The proposal includes construction of approximately 9 miles of access roads and reconstruction of 4 miles

Additionally the proposal includes prescribed burning in Douglas-fir stands on dry southerly aspects, in ponderosa pine stands, and in open grass parks and shrub fields.

Open road density during hunting season will be reduced through road use restrictions as necessary to meet big game security objectives.

The harvest and burning activities would alter the species, size and age class distribution over the landscape in patterns which were historically represented.

DATES: Written comments concerning the scope of the analysis should be received by November 23, 1992.

ADDRESSES: Send written comments to Philipsburg District Ranger, Box H, Philipsburg, Montana 59858.

FOR FURTHER INFORMATION CONTACT: Questions concerning the proposed action and EIS should be directed to Glenda Scott, Interdisciplinary Team Leader, Philipsburg Ranger District, phone: (406) 859-3211.

SUPPLEMENTARY INFORMATION: An integrated resource analysis covering 59,000 acres (gross) in the Boulder-Fred Burr Landscape was initiated in 1991. A number of management opportunities were identified which would help move the forest condition closer to the desired condition described in the Forest Plan considering the objectives for sustaining ecological systems and the social/economic factors. This proposal includes similar or connected actions resulting from this analysis. Data collection and information assimilation is continuing throughout this time.

This EIS will tier to the Forest Plan (approved September 23, 1987) which provides the overall guidance (Goals, Objectives, Standards, and Management Area direction) to achieve the desired future condition for the area being analyzed. The proposed actions will occur primarily in Management Area E1. The goals for this management area is:

Management Area E1:

—To help satisfy the short-term demands for timber, maintain a continuous supply of timber for the future.

—To produce a distribution of size and age classes of timber stands that more fully realize site potential, are healthier, and are more resistant to disease and insect infestations.

—To maintain overall levels of wildlife habitat, livestock grazing and dispersed recreation.

A portion of the proposal is within the Flint Creek/Dolus Lakes Roadless Areas. Portions of the Roadless Area were included in past wilderness legislation indicating public interest in the roadless values. About 600 acres of the 60,177 acre roadless area would be directly affected by the proposed action.

The purpose and need for action of the proposal is:

—To implement silvicultural practices that maintain and create healthy stands of timber of more equal age/size class distribution and with improved growth.

—To maintain or restore the natural functions of the ecological systems which are declining over the landscape.

—To help satisfy local, regional, and national demands for timber, while also contributing to the local economy.

—To provide adequate security areas for big game during the hunting season.

The tentative environmental issues identified are:

—The effects of increased sediment delivery to streams which are habitat to sensitive fish species.

—The effects to the roadless characteristics in the Flint Creek/Dolus Lakes Roadless Areas.

—The maintenance of the dry Douglas-fir and the ponderosa pine ecological systems.
—The improved health and vigor of timber stands.
—The volume and products of timber provided to the local economy.
—The effects on wildlife habitat, particularly the winter range.

The Forest Service is seeking information and comments from Federal, State and local agencies as well as individuals and organizations who may be interested in, or affected by, the proposed action. The Forest Service invites written comments and suggestions on the issues for the proposal and the area being analyzed. Information received will be used in preparation of the Draft EIS. For most effective use, comments should be submitted to the Forest Service within 30 days from the date of publication of this Notice in the **Federal Register**.

Preparation of the EIS will include the following steps.

1. Identification of potential issues.
2. Elimination of issues of minor importance or those that have been covered by previous and relevant environmental analysis.
3. Selection of issues to be analyzed in depth.
4. Identification of reasonable alternatives to the proposed action.
5. Identification of the potential environmental effects of the alternatives.

Step 4 will consider a range of alternatives developed from the key issues. One of these will be the "No Action" alternative, in which all management activities are deferred. Other alternatives will consider various levels and locations of harvest and regeneration and levels of prescribed burning in response to issues. As well, alternatives to harvest and burning will be considered where other methods will accomplish the objectives. Travel management will be analyzed with respect to affects to big game security areas and road restrictions will be identified where needed to meet objectives.

Step 5 will analyze the environmental effects of each alternative. This analysis will be consistent with management direction outlined in the Forest Plan. The direct, indirect, and cumulative effects of each alternative will be analyzed and documented. In addition, the site specific mitigation measures for each alternative will be identified and the effectiveness of those mitigation measures will be disclosed.

The project area is the broad area where management activities are proposed or that will be considered in alternatives to the proposed action. The area is about 20,000 acres (gross) bordered by private land on the west and northwest, Boulder Creek on the northeast, and the southern boundary is north of Copper Creek lakes area. The legal description of the area is all or portions of: T.8 N., R.13 W., Sec.14, 15, 21–29,32–36; T.8 N., R.12 W., Sec. 30–32; T.7 N., R.13 W., Sec. 1–5, 8–17, 21–23; T.7 N., R.12 W., Sec. 3–10, 17, 18.

The analysis area by resource will be determined based on the site specific features of each resource. The analysis area will differ between resources and may extend beyond the project boundary. The analysis will include the direct, indirect and cumulative effects as well as the degree to which natural ecological systems are represented.

Silvicultural prescriptions as identified in the proposed action include clearcut, seed tree and shelterwood harvest systems with varying species reserved and maintained throughout the rotation. Units will be regenerated using natural and artificial means. The units are designed to repeat natural vegetative patterns. They are irregular in shape ranging from 11 to 266 acres in size.

Prescriptions for burning in forested stands will be an under burn to reduce the understory and advanced successional species while maintaining forest cover. Open parklands and shrub fields will be burned in a manner to improve wildlife browse. Areas to be burned are in patterns represented naturally on the landscape.

The proposal and alternatives to the proposal will consider the present and historical landscape condition and processes.

The proposed management activities would be administered by the Philipsburg Ranger District of the Deerlodge National Forest in Granite County, Montana.

Public participation is especially important at several points of the analysis. Agencies and other interested publics are invited to visit with Forest Service officials at any time during the process. However, two specific time periods are identified for the receipt of formal comments on the analysis. The two comment periods are, (1) during the scoping process (the next 30 days) and, (2) during the formal review period of the Draft EIS. Public Open Houses will be held in Philipsburg, MT and Drummond, MT and will be announced in the local newspapers.

The Draft EIS is estimated to be filed with the Environmental Protection Agency (EPA) and be available for public review on July 30, 1993. At that time the EPA will publish a notice of availability of the Draft EIS in the **Federal Register**. The comment period on the Draft EIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes it is important to alert reviewers of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and so that it alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 19800). Because of these court rulings, it is important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the Draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the Draft EIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act, 40 CFR 1503.3, in addressing these points.

The final EIS is expected to be released October 30, 1993. The Forest Supervisor for the Deerlodge National Forest who is the responsible official for the EIS will make a decision regarding this proposal considering the comments, responses, and environmental consequences discussed in the Final Environmental Impact Statement, and applicable laws, regulations, and policies. The reasons for the decision

will be documented in a Record of Decision.

Dated: October 14, 1992.

Van C. Elsbernd,

Forest Supervisor, Deerlodge National Forest.

[FR Doc. 92-25816 Filed 10-21-92; 8:45 am]

BILLING CODE 3410-11-M

Management Direction on Northern Spotted Owl Habitat; National Forests in Washington, Oregon, and Northern California

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare a Supplemental Environmental Impact Statement.

SUMMARY: The USDA Forest Service will prepare a Supplemental Environmental Impact Statement for amendments to final Forest Plans, the Regional Guide for the Pacific Northwest Region, and the Regional Guide for the Pacific Southwest Region, in accordance with the requirements of 36 CFR 219.19.

FOR FURTHER INFORMATION CONTACT: Jerald N. Hutchins, Leader, Spotted Owl EIS Team (503) 326-7467.

SUPPLEMENTARY INFORMATION: The Final Environmental Impact Statement on Management for the Northern Spotted Owl in the National Forests (FEIS) was filed with the Environmental Protection Agency (EPA) on January 31, 1992, and the Record of Decision (ROD) for this FEIS was signed on March 3, 1992. The Supplemental Environmental Impact Statement (SEIS) will add to the previous analysis, present new information and lead to a new Record of Decision on management for the northern spotted owl in the National Forests. The ROD will establish standards and guidelines for maintaining viable populations of northern spotted owls in accordance with requirements of 36 CFR 219.19. The SEIS will be appropriately focused. It will respond to the court's finding that the Forest Service has not fully complied with the National Environmental Policy Act (NEPA) and that it must take further action under that statute. More specifically, the SEIS will determine if the decision by the Endangered Species Committee to allow 13 Bureau of Land Management timber sales, recent demographic analysis, or other new information changes the viability ratings assigned to the alternatives in the Final Environmental Impact Statement. It will also determine whether the planning direction in the Regional Guides for the Pacific Northwest and Pacific Southwest Regions, as amended, will knowingly result in the extirpation of any old-growth species.

Northern spotted owls are known to be present on 13 National Forests in the States of Oregon and Washington, Pacific Northwest Region (Mount Baker-Snoqualmie, Gifford Pinchot, Siuslaw, Umpqua, Siskiyou, Okanogan, Wenatchee, Willamette, Winema, Olympic, Mount Hood, Deschutes, and Rogue River) and on 4 National Forests in northern California, Pacific Southwest Region (Six Rivers, Mendocino, Klamath, and Shasta-Trinity). The counties encompassed by these National Forests are Benton, Clackamas, Coos, Curry, Deschutes, Douglas, Hood River, Jackson, Jefferson, Josephine, Klamath, Lane, Lincoln, Linn, Marion, Multnomah, Polk, Tillamook, and Wasco Counties in Oregon; Chelan, Clallam, Clark, Cowlitz, Grays Harbor, Jefferson, King, Kittitas, Klickitat, Lewis, Mason, Okanogan, Pierce, Skagit, Skamania, Snohomish, Whatcom, and Yakima Counties in Washington; and Colusa, Del Norte, Glenn, Humboldt, Lake, Mendocino, Shasta, Siskiyou, Tehama, and Trinity counties in California.

In June 1990, the USDI Fish and Wildlife Service listed the northern spotted owl as a threatened species throughout its range. By notice in the **Federal Register** (55 FR 40412, October 3, 1990), the Secretary of Agriculture vacated the standards and guidelines in the Pacific Northwest and Pacific Southwest Regional Guides that pertained to northern spotted owl habitat in the National Forests, and directed that, pending further direction from Congress or the Fish and Wildlife Service, timber management activities affecting spotted owl habitat would comply with the Endangered Species Act and would be not inconsistent with the conservation strategy developed by the Interagency Scientific Committee to Address the Conservation of the Northern Spotted Owl. On March 7, 1991, Judge William L. Dwyer (Federal District Court, Western Washington) ruled in *Seattle Audubon Society, et al.*, v. *Evans, et al.*, C89-160-WD, that the Forest Service had violated the National Forest Management Act (NFMA) regulations (36 CFR part 219) by failing to follow the process required by the regulations for adopting management direction to assure the viability of the northern spotted owl.

Subsequently, on May 23, 1991, Judge Dwyer enjoined the Forest Service "* * * to submit to the court and have in effect by March 5, 1992, revised standards and guidelines to ensure the northern spotted owl's viability, together with an environmental impact statement, as required by NEPA and its implementing regulations * * *". The Forest Service completed its analysis; published Draft and Final Environmental Impact Statements on Management for the Northern Spotted Owl in the National Forests; and on March 3, 1992, issued a ROD which adopted a Forest Service conservation strategy and amended the Regional Guides for the Pacific Northwest and Pacific Southwest Regions and final Forest Plans. These documents were submitted to Judge Dwyer on March 5, 1992.

A second lawsuit was filed by Seattle Audubon Society on March 25, 1992, *(Seattle Audubon Society, et al.*, v. *James R. Moseley, et al.)*, C92-479-WD, which challenged the legality of the FEIS and ROD, alleging violations of both NEPA and NFMA. On May 28, 1992, Judge Dwyer found that the Forest Service had not fully complied with NEPA and that it must take further action under that statute. Pending further Forest Service compliance with NEPA, he made no ruling on the legality of the conservation strategy. On May 29, 1992, Judge Dwyer enjoined the Forest Service from auctioning and awarding additional timber sales in suitable northern spotted owl habitat. Then, on July 2, 1992, Judge Dwyer enjoined the Forest Service to prepare a new EIS or a Supplemental EIS (SEIS) in compliance with NEPA, remedying the identified defects. On July 10, 1992, the Government filed in the United States Court of Appeals for the Ninth Circuit its Notice of Appeal to Judge Dwyer's decision. Finally, on August 17, 1992, Judge Dwyer signed an order setting a schedule for compliance which stated a new ROD must be adopted by August 20, 1993, to be in effect 30 days thereafter.

This notice of intent initiates the process of amending the Pacific Northwest and Pacific Southwest Regional Guides and Forest Land and Resource Management Plans (FLRMP) in accordance with 36 CFR part 219. The standards and guidelines established by these amendments will be reviewed when the Fish and Wildlife Service issues the Final Northern Spotted Owl Recovery Plan, and if necessary, changed after that review through further amendments to the Regional Guides and FLRMPs. This direction on management of northern spotted owl habitat will be applicable until amended. Since the FEIS that is being supplemented is recent and public input remains pertinent, scoping of the issues is not necessary, pursuant to Council on Environmental Quality Regulations at 40 CFR 1502.9(c)(4).

The comment period on the Draft SEIS will be 90 days from the date EPA publishes the notice of availability of the Draft SEIS in the Federal Register. If public meetings are used as one of the methods for public involvement on the Draft SEIS, they will be announced in newspapers of general circulation in the geographic area of such meetings well in advance of the scheduled dates. If public hearings are scheduled, they will be announced in a Federal Register notice.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental impact statement review process. First, reviewers of draft supplemental environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft supplemental environmental impact statement stage but that are not raised until after completion of the final supplemental environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, *490 F. Supp. 1334, 1338 (E.D. Wis. 1980)*. Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 90-day comment period on the Draft SEIS so that substantive comments and objections are made available to the Forest Service at a time when they can meaningfully consider them and respond to them in the Final SEIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the Draft SEIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the Draft SEIS. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environment Policy Act at 40 CFR 1503.3 in addressing these points.

The responsible official for this SEIS and decision is the Secretary of Agriculture, Washington, DC 20090-6090.

A Draft Supplemental Environmental Impact Statement is expected to be available for agency and public review by February 1993 and a Final Supplemental Environmental Impact Statement should be available by July 1993.

Dated: October 16, 1992.

George M. Leonard,

Associate Chief.

[FR Doc. 92-25569 Filed 10-21-92; 8:45 am]

BILLING CODE 3410-11-M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Vermont Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Vermont Advisory Committee will be convened at 3 p.m. and adjourn at 5 p.m. on Monday, November 16, 1992, in the Second Floor Conference Room of Hoff, Angel, & Associates, 100 Main Street, Burlington, Vermont 05402. The purposes of the meeting are to review, discuss, and take action upon a draft of a report of campus tensions based on a February 10, 1991 factfinding meeting and to select a topic for a new project.

Persons desiring additional information, or planning a presentation to the Committee, should contact Samuel B. Hand (802/656-3180, 4489) or John I. Binkley, Director, ERO, at (202/523-5264) or TDD (202/376-8116). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the regional office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, October 16, 1992.

Carol-Lee Hurley, *Chief,*

Regional Programs Coordination Unit.

[FR Doc. 92-25617 Filed 10-21-92; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews.

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders, findings and suspension agreements with September anniversary dates. In accordance with the Commerce Regulations, we are initiating those administrative reviews.

FOR FURTHER INFORMATION CONTACT: Roland L. MacDonald, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone (202) 482-2104.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce ("the Department") has received timely requests, in accordance with §§ 353.22(a) and 355.22(a) of the Department's regulations, from interested parties as defined in §§ 353.2(k) and 355.2(i) of the Department's regulations, for administrative reviews of various antidumping and countervailing duty orders, findings, and suspension agreements, with September anniversary dates.

Initiation of Reviews

In accordance with §§ 353.22(c) and 355.22(c) of the Department's regulations, we are initiating administrative reviews of the following antidumping and countervailing duty orders, findings, and suspension agreements. We intend to issue the final results of these reviews not later than September 30, 1993.

Antidumping duty proceedings and firms	Periods to be reviewed
Argentina:	
Silicon Metal	
A-357-804	
Electrometalurgica Andina, Silersa, Propulsora Siderugica	3/29/91-8/31/92
Canada:	
Replacement Parts for Self-Propelled Bituminous Paving Equipment	
A-122-057	
Allatt Paving Equipment, Division of Ingersoll-Rand Canada, Inc	9/1/91-8/31/92
Hong Kong:	
Sweaters Wholly or in Chief Weight of Man-Made Fiber	
A-582-802	
Comitex Knitters, Ltd., Hayward Knitters Ltd., La-Magma Ltd., Shanghai Knitwear, Wing Ho Knitting	9/1/91-8/31/92

Antidumping duty proceedings and firms	Periods to be reviewed
Japan:	
Active-Matrix Liquid Crystal High Information Content Flat Panel Displays and Display Glass Therefor	
A-588-817	
Toshiba Corporation, Hosiden Corporation, Seiko-Epson Corporation, Sharp Corporation	2/21/91-8/31/92
The Republic of Korea:	
Sweaters Wholly or in Chief Weight of Man-Made Fiber	
A-580-806	
Chunji Industrial Co., Ltd., Hanil Synthetic Fiber Ind. Co. Ltd., Shinwon Tongsang, Young Woo & Co., Ltd., Yurim Company, Ltd., Jo Woo	9/1/91-8/31/92
Mexico:	
Gray Portland Cement	
A-201-802	
Apasco, S.A. de C.V.	8/1/91-7/31/92
Taiwan:	
Chrome-Plated Lug Nuts	
A-583-810	
King Kong Corporation, San Shin Hardware Works Co., Ltd., Gourmet Equipment (Taiwan) Corporation, Chu Fong Metallic Industrial Corporation, San Chien Electric Industrial Works, Ltd.	
Sweaters Wholly or in Chief Weight of Man-Made Fiber	
A-583-808	
Chung Tai Industries Co., Ltd., Jia Farn Manufacturing Co., Ltd., Modern Knitting Mills Inc	9/1/91-8/31/92
The People's Republic of China:	
Chrome-Plated Lug Nuts	
A-570-808	
Lu Dong Grease Gun Factory, China National Automotive Industry I/E Corp., China National Machinery & Equipment, Import and Export Corporation, Jiangsu Co., Ltd., Shanghai Automobile Import & Export Corp., Chu Fong Metallic Industrial Corporation, San Chien, Electric Industrial Works, Ltd	
New Zealand:	
Lamb Meat	
C-614-503	4/1/91-3/31/92

Interested parties must submit applications for administrative protective orders in accordance with §§ 353.34(b) and section 355.34(b) of the Department's regulations.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930 (19 U.S.C. 1675(a)) and 19 CFR 353.22(c)(1) and 355.22(c)(1) (1992).

Dated: October 16, 1992.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 92-25670 Filed 10-21-92; 8:45 am]

BILLING CODE 3510-DS-M

[A-475-017]

Pads for Woodwind Instrument Keys From Italy; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On August 6, 1992, the Department of Commerce (the Department) published in the **Federal Register** (57 FR 34760) the preliminary results of its administrative review of the antidumping duty order on pads for woodwind instrument keys from Italy. This review covers one manufacturer/exporter of this merchandise to the United States, Pads Manufacturer SRL (PADS), and the period September 1, 1990 through August 31, 1991. The review indicates that there were no shipments of the subject merchandise to the United States during the review period.

We gave interested parties an opportunity to comment on the preliminary results; we received no comments. Consequently, the final results of the review are unchanged from those presented in the preliminary results.

EFFECTIVE DATE: October 22, 1992.

FOR FURTHER INFORMATION CONTACT: Joseph A. Fargo or Robert J. Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5253.

SUPPLEMENTARY INFORMATION:

Background

On August 6, 1992, the Department published in the **Federal Register** (57 FR 34760) the preliminary results of its administrative review of the antidumping duty order on pads for woodwind instrument keys from Italy (49 FR 27130, September 21, 1984). We mailed our antidumping questionnaire to PADS. On November 27, 1991, Consult Associates (an official Italian Bankruptcy Liquidator) notified us that PADS was declared bankrupt on March 6, 1986. On February 10, 1992, we sent a letter to Consult Associates, asking for substantive information that PADS was bankrupt and no longer existed as an ongoing entity. On February 21, 1992, we received from Consult Associates a copy of the official statement concerning the PADS bankruptcy issued by the court of Trento, Italy. On June 11, 1992, we mailed a supplemental letter to Consult Associates requesting additional information regarding PADS bankruptcy. Specifically, we sought to clarify whether PADS was being reorganized pursuant to Italian bankruptcy laws, or whether PADS was insolvent—that is, whether all of the company's assets had been distributed and the company had been liquidated. Consult Associates did not respond to this information request. The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of the Review

Imports covered by the review are shipments of pads for woodwind instrument keys from Italy, classifiable under item number 9209.99.40 of the Harmonized Tariff Schedules (HTS). The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

The review covers one manufacturer/exporter of Italian pads for woodwind instrument keys, PADS, and the period September 1, 1990 through August 31, 1991.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received no comments.

One factor that the Department usually takes into account for purposes of revoking an antidumping order is the company's bankruptcy status. In other words, if the Department determines that a respondent is insolvent, the Department may revoke an order in whole or in part. In this case, Consult Associates did not provide any information to enable the Department to determine whether PADS is insolvent or is being reorganized pursuant to Italian bankruptcy law. Therefore, the Department has insufficient information to determine whether revocation of the order is warranted in this case. It follows that the Department also has insufficient information to conduct a verification of PADS's bankruptcy status. Accordingly, the Department will continue to enforce the antidumping order in this case.

Final Results of the Review

We determine that PADS had no shipments of the subject merchandise to the United States during the period September 1, 1990 through August 31, 1991. Consequently, we are continuing the deposit rate established in the final results of the last administrative review.

Manufacturer/exporter	Margin (percent)
PADS Manufacturer SRL	[1] 1.03

[1] No shipments during the period; margin is from the last period in which there were shipments.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise, entered, or withdrawn from warehouse, for consumption on or after the publication date of this notice, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate established for the reviewed company will be the above rate; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be 1.03 percent. This rate represents the highest rate for any firm with shipments in this administrative review, other than those firms receiving a rate based entirely on best information available (BIA). Since the only firm in this review had no shipments, the "all other " rate will be the highest non-BIA rate in the most recent review in which such a rate was established. The "all other" rate is 1.03 percent.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: October 15, 1992.

Rolf Th. Lundberg, Jr.,

Acting Assistant Secretary for Import Administration.

[FR Doc. 92-25668 Filed 10-21-92; 8:45 am]

BILLING CODE 3510-05-M

[A-570-504]

Petroleum Wax Candles From the People's Republic of China; Determination Not To Revoke the Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of determination not to revoke the antidumping duty order.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the antidumping duty order on petroleum wax candles from the People's Republic of China.

EFFECTIVE DATE: October 22, 1992.

FOR FURTHER INFORMATION CONTACT: Joseph A. Fargo or Robert Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482-5253.

SUPPLEMENTARY INFORMATION: The Department of Commerce (the Department) may revoke an antidumping duty order or finding, pursuant to § 353.25(d)(4) of the Department's regulations, if no interested party has requested an administrative review for four consecutive annual anniversary months and no interested party objects to the revocation (19 CFR 353.25(d)(4) (1992)). We had not received a request to conduct an administrative review of the antidumping duty order on petroleum wax candles from the People's Republic of China (51 FR 30886, August 28, 1986) for the last four consecutive annual anniversary months. Therefore, pursuant to the Department's regulations, on September 9, 1992, we published in the **Federal Register** a notice of intent to revoke the antidumping duty order and served written notice of the intent to revoke to each interested party on the Department's service list.

On September 10, 1992, the National Candle Association, the petitioner in the less-than-fair-value investigation, objected to our intent to revoke this antidumping duty order. Therefore, because an interested party objects to the revocation, we no longer intend to revoke this antidumping duty order.

Dated: October 16, 1992.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 92-25669 Filed 10-21-92; 8:45 am]

BILLING CODE 3510-DS-M

INTERNATIONAL TRADE ADMINISTRATION

[A-437-602]

Preliminary Determination of Sales at Less Than Fair Value: Sulfanilic Acid From the Republic of Hungary

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: October 22, 1992.

FOR FURTHER INFORMATION CONTACT: Mary Jenkins or James Terpstra, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC., 20230; telephone: (202) 482-1756 and 482-3965, respectively.

Preliminary Determination

We preliminarily determine that sulfanilic acid from the Republic of Hungary ("Hungary") is being, or is likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended ("the Act") (19 U.S.C. 1673b). The estimated margin is shown in the "Suspension of Liquidation" section of the notice. We also preliminarily determine that critical circumstances exist (see, the "Critical Circumstances" section of this notice).

Case History

Since the notice of initiation on May 28, 1991, (57 FR 23378, June 3, 1992), the following events have occurred.

On June 3, 1992, we sent a letter to the Hungarian embassy and to petitioner requesting that they address the issue of: 1) whether we should continue to treat Hungary as a nonmarket economy country ("NME"), or 2) whether available information would permit the Department to determine foreign market value under section 773(a) of the Act, based on a finding that the sulfanilic acid industry in Hungary is a market-oriented industry ("MOI").

On June 5, 1992, petitioner submitted a supplement to the petition containing additional documents regarding the calculation of the U.S. price.

On June 15, 1992, counsel for respondents, Nitrokemia Ipartelepek the manufacturer and Nitrochem Co., Ltd. (herinafter referred to as "Nitrokemia") requested an extension to respond to our June 3, 1992 letter to the Hungarian embassy. On June 17, 1992, we granted respondents an extension until June 30, 1992, to provide information on the NME and MOI issues.

On June 22, 1992, the International Trade Commission (ITC) made a preliminary determination that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports of such merchandise that are allegedly sold at less than fair value in the United States.

On June 23, 1992, counsel for respondents requested additional time for submitting information on the NME and MOI issues. On June 25, 1992, we granted the requested extension.

On July 1, 1992, the Department sent an antidumping questionnaire to the Minister of Economic Affairs, Embassy of the Republic of Hungary and to counsel for respondents. On July 9, 1992, counsel for respondents requested an extension for submitting section A of the Department's questionnaire. On July 10, 1992, we granted the extension. On July 16, 1992, counsel for respondents again requested additional time to address the MOI issue. On July 17, 1992, we granted the extension. On July 23, 1992, counsel for respondents requested an extension for submitting exhibits to section A of the Department's questionnaire and the response to the Department's June 3, 1992, letter relating to the MOI issue. On July 24, 1992, we granted the extension.

On July 27, 1992, we received a response to section A of the Department's questionnaire and the Department's June 3, 1992, letter requesting MOI information. On July 28, 1992, we requested that respondents clarify their request for proprietary treatment for certain portions the Section A response. On July 29, 1992, counsel for respondents resubmitted a revised Section A with exhibits and further clarification of the this request for proprietary treatment.

On August 4, 1992, the Department sent a deficiency letter to respondents. On August 12, 1992, respondents requested an extension for submitting their responses to Section D and Attachment I of the Department's questionnaire. On August 14, 1992, respondents submitted their responses to Sections B, C, and appendix VI of the Department's questionnaire. On August 21, 1992, respondents submitted responses to Section D and Attachment I of the Department's questionnaire.

On August 27, 1992, a consulting firm, on behalf of petitioner, submitted comments on the responses to Sections B, C & D, and Attachment I of the Department's questionnaire. On September 1, 1992, we provided petitioner and respondents the opportunity to submit any publicly available published information (published material) for the Department to consider using to value factors of production in this investigation.

On September 2, 1992, the Department sent a deficiency letter to respondents concerning Sections B, C & D, and Attachment I of the respondents' response and a request for additional MOI product specific information. On September 16, 1992, counsel for respondents requested an extension for submitting the response to the deficiency letter of September 2, 1992. On September 18, 1992, the Department granted the extension. On September 21, 1992, respondents submitted sections of the response to the Department's deficiency letter of September 2, 1992. On September 21, 1992, we received from respondents additional information in response to our deficiency letter of September 2, 1992. On September 22, 1992, respondents submitted comments and proposed plan of revisions for the market oriented industry questions. On October 1, 1992, respondents submitted foreign currency values for certain imported material inputs. On October 5, 1992, respondents requested additional time to submit additional MOI information.

Period of Investigation

The period of investigation ("POI") is December 1, 1991, through May 31, 1992.

Scope of the Investigation

The products covered by this investigation are all grades of sulfanilic acid, which include technical (or crude) sulfanilic acid, refined (or purified) sulfanilic acid and sodium salt of sulfanilic acid (sodium sulfanilate).

Sulfanilic acid is a synthetic organic chemical produced from the direct sulfonation of aniline with sulfuric acid. Sulfanilic acid is used as a raw material in the production of optical brighteners, food colors, specialty dyes, and concrete additives. The principal differences between the grades are the undesirable quantities of residual aniline and alkali insoluble materials present in the sulfanilic acid. All grades are available as dry, free flowing powders.

Technical sulfanilic acid, classifiable under the subheading 2921.42.24.20 of the Harmonized Tariff Schedule of the United States (HTSUS), contains 96 percent minimum sulfanilic acid, 1.0 percent maximum aniline and 1.0 percent maximum alkali insoluble materials. Refined sulfanilic acid, classifiable under the HTSUS subheading 2921.42.24.20, contains 98 percent minimum sulfanilic acid, 0.5 percent maximum aniline and 0.25 percent maximum alkali insoluble materials. Sodium salt of sulfanilic acid, classifiable under the HTSUS subheading 2921.42.70.00 is a granular or crystalline material containing 75 percent minimum equivalent sulfanilic acid, 0.5 percent maximum aniline, and 0.25 percent maximum alkali insoluble materials based on the equivalent sulfanilic acid content.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of the proceeding is dispositive.

Fair Value Comparisons

To determine whether sales of sulfanilic acid from Hungary to the United States were made at less than fair value, we compared the United States price ("USP") to the foreign market value ("FMV"), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

We based United States price on purchase price, in accordance with section 772(b) of the Act. We used purchase price both because sulfanilic acid was sold to unrelated purchasers in the United States prior to importation into the United States, and because exporter's sales price ("ESP") methodology was not indicated by other circumstances.

We calculated purchase price based on packed, CIF port or delivered prices to unrelated customers in the United States. According to respondents, all movement charges were incurred in U.S. dollars, and billed to them in one complete invoice by a non-related Australian freight forwarder. Therefore, for each transaction, we have deducted a total for movement charges which covers all charges for shipment from the Hungarian factory to the point of delivery in the United States.

Foreign Market Value

Section 773(c)(1) of the Act provides that the Department shall determine FMV using a factors of production methodology if (1) the merchandise is exported from an NME, and (2) the information does not permit the calculation of FMV using home market prices, third country prices, or constructed value under section 773(a) of the Act.

In past cases, see, *e.g.* (Final Results of Antidumping Duty Administrative Review: Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the Republic of Hungary), and indeed in every case conducted by the Department involving Hungary, Hungary has been treated as an NME. In this case, neither party has argued that Hungary is no longer an NME. Therefore, we will continue to treat Hungary as an NME.

However, respondents have requested that the sulfanilic acid industry in Hungary be treated as an MOI and that, if constructed values are used, the industry's actual costs be used by the Department. The respondents claim that because the sulfanilic acid industry is market oriented, the prices it paid for inputs used in the production of sulfanilic acid are determined by market forces.

The Department has previously interpreted 773(c)(1)(B) of the Act to mean that foreign market value can be based on the NME exporter's prices or costs, despite the fact that the country may otherwise be considered an NME, if sufficient market forces are at work (see, Final Determination of Sales at Less Than Fair Value: Chrome-Plated Lug Nuts from the People's Republic of China, 56 FR 46153 (September 10, 1991) and Final Determination of Sales at Less Than Fair Value: Oscillating Fans and Ceiling Fans from the People's Republic of China, 56 FR 55271 (October 25, 1991). However, as stated in our recent notices of initiation for two countervailing duty investigations (see, Initiation of Countervailing Duty Investigation: Oscillating Fans and Ceiling Fans from the People's Republic of China, 56 FR 57616 (November 13, 1991) and Initiation of Countervailing Duty Investigation: Chrome-Plated Lug Nuts and Wheel Locks from the People's Republic of China, 57 FR 877 (January 9, 1992)), the Department determined that it must reconsider the appropriateness of the specific approach established in Lug Nuts and Fans.

As a result of this reconsideration, we have now developed the following criteria for determining whether an MOI exists in an economy which will otherwise be considered nonmarket:

- For merchandise under investigation, there must be virtually no government involvement in setting prices or amounts to be produced. For example, state-required production or allocation of production of the merchandise, whether for export or domestic consumption in the nonmarket economy country would be an almost insuperable barrier to finding a market-oriented industry.
- The industry producing the merchandise under investigation should be characterized by private or collective ownership. There may be state-owned enterprises in the industry but substantial state ownership would weigh heavily against finding a market-oriented industry.
- Market-determined prices must be paid for all significant inputs, whether material or non-material, and for an all but insignificant proportion of the inputs accounting for the total value of the merchandise under investigation. For example, an input price will not be considered market-determined if the producers of the merchandise under investigation pay a state-set price for the input or if the input is supplied to the producers at government direction. Moreover, if there is any state-required production in the industry producing the input, the share of state-required production must be insignificant.

If these conditions are not met, the producers of the merchandise under investigation will be treated as nonmarket economy producers, and the foreign market value will be calculated by using prices and costs from a surrogate country, in accordance with section 773(c)(3) and (4) of the Act.

The presumption remains that the inputs used by the sulfanilic acid producer which are sourced in Hungary are not purchased at market prices. In order to overcome this presumption, we must be able to conclude by application of the criteria outlined above that market forces are at work in determining the prices of the inputs used to produce sulfanilic acid within Hungary. A respondent asserting that it purchases inputs at market-oriented prices must provide significant documentary evidence and also show that market prices are at work to overcome this presumption, Respondents' assertion, without sufficient documentary support, is not enough to establish the operation of market forces with respect to input prices.

Petitioner maintains that the sulfanilic acid industry is state-controlled and is not market-oriented. Petitioner argues that market forces are not at play in establishing any input prices for producing sulfanilic acid in Hungary. Petitioner further argues that the respondents have not met the MOI criteria as set forth in the Department's preliminary determination in Sulfanilic Acid from the Republic of China. (Preliminary Determination of Sales at Less Than Fair Value: Sulfanilic Acid from the People's Republic of China, 57 FR 9409, 9410 (March 18, 1992)).

We have determined that for purposes of this preliminary determination, we do not have sufficient information from the respondents or the Hungarian government to determine whether or not there is a lack of state-control or a presence of market forces with respect to the input costs and their respective supplier prices. The respondents have informed the Department that additional MOI information requested by the Department will be submitted. The information submitted by the Hungarian government and/or respondents will be subject to verification, and will be taken into account in making our final decision.

Therefore, in accordance with section 773(c) of the Act, the Department is required to determine FMV on the basis of factors of production utilized in producing the subject merchandise, as valued in a surrogate country.

Surrogate Country

Section 773(c)(4) of the Act requires the Department to value the factors of production, to the extent possible, in one or more market economy countries that are at a level of economic development comparable to that of the nonmarket economy country, and that are significant producers of comparable merchandise. The Department has determined that Brazil, Uruguay, Venezuela and South Africa are the most comparable to Hungary in terms of overall economic development, based on per-capita gross national product (GNP), the national distribution of labor, and growth rate in per capita GNP. (See Memorandum from Lynn Barden to David Binder, dated June 11, 1992.)

In determining which of these countries is the most appropriate surrogate, we select as a surrogate a country which is a significant producer of merchandise comparable to that being investigated. However, information on what is produced in potential surrogate countries is not always obtainable. In this case, as in past NME cases, we were unable to find direct evidence of production in surrogate countries and instead relied on the existence of exports of the subject merchandise to the United States, or other countries, from surrogate countries to determine whether they produce comparable merchandise. Brazil is the only one of the surrogate countries which, according to U.S. Census data, exports sulfanilic acid to the United States. Thus, we have preliminarily determined that Brazil is the first choice surrogate because it alone satisfies both requirements outlined in the statute.

In attempting to find surrogate values for the factor inputs to calculate FMV in a NME, the Department has in previous cases relied on a wide variety of information sources. At one time, we relied most frequently on information provided by U.S. embassies in the

surrogate countries. We found that such information was product specific and a reliable and objective measure of factor values. However, over time we have experienced difficulty in obtaining and interpreting such information. In addition, interested parties have begun submitting information which they think should be used to value the factor inputs. Ambiguities in the data supplied by U.S. Embassies, and the existence of alternative sources of factor values, have created difficulties in choosing appropriate factor values.

In order to bring more consistency and predictability to NME cases, we established a hierarchy for preferred input values in the Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings From the People's Republic of China, 57 FR 21058 (May 18, 1992). We stated that we would we would first use factor values based on publicly available published information ("PI") from our first choice surrogate, second we would use unpublished information (*e.g.*, information provided by the U.S. embassy) from the first choice surrogate, third, we would use PI from second choice surrogates, and so on until we had found appropriate values for each factor input. To further inject predictability into the process, we established a practice of allowing interested parties to submit PI in a timely manner so that we could use this information in making our determinations.

In attempting to apply this hierarchy we have occasionally encountered factor value information from preferred surrogate countries the accuracy of which is obviously questionable. For example, in this case we found values for certain materials from Brazil which were either significantly higher or lower than the values we had found for the other surrogate and there were no apparent reasons for these wide differences. Moreover, we have found that factor that factor values from our preferred sources are not always available for each factor. For example, in this case we found no information from any of the surrogates for any of the energy inputs. Accordingly, we have developed a practice of collecting information on factor values from different sources to use as a check on, and supplement to, our preferred factor values. However, we only collect such information when, as discussed above, the preferred factor values are either questionable or unavailable. Once we have collected the factor value information, within the time and resource constraints in an antidumping case, we apply our hierarchy of preferred input values. If factor values from our preferred surrogates are unavailable or obviously questionable, we use supplemental factor value information if appropriate.

To select the appropriate factor values in this case, we used PI from our first choice surrogate except in cases where either, (1) nothing was available from the first choice surrogate, or (2) other information strongly indicated that these values were inaccurate. In evaluating the reliability of PI from Brazil and the other surrogates, we considered, among other things: Information contained in the petition, information supplied by the U.S. Embassy in India and Pakistan in the investigation of the same merchandise from the PRC, information on the public record from other investigations of products from Brazil, and information from relevant periodicals (*e.g.*, Chemical Week). In those instances where the factor value from Brazil was obviously questionable, *e.g.*, for one material input the Brazil value was almost twenty times higher than the Venzuela value, we used the supplemental sources to determine which of these two numbers was the most reasonable. No factor value information, other than that contained in the petition, was submitted by the parties in this case and we relied on information we collected.

We calculated FMV based on factors of production reported by the factory which produced the subject merchandise for export to the United States. The factors used to produce sulfanilic acid include materials, labor, and energy.

For material costs, to value three inputs, we used import statistics from Brazil which were published in the Importacao 1988, Ano 17, Tomo II. To value three additional inputs for producing sulfanilic acid, we used Venezuela import prices for 1990, published in the Anuario Del Comercio Exterior De Venezuela 1990, Tomo II. Importaciones because information from our first choice surrogate was either unavailable or suspect. To value another input, we used the price paid by respondents because the merchandise was purchased from a market economy and paid for in convertable currency. (See also the "Concurrence Memorandum for the Preliminary Determination" dated 10/15/92 for a discussion of the selection of factor values.)

For labor costs, we used Venezuelan unskilled labor and skilled labor rates, including benefits, from the Anuario Estadistico De Venezuela, 1990 because information was not available from our first choice surrogate. We applied skilled labor rates to supervisory personnel.

Respondent reported electricity, water, and steam as energy inputs. However, we were unable to obtain a factor value for steam, and consequently, were unable to establish an overall valuation for energy inputs. Therefore, we have used the petitioner's energy costs, as a percentage of its materials and labor, because no other information was available. However, for the final determination we will attempt to find a more appropriate value.

To calculate FMV, the reported factors of production were multiplied by the appropriate values for the various components. We added an amount for the delivery of inputs to the factory to arrive at a delivered cost of materials. We used freight rates obtained from the U.S. Embassy in India because we could not obtain prices from our surrogate selections or from the petition based on weight and distance.

We have also used a percentage for factory overhead, based on Indian producers' experience, obtained from the U.S. Embassy in India, as applied in the previous investigation of sulfanilic acid, because information was not available from our surrogate selections.

We then added the statutory ten percent minimum for selling, general and administrative expenses, and the statutory eight percent minimum for profit. We also added an amount for packing materials, packing transportation, and packing labor based on Venezuelan wage rates, because information from our first choice surrogate was not available, to arrive at a constructed FMV for one metric ton of sulfanilic acid.

Critical Circumstances

Petitioner alleges that "critical circumstances" exist with respect to imports of sulfanilic acid from Hungary. Section 733(e)(1) of the Act provides that critical circumstances exist when we determine that there is a reasonable basis to believe or suspect that:

(A)(i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of investigation at less than its fair value, and

(B) There have been massive imports of the merchandise which is the subject of the investigation over a relatively short period.

We normally consider either an outstanding antidumping order in the United States or elsewhere on the subject merchandise, or margins of 25 percent or more sufficient to impute knowledge of dumping under section 733(e)(1)(A) of the Act.

Pursuant to section 733(e)(1)(B) of the Act, we generally consider the following factors in determining whether imports have been massive over a short period of time: (1) The volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by imports. See, *e.g.*, Final Determination of Sales at Less Than Fair Value; Certain Internal-Combustion, Industrial Forklift Trucks from Japan, 53 FR 12552 (April 15, 1988). If imports during the period immediately following the petition increased by at least 15 percent over imports during a comparable period immediately preceding the filing of a petition, we consider them massive. Based on our analysis of the exports of sulfanilic acid submitted by Nitrokemia, we find that exports of sulfanilic acid by Nitrokemia have increased by at least 15 percent. We also examined Nitrokemia's export data to ensure that the increase in imports did not simply reflect seasonal trends. The data do not indicate seasonal increases in shipments to the extent of the increases during the comparable period. Therefore in accordance with 19 CFR 353.16(f)(2), we find that exports by Nitrokemia have been massive over a short period of time.

The preliminarily determined dumping margin is more than 25 percent; therefore, we input knowledge of dumping under section 773(e)(1)(A) of the Act.

Therefore, in accordance with section 773(e)(1)(A) of the Act, we preliminarily determine that, critical circumstances exist with respect to imports of the subject merchandise from Hungary.

Currency Conversion

When calculating foreign market value, we made currency conversions in accordance with 19 CFR 353.60(a). For Venezuela, no certified rates of exchange from the Federal Reserve Bank of New York were available for the POI. In place of these rates, we used rates from the monthly International Monetary Fund's International Financial Statistics.

Verification

As provided in section 776(b) of the Act, we will verify the information used in reaching our final determination.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of sulfanilic acid from Hungary, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the date of publication of this notice in the **Federal Register** in accordance with section 733(e)(2). The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated amount by which the foreign market value of the subject merchandise exceeds the United States price as shown below. The suspension of liquidation will remain in effect until further notice.

Manufacturer/producer/exporter	Margin percent
Nitrokemia	27.79
All others	27.79

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments, must be submitted, in at least ten copies, to the Assistant Secretary for Import Administration no later than December 10, 1992, and rebuttal briefs no later than December 15, 1992. In addition, a public version and five copies should be submitted by the appropriate date if the submission contains business proprietary information. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held, if requested, at 1 p.m. on December 17, 1992, at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue NW., Washington, DC 20230. Interested parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B-099 within ten days of the date of publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentation will be limited to arguments raised in the briefs.

This determination is published pursuant to section 773(f) of the Act (19 U.S.C. 1673b(f)) and 19 CFR 353.15(a)(4).

Dated: October 15, 1992.

Rolf Th. Lundberg, Jr.,

Acting Assistant Secretary for Import Administration.

[FR Doc. 92-25671 Filed 10-21-92; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-533-806]

Preliminary Determination of Sales at Less than Fair Value: Sulfanilic Acid from India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: October 22, 1992.

FOR FURTHER INFORMATION CONTACT: Mary Jenkins or James Terpstra, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC, 20230; telephone: (202) 482-1756 and 482-3965, respectively.

Preliminary Determination

We preliminarily determine that sulfanilic acid from India is being, or is likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended ("the Act") (19 U.S.C. 1673b). The estimated margin is shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the notice of initiation on May 28, 1991, (57 FR 23378, June 3, 1992), the following events have occurred. On June 17, 1992, we sent a follow-up cable to the American Embassy in New Delhi, India requesting the identity of any Indian companies that produce and/or export the subject merchandise to the United States, and the value and quantity of any such sales for the period of investigation (POI).

On July 1, 1992, we sent "mini Section A" questionnaires to the seven producers and/or exporters of the subject merchandise that were identified in the petition. On July 7, 1992, we received letters from Golden Dyes Corp. (India) Private Ltd., and Synthetic Dyestuff (India) Corp. Importers, stating that they have not exported subject

merchandise to the United States. On July 8, 1992, we received a letter from Atul Products Ltd. stating that it had not exported subject merchandise to the United States during our period of investigation and that it no longer produces the subject merchandise. Therefore, they would not seek to participate in the investigation. On July 22, 1992, we received a letter from Hickson & Dadajee Ltd. stating that they stopped producing sulfanilic acid and that they have never exported the subject merchandise to the United States.

On July 23, 1992, we sent letters to Beta Naphthol (P) Ltd., Kanoria Chemicals & Industries, Ltd, and Chemco International informing them that we may have to make our determination on the basis of the best information available (BIA), if the requested July 14, 1992, responses were not received immediately. On July 30, 1992 and August 27, 1992, we received administrative protective order requests from Economic Consulting Services, Inc., a consulting firm for petitioner.

Period of Investigation

The POI is December 1, 1991, through May 31, 1992.

Scope of the Investigation

The products covered by these investigations are all grades of sulfanilic acid, which include technical (or crude) sulfanilic acid, refined (or purified) sulfanilic acid and sodium salt of sulfanilic acid (sodium sulfanilate).

Sulfanilic acid is a synthetic organic chemical produced from the direct sulfonation of aniline with sulfuric acid. Sulfanilic acid is used as a raw material in the production of optical brighteners, food colors, specialty dyes, and concrete additives. The principal differences between the grades are the undesirable quantities of residual aniline and alkali insoluble materials present in the sulfanilic acid. All grades are available as dry, free flowing powders.

Technical sulfanilic acid, classifiable under the subheading 2921.42.24.20 of the Harmonized Tariff Schedule of the United States (HTSUS), contains 96 percent minimum sulfanilic acid, 1.0 percent maximum aniline and 1.0 percent maximum alkali insoluble materials. Refined sulfanilic acid, classifiable under the HTSUS subheading 2921.42.24.20, contains 98 percent minimum sulfanilic acid, 0.5 percent maximum aniline and 0.25 percent maximum alkali insoluble materials. Sodium salt of sulfanilic acid, classifiable under the HTSUS subheading 2921.42.70.00 is a granular or crystalline material containing 75 percent minimum equivalent sulfanilic acid, 0.5 percent maximum aniline, and 0.25 percent maximum alkali insoluble materials based on the equivalent sulfanilic acid content.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Fair Value Comparisons

To determine whether sales of sulfanilic acid from India to the United States were made at less than fair value, we compared the United States price ("USP") to the foreign market value ("FMV"), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

We sent "mini Section A" questionnaires to the seven producers and/or exporters of the subject merchandise that were identified in the petition. We received letters from four companies which notified us that they had no sales of the subject merchandise to the United States during the POI. Three companies did not respond to our questionnaire. Since we have not received any adequate response in the above-referenced investigation with which to perform our antidumping analysis, we are making our preliminary determination on the basis of the BIA, as required by section 776(c) of the Tariff Act of 1930, as amended. We selected as BIA the information supplied by the petitioner.

For the three companies which have not responded to our questionnaire, we are assigning, as BIA, the highest margin among the margins in the petition, according to the two-tiered BIA methodology outlined in the Final Determination of Sales at Less Than Fair Value: Antifriction Bearings (Other Than Tapered Roller Bearings and Parts Thereof from the Federal Republic of Germany, Italy, Japan, Romania, Sweden, Thailand, and the United Kingdom (54 FR 18992, 19033, May 3, 1989). The four Indian companies which notified us that they had no sales of the subject merchandise to the United States during the POI will be subject to the all-others rate, which in this instance is the BIA rate.

United States Price

We calculated U.S. price based on BIA, which was information supplied by the petitioner. We based U.S. price on exporter's sales price ("ESP") methodology because sulfanilic acid was sold to unrelated purchasers in the United States after the importation of the subject merchandise into the United States.

We calculated ESP based on packed, C&F U.S. port of entry price quotations. We deducted foreign inland freight, foreign handling, ocean freight, U.S. brokerage and handling charges, and commissions incurred in the United States.

Foreign Market Value

We calculated FMV based on BIA, which was information supplied by the petitioner. Foreign market value is based on f.o.b. observed prices in India for all three grades of sulfanilic acid. No adjustments have been made to the observed Indian prices.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of sulfanilic acid from India, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated margin amount by which the foreign market value of the subject merchandise exceeds the United States price as shown below. The suspension of liquidation will remain in effect until further notice.

Manufacturer/producer/exporter	Margin percent
All manufacturer/producers/exporters	114.8%

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments, must be submitted, in at least ten copies, to the Assistant Secretary for Import Administration no later than December 10, 1992, and rebuttal briefs no later than December 15, 1992. In addition, a public version and five copies should be submitted by the appropriate date if the submission contains business proprietary information. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held, if requested, at 1 p.m. on December 17, 1992, at the U.S. Department of Commerce, room 3708,

14th Street and Constitution Avenue NW., Washington, DC, 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B-099 within ten days of the date of publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentation will be limited to arguments raised in the briefs.

This determination is published pursuant to section 773(f) of the Act (19 U.S.C. 1673b(f)) and 19 CFR 353.15(a)(4).

Dated: October 15, 1992.

Rolf Th. Lundberg, Jr.,

Acting Assistant Secretary for Import Administration.

[FR Doc. 92-25672 Filed 10-21-92; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Coastal Zone Management: Federal Consistency Appeal by South Essex Sewerage District from an Objection by the State of Massachusetts

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of dismissal.

On May 16, 1991, the Under Secretary for Oceans and Atmosphere (Under Secretary), U.S. Department of Commerce, dismissed the consistency appeal of the South Essex Sewerage District (Appellant) filed with the Secretary of Commerce (Secretary) pursuant to section 307(c)(3)(A) of the Coastal Zone Management Act of 1972 (CZMA), as amended, 16 U.S.C. 1451 *et seq.*, and the Department of Commerce's implementing regulations at 15 C.F.R. Part 930, Subpart H. The Appellant had submitted a revised application requesting that the Environmental Protection Agency (EPA) issue to the Appellant, pursuant to section 301(h) of the Federal Water Pollution Control Act (FWPCA), a National Pollution Discharge Elimination System (NPDES) modified permit waiving the secondary treatment requirements of the FWPCA.

The Federal regulations implementing the FWPCA require that applications for a section 301(h) waiver must be submitted to appropriate state officials for review. EPA officials will not review the application until a favorable state certification/concurrence is received. No section 301(h) modified permit shall be issued if the state denies the certification/concurrence.

In the instant appeal, the Commonwealth of Massachusetts (State) denied certification of the Appellant's revised application based upon the State's determination that the modified discharge, as proposed would violate certain requirements of the FWPCA which have been incorporated into the State's Coastal Zone Management Plan. Under the Federal regulations implementing the FWPCA, EPA cannot issue a section 301(h) modified permit to the Appellant under its permit application. Therefore, the basis for the Appellant's appeal is moot.

The Federal regulations implementing the CZMA provide, in relevant part, that the Secretary may dismiss consistency appeals for "good cause." The Under Secretary found that the basis for the Appellant's appeal was moot and dismissed the appeal for good cause pursuant to 15 CFR 930.128. The Appellant may not file another appeal from the State's objection to this permit application.

FOR ADDITIONAL INFORMATION CONTACT: Glenn E. Tallia, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1825 Connecticut Avenue, NW., suite 603, Washington, DC 20235, (202) 606-4200.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance)

Dated: October 16, 1992.

Thomas A. Campbell,

General Counsel.

[FR Doc. 92-25598 Filed 10-21-92; 8:45 am]

BILLING CODE 3510-08-M

Pacific Fishery Management Council (Council), Public Hearing

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

SUMMARY: The Council will convene a hearing to receive public comments on "Draft Amendment 11 to the Fishery Management Plan for Commercial and Recreational Salmon Fisheries off the Coasts of Washington, Oregon and California Commencing in 1978." The Amendment 11 document is available from the Council's office and contains a brief description of the proposed amendment along with a draft environmental assessment, regulatory impact review/initial regulatory flexibility analysis, statement of consistency with coastal zone management programs, and review of other applicable law which could be affected by the amendment. Draft Amendment 11 contains only one issue, the establishment of a permanent recreational subarea and harvest allocation for the ocean fishery between Cape Alava and the Queets River, Washington. Thus, this subarea is referred to as the La Push subarea. Since 1990, the Council has used the annual preseason salmon management process to establish the recreational fishery in the La Push subarea with a specific harvest quota of coho salmon. Under the proposed amendment (Alternative 2), an annual decision during the preseason process would no longer be necessary to create the La Push subarea. In addition, the coho harvest allocation for La Push would be increased over a three year period from about 10 to 20 percent of the total ocean coho harvest allocation north of the Queets River, plus any Area 4B add-on fishery. This harvest allocation is similar to the share which the La Push recreational fishery harvested prior to 1980, during a time when there were no ocean harvest quotas. Chinook will be allocated to La Push subarea based on estimates of the Salmon Technical Team for the number needed to harvest the coho allocation.

The proposed amendment will not affect the commercial non-Indian or Indian fisheries or change the total ocean allocation of salmon harvest. The proposed amendment will reduce the present ocean salmon harvest allocation available to the part of Neah Bay and increase it at La Push.

DATES: The public hearing is scheduled to begin at 7 p.m., local time, Thursday, November 12, 1992. Oral or written testimony may be given at the hearing.

ADDRESSES: The hearing will be held on November 12, 1992, at Haguewood's Restaurant, 221 North Lincoln, Port Angeles, WA 98632. Written comments should be addressed as follows: Pacific Fishery Management Council, 2000 SW First Avenue, suite 420, Portland, Oregon 97201. All comments must be received no later than November 10, 1992, to assure time for processing and distribution before final consideration of the amendment by the Council.

FOR FURTHER INFORMATION CONTACT: Lawrence D Six, Executive Director, Pacific Fishery Management Council, Metro Center, suite 420, 2000 SW First Avenue, Portland, Oregon 97201 (503) 326-6831.

Dated: October 16, 1992.

David S. Crestin,

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

[FR Doc. 92-25657 Filed 10-21-92; 8:45 am]

BILLING CODE 3510-22-M

South Atlantic Fishery Management Council (Council); Snapper Grouper Public Hearings

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

ACTION: Notice of public hearing.

SUMMARY: The Council will convene a public hearing to solicit public input on extending emergency sea bass regulations and implementing framework changes to the Snapper-Grouper fishery Management Plan (FMP) including (1) an extension of 90-day emergency rule that redefines sea bass pots and removes restrictive possession limits for sea bass fishermen off North Carolina and South Carolina; and (2) framework changes to: make the sea bass pot definition permanent, allow in-season adjustments for future management of the snapper grouper fishery and modify existing minimum size limits.

DATES: The hearing is scheduled to begin at 3:15 p.m., local time, on October 28, 1992.

ADDRESSES: The hearing will be held on Wednesday, October 28, from 3:15 pm to 3:45 pm in New Bern, NC, at the Sheraton New Bern Hotel and Marina on One Bicentennial Park (919/638-3585). Send written comments to South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407, (803) 571-4366.

FOR FURTHER INFORMATION CONTACT: Carrie Knight, Public Information Officer, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407, Telephone 803/571-4366.

Dated: October 16, 1992.

David S. Crestin,

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

[FR Doc. 92-25656 Filed 10-21-92; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Issuance of Scientific Research Permit (P511).

On July 13, 1992, notice was published in the **Federal Register** (57 FR 30959) that an application had been filed by Dr. Michael Scott, Senior Scientist, Inter-American Tropical Tuna Commission, c/o Scripps Institution of Oceanography, La Jolla, CA 92037 for a Permit to harass during capture, tag, (radio- and roto-tags) and release operations, up to: 10,800 (45 radio-tagged/50 roto-tagged), spotted dolphin (*Stenella attenuata*); 7,200 (20 radio-tagged/50 roto-tagged) spinner dolphin (*S. longirostris*); 300 (5 radio-tagged/50 roto-tagged) striped dolphin (*S. coeruleoalba*); 2,800 (10 radio-tagged/50 roto-tagged) common dolphin (*Delphinus delphis*); 300 (5 radio-tagged/50 roto-tagged) bottlenose dolphin (*Tursiops truncatus*); 300 (5 radio-tagged/50 roto-tagged) rough-toothed dolphin (*Steno bredanensis*), and 300 (55 tagged) Risso's dolphin (*Grampus griseus*). Authorization has been granted for the accidental killing of up to 30 animals over the five-year permit period.

Notice is hereby given that on October 14, 1992, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the National Marine Fisheries Service issued a Permit for the above taking, subject to certain conditions set forth therein.

The application and accompanying documentation satisfy the issuance criteria for scientific research permits. The requested activities are consistent with the purposes and policies of the MMPA. The research will further a *bona fide* scientific purpose that does not involve unnecessary duplication of other research.

The Permit is available for review, by appointment, in the Permits Division, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., Silver Spring, MD 20910 (301/322-4211); and

Director, Southwest Region, National Marine Fisheries Service, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802-4213 (310/980-4015).

Dated: October 14, 1992.

Michael F. Tillman,

Acting Director, Office of Protective Resources.

[FR Doc. 92-25618 Filed 10-21-92; 8:45 am]

BILLING CODE 3510-22-M

COMMODITY FUTURES TRADING COMMISSION

The National Futures Association's Proposed Requirements for the Supervision of Telemarketing Activities

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed registered futures association rule changes.

SUMMARY: The Commodity Futures trading Commission ("Commission") has determined pursuant to section 17(j) of the Commodity Exchange Act ("Act") to review the National Futures Association's ("NFA's") proposed amendment and Interpretive Notice to its Compliance Rule 2-9. The proposal would require certain NFA members to adopt specific supervisory procedures with respect to their telemarketing activities. The Commission has determined that publication of NFA's proposal is in the public interest, will assist the Commission in considering the views of interested persons and is consistent with the purposes of the Act.

DATES: Comments must be received by November 23, 1992.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254-6314.

FOR FURTHER INFORMATION CONTACT: David P.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. Introduction

By letters dated June 16, 1992 and August 27, 1992, the NFA submitted to the Commission for its approval, pursuant to section 17(j), the Act, a proposed amendment and Interpretive Notice to NFA Compliance Rule 2-9. NFA's submission indicated that it intended to make the proposed amendments effective upon notice of Commission approval.

II. Description of NFA's Proposal

Current NFA Compliance Rule 2-9 requires each NFA Member[1] to

[1] NFA Compliance Rule 1-1 defines the term "Member" to mean all Commission registrants except floor brokers.

supervise diligently its employees and agents in all aspects of their futures activities. The NFA represents that Compliance Rule 2-9 was designed to, among other things, prevent abusive sales practices. The NFA points out that it has not used this provision to prescribe specific supervisory procedures to be followed by all NFA Members.

The NFA believes, however, that, based on its experience, Members which are identified as having a sales force which has received questionable training in sales practices should be required to adopt specific supervisory procedures designed to prevent sales practice abuse. In addition, the new amendment of section 17(p))4) to the Act requires NFA to establish special supervisory guidelines for telephone solicitation of new futures and options accounts and to make the guidelines applicable to those Members determined to require such procedures in accordance with standards established by the Commission consistent with the Act.[2]

Accordingly, the NFA has proposed an amendment to Compliance rule 2-9 which would authorize NFA's Board of Directors to Require Members which meet certain criteria established by the Board to adopt specific supervisory procedures designed to prevent abusive telemarketing sales practices. In connection with this proposed amendment, the NFA also is proposing an Interpretive Notice to Compliance Rule 2-9 which would set forth both the criteria to be used to identify Members which should be subject to enhanced supervisory procedures and the specific supervisory procedures themselves.

Under the proposal, a Member firm would be required to adopt enhanced supervisory procedures over its telemarketing activities if the Member: (1) Had at least five but less than ten associated persons ("APs") and 50% or more of those APs had been employed by one or more Members which had been disciplined by the NFA or the Commission for sales practice fraud; (2) had at least ten but less than 20 APs and five or more of those APs had been employed by one or Members which had been disciplined by the NFA or the Commission for sales practice fraud; or (3) had 20 or more APs and 25% or more of those APs had been employed by one or more Members which had been disciplined by the NFA or the Commission for sales practice fraud.

For purposes of this proposal, the NFA would define such a "disciplined Member" to include only those Members which: (1) Had been formally charged by either the Commission or the NFA with deceptive telemarketing practices; (2) had had those charges resolved; and (3) had been closed down and permanently barred from the futures industry as a result of those charges.

In formulating these criteria, the NFA represents that it has reviewed the case histories for the various Members which have been closed through enforcement actions taken by either it or the Commission for deceptive sales practices. The NFA found that one factor common to those firms and directly related to their sales practice problems was the employment history and training of their sales forces. In particular, the NFA found that for many of these Members, a significant portion of their sales forces were previously employed and trained by one or more of the other Members closed for fraud. Based upon this evidence, NFA surmises that the employment history of a Member's sales force would be a relevant factor to consider in identifying Members with potential sales practice problems. The NFA contends, that if a Member was closed for fraud related to widespread telemarketing problems, it would be reasonable to conclude that the Member's training and supervision of its sales force was generally inadequate or inappropriate. Accordingly, the NFA believes it also would be reasonable to conclude that an AP who received inadequate or inappropriate training and supervision may have learned improper sales tactics which he would retain at his next job. Accordingly, in determining criteria for the type of Members which should be subject to more stringent supervisory procedures, the NFA established standards which would cover Members employing such a sales force.

Under NFA's proposal, a Member which met the above-described criteria would be required to tape-record all of its sales solicitations which occurred prior to the receipt of a customer's initial deposit and until the first order was received and entered for the customer's account. Such selected Members would have to tape-record solicitations for one year and retain the tapes up until six months after the one-year recording period ended.

The NFA would permit any Member required to adopt these procedures to apply for a waiver from the requirement. The NFA represents that it would grant such a waiver upon a satisfactory showing that the Member's supervisory procedures provided effective supervision over its employees. An NFA Member that did not comply with these proposed requirements would be deemed in violation of NFA Compliance Rule 2-9 and would be subject to an NFA disciplinary action.

The NFA believes that its proposed taping requirement would be a strong deterrent to any APs who were inclined to use deceptive sales techniques and also would provide supervisory personnel with a mechanism for the comprehensive monitoring of their APs' solicitations. The NFA indicates that with these taping capabilities, supervisory personnel could review any or all of a given AP's solicitations, and also review directly those solicitations with the AP to correct any specific problems.

III. Request for Comments.

The Commission requests comments on NFA's proposed amendment to Compliance Rule 2-9 and its related interpretive notice addressing, among other things, the expected benefits and costs of the proposals and any issues under the Commodity Exchange Act or the Commission's regulations, including any anti-competitive implications. In that regard, the Commission requests specific comment on: (i) The costs to firms of implementing the proposals or the incidence of these costs among members in relation to the proposals' expected benefits; (ii) whether such costs would result in incentives that are not compatible with the regulatory objectives of the proposals; and (iii) whether implementation of the proposals would result in barriers to entry, especially for small firms. The Commission also requests comment on: (i) The formula proposed by NFA for determining whether an NFA Member would be required to adopt the proposed supervisory procedures over telemarketing activities; (ii) whether the proposed formula effectively would address the situation of a Member not meeting the formula given its overall operations while having a particular sales office with a sizable concentration of APs with the specified employment history; and (iii) the standards by which the Commission should evaluate NFA's proposals, including the formula, in accordance with new section 17(p)(4) of the Act.

Copies of NFA's proposed rule amendment and Interpretive Notice will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington DC 20581, except to the extent that the proposal may be

[2] Futures Trading Practices Act of 1992, Pub. L. No. ____, section 204 (October ____, 1992) (to be codified at Section 17(p) of the Act, 7 U.S.C. 21(p)).

entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Copies also may be obtained through the Office of the Secretariat at the above address or by telephoning (202) 254–6314.

Any person interested in submitting written data, views or arguments on NFA's proposed rule amendment or Interpretive Notice or with respect to other materials submitted by the NFA in support of the proposal 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 19, 1992.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 92–25634 Filed 10–21–92; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

General Services Administration

National Aeronautics and Space Administration

[FAR Case 90–12]

Clearance Request for Thresholds, Part 45—An Amendment

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0075).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Thresholds, part 45—An Amendment.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

FAR 45.307–3 and the clause at 52.245–18, Special Test Equipment, contain policy and contractual language on contractors acquiring or fabricating special test equipment for the Government when the exact identification of the special test equipment to be acquired or fabricated is unknown. The contractor may either acquire or fabricate special test equipment at Government expense when the equipment is not otherwise itemized in the contract. When the contractor intends to acquire or fabricate the special test equipment, he is required to submit a notice of intent to the contracting office, at least 30 days in advance. The notice shall include an estimated cost of all items and components of the equipment of which each item or component is less than $5,000. This threshold is being increased from $1,000 to $5,000, therefore reducing the reporting requirement of the contractor.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, 9,750; responses per respondent, 2; total annual responses, 19,500; preparation hours per response, 1; and total response burden hours, 19,500.

C. Annual Recordkeeping Burden

The annual recordkeeping burden is estimated as follows: Recordkeepers, 10,000; hours per recordkeeper, 40; and total recordkeeping burden hours, 400,000.

Obtaining Copies of Proposals: Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0075, FAR case 90–12, Thresholds, part 45, in all correspondence.

Dated: October 15, 1992.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 92–25619 Filed 10–21–92; 8:45 am]

BILLING CODE 6820-34-M

DEPARTMENT OF ENERGY

Energy Information Administration

American Statistical Association Committee on Energy Statistics; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: American Statistical Association's Committee on Energy Statistics, a utilized Federal Advisory Committee.

Date and Time: Thursday, November 19, 9:15 a.m.–5:30 p.m., Friday, November 20, 8:45 a.m.–12:15 p.m.

Place: Holiday Inn–Capitol, 550 C Street, SW., Washington, DC.

Contact: Ms. Renee Miller, EIA Committee Liaison, U.S. Department of Energy, Energy Information Administration, EI–72, Washington, DC 20585, Telephone: (202) 254–5507.

Purpose of Committee: To advise the Department of Energy, Energy Information Administration (EIA), on EIA technical statistical issues and to enable the EIA to benefit from the Committee's expertise concerning other energy statistical matters.

Tentative Agenda

Thursday, November 19, 1992

A. Opening Remarks

B. Major Topics

1. Global Warming Uncertainties and the Value of Information
2. Analysis of Uncertainty
3. National Energy Modeling System Building Sector
4. Update on Estimating Uncertainty for NEMS

(Public Comment)

Friday, November 20, 1992

5. Adjusting 1992 CBECS Sample Design to Account for Hurricane Damage
6. Use of the Petroleum Data Reporting Option in the State Heating Oil and Propane Program
7. Update on Improvement to Questions on Demand Side Management

(Public Comment)

C. Topics for Future Meetings

Public Participation: The meeting is open to the public. The chairperson of the committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Written statements may be filed with the committee either before or after the meeting. If there are any questions, please contact Ms. Renee Miller, EIA Committee Liaison, at the address or telephone number listed above or Mrs. Antoinette Martin at (202) 254–5409, or Ms. April Young at (202) 254–5380.

Transcripts: Available for public review and copying at the Public Reading Room, (Room 1E–290), 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6025, between the hours of 9 a.m. and 4 p.m., Monday through Friday.

Issued at Washington, DC on October 19, 1992.

Marcia Morris,

Deputy Advisory Committee Management Officer.

[FR Doc. 92–25654 Filed 10–21–92; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[White River Project FERC No. 2494–002]

Puget Sound Power and Light Co.; Availability of Environmental Assessment

October 15, 1992

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory

Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for major license for the proposed White River Hydroelectric Project, located on the White River in Pierce and King Counties, near Tacoma, Washington, and has prepared an environmental assessment (EA) for the proposed project. In the EA, the Commission analyzes the potential environmental impacts of the proposed project and concludes that approval of the proposed project, with appropriate enhancement measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, room 3104, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 92-25586 Filed 10-21-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. EC93-1-000, et al.]

Florida Power Corporation, et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

October 15, 1992.

Take notice that the following filings have been made with the Commission:

1. Florida Power Corporation

[Docket No. EC93-1-000]

Take notice that on October 9, 1992, Florida Power Commission (FPC) tendered for filing an application pursuant to section 203 of the Federal Power Act for an order authorizing the purchase of 2.3 miles of 69 kV transmission line and miscellaneous related equipment from the Sebring Utilities Commission of Sebring, Florida (Sebring).

FPC states that the transmission facilities will continue to be used to provide retail electric service in the City of Sebring. The facilities are to be acquired in conjunction with a purchase of Sebring 's retail distribution system under the authority of the Florida Public Service Commission.

Copies of the application have been served on Sebring and the Florida Public Service Commission.

Comment date: November 2, 1992, in accordance with Standard Paragraph E at the end of this notice.

2. Consumers Power Company

[Docket No EC92-25-000]

Take notice that on September 21, 1992, Consumers Power Company tendered for filing its application for authority to sell facilities subject to the jurisdiction of the Federal Energy Regulatory Commission. The filing company states that the facilities to be sold consist of certain transmission facilities to be sold to the Michigan Public Power Agency pursuant to previous agreements between Consumers Power Company and the Michigan Public Power Agency.

Comment date: November 27, 1992, in accordance with Standard Paragraph E at the end of this notice.

3. United Illuminating Co.

[Docket No. ER92-677-002]

Take notice that on September 18, 1992, United Illuminating Company tendered for filing its refund report in the above-referenced docket.

Comment date: October 26, 1992, in accordance with Standard Paragraph E at the end of this notice.

4. The Detroit Edison Co.

[Docket No. ER93-13-000]

Take notice that on October 9, 1992, the Detroit Edison Company (Detroit Edison) tendered for filing an executed service agreement with the City of Croswell, Michigan, and an executed service with Thumb Electric Cooperative for service under Detroit Edison's Rate Schedule Governing Experimental Seasonal Peaking Capacity Service, which Detroit Edison submitted for filing on July 17, 1992, and amended on September 1, 1992.

Detroit Edison requests an effective date of October 1, 1992, for the service agreement with the City of Croswell and an effective date of November 1, 1992, for the service agreement with Thumb Electric Cooperative.

Comment date: October 28, 1992, in accordance with Standard Paragraph E at the end of this notice.

5. New England Power Co.

[Docket No. ER93-14-000]

Take notice that New England Power Company, on October 9, 1992, tendered for filing an interconnection agreement with the Littleton (Mass.) Electric Light & Water Department. According to NEP, the purpose of the interconnection agreement is to permit Littleton to interconnect a third transformer with NEP's transmission system.

Comment Date: October 28, 1992, in accordance with Standard Paragraph E at the end of this notice.

6. PSI Energy, Inc.

[Docket No. EL93-2-000]

Take notice that on October 8, 1992, PSI Energy, Inc, (PSI) filed a petition for a declaratory order with the Federal Energy Regulatory Commission (Commission) pursuant to rule 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.207(a)(2). PSI is requesting the Commission to declare that four agreements relating to the Joint Transmission System, in which PSI, Wabash Valley Power Association, Inc. (Wabash Valley) and Indiana Municipal Power Agency (IMPA) are co-tenants, need not be filed as rate schedules pursuant to section 205 of the Federal Power Act, 16 U.S.C. 824d. Should any of the agreements be found to be jurisdictional, PSI requests waivers of various of the Commission's regulations so that such agreements be deemed to have been effective pursuant to their own terms.

A copy of the Petition was served upon Wabash Valley and IMPA.

Comment date: November 9, 1992, in accordance with Standard Paragraph E at the end of this notice.

7. Central Vermont Public Service Corp.

[Docket No. ER93-10-000]

Take notice that Central Vermont Public Service Corporation (Central Vermont or the Company) on October 7, 1992, tendered for filing revisions to its FERC Electric Tariff No. 5, which provides for the Provision of Short Term Power.

Central Vermont requests that its revised Tariff be accepted for filing and allowed to become effective in accordance with its own terms as specified. The proposed revisions are designed to allow for power sales by the Company, pursuant to the Tariff, with a duration of not less than one hour. Further, the five year maximum term of sale originally incorporated under Tariff No. 5 is eliminated. As originally filed, the Tariff provided for transactions not to exceed five years and not less than one month. The remaining amendments conform the Tariff's pricing terms so that the capacity and energy charges are pro-rated for the duration of each sale.

Central Vermont's proposed amendments do not effect a change in the rates for service under the Company's FERC Tariff No. 5 as approved by the Commission in Docket No. ER92-12-000.

A form of the Service Agreement has already been made a part of Central Vermont's FERC Tariff No. 5. The Company's proposed revisions do not change any of the terms or conditions of

the Service Agreement incorporated in the Tariff. As such, Central Vermont intends that the revised terms of this Tariff provide for short-term power sales of less than one month to those utilities for whom the Company has already filed service agreements with the Commission.

Central Vermont requests that the Commission waive the sixty (60) day notice requirement so that the revised Tariff may go into effect pursuant to its terms. Allowing the revised Tariff to become effective as provided will enable the Company and its customer to achieve mutual benefits.

Comment date: October 28, 1992, in accordance with Standard Paragraph E at the end of this notice.

8. Southern California Edison Co.

[Docket No. ER93-11-000]

Take notice that on October 9, 1992, Southern California Edison Company tendered for filing the following supplemental agreements to the 1990 Integrated Operations Agreement with the City of Riverside:

Supplemental Agreement for the Integration of Non-Firm Energy From Arizona Public Service Company (APS) Between Southern California Edison Company and City of Riverside.

Supplemental Agreement for the Integration of Non-Firm Energy From Utah Associated Municipal Power Systems (UAMPS) Between Southern California Edison Company and City of Riverside.

Supplemental Agreement for the Integration of Non-Firm Energy From Platte River Power Authority (PRPA) Between Southern California Edison Company and City of Riverside.

Supplemental Agreement for the Integration of Non-Firm Energy From Tucson Electric Power Company (TEP) Between Southern California Edison Company and City of Riverside.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: October 28, 1992, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-25583 Filed 10-21-92; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 10861-000]

Rocky Mountain Hydro, Inc.; Intent To Prepare an Environmental Impact Statement and Conduct Public Scoping Meetings

October 16, 1992.

The Federal Energy Regulatory Commission (FERC) has received an application for license to construct the Houston Power Project No. 10861. The hydropower project is located on the Colorado River in Garfield County, Colorado.

The FERC staff has determined that licensing this project would constitute a major federal action significantly affecting the quality of the human environment. Therefore, the staff intends to prepare an Environmental Impact Statement (EIS) on the hydroelectric project in accordance with the National Environmental Policy Act.

The Bureau of Land Management and Corps of Engineers will be cooperating agencies in the preparation of the EIS.

The staff's EIS will objectively consider both site specific and cumulative environmental impacts of the project and reasonable alternatives, and will include an economic, financial and engineering analysis.

A draft EIS will be issued and circulated for review by all the interested parties. All comments filed on the draft EIS will be analyzed by the staff and considered in a final EIS. The staff's conclusions and recommendations will then be presented for the consideration of the Commission in reaching its final licensing decisions.

Scoping Meetings

The FERC staff will conduct two scoping meetings. The evening scoping meeting is primarily for public input while the morning meeting will focus on resource agency concerns. All interested individuals, organizations, and agencies are invited to attend and assist the staff in identifying the scope of environmental issues that should be analyzed in the EIS.

The scoping meetings will be held on Wednesday, November 18, 1992. The first meeting, focusing on resource agency concerns, will be held from 9 a.m. to 12 p.m., in the Grand Mesa Room of the Holiday Inn, at 775 Horizon Drive, Grand Junction, Colorado. The second meeting will be from 7 p.m. to 10 p.m, in the Rifle High School Commons, at 1350 Prefontaine Avenue, Rifle, Colorado. This meeting is primarily designed for public input.

Prior to the meetings, Scoping Document 1 (SD 1) which identifies resources issues to be addressed in the EIS, will be mailed to the list of recipients and to the service list. Copies of SD 1 will also be available at the scoping meetings.

Objectives

At the scoping meetings the staff will: (1) Summarize the environmental issues tentatively identified for analysis in the planned EIS; (2) solicit from the meeting participants all available information, especially quantified data, on the resources at issue; and (3) encourage statements from experts and the public on issues that should be analyzed in the EIS, including points of view in opposition to, or in support of, the staff's preliminary views.

Procedures

The meetings will be recorded by a stenographer and all statements (oral and written) thereby become a part of the formal record of the Commission proceedings on the Houston Power Project. Individuals presenting statements at the meetings will be asked to clearly identify themselves for the record.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meetings and to assist the staff in defining and clarifying the issues to be addressed in the EIS.

Participants at the public meetings are asked to keep oral comments to five minutes.

Persons choosing not to speak at the meetings, but who have views on the issues or information relevant to the issues, may submit written statements for inclusion in the public record. In addition, written scoping comments may be filed with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, until December 18, 1992.

All written correspondence should clearly show the following caption on the first page: Houston Power Project No. 10861.

Further, parties are reminded of the Commission's Rules of Practice and Procedure, requiring parties filing documents with the Commission, to serve a copy of the document on each person whose name is on the official service list.

For further information, please contact Thomas Dean at (202) 219-2778.

Lois D. Cashell,

Secretary.

[FR Doc. 92-25659 Filed 10-21-92; 8:45 am]

BILLING CODE 6717-01-M

Application Filed With the Commission

October 16, 1992.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection.

a. *Type of Application:* Transfer of License.

b. *Project No.:* 9840-013.

c. *Date Filed:* September 17, 1992.

d. *Applicant:* Appomattox River Water Authority (licensee), STS Hydropower Inc. (transferee).

e. *Name of Project:* Appomattox River Water Authority Hydroelectric Project.

f. *Location:* On the Appomattox River, in Chesterfield and Dinwiddie Counties, Virginia.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Richard D. Hartman, Appomattox River Water Authority, 21300 Chesdin Road, Petersburg, VA 23803.

i. *FERC Contact:* Michael Dees, (202) 219-2807.

j. *Comment Date:* November 5, 1992.

k. *Description of Project:* On September 17, 1992, the licensee and transferee filed a joint application to transfer the license for the Appomattox River Water Authority Hydroelectric Project No. 9840. The proposed transfer will not result in any change in the project. The transferee states that it would comply with all terms and conditions of the license. The transfer is requested pursuant to section 1075(a)(2) of the Intermodal Surface Transportation Infrastructure Act of 1991.

l. This notice also consists of the following standard paragraphs: B, and C.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS," "RECOMMENDATIONS FOR TERMS AND CONDITIONS," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATIONS," "PROTEST" or "MOTION TO INTERVENE," as applicable, and the project number of the particular application to which the filing is in response. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to: the Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 204-RB, at the above address. A copy of any notice of intent, competing application, or motion to intervene must also be served upon each representative of the applicant specified in the particular application.

Lois D. Cashell,

Secretary.

[FR Doc. 92-25584 Filed 10-21-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD93-00228T Texas-82]

State of Texas; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

October 15, 1992.

Take notice that on October 9, 1992, the Railroad Commission of Texas (Texas) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Austin Chalk Formation in portions of Angelina, Jasper, Polk and Tyler Counties, Texas, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The designated area is described in the attached appendix.

The notice of determination also contains Texas' findings that the referenced portion of the Austin Chalk Formation meets the requirements of the Commission's regulations set forth in 18 CFR Part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

Appendix

The recommended Austin Chalk Formation is located in Angelina, Jasper, Polk and Tyler Counties, Texas, within Railroad Commission Districts 3 and 6.

Angelina County

A.G. Johnson A-391
Bluford Brooks A-85
C.C. Barnes A-1025
C.D. Havard A-922
David Denny A-218
E.A. Cameron A-192
E.J. Smith A-1065
E.S. Rodriguez A-1018
E.T. R.R. Co., A-233, A-234, A-235, A-236 and A-237
F. Scroggins A-1129
Hrs. of Mary C. Bissett A-116
H.C. Cryer A-116
H.W. Dunkin A-990
H.W. Dunkin A-1029
Jackson Crouch A-758
James Taylor A-634
James Warren A-660 and A-661
John Leonard A-420
J.E. Culpepper A-186 and A-187
J.J. Havard A-363
J.W. Weaver A-678
Lewis Latham A-404 and A-407
L.H. Jones A-1169
Nicholas Crane A-164 and A-193
Samuel Burris A-6
Samuel Parish A-507
Samuel Pate A-515
Thomas Havard A-326 and A-364
T.A. & Herbert Neyland A-1118
T. & N.O. R.R. Co. A-732, A-733, A-734, A-735, A-736, A-737 and A-738
V. Smith A-1130
W.D. Myers A-1127 and A-1128
W.F.J. Havard A-366
W T. Carter A-931
W.T. Carter & Bro. A-953, A-954, A-955, A-958, A-959, A-960, A-961, A-962 and A-963
W.T. Johnson A-944

Tyler County

A. Barclay A-106 and A-160
B.B.B. & C.R.R. Co., A-121 and A-122
B. Platt A-737
Futch A-1040
Geo. W. Van Vleck A-654
I.G. Futch A-331 and A-747
I. Waltman A-693
I. & G.N. R.R. Co. A-355 and A-702
James Bevens A-66
John Deason A-216
John W. Anderson A-51
J.G. Payne A-1044

M.H. Barclay A-731
Robert Barclay A-71 and A-72
Robert Ross A-554
R. Platt A-738
S.W. Perry A-1032
Wm. Barclay A-73
W.A. Watts A-1052
W. Barclay A-74

Jasper County

T.A. & Herbert Neyland A-1071
T. & N.O. R.R. Co. A-1072
Vy. Smith A-1130

Polk County

I. & G.N. R.R. Co. A-709
S.W. Perry A-957

[FR Doc. 92-25593 Filed 10-21-92; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. CP92-741-000, *et al.*]

Williston Basin Interstate Pipeline Co., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Williston Basin Interstate Pipeline Co.

[Docket No. CP92-741-000]

October 9, 1992.

Take notice that on September 28, 1992, Williston Basin Interstate Pipeline Company (Williston Basin), 200 North Third Street, Suite 300, Bismarck, North Dakota 58501, filed in Docket No. CP92-741-000 an application pursuant to §§ 153.10-153.12 of the Commission's Regulations under the Natural Gas Act (18 CFR 153.10), for a Presidential Permit to construct, connect and operate facilities at the Canadian border, for the exportation and importation of natural gas to and from Canada, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Williston Basin seeks a Presidential Permit to construct, connect and operate a lateral pipeline and appurtenant facilities at the United States-Canada Border near Portal, North Dakota in order to provide firm and interruptible transportation service for gas imported or exported by its Shippers. Williston Basin states that it will construct approximately 9.5 miles of 8-inch lateral pipeline to an interconnect with WBI Canadian Pipeline, Ltd. at the Canadian Border near Portal. Williston Basin also states that it will be the responsibility of individual shippers to secure the appropriate import/export authority for use of the proposed pipeline facilities. Finally, Williston Basin states that the facilities are to be constructed pursuant to its blanket certificate obtained in Docket No. CP82-487-000, *et al.*

Comment date: October 30, 1992, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

2. Transcontinental Gas Pipe Line Corp.

[Docket No. CP93-8-000]

October 13, 1992.

Take notice that on October 13, 1992, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP93-8-000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to construct and operate a delivery sales tap for an electric power generator, under its blanket certificate issued in Docket No. CP82-426-000, pursuant to Section 7(c) 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.

Transco proposes to construct and operate a new point of interconnection with Hartwell Energy Limited Partnership (Hartwell), which would construct and operate an electricity generating, combustion turbine peaking facility in Hart County, Georgia. Transco indicates that the delivery point would consist of (a) two twenty-inch tap valves, one on Transco's thirty-inch Main Line "A" and one on Transco's thirty-sixth inch Main Line "C", (b) a meter station, (c) regulating facilities, and (d) other appurtenant facilities and would cost an estimated $1,622,200.

Transco states that it is not currently providing transportation service to Hartwell, It is indicated that the construction and operation for the delivery point would enable Transco to deliver up to 97,200 Mcf of natural gas per day. Transco states that it would transport gas to the delivery point pursuant to its part 284(G) blanket certificate and under the terms of its Rate Schedule IT. It is then stated that the quantities to be delivered at the delivery point would be within the certificated entitlements of the shipper for whom the transportation service would be performed. Transco also states that its FERC Gas Tariff does not prohibit the addition of new delivery points and that the service through the new delivery point would have no impact upon Transco's peak day and annual deliveries to any firm sales or firm transportation customers.

Comment date: November 27, 1992, in accordance with Standard Paragraph G at the end of this notice.

3. Colorado Interstate Gas Co.

[Docket No. CP93-6-000]

October 14, 1992

Take notice that on October 9, 1992, Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP93-6-000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to construct and operate a sales meter station, to permit deliveries to Peoples Natural Gas (Peoples) at a new delivery point, under its blanket certificate issued in Docket No. CP83-21-000, pursuant to Section 7(c) 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.

CIG proposes to construct and operate the Falcon Air Base Meter Station located in El Paso County, Colorado. It is indicated that CIG would tap its existing 8-inch line and install a 4-inch tap and orifice meter at an estimated cost of $26,000. CIG states that the facility would be designed to deliver up to 2,000 Mcf per day. CIG states that SDS Petroleum Products, Inc. (SDS) has requested interruptible transportation service on CIG's system to the new delivery point and that Peoples would transport the gas to the Falcon Air Base from that point. It is stated that CIG would perform the transportation service for SDS under its blanket transportation certificate issued under Part 284, Subpart G of the Commission's Regulations. CIG also states that the proposed delivery point would not have an effect on CIG's peak day and annual deliveries as the transportation service would be provided on an interruptible basis.

Comment date: November 30, 1992, in accordance with Standard Paragraph G at the end of this notice.

4. Algonquin Gas Transmission Co.

[Docket No. CP89-661-019]

October 15, 1992.

Take notice that on October 13, 1992, Algonquin Gas Transmission Company (Algonquin), 1284 Soldiers Field Road, Boston, Massachusetts 02135, filed an application under Section 7(c) of the Natural Gas Act requesting authority to amend certificate of public convenience and necessity to provide interim service and collect interim rates under Rate Schedule AFT-2 and to relocate minor segments of its previously certificated Manchester Street Lateral. A copy of Algonquin's application is on file with

the Commission and is open for public inspection.

Algonquin seeks authority to provide interim service for a one year period under Rate Schedule AFT-2 and collect interim rates commencing November 1, 1992, to account for its inability to complete construction of its proposed 6.7 mile 36-inch pipeline loop located near Cromwell, Connecticut this year. Certain customers under Rate Schedule AFT-2, namely, Colonial Gas Company and New York State Electric & Gas Company and Iroquois Transmission System, L.P. on behalf of Connecticut Natural Gas Company have agreed to defer receipt of all or a part of their contractual entitlement from Algonquin for an interim period of one year commencing November 1, 1992. All other customers, Algonquin states, will receive their full certified volumes at originally certificated delivery points. Total transportation quantities under Rate Schedule AFT-2 during the interim period will be 71,010 MMBtu per day as opposed to the originally certificated quantity of 91,010 MMBtu per day.

Algonquin proposes to charge interim rates for service until it completes construction of the Cromwell loop. The proposed rate for interim service is $5.7223 per MMBtu, which is computed on the basis of a 100% demand charge rate design for the $21.9 million of Rate Schedule AFT-2 related facilities for the interim service. Algonquin states that the rate methodology and factors proposed are consistent with Algonquin's prior rates approved in this docket.

Algonquin also seeks authorization to reroute two small segments of the certificated route for its proposed Manchester Street lateral for service to New England Power Company (NEP) under Rate Schedule X-38. According to Algonquin, one modification in route in East Providence, Rhode Island is necessary to accommodate plans of the Rhode Island Department of Transportation in connection with proposed construction of the East Providence Industrial Highway project. The second modification requested by Algonquin is to reroute a small segment to avoid a sewage lifting station operated by the East Providence Department of Public Works and the junction of several utility lines at a major intersection of three streets in East Providence, Rhode Island.

Comment date: November 5, 1992, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

5. Panhandle Eastern Pipe Line Co.

[Docket No. CP93-10-000]

October 15, 1992.

Take notice that on October 13, 1992, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP93-10-000 a request pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205), for authorization to add an existing delivery point, currently used to provide transportation service to Ohio Gas Company (Ohio Gas) pursuant to Section 311 of the Natural Gas Policy Act of 1978, to the sales service agreement between Panhandle and Ohio Gas, and to reassign the maximum delivery volumes to various Ohio Gas delivery points under the certificate issued to Panhandle in Docket No. CP83-83-000, 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.

It is stated that Ohio Gas is an existing jurisdictional sales customer under Panhandle's Rate Schedule G-1. It is further stated that Panhandle requests authorization to add the Fulton County delivery point to the November 1, 1992, sales service agreement between Panhandle and Ohio Gas. In addition, Panhandle states that the maximum volume of gas to be delivered to the Fulton County point is 30 Mcf per day of natural gas.

Panhandle asserts that the November 1, 1992, sales service agreement supersedes an agreement dated March 26, 1992, which was certificated in Docket No. CP92-565-000. It is stated that such agreement did not propose a change to the maximum daily contract demand for Ohio Gas; however, Panhandle now requests authorization to reassign volumes of gas to be delivered to the Ohio Gas delivery points as further described in the subject Docket No. CP93-10-000.

Comment date: October 26, 1992, in accordance with Standard Paragraph G at the end of this notice.

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 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. 92-25581 Filed 10-21-92; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 10686-001 New York]

Mill Pond Associates; Surrender of Preliminary Permit

October 16, 1992.

Take notice that Mill Pond Associates, permittee for the Mill Pond Hydroelectric Project located on Mill

Brook, near Port Henry, Essex County, New York, has requested that its preliminary permit be terminated. The preliminary permit was issued on June, 26, 1990, and would have expired on May 31, 1993.

The permittee filed the request on September 24, 1992, and the preliminary permit for Project No. 10886 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 92-25664 Filed 10-21-92; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 10885-001 New York]

Grass River Stone Dam Associates; Surrender of Preliminary Permit

October 16, 1992.

Take notice that Grass River Stone Dam Associates, Permittee for the Grass River Stone Dam Hydroelectric Project located on the Grass River, near Madrid, St. Lawrence County, New York, has preliminary permit was issued on June 28, 1990, and would have expired on May 31, 1993.

The permittee filed the request on September 24, 1992, and the preliminary permit for Project No. 10885 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 92-25660 Filed 10-21-92; 8:45 am]

BILLING CODE 6717-01-M

Rossie Mills Associates; Surrender of Preliminary Permit

[Project No. 10884-001 New York]

October 16, 1992.

Take notice that Rossie Mills Associates, permittee for the Rossie Mills Hydroelectric Project located on the Indian River, near Rossie, St. Lawrence County, New York, has requested that its preliminary permit be terminated. The preliminary permit was issued on June, 21, 1990, and would have expired on May 31, 1993.

The permittee filed the request on September 24, 1992, and the preliminary permit for Project No. 10884 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 92-25663 Filed 10-21-92; 8:45 am]

BILLING CODE 6717-01-M

American Gas Assoc.; Briefing

October 16, 1992.

The American Gas Association will make a presentation to the Commission on Supply and Demand Forecast at 3 p.m. on October 22, 1992, in the Commission Meeting Room, 825 North Capitol Street NE., Washington, DC.

Lois D. Cashell,

Secretary.

[FR Doc. 92-25658 Filed 10-21-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RS92-30-000]

Carnegie Natural Gas Co.; Prefiling Conference

October 16, 1992.

Take notice that a prefiling conference will be convened in this proceeding on Tuesday, October 27, 1992 at 1 p.m., in the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC. The conference will address the proposal of Carnegie Natural Gas Company (Carnegie) to comply with the Commission's Order Nos. 636 and 636-A. Parties, as defined by 18 CFR 385.102(c)(1992), and Commission Staff are invited to attend.

For additional information, contact Joan Dreskin at (202) 208-0738.

Lois D. Cashell,

Secretary.

[FR Doc. 92-25662 Filed 10-21-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RS92-43-000]

Mississippi River Transmission Corp.; Prefiling Conference

October 15, 1992.

Take notice that a prefiling conference will be convened in this proceeding on Wednesday, November 4, 1992, at 10 a.m. at the offices of the Federal Energy Regulatory Commission, 810 First Street NE., Washington, DC. The purpose of the conference is to address Mississippi River Transmission Corporation's proposal to comply with Order Nos. 636 and 636-A.

Any party, as defined in 18 CFR 385.102(c), or any participant, as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations, 18 CFR 385.214.

For additional information, contact David Cain at (202) 208-0909.

Lois D. Cashell,

Secretary.

[FR Doc. 92-25587 Filed 10-21-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ93-2-16-001]

National Fuel Gas Supply Corp.; Proposed Changes in FERC Gas Tariff

October 15, 1992.

Take notice that on October 6, 1992, National Fuel Gas Supply Corporation ("National") submitted the following revised tariff sheet in a correction filing as a part of its FERC Gas Tariff, Second Revised Volume No. 1, to become effective on October 1, 1992:

Sub Twenty-Fourth Revised Sheet No. 5

On September 30, 1992, National submitted an out-of-cycle Purchased Gas Cost Adjustment ("PGA") to be in effect October 1, 1992. The purpose of this filing is to correct the current adjustment, column (4) on its originally tendered "Twenty-Fourth Revised Sheet No. 5", to reflect the compliance filing concurrently submitted in Docket Nos. TQ93-1-16-000 *et al.* Since the gas cost projection remain unchanged, there is no change in the current rates proposed in its out-of-cycle PGA.

In addition, National requests the withdrawal of its "Alt Twenty-Fourth Revised Sheet No. 5" tendered in the above-referenced proceeding on September 30, 1992.

National further states that copies of this filing were served upon the Company's jurisdictional customers and the Regulatory Commissions of the

States of New York, Ohio, Pennsylvania, Delaware, Massachusetts and New Jersey.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before October 22, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-25590 Filed 10-21-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ93-1-16-002]

National Fuel Gas Supply Corp.; Proposed Changes in FERC Gas Tariff

October 15, 1992.

Take notice that on October 6, 1992, National Fuel Gas Supply Corporation ("National") tendered the following revised tariff sheet in a compliance filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, to become effective on October 1, 1992:

2nd Sub Twenty-Third Revised Sheet No. 5

National filed its regularly-scheduled October Quarterly Purchased Gas Cost Adjustment ("PGA") on August 31, 1992 which was later accepted by the Commission's September 19, 1992 order, subject to refund and conditions. In compliance with the order, National revises the Texas Eastern Transmission Corporation ("Tetco") rates in its rate calculation to reflect the Tetco rates accepted by the Commission's August 26, 1992 order in Docket No. TQ92-7-17-000.

National further states that copies of this filing were served upon the Company's jurisdictional customers and the Regulatory Commissions of the States of New York, Ohio, Pennsylvania, Delaware, Massachusetts and New Jersey.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before October 22, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-25589 Filed 10-21-92; 8:45 am]

BILLING CODE 6717-01-M

Natural Gas Pipeline Co. of America; Resubmittal of FERC Gas Tariff

[Docket No. RP93-10-000]

October 15, 1992.

Take notice that on October 9, 1992, Natural Gas Pipeline Company of Revised Volume No. 1A as part of its FERC Gas Tariff, to be effective November 9, 1992.

Natural states that the purpose of the filing is to resubmit its current tariff, Third Revised Volume No. 1 and First Revised Volume No. 1A, on electronic media in compliance with Order No. 493 and § 154.1(c) of the Commission's Regulations.

Natural states that there were no substantive changes from its currently effective tariff. The rates and charges are at the levels previously approved by the Commission.

Natural states that copies of Fourth Revised Volume No. 1 have been mailed to its jurisdictional sales customers, copies of Second Revised Volume No. 1A have been mailed to its jurisdictional transportation customers, and interested state regulatory agencies were mailed both volumes.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before October 22, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-25591 Filed 10-21-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-1-37-001]

Northwest Pipeline Corp.; Proposed Change in FERC Gas Tariff

October 15, 1992

Take notice that on October 8, 1992, Northwest Pipeline Corporation (Northwest) tendered for filing and acceptance Substitute Twenty-Fifth Revised Sheet No. 2-B to be a part of its FERC Gas Tariff, Original Volume No. 2.

On August 28, 1992, Northwest submitted its quarterly SSP filing, in Docket No. TM93-1-37, to be effective October 1, 1992. In its August 28 filing, Northwest also adjusted its ACA Surcharge downward from .24¢ to .23¢ per MMBtu to become effective for the twelve months commencing October 1, 1992.

On July 30, 1992 in Docket No. RP87-110-002, the Commission issued an "Order Granting in Part and Denying in Part Rehearing," which clarifies that Northwest should not collect the ACA Surcharge on volumes that are both gathered and transported on Northwest's mainline. Therefore, to prevent the double collection described in the Commission's July 30 order, Northwest is resubmitting Substitute Twenty-Fifth Revised Sheet No. 2-B, to reflect the removal of the ACA Surcharge from Northwest's gathering rates effective October 1, 1992.

Northwest states that a copy of this filing has been served upon Northwest's jurisdictional customer list and affected state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before October 22, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-25588 Filed 10-21-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP93-11-000]

Paiute Pipeline Co.; Change in FERC Gas Tariff

October 15, 1992.

Take notice that on October 13, 1992, Paiute Pipeline Company (Paiute) tendered for filing and acceptance the following tariff sheets to be a part of its FERC Gas Tariff:

First Revised Volume No. 1-A

First Revised Sheet No. 49
Second Revised Sheet No. 56
First Revised Sheet No. 57

Paiute states that the purpose of said filing is to make changes to the tariff definition of a gas "day" and to the scheduling procedures outlined in Sections 4.2(a) and 4.2(b) of the General Terms and Conditions of its tariff. Paiute indicates that the proposed changes are intended to parallel similar changes recently approved for Northwest Pipeline Corporation, whose system interconnects with Paiute's system.

Paiute has requested an effective date of November 12, 1992 for the tendered sheets.

Paiute states that copies of its filing have been mailed to all jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 22, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-25592 Filed 10-21-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI93-1-000]

Renaissance Energy (U.S.) Inc.; Application for Blanket Certificate With Pregranted Abandonment

October 15, 1992.

Take notice that on October 8, 1992, Renaissance Energy (U.S.) Inc. (Renaissance) filed an application under Sections 4 and 7 of the Natural Gas Act (NGA). Renaissance requests an unlimited-term blanket certificate with pregranted abandonment authorizing sales in interstate commerce for resale of all categories of natural gas subject to the Commission's jurisdiction, including gas subject to the jurisdiction of the Commission under the NGA purchased from first sellers, gas purchased from non-first sellers, including interstate pipelines or local distribution companies (LDCs) under FERC authorizations such as interruptible sales service (ISS), imported natural gas, including liquefied natural gas. Renaissance's application is on file with the Commission and open for public inspection.

To be heard or to protest the application a person must file a motion to intervene or a protest on or before October 30, 1992. A person filing a protest or motion to intervene must follow the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All protests or motions to intervene must be filed with the Federal Energy Regulatory Commission, Washington, DC 20426.

The Commission will consider all filed protests in deciding the appropriate action to take but filing a protest does not make a protestant a party to a proceeding. A person wanting to be a party to a proceeding or to participate as a party in a hearing must file a motion to intervene.

Under the procedure provided for here, unless otherwise advised, Renaissance will not have to appear or be represented at any hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 92-25585 Filed 10-21-92; 8:15 am]

BILLING CODE 6717-01-M

Texas Gas Transmission Corp.; Tariff Filing

[Docket No. TC92-12-000]

October 16, 1992.

Take notice that Texas Gas Transmission Corporation (Texas Gas) filed, on September 17, 1992, the following revised tariff sheets to Original Volume No. 1 of Texas Gas's FERC Gas Tariff, to be effective November 1, 1992.

Third Revised Sheet No. 194
Third Revised Sheet No. 195
Third Revised Sheet No. 196
Second Revised Sheet No. 197

Texas Gas states that the purpose of the filing is to update the Index of Quantity Entitlements to reflect significant changes in the gas requirements of certain customers.

Texas Gas states that copies of the filing have been mailed to each of Texas Gas' customers and interested state commissions.

Any person desiring to be heard or to make any protest with reference to said tariff filing should on or before October 26, 1992, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). 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 the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Secretary.

[FR Doc. 92-25661 Filed 10-21-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL92-42-000]

UNITIL Power Corp. v. Public Service Co. of New Hampshire and Northeast Utilities; Filing

October 9, 1992.

Take notice that on September 11, 1992, UNITIL Power Corp. (UNITIL Power) filed a complaint against Public Service Company of New Hampshire (PSNH) and PSNH's parent, Northeast Utilities (NU). The complaint alleges that the rates charged UNITIL Power under PSNH Rate Schedule FERC No. 123, and PSNH Rate Schedule FERC No. 124, produce excessive revenues to PSNH and NH under Section 206 of the Federal Power Act, 16 U.S.C. 824e. The complaint seeks a refund effective date of November 10, 1992.

UNITIL Power states that it has served a copy of the Complaint upon PSNH and upon NU, and that the Complaint otherwise complies with the requirements of the Commission's rule governing complaints, 18 CFR 385.206.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before

November 9, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. Answers to the complaint shall be due on or before November 9, 1992.

Lois D. Cashell,

Secretary.

[FR Doc. 92-25580 Filed 10-21-92; 8:45 am]

BILLING CODE 6717-01-M

Office of Arms Control and Nonproliferation; Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation Between the Government of the United States of America and the Government of Switzerland Concerning Civil Uses of Atomic Energy, as amended.

This subsequent arrangement would give approval, which must be obtained under the above-mentioned agreements, for the following transfer of special nuclear materials of United States origin, or of special nuclear materials produced through the use of materials of United States origin, as follows:

Switzerland to France for the purpose of reprocessing 42 irradiated fuel assemblies containing approximately 7,500 kilograms of uranium, enriched to approximately 0.85% in U-235, and 66 kilograms of plutonium from the Muehleberg nuclear power station. This subsequent arrangement is designated as RTD/EU(SD)-78.

The United States has received assurance from the Government of Switzerland that the recovered uranium and plutonium will be stored in France, and will not be transferred from France, nor put to any use, without the prior consent of the United States Government.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice and after fifteen days of continuous session of the Congress, beginning the day after the date on which the reports required by section (131(b)(1) of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), are submitted to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate. The two time periods referred to above shall run concurrently.

Issued in Washington, DC, on October 19, 1992.

Salvador N. Ceja,

Acting Director, Office of Nonproliferation Policy (AN-20), Office of Arms Control & Nonproliferation.

[FR Doc. 92-25649 Filed 10-21-92; 8:45 am]

BILLING CODE 6450-01-M

Office of Conservation and Renewable Energy

Advisory Committee on Renewable Energy and Energy Efficiency Joint Ventures; Open Meeting

Under the Federal Advisory Committee Act (Pub. L. 92-463; 86 Stat. 770), notice is hereby given of the following meeting:

Name: Advisory Committee on Renewable Energy and Energy Efficiency Joint Ventures (ACREEJV)

Date and Time: Thursday, November 12, 1992, 1 p.m.-5 p.m. Friday, November 13, 1992, 9 a.m.-5 p.m.

Place: The Madison Hotel 15th and M Streets, NW. Washington, DC.

Contact: Elaine Guthrie, U.S. Department of Energy, Office of Technical Assistance (CE-54), Conservation and Renewable Energy, Washington, DC 20585, Telephone: 202/586-1719.

Purpose of Committee: To advise the Secretary of Energy on the development of the solicitation and evaluation criteria for joint ventures, and on otherwise carrying out his responsibilities under the Renewable Energy and Energy Efficiency Technology Competitiveness Act of 1989 (Pub. L. 101-218, 42 U.S.C. 12005).

Tentative Agenda: Briefings and discussions of:

Recap of Events Since Last Meeting;
Discussion of Amendments to Public Law 101-218, Energy Policy Act of 1992;
Specification of Criteria for Selection of Joint Venture Projects;
Additional Recommendations on Joint Venture Implementation;

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Elaine Guthrie at the address or telephone number listed above. Requests to make oral presentations must be received 5 days prior to the meeting; reasonable provision will be made to include the statement in the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes of the Meeting: Minutes of the meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room IE-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on October 19, 1992.

Marcia L. Morris,

Deputy Advisory Committee Management Officer.

[FR Doc. 92-25652 Filed 10-21-92; 8:45 am]

BILLING CODE 6450-01-M

Office of Energy Research

High Energy Physics Advisory Panel; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: High Energy Physics Advisory Panel (HEPAP).

Date and Time: Sunday, November 15, 1992, 9 a.m.-5 p.m. Monday, November 16, 1992, 9 a.m.-5 p.m.

Place: Fermi National Accelerator Laboratory, Rm. 15th Floor South Crosswalk, P.O. Box 500, Batavia, IL 60510.

Contact: Dr. Enloe T. Ritter, Executive Secretary, High Energy Physics Advisory Panel, U.S. Department of Energy, ER-221, GTN, Washington, DC 20585. Telephone: (301) 903-4829.

Purpose of Panel: To provide advice and guidance on a continuing basis with respect to the high energy physics research program.

Tentative Agenda

Sunday, November 15, 1992, and Monday, November 16, 1992

—Discussion of National Science Foundation (NSF) Elementary Particle Physics Programs
—Discussion of Department of Energy (DOE) High Energy Physics Programs
—Discussion of Department of Energy Superconducting Super Collider (SSC) Project Activities
—Update on Fermilab Programs
—Discussion of International High Energy Physics Activities
—Reports on and Discussions of Topics of General Interest in High Energy Physics
—Public Comment

Public Participation

The meeting is open to the public. The Chairperson of the Panel is empowered to conduct the meeting in a fashion that will, in

his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to make oral statements pertaining to agenda items should contact the Executive Secretary at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Minutes

Available for public review and copying at the Public Reading Room, Room 1E-190, Forrestal Building, 100 Independence Avenue, SW., Washington, DC between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on October 19, 1992.

Marcia L. Morris,

Deputy Advisory Committee Management Officer.

[FR Doc. 92-25653 Filed 10-21-92; 8:45 am]

BILLING CODE 6450-01-M

Office of Fossil Energy

[FE Docket No. 90-92-NG]

Sumas Cogeneration Co., L.P. Sumas Energy, Inc.; Notice of Floodplain/Wetland Involvement for a Natural Gas Import Authorization

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of floodplain/wetland involvement.

SUMMARY: Sumas Cogeneration Company, L.P. (SCCLP) and Sumas Energy, Inc. (SEI) have applied to the Office of Fossil Energy of the Department of Energy (DOE) to import Canadian natural gas pursuant to section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. SCCLP is requesting authorization to import up to 8 Bcf of natural gas per year over a 20-year term commencing in the first quarter of 1993. The proposed imports would be used as fuel in a new 113 megawatt (MW) cogeneration plant to be constructed and operated by SCCLP near Sumas, Washington. The gas would be delivered to the cogeneration facility by the proposed Sumas Pipeline-USA pipeline facility. The natural gas would be imported at the interconnection between Westcoast Energy, Inc. (WEI), and Sumas Pipeline-USA near Huntingdon, British Columbia. This application was noticed in the **Federal Register** on May 29, 1992 (57 FR 22742).

In accordance with DOE regulations for compliance with floodplain and wetland environmental review requirements (10 CFR Part 1022), DOE will prepare a floodplain and wetland assessment for the proposed project in a manner so as to avoid or minimize potential impacts on the affected floodplain and wetlands. The assessment will be included in the Environmental Assessment (EA) being prepared for the proposed project in accordance with the requirements of the National Environmental Policy Act (NEPA). A floodplain statement on findings will be included in any Finding of No Significant Impact (FONSI) that is issued following completion of the EA or may be issued separately.

COMMENT PERIOD: Comments are due to the address below no later than November 6, 1992.

FOR FURTHER INFORMATION ON THIS PROPOSED ACTION, CONTACT: Steven Mintz, Office of Fuels Programs, FE-52, Fossil Energy, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 586-9506.

FOR FURTHER INFORMATION ON GENERAL DOE FLOODPLAIN/WETLANDS ENVIRONMENTAL REVIEW REQUIREMENTS, CONTACT: Carol M. Borgstrom, Director, Office of NEPA Oversight, EH-25, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-4600 or (800) 472-2756, FAX (202) 586-7031.

SUPPLEMENTARY INFORMATION: The gas would be imported into the United States at an interconnection between the Canadian pipeline system of WEI and the proposed known as Sumas Pipeline-USA near Huntington, British Columbia and Sumas, Washington. Sumas Pipeline-USA would transport the gas from this point to the proposed cogeneration facility. Sumas Pipeline-USA would extend for 3.8 miles between the U.S./Canadian border and the proposed cogeneration plant. The 8-inch diameter high pressure steel pipeline would be installed underground in a 4-foot deep trench exclusively through private easements in Whatcom County, Washington. These easements are on land used primarily for agriculture and dairy farming. The pipeline would cross under six roads, the Sumas River, Bone Creek, and Johnson Creek. The trench would be about 18-inches wide along most of the route, but wider excavations might be necessary at Bone Creek and Sumas River where the crossings would be dredged. The Johnson Creek crossing would be diagonally drilled. Roads would be crossed by boring or tunneling under them to avoid disturbing the road beds.

The site for the proposed cogeneration plant is located in the 100-year floodplain of Johnson Creek, but the project would be set back at least 200 feet from the creek itself. Only 0.97 acres of wetlands has been identified on the site. Of this total, 0.67 acres consist of riparian wetlands within the 200-foot setback area along Johnson Creek. The remaining wetland acreage is classified as "wet meadow" wetlands that are isolated from the creek. These wetlands do not appear on the National Wetlands Inventory Maps for 1987.

In accordance with DOE regulations for compliance with floodplain and wetland environmental review requirements (10 CFR part 1022), DOE will prepare a floodplain and wetland assessment for the proposed action. The assessment will be included in the EA being prepared for the proposed project in accordance with the requirements of NEPA. A floodplain statement of findings will be included in any FONSI that is issued following completion of the EA or may be issued separately.

Maps and further information are available from FE at the address given above.

Issued in Washington, DC, October 15, 1992.

Charles F. Vacek,

Deputy Assistant Secretary For Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-25650 Filed 10-21-92; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. FE C&E 92-16; Certification Notice 108]

Filing Certification of Compliance: Coal Capability of New Electric Powerplant; Powerplant and Industrial Fuel Use Act

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of filing.

SUMMARY: Crockett Cogeneration has submitted a coal capability self-certification pursuant to section 201 of the Powerplant and Industrial Fuel Use Act of 1978, as amended.

ADDRESSES: Copies of the self-certification filing are available for public inspection upon request in the Office of Fuels Programs, Fossil Energy, room 3F-056, FE-52, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Ellen Russell at (202) 586-9624.

SUPPLEMENTARY INFORMATION: Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended (42 U.S.C. 8301 *et seq.*), provides that no new baseload electric powerplant may be constructed or operated without the capability to use coal or another alternate fuel as a primary energy source. In order to meet the requirement

of coal capability, the owner or operator of such facilities proposing to use natural gas or petroleum as its primary energy source shall certify, pursuant to FUA section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) on the day it is filed with the Secretary. The Secretary is required to publish a notice in the **Federal Register** that a certification has been filed. The following owner/operator of a proposed new baseload powerplant has filed a self-certification in accordance with section 201(d).

Owner: Crockett Cogeneration, A California Ltd. Partnership, Portland, OR.

Operator: ESOCO Crockett, Inc. an affiliate of Energy National, Inc. will operate under an agreement with Energy National, Inc.

Location: 885 Loring Avenue, Crockett, CA 94525.

Plant Configuration: Topping-cycle cogeneration facility using combined cycle technology.

Capacity: 247.4 megawatts.

Fuel: Natural gas.

Purchasing Utility: Pacific Gas and Electric Company (PG&E).

Expected In-Service Date: October 1, 1995.

Issued in Washington, DC, on October 16, 1992.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-25651 Filed 10-21-92; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4525-6]

CERCLA Cost Recovery Agreement Regarding Certain Parties at Quanta Resources Site, Syracuse, NY

AGENCY: Environmental Protection Agency.

ACTION: Informational notice.

The Environmental Protection Agency ("EPA") Region II announces entry of two administrative cost recovery settlement agreements pursuant to section 122(h)(1) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, ("CERCLA"), 42 U.S C. 9622(h)(1). One of the agreements is between the U.S. Environmental Protection Agency ("EPA") and 23 potentially responsible parties ("PRPs"). The other is between EPA and three federal agency PRPs. The agreements provide for the reimbursement of removal action costs incurred by EPA at the Quanta Syracuse Superfund Site (the "Site").

The Site consists of an abandoned, .75 acre former waste oil processing facility, last operated by the Quanta Resources Corporation ("QRC") and located at 2802-2810 Lodi Street, Syracuse, Onondaga County, New York. On March 13 and August 4, 1990, EPA approved Action Memoranda to conduct a removal action including removal and off-site disposal of drums, tanks and their contents from the Site. In August and September, 1990, EPA identified and noticed over 30 PRPs who generated and/or transported hazardous substances to the Site.

After a period of negotiations with the PRPs, 26 agreed to enter into administrative cost recovery agreements to reimburse EPA for a portion of the total costs in conducting the removal action. The total cost expended for the removal action was $1.54 million. The settlement recommends a cashout of $1,070,000 million from Respondents the 26 settling PRPs. Those parties are: Allied Signal, Inc., Borg-Warner Corporation, Carrier Corporation, Chicago Pneumatic Tool Company, Chrysler Corporation, Corning Incorporated, Crucible Materials Corporation, Environmental Products, & Service, Inc., Ford Motor Company, General Electric, General Motors Corporation, General Railway Signal, Ingersoll-Rand Company, Mobil Oil Corporation Niagara Mohawk Power Corporation, Nestle Chocolate & Confection Company, Inc., formerly known as Nestle Foods Corporation, Parker-Hannifin Corporation, Pratt & Whitney Canada, Inc. Rochester Gas & Electric, Rollway Bearing Co., Smith Corona, Special Metals Corporation, United Technologies Corporation, United States Air Force, United States Navy, and United States Army. (These parties are herein after collectively referred to as "Respondents".)

Under the settlement, EPA covenants not to sue Respondents pursuant to sections 106 or 107(a) of CERCLA or section 7003 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6973, with regard to the Site.

FOR FURTHER INFORMATION CONTACT: Henry Guzman, Assistant Regional Counsel, New York/Caribbean Superfund Branch, U.S. Environmental Protection Agency, 26 Federal Plaza, room 437, New York, New York, 10278, telephone: (212) 264-4942.

Dated: September 28, 1992.

Constantine Sidamon-Eristoff,

Regional Administrator.

[FR Doc. 92-25643 Filed 10-21-92; 8:45 am]

BILLING CODE 6560-50-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

SES Performance Review Board Members

AGENCY: Equal Employment Opportunity Commission (EEOC).

ACTION: Notice.

SUMMARY: Notice is hereby given of the names of the members of the SES Performance Review Board of EEOC.

FOR FURTHER INFORMATION CONTACT: Patricia Cornwell Johnson, Director, Human Resources Management Services, Equal Employment Opportunity Commission, 1801 L Street, NW, Washington, DC, 20507, (202) 663-4306.

SUPPLEMENTARY INFORMATION: Pursuant to the requirement of section 4314(c)(1), chapter 43 title 5 U.S.C., membership of the SES Performance Review is as follows: Ms. Ronnie Blumenthal, Director, Office of Federal Operations, Equal Employment Opportunity Commission (Chairperson); Mr. David H. Burns, Senior Advisor, Office of the U.S. Trade Representative; Mr. Jaime Ramon, Director, Office of Federal Contract Compliance Programs, U.S. Department of Labor; Ms. Elizabeth Thornton, Deputy Legal Counsel, Equal Employment Opportunity Commission (Alternate). Signed at Washington, DC, on this 13th day of October 1992.

For the Commission.

Evan J. Kemp, Jr.,

Chairman.

[FR Doc. 92-25531 Filed 10-21-92; 8:45 am]

BILLING CODE 6570-06-M

FEDERAL COMMUNICATIONS COMMISSION

[PR Docket No. 92-169; DA 92-1371]

Private Land Mobile Radio Services; San Antonio Area Public Safety Plan

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Chief, Private Radio Bureau and the Chief Engineer released this Order accepting the Public Safety Radio Plan for San Antonio (Region 53). As a result of accepting the Plan for

Region 53, licensing of the 821–824/866–869 MHz band in that region may begin immediately

EFFECTIVE DATE: October 9, 1992.

FOR FURTHER INFORMATION CONTACT: Betty Woolford, Private Radio Bureau, Policy and Planning Branch, (202) 632–6497.

SUPPLEMENTARY INFORMATION:

Order

Adopted: October 2, 1992.
Released: October 9, 1992.

By the Chief, Private Radio Bureau and the Chief Engineer:

1. On February 27, 1992, Region 53 (San Antonio) submitted its Public Safety Plan to the Commission for review. The Plan sets forth the guidelines to be followed in allotting spectrum to meet current and future mobile communications requirements of the public safety and special emergency entities operating in the San Antonio area.

2. The San Antonio Plan was placed on Public Notice for comments on July 28, 1992, 57 FR 34568 (August 5, 1992). The Commission received no comments in this proceeding.

3. We have reviewed the Plan submitted for the San Antonio area and find that it conforms with the National Public Safety Plan. The plan includes all the necessary elements specified in the *Report and Order* in Gen. Docket No. 87–112, 3 FCC Rcd 905 (1987), and satisfactorily provides for the current and projected mobile communications requirements of the public safety and special emergency entities in the San Antonio area.

4. Therefore, we accept the San Antonio Public Safety Radio Plan. Furthermore, licensing of the 821–824/866–869 MHz band in the San Antonio area may commence immediately.

Federal Communications Commission.

Ralph A. Haller,

Chief, Private Radio Bureau.

[FR Doc. 92–25311 Filed 10–21–92; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Meeting, Advisory Committee of the National Earthquake Hazards Reduction Program

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, FEMA announces the following committee meeting, a portion of which will be closed to the public:

Name: Advisory Committee of the National Earthquake Hazards Reduction Program (NEHRP).

Dates of Meeting: October 26–28, 1992.

Place: Holiday Inn Union Square, 480 Sutter Street, San Francisco, CA.

Time: October 26: 1 p.m. to 5 p.m., October 27: 8:30 a.m. to 5 p.m., October 28: 8:30 a.m. to 5 p.m.

Proposed Agenda: The NEHRP Advisory Committee will discuss its 1993 report to the Congress and the role that its Subcommittee reports will have in it; the progress and status of the Program agencies in fulfilling Congressionally mandated actions and reports; and will also include a two-hour closed session.

SUPPLEMENTARY INFORMATION: The Director has determined that portions of the Board meeting may have to be closed to the public in accordance with section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, and 5 U.S.C. 552b(c), because discussions may disclose information the premature disclosure of which would be likely to significantly frustrate implementation of proposed FEMA action.

The meeting will be open to the public with seating for approximately ten people available on a first-come, first-served basis. Members of the general public who plan to attend the meeting should contact Brian Cowan at (202) 646–2821 by 5 p.m. EDT, October 22, 1992.

Minutes of the meeting will be prepared and will be available for public viewing at the Office of Earthquakes and Natural Hazards, Federal Emergency Management Agency, 1411 K Street, NW., room 1000, Washington, DC 20005. Copies of the minutes will be available upon request 45 days after the meeting.

Dated: October 9, 1992.

Wallace E. Stickney,

Director.

[FR Doc. 92–25647 Filed 10–21–92; 8:45 am]

BILLING CODE 6718–01–M

Meeting; FEMA Security Practices Board of Review

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, FEMA announces the following committee meeting, portions of which may be closed:

Names: FEMA Security Practices Board of Review.

Dates of Meeting: Thursday, November 12, 1992.

Place: Federal Emergency Management Agency, John W. Macy, Jr. Conference Room, room 829, 500 C Street, SW., Washington, DC 20472.

Times: 9 a.m. to 12 p.m.

Proposed Agenda: Discussion and final review of draft of the Board's final report.

FOR FURTHER INFORMATION CONTACT: Dirk J. Vande Beek, Office of the Director, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3923.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public with approximately 10 seats available on a first-come, first-served basis. Members of the general public who plan to attend the meeting should contact the Office of the Director, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3923) on or before Wednesday, November 11, 1992.

The Director has determined that portions of the Board meeting may have to be closed to the public in accordance with section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, and 5 U.S.C. 552b(c), because discussions may (1) disclose matters that are specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense, (2) relate solely to the internal personnel rules and practices of an agency, and (3) disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of privacy.

Minutes of the meeting (minus those portions of the meeting which may be closed to the public) will be prepared and will be available for public viewing in the Office of the Director, Federal Emergency Management Agency, room 828, 500 C Street, SW., Washington, DC 20472. Copies of the minutes will be available upon request 30 days after the meeting.

Dated: October 13, 1992.

Wallace E. Stickney,

Director.

[FR Doc. 92–25646 Filed 10–21–92; 8:45 am]

BILLING CODE 6718–01–M

FEDERAL MARITIME COMMISSION

American President Lines, Ltd. et al.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No: 202–008493–020.

Title: Trans-Pacific American Flag Berth Operators Agreement.

Parties: American President Lines, Ltd.; Sea-Land Service, Inc.

Synopsis: The proposed amendment makes technical changes in the Agreement's authority to conform with revised transportation requirements of the U.S. Department of Defense for the shipment of household goods and personal effects. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Dated: October 16, 1992.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 92–25579 Filed 10–21–92; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Employee Thrift Advisory Council; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory committee Act (Pub. L. 92–463), a notice is hereby given of the following committee meeting:

Name: Employee Thrift Advisory Council.

Time: 10 a.m.

Date: November 5, 1992.

Place: 5th Floor, Conference Room, Federal Retirement Thrift Investment Board, 805 Fifteenth Street, NW., Washington, DC.

Status: Open.

Matters to be Considered: Approval of the minutes of the May 20, 1992, meeting; report of the Executive Director on the status of the Thrift Savings Plan; legislation; investment booklet; Thrift Savings Plan video; and new business.

Any interested person may attend, appear before, or file statements with the Council. For further information contact John J. O'Meara, Committee Management Officer, on (202) 523–6367.

Dated: October 19, 1992.

Francis X. Cavanaugh,

Executive Director, Federal Retirement Thrift Investment Board.

[FR Doc. 92–25689 Filed 10–21–92; 8:45 am]

BILLING CODE 6760–01–M

FEDERAL RESERVE SYSTEM

James William Collins; Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than November 10, 1992.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. James William Collins, McAllen, Texas; to acquire 27.09 percent of the voting shares of Gulf Southwest Bancorp, Inc., Houston, Texas, and thereby indirectly acquire Merchants Bank, Houston, Texas; and to acquire 12.34 percent of the voting shares of Texas Regional Bancshares, Inc., McAllen, Texas, and thereby indirectly acquire Texas State Bank, McAllen, Texas.

Board of Governors of the Federal Reserve System, October 16, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-25626 Filed 10-21-92; 8:45 am]

BILLING CODE 6210-01-F

NationsBank Corporation; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 16, 1992.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. NationsBank Corporation, Charlotte, North Carolina; to engage *de novo* through its subsidiary, NationsBanc Leasing and Finance Corporation, Tucker, Georgia, in making, acquiring, and servicing loans and extensions of credit (including issuing letters of credit and accepting drafts) for its own account and for the account of others pursuant to § 225.25(b)(1); in originating and holding leases of real and personal property, including (but not limited to) leases of tangible personal property with respect to which the lessor relies on an estimated residual value of the property in excess of the 25 percent limitation described in § 225.25(b)(5)(i)(D)(3), and acting as adviser, agent and broker in connection with the leasing of such real and personal property pursuant to § 225.25(b)(5) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, October 16, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-25627 Filed 10-21-92; 8:45 am]

BILLING CODE 6210-01-F

SunTrust Banks, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than November 16, 1992.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. SunTrust Banks, Inc., Atlanta, Georgia; to acquire 100 percent of the voting shares of First United Bancorp, Inc., Florence, Alabama, and thereby indirectly acquire The First National Bank of Florence, Florence, Alabama.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Milk River Investments, Inc., Hinsdale, Montana; to acquire 7.3 percent of the voting shares of The First National Bank of Glasgow, Glasgow, Montana.

C. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Golden Plains Bankshares, Inc., Phillipsburg, Kansas; to acquire Logan Bancshares, Inc., Logan, Kansas, and thereby indirectly acquire First National Bank of Logan, Logan, Kansas.

2. Hopeton Bancshares, Inc., Hopeton, Oklahoma; to become a bank holding company by acquiring 100 percent of the voting shares of Hopeton State Bank, Hopeton, Oklahoma.

Board of Governors of the Federal Reserve System, October 16, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-25628 Filed 10-21-92; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION

Transaction No.	Name of acquiring person, name of acquired person, name of acquired entity	End of waiting period
870360	Stanley H. Durwood, Budco Threatres, Inc., Budco Threatres, Inc.	123086
870403	Cooper Industries, Inc., GATX Corp., Duroflow Corp. and Sutorbilt Corp.	123086
870485	Honeywell Inc., Unisys Corp., SP-Commercial Flight Inc., SP-Defense Avionics Inc.	123086
871324	Exide Corp., Mr. William Farley, General Battery Corp.	052087

TRANSACTIONS GRANTED EARLY TERMINATION—Continued

Transaction No.	Name of acquiring person, name of acquired person, name of acquired entity	End of waiting period
871396	Tele-Communications, Inc., R.E. Turner, III, Turner Broadcasting System, Inc..	052887
871397	United Cables Television Corp., R.E. Turner, III, Turner Broadcasting System, Inc.	052887
871404	Time Inc., R.E. Turner, III, Turner Broadcasting System, Inc.	052887
871758	Weyerhaeuser CO., The Mead Corp., 6 Mead paper board plants.	073087
871719	Chrysler Corp., American Motors Corp., American Motors Corp.	080487
871720	Chrysler Corp., American Motors Corp., American Motors Financial Corp.	080487
871722	Chrysler Corp., American Motors Corp., American Motors Corp.	080487
871723	Chrysler Corp., Regie Nationale Des Usines Renault, American Motors Financial Corp.	080487
871685	ConAgra, Inc., CHS Partners, II, L.P., Swift Independant Holding Corp.	082887
872043	Smiths Industries Public Limited Co., Lear Siegler Holdings Corp., Lear Siegler Instrument and Avionic Systems Corp.	090387
872095	Pilkington Brothers plc, Ronald O. Perelman, Revlon Group Inc—Vision Care Business.	090487
872047	British & Commonwealth Holdings PLC, Mercantile House Holdings PLC, Mercantile House Holdings PLC.	091487
872096	McCormick & Co., Gentry Foods Corp., Gentry Foods Corporation.	100987
872408	Medtronic, Inc., Johnson & Johnson, Johnson & Johnson Cardiovascular.	102387
872333	Teradyne, Inc., Zehntel, Inc., Zehntel, Inc.	102887
872339	Sisters of St. Joseph of Nazareth, HealthSource Group, Inc. The, HealthSource Group, Inc. The.	110687
872524	BBC Brown Boveri & Company Ltd., Newco (Proposed BBC joint venture name), Newco (Proposed BBC joint venture name).	121187
880073	ASEA AB, Newco, Newco	121187
871994	Thomson S.A., Northrop Corp., Wilcox Electric, Inc.	011288
870684	Donald J. Trump, Bally Manufacturing Corp., Bally Manufacturing Corp.	012288
880137	American Cyanamid Co., Criterion Catalyst Co., Criterion Catalyst Co.	021888
880158	Royal Dutch Petroleum Co., Criterion Catalyst Co., Criterion Catalyst Co.	021888
880927	CSX Corp. ECON Associates Limited Partnership, ECON Associates Limited Partnership.	032588

TRANSACTIONS GRANTED EARLY TERMINATION—Continued

Transaction No.	Name of acquiring person, name of acquired person, name of acquired entity	End of waiting period
881068	Whirlpool Corp., Roper Corp., Roper Corp.	033088
881069	Whirlpool Corp., Roper Corp., Roper Corp.	033088
881121	General Electric Co., Roper Corp., Roper Corp.	033088
881226	Thomas C. Foley, J.P. Stevens & Co., J.P. Stevens & Co.	040888
881227	West Point-Pepperell, Inc., J.P. Stevens & Co., Inc., J.P. Stevens & Co., Inc.	040888
880902	Engelhard Corp., KaiserTech Ltd., Kaiser Clay & Catalyst Co. and the Harshaw Chemical.	042988
881861	Marmon Holdings, Inc., (Pritzker Family), McHenry Sand & Gravel Co., Inc., McHenry Sand & Gravel Co., Inc.	083088
881864	Olin Corp., Dr. Beurt R. SerVaas, c/o SerVaas, Inc., Bridgeport Brass Corp.	083188
881876	General Electric Co., Borg-Warner Corp., Borg-Warner Chemicals, Inc.	091488
881964	Aramco Services Co., Texaco Inc., Texaco Refinery and Marketing, Inc.	111788
881967	Texaco, Texaco, Texaco Refinery and Marketing Inc.	111788
881982	Aramco Services Co., Texaco Inc., Texaco Refining and Marketing Inc.	111788
881983	Aramco Services Co., Aramco Services Co., Saudi Refining, Inc..	111788
881984	Texaco Inc., Aramco Services Co., Saudi Refining, Inc.	111788
890138	Williams Holdings PLC, Hanson PLC, Walter Kidde Aerospace Inc. et al.	112588
890161	Super Valu Stores, Inc., Red Owl Holdings, Inc., Red Owl Stores, Inc., ROSBismarck, Inc., ROS Brookings.	120588
890144	Varian Associates, Inc., Raytheon Co., The Machlett Laboratories, Incorporated.	012389
890649	AMR Corp., Texas Air Corp., Britt Airways, Inc.	021789
890479	UAL Corp., Texas Air Corp., Eastern Air Lines, Inc.	030789
890481	Texas Air Corp., UAL Corp., United Air Lines Inc.	030789
890840	Transco Energy Co., CSX Corp., Texas Gas Transmission Corporation, TXG Gas Marketing.	032989
890518	Becton Dickinson and Co., Marion Laboratories, Inc., Marion Laboratories, Inc. (Scientific Division).	040789
890315	CIBA-GEIGY Ltd., Ohaus Corp., Ohaus Corp.	042189
891001	Sara Lee Corp., Spring City Knitting Co., Inc., Spring City Knitting Co., Inc.	051789
890041	Nortek, Corp., Federal-Mogul Corp., Federal-Mogul.	082489
890170	Nortek, Inc., Federal-Mogul Corp., Federal-Mogul Corp.	082489
892037	American Cyanamid Co., Praxis Biologics, Inc., Praxis Biologics, Inc.	100589

TRANSACTIONS GRANTED EARLY TERMINATION—Continued

Transaction No.	Name of acquiring person, name of acquired person, name of acquired entity	End of waiting period
892769	Gannett Co., Inc., Saratoga Partners, L.P., AMNI America, Inc.	110189
892516	Fertilizer Industries, Inc., CNC Chemicals, Inc., CNC Chemicals, Inc.	110689
892623	Toshiba Corp., Diasonics, Inc., Diasonics (NMR) Inc. and Diasonics Credit Corp.	111789
900433	BBC Brown Boveri Ltd., Combustion Engineering, Inc., Combustion Engineering, Inc.	121489
900434	ASEA AB, Combustion Engineering, Inc., Combustion Engineering, Inc.	121489
900037	Emerson Electric Co., Vermont American Corp., Vermont American Corp.	122089
900038	Emerson Electric Co., Vermont American Corp., Vermont American Corp.	122089
892316	Borden, Inc., B. Jadow and Sons, Inc., B. Jadow and Sons, Inc.	010590
892318	Toagosei Chemical Industry Co., Ltd., B. Jadow and Sons, Inc., B. Jadow and Sons, Inc.	010590
900960	Imasco Ltd., Marriott Corp., MRO Mid-Atlantic Corp.	041390
900849	Trinity Industries, Inc., Ashland Oil, Inc., Beaird Industries, Inc.	041790
901176	Ushor Sacilor, Specialty Materials Corp., Specialty Materials Corp.	051890
901169	Hoechst Aktiengesellschaft, Union Carbide Corp., Union Carbide Chemicals and Plastics Company Inc.	060490
901388	Dayton Hudson Corp., B.A.T. Industries p.l.c., Marshall Field & Co.	061190
901184	Reckitt & Colman plc, American Home Products Corp., Boyle-Midway Household Products, Inc., Boyle-Midway.	026790
901258	Boston Ventures Limited Partnership III, The News Corporation Ltd., News America Publishing Inc.	062790
901038	Northwestern Healthcare Network, Northwestern Memorial Corp., Northwestern Memorial Corp.	071890
901062	Northwestern Healthcare Network, Lakeland Health Services, Inc., Lakeland Health Services, Inc.	071890
901064	Northwestern Healthcare Network, Evanston Hospital Corp., Evanston Hospital Corp.	071890
901671	BCI Associates, L.P., ConAgra, Inc., ConAgra, Inc.	081090
901673	ConAgra, Inc., BCI Associates, L.P., Beatrice Co.	081090
901781	W. R. Grace & Co., Whitehall Associates, L.P., RJR Nabisco Inc.	081790
901069	Colgate-Palmolive Co., Scherer Healthcare, Inc., Scherer Laboratories, Inc.	082490

TRANSACTIONS GRANTED EARLY TERMINATION—Continued

Transaction No.	Name of acquiring person, name of acquired person, name of acquired entity	End of waiting period
901737	Radex Heraklith Industriebeteiligungs AG, National Refractories Holding Co., National Refractories Holding Co.	110990
910034	The May Department Stores Co., Carter Hawley Hale Stores, Inc., Thalimer Brother Inc.	121190
902202	FAG KGaA, The Barden Corp., The Barden Corp.	122090
902264	FAG Kugelfischer Georg Schafer Kommanditgesellschaft, The Barden Corp., The Barden Corp.	122090
900064	James Hardie Industries Ltd., The Black & Decker Corp., GardenAmerica Corp.	122890
910135	UAL Corp., Pan Am Corp., Pan American World Airways, Inc.	011791
910348	Outdoor Systems, Inc., William S. Morris, III, Naegele Outdoor Advertising, Inc.	012891
910495	House of Fabrics, Inc., Fabricland, Inc., Fabricland, Inc.	013191
910496	House of Fabrics, Inc., Fabricland, Inc., Fabricland, Inc.	013191
902215	New York State Electric & Gas Corp., The Columbia Gas System, Inc., Columbia Gas of New York, Inc.	020891
910416	MTI Partners, L.P., Martin E. Zimmerman, LINC Scientific Imaging, Inc.	032291
910645	H Group Holding, Inc., Ticketron Limited Partnership, Ticketron Limited Partnership.	050691
902191	Senatera Health System, Humana, Inc., Humana Virginia Hospital Corporation, et al.	053191
910387	RWE A.G., Vista Chemical Co., Vista Chemical Co.	060791
910815	The Proctor & Gamble Co., Ronald O. Perelman, Revlon, Inc.	070291
910911	Voest-Alpine Stahl AG, Per-Olov Norberg, Uddeholms AB.	070391
910989	Continental Materials Corp., Whitman Corp., Krack Corp.	081591
910879	Ryder System, Inc., USAIR Group, Inc., USAIR, Inc. and Pacific Southwest Airmotive.	090991
911311	Vitro, Sociedad Anonima, Corning Inc., NEWCO.	112191
911312	Corning Inc., Vitro, Sociedad Anonima, NEWCO.	112191
920037	Hanson PLC, Beazer PLC, Beazer PLC.	112691
911487	Journal Communications, Inc., NorLight, NorLight.	112791
920087	A.H. Belo Corp., John Buzzetta, Times Herald Printing Co. (The).	120691
911053	Mannesmann A.G., Lear Siegler Holdings Corp., Rapistan Corp.	21391
911477	Pegasus Holdings, Inc., Hoeschst Aktiengesellschaft, Sigri GmBH.	012992
920185	W.R. Grace & Co., E.I. du Pont de Nemours and Co., Du Pont Canada Inc.	021392

TRANSACTIONS GRANTED EARLY TERMINATION—Continued

Transaction No.	Name of acquiring person, name of acquired person, name of acquired entity	End of waiting period
891128	Consolidated Freightways, Inc., Emery Air Freight Corp., Emery Air Freight Corp.	032892
901266	Leggett & Platt Inc., Dresher, Inc., Dresher, Inc.	050992
920851	Jostens, Inc., Wicat Systems, Inc., Wicat Systems, Inc.	062592
920885	Allied-Signal Inc., Westinghouse Electric Corp., Fortin, Inc., Fortin S.A., and Fortin Ltd.	072492
921025	GroupCare, Inc., MedCenters Health Care, Inc., MedCenters Health Care, Inc.	072992
921027	GroupCare, Inc., Group Health Plan, Inc., Group Health Plan, Inc.	072992
921102	Act III Cinemas, Inc., Cineplex Odeon Corp., Plitt Theatres, Inc.	073092
920912	Nesbitt Hospital Foundation, Wilkes-Barre General Health Corp., Wilkes-Barre General Health Corp.	080792
921065	Acadia Partners, L.P., BBA Group PLC (a British corporation), Page Avjet Airport Services, Inc.	082092
921066	BBA Group PLC, Acadia Partners, L.P., Butler Aviation International, Inc.	082092
920763	Motorola, Inc., Phillip N. and Mary A. Lyons, Airware Communications Corp. (San Francisco).	090492

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Renee A. Horton. Contact Representatives: Federal Trade Commission, Premerger Notification Office, Bureau of Competition, room 303, Washington, DC 20580, (202) 326-3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 92-25637 Filed 10-21-92; 8:45 am]

BILLING CODE 6750-01-M

[File No. 921-0084]

Dentsply International Inc.; Proposed Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, a Pennsylvania-based manufacturer of professional dental-care products to divest, within nine months of the order, all assets related to its U.S. Valiant product line. If the divestiture is not completed in the designated time-frame, the respondent would be required to agree to a Commission-appointed trustee to divest its interest in the assets related to its Valiant Alloy products. In addition, the order would require a Hold Separate Agreement during any period in which the respondent possesses an ownership interest in the U.S. Valiant assets.

DATES: Comments must be received on or before December 21, 1992.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Casey Triggs, FTC/S-2308, Washington, DC 20580. (202) 326-2682.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to divest, having been filed with and accepted, subject to final approval, the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order

In the Matter of Dentsply International Inc., A corporation.

The Federal Trade Commission ("Commission") having initiated an investigation of the proposed acquisition by Dentsply International Inc. ("Dentsply") of certain assets of the Professional Dental Care Products division of Johnson & Johnson ("J&J"), and it now appearing that Dentsply, hereinafter sometimes referred to as "proposed respondent", is willing to enter into an Agreement Containing Consent Order ("Agreement") to divest certain assets, cease and desist from certain acts, and to provide for certain other relief,

It is hereby agreed by and between Dentsply, by its duly authorized officers and its attorneys, and counsel for the Commission that:

1. Proposed respondent is a corporation organized, existing, and doing business under and by virtue of the laws of Delaware, with its principal offices located at 570 West College Avenue, York, Pennsylvania 17405.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) All rights under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceedings unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by the proposed respondent that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following Order to divest and cease and desist, and for other relief in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the Order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the United States Postal Service of the compliant and decision containing the agreed-to-Order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives

any right it may have to any other manner of service. The complaint may be used in construing the terms of the Order, and no agreement, understanding, representation, or interpretation not contained in the agreement or the Order may be used to vary or contradict the terms of the Order.

7. Proposed respondent has read the proposed Compliant and Order contemplated hereby. Proposed respondent understands that once the Order has been issued, it will be required to file one or more compliance reports showing it has fully complied with the Order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

I

As used in this order, the following definitions shall apply:

A. "Dentsply" means Dentsply International Inc., a corporation organized, existing, and doing business under and by the virtue of the laws of Delaware, its directors, officers, employees, agents and representatives, its domestic and foreign parents, predecessors, successors, assigns, divisions, subsidiaries, affiliates, partnerships and joint ventures, and the directors, officers, employees, agents and representatives of its domestic and foreign predecessors, successors, assigns, divisions, subsidiaries, affiliates, partnerships and joint ventures. The words "subsidiary," "affiliate" and "joint venture" refer to any firm in which there is partial (10 percent or more) or total ownership or control between corporations.

B. "J&J" means Johnson & Johnson, a corporation organized, existing, and doing business under and by virtue of the laws of New Jersey, its directors, officers, employees, agents and representatives, its domestic and foreign parents, predecessors, successors, assigns, divisions, subsidiaries, affiliates, partnerships and joint ventures, and the directors, officers, employees, agents and representatives of its domestic and foreign predecessors, successors, assigns, divisions, subsidiaries, affiliates, partnerships and joint ventures.

C. "Commission" means the Federal Trade Commission.

D. "Acquisition" means the acquisition of certain assets of J&J's Professional Dental Care Products division by Dentsply.

E. "Acquirer" means the party or parties to whom Dentsply divests the assets herein ordered to be divested.

F. "Silver alloy" means a metal-based alloy product which, when combined with mercury, forms an amalgam that is used to fill dental caries.

G. "Valiant Products" means Dentsply's silver alloy products marketed in the United States under the means "Valiant," "Valiant Ph.D," "Valiant Snap-Set," and "Valiant Extended Time."

H. "Valiant Business" means Dentsply's business of manufacturing, marketing, and selling Valiant Products in the United States.

I. "Valiant Assets" means all assets constituting or otherwise related to the Valiant Business, including but not limited to:

1. All books, records, manuals, reports, dockets, lists, advertising and promotional materials and other documents relating to the Valiant Products;

2. Valiant product line Profit and Loss Statements relating to each of the Valiant Products;

3. All United States trademarks together with all trademark registrations and applications therefor relating to Valiant Products;

4. All lists of stock keeping units ("SKUs"); i.e., all forms, package sizes and other units in which Valiant Products are sold and which are used in records of sales and inventories;

5. All Bills of Materials for each of the Valiant Products, consisting of full manufacturing standards and procedures, quality control specifications, specifications for raw materials and components, including all lists of authorized sources for materials and components;

6. All artwork and mechanical drawings currently in use relating to each of the Valiant Products;

7. All fixed assets listed on Schedule I hereto;

8. All lists of all customers, including but not limited to, distributors, dentists, and dental schools, who have bought Valiant Products, including all files of names, addresses, and telephone numbers of the individual customer contacts, and the unit and dollar amounts of sales, by product, to each customer;

9. All marketing information relating to Valiant Products, including but not limited to Dentsply's consumer and trade promotional, marketing and business programs;

10. All inventories of finished goods, packaging and unique raw materials relating to Valiant Products;

11. All names of manufacturers under contract with Dentsply to produce Valiant Products and all contracts with outside suppliers for formulations unique to the Valiant Products;

12. All product testing and laboratory research data relating to Valiant Products, including but not limited to toxicity research data, all regulatory registrations and correspondence;

13. All consumer correspondence and documents related to the Valiant Business;

14. All price lists for Valiant Products;

15. All information relating to costs of production for each of the Valiant Products, including but not limited to raw material costs, packaging costs, and advertising and promotional costs;

16. All sales data relating to Valiant Products;

17. A sublicense to make, use and sell certain technology in the U.S. related to the design for a sealed, mercury-tight dental mixing capsule under claims of certain patents owned by Ernst Muhlbauer K.G. and granted to Dentsply under a License Agreement dated November 26, 1979, as amended;

18. a sublicense to use and sell certain technology in the United States related to the formulation of the dental alloy used in the Valiant Products under claims of certain patents owned by Special Metals Corporation and granted to Dentsply under a License Agreement dated October 8, 1980, as amended; and

19. all patents and patent applications owned by Dentsply related to the Valiant Business and the formulas, processes, technology, know-how, trade secrets, manufacturing information, specifications, plans, drawings and data and other tangible embodiments of know-how used in the Valiant Business, including (without limitation) the technology and know-how required to manufacture commercially acceptable products.

J. "Worldwide Valiant Products" means Dentsply's silver alloy products marketed anywhere in the world under the names "Valiant," "Valiant Ph.D," "Valiant Snap-Set," and "Valiant Extended Time."

K. "Worldwide Valiant Business" means Dentsply's business of manufacturing, marketing, and selling Worldwide Valiant Products.

L. "Worldwide Valiant Assets" means all assets constituting or otherwise related to the Worldwide Valiant Business, including but not limited to:

1. All books, records, manuals, reports, dockets, lists, advertising and promotional materials and other documents relating to the Worldwide Valiant Products;

2. Valiant product line Profit and Loss Statements relating to each of the Worldwide Valiant Products;

3. all trademarks together with all trademark registrations and applications therefor relating to Worldwide Valiant Products;

4. all lists of stock keeping units ("SKUs"); i.e., all forms, package sizes and other units in which Worldwide Valiant Products are sold and which are used in records of sales and inventories;

5. all Bills of Materials for each of the Worldwide Valiant Products, consisting of full manufacturing standards and procedures, quality control specifications, specifications for raw materials and components, including all lists of authorized sources for materials and components;

6. all artwork and mechanical drawings currently in use relating to each of the Worldwide Valiant Products;

7. all fixed assets listed on Schedule I hereto;

8. all lists of all customers, including but not limited to, distributors, dentists, and dental schools, who have bought Worldwide Valiant Products, including all files of names, addresses, and telephone numbers of the individual customer contacts, and the unit and dollar amounts of sales, by product, to each customer;

9. all marketing information relating to Worldwide Valiant Products, including but not limited to Dentsply's consumer and trade promotional, marketing and business programs;

10. all inventories of finished goods, packaging and unique raw materials relating to Worldwide Valiant Products;

11. all names of manufacturers under contract with Dentsply to produce Worldwide Valiant Products and all contracts with outside suppliers for formulations unique to Worldwide Valiant Products;

12. all product testing and laboratory research data relating to Worldwide Valiant Products, including but not limited to toxicity research data, all regulatory registrations and correspondence;

13. all consumer correspondence and documents related to the Worldwide Valiant Business;

14. all information relating to costs of production for each of the Worldwide Valiant Products, including but not limited to raw material costs, packaging costs, and advertising and promotional costs;

16. all sales data relating to Worldwide Valiant Products;

17. a sublicense to make, use and sell certain technology in certain designated countries of the world related to the design for a sealed, mercury-tight dental mixing capsule under claims of certain patents owned by Ernest Muhlbauer K.G. and granted to Dentsply under a License Agreement dated November 26, 1979;

18. a sublicense to use and sell certain technology in the United States related to the formulation of the dental alloy used in the Worldwide Valiant Products under claims of certain patents owned by Special Metals Corporation and granted to Dentsply under a License Agreement dated October 8, 1980, as amended; and

19. all patents and patent applications owned by Dentsply related to the Worldwide Valiant Business and the formulas, processes, technology, know-how, trade secrets, manufacturing information, specifications, plans, drawings and data and other tangible embodiments of know-how used in the Worldwide Valiant Business, including (without limitation) the technology and know-how required to manufacture commercially acceptable products.

M. "Dispersalloy Products" means J&J's silver alloy products, marketed in the United States under the names "Dispersalloy" and "Unison."

N. "Dispersalloy Business" means the business of manufacturing, marketing, and selling Dispersalloy Products.

II.

A. Dentsply shall divest, absolutely and in good faith, within nine (9) months of the date this Order becomes final, the Valiant Assets.

B. Dentsply shall divest the Valiant Assets only to an Acquirer that receives the prior approval of the Commission, and only in a manner that receives the prior approval of the Commission. The purpose of the divestiture of the Valiant Assets is to ensure the continuation of such assets as an ongoing, viable enterprise and to remedy the lessening of competition resulting from the proposed Acquisition as alleged in the Commission's Complaint.

C. Dentsply shall make available to the Acquirer such Dentsply personnel, assistance and training as the Acquirer might reasonably need to transfer technology and know-how and shall continue providing such personnel, assistance and training at no additional cost for a period of time sufficient to satisfy the Acquirer's management that its personnel are appropriately trained in the technology and know-how. However, Dentsply shall not be required to continue providing such personnel, assistance and training for more than six (6) months after the Valiant Assets are divested pursuant to this Order.

D. Dentsply will provide reasonable cooperation and assistance to the Acquirer in obtaining approvals for the transfer of all registrations relating to the Valiant Business or the Worldwide Valiant Business.

E. Dentsply shall comply with all terms of the Hold Separate Agreement, attached hereto and made a part hereof. Said Agreement shall continue in effect until such time as Dentsply has divested the Valiant Assets or until such time as the Hold Separate Agreement provides.

F. Dentsply shall take such action as is necessary and reasonable to maintain the viability and marketability of the Worldwide Valiant Assets and shall not cause or permit the destruction, removal, wasting, deterioration, or impairment of any of the Worldwide Valiant Assets except in the ordinary course of business and except for ordinary wear and tear that does not affect the viability and marketability of the Worldwide Valiant Assets.

III.

It is further ordered that:

A. If Dentsply has not divested, absolutely and in good faith and with the Commission's approval, the Valiant Assets within nine (9) months of the date this Order becomes final, Dentsply shall consent to the appointment by the Commission of a trustee to divest the Valiant Assets only to an Acquirer that receives the prior approval of the Commission, and only in a manner that receives the prior approval of the Commission. Provided, however, that if the Commission has not approved or disapproved a proposed divestiture within 120 days of the date the application for such divestiture has been put on the public record, the running of the divestiture period shall be tolled until the Commission approves or disapproves the divestiture. If the trustee has not divested the Valiant Assets within the subsequent nine (9) months, the trustee shall divest the Worldwide Valiant Assets within twelve (12) months thereafter. In the event the Commission or the Attorney General brings an action pursuant to section 5 (*l*) of the Federal Trade Commission Act, 15 U.S.C. 45 (*l*), or any other statute enforced by the Commission, Dentsply shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to Section 5 (*l*) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for

any failure by Dentsply to comply with this Order.

B. If a trustee is appointed by the Commission or a court pursuant to paragraph III.A. of this Order, Dentsply shall consent to the following terms and conditions regarding the trustee's powers, duties, authorities, and responsibilities:

1. The Commission shall select the trustee, subject to the consent of Dentsply, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures.

2. The trustee shall, subject to the prior approval of the Commission, have the exclusive power and authority to divest the Valiant Assets, or, as the case may be, to divest the Worldwide Valiant Assets.

3. The trustee shall have nine (9) months to divest the Valiant Assets from the date of appointment, and if the Valiant Assets have not been divested, the trustee shall have twelve (12) months thereafter to accomplish the divestiture of the Worldwide Valiant Assets. If, however, at the end of the twelve-month period the trustee has submitted a plan of divestiture or believes that divestiture can be accomplished within a reasonable time, the twelve (12) month divestiture period for the Worldwide Valiant Assets may be extended by the Commission; provided, however, the Commission may only extend the twelve (12) month divestiture period two (2) times.

4. The trustee shall have full and complete access to the personnel, books records, and facilities related to the Valiant and Worldwide Valiant Assets, or any other relevant information, as the trustee may reasonably request. Dentsply shall develop such financial or other information as such trustee may reasonably request and shall cooperate with any reasonable request of the trustee. Dentsply shall take no action to interfere with or impede the trustee's accomplishment of the divestiture. Any delays in divestiture caused by Dentsply shall extend the time for divestiture under paragraph III.B.3. in an amount equal to the delay, as determined by the Commission or the court for a court-appointed trustee.

5. Subject to Dentsply's absolute and unconditional obligation to divest at no minimum price and the purpose of the divestiture as stated in paragraph II.B., the trustee shall use his or her best efforts to negotiate the most favorable price and terms available with each prospective acquirer for the divestiture of either the Valiant Assets or the Worldwide Valiant Assets. Either divestiture shall be made in the manner set out in paragraph II; provided, however, if the trustee receives bona fide offers from more than one acquirer, and if the Commission determines to approve more than one such acquirer, the trustee shall divest to the acquirer selected by Dentsply from among those approved by the Commission.

6. The trustee shall serve, without bond or other security, at the cost and expense of Dentsply, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have authority to employ, at the cost and expense of Dentsply, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are reasonably necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the sale and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of Dentsply and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting the Valiant Assets or the Worldwide Valiant Assets.

7. Dentsply shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, or liabilities arising in any manner out of, or in connection with, the trustee's duties under this Order.

8. Within thirty (30) days after appointment of the trustee, and subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, Dentsply shall execute a trust agreement that transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture required by this Order.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in paragraph III.A. of this Order.

10. The Commission or, in the case of a court-appointed trustee, the court may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order.

11. The trustee shall have no obligation or authority to operate or maintain either the Valiant Assets or the Worldwide Valiant Assets.

12. The trustee shall report in writing to Dentsply and to the Commission every thirty (30) days concerning the trustee's efforts to accomplish divestiture.

It is further ordered That, within sixty (60) days after the date this Order becomes final and every sixty (60) days thereafter until Dentsply has fully complied with the provisions of paragraphs II. and III. of this Order, Dentsply shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, or has complied with those provisions. Dentsply shall include in its compliance reports, among other things that are required from time to time, a full description of substantive contacts or negotiations for the divestiture, including the identity of all parties contacted. Dentsply also shall include in its compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning divestiture.

V.

It is further ordered That for a ten (10) year period commencing on the date this Order becomes final, Dentsply shall cease and desist from acquiring, without the prior approval of the Federal Trade Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise, any equity or other interest in, or the whole or any part of the stock of share capital of, any person or business that is engaged in any way in the manufacture, sale, shipment or distribution of silver alloy in the United States; or, except in the ordinary course of business, any assets used or previously used in (and still suitable for use in), the manufacture, sale, shipment or distribution of silver alloy. One year from the date this Order becomes final and annually thereafter for nine years on the anniversary date of this Order, Dentsply shall file with the Secretary of the Federal Trade Commission a verified written report of its compliance with this paragraph.

VI.

It is further ordered That, for the purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, upon written request and on reasonable notice to Dentsply, Dentsply shall permit any duly authorized representatives of the Commission:

A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts,

correspondence, memoranda and other records and documents in possession or under the control of Dentsply relating to any matters contained in this consent order; and

B. Upon five (5) days notice to Dentsply, and without restraint or interference from Dentsply, to interview officers or employees of Dentsply, who may have counsel present, regarding such matters.

VII.

It is further ordered That, Dentsply shall notify the Commission at least thirty (30) days prior to any change in the corporation such as dissolution, assignment, or sale, resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, and any other change that may affect compliance obligations arising out of the Order.

Schedule I

Valiant Manufacturing/Packaging Equipment

Magnathermic Melter
Atomizer
Ovens (2)
Ohio grinder
America centrifuge
Ball mill
Sweco sieve
Vortex particle classifier
Pfaudler treating vessel Drum tumbler
ATM centrifuge
2 cu. ft. Paterson Kelly Blender
Box sieve
Stokes tablet machine
Stacker/packager
Aidlin plugger
Synthron Capper
Fasson labler
DMG Sure Cap filling machine
Old design Sure Cap filling machine
Sure-Cap Mold

Commissioners: Janet D. Steiger, Chairman, Mary L. Azcuenaga, Deborah K. Owen, Roscoe B. Starek, III, Dennis Yao.

Hold Separate Agreement

In the Matter of Dentsply International Inc. a corporation.

This Hold Separate Agreement (the "Agreement") is by and among Dentsply International Inc. (Dentsply), a corporation organized, existing, and doing business under and by virtue of the laws of Delaware, with its office and principal place of business at 570 West College Avenue, York, Pennsylvania 17405; and the Federal Trade Commission ("the Commission"), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. 41, et seq. (collectively, the "Parties").

Premises

Whereas, on April 27, 1992, Dentsply entered into an agreement with Johnson & Johnson ("J&J") to acquire certain assets of its Professional Dental Care division, (hereinafter "Acquisition"); and

Whereas, J&J, with its principal office and place of business located at One Johnson & Johnson Plaza, New Brunswick, New Jersey 08933–7002, produces and markets, among other things, silver alloy products; and

Whereas, the Commission is now investigating the Acquisition to determine whether it would violate any of the statutes enforced by the Commission; and

Whereas, if the Commission accepts the attached Agreement Containing Consent Order ("Consent Order"), the Commission must place it on the public record for a period of at least sixty (60) days and may subsequently withdraw such acceptance pursuant to the provisions of section 2.34 of the Commission's Rules; and

Whereas, the Commission is concerned that if an understanding is not reached, preserving the status quo ante of Dentsply's Valiant Business during the period prior to the final acceptance of the Consent Order by the Commission (after the 60-day public notice period), divestiture resulting from any proceeding challenging the legality of the Acquisition might not be possible, or might be less than an effective remedy; and

Whereas, the Commission is concerned that if the Acquisition is consummated, it will be necessary to preserve the Commission's ability to require the divestiture of the Valiant Assets or the Worldwide Valiant Assets as described in paragraph I of the Consent Order and the Commission's right to have the Valiant Business continued as a viable competitor; and

Whereas, the purpose of the Agreement and the Consent Order is to:

1. Preserve the viability of the Valiant Business pending the divestiture of the Valiant Assets or the Worldwide Valiant Assets, as defined in paragraphs I.I. and I.L. of the Consent Order, as a viable and ongoing enterprise,

2. remedy any anticompetitive effects of the Acquisition, and

3. preserve the Valiant Business as an ongoing, viable silver alloy business until divestiture is achieved; and

Whereas, Dentsply's entering into this Agreement shall in no way by construed as an admission by Dentsply that the Acquisition is illegal; and

Whereas, Dentsply understands that no act or transaction contemplated by this Agreement shall be deemed immune or exempt from the provisions of the antitrust laws of the Federal Trade Commission Act by reason of anything contained in this Agreement.

Now, therefore, the parties agree, upon the understanding that the Commission has not yet determined whether the acquisition will be challenged; and in consideration of the Commission's agreement that, unless the Commission determines to reject the Consent Order, it will not seek further relief from Dentsply with respect to the Acquisition, except that the Commission may exercise any and all rights to enforce this Hold Separate Agreement and the Consent Order to which it is annexed and made a part thereof, and in the event the required divestiture is not accomplished, to appoint a trustee to seek divestiture of the Valiant Assets or the Worldwide Valiant Assets pursuant to the Consent Order, as follows:

1. Dentsply agrees to execute and be bound by the attached Consent Order.

2. Dentsply agrees that from the date this Agreement is accepted until the earliest of the dates listed in subparagraphs 2.a–2.b, it will comply with the provisions of paragraph 3 of this Agreement:

a. three business days after the Commission withdraws its acceptance of the Consent Order pursuant to the provisions of section 2.34 of the Commission's rules;

b. the day after the divestiture required by the Consent Order has been completed.

3. Because complete isolation of the Valiant Business from Dentsply's marketing and sales operations could cause irreparable harm to that business and make it difficult or impossible to divest the Valiant Assets as an ongoing, viable alloy products business, Dentsply will manage and maintain the Valiant Assets, as they are presently constituted, on the following terms and conditions:

a. Dentsply will appoint two individuals, one each from among Dentsply's current employees working in the marketing and sales areas of the L.D. Caulk division of Dentsply to manage and maintain the Valiant Business. These individuals ("the management team") shall manage the Valiant Business independently of the management of Dentsply's other businesses, except that these individuals may provide information to and receive information from Dentsply's production and financial personnel, and Dentsply's marketing and sales forces to the extent

necessary to effectively operate the Valiant Business and arrange for the Valiant Products to be marketed and sold. The management team shall not thereafter, until the Valiant Assets are divested pursuant to the Consent Order, be in any way involved in the marketing or selling of any Dispersalloy Product.

b. The management team, in its capacity as such, shall report directly and exclusively to an independent auditor/manager, to be appointed by Dentsply with the consent of the Commission. The independent auditor/manager shall have exclusive control over the operations of the Valiant Business, with responsibility for the management of the Valiant Business and for maintaining the independence of that business.

c. Dentsply shall not exercise direction or control over, or influence directly or indirectly the independent auditor/manager or the management team or any of its operations relating to the operations of the Valiant Business; provided, however, that Dentsply may exercise only such direction and control over the management team and the Valiant Assets as is necessary to assure compliance with this Agreement and with the Order.

d. Dentsply shall maintain the viability and marketability of the Valiant Assets and shall not sell, transfer, encumber (other than in the normal course of business), or otherwise impair their marketability or viability. Dentsply shall ensure the uninterrupted supply of Valiant Products and shall not impede production nor allow inventories to fall below reasonable levels.

e. Except for the management team, Dentsply shall not permit any other Dentsply employee, officer, or director to be involved in the management of the Valiant Assets. Nothing in this paragraph shall preclude Dentsply's sales, marketing, manufacturing, financial, accounting, or distribution personnel form providing services to the management team in the ordinary course of business as set forth in subparagraph 3.a.

f. Except as required by law, and except to the extent that necessary information is exchanged in the course of evaluating the Acquisition, defending investigations or litigation, or negotiating agreements to divest assets, Dentsply shall not receive or have access to, or the use of, any material confidential information about the Valiant Business or the activities of the management team in managing that business not in the public domain, nor shall the management team receive or have access to, or the use of, any material confidential information about the Dispersalloy Business or the activities of Dentsply in managing the Dispersalloy Business not in the public domain. Any such information that is obtained pursuant to this subparagraph shall be used only for the purpose set forth in this subparagraph. ("Material confidential information," as used herein, means competitively sensitive or proprietary information not independently known to Dentsply from sources other than the management team, and includes but is not limited to customer lists, price lists, marketing methods (except to the extent marketing and sales information need to be divulged to the Dentsply marketing and sales force or production and financial personnel in the ordinary course of business), patents, technologies, processes, or other trade secrets.)

g. Dentsply shall not change the composition of the management team unless the independent auditor/manager consents. The independent auditor/manager shall have the power to remove members of the management team.

h. Dentsply shall establish written procedures to be approved by the independent auditor/manager, covering the management, maintenance, and independence of the Valiant Business and the conduct of the management team in accordance with this Agreement. Dentsply shall also circulate to all of its employees and appropriately display a notice of this Hold Separate Agreement and Consent Order in the form attached hereto as Appendix A.

i. The management team shall be permitted access to Dentsply's sales force, including but not limited to giving sales presentations, distribution of sales brochures or informational materials, and notification of promotional programs affecting the Valiant Products.

j. Dentsply will offer an additional 2% sales commission to the L.D. Caulk field sales force on all U.S. Valiant sales above and beyond the current level of commissions, and in the event that a commission is offered to Dentsply sales personnel for sales of Dispersally Products, the sales commission for sales of U.S. Valiant Products shall always be 2% more than the sales commission offered for sales of Dispersalloy Products until the Valiant Assets or the Worldwide Valiant Assets have been divested.

k. Dentsply shall make available for use in the Valiant Business each year until divestiture an amount not lower than the amount of money spent in fiscal year 1991 for advertising and trade promotion of the Valiant Products, and shall pay all direct product costs and indirect overheads for the Valiant Business. The Valiant Business shall not be charged with the compensation and expenses of the independent auditor/manager.

l. The independent auditor/manager shall serve at the cost and expense of Dentsply. Dentsply shall indemnify the independent auditor/manager against any losses or claims of any kind that might arise out of his or her involvement under this Hold Separate Agreement.

m. If the independent auditor/manager ceases to act or fails to act diligently, a substitute auditor/manager shall be appointed in the same manner as provided in paragraph 3.b of this Hold Separate Agreement.

n. The independent auditor/manager shall have access to and be informed about all companies who inquire about, seek or propose to buy the Valiant Assets or the Worldwide Valiant Assets. Dentsply may require the independent auditor/manager to sign a confidentiality agreement prohibiting the disclosure of any material confidential information gained as a result of his or her role as independent auditor/manager to anyone other than the Commission.

o. All material transactions, out of the ordinary course of business and not precluded by subparagraphs 3.a–3.n hereof, shall be subject to a majority vote of the management team. In case of a tie, the independent auditor/manager shall cast the deciding vote.

p. The independent auditor/manager shall report in writing to the Commission every thirty (30) days concerning the independent auditor/manager's efforts to accomplish the purposes of this Hold Separate Agreement.

4. Should the Federal Trade Commission seek in any proceeding to compel Dentsply to divest itself of the Valiant Assets or the Worldwide Valiant Assets, as defined in the Consent Order, Dentsply shall not raise any objection based on the expiration of the applicable Hart-Scott-Rodino Antitrust Improvements Act waiting period or the fact that the Commission has permitted the Acquisition. Dentsply also waives all rights to contest the validity of this Agreement.

5. For the purpose of determining or securing compliance with this Agreement, subject to any legally recognized privilege, and upon written request with reasonable notice to Dentsply made to its principal office in the United States, Dentsply shall permit any duly authorized representative or representatives of the Commission:

a. Access during the office hours of Dentsply and in the presence of counsel to inspect and copy all books, ledgers,

accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Dentsply relating to compliance with this Agreement;

b. Upon five (5) days notice to Dentsply, and without restraint or interference from it, to interview officers or employees of Dentsply, who may have counsel present, regarding any such matters. #

c. Information obtained by the Commission pursuant to this provision shall be given confidential treatment pursuant to sections 6(f) and 21(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f) and 56(f).

6. This Agreement shall not be binding until approved by the Commission.

Appendix A

Notice of Divestiture and Requirement for Confidentiality

Dentsply International Inc. ("Dentsply") has entered into a Consent Order and Hold Separate Agreement with the Federal Trade Commission relating to the divestiture of certain Dentsply silver alloy assets and products, including its Valiant, Valiant Ph.D, Valiant Snap-Set and Valiant Extended Time products. Until such assets and products are divested, they must be managed and maintained as a separate, ongoing business, independent of all other competing product lines of Dentsply. All competitive information relating to all Valiant product lines must be retained and maintained by the persons responsible for the management of these products on a confidential basis and such persons shall be prohibited from providing, discussing, exchanging, circulating or otherwise furnishing any such information to or with any other person whose employment involves any Dentsply competing alloy product, including Dispersalloy, except to the extent such information is required in connection with the manufacture or sale of Valiant products. All such persons responsible for the management of Dentsply's competing silver alloy products shall be prohibited from providing, discussing, exchanging, circulating or otherwise furnishing any competition information about those products to or with any person responsible for Valiant products.

Any violation of the Consent Order or the Hold Separate Agreement, incorporated by reference as part of the Consent Order, subjects the violator to civil penalties and other relief as provided by law.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission ("Commission") has accepted provisionally an agreement containing a proposed Consent Order and Agreement to Hold Separate from Dentsply International Inc. ("Dentsply") under which Dentsply would divest its Valiant silver alloy business (hereinafter referred to as "Valiant").

The proposed Consent Order has been placed on the public record for sixty (60) days for reception of comments by interested people. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed Order.

On April 27, 1992, Dentsply and Johnson & Johnson ("J&J") entered into an agreement whereby Dentsply would acquire certain assets of J&J's Professional Dental Care Products division. The proposed complaint alleges that the proposed acquisition, if consummated, would constitute a violation of section 7 of the Clayton Act, as amended, 15 U.S.C. 18 and section 5 of the FTC Act, as amended, 15 U.S.C. 45 in the market for the sale of premium silver alloy products in the United States.

The proposed Consent Order provides that within nine (9) months of the Order becoming final, Dentsply shall divest all assets related to its U.S. Valiant product line. In the event that Dentsply has not divested the U.S. Valiant assets in nine (9) months, the proposed Consent Order provides that Dentsply shall consent to the appointment by the Commission of a trustee to divest all of Dentsply's interest in the assets related to its Valiant alloy products. If the Commission-appointed trustee has not divested the U.S. Valiant assets within that subsequent nine (9) month period, the trustee shall divest all of the Dentsply's interest in the assets related to its worldwide Valiant alloy products ("Worldwide Valiant").

The Hold Separate provides that during any period in which Dentsply possesses an ownership interest in the U.S. Valiant assets, these assets will be operated independently of Dentsply. Under the provisions of the Order, Dentsply is also required to provide to the Commission a report of its compliance with the divestiture provisions of the Order within sixty (60) days following the date this Order becomes final, and every sixty (60) days thereafter until Dentsply has completely divested its interest in either the U.S. Valiant assets or the Worldwide Valiant assets. The proposed Order will also require Dentsply to cease and desist for ten (10) years from acquiring, without Federal Trade Commission approval, any interest in assets suitable for the manufacture, sale, shipment or distribution of silver alloy in the United States market. One year from the date the Order becomes final and annually thereafter for nine (9) years, Dentsply will be required to provide to the Commission a report of their compliance with the cease and desist provision of the proposed Order.

The purpose of this analysis is to facilitate public comment on the proposed Order, and it is not intended to constitute an official interpretation of the agreement and proposed Order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 92-25636 Filed 10-21-92; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Update of the Clinical Practice Guideline for Depression in Primary Care; Diagnosis and Treatment of Selected Mood Disorders

The Agency for Health Care Policy and Research (AHCPR) announces that it is seeking nominations of qualified individuals to serve on a panel to update a clinical practice guideline that will be released during the first quarter of 1993 for Depression in Primary Care: Diagnosis and Treatment of Selected Mood Disorders. Selected individuals will replace four of the current panel members.

Background

The Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101-239) added a new title IX to the Public Health Service Act (the Act), which established the Agency for Health Care Policy and Research (AHCPR) to enhance the quality, appropriateness, and effectiveness of health care services, and access to such services. (See 42 U.S.C. 299-299c-6 and 1320b-12.)

As part of its legislative mandate, AHCPR is arranging for the development, periodic review, and updating of clinically relevant guidelines that may be used by physicians, other health care practitioners, educators, and consumers to assist in determining how diseases, disorders, and other health conditions can most effectively and appropriately be prevented, diagnosed, treated, and clinically managed.

Section 912 of the Act (42 U.S.C. 299b-1(b)) requires that the guidelines be:

1. Based on the best available research and professional judgment;

2. Presented in formats appropriate for use by physicians, other health care practitioners, medical educators, medical review organizations, and consumers; and

3. Presented in treatment-specific or condition-specific forms appropriate for use in clinical practice, educational programs, and reviewing quality and appropriateness of medical care.

Section 913 of the Act (42 U.S.C. 299b-2) describes two mechanisms through which AHCPR may arrange for development of guidelines: (1) Panels of qualified health care experts and consumers may be convened; and (2) contracts may be awarded to public and private non-profit organizations. The AHCPR has elected to use the panel process for development and updating of

the clinical practice guideline for Depression in Primary Care: Diagnosis and Treatment of Selected Mood Disorders.

Section 914 of the Act (42 U.S.C. 299b-3(a)) identifies factors to be considered in establishing priorities for guidelines, including the extent to which the proposed guidelines would:

1. Improve methods of prevention, diagnosis, treatment and clinical management, and thereby benefit a significant number of individuals;
2. Reduce clinically significant variations among clinicians in the particular services and procedures utilized in making diagnoses and providing treatments; and
3. Reduce clinically significant variations in the outcomes of health care services and procedures.

Also, in accordance with title IX of the PHS Act and section 1142 of the Social Security Act, the Administrator, AHCPR, is to assure that the needs and priorities of the Medicare program are reflected appropriately in the agenda and priorities for development of guidelines.

Panel Nominations

The panel that will update the guideline for Depression in Primary Care will assess new research in selected areas previously reviewed, review current literature on new drug treatments, and assess research in diagnosis and treatment of depressions seen in outpatient settings. The panel will consist of two co-chairpersons and approximately twelve other members. To assist in identifying four new members for the panel, AHCPR is requesting recommendations from interested individuals and organizations. To replace the expertise of the retiring members, the AHCPR is especially interested in receiving nominations of: (1) physicians specializing in family practice; (2) psychiatrists; and (3) psychologists.

Individuals selected for the guideline update panel will be asked to serve from 1 to 3 years. This panel is expected to meet 2 times during 1993. The first meeting is scheduled for February 1993. An additional meeting is expected to be held in June 1993.

The AHCPR will use the criteria specified below in making panel selections.

- Relevant training and clinical experience;
- Demonstrated interest in quality assurance and research on diagnosis and treatment of depressed outpatients in primary care settings, including publication of relevant peer-reviewed articles;
- Commitment to the need to produce clinical guidelines;
- Recognition in the field with a record of leadership in relevant activities;
- Broad public health view of the utility of particular procedures(s) or clinical services(s);
- Demonstrated capacity to respond to consumer concerns;

Prior experience in developing guidelines for the clinical condition in question; and

- No potential conflict of interest that would impair the impartial participation in development of the guidelines.

Nominations for members of the panel will be submitted to the co-chairpersons for review and consideration. The co-chairpersons will, in turn, recommend proposed panel members to AHCPR. Appointments of the panel members will be made by AHCPR, after review of proposed members' qualifications and the overall composition of the panel to ensure representation of a range of expertise and experience.

Each nomination must include a copy of the individual's curriculum vitae or resume, plus a statement of the rationale for the specific nomination. To be considered, nominations must be received by November 23, 1992 at the following address: Office of the Forum for Quality and Effectiveness in Health Care, Attn: Kay Pearson, Forum staff contact, Agency for Health Care Policy and Research, 2101 East Jefferson Street, Suite 401, Rockville, MD 20852. Ph #: 301-227-6671. Fax #: 301-227-8332.

For Additional Information

Additional information on the guideline development process is contained in the AHCPR Fact Sheet, "AHCPR-Commissioned Clinical Practice Guidelines," dated January 1992 and the Program Note, "Clinical Guideline Development," dated August 1990. These documents can be obtained from the AHCPR Publications Clearinghouse, P.O. Box 8547, Silver Spring, MD 20907; or call toll-free: 1800-358-9295;

Also, information can be obtained by contacting Kathleen A. McCormick, Ph.D., R.N., Director, Office of the Forum for Quality and Effectiveness in Health Care, Agency for Health Care Policy and Research, at the Rockville address above.

Dated: October 14, 1992.

J. Jarrett Clinton, M.D.,

Administrator.

[FR Doc. 92-25575 Filed 10-21-92; 8:45 am]

BILLING CODE 4160-90-M

Food and Drug Administration

Advisory Committee; Amendment of Notice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration is announcing an amendment to the agenda of a meeting of the Vaccines and Related Biological Products Advisory Committee which is scheduled for October 28 and 29, 1992. This meeting was announced in the Federal Register of September 28, 1992 (57 FR 44573). The change is being made to add a closed session to the agenda on October 28, 1992. A previous amendment to the agenda was announced in the Federal Register of October 13, 1992 (57 FR 46865). Both amendments will be announced at the beginning of the open portion of the meeting.

FOR FURTHER INFORMATION CONTACT: Anna J. Baldwin, Center for Biologics Evaluation and Research (HFB-5), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20892, 301-295-8226.

SUPPLEMENTARY INFORMATION: In the Federal Register of September 28, 1992 (57 FR 44573), FDA announced that a meeting of the Vaccines and Related Biological Products Advisory Committee would be held on October 28 and 29, 1992. On page 44573, column 3, the type of meeting and contact person portion of the agenda is amended as follows:

Type of meeting and contact person. Open committee discussion, October 28, 1992, 8:30 a.m. to 9 a.m.; closed committee deliberations, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 5:30 p.m.; open public hearing, 5:30 p.m. to 6 p.m., unless public participation does not last that long; open public hearing, October 29, 1992, 8:30 a.m. to 9 a.m., unless public participation does not last that long; open committee discussion, 9 a.m. to 11 a.m.; closed committee deliberations, 11 a.m. to 12 m.; Anna J. Baldwin, Center for Biologics Evaluation and Research (HFB-5), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20892, 301-295-8226.

Dated: October 19, 1992.

David A. Kessler,

Commissioner of Food and Drugs.

[FR Doc. 92-25674 Filed 10-21-92; 8:45 am]

BILLING CODE 4160-01-F

Health Resources and Services Administration

Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory bodies scheduled to meet during the month of December 1992.

Name: Graduate Training in Family Medicine Review Committee.

Date and Time: December 1-3, 1992, 8:30 a.m.

Place: Georgetown and Montrose Conference Rooms, Ramada Inn Rockville, 1775 Rockville Pike, Rockville, Maryland 20852.

Open on December 7, 8:30 a.m.—10:30 a.m., Closed for Remainder of Meeting.

Purpose: The Graduate Training in Family Medicine Review Committee shall review applications from public or nonprofit private hospitals, and other public or nonprofit entities that plan, develop and operate or participate in approved graduate training programs in the field of family medicine; or supports trainees in such programs who plan to specialize or work in the practice of family medicine.

Agenda: The open portion of the meeting will cover welcome and opening remarks, financial management and legislative implementation updates, and overview of the review process. The meeting will be closed to the public on December 1 at 10:30 a.m. for the remainder of the meeting for the review of grant applications. The closing is in accordance with the provisions set forth in section 552b(c)(6), title 5 U.S.C., and the Determination by the Administrator, Health Resources and Services Administration, pursuant to Public Law 92-463.

Anyone requiring information regarding that subject Council should contact Mrs. Sherry Whipple, Executive Secretary, Graduate Training in Family Medicine Review Committee, room 4C-18, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-6874.

Name: Residency Training Review Committee.

Date and Time: December 7-9, 1992, 8:30 a.m.

Place: Montrose Conference Rooms, Ramada Inn Rockville, 1775 Rockville Pike, Rockville, Maryland 20852.

Open on December 7, 8:30 a.m.—10:30 a.m., Closed for Remainder of Meeting

Purpose: The Residency Training Review Committee shall review applications that plan, develop and operate approved residency training programs in internal medicine or pediatrics, which emphasize the training of residents for the practice of general internal medicine or general pediatrics and assist residents, through traineeships and fellowships, who are participants in any such program and who plan to specialize or work in the practice of general internal medicine or general pediatrics.

Agenda: The open portion of the meeting will cover welcome and opening remarks, financial management and legislative implementation updates, and overview of the review process. The meeting will be closed to the public on December 7 at 10:30 a.m. for the remainder of the meeting for the review of grant applications. The closing is in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., and the Determination by the Administrator, Health Resources and Services Administration, pursuant to Public Law 92-463.

Anyone requiring information regarding the subject Council should contact Mrs. Sherry Whipple, Executive Secretary, Residency Training Review Committee, room 4C-18, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-6874.

Agenda Items are subject to change as priorities dictate.

Dated: October 19, 1992.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 92-25679 Filed 10-21-92; 8:45 am]

BILLING CODE 4160-15-M

National Institutes of Health

Meeting of the Acquired Immunodeficiency Syndrome Program Advisory Committee (APAC)

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the NIH Acquired Immunodeficiency Syndrome (AIDS) Program Advisory Committee on November 9-10, 1992, at the National Institutes of Health (NIH), Bethesda, MD. The meeting will take place on November 9 from 9 a.m. to 5 p.m., and on November 10 from 9 a.m. to 12 noon, in Building 31, C Wing, Conference Room 10. The meeting will be open to the public.

The purpose of the Eleventh Meeting will be to examine research priorities of the NIH AIDS research program. Specifically, the APAC will address the AIDS research budget, AIDS vaccine issues, the NIH Five Year Plan for HIV-related Research, and the AIDS research programs of the National Institute of Mental Health, National Institute on Drug Abuse, and National Institute on Alcohol Abuse and Alcoholism.

Deborah S. Fountain, Committee Management Officer, Office of AIDS Research, National Institutes of Health, Building 31, room 5C02, 9000 Rockville Pike, Bethesda, MD 20892, (301) 496-0358, will furnish the meeting agenda, roster of committee members, and substantive program information upon request.

Dated: October 15, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92-25596 Filed 10-21-92; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Diabetes and Digestive and Kidney Diseases; Meeting: National Digestive Diseases Advisory Board

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the National Digestive Diseases Advisory Board on November 16-17, 1992. On Monday, November 16, the meeting will begin at approximately 8:30 a.m. and adjourn at approximately 5 p.m. This portion of the meeting will be devoted to a discussion of previous Board sponsored workshops and Research Training Initiatives for Minorities and Women. On Tuesday, November 17, the meeting will begin at 8:30 a.m. and adjourn at approximately 4 p.m. Outcomes Research and Practice Guidelines Related to Digestive Diseases as well as current and future Board business will be discussed at this time. The meeting, which will be open to the public, will be held at the Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, Virginia 22032. Attendance by the public will be limited to space available. Notice of the meeting room will be posted in the hotel lobby.

Mr. Raymond M. Kuehne, Executive Director, National Digestive Diseases Advisory Board, 1801 Rockville Pike, Suite 500, Rockville, Maryland 20852, (301) 496-6045, will provide on request an agenda and roster of the members. Summaries of the meeting may also be obtained by contacting his office.

(Catalog of Federal Domestic Assistance Program No. 93.847-849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health.)

Dated: October 15, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92-25594 Filed 10-21-92; 8:45 am]

BILLING CODE 4140-01-M

National Kidney and Urologic Diseases Advisory Board; Meeting

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the National Kidney and Urologic Diseases Advisory Board on November 30, 1992. The meeting will begin at 8 a.m. and adjourn at approximately 4 p.m. The Board will meet at the Sheraton National Hotel, Columbia Pike and Washington Blvd., Arlington, Virginia. The meeting, which will be open to the public, is being held to discuss the future activities of the Board. Attendance by the public will be limited to space available.

Dr. Ralph Bain, Executive Director, National Kidney and Urologic Diseases Advisory Board, 1801 Rockville Pike, Suite 500, Rockville, Maryland 20852, (301) 496-6045, will provide on request an agenda and roster of the members. Summaries of the meeting may also be obtained by contacting his office.

(Catalog of Federal Domestic Assistance Program No. 93.847-849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health.)

Dated: October 15, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92-25595 Filed 10-21-92; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-050-02-4212-14; AZA 25252]

Arizona: La Paz County Realty Action for the Noncompetitive Sale of Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The Bureau of Land Management has determined that the following described 3 acres of public land are suitable for direct sale under sections 203 and 209 of the Federal Land Policy and Management Act of 1976 (Public Law 94-579, 90 Statute 2750; Title 43, United States Code, Section 1713), at not less than the estimated fair market value:

Gila and Salt River Meridian, Arizona

T 4 N., R. 19 W.,
Sec. 22, the south 536 feet of the west 244 feet of the SE¼.

DATES: Comments regarding the proposed sale of lands must be submitted by December 7, 1992, to Resource Area Manager Michael A. Taylor, Bureau of Land Management, Yuma Resource Area, 3150 Winsor Avenue, Yuma, Arizona 85365, telephone (602) 726-6300. Any adverse comments will be reviewed by the State Director, who may sustain, vacate, or modify this realty action. In the absence of objections, this proposed realty action will become final.

The lands will not be offered for sale until December 21, 1992.

On October 22, 1992, the aforementioned public land shall be segregated from all forms of appropriation under the public land laws, including the mining laws. The segregative effect will end upon issuance of the patent or on July 19, 1992 whichever occurs first.

FOR FURTHER INFORMATION CONTACT: Resource Area Manager Michael A. Taylor, Bureau of Land Management, Yuma Resource Area, 3150 Winsor Avenue, Yuma, Arizona 85365, telephone (602) 726-6300. Detailed information concerning this action is also available for review.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management proposes to sell the surface and subsurface estates of the aforementioned lands to the town of Quartzsite. The town would exchange the acquired 3 acres for a strip of private land, which will be used by the town to widen a dangerous narrow portion of Plymouth Road.

Conveyance of the available mineral interests will occur simultaneously with the sale of land. The mineral interests will occur simultaneously with the sale of land. The mineral interests being offered for conveyance have no known mineral value. Acceptance of a direct sale offer will constitute an application for conveyance of those mineral interests. The applicant will be required to pay a $50 nonrefundable filing fee for conveyance of the available mineral interests.

The patent, when issued, will contain the following terms, conditions, and reservations:

1. Reservation to the United States of a right-of-way for ditches and canals pursuant to the Act of August 30, 1890, title 43, United States Code, section 945.

2. Subject to AZA 8829, Southwestern Telephone Company, 10-foot-wide telephone line right-of-way.

3. Subject to AZA 22113, La Paz County Plymouth Road, 50-foot-wide road right-of-way.

This Notice of Reality Action is issued under authority of Title 43, Code of Federal Regulations, subpart 2711, section 1-2(c).

Dated: August 26, 1992.

Herman L. Kast,

District Manager.

[FR Doc. 92-25620 Filed 10-21-92; 8:45 am]

BILLING CODE 4310-32-M

[C-050-4210-05; COC-53416]

Colorado; Realty Action

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, modified competitive sale of public land in Clear Creek County, Colorado; COC-53416.

SUMMARY: The following described land has been examined and found suitable for disposal by sale under section 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713) at no less than the appraised fair market value.

Sixth Principal Meridian, Colorado.

T.3S., R.74W.
Section 26: Lot 90
Containing 6.15 acres.

The land described is hereby segregated from appropriation under the public land laws, including the mining laws until the land is sold or 270 days from publication of this notice, whichever occurs first. All minerals will be reserved to the United States.

The land will be offered at public auction by sealed bid, with Richard W. and Joan C. Dana being allowed a preference right to match the high bid. The Danas own property on two sides of this parcel, and purchase by them would connect their property.

Detailed information concerning this sale, including dates, price, patent reservations, sale procedures, etc., will be available upon request.

ADDRESSES: Bureau of Land Management, Canon City District, P.O. Box 2200, Canon City, Colorado 81215-2200.

DATES: Interested parties may submit comments to the District Manager at the above address until December 1, 1992.

FOR FURTHER INFORMATION CONTACT: Stu Parker at (719) 275-0631.

SUPPLEMENTARY INFORMATION: Any adverse comments will be evaluated by the District Manager who may vacate, modify or continue this realty action.

Dated: October 9, 1992.

Stuart A. Parker,

Acting District Manager.

[FR Doc. 92-25566 Filed 10-21-92; 8:45 am]

BILLING CODE 4310-JB-M

[AZ-040-4210-04]

Notice of Realty Action for the Exchange of Public Lands, Case Number AZA 26565; Amended

AGENCY: Bureau of Land Management.

ACTION: Exchange of public lands in Pima and Pinal Counties, Arizona; addition to the legal description.

SUMMARY: Federal Register, Volume 57, No. 85, appearing on page 18903 in the issue of Friday, May 1, 1992, is amended. This listing of land should have included the following

Gila and Salt River Meridian, Arizona

T. 12 S., R. 11 E.,
Sec. 33, SW¼NW¼.
Containing 40 acres, more or less.

The acreage to be segregated in Pima County from appropriation under the public land laws and the mining laws totals 742.48 acres, more or less. The total acreage to be segregated from appropriation under the public land laws and the mining laws is 7,784.89 acres, more or less.

Dated: October 14, 1992.

Frank Rowley,

Acting District Manager.

[FR Doc. 92-25621 Filed 10-21-92; 8:45 am]

BILLING CODE 4310-32-M

[CA-060-343-7122-10-D063; CACA 28709]

Partial Cancellation of Proposed Withdrawal; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates the segregative effect of a proposed withdrawal insofar as it affects 10,849.38 acres of public land requested by the United States Department of the Army to expand the Army's National Training Center at Fort Irwin. This action will open 10,209.38 acres to surface entry and mining. The remaining 640 acres are in an overlapping withdrawal and thus remain closed to surface entry and mining. All of the land has been and will remain open to mineral leasing.

EFFECTIVE DATE: November 23, 1992.

FOR FURTHER INFORMATION CONTACT: Viola Andrade, BLM California State Office, 2800 Cottage Way, room E-2845, Sacramento, California 95825, (916) 978-4820.

SUPPLEMENTARY INFORMATION: An Amendment to Withdrawal Application and Opportunity for a Public Meeting, California, was published in the **Federal Register**, 57 FR 5167, February 12, 1992, which segregated the lands described therein from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights. The United States Department of the Army has determined that certain lands will not be needed in connection with the National Training Center at Fort Irwin and has canceled its application as to those lands.

1. The segregative effect imposed by the aforementioned **Federal Register** publication, 57 FR 5167, February 12, 1992, is hereby terminated insofar as it affects the following described land:

San Bernardino Meridian

T. 18 N., R. 6 E.,
Secs. 2, 3, and 4;
Secs. 5, lots 1, 2, 7, 8, 9, 10, 11, and 12;
Sec. 8, E½;
Secs. 9 to 12, inclusive.
T. 19 N., R. 6 E.,
Secs. 25 and 26;
Sec. 27 partly unsurveyed;
Sec. 28, unsurveyed;
Sec. 29, E½, unsurveyed;
Sec. 32, E½, unsurveyed;
Sec. 33, partly unsurveyed;
Secs. 34 and 35.

The area described contains 10,209.38 acres in San Bernardino County.

2. The following described land is in an overlapping withdrawal, Public Land Order No. 5537, and thus remains withdrawn from all forms of appropriation under the public land laws, including the Mining Laws, 30 U.S.C. Ch. 2:

San Bernardino Meridian

T. 18 N., R. 6 E.,
Sec. 1.

The area described contains 640 acres in San Bernardino County.

3. At 10 a.m. on November 23, 1992, the land described in paragraph 1, except for that described in paragraph 2, will be opened to the operation of the public land laws generally, subject to valid existing rights, the provision of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on November 23, 1992, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

4. At 10 a.m. on November 23, 1992, the land described in paragraph 1, except for that described in paragraph 2, will be opened to location and entry under the United States mining laws, subject to valid existing rights, the provision of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the land described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: October 14, 1992.

Nancy J. Alex,

Chief, Lands Section.

[FR Doc. 92-25623 Filed 10-21-92; 8:45 am]

BILLING CODE 4310-40-M

[UT-942-4214-11; U-0115867]

Proposed Continuation of Withdrawal; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation proposes that a 127.29-acre withdrawal for the Central Utah Project, Jordanelle Dam and Reservoir continue for 100 years. The land would remain closed to surface entry and mining, but has been and would remain open to mineral leasing.

DATE: Comments should be received by January 21, 1993.

ADDRESS: Comments should be sent to State Director, Utah State Office, P.O. Box 45155, Salt Lake City, Utah 84145-0155.

FOR FURTHER INFORMATION CONTACT: Randy Massey, BLM Utah State Office, (801) 539-4119.

SUPPLEMENTARY INFORMATION: The Bureau of Reclamation proposes that the existing land withdrawal made by the Public Land Order 3783, dated August 10, 1965, be continued for 100 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:

Salt Lake Meridian

T. 2 S., R. 5 E.,
Sec. 20, NE¼NW¼;
Sec. 31, SE¼NW¼;
T. 3 S., R. 5E.,
Sec. 1, that portion east of the newly re-aligned highway 40 right-of-way and the east section line.

The areas described aggregate 127.29 acres in Wasatch County.

The purpose of the withdrawal is to protect Jordanelle Dam and Reservoir, near Heber City, Utah. The withdrawal segregates the land from settlement, sale, location, and entry, including location and entry under the mining laws, but not the mineral leasing laws. No change is proposed in the purpose of segregative effect of the withdrawal.

For a period of 90 days from the date of publication of this notice, all persons who with to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Chief, Branch of Lands and Minerals Operations, Utah State Office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued, and, if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

JoAn C. Robbins,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 92-25635 Filed 10-21-92; 8:45 am]

BILLING CODE 4310-DQ-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-323]

Receipt of Filing of a Joint Motion to Terminate Investigation on the Basis of a Settlement Agreement; Request for Comments

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that complainant Xoma Corp. (Xoma) and respondents Centocor Inc. and Centocor Partners II, L.P. ("Centocor") have moved that the above captioned investigation be terminated with prejudice in view of a settlement between Xoma and Centocor.

In the Matter of Certain monoclonal antibodies used for therapeutically treating humans having gram negative bacterial infections.

SUPPLEMENTARY INFORMATION: On December 20, 1990, Xoma Corp. of Berkeley, California failed a complaint with the Commission alleging violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation and sale of certain monoclonal antibodies covered by claims 6 and 7 of U.S. Letters Patent 4,918,163 owned by Xoma. The Commission instituted an investigation of Xoma's complaint on January 30, 1991. 56 FR 3484-85. Centocor was the only respondent named in the Commission's notice of investigation. On June 11, 1991, the Commission suspended the investigation in favor of district court litigation then taking place between the parties in the U.S. District Court for the Northern District of California, *Xoma Corp.* v. *Centocor. Inc.*, Civil Action No. C90 1129 (RHS).

Copies of the joint motion, the response of the Commission investigative attorney, and all other non-confidential 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.

WRITTEN COMMENTS: Interested persons may file written comments with the Commission concerning termination of the investigation. 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 request 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. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810.

By order of the Commission.

Issued: October 16, 1992.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 92-25607 Filed 10-21-92; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32160]

Atchison, Topeka and Santa Fe Railway Co.—Merger Exemption—Fresno Interurban Railway Co.

The Atchison, Topeka and Santa Fe Railway Company (ATSF) and Fresno Interurban Railway Company (FI) have filed a notice of exemption to merge FI into ATSF. FI is a wholly owned subsidiary of ATSF and all its lines are in California. ATSF operates in California and 10 other States. The merger was expected to be consummated on September 29, 1992.

This is a transaction within a corporate family of the type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). It will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.

To ensure that all employees who may be affected by the transaction are given the protection afforded under 49 U.S.C. 10505(g)(2) and 49 U.S.C. 11347, the labor conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979), are imposed.

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Peter M. Olson, The Atchison, Topeka and Santa Fe Railway Company, 1700 E. Golf Road, Schaumburg, IL 60173.

Decided: October 16, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-25645 Filed 10-21-92; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Registration

By Notice dated August 10, 1992, and published in the **Federal Register** on August 25, 1992, (57 FR 38523), Radian Corporation, P.O. Box 201088, 8501 Mo-Pac Blvd., Austin, Texas 78759, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
4-Methylaminorex (cis isomer) (1590)	I
Methaqualone (2565)	I
Lysergic Acid Diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
3,4-Methylenedioxyamphetamine (7400)	I
3,4-Methylenedioxymethamphetamine (7405)	I
Normorphine (9313)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Methylphenidate (1724)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Phencyclidine (7471)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Benzoylecgonine (9180)	II
Hydrocodone (9193)	II
Meperidine (9230)	II
Methadone (9250)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273)	II
Oxymorphone (9652)	II
Fentanyl (9801)	II

A registered manufacturer did file an objection to the registration of Radian Corporation with respect to methylphenidate. The firm subsequently withdrew its objection after Radian Corporation stated that it would only manufacture a small quantity of the deuterated form of methylphenidate which will be sold as an analytical reference standard. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: October 9, 1992.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 92-25573 Filed 10-21-92; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Office of the Secretary

Milwaukee Fence Company

AGENCY: Office of Federal Contract Compliance Programs, Labor.

ACTION: Notice of Debarment, Milwaukee Fence Company.

SUMMARY: This notice advises of the debarment of Milwaukee Fence Company as eligible bidders on Government contracts and subcontracts and all Federal and federally assisted construction contracts and subcontracts.

FOR FURTHER INFORMATION CONTACT: Jaime Ramon, Director, Office of Federal Contract Compliance Programs, U.S. Department of Labor, 200 Constitution Avenue, NW., room C-3325, Washington, DC 20210 (202-219-9475).

SUPPLEMENTARY INFORMATION: On October 6, 1992, pursuant to 41 CFR 60-30.30, the Secretary of Labor issued a Final Administrative Order: (1) Finding Milwaukee Fence Company in violation of Executive Order 11246, as amended (30 FR 12319, September 28, 1965; 32 FR 14303, October 13, 1967; 43 FR 46501, October 5, 1978), section 503 of the Rehabilitation Act, as amended, 29 U.S.C. 793, the affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act, as amended, 38 U.S.C. 4212, and their respective implementing regulations; (2) cancelling all Federal contracts and subcontracts and all Federal and federally assisted construction contracts and subcontracts of Milwaukee Fence Company; and (3) declaring Milwaukee Fence Company, and their successors, officers, agents, servants, employees, direct or beneficial owners, divisions or subsidiaries and those persons in active concert or participation with them ineligible for the award of any Government contracts or subcontracts and Federal or federally assisted construction contracts or subcontracts and ineligible for extensions or other modifications of any existing Government contracts or subcontracts and Federal and federally assisted construction contracts or subcontracts until such time as Milwaukee Fence Company satisfies the Director of OFCCP that it is in compliance with the laws found to have been violated. The Final Administrative Order is set forth below.

The debarment from future Government contracts and subcontracts and Federal and federally assisted construction contracts and subcontracts and the ineligibility for extensions or other modifications of any existing Government contracts or subcontracts and Federal or federally assisted construction contracts or subcontracts are effective immediately. The contract cancellation part of the Order will not become effective until the relevant contracting agencies have been consulted in accordance with section 209(a)(5) of Executive Order 11246, as amended by Executive Order 12086.

Signed October 15, 1992, Washington, DC.

Jaime Ramon,

Director, OFCCP.

Final Administrative Order

Date: October 6, 1992.

Case No. 91-OFC-3

In The Matter of Office of Federal Contract Compliance Programs, United States Department of Labor, Plaintiff, v. Milwaukee Fence Company, Defendant.

Before: The Secretary of Labor

On April 22, 1992, the Administrative Law Judge (ALJ) issued a Recommended Decision and Order (R.D. and O.) providing for a default judgment against Defendant, Milwaukee Fence Company (Milwaukee Fence), pursuant to Executive Order No. 11,246, 3 CFR 339 (1964-1965), reprinted as amended in 42 U.S.C. 2000e note (1988), section 503 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 793 (1988), and section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974, as amended, 38 U.S.C.A. 4211-4212 (West 1991), (collectively the Acts) because of defendant's persistent failure to acknowledge and participate in these proceedings.

The ALJ's order recounted Defendant's disregard of the hearing process from the commencement of the action by Plaintiff, Office of Federal Contract Compliance Programs (OFCCP), through the issuance of the R.D. and O. For example, Milwaukee Fence: (1) Failed to file an answer to the administrative complaint, R.D. and O. at 2; (2) failed to respond to the ALJ's Notice of Docketing, *id.*; (3) failed to respond to OFCCP's motion for relief pursuant to 41 CFR 60-30.6 (1991), *id.*; and (4) failed to respond to the ALJ's Order to Show Cause why the material facts alleged in the complaint, including Defendant's failure to comply with the reporting requirements in the Conciliation Agreement, Exhibit A to complaint, should not be adopted as the ALJ's findings of fact. In view of this recalcitrance, the ALJ's ruled, pursuant to 41 CFR 60-30.6, that Defendant had waived its opportunity for a hearing and was deemed to have admitted the allegations in the complaint, whereby the material facts set out in the complaint and Exhibit A became the ALJ's findings of fact in support of his conclusions of violations. *Id.* at 2-3.

Following issuance of the R.D. and O. recommending sanctions, Defendant has continued its failure to respond to this case. It did not file exceptions to the R.D. and O., although such filing was specified therein, *id.* at 4, and it did not reply to the May 21, 1992, Order to Ensure Service and Establish Briefing Schedule, issued by the Office of Administrative Appeals to ensure that Milwaukee Fence received full notice of the R.D. and O. and related documents and allowing it further time to submit exceptions and responses to OFCCP's exceptions, if any. Nor has it responded to the August 24, 1992, Motion and Memorandum in Support Thereof for Entry of Default Judgment and Entry of Sanctions filed by Plaintiff. Absent any defense whatsoever, I adopt the material facts set out in the complaint and Exhibit A, appended hereto.

In the face of Defendant's record of failure to comply with its obligations under the Acts as a federal contractor, I must consider what further steps may be employed to achieve compliance. The ALJ recommended that because of Defendant's "disregard" of its obligation, *id.* at 3, that I (1) cancel all of Milwaukee Fence's federal and federally assisted contracts;[1] (2) declare Milwaukee Fence ineligible for the award of any contracts or subcontracts funded in whole or in part with federal funds; and (3) declare Milwaukee Fence ineligible for extension or modification of any existing contracts or subcontracts. *Id.* at 3–4.

The Acts contemplate the imposition of such strong sanctions as essential to effective enforcement. See, *e.g., OFCCP* v. *Bruce Church*, Case No. 87–OFC–7, Sec'y Final Dec. and Ord., June 30, 1987, slip op. at 5–6; *First Alabama Bank of Montgomery* v. *Donovan*, 692 F.2d 714, 722 (11th Cir. 1982). In *Uniroyal* v. *Marshall*, 482 F. Supp. 364 (D.D.C. 1979), the court recognized that the goals and purposes of the Executive Order program "would be nothing more than an empty shell, an abstract statement of principles, unless it is backed by adequate means of enforcement." 482 F. Supp. at 374–75. I can conclude only that Milwaukee Fence's conduct here reflects its callous disregard for the purposes of the Executive Order, section 503 and section 402, and that only immediate, significant sanctions may achieve compliance. Accordingly, I make the following order:

1. All federal and federally assisted construction contracts and subcontracts of Defendant, Milwaukee Fence Company, its successors, officers, agents, servants, employees, direct or beneficial owners, divisions or subsidiaries and those persons acting in concert with them shall be canceled, terminated and suspended;

2. Defendant, Milwaukee Fence Company, its successors, officers, agents, servants, employees, direct or beneficial owners, divisions or subsidiaries and those persons in active concert or participation with them shall be ineligible for the award of new federal or federally assisted construction contracts or subcontractors or the extension or modification of any such existing contracts or subcontracts. These sanctions shall be implemented and shall remain in effect until such time as Defendant, Milwaukee Fence Company, its successors, officers, agents, servants, employees, direct or beneficial owners, divisions or subsidiaries and those persons in active concert or participation with them have satisfied the OFCCP Director that Defendant is in compliance with the provisions of Executive order No. 11,246, as amended, section 503 of the Rehabilitation Act of 1973, as amended, and section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974, as amended, and the rules and regulations issued thereunder. See 41 CFR 60–1.31; 60–205; 50–741.50.

So Ordered.

Washington, DC

Lynn Martin,

Secretary or Labor.

Administrative Complaint

Office of Federal Contract Compliance Programs, United States Department of Labor, Plaintiff v. Milwaukee Fence Company, Defendant

Case No. 91–OFCCP–3

Plaintiff, Office of Federal Contract Compliance Programs, United States Department of Labor, by its attorneys, alleges:

I

This proceeding is brought by the Office of Federal Contract Compliance Programs, United States Department of Labor, to enforce the contractual obligations imposed by Executive Order 11246 (30 FR 12319), as amended by Executive Orders 11375 and 12086 (32 FR 14302 and 43 FR 46501, respectively) (hereinafter "Executive Order 11246"), section 503 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 793 (hereinafter "section 503"), the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C 2012, and the regulations issued pursuant thereto.

II

This proceeding is authorized by sections 208, 209, 301 and 303, of Executive Order 11246, 41 CFR 60–1.26 and 41 CFR part 60–30, section 503, 41 CFR 60–741.29, 38 U.S.C. 2012 and 41 CFR 60–250.29.

III

Defendant Milwaukee Fence Company is a corporation with a place of business located at 2067 South First Street, Milwaukee, Wisconsin where it is engaged in the business of selling and installing fences in both residential and commercial settings.

IV

Defendant, at all times relevant hereto, had a contract or subcontract with an agency of the United States government to perform construction work and said contract or subcontract had a value in excess of $10,000.00.

V

At all times relevant hereto, Defendant has been a government construction contractor or subcontractor within the meaning of Executive Order 11246, section 503 and 38 U.S.C. 2012, and the implementing regulations issued thereunder.

VI

By letter dated January 9, 1989, OFCCP notified Milwaukee Fence Company that it had been selected for a compliance review which was conducted in January 1989.

VII

On or about February 9, OFCCP advised Defendant that it had violated its contractual obligations under Executive Order 11246, section 503 and 38 U.S.C. 2012 and the regulations promulgated thereunder in the following manner.

a. Defendant failed to take the specific affirmative action steps set forth at 41 CFR 60–4.2(d)(2) and 60–4.3(a)7a through p to employ and advance in employment females and minorities.

b. Defendant failed to establish and maintain a current list of minority and female recruitment sources and failed to provide notice of available employment opportunities to these sources as required by 41 CFR 60–4.3(a)(7)h and i.

c. Defendant failed to maintain a record identifying minority and female applicants and has failed to record the action taken with respect to each individual as required by 41 CFR 60–4.3(a)7c.

d. Defendant failed to encourage present minority employees to recruit other minorities and women as required by 41 CFR 60–4.3(a)7j.

e. Defendant failed to develop a company EEO policy and disseminate it to all employees as required by 41 CFR 60–4.3(a)7f.

f. Defendant failed to review its EEO policy and affirmative action obligations with employees having responsibility for employment decisions as required by 41 CFR 60–4.3(a)7l.

g. Defendant failed to inventory its minority employees for promotional opportunities as required by 41 CFR 60–4.3(a)7l.

h. Defendant failed to conduct a review of its supervisors' adherence to its EEO policies and affirmative action obligations as required by 41 CFR 60–4.3(a)7p.

i. Defendant failed to document its efforts to ensure that onsite supervisory personnel carry out its obligation to maintain a working environment free of harassment, intimidation and coercion as required by 41 CFR 60–4.3(a)7a.

j. Defendant failed to develop and implement a procedure to monitor employment related activities to insure its EEO policy is carried out as required by 41 CFR 60–3, 60–4.3(a)7k and 60–4.3(a)7m.

k. Defendant failed to invite applicants and employees to identify themselves as individuals with handicaps, Vietnam Era Veterans or disabled veterans as required by 41 CFR 60.250.5(d) and 60.741.5(c).

l. Defendant failed to post the EEO poster as required by 41 CFR 60.1.4(a)(i) and 60–1.42.

m. Defendant failed to list all suitable employment openings with the office of the State Employment Service required by 41 CFR 60–250.4(b)–(c) and (e)–(h).

[1] I interpret the ALJ's reference to "contracts" to include subcontracts since the regulations at 41 CFR 60–1.3, 60–250.2 and 60–741.2 (1991) specify that the term "contractor" means a subcontractor.

VIII

As a result of Plaintiff's findings relating to the aforesaid violations, the parties entered into a Conciliation Agreement executed on March 9, 1989 pursuant to 41 CFR 60-1.33, which outlined each problem area, the remedy for each problem area and the time period for submission of a progress report, see Exhibit A attached hereto.

IX

Part III of the Conciliation Agreement signed by Defendant on March 9, 1989 states as follows:

Part III: Reporting Provisions

1. Milwaukee Fence shall furnish one (1) report to OFCCP, Milwaukee by December 31, 1989. It will consist of a narrative report on the implementation and results of the remedies specified at Part II of this Agreement and it will be accompanied by support documentation, e.g., copies of memos, reports and logs. It will also include a summary of monthly work hours for the period of February 1, 1989 through November 30, 1989 and it will be broken out by race and sex.

2. The terms of this Agreement shall expire January 31, 1991.

X

To date, Defendant has failed, and continues to refuse to submit the aforesaid progress report as required by Part III of the March 9, 1989 Conciliation Agreement.

XI

In accordance with 41 CFR 60-1.34, on March 25, 1990 Plaintiff issued a written notice of violation of the Conciliation Agreement to Defendant advising Defendant of its failure to comply with the reporting requirement set forth in Part III of the Conciliation Agreement. Defendant failed to respond to this notice and continued to fail to submit the required report. Plaintiff's efforts to secure compliance through means of conciliation and persuasion have been unsuccessful.

XII

Since at least December 31, 1989, Defendant, by its failure to submit the required narrative report, as set forth above, has violated the conditions and terms of the March 9, 1989 Conciliation Agreement and its statutory and regulatory obligations as set forth in paragraph VII above.

Wherefore, cause having been shown, plaintiff prays for an order pursuant to 41 CFR 60-1.26, 41 CFR 60-30.27, 41 CFR 60-30.30, 41 60-250.29, and 41 CFR 60-741.29, permanently enjoining the Defendant, its officers, agents, employees, successors, and all persons in active concert or participation with them from violating its aforesaid contractual obligations imposed by Executive Order 11246, as amended, section 503 of the Rehabilitation Act of 1973 and the Vietnam Era Veterans Readjustment Assistance Act of 1973, as amended, and its obligations under the terms and conditions of the March 9, 1989 Conciliation Agreement and for such other and further relief as may be appropriate.

Plaintiff further prays for such additional relief as justice may require including entry of an order pursuant to 41 CFR 60-30.27, 41 CFR 60-30.30, 41 CFR 60-250.28, 41 CFR 60-250.29, 41 CFR 60-741.28, and 41 CFR 60-741.29 requiring the immediate withholding of all progress payments, if any, due on all Defendant's government contracts and subcontracts; for the immediate cancellation, termination and suspension of all Defendant's existing government contracts and subcontracts; and, that Defendant, its officers, subsidiaries and successors be declared ineligible for the award of any future government contracts and subcontracts until Defendant complies with such order and until Defendant satisfies the Director of the Office of Federal Contract Compliance Programs that it is in compliance with obligations under executive Order 11246, section 503, 38 U.S.C. 2012 and the regulations issued thereunder, and other relief as justice requires.

Dated this 30th day of October, 1990.

Robert P. Davis,

Solicitor of Labor.

John R. Secaras,

Regional Solicitor.

Janet M. Graney.

Attorneys for Office of Federal Contract Compliance Programs, United States Department of Labor, Plaintiff.

P.O. Address: Office of the Solicitor, U.S. Department of Labor, 230 South Dearborn Street, Eighth Floor, Chicago, Illinois 60604, Telephone: 312 353-6992.

Certificate of Service

I certify that one copy of the foregoing administrative complaint has been served on the below-named individual(s) this 30th day of October, 1990, by sending said copy by certified mail, return receipt requested, to: John Scholten, President, Milwaukee Fence Company, 2067 South 1st Street, Milwaukee, Wisconsin 53207.

Janet M. Graney,

Attorney.

Conciliation Agreement Between U.S. Department of Labor, Office of Federal Contract Compliance Programs and Milwaukee Fence, 2067 South 1st Street, Milwaukee, Wisconsin 53207

Part I: General Provisions

1. This Agreement is between the Office of Federal Contract Compliance Programs (hereinafter OFCCP) and Milwaukee Fence, 2067 South 1st Street, Milwaukee, WI 53207 (hereinafter Milwaukee Fence).

2. The problem areas identified in this Agreement were found during the compliance review of Milwaukee Fence which commenced on January 26, 1989, and which were determined to be violations. OFCCP alleges that Milwaukee Fence has violated Executive Order 11246, as amended, (38 U.S.C. 2012) Vietnam Era Veterans Readjustment Assistance Act of 1974, section 503 of the Rehabilitation Act of 1973, as amended, and their implementing regulations as identified in Part II herein.

3. This Agreement does not constitute an admission by Milwaukee Fence of any violation of Executive Order 11246, as amended, (38 U.S.C. 2012) Vietnam Era Veterans Readjustment Assistance Act of 1974, or section 503 of the Rehabilitation Act of 1973, as amended. The provisions of this Agreement will become part of Milwaukee Fence's Affirmative Action Programs (AAPs).

Subject to the performance by Milwaukee Fence of all promises and representations contained herein and in its AAPs all identified problem areas in this Agreement in regards to the compliance of Milwaukee Fence with Executive Order 11246, as amended, (38 U.S.C. 2012) Vietnam Era Veterans Readjustment Assistance Act of 1974, or section 503 of the Rehabilitation Act of 1973, as amended, shall be deemed resolved. However, Milwaukee Fence is advised that the commitments contained in this agreement do not preclude future determinations of noncompliance based on a finding that the commitments are not sufficient to achieve compliance.

4. Milwaukee Fence agrees that OFCCP may review compliance with this Agreement. As part of such review, OFCCP may require written reports, inspect the premises, examine witnesses, and examine and copy documents, as may be relevant to the matter under investigation and pertinent to Milwaukee Fence's compliance. Milwaukee Fence shall permit access to its premises during normal business hours for these purposes.

5. Nothing herein is intended to relieve Milwaukee Fence from compliance with the requirements of Executive Order 11246, as amended, (38 U.S.C. 2012) Vietnam Era Veterans Readjustment Assistance Act of 1974, or section 503 of the Rehabilitation Act of 1973, as amended, or their implementing regulations.

6. Milwaukee Fence agrees that there will be no retaliation of any kind against any beneficiary of this Agreement, or against any person who has provided information or assistance, or who files a charge or who participates in any manner in any proceeding under Executive Order 11246, as amended, (38 U.S.C. 2012) Vietnam Era Veterans Readjustment Assistance Act of 1974, section 503 of the Rehabilitation Act of 1973, as amended, or any other equal employment statute or Executive Order.

7. This Agreement will be deemed to have been accepted by the Government on the date of signature by the District Director unless the Director, OFCCP indicates otherwise within 45 days of his receipt of the Agreement.

8. (1) If, at any time in the future OFCCP believes that Milwaukee Fence has violated any portion of this Agreement, Milwaukee Fence will be promptly notified of that fact in writing. This notification shall include a statement of the facts and circumstances relied upon in forming that belief. In addition, the notification will provide Milwaukee Fence with 15 days from receipt of the notification to respond in writing except where OFCCP alleges that such delay would result in irreparable injury.

(2) It is understood that enforcement proceedings for violation of this Agreement may be initiated at any time after the 15-day period has elapsed (or sooner if irreparable

injury is alleged) without issuance of a show cause notice.

(3) It is recognized that where OFCCP believes that Milwaukee Fence has breached the Conciliation Agreement, evidence regarding the entire scope of Milwaukee Fence's alleged noncompliance from which the Conciliation Agreement resulted, in addition to evidence regarding Milwaukee Fence's alleged violation of the Conciliation Agreement, may be introduced at the enforcement proceeding.

(4) It is further recognized that liability for violation of this Agreement may subject Milwaukee Fence to sanctions set forth in section 209 of Executive Order 11246, as amended; and/or to the sanctions set forth in 41 CFR 60-250.28 implementing (38 U.S.C. 2012) Vietnam Era Veterans Readjustment Assistance Act of 1974; and/or to the sanctions set forth in 41 CFR 60-741.28 implementing section 503 of the Rehabilitation Act of 1973, as amended; and/or appropriate relief.

Part II: Specific Provisions

1. Affirmative Action Implementation

a. *Problem Area:* Milwaukee Fence failed to take all of the specific affirmative steps as cited below to increase the representation of females and minorities in the fence installer trade in the Milwaukee, Wisconsin Standard Metropolitan Statistical Area (SMSA) as set forth in 41 CFR 60-4.2(d)2 and 41 CFR 60-4.3(a)7a through p.

b. *Remedy:* Milwaukee Fence agrees to take every good faith effort including at a minimum all sixteen affirmative action steps as required by 41 CFR 60-4.3(a)7a through p to increase the representation of females and minorities as cited above. Milwaukee Fence agrees to document the good faith efforts put forward and such documentation will be made available to OFCCP upon request.

2. Minority and Females Recruiting Sources

a. *Problem Area:* Milwaukee Fence did not establish and maintain a current list of minority and female recruitment sources. Also, Milwaukee Fence failed to provide written notification to minority and female recruitment sources and to community organizations when it had employment opportunities available as required by 41 CFR 60-4.3(a)7b and i.

b. *Remedy:* Milwaukee Fence agrees to establish a current list of minority and female recruitment sources. This list shall include but need not be limited to organizations such as those listed in Exhibit A. Milwaukee Fence shall maintain and update its list of minority and female recruitment sources at least annually and ensure the sources utilized are appropriate to the area where the opportunities occur. It shall provide written notification to minority and female recruitment sources and to community organizations when Milwaukee Fence has employment opportunities available. Milwaukee Fence shall also maintain a record of its contact with each organization as well as each organization's response. It shall comply with these requirements for as long as it is contractually obligated to do so.

3. Minority and Female Applicant Files

a. *Problem Area:* Although Milwaukee Fence maintains a file of job applications which gives the name, address and telephone number of each applicant, it cannot identify, by race and sex, the applications of minority and female candidates, not has it recorded the action taken with respect to each individual as set forth in 41 CFR 60-4.3(a)7c.

b. *Remedy:* Effective immediately, Milwaukee Fence shall establish a means of identifying the applications of minority and female walk-in applicants, as well as the recruitment source and/or community organization that referred each such individual. It shall maintain a record of the action taken with respect to each individual. Milwaukee Fence shall continue to comply with this requirement for as long as it is contractually obligated to do so.

4. Recruitment Through Minority and Female Employees

a. *Problem Area:* Milwaukee Fence did not encourage present minority employees to recruit other minorities and women as required by 41 CFR 60-4.3(a)7j.

b. *Remedy:* Effective immediately, Milwaukee Fence will encourage present minority and female (when employed) employees to recruit other minorities and women and will maintain documentation of these efforts. Milwaukee Fence will continue this practice so long as required by the regulations.

5. Internal Dissemination of Policy

a. *Problem Area:* Milwaukee Fence failed to develop a company EEO policy and to disseminate it to all employees, including all management personnel, as required by 41 CFR 60-4.3(a)7f.

b. *Remedy:* Milwaukee Fence shall develop a Company EEO policy and disseminate it as follows:

(1) By specific review of the policy with all management personnel and with all minority and female employees at least once a year; and

(2) By posting the Company EEO policy on bulletin boards accessible to all employees and job applicants at the Company's place of business.

Milwaukee Fence agrees to comply with this requirement for as long as it is contractually obligated to do so.

6. Annual Review of EEO Policy and Affirmative Action Obligations

a. *Problem Area:* Milwaukee Fence did not review its EEO policy and affirmative action obligations with all employees having responsibility for employment decisions, including onsite supervisory personnel, prior to the initiation of construction work at any job site as required by 41 CFR 60-4.3(a)7g.

b. *Remedy:* Within 30 days of the signing of this Agreement and annually thereafter, Milwaukee Fence shall review its EEO policy and affirmative action obligations with all employees responsible for hiring, termination, lay-off, job assignment, or other employment decisions. A written record shall be maintained identifying the time and place of these meetings, persons attending and subject matter discussed. Milwaukee Fence agrees to comply with this requirement for as long as it is contractually obligated to do so.

7. Inventory for Promotional Opportunities

a. *Problem Area:* Milwaukee Fence failed to inventory its minority employees for promotional opportunities as required by 41 CFR 60-4.3(a)71.

b. *Remedy:* Within 30 days of the effective date of this Agreement, Milwaukee Fence will inventory and evaluate minority personnel for promotional opportunities, encourage them to prepare themselves for promotional opportunities and document its efforts and results. Thereafter, such reviews will be conducted of minority and female personnel at least annually as long as required by the regulations.

8. Annual Review of Supervisors' Performance

a. *Problem Area:* Milwaukee Fence did not conduct a review of all supervisors' adherence to and performance under its EEO policies and affirmative action obligations as required by 41 CFR 60-4.3(a)7p.

b. *Remedy:* Milwaukee Fence will conduct and document, at least annually, its review of supervisors' performance relative to Milwaukee Fence's EEO policy and affirmative action obligations. Such reviews will be completed within six months from the acceptance of this Agreement and annually thereafter so long as required by the regulations.

9. Working Environment

a. *Problem Area:* Although no incidents occurred, Milwaukee Fence failed to document its efforts to ensure that all foremen and/or other on-site supervisory personnel are aware of and carry out the company's obligation to maintain a working environment free of harassment, intimidation and coercion as required by 41 CFR 60-4.3(a)7a.

b. *Remedy:* Within 30 days of the effective date of this Agreement, and annually thereafter, Milwaukee Fence agrees to inform all foremen and/or other supervisory personnel, of its obligation to maintain a working environment free of harassment, intimidation and coercion. It shall ensure that supervisory personnel are aware of and carry out its obligation to maintain such a working environment, with particular attention to minorities (and females at such time they become part of the workforce). Milwaukee Fence will document its efforts fully and will continue to fulfill this obligation so long as required by the regulation.

10. Monitoring Personnel and Employment Practices for Non-Discrimination

a. *Problem Area:* Milwaukee Fence failed to develop and implement a procedure to continually monitor all personnel and employment related activities to ensure that its EEO policy and obligations under the specifications are being carried out as prescribed by 41 CFR 60-3, 41 CFR 60-4.3(a)7k and 41 CFR 60-4.3(a)7m.

b. *Remedy:* Milwaukee Fence agrees to maintain and have available, records showing the numbers of applicants, hires,

promotions and terminations, broken out by race and sex, in the Fence Installers trade. It will develop and implement a procedure to monitor personnel and employment related activities for discriminatory effect upon minorities and women and to ensure that its affirmative action obligations are being fulfilled. Milwaukee Fence will continue to maintain and monitor personnel activity so long as required by the regulation.

11. Invitation to Self-Identify

a. *Problem Area:* Milwaukee Fence did not issue an invitation to applicants and employees to identify themselves as being individuals with handicaps, Vietnam era veterans or disabled veterans as required by 41 CFR 60-250.5(d) and 41 CFR 60-741.5(c).

b. *Remedy:* Within 30 days, Milwaukee Fence will develop and distribute an invitation for self-identification to all employees and prospective applicants that is consistent with the regulations cited above. Invitations will be extended to job applicants for so long as it is required by the regulations.

12. Equal Employment Opportunity (EEO) Poster

a. *Problem Area:* Milwaukee Fence did not post the EEO poster as required by 41 CFR 60-1.4(a)(i) and 41 CFR 60-1.42.

b. *Remedy*: Milwaukee Fence will post the EEO poster in its office where it is visible to employees and job applicants. Milwaukee Fence will continue the posting so long as required by the regulations.

13. Mandatory Job Listing

a. *Problem Area*: Milwaukee Fence did not list all suitable employment openings with the appropriate office of the state employment service as required by 41 CFR 60-250.4(b)-(c) and (e)-(h).

b. *Remedy*: Effective immediately, Milwaukee Fence agrees to list all suitable employment openings, as defined by 41 CFR 60-250.4(h), with the appropriate office of the state employment service and will continue to do so as long as the regulations require.

Part III: Reporting Provisions

1. Milwaukee Fence shall furnish one (1) report to OFCCP, Milwaukee by December 31, 1989. It will consist of a narrative report on the implementation and results of the remedies specified at Part II of this Agreement and it will be accompanied by support documentation, e.g., copies of memos, reports and logs. It will also include a summary of monthly work hours for the period of February 1, 1989 through November 30, 1989 and it will be broken out by race and sex.

2. The terms of this Agreement shall expire January 31, 1990.

Part IV: Signatures

This Agreement is hereby executed by and between the Office of Federal Contract Compliance Programs and Milwaukee Fence, 2067 South 1st Street, Milwaukee, WI 53207.

Dated: March 9, 1989.

John Scholten,

President, Milwaukee Fence.

Dated: March 10, 1992.

Anita L. Nagy,

Assistant District Director, OFCCP, Milwaukee, WI.

Dated: March 9, 1989.

Timothy B. Staats,

Equal Opportunity Specialist, OFCCP, Milwaukee, WI.

Dated: March 10, 1989.

Robert D. Potter,

District Director, OFCCP, Milwaukee, WI.

Exhibit A

1. Milwaukee Urban League, 2800 West Wright Street, Milwaukee, WI 53210, Contact: Ms. Mary Coleman, Employment Dept. Coordinator, Telephone: (414) 274-5850.
2. Milwaukee Area American Indian Manpower Council, Inc., 3121 West Wisconsin Avenue, Milwaukee, WI 53208, Contact: Mr. Douglas LaBelle, Employment Counselor, Telephone: (414) 931-8822.
3. Big Step, Inc., 2821 North 4th Street, Milwaukee, WI 53212, Contact: Mr. Lerman Ellis, Director, Telephone: (414) 264-0515.
4. Lao Family Community, Inc., 1420 West Scott Street, Milwaukee, WI 53204, Contact: Cha Dang Xiong—Job Developer, Kanesome Simpraphone—Job Developer, Telephone: (414) 383-4180.
5. SER Job for Progress, Inc., 1711 South 11th Street, Milwaukee, WI 53204, Contact: Mr. Leo Espitia, Coordinator, Employment Services, Telephone: (414) 649-2640.
6. Family & Women's Resource Center, Milwaukee Area Technical College, 1015 North 6th Street, Milwaukee, WI 53203, Contact: Ms. Deborah Wheeler, Director, Telephone: (414) 278-6214.
7. Marquette University, Multi-Cultural Center, 617 North 13th Street, rm. 110, Milwaukee, WI 53233, Contact: Ms. Lori Larsen, Director, Telephone: (414) 224-6769.

Certificate of Service

I certify that one copy of the foregoing motion for relief pursuant to 41 CFR 60-30.6, memorandum in support of motion for relief pursuant to 41 CFR 60-30.6 and recommended decision and order have been served on the below-named individual this 7th day of March, 1991, by sending said copy by certified mail, return receipt requested, to: John Scholten, President, Milwaukee Fence Company, 2067 South 1st Street, Milwaukee, Wisconsin 53207.

Janet M. Graney,

Attorney.

CERTIFICATE OF SERVICE

Case Name: *Office of Federal Contract Compliance Programs, United States Department of Labor* v. *Milwaukee Fence Company*

Case No.: 91-OFC-3

Document: Final Administrative Order Entering Default Judgment and Imposing Sanctions

A copy of the above-referenced document was sent to the following persons October 6, 1992.

Carl Longus

Certified Mail

John H. Secaras, Regional Solicitor, Attn: Janet M. Graney, U.S. Department of Labor, Office of the Solicitor, 230 South Dearborn St., Eighth Floor, Chicago, IL 60604.

John Scholten, President, Milwaukee Fence Company, 2067 South 1st Street, Milwaukee, WI 53207.

Hand Delivered

James D. Henry, Esq., Associate Solicitor for Civil Rights, Attn: Jay D. Adelstein, U.S. Department of Labor, room N-2464, 200 Constitution Avenue, NW, Washington, DC 20210.

NOTE: As of September 28, 1992, the telephone number for the Office of Administrative Appeals is (202) 219-4728.

Regular Mail

Honorable Nahum Litt, Chief Administrative Law Judge, Office of Administrative Law Judges, 800 K Street, NW, suite 400, Washington, DC 20001-8002.

Honorable John M. Vittone, Deputy Chief Administrative Law Judge, Office of Administrative Law Judges, 800 K Street, NW, suite 400, Washington, DC 20001-8002.

[FR Doc. 92-25601 Filed 10-21-92; 8:45 am]

BILLING CODE 4510-27-M

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 92-73]

Aetna Life Insurance Company (Aetna)

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Notice of technical correction.

On September 16, 1992, the Department of Labor (the Department) published in the **Federal Register** (57 FR 42764) an individual exemption which permits the purchase or sale by an employee benefit plan to which Aetna or an affiliate is a party in interest (the Plan) of shares of an open-end investment company registered under the Investment Company Act of 1940 (the Fund), where the Fund is also a party in interest with respect to the Plan as a result of Aetna or its affiliates owning 50% or more of the Fund's outstanding shares at the time of the transaction.

The first paragraph in the third column on 57 FR 42764 should read as follows:

(a) Neither Aetna nor any affiliate has discretionary authority or control for the investment of the Plan's assets involved in the transaction or renders investment advice (within the meaning of 29 CFR 2510.3-21(c)) for those assets.

In addition, the fourth paragraph in the third column on 57 FR 42764 should read as follows:

(d) The Plan does not pay a redemption fee in connection with the sale by the Plan to the Fund of such shares unless (1) the redemption fee is paid only to the Fund and such fee is reasonable, and (2) the existence of the redemption fee is disclosed in the Fund prospectus in effect both at the time of the purchase of such shares and at the time of the sale.

For Further Information Contact: Mr. E. F. Williams, of the Department, at (202) 219-8883.

Signed at Washington, DC, this 19th day of October, 1992.

Ivan L. Strasfeld,

Director, Office of Exemption Determinations, Pension and Welfare Benefits Administration.

[FR Doc. 92-25665 Filed 10-21-92; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-8716, et al.]

Proposed Exemptions; Memorex Telex Employees' Pension Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this Federal Register Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESS: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N-5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC. 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N-5507, 200 Constitution Avenue, NW., Washington, DC. 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register.** Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Memorex Telex Employees' Pension Plan (the Plan) Located in Tulsa, Oklahoma

[Application No. D-8716]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of sections 406(a), 406(b)(1) and (b)(2) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to: (1) The September 28, 1990 purchase by the Plan from Memorex Telex Holding N.V. (MT-Holding), a party in interest with respect to the Plan, of 382,769 shares of stock (the Stock) of Memorex Telex Japan Limited (MT-Japan) for $5 million; (2) the Plan's holding of the Stock; and (3) the acquisition, holding and exercise by the Plan of an irrevocable put option (the Put Option) which permits the Plan to sell the Stock to Memorex Telex N.V. (MTNV) on behalf of MT-Holding at a price per share equal to the Plan's acquisition price for the Stock, provided: (a) The Plan paid no more than the fair market value of the Stock on the date of the acquisition; (b) the transactions were approved on behalf of the Plan by a qualified independent fiduciary; (c) the Plan's independent fiduciary will monitor the holding of the Stock by the Plan and take whatever action is necessary to protect the Plan's rights, including, but not limited to, the exercising of the Put Option if the independent fiduciary, in his sole discretion, determines that such exercise is appropriate; and (d) an escrow agreement, as described herein, is maintained as long as the Plan continues to hold any shares of the Stock.

EFFECTIVE DATE: If granted, this proposed exemption will be effective September 28, 1990.

Summary of Facts and Representations

1. The Plan is a defined benefit plan which had approximately 7,224 participants as of January 1, 1991. As of April 30, 1991, the Plan held approximately $60 million in assets. The Plan is maintained by Memorex Telex Corporation (MT-US), a wholly owned subsidiary of Memorex Corporation, which is itself a wholly owned subsidiary of MTNV. MT-Holding is a first-tier wholly owned subsidiary of MTNV.

2. MT-Japan is a Japanese corporation whose only class of stock is traded on the Japanese over-the-counter market. On September 28, 1990, the Plan purchased 382,769 shares of Stock of MT-Japan from MT-Holding for $5 million. Immediately prior to the purchase of the Stock by the Plan, MT-Holding owned 7,404,670 shares of MT-Japan, representing approximately 51.51% of the total outstanding 14,376,012 shares of MT-Japan.

Immediately following the purchase, the 382,769 shares of Stock owned by the Plan represented 2.66% of the outstanding MT-Japan stock, and the remaining 7,021,901 shares held by MT-Holding represented 48.85% of such outstanding stock.

3. The closing bid price of a share of MT-Japan stock on September 28, 1990 was 2,120 Japanese yen which, when converted to dollars based upon the exchange rate quoted in the *Wall Street Journal* of that date, was equal to $15.3679 per share. The Plan received a 15% discount from the closing bid price and actually paid only $13.0627 per share for the Stock, equal to an aggregate purchase price of $5 million. The 15 percent discount was arrived at in arm's-length negotiations between MT-Holding and the Plan's independent fiduciary (see rep. 6, below).

4. In connection with the Plan's acquisition of the Stock, the Plan has obtained a Put Option from MTNV. The Put Option, which will be exercisable by the Plan's independent fiduciary (see reps. 6 and 10, below), will permit the Plan to require MTNV (on behalf of MT-Holding) to purchase from the Plan all or any portion of the Stock sold to the Plan. The purchase price to MTNV of such Stock sold pursuant to the Put Option would be $13.0627 per share, the same price which the Plan paid to obtain the Stock. The applicant represents that MTNV is not, and will not become, a party to any agreement which prohibits it from purchasing the Stock from the Plan pursuant to the Put Option.

5. The applicant represents that the September 28, 1990 acquisition of the Stock involved approximately 9.09% of the Plan's assets. The Plan holds no other qualifying employer securities. The applicant further represents that the Stock purchased by the Plan met the requirements of section 407(f)(1)(A) of the Act because the purchase represented approximately 2.66% of the outstanding MT-Japan Stock. However, the applicant represents that the Stock did not satisfy section 407(f)(1)(B) of the Act which requires that at least 50% of the aggregate amount of the Stock which is issued and outstanding be held by persons independent of the issuer, because MT-Holding held 51.51% of the Stock at the time of the sale. Accordingly, the statutory exemption contained in Act section 408(e) did not apply to the acquisition of the Stock by the Plan, and therefore the applicant has requested the relief proposed herein.

6. U.S. Trust was retained specifically to be an independent fiduciary with respect to the Plan's purchase and subsequent holding of the Stock. U.S. Trust is a wholly owned subsidiary of United States Trust Company of New York (UST-NY), which was founded in 1853 and manages or supervises assets in excess of $200 billion. U.S. Trust represents that it has extensive expertise in acting as an independent fiduciary to retirement plans with respect to the purchase and subsequent holding by such plans of stock of the sponsoring employer or an affiliate. Specifically, U.S. Trust acts as independent trustee of a number of the largest employee stock ownership plans (ESOPs) and stock bonus plans in the United States. Total ESOP and stock bonus plan assets under management by U.S. Trust exceed $2 billion. U.S. Trust represents that neither it nor UST-NY has currently or has had in the recent past any significant dealings with, and shares no Board of Directors members with, MT-US, MTNV, MT-Japan or any affiliated entity.

7. Concurrently with the purchase of the Stock by the Plan on September 28, 1990, an escrow agreement (the Escrow) was entered into between MTNV and the Plan. The Escrow provides that $1 million (i.e. 20% of the proceeds of the purchase) be transferred by MTNV to an escrow account (the Account) at U.S. Trust. Such transfer did in fact occur on a timely basis. If any of the Stock is sold by the Plan to an unrelated third party for less than $13.0627 per share (based upon the currency exchange rate published in the *Wall Street Journal* on the business day preceding the day of such sale, if such sale is in other than U.S. dollars), the Plan will be reimbursed from the Account for such loss. The Escrow was entered into to ensure that the purchase by the Plan of the Stock was in the best interests of the Plan's participants and their beneficiaries. U.S. Trust was made escrow agent of the Account to ensure that the funds will be available to the Plan in the event some or all of the Stock is sold at a loss. The Escrow will remain in effect as long as the Plan continues to hold any of the 382,769 shares of Stock.

8. In addition, MTNV addressed to U.S. Trust a letter dated September 28, 1990 (the Side Letter) wherein MTNV agreed that if the closing bid price of MT-Japan stock falls by more than 15% from the closing bid price on September 28, 1990, MTNV will negotiate in good faith with U.S. Trust with respect to the implementation of measures to further protect the Plan's investment in the Stock. These measures would include the option of increasing the amount of the Account in direct proportion to the amount of the decrease.

9. U.S. Trust represents that it reviewed the subject transaction and determined, as of September 28, 1990, that the transaction was appropriate for the plan and in the best interests of the Plan and its participants and beneficiaries. Prior to the acquisition, U.S. Trust considered historical financial information related to MT-Japan and interviewed its management and experts in the Japanese financial markets to determine the prospects for appreciation of the Stock over the long term. Furthermore, U.S. Trust considered the current investment mix of the Plan as well as its investment objectives. An opinion letter from MT-Japan's Japanese outside counsel assured U.S. Trust that the Stock could be freely sold by the Plan in the Japanese over-the-counter market, and the proceeds repatriated to the United States. U.S. Trust also determined that it was permissible for the Plan to hold the Stock, which is traded on a foreign exchange, under the Department's regulation 29 CFR § 2550.404b–1.[1]

10. U.S. Trust will remain independent fiduciary of the Plan with respect to the Plan's continued holding of the Stock. In that role, U.S. Trust has monitored and will monitor the performance of the Stock on a continual basis. MTNV is required to supply U.S. Trust with financial information with respect to MT-Japan to allow U.S. Trust to fulfill its obligation to monitor the Plan's investment in the Stock. U.S. Trust will exercise the Plan's rights under the Put Option as it deems appropriate. U.S. Trust has the authority to sell all or any portion of the Stock at any time, and U.S. Trust represents that it will do so if the Stock becomes an inappropriate investment for the Plan or other circumstances arise which make such a sale in the Plan's best interest.

11. U.S. Trust represents that, as of November 26, 1991, the Plan had sold approximately 88,000 shares of the Stock and received proceeds of $1,363,614. That represents an average sales price of $15.50 per share, a profit of $2.44 per share sold when compared with the $13.06 per share paid for the Stock by the Plan. In addition, in June, 1991, the Plan received a Stock dividend of 38,277 shares. Accordingly, the Plan currently holds 332,746 shares of the Stock. U.S. Trust represents that, pursuant to the Side Letter, it engaged in negotiations with MTNV to implement additional measures to further protect the Plan's investment in the Stock. As a result of those negotiations, an additional $1.3

[1] The Department is providing no view herein with regard to whether the Plan's holding of the Stock would meet the conditions contained in § 2550.404b–1.

million was placed into the Account. The Account now holds approximately $2.33 million.

12. U.S. Trust represents that it continues to believe that the Plan's investment is adequately protected, and that it will continue to monitor the investment on a daily basis and take whatever steps are necessary to protect the interests of Plan participants. U.S. Trust represents that it remains comfortable with MTNV's ability to honor its obligations under the put option agreement. MTNV currently has substantial assets which could be used to purchase all, or a portion of, the Stock. U.S. Trust has monitored the price of the Stock on a daily basis and also generates a weekly monitoring report and holds a weekly meeting of its fiduciary committee (the Committee) to discuss the investment. The Committee periodically reviews reports from internal specialists on the Japanese market and MTNV's industry and the continued advisability of retaining the Stock. U.S. Trust represents that as of September 9, 1992, the continued holding of the Stock by the Plan remains appropriate for the plan and in the Plan's best interest.

13. In summary, the applicant represents that the subject transactions satisfy the criteria contained in section 408(a) of the Act because: (1) The Stock purchased represented approximately 9.09% of the Plan's assets at the time of acquisition; (2) the Stock is publicly-traded on the Japanese over-the-counter market, and the Plan paid a price at a 15% discount from the then-current closing bid price; (3) the Plan has obtained a Put Option which will permit the Plan to sell any or all shares of the Stock to MTNV, upon the independent fiduciary's decision, for the same price which the plan paid for the Stock; (4) if the Plan were to sell the Stock to an unrelated party at a loss, it could recoup its loss from the Account, which is holding approximately $2.33 million in escrow; (5) U.S. Trust, the Plan's independent fiduciary, has determined, as of September 28, 1990, that the acquisition of the Stock was appropriate for the Plan and in the best interests of its participants and beneficiaries, and has currently determined that the continued retention of the Stock remains in the Plan's best interest; and (6) U.S. Trust will monitor the holding of the Stock and will determine, among other things, whether to exercise the Put Option.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Norwood Clinic, Inc. Defined Benefit Plan (the Plan) Located in Birmingham, Alabama

[Application No. D-9181]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c) (2) of the Code and in accordance with the procedures set forth in 29 C.F.R. Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed cash sale by the Plan of a group annuity contract (the GAC) to Norwood Clinic, Inc. (the Employer), a party in interest with respect to the Plan; provided that the following conditions are satisfied:

(1) The sale is a one-time transaction for cash;

(2) The Plan receives a purchase price for the GAC of no less than its fair market value as of the Distribution Date (described below); and

(3) The Plan does not incur any costs or expenses related to the sale.

Summary of Facts and Representations

1. The Plan is a terminated defined benefit pension plan with 388 participants and total assets of approximately $4,647,737 as of December 31, 1991. The Plan is sponsored by the Employer, an Alabama private corporation which operates a medical clinic in Birmingham, Alabama. Investment decisions with respect to Plan assets are made by the Plan's trustee, AmSouth Bank, N.A. (the Trustee) in Birmingham.

2. The Employer represents that during 1991, its Board of Directors determined that continued maintenance and sponsorship of the Plan was too costly, and that the Plan was terminated effective December 31, 1991 (the Termination Date). The Plan termination has been approved by the Internal Revenue Service (the IRS) in a letter dated June 2, 1992 from the District Director of the IRS in Atlanta, Georgia. As a replacement for the Plan a new defined contribution plan was established effective January 1, 1992, for the benefit of employees of the Employer (the New Plan).

The Employer filed notice of the Plan termination with the Pension Benefit Guaranty Corporation (PBGC) on March 25, 1992, declaring an effective termination date of December 31, 1991. Accordingly, Plan participants receive distributions of the benefits accrued under the Plan through December 31, 1991. In its notice of termination filed with the PBGC, the Employer proposed a distribution date (the Distribution Date) of May 25, 1992. The Employer represents that under PBGC rules, the Distribution Date is the date to be used by the Plan's enrolled actuary for valuing Plan assets. The Employer represents that for the period between the Termination Date and the Distribution, the participants' accrued Plan benefits continued to earn interest at the rate of 6.5 percent, which the Employer represents to be the rate required by the regulations of the PBGC, at 29 CFR Part 2619, for plans with a valuation date between March 1, 1992 and July 1, 1992. Earnings on the investments of Plan assets after May 25, 1992 are allocated among Plan participants in proportion to the Plan benefits they had accrued as of December 31, 1991.

The Employer represents that in order to preserve the December 31, 1991 effective Termination Date, PBGC rules require actual distribution of Plan assets to be completed within 180 days after the expiration of PBGC's sixty-day review period. The Employer states that the PBGC review period ended May 31, 1992, and that, accordingly, final distribution of Plan assets must be made within 180 days thereafter, or by November 27, 1992. The Employer further represents that distribution of Plan benefits to Plan participants must be made within one year of the effective date of the Plan termination, i.e., by December 31, 1992, in order to preserve for Plan participants the ability to "roll over" all of their distributions into the New Plan during one taxable year.

The Employer has proceeded with liquidation of Plan assets and distribution of Plan benefits to participants. In accordance with elections made by all Plan participants, Plan benefits are to be distributed in the form of lump-sum distributions. The Employer represents that as of the time of the Plan termination, the value of the Plan's assets exceeded the Plan's liabilities.

3. Among the assets in the Plan upon its termination was the GAC, a single premium group annuity contract purchased by the Plan from Executive Life on February 6, 1986. The Employer purchased the GAC for $20,605.69 to cover the Plan's liabilities with respect to four terminated participants of the Plan whose benefits were to be distributed at normal retirement age. The Plan's obligations to these four

participants have subsequently been paid in full out of other assets of the Plan, and the GAC has become a general asset of the Plan. The Employer represents that liquidation of the GAC by November 27, 1992 is necessary to complete the distribution of Plan assets by that date. In order to liquidate the GAC and obtain sufficient cash to enable the lump-sum distributions to Plan participants, application to Executive Life for the cash surrender of the GAC was made on behalf of the Plan on April 22, 1991 by Business Planning, Inc. (BPI), an administrative service provider for the Plan. The Employer represents that there has been no formal response to BPI's application for cash surrender of the GAC.

On April 12, 1991, Executive Life was placed in conservatorship by the California Insurance Commissioner (the Commissioner).[2] The Commissioner is proceeding with a plan of rehabilitation (the Rehab Plan) of Executive Life. As a consequence of the conservatorship and the Rehab Plan, the Employer represents that Executive Life assets are frozen and that Executive Life has been prevented from paying the Plan the cash representing the GAC's surrender value, pursuant to BPI's application. In order to enable the Plan to accomplish complete distribution of Plan benefit obligations by December 31, 1992 and distribution of assets by November 27, 1992, the Employer proposes to purchase the GAC from the Plan by that date. The Employer is requesting an exemption for the proposed purchase of the GAC from the Plan under the terms and conditions described herein.

4. The Employer will purchase the GAC from the Plan by paying the Plan cash in an amount not less than the GAC's fair market value as of the date of purchase. The Employer directed a valuation of the GAC by Patricia Novitski (Novitski), an officer with BPI. Novitski represents that she was able to estimate the value of the GAC by referring to the proposed details of the developing Rehab Plan, under which it appears that Executive Life contract holders will receive approximately $.72 per dollar of the amounts due under Executive Life contracts. Based on a cash surrender value of $30,671.66 (consisting of the GAC's purchase price, less fees and commissions, plus accrued interest at 8.50 percent, compounded annually, through May 24, 1992), Novitski determined the GAC's estimated value to be $22,083.60 as of May 24, 1992, representing 72 percent of its cash surrender value as of May 24, 1992. The Employer proposes to pay the Plan $22,083.60 as the purchase price for the GAC, and the Plan will not incur any expenses with respect to the transaction.

The Employer represents that the proposed purchase of the GAC for $22,083.60 will enable all Plan participants to receive the full amount of their accrued benefits under the terms of the Plan as of the Distribution Date. The Employer further represents that its purchase of the GAC from the Plan at its value as of May 24, 1992 is necessary to complete the distribution of Plan benefits within the time necessary to preserve the December 31, 1991 effective termination date, and to prevent hardship and further delay in the receipt by Plan participants of their benefits under the Plan.

5. In summary, the applicants represent that the transaction satisfies the criteria of section 408(a) of the Act for the following reasons: (1) The Plan will receive cash for the GAC in the amount determined to be not less than the fair market value of the GAC as of May 25, 1992; (2) The transaction will enable the Employer to avoid any further delay in distributing the Plan benefits and to complete the Plan distribution within the limits necessary to preserve the effective termination date of December 31, 1991; (3) The Plan will not incur any expenses with respect to the transaction; (4) The transaction will enable the Plan participants to roll over their Plan assets to the New Plan within one calendar year; and (5) All participants will receive the full amount of the benefits due them under the Plan.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 219-8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application which is the subject of the exemption.

Signed at Washington, DC, this 19th day of October, 1992.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 92-25666 Filed 10-21-92; 8:45 am]

BILLING CODE 4510-29-M

[2] The Department notes that the decisions to acquire and hold the GAC are governed by the fiduciary responsibility requirements of Part 4, Subtitle B, Title I of the Act. In this regard, the Department herein is not proposing relief for any violations of Part 4 which may have arisen as a result of the acquisition and holding of the GAC.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 92-66]

NASA Advisory Council (NAC), Space Systems and Technology Advisory Committee (SSTAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Systems and Technology Advisory Committee.

DATES: November 12, 1992, 8 a.m. to 7 p.m.; and November 13, 1992, 8 a.m. to 6 p.m.

ADDRESSES: Sheraton Premiere Hotel, Conference Room 6, 8661 Leesburg Pike, Vienna, VA 22182.

FOR FURTHER INFORMATION CONTACT: Ms. Catherine Smith, Office of Aeronautics and Space Technology, National Aeronautics and Space Administration, Washington, DC 20546, (202) 453-2367.

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:

—Welcome
—Review of Technology Requirements
—Review of Technology Program
—Review of Strategic Planning and Integrated Technology Plan
—Review of Space Thrust Planning and Options

Dated: October 16, 1992.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 92-25612 Filed 10-21-92; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the National Council on the Arts will be held on November 6, 1992, from 8:20 a.m.-5 p.m. and November 7 from 9 a.m.-2:30 p.m. in room M-09 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC 20506.

This meeting will be open to the public on a space available basis. The topics for discussion will include opening remarks, emergency grant update, legislative update, arts education update, and program review and/or guidelines and/or application review for the Arts in Education, Challenge/Advancement, Dance, Design Arts, Expansion Arts, Folk Arts, International, Literature, Locals, Media Arts, Museum, Music, Policy, Planning and Research, Presenting and Commissioning, Special Constituencies, State and Regional, Theater, and Visual Arts programs.

If in the course of application review it becomes necessary for the Council to discuss non-public financial information about individuals, such as salary information, submitted with grant applications, the Council will go into closed session for that limited purpose only pursuant to subsection (c)(4) of section 552b of title 5, United States Code. Such closure would be in accordance with the determination of the chairman of March 6, 1991.

Any interested persons may attend, as observers, Council discussions and reviews which are open to the public.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington, DC 20506, (202) 682-5532, TTY (202) 682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5439.

Dated: October 16, 1992.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 92-25600 Filed 10-21-92; 8:45 am]

BILLING CODE 7537-01-M

Agency Information Collection Under OMB Review

AGENCY: National Endowment for the Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Comments on this information collection must be submitted on or before November 23, 1992.

ADDRESSES: Send comments to Ms. Susan Daisey, Assistant Director, Grants Office, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., room 310, Washington, DC 20506 (202-606-8494) and Mr. Steve Semenuk, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., room 3002, Washington, DC 20503 (202-395-6880).

FOR FURTHER INFORMATION CONTACT: Ms. Susan Daisey, Assistant Director, Grants Office, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., room 310, Washington, DC 20506 (202) 606-8494 from whom copies of forms and supporting documents are available.

SUPPLEMENTARY INFORMATION: All of the entries are grouped into new forms, revisions, extensions, or reinstatements. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what the form will be used for; (6) an estimate of the number of responses; (7) the frequency of responses; (8) an estimate of the total number of hours needed to fill out the form; (9) an estimate of the total annual reporting and recordkeeping burden. None of these entries are subject to 44 U.S.C. 3504(h).

Category: Revisions

Title: Applications and Instructions Forms for the Humanities Projects in Museums and Historical Organizations Program.

Form Number: Not Applicable.

Frequency of Collection: Biannual

Respondents: Museums and historical organizations.

Use: Application for funding, information about program.

Estimated Number of Respondents: 270 per year.

Frequency of Response: Once.

Estimated Hours for Respondents to *Provide Information:* 40 per respondent.

Estimated Total Annual Reporting and Recordkeeping Burden: 10,800 hours.

Thomas S. Kingston,

Assistant Chairman for Operations.

[FR Doc. 92-25639 Filed 10-21-92; 8:45 am]

BILLING CODE 7536-01-M

National Council on the Humanities; Meeting

October 15, 1992.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended) notice is hereby given that a meeting of the National Council on the Humanities will be held in Washington, DC, on November 19-20, 1992.

The purpose of the meeting is to advise the Chairman of the National Endowment for the Humanities with respect to policies, programs, and procedures for carrying out her functions, and to review applications for financial support and gifts offered to the Endowment and to make

recommendations thereon to the Chairman.

The meeting will be held in the Old Post Office Building, 1100 Pennsylvania Avenue, NW., Washington, DC. A portion of the morning and afternoon sessions on November 19–20, 1992, will not be open to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code because the Council will consider information that may disclose: Trade secrets and commercial or financial information obtained from a person and privileged or confidential; information of a personal nature the disclosure of which will constitute a clearly unwarranted invasion of personal privacy; and information the disclosure of which would significantly frustrate implementation of proposed agency action. I have made this determination under the authority granted me by the Chairman's Delegation of Authority dated September 9, 1991.

The agenda for the sessions on November 19, 1992, will be as follows:

Committee Meetings

8:30–9 a.m.—Coffee for Council Members—Room 526

9–10 a.m.

(Open to the Public)

Committee Meetings—Policy Discussion
Education Programs—Room M–14
Fellowships Programs—Room 315
Public Programs—Room 415
Research Programs/Preservation and Access—Room 507
State Programs and Office of Outreach—Room M–07

(Closed to the Public for the reasons stated above)

10 a.m. until
Adjourned—Consideration of specific applications

(Closed to the Public)

2 p.m.—Joint Meeting of State and Public Programs Committees to review Frankel Awards nominees—Room 415

3:30 p.m.—Recognition of Frankel Prize Recipients—Room M–09.

The morning session on November 20, 1992, will convene at 8:30 a.m., in the 1st Floor Council Room, M–09, and will be open to the public, as set out below. The agenda for the morning session will be as follows:

(Coffee for Council members from 8:30–9 a.m.)

Administration of Oath of Office for New Council Member Minutes of the Previous Meeting Reports
A. Introductory Remarks
B. Introduction of New Staff
C. Contracts Awarded in the Previous Quarter
D. Final Fiscal year 1992 Budget Report
E. Fiscal Year 1993 Appropriations
F Legislative Report
G. Committee Reports on Policy and General Matters
1. Overview
2. Education Programs
3. Fellowships Programs
4. Public Programs
5. Research Programs
6. Preservation and Access
7. State Programs and Office of Outreach

The remainder of the proposed meeting will be given to the consideration of future budget requests and specific applications (closed to the public for the reasons stated above).

Further information about this meeting can be obtained from Mr. David C. Fisher, Advisory Committee Management Officer, Washington, DC 20506, or call area code (202) 786–0322, TDD (202) 786–0282. Advance notice of any special needs or accommodations is appreciated.

David C. Fisher,

Advisory Committee, Management Officer.

[FR Doc. 92–25640 Filed 10–21–92; 8:45 am]

BILLING CODE 7536–01–M

NATIONAL SCIENCE FOUNDATION

Expert Panel of the Federal Coordinating Council for Science, Engineering and Technology (FCCSET); Committee on Education and Human Resources (CEHR), Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Expert Panel of the FCCSET/CEHR.

Dates and Times: November 8, 1992, 5:30 p.m. to 9 p.m.; November 9, 1992, 8:30 a.m. to 5 p.m.; November 10, 1992, 8:30 a.m. to 12 p.m.

Place: Washington DC. Call contact person for location.

Type of the Meeting: Open.

Contact Person: Mr. James S. Dietz, Program Analyst, Division of Research, Evaluation and Dissemination, Directorate of Human Resources, National Science Foundation, Room 1249, 1800 G Street, NW., Washington, DC 20550. Telephone: (202) 357–7425.

Minutes: May be obtained from the contact person listed above.

Purpose of the Meeting: The National Science Foundation, acting through the FCCSET/CEHR, established an Expert Panel to review the status of Federal Science, Mathematics, Engineering, and Technology (SMET) programs of member agencies. The Expert Panel will provide advice and recommendations to FCCSET/CEHR on the status of Federal SMET education programs.

Agenda: Mission Discussion, Panel Discussion on the Past Accomplishment of its Mission, Subpanel Discussions for Reviewing Data, Synthesis Discussions and Presentations of Subpanel Leaders, Panel Working Session on Draft Questions and Data Call, Future Directions, Summary Report Discussions and Closure.

Dated: October 19, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–25613 Filed 10–21–92; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8904]

Sohio Western Mining Co.; Finding of No Significant Impact

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of a Finding of No Significant Impact.

1. Proposed Action

The administrative action is issuance of a license amendment to incorporate an enforceable reclamation schedule for the L-Bar Mill in Cibola County, New Mexico.

2. Reasons for Finding of No Significant Impact

The proposed amendment is administrative, incorporating reclamation milestones into the license in accordance with the Memorandum of Understanding (MOU) between the Environmental Protection Agency (EPA) and the NRC which was published in the **Federal Register** on October 25, 1991. The Notice of Intent to Amend Source Material License SUA–1472 for the L-Bar Mill to incorporate reclamation schedules was published in the Federal Register on June 11, 1992. The NRC accepted comments on this proposed licensing action for 45 days. No comments were received. In accordance with 10 CFR 51.22(c)(11), the Commission has determined that no environmental analysis need be performed since no significant impacts will result from the proposal licensing actions.

3. Action

The Commission action is to amend Source Material License SUA–1472 upon publication of this Notice. The action is based on this Finding of No Significant Impact and no comments being received to the Notice of Intent published on June 11, 1992.

This Notice, together with the Notice of Intent to Amend Source Material License SUA–1472, are available for

public inspection and copying at the Commission's Uranium Recovery Field Office at 730 Simms Street, Golden, Colorado, and at the Commission's Public Document Room at 2120 L Street, NW., Washington, DC 20555.

Dated at Denver, Colorado, this 13 day of October 1992.

For the Nuclear Regulatory Commission.

Ramon E. Hall,

Director, Uranium Recovery Field Office.

[FR Doc. 92-25629 Filed 10-21-92; 8:45 am]

BILLING CODE 7590-01-M

Studies of Plant Components using Yankee-Rowe Nuclear Plant

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The staff of the Nuclear Regulatory Commission will meet with the staffs of the Yankee Atomic Power Station, Nuclear management and Resources Council (NUMARC) and other members of the nuclear industry to discuss the possible use of the Yankee-Rowe Nuclear Power Station for studies of generic plant systems, structures and components to improve our knowledge of aging and degradation.

DATES: Thursday, November 5, 1992.

TIME: 9 a.m.–5 p.m.

ADDRESSES: 11555 Rockville Pike, Room: 1 F7/9, Rockville, Maryland.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Z. Serpan, Jr., Chief, Materials Engineering Branch, Office of Nuclear Regulatory Research, Nuclear Regulatory Commission, Washington DC 20555. Telephone: (301) 492-3835.

SUPPLEMENTARY INFORMATION: Aging degradation of the systems, structures and components (SSC) of nuclear power plants has been an issue of increased concern to operators and regulators of nuclear power plants in the recent years. The USA and virtually all other countries have initiated programs to monitor, detect, and mitigate the effects of aging degradation, so as to improve current plant operations and enhance plant safety. An exceptionally valuable resource for such studies is shut-down nuclear plant; therefore, on July 9, 1992, NRC wrote to Yankee Atomic Electric Co. as well as NUMARC, EPRI and DOE, proposing that NRC hold a meeting to discuss the possible use of the shut-down Yankee Rowe Nuclear Power Station as a source of SSC for aging degradation studies; the meeting described in this notice is a result of that invitation. The meeting is expected to include a statement by the Yankee Atomic Electric Co. of its interest in this program, and the availability of its SSC for study. NRC and other participants are expected to make statements about their plans for aging studies, and of their interest in incorporating the Yankee Rowe SSC into their plans. Other persons wishing to make statements at the meeting should inform the NRC contact person by October 27, 1992. It is expected that common interests can be identified for future action by the parties concerned.

Dated at Rockville, Maryland, this 15th day of October, 1992, for the Nuclear Regulatory Commission.

Lawrence C. Shao,

Director, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 92-25630 Filed 10-21-92; 8:45 am]

BILLING CODE 7590-01-M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval

Summary of Proposal(s)

(1) *Collection title:* Questionnaire Regarding Name Difference.

(2) *Form(s) submitted:* OI-22, OI-23.

(3) *OMB Number:* New Collection.

(4) *Expiration date of current OMB clearance:* Three years from date of OMB approval.

(5) *Type of request:* New Collection.

(6) *Frequency of response:* On occasion.

(7) *Respondents:* Individuals or households.

(8) *Estimated annual number of respondents:* 11,440.

(9) *Total annual response:* 11,440.

(10) *Average time per response:* .083333 hours.

(11) *Total annual reporting hours:* 953.

(12) *Collection description:* Certain annuitants are not eligible for full benefits under the Railroad Retirement Act when they remarry. As an anti-fraud initiative, computer matches of female beneficiaries' surnames will be performed using the records of the Social Security Administration and the Illinois Secretary of State.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the form and supporting documents can be obtained from Dennis Eagan, the agency clearance officer (312-751-4693). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611-2092 and the OMB reviewer, Laura Oliven (202-395-7316), Office of Management and Budget, room 3002, New Executive Office Building, Washington, DC 20503.

Dennis Eagan,

Clearance Officer.

[FR Doc. 92-25624 Filed 10-21-92; 8:45 am]

BILLING CODE 7905-01-M

RESOLUTION TRUST CORPORATION

Coastal Barrier Improvement Act; Property Availability; Ashland Property, Prince William County, VA

AGENCY: Resolution Trust Corporation.

ACTION: Notice.

SUMMARY: Notice is hereby given that the property known as Ashland, located near the City of Dumfries, Prince William County, Virginia, is affected by section 10 of the Coastal Barrier Improvement Act of 1990, as specified below.

DATES: Written notices of serious interest to purchase or effect other transfer of the property may be mailed or faxed to the RTC until January 21, 1993.

ADDRESSES: Copies of detailed descriptions of the property, including maps, can be obtained from or are available for inspection by contacting the following person: Mr. E. Ted Hine, Resolution Trust Corporation, 4000 MacArthur Boulevard, East Tower, Suite 315, Newport Beach, CA 92660-2516, (714) 263-4648, Fax (714) 852-7786.

SUPPLEMENTARY INFORMATION: The Ashland property is located on the north side of Route 234, west of Route 643, in Prince William County, Virginia. The entire property is heavily wooded and several creeks flow through the site. The property is adjacent to the Prince William Forest Park which is managed by the National Park Service. The property is covered property within the meaning of section 10 of the Coastal Barrier Improvement Act of 1990, Public Law 101-591 (12 U.S.C. 1441a-3).

Characteristics of the property include: The property consists of approximately 505 acres of undeveloped land located west of Dumfries, Prince William County, Virginia. The site consists of two parcels on the north side of Route 234, but separated by Route 643. As a result of Powells Creek flowing through the property, approximately 38

acres of the site are floodplain with some areas featuring steep slopes not capablel of sustaining development.

Property size: Approximately 505 acres.

Written notice of serious interest in the purchase or other transfer of the property must be received on or before January 21, 1993 by the Resolution Trust Corporation at the address stated above.

Those entities eligible to submit written notices of serious interest are:

1. Agencies or entities of the Federal government;

2. Agencies or entities of State or logal government; and

3. "Qualified organizations" pursuant to section 170(h)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)(3)).

Written notices of serious interest to purchase or effect other transfer of the property must be submitted by January 21, 1993 to Mr. E. Ted Hine at the above ADDRESSES and in the following form:

Notice of Serious Interest

Re: Ashland Property
Federal Register Publication Date: **XXX**
[insert Federal Register publication date]

1. Entity name.

2. Declaration of eligibility to submit Notice under criteria set forth in Coastal Barrier Improvement Act of 1990, Public Law 101-591, section 10(b)(2), (12 U.S.C. 1441a-3(b)(2)).

3. Brief description of proposed terms of purchase or other offer (e.g., price and method of financing).

4. Declaration by entity that is intends to use the property primarily for wildlife refuge, sanctuary, open space, recreational, historical, cultural, or natural resource conservation purposes.

5. Authorized Representative (Nane/Address/Telephone/Fax).

Dated: October 16, 1992.

Resolution Trust Corporation.

William J. Tricarico,

Assistant Secretary.

[FR Doc. 92-25676 Filed 10-21-92; 8:45 am]

BILLING CODE 6714-01-M

Coastal Barrier Improvement Act; Property Availability; Eastgate Ranch, Riverside County, CA

AGENCY: Resolution Trust Corporation.

ACTION: Notice.

SUMMARY: Notice is hereby given that the property known as Eastgate Ranch, located in Moreno Valley, Riverside County, California, is affected by section 10 of the Coastal Barrier Improvement Act of 1990, as specified below.

DATES: Written notices of serious interest to purchase or effect other transfer of the property may be mailed or faxed to the RTC until January 21, 1993.

ADDRESSES: Copies of detailed descriptions of the property, including maps, can be obtained from or are available for inspection by contacting the following person: Mr. E. Ted Hine, Resolution Trust Corporation, 4000 MacArthur Boulevard, East Tower, Suite 315, Newport Beach, CA 92660-2516. (714) 263-4648, Fax (714) 852-7766.

SUPPLEMENTARY INFORMATION: The Eastgate Ranch property, also known as La Jolla Estates, is located generally north of John F. Kennedy Drive, west of Moreno Beach Drive, and south of Cactus Avenue in Moreno Valley, Riverside County, California. The site contains habitat for the federally endangered Stephens' kangaroo rat and least Bell's vireo. This property is adjacent to a park managed by the City of Moreno Valley for recreational purposes. The property is covered property within the meaning of section 10 of the Coastal Barrier Improvement Act of 1990, Public Law 101-591 (12 U.S.C. 1441a-3).

Characteristics of the property include: The property consists of approximately 155 acres of undeveloped land and is rectangular in shape. The site is relatively flat with very thick native grasses and scrub. An east-west stream, which bisects the middle of the site, contains riparian vegetation. The property is located 1 mile north of the Lake Perris State Recreation Area and ¼ mile west of State owned land.

Property size: Approximately 155 acres.

Written notice of serious interest to purchase or effect other transfer of the property must be submitted by January 21, 1993 by the Resolution Trust Corporation at the address stated above.

Those entities eligible to submit written notices of serious interest are:

1. Agencies or entities of the Federal government;

2. Agencies or entities of State or local government; and

3. "Qualified organizations" pursuant to section 170(h)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)(3)).

Written notices of serious interest to purchase or effect other transfer of the property must be submitted by January 21, 1993 to Mr. E. Ted Hine at the above **ADDRESSES** and in the following form:

Notice of Serious Interest

RE: Eastgate Ranch
Federal Register Publication Date: _____
[insert Federal Register publication date]

1. Entity name.

2. Declaration of eligibility to submit Notice under criteria set forth in Coastal Barrier Improvement Act of 1990, Public Law 101-591, section 10(b)92), (12 U.S.C. 1441a-3(b)(2)).

3. Brief description of proposed terms of purchase or other offer (e.g., price and method of financing).

4. Declaration by entity that it intends to use the property primarily for wildlife refuge, sanctuary, open space, recreational, historical, cultural, or natural resource conservation purposes.

5. Authorized Representative (Name/Address/Telephone/Fax).

Dated: October 16, 1992.

Resolution Trust Corporation.

William J. Tricarico,

Assistant Secretary.

[FR Doc. 92-25678 Filed 10-21-92; 8:45 am]

BILLING CODE 6719-01-M

Coastal Barrier Improvement Act; Property Availability; PortAmerica, Prince George's County, MD

AGENCY: Resolution Trust Corporation.

ACTION: Notice.

SUMMARY: Notice is hereby given that the property known as PortAmerica, located on the Potomac River, Prince George's County, Maryland, is affected by section 10 of the Coastal Barrier Improvement Act of 1990, as specified below.

DATES: Written notices of serious interest to purchase or effect other transfer of the property may be mailed or faxed to the RTC until January 21, 1993.

ADDRESSES: Copies of detailed descriptions of the property, including maps, can be obtained from or are available for inspection by contacting the following person: Mr. E. Ted Hine, Resolution Trust Corporation, 4000 MacArthur Boulevard, East Tower, Suite 315, Newport Beach, CA 92660-2516. (714) 263-4648, Fax (714) 852-7766.

SUPPLEMENTARY INFORMATION: The PortAmerica property is located along the east shoreline of the Potomac River, immediately south of the intersection of the Capital Beltway (I-95) and the interchange of the Anacostia Freeway (I-295), Prince George's County, Maryland. Approximately one-half of

the property is submerged under the Potomac River with the upland portion being adjacent to lands managed by the Maryland National Capital Park and Planning Commission. The property is covered property within the meaning of section 10 of the Coastal Barrier Improvement Act of 1990, Public Law 101-591 (12 U.S.C. 1441a-3).

Characteristics of the property include: The property consists of approximately 448 acres of undeveloped land. Approximately 205 acres are wooded land and approximately 243 acres are submerged under the Potomac River. About 151 acres of the upland comprise the Waterfront Parcel on the eastern bank of the Potomac River and about 52 acres are known as the Beltway Parcel. The two upland parcels are connected by a roadway which is part of the Capital Beltway (I-95). Archaeological investigations of the site have revealed artifacts that document that Thomas Addison built his manor on the property and that the manor activities were typical of plantation activities of that period.

Property size: Approximately 448 acres.

Written notice of serious interest in the purchase or other transfer of the property must be received on or before January 21, 1993 by the Resolution Trust Corporation at the address stated above.

Those entities eligible to submit written notices of serious interest are:

1. Agencies or entities of the Federal government;

2. Agencies or entities of State or local government; and

3. "Qualified organizations" pursuant to section 170(h)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)(3)).

Written notices of serious interest to purchase or effect other transfer of the property must be submitted by January 21, 1993 to Mr. E. Ted Hine at the above **ADDRESSES** and in the following form:

Notice of Serious Interest

RE: PortAmerica
Federal Register Publication Date: _____
[insert Federal Register publication date]

1. Entity name.

2. Declaration of eligibility to submit Notice under criteria set forth in Coastal Barrier Improvement Act of 1990, Public Law 101-591, section 10(b)(2), (12 U.S.C. 1441a-3(b)(2)).

3. Brief description of proposed terms of purchase or other offer (e.g., price and method of financing).

4. Declaration by entity that it intends to use the property primarily for wildlife refuge, sanctuary, open space, recreational, historical, cultural, or natural resource conservation purposes.

5. Authorized Representative (Name/Address/Telephone/Fax).

Dated: October 16, 1992.

Resolution Trust Corporation.

William J. Tricarico,

Assistant Secretary.

[FR Doc. 92-25677 Filed 10-21-92; 8:45 am]

BILLING CODE 6714-01-M

Coastal Barrier Improvement Act; Property Availability; Saddleback Mountain, Maricopa County, AZ

AGENCY: Resolution Trust Corporation.

ACTION: Notice.

SUMMARY: Notice is hereby given that the property known as Saddleback Mountain, located in the City of Scottsdale, Maricopa County, Arizona, is affected by section 10 of the Coastal Barrier Improvement Act of 1990, as specified below.

DATES: Written notices of serious interest to purchase or effect other transfer of the property may be mailed or faxed to the RTC until January 21, 1993.

ADDRESSES: Copies of detailed descriptions of the property, including maps, can be obtained from or are available for inspection by contacting the following person: Mr. Scott Jones, Resolution Trust Corporation, c/o Metec Asset Management, 3626 North Hall Street; Suite #916, Dallas, TX 75219. (214) 522-4252, Fax (214) 522-8984.

SUPPLEMENTARY INFORMATION: The Saddleback Mountain property is located at the intersection of 136th Street and Shea Boulevard, in Scottsdale, Maricopa County, Arizona. The property contains a large wash area located along the western boundary and hillside landforms protected by the City of Scottsdale Environmentally Sensitive Lands Ordinance. The property is adjacent to the Salt River Pima-Maricopa Indian Reservation. The property is covered property within the meaning of section 10 of the Coastal Barrier Improvement Act of 1990, Public Law 101-591 (12 U.S.C. 1441a-3).

Characteristics of the property include: The property consists of three distinct parcels of land, two of which are contiguous and one of which is physically separated from the other two parcels by Shea Boulevard. The site consists of approximately 719 acres of undeveloped land, of which, about 306 acres are considered as compatible for development. The difference between the gross acreage and the undevelopable acreage is attributed to Saddleback Mountain. The biological setting of this property is considered as Lower Sonoran. The Sonoran desert tortoise and other cacti and desert plants on the site are protected by the State of Arizona.

Property size: Approximately 719 acres.

Written notice of serious interest in the purchase or other transfer of the property must be received on or before January 21, 1993 by the Resolution Trust Corporation at the address stated above.

Those entities eligible to submit written notices of serious interest are:

1. Agencies or entities of the Federal government;

2. Agencies or entities of State or local government; and

3. "Qualified organizations" pursuant to section 170(h)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)(3)).

Written notices of serious interest to purchase or effect other transfer of the property must be submitted by January 21, 1993 to Mr. Scott Jones at the above **ADDRESSES** and in the following form:

Notice of Serious Interest

RE: Saddleback Mountain
Federal Register Publication Date: _____
[insert Federal Register publication date]

1. Entity name.

2. Declaration of eligibility to submit Notice under criteria set forth in Coastal Barrier Improvement Act of 1990, Public Law 101-591, section 10(b)(2), (12 U.S.C. 1441a-3(b)(2)).

3. Brief description of proposed terms of purchase or other offer (e.g., price and method of financing).

4. Declaration by entity that it intends to use the property primarily for wildlife refuge, sanctuary, open space, recreational, historical, cultural, or natural resource conservation purposes.

5. Authorized Representative (Name/Address/Telephone/Fax).

Dated: October 16, 1992.

Resolution Trust Corporation.

William J. Tricarico,

Assistant Secretary.

[FR Doc. 92-25675 Filed 10-21-92; 8:45 am]

BILLING CODE 6714-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-31328; File No. SR-GSCC-92-07]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Order Approving a Proposed Rule Relating to Enhancements to the Comparison System

October 16, 1992.

On June 30, 1992, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-GSCC-92-07) that would modify the criteria GSCC uses for comparison of trade data. The Commission published notice of the proposed rule change in the **Federal Register** to solicit comment from interested persons.[2] No comments were received. This order approves the proposal.

I. Description

As described below, the proposed rule change will enhance GSCC's ability to compare a trade where the data submitted does not meet all of the criteria for comparison and the nonmatch item(s) fits within certain predefined parameters.

Summarization of Par Amounts GSCC would have the ability to compare data on two buy sides with data on one or two sell sides, and vice versa, if the data matches except for par amount and final money amount, and the total of the par amounts and final money amounts is the same on both sides. This summarization process would apply to yield trades as well; the submitted yields when combined must match exactly, while the commissions, if different, must fall within GSCC's system tolerance.[3]

Trade Date GSCC would have the ability to compare a buy or sell side with a contra buy or sell side that matches in all respects except for trade date, with the earlier trade date being presumed to be the correct trade date. GSCC would look to match a buy or sell side with a contra buy or sell side with the closest trade date.

The filing also makes clear that GSCC may use the summarization of par amounts and the alternate trade date together to generate a comparison of a trade, provided the final money amounts on the buy and sell sides of a trade fall within the dollar tolerance established by GSCC.

II. Discussion

The Commission believes GSCC's proposal is consistent with the Act, and in particular, section 17A of the Act.[4] Section 17A(a)(1) encourages the adoption of efficient and effective procedures for the clearance and settlement of securities transactions.[5] Section 17A(b)(3)(F) requires that the rules of a clearing agency, among other things, be designed to promote the prompt and accurate clearance and settlement of securities transactions and to remove impediments to the prompt and accurate settlement of securities transactions.[6]

The proposed rule change would assist members in comparing trades and bolster reconciliation of unmatched trade data. The proposed rule change also would increase the number of trades that go into GSCC's netting system and provide greater efficiency by increasing the number of transactions settled within a centralized and automated clearance and settlement environment. Thus, the Commission believes that the proposal is consistent with the requirement of section 17A(b)(3)(F) of the Act requiring that the rules of a clearing agency be designed to promote the prompt and accurate settlement of securities transactions and to remove impediments to the prompt and accurate settlement of securities transactions.

GSCC has operated its comparison system for four years and has successfully managed the volume of trades submitted for comparison. On an average day, GSCC estimates that 22,000 trades are submitted for comparison.[7] Approximately 85-90% of the trades submitted are successfully compared by GSCC.[8] As a result of the enhancements, GSCC expects the number of successfully compared trades to increase by roughly three percent.

The increase will not have an impact on GSCC's processing capacity in the comparison system. The proposal, however, will increase the number of successfully compared trades that go into GSCC's netting system. GSCC has represented to the Commission that its netting system is capable of handling the additional volume of trade.[9]

III. Conclusion

On the basis of the foregoing, the Commission finds that GSCC's proposed rule change is consistent with the Act, and in particular with section 17A of the Act.

It is therefore ordered, under section 19(b)(2) of the Act,[10] that the proposed rule change (File No. SR-GSCC-92-07) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-25582 Filed 10-21-92; 8:45 am]

BILLING CODE 8010-01-M

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 31138 (September 3, 1992), 57 FR 41528.

[3] "Yield trades" are trades that have been executed on the basis of the current market yield and are compared and netted by GSCC prior to the U.S. Treasury Department auction. For a more detailed discussion of yield trades, see Securities Exchange Act Release Nos. 29732 (September 24, 1991), 56 FR 49937; and 30170 (January 15, 1992), 57 FR 1774.

[4] 15 U.S.C. 78q-1 (1988).

[5] 15 U.S.C. 78q-1(a)(1) (1988).

[6] 15 U.S.C. 78q-1(b)(3)(F) (1988).

[7] Telephone conversation between Jeffrey F. Ingber, General Counsel, GSCC, and Sonia G. Burnett, Attorney, Commission (October 6, 1992).

[8] *Id.*

[9] Letter from Jeffrey F. Ingber, General Counsel, GSCC, to Sonia Burnett, Attorney, Commission (October 6, 1992.)

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30-3(a)(12).

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended October 9, 1992

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 48386

Date filed: October 6, 1992

Parties: Members of the International Air Transport Association

Subject: Comp Reso/C 0522 dated September 15, 1992 Composite Resolutions—R-1 to R-7

Proposed Effective Date: October 1, 1992

Docket Number: 48392

Date filed: October 8, 1992

Parties: Members of the International Air Transport Association

Subject:

TC2 Reso/P 1294 dated September 25, 1992, Europe-Mideast Expedited Resos, intended effect: November 1, 1992—R-1 To-17

TC2 Reso/P 1295 dated September 25, 1992, Europe-Mideast Expedited Resos, intended effect: December 1, 1992—R-18 to R-24

TC2 Reso/P 1296 dated September 25, 1992, Europe-Mideast Expedited Resos, intended effect: January 1, 1993—R-25 To R-29

Docket Number: 48393

Date filed: October 8, 1992
Parties: Members of the International Air Transport Association
Subject: TC2 Reso/P Reso/P 1299 dated September 25, 1992 Within Mideast Expedited Resos R-1 To R-6
Proposed Effective Date: November 1, 1992

Docket Number: 48394

Date filed: October 8, 1992
Parties: Members of the International Air Transport Association
Subject: Comp Reso/C 0526 dated September 29, 1992 Composite Resolutions R-1 To R-6
Proposed Effective Date: December 1, 1992.

Phyllis T. Kaylor,
Chief, Documentary Services Division.
[FR Doc. 92-25631 Filed 10-21-92; 8:45 am]
BILLING CODE 4910-62-M

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended October 9, 1992

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 48388

Date filed: October 6, 1992
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 3, 1992
Description: Application of Capitol Air Express Inc., pursuant to Section 401(d)(3) of the Act and Subpart Q of the Regulations requests issuance of a Certificate of Public Convenience and Necessity authorizing it to engage in charter foreign air transportation.

Docket Number: 48395

Date filed: October 8, 1992
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 5, 1992
Description: Application of Air Atlanta-Icelandic pursuant to section 402 of the Act and Subpart Q of the Regulations, applies for a foreign air carrier permit to enable it to provide charter foreign air transportation of persons, property, and mail between any point or points in Iceland and any point or points in the United States.

Docket Number: 48397

Date filed: October 9, 1992
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 6, 1992
Description: Application of Asiana Airlines, Inc., pursuant to section 402 of the Act and Subpart Q of the Regulations applies for an amendment to its foreign air carrier permit which would authorize Asiana to provide scheduled foreign air transportation of persons, property and mail between a point or points in Korea via points in Japan to the coterminal points the Northern Mariana Islands, Alaska, Honolulu, Los Angeles, San Francisco, and New York.

Docket Number: 45723

Date filed: October 8, 1992
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 5, 1992
Description: Application of Transportes Aereos Ejecutivos, S.A. de C.V., pursuant to Section 402 of the Act and Subpart Q of the Regulations, requests the Department to amend its foreign air carrier permit to the extent necessary to authorize it to engage in daily scheduled air transportation of persons, property and mail on the scheduled routes: (1) Guadalajara, Mexico, on the one hand, and Eagle/Vail, Co., on the other hand; (2) Monterrey, Mexico, on the one hand, and Eagle/Vail, Co., on the other hand; (3) Huatulco, Mexico, on the one hand, and Eagle/Vail, Co., on the other hand; (4) Zihuantanejo, Mexico, on the one hand, and Chicago, Il., on the one hand; (5) Leon/Guadalajara, on the one hand, and Chicago, Il., on the other hand; and (6) Guadalajara, Mexico, on the one hand, and Chicago, Il., on the other hand, using large aircraft.

Docket Number: 48295

Date filed: October 8, 1992
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 5, 1992
Description: Amendment to Application of United Air Lines, Inc., pursuant to Section 401 of the Act and Subpart Q of the Regulations, to realign segment 1 of its certificate of public convenience and necessity for Route 632, as filed on August 13, 1992.

Phyllis T. Kaylor,
Chief, Documentary Services Division.
[FR Doc. 92-25632 Filed 10-21-92; 8:45 am]
BILLING CODE 4910-62-M

Federal Aviation Administration

Index of Administrator's Decisions and Orders in Civil Penalty Actions; Publication

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of publication.

SUMMARY: This notice constitutes the required quarterly publication of an index of the Administration's decisions and orders in civil penalty cases. The FAA is publishing an index by order number, a subject-matter index, and case digests that contain identifying information about the final decisions and orders issued by the Administrator. These indexes and digests will increase the public's awareness of the Administrator's decisions and orders and will assist litigants and practitioners in their research and review of decisions and orders that may have precedential value in a particular civil penalty action. Publication of the index by order number ensures that the agency is in compliance with statutory indexing requirements.

FOR FURTHER INFORMATION CONTACT: James S. Dillman, Assistant Chief Counsel for Litigation (AGC-400), Federal Aviation Administration, 701 Pennsylvania Avenue NW., suite 925, Washington, DC 20004: telephone (202) 376-6441.

SUPPLEMENTARY INFORMATION: The Administrative Procedure Act requires Federal agencies to maintain and make available for public inspection and copying current indexes that contain identifying information as to those materials required to be made available or published. 5 U.S.C. 552(a)(2). In a notice issued on July 11, 1990, and published in the **Federal Register** (55 FR 29148; July 17, 1990), the FAA announced the public availability of several indexes and summaries that provide identifying information about the final decisions and orders issued by the Administrator under the FAA's civil penalty assessment authority and the rules of practice governing hearings and appeals of civil penalty actions. 14 CFR part 13, subpart G. The FAA maintains an index of the Administrator's decisions and orders in civil penalty actions organized by order number and containing

identifying information about each decision or order. The FAA also maintains a subject-matter index, and digests organized by order number.

In a notice issued on October 26, 1990, the FAA published these indexes and digests for all decisions and orders issued by the Administrator through September 30, 1990. 55 FR 45984; October 31, 1990. The FAA announced in that notice that it would publish supplements to these indexes and digests on a quarterly basis (*i.e.*, in January, April, July, and October of each year). Only the subject-matter index will be published cumulatively. Both the order number index and the digests will be non-cumulative.

In a notice issued on January 25, 1991, the FAA published the first supplement to the indexes and digests described in this notice, which included the decisions and orders issued by the Administrator from October 1, 1990, through December 31, 1990. 56 FR 4886; February 6, 1991. In a notice issued on May 1, 1991, the FAA published the second supplement, which included decisions and orders issued by the Administrator from January 1, 1991, through March 31, 1991. 56 FR 20250; May 2, 1991. In a notice issued on July 3, 1991, the FAA published the third supplement, which included decisions and orders issued by the Administrator from April 1, 1991, through June 30, 1991. 56 FR 31984; July 12, 1991. In a notice issued on October 8, 1991, the FAA published the fourth supplement, which included decisions and orders issued by the Administrator between July 1, 1991 and September 30, 1991. 56 FR 51735; October 15, 1991. In a notice issued on January 13, 1992, the FAA published the fifth supplement, which included decisions and orders issued by the Administrator between October 1, 1991, and December 31, 1991. 57 FR 2299; January 21, 1992. In a notice issued on April 3, 1992, the FAA published the sixth supplement, which included decisions and orders issued by the Administrator between January 1, 1992, and March 31, 1992. 57 FR 12359 (April 9, 1992). In a notice issued on July 16, 1992, the FAA published the seventh supplement, which included decisions and orders issued by the Administrator between April 1, 1992, and June 30, 1992. 57 FR 32625 (July 23, 1992).

As noted at the beginning of each of these documents, these indexes and digests do not constitute legal authority, and should not be cited or relied upon as such. The indexes and digests are not intended to serve as a substitute for proper legal research. Parties, attorneys, and other interested persons should always consult the full text of the Administrator's decisions before citing them in any context. The Administrator's final decisions and orders, indexes, and digests are available for public inspection and copying at all FAA legal offices. (The addresses of the FAA legal offices are listed at the end of this notice.)

In addition, the Administrator's final decisions and orders have been published by commercial publishers and are available on computer databases. (Information about these commercial publications and computer databases is provided at the end of this notice.)

Civil Penalty Actions—Orders Issued by the Administrator

Order Number Index

(This supplement includes decisions and orders issued by the Administrator from July 1, 1992, through September 30, 1992.)

This index does not constitute legal authority, and should not be cited or relied upon as such. This index is not intended to serve as a substitute for proper legal research. Parties, attorneys, and other interested persons should always consult the full text of the Administrator's decisions before citing them in any context.

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Civil Penalty Actions—Decisions Issued by the Administrator

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(Current as of September 30, 1992)

This index does not constitute legal authority, and should not be cited or relied upon as such. This index is not intended to serve as a substitute for proper legal research. Parties, attorneys, and other interested persons should always consult the full text of the Administrator's decisions before citing them in any context.

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Civil Penalty Case Decisions

Digests

(Current as of September 30, 1992)

The digest of the Administrator's final decisions and orders are arranged by order number, and briefly summarize key points of the decision. The following compilation of digests includes all final decisions and orders issued by the Administrator from July 1, 1992, through September 30, 1992. The FAA will publish noncumulative supplements to this compilation on a quarterly basis (*e.g.*, April, July, October, and January of each year).

These digests do not constitute legal authority, and should not be cited or relied upon as such. These digests are not intended to serve as a substitute for proper legal research. Parties, attorneys, and other interested persons should always consult the full text of the Administrator's decisions before citing them in any context.

In the Matter of Delta Air Lines, Inc.

Order No. 92–43 (7/2/92)

Withdrawal of Appeal. Complainant withdrew its notice of appeal from the initial decision. Complainant withdrew its notice of appeal from the initial decision. Complainant's appeal is dismissed.

In the Matter of Al Owens

Order No. 92–44 (7/6/92)

Withdrawal of Appeal. Complainant withdrew its notice of appeal from the initial decision. Complainant's appeal is dismissed.

In the Matter of George O'Brien

Order No. 92–45 (7/10/92)

Dismissal of Appeal. Respondent failed to perfect his appeal by filing an appeal brief as required by 14 CFR 13.233(c). Respondent's appeal is dismissed.

In the Matter of Nora Sutton-Sautter

Order No. 92–46 (7/23/92)

Weapons Violation. Respondent, a ticketed passenger, attempted to enter a sterile area at the Anchorage International Airport, forgetting that she had an unloaded semiautomatic handgun in her accessible baggage.

The inadvertent nature of Respondent's violation does not justify reducing the sanction below $1,000. The amount of $1,000 already takes into account Respondent's lack of intent.

Respondent's argument that she was denied justice because complainant's counsel and the law judge lacked the authority to reduce her civil penalty is without merit. The duty of Complainant and the law judges to follow the Administrator's precedent does not result in unfairness. On the contrary, when Complainant and the law judges follow the policies set forth in the Administrator's prior decisions, they ensure consistency and fairness in the application of the law.

Discovery. The law judge did not err when he reversed his order to Complainant to provide Respondent with a copy of the FAA's investigative file concerning a similar but unrelated weapons incident in which no enforcement action was taken. Without this information, said Respondent, she was unable to show that Complainant shows favoritism. Whether enforcement action was taken against someone else who may have violated a safety rule is not relevant in determining whether Respondent violated the same rule. An agency's decision not to prosecute or enforce is generally committed to the agency's discretion and should be presumed immune from review.

In the Matter of David Cornwall

Order No. 92–47 (7/23/92)

Late-Filed Answer. The law judge did not err in denying Complainant's motion to deem the allegations of the complaint admitted when Respondent failed to file a timely answer to the complaint. Good cause for the late filing is indicated by the following: The complaint in this case was silent concerning the requirement for an answer; it was not Respondent who committed the mistake, but his counsel, and Respondent understandably relied upon his counsel to comply with procedural requirements; Complainant did not appear to have been prejudiced by the late-filing. *Playter* case is distinguished.

Appropriateness of Landing Spot. The law judge did not err in finding that there was at least one other spot more appropriate for landing than the one chosen by Respondent, where experienced pilots familiar with the river testified that they would not have landed where Respondent did and that there were more suitable landing sites on the river. Respondent should have found some other spot where he could have landed without coming so close to people and boats on the water. If there was no other safe spot for landing, then Respondent should not have landed. Respondent was not landing to respond to an emergency. Instead, he was landing to go fishing.

Careless Operation Violation. Piloting an aircraft at an altitude of between 50 to 80 feet, even if one does not fly directly over people and boats on the river, is inherently careless and potentially dangerous. A § 91.9 infringement is almost invariably concomitant with a low flight violation.

In the Matter of USAIR, Inc.

Order No. 92-48 (7/23/92)

Complainant appealed from the law judge's oral initial decision in which he held that USAIR had not operated an unairworthy aircraft in a careless or reckless manner in violation of 14 CFR 121.153(a)(2) and 91.9. The Administrator reversed the law judge's decision and assessed a reduced civil penalty of $5,000.

Airworthy condition. The aircraft's broken nose wheel water deflector did not conform to the aircraft's type design, and rendered the aircraft not in a condition for safe operation. The broken water deflector most likely prevented the nose gear landing doors from completely closing in flight, and could have resulted in water or debris being ingested into the engine during a landing or takeoff.

The law judge erred in finding that Respondent did not know or should not have known that the aircraft was unairworthy before takeoff because of the broken nose wheel water deflector. Respondent's pushback operator did not tell Respondent's Captain that she saw the water deflector pop up and down after it rode up onto an improperly placed chock. Respondent's Captain did not determine what caused the loud noise that he heard coming from the nose wheel area of the aircraft during pushback. These ommissions by Respondent's ground crew and Captain are attributable to Respondent air carrier.

Careless or reckless operation. Absent extraordinary circumstances, careless or reckless operation of an aircraft follows as residual violation when operation of an unairworthy aircraft is established.

Civil penalty. Under the Federal Aviation Act, Respondent is subject to a maximum civil penalty of $10,000 for each violation. The Administrator determined that the $15,000 civil penalty sought by Complainant was not required under the facts of this case. He held that a $5,000 civil penalty would adequately reflect the seriousness of the violations committed by Respondent and deter future similar incidents.

In the Matter of Warren R. Richardson & David O. Shimp

Order No. 92-49 (7/23/92)

Respondents appealed from the law judge's oral initial decision in which he held that Respondent Richardson deviated from an air traffic control clearance without obtaining an amended clearance in violation of 14 CFR 91.75(a). The law judge also held that both Respondents operated an aircraft in a careless manner in violation of 14 CFR 91.9. The Administrator affirmed the law judge's decision.

Air traffic control clearance deviation. Captain, who heard all of the "maintain flight level one eight zero" clearance except for the word "maintain," should have sought clarification from air traffic control before descending below flight level one eight zero. Subsequent traffic advisory concerning oncoming aircraft at an altitude of 17,000 feet should have alerted Captain to maintain flight level one eight zero.

The fact that controller could have given Respondents a different clearance did not excuse Respondents' deviation from a valid clearance in a non-emergency situation. Validity of clearance that conformed to the Air Traffic Control Manual's guidance on amended clearances in effect at the time of the incident, is not affected by subsequent amendment of the Air Traffic Control Manual.

Where the pilot acknowledged an air traffic control clearance to maintain an altitude, and the entire clearance is contained in the air traffic control tapes, a presumption arises that the clearance was received.

Careless operation. Pilots, who were instructed to maintain flight level one eight zero, and descended from that assigned altitude without obtaining an amended clearance, operated the aircraft in a careless manner.

National Transportation Safety Board (NTSB) precedent. The Administrator may decide to follow persuasive NTSB precedent but is not required to do so.

In the Matter of Billy F. Cullop

Order No. 92-50 (7/23/92)

Failure to appear at hearing. The Administrator affirmed the decision of the Administrative Law Judge to assess Respondent the $1,000 civil penalty sought in the complaint, after Respondent failed to appear at the hearing scheduled in his case.

Change of hearing location. Respondent's request for a change of hearing location was dated three days before the hearing, and was not received in the mail by the law judge until after the hearing terminated. Respondent had two months notice that the hearing would be held in Albany, New York. He failed to explain the reason for his delay in requesting a change in the location of the hearing to the Rome-Utica, New York area. His request was so late that the law judge did not have the opportunity to rule on it before the close of the hearing.

Respondent did not explain why he could not arrange for transportation to Albany, New York for the hearing. The fact that he may have been out of work at the time did not excuse his non-appearance at the hearing.

In the Matter of Ian Koblick

Order No. 92-51 (7/23/92)

Weapons Violation. Respondent should have known that he was carrying a loaded gun in his carry-on luggage. It is no excuse that his wife packed for him. Passengers have a duty to know the contents of their luggage.

Sanction. Because the gun was loaded and no financial hardship was shown, a sanction of $2,500 is appropriate.

In the Matter of Thomas A. Beck

Order No. 92-52 (7/23/92)

Based on Complainant's representation that Respondent may have misunderstood his appeal rights, the Administrator granted Respondent an additional 30 days to file an additional appeal brief. Complainant was granted an extension of time in which to file its reply brief.

In the Matter of Cecil Humble

Order No. 92-53 (7/24/92)

Withdrawal of Appeal. Complainant withdrew its notice of appeal from the initial decision. Complainant's appeal is dismissed.

In the Matter of Northwest Airlines, Inc.

Order No. 92-54 (7/29/92)

Withdrawal of Appeal. Respondent withdrew its notice of appeal from the initial decision. Respondent's appeal is dismissed.

In the Matter of Northwest Airlines, Inc.

Order No. 92-55 (7/29/92)

Withdrawal of Appeal. Complainant and Respondent withdrew their notices of appeal from the initial decision. The appeals of Complainant and Respondent are dismissed.

In the Matter of Montauk Caribbean Airways, Inc.

Order No. 92-56 (9/8/92)

Dismissal of Appeal. Respondent failed to perfect its appeal by filing an appeal brief as required by 14 CFR 13.233(c). Respondent's appeal is dismissed.

Commercial Reporting Services of the Administrator's Civil Penalty Decisions and Orders

In June, 1991, as a public service, the FAA began releasing to commercial publishers the Administrator's decisions in civil penalty cases. The goal was to make these decisions and orders more accessible to the public. As a result, the Administrator's decisions and orders in civil penalty cases are now available in the following commercial publications:

Avlex, published by Aviation Daily, 1156 15th Street, NW., Washington, DC 20005, (202) 82-4669;

Civil Penalty Cases Digest Service, published by Hawkins Publishing Company, Inc., P.O. Box 480, Mayo, MD, 21106, (301) 798-1098.

Another publishing company, Clark Boardman Callaghan, 50 Broad Street East, Rochester, NY 14694, (716) 546-1490, is expected to release its publication of the civil penalty decisions and orders soon.

The decisions and orders may be obtained on disk from Aviation Records, Inc., P.O. Box 172, Battle Ground, WA 98604, (206) 896-0376. Aeroflight Publications, P.O. Box 854, 433 Main Street, Gruver, TX 79040 (806) 733-2483, is placing the decisions on CD-ROM. Finally, the Administrator's decisions and orders in civil penalty cases are available on the following computer databases: Compuserve; Fedix; and GEnie.

The FAA has stated previously that publication of the subject-matter index and the digests may be discontinued once a commercial reporting service publishes similar information in a timely and accurate manner. No decision has been made yet on this matter, and for the time being, the FAA will continue to prepare and publish the subject-matter index and digests.

FAA Offices

The Administrator's final decisions and orders, indexes, and digests are also available for public inspection and copying at the following location in FAA headquarters: FAA Hearing Docket, Federal Aviation Administration, 800 Independence Avenue, SW., room 924A, Washington, DC 20591; (202) 267-3641.

In addition, these materials are available at all FAA regional and center legal offices at the following locations:

Office of the Assistant Chief Counsel for the Aeronautical Center (AAC-7), Mike Monroney Aeronautical Center, 6500 South MacArthur, Oklahoma City, OK 73125; (404) 680-3296.

Office of the Assistant Chief Counsel for the Alaskan Region (AAL-7), Alaskan Region Headquarters, 222 West 7th Avenue, Anchorage, AL 99513; (907) 271-5269.

Office of the Assistant Chief Counsel for the Central Region (ACE-7), Central Region Headquarters, 601 East 12th Street, Federal Building, Kansas City, MO 64106; (816) 426-5446.

Office of the Assistant Chief Counsel for the Eastern Region (AEA-7), Eastern Region Headquarters, JFK International Airport, Fitzgerald Federal Building, Jamaica, NY 11430; (718) 917-1035.

Office of the Assistant Chief Counsel for the Great Lakes Region (AGL-7), Great Lakes Region Headquarters, O'Hare Lake Office Center, 2300 East Devon Avenue, Des Plaines, IL 60018; (312) 694-7108.

Office of the Assistant Chief Counsel for the New England Region (ANE-7), New England Region Headquarters, 12 New England Executive Park, Burlington, MA 001803; (617) 273-7310.

Office of the Assistant Chief Counsel for the Northwest Mountain Region (ANM-7), Northwest Mountain Region Headquarters, 18000 Pacific Highway South, Seattle, WA 98188; (206) 227-2007.

Office of the Assistant Chief Counsel for the Southern Region (ASO-7), Southern Region Headquarters, 3400 Norman Berry Drive, East Point, GA 30344; (404) 763-7204.

Office of the Assistant Chief Counsel for the Southwest Region (ASW-7), Southwest Region Headquarters, 4400 Blue Mound Road, Fort Worth, TX 76193; (817) 624-5707.

Office of the Assistant Chief Counsel for the Technical Center (ACT-7), Federal Aviation Administration Technical Center, Atlantic City International Airport, Atlantic City, NJ 08405; (609) 484-6605.

Office of the Assistant Chief Counsel for the Western-Pacific Region (AWP-7), Western-Pacific Region Headquarters, 15000 Aviation Boulevard, Hawthorne, CA 90261; (213) 297-1270.

Issued in Washington, DC, on October 16, 1992.

Kenneth P. Quinn,

Chief Counsel.

[FR Doc. 92-25559 Filed 10-21-92; 8:45 am]

BILLING CODE 4910-13-M

Air Traffic Subcommittee of the Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Air Traffic Subcommittee of the Aviation Rulemaking Advisory Committee.

DATES: The meeting will be held on November 12, 1992, at 9:30 a.m.

ADDRESSES: The meeting will be held at the General Aviation Manufacturers Association, 1400 K Street, NW., suite 801, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Aaron Boxer, Designated Federal Official, Air Traffic Rules and Procedures Service, Federal Aviation Administration, telephone: 202-267-8783.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Air Traffic Subcommittee to be held on November 12, 1992, at the General Aviation Manufacturers Association, 1400 K Street, NW., suite 800, Washington, DC. The agenda for this meeting will include:

- A report from the Unmanned Airspace Vehicle working group;
- A status of the recommendation to the FAA from the Pilot Procedures at Non-towered Airports working group;
- A report on the status of the Mode S ground sensor evaluation study; and
- A status of the request to assign the Mode C veil petition to the subcommittee.

Attendance is open to the interested public but will be limited to the space available. The public may present written statements to the subcommittee at any time by providing 30 copies to the Executive Director, or by bringing the copies to him at the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on October 16, 1992.

Aaron Boxer,

Executive Director, Air Traffic Subcommittee, Aviation Rulemaking Advisory Committee.

[FR Doc. 92-25606 Filed 10-21-92; 8:45 am]

BILLING CODE 4910-13-M

Pilot and Aviation Maintenance Technician Shortage Blue Ribbon Panel; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given of a meeting of the Pilot and Aviation

Maintenance Technician Shortage Blue Ribbon Panel.

DATES: The meetings will be held November 18–19, 1992, from 8:30 a.m. to 5 p.m. on November 18, and from 8:30 a.m. to 3 p.m. on November 19.

ADDRESSES: The meeting will be held in Room 3E43 of the American Airlines Learning Center, 4501 Highway 360, Fort Worth, Texas 76155.

FOR FURTHER INFORMATION CONTACT: Daniel C. Beaudette, Executive Director, 800 Independence Ave., SW., Washington, DC 20591; telephone (202) 267–7804.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. app. II), notice is hereby given of a meeting of the Pilot and Aviation Maintenance Technician Shortage Blue Ribbon Panel to be held November 18–19, 1992. The meeting agenda will include:

- Opening comments.
- Public comments.
- Panel deliberations.
- Future operations.

Attendance is open to the interested public but may be limited to the space available. The public must make arrangements on or before November 10, 1992, to present oral statements at the meeting. The public may present written statements to the committee at any time by providing 25 copies to the Executive Director. Arrangements may be made by contacting the person listed under the heading **"FOR FURTHER INFORMATION CONTACT."**

Issued in Washington, DC, on October 16, 1992.

Daniel C. Beaudette,

Executive Director, Pilot and Aviation Maintenance Technician Shortage Blue Ribbon Panel.

[FR Doc. 92–25608 Filed 10–21–92; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Austin Straubel International Airport, Green Bay, WI

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 Austin Straubel International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulation (14 CFR part 158).

DATES: Comments must be received on or before November 23, 1992.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address:

Federal Aviation Administration, Minneapolis Airports District Office, 6020 28th Avenue South, room 102, Minneapolis, Minnesota 55450.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Donald D. Hoeft, Airport Director, Austin Straubel International Airport at the following address: 2077 Airport Drive, Green Bay, Wisconsin 54313.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the County of Brown, Wisconsin, under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Franklin D. Benson, Manager, Minneapolis Airports District Office, 6020 28th Avenue South, room 102, Minneapolis, Minnesota 55450, (612) 725–4331. 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 Austin Straubel International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On September 21, 1992, the FAA determined that the application to impose and use the revenue from a PFC submitted by County of Brown, Wisconsin was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than December 26, 1992.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: November 1, 1992.

Proposed charge expiration date: October 31, 2002.

Total estimated PFC revenue: $8,140,000.

Brief description of proposed project(s):

Projects to Impose and Use PFC

Renovation and Expansion of the terminal building (Phase II). Taxiway C/M and D/K improvements, and Stormwater Management System.

Projects Only to Impose a PFC

Renovation and Expansion of the terminal building (Phases III and IV).

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Part 135 Operators.

Any person may inspect the application in person at the FAA office listed above under **"FOR FURTHER INFORMATION CONTACT."**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Austin Straubel International Airport.

Issued in Des Plaines, Illinois on October 1, 1992.

James H. Washington,

Acting Manager, Airports Division, Great Lakes Region.

[FR Doc. 92–25609 Filed 10–21–92; 8:45 am]

BILLING CODE 4910–13–M

Airborne Supplemental Navigation Equipment Using the Global Positioning System (GPS)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of and requests comments on a proposed technical standard order (TSO) pertaining to airborne supplemental navigation equipment using the global positioning system (GPS). The proposed TSO prescribes the minimum performance standards that airborne supplemental navigation equipment using the global positioning system (GPS) with the marking "TSO–C129." This notice is necessary to give all interested persons an opportunity to present their views on the revised proposed TSO.

DATES: Comments must identify the TSO file number and be received on or before November 6, 1992.

ADDRESSES: Send all comments on the proposed technical standard order to: Technical Analysis Branch, AIR–120, Aircraft Engineering Division, Aircraft Certification Service—File No. TSO–C129, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, or deliver comments to the Federal Aviation Administration, room 335, 800

Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Bobbie J. Smith, Technical Analysis Branch, AIR-120, Aircraft Engineering Division, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267-9546.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed TSO announced in this notice by submitting such written data, views, or arguments as they desire to the above specified address. Comments received on the proposed TSO may be examined, both before and after the comment closing date, in room 806, FAA Headquarters Building (FOB-10A), 800 Independence Avenue, SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m. All communications received on or before the closing date for comments specified above will be considered by the Director of the Aircraft Certification Service before issuing the final TSO.

Background

TSO-C129, as initially proposed, has been revised in response to public comments received. Extensive changes were made and some parts of the TSO have been rewritten.

How to Obtain Copies

A copy of the proposed TSO-C129 may be obtained by contacting the person under **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC on October 15, 1992.

John K. McGrath,

Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 92-25605 Filed 10-21-92; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement; Jefferson and Waukesha Counties, WI

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed highway project in Jefferson and Waukesha Counties, Wisconsin.

FOR FURTHER INFORMATION CONTACT: James Zavoral, Federal Highway Administration, 4502 Vernon Boulevard, Madison, Wisconsin 53705-4905, Telephone: (608) 264-5944. Additional information can be obtained through Ms. Carol Cutshall, Director, Office of Environmental Analysis, Wisconsin Department of Transportation, 4802 Sheboygan Avenue, Madison, Wisconsin 53707, Telephone: (608) 266-9626.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Wisconsin Department of Transportation, will prepare an Environmental Impact Statement (EIS) on a proposal to improve State Trunk Highway 16 (STH 16) in Jefferson and Waukesha Counties, Wisconsin. The proposed improvement would involve the relocation of STH 16 to bypass the City of Oconomowoc on the north and west for a distance of about 4 miles.

Improvements to the corridor are considered necessary to provide for the compatibility with the regional function of STH 16, and to provide for the existing and projected traffic demand, to reduce congestion and improve safety in the City of Oconomowoc. Alternatives under consideration include (1) taking no action; and (2) improvements on new location. Incorporated into and studied with the build alternative will be design variations of grade and alignment location.

Letters describing the proposed action and soliciting comments will be sent to the appropriate Federal, State and local agencies, and to private organizations and citizen groups who have previously expressed or are known to have an interest in this proposal. A series of public meetings will be held in the project vicinity during 1993. In addition, a public hearing will be held in October 1993. Public notice will be given of the time and place of the meetings and hearings. The draft EIS will be available for public and agency review and comment prior to the public hearing. The scoping process will continue through the duration of the project.

To ensure that the full range of issues related to this proposed action are addressed and that all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. This document is being prepared in conformance with 40 CFR part 1500 and the FHWA regulations. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: October 15, 1992.

James R. Zavoral,

Area Engineer, Madison, Wisconsin.

[FR Doc. 92-25625 Filed 10-21-92; 8:45 am]

BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

[Docket No. 92-36; Notice 2]

Koito Manufacturing Co., Ltd. Grant of Petition for Determination of Inconsequential Noncompliance

This notice grants the petition of Koito Manufacturing Co., Ltd. (Koito), of Shimizu-Shi, Shizuoka-Ken, Japan, to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) on the basis that its noncompliance with Federal Motor Vehicle Safety Standard No. 108, Lamps, Reflective Devices and Associated Equipment, is inconsequential as it relates to motor vehicle safety.

Notice of receipt of the petition was published on July 29, 1992, and an opportunity afforded for comment (57 FR 33543).

During the period of January 1990 through June 1992, Koito produced 325,364 headlamps which were installed on vehicles manufactured by Toyota, Mitsubishi, Chrysler, Subaru, Geo, Mazda, and Nissan. The headlamps failed to include the "O" mark required by Standard No. 108 as a point of reference to facilitate proper aiming of the lamps.

Paragraph S7.7.5.2(a)(2) Horizontal aim states that "(a)n 'O' mark shall be used to indicate alignment of the headlamps relative to the longitudinal axis of the vehicle." Paragraph S7.7.5.2(a)(1) Vertical aim and (a)(2) Horizontal aim, reference the necessity of providing "an equal number of graduations from the 'O' position representing angular changes in the axis." Koito headlamps do not bear the "O" mark.

Koito supported its petition for inconsequential noncompliance with the following:

(1) The purpose of the "O" mark would be to provide the base point on the scale. In place of this mark, the Koito headlamps concerned make use of a pair of lines which are clearly distinguished by their color and/or their thickness (bold). Even in the absence of

the "O" mark, the user and dealer can easily determine the reference lines and perform a correct aiming adjustment.

(2) The vehicle operator's manual fully explains the method of aiming the headlamp. It should be noted that the user does not need the "O" mark to follow the maker's instructions correctly.

(3) Headlamps which are equipped with aiming pads allow aiming by an aimer which must satisfy Society of Automotive Engineers (SAE) J602 requirements, as stipulated by FMVSS No. 108. Of aimers meeting SAE J602 requirements and currently available on the market, the most popular is the one made by H-Company.

This aimer does not make use of the "O" mark. It features indicator scale reference lines which are very similar to Koito VHAD (Vehicle Headlamp Aiming Device) reference lines, and which function in the same way. We believe that the great majority of the users and dealers are well accustomed to this system.

(4) Up to the present date, Koito has not received any claim or complaint representing a user's inability to determine the reference line positions.

(5) In order to demonstrate the efficacy of this aiming system, Koito has conducted a demonstration test. Ten unbiased subjects with no prior familiarity with the system were asked to readjust headlamps which has been deliberately misaligned. All ten were successful in making the required corrections in the manner intended by the designers of this system.

(6) All of the concerned headlamps were subject to the test and were certified (to be in) compliance (with) all the requirements, including (the) VHAD adjusting system, in FMVSS 108 by ETL Testing Laboratories Inc., an authoritative organization in the United States. This shows that there is no problem in headlamp aiming inspection and adjustment.

One comment was received on the petition, from General Motors Corporation (GM), which supported it. According to GM, seller of the Geo car, there have been no reports indicating that the missing "O" mark is causing confusion or difficulty in the field.

Before filing its petition, Koito's representative met with NHTSA personnel to discuss the noncompliance, and to demonstrate its inconsequentiality. The NHTSA employees who were present at this meeting considered that the pair of bold lines provided a sufficient and unmistakable replacement for the "O" mark. In their view, vehicle owners, lacking familiarity with the new VHAD systems, would not notice that an "O" mark was missing, and would aim their headlamps with the pair of bold lines as an adequate reference point. S7.8.5.2(b)(1) of FMVSS No. 108, Aiming Instructions, states that: The instructions for properly aiming the headlighting system using the VHAD (vehicle headlamp aiming device) shall be provided on a label permanently affixed to the vehicle adjacent to the VHAD, or in the vehicle operator's manual. With such information, owners should have no difficulty aiming the lamps. At this point, the agency knows that GM has provided such aiming instructions and Mazda has not; the agency currently has a petition from Mazda regarding a noncompliance with S7.8.6.2(b)(1). However, Mazda's noncompliance in no way affects the agency's decision on this petition, since the equipment manufacturer (Koito) is not responsible for supplying such information. Rather, it is the vehicle manufacturer's responsibility to assure that each vehicle complies with all federal standards.

For the reasons given above, petitioner has met its burden of persuasion that the noncompliance herein described is inconsequential as it relates to motor vehicle safety, and its petition is hereby granted.

(15 U.S.C. 1417; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on: October 16, 1992.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 92-25611 Filed 10-21-92; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 92-100]

Approval of Testing JSI as a Commercial Gauger

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

ACTION: Notice of Approval of JSI as a Commercial Gauger.

SUMMARY: JSI of Houston, Texas applied to Customs for approval to gauge imported petroleum, petroleum products, organic chemicals and vegetable and animal oils under § 151.13 of the Customs Regulations (19 CFR 151.13). Customs has determined that JSI meets all of the requirements for approval as a commercial gauger.

Therefore, in accordance with § 151.13(f) of the Customs Regulations JSI, 15102 Stonewick, Houston, Texas 77068 is approved to gauge the products named above in all Customs districts.

EFFECTIVE DATE: October 8, 1992.

FOR FURTHER INFORMATION CONTACT: Ira S. Reese, Special Assistant for Commercial and Tariff Affairs, Office of Laboratories and Scientific Services, U.S. Customs Services, 1301 Constitution Avenue NW, Washington, DC 20229 (202-927-1060).

Dated: October 15, 1992.

J.E. Harrell,

Acting Director, Office of Laboratories and Scientific Services.

[FR Doc. 92-25644 Filed 10-21-92; 8:45 am]

BILLING CODE 4820-02-M

UNITED STATES INFORMATION AGENCY

Training Program With the Newly Independent States (NIS): Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgystan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan

AGENCY: United States Information Agency.

ACTION: Notice—request for proposals.

SUMMARY: The Office of Citizen Exchanges (E/P) announces a competitive grants program for non-profit organizations to develop training programs in (1) local government and public administration, (2) business administration and business development, and (3) independent media development for the following countries: Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine and Uzbekistan. Interested applicants are urged to read the complete **Federal Register** announcement before addressing inquiries to the Office or submitting their proposals.

ANNOUNCEMENT NUMBER: The Announcement Number is E/P-93-2. Please refer to this number in all correspondence or telephone calls to the Agency.

DATES: Deadline for Proposals: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC, time on Wednesday, December 30, 1992. Faxed documents will not be accepted, nor will documents postmarked December 30, 1992, but received at a later date. It is the responsibility of each grant applicant to ensure that proposals are received by the above deadline. Grant activity should begin after May 1, 1993.

ADDRESSES: The original and 14 copies of the completed proposal application, including required forms, should be submitted by the deadline to: U.S. Information Agency, REF: Citizen Exchange: Commonwealth Training Program, Office of Grants Management (E/XE), Room 336, 301 Fourth Street, SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Interested organizations/institutions should contact Molly Raymond, Coordinator for Russia/Eurasia Programs, Office of Citizen Exchanges (E/P), Room 224, United States Information Agency, 301 4th Street, SW., Washington, DC 20547, telephone: 202-619-5326 to request detailed application packets, which include award criteria, all necessary forms, and guidelines for preparing proposals, including specific budget preparation.

Note: A separate announcement for training programs with Central and Eastern Europe will be forthcoming.

Overview of the Commonwealth of Independent States Training Program (CTP)

USIA is interested in proposals that encourage the growth of democratic institutions in only three areas: Local government and public administration, business management, and media. Rule of law and the administration of justice projects are not covered under this announcement. For Russia, priority will be given to projects outside the Moscow region.

USIA-supported projects may include: Internships; study tours; short-term, non-technical training; consultations; and extended, intensive workshops taking place in the United States or in the countries listed in this announcement. Projects that duplicate what is routinely carried out by private sector and/or public sector operations will not be considered.

Local Government and Public Administration

USIA is interested in proposals for training programs that foster effective administration of local and regional governments. USIA is interested in programs that examine local executive—legislative branch relationships in the formulation of policy and budget decisions, as well as relations between various levels of government. Preference will be given to projects in Russia and Ukraine.

Specific topics could include: The practical processes by which legislative initiatives are implemented by local authorities; management of municipal services; management practices regarding budget and taxation; local economic development; privatization of government property; consumer protection; business regulation (as opposed to control) and licensing; and environmental protection.

Important concepts to be woven into projects include: The need to balance freedom and self-interest with a sense of order; the role of ethics in governance and conflict of interest issues; and concern over individual rights, community welfare and greater good. The art of compromise and conflict resolution are skills to be shared.

Business Administration and Development

USIA's definition of business development and administration is broad. It includes: Small business development, economic privatization, and agri-business development including food distribution systems or the role of family farms. USIA is interested in projects that strengthen university business departments and provide management training for people already in the workplace.

Specific topics include: an examination of macro- and micro-economics; banking and capital formation; accounting and fiscal management; the development of light industrial and service industry sectors; the distribution of products and infrastructure building; market research; advertising, management and decision-making processes; entrepreneurship; industrial-labor relations and conflict resolution techniques. Preference will be given to projects in the Central Asian countries.

Independent Media Development

USIA is interested in two types of media training proposals: (1) Journalistic training, and (2) training to manage and develop media organizations. Journalism training in basic skills and concepts could include: Effective writing, investigative reporting, objectivity, the clear labeling of editorials and opinion pieces, intellectual property issues, and ethics.

Media management training (both print and electronic) should focus on management of media as a business: Management techniques, desk top publishing, advertising, marketing, distribution, personnel, public relations, and the financial benefits and pitfalls of journalistic advocacy.

Scope

USIA is interested in proposals that focus exclusively on one of the three major topics: Public administration; business development; or media training.

USIA will consider geographic distribution in selecting grantee institutions to ensure that the overall program reaches most if not all of the countries of Russia/Eurasia. Organizations are not limited to developing one-country projects. However, if developing a multi-country or regional project, serious thought must be given to political and organizational implications. A regional approach will work for some projects and not at all for others.

USIA is interested in proposals whose design takes into account the need for ongoing sharing of information and training in these three fields. Examples include: "train the trainers" models; the creation of indigenous training centers; enhancement or support for university departments; schemes to create professional networks or professional associations to share information.

Programmatic Considerations

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social and cultural life.

USIA will give priority to proposals from U.S. organizations that have partner organizations in the countries of the former Soviet Union. Partner institutions can provide cost-sharing or significant in-kind contributions (local housing and transportation, interpreting, translating and other ruble/local currency costs) and can assist with the organization of projects.

USIA is interested in multi-phase programs. A typical program model could be: A planning visit by the American organizer; an in-country workshop or seminar led by American experts; a travel/study program in the United States for selected foreign participants; US-based internships if appropriate; and finally, follow-up consultations by American organizers.

Planning Trips

USIA grants will pay for planning trips to the Newly Independent States by staff or consultants for consultations and planning meetings with partner institutions.

Seminars and In-Country Workshops

Seminars and workshops should be at least two weeks in duration. Russian and/or local language skills on the part of American experts are desirable but not essential. American presenters should be experienced trainers and

professionals in the relevant field (public administration, business or media) and be knowledgeable of local conditions and needs to tailor presentations.

Orientation Activities

Projects beginning overseas should open with a structured orientation to introduce participants to purpose of the program and specific topics to be covered.

In the U.S., projects should begin with two or three days of orientation and discussions on the specific program, its rationale and the historical background of the subject matter to be addressed. Orientation sessions might take place in Washington, DC or other appropriate location. American presenters should have in advance biographic information on the foreign participants to adjust presentation to their level of knowledge.

Study Tours in the United States

Study tours are generally three-four weeks in length and can be a mix of site visits, mini-workshops, and consultations. The purpose of these visits is to provide the participants a first-hand look at public administration, business and the media as organized in the United States, as well as an introduction to the cultural and geographic richness of the U.S.

U.S.-Based Internships

For the purposes of this competition, internships are practical work experiences in state or local government, businesses, or media organizations. They are not university-based residency programs or research opportunities. Participants must be fluent in English.

The length of stay for an internship should be at least one month (and preferably six weeks to three months). USIA gives priority to proposals that demonstrate private sector cost-sharing, either in the form of in-kind contributions or through corporate or foundation support. Per diem support from host institutions during an internship is strongly encouraged.

Well-designed internships require considerable planning and monitoring. Critical to the success of internship programs is the matching of expectations of host institution and participant. USIA will give priority to proposals that include a detailed plan for how internships will be developed and organized—from the recruitment of institutions for placements and their orientation, the detailed course of work for participants, extracurricular activities, on-going monitoring, contingency planning should changes be required, and final evaluation.

Internships should begin with a basic orientation program that introduces the participants to American culture, life and work habits, in addition to providing introductory information about their area of interest (public administration, business or media). For internships of an extended duration, organizations may wish to design a mid-point workshop that brings participants together for a few days to evaluate the experience and make mid-course corrections if necessary.

Funding from private sources should be used to provide food, lodging, and pocket money for the participant. In no case could the intern receive a wage or "be hired" by the sponsoring institution.

Materials Development

USIA encourages the development of written materials in Russian, Ukrainian, or other local languages to enhance the training programs. Organizations should canvas their own sources and, to the extent possible, use already translated material.

If not already available, glossaries of specialized terms in the three fields (public administration, business, and media) should be developed in Russian, Ukrainian, and if feasible, other local languages.

In developing written materials, consideration should be given to their wider use, beyond the immediate training program at hand. USIA is interested in organizations' ideas how to "reuse" specialized materials, by providing them to universities, libraries, or other institutions for use by a larger audience.

Cost Sharing

Cost sharing is desirable. It indicates a commitment on the part of the prospective grantee institution to the project. Projects with foundation or corporate support, either cash or in-kind, will receive priority consideration by USIA.

A Note on Conferences: The Office of Citizen Exchanges does not fund proposals limited to conferences or seminars (i.e., one-to-fourteen day programs with plenary sessions, main speakers, panels, and a passive audience). It will support conferences only insofar as they are part of a larger project in duration and scope.

Other Program Considerations

Consultation with USIS or American Embassy staff in the development of a training proposal is encouraged. They are aware of developments in their country of assignment and can serve as a source of advice and suggestions. Program monitoring and oversight will be provided by appropriate Agency elements.

Selection of Participants

A project proposal should clearly describe the type of person who will participate in the program and for what reasons. The process by which participants will be selected initially should be described (e.g., nominations from employers, open competition, applications, interviews, etc.)

In the selection of foreign participants, USIA and USIS and American Embassies retain the right to nominate all participants and to accept or deny participants recommended by the grantee institution. However, grantee institutions will often provide support, as requested by USIA, in the nomination of participants. The grantee institution will also provide the names of American participants and brief biographical data to the Office of Citizen Exchanges for information purposes. Priority will be given to foreign participants who have not previously travelled to the United States.

Funding

Competition for USIA funding is keen. The selection of grantee institutions will depend on program substance, cross-cultural sensitivity, and ability to carry out the program successfully. Since USIA grant assistance constitutes only a portion of total project funding, proposals should list and provide evidence of other anticipated sources of financial and in-kind support.

A proposal's cost-effectiveness—including in-kind contributions and ability to keep administrative costs low—is a major consideration in the review process.

Although no set funding limit exists, proposals for less than $225,000 will receive preference. Organizations with less than four years of successful experience in managing international exchange programs are limited to grants of $60,000.

The following program and administrative items are eligible for consideration for funding:

1. International and domestic air fares; transit costs; ground transportation costs;

2. Per diem. Organizations should use the published federal per diem rates for individual American cities for foreign participants and accompanying American staff.

3. Escort-Interpreters. Interpretation for delegations is provided by the State Department's Language Services Division. USIA grants do not pay for

foreign interpreters to accompany delegations from their home country. Grant proposal budgets should contain a flat $140/day per diem for each State Department interpreter, as well as home-program-home air transportation of $400 per interpreter and any US travel expenses during the program itself. Salary expenses are covered centrally and are not part of a grantee's budget proposal.

4. Book and Cultural allowances. Participants and the escort interpreters are entitled to a one-time book allowance payment of approximately $50 and a cultural allowance of $150 per person. Accompanying staff do not get these benefits.

5. Consultants. Consultants from outside the grantee organizations may be used to provide specialized expertise or to make presentations. Daily honoraria generally do not exceed $250/day. Subcontracting organizations may also be used. The written agreement between the prospective grantee and subcontractor must be included in the proposal.

6. Materials development. Proposals may contain costs to purchase, develop and translate materials for participants.

7. Room rental, generally not to exceed $250/day.

8. One working meal per project. Per capita costs may not exceed $15–20 for a lunch and $20–30 for a dinner. Number of invited guests may not exceed number of participants by more than a factor of two. This includes room rental if applicable.

9. Administrative costs. USIA-funded administrative costs are limited to twenty-two (22%) per cent of the total funds requested from USIA. Administrative costs are defined as salaries for grantee organizations employees, benefits, other direct and indirect costs incurred in the United States. Overseas administrative costs—such as compensation of an employee in an overseas office—are not counted in this 22% limit. Important note for universities: The U.S. Information Agency's Bureau of Educational and Cultural Affairs defines American faculty salaries as an administrative expense, regardless of how the faculty time is to be used.

Application Requirements

Proposals must be structured in the following way:

1. An executive summary, not to exceed one page single-spaced, describing the goals of the program, the institutions and major personalities involved, an outline of what will take place, and the timing of the program.

2. A narrative section (20 double-spaced pages or less) showing the intellectual rationale of the program, how the program will accomplish its goals and how it relates to USIA's mission to increase mutual understanding between the people of the United States and of other societies. This section should include a concise description of the project's work plan, spelling out program schedules, thematic agenda, and proposed itineraries. Participant selection should be discussed in detail. This section should conclude with a discussion of any follow-up activities planned; how the organization intends to evaluate the project; and what groups, beyond the direct participants, will benefit from the project.

3. A detailed three-column budget. See application package.

4. Résumés (not to exceed two pages each) for key personnel.

5. Confirmation letters from American and foreign co-sponsors noting their intention to participate in the program will enhance an institution's submission.

6. USIA compliance forms, furnished with the application package, must be submitted with the proposal.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines established herein and in the application packet. Eligible proposals will be forwarded to panels of USIA officers for advisory review. Proposals are reviewed by USIS posts and by USIA's Office of European Affairs and the contracts office. Proposals may also be reviewed by the Agency's Office of the General Counsel.

Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with USIA's contracting officer. The award of any grant is subject to the availability of funds. The Government reserves the right to reject any or all applications received. USIA will not pay for design and development costs associated with submitting a proposal. Applications are submitted at the risk of the applicant; should circumstances prevent award of a grant, all preparation and submission costs are at the applicant's expense. USIA will not award funds for activities conducted prior to the actual grant award.

Review Criteria

USIA will evaluate proposals based on the following criteria:

1. *Quality of Program Idea:* Proposals should exhibit originality and substance. Their rationale should persuade the reader that the U.S. taxpayer's dollar is being well-spent for a clearly defined need.

2. *Institutional Reputation/Ability:* Institutions should demonstrate their potential for program excellence and/or provide documentation of successful programs. If an organization is a previous USIA grant recipient, responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts (M/KG) will be considered.

3. *Poject Personnel:* Personnel's professional and logistical expertise should be relevant to the proposed program. Resumes should be relevant to the specific proposal.

4. *Thematic Expertise:* Proposal should demonstrate the organization's professional expertise in the subject area.

5. *Program Planning:* Detailed agenda and work plan should demonstrate substance and logistical capacity.

6. *Cross-Cultural Sensitivity/Area Expertise:* Evidence of sensitivity to historical, linguistic, and other cross-cultural factors; relevant knowledge of geographic area.

7. *Ability to Achieve Program Objectives:* Objectives should be realistic and obtainable. Proposal should clearly demonstrate how the grantee institution will meet the program's objectives.

8. *Multiplier Effect:* Proposed programs should strengthen long-term mutual understanding, to include maximum sharing of information and establishment of long-term institutional and individual ties.

9. *Cost-Effectiveness:* Overhead and administrative costs should be kept as low as possible. All other items proposed for USIA funding should be necessary and appropriate to achieve the program's objectives.

10. *Cost-Sharing:* Proposals should show cost-sharing through other private sector support as well as direct funding contributions and in-kind support from the prospective grantee institution.

11. *Follow-on Activities:* Proposals should provide a plan for continued exchange activity (without USIA support) which ensures that USIA-funded programs are not one-time events.

12. *Project Evaluation:* Proposals should include a plan to evaluate the activity's success.

Notice: The terms and conditions published in this RFP are binding and may not be

modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. Final award cannot be made until funds have been fully appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about *April 1, 1993.* Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: October 16, 1992.

Jill Emery,

Acting Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 92-25673 Filed 10-21-92; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 205
Thursday, October 22, 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).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10:00 a.m. on Tuesday, October 27, 1992, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Reports of actions approved by the standing committees of the Corporation and by officers of the Corporation pursuant to authority delegated by the Board of Directors.

Discussion Agenda:

Memorandum and resolution re: Proposed amendments to Part 353 of the Corporation's rules and regulations, entitled "Reports of Apparent Crimes Affecting Insured Nonmember Banks," which would implement new procedures for completion and submission of the uniform multi-agency criminal referral form designed to facilitate financial institutions' compliance with criminal activity reporting requirements and enhance law enforcement agencies' ability to investigate the matters reported in criminal referrals.

Memorandum and resolution re: Final amendments to the Corporation's rules and regulations in the form of a new Part 362, entitled "Activities and Investments of Insured State Banks," which prohibit insured state banks, subject to certain exceptions, from making equity investments of a type, or in an amount, that are not permissible for a national bank.

Memorandum and resolution re: Final amendment to Part 333 of the Corporation's rules and regulations, entitled "Extension of Corporate Powers," which eliminates current language applying certain prohibitions concerning equity investments by savings associations to state banks that are members of the Savings Association Insurance Fund, with such banks thereafter to be subject to the restrictions of Part 362.

Memorandum and resolution re: Final amendments to the Corporation's rules and regulations in the form of a new Part 365, entitled "Real Estate Lending Standards," which would implement section 304 of the Federal Deposit Insurance Corporation Improvement Act of 1991 by requiring insured State nonmember banks to adopt real estate loan policies which are prudent and which take into consideration the suggested maximum loan-to-value ratios and exception standards contained in guidelines issued by the Corporation.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550–17th Street, NW., Washington, DC.

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should contact Llauger Valentin, Equal Employment Opportunity Manager, at (202) 898–6745 (Voice); (202) 898–3509 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: October 20, 1992.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 92–25794 Filed 10–20–92; 2:41 pm]

BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:30 a.m. on Tuesday, October 27, 1992, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b(c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal of proceedings, or assessment of civil money penalties) against certain insured depository institutions or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of depository institutions authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda:

Matters relating to the possible closing of certain insured depository institutions:

Names and locations of depository institutions authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: October 20, 1992.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 92–25795 Filed 10–20–92; 2:41 pm]

BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:02 a.m. on Tuesday, October 20, 1992, the Board of Directors of the Federal Deposit Insurance Corporation

met in closed session to consider the following:

Matters relating to the probable failure of certain insured bank.

Recommendation concerning an administrative enforcement proceeding.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Stephen R. Steinbrink (Acting Comptroller of the Currency), concurred in by Director T. Timothy Ryan, Jr., (Office of Thrift Supervision) and Acting Chairman Andrew C. Hove, Jr., that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550–17th Street NW., Washington, DC

Dated: October 20, 1992.

Federal Deposit Insurance Corporation

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 92–25835 Filed 10–20–92; 3:31 pm]

BILLING CODE 6714–01–M

FEDERAL ELECTION COMMISSION:

* * * * *

"FEDERAL REGISTER" NUMBER: 92–25194.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, October 22, 1992, 10:00 a.m., meeting open to the public.

THE FOLLOWING ITEM WAS ADDED TO THE AGENDA: Advisory Opinion 1992–37: Mr. Randall A. Terry.

* * * * *

DATE AND TIME: Tuesday, October 27, 1992 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

DATE AND TIME: Wednesday, October 28, 1992 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This oral presentation will be open to the public.

MATTER BEFORE THE COMMISSION: Jackson for President '88 Committee, Federal Election Commission, Sunshine Act Notices for Meetings of October 22, 27, 28, and 29, 1992.

DATE AND TIME: Thursday, October 29, 1992 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes

Title 26 Certification Matters

Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Press Officer, Telephone: (202) 219–4155.

Delores Hardy,

Administrative Assistant.

[FR Doc. 92–25812 Filed 10–20–92; 2:55 pm]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 57 FR 47511, October 16, 1992.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., Wednesday, October 21, 1992.

CHANGES IN THE MEETING: Deletion of the following open item from the agenda:

Request by the Financial Accounting Standards Board for comments on its proposal on accounting for impaired loans.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: October 16, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92–25818 Filed 10–20–92; 3:04 am]

BILLING CODE 6210–01–M

MERIT SYSTEMS PROTECTION BOARD

TIME AND DATE: 10:00 a.m., Friday, October 30, 1992.

PLACE: Eighth Floor, 1120 Vermont Avenue, NW., Washington, DC 20419.

STATUS: The meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Internal personnel rules and practices, matters the premature disclosure of which would likely frustrate implementation of a proposed agency activity, and the following cases pending before the Baord:

1. *Hawkins v. U.S. Postal Service,* AT0752870068X1
2. *Hooks v. U.S. Postal Service,* PH0752870444X1
3. *Wilkins v. U.S. Postal Service,* SF0752860201X1
4. *Lunkin v. U.S. Postal Service,* SF0752850038X1
5. *Alston v. Department of the Navy,* AT07529010238–R–1
6. *Special Counsel v. Byrd and Rubenstein,* CB–1215–91–0016–T–1, CB1215–91–0017–T–1
7. *Special Counsel v. Narcisse,* CB–1216–91–0025–R–1

CONTACT PERSON FOR ADDITIONAL INFORMATION: Robert E. Taylor, Clerk of the Board, (202) 653–7200.

Dated: October 20, 1992.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 92–25833 Filed 10–20–92; 3:30 pm]

BILLING CODE 7400–01–M

federal register

Thursday
October 22, 1992

Part II

Securities and Exchange Commission

17 CFR 240 and 249

Communications Among Shareholders
Regulation; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240 and 249

[Release Nos. 34-31326; IC-19031; File No. S7-15-92]

RIN: 3235-AE12

Regulation of Communications Among Shareholders

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Securities and Exchange Commission ("Commission") today announces the adoption of amendments to its proxy rules promulgated under section 14(a) of the Securities Exchange Act of 1934 ("Exchange Act"). By removing unnecessary government interference in discussions among shareholders of corporate performance and other matters of direct interest to all shareholders, these rules should reduce the cost of regulation to both the government and to shareholders. The amendments eliminate unnecessary regulatory obstacles to the exchange of views and opinions by shareholders and others concerning management performance and initiatives presented for a vote of shareholders. The amendments also lower the regulatory costs of conducting a regulated solicitation by management, shareholders and others by minimizing regulatory costs related to the dissemination of soliciting materials. The rules also remove unnecessary limitations on shareholders' use of their voting rights, and improve disclosure to shareholders in the context of a solicitation as well as in the reporting of voting results.

EFFECTIVE DATE: These rules are effective October 22, 1992.

Transition Provision: The new rules are effective October 22, 1992, and any registrant or person engaging in a proxy solicitation may rely on the new rules at any time thereafter. However, to facilitate a smooth transition to use of the new rules, the following transition provisions will be allowed by the Commission. Soliciting parties and registrants are required to comply with the new rules for: (1) Any new proxy or information statement, form of proxy, and any periodic report under the Exchange Act filed on or after November 23, 1992; and (2) any request for a mailing or shareholder list received from a shareholder on or after that date.

FOR FURTHER INFORMATION CONTACT: David A. Sirignano, Chief, Office of Tender Offers at (202) 272-3097, Catherine T. Dixon, Chief, Elizabeth M. Murphy, Special Counsel, or James R. Budge, Special Counsel, Office of Disclosure Policy at (202) 272-2589, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is today adopting several amendments to its proxy rules and related disclosure requirements. These changes include:

(1) Rule 14a-2(b) [1] has been amended to create an exemption from the proxy statement delivery and disclosure requirements for communications with shareholders, where the person soliciting is not seeking proxy authority and does not have a substantial interest in the matter subject to a vote or is otherwise ineligible for the exemption. Public notice of written soliciting activity will be required by beneficial owners of more than $5 million of the registrant's securities through publication, broadcast or submission to the Commission of the written soliciting materials;

(2) The definition of "solicitation" in Rule 14a-1 [2] has been amended to specify that a shareholder can publicly announce how it intends to vote and provide the reasons for that decision without having to comply with the proxy rules;

(3) Rule 14a-3 [3] has been amended to add a new paragraph (f), exempting solicitations conveyed by public broadcast or speech or publication from the proxy statement delivery requirements, provided a definitive proxy statement is on file with the Commission;

(4) Rules 14a-3(a) and 14a-4 [4] have been amended to allow registrants and other soliciting parties to commence a solicitation on the basis of a preliminary proxy statement publicly filed with the Commission, so long as no form of proxy is provided to the solicited shareholders until the dissemination of a definitive proxy statement;

(5) Rule 14a-6 [5] has been amended to allow solicitation materials other than the proxy statement and form of proxy to be filed with the Commission in definitive form at the time of dissemination. In addition, preliminary proxy statements are now available for public inspection when filed except in connection with business combinations other than roll-ups and going private transactions;

(6) Rule 14a-7 [6] has been amended to require registrants, in the case of transactions subject to the Commission roll-up or going private rules, to provide shareholders, upon written request and satisfaction of certain conditions, copies of its list of shareholder names, addresses, and position listings, as well as any list of non-objecting or consenting beneficial owners where in possession of the registrant. In all other cases, registrants are required to make an election either to provide a list to, or mail materials for, the requesting shareholders;

(7) Rules 14a-4(a) and (b)(1) [7] have been amended to require that the form of proxy set forth each matter to be voted upon separately in order to allow shareholders to vote individually on each matter;

(8) Rule 14a-4(d) [8] has been amended to allow shareholders who seek minority representation on the board of directors to seek proxy authority to vote for one or more of management's nominees, so long as the names of non-consenting nominees do not appear on the dissident's form of proxy or in the dissident's proxy statement;

(9) Rule 14a-11(c) [9] which mandated the filing of Schedule 14B [10] by all participants other than the registrant in an election contest, has been rescinded; and

(10) Items 4(c) of Forms 10-K,[11] 10-Q,[12] 10-KSB [13] and 10-QSB [14] and Item 21 of Schedule 14A [15] have been revised to require improved disclosure of voting results and of the vote needed for approval of matters presented to shareholders.

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[1] 17 CFR 240.14a-2(b)
[2] 17 CFR 240.14a-1(*l*).
[3] 17 CFR 240.14a-3.
[4] 17 CFR 240.14a-4.
[5] 17 CFR 240.14a-6.
[6] 17 CFR 240.14a-7.
[7] 17 CFR 240.14a-4(a) and (b)(1).
[8] 17 CFR 240.14a-4(d).
[9] 17 CFR 240.14a-11(c).
[10] 17 CFR 240.14a-102.
[11] 17 CFR 249.310.
[12] 17 CFR 249.308a.
[13] 17 CFR 240.310b.
[14] 17 CFR 240.308b.
[15] 17 CFR 240.14a-101.

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I. Introduction

The amendments to the proxy rules and other disclosure provisions adopted today follow upon an extensive three-year examination by the Commission of the effectiveness of the proxy voting process and its effect on the corporate governance system in this country. This examination included consultations and discussion with, and receipt of commentary from, shareholders, issuers, directors, academics, and other interested groups. The amendments are the product of two releases proposing and reproposing a number of amendments to the proxy rules. Together these releases engendered over 1700 comment letters from the public.

Within the overall scope of this broad examination, the Commission has focused particularly on the role of its proxy and disclosure rules in impeding shareholder communication and participation in the corporate governance process. This demonstrated effect of the current rules is contrary to Congress's intent that the rules assure fair, and effective shareholder suffrage. Apart from attempts to obtain proxy voting authority, to the degree the current rules inhibit the ability of shareholders not seeking proxy authority to analyze and discuss issues pertaining to the operation of a company and its performance, these rules may in fact run exactly contrary to the best interests of shareholders.

The amendments adopted today reflect a Commission determination that the federal proxy rules have created unnecessary regulatory impediments to communication among shareholders and others and to the effective use of shareholder voting rights. The Commission has also determined that modifications in the current rules are desirable to reduce these burdens and to achieve the purposes set forth in the Exchange Act.

Underlying the adoption of section 14(a) of the Exchange Act [16] was a Congressional concern that the solicitation of proxy voting authority be conducted on a fair, honest and informed basis. Therefore, Congress granted the Commission the broad "power to control the conditions under which proxies may be solicited," and to promote "fair corporate suffrage." [17] A necessary element of the Commission's mandate was "to prevent management or others from obtaining authorization for corporate action by means of deceptive or inadequate disclosure in proxy solicitations." *J.I. Case* v. *Borak*, 377 U.S. 426, 431 (1964). This concern with disclosure included preventing the solicitation of proxies "without fairly informing the stockholders of the purposes for which the proxies are to be used." [18]

Prior to a shareholder granting the legal power to someone else—whether management or an outsider—to vote his or her stock, the shareholder needs to know what matters will be voted on, and how the recipient of the proxy intends to vote the shareholder's shares. This fundamental objective is intended to deal with the problems that would arise if a shareholder was advised that his or her shares were going to be voted on the election of directors and auditors, and instead the proxy was used to vote, for example, in favor of a merger with another company owned by insiders on unfavorable terms.

Thus, the description of the matters to be brought before a meeting for a vote (including the election of directors), the material information related to all such matters (including any substantial interest the soliciting person has in the subject matter of the vote), and the specifics on how the proxy recipient proposes to vote on behalf of the proxy giver unless otherwise instructed are core information critical to shareholders as part of the proxy process. Likewise, the terms of the proxy authority solicited and the ability of soliciting shareholders to reach other shareholders are key elements in assuring the fairness of the solicitation of proxy authority. On the whole, the regulatory scheme adopted by the Commission pursuant to the broad authority granted by section 14(a) has been designed to make sure that management and others who solicit shareholder proxies provide this needed information to shareholders, allow them to instruct the specific use of their proxy and provide them access to other shareholders through mailing or by access to a shareholder list.

Originally, the definition of "solicitation" of a proxy reflected this principal focus of the proxy rules, by limiting the reach of those rules to any "request" for a proxy or the furnishing of a proxy, consent, or authorization to security holders.[19] Thereafter, the definition was broadened to make clear that any communication by a person soliciting proxy authority, not just the communication delivered with the form of proxy, was a solicitation.[20] However, in 1942, without explanation, the Commission expanded the definition of "solicitation" of a proxy to include "any request to revoke or not execute a proxy * * *." [21]

In 1956, the Commission significantly expanded the definition of "solicitation" of a proxy to embrace "any communication" which could be viewed as being "reasonably calculated" to influence a shareholder to give, deny or revoke a proxy. In adopting the sweeping 1956 definition, the Commission sought to address abuses by persons who were actually engaging in solicitations of proxy authority in connection with election contests.[22] The

[16] 15 U.S.C. 78n(a).

[17] H.R. Rep. No. 1383, 73d Cong., 2d Sess. 13 (1934) at 14. The House Report indicated that the Commission was provided with this broad power "with a view to preventing the recurrence of abuses which * * * [had] frustrated the free exercise of the voting rights of stockholders." Id.

[18] Id.

[19] Exchange Act Rel. No. 378 (Sept. 24, 1935).

[20] See Exchange Act Rel. No. 1823 (Aug. 11, 1938); Exchange Act Rel. No.2376 (Jan. 12, 1940).

[21] Exchange Act Rel. No. 3347 (Dec. 18, 1942).

[22] Exchange Act Rel. No. 5276 (Jan. 17, 1956). It is clear that at the time the definition was amended, the Commission was principally concerned with communications "by any person who has solicited or intends to solicit proxies" prior to the formal commencement of the solicitation. *Id.* See also Stock Market Study (Corporate Proxy Contests), Part 3: Hearings on S. 879 before the Subcommittee on Securities of the Senate Committee on Banking and Currency, 84th Cong., 1st Sess. at 1692 (Statement of Chairman Armstrong) (purpose of amendments was to ensure that shareholders are "fully and fairly informed about the interests which seek to elect directors and about the nominees who offer themselves or are offered by others to assure responsibility for management").

Commission does not seem to have been aware, or to have intended, that the new definition might also sweep within all the regulatory requirements persons who did not "request" a shareholder to grant or to revoke or deny a proxy, but whose expressed opinions might be found to have been reasonably calculated to affect the views of other shareholders positively or negatively toward a particular company and its management or directors. Since any such persuasion—even if unintended—could affect the decision of shareholders even many months later to give or withhold a proxy, such communications at least literally could fall within the new definition.

The literal breadth of the new definition of solicitation was so great as potentially to turn almost every expression of opinion concerning a publicly-traded corporation into a regulated proxy solicitation. Thus, newspaper op-ed articles,[23] public speeches or television commentary on a specific company could all later be alleged to have been proxy solicitations in connection with the election of directors, as could private conversations among more than 10 shareholders.[24] This created a basis upon which claims that the proxy rules, including the mandatory disclosure, filing and dissemination provisions of those rules, could be brought to bear not only on persons seeking authority to vote another's shares, but also on those persons merely expressing a view or opinion on management performance or on initiatives presented by management and others for a shareholder vote.

If the current proxy rules apply to a communication, the effect can be very costly. Among other things, the person making the communication would be required to prepare a proxy statement and mail it to every shareholder of the company who is deemed to have been solicited. Where a communication appears in the public media, the Commission has taken the position that all shareholders have been solicited. In such a case, the cost of the mailing requirement alone could run into hundreds of thousands of dollars, and the decision on whether a solicitation occurred will be judged purely in hindsight. Thus, shareholders can be deterred from discussing management and corporate performance by the prospect of being found after the fact to have engaged in a proxy solicitation. The costs of complying with those rules also has meant that, unless they have substantial financial backing, shareholders and other interested persons may effectively be cut out of the debate regarding proposals presented by management or shareholders for a vote.

To correct this distortion of the purposes of the proxy rules, initially highlighted in petitions and other requests from the shareholder community for reform, the Commission proposed several revisions to the proxy rules intended to deregulate constraints on communications by persons who do not seek to obtain proxy authority from any other shareholders, and who do not have a substantial interest in the subject matter of the communication beyond the interest of such person as a shareholder. The original rule proposal was intended to allow such "disinterested" persons who are not seeking proxy authority to express their views freely, without any requirement to file materials with, or otherwise to notify, the Commission. Under this proposal, all communications would have remained subject to antifraud standards, but the excessive regulatory reach of "solicitation" would have been narrowed significantly. The Commission also proposed to remove some of the unnecessary regulatory costs from the regulated proxy solicitation process, such as by eliminating the requirement to obtain preclearance of all soliciting materials from the Commission's staff before their dissemination.

These proposals elicited widespread approval by the shareholder community and further suggestions for reform. Many commenters expressed the view that the proxy rules created both costs and a chilling effect on attempts to participate in the governance process by expressing their views.

The corporate community raised numerous objections to the proposals. Many corporate commenters argued that absent a filing obligation in connection with all communications among shareholders, the reforms would "further the disturbing trend toward the determination of the outcome of shareholder voting by secret back-room lobbying of and negotiations with institutional investors, rather than in open and public proxy campaigns."[25] However, these comments did not provide examples of cases in which the outcome of a proposal submitted for a shareholder vote had been determined through secret actions of institutional investors. These comments also did not explain why any shareholder seeking to assemble majority voting support for a proposal would wish to keep the arguments in favor of the shareholder's position secret. Maximizing the knowledge of a shareholder's views rather than concealing them would seem the more likely approach.

When and under what circumstances a large shareholder, or group of shareholders acting together, must reveal to the SEC, the company, other shareholders, and the market its plans and proposals regarding the company has been addressed by Congress, but not through the provisions governing proxy solicitations. Section 13(d) of the Exchange Act, as implemented by the Commission in its regulations adopted thereunder,[26] sets forth the circumstances when public disclosure of plans and proposals by significant shareholders, as well as agreements among shareholders to act together with respect to voting matters, must be disclosed to the market.

Corporate commenters also argued that disclosure of communications among shareholders is necessary to allow management "a role to play" in rebutting any misstatements or mischaracterizations, to the benefit of shareholders as a whole in ensuring that proxies are executed on the basis of "correct" information. Of course, much commentary concerning corporate performance, management capability or directorial qualifications or the desirability of a particular initiative subject to a shareholder vote is by its nature judgmental. As to such opinions, there typically is not a "correct" viewpoint.

While voting rights are valuable assets and an uninformed exercise of those rights could represent a wasted opportunity for the voting shareholder, that concern does not justify the government's requiring that all private conversations on matters subject to a shareholder vote be reported to the government. In the Commission's view, the antifraud provisions provide adequate protection against fraudulent and deceptive communications to

[23] See Letter re College Retirement Equities Fund, dated November 12, 1986 (no action relief with respect to op-ed piece submitted by employees of shareholder proponent of proposals on same issue, so long as article was solicited by newspaper, constituted a general discussion and did not refer to specific proposal, and appeared three months prior to meeting). Cf. Letter from the Director of the Division of Corporation Finance to the American Newspaper Association, dated September 27, 1955 (addressing concern that proxy rules could apply to newspaper's own editorials relating to a proxy contest, by stating that rules, as well as proposed amendments then under consideration, only apply to persons who solicit proxies from holders).

[24] Since 1942, conversations with not more than 10 shareholders have been exempt "solicitations." Exchange Act Rel. No. 3347 (Dec. 18, 1942) (exempting "less than 10").

[25] Comment letter submitted by The Business Roundtable, dated September 18, 1991, at 2.

[26] 15 U.S.C. 78m(d) and Regulation 13D/G, 17 CFR 240.13d-1, *et seq.*

shareholders on matters presented for a vote by persons not seeking proxy authority and not in the classes of persons ineligible for the exemption.

A regulatory scheme that inserted the Commission staff and corporate management into every exchange and conversation among shareholders, their advisors and other parties on matters subject to a vote certainly would raise serious questions under the free speech clause of the First Amendment, particularly where no proxy authority is being solicited by such persons. This is especially true where such intrusion is not necessary to achieve the goals of the federal securities laws.

The purposes of the proxy rules themselves are better served by promoting free discussion, debate and learning among shareholders and interested persons, than by placing restraints on that process to ensure that management has the ability to address every point raised in the exchange of views. Indeed, the Commission has not perceived, and the comments have not demonstrated, shareholder abuses where proxy authority is not being sought by the person engaged in the communications. However, there have been situations in which discontented shareholders have been subjected to legal threats based on the possibility the shareholder might have triggered proxy filing requirements by expressing disagreement to other shareholders.

In the amendments adopted today, the Commission has also attempted to remove unnecessary impediments to the solicitation of proxy authority to allow management and other persons seeking proxy authority more efficiently and effectively to get their case to the shareholders. The rules as adopted today reflect views expressed both by shareholders that some of the proposed restrictions would have had significant deterrent effect to the expression of views, and by management commenters that certain unnecessary restraints on their communications with shareholders remained under the reproposals.

II. Discussion of Amendments and New Rules

A. Exemption for Persons Not Seeking Proxy Authority

1. Exempt Solicitations

The initiative to exempt from the proxy rules (other than Rule 14a-9) solicitations by persons who are not seeking proxy authority and do not have a substantial interest in the matter was undertaken as a result of the substantial concern raised by public commentary and letters to the Commission and its staff. These concerns were subsequently confirmed in many of the comment letters that were filed in response to the proposal [27] and reproposal.[28] These letters took the position that the current rules unnecessarily curtail communications by shareholders on matters related to the company and its management, as well as with respect to matters presented by the registrant or a third party for shareholder action.

Of course, compliance with the proxy rules is necessary only if the communication constitutes a proxy solicitation within the meaning of those rules. However, an essential problem in this area is that it is generally *not* possible for a shareholder to know with certainty that a communication will or will not be deemed to constitute a solicitation. The broad definition of a proxy solicitation that includes not only a request for a proxy or request to execute, not execute or revoke a proxy, but also "the furnishing of * * * a communication to security holders under circumstances reasonably calculated to result in the procurement, withholding or revocation of a proxy," creates this inherent uncertainty for shareholders.[29] As a result of this definition, almost any statement of views could be alleged to be a solicitation, and the shareholder could be exposed to litigation by the company challenging the failure to incur massive proxy mailing and other costs. Only after such a claim was litigated would the shareholder know whether a speech or printed article, for example, criticizing the quality of a company's management would be deemed to have been a solicitation.

As made clear from the comment letters from shareholders on the initial proposal and reproposals, the scope of the definition of solicitation under the proxy rules does have a chilling effect on discussion of management performance, out of fear that the communication could after the fact be found to have triggered disclosure and filing obligations under the federal proxy rules. The cost of compliance with the proxy rules likewise could deter shareholders wishing to express support for, or opposition to, management or third party proposals or director nominees. The regulatory scheme imposed virtually the same requirements and therefore costs on discussions about management proposals and nominees as it did on management in seeking authority to vote the shareholders' securities in favor of its proposals or nominees, where such discussions were found to fall within the definition of solicitation.

In most instances management, with access to corporate funds to finance the solicitation, would be the only party willing to assume the regulatory costs, resulting in a one-sided discussion of the merits of the matters put to a vote. The proxy rules thus unduly hindered free discussion that could better inform shareholders as to their voting decisions.

To address these concerns, the Commission proposed in June 1991, and reproposed with modifications in June 1992, a new exemption from the regulatory requirements of the proxy rules [30] for a solicitation by or on behalf of persons (i) who do not seek the power to act as a proxy, or furnish or request, or act on behalf of a person who furnishes or requests, a consent or authorization for delivery to the registrant, and (ii) who are disinterested in the subject matter of a vote.

As initially proposed, such a disinterested person would have been absolutely free to communicate with other shareholders in writing or orally without any filing requirement whatsoever. The rule as reproposed specified nine classes of persons specifically excluded from relying on the exemption for persons not seeking proxy authority. In a major change from the initial proposal, the reproposal required persons relying on the exemption in connection with the dissemination of written soliciting material to submit that material or mail it to the Commission, under the cover of a new notice form, within 10 days of its use. No such notice

[27] Exchange Act Rel. No. 29315 (Jun. 17, 1991)[56 FR 28987]. The Commission received more than 900 letters of comment in response to its June 1991 release. The comment letters and a staff summary of the letters may be inspected and copied at the Commission Public Reference Room (File No. S7-22-91).

Prior to publication of the June 1991 release, the Commission and staff received more than 50 letters proposing changes to the Commission's proxy and disclosure rules, or commenting on such proposals. More than 500 letters were submitted by individual members of the United Shareholders Association, in support of a rulemaking petition submitted by that organization. These letters are included in Public File No. 4-353.

[28] Exchange Act Rel. No. 30849 (Jun. 23, 1992)[57 FR 29564]. More than 800 additional letters were received in response to the June 1992 release.

[29] 17 CFR 240.14a-1(*l*)(1)(iii). Notwithstanding the breadth of the definition, it is clear, as noted by The Business Roundtable in its letter, that "shareholders doing nothing more than exchanging opinions about the management's performance would not be a solicitation." Letter dated August 28, 1992.

[30] Pursuant to the exemption, solicitations by or on behalf of eligible persons would be exempt from all of the proxy statement filing, delivery and information requirements imposed by the proxy rules but remain subject to Rule 14a-9, 17 CFR 240.14a-9, which prohibits false or misleading statements in connection with written or oral solicitations.

requirement was proposed for published or broadcast solicitations or oral solicitations.

Nearly all of the commenters responding to the reproposals addressed the exemption. While there still was considerable comment regarding the merits of the exemption, the controversy focused primarily on the notice submission requirement, and the distinction made by the Commission between oral communications and written soliciting material.

Concerning the merits of the proposal, many of the commenters responding to the reproposals, including a substantial number of individual investors, supported the exemption on the ground that it would enable them to exercise more easily their constitutionally protected rights to discuss corporate proposals voted on at shareholder meetings, as well as the effectiveness of management in achieving long term performance goals and increasing shareholder values. Many institutional investors also viewed the exemption as an important measure to help them fulfill their fiduciary obligations. Despite the general support for the proposed exemption, many shareholders strongly opposed, as overly intrusive, the requirement in the reproposal that written solicitations be submitted to the SEC. A significant number of shareholder commenters expressed concerns over the potential liability that solicitors relying on the exemption might incur, particularly in connection with the notice submissions.

Corporate and legal practitioners strongly reiterated their concerns that the provisions of the exemption would permit institutional investors and other large shareholders to conduct "secret" solicitation campaigns in support of their proposals and against management proposals. They supported the requirement to submit written proposals but remained very concerned that shareholders should be required to notify the SEC concerning all oral communications, and to disclose the substantive content of their communications. They warned that the absence of a notice requirement with respect to oral solicitations suggests an improper preference for such solicitations and creates a loophole that potentially may undermine the notice requirement by causing solicitation activities to be conducted orally.

The commenters opposed to exclusion of oral communications from the notice requirement also argued that maintenance of a fair and balanced solicitation process requires that all interested parties, including the marketplace, be apprised of the existence and substance of a significant solicitation. They also argued that interested parties need an opportunity to respond to inaccurate and misleading comments.

These commenters did recognize that there were classes of solicitation efforts that did not raise sufficient concerns to warrant notice requirements. Some suggested exclusion from notice requirements based on limited shareholdings by the solicitor, such as $5 million. Others suggested exclusion from the notice requirements where the holdings both of the solicitor and solicitees did not exceed a specified threshold, such as 5% of any class of outstanding securities.

As to the distinction between oral and written communications, the Commission has expressly determined that the burdens of requiring a notice to the federal government of oral communications, except in the case where the speaker is seeking to obtain proxy authority for himself, or is in the class of persons the Commission has excluded from eligibility for the exemption due to a substantial association with soliciting parties or special interest in the subject matter of the vote, are not justified by any benefit to be derived therefrom, and that such a requirement is not necessary or desirable in achieving the purposes of section 14(a).

The Commission has weighed the benefits of the proposals against the potential for abuse both by insurgents and by management. The Commission has concluded the best protection for shareholders and the marketplace is to identify those classes of solicitations that warrant application of the proxy statement disclosure requirement, and to foster the free and unrestrained expression of views by all other parties by the removal of any regulatory cost, burden or uncertainty that could have the effect of deterring the free expression of views by disinterested shareholders who do not seek authority for themselves. Contested solicitations by those seeking power or authority for themselves would remain subject to the requirements to file with the Commission and deliver a proxy statement to shareholders. Shareholders will be better protected by having access to as many sources of opinions relating to voting matters as possible and thus will benefit from the removal of unnecessary costs imposed on the expression of those views.

The Commission disagrees with some commenters who argue that oral and written communications are largely indistinguishable in terms of the purposes of the proxy rules. Written analyses can be far longer and more complex than most oral conversations. They can include extensive quantities of data—often displayed using charts and graphs. Written documents can be circulated by the recipient to any number of persons in the same organization or outside, while an oral conversation cannot generally be "republished" to persons other than the original participants. Written documents can be saved and referred to over and over again. Oral conversations, by contrast, are more ephemeral. Moreover, the burden of mailing one extra copy of something already being sent to more than 10 other shareholders is minimal compared with a requirement that oral conversations must be memorialized and reported to the government.

In light of the considerations raised by the commenters, as adopted the exemption contains three modifications from the reproposal. First, persons who beneficially own $5 million or less of the company's securities that are the subject of the solicitation will not be required to submit written soliciting material to the SEC. As recognized by commenters, smaller shareholders do not present the concerns raised by commenters with respect to the exemption, and they are less likely to even be aware of this requirement, much less have the means or sophistication to meet that requirement. Rather, it is principally with respect to significant shareholders that corporate commenters raised concerns.

Second, the notice is required to be delivered or mailed to the SEC within three days of first use of the soliciting material, not ten days as proposed.

Finally, consistent with the Commission's fundamental conclusion that the interests of shareholders are best served by more, and not less, discussion of matters presented for a vote, officers and directors of the company who are soliciting at their own expense will be entitled to rely upon the exemption.

2. Qualifications for Reliance on the Exemption

The Rule 14a-2(b)(1) exemption as adopted generally is available to any person, whether or not a shareholder, who conducts a solicitation but does not seek proxy voting authority or furnish shareholders with a form of consent, authorization, abstention, or revocation, and does not act on behalf of any such person.[31] The rule sets forth the

[31] A solicitation would not be deemed to be conducted on behalf of an ineligible person merely

Continued

following categories of persons who are ineligible to rely on the exemption:

(a) The registrant or an affiliate or associate of the registrant (other than an officer or director or any person serving in a similar capacity);

(b) Any officer or director of the registrant, or person serving in a similar capacity, engaging in a solicitation financed by the registrant;

(c) Any officer, director, affiliate or associate of an ineligible person other than the registrant, or any person serving in a similar capacity;

(d) Any nominee for whose election as a director proxies are solicited;

(e) Any person soliciting in opposition to a merger, recapitalization, reorganization, sale of assets or other extraordinary transaction recommended or approved by the board of directors of the registrant who is proposing or intends to propose an alternative transaction to which such person or one of its affiliates is a party;

(f) Any person required to report beneficial ownership of the registrant's equity securities on Schedule 13D, unless the person has filed a Schedule 13D and has not disclosed an intent, or reserved the right, to engage in a control transaction, or a contested solicitation for the election of directors;

(g) Any person who receives compensation (other than reimbursement pursuant to the shareholder communications rules) directly related to the solicitation of proxies from an ineligible person;

(h) Where the registrant is an investment company registered under the Investment Company Act of 1940,[32] an "interested person" of that investment company, as that term is defined in section 2(a)(19) of the Investment Company Act;[33]

(i) Any person who, because of a substantial interest in the subject matter of the solicitation, is likely to receive a benefit from a successful solicitation that will not be shared pro rata by all other holders of the same class of securities, other than by virtue of the person's employment with the registrant; and

(j) Any person acting on behalf of any of the foregoing.

As described above, pursuant to the exemption as adopted, officers and directors of the registrant, as well as persons serving in similar capacities, may rely on the exemption provided that their solicitations are not financed by the registrant, and they otherwise are not engaging in the registrant's solicitation. This change from the reproposal was prompted by remarks by some commenters that they should be able to rely on the exemption if conducting personal solicitations at their own expense. These commenters expressed concern that the exemption as reproposed excluded officers and directors, but not other employees of the registrant. Since the effect will be to provide shareholders with additional sources of information, opinions and views regarding corporate matters, the Commission has adopted the suggestion.

Another category of persons not eligible to rely on the exemption are persons who have a substantial interest in the matter to be acted upon.[34] This limitation does not apply to an interest arising from the ownership of securities of the registrant where the shareholder does not receive extra or special benefits that are not shared *pro rata* by all other holders of the same class. Interests arising from the soliciting party's employment with the registrant are likewise specifically carved out of the exclusion.

A person conducting a solicitation in connection with a Rule 14a-8 shareholder proposal will not be deemed to have a substantial interest in the solicitation solely on the basis of its sponsorship of the proposal. Therefore, any such person may rely on the exemption provided that the person does not seek proxy voting authority and is not otherwise ineligible.[35]

As previously indicated by the Commission, any person who relies on Rule 14a-2(b)(1) for exempt communications will be deemed to have made an irrevocable election to maintain exempt status throughout the relevant soliciting period.[36] Thus, a person who relies on the exemption could not undertake, with respect to the same meeting or solicitation, a regulated proxy solicitation regarding a matter that was the subject of the exempt solicitation without rendering the prior solicitation activity in violation of the full panoply of the proxy rules. The rule has been clarified in this respect.

3. Notice of Exempt Solicitations

As noted, in response to the comments, the Commission is adopting a notice requirement for all written solicitations conducted by persons owning beneficially more than $5 million of the securities that are the subject of the solicitation, other than speeches in a public forum, press releases, and published or broadcast opinions, statements or advertisements.[37] At the same time, there will not be any notice or filing requirement for oral communications.[38]

The Commission has not expanded the information called for by the notice or required a signature or attestation, as suggested by some corporate commenters. The notice is not intended to serve as a disclosure document or to be the basis for litigation as to its adequacy. Rather, it is designed as the simplest means to get written soliciting material into the public domain. For that reason, the proposed requirement for disclosure of share holdings in the notice has not been adopted.

The timing provisions for submitting the notice have been revised in response to comments. Persons required to submit written soliciting materials must furnish or send copies of the materials to the Commission, and any national exchange that the securities are listed on, within three days of the date that the material is first given or sent to shareholders. These materials must be submitted under cover of the new Notice of Exempt Solicitation.[39] The notice will become publicly available immediately upon receipt by the Commission.

The period for mailing or submission of the notice was shortened from ten days, as reproposed, to three days, in response to commenters' remarks. Given the limitation of the notice requirement to large shareholders, the Commission's concerns about less sophisticated shareholders that gave rise to the ten-day period have been mitigated. Failure to mail the notice with the written materials within the specified period

because a person encourages shareholders to execute a form of proxy disseminated by such ineligible person.

[32] 15 U.S.C. 80a-1, et seq.

[33] 15 U.S.C. 80a-2.

[34] This standard is similar to that used in Item 5 of Schedule 14A, which requires specified persons conducting solicitations to describe briefly any substantial interest in the matter to be acted upon, other than an interest as a shareholder.

[35] The substantial interest test will be applied to the proponent on the basis of the subject matter of the proposal, not simply on the basis of inclusion in the proxy statement.

Other technical drafting changes suggested by commenters have been incorporated into the Rule.

[36] In the June 1991 Release, the Commission stated:

[A]ny person who purports to engage in an exempt solicitation with respect to a particular meeting or subject matter of securityholder action pursuant to proposed Rule 14a-2(b)(1) could not continue to rely on the proposed exemption through the assertion of a change in purpose or intent should he subsequently solicit authority to act on behalf of securityholders concerning the same meeting or subject matter. Because the earlier solicitation would not qualify for exempt treatment under such circumstances, any failure to comply with the full panoply of the proxy rules as to that solicitation would be deemed a proxy violation.

[37] The notice submission requirement is set forth in Rule 14a-6(g), 17 CFR 240.14a-6(g). The definition of publication is intended to be broad and is not limited to the type of publications found exempt from the Investment Advisers Act of 1940 [15 U.S.C. 80b-1, *et seq.*] in *Lowe v. SEC*, 472 U.S. 181 (1985).

[38] The First Amendment applies equally to written and oral communications. However, regulatory requirements can impose different degrees of burdens on different types of speech. Imposing a notice requirement on oral communications would result in greater burdens on communications about proxy voting issues than the Commission believes are warranted or necessary to achieve statutory requirements.

[39] The notice will not carry the proposed "Form 14" designation.

will not result in the loss of the exemption for the communication itself.

Corporate commenters argued that the submitter should be required to send a copy of the notice to the registrant as well. The Commission, however, is not adopting such a requirement. Persons engaged in non-exempt proxy solicitations do not have to send copies of their filings to the registrant, and it would not be appropriate to impose a greater burden in this regard on persons engaging in exempt solicitations.

The notice includes the name and address of the person relying on the exemption and the registrant's name. The written soliciting material disseminated is to be attached to the notice. Additional written soliciting materials that are materially different also are to be mailed or furnished to the Commission no later than three days following the date that such materials are first sent or given to shareholders.

Oral communications, speeches in a public forum, press releases, published or broadcast opinions, statements, and advertisements appearing in a broadcast media, newspaper, magazine, or other bona fide publication disseminated on a regular basis, expressly do not trigger the new notice requirement.[40] Some commenters suggested that excluding all published materials from the notice requirement would be inappropriate. For example, either the notice provided by one-time broadcasts or that provided by publications of limited or local circulation might be inadequate. The exclusion has not been restricted, however, because solicitations that are publicly published or broadcast, even if not broadly or repeatedly disseminated, including speeches in a public forum, do not lend themselves to the types of potential abuses raised by commenters to justify a notice requirement. The Commission does not intend to restrict the use of publications with smaller circulations or to interfere with the ability of shareholders and others to participate in broadcast talk shows or other programs that by their nature are not repeatedly broadcast.

Solicitations exempt from the notice requirement by virtue of having been published or broadcast may subsequently be freely disseminated without compliance with the notice requirement. Questions were presented whether press releases provided to, but not published by, the news media create any obligations under the proxy rules. A press release that has not been picked up by a news or wire service has not been published. Therefore, the press release may not be disseminated without complying with the notice requirement. Of course, a press release that is neither published by a news or wire service or otherwise disseminated, is not subject to the proxy rules.

In response to comments, scripts used in connection with oral solicitations will be viewed as written soliciting material required to be submitted under the notice requirement, by persons subject to that requirement. This approach was suggested as a means to provide notice of "telephone bank" and other widespread concerted oral solicitations that do not present the same privacy concerns or burdens as with other oral communications.[41]

B. Shareholder Announcements of Voting Decisions

As noted, the obligation to comply with the proxy rules turns on whether the communication falls within the Rule 14a-1 definition of "solicitation." The simple announcement by shareholders of how they intend to vote, whether or not coupled with the shareholders' reasons for their voting decisions, are not subject to the proxy rules. The reproposal included a safe harbor rule for those announcements that would not, in any case, be subject to the proxy rules. Statements regarding how the shareholder intends to vote and why that are not within the safe harbor still would not be a solicitation absent special facts and circumstances.

The commenters addressing this proposal generally recognized the appropriateness of allowing a shareholder to announce its voting decision and the reasons for that decision without having to comply with the proxy rules. A number of commenters, including many corporate representatives, expressed concern, however, with the potential for abuse of the provision. These commenters viewed the revision as a potential loophole that would allow a person conducting a concerted solicitation to avoid application of the proxy rules, including the antifraud provisions. It was suggested that the exemption be limited to a one-time announcement to the press, and that it should not include the distribution of written materials. On the other hand, shareholders believed the exemption was too narrow, arguing that it should encompass all disclosures of voting decisions, whether public or private. Other commenters called for clarification of the term "announcement."

The safe harbor as adopted excludes from the definition of solicitation announcements that are published, broadcast or disseminated to the media. There is no limitation on the number of announcements that can be published or broadcast.

The rule makes clear that all communications directed at beneficiaries or other persons with respect to whom the shareholder owes a fiduciary duty in connection with the voting of its portfolio securities are covered by the safe harbor. Finally, responding to unsolicited requests for information from other shareholders, including providing copies of the announcement on an unsolicited basis, likewise qualifies for the safe harbor. The safe harbor would be available to all shareholders, including officers and directors of the registrant, so long as they do not otherwise engage in a regulated solicitation.

Merely because an announcement or other communication or disclosure falls outside the safe harbor protection does not mean that it falls within the definition of solicitation and thus is subject to the proxy rules. The application of the general definition with respect to announcements of voting decisions not meeting the requirements of the new safe harbor remains unchanged under the revised regulatory scheme.

C. Proxy Solicitations Prior to Delivery of Proxy Statement

Rule 14a-3(a) provides that a solicitation may not be made unless each person solicited concurrently is furnished or previously has been furnished with a written proxy statement. Exemptions to this proxy statement delivery requirement are provided in Rule 14a-11(d) and 14a-12.[42] Rule 14a-11(d) permits the solicitation process in election contests to begin prior to the delivery of a proxy statement, so long as a proxy card is not provided, certain background

[40] Rule 14a-6(g).

[41] Questions have been raised about the status of advice provided to clients on voting issues under the proxy rules. See Letter re NASD, Inc. (May 19, 1992). Advice given with respect to matters subject to a shareholder vote by financial and investment advisers, investment banking and broker-dealer firms, and lawyers, as well as proxy advisory services in the ordinary course of business is covered by the exemption provided under Rule 14a-2(b)(2) (newly redesignated Rule 14a-2(b)(3)), so long as the other requirements of that exemption are met. Accordingly, the staff no-action letter in In re Institutional Shareholder Services, Inc. (Dec. 15, 1988), no longer may be relied upon as the view of the Commission or the staff.

[42] 17 CFR 240.14a-11(d) and 17 CFR 240.14a-12. Rules 14a-11(d) and (e) have been redesignated by the amendments as 14a-11(b) and (c). For the purposes of clarity, this release refers to the prior designation.

information concerning the participants is disclosed and a proxy statement is provided to shareholders as soon as practicable. There is no restriction on the content of such communications, other than that imposed by the antifraud provisions of Rule 14a-9.

The communications made pursuant to these provisions are required to provide background information on the soliciting party and other participants, including their interests in the subject matter of the solicitation.[43] Subject to similar requirements, Rule 14a-12 allows a solicitation in non-election contest matters to begin prior to delivery of a proxy statement to solicited persons where such solicitation is made in opposition to a prior solicitation or other publicized activity, which if successful, could reasonably have the effect of defeating the solicitation.

In the June 1992 release, the Commission proposed revisions to Rule 14a-12 that would have permitted a person to commence a solicitation prior to delivering a written proxy statement regardless of the existence of an opposing solicitation. The Commission also proposed to extend its provisions to election contests. Rules 14a-11(d) and (e) would have been rescinded as unnecessary.

The comments with respect to the proposal were mixed. Some commenters, including a registrant, believed the proposal would be beneficial. They believed registrants as well as soliciting shareholders would be benefited if allowed to discuss contemplated proposals with shareholders prior to the delivery of a proxy statement. A number of commenters expressed general support for the proposal and suggested technical revisions to the proposal. On the other hand, some commenters questioned whether there was a demonstrated need for the revisions and raised concern with the potential abuses that could arise from unlimited solicitations prior to delivery of a proxy statement.

The Commission has determined not to adopt the proposal. The broad scope of current Rules 14a-11(d) and 14a-12 reach virtually all contested and responsive solicitations. The need to extend Rule 14a-12 to all solicitations is mitigated by the proposal to allow registrants and other persons planning a solicitation to commence their solicitation on the basis of a publicly filed preliminary proxy statement, so long as no form of proxy is provided to shareholders until they receive a definitive proxy statement.[44] Since the flexibility to engage in that type of solicitation under the reproposals was an objective of the proposed amendments to Rule 14a-12 which now are not being adopted, the Commission has amended Rules 14a-3(a) and 14a-4 to implement specifically that reform.[45]

D. Amendment of Proxy Statement Delivery Requirement to Facilitate General Broadcast or Publication of Soliciting Materials

The Commission is adopting as proposed the amendment to Rule 14a-3 providing that the proxy statement delivery requirement set forth in paragraph (a) of the rule does not apply to a soliciting communication made solely by means of a speech in a public forum, or an opinion, statement or advertisement broadcast through radio or television media, or appearing in a newspaper, magazine or other publication disseminated on a regular basis.[46] The provisions of the amendment include the two proposed conditions: (1) No form of proxy, consent or authorization is provided to shareholders in conjunction with the communication; and (2) a definitive proxy statement is on file with the Commission pursuant to Rule 14a-6(b).

Prior to revision, Rule 14a-3(a) was interpreted as requiring a person broadcasting or publishing soliciting material to deliver a proxy statement to all shareholders, since the publication or broadcast was viewed as soliciting material furnished to all shareholders. However, this interpretation could result in immense costs, thereby penalizing use of public media. The amendment is intended to remedy the problem by removing the regulatory obstacle to published or broadcast solicitations.

Delivery of a form of proxy to a shareholder still must be accompanied or preceded by delivery of a definitive proxy statement. Thus, the modification does not affect proxy statement delivery requirements where a form of proxy is provided in conjunction with a speech, publication or broadcast or where a communication is made other than by a means specified in the rule.

E. Preliminary Filing and Staff Review of Soliciting Material

1. Soliciting Materials Other Than Proxy and Information Statements and Form of Proxy

Prior to the adoption of these amendments, Rule 14a-6 required that proxy statements and any additional proxy soliciting materials be filed in non-public, preliminary form with the Commission prior to delivery to shareholders, with exceptions for certain registrant "plain vanilla" proxy statements.[47] Similarly, Rules 14a-11(e) and 14a-12 required soliciting materials disseminated in advance of the written proxy statement to be filed in preliminary form five business days prior to dissemination.[48] Additional soliciting materials used after dissemination of a proxy statement, as well as personal soliciting material committed to writing, were subject to two and five business day preliminary filing requirements, respectively.[49] Rule

[43] Rule 14a-11(d) also required that a Schedule 14B be on file prior to the commencement of the solicitation. Under the amendment adopted today, the Schedule 14B filing requirement has been eliminated. Under Rule 14a-11(e) as amended, all written soliciting material disseminated in such solicitations would have to be filed or mailed for filing on the same day they are first published, sent or given to shareholders

[44] The June 1991 proposing release stated:

Although the proposals would not dispense with preliminary filing of the written proxy statement or form of proxy, the proposed amendments would eliminate the non-public treatment of preliminary proxy statements. Under the proposed approach, preliminary proxy materials would be treated in a manner similar to registration statements required by Section 5 of the Securities Act * * *. Accordingly, the preliminary filing requirements would permit the use of the preliminary form of the proxy statement, but would bar the transmittal or use of the form of proxy during the ten-day period or a shorter period in the case of an earlier clearance.

[45] Rules 14a-11(d) and 14a-12 also have been amended in response to a comment that those rules currently are ambiguous concerning which shareholders must subsequently receive the definitive proxy statement. Those rules now make clear that the soliciting party need only furnish as soon as practicable the definitive proxy statement to the shareholders actually solicited pursuant to Rules 14a-11(d) or 14a-12.

[46] The rule as adopted refers to a "communication" made solely by general broadcast or publication rather than a "solicitation" made solely by general broadcast or publication in response to a comment that it was unclear as proposed whether the term "solicitation" referred only to the specific broadcast or publication or to all solicitation activity undertaken by a person planning to rely on the rule

[47] Under Rule 14a-6(a), 17 CFR 240.14a-6(a), preliminary proxy statements were required to be on file at least 10 calendar days prior to the dissemination of definitive materials, unless the staff by delegated authority accelerated the period. Additional soliciting materials were required to be on file two business days prior to dissemination pursuant to Rule 14a-6(b), 17 CFR 240.14a-6(b). No preliminary filings were required with respect to speeches, press releases or scripts. Rule 14a-6(h), 17 CFR 240.14a-6(h).

[48] Rule 14a-11(e), 17 CFR 240.14a-11(e) (election contests) and Rule 14a-12(b), 17 CFR 240.14a-12(b) (other contested matters).

[49] Rule 14a-6(d) required that personal solicitation material, generally consisting of written material or instructions that form the basis of a program of personal, typically oral solicitation of shareholders, be filed with the Commission at least five calendar days before use.

14c-5(a) [50] imposed similar filing requirements for preliminary information statements.

Today's amendments will allow all soliciting materials, other than proxy and information statements or forms of proxy relating to certain matters, to be filed only in definitive form at the time of dissemination, whether prior or subsequent to the circulation of the written proxy statement. Materials not subject to a preliminary filing requirement must be filed with, or mailed for filing to, the Commission and sent to the exchanges on the same day that they are first published, sent or given to shareholders.

Comment on these proposals generally was mixed. Some corporate commenters opposed the proposals, arguing that preliminary filing and staff review is the most cost-effective means of assuring that soliciting materials do not contain false or misleading statements, and that the revisions may result in increased litigation regarding soliciting material. On the other hand, a number of commenters argued that staff review did not significantly improve the communication, and some commenters even argued that staff comment reduced the substance and quality of the communications.

The Commission believes that the most cost-effective means to address hyperbole and other claims and opinions viewed as objectionable is not government screening of the contentions or resort to the courts. Rather, the parties should be free to reply to the statements in a timely and cost-effective manner, challenging the basis for the claims and countering with their own views on the subject matter through the dissemination of additional soliciting material. The amendments adopted today applicable to regulated solicitations are intended to promote that goal.

2. Preliminary Filing of Proxy Statement and Form of Proxy Retained

The amendments retain the preliminary filing requirements of Rule 14a-6(a) relating to written proxy statements and forms of proxy. While a number of commenters supported elimination of staff review of certain proxy statements, these commenters differed on which categories of proxy statements should be exempt from preliminary filings. In light of these differences, as well as the number of commenters supporting continued review, preliminary filing of these documents that are subject to specific informational requirements will continue to be required.

The rules have been amended, as previously noted, to make it clear that a person may distribute a filed preliminary proxy statement as soliciting material, so long as no form of proxy is provided prior to the furnishing of a definitive proxy statement.

3. Schedule 14B

In both the original proposals and the reproposals, the Commission solicited comment as to whether Schedule 14B, which provides detailed identification and background information about participants in election contests, should be eliminated. In that event, the information required by the Schedule would have been included in the proxy statement. In response to the original proposals, several commenters supported eliminating Schedule 14B, but the majority of commenters were opposed, with a number suggesting that they were reluctant to support the idea until they knew what other changes to the proxy rules might be contemplated by the Commission in the near future. The reproposals generated significantly fewer comments with respect to this question. Generally, those commenting on the issue supported the elimination of the Schedule without adding to the disclosure provided by the proxy statement, since the information not already in the proxy statement is often of little significance and is alternatively readily obtainable by opposing parties.

In light of the comments received, as well as its own review, the Commission has determined to eliminate Schedule 14B. The provisions of Item 5 of Schedule 14A requiring disclosure of designated Items of Schedule 14B have been amended to restate the substance of those items directly in Schedule 14A. Solicitations commencing prior to the delivery of a proxy statement are required to provide information concerning the participant, pursuant to Rules 14a-11(d) and 14a-12.[51]

4. Immediate Availability of Preliminary Proxy Materials

The original proposals would have eliminated non-public status for all preliminarily filed materials. In response to public comment, the Commission reproposed a scheme whereby material filed in preliminary form with respect to solicitations involving transactional filings that are subject to Item 14 of Schedule 14A (Mergers, Consolidations, Acquisitions and Similar Matters) would be afforded confidential treatment automatically upon request if the transaction had not yet been made public. Under the reproposal, this treatment would extend to information statements filed in preliminary form under similar circumstances. In both cases, the subject transaction would not be entitled to confidential treatment if it was a going-private transaction subject to Rule 13e-3,[52] or a roll-up transaction as defined in Rule 901(c) of Regulation S-K.[53]

The Commission has adopted the amendments to allow for immediate public access to preliminary proxy statements as reproposed, with revisions to the confidential treatment procedure in response to commenters' concerns as discussed below.

A number of institutional investors, legal and academic commenters, and some corporations supported the reproposals. Supportive commenters believed that allowing limited use of preliminarily filed proxy statements would make proxy contests less likely to be affected by pre-clearance delays. Thus, such contests would be more likely to be decided on the merits, after informed shareholder consideration. They argued that final materials usually would not differ greatly from the preliminary materials, and that shareholders would understand that the preliminary materials are subject to change. They also argued that definitive proxy material reflecting staff review would be required prior to a form of proxy being made available.

Many corporate and legal commenters who addressed the issue opposed public access to preliminarily filed materials. Many based their opposition on grounds that it would enable shareholders to attack management proposals before management could explain and defend them. However, under Rules 14a-11 and 14a-12, management and other soliciting parties should have adequate means to address comments directed at statements or proposals contained in their preliminary proxy statements. This is particularly true in light of the elimination of the five-day filing delay, as well as the amendments permitting a solicitation to commence on the basis of the preliminary proxy statement.

Others argued that the public could be misled by relying on information subsequently changed in definitive documents as a result of the review and comment process. Still others believed

[50] 17 CFR 240.14c-5(a).

[51] The disclosure requirement of Rule 14a-11(d) relating to the identity and interests of participants, has been revised in light of the elimination of Schedule 14B to specifically set forth the disclosure required in connection with communications made under that rule.

[52] 17 CFR 240.13e-3.

[53] 17 CFR 229.901(c).

that registrants would be less willing to accept staff comment, since to do so might draw attention to changed passages. As to these last points, the Commission does not believe there is a real difference in this respect between preliminary proxy materials and other documents that are public upon filing, such as registration statements and prospectuses under the Securities Act and periodic reports under the Exchange Act. In each case, staff comment may result in amendments after the filings have been publicly available and disseminated, and may have been relied upon by the market.

Several commenters were of the view that while not burdensome, the proposed requirement that confidential treatment be granted only upon request was not necessary, and suggested that the Commission adopt a bright line test by automatically affording confidential treatment to all preliminarily filed proxy materials, or at least to additional specifically designated types of transactions, either automatically or upon a showing of good cause. In that regard, a number of commenters argued that transactions subject to Rule 13e-3 and roll-up transactions should not be treated differently from other types of extraordinary transactions.

Commenters also raised questions with respect to the provision that confidential treatment be conditioned on the transaction not having been made public. They stated that, as a practical matter, few preliminary proxy statements would be afforded confidential treatment if the proposal were adopted because antifraud considerations under the federal securities laws, self-regulatory organization disclosure policies and good disclosure practices customarily lead to public disclosure about a transaction that is still in the early stages, well before any related proxy material is filed. To condition confidential treatment on not making public disclosure, a commenter argued, would create an "inappropriate disincentive to prompt disclosure." [54]

The Commission has adopted the rules governing public access to and confidential treatment of preliminarily filed proxy and information statements and forms of proxy essentially as reproposed. As noted, the Commission is not convinced that the need for confidential treatment with respect to proxy materials other than those relating to business combinations is any greater than in the case of preliminary prospectuses, Forms 10-K or 10-Q, and tender offers. Under the rules adopted today, all preliminarily filed proxy statements, forms of proxy and information statements will be available to the public upon filing with the Commission, unless the transaction to which the proxy materials relates is encompassed by Item 14 of Schedule 14A. In that case confidential treatment will be granted upon appropriate marking of the filed materials.[55] For the reasons stated by the commenters mentioned above, the language of the rule conditioning confidential treatment on the non-public status of the transaction has been eliminated. Moreover, the necessity of submitting a formal request to the Commission's Secretary has been eliminated; it will be sufficient to mark clearly the filing as nonpublic pursuant to Rule 14a-6(e)(2).

As reproposed, confidential treatment will not be available under the final rules for transactions subject to Rule 13e-3 or for roll-up transactions. The affiliated nature of most of these transactions creates a less compelling need for confidentiality and a concomitantly greater need for disclosure than in the case where management is dealing at arms length with unaffiliated parties.

F. Access to Shareholder Lists

1. Overview

The Commission is adopting revisions to Rule 14a-7,[56] which sets forth the obligations of registrants to either: (1) Provide a requesting shareholder with a list of holders of securities of a class from which proxies have been solicited or are to be solicited on management's behalf in connection with a shareholder meeting or action by consent or authorization; or (2) Mail the requesting shareholder's soliciting materials to shareholders or subgroups of shareholders of that class. As reproposed, registrants retain the option to deliver the shareholder list or mail soliciting materials on behalf of the soliciting shareholder, except where the registrant has commenced a proxy solicitation relating to a roll-up transaction,[57] or a transaction subject to the Commission's going private rule,[58] or has disclosed an intention to commence a solicitation relating to either type of transaction.[59] If the solicitation relates to a roll-up or going private transaction, the list or mailing option shifts to the requesting shareholder due to the extraordinary nature of those transactions, the common conflicts of interest of management, and heightened investor protection concerns.

Shareholder commenters and academics sharply disagreed with the Commission's abandonment of its initial proposal to require access to shareholder lists. These commenters took substantial issue with the corporate community's assertions that state law provisions were adequate, and that the frequency of tactical refusals to provide the list is not significant enough to warrant amending Rule 14a-7 to require equal access to the shareholder list for soliciting shareholders. State law is not adequate, they contended, because it permits companies routinely to abuse shareholder rights by denying requests on insubstantial grounds. This causes shareholders to have to choose between the expense of litigation or forgoing the list to which they are entitled.

Most of the commenters from the corporate and legal community preferred the rule as adopted today over the rule as originally proposed. However, a few of these commenters objected to the provisions governing roll-up and going private transactions and raised questions regarding the Commission's authority to provide shareholders with a federal right of access to the shareholder list in the context of roll-up and going private transactions.

2. Registrant's Obligations

The introductory language of Rule 14a-7 has been revised to clarify that a shareholder's written request for either the shareholder list or mailing of soliciting materials triggers the Rule 14a-7 requirements, even if the request does not explicitly reference Rule 14a-7.[60] The revised rule requires registrants

[54] See letter from the American Bar Association, Federal Regulation of Securities Committee, Subcommittee on Proxy Solicitations and Tender Offers, dated August 31, 1992.

[55] Since confidential treatment will be available only with respect to Item 14 transactions, the appearance on the computer screens in the Commission's public reference room of a preliminary proxy filing may indicate to observers that an extraordinary transaction is pending before the parties to the transaction have otherwise made it public. Therefore, the Commission will not have the preliminary filing appear on the public reference room computer screens.

[56] 17 CFR 240.14a-7.

[57] See Item 901(c) of Regulation S-K, 17 CFR 229.901(c).

[58] Rule 13e-3, 17 CFR 240.13e-3.

[59] Rule 14a-7(b).

[60] See In re The Krupp Companies, Exchange Act Rel. No. 30566 (Apr. 8, 1992). In the *Krupp* order, the Commission also stated that (footnote omitted):

Where a securityholder is deemed to have requested the list under both state and federal law, the registrant must promptly advise the requesting securityholder as to whether it will mail or provide a list under Rule 14a-7, and must not mislead the securityholder as to whether its rights to a list under

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to deliver, within five business days after receipt of a shareholder request, a list or a statement including the following information to the requesting shareholder: notification that the registrant elects to mail the shareholder's soliciting materials; the approximate number of record holders and beneficial holders, separated by type of holder and class, owning securities in the same class or classes of holders solicited by management or any more limited group of such holders designated by the shareholder; and the estimated cost of mailing a proxy statement, form of proxy or other communication to such holders.[61]

The rule as adopted clarifies that a registrant is required to provide information as to subsets of record and beneficial holders targeted by the requesting shareholder, but only to the extent that the information is available or retrievable under the registrant's or its transfer agent's security holder data systems.[62] The time period for furnishing this information was lengthened in response to concerns raised by commenters that a two-business day period would be inadequate. In response to other comments, however, that the requirement that the registrant need only mail the information within the specified period would cause substantial additional delays, the rule has been amended to require actual delivery within five business days.

In addition, at the registrant's option (or requesting shareholder's option in the context of a roll-up or going private transaction), the registrant must either promptly mail the shareholder's material upon receipt of the materials and postage [63] or furnish the requesting shareholder with a shareholder list within five business days of receipt of the initial request. As under the rule prior to revision, the shareholder must reimburse the company for the reasonable expenses incurred by the registrant in performing the obligations specified in Rule 14a-7.

The list information provided to requesting shareholders must be reasonably current and include the names, addresses, and security positions of record holders, including banks, brokers and similar intermediaries, owning securities in the same class or classes as holders solicited by management, or a more limited sub-group as designated by the shareholder. The information also must include a reasonably current list of beneficial owners obtained by the registrant pursuant to Rule 14a-13(b) (the "NOBO/COBO list"),[64] if the registrant has obtained or obtains such a list (or updated list) for its own use prior to the meeting or other shareholder action.

In response to a request for comment, a few commenters addressed whether shareholders should be able to use the NOBO/COBO list to distribute proxy materials directly to beneficial owners and urged that this was an appropriate use of the list. Nothing in the amendments will bar direct dissemination of proxy material to beneficial owners by shareholders or the registrant, so long as adequate disclosure is provided concerning the need for the record holder to execute the proxy.[65]

The list information must be provided in the form (*e.g.*, paper, magnetic tape) requested by the shareholder to the extent that the form is available to the registrant without undue burden or expense. The registrant must update record holder information on a daily basis or at the shortest other reasonable intervals until the record date for the meeting or action.[66]

A number of legal and corporate commenters objected to the requirement that any other information regarding beneficial owners that is in the registrant's possession at the time of the list request that the registrant has used or intends to use to conduct its solicitation in connection with the meeting or action also be furnished to the shareholder. They argued that this requirement was too vague given the many different ways beneficial ownership information is obtained, and the different forms it could take. As a result, the requirement has been eliminated.

Commenters were split on the issue whether a shareholder should have access to beneficial ownership information concerning employee participants. Because disclosure of the identity of employee participants would provide information concerning their employment and not just information related to their shareholdings, the amendments do not provide for the delivery of beneficial ownership information beyond that included in the NOBO/COBO list.

3. Shareholders' Certification

The commenters were equally split on whether beneficial owners should be permitted to invoke Rule 14a-7, with the legal commenters arguing that limiting access to record holders will avoid confusion without imposing any significant burden, and academic and shareholder commenters arguing in favor of beneficial owner access. Since the procedure under Rule 14a-8,[67] under which a beneficial owner may submit a proposal, has proven workable, the amended rule will allow the beneficial owner to make the request as long as adequate documentation of beneficial ownership is provided with the initial request.[68] The documentation of the fact of beneficial ownership will be substantially the same as that required under Rule 14a-8. Documentation of the period of investment will not be required.

Shareholders receiving a list under revised Rule 14a-7 must provide the registrant with a certification identifying the proposal that will be the subject of the shareholder's solicitation or communication and attesting that the shareholder will not: (a) Use the list information for any purpose other than to communicate with or solicit security holders regarding the same meeting or action by consent or authorization for which the registrant is soliciting proxies; nor (b) disclose the list information to any person other than a beneficial owner for whom the list request was made, or an employee or agent to the extent necessary to affect the communication or solicitation.[69] The certification is not filed with the Commission.

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state law have been affected by the registrant's actions under Rule 14a-7. Thus, care must be taken not to mislead the securityholder with respect to the comparability of the information to be provided under Rule 14a-7 and state law. Prompt compliance with Rule 14a-7 is required, even if a concurrent request has been presented to the issuer under state law.

[61] Rule 14a-7(a)(1)(i)-(iii).

[62] Thus, for example, a requesting shareholder could target shareholders with holdings over a specified amount, the largest shareholders who hold in the aggregate a certain specific percentage of the company's stock, shareholders within a specific geographical region, or shareholders who hold as nominees.

[63] Rule 14a-7(a)(2)(i). The registrant no longer will be able to delay mailing a shareholder's soliciting materials pursuant to revised Rule 14a-7 until the earlier of the anniversary date of the mailing of the prior year's proxy statement or the mailing of its own materials, as permitted under the old rule.

[64] 17 CFR 240.14a-13(b).

[65] Registrants nevertheless would be obligated by the shareholder communication provisions of Rule 14a-13(a)(4), 17 CFR 240.14a-13(a)(4), to disseminate proxy materials through the record holders as well.

[66] Rule 14a-7(a)(2)(ii).

[67] 17 CFR 240.14a-8(a)(1).

[68] At least 32 states recognize a statutory or common law right of beneficial owners to request a shareholder list.

[69] Rule 14a-7(c).

Commenters were split on whether the shareholder should be required to return the list after the termination of the solicitation. Since return of the list and destruction of any copies is a requirement of Rule 14d-5,[70] governing delivery of lists in connection with tender offers, a similar provision has been adopted in amended Rule 14a-7.

4. Disclosure of a Registrant's Denial of Shareholder List Requests

The Commission is not adopting proposed amendments to Schedule 14A and Schedule 14C that would have required registrants to provide disclosure regarding shareholder list requests not granted as of the date that the proxy or information statement is disseminated to shareholders.

The comments did not reveal widespread support for this proposal among shareholders. Corporate and legal commenters objected on the grounds that such disclosure would imply wrongdoing or unfair treatment of shareholders by the registrant, even where the registrant may be acting in compliance with Rule 14a-7 or denying a request made for an improper or frivolous purpose. They also argued that this would not materially benefit shareholders, but would increase the length and cost of preparation of the proxy statement.

G. Enhanced Disclosure Regarding Voting Results and Vote Tabulation Policies

1. Voting Results

The Commission proposed to amend Items 4(c) of Forms 10-K and 10-Q to require a brief description of each matter voted upon by shareholders during the period of the report, including contested and uncontested elections, as well as a statement of the number of votes cast for, against, or withheld with regard to each matter or nominee. Similarly, the number of abstentions and broker non-votes also were to be disclosed. Comment for the most part was favorable with respect to these proposals. Because expanded disclosure will provide shareholders with more information regarding the use of the corporate franchise, such as where a significant percentage of votes were withheld by shareholders on an uncontested management slate to express dissatisfaction with management's policies or practices, the Commission has adopted the amendments as proposed. Identical amendments have been made to recently adopted Form 10-KSB and 10-QSB.

2. Vote Tabulation Policies and Procedures

The amendments also codify existing interpretations of Item 21 of Schedule 14A and extend required disclosure to tabulation of votes relating to the election of directors. Revised Item 21 requires that shareholders be furnished with a statement indicating the vote needed for approval, except for votes relating to the approval of auditors. In addition, proxy statements must include a description of the treatment and effect of abstentions and broker non-votes under applicable state law and registrant charter and by-law provisions. The majority of commenters who spoke to the issue were supportive of these changes.

H. Presentation of Matters on the Form of Proxy

Prior to today's amendments, Rule 14a-4(a)[71] required that each matter or "group of related matters" intended to be acted upon be identified in the form of proxy. Rule 14a-4(b)(1)[72] required that the form of proxy provide an opportunity to specify by boxes a choice between approval or disapproval of, or abstention with respect to, each matter or "group of related matters." Where a registrant or other party expressly conditioned the adoption of one matter on the approval of other matters, the matters were not required to be set forth separately on the form of proxy.

In the reproposal, the Commission proposed amendments to Rules 14a-4 (a) and (b)(1) to require that the form of proxy provide for a separate vote on each matter presented. The amendments, adopted as reproposed, will not prohibit the soliciting party from conditioning the effectiveness of any proposal on the adoption of one or more other proposals, if permitted by state law. In such cases, appropriate disclosure will be required to advise shareholders that a vote against one proposal may have the effect of a vote against the group of mutually-conditioned proposals.

Shareholder and academic commenters applauded the Commission's effort to "unbundle" management proposals. Corporate and legal commenters, however, asserted that, while there may be a limited number of cases where proposals are grouped together in such a manner that a shareholder may be obliged to vote in favor of some proposals he or she would otherwise oppose in order to support other, more desirable proposals, there is a legitimate purpose in providing for a single vote on a group of related matters. Those commenters believed that providing shareholders a means to defeat one portion of such a group may be misleading, since it implies that the shareholder has a choice to accept some but not all portions of the grouped proposals. Some commenters also argued against the Commission's proposal, asserting that it intruded into areas traditionally governed by state law.

The Commission has adopted the proposed amendments to Rules 14a-4 (a) and (b)(1). The amendments will allow shareholders to communicate to the board of directors their views on each of the matters put to a vote. Although the board of directors may not be legally obligated to proceed with a favorable proposal after a negative vote on the unpopular portions of the package, and is legally entitled to proceed with the package as a whole once approved despite a significant number of negative votes or abstentions on one of the proposals, it may review those options in light of a significant expression of shareholder sentiment against the package as formulated.

A few commenters questioned whether the Commission has authority to promulgate this rule. Like current Rule 14a-4(b)(2),[73] the amended rule serves not only to ensure informed decisionmaking on each matter presented, but prohibits electoral tying arrangements that restrict shareholder voting choices on matters put before shareholders for approval.

As noted in the reproposing release, nothing in the amendment would prevent a registrant from providing shareholders with the option to vote on the separate proposals as a package by marking a single box as "FOR," "AGAINST," or "ABSTAIN" with respect to all the separate proposals.

I. Amendment to the Bona Fide Nominee Rule

Shareholders under state law generally only can submit one effective proxy in connection with a solicitation. Dissident shareholders seeking to nominate and elect a minority of directors to the board in the past have sought to avoid having to advise shareholders that they may not exercise their full voting power if the shareholder chooses to vote for its nominees, by obtaining authority on the form of proxy to vote for certain of the company's

[70] 17 CFR 240.14d-5(e)(4).

[71] 17 CFR 240.14a-4(a).

[72] 17 CFR 240.14a-4(b)(1).

[73] 17 CFR 240.14a-4(b)(2).

nominees in addition to the shareholder's nominees. The Commission's proxy rules, however, have erected unnecessary impediments to this solution. Rule 14a-4(d) prohibited listing on a form of proxy the names of persons who are not "bona fide nominees." Bona fide nominees are persons who have consented to be named in the proxy statement of the soliciting party and to serve if elected.[74]

Rarely, if ever, do company nominees consent to be named by soliciting shareholders. Consequently, shareholders have been deprived of the opportunity to vote for one or more company nominees on a soliciting shareholder's proxy card, since those persons generally have not consented to be named in the soliciting shareholder's proxy statement.

Throughout the Commission's review of its proxy rules, the difficulty experienced by shareholders in gaining a voice in determining the composition of the board of directors has been highlighted by a number of comment letters and proposals. This issue also has been the subject of congressional proposals for expanded shareholder access to company proxy statements for the purpose of nominating director candidates.

Proposals to require the company to include shareholder nominees in the company's proxy statement would represent a substantial change in the Commission's proxy rules. This would essentially mandate a universal ballot including both management nominees and independent candidates for board seats. However, any such universal ballot is appealing since the shareholder could make such a selection if he or she attended the annual meeting in person.

The Commission's revision of the bona fide nominee rule addressed a more limited problem caused solely by its own rules. Currently, shareholders under state law can nominate and run independently their own nominees. Currently, state law allows shareholders to vote for both company and shareholder nominees, if provided a means to do so on a proxy or by attending the meeting. The Commission's bona fide nominee rule has acted to prevent the form of proxy from being used to allow shareholders to exercise their state law right through the proxy process, and as a result has both cut off shareholder voting rights and greatly disadvantaged shareholder nominees seeking minority representation on the board of directors.

[74] 17 CFR 240.14a-4(d).

In order to remove this purely regulatory impediment to the election of shareholder nominees for directors, the Commission proposed to amend the bona fide nominee rule to provide that the requirement that a nominee consent to be named in the proxy statement would not prevent a person soliciting in support of shareholder nominees who, if elected, would constitute a minority of the board of directors, from providing shareholders an opportunity to vote for the company nominees, provided that company's candidates are clearly distinguished as such. Where, however, an insurgent seeks to elect a majority of the board of directors rather than seek minority representation, the requirement for specific nominee consent to be named and serve will continue.[75] For such insurgents, it is not unduly burdensome to be required to propose a full complement of nominees or bear the obligation to disclose the consequences to shareholders of using the proxy to vote for less than all the director positions up for election.[76]

Corporate commenters vigorously opposed this amendment. They contended that the unauthorized use of the names of company's nominees on soliciting shareholder's proxy cards would imply that the company nominees supported the soliciting shareholder's position, had agreed to be named on the shareholder's card, and would serve along with the shareholder's nominees if elected. They also argued that the use of company nominees' names on both proxy cards would confuse shareholders; one commenter noted that some shareholders who do not read the proxy statement may see some familiar company names on the soliciting shareholder's proxy card and execute it in the mistaken belief that they were executing the company's proxy card.

Moreover, the opposed commenters, a number of whom currently serve as directors of public companies, expressed their strong belief that no one should be forced to lend his or her name, stature, and reputation to the election campaign of a person or persons with whom he or she does not choose to run. Finally, a number of corporate and director commenters argued that minority representation on the board was not a good thing, arguing that the dissension and loss of collegiality likely will make the board less effective. They cited liability concerns and suggested that if the rule was adopted fewer qualified persons would be willing to serve as directors of public companies.

The Commission has determined to adopt the proposal with modifications to address the concerns of commenters with respect to nominees lending their names to a shareholder's solicitation and possible confusion of shareholders. While the revision to the bona fide nominee rule may facilitate the election of shareholder nominees, the possibility of split election results and the potential that a company nominee may be elected with shareholder nominees exists under the current rules, particularly in the case of cumulative voting.[77] The argument that election of shareholder nominees to the board will hinder the board's effectiveness is best made to the shareholders. It should not be a basis for imposing unnecessary regulatory barriers to the full exercise of the shareholder franchise.

While the reproposing release suggested the device as a means to "round out" a short slate, the proposal was not intended as a means to require company nominees to be part of the soliciting shareholder's slate without their consent. Rather, the proposal merely would allow the soliciting shareholder to afford shareholders an opportunity to vote for certain of company's nominees if they chose to vote for shareholder nominees by

[75] Several commenters pointed out that while a shareholder slate may, if elected, represent a minority of the entire board, the slate may represent a majority of the seats up for election, for example, in the case of a staggered or classified board. Conversely, the minority slate, when added to dissident supporters already sitting on the board may represent in the aggregate a majority of the board. The election of the minority slate, therefore, could effect a change of control. Others were concerned that two different minority slates could independently garner enough support to replace management.

The Commission has determined, as proposed, to require only that the director candidates nominated by the shareholder soliciting voting authority if elected constitute a minority of the entire board. The rule would be unduly narrow if it required that dissidents only seek a minority of the seats up for election. In addition, the rule would be unworkable if it turned on which "camp" both sitting directors and nominees belonged to at a particular moment.

[76] The required disclosure includes whether the remaining seats are likely to be vacant or filled by company nominees (often depending on whether the vote requirement for the election of directors is a plurality or majority of votes cast) and that certain company nominees may not serve if elected to an insurgent-controlled board. In addition, any plan to fill any such vacancies on the board must be disclosed.

[77] Of the 17 election contests reviewed by the Institutional Shareholder Services Inc. from January 1, 1991 to July 8, 1991, five resulted in dissidents winning partial representation on the board. Smith & Deal, Special Report, The 1991 Proxy Season, Institutional Shareholder Services, Inc. (1991). For the eight election contests covered between January 1, 1992 and June 30, 1992, four resulted in dissidents winning minority representation on the board. Special Report, The 1992 Proxy Season, Institutional Shareholder Services, Inc. (1992). The data do not include settlements resulting in agreements to place one or more dissident nominees on the board.

executing the soliciting shareholder's proxy card. That opportunity, however, can be afforded without the names of the company nominees being reprinted on the form of proxy or in the soliciting shareholder's proxy statement.

Under the amendment to Rule 14a-4(d) as adopted, a soliciting shareholder would not be precluded by the bona fide nominee rule from undertaking to vote the proxy in favor of the company's nominees, other than those specifically excluded by the soliciting shareholder, so long as shareholders are provided an opportunity specifically to write the names of any other company nominees with respect to whom they wish to withhold voting authority from the proxy holder. The proxy statement and form of proxy will refer the shareholder to management's soliciting materials for the names, background and qualifications of the company nominees. Thus, shareholders will know precisely which company nominees their shares will be voted for by comparing the full company slate with the list of company nominees the proxy holder will not vote for, and by indicating additional company nominees with respect to whom the shareholder wishes to withhold authority. An example of the relevant portions of the resulting form of proxy follows:

Proxy

ABC Corporation

Annual Meeting of Shareholders

This Proxy is Solicited by the Shareholder Committee to Revitalize ABC Corporation

The undersigned hereby appoints Joseph Robert et al. as proxies and revokes any previous proxies with respect to the matters covered by this proxy.

Election of Directors

1. *Shareholder Committee Nominees*—Election of Joseph Robert, Mary White, and Kevin Black.

FOR all nominees [ ]
WITHHOLD AUTHORITY for all nominees [ ]

Instruction: To withhold authority to vote for election of one or more persons nominated by the Shareholder Committee, mark FOR above and cross out name(s) of persons with respect to whom authority is withheld.

2. *Company Nominees*

The Shareholder Committee intends to use this proxy to vote for persons who have been nominated by ABC Corporation to serve as directors, other than the company nominees listed below. You may withhold authority to vote for one or more additional company nominees, by writing the name of the nominee(s) below. You should refer to the proxy statement and form of proxy distributed by the Company for the names, background, qualifications and other information concerning the company's nominees.

There is no assurance that any of company's nominees will serve as directors if any of the Shareholder Committee's nominees are elected to the board.

Company nominees with respect to whom the Shareholder Committee is NOT seeking authority to vote for and WILL NOT exercise any such authority:

Jane Doe, John Jones, Roger Roy

Write in below the names of any additional company nominees for which authority to vote is withheld:

_____

_____

Dated:_____

_____

_____

_____

Signature

With respect to the possibility that the company nominees may not serve if elected with one or more shareholder nominees due to liability or other concerns, this risk again is best addressed through disclosure. The soliciting shareholder will be required to include on the proxy card, as well as in the proxy statement, a legend to the effect that there is no assurance that these nominees will serve as directors if the shareholder's nominees are elected to the board.[78]

J. Shareholder Analysis of Management Performance

In the reproposing release, the Commission requested comment on a proposal that was the subject of a petition for rulemaking submitted to the Commission by the Comptroller of the State of New York, Edward V. Regan. The proposal would have allowed any person or group of persons who has held one-half of one percent or more of the voting power of the stock of a registrant for three or more years to submit a statement to be included in the registrant's proxy statement relating to the selection of directors, setting forth their views on the long-term company performance and the effectiveness of management in promoting the long-term interests of the company and its shareholders. Such statements would have been limited to 700 words, not counting tables, charts or graphs, and if more than three statements were submitted to the registrant in respect of any proxy statement, the three shareholder statements to be included would have been selected by lot.

The proxy rules, as amended today, afford investors ample opportunity to communicate their views to other shareholders. Communications can be made directly to other shareholders by qualifying shareholders with minimal or no filing requirements. Public announcements of shareholder voting intentions and the reasons therefor also are available. Consequently, as suggested by many commenters, the Commission has determined that it is unnecessary to adopt this proposal in light of the other reforms.

K. Technical Amendment to Information Statement Delivery Rule

In January, 1992, the Commission amended the shareholder communications and related rules [79] to implement provisions of the Shareholder Communications Improvement Act of 1990.[80] In connection with the amendments, the first sentence of paragraph (a) of Rule 14c-2, which sets forth information statement delivery requirements, inadvertently was revised in a manner which could have been erroneously construed to mean that the rule extended to meetings of holders of unregistered securities where the registrant had registered a different class of securities under Section 12 of the Exchange Act. That sentence is further amended today to clarify that Rule 14c-2 extends only to meetings of holders of a class of securities registered pursuant to section 12 of the Exchange Act or a class of securities issued by an investment company registered under the Investment Company Act of 1940.

III. Effective Date

The amendments are effective immediately on publication in the **Federal Register**, in accordance with the Administrative Procedure Act, which allows for effectiveness in less than 30 days after such publication, *inter alia*, "as provided by the agency for good cause found and published with the rule." 5 U.S.C. 553(d)(3). The Commission has determined that the federal proxy rules have created

[78] Regardless of whether dissidents rely on the amendment to the bona fide nominee rule, management's proxy statement should disclose if any nominee has determined to serve only if the full management slate is elected or would resign in the event one or more persons that were not nominated by management are elected to the board of directors. If informed in a timely manner of the limited degree to which a management nominee has consented to serve if elected, the dissident should likewise disclose that information if it nevertheless proposes to vote for that nominee.

[79] Exchange Act Rel. No. 30147; Investment Company Act Rel. No. 18467 (Jan. 6, 1992) [57 FR 1096].

[80] Pub. L. 101-550, 104 Stat. 2713.

unnecessary regulatory impediments to communication among shareholder and others and to the effective use of shareholder voting rights, and that those impediments should be removed by the regulatory amendments adopted today. There is good cause for the amendments to be become effective immediately on **Federal Register** publication, in order to remove these unnecessary regulatory burdens as soon as possible and, thus, to achieve the statutory purposes of the Exchange Act.

In addition, most of the amendments to the proxy rules adopted today remove restrictions. Immediate effectiveness will afford shareholders and other eligible persons the opportunity to take immediate advantage of the exemptions afforded by the amendments. Accordingly, immediate effectiveness is in accordance with the Administrative Procedure Act, which allows for effectiveness in less than 30 days after publication, *inter alia*, for a "substantive rules which grants or recognizes an exemption or relieves a restriction." 5 U.S.C. 553(d)(1).

IV. Cost-Benefit Analysis

As noted by many commenters, today's amendments will reduce substantially the costs and burdens that have been imposed on those who wish to communicate with shareholders and others regarding management performance and matters submitted to a shareholder vote. The amendments will result in a cash and manpower savings for all those who no longer will be required to prepare and file proxy materials with the Commission pursuant to the new exemption solicitations not seeking proxy authority; even those who are required to submit a Notice of Exempt Solicitation will have a significantly reduced compliance burden. Costs also will be reduced by the elimination of preliminary filing requirements for all soliciting material other than proxy and information statements, as well as by the changes to the proxy statement delivery requirements. The amendments to the shareholder list provisions should not change substantially the costs or burdens to either the registrant or the requesting party.

While some additional disclosure will be required relating to tabulation procedures and voting results, the overall cost resulting from this change to registrants should be minimal and are outweighed in any event by the benefits to shareholders and investors at large resulting from the enhanced information.

V. Final Regulatory Flexibility Analysis

A final regulatory flexibility analysis has been prepared regarding the amendments in accordance with 5 U.S.C. 604. A copy of the analysis may be obtained by contacting Elizabeth M. Murphy, or James R. Budge, Office of Disclosure Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. The corresponding Initial Regulatory Flexibility Analysis appears at 57 FR 29564 [Rel. No. 34-30849].

VI. Statutory Basis

The amendments to the proxy rules and Forms 10-K, 10-Q, 10-KSB, and 10-QSB are being adopted by the Commission pursuant to Exchange Act Sections 3(b),[81] 13,[82] 14,[83] 15 [84] and 23(a).[85]

List of Subjects in 17 CFR Parts 240 and 249

Reporting and recordkeeping requirements, Securities.

VII. Text of the Amendments

In accordance with the foregoing, title 17, chapter II of the Code of Federal Regulations is amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 continues to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78l, 78m, 78n, 78o, 78p, 78s, 78w, 78x, 7811(d), 79q, 79t, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4, and 80b-11, unless otherwise noted.

2. By amending § 240.13e-100 by revising the section heading and General Instructions A.1. and G, to read as follows:

§ 240.13e-100 Schedule 13E-3, Transaction statement pursuant to section 13(e) of the Securities Exchange Act of 1934 and rule 13e-3 (§ 240.13e-3) thereunder.

* * * * *

General Instructions

A. * * *

(1) Concurrently with the filing of preliminary or definitive soliciting materials or an information statement pursuant to Regulations 14A or 14C under the Act;

* * * * *

G. If the rule 13e-3 transaction involves a proxy or an information statement subject to Regulation 14A (§§ 240.14a-1 to 240.14b-1) or Regulation 14C (§§ 240.14c-1 to 14c-101), this Schedule 13E-3 shall be available immediately upon filing such material with the Commission in preliminary form.

* * * * *

3. By amending § 240.14a-1 by revising paragraph (*l*)(2) to read as follows:

§ 240.14a-1 Definitions.

* * * * *

(l) *Solicitation.* (1) * * *

(2) The terms do not apply, however, to:

(i) The furnishing of a form of proxy to a security holder upon the unsolicited request of such security holder;

(ii) The performance by the registrant of acts required by § 240.14a-7;

(iii) The performance by any person of ministerial acts on behalf of a person soliciting a proxy; or

(iv) A communication by a security holder who does not otherwise engage in a proxy solicitation (other than a solicitation exempt under § 240.14a-2) stating how the security holder intends to vote and the reasons therefor, provided that the communication:

(A) Is made by means of speeches in public forums, press releases, published or broadcast opinions, statements, or advertisements appearing in a broadcast media, or newspaper, magazine or other bona fide publication disseminated on a regular basis,

(B) Is directed to persons to whom the security holder owes a fiduciary duty in connection with the voting of securities of a registrant held by the security holder, or

(C) Is made in response to unsolicited requests for additional information with respect to a prior communication by the security holder made pursuant to this paragraph (*l*)(2)(iv).

4. By amending § 240.14a-2 by revising the introductory text of paragraph (b); redesignating paragraphs (b)(1) and (b)(2) as paragraphs (b)(2) and (b)(3), respectively; and adding new paragraph (b)(1) to read as follows:

§ 240.14a-2 Solicitations to which §§ 240.14a-3 to 240.14a-14 apply.

* * * * *

(b) Sections 240.14a-3 to 240.14a-6 (other than 14a-6(g)), 240.14a-8, and 240.14a-10 to 14a-14 do not apply to the following:

(1) Any solicitation by or on behalf of any person who does not, at any time during such solicitation, seek directly or indirectly, either on its own or another's behalf, the power to act as proxy for a security holder and does not furnish or

[81] 15 U.S.C. 78c(b).
[82] 15 U.S.C. 78m.
[83] 15 U.S.C. 78n.
[84] 15 U.S.C. 78o.
[85] 15 U.S.C. 78w(a).

otherwise request, or act on behalf of a person who furnishes or requests, a form of revocation, abstention, consent or authorization. *Provided, however,* That the exemption set forth in this paragraph shall not apply to:

(i) The registrant or an affiliate or associate of the registrant (other than an officer or director or any person serving in a similar capacity);

(ii) An officer or director of the registrant or any person serving in a similar capacity engaging in a solicitation financed directly or indirectly by the registrant;

(iii) An officer, director, affiliate or associate of a person that is ineligible to rely on the exemption set forth in this paragraph (other than persons specified in paragraph (b)(1)(i) of this section), or any person serving in a similar capacity;

(iv) Any nominee for whose election as a director proxies are solicited;

(v) Any person soliciting in opposition to a merger, recapitalization, reorganization, sale of assets or other extraordinary transaction recommended or approved by the board of directors of the registrant who is proposing or intends to propose an alternative transaction to which such person or one of its affiliates is a party;

(vi) Any person who is required to report beneficial ownership of the registrant's equity securities on a Schedule 13D (§ 240.13d–101), unless such person has filed a Schedule 13D and has not disclosed pursuant to Item 4 thereto an intent, or reserved the right, to engage in a control transaction, or any contested solicitation for the election of directors;

(vii) Any person who receives compensation from an ineligible person directly related to the solicitation of proxies, other than pursuant to § 240.14a–13;

(viii) Where the registrant is an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.), an "interested person" of that investment company, as that term is defined in section 2(a)(19) of the Investment Company Act (15 U.S.C. 80a–2);

(ix) Any person who, because of a substantial interest in the subject matter of the solicitation, is likely to receive a benefit from a successful solicitation that would not be shared pro rata by all other holders of the same class of securities, other than a benefit arising from the person's employment with the registrant; and

(x) Any person acting on behalf of any of the foregoing.

* * * * *

5. By amending § 240.14a–3 by revising paragraph (a) and adding paragraph (f) to read as follows:

§ 240.14a–3 Information to be furnished to security holders.

(a) No solicitation subject to this regulation shall be made unless each person solicited is concurrently furnished or has previously been furnished with a publicly-filed preliminary or definitive written proxy statement containing the information specified in Schedule 14A (§ 240.14a–101) or with a preliminary or definitive written proxy statement included in a registration statement filed under the Securities Act of 1933 on Form S–4 or F–4 (§ 239.25 or § 239.34 of this chapter) or Form N–14 (§ 239.23) and containing the information specified in such Form.

* * * * *

(f) The provisions of paragraph (a) of this section shall not apply to a communication made by means of speeches in public forums, press releases, published or broadcast opinions, statements, or advertisements appearing in a broadcast media, newspaper, magazine or other bona fide publication disseminated on a regular basis, provided that:

(1) No form of proxy, consent or authorization or means to execute the same is provided to a security holder in connection with the communication; and

(2) At the time the communication is made, a definitive proxy statement is on file with the Commission pursuant to § 240.14a–6(b).

6. By amending § 240.14a–4 by revising the first sentence of each of paragraphs (a)(3) and (b)(1), adding a sentence at the end of paragraph (d)(4), and adding a new paragraph (f), to read as follows:

§ 240.14a–4 Requirements as to proxy.

(a) * * *

(3) Shall identify clearly and impartially each separate matter intended to be acted upon, whether or not related to or conditioned on the approval of other matters, and whether proposed by the registrant or by security holders. * * *

(b)(1) Means shall be provided in the form of proxy whereby the person solicited is afforded an opportunity to specify by boxes a choice between approval or disapproval of, or abstention with respect to each separate matter referred to therein as intended to be acted upon, other than elections to office. * * *

* * * * *

(d)(4) * * * *Provided, however,* That nothing in this section 240.14a–4 shall prevent any person soliciting in support of nominees who, if elected, would constitute a minority of the board of directors, from seeking authority to vote for nominees named in the registrant's proxy statement, so long as the soliciting party:

(i) Seeks authority to vote in the aggregate for the number of director positions then subject to election;

(ii) Represents that it will vote for all the registrant nominees, other than those registrant nominees specified by the soliciting party;

(iii) Provides the security holder an opportunity to withhold authority with respect to any other registrant nominee by writing the name of that nominee on the form of proxy; and

(iv) States on the form of proxy and in the proxy statement that there is no assurance that the registrant's nominees will serve if elected with any of the soliciting party's nominees.

* * * * *

(f) No person conducting a solicitation subject to this regulation shall deliver a form of proxy, consent or authorization to any security holder unless the security holder concurrently receives, or has previously received, a definitive proxy statement that has been filed with, or mailed for filing to, the Commission pursuant to § 240.14a–6(b).

7. By amending § 240.14a–6 by revising the first sentence of the introductory text of paragraph (a); removing paragraphs (b) and (h); redesignating paragraphs (c) through (g) as paragraphs (b) through (f); adding new paragraph (g); redesignating paragraphs (i) through (m) as paragraphs (h) through (*l*); revising the caption to newly redesignated paragraph (b); revising newly redesignated paragraphs (c), (d), and (e); and adding to newly redesignated paragraph (i) a new paragraph (i)(5) before the flush text, to read as follows:

§ 240.14a–6 Filing requirements.

(a) *Preliminary proxy statement.* Five preliminary copies of the proxy statement and form of proxy shall be filed with the Commission at least 10 calendar days prior to the date definitive copies of such material are first sent or given to security holders, or such shorter period prior to that date as the Commission may authorize upon a showing of good cause thereunder. * * *

(b) *Definitive Proxy Statement and Other Soliciting Materials.* * * *

(c) *Personal Solicitation Materials.* If the solicitation is to be made in whole or in part by personal solicitation, eight copies of all written instructions or other material which discusses or reviews, or comments upon the merits of, any

matter to be acted upon and which is furnished to the persons making the actual solicitation for their use directly or indirectly in connection with the solicitation shall be filed with, or mailed for filing to, the Commission by the person on whose behalf the solicitation is made not later than the date any such material is first sent or given to such individuals.

(d) *Release dates.* All preliminary proxy statements and forms of proxy filed pursuant to paragraph (a) of this section shall be accompanied by a statement of the date on which definitive copies thereof filed pursuant to paragraph (b) of this section are intended to be released to security holders. All definitive material filed pursuant to paragraph (b) of this section shall be accompanied by a statement of the date on which copies of such material were released to security holders, or, if not released, the date on which copies thereof are intended to be released. All material filed pursuant to paragraph (c) of this section shall be accompanied by a statement of the date on which copies thereof were released to the individual who will make the actual solicitation or if not released, the date on which copies thereof are intended to be released.

(e) (1) *Public Availability of Information.* All copies of preliminary proxy statements and forms of proxy filed pursuant to paragraph (a) of this section shall be clearly marked "Preliminary Copies," and shall be deemed immediately available for public inspection unless confidential treatment is obtained pursuant to paragraph (e)(2) of this section.

(2) *Confidential Treatment.* If action is to be taken with respect to any matter specified in Item 14 of Schedule 14A (§ 240.14a–101), all copies of the preliminary proxy statement and form of proxy filed pursuant to paragraph (a) of this section shall be for the information of the Commission only and shall not be deemed available for public inspection until filed with the Commission in definitive form, provided that:

(i) The proxy statement does not relate to a matter or proposal subject to § 240.13e–3 or a roll-up transaction as defined in Item 901(c) of Regulation S–K (§ 229.901(c) of this chapter); and

(ii) The filed material is marked "Confidential, For Use of the Commission Only." In any and all cases, such material may be disclosed to any department or agency of the United States Government and to the Congress, and the Commission may make such inquiries or investigation in regard to the material as may be necessary for an adequate review thereof by the Commission.

* * * * *

(g) *Solicitations subject to § 240.14a–2(b)(1).* (1) Any person who:

(i) Engages in a solicitation pursuant to § 240.14a–2(b)(1), and

(ii) At the commencement of that solicitation owns beneficially securities of the class which is the subject of the solicitation with a market value of over $5 million,

Shall furnish or mail to the Commission, not later than three days after the date the written solicitation is first sent or given to any security holder, five copies of a statement containing the information specified in the Notice of Exempt Solicitation (§ 240.14a–103) which statement shall attach as an exhibit all written soliciting materials. Five copies of an amendment to such statement shall be furnished or mailed to the Commission, in connection with dissemination of any additional communications, not later than three days after the date the additional material is first sent or given to any security holder. Three copies of the Notice of Exempt Solicitation and amendments thereto shall, at the same time the materials are furnished or mailed to the Commission, be furnished or mailed to each national securities exchange upon which any class of securities of the registrant is listed and registered.

(2) Notwithstanding paragraph (g)(1) of this section, no such submission need be made with respect to oral solicitations (other than with respect to scripts used in connection with such oral solicitations), speeches delivered in a public forum, press releases, published or broadcast opinions, statements, and advertisements appearing in a broadcast media, or a newspaper, magazine or other bona fide publication disseminated on a regular basis.

* * * * *

(i) *Fees.* * * *

(5) For submissions made pursuant to § 240.14a–6(g), no fee shall be required.

* * * * *

8. By revising § 240.14a–7 to read as follows:

§ 240.14a–7 Obligations of registrants to provide a list of, or mail soliciting material to, security holders.

(a) If the registrant has made or intends to make a proxy solicitation in connection with a security holder meeting or action by consent or authorization, upon the written request by any record or beneficial holder of securities of the class entitled to vote at the meeting or to execute a consent or authorization to provide a list of security holders or to mail the requesting security holder's materials, regardless of whether the request references this section, the registrant shall:

(1) Deliver to the requesting security holder within five business days after receipt of the request:

(i) Notification as to whether the registrant has elected to mail the security holder's soliciting materials or provide a security holder list if the election under paragraph (b) of this section is to be made by the registrant;

(ii) A statement of the approximate number of record holders and beneficial holders, separated by type of holder and class, owning securities in the same class or classes as holders which have been or are to be solicited on management's behalf, or any more limited group of such holders designated by the security holder if available or retrievable under the registrant's or its transfer agent's security holder data systems; and

(iii) The estimated cost of mailing a proxy statement, form of proxy or other communication to such holders, including to the extent known or reasonably available, the estimated costs of any bank, broker, and similar person through whom the registrant has solicited or intends to solicit beneficial owners in connection with the security holder meeting or action;

(2) Perform the acts set forth in either paragraphs (a)(2)(i) or (a)(2)(ii) of this section, at the registrant's or requesting security holder's option, as specified in paragraph (b) of this section:

(i) Mail copies of any proxy statement, form of proxy or other soliciting material furnished by the security holder to the record holders, including banks, brokers, and similar entities, designated by the security holder. A sufficient number of copies must be mailed to the banks, brokers and similar entities for distribution to all beneficial owners designated by the security holder. The registrant shall mail the security holder material with reasonable promptness after tender of the material to be mailed, envelopes or other containers therefor, postage or payment for postage and other reasonable expenses of effecting such mailing. The registrant shall not be responsible for the content of the material; or

(ii) Deliver the following information to the requesting security holder within five business days of receipt of the request: a reasonably current list of the names, addresses and security positions of the record holders, including banks, brokers and similar entities, holding securities in the same class or classes as

holders which have been or are to be solicited on management's behalf, or any more limited group of such holders designated by the security holder if available or retrievable under the registrant's or its transfer agent's security holder data systems; the most recent list of names, addresses and security positions of beneficial owners as specified in § 240.14a-13(b), in the possession, or which subsequently comes into the possession, of the registrant. All security holder list information shall be in the form requested by the security holder to the extent that such form is available to the registrant without undue burden or expense. The registrant shall furnish the security holder with updated record holder information on a daily basis or, if not available on a daily basis, at the shortest reasonable intervals, *provided, however,* the registrant need not provide beneficial or record holder information more current than the record date for the meeting or action.

(b) If the registrant is soliciting or intends to solicit with respect to a proposal that is subject to § 240.13e-3 or a roll-up transaction as defined in Item 901(c) of Regulation S-K [§ 229.901(c) of this chapter], the requesting security holder shall have the option set forth in paragraph (a)(2) of this section. With respect to all other requests pursuant to this section, the registrant shall have the option to either mail the security holder's material or furnish the security holder list as set forth in paragraph (a)(2) of this section.

(c) At the time of a list request, the security holder making the request shall:

(1) If holding the registrant's securities through a nominee, provide the registrant with a statement by the nominee or other independent third party, or a copy of a current filing made with the Commission and furnished to the registrant, confirming such holder's beneficial ownership; and

(2) Provide the registrant with an affidavit, declaration, affirmation or other similar document provided for under applicable state law identifying the proposal or other corporate action that will be the subject of the security holder's solicitation or communication and attesting that:

(i) The security holder will not use the list information for any purpose other than to solicit security holders with respect to the same meeting or action by consent or authorization for which the registrant is soliciting or intends to solicit or to communicate with security holders with respect to a solicitation commenced by the registrant; and

(ii) The security holder will not disclose such information to any person other than a beneficial owner for whom the request was made and an employee or agent to the extent necessary to effectuate the communication or solicitation.

(d) The security holder shall not use the information furnished by the registrant pursuant to paragraph (a)(2)(ii) of this section for any purpose other than to solicit security holders with respect to the same meeting or action by consent or authorization for which the registrant is soliciting or intends to solicit or to communicate with security holders with respect to a solicitation commenced by the registrant; or disclose such information to any person other than an employee, agent, or beneficial owner for whom a request was made to the extent necessary to effectuate the communication or solicitation. The security holder shall return the information provided pursuant to paragraph (a)(2)(ii) of this section and shall not retain any copies thereof or of any information derived from such information after the termination of the solicitation.

(e) The security holder shall reimburse the reasonable expenses incurred by the registrant in performing the acts requested pursuant to paragraph (a) of this section.

9. By amending § 240.14a-11 by removing paragraphs (b) and (c) and redesignating paragraphs (d) through (h) as paragraphs (b) through (f), respectively; removing newly redesignated paragraph (b)(1); redesignating paragraphs (2) through (4) of newly redesignated paragraph (b) as paragraphs (b)(1) through (b)(3); revising the reference "paragraph (d)(2)" to read "paragraph (b)(1)" in newly redesignated paragraph (b)(1); revising newly redesignated paragraphs (b)(2), (b)(3), (c) and (e); and removing the last sentence in newly redesignated paragraph (d), to read as follows:

§ 240.14a-11 Special Provisions Applicable to Election Contests.

* * * * *

(b) *Solicitations Prior to Furnishing Required Written Proxy Statement.*

* * *

(1) * * *

(2) The identity of the participants in the solicitation (as defined in Instruction 3 of Item 4 of Schedule 14A [§ 240.14a-101]) and a description of their interests, direct or indirect, by security holdings or otherwise, are set forth in each communication published, sent or given to security holders in connection with the solicitation.

(3) A written proxy statement meeting the requirements of this regulation is sent or given to security holders solicited pursuant to this paragraph (b) at the earliest practicable date.

(c) *Solicitation prior to furnishing required written proxy statement; filing requirements.* Eight copies of any soliciting material published, sent or given to security holders prior to the furnishing of the written proxy statement required by § 240.14a-3(a) shall be filed with, or mailed for filing to, the Commission no later than the date such material is published, sent or given to any security holder. Three copies of such material shall at the same time be filed with, or mailed for filing to, each national securities exchange upon which any class of securities of the registrant is listed and registered.

* * * * *

(e) *Application of § 240.14a-6.* The provisions of paragraphs (b), (c), (d), and (e) of § 240.14a-6 shall apply, to the extent pertinent, to soliciting material subject to paragraphs (c) and (d) of this section.

* * * * *

10. By amending § 240.14a-12 by revising paragraphs (a)(3), (a)(4) and (b) to read as follows:

§ 240.14a-12 Solicitation Prior to Furnishing Required Proxy Statement.

(a) * * *

(3) The identity of the participants in the solicitation (as defined in Instruction 3 to Item 4 of Schedule 14A [§ 240.14a-101]) and a description of their interests direct or indirect, by security holdings or otherwise, are set forth in each communication published, sent or given to security holders in connection with the solicitation; and

(4) A written proxy statement meeting the requirements of this regulation is sent or given to security holders solicited pursuant to this section at the earliest practicable date.

(b) Eight copies of any soliciting material published, sent or given to security holders prior to the furnishing of a written proxy statement required by Rule 14a-3(a) [§ 240.14a-3(a)] shall be filed with, or mailed for filing to, the Commission no later than the date such material is published, sent or given to any security holders. Three copies of such material shall at the same time be filed with, or mailed for filing to, each national securities exchange upon which any class of securities of the registrant is listed and registered.

11. By amending § 240.14a-101 by revising Items 4(a)(2) and 5(a)(2), removing the flush text following 5(a)(2), revising Items 5(b) and 21, and adding Instruction 3 to Item 4 to read as follows:

§ 240.14a-101 Schedule 14A. Information Required in Proxy Statement.

* * * * *

Item 4. Persons Making the Solicitation

(a) * * *

(1) * * *

(2) If the solicitation is made otherwise than by the registrant, so state and give the names of the participants in the solicitation, as defined in paragraphs (a) (iii), (iv), (v) and (vi) of Instruction 3 to this Item.

* * * * *

Instructions

* * * * *

3. For purposes of this Item 4 and Item 5 of this Schedule 14A:

(a) The terms "participant" and "participant in a solicitation" include the following:

(i) The registrant;

(ii) Any director of the registrant, and any nominee for whose election as a director proxies are solicited;

(iii) Any committee or group which solicits proxies, any member of such committee or group, and any person whether or not named as a member who, acting alone or with one or more other persons, directly or indirectly takes the initiative, or engages, in organizing, directing, or arranging for the financing of any such committee or group;

(iv) Any person who finances or joins with another to finance the solicitation of proxies, except persons who contribute not more than $500 and who are not otherwise participants;

(v) Any person who lends money or furnishes credit or enters into any other arrangements, pursuant to any contract or understanding with a participant, for the purpose of financing or otherwise inducing the purchase, sale, holding or voting of securities of the registrant by any participant or other persons, in support of or in opposition to a participant; except that such terms do not include a bank, broker or dealer who, in the ordinary course of business, lends money or executes orders for the purchase or sale of securities and who is not otherwise a participant; and

(vi) Any person who solicits proxies.

(b) The terms "participant" and "participant in a solicitation" do not include:

(i) Any person or organization retained or employed by a participant to solicit security holders and whose activities are limited to the duties required to be performed in the course of such employment;

(ii) Any person who merely transmits proxy soliciting material or performs other ministerial or clerical duties;

(iii) Any person employed by a participant in the capacity of attorney, accountant, or advertising, public relations or financial adviser, and whose activities are limited to the duties required to be performed in the course of such employment;

(iv) Any person regularly employed as an officer or employee of the registrant or any of its subsidiaries who is not otherwise a participant; or

(v) Any officer or director of, or any person regularly employed by, any other participant, if such officer, director or employee is not otherwise a participant.

Item 5. Interest of Certain Persons in Matters to Be Acted Upon

(a) *Solicitations not subject to Rule 14a-11 (§ 240.14a-11 of this chapter).* * * *

(1) * * *

(2) If the solicitation is made otherwise than on behalf of the registrant, each participant in the solicitation, as defined in paragraphs (a) (iii), (iv), (v), and (vi) of Instruction 3 to Item 4 of this Schedule 14A.

* * * * *

(b) *Solicitation subject to Rule 14a-11 (§ 240.14a-11 of this chapter).* With respect to any solicitation subject to Rule 14a-11 (§ 240.14a-11):

(1) Describe briefly any substantial interest, direct or indirect, by security holdings or otherwise, of each participant as defined in paragraphs (a) (ii), (iii), (iv), (v) and (vi) of Instruction 3 to Item 4 of this Schedule 14A, in any matter to be acted upon at the meeting, and include with respect to each participant the following information, or a fair and accurate summary thereof:

(i) Name and business address of the participant.

(ii) The participant's present principal occupation or employment and the name, principal business and address of any corporation or other organization in which such employment is carried on.

(iii) State whether or not, during the past ten years, the participant has been convicted in a criminal proceeding (excluding traffic violations or similar misdemeanors) and, if so, give dates, nature of conviction, name and location of court, and penalty imposed or other disposition of the case. A negative answer need not be included in the proxy statement or other soliciting material.

(iv) State the amount of each class of securities of the registrant which the participant owns beneficially, directly or indirectly.

(v) State the amount of each class of securities of the registrant which the participant owns of record but not beneficially.

(vi) State with respect to all securities of the registrant purchased or sold within the past two years, the dates on which they were purchased or sold and the amount purchased or sold on each such date.

(vii) If any part of the purchase price or market value of any of the shares specified in paragraph (b)(1)(vi) of this Item is represented by funds borrowed or otherwise obtained for the purpose of acquiring or holding such securities, so state and indicate the amount of the indebtedness as of the latest practicable date. If such funds were borrowed or obtained otherwise than pursuant to a margin account or bank loan in the regular course of business of a bank, broker or dealer, briefly describe the transaction, and state the names of the parties.

(viii) State whether or not the participant is, or was within the past year, a party to any contract, arrangements or understandings with any person with respect to any securities of the registrant, including, but not limited to joint ventures, loan or option arrangements, puts or calls, guarantees against loss or guarantees of profit, division of losses or profits, or the giving or withholding of proxies. If so, name the parties to such contracts, arrangements or understandings and give the details thereof.

(ix) State the amount of securities of the registrant owned beneficially, directly or indirectly, by each of the participant's associates and the name and address of each such associate.

(x) State the amount of each class of securities of any parent or subsidiary of the registrant which the participant owns beneficially, directly or indirectly.

(xi) Furnish for the participant and associates of the participant the information required by Item 404(a) of Regulation S-K (§ 229.404(a) of this chapter).

(xii) State whether or not the participant or any associates of the participant have any arrangement or understanding with any person—

(A) with respect to any future employment by the registrant or its affiliates; or

(B) with respect to any future transactions to which the registrant or any of its affiliates will or may be a party.

If so, describe such arrangement or understanding and state the names of the parties thereto.

(2) With respect to any person, other than a director or executive officer of the registrant acting solely in that capacity, who is a party to an arrangement or understanding pursuant to which a nominee for election as director is proposed to be elected, describe any substantial interest, direct or indirect, by security holdings or otherwise, that such person has in any matter to be acted upon at the meeting, and furnish the information called for by paragraphs (b)(1) (xi) and (xii) of this Item.

Instruction: For purposes of this Item 5, beneficial ownership shall be determined in accordance with Rule 13d-3 under the Act (Section 240.13d-3 of this chapter).

* * * * *

Item 21. Voting Procedures. As to each matter which is to be submitted to a vote of security holders, furnish the following information:

(a) State the vote required for approval or election, other than for the approval of auditors.

(b) Disclose the method by which votes will be counted, including the treatment and effect of abstentions and broker non-votes under applicable state law as well as registrant charter and by-law provisions.

§ 240.14a-102 [Removed]

12. By removing § 240.14a-102 (Schedule 14B) and reserving that section.

13. By adding § 240.14a-103 to read as follows:

§ 240.14a-103 Notice of Exempt Solicitation. Information to be included in statements submitted by or on behalf of a person pursuant to § 240.14a-9(g)

U.S. Securities and Exchange Commission
Washington, D.C. 20549

Notice of Exempt Solicitation

1. Name of the Registrant:

2. Name of person relying on exemption:

3. Address of person relying on exemption:

4. Written materials. Attach written material required to be submitted pursuant to Rule 14a-6(g)(1) [§ 240.14a-6(g)(1)].

14. By amending § 240.14c-2 to revise the introductory text of paragraph (a) to read as follows:

§ 240.14c-2 Distribution of Information Statement.

(a) In connection with every annual or other meeting of the holders of the class of securities registered pursuant to section 12 of the Act or of a class of securities issued by an investment company registered under the Investment Company Act of 1940 that has made a public offering of securities, including the taking of corporate action by the written authorization or consent of security holders, the registrant shall transmit a written information statement containing the information specified in Schedule 14C (§ 240.14c-101) or written information statements included in registration statements filed under the Securities Act of 1933 on Form S-4 or F-4 (§ 239.25 or § 239.34 of this chapter) or Form N-14 (§ 239.23 of this chapter), and containing the information specified in such form, to every security holder of the class that is entitled to vote or give an authorization or consent in regard to any matter to be acted upon and from whom proxy authorization or consent is not solicited on behalf of the registrant pursuant to Section 14(a) of the Act, *Provided however*, That:

* * * * *

15. By amending § 240.14c-5 by revising paragraph (d) to read as follows:

§ 240.14c-5 Filing requirements.

* * * * *

(d)(1) *Public Availability of Information.* All copies of material filed pursuant to paragraph (a) of this section shall be clearly marked "Preliminary Copies," and shall be deemed immediately available for public inspection unless confidential treatment is obtained pursuant to paragraph (d)(2) of this section.

(2) *Confidential Treatment.* If action is to be taken with respect to any matter specified in Item 14 of Schedule 14A (§ 240.14a-101), all copies of the preliminary information statement filed pursuant to this section shall be for the information of the Commission only and shall not be deemed available for public inspection until definitive material has been filed with the Commission provided that:

(i) the information statement does not relate to a matter or proposal subject to § 240.13e-3 or a roll-up transaction as defined in Item 901(c) of Regulation S-K (§ 229.901(c) of this chapter); and

(ii) the filed material is marked "Confidential, For Use of the Commission Only." In any and all cases, such material may be disclosed to any department or agency of the United States Government and to the Congress, and the Commission may make such inquiries or investigation in regard to the material as may be necessary for an adequate review thereof by the Commission.

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

16. The authority citation for part 249 continues to read as follows:

Authority: 15 U.S.C. 78a, *et seq.*, unless otherwise noted.

17. By amending Form 10-Q (§ 249.308a) by revising the introductory text to Item 4, paragraph (c) and Instruction 4 of Item 4 Part II to read as follows:

Note—The text of Form 10-Q does not and this amendment will not appear in the Code of Federal Regulations.

Form 10-Q

* * * * *

Part II

* * * * *

Item 4. Submission of Matters to a Vote of Security Holders

If any matter has been submitted to a vote of security holders during the period covered by this report, through the solicitation of proxies or otherwise, furnish the following information:

* * * * *

(c) A brief description of each matter voted upon at the meeting and state the number of votes cast for, against or withheld, as well as the number of abstentions and broker non-votes, as to each such matter, including a separate tabulation with respect to each nominee for office.

* * * * *

Instructions

* * * * *

4. Paragraph (c) must be answered for all matters voted upon at the meeting, including both contested and uncontested elections of directors.

* * * * *

18. By amending Form 10-QSB (§ 249.308b) by revising the introductory text to Item 4, paragraph (c) and Instruction 4 of Item 4 Part II to read as follows:

Note—The text of Form 10-QSB does not and this amendment will not appear in the Code of Federal Regulations.

Form 10-QSB

* * * * *

Part II

* * * * *

Item 4. Submission of Matters to a Vote of Security Holders

If any matter has been submitted to a vote of security holders during the period covered by this report, through the solicitation of proxies or otherwise, furnish the following information:

* * * * *

(c) A brief description of each matter voted upon at the meeting and state the number of votes cast for, against or withheld, as well as the number of abstentions and broker non-votes, as to each such matter, including a separate tabulation with respect to each nominee for office.

* * * * *

Instructions

* * * * *

4. Paragraph (c) must be answered for all matters voted upon at the meeting, including both contested and uncontested elections of directors.

* * * * *

19. By amending Form 10-K (§ 249.310) by revising paragraph (c) and Instruction 4 of Item 4 of Part I to read as follows:

Note—The text of Form 10-K does not and this amendment will not appear in the Code of Federal Regulations.

Form 10-K

* * * * *

Part I

* * * * *

Item 4. Submission of Matters to a Vote of Security Holders

* * * * *

(c) A brief description of each matter voted upon at the meeting and state the number of votes cast for, against or withheld, as well as the number of abstentions and broker non-votes as to each such matter, including a separate tabulation with respect to each nominee for office.

* * * * *

Instructions

* * * * *

4. Paragraph (c) must be answered for all matters voted upon at the meeting, including both contested and uncontested elections of directors.

* * * * *

20. By amending Form 10-KSB (§ 249.310b) by revising paragraph (c) and Instruction 4 of Item 4 of Part I to read as follows:

Note—The text of Form 10-KSB does not and this amendment will not appear in the Code of Federal Regulations.

Form 10-KSB

* * * * *

Part I

* * * * *

Item 4. Submission of Matters to a Vote of Security Holders

* * * * *

(c) A brief description of each matter voted upon at the meeting and state the number of votes cast for, against or withheld, as well as the number of abstentions and broker non-votes as to each such matter, including a separate tabulation with respect to each nominee for office.

* * * * *

Instructions

* * * * *

4. Paragraph (c) must be answered for all matters voted upon at the meeting, including both contested and uncontested elections of directors.

* * * * *

By the Commission.

Dated: October 16, 1992.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-25563 Filed 10-21-92; 8:45 am]

BILLING CODE 8010-01-M

federal register

Thursday
October 22, 1992

Part III

Department of Labor

Office of the Secretary

Women's Bureau: Announcement of Public Hearings on Concerns of Midlife Women in the Labor Force; Notice

DEPARTMENT OF LABOR

Office of the Secretary

Women's Bureau: Announcement of Public Hearings on Concerns of Midlife Women in the Labor Force

AGENCY: Office of the Secretary. Women's Bureau, Labor.

ACTION: Announcement.

SUMMARY: The Women's Bureau (WB) of the Department of Labor is announcing four public hearings to be held to provide interested parties opportunities to present oral or written views to WB on employment issues and/or concerns related to midlife women.

DATES: The dates of the four public hearings are as follows:

November 17, 1992: Atlanta, GA.
November 19, 1992: Chicago, IL.
December 2, 1992: Denver, CO.
December 4, 1992: Los Angeles, CA.

Persons desiring to present oral statements at the hearing must provide the WB a notice of intent to appear, postmarked on or before November 6, 1992.

Written statements from persons not presenting oral statements must be postmarked on or before December 11, 1992.

ADDRESSES: The hearings are open to the public. The locations of the public hearings are shown below.

Atlanta: Georgia State Capitol, 203 State Capitol, room 341, Atlanta, Georgia 30334.

Chicago: Metcalf Federal Building, 77 W. Jackson, 3rd Floor, room 331, Chicago, Illinois 60604.

Denver: U.S. West Building, 1801 California Street, 9th Floor Conference Room, Denver, Colorado 80202.

Los Angeles: Location to be announced.

Notices of intent to present oral statements and written statements from persons not presenting oral statements should be mailed to: Ms. Sandra Robinson, Midlife Project Coordinator, Women's Bureau, U.S. Department of Labor, room S3002, 200 Constitution Avenue, NW., Washington, DC 20210. Persons planning to attend a public hearing should call the appropriate WB regional office at the telephone number listed below.

Atlanta: 404-347-4461.
Chicago: 312-353-6985.
Denver: 303-391-6756.
Los Angeles: 415-744-6679.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra Robinson, Midlife Project Coordinator, Women's Bureau, U.S. Department of Labor, room S3002, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: 202-219-6611.

SUPPLEMENTARY INFORMATION: During the past year the Women's Bureau has been studying the employment concerns of midlife women, those between the ages of 35 and 54. The purposes of this study are (1) to create an awareness of the concerns and needs of midlife women in the labor force or seeking to enter the labor force and (2) to delineate how the Women's Bureau can better serve midlife women in the labor force as they seek to improve their economic status.

The first stage of the research was comprised of roundtable discussions with selected groups of midlife women in 20 communities. These roundtable discussions were completed in June 1992. As a follow-up to the community meetings, the Women's Bureau will host four public hearings to provide an opportunity for interested parties to present orally, or to submit in writing to the Women's Bureau, their views on issues related to the labor force status of midlife women.

The Women's Bureau chose education, training and retraining as the broad topics to be addressed in the roundtable discussions. The issues identified for these public hearings are derived from some of the findings of those discussions. This **Federal Register** notice briefly discusses the issues and invites interested parties to present their views on the issues. Respondents are encouraged to present their views on other employment concerns of midlife women, such as pensions, compensation and benefits, work and family, etc., that may not be specifically addressed by this notice.

Background

In the 1990s, women at the midpoint of their working lives, those in the 35 to 54 age group, will play an increasingly important role in the work force. In 1991, midlife women accounted for 44 percent of the female labor force and are projected to be almost half of the women in the labor force in 2005. By that year, women in their midlife years will have accounted for more than 70 percent of the net increase in the number of women in the labor force since 1991.

The ability to update skills and develop new ones is critical for economic success in an economy which is undergoing substantial change in terms of its labor requirements. Many women in this age group are returning to the labor force with outdated skills and need training; others are seeking paid employment for the first time. Many who have jobs are seeking career changes and/or are seeking promotional opportunities. Education, training and/or retraining are key factors in meeting their needs in developing new skills and/or upgrading the skills they have.

The roundtable discussions were held to gather information at the grass roots level which would provide a better understanding of the decisions women in their midlife years make about education and training, the success and/or failure of those decisions and why. In addition to midlife women, participants in the roundtables included public and private training program representatives, educators, government officials and others.

The finding of the community meetings which was most often reported was that midlife women, particularly new entrants and reentrants to the labor force, generally do not get reliable information and/or guidance on the education and training resources available. In addition, although education and training information is available from many sources, many of these women are unaware of these sources and others don't know how to use the information they receive.

The information obtained from these public hearings will be used to determined ways in which the Women's Bureau can respond to the concerns and needs of midlife women that were expressed. Also, because education and training issues are not isolated from other employment concerns, the opportunity is provided at the four hearings to present views on other issues related to midlife women and their labor force status.

Discussion

The information needs are different for women returning to the labor force or entering the paid labor force for the first time and for those career women who have been in the labor force for many years.

Entry and Reentry Midlife Women

One of the most difficult transitions facing midlife women is to return to the workplace after a long absence or to seek paid employment for the first time. Many of the entry and reentry women have no plans to enter or to return to the labor force but family economics, especially resulting from divorce or widowhood, make it necessary. Many women in their midlife years work intermittently, returning and withdrawing several times over their worklives. Others join the work force because they are simply seeking new roles and new interests. Most of these

women need additional education and/or job training for updating old skills or learning new ones.

The recommendation made most often in the roundtables was that information about education, be made available in a central location. Information about local and state public and private training programs, particularly those at community colleges, and other educational institutions as well as information about financial assistance should be readily available. Particularly important is accessible information about government funded programs that are available to midlife women who are above the income thresholds that make them ineligible for many programs. The Department of Labor's Job 2000 Training initiative provides for local Skill Centers but the job training information will be only on federal programs.

Issues

How can information systems be structured so that the needed information is readily available at central locations? What technologies can be put to better use in this regard? What needs to be done to ensure that reentrants and new entrants have the appropriate information to make informed training choices? What are the exemplary programs that specifically address the needs of midlife women? To what extent can replicable models be created from the best programs? What model programs are there for midlife women which are forward looking in terms of skills building for the 21st century? What strategies are needed to encourage midlife women to enter nontraditional or gender neutral occupations?

Career Women

Many midlife career women who were employed prior to midlife or in early midlife years and have worked continuously need access to resources that will help upgrade their skills and/or to receive promotions. To do this, many women enter degree programs at midlife; some study for their first degree, some take graduate work, and others pursue studies to change careers. Many career women look first to their employers for employer-provided training information. However, according to the roundtable discussions, information about employer-provided training is not often easy to obtain. In addition, midlife women have difficulty in obtaining cross training and lateral moves to positions of responsibility, i.e., developmental assignments and grooming opportunities. Barriers to training opportunities which were frequently cited are age and sex discrimination.

Issues

How have midlife women tried to resolved these issues at the workplace? To what extent have they been able to sensitize employers to their concerns? What strategies have been successful? How can the benefits of hiring and promoting midlife women best be conveyed to employers?

Notice of Public Hearings

To explore fully the above issues and any other employment issues concerning midlife women which interested parties may wish to raise, the Women's Bureau is conducting a series of four public hearings.

Locations and Dates

The meeting dates are as follows:

November 17, 1992: Atlanta, GA.
November 19, 1992: Chicago, IL.
December 2, 1992: Denver, CO.
December 4, 1992: Los Angeles, CA.

The hearings will commence at 9 a.m. and adjourn at 6 p.m. There will be a one-hour break for lunch (noon-1 p.m.). The hearings are open to the public.

The locations of the public hearings are shown below:

Atlanta: Georgia State Capitol, 203 State Capitol, room 341, Atlanta, Georgia 30334.

Chicago: Metcalf Federal Building, 77 W. Jackson, 3rd Floor, room 331, Chicago, IL 60604.

Denver: U.S. West Building, 1801 California Street, 9th Floor Conference Room, Denver, Colorado 80202.

Los Angeles: Location to be announced.

Participation of Interested Parties

An opportunity to present oral statements concerning the issues raised above will be provided at these public hearings. Notices of intent to present oral statements, postmarked on or before November 6, 1992, must be mailed to the following: Ms. Sandra Robinson, Midlife Project Coordinator, Women's Bureau, U. S. Department of Labor, Room S3002, 200 Constitution Avenue, NW., Washington, DC 20210.

The notice of intent to present oral comments must contain the following information:

(1) The name, address, and telephone number of each person to appear:

(2) The capacity in which the person will appear:

(3) The approximate amount of time required for the presentation; and

(4) The issues that will be addressed.

This information is necessary to properly schedule persons presenting oral statements. The amount of time requested for each presentation will be reviewed in light of the number of persons or groups wishing to appear and will affect the time limitations of the hearings' schedules. In some cases, the time requested will be modified. To provide all interested parties an opportunity to present their views in public hearings, the WB may impose an appropriate time restriction for each presentation or limit presentations to only one person for an organization or interest group.

A videotape may be made of each hearing, and the proceedings may be transcribed.

Since this is a continuous series of hearings, material submitted at one hearing should not be submitted again at another site.

Hearing Procedures and Objectives

A Department of Labor official (or officials) will preside at each of the four hearings. The presiding official shall:

(1) Regulate the course of the hearings, including the order of appearance of persons presenting oral statements:

(2) Dispose of procedural requests and comparable matters; and

(3) Confine the oral presentations to matters pertinent to the employment concerns of midlife women.

Signed at Washington, DC, this 16th day of October, 1992.

Elsie Vartanian,

Director, Women's Bureau.

[FR Doc. 92-25602 Filed 10-21-92; 8:45 am]

BILLING CODE 4510-23-M

federal register

Thursday
October 22, 1992

Part IV

The President

Proclamation 6496—National Forest Products Week, 1992

Federal Register
Vol. 57, No. 205
Thursday, October 22, 1992

Presidential Documents

Title 3—

The President

Proclamation 6496 of October 20, 1992

National Forest Products Week, 1992

By the President of the United States of America

A Proclamation

From our magnificent National Forests, which cover some 212 million acres of land in the United States, to our thriving State and local parks, industrial timberlands, and privately owned woodlots, America's forests constitute one of this country's greatest treasures. All Americans share a responsibility to protect our Nation's forests, and during National Forest Products Week, we renew our commitment to responsible management of these precious tracts of land.

As a vital part of our planet's ecosystem, our forests provide food and habitat for a wide range of plants and animals. These rich tracts of land also provide essential raw materials for building and other uses, and hundreds of thousands of Americans depend on them for their livelihood. Countless other citizens enjoy our forests as a beautiful setting for family camp-outs and other forms of recreation, which encourage children and adults alike to appreciate more fully the importance of conservation.

Today the United States boasts a strong and growing tradition of forest conservation. Annual forest growth now exceeds timber harvests by more than 35 percent, and the total national volume of wood is 25 percent larger than it was in 1952. Yet, recognizing continued challenges to forest preservation—from disease and drought to wildfires, which destroyed almost 2 million acres of forest and rangeland this summer alone—we are working hard to promote environmental stewardship in both the public and private sectors.

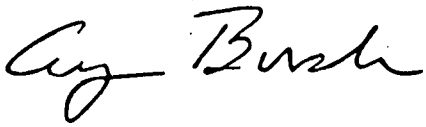
The major Federal forest management agencies have adopted an "ecosystem approach" to conservation, and by law our National Forests must now be managed on a sustained yield basis. As part of our Forests for the Future Initiative, the United States Government is also helping to lead the way toward a twofold increase in worldwide forest conservation assistance, as a first step toward halting the net loss of forests over the next decade. Here at home, millions of volunteers are working together with private organizations and with State and local agencies in support of our America the Beautiful Initiative, our ambitious program to plant 1 billion new trees in urban and rural areas each year.

The benefits that we derive from our forests are as varied as the species of trees and wildlife that they contain. As demand for traditional forest commodities continues, and as we continue to develop new products and uses each year, it is imperative that we join together in promoting sustainable use and conservation of our forests and timberlands.

The Congress, by Public Law 86–753 (36 U.S.C. 162), designated the week beginning on the third Sunday in October of each year as "National Forest Products Week" and requested the President to issue a proclamation in observance of that week.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the week beginning October 18, 1992, as National Forest Products Week. I encourage all Americans to observe that week with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twentieth day of October, in the year of our Lord nineteen hundred and ninety-two, and of the Independence of the United States of America the two hundred and seventeenth.



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Filed 10-21-92; 10:21 am]
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