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Friday
March 17, 1989

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WHERE: State Office Building Auditorium, Capitol Hill, Salt Lake City, UT
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Contents

Federal Register

Vol.54, No. 51

Friday, March 17, 1989

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

CFR PARTS AFFECTED IN THIS ISSUE

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

Federal Register
Vol. 54, No. 51
Friday, March 17, 1989

Presidential Documents

Title 3—

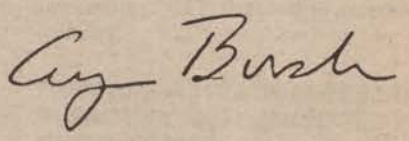
The President

Executive Order 12671 of March 14, 1989

Exclusion of the Customs Office of Enforcement From the Federal Labor-Management Relations Program

By virtue of the authority vested in me as President by the Constitution and laws of the United States of America, including Chapter 71 of Title 5 of the United States Code, and having determined, under Section 7103(b)(1) of said Chapter, that the Office of Enforcement (Headquarters and Regional Components), U.S. Customs Service, has as a primary function intelligence, counterintelligence, investigative, or national security work, and having determined that the provisions of Chapter 71 of Title 5 of the United States Code cannot be applied to the Office of Enforcement (Headquarters and Regional Components), U.S. Customs Service, in a manner consistent with national security requirements and considerations, it is hereby ordered that Executive Order No. 12171, as amended, is further amended by deleting Section 1–203(g) and inserting in its place:

"1–203(g). The Office of Enforcement (Headquarters and Regional Components), U.S. Customs Service."



THE WHITE HOUSE,
March 14, 1989.

[FR Doc. 89–6507
Filed 3–15–89; 4:23 pm]
Billing code 3195–01–M

Rules and Regulations

Federal Register
Vol. 54, No. 51
Friday, March 17, 1989

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Regulation 692]

Navel Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 692 establishes the quantity of California-Arizona navel oranges that may be shipped to market during the period March 17 through March 23, 1989. Such action is needed to balance the supply of fresh navel oranges with the demand for such oranges during the period specified due to the marketing situation confronting the orange industry.

DATES: Regulation 692 (§ 907.992) is effective for the period March 17, 1989, through March 23, 1989.

FOR FURTHER INFORMATION CONTACT: Jacquelyn R. Schlatter, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2528–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5120.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order 907 (7 CFR Part 907), as amended, regulating the handling of navel oranges grown in Arizona and designated part of California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of the use of volume regulations on small entities as well as larger ones.

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

There are approximately 125 handlers of California-Arizona navel oranges subject to regulation under the navel orange marketing order, and approximately 4,065 producers in California and Arizona. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona navel oranges may be classified as small entities.

This action is consistent with the marketing policy for 1988–89 adopted by the Navel Orange Administrative Committee (Committee). The Committee met publicly on March 14, 1989, in Visalia, California, to consider the current and prospective conditions of supply and demand and recommended by a nine-to-two vote a quantity of navel oranges deemed advisable to be handled during the specified week. The Committee reports that the market for navel oranges has improved.

Based on consideration of supply and market conditions, and the evaluation of alternatives to the implementation of prorate regulations, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after the publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. To effectuate the declared purposes of the Act, it is necessary to make this regulatory provision effective as specified, and handlers have been apprised of such provision and the effective time.

List of Subjects in 7 CFR Part 907

Arizona, California, Marketing agreements and orders, Navel Oranges.

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

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

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

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

2. Section 907.992 is added to read as follows:

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

§ 907.992 Navel Orange Regulation 692.

The quantity of navel oranges grown in California and Arizona which may be handled during the period March 17, 1989, through March 23, 1989, is established as follows:

(a) District 1: 1,584,000 cartons;
(b) District 2: 216,000 cartons;
(c) District 3: unlimited cartons;
(d) District 4: unlimited cartons.

Dated: March 15, 1989.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–6468 Filed 3–16–89; 8:45 am]
BILLING CODE 3410–02–M

7 CFR Part 910

[Lemon Reguation 657]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 657 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 320,000 cartons during the period March 19 through March 25, 1989. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 657 (§ 910.957) is effective for the period March 19 through March 25, 1989.

FOR FURTHER INFORMATION CONTACT: Beatriz Rodriguez, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

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

There are approximately 85 handlers of lemons grown in California and Arizona subject to regulation under the lemon marketing order and approximately 2500 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona lemons may be classified as small entities.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601–674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee (Committee) and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the marketing policy for 1988–89. The Committee met publicly on March 14, 1989, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and unanimously recommended a quantity of lemons deemed advisable to be handled during the specified week. The Committee reports that demand for lemons is good.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information become available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

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

2. Section 910–957 is added to read as follows:

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

§ 910.957 Lemon Regulation 657.

The quantity of lemons grown in California and Arizona which may be handled during the period March 19, 1989, through March 25, 1989, is established at 320,000 cartons.

Dated: March 15, 1989.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–6467 Filed 3–16–89; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 204

[INS: 1049–89]

Petition to Classify Alien as Immediate Relative of a United States Citizen or as a Preference Immigrant

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This revision implements section 101(b)(1)(D) of the Immigration and Nationality Act as amended by Pub. L. 99–603, the Immigration Reform and Control Act of 1986, which recognizes, for immediate relative and preference petition purposes, the relationship between a biological father and his illegitimate child. This regulation will assist Service administration and public understanding by providing guidelines on identification of a natural father, and to establish the parent-child relationship for immigration purposes.

DATES: Interim rule is effective March 17, 1989. Comments must be received on or before April 17, 1989.

ADDRESS: Submit written comments, in triplicate, to the Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street, NW., Room 2011, Washington, DC 20536.

FOR FURTHER INFORMATION CONTACT: Yolanda Sanchez-K., Senior Immigration Examiner, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536. Telephone (202) 633–5014.

SUPPLEMENTARY INFORMATION: On November 6, 1986, President Reagan signed Pub. L. 99–603, the Immigration Reform and Control Act of 1986, which,

among other things, amended section 101(b)(1)(D) of the Immigration and Nationality Act. This amendment gives certain fathers of out-of-wedlock children the same relative petition rights for immigration purposes as the mothers of out-of-wedlock children. However, the new section contains the condition that only a natural father qualifies, and that a bona fide parent-child relationship must have existed at some time or does exist at the time of application. To implement this amendment, the Service is revising § 204.2, paragraphs (c)(3) through (5). These revisions provide guidance on eligibility criteria under this section, as well as acceptable documentary evidence to support one's claim to eligibility. Publication of this regulation was held in abeyance pending the outcome in a case before the Board of Immigration Appeals which addressed eligibility for/by an adult offspring under this part.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is impracticable and unnecessary as the changes have been mandated by the passage of Pub. L. 99–603.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule does not have a significant economic impact on a substantial number of small entities. This is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612.

List of Subjects in 8 CFR Part 204

Administrative practice and procedures, Petition, Reporting and recordkeeping requirements.

Accordingly, Chapter I of Title 8, Code of Federal Regulations, is amended as follows:

PART 204—PETITION TO CLASSIFY ALIEN AS IMMEDIATE RELATIVE OF A UNITED STATES CITIZEN OR AS A PREFERENCE IMMIGRANT

1. The authority citation for Part 204 is revised to read as follows:

Authority: 66 Stat. 166, 173, 175, 178, 179, 182, 217, 100 Stat. 3537; 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1182, 1186a, 1255, and 8 CFR Part 2.

2. In § 204.2, paragraphs (c)(3) through (5) are revised to read as follows:

§ 204.2 Documents.

* * * * *

(c) * * *

(3) *Petition for child.* (i) If a form I–130, "Petition for Alien Relative", is submitted to the Service by a mother in behalf of a child, regardless of the child's age, the birth certificate of the child showing the name of the mother must accompany the petition. If a petition is submitted by a father in behalf of a child or by a stepparent in behalf of a stepchild, regardless of the child's age, a certificate of marriage of the parents, proof of legal termination of their prior marriages, and the birth certificate of the child must accompany the petition. If the petition is submitted by the purported father of a child born out-of-wedlock, regardless of the child's age, the father must establish that he is the natural father and that a bona fide parent-child relationship exists or has existed. Such a relationship exists or has existed where the father evinces or has evinced an active concern for the child's support, instruction, and general welfare. Furthermore, the parent-child relationship must be or have been established while the child is or was unmarried and under twenty-one (21) years of age. Once established, benefits may be sought at a later date pursuant to section 201(b) or 203(a) of the Act, provided that all other eligibility criteria under the appropriate section have been met and that a parent-child relationship exists or has existed. Evidence to establish that the petitioner is the child's natural parent may include, but is not limited to the following:

(A) The beneficiary's birth certificate or religious documents relating to birth or baptism of the beneficiary;

(B) Local civil records;

(C) Affidavits from knowledgeable witnesses, and/or;

(D) Evidence of financial support of the child by the putative father.

(ii) The district director may require a specific Blood Group Antigen Test to be conducted of the petitioner, beneficiary and beneficiary's mother on Form G–620. If the Specific Blood Group Antigen Test does not exclude paternity and the district director determines additional evidence is needed, an HLA Type Blood Test may be required. Such blood tests will be conducted at the expense of the petitioner or beneficiary by the United States Public Health Service or by a qualified medical specialist designated by the district director. Refusal to submit to a Specific Blood Group or HLA blood test when required may constitute a basis for denial of the petition.

(4) *Petition for a brother or sister.* If a sibling relationship is claimed through a common mother, the petition shall be supported by a birth certificate of the petitioner and a birth certificate of the beneficiary showing a common mother. If the petition is on behalf of a brother or sister having a common father and different mothers, the birth certificate of the petitioner and the birth certificate of the beneficiary showing a common father along with the marriage certificate (if applicable) of the petitioner's parents, the marriage certificate (if applicable) of the beneficiary's parents, and proof of the legal termination of the parents' prior marriages, if any, must accompany the petition. If either the petitioner or the beneficiary is a child born out-of-wedlock, evidence to establish that the father and child have or had a bona fide parent-child relationship as described in paragraph (c)(3) of this section for a child born out-of-wedlock must accompany the petition.

(5) *Petition in behalf of a parent.* If a petition is submitted in behalf of a mother, the petitioner's birth certificate showing the name of the mother must accompany the petition. If a petition is submitted in behalf of a father or stepparent, the petitioner's birth certificate and the marriage certificate of his or her parent (if applicable) and stepparent must accompany the petition, as well as proof of the legal termination of their prior marriages, if any. If a petition is submitted by a petitioner born out-of-wedlock on behalf of his or her natural father, evidence to establish that the beneficiary is the petitioner's natural parent as described in paragraph (c)(3) of this section for a child born out-of-wedlock, and evidence that a parent-child relationship exists or had existed, must accompany the petition.

* * * * *

Dated: February 24, 1989.

Richard E. Norton,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 89–6296 Filed 3–16–89; 8:45 am]

BILLING CODE 4410–10–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Extension of Time for the Implementation of the Decontamination Priority and Trusteeship Provisions of Property Insurance Requirements

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is amending the

implementation schedule to change the effective date for the stabilization and decontamination priority and trusteeship provisions of its property insurance regulations. This delay in implementation is necessary because the insurers that offer property insurance for power reactors have informed the Commission that they will be unable to include the stabilization and decontamination priority and trusteeship provisions in their insurance policies within the date required by current regulations. Concurrently, the extension of the effective date of the rule allows the NRC to consider three petitions for rulemaking that propose changes to improve the efficacy of the NRC's stabilization and decontamination priority and trusteeship provisions.

EFFECTIVE DATE: March 17, 1989.

FOR FURTHER INFORMATION CONTACT: Robert S. Wood, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–1280.

SUPPLEMENTARY INFORMATION:

I. Background

On September 19, 1988, the Commission published a proposed rule in the **Federal Register** (53 FR 36338) that proposed to amend the implementation schedule for the stabilization and decontamination priority and trusteeship provisions of its property insurance regulations contained in 10 CFR 50.54(w)(5)(i) to change the effective date from October 4, 1988, to April 4, 1990. As explained in the proposed rule, this implementation schedule was part of a final rulemaking published on August 5, 1987 (52 FR 28963) which, for the first time, explicitly required power reactor licensees to purchase on-site property damage insurance policies in which $1.6 billion of the proceeds from these policies are to be used first for stabilization of a reactor after an accident and then for decontamination of the facility before any other purpose. The 1987 final rule also required that these insurance proceeds be paid to an impartial trustee who would be required to disburse funds according to the stabilization and decontamination priority.

Subsequent to the publication of the 1987 final rule, the NRC was informed that the trusteeship provision and, to a lesser extent, the stabilization and decontamination priority provisions of that rule were sufficiently complex and problematic that the insurers were unable to incorporate such provisions in their policies by the required October 4, 1988, date.

As explained in the September 19, 1988, proposed rule, the insurers and their counsel gave two reasons why they were unable to comply with the date specified in the final rule for adding the stabilization and decontamination priority and trusteeship provisions. First, with respect to the trusteeship provision, counsel for insurers assured the NRC staff that they had made a good-faith effort to obtain trustees, but were unsuccessful. They believed the reason for their lack of success was the potential trustees' conflicts of interest and reluctance to assume, on the one hand, responsibility for disbursing potentially over $1 billion in insurance proceeds and the resulting exposure to possible litigation for wrongful disbursement, while, on the other hand, being eligible for only modest fees for this service.

A second reason insurers gave for being unable to comply with the effective date of the 1987 rule was essentially logistical. As a contract, an insurance policy can only be modified with the consent of all affected parties. Because the Commission's mandated stabilization and decontamination priority and trusteeship provisions adversely affect the current rights under the policy of the bondholders' trustee, it is unlikely that policies could be legally changed before the end of the policy years. Because of insurers' policy renewal procedures and the policy anniversaries, these dates would have fallen after the effective date specified in the rule.

II. Summary of Comments, NRC Response and Conclusions

By the end of the comment period on October 19, 1988, the NRC received five comments. One of these was misdirected to this rulemaking. (Comment 1 was directed to rescinding § 50.54 (x) and (y) rather than § 50.54(w).) The remaining four either supported the proposed rulemaking (comment 4) or sought clarification of the applicability of 10 CFR 50.54(w)(5)(i) to specific licensees while the rulemaking was being considered (comments 2, 3, and 5). In addition, comment 4 suggested that, rather than provide a date certain in the rule, the stabilization and decontamination priority and trusteeship provisions of § 50.54(w) (3) and (4) be suspended indefinitely pending completion of consideration of three petitions for rulemaking (PRM–50–51, PRM–50–51A, and PRM–50–51B; 53 FR 36335, September 19, 1988).

The only issue of any controversy raised by commenters was whether the extension of time for implementing the stabilization and decontamination priority and trusteeship provisions of § 50.54(w) should be for a date certain (i.e., April 4, 1990) or indefinite until consideration of the above-cited petitions for rulemaking has been completed. The Commission continues to believe that an 18 month extension is more appropriate than an open-ended extension. First as commenter 4 acknowledged, 18 months should be sufficient to complete consideration of the issues raised in the three petitions for rulemaking. Second if 18 months is insufficient, the Commission can act to further extend the implementation date. Finally, the Commission imposed the stabilization and decontamination priority and trusteeship provisions for valid health and safety reasons. Indefinitely deferring these provisions prior to a substantive reevaluation of their efficacy could conflict with the Commission's mandate to protect health and safety. The proposed rule analyzed why an 18 month delay would have minimal health and safety impact. The NRC believes that analysis remains valid.

For the foregoing reasons, the Commission concludes that a delay from October 4, 1988, to April 4, 1990, in the implementation schedule of the stabilization and decontamination priority and trusteeship provisions is justified and is amending 10 CFR 50.54(w)(5)(i) accordingly.

Because the amendment to § 50.54(w)(5)(i) relates solely to extending the time for implementing the stabilization and decontamination priority and trusteeship provisions of the property insurance rule and therefore provides relief from restrictions under regulations currently in effect, the Commission has found that good cause exists for making the rule effective on the date of publication in the **Federal Register** without the customary 30 day waiting period.

III. Environmental Impact: Categorical Exclusion

The NRC has determined that this rule constitutes a minor corrective amendment that does not substantially modify existing regulations and, therefore, is the type of action eligible for categorical exclusion under 10 CFR 51.22(c)(2). Accordingly, neither an environmental impact statement nor an environmental assessment is required.

IV. Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et*

seq.). Existing requirements were approved by the Office of Management and Budget approval number 3150–0011.

V. Regulatory Analysis

On August 5, 1987, the NRC published in the **Federal Register** a final rule amending 10 CFR 50.54(w). The rule increased the amount of on-site property damage insurance required to be carried by NRC's power reactor licensees. The rule also required these licensees to obtain by October 4, 1988, insurance policies that prioritized insurance proceeds for stabilization and decontamination after an accident and provided for payment of proceeds to an independent trustee who would disburse funds for decontamination and cleanup before any other purpose. Subsequent to publication of the August 5, 1987 rule, the NRC was informed by insurers who offer nuclear property insurance that the decontamination priority and trusteeship provisions would not be able to be incorporated into the policies by the time required in the 1987 rule. In petitions for rulemaking, insurers' representatives further stated that the trusteeship provisions might actually have an effect counter to their intended purpose by delaying claims payment and thus possibly the cleanup process. By deferring implementation of these provisions by 18 months, the Commission is allowing sufficient time either to secure the required coverage or to reconsider the mechanism by which accident cleanup funds may be assured to be used for their intended purpose. Even without formal stabilization and decontamination priority and trusteeship provisions, NRC has authority to take appropriate enforcement action to order cleanup in the unlikely event of an accident. Thus, this rule will not have a significant impact on public health and safety. Furthermore, this rule will not have significant impacts on state and local governments and geographical regions; on the environment; or, create substantial costs to licensees, the NRC, or other Federal agencies. The foregoing discussion constitutes the regulatory analysis for this rule.

VI. Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this final rule does not have a significant economic impact on a substantial number of small entities. The final rule affects only those companies licensed to operate nuclear powerplants. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR Part 121.

VII. Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this rule because this rule would not impose a backfit as defined in § 50.109(a)(1). Therefore, a backfit analysis is not required for this rule.

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Fire prevention, Incorporation by reference, Intergovernmental relations, Nuclear powerplants and reactors, Penalty, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendment to 10 CFR Part 50.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for Part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1224, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201 as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 is also issued under secs. 101, 185, 68 Stat. 936, 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332).

Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 50.10 (a), (b), and (c), 50.44, 50.46, 50.48, 50.54 and 50.80(a) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 50.10 (b) and (c), and 50.54 are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 50.9, 50.55(e), 50.59(b), 50.70, 50.71, 50.72, 50.73, and 50.78 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C: 2201(o)).

2. In § 50.54, paragraph (w)(5)(i) is revised to read as follows:

§ 50.54 Conditions of licenses

* * * * *

(w) * * *

(5) The decontamination priority and trust requirements set forth in paragraphs (w)(3) and (w)(4) of this section must:

(i) Be incorporated in onsite property damage insurance policies for nuclear powerplants not later than April 4, 1990 and

* * * * *

Dated at Rockville, Maryland this 10th day of March, 1989.

For the Nuclear Regulatory Commission.

Victor Stello, Jr.,

Executive Director for Operations.

[FR Doc. 89–6330 Filed 3–16–89; 8:45 am]

BILLING CODE 7590–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89–NM–04–AD; Amdt. 39–6151]

Airworthiness Directives: Avions Marcel Dassault-Breguet Aviation (AMD–BA) Model Mystere Falcon 50 and 900 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Avions Marcel Dassault-Breguet Aviation (AMD–BA) Model Mystere Falcon 50 and 900 series airplanes, which requires repetitive inspections of the main landing gear (MLG) door emergency release mechanism to detect broken or damaged unlocking pins, and replacement of the pins, if necessary. This amendment is prompted by reports of the MLG door emergency unlocking pin breaking due to fatigue failure. This condition, if not corrected, could prevent emergency extension of the MLG.

DATE: Effective March 24, 1989.

ADDRESSES: The applicable service information may be obtained from Falcon Jet Corporation, 777 Terrace Avenue, Hasbrouck Heights, New Jersey 07604. This information may be examined at the FAA, Northwest

Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Adriano Pasion, Standardization Branch, ANM-113; telephone (206) 431-1977. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: The Direction Générale de L'Aviation Civile (DGAC), which is the airworthiness authority of France, has notified the FAA of an unsafe condition which may exist on certain Avions Marcel Dassault Breguet Aviation (AMD-BA) Model Mystere Falcon 50 and 900 series airplanes. There have been two reports of the MLG door emergency unlocking pin breaking due to fatigue failure. This condition, if not corrected, could prevent emergency extension of the MLG.

The DGAC has issued French Airworthiness Directive 88-140-006(B)R1, dated December 28, 1988, which contains procedures for repetitive inspection of the main landing gear door emergency release mechanism for a broken or damaged unlocking pin, and replacement of the pins, if necessary.

This airplane model is manufactured in France and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD requires repetitive inspections of the MLG door emergency release mechanism for a broken or damaged unlocking pin, and replacement, if necessary.

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

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

The FAA has determined that this regulation is an emergency regulation and that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Avions Marcel Dassault Breguet Aviation (AMD-BA): Applies to Model Mystere Falcon 50 and 900 series airplanes, certificated in any category, equipped with emergency unlocking levers part numbers:

—For Mystere Falcon 50:
F50B793600160 or 160A1 or 161 or 161A1—LH side.
F50B793700160 or 160A1 or 161 or 161A1—RH side.

—For Mystere Falcon 900:
FGFB793600160 or 160A2 or 161 or 161A2 or F50B793600160A1 or 161 or 161A1—LH side.
FGFB793700160 or 160A2 or 161 or 161A2 or F50B793700160A1 or 161 or 161A1—RH side.

Compliance is required as indicated, unless previously accomplished.

To prevent inability to open the main landing gear (MLG) door for MLG emergency extension, accomplish the following:

A. Prior to the accumulation of 1,000 landings on the MLG door emergency unlocking pin, or within 7 days after the effective date of this AD, whichever occurs later, verify the integrity of the MLG door emergency unlocking system by operating the manual opening system, in accordance with the instructions in the AMD-BA Falcon 50 or 900 series (as applicable) Maintenance Manual, Work Card 480.0, paragraph 3.

1. If the unlocking pin is broken or damaged, replace the pin with a serviceable pin of the same part number prior to further flight.

2. If the unlocking pin is not damaged, repeat the inspection prior to accumulation of 2,000 landings. Replace broken or damaged pins in accordance with paragraph A.1., above.

B. Upon the accumulation of 2,000 or more landings on the MLG door emergency unlocking pin, repeat the inspection described in paragraph A., above, at intervals not to exceed 50 landings from last inspection. Replace broken or damaged pins in accordance with paragraph A.1., above.

C. Following the replacement of any unlocking pin with a new pin, repeat the inspection required by paragraphs A. and B., above, at the intervals specified. Replace broken or damaged pins in accordance with paragraph A.1., above.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Standardization Branch, ANM-113.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the inspections required by this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Falcon Jet Corporation, 777 Terrace Avenue, Hasbrouck Height, New Jersey 07604. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective March 24, 1989.

Issued in Seattle, Washington, on February 24, 1989.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-6374 Filed 3-16-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-NM-06-AD; Amdt. 39-6155]

Airworthiness Directives: Gulfstream Model G-IV Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the Federal Register and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of Gulfstream Model G-IV airplanes by individual letters. This AD requires that instrument landing system (ILS) operations utilizing Bendix ILS radios be discontinued. This action is prompted by reports where airplanes have turned inbound on an ILS approach before capturing the localizer signal. This condition, if not corrected, could result in hazardous deviations from the intended course.

DATE: Effective April 3, 1989.

This AD was effective earlier to all recipients of Priority Letter AD 89-02-12, dated January 24, 1989.

ADDRESSES: The applicable service information may be obtained from Gulfstream Aerospace Corporation, Technical Operations Department, Travis Field, P.O. Box 2206, Savannah, Georgia 31402-2206. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the FAA, Central Region, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Mr. James Williams, Aerospace Engineer, Atlanta Aircraft Certification Office, ACE-130A, FAA, Central Region, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349; telephone (404) 991-3020.

SUPPLEMENTARY INFORMATION: On January 24, 1989, the FAA issued Priority Letter AD 89-02-12, applicable to Gulfstream G-IV airplanes, which requires that instrument landing system (ILS) operations utilizing Bendix ILS radios be discontinued.

That action was prompted by three reports where Model G-IV airplanes had turned inbound on an ILS approach before capturing the localizer signal. These incidents all occurred on approaches with large intercept angles while flying with the autopilot coupled to the dedicated Bendix ILS radio. This condition, if not corrected, could result in hazardous deviations from the intended course.

While the precise cause of this problem has not been identified, the FAA has determined that it is associated with the integration of the ILS radios with the autopilot, and that the problem can be eliminated by disconnecting the ILS radio from the autopilot.

Since this condition is likely to exist or develop on other airplanes of this same type design, this AD requires that use of the Bendix ILS radios be discontinued and that these ILS radios be disabled by pulling the radios' circuit breakers and tyrapping them. These circuit breakers and Bendix ILS control heads must be labelled "INOP" (inoperative). The aircraft display controller must also be modified to disable its ability to couple the Bendix radio to the autopilot or to display ILS information from them on the primary flight displays.

Note: All Model G-IV airplanes are equipped with two additional navigation radios which are not affected by this AD. All operations using those radios are permitted.

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking to address it.

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

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

The Federal Aviation Administration has determined that this regulation is an emergency regulation and is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Gulfstream: Applicable to Model G-IV airplanes, as listed in Gulfstream Aircraft Service Change No. 110, dated January 24, 1989, certificated in any category. Compliance is required as indicated, unless already accomplished.

To prevent premature turns toward the runway while conducting ILS approaches, accomplish the following:

A. Prior to further flight, discontinue use of the Bendix ILS radios for any type approach. Pull both circuit breakers (C/B) on the co-pilot's circuit breaker panel labeled "ILS #1" and "ILS #2." Tyrap the C/B's out, using Ty23M or equivalent tyraps. Affix placards (Gulfstream decal #1159F40000-911 or equivalent) to the control heads and the C/B's, labeling them "INOP."

B. Within 10 hours of airplane operation after the effective date of this AD, modify the wiring to the #1 and #2 electronic display controllers, in accordance with Gulfstream Aircraft Service Change No. 110, dated January 24, 1989.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Atlanta Aircraft Certification Office, FAA, Central Region.

Note: If appropriate, the request should be forwarded through an FAA Principal Maintenance Inspector (PMI) who may add any comments and then send it to the Manager, Atlanta Aircraft Certification Office.

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

All persons affected by this directive who have not received copies of the service information from the manufacturer, may obtain copies upon request to Gulfstream Aerospace

Corporation, Technical Operations Department, Travis Field, P.O. Box 2206, Savannah, Georgia 31402–2206. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the FAA, Central Region, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia.

This amendment becomes effective April 3, 1989.

This AD was effective earlier to all recipients of Priority Letter AD 89–02–12, dated January 24, 1989.

Issued in Seattle, Washington, on March 6, 1989.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–6273 Filed 3–16–89; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 89–NM–18–AD; Amdt. 39–6156]

Airworthiness Directives: Gulfstream Model G–IV Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the Federal Register and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of Gulfstream Model G–IV airplanes by individual letters. This AD prohibits operations at airfields with pressure altitudes less than sea level, and requires that certain stall warning computers be modified by removing and replacing those computers with a new model. This action is prompted by a manufacturing defect identified in the Sundstrand Stall Warning Computers which can cause inadvertent pusher activation during takeoff rotation. This condition, if not corrected, could result in hazardous aborted takeoffs or a reduction in the takeoff and landing performance of the airplane.

DATE: Effective April 3, 1989.

This AD was effective earlier to all recipients of Priority Letter AD 89–04–10, dated February 16, 1989.

ADDRESSES: The applicable service information may be obtained from Gulfstream Aerospace Corporation, Technical Operations Department, Travis Field, P. O. Box 2206, Savannah, Georgia 31404–2206. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the FAA, Central Region, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Mr. James Williams, Aerospace Engineer, Atlanta Aircraft Certification Office, ACE–130A, FAA, Central Region, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349; telephone (404) 991–3020.

SUPPLEMENTARY INFORMATION: On February 16, 1989, the FAA issued Priority Letter AD 89–04–10, applicable to Gulfstream Model G–IV airplanes, which prohibits operations at airfields with pressure altitudes less than sea level, and requires that certain stall warning computers be modified by removing and replacing those computers with a new model. That action was prompted by a manufacturing defect identified in the Sundstrand Stall Warning Computers which can cause inadvertent pusher activation during takeoff rotation. This defect was discovered by Gulfstream Aerospace Corporation during testing in Savannah, Georgia. The inadvertent pusher activation can occur if the pressure altitude is below sea level when the airplane is rotated during takeoff and landing operations. This condition, if not corrected, could result in hazardous aborted takeoffs or a reduction in the takeoff and landing performance of the airplane.

Since this condition is likely to exist or develop on other airplanes of this same type design, this AD requires a revision to the FAA-approved Airplane Flight Manual (AFM) to prohibit operations at airfields with pressure altitudes less than sea level. This AD also requires that all stall warning computers, part number (P/N) 965–0041–034, be modified by removing and replacing these computers with new model computer, P/N 965–0041–036. Once the replacement has been made, the operational restrictions may be removed and the airplane may be returned to service.

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

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

The Federal Aviation Administration has determined that this regulation is an emergency regulation and that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Gulfstream: Applicable to Model G–IV airplanes, Serial Numbers 1060 through 1088; and all G–IV airplanes, Serial Numbers 1000 through 1059, which have been modified by Gulfstream Product Enhancement Program #16 (PEP–16); certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent inadvertent pusher activation during rotation on takeoff, accomplish the following:

A. Within 24 hours after the effective date of this Airworthiness Directive (AD), and until modifications required by paragraph B., below, are accomplished, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following limitation. This may be accomplished by inserting a copy of this AD in the AFM: "Operations at Airfields With a Pressure Altitude Below Sea Level Are Prohibited."

B. Within 14 days after the effective date of this AD, replace Sundstrand Stall Warning Computer, part number (P/N) 965–0041–034 (any Mod Number), with Sundstrand Stall Warning Computer, P/N 965–0041–036, in accordance with Gulfstream Customer Alert Bulletin Number 4, dated February 1, 1989.

C. An alternate means of compliance or adjustment of compliance times, which provides an acceptable level of safety, may be used when approved by the Manager, Atlanta Aircraft Certification Office, FAA, Central Region.

Note.—If appropriate, the request should be forwarded through a Principal Avionics Inspector (PAI), who may add comments and then send it to the Manager, Atlanta Aircraft Certification Office.

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

All persons affected by this directive who have not received copies of the service information from the manufacturer, may obtain copies upon request to Gulfstream Aerospace Corporation, Technical Operations Department, Travis Field, P. O. Box 2206, Savannah, Georgia 31404–2206. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the FAA, Central Region, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia.

This amendment becomes effective April 3, 1989.

This AD was effective earlier to all recipients of Priority Letter AD 89–04–10, dated February 16, 1989.

Issued in Seattle, Washington, on March 6, 1989.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–6272 Filed 3–16–89; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 89–NM–15–AD; Amdt. 39–6152]

Airworthiness Directives: McDonnell Douglas Model DC–9–10 Through –30 Series and C–9 (Military) Airplanes, Equipped With a Non-Ventral Aft Pressure Bulkhead

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive, applicable to certain McDonnell Douglas Model DC–9–10 through –30 series and C–9 (Military) series airplanes equipped with a non-ventral aft pressure bulkhead, which requires both visual and high frequency eddy current inspection of the aft pressure bulkhead from the aft side. This amendment is prompted by a recent report of a crack in the aft pressure bulkhead tee cap. If this condition is not corrected, bulkhead tee cap cracks may develop, which could result in rapid depressurization of the fuselage in flight and cause severe structural damage to the airplane.

DATE: Effective March 24, 1989.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1–L00 (54–60). This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Michael N. Asahara, DC9/MD80 Program Manager, Airframe Branch, ANM–122L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (213) 988–5321.

SUPPLEMENTARY INFORMATION: On May 31, 1988, the FAA issued AD 88–13–09, Amendment 39–5954 (53 FR 21411; June 8, 1988), to require the structural inspection of the aft pressure bulkhead using low frequency eddy current inspection techniques from the forward side of the bulkhead of all McDonnell Douglas Model DC–9 series airplanes. That AD was prompted by reports of cracks in the aft pressure bulkhead tee cap. This condition, if not corrected, could result in rapid depressurization of the fuselage, causing structural damage and possible loss of adjacent structures, including damage to control cables, with subsequent loss of airplane control.

Since issuance of AD 88–13–09, a DC–9 operator reported finding a 24-inch crack in the non-ventral aft pressure bulkhead tee while performing an unscheduled heavy maintenance inspection. Preliminary analysis of the tee revealed that the cracks initiated at multiple sites on the forward surface of the upstanding leg of the tee as the result of metal fatigue due to bending and preloads. The crack was detected on an airplane having logged 36,079 landings, with 40,336 total hours on the fuselage. Fractrographic analysis revealed that the crack initiated approximately 12,000 landings prior to its discovery. In light of this new report of cracking, the FAA has determined that the initial inspection threshold for compliance with the inspection requirements of AD 88–13–09 must be reduced to 25,000 landings on airplanes equipped with non-ventral aft pressure bulkheads in order to adequately detect cracking in a timely manner.

The FAA canvassed the affected airline operators, through the Air Transport Association (ATA) of America, and McDonnell Douglas, to ascertain their experience with the low frequency eddy current inspection from the forward side of the bulkhead, as an option provided in AD 88–13–09. From information supplied by those groups, the FAA has determined that, due to the complexity and difficulty in performing that type of inspection, the results may not be reliable and, therefore, the inspection may not be effective. The FAA has determined that a high frequency eddy current inspection of the 5910163–91 and –92 attach tee from the aft side of the bulkhead, coupled with an optically aided visual inspection, will more adequately detect cracking in the attach tee area. In addition, the FAA has determined that sealant must be removed from the inspection area prior to inspection. Further, because of the differences in the eddy current inspection equipment sensitivity, the FAA has determined that the interval between inspections of the 5910163–91 and –92 attach tees must be reduced to 500 landings.

The FAA has determined that, due to the multiple-site nature of the reported cracking, continued operation of airplanes with cracks is unacceptable. Accordingly, this action does not permit the interim repair for certain cracks as currently described in paragraph C.2.a. of AD 88–13–09.

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin A57–231, dated February 24, 1989, which describes high frequency eddy current inspection of the attach tee area, and repairs or replacement, if necessary.

Since this unsafe condition may exist or develop on other airplanes of the same type design equipped with a non-ventral aft pressure bulkhead, this AD requires repetitive high frequency eddy current inspection of the 5910163–91 and –92 attach tee, coupled with repetitive optically aided visual inspections of the attach tee from the aft side of the bulkhead, and repair or replacement, if necessary. Subsequent inspections are also required after any repair or replacement. Additionally, affected operators are required to remove sealant from the inspection area prior to inspection.

The requirements of this AD differ from and replace the requirements of

AD 88-13-09 for airplanes equipped with non-ventral aft pressure bulkheads by: (1) Deleting the option for low frequency eddy current inspections from the forward side of the bulkhead; (2) lowering the initial inspection threshold called out in AD 88-13-09 to 25,000 landings; (3) eliminating the interim repair provided by that AD; and (4) eliminating the optional inspections from the forward side of the bulkhead.

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

The FAA is currently preparing a similar action to address revised inspection requirements for Model DC-9 series airplanes equipped with a ventral aft pressure bulkhead. However, the proposed compliance time would not preclude a period for public comment. (Therefore, that action will appear as a Notice of Proposed Rulemaking.)

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

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends Section 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

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

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

§ 39.13 Amended]

2. By adding the following new airworthiness directive:

McDonnell Douglas: Applies to Model DC-9-10 through -30 series and C-9 (Military) series airplanes, equipped with a non-ventral aft pressure bulkhead, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent cracks which could result in structural failure of the nonventral aft ventral pressure bulkhead, accomplish the following:

A. Prior to the accumulation of 25,000 landings or within 500 landings after the effective date of this AD, whichever occurs later, inspect the aft pressure bulkhead attach tee section, in accordance with the following procedures.

1. Remove any sealant from inspection area of the tee section that might hinder optically aided and high frequency eddy current inspections. Clean dirt, grease, and all foreign materials from inspection area using lint-free wipers and 1,1,1 trichloroethane solvent or equivalent;

2. Using an optically aided visual inspection technique, inspect the 5910163-89, -93, -94, and -95 attach tees from the aft side of the bulkhead, in accordance with McDonnell Douglas Alert Service Bulletin A53-231, dated February 24, 1989 (hereinafter referred to as ASB53-231). Repeat this inspection thereafter at intervals not to exceed 1,500 landings; and

3. Using a high frequency eddy current inspection technique, in accordance with ASB53-231, inspect the 5910163-91 and -92 attach tees from the aft side of the bulkhead. Repeat this inspection thereafter at intervals not to exceed 500 landings.

B. If cracks are found, prior to further flight, replace the cracked tee cap or repair by splicing in a section of tee cap with a new like or improved part, in accordance with McDonnell Douglas Service Rework Drawings SR09530001, Revision C, dated August 18, 1987, and SR09530001, Revision "Advance D", dated October 29, 1987. Prior to the accumulation of 25,000 landings after the repair or replacement, resume the repetitive inspections in accordance with paragraph A., above.

C. Compliance with the requirements of this AD constitutes terminating action for the requirements of AD 88-13-09, Amendment 39-5954, relating to airplanes equipped with non-ventral aft pressure bulkheads.

Note.—The requirements of AD 88-13-09 relating to airplanes with ventral aft pressure bulkheads are not affected by this AD.

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

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments then send it to the Manager, Los Angeles Aircraft Certification Office.

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1-L00 (54-60). These documents may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 3229 East Spring Street, Long Beach, California.

This amendment becomes effective March 24, 1989.

Issued in Seattle, Washington, on February 24, 1989.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-6373 Filed 3-16-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-NM-139-AD; Amdt. 39-6158]

Airworthiness Directives: McDonnell Douglas Model DC-8 Series Airplanes Equipped With Rudder Drive Torque Tube Crank Assembly P/N 5647102-1 or -501

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive, applicable to McDonnell Douglas Model DC-8 series airplanes equipped with rudder drive torque tube crank assembly, P/N 5647102-1 or -501, which requires inspection of the rudder drive torque tube crank assembly for fatigue cracking, and replacement, as necessary. This amendment is prompted by two reported failures of the crank assembly. In one case, the pilot aborted takeoff at about V_1 speed due to a broken rudder crank assembly, which resulted in the loss of directional control. This condition, if not corrected, could result in the loss of directional

flight control of the airplane during a critical flight regime.

DATES: Effective April 26, 1989.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846; Attention: Director of Publications, C1–LOO (54–60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. David Y. J. Hsu, Aerospace Engineer, Airframe Branch, ANM–122L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (213) 988–5323.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to McDonnell Douglas Model DC–8 series airplanes equipped with rudder drive torque tube crank assembly, P/N 5647102–1 or 501, which requires inspection of the rudder drive torque tube crank assembly for fatigue cracking, and replacement as necessary, was published in the **Federal Register** on November 17, 1988 (53 FR 46473).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commentor requested that a forthcoming revision to the referenced McDonnell Douglas service bulletin be referred to in the final rule. The FAA does not concur. The manufacturer has not yet submitted a revision to the service information and, as the FAA has not had the opportunity to review any proposed changes to the service information, it is inappropriate to refer to that information in the final rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 350 Model DC–8 series airplanes in the worldwide fleet. It is estimated that 256 airplanes of U.S. registry will be affected by this AD, that it will take approximately 0.6 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $6,144 for the initial inspection cycle.

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

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities, because of the minimal cost of compliance per airplane ($24). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends section 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas Model DC–8 series airplanes, equipped with rudder drive torque tube crank assembly, P/N 5647102–1 or –501, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent the loss of directional control of the airplane in critical flight regimes due to fatigue failure of the rudder drive torque tube crank assembly, accomplish the following:

A. Within the next 1,000 hours time-in-service after the effective date of this AD, unless already accomplished within the last 2,600 hours time-in-service, conduct an eddy current inspection of the rudder drive torque tube crank assembly, in accordance with the accomplishment instructions in McDonnell Douglas DC–8 Service Bulletin 27–268, dated February 9, 1988, or equivalent inspection technique approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

B. If no cracks are found, repeat the inspection in accordance with paragraph A. of this AD at intervals not to exceed 3,600 hours time-in-service.

C. If cracks are found, accomplish one of the following:

1. Replace the cracked rudder drive crank assembly (P/N 5647102–1 or –501) with P/N 5647102–501, in accordance with McDonnell Douglas DC–8 Service Bulletin 27–268, dated February 9, 1988, and repeat inspections in accordance with paragraph B. of this AD; or

2. Replace the rudder drive crank assembly with P/N 5647102–503 in accordance with McDonnell Douglas DC–8 Service Bulletin 27–268, dated February 9, 1988.

D. Replacement of the rudder drive crank assembly with P/N 5647102–503, in accordance with McDonnell Douglas DC–8 Service Bulletin 27–268, dated February 9, 1988, constitutes terminating action for the repetitive inspections required by this AD.

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

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1–LOO (54–60). These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 3229 East Spring Street, Long Beach, California.

This amendment becomes effective April 26, 1989.

Issued in Seattle, Washington, on March 8, 1989.

Darrell M. Pederson,

Assistant Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–6271 Filed 3–16–89; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 88-NM-126-AD; Amdt. 39-6150]

Airworthiness Directives: McDonnell Douglas Model DC-9 Series, Model DC-9-80 Series, Model MD-88, and C-9 (Military) Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all McDonnell Douglas Model DC-9 series, Model DC-9-80 series, Model MD-88, and C-9 (Military) series airplanes, which requires inspection of the rudder actuator for internal hydraulic fluid leakage, and replacement if necessary, to ensure that degraded actuators are removed from service. This amendment is prompted by reports of degraded actuators. This condition, if not corrected, could lead to reduced rudder authority and uncontrollable airplane sideslip, should an engine failure occur at takeoff.

DATE: Effective April 12, 1989.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1-L00 (54-60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Stacho, Aerospace Engineer, Systems and Equipment Branch, ANM-130L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806; telephone (213) 988-5338.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include a new airworthiness directive (AD), applicable to McDonnell Douglas Model DC-9 series, DC-9-80 series, MD-88, and C-9 (Military) series airplanes, which requires inspection of the rudder actuator for internal hydraulic fluid leakage, and replacement, if necessary, to ensure that degraded actuators are removed from service, was published in the Federal Register on October 20, 1988 (53 FR 41192).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter requested that the initial inspection of paragraph B of the proposed AD be changed from 1,000 flight hours to 1,500 flight hours. This commenter operates a large fleet of recently-delivered Model DC-9-80 airplanes, and suggested that the 1,000-hour compliance time unduly penalizes its operation of low-time airplanes. The FAA concurs. In developing an appropriate compliance time for this AD action, the FAA considered not only the degree of urgency associated with addressing the subject unsafe condition, but the practical aspect of incorporating the required inspections into affected operator's maintenance schedules in a timely manner. The FAA has reviewed data submitted by the aircraft manufacturer as to recommended inspections times and parts availability, as well as average aircraft utilization rates of affected operators, and has determined that extending the initial inspection from 1,000 to 1,500 flight hours will provide an acceptable level of safety. The final rule has been revised accordingly.

One commenter requested the repetitive inspection intervals of paragraph C of the proposed AD, applicable to Model DC-9-80 series airplanes, be extended from 2,500 to 3,000 flight hours so the inspections can be accomplished during the "C" maintenance check. The FAA concurs with this request. In developing the proposed repetitive inspection interval, the FAA had intended that it fall during a time of regular scheduled maintenance for the majority of affected operators. After reviewing the average utilization rates for U.S. operators, the FAA has determined that revising the repetitive inspection intervals to 3,000 flight hours, for all airplanes specified in paragraph B of the final rule, will provide an acceptable level of safety. The final rule has been revised accordingly.

The FAA has determined that the changes described above will neither impose an additional economic burden on any operator, nor expand the scope of the AD.

One commenter requested that terminating action for the repetitive inspections be included in the AD if the aircraft manufacturer has developed such corrective action. To date, the aircraft manufacturer has not proposed design changes that would preclude the need for these inspections. When such design changes are available, the FAA may consider further rulemaking to provide for terminating action for the inspection requirements of this AD.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described.

There are approximately 1,500 Model DC-9 series airplanes in the worldwide fleet. It is estimated that 870 airplanes of U.S. registry will be affected by this AD, that it will take approximately 10 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. (Replacement of the rudder actuator, if necessary, would require 13 manhours to accomplish). Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $348,000.

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

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities, because few, if any, Model DC-9 series airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends Section 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas Model DC–9 series, Model DC–9–80 series, Model MD–88, and C–9 (Military) series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent uncontrollable airplane sideslip due to an ineffective rudder actuator, accomplish the following:

A. For Model DC–9–11, –12, –13, –14, –15, –15F, –21, and –87 series airplanes: Within 500 flight hours after the effective date of this airworthiness directive (AD), unless already accomplished within the last 1,000 flight hours, inspect the rudder actuator for internal hydraulic fluid leakage in accordance with McDonnell Douglas Alert Service Bulletin A27–291, Revision 3, dated August 24, 1988.

B. For Model DC–9–31, –32, –32F, –33, –34, –34F, –41, –51, –81, –82, –83, and MD–88 series airplanes: Within 1,500 flight hours after the effective date of this AD, unless already accomplished within the last 1,500 flight hours, inspect the rudder actuator for internal hydraulic fluid leakage, in accordance with McDonnell Douglas Alert Service Bulletin, A27–291, Revision 3, dated August 24, 1988.

C. If the rudder actuator internal hydraulic fluid leakage is within the limits established in McDonnell Douglas Alert Service Bulletin A27–291, Revision 3, dated August 24, 1988, repeat the inspection specified in paragraph A. or B., above, as follows:

1. For those airplanes specified in paragraph A., at intervals not to exceed 1,500 flight hours.

2. For those airplanes specified in paragraph B., at intervals not to exceed 3,000 flight hours.

D. Any rudder actuator which exceeds the internal hydraulic fluid leakage limit specified in McDonnell Douglas Alert Service Bulletin A27–291, Revision 3, dated August 24, 1988, must be replaced, prior to further flight, with a rudder actuator within those limits.

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

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

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

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, CI–LOO (54–60). These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

This Amendment becomes effective April 12, 1989.

Issued in Seattle, Washington, on February 21, 1989.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–6375 Filed 3–16–89; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 89–NM–12–AD; Amdt. 39–6157]

Airworthiness Directives Fokker Model F–28 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Fokker Model F–28 series airplanes, which requires a one-time visual inspection of the fuselage lap joint at stringer 73 between frame 4900 and frame 9805 for cracks, and repair, if necessary. This amendment is prompted by reports of cracks found in a non-bonded fuselage lap joint due to fatigue cracking of the dimpled rivet holes. This condition, if not corrected, could lead to reduced structural capability of the fuselage and subsequent decompression of the airplane.

EFFECTIVE DATE: April 10, 1989.

ADDRESSES: The applicable service information may be obtained from Fokker Aircraft USA, Inc., 1199 N. Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Standardization Branch, ANM–113; telephone (206) 431–1978. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: The Rijksluchtvaartdienst (RLD), which is the airworthiness authority of the Netherlands, has notified the FAA of an unsafe condition which may exist on certain Fokker F–28 series airplanes. There have been two reports of cracks found during visual inspections of the fuselage lap joint at stringer 73, between frame 4900 and frame 9805. The cracks have been determined to be due to fatigue cracking of the dimpled rivet holes. This condition, if not corrected, could lead to reduced structural capability of the fuselage and subsequent decompression of the airplane.

Fokker has issued Service Bulletin F28/53–A93, dated December 23, 1988, which describes procedures for a one-time visual inspection for cracks in the fuselage lap joint at stringer 73, between frame 4900 and frame 9805, and the installation of a repair patch, if necessary. The RLD has classified the service bulletin as mandatory, and has issued the Netherlands Airworthiness Directive BLA No. 89–02 to address this subject.

This airplane model is manufactured in the Netherlands and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD requires a one-time visual inspection for cracks in the fuselage lap joint at stringer 73, and the installation of a repair patch, if necessary, in accordance with the service bulletin previously described.

The manufacturer is currently developing a repetitive inspection technique for the repair patch and the fuselage lap joint. Additionally, the manufacturer is currently in the process of developing a permanent modification to replace the interim repair patch. This modification expected to be available later this year. When the repetitive inspection techniques and the modification are developed and available, the FAA may consider further rulemaking action to address these subjects.

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

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

The FAA has determined that this regulation is an emergency regulation and that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule, since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

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

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

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Fokker: Applies to Model F-28 series airplanes, Serial Number 11003 to 11241, inclusive, and 11991 and 11992, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent reduced structural capability of the fuselage and subsequent decompression of the airplane, accomplish the following:

A. Prior to the accumulation of 32,000 landings or within 10 days after the effective date of this AD, whichever occurs later, inspect the fuselage lap joint at stringer 73, between frame 4900 and frame 9805, in accordance with Fokker Service Bulletin F28/53-A93, dated December 23, 1988. If cracks are found, repair in accordance with the service bulletin, prior to further flight.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Standardization Branch, ANM-113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Fokker Aircraft USA, Inc., 1199 N. Fairfax Street, Alexandria, Virginia 22314. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective April 10, 1989.

Issued in Seattle, Washington, on March 8, 1989.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-6265 Filed 3-16-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-NM-78-AD; Amdt. 39-6164]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to all Boeing Model 747 series airplanes except the Model 747SP, which currently requires periodic inspection of both inboard and outboard trailing edge flap carriage spindles for fracture, corrosion, or cracks, and repair or replacement, if necessary. This action requires additional inspections, revised compliance intervals, and periodic overhaul of the spindles to ensure continued airworthiness. This condition, if not corrected, could lead to the failure of the trailing edge flap carriage spindles, which could result in the inability of the pilot to safely control the airplane during landing.

EFFECTIVE DATE: April 26, 1989.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Dan R. Bui, Airframe Branch, ANM-120S; telephone (206) 431-1919. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to revise AD 88-04-06, Amendment 39-5851 (53 FR 4114; February 12, 1988), to require periodic inspection of both inboard and outboard trailing edge flap carriage spindles of Boeing Model 747 series airplanes for fractures or cracks, and repair or replacement, if necessary, was published in the Federal Register on July 15, 1988 (53 FR 27529). The comment period for the proposal closed on September 13, 1988.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the three comments received.

The Air Transport Association (ATA) of America, on behalf of its members, was concerned that the specific reference to "inspect" in paragraph A. would require an inspection even by an operator who chose Option III: Overhaul, of the spindles. The FAA concurs and has revised paragraph A. to clarify this matter.

The ATA pointed out that the referenced Boeing Service Bulletin 747-27-2280, Revision 1, dated March 31, 1988, does not provide instructions for inspection for corrosion, only inspection for cracks. The ATA stated this would appear to be inconsistent with the intent of the proposed rule and should be resolved before any rule is adopted. The ATA also pointed out that if heavy corrosion is found, the proposed rule requires overhaul of the unit prior to further flight, while the service bulletin recommends overhaul within a 12-month period. The FAA acknowledges both of these differences. The FAA has determined that the inspection for corrosion is necessary because the reported cracks typically started as corrosion pits. The FAA does not concur with the service bulletin's recommendation to overhaul within a 12-month period after heavy corrosion is found because the potential for subsequent cracking of the flap spindle may lead to its failure prior to the overhaul period recommended by the service bulletin.

A number of ATA's members requested that the compliance period for the initial and repeat (detail) inspection be extended to coincide with their scheduled "C" check. For such members this would be a period of 15 to 18 months. The FAA does not agree that the initial and repeat inspection interval

should be extended. The FAA has determined that the inspection intervals specified in the rule are the maximum that can be permitted for the purpose of detecting cracks and corrosion pits before they could result in failure of the spindle.

Another commenter requested the FAA to consider the situation where overhaul performed in accordance with Boeing Service Bulletin 747–27–2280, Revision 1, dated March 31, 1988, but for which sleeves have not been removed would be acceptable compliance with this AD. The FAA does not concur because corrosion and stress corrosion cracking, which are the subject of the AD, can develop under the sleeve. Until this distress is eliminated, airplanes must be inspected periodically to preclude failure of the spindle.

The National Transportation Safety Board (NTSB) was concerned that stress corrosion cracking beneath the journal sleeve does not always occur in conjunction with externally observable signs of corrosion. The NTSB recommended that the general and detailed visual inspections as outlined in the NPRM and in the Boeing service bulletin are inadequate and should not be allowed to delay periodic overhaul of the carriage spindles. While the proposed visual inspections provide a safety benefit, the FAA agrees that the overhaul period proposed may be too long in certain cases; however, due to the requirements of the Administrative Procedure Act, the FAA has determined that the necessary changes to decrease this period would be beyond the scope of this AD action. The FAA is considering the issuance of a new NPRM to revise this AD to propose such a requirement.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule, with the change previously noted.

There are approximately 690 Model 747 series airplanes of the affected design in the worldwide fleet. It is estimated that 160 airplanes of U.S. registry will be affected by this AD, that it will take approximately 684 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $4,377,600.

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

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities, because few, if any, Model 747 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. By revising AD 88–04–06, Amendment 39–5851 (53 FR 4114; February 12, 1988), to read as follows:

Boeing: Applies to all Model 747 series airplanes, except Model 747SP, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent failure of the trailing edge flaps carriage spindles, accomplish the following:

A. Prior to the accumulation by each new or overhauled flap carriage spindle of 30,000 flight hours, or eight years in service, whichever occurs first, or within 30 days after the effective date of this amendment, whichever occurs later, inspect the forward and aft journal areas of each trailing edge flap carriage spindle and/or overhaul, if necessary, at times and using methods specified in paragraphs A.1., A.2., or A.3., below.

1. Option I: General Visual Inspection

Perform a visual inspection of carriage spindle for cracking and corrosion, in accordance with Boeing Service Bulletin 747–27–2280, Revision 1, dated March 31, 1988. Inspection in accordance with paragraph A.2., below, is required within 12 months after the initial inspection.

a. If no cracks or corrosion are found, repeat the visual inspection at intervals not to exceed 3 months.

b. If a cracked carriage spindle is found, replace the carriage spindle prior to further flight, in accordance with Boeing Service Bulletin 747–27–2280, Revision 1, dated March 31, 1988.

c. If corrosion is found, inspect in accordance with paragraph A.2., below, within 3 months after detection of corrosion.

2. Option II: Detailed Visual Inspections

a. Remove the aft link and perform detailed visual inspection of the carriage spindle for cracking and corrosion, in accordance with Boeing Service Bulletin 747–27–2280, Revision 1, dated March 31, 1988. If a cracked carriage spindle is found, replace the carriage spindle prior to further flight, in accordance with the service bulletin.

b. If no cracking or corrosion is found, repeat the inspections required by paragraph A.2.a., above, at intervals not to exceed 12 months. Remove the carriage spindle and overhaul within 8 years after the initial inspection required by this AD, in accordance with Boeing Service Bulletin 747–27–2280, Revision 1, dated March 31, 1988.

c. If no cracking is found, but light corrosion exists, repeat the inspections required by paragraph A.2.a., above, at intervals not to exceed 6 months. Remove the carriage spindle and overhaul within 48 months after detection of light corrosion, in accordance with Boeing Service Bulletin 747–27–2280, Revision 1, dated March 31, 1988.

Note.—Light corrosion is considered to be corrosion with pits not exceeding 0.020 inch in depth.

d. If heavy corrosion is found, remove the carriage spindle and overhaul in accordance with Boeing Service Bulletin 747–27–2280, Revision 1, dated March 31, 1988; or repair, prior to further flight, in accordance with data meeting the certification basis of the airplane and approved by a Boeing DER authorized to make such findings.

Note.—Heavy corrosion is considered to be corrosion with pits that exceed 0.020 inch in depth.

3. Option III: Overhaul

Remove carriage spindle and overhaul in accordance with Boeing Service Bulletin 747–27–2280, Revision 1, dated March 31, 1988.

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

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon

request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective April 26, 1989.

Issued in Seattle, Washington, on March 8, 1989.

Darrell M. Pederson,

Assistant Manager, Transport Airplane Directorate Aircraft Certification Service.

[FR Doc. 89-6266 Filed 3-16-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-NM-143-AD; Amdt. 39-6159]

Airworthiness Directives Short Brothers SD3-30 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Shorts Model SD3-30 series airplanes, which requires replacement of the nose landing gear pintle pins. This amendment is prompted by reports of fatigue testing of the nose landing gear pintle pins which revealed that these pintle pins have a limited service life and must be replaced upon accumulation of 30,000 landings. This condition, if not corrected, could lead to collapse of the nose landing gear.

EFFECTIVE DATE: April 26, 1989.

ADDRESSES: The applicable service information may be obtained from Short Brothers PLC, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202-3702. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 431-1565. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to Shorts Model SD3-30 series airplanes, which requires replacement of the nose landing gear (NLG) pintle pins with new pins, was published in the **Federal Register** on October 20, 1988 (53 FR 41196).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter agreed with the proposed 30,000 landing repetitive replacement interval for certain pintle pins, part numbers (P/N) 18109-3 and 18110-3, since those pins are life-limited to 30,000 landings. However, the commenter indicated that the life limit for pintle pins, P/N 18109-5 and 18110-5, is 40,000 landings, which coincides with the life limit for the NLG assembly (of which they are a part). Therefore the -5 pintle pins would not need to be replaced at 30,000 landings, since they will be replaced appropriately every 40,000 landings when the NLG is replaced. The FAA concurs. The manufacturer has advised FAA that the -5 pintle pins are made of a stronger material than the -3 pins and have a life-limit equivalent to that of the landing gear (40,000 landings). The final rule has been revised to clarify this.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed with changes described above.

It is estimated that 52 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. The estimated cost for parts is $780. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $44,720.

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

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities because of the minimal cost of compliance per airplane ($860). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Short Brothers, PLC. Applies to Model SD3-30 series airplanes, equipped with Menasco nose landing gear, Part No. 18001, having nose landing gear Serial Numbers 017 through 097 with pintle pins P/N 18109-3 or 18110-3 installed, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent collapse of the nose landing gear, accomplish the following:

A. Prior to the accumulation of 30,000 landings on the nose landing gear pintle pins, or within the next 250 landings after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 30,000 landings, replace nose landing gear pintle pins, part number (P/N) 18109-3 and 18110-3 pintle pins, in accordance with Short Service Bulletin SD330-32-119, dated February 1988.

Note: Shorts Service Bulletin SD330-32-119 references Menasco Service Bulletin 32-69, dated August 11, 1981, for instructions for accomplishing the pintle pin replacement.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Standardization Branch, ANM-113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon

request to Short Brothers PLC, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202–3702. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective April 26, 1989.

Issued in Seattle, Washington, on March 8, 1989.

Darrell M. Pederson,

Assistant Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–6267 Filed 3–16–89; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 88–NM–110–AD; Amdt. 39–6163]

Airworthiness Directives Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Boeing Model 727 series airplanes, which requires replacement or repetitive leakage checks of aileron power control units (PCU) which have accumulated 18,000 or more hours time in service. This amendment is prompted by reports of aileron power control units binding due to piston seal and flange failure. This condition, if not corrected, could lead to immobilization of the ailerons and partial loss of controllability of the airplane.

DATE: Effective April 26, 1989.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Robert C. McCracken, Systems and Equipment Branch, ANM–130S; telephone (206) 431–1947. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires replacement or repetitive internal leakage checks of aileron power control units on Boeing Model 727 airplanes, was published in the **Federal Register** on September 2, 1988 (53 FR 34117).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Boeing and the Air Transport Association (ATA) of America both requested that the interval for the periodic inspection be expressed in flight cycles rather than hours time-in-service. Boeing noted that the testing which established the interval made flight cycles more appropriate. The FAA has reviewed the service data and concurs. The final rule has been changed to require inspection at intervals not to exceed 2,500 flight cycles, rather than 2,500 flight hours. Since the average flight cycle for the Model 727 is greater than one hour for all operators, the FAA has determined that this change will not increase the burden on any operator, nor will it increase the scope of the AD.

The ATA also requested increasing the repetitive inspection period to 4,000 flight hours. No data was presented in support of this comment. The FAA does not concur, and the final rule reflects the compliance interval of 2,500 flight cycles, as previously noted.

The ATA also provided comments from one of its members requesting that the internal leakage test procedure should allow bench or on-airplane accomplishment. The FAA does not concur with this comment. While it is recognized that some airlines have the facilities and procedures to accomplish back flushing actuators on the airplane without introducing contamination into the system, this is not the case for all operators. Individual operators may request utilization of on-airplane internal leakage procedures as an alternate means of compliance in accordance with the provisions of paragraph C. of the final rule.

This commenter also noted that the terminating action described in paragraph B. of the rule calls for "overhaul" of the actuator in accordance with National Waterlift (NWL) Service Bulletin 27-21-1/200, but should instead call for modification of the sleeves and inspection of actuator housing in accordance with that service bulletin. The commenter notes that only these actions are necessary to correct the defects in the actuator, and should be sufficient to provide terminating action. The FAA concurs with this comment, and the final rule has been changed accordingly.

After the comment period for the NPRM closed, the FAA reviewed and approved National Waterlift Service Bulletin 27-10-1/200, Revision 1, dated November 4, 1988, which was originally issued with the incorrect number as NWL Service Bulletin 21-21-1/200, dated April 8, 1988. This revision corrects the original service bulletin's number and adds a revised means of repair of damaged PCU housing. Paragraph B. of the final rule has been changed to allow repair of the PCU in accordance with the revised service bulletin as an option to repair in accordance with the service bulletin originally specified.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule, with the changes previously noted.

There are approximately 1,767 Model 727 series airplanes of the affected design in the worldwide fleet. It is estimated that 1,246 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 manhours per airplane to replace the PCU, and that the average labor cost will be $40 per manhour. If a hydraulic bench internal leakage test is performed, an additional 3 manhours per airplane will be required. Based on these figures, if replacement only is accomplished, the estimate cost will be $149,500 per year; if the leakage test only is accomplished, that estimate increases to $250,000 per year. The cost to rebuild the PCU after removal is estimated to be $6,545. Based on these figures, the total cost impact of the AD on U.S. operators will be between $300,000 and $8,300,000, depending on the option selected by the operators.

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

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small

entities, because few, if any, Model 727 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to all Model 727 series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent binding of the aileron control wheel caused by internal damage in the aileron power control unit (PCU), accomplish the following:

A. Prior to the accumulation of 18,000 hours time in service on the PCU since new or overhauled with new seals, or within the next 3,000 hours time in service on the PCU after the effective date of this AD, whichever occurs later, accomplish either of the following, in accordance with Boeing Alert Service Bulletin 727–27A0220, Revision 1, dated July 28, 1988:

1. Replace any aileron power control unit with a PCU which has been overhauled including new piston seals or one which has accumulated less than 18,000 hours time in service. Continue to replace any PCU prior to the accumulation of 18,000 hours time in service on the PCU.

Perform a hydraulic bench internal leakage test on the aileron power control unit. Before further flight, replace any PCU which fails the test. Repeat the hydraulic bench internal leakage test at intervals not to exceed 2,500 flight cycles.

B. Inspection of the aileron power control unit, and modification of the aileron power control unit including replacement of piston seals, in accordance with National Waterlift Service Bulletin 27–21–1/200, dated April 8, 1988, or National Waterlift Service Bulletin 27–10–1/200, Revision 1, dated November 4, 1988, constitutes terminating action for the repetitive replacement or internal leakage test required by paragraph A., above.

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

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for accomplishment of the rework required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective April 26, 1989.

Issued in Seattle, Washington, on March 8, 1989.

Darrell M. Pederson,

Assistant Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–6268 Filed 3–16–89; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 89–NM–14–AD; Amdt. 39–6162]

Airworthiness Directives: Cessna Model 650 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the **Federal Register** and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of Cessna Model 650 series airplanes by individual letters. This AD requires an operational check of the avionics bus relay feeder wiring to determine proper installation, and modification, if necessary. This action is prompted by a report of the erroneous installation of a jumper wire between the left-hand avionics bus relay feeder #1 and the right-hand avionics bus relay feeder #3. This condition, if not corrected, could result in total non-restorable loss of all power to all avionics buses following a failure on one bus.

EFFECTIVE DATE: April 5, 1989.

This AD was effective earlier to all recipients of Priority Letter AD 89–03–16, dated February 7, 1989.

ADDRESSES: The applicable service information may be obtained from Cessna Aircraft Company, P.O. Box 7706, Wichita, Kansas 67277. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the FAA, Central Region, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph Rissmiller, Jr., Aerospace Engineer, Systems and Equipment Branch, ACE–130W, FAA, Wichita Aircraft Certification Office, FAA, Central Region, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4419.

SUPPLEMENTARY INFORMATION: On February 7, 1989, the FAA issued Priority Letter AD 89–03–16, applicable to Cessna 650 series airplanes, which requires an operational check of the avionics bus relay feeder wiring to determine proper installation, and modification, if necessary. That action was prompted by reports of the erroneous installation of a jumper wire between the left-hand avionics bus relay feeder #1 (K188X2) and the right-hand avionics bus relay feeder #3 (K187X2), which can result in total non-restorable loss of all power to all avionics buses following a failure on one bus.

One report was received where all five tubes of an electronic flight instrument system went blank simultaneously, along with the loss of all other avionics, following shutdown of one engine and the subsequent opening of the 300-amp current limiter bus tie. As a result of either this condition, or opening of the three 75-amp bus feeder circuit breakers (left or right cockpit circuit breaker panels) or the three 80-amp bus feeder current limiters (aft junction box) associated with a single (left or right side) primary electrical feed, all primary flight instruments and avionics on both the pilot's and copilot's side of the cockpit could become inoperative. This condition, if not corrected, could result in the total non-restorable loss of all primary attitude, heading, airspeed, altitude, navigation, and communication capability on the airplane.

Since this condition is likely to exist on other airplanes of this same type design, this AD requires an operational check of the avionics bus relay feeder wiring to determine proper installation, and modification, if necessary. Additionally, operators are required to submit a report to the FAA of any

incorrectly installed wiring found during the required inspection.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and have been assigned OMB Control Number 2120–0056.

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

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

The Federal Aviation Administration has determined that this regulation is an emergency regulation and is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Cessna: Applicable to Model 650 series airplanes, serial numbers 650–0067 through 650–0165, certificated in any category. Compliance is required as indicated, unless already accomplished.

To prevent non-restorable loss of all avionics power, accomplish the following:

A. Within 25 hours time-in-service after the effective date of this Airworthiness Directive (AD), perform an operational check of the avionics bus relays, in accordance with the Accomplishment Instructions of Cessna Alert Service Letter SLA650–24–14, dated February 3, 1989. If the wiring of the avionics bus relays is not correctly installed, prior to further flight, modify that wiring in accordance with the referenced service letter.

B. Within 5 days after accomplishing the check required by paragraph A., above, submit a report, in writing, of any incorrectly installed avionics bus relay wiring identified, to: Manager, Wichita Aircraft Certification Office, FAA, Central Region, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Wichita Aircraft Certification Office, FAA, Central Region.

Note: If appropriate, the request should be forwarded through an FAA Principal Maintenance Inspector (PMI) who may add any comments and then send it to the Manager, Wichita Aircraft Certification Office.

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

All persons affected by this directive who have not received copies of the service information from the manufacturer, may obtain copies upon request to Cessna Aircraft Company, P.O. Box 7706, Wichita, Kansas 67277. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the FAA, Central Region, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

This amendment becomes effective April 5, 1989.

This AD was effective earlier to all recipients of Priority Letter AD 89–03–16, dated February 7, 1989.

Issued in Seattle, Washington, on March 8, 1989.

Darrell M. Pederson,

Assistant Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–6269 Filed 3–16–89; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 88–NM–166–AD; Amdt. 39–6160]

Airworthiness Directives; SAAB-Scania Model SF–340A Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain SAAB-Scania Model SF–340A series airplanes, which requires an inspection to determine if the jumper assembly fittings (bonding wires) have been attached to the midlevel and tank-full optical sensors, and to install the jumper assemblies if they are missing. This amendment is prompted by reports that, during production of certain airplanes, the optical sensors' jumper assemblies were not installed. This condition, if not corrected, could lead to electrical arcing in the fuel tank in the event of a lightning strike.

EFFECTIVE DATE: April 26, 1989.

ADDRESSES: The applicable service information may be obtained from SAAB-Scania Aircraft Division, Product Support, S–58188, Linkoping, Sweden. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Standardization Branch, ANM–113; telephone (206) 431–1978. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to SAAB-Scania Model SF–340A series airplanes, which requires an inspection to determine if the jumper assembly fittings (bonding wires) have been attached to the midlevel and tank-full optical sensors, and to install the jumper assemblies if they are missing, was published in the **Federal Register** on December 8, 1988 (53 FR 49559).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supported the proposal.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 41 airplanes of U.S. registry will be affected by this AD, that it will take approximately 8 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $13,120.

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

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities because of the minimal cost of compliance per airplane ($320). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

SAAB-Scania: Applies to Model SF-340A series airplanes, serial numbers 003 through 106, certificated in any category, except those airplanes equipped with mechanical float switches. Compliance is required as indicated below, unless previously accomplished.

To prevent the potential for arcing in the fuel tanks should a lightning strike occur, accomplish the following:

A. Within 30 days after the effective date of this AD, conduct an inspection to determine if the jumper assemblies are fitted to the midlevel and tank full optical sensors, in accordance with SAAB Service Bulletin SF340-28-006, dated March 23, 1988.

B. If optical sensor jumper assemblies have not been installed, prior to further flight, install jumper assemblies and check resistance, in accordance with SAAB Service Bulletin SF340-28-006, dated March 23, 1988.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Standardization Branch, ANM-113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to SAAB-Scania Aircraft Division, Product Support, S-58188, Linkoping, Sweden. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective April 26, 1986.

Issued in Seattle, Washington, on March 8, 1989.

Darrell M. Pederson,

Assistant Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-6270 Filed 3-16-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 88-AGL-27]

Alteration to Transition Area—Ashland, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this action is to alter the Ashland, WI, transition area to accommodate existing Standard Instrument Approach Procedures (SIAPs) to John F. Kennedy Memorial Airport, Ashland, WI. The intended effect of this action is to ensure segregation of the aircraft using approach procedures in instrument conditions from other aircraft operating under visual weather conditions in controlled airspace.

EFFECTIVE DATE: 0901 u.t.c., June 1, 1989.

FOR FURTHER INFORMATION CONTACT: Harold G. Hale, Air Traffic Division, Airspace Branch, AGL-520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7360.

SUPPLEMENTARY INFORMATION:

History

On Tuesday, January 17, 1989, the Federal Aviation Administration (FAA) proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the transition area airspace near Ashland, WI, (54 FR 1727). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the transition area airspace near Ashland, WI. The present transition area is being modified to accommodate existing SIAPs to John F. Kennedy Memorial Airport. The minimum descent altitude for the approach procedures may be established below the floor of the 700-foot controlled airspace. Aeronautical maps and charts will reflect the defined areas which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

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

promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—[AMENDED]

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

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Ashland, WI [Revised]

That airspace extending upward from 700 feet above the surface within a 5 mile radius of the John F. Kennedy Memorial Airport (Lat. 46°32'55" N., Long. 90°55'08" W.) within 3 miles each side of the 204° bearing from the airport extending from the 5 mile radius to 8.5 miles southwest of the airport, within 3 miles each side of the 206° bearing from the airport extending from the 5 mile radius to 8.5 miles southwest of the airport, within 3 miles each side of the 124° bearing from the airport extending from the 5 mile radius to 8.5 miles southeast of the airport.

Issued in Des Plaines, Illinois, on February 27, 1989.

Teddy W. Burcham,

Manager, Air Traffic Division.

[FR Doc. 89–6275 Filed 3–16–89; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 88–AGL–30]

Establishment of Transition Area—Hawley, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this action is to establish the Hawley, MN, transition area to accommodate a new VOR/DME–A Standard Instrument Approach Procedure (SIAP) to Hawley Municipal Airport, Hawley, MN. The intended effect of this action is to ensure segregation of the aircraft using approach procedures in instrument conditions from other aircraft operating under visual weather conditions in controlled airspace.

EFFECTIVE DATE: 0901 u.t.c., June 1, 1989.

FOR FURTHER INFORMATION CONTACT: Harold G. Hale, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7360.

SUPPLEMENTARY INFORMATION:

History

On Monday, January 23, 1989, the Federal Aviation Administration (FAA) proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish a transition area airspace near Hawley, MN (54 FR 3077). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations establishes a transition area airspace near Hawley, MN. The development of a new VOR/DME–A SIAP requires that the FAA designate airspace to insure that the procedure will be contained within controlled airspace. The minimum descent altitude for this procedure may be established below the floor of the 700-foot controlled airspace. Aeronautical maps and charts will reflect the defined areas which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—[AMENDED]

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

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Hawley, MN [New]

That airspace extending upward from 700 feet above the surface within a 5 mile radius of the Hawley Municipal Airport (lat. 46°53'02"N., long. 96°21'02"W.) within 3.5 miles each side of the 246° bearing from the airport extending from the 5 mile radius to 6 miles southwest of the airport, excluding that portion which overlies the Fargo, ND, transition area.

Issued in Des Plaines, Illinois on February 27, 1989.

Teddy W. Burcham,

Manager, Air Traffic Division.

[FR Doc. 89–6274 Filed 3–16–89; 8:45 am]

BILLING CODE 4910–13–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 30

Foreign Futures and Option Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Order.

SUMMARY: The Commodity Futures Trading Commission ("Commission" or "CFTC") is granting an exemption to designated members of the Montreal Exchange ("Exchange") from the application of certain of the Commission's foreign futures and option rules based on substituted compliance with certain comparable regulatory and self-regulatory requirements of a foreign regulatory authority consistent with conditions specified by the Commission, as set forth herein. This Order is issued pursuant to Commission Rule 30.10, 17 CFR 30.10 (1988), which permits

specified persons to file a petition with the Commission for exemption from the application of certain of the rules set forth in Part 30 and authorizes the Commission to grant such an exemption if such action would not be otherwise contrary to the public interest or to the purposes of the provision from which exemption is sought.

EFFECTIVE DATE: April 17, 1989.

FOR FURTHER INFORMATION CONTACT: Jane C. Kang, Esq. or Robert Rosenfeld, Esq., Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254–8955.

SUPPLEMENTARY INFORMATION: The Commission has issued the following Order:

United States of America Before the Commodity Futures Trading Commission

Order Under CFTC Rule 30.10 Exempting Firms Designated by the Montreal Exchange from the Application of Certain of the Foreign Futures and Option Rules the Later of Thirty Days after Publication of the Order Herein in the Federal Register or after Filing of Consents by Such Firms and the Regulatory or Self-Regulatory Organization, as Appropriate, to the Terms and Conditions of the Order Herein.

On July 23, 1987, the Commission adopted final rules governing the domestic offer and sale of commodity futures and option contracts traded on or subject to the rules of a foreign board of trade. 52 FR 28980 (August 5, 1987). These rules, which are codified in Part 30 of the Commission's regulations, generally extend the Commission's existing customer protection regulations for products offered or sold on contract markets in the United States to foreign futures and option products sold to United States customers by imposing requirements with respect to registration, disclosure, capital adequacy, protection of customer funds, recordkeeping and reporting, and sales practice and compliance procedures that are generally comparable to those applicable to wholly domestic transactions.

In formulating a regulatory program to govern the offer and sale of foreign futures and option products to United States customers, among other things, the Commission considered the desirability of ameliorating the potential extraterritorial impact of such a program and avoiding duplicative regulation of firms engaged in international business. Based upon these considerations, the Commission, as set forth in Commission Rule 30.10, determined to permit persons *located outside the United States* and subject to a comparable regulatory structure in the jurisdiction in which they were located to seek an exemption from certain of the requirements imposed by the Part 30 rules based upon substituted compliance with the comparable regulatory requirements imposed by the foreign jurisdiction.

Appendix A to Part 30, "Interpretative Statement With Respect to the Commission's Exemptive Authority Under § 30.10 of Its Rules" ("Appendix A"), generally sets forth the elements the Commission will evaluate in determining whether a particular regulatory program may be found to be comparable for purposes of exemptive relief pursuant to Commission Rule 30.10, 52 FR 28980, 29001. These elements include: (1) Registration, authorization or other form of licensing, fitness review or qualification of persons through whom customer orders are solicited and accepted; (2) minimum financial requirements for those persons who accept customer funds; (3) protection of customer funds from misapplication; (4) recordkeeping and reporting requirements; (5) sales practice standards; (6) procedures to audit for compliance with, and to take action against those persons who violate, the requirements of the program; and (7) information sharing arrangements between the Commission and the appropriate governmental and/or self-regulatory organization to ensure Commission access on an "as needed" basis to information essential to maintaining adequate standards of customer and market protection within the United States.

Moreover, the Commission specifically stated in adopting Commission Rule 30.10 that no exemption of a general nature would be granted unless the persons to whom the exemption is to be applied: (1) Consensually submit to jurisdiction in the United States by designating an agent for service of process in the United States with respect to transactions subject to Part 30 and filing a copy of the agency agreement with the National Futures Association ("NFA"); (2) agree to provide access to their books and records in the United States to Commission and Department of Justice representatives; and (3) notify the NFA of the commencement or termination of business in the United States.[1]

[1] 52 FR 28980, 28981 and 29002.

By letter dated March 4, 1988, the Exchange petitioned the Commission on behalf of certain of its members for an exemption from the application of the Commission's foreign futures and option rules. In support of its petition, the Exchange states that granting such an exemption with respect to its members would not be contrary to the public interest or to the purposes of the provisions from which the exemption is sought because such firms and the Exchange are subject to a regulatory scheme under the Quebec Securities Act which is comparable to that imposed by the Commodity Exchange Act ("Act") and the regulations thereunder.

Based upon a review of the petition, supporting materials filed by the Exchange, its regulatory authority, the Commission des valeurs Mobilieres du Quebec ("CVMQ"), and the recommendation of the staff, the Commission has concluded that the standards for relief set forth in Commission Rule 30.10 and, in particular, Appendix A thereof, have generally been satisfied and that compliance with applicable Canadian law and Exchange rules may be substituted for compliance with those sections of the Act more particularly set forth herein.

By this Order, the Commission hereby exempts, subject to specified conditions, those firms identified to the Commission as eligible for the relief granted herein from:

— Registration with the Commission;
— The requirement in Commission Rule 30.6(d), 17 CFR 30.6(d) (1988), that firms provide customers resident in the United States with the options risk disclosure statement in Commission Rule 33.7, 17 CFR 33.7 (1988);
—Those sections of Part 1 of the Commission's financial regulations that apply to foreign futures and options sold in the United States as set forth in Part 30; and
— Those sections of Part 1 of the Commission's regulations relating to books and records which apply to transactions subject to Part 30;

based upon substituted compliance by such persons with the applicable statutes and regulations in effect in the province of Quebec.

This determination to permit substituted compliance is based on, among other things, the Commission's finding that the regulatory scheme governing the persons in Quebec who would be exempted hereunder provides:

(1) A system of licensing of firms and persons who deal in transactions subject to regulation under Part 30 that includes, for example, criteria and

procedures for granting, monitoring, suspending and revoking licenses, and provisions for requiring and obtaining access to information about licensees;

(2) Financial requirements for firms carrying customer accounts including, without limitation, a requirement that all firms immediately notify the Exchange if the firms' adjusted net capital falls below a specified level and daily mark-to-market settlement;

(3) A system for the protection of customer funds which requires separate accounting for such funds, augmented by a compensation fund designed to compensate customers who have suffered a loss as a result of fraud and/or insolvency of a licensee;

(4) Recordkeeping and reporting requirements pertaining to financial and trade information including, without limitation, order tickets, trade confirmations, monthly customer account statements, accounting records for customer and proprietary trades and discretionary account documentation;

(5) Sales practice standards for licensees which include, for example, a requirement that firms licensed to do business know their customers, required disclosures to prospective customers and prohibitions on misleading advertising and improper trading activities;

(6) Procedures to audit for compliance with, and to redress violations of, customer protection and sales practice requirements including, without limitation, an affirmative surveillance program designed to detect trading activities which take advantage of customers, and the existence of broad powers of investigation relating to sales practice abuses; and

(7) Mechanisms for sharing of information between the Commission, the Exchange and the CVMQ on an "as needed" basis including, without limitation, confirmation data, data necessary to trace funds related to trading futures and option products subject to regulation in Quebec, position data and data on firms' standing to do business and financial condition.

This Order does not provide an exemption from any provision of the Act or regulations thereunder not specified herein, for example, without limitation, the antifraud provision in Commission Rule 30.9, 17 CFR 30.9 (1988), or the disclosure provision in Commission Rule 30.6(a), 17 CFR 30.6(a) (1988). Moreover, the relief granted is directed to brokerage activities on or subject to the rules of the Exchange undertaken by Exchange member firms authorized to do investment business in Quebec. The relief does not extend to rules or regulations relating to trading, directly or indirectly, on United States exchanges. For example, such a firm trading in United States markets for its own account would be subject to the Commission's large trader reporting requirements. *See, e.g.*, 17 CFR Part 18 (1988). Similarly, if such a firm were carrying a position on a United States exchange on behalf of foreign clients, it would be subject to the reporting requirements applicable to foreign brokers. *See, e.g.*, 17 CFR Parts 17 and 21 (1988). The relief herein is inapplicable where the firm solicits United States customers for transactions on United States markets. In that case, the firm must comply with all applicable United States laws and regulations, including the requirement to register in the appropriate capacity.

The eligibility of any firm to seek relief under this exemptive Order is subject to the following conditions:

(1) The regulatory or self-regulatory organization responsible for monitoring the compliance of such firm with the regulatory requirements described in the Rule 30.10 petition must represent in writing to the CFTC that:

(a) Each firm for which relief is sought is registered, licensed or authorized, as appropriate, and is otherwise in good standing under the standards in place in Quebec; such firm is engaged in business with customers located in Canada as well as in the United States; and such firm and its employees who engage in activities subject to Part 30 would not be statutorily disqualified from registration under section 8a(2) of the Act, 7 U.S.C. 12(a)(2);

(b) It will monitor firms to which relief is granted for compliance with the regulatory requirements for which substituted compliance is accepted and will promptly notify the Commission or NFA of any change in status of a firm which would affect its continued eligibility for the exemption granted hereunder, including the termination of its activities in the United States;

(c) All transactions with respect to customers resident in the United States will be made on or subject to the rules of the Exchange and the Commission will receive prompt notice of all material changes in the Quebec Securities Act, Regulations thereunder and Exchange rules;

(d) Customers resident in the United States will be provided no less stringent regulatory protection than Canadian customers under all relevant provisions of Quebec law; and

(e) It will cooperate with the Commission with respect to any inquiries concerning any activity subject to regulation under the Part 30 rules, including sharing the information specified in Appendix A to the Part 30 rules on an "as needed" basis and will use its best efforts to notify the Commission if it becomes aware of any information which in its judgment affects the financial or operational viability of a member firm doing business in the United States under the exemption granted by this Order.

(2) Each firm seeking relief hereunder must apply in writing whereby it:

(a) Consents to jurisdiction in the United States under the Act by filing a valid and binding appointment of an agent in the United States for service of process in accordance with the requirements set forth in Commission Rule 30.5, 17 CFR 30.5 (1988), unless a currently effective valid and binding agency agreement has previously been filed by or on behalf of such firm in connection with the interim relief granted by the Commission with respect to certain persons on January 29, 1988, 53 FR 3338 (February 5, 1988), as extended on April 4, 1988, 53 FR 11491 (April 7, 1988), and by letters dated July 5, 1988, November 2, 1988 and December 22, 1988;

(b) Agrees to provide access to its books and records related to transactions under Part 30 required to be maintained under the applicable statutes and regulations in effect in Quebec upon the request of any representative of the Commission or United States Department of Justice at the place in the United States designated by such representative, within 72 hours, or such lesser period of time as specified by that representative as may be reasonable under the circumstances after notice of the request;

(c) Represents that no principal of such firm would be disqualified from directly applying to do business in the United States under section 8a(2) of the Act, 7 U.S.C. 12a(2), and notifies the Commission promptly of any change in that representation based on a change in control as generally defined in Commission Rule 3.32, 17 CFR 3.32 (1988);

(d) Discloses the identity of each subsidiary or affiliate domiciled in the United States with a related business (*e.g.*, banks and broker/dealer affiliates) and provides a brief description of such subsidiary's or affiliate's principal business in the United States;

(e) Consents to participate in any NFA arbitration program which offers a procedure for resolving customer disputes on the papers where such disputes involve representations or activities with respect to transactions under Part 30 and consents to notify

customers resident in the United States of the availability of such a program;

(f) Agrees to maintain, on behalf of customers located in the United States, funds equivalent to the "secured amount" described in Commission Rule 1.3(rr), 17 CFR 1.3(rr) (1988), in a separate account as set forth in Commission Rule 30.7, 17 CFR 30.7 (1988), and to treat those funds in the manner described by that rule;

(g) Consents to maintain as part of the firm's regulatory capital, an amount, which may not be satisfied by letters of credit, which is equal to four percent of the secured amount held in separate accounts on behalf of customers located in the United States;

(h) Consents to notify the Commission and NFA if transactions subject to Part 30 of the Commission's rules would constitute fifty percent or more of customer business undertaken by such firm; and

(i) Undertakes to comply with the applicable provisions of Quebec and Exchange rules which form the basis upon which this exemption from certain provisions of the Act is granted.

This Order will become effective as to any firm designated under the Commission's interim order or hereinafter designated the later of thirty days after publication of the Order in the **Federal Register** or after filing of the consents hereinabove required. Upon filing of the notice required under paragraph (1)(b) as to any firm, the relief granted by this Order may be suspended immediately as to that firm. That suspension will remain in effect pending further notice by the Commission, or the Commission's designee, to the firm and the Exchange.

This Order is issued pursuant to Commission Rule 30.10 based on the comparability representations made and supporting material provided to the Commission and the recommendation of the staff, and is made effective as to any firm granted relief hereunder based upon the filings and representations of such firm required hereunder. Any material changes or omissions in the facts and circumstances pursuant to which this Order is granted might require the Commission to reconsider its finding that the standards for relief set forth in Commission Rule 30.10 and, in particular, Appendix A thereof, have generally been satisfied. Further, if experience demonstrates that the continued effectiveness of this Order in general, or with respect to a particular firm, would be contrary to public policy or the public interest, or that the systems in place for the exchange of information or other circumstances do not warrant continuation of the exemptive relief granted herein, the Commission may condition, modify, suspend, terminate, withhold as to a specific firm, or otherwise restrict the exemptive relief granted in this Order, as appropriate, on its own motion. For example, the relief granted to a specific firm may be suspended upon the firm's failure to provide access to its books and records. If necessary, provisions will be made for servicing existing client positions.

The Commission will continue to monitor the implementation of its program to exempt firms located in jurisdictions generally deemed to have a comparable regulatory program from the application of certain of the foreign futures and option rules and will make necessary adjustments if appropriate.

List of Subjects in 17 CFR Part 30

Commodity futures.

Accordingly, 17 CFR Part 30 is amended as set forth below:

PART 30—FOREIGN FUTURES AND FOREIGN OPTION TRANSACTIONS

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

Authority: Secs. 2(a)(1)(A), 4, 4c and 8a of the Commodity Exchange Act, 7 U.S.C. 2, 4, 6, 6c and 12a (1982).

2. Appendix C to Part 30 is amended by adding the following entry to read as follows:

APPENDIX C—FOREIGN PETITIONERS GRANTED REFLIEF FROM THE APPLICATION OF CERTAIN OF THE PART 30 RULES PURSUANT TO § 30.10

* * * * *

Firms designated by the Montreal Exchange.

FR date and citation: March 17, 1989; 54 FR ———.

Issued in Washington, DC, on March 14, 1989.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 89-6349 Filed 3-16-89; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food And Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Decoquinate

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Rhone-Poulenc, Inc., providing for safe and effective use of a currently approved Type A medicated article containing decoquinate in manufacturing a liquid Type B medicated feed. The feed will be used as a supplement to the total ration to prevent coccidiosis in ruminating calves and cattle.

EFFECTIVE DATE: March 17, 1989.

FOR FURTHER INFORMATION CONTACT: John R. Markus, Center for Veterinary Medicine (HFV-142), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2871.

SUPPLEMENTARY INFORMATION: Rhone-Poulenc, Inc., P.O. Box 125, Black Horse Lane, Monmouth Junction, NJ 08852, is the sponsor of NADA 39-417 which provides for use of a Type A medicated article containing 6 percent decoquinate in manufacturing Type C medicated feeds intended for use as a coccidiostat in chickens, cattle, and goats. The firm also holds approval for use of the article in manufacturing dry Type B medicated cattle feeds. The firm has submitted a supplemental NADA providing for use of the article in manufacturing liquid Type B medicated cattle feeds. Based on the data submitted, the supplemental NADA is approved. The animal drug regulations are amended in 21 CFR 558.195 (c) and (d) to reflect the approval.

This supplemental NADA provides solely for use of the existing Type A article to manufacture an additional drug delivery system—the liquid Type B feed. The feed is to be used at previously approved feeding rates for the approved indications and limitations. Because approval of this application does not require additional safety or effectiveness data or information, a freedom of information (FOI) summary is not required.

The agency has determined under 21 CFR 25.24(d)(i)(vi) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

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, Part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343-351 (21 U.S.C. 306b); 21 CFR 5.10 and 5.83.

2. Section 558.195 is amended by adding a new paragraph (c)(3) and in the

table in paragraph (d) in the entry for "22.7 mg per 100 lb of body weight per day (0.5 mg per kilograms)", the sentences under the "Limitations" column are revised to read as follows:

§ 558.195 Decoquinate.

* * * * *

(c) * * *

(3) Type A medicated articles containing 6 percent decoquinate may be used to manufacture dry or liquid Type B cattle feeds as indicated in paragraph (d) of this section.

(d) * * *

Decoquinate in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
*	*	*	*	
22.7 mg per 100 lb of body weight per day (0.5 mg per kilogram).	.....	* * *	Administer as a Type C feed containing 0.0015 pct to 0.003 pct decoquinate, as a dry Type B feed containing 0.05 pct to 0.5 pct decoquinate, or as a liquid Type B feed containing 0.0125 pct to 0.05 pct decoquinate. The liquid Type B feed to be used must have a pH range of 5.0 to 6.5 and contain a suspending agent to maintain a viscosity of not less than 500 centipoises. Feed at least 28 days during periods of exposure to coccidiosis or when it is likely to be a hazard. Do not feed to cows producing milk for food.	
*	*	*	*	

Dated: March 9, 1989.

Robert C. Livingston,

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

[FR Doc. 89-6317 Filed 3-16-89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 931

New Mexico Permanent Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSMRE is announcing approval of a proposed amendment to the New Mexico permanent regulatory program (hereinafter referred to as the New Mexico program) approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment pertains to coal mine waste. The amendment revises the State program to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: March 17, 1989.

FOR FURTHER INFORMATION CONTACT: Robert H. Hagen, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 625 Silver Avenue, SW., Suite 310, Albuquerque, NM 87102; Telephone (505) 766-1486.

SUPPLEMENTARY INFORMATION:

I. Background on the New Mexico Program

On December 31, 1980, the Secretary of the Interior conditionally approved the New Mexico program. Information regarding the general background on the New Mexico program, including the Secretary's findings, the disposition of comments, and detailed explanation of the conditions of approval of the New Mexico program can be found in the December 31, 1980, **Federal Register** (45 FR 86459). Actions taken subsequent to the approval of the New Mexico program are found at 30 CFR 931.12, 931.13, 931.15, and 931.16.

II. Submission of Amendment

By letter dated April 18, 1988, New Mexico submitted to OSMRE the proposed amendment (Administrative Record No. NM-405). The State submitted parts of this proposed amendment at its own initiative and other parts in response to required program amendments specified in OSMRE's 30 CFR Part 732 letter dated August 14, 1986.

OSMRE announced receipt of the proposed amendment in the June 22, 1988, **Federal Register** (53 FR 23415) and, in the same notice, opened the public comment period and provided an opportunity for a public hearing on the substantive adequacy of the proposed amendment (Administrative Record No. NM-425). The public comment period closed on July 22, 1988. The public hearing, scheduled for July 18, 1988, was not held because no one requested an opportunity to testify.

After reviewing the proposed amendment and all comments received, OSMRE notified New Mexico by letter dated September 26, 1988, of several provisions in its proposal that appeared to be inconsistent with the Federal regulations (Administrative Record No. NM-446). By letter dated October 20, 1988, New Mexico provided further clarification of and submitted revisions to the amendments (Administrative Record No. NM-452). These clarifications and revisions pertained to disposal of excess spoil, general requirements; coal processing waste banks, construction requirements; coal processing waste banks, general requirements; coal processing waste, dams, embankments, and site preparation; and coal processing waste banks, water control measures. To allow the public an opportunity to comment on the additional material submitted by New Mexico, OSMRE published a notice in the **Federal Register** on December 14, 1988 (53 FR 50245), reopening and extending the comment period (Administrative Record No. NM-471). The comment period closed on December 29, 1988.

III. Director's Findings

The Director finds in accordance with SMCRA and 30 CFR 732.15 and 732.17, that the amendment submitted by New Mexico on April 18, 1988, and subsequently revised and clarified on October 20, 1988, meets the requirements of SMCRA and 30 CFR Chapter VII as discussed below. The Director is approving the rules, providing that they be fully promulgated in identical form to the rule submitted to and reviewed by OSMRE and the public.

Although the Director is approving the amendment as submitted, he may also in the future require that New Mexico make further changes in its amended regulations as a result of Federal regulatory revisions and court decisions. Subsequent to New Mexico's submission of its proposed coal mine waste amendment, OSMRE on October 27, 1988, promulgated new coal mine waste regulations (53 FR 43585) in response to the decision of the U.S. District Court for the District of Columbia in *In re Permanent Surface Mining Regulation Litigation. (In re Permanent II (Round III))* 620 F. Supp. 1519 (D.D.C. July 15, 1985). If further changes to New Mexico's program are needed as the result of OSMRE's new regulations, the Director will notify New Mexico in accordance with 30 CFR 732.17(f) of these needed changes.

Coal Surface Mining Commission (CSMC) Rule 80-1-20-71(b): Disposal of Excess Spoil, General Requirements

The State proposes to amend Rule 80-1-20-71(b) by adding the word

"qualified" to the phrase "certified by a registered professional engineer." This proposed change by the State would require that all coal processing waste banks be certified by a qualified registered professional engineer.

The corresponding Federal regulation at 30 CFR 816.81(c)(1) requires that a qualified registered professional engineer, experienced in the design of similar earth and waste structures, certify the design of the disposal facility.

The proposed New Mexico rule does not include the earth and waste structure design experience requirements of the counterpart Federal regulation. However, the New Mexico Engineering and Land Surveying Practice Act, Section (O) (Rules of Professional Conduct), Subsection 2 (Specialization and the Performance of Services Only in Specific Areas of Competence) requires that (1) professional engineers and professional land surveyors undertake assignments only when qualified by education, experience, or examination in the specific technical fields of engineering or land surveying involved and (2) registrants not affix their signatures or seals to any plans or documents dealing with subject matter in which they lack competence, nor to any such plan or documents not prepared under their general direction and control (Administrative Record No. NM–419).

Proposed Rule 80–1–20–71(b), when implemented in conjunction with the New Mexico Engineering and Land Surveying Practice Act as discussed above, requires coal processing waste bank design experience equivalent to that required in 30 CFR 816.81(c)(1). Therefore, the Director finds that proposed Rule 80–1–20–71(b) is no less effective than the Federal regulation at 30 CFR 816.81(c)(1).

CSMC Rule 80–1–20–81: Coal Processing Waste Banks, General Requirements

New Mexico proposes to revise Rule 80–1–20–81, to add a new subsection (a). This new subsection would require the mine operator to meet the Mine Safety and Health Act (MSHA) design and construction requirements for refuse piles at 30 CFR 77.214 and 77.215, and to obtain the approval of the Director of the Mining and Minerals Division (MMD) when designing and constructing coal processing waste banks. By adding a new subsection (a), existing State rule (a) would become (b) and (b) would become (c).

The coal mine waste and refuse piles sections of corresponding Federal regulations at 30 CFR 816.83 and 817.83 require that operators construct refuse piles in accordance with the requirements of 30 CFR 77.214 and 77.215.

The Director finds that proposed new subsection (a) of Rule 80–1–20–81, is substantively identical to and therefore no less effective than the Federal regulations at 30 CFR 816.83 and 817.83.

CSMC Rule 80–1–20–85: Coal Processing Waste Banks, Construction Requirements

The State proposes to delete subsections (b) and (c) from Rule 80–1–20–85 and change subsection (d) to (b).

Deleted subsection (b) requires that coal processing waste banks have a minimum static safety factor of 1.5. The corresponding Federal regulations at 30 CFR 816.81(c)(2) and 817.81(c)(2) requires that coal mine waste be designed to a minimum, long-term, static safety factor of 1.5. The omission of subsection (b) does not reduce the effectiveness of this rule since the minimum static safety factor of 1.5 is required at Rule 80–1–20–71(f), which is cross referenced in Rule 80–1–20–85(a).

Deleted subsection (c) deals with design standards for coal processing waste banks; the subsection includes compaction and maximum lift thickness standards. On June 9, 1988, OSMRE deleted comparable coal processing waste bank requirements from the corresponding Federal regulations at 30 CFR 816.81 and 817.83 (53 FR 51764).

The Director finds that the proposed deletion of subsections (b) and (c) from Rule 80–1–20–85 does not render the rule less effective than the Federal regulations at 816.81 and 817.81.

CSMC Rule 80–1–20–92(b): Coal Processing Waste, Site Preparation

Rule 80–1–20–92(b) provides design criteria for sediment control measures, requires that diversions be designed to carry the peak runoff from a 100-year, 24-hour event, and requires compliance with the entire Rule 80–1–20–43 that sets performance standards for the hydrologic balance as it relates to diversions and conveyance of overland flow, shallow groundwater flow, and ephemeral streams.

New Mexico proposes to revise Rule 80–1–20–92(b) to require that diversions for coal processing waste banks be designed for a 100-year, 6-hour precipitation event, and to only require compliance with subsections 20–43 (c), (d), (e), (f), and (g) instead of entire Rule 80–1–20–43. Because the proposed precipitation event standard is the same standard as in the counterpart Federal regulation at 30 CFR 816.84(d) and 817.84(d), the Director finds that this proposed revision to Rule 80–1–20–92(b) is no less effective than the Federal regulations. Because the requirements of deleted subsections 20–43 (a) and (b) are general diversion design standards that are not applicable to diversions for coal processing waste banks, the Director finds that the removal of their reference in Rule 80–1–20–92(b) does not render the proposed Rule 80–1–20–92(b) less effective than the counterpart Federal regulations at 30 CFR 816.43, 817.43, 816.84, and 817.84.

CSMC Rule 80–1–20–83(b): Coal Processing Waste Banks, Water Control Measures

New Mexico's Rule 80–1–20–83(b) requires control of surface drainage on and from above coal processing waste banks in accordance with Rule 80–1–20–72(d). Rule 80–1–20–72(d) sets out surface drainage structure design criteria for valley fill spoil disposal areas.

New Mexico proposes to amend Rule 80–1–20–83(b) to remove the requirements for use of the valley fill surface drainage design criteria of Rule 80–1–20–72(d) and to substitute in its place a requirement for use of coal processing waste bank surface drainage design criteria of Rule 80–1–20–92(b). As discussed in the preceding finding, Rule 80–1–20–92(b) includes directly, or by reference, provisions that are no less effective than the Federal program provisions at 30 CFR 816.84(d) and 817.84(d) for control of surface drainage on and from above coal processing waste banks. Omission of the valley fill surface drainage design criteria of Rule 80–1–20–72(d) from the coal processing waste surface drainage sections of Rule 80–1–20–83(b) does not render Rule 80–1–20–83(b) less effective than the Federal counterpart regulations at 30 CFR 816.84(d) and 817.84(d).

IV. Summary and Disposition of Comments

OSMRE did not receive any public comments in response to its June 22, 1988, and December 14, 1988, **Federal Register** notices, and it did not hold public hearings because no one requested an opportunity to provide testimony.

Pursuant to section 503(b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(11), OSMRE solicited comments from various Federal agencies with an actual or potential interest in the New Mexico program. The Mine Safety and Health Administration (MSHA) and the Soil Conservation Service (SCS) submitted comments on the proposed amendment.

MSHA responded to OSMRE's request for comments on New Mexico's April 18,

1988, submittal by submitting a letter that discussed MSHA's requirements at 30 CFR 77.214 and 77.215 for compaction of refuse embankment material; it also stated that MSHA's regulations do not address drainage control around refuse embankments. In its second submittal of October 20, 1988, New Mexico, consistent with OSMRE's regulations, amended Rule 80–1–20–81, to specify that refuse piles be designed and constructed in accordance with the requirements of 30 CFR 77.214 and 77.215.

SCS commented on the April 18, 1988, submittal and suggested that Rules 80–1–20–85 (b) and (c) be deleted and be replaced with wording from 30 CFR 816.81(c), which requires that a qualified registered professional engineer be responsible for coal mine waste designs. In its second submittal of October 20, 1988, New Mexico, consistent with SCS's comment and OSMRE's regulations at 816.81(c), amended Rule 80–1–20–71(b) to require that fills be designed and certified by a qualified registered professional engineer.

Based on the above discussions, the Director concludes that New Mexico has in its October 20, 1988, submittal adequately revised its regulations to address MSHA's and SCS's concerns.

V. Director's Decision

Based on the above findings, the Director is approving the proposed amendment submitted by New Mexico on April 18, 1988, and as revised and clarified on October 20, 1988.

The Federal regulations at 30 CFR Part 931 that codify decisions concerning the New Mexico program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage states to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

National Environmental Policy Act

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

Executive Order No. 12291 and the Regulatory Flexibility Act

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

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

Paperwork Reduction Act

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

List of Subjects in 30 CFR Part 931

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Date: March 10, 1989.

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below.

PART 931—NEW MEXICO

1. The authority citation for Part 931 continues to read as follows:

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

2. Section 931.15 is amended by adding a new paragraph (i) to read as follows:

§ 931.15 Approval of amendments to State regulatory program.

* * * * *

(i) The following amendment is approved effective March 17, 1989: Revisions to the New Mexico Surface Coal Mining Commission (CSMC) Rules 80–1–20–71(b), 80–1–20–81, 80–1–20–83(b), 80–1–20–85, and 80–1–20–92(b), concerning coal mine waste, as submitted on April 18, 1988, and October 20, 1988.

[FR Doc. 89–6292 Filed 3–16–89; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 500

Foreign Assets Control Regulations; Correction

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

ACTION: Final rule, Correction of section number.

SUMMARY: This notice corrects the section number of a regulation published in the **Federal Register** on January 3, 1989 (54 FR 21). The regulation was inadvertently given a regulatory section number reserved for a subsequently issued regulation.

EFFECTIVE DATE: March 17, 1989.

FOR FURTHER INFORMATION CONTACT: William B. Hoffman, Chief Counsel, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, (tel.: 202/376–0408).

SUPPLEMENTARY INFORMATION: The following correction is made to the Foreign Assets Control Regulations:

§ 500.569 [Correctly designated from § 500.568]

Section 500.568 Transactions with respect to group travel to North Korea, is renumbered § 500.569.

Dated: March 14, 1989.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

[FR Doc. 89–6259 Filed 3–16–89; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGDI–89–010]

Safety Zone; Fore River, Portland, ME

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a safety zone in the Fore River in the area of the International Ferry Terminal located in Portland, ME. This safety zone is being established to ensure the safety of the vessels, waterfront structures and shore areas involved in the commissioning of a U.S. Naval Ship. In addition, this safety zone will provide an additional margin of safety for commercial vessels and pleasure craft which frequent this body

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

EFFECTIVE DATES: This regulation becomes effective on March 18, 1989 at 9:00 a.m. It terminates on March 18, 1989 at 1:00 p.m. Comments on this regulation must be received on or before March 18, 1989.

ADDRESSES: Comments should be mailed to Commanding Officer, Coast Guard Marine Safety Office, P.O. Box 108, DTS, Portland, ME 04112-0108. Comments will be available for inspection and copying at the U.S. Customs House, 312 Fore Street, Portland, ME. Normal office hours are between 8:00 a.m. and 4:00 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Scott Kuhaneck at Marine Safety Office, Portland at (207) 780-3251.

SUPPLEMENTARY INFORMATION: 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. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to prevent damage to the vessels, structures and shore areas involved.

Although this regulation is published as a final rule without prior notice, an opportunity for public comment is nevertheless desirable to ensure that the regulation is both reasonable and workable. Accordingly, persons wishing to comment may do so by submitting written comments to the office listed under "**ADDRESS**" in this preamble. Commenters should include their names and addresses, identify the docket number for the regulations, and give reasons for their comments. Based upon comments received, the regulations may be changed.

Drafting Information

The drafters of this notice are Lieutenant Scott Kuhaneck, project officer, Portland Marine Safety Office and Lieutenant John Gately, project attorney, First Coast Guard District Legal Office.

Discussion of the Regulation

The event requiring this regulation is the commissioning of a U.S. Naval Ship in Portland, ME, on March 18, 1989. The vessel to be commissioned is significantly large and will be moored in close proximity to the navigable channel of Portland's Inner Harbor. In addition, a significant number of dignitaries and civilians will be in attendance. This safety zone will maximize their margin of safety in a confined and relatively exposed waterfront location. This regulation will be in effect for the commissioning ceremony only to minimize its impact on the maritime community. This regulation is being undertaken at the request of U.S. Navy and Bath Iron Works personnel. Representatives of the Captain of the Port, Portland, ME, will be on scene to enforce this regulation.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Final Regulation

In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations is amended as follows:

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 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 section number is added to read as follows:

§ 165.T0102 Safety zone; Fore River, Portland, ME.

(a) *Location.* The following area is a safety zone: The land and water area within a 100 yard radius of the U.S.S. Philippine Sea located at the International Ferry Terminal, Portland, ME.

(b) *Effective date.* This regulation becomes effective at 9:00 a.m. on March 18, 1989. It terminates at 1:00 p.m. on March 18, 1989.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the captain of the port.

(2) Commercial vessels are prohibited from transiting the Fore River unless authorized by the captain of the port.

Dated: February 14, 1989.

M. R. Perkins,

Commander, U.S. Coast Guard, Captain of the Port.

[FR Doc. 89-6282 Filed 3-16-89; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3538-4]

Approval and Promulgation of State Implementation Plan; Wyoming; Stack Height Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is today approving the stack height regulations for the State of Wyoming which were submitted by the Governor's designee on September 6, 1988. The State submittal is in response to EPA's July 8, 1985, stack height regulation promulgation. The July 8, 1985, stack height regulations were challenged by the Natural Resource Defense Council (NRDC) and resulted in the remand of three provisions of the regulations to EPA for reconsideration. The limited remand is not believed to significantly affect the Wyoming submittal.

DATES: This action will be effective on May 16, 1989, unless notice is received by April 17, 1989 that someone wishes to submit adverse or critical comments.

ADDRESSES: Copies of the revision are available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday, at the following offices:

Environmental Protection Agency, Region VIII, Air Programs Branch, 999 18th Street, Suite 500, Denver, Colorado 80202-2405

Environmental Protection Agency, Public Information Reference Unit, Waterside Mall, 401 M Street, SW., Washington, DC 20460

FOR FURTHER INFORMATION CONTACT: Laurie Ostrand, Air Programs Branch, Environmental Protection Agency, 999 18th Street, Suite 500, Denver, Colorado 80202-2405, (303) 293-1814, (FTS) 564-1814.

SUPPLEMENTARY INFORMATION:

Background

On February 8, 1982 (47 FR 5864), EPA promulgated final regulations limiting stack height credits and other dispersion techniques as required by section 123 of the Clean Air Act (CAA). These regulations were challenged in the Courts for the next two years and resulted in revisions to the stack height regulations. The revisions were promulgated on July 8, 1985 (50 FR 27892), and redefined a number of specific terms including "excessive concentrations", "dispersion

techniques", "nearby", and other important concepts. The federal regulations also modified some of the bases for determining good engineering practice (GEP) for stack height.

The July 8, 1985, promulgation required the State to: (1) Review and revise, as necessary, its State Implementation Plan (SIP) to include provisions that limit stack height credit and dispersion techniques in accordance with the revised regulations, and (2) review all existing emission limitations to determine whether any of these limitations have been affected by stack height credits above GEP or any other dispersion techniques. This action only pertains to item: (1) Above, revised regulations. Item (2) above is being addressed in a separate **Federal Register** action.

Stack Height Regulations

On December 4, 1986, Mr. Charles Collins, Administrator, Wyoming Air Quality Division, submitted a letter of commitment ensuring consistency with the federal stack height regulations through the State's new source review process until its stack height rules were finalized. In 53 FR 3052 (February 3, 1988), EPA acknowledged such commitment.

On September 6, 1988, Mr. Collins, as the Governor's designee, submitted revisions to the Implementation Plan and to the Wyoming Air Quality Standards and Regulations (WAQSR). The submittal included the addition of and revision to several Wyoming Air Quality Standards and Regulations and an Implementation Plan for Visibility. This action pertains only to the revisions of section 21(d) GEP Stack Height Regulations. Section 21(d) was revised effective May 10, 1988.

Stack height regulations consist mostly of definitions. Before EPA can approve a State's stack height rules, definitions similar to the following must be incorporated into its regulations: 40 CFR Part 51.100(z)—emission limitation; (ff)—stack; (gg)—a stack in existence; (hh)—dispersion technique; (ii)—good engineering practice; (jj)—nearby; and (kk)—excessive concentration. Wyoming has addressed most of these definitions. The following is a discussion of the required federal definitions, the citation to location in Wyoming's regulations and determinations concerning federal requirements:

1. *Emission limitation*—WAQSR section 21(d)(iv)—is identical to the federal definition and, thus, meets the federal requirement.

2. *Stack*—WAQSR section 2(a)(xxxvi)—is not identical to the federal definition. However, by following a sequence of definitions ("emissions" and "air contaminant") in the General Provisions of WAQSR, it is determined that the WAQSR definition has the same meaning as the federal definition and, thus, accords with the federal definition.

3. *Stack in existence*—the State rules do not include such definition. The State believes that such definition is not applicable to new source review. The State has demonstrated that all its existing stacks are in compliance with the stack height regulations, i.e. the H+1.5L formula, and has omitted from the "good engineering practice" definition the paragraph that pertains to the 2.5H formula. The omission of this paragraph omits the only reference to "stack in existence" found in the federal stack height definitions. EPA concurs with the State that its circumstances do not require definition of "stack in existence".

4. *Dispersion technique*—WAQSR section 21(d)(ii)—is not identical to the federal definition because it omits 40 CFR Part 51.100(hh)(2)(ii) (B) and (C), (iii), (iv), and (v). The omission of these sections makes the State's regulations more stringent than the federal regulations, since these items are exclusion from the "dispersion techniques" definition. EPA interprets the omission of 40 CFR Part 51.100(hh)(2)(ii) (B) and (C) to mean that the merging of exhaust gas streams which are part of a change in operation of an existing source will be considered a dispersion technique by the State. In addition, should a source undergo a modification, WAQSR section 21(a)(i) requires any person who plans to modify an existing facility or source to obtain a construction permit. In accordance with WAQSR section 21(c)(i), an approval to modify shall not be granted unless the applicant can show that the proposed facility will comply with all the rules and regulations of the Wyoming Department of Environmental Quality.

EPA interprets that the omission of 40 CFR Part 51.100(hh)(2) (iii), (iv), and (v), could even mean that the State will consider smoke management, episodic restrictions on residential woodburning and open burning, and sources less than 5,000 tons per year as "dispersion techniques". EPA documented these interpretations in a letter to the State dated March 22, 1988. With these interpretations, EPA determines that such definition meets federal requirements.

5. *Good engineering practice (GEP)*—WAQSR section 21(d)(i)—is not identical to the federal definition. One of the differences is that it defines GEP as 30 meters in lieu of 65 meters. The other difference is that it does not allow sources to take credit for GEP stack height by using the 2.5H formula. These two differences make the State's definition allowably more stringent than the federal definition. In addition, in the formula for "H+1.5L", section 21(d)(i)(B), the State did not indicate that the "projected" width should be used for "L" when evaluating GEP. Because of this omission, EPA requested the State to commit to conducting stack height evaluations in accordance with the "Guideline for Determination of Good Engineering Practice Stack Height (Technical Support Document for the Stack Height Regulations)", EPA 450/4-80-023R, June 1985. Such a commitment was made in a letter dated December 9, 1988, to Douglas M. Skie, EPA, from Charles A. Collins, Administrator of the Air Quality Division. The December 9, 1988 letter, however, stated "* * * the Division will make the commitment * * *". A verbal discussion with the State on January 9, 1989, indicated that the December 9, 1988, letter was *the* commitment to conduct the stack height evaluations in accordance with the guidelines mentioned above.

With respect to GEP stack height demonstrated by a fluid model or field study, the State does not explain that such demonstrations have to be approved by EPA. The State did add a paragraph, WAQSR section 21(d)(vii), describing that when a decision is reached to issue a permit where the source relied on a demonstration study to determine GEP stack height, the public will be notified and the opportunity of a public hearing will be provided in accordance with WAQSR section 21(m), the public notification requirements concerning preliminary determinations on permits to construct. Section 21(m) requires the State to notify EPA. Should EPA find any such demonstration study to be unacceptable, the EPA *will* comment to the State, at which time the State will be required to demonstrate that the fluid model or field study meets federal requirements, as set out in 40 CFR Part 51.100(ii), 118 and 164. Should the EPA still find any such demonstration study to be unacceptable, the EPA will exercise its authority under section 113 or 167 of the Clean Air Act to stop or prevent construction of such source. With this understanding, EPA determines that demonstration procedures meet federal requirements.

6. *Nearby*—WAQSR section 21(d)(v)—is identical to the federal definition and, thus, meets the federal requirement.

7. *Excessive concentration*—WAQSR section 21(d)(vi)—is not identical to the federal definition because it does not include 40 CFR Part 51.100(kk) (2) and (3). Such omission is inconsequential because it applies to existing sources whose actual stack height is lower than the GEP stack height and who want to raise the stack to the GEP height. It is important to note here that in the **Federal Register** notice proposing to approve the demonstration analysis for the State of Wyoming (February 3, 1988, 53 FR 3052), EPA treated those sources with actual height less than the GEP stack height as having an actual stack height equivalent to GEP stack height. Therefore, any existing sources planning to increase their stack height will have to comply with all the stack height regulations since WAQSR section 21(a)(i) requires any person who plans to modify an existing facility or source to obtain a construction permit. In accordance with WAQSR section 21(c)(i), an approval to modify shall not be granted unless the applicant can show that the proposed facility will comply with all the rules and regulations of the Wyoming Department of Environmental Quality.

Additionally, the State did not incorporate a paragraph equivalent to 40 CFR Part 51.100(kk)(3). EPA interprets this to mean that if the State requires a field study or fluid model to verify the calculated GEP stack height, or if a source seeks stack height credit based on the aerodynamic influences of cooling towers or structures not adequately represented by the equation in WAQSR section 21(d)(i)(B), the State will follow the provisions of its definition of "excessive concentration" [which is equivalent to 40 CFR Part 51.100(kk)(1), i.e. the definition of "excessive concentration"]. With this interpretation, EPA determines that the definition of "excessive concentration" meets federal requirements.

Immediately following promulgation, the July 8, 1985, regulations were challenged by the NRDC. On January 22, 1988, the U.S. Appeals Court for the D.C. Circuit issued its decision in the *NRDC v. Thomas* case (838 F.2d 1224) affirming the stack height regulations for the most part, but remanding three provisions to the EPA for reconsideration. These are:

1. Grandfathering pre-October 11, 1983, within-formula stack height increases from demonstration requirements [40 CFR 51.100(kk)(2)];

2. Dispersion credit for sources originally designed and constructed with merged or multiflue stacks [40 CFR 51.100(hh)(2)(ii)(A)]; and

3. Grandfathering pre-1979 use of the refined H+1.5L formula [40 CFR 51.100(ii)(2)].

The remand is not believed to significantly affect the Wyoming submittal. However, EPA is providing notice that this action may be subject to modification when EPA completes rulemaking to respond to the decision in the above-mentioned remand. If EPA's response to the NRDC remand modifies the July 8, 1985, regulations, EPA will notify the State that its rules must be changed to comport with the EPA's modified requirements.

Final Action

EPA hereby approves the Wyoming Air Quality Standards and Regulations submitted on September 6, 1988, (pertaining to stack height regulations only) as it satisfies the requirements of 40 CFR Part 51. This approval does not include the adoption of Visibility, Asbestos and New Source Performance Standards Regulations, the Visibility Implementation Plan and the definition of ambient air submitted on that same date. This action is a revision to an approved new source review program.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective 60 days from the date of the **Federal Register** unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another notice will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective May 16, 1989.

EPA finds good cause exists for making the action taken in this notice immediately effective because the implementation plan revisions are already in effect under State law or regulation and EPA's approval poses no additional regulatory burden.

Under 5 U.S.C. section 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (60 days from publication). This action may not be challenged later in a proceeding to enforce its requirements (See CAA section 307(b)(2)).

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

List of Subject in 40 CFR Part 52

Air pollution control, Sulfur oxides, Nitrogen dioxide, Particulate matter, Carbon monoxide, Stack height, and Incorporation by reference.

Note: Incorporation by reference of the State Implementation Plan for the State of Wyoming was approved by the Director of the Federal Register on July 1, 1982.

Date: March 9, 1989.

William K. Reilly,

Administrator.

Part 52 Chapter I, Title 40 of the *Code of Federal Regulations* is amended as follows:

PART 52—[AMENDED]

Subpart (ZZ—Wyoming)

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.2620 is amended by adding paragraph (c)(18) to read as follows:

§ 52.2620 Identification of plan.

* * * * *

(c) * * *

(18) On September 6, 1988, the Administrator of the Air Quality Division, as the Governor's designee, submitted a plan revising the stack height regulations, Wyoming Air Quality Standards and Regulations (WAQSR) section 21(d).

(i) Incorporation by reference

(A) Revisions to the Wyoming Air Quality Standards and Regulation section 21(d), stack heights, were adopted and effective on May 10, 1988.

3. Add a new § 52.2633 to read as follows:

§ 52.2633 Stack height regulations.

In a letter dated December 9, 1988, to Douglas M. Skie, EPA, from Charles A. Collins, Administrator of The Air Quality Division, the State committed to conduct stack height evaluations in accordance with the "Guideline for Determination of Good Engineering Practice Stack Height (Technical Support Document for the Stack Height Regulations)", EPA 450/4–80–023R, June 1985.

[FR Doc. 89–6107 Filed 3–16–89; 8:45 am]
BILLING CODE 6560–50–M

40 CFR Part 228

[FRL-3539-2]

Ocean Dumping; Site Designation; Gulf of Mexico; Pensacola, FL

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA today designates a new Ocean Dredged Material Disposal Site (ODMDS) in the Gulf of Mexico offshore Pensacola, Florida, i.e., the Pensacola (offshore) ODMDS, as an EPA-approved ocean disposal site for the disposal of dredged material. This action is necessary to provide an acceptable ODMDS option for anticipated future disposal of restricted suitable dredged material.

The Pensacola (offshore) ODMDS is located outside of Florida State waters and is restricted to disposal of predominantly fine-grained dredged material from the greater Pensacola, Florida, area that meets the Ocean Dumping Criteria, but is not suitable for beach nourishment or disposal in the existing, EPA-designated Pensacola (nearshore) ODMDS located closer to shore. The Pensacola (nearshore) ODMDS is restricted to suitable dredged material with a median grain size of >0.125 millimeters (mm) and a composition of >10% fines.

Review comments on the Final Environmental Impact Statement (FEIS) for this action were not addressed in the preceding Proposed Rule (53 FR 50977 [December 19, 1988]) but are addressed in this Final Rule. Comments on the Proposed Rule are also addressed herein.

DATE: This designation shall become effective on April 17, 1989.

ADDRESSES: Send comments to: Frank M. Redmond, Chief, Wetlands and Coastal Programs Section, Water Management Division, U.S. Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365.

The file supporting this designation is available for public inspection at the following locations:

EPA Public Information Reference Unit (PIRU), Room 2904 (rear), 401 M Street, SW., Washington, DC 20460.
EPA/Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365.

FOR FURTHER INFORMATION CONTACT: Christian M. Hoberg, 404/347-2126 or FTS 257-2126.

SUPPLEMENTARY INFORMATION:

A. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act (MPRSA) of 1972, as amended, 33 U.S.C. 1401 *et seq.*, gives the Administrator of EPA the authority to designate sites where ocean disposal may be permitted. On December 23, 1986, the Administrator delegated the authority to designate ocean disposal sites to the Regional Administrator of the Region in which the sites are located. The Pensacola (offshore) ODMDS is in Region IV and the designation is being made pursuant to that authority.

The EPA Ocean Dumping Regulations (40 CFR Chapter I, Subchapter H, § 228.4) indicate that ocean disposal sites will be designated by promulgation in this Part 228. A list of "Approved Interim and Final Ocean Dumping Sites" was published on January 11, 1977 (42 FR 2461 [January 11, 1977]).

B. Environmental Impact Statement Development

Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended, 42 U.S.C. 4321 *et seq.*, requires that Federal agencies prepare an Environmental Impact Statement (EIS) on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment.

The object of NEPA is to build careful consideration of all environmental aspects of proposed actions into the agency decision-making process. While NEPA does not apply to EPA activities of this type, EPA has voluntarily committed to prepare EISs in connection with ocean disposal site designations such as this (see 39 FR 16186 [May 7, 1974]). EPA, in cooperation with the U.S. Army Corps of Engineers (COE) and the U.S. Navy, has prepared a Draft Environmental Impact Statement (DEIS) and FEIS entitled "Designation of a New Ocean Dredged Material Disposal Site, Pensacola, Florida." The preceding Proposed Rule (53 FR 50977 [December 19, 1988]) and this Final Rule are procedural follow-ups to the EIS. This Final Rule includes excerpts from the Proposed Rule which included excerpts from the EIS. The EIS may be used as reference, especially for literature citations, which are not cited herein (two exceptions in this Final Rule).

The action proposed in the EIS is the designation of a new ODMDS offshore Pensacola, Florida. The purpose of this Final Rulemaking action is to designate, on a permanent basis, a new environmentally-acceptable ODMDS as an ocean option for the disposal of restricted suitable dredged material. The need for ocean disposal is determined on a case-by-case basis as part of the process of issuing permits for the transport of dredged material for disposal.

The COE and EPA evaluate all dredged material disposal projects in accordance with the EPA criteria given in the Ocean Dumping Regulations (40 CFR Parts 220–229), the COE regulations (33 CFR 209.120 and 209.145), and any State comments concerning consistency with a State coastal zone management program. The COE also issues permits to all applicants for transport of dredged material intended for disposal after compliance with the same regulations is determined. The COE also undergoes a public review process for its own disposal actions. EPA has the right to disapprove any ocean disposal project if it believes that all provisions of MPRSA and the associated implementing regulations have not been met. Although State permits may be required for dredging activities, they would not be needed at the Pensacola (offshore) ODMDS since the disposal site is located outside Florida State waters.

The Notice of Intent to prepare an EIS was published in the **Federal Register** on January 29, 1988 (53 FR 2640 [January 29, 1988]).

On June 10, 1988, the Notice of Availability of the DEIS for public review and comment was published in the **Federal Register** (53 FR 21914 [June 10, 1988]). The public comment period on the DEIS closed July 25, 1988. Distribution of the DEIS resulted in some mailing returns; attempts were made to redistribute such returns.

The Notice of Availability of the FEIS for public review and comment was published in the **Federal Register** on September 23, 1988 (53 FR 37044 [September 23, 1988]). The public comment period was to close on October 24, 1988, but was extended by EPA to November 14, 1988 (see announcement in **Federal Register** in 53 FR 44658 [November 4, 1988]). The FEIS addressed the comments received on the DEIS. Distribution of the FEIS also resulted in some mailing returns; attempts were again made to redistribute such returns. Also, replacement pages for Appendix B in the FEIS were distributed to the FEIS mailing list addressees at the end of the original FEIS review period (original review period was extended to allow some review time for Appendix B replacement pages). Review comment letters received by EPA on the FEIS are addressed in this Final Rule as opposed to the preceding Proposed Rule.

On December 19, 1988, the Proposed Rule for the Pensacola (offshore) ODMDS was published in the Federal Register (53 FR 50977 [December 19, 1988]). The public comment period for the Proposed Rule closed on January 18, 1989. One comment letter from the U.S. Department of the Interior (DOI) dated within the Proposed Rule comment period was received by EPA. In addition, a related follow-up letter was requested and received by EPA from the Minerals Management Service (MMS) within DOI, written comments from the COE were requested and received by EPA, EPA provided a letter (with COE's letter attached) to DOI requesting a DOI follow-up letter, and DOI provided the follow-up letter to EPA. Also during this general time, telephone coordination occurred between EPA and the COE (Mobile District and Panama City, FL office), MMS (New Orleans (Metairie), LA), DOI (Washington, DC), State of Florida (Tallahassee, FL), the U.S. Navy (Charleston, SC) and the Escambia County Florida Marine Recreation Committee (MRC: Pensacola, FL). Topics included artificial reef permitting, oil and gas lease block/ODMDS use conflicts, FEIS comment letters, DOI's lease block comments on the Proposed Rule, Final Rule publication and designation schedule, Final Rule development and/or artificial reef use. As a follow-up to discussions with MRC, in which EPA primarily requested information on artificial reef use, MRC provided a letter dated January 16, 1989, discussing artificial reef use as well as providing other comments/concerns. Although this letter was received after the close of the FEIS comment period, it was dated within the Proposed Rule comment period and concerned the FEIS and site designation in general. This letter is addressed in this Final Rule in association with the responses to the comment letters on the FEIS.

The EIS discusses the need for the designation of the Pensacola (offshore) ODMDS. EPA is designating the new ODMDS off Pensacola, Florida at this time to accommodate the Navy's anticipated disposal needs for predominantly fine-grained dredged material that meets the Ocean Dumping Criteria, but is not suitable for beach nourishment or disposal in the existing, EPA-designated Pensacola (nearshore) ODMDS (that site is restricted to disposal of suitable sandy dredged material). The U.S. Navy has proposed to establish a new homeport at Pensacola for the aircraft carrier *USS Kitty Hawk* and one naval reserve patrol craft. The *USS Lexington*, currently based at Pensacola, will be moved to Corpus Christi, Texas as part of the overall Gulf Coast Strategic Homeport Project. The proposed project will require deepening of the existing channel to the Naval Air Station (NAS) at Pensacola. Approximately 4.1 million cubic yards (mcy) of new work dredged material from the turning basin and channel is initially proposed for disposal in the new ODMDS. The U.S. Navy has applied for a section 103 permit for the transport of this material to the new ODMDS.

In the future, the ODMDS could also be used for disposal of maintenance material dredged from the Navy's channel, the Pensacola Harbor Ship Channel, or other private or Federal dredging projects provided the material meets the criteria specified in MPRSA. Additional section 103 permit review would be required prior to the use of the new ODMDS for any dredged material other than the initial 4.1 mcy proposed for disposal. Additional dredged material testing and NEPA documentation may also be required. Only material that meets the Ocean Dumping Criteria and is not suitable for beach nourishment would be placed in the site.

Ocean disposal site alternatives to the ODMDS being designated were examined in the EIS. Three alternative sites (Sites "A", "B" and "C") located in the mid-Continental Shelf area were initially selected for study. All three sites were located within an economically and operationally feasible radius (20 miles) from Pensacola Pass. The sites chosen for detailed investigation, Sites "B" and "C", covered approximately 19 square miles each. This area was considered large enough that an ODMDS could be located within the area.

Alternative Site "A" is located within Florida State waters, as defined by the State of Florida (10.36 statute miles).

(Note: EPA defines the breadth of Florida State waters as three miles per the Clean Water Act, as amended.)

Alternative Site "A" is a four-mile area located approximately 13 statute miles southwest of Pensacola Pass in depths of 60 to 70 feet. During the initial evaluations, this site was eliminated because it had no apparent environmental advantages, would be more expensive to use than either of the two other alternative sites because it was farther from Pensacola Pass, and was adjacent to Alabama State waters which would complicate the coordination process.

Alternative Site "B" is also located within Florida State waters, as defined by Florida. The northern side of the site is approximately seven statute miles southeast of Pensacola Pass. Depths in the area range from 60 to 87 feet and the bottom is generally classified as compacted sand. Site B was not selected for locating the ODMDS because one permitted and two existing artificial reefs were located within the eastern portion of the site. It should also be noted that water depths at the safety fairway portion of Site B (western portion of Site B) are generally shallow for receipt of dredged material disposal relative to the minimum 65-foot water-depth clearance specified by the U.S. Coast Guard, New Orleans District.

Alternative Site "C", the selected site, is located seaward of State waters, as defined by Florida, with the exception of a small portion of the northwest corner. The northern side of Site "C" is approximately 11 statute miles south of Pensacola Pass. Depths in the area range from 60 to 95 feet and the bottom is generally classified as compacted sand and shell hash.

The present Final Rulemaking action is the final designation of a new ODMDS for Pensacola located within the selected alternative Site "C". This ODMDS is located entirely outside of State waters. A numerical dispersion model (Disposal From An Instantaneous Dump: DIFID Model), available at the U.S. Army Engineer Waterways Experiment Station, was used to simulate the disposed material as it descends through the water column and spreads over the ocean bottom under varying hydrodynamic conditions. The results of all the model simulations indicated that 100% of the sand and silt/clay clumps fell to the bottom within less than 100 seconds of the beginning of the disposal operation. In addition, the simulations indicated that this material fell directly beneath the discharge barge, regardless of the input data, describing the oceanographic conditions of the site. The actual deposits of each of these solids fractions were different in that the sand tended to cover a large area of bottom at a lesser thickness than did the silt/clay clumps. The non-cohesive silts and clays did not behave in a similar fashion with a large percentage of these particles remaining suspended in the water column after disposal. Depending upon the ambient conditions, these particles can be transported from the dump location as a turbidity plume. The area affected by the plume varies greatly, depending primarily upon the type of material disposed. The area with suspended solids concentrations of more than 10 parts per million (ppm) would cover approximately 300 acres, 90 minutes after discharge, under worst-

case conditions, i.e., 95% silt/clay. Since approximately 93% of the 4.1 mcy to be disposed can be classified as sand or silt/clay clumps, a management plan was devised to utilize this material to form a submerged containment area (a horseshoe-shaped berm) into which the non-cohesive material would then be disposed. The model results, the management plan, and the comments received on the DEIS were used to define the actual coordinates of the area to be designated as the ODMDS. For additional details on the model and the management plan, see Appendices H and I of the FEIS, respectively.

Nineteen comment letters on the FEIS were received from sixteen commenters by EPA by the close of the extended comment period (November 14, 1988). The three additional letters were comprised of two follow-up letters (one within the comment period and one subsequently) and one inadvertent duplicate (but individually dated) letter. One additional letter provided comments on the FEIS and site designation in general. This letter, which was received after the FEIS comment period but was dated within the Proposed Rule comment period, is addressed below in association with FEIS responses.

Comments from nine of the sixteen commenters were not substantive. These commenters were Florida State University (Department of Biology: Tallahassee, FL), Department of Health & Human Resources (Centers for Disease Control, Atlanta, GA), Department of the Air Force (Eastern Region: Atlanta, GA), Northwest Florida Water Management District (Havana, FL), Florida Department of Agriculture & Consumer Services (Tallahassee, FL), U.S. Department of Housing and Urban Development (Atlanta Regional Office: Atlanta, GA), West Florida Regional Planning Council (Pensacola, FL; cover letter with comments attached), the Department of the Navy (Naval Air Station: Pensacola, FL), and the Department of the Army (South Atlantic Division: Atlanta, GA). The nature of these comments were either complimentary, and/or of the no comments, no adverse impact, or general compliance variety. Also, in one instance, no comments were provided due to reviewer scheduling problems. The West Florida Planning Council provided a follow-up letter to their initial comments, which indicated "[n]o additional comments" for the Appendix B replacement pages. One inadvertent duplicate letter was also received.

Comments from the remaining seven commenters were substantive. These commenters were Florida State University (Department of Oceanography: Tallahassee, FL), U.S. Department of the Interior, Minerals Management Service (Gulf of Mexico OCS Region: New Orleans, LA), Sport Fishing Institute (Washington, DC), Mote Marine Laboratory (Sarasota, FL), Florida Department of State (Division of Historical Resources: Tallahassee, FL; cover letter with previous letter to the U.S. Navy attached); Board of County Commissioners (Escambia County: Pensacola, FL; cover letter with comments attached); and the State of Florida (Office of the Governor: Tallahassee, FL; cover letter with comments attached). In addition to these seven letters, a follow-up letter was received from the Florida Department of State (Division of Historical Resources: Tallahassee, FL). Also, a letter providing comments on the FEIS and site designation in general was received from the Escambia County, Florida, Marine Recreation Committee (Pensacola, FL; cover letter with comments attached) after the FEIS comment period but dated within the Proposed Rule comment period. The comments in these nine letters are briefly summarized below, with responses provided.

The comments in the Florida State University letter were technical, critical, and concerned the original Appendix B of the FEIS relative to modeling and "* * * the extent to which the model reproduces the observed currents." The commenter summarized the FEIS as concluding that observed currents were longshore in direction and principally wind-driven, which the commenter felt was "not surprising" since this was a documented phenomenon. Of interest to the commenter was that "* * * we would hope to learn the extent the flow would be onshore or offshore, particularly in the near bottom layer—as we are concerned about the motion of dumped dredging materials." The commenter also summarized the FEIS as indicating that subtle differences in direction (about 10°) "* * * determine whether flow is onshore or offshore" depending on water column stratification (when stratified, flow is onshore in the bottom layer versus offshore when unstratified). The commenter felt that important differences in current transport patterns due to stratification were "ignored" in the modeling work and that the difficulty associated with model calibration to include stratification aspects was not justification for assuming neutral stratification. Instead, the difficulty of the problem was justification for first-rate modeling.

The commenter cited several figures in the FEIS (e.g., Fig. 5) that presented "* * * comparisons between modeled and observed flow direction" and exhibited a difference in direction of typically 20° (45° in Fig. 8), so that "* * * the *observed flow* is usually more towards the coast than the *modeled flow.*" Therefore, it was indicated that the likelihood of dredged material being carried back to shore would be considerably greater than the model predicted. The commenter was also critical of Figures 10–20 which were felt to show "serious" differences between the model and observations. Differences listed were the omission of a series of "events" (Fig. 12) and frequent approximate doubling of velocities, "wrong" directions (Fig. 13), and "serious phase shift" errors (e.g., Fig. 14 and 15). The author, therefore, disagreed with the FEIS which indicated, despite these "continued, significant errors," that figures showed reasonable agreement between overall current magnitudes and directions. The commenter questioned how great the differences would have to be before the FEIS would conclude that the figures did not show good agreement. It was also pointed out that quantitative comparisons were not made.

The Florida State University letter also presented five other specific concerns (excerpted):

1. Coastal trapped waves propagate generally to the west along the Gulf coast. It is *essential*, therefore, that any adequate model of nearshore currents include not only the local winds at Pensacola but also the forcing by distant winds to the east. The winds as far away as Tampa and Key West probably contribute significantly. Was this investigated?

2. No quantitative comparison is shown between the results of the model and the observed currents. The comparison, in fact, now seems biased in favor of the model; during March the water is unlikely to be stratified. What would a comparison in August show?

3. If velocities were calculated in the model at ten levels (in the vertical) why were comparisons made at only two levels? Figure 4, page B–54, suggests that 6 levels might be the minimum necessary. However, veering in a boundary layer is not unique to Pensacola.

4. I have been unable to tell from the report, the offshore extent of the bottom topography in the model. If they do not continue the model out into deep water, this will guarantee that the free waves

will not travel at the correct speed—and perhaps explain some of the strange phase problems in their results.

5. In the first part of the analysis section, pages B–25 through B–31, a great deal of description is given to quantities that could be computed from the data, including normal spectral analysis. It appears, however—at least in my copy of the report—that none of these derived or computed quantities are presented. Is the report incomplete?

In the letter's final paragraph, the commenter again disagreed with the FEIS conclusion that the comparisons (between observed data and modeled results) were in "relatively good agreement." The FEIS conclusion was questioned, given the considerable accuracy required to assess the problem. The commenter indicated that "[t]he whole purpose of doing current meter work and numerical modeling is to allow accurate, reliable predictions of where suspended sediment will be carried." The commenter did not believe that such a predictive capability could "* * * possibly come from the model results presented * * *" in the FEIS.

In response to these comments, it should be stated that the goal of this work was not to advance the state of modeling or to conduct a detailed oceanographic investigation of the region of Pensacola, Florida, but rather to extrapolate a current climatology from specific current meter samples. Also, the concern was not with typical currents, but rather with those capable of moving local sandy bottom materials. This led to a simple model that was tuned to strong currents in a well-mixed water column. This information was then utilized to project, under conservative circumstances, the response of materials discharged into the proposed ODMDS. The results of these efforts are presented in the body of the FEIS and Appendix H.

With regard to stratification, the statement on page B–52 of the FEIS may have been misconstrued. Stratification was not neglected because of modeling difficulties, but rather because the interest was in flows sufficient to move material in 20 meters of water. Such flows are virtually always well mixed. Moreover, it was not evident that incorporating stratification would provide better accuracy owing to uncertainties in specifying its parameters (heating, cooling, freshwater runoff, etc.). During the application of the DIFID Model to project movement of material (see FEIS Appendix H), the impact of a stratified water column was investigated. Comparison of these results to a scenario utilizing a well-mixed water column did not show any change. This is likely due to the depths within the proposed ODMDS, the draft of the loaded dump scow proposed for use, and the nature of the material to be disposed.

Relative to comparisons between the model results and observed data, comparisons relate to high speeds to emphasize intervals in which bottom material moves. These comparisons (both velocity and direction) are much better than for lower speeds, which were of little interest. It is unlikely that details of low-speed current structure could have ever been resolved since many of these are due to randomness and sub-scale phenomena.

Pertaining to the five specific concerns excerpted above from the comment letter, the following responses are offered:

• *Concern 1:* Little evidence was found either in the data or a literature review to suggest that currents resulting from non-local mechanisms (free waves, trapped waves, edge waves, etc.) are strong enough to move significant quantities of local bottom material. Also, the strong, open Gulf, Loop Current is unlikely to come this close to shore. To account for the possible occurrence of this phenomenon, however, a scenario was investigated utilizing the DIFID Model described above. In this scenario, current velocities of 2.54 feet per second, constant with depth, towards the northeast (shoreward) were input to determine the extent of movement of fine-grained materials discharged into the ODMDS. Although some movement of material from the site is expected to occur during these conditions, impacts to significant resources are not predicted due to the location of the ODMDS.

• *Concern 2:* How well the model predictions might have been for August was not investigated because the interest was in velocities strong enough to move materials deposited on the bottom. At these times, summer and fall, the water column will not remain stratified.

• *Concern 3:* Comparisons were only made at water column levels at which current meter data had been collected; therefore, not all ten modeled levels were compared.

• *Concern 4:* Regarding "the offshore extent of the bottom topography of the model," the model bottom topography grid extended offshore to 28.5° N latitude.

• *Concern 5:* Relative to the lack of analyses actually in the FEIS analysis section, all analysis details were not included in the report because of their bulk. However, a separate analysis appendix can be made available.

In response to the commenter questioning the predictive capability of the model, it may be stated that the results of this data collection, analysis, and modeling effort were only a portion of the total effort undertaken during the designation process for the proposed ODMDS. As indicated earlier, the goal of this work was not to advance the state of modeling or to conduct a detailed oceanographic investigation. As such, the information presented in Appendix B must be utilized in combination with the other efforts presented in the FEIS to determine the suitability of the proposed location as an ODMDS and to describe the possible impacts associated with its use.

The letter from the U.S. Department of the Interior, Minerals Management Service, also provided substantive comments. The Department's review presented eight concerns. Specifically, the Department indicated that: (1) No follow-up textual discussions were presented for the three adverse environmental impacts (water quality, bathymetric alteration, and benthos smothering) listed in the FEIS cover sheet (it was noted, however, that the text did not indicate adverse impacts); (2) inclusion of the dimensions of the navigation channel in Section 2–1 would be beneficial; (3) it was unclear where previous ocean disposal of fine-grained material had occurred since the existing disposal site near Pensacola was rejected for the U.S. Navy's homeporting project, as it was restricted to coarse sediments; (4) the text was "unnecessarily confusing" relative to referencing alternative Sites B and C versus rejected alternative sites; (5) the discussion in Section 4.03 on barrier island evolution was felt inaccurate since the islands were apparently formed by headland erosion and spit elongation rather than dune ridge submergence; (6) the description of the bottom topography in Section 5.02 as "relatively flat" but also as "highly irregular" were felt to describe different terrains; (7) fisheries statements in Section 5.03 were believed to be too general since the commenter indicated that a great deal was known about certain commercial species in the northern Gulf of Mexico as opposed to the general life-cycle of fish and shellfish in the northern Gulf, and that Gulf species spawn in "nearshore waters near passes and estuaries" as opposed to "the waters of the Gulf," and (8) Appendix A (pg. 3) did not present the results of discussed bathymetric

surveys conducted to identify potential live/hard bottom communities.

In response to these eight concerns, the following is offered:

• *Concern 1:* The three adverse impacts listed in the cover sheet are discussed in Sections 5.02, 5.07, 5.14, and 5.21. In these sections, it is indicated that although these impacts are adverse, they are not considered significant. These impacts, therefore, did not preclude designation of an ODMDS within Site C.

• *Concern 2:* Regarding the dimensions of the navigation channel, the U.S. Navy Homeport action was described in detail in the U.S. Navy Gulf Strategic Homeport Project FEIS filed with EPA in January 1987. The information presented in that document was incorporated by reference into this EIS. The actual size of the channel is not relevant to the designation process for the proposed ODMDS and therefore was not included.

• *Concern 3:* Fine-grained material has historically been disposed in land disposal sites or open estuarine waters. These alternatives were discussed in the U.S. Navy FEIS referenced above. This document concluded that the only option suitable for disposal of the quantity of fine-grained material associated with the Homeporting action was ocean disposal. Also, the Pensacola (nearshore) ODMDS was not restricted to sandy material until it was permanently designated by EPA with grain-size restrictions on May 9, 1988.

• *Concern 4:* Section 1.0 of the FEIS is a concise summary of the information presented in the body of the FEIS. As such, it describes the need for ocean disposal, alternatives which were eliminated prior to detailed investigation, and the sites at which detailed field investigations were undertaken. Alternative Sites B and C received detailed study, which was described in the body of the FEIS (Section 3.0).

• *Concern 5:* The discussion of barrier island evolution in the Pensacola area in Section 4.03 is from the published literature, particularly:

Hoyt, J.H. 1967. Barrier island information. Geol. Soc. Am. Bull. 78:1125–1136.

Shepard, F.P., F.B. Phleger, and T.H. van Andel (eds.). Recent Sediments, Northwest Gulf of Mexico. A Symposium 1951–1958. AAPG, Tulsa, OK. 394 pp.

If additional information exists that indicates that the results published in this literature are inaccurate, appropriate citations may be provided to EPA or the COE at the addresses provided above.

• *Concern 6:* The information on bottom topography presented in Section 5.02 may have been misconstrued. The first description is of the bottom topography of the sites investigated in detail, i.e., relatively flat. The next sentence describes the bottom topography of the Continental Shelf, offshore Pensacola, in general terms. Therefore, the description as presented in Section 5.02 is accurate.

• *Concern 7:* Thank you for your fisheries comments.

• *Concern 8:* Sections 4.10, 5.02, and 5.10 of the FEIS and paragraphs 5 and 8 of Appendix A indicate that no areas of live/hard bottom were identified from the literature searched or areas surveyed within either Site B or C.

The Sport Fishing Institute's comments were generally critical of the FEIS fisheries information. Two specific comments and two subcomments were presented: (1) The FEIS "* * * does not address the affected recreational fisheries;" the magnitude of the recreational fisheries (artificial reefs, etc.) relative to "* * * participation, economic impact, and catch should be quantified;" (2) "* * * the FEIS should be rejected * * *" since Section 5.09 (which was described as "incomplete and inaccurate"), addresses impacts on various activities including recreational fishing. Under this second point, the letter indicated that: (a) Loss of habitat at the disposal site would ultimately result in loss of fish "* * * due to decreased spawning and predator-prey opportunities" even though fish are mobile and could avoid direct effects during discharges, and (b) although Site B would affect three artificial reefs and Site C four reef sites, no efforts for ecological and economic impact calculations or for mitigation were provided.

The commenter concluded that "* * * the FEIS is inadequate because it fails to address fisheries in any meaningful way" and that "[p]otential negative effects exist * * *" which should be estimated. Also, adverse impacts to fisheries should be mitigated if the project is undertaken.

In response to these concerns, the following is offered:

• *Concern 1:* The importance of recreational fisheries to the economy of the northern Gulf Coast and the Pensacola area in particular is a well known fact, although poorly documented. Section 4.11 of the FEIS discusses the location of artificial reefs in the Pensacola area, the composition of the fishery utilizing these reefs, non-reef community composition, and the shrimp fishery of the area. Sections 5.03, 5.05, 5.07, 5.09, 5.13, 5.14, and 5.18 discuss the possible impacts to the fishery-related resources that would result from the utilization of an ODMDS at the recommended site (Site C) for the disposal of suitable dredged material.

As depicted in Figure 4–2 in the FEIS (pg. 4–10), two existing artificial reefs (Escambia #15 site and the "Russian Freighter" or San Pablo site) and one permitted reef are located within Site B, while one existing reef ("bridge rubble" reef) and one proposed reef site are located in the vicinity (east) of Site B. Two proposed reef sites are located within Site C while one existing reef (Escambia #7 site), one permitted reef, and four proposed reef sites are located in the vicinity (east) of Site C. One proposed reef site is located northwest of Site C and west of Site B and one proposed reef is located northwest of Site B. Of these, impacts to the existing and permitted reefs are of concern to EPA. Because the proposed reefs are not constructed and can conceivably be moved to nearby sites as necessary (numerous proposed sites exist in the area), proposed reefs are of minimal concern.

Based on telephone discussions with and a letter dated January 16, 1989, from the Escambia County Florida Marine Recreation Committee (MRC), EPA understands that "thousands" of private artificial reefs have been constructed in the area; five are known to be located within Site B and four within Site C and others may also exist within the sites. These private reefs can be substantial structures (e.g., airplane body), but are generally constructed of non-permanent materials (wood and metal) and are uncharted. The MRC indicated that "little" original material remained at the four reefs within Site C. EPA believes that while private reefs would provide habitat and could or would be impacted if present at selected Site C, such private reefs constitute illegal ocean dumping (i.e., were not granted appropriate permits). Such reefs were not considered in the impact analysis of the EIS or in the Proposed or Final Rules.

Information regarding the one permitted reef located within Site B and the one located east of Site C is unclear. It is possible that these sites are the same as the existing Escambia #7 and #15 reefs since the permitted reefs are proximal to either Escambia #7 or #15. If not, EPA assumes that they are or will be constructed since they would have been granted permits and expects their level of use to be similar to that of the Escambia #7 and #15 reefs. The EIS and this Final Rule treat the existing and permitted sites as separate sites.

The quantification of the magnitude of the artificial reef fisheries in terms of participation, economic impact, and catch, as requested by the commenter, would be difficult to compile. It is probably also unlikely that such quantified information is documented, since records of sports catches are generally uncommon. However, EPA believes information on the use and economic value of local artificial reefs is helpful in impact assessment. Based primarily on telephone discussions with and a letter dated January 16, 1989, from Escambia County (MRC), the Escambia #7 and #15 reefs were recently constructed in 1987 and 1988 and contain a considerable amount of structure (car bodies, concrete material and/or a steel boat hull). Considerable additional material will also be deployed at these reefs and more is planned. The "bridge rubble" reef was constructed with bridge rubble in the 1970's and therefore is well established. The San Pablo reef, which consists of a Russian freighter (approx. 150 ft. long) that was sunk in 1943, has existed even longer and is the largest reef in the area. MRC reported 29 boats anchored at the San Pablo reef one summer Saturday on a holiday weekend in 1988. Also, MRC estimated that a minimum of 30% of the 19,000 registered pleasure motorboats in Escambia County utilize Escambia #7 and #15 and other artificial and natural structures. All four reefs are heavily fished, with grouper, snapper, triggerfish and other species being caught (also see Section 4.11 of FEIS). Principally hook-and-line but also spearfishing methods are used. Pleasure diving, particularly at the San Pablo reef, is also pursued. (For details on reef use, also see the subsequent summary of the MRC letter.)

Based on the above information, EPA believes that the four existing reefs in proximity to Sites B and C attract sports fish, are heavily fished and otherwise used for recreation, and are economically important. This is apparently particularly true for the older San Pablo and "bridge rubble" reefs. If the two permitted reefs in the area are different from Escambia #7 and #15 and are constructed, it is assumed that they too are similarly used.

• *Concern 2:* With regard to the completeness and accuracy of Section 5.09, EPA believes that, relative to recreational fisheries, Section 5.09 clearly indicates the existence of artificial reefs in Site B and that "[u]se of the eastern side of alternative Site B as an ODMDS would impact the existing and permitted artificial reefs." The presence of these reefs was a major factor in the rejection of Site B over Site C as the selected ODMDS area. The EIS provides a reasonable basis for this decision. The artificial reef use information supplied herein in response to the Sport Fishing Institute's letter supports the selection of Site C since the San Pablo reef is heavily used and would have been impacted if the eastern portion of Site B would have been used. Relative to Site C and impacts on artificial reefs, the one existing and one permitted reef located to the east of Site C both lie upcurrent of the predominant currents which flow toward the west and therefore will not be impacted significantly by the action. EPA does not agree that the FEIS should be rejected.

• *Concern 2a:* The paragraph in Section 5.09 is accurate and does not ignore the fact of possible impacts due to lost habitat. Fish, due to their motile nature, are not directly affected by the discharge, i.e., they are not smothered by the material being discharged. However, as indicated in Section 5.09, indirect impacts do accrue to the fishery of the area through the loss of benthic organisms which serve as a food source for many demersal species. These impacts, however, are not significant because they would be restricted to the actual disposal area and studies have shown that the benthos are able to recolonize dredged material disposal areas within 6 to 18 months following the disturbance (see Section 5.21). As discussed in Section 5.03, no impact to breeding, spawning, or migratory areas is expected to result from the proposed action due to the location of the proposed ODMDS in relation to these areas.

• *Concern 2b:* The commenter's concern that the use of Site B would affect three artificial reefs (presumably the two existing reefs and one permitted reef within Site B) is shared by EPA. As indicated above, this was one factor that led to the selection of Site C over Site B. However, despite the fisheries importance of the artificial reefs in proximity to Site C, EPA believes that the one existing and one permitted reef east of selected Site C should not be impacted significantly since they are not only located outside of Site C boundaries, they are also located upcurrent of Site C relative to the predominant current direction.

Oceanographic investigation of the proposed sites was conducted between February 1987 and January 1988. The results of these investigations indicated that the currents in this area of the Gulf of Mexico are wind driven, parallel to shore, and typically uniform throughout the water column. Although the predominant current direction is towards the west, there are instances when flows are towards the northeast and east. During the site designation process, the possible impact of dredged material being moved by the currents was investigated utilizing numerical models. As a result of these models, a management plan was devised for the site to provide additional buffer between significant resources and the ODMDS. Appendices H and I to the FEIS contain the numerical modeling effort and management plan, respectively, and should be consulted for details. The results of the numerical model indicate that although the fine-grained material stays in suspension after disposal, the concentration of the material decreases significantly with distance from the disposal site. The distance between the existing Escambia #7 reef and the ODMDS is approximately 2 miles (approximately 3 miles for the permitted reef) and it is unlikely that concentrations of suspended material of sufficient quantity to result in impacts to this reef would ever travel this distance. As added protection, the management of the site involves the proposed construction of a horseshoe-shaped berm into which the fine-grained dredged material would be disposed. This berm is closed on the eastern end; therefore, any suspended or eroded material would have to move up the berm, approximately 6 feet in height, before moving toward the artificial reefs. Since impacts to these resources would not be significant, discussion on mitigation of impacts is not appropriate. Since Site B was not selected, discussion of mitigation of impacts to the artificial reefs within Site B is also not appropriate.

With respect to the commenter's conclusion that "* * * the FEIS is inadequate and fails to address fisheries in any meaningful way," EPA does not agree that the FEIS is "inadequate," pursuant to the EIS rating system criteria presented in the "Policy and Procedures For the Review of Federal Actions Impacting the Environment" currently used by EPA. Fisheries-related information presented in the FEIS supports the selection of Site C over Site B. The EIS provides a reasonable basis for this decision. The reef use information supplied herein, further supports this selection.

Also with regard to fisheries, EPA wishes to note that the Proposed Rule should have included a discussion on potential impacts to artificial reefs associated with Site C under criteria #8, concerned with fishing and recreation, in the discussion of the 11 specific site

selection criteria characterizing Site C. However, such discussion was presented earlier under criteria #3 concerned with amenities.

Related to the above Sport Fishing Institute's letter was a letter received from the Escambia County Florida, Marine Recreation Committee (MRC). As previously mentioned, EPA telephone requested information from MRC, primarily concerning the use of artificial reefs associated with Sites B and C. As a follow-up, MRC provided a letter dated January 16, 1989, discussing artificial reef use and other comments/concerns.

The MRC cover letter referenced the conversation with EPA on January 10, 1989, receipt and review of the provided FEIS, and indicated that comments were "* * * directed at the ODMDS potential impact on recreational fishing, sports diving and artificial fishing reefs in this area." The commenter also indicated that the MRC was an advisory body to the Escambia County Board of County Commissioners and that it was composed of recreational fishermen, charter boat captains, and sports divers. As such, it represented the opinions of the local recreational fishing and diving industry.

The MRC comments attached to the cover letter discussed three main topics: (1) Review of the FEIS, (2) existing and proposed artificial reefs, and (3) the effect of ODMDS Sites B and C on recreational fishing, sports diving and artificial reef sites of Escambia County.

Regarding the MRC review of the FEIS, the commenter indicated that this was the initial review opportunity provided to MRC for the DEIS or FEIS. An MRC letter dated March 26, 1987, to the Mobile COE expressing MRC views was referenced. The commenter indicated that MRC in principal opposes the establishment of ODMDSs or other ocean disposal "* * * due to negative effects which this activity has traditionally had upon marine life and recreational fishing." However, the commenter recognized the complex nature of the U.S. Navy Strategic Homeport Project and the effect of economics on the selection of disposal methods and site locations. It was indicated that it was understood that it was not a matter if an ODMDS would be approved, but rather where it would be located. The MRC indicated, based on the FEIS review, that Site C "* * * will have the least negative impact * * *" on the local artificial fishing reef program and on recreational fishing. The commenter also referenced that MRC comments were made per EPA request.

Relative to existing and artificial reefs, the commenter indicated that local charter boats "rely heavily" on artificial structure since the presence of natural structure in the area was limited within a feasible distance of Pensacola Pass (considered to be less than 35 miles and usually less than 20 miles). Very few large structures exist. Significant natural structures were listed as ledges and rock outcroppings generally more than 20 miles from the Pensacola Pass. Fishes of recreational interest dwelling or visiting at structures were snapper, grouper, triggerfish, amberjack, mackerel and cobia.

The commenter also indicated that "thousands" of private, non-permitted reefs existed within the 35-mile arc of the Pass. Four such reefs were known to be located within Site C (3 east of the western edge of the safety fairway and 1 on the extreme western side of Site C). The commenter stated that "[l]ittle of the original material, automobile bodies, a wooden shrimp boat and an airplane, remains." Site B was indicated as containing five known private reefs (3 in the southeastern portion and 2 in the southwestern end). Structures were comprised of two airplanes, two barges and automobile bodies. The commenter stated that private reef builders "* * * recognize the disadvantages of their efforts due to the effects of hurricanes and discovery by other fishermen" and that generally inexpensive and relatively short-lived materials were used. It was felt that other private reefs in addition to the nine mentioned may also be located within Sites B and C.

The commenter provided a history of Escambia County's artificial reef program which was established in 1985 and was preceded by a former county program (until 1979) and the State's deployment of liberty ships. The former County program concentrated on automobile tires and concrete rubble material while the present program centered on donated material and designed structure. Escambia Sites #7 and #15 were scheduled to receive about $100,000 worth of designed structure in 1989 and some $120,000 had been requested for the future. Escambia County was one of few communities with a program using designed structure. The present program identified 22 potential public reef sites of which eight were permitted. Existing permitted reefs in the vicinity of Sites B and C were known as Escambia County #7 and #15, which were two square mile plots each. These sites were located per COE and the Florida Department of Natural Resources (DNR) requirements and other factors. The COE and DNR requirements were described as "a sandy bottom with no natural growth or other significant habitat," which are similar to criteria for siting ODMDSs. Only reef sites #7 and #15 of the eight permitted sites have received material; they were defined as the "cornerstones" of the Escambia County reef program for development of mid-depth sites (70–100 ft.). Deployment of material occurred in alternate 500 x 500-foot squares composing the sites.

The commenter indicated that Figure 4–2 of the FEIS depicted permitted and proposed Escambia County public artificial reefs relative to Sites B and C. It was stated that "[w]e commend the EPA in not recommending ODMDS site B due to its potentially negative effect on existing and proposed artificial fishing reef sites." Escambia #7, east of Site C, is composed of 200 tons of concrete structure and 30 automobile bodies deployed in 1987 and 1988. Escambia #15, within the southeast end of Site B, contains 24 automobile bodies and a 40-foot steel hull boat deployed in 1988. Within the next 30 days, the commenter indicated that 100 large concrete culverts and 14 steel pipes would be deployed and 16 railroad box cars were scheduled for deployment in the next six months. Plans for additional deployment were in various stages; a majority of the $100,000 worth of designed materials for deployment at these sites was scheduled for 1989. The commenter felt that these two sites currently contained 30% of the volume of artificial reef material in the area, which would increase to 60% by the end of 1989.

Specific to reef use information, the commenter provided the following (excerpted):

"As with any publicly identified artificial reef structure, sites 7 and 15 are heavily used by recreational fishermen due to the lack of natural and artificial bottom structure. Their use will significantly increase as additional material is deployed and the public experiences successful fishing trips at these sites. During peak recreational fishing periods such as summer holiday weekends, we have frequently observed numerous recreational fishing and dive boats anchored over the same public reef structure. On one summer Saturday in 1988, 29 boats were observed anchored at the same time on one structure, the San Pueblo [San Pablo]. The San Pueblo [San Pablo] or Russian Freighter, has been in place since 1943 and is located east of Escambia County site 15 on the eastern boundary of site B. The same day, every publicly known site to include sites 7 and 15, had 5 or more boats on them. We estimate that at a minimum 30 percent of Escambia County's 19,000 registered pleasure motor boats use sites 7 and 15, other public artificial reefs and well known natural structures. Private and charter fishing and dive boats from Pensacola, Destin, and Orange Beach, AL also use public reef

structures off Pensacola and have frequently been observed on sites 7 and 15. Approximately 20 percent of the charter fishing boats use public sites. Virtually 100 percent of the areas dive shops use public reef sites. Sites 7 and 15 are designed by the placement of material in alternate squares, to accommodate a large number of recreational boaters on a non competition basis, while at the same time increasing the probability of creating an artificial reef habitat that will encourage and support a total increase in fish biomass. These sites are unique in their size and design as a majority of the older public reef sites consist of smaller physical areas and significantly less reef material."

The commenter stated that MRC members "* * * must rely upon the EPA, DNR, and other agencies * * *" for the expertise to address the total effect of creating an ODMDS in the area.

Several concerns were raised regarding ODMDS impacts on the artificial reefs. These involved the effect of depositing dredged material containing heavy metals or other unsuitable constituents at the ODMDS and that 19 square miles of bottom area would be eliminated for potential habitat improvement (reefs). MRC was also concerned that materials might migrate from the ODMDS. MRC also did not believe that the FEIS monitoring and management plans fully provided methods to monitor such migration or "* * * actions which can or will be taken to correct or eliminate any discovered movement." It was recommended that the monitoring plan "* * * should at a minimum encompass detailed monitoring during the construction process, an annual evaluation during the first five years after construction and evaluations after any hurricane whose eye transits within 100 miles of this area." If the material was demonstrated to be stable, monitoring intervals could be significantly decreased. It was also felt that subsequent disposal by "private" dredging activities may not be properly monitored. It was felt that a commitment for long-term funding to correct any problems was not addressed and may not be possible for government budgets. The source of funding for possible capping of the disposed material, if it was determined to migrate, was also questioned.

The commenter noted that "[i]f, ODMDS site C is created with a horseshoe berm and material is placed and monitored as described above and in the EIS, we do not believe their [there] will be a significant adverse effect upon reef sites 7 and 15, beyond anticipated turbidity problems during the initial deployment." If material movement or placement was not as predicted, however, it was stated that "* * * there is the possibility for significant adverse effects on these two and other reef sites."

Alteration of Escambia County's artificial reef construction program was said to be dictated by creation of the ODMDS at Site C. Sites #3 and #4 would need to be abandoned (since they were downcurrent of the open portion of the horseshoe berm and could potentially be influenced by material movement). Plans for Site #2 may also be abandoned, depending on material movement. The potential use of Site #2 would be, at a minimum, delayed for three years until effects of the ODMDS were determined. Development of Site #1 was already reduced and would likely not occur due to turbidity from nearshore dredging projects existing north and west of the safety fairway intersection. Regarding Site B, the commenter indicated that proposed sites #1 through #4 were the only large reef sites west of the north-south safety fairway. It was felt that selection of Site B would have had a significant and adverse effect on recreational fishing since "* * * it would have caused our complete abandonment of reef site 15, a significant deterioration of the San Pueblo [San Pablo] site, and the probable abandonment of plans to develop sites 1, 2 and 3."

In response to the MRC letter, the following is offered:

• *Topic 1:* Regarding the review of the FEIS, the commenter indicated that this was the "initial opportunity" to review the FEIS or DEIS. We wish to note, however, that page 7–3 of the DEIS and FEIS indicate that the Escambia County Commission was on the EIS coordination list.

EPA primarily requested use information on Escambia County artificial reefs associated with Sites B and C. As a follow-up to this telephone discussion, a copy of the FEIS (with a question as to the source of the two permitted reefs in Figure 4–2 on page 4–10) and the Proposed Rule were provided. Although a letter was not necessarily requested, MRC provided the letter dated January 16, 1989. EPA appreciates MRC's documentation of the artificial reef information.

• *Topic 2:* Thank you for providing information on the existing and proposed Escambia County artificial reefs associated with Sites B and C. EPA wishes to emphasize that the referenced private, non-permitted reefs constitute illegal ocean dumping.

• *Topic 3:* Several concerns were presented by the MRC:

—Pertaining to the presence of heavy metals and other unsuitable constituents in the disposal material, materials may not be approved for ocean disposal unless the criteria in the Ocean Dumping Regulations, 40 CFR Part 227, have been met. Bioassay toxicity tests of the material anticipated for initial disposal at the ODMDS (from the Navy's homeporting project at Pensacola) indicate no significant adverse effects to marine organisms (see FEIS Appendix D). Although slight heavy metal enrichment of chromium, mercury, and zinc exists, the levels are not high enough to initiate the capping of the disposed dredged material with clean sand or to prevent the proposed designation of this ODMDS (see FEIS Section 5.05). Any future disposal of dredged material at this site would require similar testing before disposal.

—EPA agrees that the ocean bottom area within the boundaries of the ODMDS would be lost for habitat improvement for the Escambia County artificial reef program. However, the proposed ODMDS horseshoe-shaped containment berm and clay clumps could attract reef-associated fishes.

—Regarding the monitoring and management plans proposed in the EIS, we believe them to be adequate proposals at this time. Modifications of these plans are possible as greater understanding of the site develops. In general, disposed material will be monitored via a sediment mapping technique. If evidence of significant adverse environmental effects outside the ODMDS boundaries is discovered, EPA will take appropriate measures to mitigate the impact or terminate disposal at the site. It should also be noted that the proposed horseshoe-shaped berm at the eastern end of the ODMDS should help contain the fine-grained disposal material within the ODMDS. This berm, in association with a natural upward slope at the western end of the ODMDS, will form a trough containment area.

—In regard to ODMDS monitoring frequency, this will depend upon need (determined dredged material migration outside the ODMDS) and funding. Funding sources include EPA, COE, and private operators with disposal needs. Funding is via an annual budget and is therefore undetermined for each following year. In general, the existence, magnitude, and implementation of the management and monitoring plans for this site are dependent upon funding, monitoring data results and coordination between EPA, the COE, U.S. Navy, State of Florida and/or other potential users.

—In general, turbidity problems during disposal should not be significant to Escambia #7 and #15 reefs since the predominant current direction is to the west away from the reefs and toward the ODMDS.
—The abandonment of proposed reef sites by Escambia County should be dependent upon site locations in relation to the ODMDS, current directions, and monitoring data results. We assume that there are numerous new sites in the general area that could be used as necessary for artificial reef deployment.
—The FEIS (Appendices G and I) and the Proposed Rule should be consulted for additional information on the proposed management and monitoring plans and the Pensacola (offshore) ODMDS designation in general.

Comments from the Mote Marine Laboratory complimented the FEIS's "presentation and history of site selection" as being "quite excellent." Three main concerns were provided: (1) Use of the words "temporary" and "localized" (pp. 1–2) was questioned relative to dredged material impacts; while "localized" could be interpreted to mean the "disposal site," it was suggested that the word "temporary" be better defined; (2) it was unclear if the model used in the "Circulation and Mixing and Sediment Transport" section (FEIS: pp. 4–2 and 4–3) accounted for any wave surge, which can affect sheer forces and resuspension of fines; *in situ* measurement of resuspension was felt to be technologically possible although probably unprecedented at a disposal site; measurement would be useful to refine and verify models predicting sediment transport; (3) the commenter felt that fine particulates disposed on sites consisting of "* * * coarse and medium sand with varying amounts of shell fragments" (FEIS: pg. 4–4) will not remain there (i.e., will be re-exposed) due to hydrodynamic forces; the author did not totally agree with "[t]he hypothesis that coarser materials will armor the surface and prevent further winnowing of fine particulates * * *" due to bioturbation effects (sediment mixing of macroinfauna), which would expose fines to surge and currents; moving sediments (as evidenced by sand waves and indicating instability and sediment movement) would also re-expose fine particulates to currents.

The commenter also indicated that "* * * the EPA monitoring program should consider a long term strategy at these sites in order to accurately define sediment transport dynamics." The magnitude and extent of sediment movement could thereby be resolved and its importance determined.

In response to the three main concerns from Mote Marine Laboratory, the following is offered:

• *Concern 1:* The terms "localized" and "temporary" are more clearly defined in Section 5 of the FEIS. "Localized" is used to mean the area of the ODMDS. The term "temporary" may denote varying time frames depending on whether one is discussing the impacts to the water column or benthos. The former may refer to a matter of minutes or hours while the latter may range from weeks to months.

• *Concern 2:* Relative to the DIFID Model accounting for wave surge affecting sediment resuspension and sheer forces, FEIS Appendix B contains a summary of the physical oceanographic data collected at Sites B and C as part of the field investigations on these sites. This information was then utilized as input to two models to project conditions under differing meteorological conditions as described in Section 3 of Appendix B. Appendix H presents a discussion of the DIFID Model utilized in the projection of the response of the material discharge from the disposal vessel. As indicated in this discussion, the major limitation of DIFID is the assumption that once solid particles are deposited on the bottom, they remain there. As indicated in Sections 4.08 and 5.07, resuspension of deposited material, especially fine sands and silts and clay, can be expected to occur under conditions measured at the site. The movement of these materials, however, is not expected to result in unacceptable impacts due to the location of the proposed ODMDS in relation to significant resources.

It is agreed that information relative to transport and resuspension of materials deposited in the ODMDS is needed. A collection of relevant information has been included in the proposed Site Monitoring Plan discussed in Appendix G of the FEIS.

• *Concern 3:* Regarding bioturbation, EPA agrees that it is an important aspect in the sedimentary processes of an area. As indicated in Section 5.07, much of the silt and clay deposited in the area is expected to be winnowed from the site by ambient currents. The material initially to be discharged into the site consists of approximately 3 mcy of sandy or cohesive material. This cohesive material is expected to form clumps of "clay balls" which tend to consolidate over time. The remaining 1.1 mcy is approximately 40% sand and 60% silt/clay. Of this 60% silt/clay, approximately 50% is expected to form clumps. The proposed management plan for the use of the site (Appendix I) would utilize the three million cubic yards to form a three-sided underwater berm. The remaining material would then be discharged within this berm area. It is expected that much of the non-cohesive, fine-grained material will erode from the site over time. Based on COE experience, minimial erosion of the cohesive fine-grained material is expected.

Concerning the commenter's interest in "a long term strategy" at the site relative to sediment transport dynamics, the proposed site monitoring plan as described in Appendix G contains components associated with measuring sediment transport away from the ODMDS. The temporal extent of the monitoring program is dependent, however, on the level of impacts associated with the action and does not represent a scientific investigation into sediment transport processes.

The review letter from the Florida Department of State, Division of Historical Resources, provided comments and included a copy of the Division's previous letter dated March 16, 1988, to the U.S. Navy concerning the "[c]ultural resource assessment request for proposed dredge disposal from Pensacola Harbor Homeporting" (a copy of that letter was included in the FEIS (pg. 7–7 and 7–8) and is not completely summarized herein; however, see summary of the Division's present letter below and responses to the U.S. Department of the Interior's comment letter on the Proposed Rule at the end of this Section B). The commenter referenced Section 4.16, "Cultural Resources," of the FEIS as indicating that a literature search determined no historic shipwrecks near the alternative ODMDS, and that Section 7.0 indicated that results were coordinated with the Florida State Historic Preservation Officer. The enclosed March 16 letter was described as addressing two issues: 1) Unless inbank disposal of clean sand is used, "* * * the remains of Ft. McRae and shipwrecks on the west bank of the entrance channel * * *" would be adversely impacted by the proposed dredging and 2) disposal of spoil on the "* * * several known potentially significant shipwrecks * * *" in the ODMDS area, "* * * would not affect the qualities which would make them eligible for listing in the *National Register of Historic Places.*" As stated in the letter, it was concluded in the March 16 letter that in the Division's opinion, there would be no effects to any "* * * properties listed, or eligible for listing, on the *National Register of Historic Places,*" if clean ocean sand

(dredged material) is used for beach nourishment at the Pensacola entrance channel (west bank). The main point of the Historical Resources comment letter was that the commenter felt that despite the enclosure of the Division's comments in the FEIS, "* * * there is no evidence that they have been taken into account * * *" in the FEIS. It was, therefore, unclear if clean sand would or would not be used for inbank disposal. Without such disposal, the commenter felt that the eligible *National Register* properties would be adversely affected.

After receiving the above comment letter, EPA received a follow-up letter from the Florida Division of Historical Resources dated December 20, 1988. This letter indicated that additional information had been provided by the COE (Mobile District) which addressed the Division's concerns. Based on this additional information, the letter indicated that "* * * it is the opinion of this agency that the above referenced project will have no effect on any sites listed, or eligible for listing, in the *National Register of Historic Places,* or otherwise of national, state, or local significance" and that "[t]he project may proceed without further involvement with this agency."

EPA wishes to note that the letters from the Division commented primarily on the U.S. Navy homeporting project at Pensacola rather than the ODMDS designation process per se, although the designation FEIS is referenced in the two recent review letters to EPA. While it is anticipated that certain dredged material from this project is to be disposed at the Pensacola (offshore) ODMDS, this and other dredging projects proposing to use the ODMDS after site designation are related to but *separate* from the present site designation rulemaking process. EPA wishes to emphasize that site designation, by itself, does not authorize any dredging project or on-site disposal of dredged material. Also, the Pensacola (offshore) ODMDS is restricted to fine-grained material which is not suitable for beach nourishment.

The Board of County Commissioners (Escambia County, FL) also commented. Comments were both on site designation and the proposed Navy homeporting project and presented Board conclusions rather than a critique of the FEIS. In the cover letter, the commenter indicated that "[t]he Board strongly urges favorable consideration of Site C as the best suited for use as an Ocean Dredged Material Disposal site for disposal of the 4.1 million cubic yards of dredged material * * *" from the homeporting project. The comments attached to the cover letter summarized the anticipated Navy homeporting project at Pensacola where 5 mcy of dredged material are proposed for beach nourishment and 4.1 mcy are proposed for disposal at the ODMDS. Four main points were listed: (1) The designation of an ODMDS involved consideration of several alternatives, including the no-action and non-ocean alternatives which were not acceptable (presumably per the FEIS); the COE had determined "* * * that ocean disposal is the most feasible method at the present time" (COE references were cited), which was felt to be partly related to the general non-availability of land disposal sites and increased costs; it was stated that "[i]t is felt however, that given the availability of land based disposal site(s), disposal of dredged material should be evaluated in terms of EPA's criteria (40 CFR 227.15) for site suitability based on availability and environmental acceptability;"(2) dredged material compatible with beach nourishment should be deposited further landward (further than natural processes would provide along the shoreline) to stabilize the dune system; maintenance dredging material could be deposited along the shoreline to further stabilize dunes and promote vegetation; (3) alternative Site C was felt to apparently be the best suited for ODMDS designation in terms of compliance with Federal, State and local statutes and policies regarding ODMDS designation, water depth, distance from shore, relation to beaches, artificial reefs, fish havens, hard bottom areas, other criteria in 40 CFR 228.6, and the fact that it is within an economically transportable distance; and (4) construction of a submerged containment area for disposed non-cohesive material was recommended using 93% of the dredged material (sand or silt/clay clumps); the site's size and depth should be designed to minimize potential impacts to areas outside the site.

EPA is pleased that the Board approves of Site C as the location for the ODMDS. The following clarification is offered on the Board's four comments:

- *Comment 1:* Regarding alternatives, the FEIS prepared by the U.S. Navy for the Gulf Coast Strategic, Homeporting project investigated a number of alternatives, including land-based disposal. This FEIS filed with EPA in January 1987, and incorporated into this site designation EIS by reference, concluded that ocean disposal was the only acceptable alternative for the disposal of fine-grained material to be dredged as part of the homeporting activity at Pensacola. Alternatives in the site designation EIS were intended to be generally limited to the evaluation of ocean action alternatives and the no-action alternative. EPA believes that the non-ocean alternatives should be addressed in project-specific documentation.
- *Comment 2:* It was suggested that maintenance material could be used for beach nourishment of the shoreline to stabilize the dune system. EPA wishes to emphasize that beach nourishment is another option alternative for dredged material disposal (i.e., is different from ocean disposal) and as such is separate from the site designation process, which by itself does not authorize dredging projects or ocean disposal at the ODMDS.
- *Comment 3:* EPA wishes to emphasize that Site C is not being designated in its entirety, but rather only approximately six square statute miles thereof will be designated as an ODMDS.
- *Comment 4:* Your comments on the proposed ODMDS submerged containment berm are appreciated.

The State of Florida, Office of the Governor, provided generally complimentary comments. Comment letters from the Florida Department of Natural Resources (FDNR) and the Florida Department of Environmental Regulation (FDER) were attached to a summary cover letter from the Office of the Governor. In the cover letter, the State indicated that their concerns on the site boundaries, nature of site disposal material, and a detailed site monitoring and management plan relative to the site designation process had been resolved through model studies, coordination with EPA, COE, and the Navy, and conveyed through FEIS revisions. The State, therefore, concurred with EPA's determination that the designation of the ODMDS is consistent to the maximum extent practicable with the Florida Coastal Management Program (FCMP). The State was "* * * particularly pleased with the application of the dispersion model in selecting final site boundaries and in determining the monitoring and site management protocol." The State indicated that they expected the site management and monitoring plans to be incorporated specifically or by reference in the published rule. It was further indicated that monitoring results could evaluate the dispersion modeling and management plan. Mention of continued consultation with EPA and the COE regarding monitoring results and changes in the management plan was also made. Appreciation for early coordination and a recommendation to

use the coordination process for the Pensacola (offshore) ODMDS as a model for future Florida ODMDS designations was also included.

The attached letter from the FDNR noted that if modification of the proposed site should involve use of State waters for disposal of dredged material, designation would require State easements. It was also noted per the FEIS that the Pensacola (offshore) ODMDS was not for disposal of beach compatible dredged material or for material appropriate for the Pensacola (nearshore) ODMDS, and that coordination with the COE and the Navy regarding beach-quality dredged material was welcomed.

The attached FDER letter presented most of the comments conveyed in the cover letter summarized above. In addition, tracking the success of the underwater berm construction was mentioned.

In response to the State of Florida Office of the Governor letter and its attached FDNR and FDER letters, EPA appreciates the State's concurrence in the designation of the Pensacola (offshore) ODMDS within Site C to receive fine-grained dredged material not suitable for beach nourishment or for disposal at the Pensacola (nearshore) ODMDS from the greater Pensacola, Florida area. We also note the State's concurrence in EPA's consistency determination with the Florida Coastal Management Program. EPA and the COE appreciate the efforts of the State, especially the Office of the Governor, Office of Planning and Budgeting, and the Florida Departments of Environmental Regulation and Natural Resources. EPA and the COE will continue to coordinate efforts at the Pensacola (offshore) ODMDS, especially the management and monitoring activities, with these agencies.

The proposed monitoring and management plans are presented in Appendices G and I, respectively, in the FEIS. These two plans were referenced in Section G ("Site Management") of the Proposed Rule (pg. 50981) and in this Final Rule.

The Pensacola (offshore) ODMDS boundaries are *outside* Florida State waters. Relative to the need for State easements (FDNR letter), EPA does not believe that the ODMDS designation process requires State easements when proposed ODMDSs are outside or inside Florida waters.

One comment letter on the Proposed Rule was received by EPA from the U.S. Department of the Interior (DOI; Office of Environmental Project Review: Washington, DC). This letter was dated January 13, 1989, and presented two concerns. Also, a follow-up letter to the DOI letter was requested by EPA and received from the Minerals Management Service (MMS; Gulf of Mexico OCS Region: New Orleans (Metairie), LA) within DOI shortly after the Proposed Rule comment period (letter dated January 31, 1989). EPA subsequently requested and received written comments dated February 3, 1989 from the COE (Mobile District) and provided a letter to DOI dated February 6, 1989, attaching the COE letter and requesting a DOI follow-up letter to EPA. The requested second DOI letter was dated February 24, 1989.

The first concern in the initial January 13 DOI letter discussed the presence of two lease blocks in the area of the ODMDS. DOI indicated that "[i]t is likely that the area proposed for ODMDS designation will be leased by Interior for oil and gas exploration and development." It was indicated that two blocks (846 and 847) were offered in November 1988, that bids had been received for both, and that "* * * leases may be awarded in the very near future." The portion of the site that includes block 847 "* * * should not affect exploration because it lies directly beneath an existing shipping fairway." Regarding block 846, the commenter indicated that 90% of the site was located on block 846 and 50% lies on the fairway. It was stated that "[i]f the proposed site is designated, its use should be controlled in a manner that ensures ocean dumping activities will not interfere with oil and gas exploration or development activities conducted on these blocks."

The second DOI concern involved potential archaeological resources. The commenter stated that "[t]he site selected for the ODMDS lies in an area that may contain undiscovered archaeological resources." It was indicated that no surveys had been conducted to determine if such resources were present and that "* * * the vast majority of prehistoric archaeological sites found on the Gulf of Mexico outer continental shelf occur off the Florida coast." The commenter also stated that "EPA should ensure that the site is surveyed prior to designation in order to determine whether archaeological resources may be affected by ocean dumping activities."

With regard to the DOI-requested archaeological survey, the Mobile District COE conducted underwater cultural resources investigations for the U.S. Navy Gulf Coast Strategic Homeporting effort at Pensacola, Florida in 1986–1987. When the need to develop an ODMDS offshore Pensacola was identified, this activity was coordinated by the COE with the Florida State Historic Preservation Officer (SHPO). In a previously-referenced letter (see responses to FEIS comments) dated March 16, 1988 (see FEIS, pg. 7–7), from the Florida Department of State (Division of Historical Resources: Tallahassee, FL) to the U.S. Navy, it was stated with regard to open water coordinates inclusive of the ODMDS, that (excerpted):

> With respect to the disposal of other dredge materials within the above cited open water coordinates, then even though we have identified potentially significant historic shipwrecks within that area (as well as several non-historic shipwrecks and artificial fish reefs important to the local fishing economy), we would have to conclude that its use as a dredge disposal site would not affect the qualities which make such shipwrecks eligible for listing in the National Register. Thus, if the clean sand is used for beach nourishment, it is the opinion of this agency that the proposed offshore dredge disposal will have no effect on any properties listed, or eligible for listing, in *The National Register of Historic Places.*

It can also be stated that the present site designation process does not, by itself, authorize any dredging projects or disposal at the ODMDS. Furthermore, use of the ODMDS would involve disposal, as opposed to dredging, at the ODMDS so that submarine areas will not be excavated.

In response to DOI's lease block concern, EPA coordinated with MMS (Gulf of Mexico OCS Region: New Orleans (Metairie), LA office) within DOI. EPA/MMS telephone discussions were held on January 26, 27, 30, and 31, 1989. As part of this coordination, EPA requested a follow-up letter from MMS. By letter dated January 31, 1989, MMS stated that (excerpted):

> Your Agency has requested the Department of the Interior provide some clarification of its comments concerning an ocean dredged materials dumping site in Pensacola Blocks 846 and 847. Further, you asked about when one might expect oil and gas activities to commence on the two tracts.
>
> Oil and gas leases for Pensacola Blocks 846 and 847 will be issued effective February 1, 1989. We do not believe drilling operations can commence earlier than 8 to 10 months from this date given all the approved activities involved with tracts off the State of Florida. Our experience indicates a more practical date would be 2 to 3 years after the date of the lease.
>
> Our concern with the dumping of dredged material interfering with oil and gas exploration and development activities was directed at on-site drilling and production structures. The proposed disposal site is relatively small in areal extent, and we do not foresee any adverse effects on oil and gas activities. Once a drilling rig or platform has been placed on the lease, disposal should

occur a safe distance away. This would require some coordination between the dredging company and the oil and gas operator.

Accordingly, we believe the dumping of dredged material at the proposed site and oil and gas activities can coexist on Pensacola Blocks 846 and 847. If you should have further questions, please let us know.

Based on this letter, any near-future ODMDS utilization, such as the anticipated initial disposal of 4.1 mcy of dredged material from the U.S. Navy's Homeport Project at Pensacola (disposal projected in Spring of 1989, pending site designation), should not conflict with oil and gas exploration/development since any drilling operations apparently are not imminent. However, because the ODMDS is designated on a permanent basis as opposed to an interim basis, EPA believes the potential for use conflicts associated with more distant future disposal operations exists at the ODMDS.

EPA requested written comments from the COE (Mobile District) regarding use conflicts at the ODMDS. The COE responded by letter dated February 3, 1989. Included in this letter was the COE's concern about future conflicts between dredged material and oil and gas exploration/development activities. The COE stated that "[t]he location of a drilling rig or platform within the ODMDS would preclude any meaningful monitoring of the ODMDS since it would be virtually impossible to separate impacts caused by the two activities." The COE also indicated that due to the small size of the ODMDS and the fine-grained nature of the dredged material, "* * * the entire site is needed to contain fine grained dredged material."

In general, EPA believes that although the proposed ODMDS horseshoe-shaped containment berm (which is currently designed to receive disposal material) would principally be located within a safety fairway where no drilling platform or rig structures are allowed, the potential for use conflicts exists for the remaining portion of the ODMDS. If a find is made within the ODMDS, directional drilling from areas adjacent to the ODMDS may be an option to drilling structure placement within the ODMDS. EPA also believes it is important to monitor the ODMDS and surrounding area in order to determine if disposal material is migrating from the site and, if so, to determine any associated impacts (see FEIS Appendices G and I for proposed monitoring and management plans, respectively). While such monitoring would still physically be possible if drilling structures were located in the area, EPA and the COE are concerned that drilling mud and cutting effluent from such structures could, despite NPDES permitting, result in local environmental impacts. If so, such impacts could confound potential impacts outside the ODMDS boundaries attributable to the ODMDS. EPA monitoring results could therefore be inconclusive.

Subsequent to receipt of the COE's February 3 letter, EPA provided the COE's comments to DOI in a letter dated February 6, 1989. In that letter, EPA stated that "[t]he COE's letter indicates a preference to keep drilling activities at least one mile outside the ODMDS" and "[f]rom a site designation, monitoring and management perspective, EPA also prefers such a limitation." The EPA letter also requested that DOI "* * * determine if drilling structures can be kept outside of the ODMDS boundaries." EPA coordinated with DOI by telephone on February 8, 10, 16, 22, 23, and 24, 1989, prior to receipt of the requested second letter. By letter dated February 24, 1989, DOI stated the following (excerpted except for the referenced sketch):

The Department of the Interior has reviewed your letter of February 6, 1989, and the enclosures thereto. We have also reexamined the details concerning the Environmental Protection Agency's rulemaking appearing at 53 FR 50977 (December 19, 1988), that would designate a site offshore Pensacola, Florida, as an ocean dredged material disposal site (ODMDS).

Enclosed is a sketch showing the approximate locations of the shipping safety fairway (SSF), oil and gas leasing blocks—Pensacola Blocks 846 and 847, and the outer boundary of the ODMDS. The approximate location of the planned spoils piles within the ODMDS are indicated. The Corps of Engineers has indicated a preference that all drilling activities be kept at least 1 mile outside of the ODMDS for environmental monitoring purposes but that both activities could coexist if drilling rigs and platforms are at least kept outside the ODMDS.

Assuming that the sketch is reasonably accurate, it is apparent that a 1-mile buffer outside the ODMDS would totally preclude surface access to Pensacola Block 846. If drilling units were allowed in the portion of Pensacola Block 846 which is outside both the SSF and the ODMDS, limited exploration drilling would be permitted. If drilling units were allowed in the western half of Pensacola Block 846 with the requirement to remain clear of the spoils piles, nearly the entire block that was available at the time oil and gas lease bids were offered, i.e., excluding the SSF, would be available for exploratory drilling. The placement of production platforms and development wells is less sensitive to surface location than is the placement of exploratory wells.

The location and spacing of wells necessary for exploration and development is controlled by 30 CFR 250.32 (1988) which requires that consideration must be given to unreasonable interference with other uses of the Outer Continental Shelf (OCS). In addition, plans required under 30 CFR 250.33 and 250.34 (1988) prior to exploration and development must include a bathymetry map and an analysis of seafloor and subsurface geologic and manmade hazards. Therefore, it is not necessary to constrain oil and gas lease activity via a specific prohibition in the lease agreement pertaining to placement of drilling units and/or platforms. To further encumber a lease on Pensacola Block 846 now could result in the bidder rejecting the lease offer.

Our experience indicates that not all oil and gas leases are explored by drilling. Furthermore, the average time lapse between lease issuance and exploratory drilling is 2–3 years. The drilling of exploratory wells will rarely consume 6 months even for the deepest wells. When an oil or gas discovery has been made in a relatively remote area such as Pensacola Block 846, another average 3–5 years will pass before the lease can be developed and placed on production. In view of the time spans involved, it is very unlikely that a conflict would arise between oil and gas activities and dumping activities. If a plan of exploration is received identifying the surface location of a proposed well or wells, we are confident that accommodation can be reached between these competing uses in the event they occur in the same time period. We are also confident that if it is possible to control dumping discharges sufficiently to avoid moving ships in the SSF, it should be possible to control dumping discharges to avoid a stationary drilling unit or platform.

If you need further information in this regard, please contact the Minerals Management Service Regional Director, Gulf of Mexico OCS Region, Metairie, Louisiana.

Based on this letter, it appears that DOI believes that oil and gas/ODMDS use conflicts at the site are not likely. Specifically, due to provisions afforded by 30 CFR 250.32 requiring consideration of "unreasonable interference with other uses" and by 30 CFR 250.33 and 250.34 requiring a bathymetry map and

seafloor/subsurface hazards analysis, DOI believes that "* * * it is not necessary to constrain oil and gas lease activity via a specific prohibition in the lease agreement pertaining to placement of drilling units and/or platforms." Also, due to the timing of exploration and drilling events, use conflicts at the site were felt to be "very unlikely." DOI further indicated that if a plan of exploration was received that identified the surface locations of proposed wells, "* * * we are confident that accommodations can be reached between these competing uses."

EPA is encouraged by the DOI letter. However, we wish to note that if use conflicts should nevertheless arise, the letter does not identify a mechanism for accommodation. EPA therefore looks toward DOI/MMS to take the lead as mediator for conflict resolution of any such possible conflicts among the oil and gas leasee, disposal applicant, and permitting agency. EPA also requests that DOI/MMS at this time advise the leasee of Pensacola Blocks 846 and 847 that an ODMDS is being permanently designated in portions of these lease blocks. EPA further wishes to note that the letter does not specifically address (unless part of 30 CFR Part 250) use conflicts associated with ODMDS monitoring, i.e., separating possible environmental impacts attributable to potential drilling structures from ODMDS disposal material. EPA therefore requests that consideration be given to barge off-site removal of effluents produced by drilling structures (as opposed to on-site NPDES disposal) and/or that directional drilling be considered to maximize the distance between the drilling structure and the disposal area.

In addition to telephone coordination between EPA and MMS, DOI, and the Escambia County Florida Marine Recreation Committee (MRC) during the preparation period of this Final Rule, telephone coordination with the State of Florida (Tallahassee, FL), COE (Mobile District and Panama City, FL) and the U.S. Navy (Charleston, SC) also occurred. Topics included artificial reef permitting, oil and gas lease block/ODMDS use conflicts, FEIS comment letters, DOI's lease block comments on the Proposed Rule, Final Rule publication and designation schedule, Final Rule development and/or artificial reef use.

C. Coastal Zone Management Coordination

EPA has determined that the designation of the Pensacola (offshore) ODMDS is consistent to the maximum extent practicable with the Florida Coastal Management Program and has notified the State of Florida of this determination. In a letter dated October 26, 1988, the State of Florida has concurred in EPA's determination. EPA has included its consistency determination as Appendix J in the FEIS.

D. Endangered Species Coordination

Pursuant to section 7 of the Endangered Species Act, coordination with the National Marine Fisheries. Service (NMFS) and the U.S. Fish and Wildlife Service (FWS) was conducted regarding this site designation relative to adverse effects to any endangered species under NMFS and FWS jurisdiction. By letter to the U.S. Navy dated February 18, 1987 (see FEIS, pg. 7–6), the FWS concurred in the Navy's determination that the Navy's Pensacola Homeport Project would have no adverse effect on Federally-listed threatened or endangered species under FWS jurisdiction in the Pensacola area. Additional concurrence from FWS specifically relating to the designation of an ODMDS offshore Pensacola, Florida was requested by EPA in a letter dated September 13, 1988, and concurrence was received by letter dated October 4, 1988. Also, the NMFS reaffirmed concurrence in the COE's determination that this site designation would have no adverse effects on threatened or endangered species under their jurisdiction by letter dated December 14, 1987 (see FEIS, pg. 7–5). Verification that this concurrence is relevant to the designation and is still valid was obtained by EPA during a telephone conversation on September 1, 1988, with Dr. Terry Henwood, Fisheries Biologist, of the NMFS Southeast Regional Office in St. Petersburg, Florida.

E. Site Designation

The Pensacola (offshore) ODMDS is located approximately 11 statute miles south of Pensacola Pass and occupies an area of approximately six square statute miles (2 x 3 mile rectangle). Water depths range from approximately 65 to 80 feet. The Pensacola (offshore) ODMDS proposed for final designation is located entirely outside of Florida State waters and is defined by the following coordinates:

30°08'50" N.,	87°19'30" W.;
30°08'50" N.,	87°16'30" W.;
30°07'05" N.,	87°16'30" W.;
30°07'05" N.,	87°19'30" W.

F. Regulatory Requirements

Pursuant to the Ocean Dumping Regulations, 40 CFR Part 228, five general criteria are used in the selection and approval for continuing use of ocean disposal sites. Sites are selected to minimize interference with other marine activities, to keep any temporary perturbations by the disposal from causing significant impacts outside the disposal site, to permit effective monitoring to detect any perturbations from the disposal, and to detect any adverse impacts at an early stage. Where feasible, locations off the Continental Shelf and other sites that have been historically used are to be chosen. If, at any time, disposal operations at a site cause unacceptable adverse impacts, EPA will take appropriate measures to mitigate the impact or terminate disposal at the site. The disposal site conforms to the five general criteria except for the preference for historically-used sites and sites located off the Continental Shelf. EPA has determined, based on the information presented in the EIS, that no environmental benefit would be obtained by selecting a site off the Continental Shelf instead of the site in this action. Also, in this case, the site that has been historically used in the area had already been permanently designated by EPA as the Pensacola (nearshore) ODMDS and is restricted to disposal of suitable sandy dredged material as defined earlier. A new ODMDS at Pensacola was therefore selected. This new Pensacola (offshore) ODMDS, which is being permanently designated in this action, will compliment the existing Pensacola (nearshore) ODMDS since it may be used for disposal of suitable fine-grained dredged material as defined earlier.

The general criteria are given in 40 CFR 228.5 of the EPA Ocean Dumping Regulations, and 40 CFR 228.6 lists 11 specific criteria used in evaluating a proposed disposal site to assure that the general criteria are met. EPA established these 11 criteria to constitute an environmental assessment of the impact of the site for disposal. The characteristics of the Pensacola (offshore) ODMDS were reviewed in the Proposed Rule. Also, in this Final Rule (Section B), some of the responses to the FEIS, Proposed Rule, and follow-up comment letters supplement or update some of these 11 criteria, particularly those concerning fisheries, recreation, currents, amenities and mineral extraction.

G. Site Management

Site management of the Pensacola (offshore) ODMDS is the responsibility of EPA and the COE. The COE issues permits to all applicants for transport of dredged material intended for ocean disposal after compliance with regulations is determined, and undergoes a public review process for

its own disposal actions; however, EPA assumes overall responsibility for site management.

Currently a Memorandum of Understanding (MOU) between the COE/South Atlantic Division and EPA/Region IV is being developed and is to establish a monitoring framework for ODMDSs in the Region IV area, which is to lead toward site-specific monitoring plans for individual ODMDSs. In the case of the Pensacola (offshore) ODMDS, a proposed site-specific monitoring plan and a proposed site management plan are already developed and presented in Appendices G and I, respectively, of the FEIS. Since specifics of these proposed plans are not presented herein, the FEIS should be consulted for such specifics. Plan concepts presented in the FEIS include an electronic verification system or visual surveillance that will report actual disposal information, sediment mapping to determine distribution of disposal material at the ODMDS, construction of a horseshoe-shaped berm within the ODMDS to help contain disposal material, bathymetric measurements to assess mounding of disposal material, water quality sampling and analysis of various parameters, and benthic sampling and analysis of sediments and benthos.

Some modifications of the proposed plans presented in the FEIS are possible as greater understanding of the site develops. Substantive modifications would be coordinated with appropriate Federal and State agencies. For example, revisions may be required based on monitoring data results and comparison of those data to the DIFID dispersion model. Techniques may also vary or be upgraded. These plans are furthermore dependent on funding, which is via an annual budget and is therefore undetermined for each year. In general, the existence, magnitude, and implementation of the management and monitoring plans for this site are dependent upon funding, monitoring data results, and coordination between EPA, the U.S. Navy, the COE, the State of Florida and/or other potential users of the ODMDS. Nevertheless, EPA believes that site plans are needed and that the plans in the FEIS are reasonable proposals for the Pensacola (offshore) ODMDS.

If evidence of significant adverse environmental effects outside the Pensacola (offshore) ODMDS boundaries is discovered, EPA will take appropriate measures to mitigate the impact or terminate disposal at the site. Conversely, if monitoring results exhibit no significant impact outside the ODMDS boundaries, monitoring may be discontinued or less frequent.

Related to site monitoring, EPA plans to test for tributyltin (TBT) in sediment samples from dredged material from Pensacola Harbor that would be projected for disposal at the ODMDS.

H. Action

The designation of the Pensacola (offshore) ODMDS as an EPA-approved disposal site for suitable dredged material is being published as Final Rulemaking. Overall management of this site is the responsibility of the Regional Administrator of EPA/Region IV. The EIS provides information indicating that the ODMDS may appropriately be designated for use.

It should be emphasized that if an ocean disposal site is designated by EPA, such a site designation does not constitute EPA's approval of dredging projects or actual disposal of dredged material at the site. Before ocean disposal of dredged material at the site may commence, EPA and the COE must also evaluate the proposed dumping in accordance with the criteria in 40 CFR Part 227 of the Ocean Dumping Regulations. In any case, EPA has the right to disapprove the actual disposal, if it determines that environmental concerns under MPRSA have not been met.

The Pensacola (offshore) ODMDS is not restricted to disposal use by Federal projects; private applicants may also dispose of suitable dredged material at the ODMDS once relevant regulations have been satisfied. This site is restricted, however, to disposal of predominantly fine-grained dredged material from the greater Pensacola, Florida area that meets the Ocean Dumping Criteria, but is not suitable for beach nourishment or disposal in the existing, EPA-designated Pensacola (nearshore) ODMDS. The Pensacola (nearshore) ODMDS is restricted to suitable dredged material with a median grain size of >0.125 mm and a composition of $<10\%$ fines.

I. Regulatory Assessments

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. EPA has determined that this action will not have a significant impact on small entities since the site designation will only have the effect of providing a disposal option for dredged material. Consequently, this action does not necessitate preparation of a Regulatory Flexibility Analysis.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action will not result in an annual effect on the economy of $100 million or more, or cause any of the other effects which would result in its being classified by the Executive Order as a "major" rule. Consequently, this Final Rule does not necessitate preparation of a Regulatory Impact Analysis.

This Final Rule does not contain any information collection requirements subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

This Final Rulemaking Notice for site designation of the Pensacola (offshore) ODMDS fills the same role as the Record of Decision required under regulations promulgated by the Council on Environmental Quality for agencies subject to NEPA.

List of Subjects in 40 CFR Part 228

Water pollution control.

Dated: March 10, 1989.

Joseph R. Franzmathes,

Acting Regional Administrator.

In consideration of the foregoing, Part 228 of Subchapter H of Chapter I of Title 40 is amended as set forth below.

PART 228—[AMENDED]

1. The authority citation for Part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

2. Part 228 is amended by adding to § 228.12, paragraph (b)(72) to read as follows:

§ 228.12 Delegation of management authority for interim ocean dumping sites.

* * * * *

(b) * * *

(72) Pensacola, Florida; Ocean Dredged Material Disposal Site—Region IV, *i.e.* the Pensacola (offshore) Ocean Dredged Material Disposal Site.

Location:

30°08'50" N.,	87°19'30" W.;
30°08'50" N.,	87°16'30" W.;
30°07'05" N.,	87°16'30" W.;
30°07'05" N.,	87°19'30" W.

Size: Approximately 6 square statute miles.

Depth: Ranges from approximately 65 to 80 feet.

Primary Use: Dredged Material.

Period of Use: Continuing Use.

Restriction: Disposal is restricted to predominantly fine-grained dredged material from the greater Pensacola, Florida area that meets the Ocean

Dumping Criteria, but is not suitable for beach nourishment or disposal in the existing, EPA-designated Pensacola (near shore) ODMDS. The Pensacola (nearshore) ODMDS (§ 228.12(b)(48)) is restricted to suitable dredged material with a median grain size >0.125 mm and a composition of <10% fines.

[FR Doc. 89-6303 Filed 3-16-89; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 300

[FRL-3538-3]

National Oil and Hazardous Substances Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of the deletion of the New Castle Steel Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) announces the deletion of the New Castle Steel Site in New Castle, Delaware from the National Priorities List (NPL). The NPL is Appendix B to the National Oil and Hazardous Substances Contingency Plan (NCP) (40 CFR Part 300), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended. EPA and the State of Delaware have determined that all appropriate fund-financed responses under CERCLA have been implemented and that no further cleanup by responsible parties is appropriate. Moreover, EPA and the State of Delaware determined that remedial actions conducted at the site to date have been protective of public health, welfare, and the environment.

EFFECTIVE DATE: March 17, 1989.

FOR FURTHER INFORMATION CONTACT: Barbara Brown at (215) 597-8593.

For background information on the site contact: Randy Sturgeon, DELMARVA/DC/WV CERCLA Remedial Enforcement Section (3HW16), U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107, (215) 597-0978.

SUPPLEMENTARY INFORMATION: The EPA identifies sites that appear to present a significant risk to public health, welfare or the environment and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Hazardous Substances Response Trust Fund (Fund) financed remedial actions. Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action. Section 300.66(c)(8) of the NCP states that Fund-financed actions may be taken at sites deleted from the NPL.

The site EPA deletes from the NPL is: New Castle Steel Co., New Castle, New Castle County, Delaware.

An explanation of the criteria for deleting sites from the NPL was presented in section II of the September 22, 1988 Notice of Intent to Delete (53 FR 36869). A description of the site and how it met the criteria for deletion was presented in section IV of that notice.

The closing date for comments on the Notice of Intent to Delete was October 24, 1988. The comment period was reopened from January 30, 1989, to February 13, 1989 (53 FR 4302) to provide a full 30-day comment period on the Notice of Intent to Delete. No comments were received. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Hazardous waste.

PART 300—[AMENDED]

1. The authority citation for Part 300 continues to read as follows:

Authority: Section 105, Pub. L. 96-510, 94 Stat. 2764, 42 U.S.C. 9605 and sec. 311(c)(2), Pub. L. 92-500, as amended, 86 Stat. 865, 33 U.S.C. 1321(c)(2); E.O. 12316, 46 FR 42237, E.O. 11735, 38 FR 21243.

Appendix B—[Amended]

2. The NPL, 40 CFR Part 300; Appendix B, is amended as follows:

In Group 15 remove: New Castle Steel Co. (Deemer Steel), New Castle, New Castle County, Delaware.

The other entries will move up accordingly. The NPL will reflect this deletion in the next final update.

Dated: March 9, 1989

Stanley L. Laskowski,

Acting Regional Administrator.

[FR Doc. 89-6309 Filed 3-16-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88-184; RM-6116]

Radio Broadcasting Services; Coalinga, CA

AGENCY: Federal Communications Commission

ACTION: Final rule.

SUMMARY: This document substitutes Channel 261B for Channel 261A at Coalinga, California, and modifies the Class A permit of William L. Zawila for Station KNGS(FM), as requested, to specify operation on the higher class channel, thereby providing that community with its first wide coverage area FM service. Reference coordinates for Channel 261B at Coalinga are 36-00-21 and 120-03-17. With this action, the proceeding is terminated.

EFFECTIVE DATE: April 24, 1989.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-184, adopted February 14, 1989, and released March 8, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

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

§ 73.202. [Amended]

2. Section 73.202(b), the Table of FM Allotments for California, is amended by revising the entry for Coalinga, by removing Channel 261A and adding Channel 261B.

Federal Communications Commission

Karl Kensinger,

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

[FR Doc. 89-6340 Filed 3-16-89; 8:45 am]

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Proposed Rules

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

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 1

Administrative Regulations; Privacy Act Regulations

AGENCY: Office of the Secretary, USDA.

ACTION: Proposed rule with request for comments.

SUMMARY: This proposed rule amends 7 CFR 1.122 by exempting two systems of records from certain sections of the Privacy Act of 1974 (5 U.S.C. 552a) pursuant to 5 U.S.C. 552a(j).

DATE: Comments must be received on or before April 17, 1989.

ADDRESSES: Interested persons may submit written comments to: Dianne Drew, Assistant Inspector General for Administration, Office of Inspector General, USDA, Washington, DC 20250 (202–447–6915).

FOR FURTHER INFORMATION CONTACT: Dianne Drew, Assistant Inspector General for Administration, Office of Inspector General, USDA, Washington, DC 20250 (202–447–6915).

SUPPLEMENTARY INFORMATION: 7 CFR 1.122 is necessary to provide for exemption of two Privacy Act systems of records: "Intelligence Records, USDA/OIG–2," and "Investigative Files and Subject/Title Index, USDA/OIG–3." The exemptions are authorized by the Privacy Act of 1974, 5 U.S.C. 552a(j)(2), as amended. Amended systems notices have been published in proposed form elsewhere in today's issue of the **Federal Register**.

In accordance with 5 U.S.C. 552a(j)(2), information maintained in the two systems of records of OIG is exempt from all provisions of the Privacy Act of 1974, 5 U.S.C. 552a, as amended, except subsections (b), (c) (1) and (2), (e)(4) (A) through (F), (e) (6), (7), (9), (10), and (11), and (i), to the extent that information in the systems pertains to criminal law enforcement. This includes, but is not limited to, information compiled for the purpose of identifying criminal offenders and alleged offenders and consisting of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status; information compiled for the purpose of a criminal investigation, including reports of informants and investigators, that is associated with an identifiable individual; or reports of enforcement of the criminal laws from arrest or indictment through release from supervision.

The disclosure of information contained in the criminal investigative files, including the names of persons or agencies to whom the information has been transmitted, would substantially compromise the effectiveness of OIG investigations. Knowledge of such investigations could enable suspects to take such action as is necessary to prevent detection of criminal activities, conceal or destroy evidence, or escape prosecution. Disclosure of this information could lead to the intimidation of, or harm to, informants, witnesses, and their families, and could jeopardize the safety and well-being of investigative and related personnel and their families. The imposition of certain restrictions on the manner in which investigative information is collected, verified, or retained would significantly impede the effectiveness of OIG investigatory activities, and in addition could preclude the apprehension and successful prosecution of persons engaged in fraud or criminal activity.

Information in these systems is maintained pursuant to official Federal law enforcement and criminal investigation functions of the Office of Inspector General. The exemptions are needed to maintain the integrity and confidentiality of criminal investigations, to protect individuals from harm, and for the following reasons:

(1) 5 U.S.C. 552a(c)(3) requires an agency to make the accounting of each disclosure of records available to the individual named in the record at his/her request. These accountings must state the date, nature, and purpose of each disclosure of a record and the name and address of the recipient. Accounting for each disclosure would alert the subjects of an investigation to the existence of the investigation and the fact that they are subjects of the investigation. The release of such information to the subjects of an investigation would provide them with significant information concerning the nature of the investigation, and could seriously impede or compromise the investigation, endanger the physical safety of confidential sources, witnesses, law enforcement personnel and their families, and lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony.

(2) 5 U.S.C. 552a(c)(4) requires an agency to inform any person or other agency about any correction or notation of dispute made by the agency in accordance with subsection (d) of the Act. Since these systems of records are being exempted from subsection (d) of the Act, concerning access to records, this section is inapplicable to the extent that these systems of records will be exempted from subsection (d) of the Act.

(3) 5 U.S.C. 552a(d) requires an agency to permit an individual to gain access to records pertaining to him/her, to request amendment to such records, to request a review of an agency decision not to amend such records, and to contest the information contained in such records. Granting access to records in these systems of records could inform the subject of an investigation of an actual or potential criminal violation of the existence of that investigation, of the nature and scope of the information and evidence obtained as to his/her activities, of the identity of confidential sources, witnesses, and law enforcement personnel, and could provide information to enable the subject to avoid detection or apprehension. Granting access to such information could seriously impede or compromise an investigation, endanger the physical safety of confidential sources, witnesses, law enforcement personnel and their families, lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony, and disclose investigative techniques and procedures. In addition, granting access to such information could disclose classified, security-sensitive, or confidential business information and could constitute an unwarranted invasion of the personal privacy of others.

(4) 5 U.S.C. 552a(e)(1) requires each agency to maintain in its records only such information about an individual as

is relevant and necessary to accomplish a purpose of the agency required by statute or by executive order of the President. The application of this provision could impair investigations and law enforcement because it is not always possible to detect the relevance or necessity of specific information in the early stages of an investigation. Relevance and necessity are often questions of judgment and timing, and it is only after the information is evaluated that the relevance and necessity of such information can be established. In addition, during the course of the investigation, the investigator may obtain information which is incidental to the main purpose of the investigation but which may relate to matters under the investigative jurisdiction of another agency. Such information cannot readily be segregated. Furthermore, during the course of the investigation, the investigator may obtain information concerning the violation of laws other than those which are within the scope of his/her jurisdiction. In the interest of effective law enforcement, OIG investigators should retain this information, since it can aid in establishing patterns of criminal activity and can provide valuable leads for other law enforcement agencies.

(5) 5 U.S.C. 552a(e)(2) requires an agency to collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs. The application of this provision could impair investigations and law enforcement by alerting the subject of an investigation of the existence of the investigation, thereby enabling the subject to avoid detection or apprehension, to influence witnesses improperly, to destroy evidence, or to fabricate testimony. Moreover, in certain circumstances the subject of an investigation cannot be required to provide information to investigators, and information must be collected from other sources. Furthermore, it is often necessary to collect information from sources other than the subject of the investigation to verify the accuracy of the evidence collected.

(6) 5 U.S.C. 552a(e)(3) requires an agency to inform each person whom it asks to supply information, on a form that can be retained by the person, of the authority under which the information is sought and whether disclosure is mandatory or voluntary; of the principal purposes for which the information is intended to be used; of the routine uses which may be made of the information; and of the effects on the person, if any, of not providing all or any part of the requested information. The application of this provision could provide the subject of an investigation with substantial information about the nature of that investigation, which could interfere with the investigation. Moreover, providing such a notice to the subject of an investigation could seriously impede or compromise an undercover investigation by revealing its existence and could endanger the physical safety of confidential sources, witnesses, and investigators by revealing their identities.

(7) 5 U.S.C. 552a(e)(4)(G) and (H) require an agency to publish a **Federal Register** notice concerning its procedures for notifying an individual, at his/her request, if the system of records contains a record pertaining to him/her, how to gain access to such a record, and how to contest its content. Since these systems of records are being exempted from subsection (f) of the Act, concerning agency rules, and subsection (d) of the Act, concerning access to records, these requirements are inapplicable to the extent that these systems of records will be exempted from subsection (f) and (d) of the Act. Although the systems would be exempt from these requirements, OIG has published information concerning its notification, access, and contest procedures because, under certain circumstances, OIG could decide it is appropriate for an individual to have access to all or a portion of his/her records in these systems of records.

(8) 5 U.S.C. 552a(e)(4)(I) requires an agency to publish a **Federal Register** notice concerning the categories of sources of records in the system of records. Exemption from this provision is necessary to protect the confidentiality of the sources of information, to protect the privacy and physical safety of confidential sources and witnesses, and to avoid the disclosure of investigative techniques and procedures. Although the systems will be exempt from this requirement, OIG has published such a notice in broad generic terms.

(9) 5 U.S.C. 552a(e)(5) requires an agency to maintain its records with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in making any determination about the individual. Since the Act defines "maintain" to include the collection of information, complying with this provision could prevent the collection of any data not shown to be accurate, relevant, timely, and complete at the moment it is collected. In collecting information for criminal law enforcement purposes, it is not possible to determine in advance what information is accurate, relevant, timely, and complete. Facts are first gathered and then placed into a logical order to prove or disprove objectively the criminal behavior of an individual. Material which seems unrelated, irrelevant, or incomplete when collected can take on added meaning or significance as the investigation progresses. The restrictions of this provision could interfere with the preparation of a complete investigative report, thereby impeding effective law enforcement.

(10) 5 U.S.C. 552a(e)(8) requires an agency to make reasonable efforts to serve notice on an individual when any record on such individual is made available to any person under compulsory legal process when such process becomes a matter of public record. Complying with this provision could prematurely reveal an ongoing criminal investigation to the subject of the investigation.

(11) 5 U.S.C. 552a(f)(1) requires an agency to promulgate rules which shall establish procedures whereby an individual can be notified in response to his/her request if any system of records named by the individual contain a record pertaining to him/her. The application of this provision could impede or compromise an investigation or prosecution if the subject of an investigation were able to use such rules to learn of the existence of an investigation before it could be completed. In addition, mere notice of the fact of an investigation could inform the subject and others that their activities are under or may become the subject of an investigation and could enable the subjects to avoid detection or apprehension, to influence witnesses improperly, to destroy evidence, or to fabricate testimony. Since these systems would be exempt from subsection (d) of the Act, concerning access to records, the requirements of subsection (f)(2) through (5) of the Act, concerning agency rules for obtaining access to such records, are inapplicable to the extent that these systems of records will be exempted from subsection (d) of the Act. Although these systems would be exempt from the requirements of subsection (f) of the Act, OIG has promulgated rules which establish Agency procedures because, under certain circumstances, it could be appropriate for an individual to have

access to all or a portion of his/her records in these systems of records.

(12) 5 U.S.C. 552a(g) provides for civil remedies if an agency fails to comply with the requirements concerning access to records under subsections (d) (1) and (3) of the Act; maintenance of records under subsection (e)(5) of the Act; and any other provision of the Act, or any rule promulgated thereunder, in such a way as to have an adverse effect on an individual. Since these systems of records would be exempt from subsections (c)(3) and (4), (d), (e)(1), (2), (3), and (4)(G) and (H), (e)(1) through (5) and (8), and (f) of the Act, the provisions of subsection (g) of the Act would be inapplicable to the extent that these systems of records will be exempted from those subsections of the Act.

Under 5 U.S.C. 552a(j)(2), the head of any agency may by rule exempt any system of records within the agency from certain provisions of the Privacy Act of 1974, if the system of records is maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws and which consists of:

(1) Information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status;

(2) Information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or

(3) Reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision.

USDA/OIG–2 and USDA/OIG–3 contain information of the type described above and are maintained by the Office of Inspector General, a component of USDA which performs as one of its principal functions activities pertaining to the enforcement of criminal laws. Authority for the criminal law enforcement activities of the Office of Inspector General is the Inspector General Act of 1978, 5 U.S.C. app. 3. That legislation authorizes the Office of Inspector General to conduct investigations relating to programs and operations of the Department of Agriculture.

This proposed rule has been reviewed under Departmental Regulations 1512–1 and Executive Order No. 12291 and has been determined not to be a "major rule" since it will not have an annual effect on the economy of $100 million or more.

In addition, it has been determined that this proposed rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 1

Privacy Act.

For the reasons set out in the preamble, it is proposed to amend 7 CFR, Subtitle A, Part 1, Subpart G, as follows:

PART 1—ADMINISTRATIVE REGULATIONS

Subpart G—Privacy Act Regulations

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

Authority: 5 U.S.C. 552a.

2. Section 1.122 would be added as follows:

§ 1.122 General exemptions.

Pursuant to 5 U.S.C. 552a(j), the systems of records (or portions thereof) maintained by agencies of USDA identified below are exempted from the provisions of 5 U.S.C. 552a, except subsections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (i).

Office of Inspector General.

Intelligence Records, USDA/OIG–2.

Investigative Files and Subject/Title Index, USDA/OIG–3.

Done this 13th day of March 1989, at Washington, DC.

Clayton Yeutter,

Secretary.

[FR Doc. 89–6301 Filed 3–16–89; 8:45 am]

BILLING CODE 3410–23–M

Agricultural Marketing Service

7 CFR Part 1005

[Docket No. AO–388–A1; DA–88–123]

Milk in the Carolina Marketing Area; Notice of Hearing on Proposed Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: This hearing is being held to consider a proposed milk order that would regulate the handling of milk in an area designated as the Carolina marketing area. Ten dairy farmer organizations representing about 90 percent of the dairy farmers who market their milk at fluid milk plants located in North Carolina and South Carolina requested the proposed order. The marketing area of the proposed order would include the States of North Carolina and South Carolina. Proponents contend that a milk order is needed to establish and maintain orderly marketing conditions and an effective pricing regulation for the marketing of milk in the area. The texts of the proposals to be considered are set forth in this document.

DATE: The hearing will convene at 1:30 p.m., on April 17, 1989.

ADDRESS: The hearing will be held at the Ramada Inn South-Airport, 515 Clanton Road, Charlotte, North Carolina 28217, (704) 527–3000.

FOR FURTHER INFORMATION CONTACT: Robert F. Groene, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 447–2089.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of Parts 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

Notice is hereby given of a public hearing to be held at the Ramada Inn South-Airport, 515 Clanton Road, Charlotte, North Carolina 28217, (704) 527–3000, beginning at 1:30 p.m., on April 17, 1989, with respect to proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Carolina marketing area.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The purpose of the hearing is to:

(a) Receive evidence with respect to the economic and marketing conditions which relate to the proposed marketing agreement and order, hereinafter set forth, and any appropriate modifications thereof;

(b) Determine whether the handling of milk in the area proposed for regulation is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects interstate or foreign commerce;

(c) Determine whether there is need for a marketing agreement or order regulating the handling of milk in the area; and

(d) Determine whether the proposed marketing agreement and order or appropriate modifications thereof will

tend to effectuate the declared policy of the Act.

Actions under the Federal milk order program are subject to the Regulatory Flexibility Act (Pub. L. 96–354). This Act seeks to ensure that, within the statutory authority of a program, the regulatory and information requirements are tailored to the size and nature of small businesses. For the purposes of the Act, a dairy farm is a "small business" if it has an annual gross revenue of less than $500,000, and a dairy products manufacturer is a "small business" if it has fewer than 500 employees. Most parties subject to a milk order are considered as a small business. Accordingly, interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing proposals on small businesses. Also, parties may suggest modifications of these proposals for the purpose of tailoring their applicability to small businesses.

List of Subjects in 7 CFR Part 1005

Milk marketing orders, Milk, Dairy products.

PART 1005—[AMENDED]

The authority citation for 7 CFR Part 1005 continues to read as follows:

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

The proposed amendments, as set forth below, have not received the approval of the Secretary of Agriculture. Proposed by Coble Dairy Cooperative, Inc.; Edisto Milk Producers Assn.; Dairymen, Inc.; Palmetto Milk Producers Assn.; Carolina-Virginia Milk Producers Assn.; Capitol Area Milk Producers Assn.; Sumter Dairies, Inc.; East Carolina Milk Producers; Dairy Farmers, Inc.; and Southern Milk Sales: Proposal No. 1:

General Provisions

§ 1005.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

Definitions

§ 1005.2 Carolina marketing area.

The "Carolina marketing area", hereinafter called the "marketing area", means all the territory within the boundaries of the following counties, including all waterfront facilities connected therewith and all territory occupied by government (municipal, State or Federal) reservations, installations, institutions, or other similar establishments if any part thereof is within any of the listed counties:

(a) *Northwestern Zone.* North Carolina counties of Alexander, Alleghany, Ashe, Avery, Buncombe, Burke, Caldwell, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, McDowell, Macon, Madison, Mitchell, Rockingham, Stokes, Surry, Swain, Transylvania, Watauga, Wilkes, Yadkin, and Yancey.

(b) *Base Zone.* North Carolina counties of Alamance, Anson, Cabarrus, Caswell, Catawba, Chatham, Cleveland, Davidson, Davie, Durham, Forsyth, Franklin, Gaston, Granville, Guilford, Halifax, Iredell, Lee, Lincoln, Mecklenberg, Montgomery, Moore, Nash, Northampton, Orange, Person, Polk, Randolph, Richmond, Rowan, Rutherford, Stanly, Union, Vance, Wake, and Warren.

South Carolina counties of Abbeville, Anderson, Cherokee, Chester, Greenville, Greenwood, Lancaster, Laurens, McCormick, Oconee, Pickens, Spartanburg, Union, and York.

(c) *Southeastern Zone:* North Carolina counties of Beaufort, Bertie, Bladen, Brunswick, Camden, Carteret, Chowan, Columbus, Craven, Cumberland, Currituck, Dare, Duplin, Edgecombe, Gates, Greene, Harnett, Hertford, Hoke, Hyde, Johnston, Jones, Lenoir, Martin, New Hanover, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Pitt, Robeson, Sampson, Scotland, Tyrrell, Washington, Wayne, and Wilson.

South Carolina counties of Aiken, Bamberg, Barnwell, Calhoun, Chesterfield, Clarendon, Darlington, Dillon, Edgefield, Fairfield, Florence, Georgetown, Horry, Kershaw, Lee, Lexington, Marion, Marlboro, Newberry, Orangeburg, Richland, Saluda, Sumter, and Williamsburg.

(d) *Southern Zone:* South Carolina counties of Allendale, Beaufort, Berkeley, Charleston, Colleton, Dorchester, Hampton, and Jasper.

§ 1005.3 Route disposition.

"Route disposition" means a delivery to a retail or wholesale outlet (except to a plant) either direct or through any distribution facility (including disposition from a plant store, vendor or vending machine) of a fluid milk product classified as Class I milk.

§ 1005.4 Plant.

"Plant" means the land, buildings, facilities, and equipment constituting a single operating unit or establishment at which milk or milk products, including filled milk, are received, processed, or packaged. Separate facilities without stationary storage tanks that are used only as a reload point for transferring bulk milk from one tank truck to another or separate facilities used only as a distribution point for storing packaged fluid milk products in transit for route disposition shall not be a plant under this definition.

§ 1005.5 [Reserved]

§ 1005.6 [Reserved]

§ 1005.7 Pool plant.

Except as provided in paragraph (d) of this section, "pool plant" means:

(a) A plant that is approved by a duly constituted regulatory agency for the processing or packaging of Grade A milk and from which during the month there is:

(1) Route disposition, except filled milk, in the marketing area is not less than 15 percent of its total route disposition, except filled milk, during the month; and

(2) The total quantity of fluid milk products, except filled milk, disposed of in Class I is not less than 60 percent in each of the months of August through November and January and February, and 40 percent in each of the other months, of the total quantity of fluid milk products, except filled milk, physically received at such plant or diverted therefrom pursuant to § 1005.13. The applicable percentage in this subparagraph may be increased or decreased up to 10 percentage points by the Director of the Dairy Division if the Director finds such revision is necessary to effect a similar adjustment pursuant to § 10005.13(e)(3). Before making such a finding, the Director shall investigate the need for revision either at the Director's own initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the Director shall issue a notice stating that the revision is being considered and invite data, views, and arguments.

(b) A plant, other than a plant described in paragraph (a) of this section, from which fluid milk products, except filled milk, are shipped to pool plants pursuant to paragraph (a) of this section. Such shipments must equal not less than 60 percent in each of the months of August through November and January and February, and 40 percent in each of the other months, of the total quantity of milk approved by a duly constituted regulatory agency for fluid consumption that is received during the month from dairy farmers (including producer milk diverted from the plant pursuant to § 1005.13 but excluding milk diverted to such plant) and handlers described in § 1005.9(c). The operator of such plant may include

milk diverted from such plant to plants described in paragraph (a) of this section as qualifying shipments in meeting up to one-half of the required shipments. The applicable shipping percentage of this paragraph may be increased or decreased up to 10 percentage points by the Director of the Dairy Division if the Director finds such revision is necessary to obtain needed shipments or to prevent uneconomic shipments. Before making such a finding, the Director shall investigate the need for revision either at the Director's own initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the Director shall issue a notice stating that the revision is being considered and invite data, views, and arguments.

(c) A plant that is operated by a cooperative association if pool plant status under this paragraph is requested for such plant by the cooperative association and during the month 60 percent or more of the producer milk of members of such cooperative association, excluding such milk that is received at or diverted from pool plants described in paragraph (b) of this section but including milk delivered by such cooperative as a handler described in § 1005.9(c), is delivered directly from their farms to pool plants described in paragraph (a) of this section or is transferred to such plants as a bulk fluid milk product from the plant of the cooperative association, subject to the following conditions:

(1) The plant does not qualify as a pool plant under paragraph (a) or (b) of this section or under the provisions of another Federal order applicable to a distributing plant or a supply plant; and

(2) The plant is approved by a duly constituted regulatory agency to handle milk for fluid consumption.

(d) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) A governmental agency plant;

(3) A plant qualified pursuant to paragraph (a) of this section which also meets the pooling requirements of another Federal order and from which there is a greater quantity of route disposition, except filled milk, during the month in such other Federal order marketing area than in this marketing area; and

(4) A plant qualified pursuant to paragraph (b) of this section which also meets the pooling requirements for the month under another Federal order.

§ 1005.8 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is not a producer-handler plant, a governmental agency plant or an other order plant and from which there is route disposition in consumer-type packages or dispenser units in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant that is not a producer-handler plant, a governmental agency plant or an other order plant and from which fluid milk products are shipped to a pool plant.

(e) "Governmental agency plant" means a plant operated by a governmental agency from which fluid milk products are distributed in the marketing area. Such plant shall be exempt from all provisions of this part.

(f) "Exempt plant" means a producer-handler plant that has monthly route disposition of 150,000 pounds or less. Such plant shall be exempt from the pricing and pooling provisions of this order. However, such plant must file periodic reports as prescribed by the market administrator to enable determination of the exempt status of such plant.

§ 1005.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of one or more pool plants;

(b) Any cooperative association with respect to milk of such producers diverted to nonpool plants for the account of such association pursuant to § 1005.13, excluding the milk of producers diverted by the association as a handler pursuant to paragraph (a) of this section;

(c) Any cooperative association with respect to milk excluding the milk of producers diverted to pool plants by the association as a handler pursuant to paragraph (a) of this section, that it receives for its account from the farm of a producer for delivery to a pool plant or another handler, in a tank truck owned and operated by, or under the control of, such cooperative association, unless both the cooperative association and the operator of the pool plant notify the market administrator prior to the time that such milk is delivered to the pool plant that the plant operator will be the handler of such milk and will purchase such milk on the basis of weights determined from farm bulk tank samples. Milk for which the cooperative association is the handler pursuant to this paragraph shall be deemed to have been received by the cooperative association at the location of the pool plant to which such milk is delivered;

(d) Any person who operates a partially regulated distributing plant;

(e) A producer-handler;

(f) Any person who operates an other order plant described in § 1005.7(d) (3) or (4); and

(g) Any person who operates an exempt plant described in § 1005.8(f).

§ 1005.10 Producer-handler.

"Producer-handler" means a person who is engaged in the production of milk and also operates a plant from which during the month fluid milk products, except filled milk, are disposed of only direct to consumers through home delivery retail routes or through a retail store located on the same property as the plant, and who has been so designated by the market administrator upon his determination that all of the requirements of this section have been met, and that none of the conditions therein for cancellation of such designation exists. All designations shall remain in effect until canceled pursuant to paragraph (c) of this section.

(a) Requirements for designation.

(1) The producer-handler has and exercises (in his capacity as a handler) complete and exclusive control over the operation and management of a plant at which he handles and processes milk received from his milk production resources and facilities (designated as such pursuant to paragraph (b)(1) of this section), the operation and management of which are under the complete and exclusive control of the producer-handler (in his capacity as a dairy farmer).

(2) The producer-handler neither receives at his designated milk production resources and facilities nor receives, handles, processes or distributes at or through any of his milk handling, processing or distributing resources and facilities (designated as such pursuant to paragraph (b)(2) of this section) milk products for reconstitution into fluid milk products, or fluid milk products derived from any sources other than:

(i) His designated milk production resources and facilities,

(ii) Pool plants within the limitation specified in paragraph (c)(2) of this section, or

(iii) Nonfat milk solids which are used to fortify fluid milk products.

(3) The producer-handler is neither directly nor indirectly associated with the business or management of, nor has a financial interest in another handler's operation; nor is any other handler so associated with the producer-handler's operation.

(4) The producer-handler is neither directly nor indirectly associated with the business or management of, nor has a financial interest in another producer's operation (in this or any other Federal order).

(5) Designation of any person as a producer-handler following a cancellation of his prior designation shall be preceded by performance in accordance with paragraphs (a) (1), (2), (3) and (4) of this section for a period of one (1) month.

(b) Resources and facilities. Designation of a person as a producer-handler shall include the determination and designation of the milk production, handling, processing and distributing resources and facilities, all of which shall be deemed to constitute an integrated operation, as follows:

(1) As milk production resources and facilities: All resources and facilities (milking herd(s), buildings housing such herd(s), and the land on which such buildings are located) used for the production of milk:

(i) Which are directly, indirectly or partially owned, operated or controlled by the producer-handler;

(ii) In which the producer-handler in any way has an interest including any contractual arrangement; and

(iii) Which are directly, indirectly or partially owned, operated or controlled by any partner or stockholder of the producer-handler.

(2) As milk handling, processing and distribution resources and facilities: All resources and facilities (including store outlets) used for handling, processing and distributing any fluid milk products:

(i) Which are directly, indirectly or partially owned, operated or controlled by the producer-handler; or

(ii) In which the producer-handler in any way has an interest including any contractual arrangement, or with respect to which the producer-handler directly or indirectly exercises any degree of management or control.

(c) Cancellation. The designation as a producer-handler shall be canceled under any of the conditions set forth in paragraphs (c) (1) and (2) of this section or upon determination by the market administrator that any of the requirements of paragraphs (a) (1), (2), (3) or (4) of this section are not continuing to be met. Such cancellation is to apply to any month in which the requirements are not met, or the conditions for cancellation occurred.

(1) Milk from the designated milk production resources and facilities of the producer-handler is delivered in the name of another person as producer milk to another handler under this or any other Federal order.

(2) The producer-handler handles fluid milk products derived from sources other than the designated milk production facilities and resources, with the exception of purchases from pool plants in the form of fluid milk products which do not exceed the lessor of five (5) percent of his Class I disposition during the month or 5,000 pounds.

(d) Public announcement. The market administrator shall publicly announce the name, plant location and farm location(s) of any persons designated as producer-handlers, of those whose designations have been canceled and the effective dates of producer-handler status or loss of producer-handler status for each.

(e) Burden of establishing and maintaining producer-handler status. The burden rests upon the handler who is designated as a producer-handler to establish through records required pursuant to section § 1000.5 of this chapter that the requirements set forth in paragraph (a) of this section have been and are continuing to be met, and that the conditions set forth in paragraph (c) of this section for cancellation of designation do not exist.

§ 1005.11 [Reserved]

§ 1005.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk approved by a duly constituted regulatory agency for fluid consumption, which milk is:

(1) Received at a pool plant directly from such person;

(2) Received by a handler described in § 1005.9(c); or

(3) Diverted from a pool plant in accordance with § 1005.13.

(b) "Producer" shall not include:

(1) A producer-handler as described in any order (including this part) issued pursuant to the Act;

(2) A governmental agency operating a plant exempt pursuant to § 1005.8(e);

(3) Any person with respect to milk produced by such person which is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1005.44(a)(8)(iii) and the corresponding step of § 1005.44(b); and

(4) Any person with respect to milk produced by such person which is reported as diverted to an other order plant if any portion of such person's milk so moved is assigned to Class I under the provisions of such other order; and

(5) Any person that delivers milk to or receives milk from a producer-handler or an exempt handler specified in § 1005.8(f), or who has disposition of fluid milk products to consumers at the farm in excess of 110 pounds per day during the month.

§ 1005.13 Producer milk.

"Producer milk" means the skim milk and butterfat contained in milk of a producer that is:

(a) Received at a pool plant directly from such producer by the operator of the plant, excluding such milk that is diverted from another pool plant;

(b) Received by a handler described in § 1005.9(c);

(c) Diverted from a pool plant for the account of the handler operating such plant to another pool plant;

(d) Diverted from a pool plant to a nonpool plant (other than a producer-handler plant) for the account of the handler described in § 1005.9 (a) or (b) subject to the following conditions:

(1) A producer's milk shall be eligible for diversion to a nonpool plant during any month in which such producer's milk is physically received at a pool plant as follows:

(i) In any month of July through February, ten days' production;

(ii) In any month of March through June, four days' production.

(2) During each of the months of July through November and January and February, the total quantity of milk diverted by a cooperative association shall not exceed one-fourth of the producer milk that such cooperative caused that month to be delivered to or diverted from such pool plants;

(3) A handler described in § 1005.9(a) that is not a cooperative association may divert for its account any milk that is not under the control of a cooperative association that diverts milk during the month pursuant to paragraph (d)(2) of this section. The total quantity of milk so diverted shall not exceed one-fourth of the milk that is physically received at or diverted from pool plants as producer milk of such handler in each month of July through November and January and February;

(4) Any milk diverted in excess of the limits prescribed in paragraphs (c) (3) and (4) of this section shall not be producer milk. The diverting handler shall designate the dairy farmer

deliveries that shall not be producer milk. If the handler fails to make such designation, no milk diverted by such handler pursuant to this paragraph shall be producer milk;

(5) To the extent that it would result in nonpool status for the pool plant from which diverted, milk diverted for the account of a cooperative association from the pool plant of another handler shall not be producer milk;

(6) The cooperative association shall designate the dairy farmer deliveries that are not producer milk pursuant to paragraph (d)(5) of this section. If the diverting handler fails to make such designation, no milk diverted by such handler shall be producer milk; and

(e) Milk diverted pursuant to paragraph (c) or (d) of this section shall be priced at the location of the plant to which diverted.

§ 1005.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1005.40(b)(1) from any source other than producers, handlers described in § 1005.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1005.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1005.40(b)(1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1005.40(b)(1)) for which the handler fails to establish a disposition.

§ 1005.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form: Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted.

(b) The term "fluid milk product" shall not include:

(1) Evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quantity of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

§ 1005.16 Fluid cream product.

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

§ 1005.17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

§ 1005.18 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines after application by the association:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To have and be exercising full authority in the sale of milk of its members.

§ 1005.19 [Reserved]

§ 1005.20 Product prices.

The following product prices shall be used in calculating the basic Class II formula price pursuant to § 1005.51a:

(a) *Butter price.* "Butter price" means the simple average, for the first 15 days of the month, of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday, except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(b) *Cheddar cheese price.* "Cheddar cheese price" means the simple average, for the first 15 days of the month, of the daily prices per pound of cheddar cheese in 40-pound blocks. The prices used shall be those of the National Cheese Exchange (Green Bay, WI), as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(c) *Nonfat dry milk price.* "Nonfat dry milk price" means the simple average, for the first 15 days of the month, of the daily prices per pound of nonfat dry milk, which average shall be computed by the Director of the Dairy Division as follows:

(1) The prices used shall be the prices (using the midpoint of any price range as one price) of high heat, low heat and Grade A nonfat dry milk, respectively, for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service.

(2) For each week, determine the simple average of the prices reported for the three types of nonfat dry milk. Such average shall be the daily price for the day that such prices are reported and for each preceding work-day until the day such prices were previously reported. A work-day is each Monday through Friday except national holidays.

(3) Add the prices determined in paragraph (c)(2) of this section for the first 15 days of the month and divide by the number of days for which there is a daily price.

Handler Reports

§ 1005.30 Reports of receipts and utilization.

On or before the sixth day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of its pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1005.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1005.40(b)(1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1005.9 (b) and (c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to its receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

§ 1005.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1005.9 (a), (b), and (c) shall report to the market administrator its producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) Such producer's name and address;

(2) The total pounds of milk received from such producer;

(3) The average butterfat content of such milk; and

(4) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1005.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1005.32 Other reports.

(a) Each handler described in § 1005.9 (a), (b), and (c) shall report to the market administrator on or before the 6th day after the end of each month of March through June the aggregate quantity of base milk received from producers during the month, and on or before the 20th day after the end of each month of March through June the pounds of base milk received from each producer during the month.

(b) In addition to the reports required pursuant to paragraph (a) of this section and §§ 1005.30 and 1005.31, each handler shall report such other information as the market administrator deems necessary to verify or establish each handler's obligation under the order.

Classification of Milk

§ 1005.40 Classes of utilization.

Except as provided in § 1005.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1005.30 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c) of this section; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b)(1) of this section;

(3) In bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk or filled milk plant) at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages; and

(4) Used to produce:

(i) Cottage cheese, lowfat cottage cheese, and dry curd cottage cheese;

(ii) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(iii) Any concentrated milk product in bulk, fluid form other than specified in paragraph (c)(1)(iv) of this section;

(iv) Plastic cream, frozen cream, and anhydrous milkfat;

(v) Custards, puddings, and pancake mixes; and

(vi) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers.

(c) *Class III milk.* Class III milk shall be all skim milk and butterfat:

(1) Used to produce:

(i) Cheese (other than cottage cheese, lowfat cottage cheese, and dry curd cottage cheese);

(ii) Butter;

(iii) Any milk product in dry form;

(iv) Any concentrated milk product in bulk, fluid form that is used to produce a Class III product;

(v) Evaporated or condensed milk (plain or sweetened) in a consumer-type package and evaporated or condensed skim milk (plain or sweetened) in a consumer-type package; and

(vi) Any product not otherwise specified in this section.

(2) In inventory at the end of the month of fluid milk products in bulk or packaged form and products specified in paragraph (b)(1) of this section in bulk form;

(3) In fluid milk products and products specified in paragraph (b)(1) of this section that are disposed of by a handler for animal feed;

(4) In fluid milk products and products specified in paragraph (b)(1) of this section that are dumped by a handler if the market administrator is notified of such dumping in advance and is given the opportunity to verify such disposition.

(5) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1005.15; and

(6) In shrinkage assigned pursuant to § 1005.41(a) to the receipts specified in § 1005.41(a)(2) and in shrinkage specified in § 1005.41(b) and (c).

§ 1005.41 Shrinkage.

For the purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1005.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat;

(1) In the receipts specified in paragraph (b)(1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraph (b)(1) through (6) of this section which was received in the form of a bulk fluid milk product or a bulk fluid cream product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a)(1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant);

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1005.9(c), and in milk diverted to such plant from another pool plant, except that in either case, if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be 2 percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in paragraphs (b)(1), (2), (4), (5), and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1005.9(b) or (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1005.42 Classification of transfers and diversions.

(a) Transfers to pool plants. Skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant shall be classified as Class I milk unless the operators of both plants request the same classification in another class. In either case, the classification of such transfers or diversions shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant after the computations pursuant to § 1005.44(a)(12) and the corresponding step of § 1005.44(b);

(2) If the transferor-plant or divertor-plant received during the month other source milk to be allocated pursuant to § 1005.44(a)(7) or the corresponding step of § 1005.44(b), the skim milk or butterfat so transferred or diverted shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler or divertor-handler received during the month other source milk to be allocated pursuant to § 1005.44(a) (11) or (12) or the corresponding steps of § 1005.44(b), the skim milk or butterfat so transferred or diverted, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant.

(b) Transfers and diversions to other order plants. Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b)(1), (2), or (3) of this section.

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in paragraph (b)(3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I subject to adjustment when such information is available.

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to the class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to another order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1005.40.

(c) Transfers to producer-handlers and transfers and diversions to governmental agency plants. Skim milk or butterfat in the following forms that is transferred from a pool plant to a producer-handler under this or any other Federal order or transferred or diverted from a pool plant to a governmental agency plant shall be classified:

(1) As Class I milk, if so moved in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this

purpose, the transferee's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to its receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) Transfers and diversions to other nonpool plants. Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant, a producer-handler plant, or a governmental agency plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraph (d)(2)(i) (*a*) and (*b*) of this section are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization to its receipts as set forth in paragraph (d)(2)(ii) through (viii) of this section:

(*a*) The transferor-handler or divertor-handler claims such classification in such handler's report of receipts and utilization filed pursuant to § 1005.30 for the month within which such transaction occurred; and

(*b*) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(*b*) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(*c*) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(*d*) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(*b*) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(*a*) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(*b*) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to Class III utilization, and then to Class II utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class III utilization, then to any remaining Class II utilization, and then to Class I utilization at such nonpool plant; and

(viii) In determining the nonpool plant's utilization for purposes of this subparagraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this subparagraph.

(e) Transfers by a handler described in § 1005.9(c) to pool plants. Skim milk and butterfat transferred in the form of bulk milk by a handler described in § 1005.9(c) to another handler's pool plant shall be classified pursuant to § 1005.44 pro rata with producer milk received at the transferee-handler's plant.

§ 1005.43 General classification rules.

In determining the classification of producer milk pursuant to § 1005.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1005.30 and shall compute separately for each pool plant, and for each cooperative association with respect to milk for which it is the handler pursuant to § 1005.9 (b) or (c) that was not received at a pool plant, the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1005.40, 1005.41, and 1005.42. The combined pounds of skim milk and butterfat so determined in each class for a handler described in § 1005.9 (b) or (c) shall be such handler's classification of producer milk;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids; and

(c) The classification of producer milk of a handler pursuant to § 1005.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such handler.

§ 1005.44 Classification of producer milk.

For each month the market administrator shall determine for each handler described in § 1005.9(a) for each pool plant of the handler separately the classification of producer milk and milk received from a handler described in § 1005.9(c), by allocating the handler's receipts of skim milk and butterfat to the utilization of such receipts by such handler as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1005.41(b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under

any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtracted pursuant to paragraph (a)(7)(vi) of this section, as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1005.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1005.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. This paragraph shall apply only if the pool plant was subject to the provisions of this subparagraph or comparable provisions of another Federal milk order in the immediately preceding month;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to, any product specified in § 1005.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a)(5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1005.40(b)(1) that were not subtracted pursuant to paragraph (a) (4), (5), and (6) of this section;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order and from a governmental agency plant;

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) of this section; and

(vi) Receipts of reconstituted skim milk in filled milk from an other order plant that is regulated under any Federal milk order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor-plant;

(8) Subtract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) and (7)(v) of this section for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(ii) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2), (7)(v), and (8)(i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraph (a)(8)(ii) (*a*) through (*c*) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount:

(*a*) Multiply by 1.25 the sum of the pounds of skim milk remaining in Class I at this allocation step at all pool plants of the handler (excluding any duplication of Class I utilization resulting from reported Class I transfers between pool plants of the handler);

(*b*) Subtract from the above result the sum of the pounds of skim milk in receipts at all pool plants of the handler of producer milk, milk from a handler described in § 1005.9 (c) or (d), fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to paragraph (a)(7)(vi) of this section; and

(*c*) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants that remain at this pool plant is of all such receipts remaining at this allocation step at all pool plants of the handler; and

(iii) The pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a)(7)(vi) of this section, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1005.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraph (a)(5) and (7)(i) of this section;

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to paragraph (a)(1) of this section;

(11) Subject to the provisions of paragraph (a)(11) (i) and (ii) of this section, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler), with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2), (7)(v), and (8) (i) and (ii) of this section and that were not offset by transfers or diversions of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received:

(i) Should the pounds of skim milk to be subtracted from Class II and Class III combined pursuant to this subparagraph exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each

successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(ii) Should the pounds of skim milk to be subtracted from Class I pursuant to this subparagraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount, beginning with the nearest plant at which Class I utilization is available;

(12) Subtract in the manner specified below from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of bulk fluid milk products from another order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a) (7)(vi) and (8)(iii) of this section:

(i) Subject to the provisions of paragraph (a)(12) (ii), (iii), and (iv) of this section, such subtraction shall be pro rata to the pounds of skim milk in Class I and in Class II and Class III combined, with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, with respect to whichever of the following quantities represents the lower proportion of Class I milk:

(*a*) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1005.45(a); or

(*b*) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler);

(ii) Should the proration pursuant to paragraph (a)(12)(i) of this section result in the total pounds of skim milk at all pool plants of the handler that are to be subtracted at this allocation step from Class II and Class III combined exceeding the pounds of skim milk remaining in Class II and Class III at all such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which such other source milk was received;

(iii) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12) (i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class II and Class III combined that exceeds the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(iv) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12) (i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class I that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount beginning with the nearest plant at which Class I utilization is available;

(13) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from another pool plant according to the classification of such products pursuant to § 1005.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk and milk received from a handler described in § 1005.9(c), subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk and milk received from a handler described in § 1005.9(c) in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to paragraph (a)(14) of this section and the corresponding step of paragraph (b) of this section.

§ 1005.45 Market Administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1005.44(a)(12) and the corresponding step of § 1005.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1005.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 12th day after the end of each month, report to each cooperative association which so requests, the percentage of producer milk delivered by members of such association that was used in each class by each handler receiving such milk. For the purpose of this report the milk so received shall be prorated to each class in accordance with the total utilization of producer milk by such handler.

Class Prices

§ 1005.50 Class prices.

Subject to the provisions of § 1005.52, the class prices for the month per

hundredweight of milk shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $3.08.

(b) *Class II price.* A tentative Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The tentative Class II price shall be the basic Class II formula price computed pursuant to § 1005.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, except that, for each month after the first month in which this paragraph is effective, the final Class II price shall be not less than the Class III price.

(1) Determine for the most recent 12-month period the simple average (rounded to the nearest cent) of the basic formula prices computed pursuant to § 1005.51 and add 10 cents; and

(2) Determine for the same 12-month period as specified in paragraph (b)(1) of this section the simple average (rounded to the nearest cent) of the basic Class II formula prices computed pursuant to § 1005.51a.

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

§ 1005.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1005.51a Basic Class II formula price.

The "basic Class II formula price" for the month shall be the basic formula price determined pursuant to § 1005.51 for the second preceding month plus or minus the amount computed pursuant to paragraphs (a) through (d) of this section:

(a) The gross values per hundredweight of milk used to manufacture cheddar cheese and butter-nonfat dry milk shall be computed, using price data determined pursuant to § 1005.20 and yield factors in effect under the Dairy Price Support Program authorized by the Agricultural Act of 1949, as amended, for the first 15 days of the preceding month, and separately, for the first 15 days of the second preceding month as follows:

(1) The gross value of milk used to manufacture cheddar cheese shall be the sum of the following computations:

(i) Multiply the cheddar cheese price by the yield factor used under the Price Support Program for cheddar cheese; and

(ii) Multiply the butter price by the yield factor used under the Price Support Program for determining the butterfat component of the whey value in the cheese price computation.

(2) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the butter price by the yield factor used under the Price Support Program for butter; and

(ii) Multiply the nonfat dry milk price by the yield factor used under the Price Support Program for nonfat dry milk.

(b) Determine the amounts by which the gross value per hundredweight of milk used to manufacture cheddar cheese and the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk for the first 15 days of the preceding month exceed or are less than the respective gross values for the first 15 days of the second preceding month.

(c) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (b) of this section by determining the relative proportion that the data included in each of the following paragraphs is of the total of the data represented in paragraphs (c) (1) and (2) of this section:

(1) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the National Agricultural Statistics Service of the Department for the third preceding month, and divide by the yield factor used under the Price Support Program for cheddar cheese to determine the quantity of milk used in the production of American cheddar cheese; and

(2) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the National Agricultural Statistics Service of the Department for the third preceding month, and divide by the yield factor used under the Price Support Program for nonfat dry milk to determine the quantity of milk used in the production of butter-nonfat dry milk.

(d) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (b) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (c) of this section.

§ 1005.52 Plant location adjustments for handlers.

(a) For milk received at a plant from producers or a handler described in § 1005.9(c) which is classified as Class I milk subject to the limitations pursuant to paragraph (b) of this section, the Class I price specified in § 1005.50(a) shall be adjusted by the amount stated in paragraph (a) (1) through (6) of this section for the location of such plant:

(1) For a plant located within one of the zones set forth in § 1005.2, the adjustment shall be as follows:

	Adjustment per hundredweight
Northwestern	Minus 15 cents.
Base	No adjustment.
Southeastern	Plus 15 cents.
Southern	Plus 30 cents.

(2) For a plant located within the Tennessee Valley Federal order marketing area (Part 1011), except Kentucky and West Virginia counties, the adjustment shall be minus 31 cents;

(3) For a plant located within the State of Florida, the adjustment shall be a plus 50 cents;

(4) For a plant located outside the areas specified in paragraph (a) (1), (2), and (3) of this paragraph and south of a line extending through the southern boundary of the State of Tennessee, the adjustment shall be the adjustment applicable at Anderson, North Augusta, or Hardeeville, South Carolina, whichever city is nearest;

(5) For a plant located outside the area specified in paragraph (a)(2) of this paragraph and in the State of Virginia, the adjustment shall be the adjustment applicable at Reidsville, Roanoke Rapids, or Elizabeth City, North Carolina, whichever city is nearest;

(6) For a plant located outside the areas specified in (a) (1), (2), (3), (4), and (5) of this paragraph, the adjustment shall be a minus 2.5 cents for each 10 miles or fraction thereof (by the shortest hard-surfaced highway distance as determined by the market administrator) that such plant is from the nearer of the city halls in Greenville, South Carolina or Charlotte or Greensboro, North Carolina.

(b) For fluid milk products transferred in bulk form between pool plants, a

location adjustment credit for the transferor-plant which shall be determined by the market administrator for skim milk and butterfat, respectively, as follows:

(1) Subtract from the pounds of skim milk remaining in Class I at the transferee-plant after the computations pursuant to § 1005.44(a)(12) an amount equal to:

(i) The pounds of skim milk in receipts of milk at the transferee-plant from producers and handlers described in § 1005.9(c); and

(ii) The pounds of skim milk in receipts of packaged fluid milk products from other pool plants.

(2) Assign any remaining pounds of skim milk in Class I at the transferee-plant to the skim milk in receipts of bulk fluid milk products from other pool plants, first to the transferor-plant at which no location adjustment applies and then to other plants in sequence beginning with the plant at which the least location adjustment applies;

(3) Compute the total amount of location adjustment credits to be assigned to transferor-plants by multiplying the hundredweight of skim milk assigned pursuant to paragraph (b)(2) of this section to each transferor-plant by the applicable location adjustment rate for each such plant, and add the resulting amounts;

(4) Assign the total amount of location adjustment credits computed pursuant to paragraph (b)(3) of this section to those transferor-plants that transferred fluid milk products containing skim milk classified as Class I milk pursuant to § 1005.42(a), in sequence beginning with the plant at which the least location adjustment applies. Subject to the availability of such credits, the credit assigned to each plant shall be equal to the hundredweight of such Class I skim milk multiplied by the applicable location adjustment rate for such plant. If the aggregate of this computation for all plants having the same location adjustment rate exceeds the credits that are available to those plants, such credits shall be prorated to the volume of skim milk in Class I transfers from such plants; and

(5) Location adjustment credit for butterfat shall be determined in accordance with the procedure outlined for skim milk in paragraph (b)(1) through (4) of this section.

(c) The Class I price applicable to other source milk shall be adjusted at the rates set forth in paragraph (a) of this section, except that the adjusted Class I price shall not be less than the Class III price.

§ 1005.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month and for each month after the first month in which this section is effective, the final Class II price for the preceding month; and on or before the 15th day of each month the tentative Class II price for the following month.

§ 1005.54 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

Uniform Price

§ 1005.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk for each handler described in § 1005.9(a) with respect to each of its pool plants and for each handler described in § 1005.9 (b) and (c) with respect to milk that was not received at a pool plant as follows:

(a) Multiply the pounds of producer milk and milk received from a handler described in § 1005.9(c) that were classified in each class pursuant to §§ 1005.43(a) and 1005.44(c) by the applicable class prices, and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1005.44(a)(14) and the corresponding step of § 1005.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1005.74, that are applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1005.44(a)(9) and the corresponding step of § 1005.44(b);

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1005.44(a)(7) (i) through (iv) and the corresponding step of § 1005.44(b), excluding receipts of bulk fluid cream products from an other order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1005.44(a)(7) (v) and (vi) and the corresponding step of § 1005.44(b); and

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1005.44(a)(11) and the corresponding step of § 1005.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

§ 1005.61 Computation of uniform price (including weighted average price and uniform prices for base and excess milk).

(a) The market administrator shall compute the weighted average price for each month and the uniform price for each month of July through February per hundredweight for milk of 3.5 percent butterfat content as follows:

(1) Combine into one total the values computed pursuant to § 1005.60 for all handlers who filed the reports prescribed in § 1005.30 for the month and who made the payments pursuant to § 1005.71 for the preceding month;

(2) Add one-half the unobligated balance in the producer-settlement fund;

(3) Add an amount equal to the total value of the location adjustments computed pursuant to § 1005.75;

(4) Divide the resulting amount by the sum of the following for all handlers included in these computations;

(i) The total hundredweight of producer milk; and

(ii) The total hundredweight for which a value is computed pursuant to § 1005.60(f); and

(5) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The resulting figure, rounded to the nearest cent, shall be the weighted average price for each month and the

uniform price for the months of July through February.

(b) For each month of March through June, the market administrator shall compute the uniform prices per hundredweight for base milk and for excess milk, each of 3.5 percent butterfat content, as follows:

(1) Compute the total value of excess milk for all handlers included in the computations pursuant to paragraph (a)(1) of this section as follows:

(i) Multiply the hundredweight quantity of excess milk that does not exceed the total quantity of such handlers' producer milk assigned to Class III milk by the Class III price;

(ii) Multiply the remaining hundredweight quantity of excess milk that does not exceed the total quantity of such handlers' producer milk assigned to Class II milk by the Class II price;

(iii) Multiply the remaining hundredweight quantity of excess milk by the Class I price; and

(iv) Add together the resulting amounts;

(2) Divide the total value of excess milk obtained in paragraph (b)(1) of this section by the total hundredweight of such milk and adjust to the nearest cent. The resulting figure shall be the uniform price for excess milk;

(3) From the amount resulting from the computations pursuant to paragraph (a)(1) through (3) of this section subtract an amount computed by multiplying the hundredweight of milk specified in paragraph (a)(4)(ii) of this section by the weighted average price;

(4) Subtract the total value of excess milk determined by multiplying the uniform price obtained in paragraph (b)(2) of this section times the hundredweight of excess milk from the amount computed pursuant to paragraph (b)(3) of this section;

(5) Divide the amount calculated pursuant to paragraph (b)(4) of this section by the total hundredweight of base milk included in these computations; and

(6) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (b)(5) of this section. The resulting figure, rounded to the nearest cent, shall be the uniform price for base milk.

§ 1005.62 Announcement of uniform price and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 10th day after the end of each month the applicable uniform price(s) pursuant to § 1005.61 for such month.

Payments for Milk

§ 1005.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1005.71, 1005.76, and 1005.77, and out of which he shall make all payments pursuant to §§ 1005.72 and 1005.77: Provided, That any payments due any handler shall be offset by any payments due from such handler.

§ 1005.71 Payments to the producer-settlement fund.

(a) On or before the 12th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:

(1) The total value of milk of the handler for such month as determined pursuant to § 1005.60.

(2) The sum of:

(i) The value at the uniform price(s), as adjusted pursuant to § 1005.75, of such handler's receipts of producer milk and milk received from handlers pursuant to § 1005.9(c); and

(ii) The value at the weighted average price applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1005.60(f).

(b) On or before the 25th day after the end of the month each person who operated an other order plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk in route disposition from such plant in the marketing area which was allocated to Class I at such plant. If there is such route disposition from such plant in marketing areas regulated by two or more marketwide pool orders, the reconstituted skim milk allocated to Class I shall be prorated to each order according to such route disposition in each marketing area; and

(2) Compute the value of the reconstituted skim milk assigned in paragraph (b)(1) of this section to route disposition in this marketing area by multiplying the quantity of such skim milk by the difference between the Class I price under this part that is applicable at the location of the other order plant (but not to be less than the Class III price) and the Class III price.

§ 1005.72 Payments from the producer-settlement fund.

On or before the 13th day after the end of each month, the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1005.71(a)(2) exceeds the amount computed pursuant to § 1005.71(a)(1). If, at such time, the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the appropriate funds are available.

§ 1005.73 Payments to producers and to cooperative associations.

(a) Each handler shall pay each producer for producer milk for which payment is not made to a cooperative association pursuant to paragraph (b) of this section, as follows:

(1) On or before the last day of each month, for milk received during the first 15 days of the month from such producer who has not discontinued delivery of milk to such handler before the 25th day of the month at not less than the Class III price for the preceding month or 90 percent of the weighted average price for the preceding month, whichever is higher, less proper deductions authorized in writing by the producer; and

(2) On or before the 15th day of the following month, an amount equal to not less than the uniform price(s), as adjusted pursuant to §§ 1005.74 and 1005.75, multiplied by the hundredweight of milk or base milk and excess milk received from such producer during the month, subject to the following adjustments:

(i) Less payments made to such producer pursuant to paragraph (a)(1) of this section;

(ii) Less deductions for marketing services made pursuant to § 1005.86;

(iii) Plus or minus adjustments for errors made in previous payments made to such producers; and

(iv) Less proper deductions authorized in writing by such producer: Provided, That if by such date such handler has not received full payment from the market administrator pursuant to § 1005.72 for such month, he may reduce pro rata his payments to producers by not more than the amount of such underpayment. Payments to producers shall be completed thereafter not later than the date for making payments pursuant to the paragraph next following after the receipt of the balance due from the market administrator;

(b) Each handler shall make payment to the cooperative association for producer milk which it caused to be delivered to such handler, if such cooperative association is authorized to collect such payments for its members and exercises such authority, an amount equal to the sum of the individual payments otherwise payable for such producer milk as follows:

(1) On or before two days prior to the last day of each month for producer milk received during the first 15 days of the month; and

(2) On or before the 13th day after the end of each month for milk received during such month.

(c) Each handler pursuant to § 1005.9(a) who receives milk from a cooperative association as a handler pursuant to § 1005.9(c), including the milk of producers who are not members of such association, and who the market administrator determines have authorized such cooperative association to collect payment for their milk, shall pay such cooperative for such milk as follows:

(1) On or before two days prior to the last day of the month for milk received during the first 15 days of the month, not less than the Class III price for the preceding month or 90 percent of the weighted average price for the preceding month, whichever is higher; and

(2) On or before the 13th day of the following month for milk received during the month, not less than the appropriate uniform price(s) as adjusted pursuant to §§ 1005.74 and 1005.75, and less any payments made pursuant to paragraph (c)(1) of this section.

(d) In making payments for producer milk pursuant to this section, each handler shall furnish each producer or cooperative association from whom he has received milk a supporting statement in such form that it may be retained by the recipient which shall show:

(1) The month and identity of the producer;

(2) The daily and total pounds and the average butterfat content of producer milk;

(3) For the months of March through June the total pounds of base milk received from the producer;

(4) The minimum rate(s) at which payment to the producer is required pursuant to this order;

(5) The rate(s) used in making the payment if such rate(s) is other than the applicable minimum rate(s);

(6) The amount, or the rate per hundredweight, and nature of each deduction claimed by the handler; and

(7) The net amount of payment to such producer or cooperative association.

§ 1005.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price(s) shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1005.75 Plant location adjustment for producer and on nonpool milk.

(a) In making the payments required pursuant to § 1005.73, the uniform price and the uniform price for base milk pursuant to § 1005.61 for the month shall be adjusted by the amounts set forth in § 1005.62 according to the location of the plant where the milk being priced was received.

(b) For purposes of computing the value of other source milk pursuant to § 1005.71, the weighted average price shall be adjusted by the amount set forth in § 1005.52 that is applicable at the location of the nonpool plant from which the milk was received, except that the adjusted weighted average price shall not be less than the Class III price.

§ 1005.76 Payments by a handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1005.30(b) and 1005.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

(a) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:

(i) As Class I milk from pool plants, handlers pursuant to § 1005.9(b), and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract the pounds of reconstituted skim milk in route disposition in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds by the difference between the Class I price and the weighted average price, both prices to be applicable at the location of the partially regulated distributing plant (except that the Class I price and weighted average price shall not be less than the Class III price); and

(5) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in paragraph (a)(3) of this section by the difference between the Class I price applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price) and the Class III price.

(b) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the value that would have been computed pursuant to § 1005.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant, a handler described in § 1005.9(b), or an other order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant or as classified pursuant to § 1005.42 with respect to receipts from a handler described in § 1005.9(b);

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts st the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to paragraph (b)(1)(i) of this section. Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1005.60 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order

regulating the handling of milk at the transferee-plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1005.60 for such handler shall include, in lieu of the value of other source milk specified in § 1005.60(f) less the value of such other source milk specified in § 1005.71(a)(2)(ii), a value of milk determined pursuant to § 1005.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1005.7(b) subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with its reports filed pursuant to §§ 1005.30(b) and 1005.31(b) similar reports for each such nonpool supply plant;

(*b*) The operator of such nonpool supply plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for verification purposes; and

(*c*) The value of milk determined pursuant to § 1005.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(2) From the partially regulated distributing plant's value of milk computed pursuant to paragraph (b)(1) of this section, subtract:

(i) The gross payments by the operator of such partially regulated distributing plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1005.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated;

(ii) If paragraph (b)(1)(iii) of this section applies, the gross payments by the operator of such nonpool supply plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1005.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated; and

(iii) The payments by the operator of the partially regulated distributing plant to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant and like payments by the operator of the nonpool supply plant if paragraph (b)(1)(iii) of this section applies.

§ 1005.77 Adjustment of accounts.

Whenever verification by the market administrator of payments by any handler discloses errors made in payments to the producer-settlement fund pursuant to § 1005.71, the market administrator shall promptly bill such handler for any unpaid amount and such handler shall, within 15 days, make payment to the market administrator of the amount so billed. Whenever verification discloses that payment is due from the market administrator to any handler, pursuant to § 1005.72, the market administrator shall, within 15 days, make such payment to such handler. Whenever verification by the market administrator of the payment by a handler to any producer or cooperative association for milk received by such handler discloses payment of less than is required by § 1005.73, the handler shall pay such balance due such produce or cooperative association not later than the time of making payment to producers or cooperative associations next following such disclosure.

§ 1005.78 Charges on overdue accounts.

Any unpaid obligations of a handler pursuant to §§ 1005.71, 1005.73, 1005.76, 1005.77, or 1005.85 shall be increased one and one-fourth percent per month beginning on the first day after the due date, and on each date of subsequent months following the day on which such type of obligation is normally due, subject to the following conditions:

The amounts payable pursuant to this section shall be computed monthly on each unpaid obligation, which shall include any unpaid interest charges previously computed pursuant to this section; and

(b) For the purposes of this section, any obligation that was determined at a date later than that prescribed by the order because of a handler's failure to submit a report to the market administrator when due shall be considered to have been payable by the date it would have been due if the report had been filed when due.

Administrative Assessment and Marketing Service Deduction

§ 1005.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler, including a producer-handler, shall pay to the market administrator on or before the 15th day after the end of the month 4 cents per hundredweight, or such lesser amount as the Secretary may prescribe with respect to:

(a) Receipts of producer milk (including such handler's own production) other than such receipts by a handler described in § 1005.9(c) that were delivered to pool plants of other handlers;

(b) Receipts from a handler described in § 1005.9(c);

(c) Other source milk allocated to Class I pursuant to § 1005.44(a) (7) and (11) and the corresponding steps of § 1005.44(b), except such other source milk that is excluded from the computations pursuant to § 1005.60 (d) and (f); and

(d) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat specified in § 1005.76(a)(2).

§ 1005.86 Deduction for marketing services.

(a) Except as provided in paragraph (b) of this section, each handler, in making payments to producers for milk (other than milk of such handler's own production) pursuant to § 1005.73, shall deduct 5 cents per hundredweight, or such amount not exceeding 5 cents per hundredweight, as may be prescribed by the Secretary, and shall pay such deductions to the market administrator on or before the 15th day after the end of the month. Such money shall be used by the market administrator to provide market information and to check the accuracy of the testing and weighing of their milk for producers who are not receiving such service from a cooperative association.

(b) In the case of producers who are members of a cooperative association which the Secretary has determined is actually performing the services set forth in paragraph (a) of this section, each handler shall (in lieu of the deduction specified in paragraph (a) of this section), make such deductions from the payments to be made to such producers as may be authorized by the membership agreement or marketing contract between such cooperative association and such producers, and on or before the 13th day after the end of each month, pay such deductions to the cooperative association of which such producers are members, furnishing a statement showing the amount of any such deductions and the amount of milk for which such deduction was computed for each producer.

Base-Excess Plan

§ 1005.90 Base milk.

"Base milk" means the producer milk of a producer in each month of March through June that is not in excess of the producer's base multiplied by the number of days in the month.

§ 1005.91 Excess milk.

"Excess milk" means the producer milk of a producer in each month of March through June in excess of the producer's base milk for the month, and shall include all the producer milk in such months of a producer who has no base.

§ 1005.92 Computation of base for each producer.

(a) Subject to § 1005.93, the base for each producer shall be an amount obtained by dividing the total pounds of producer milk delivered by such producer during the immediately preceding months of August through November by the number of days' production represented by such producer milk or by 100, whichever is more.

(b) The base for a producer whose milk was delivered to a nonpool plant that became a pool plant after the beginning of the base-forming period (August–November) shall be calculated as if the plant were a pool plant for the entire base-forming period. A base thus assigned shall not be transferable.

§ 1005.93 Base rules.

(a) Except as provided in § 1005.92(b) and in paragraph (b) of this section, a base may be transferred in its entirety or in amounts of not less than 300 pounds effective on the first day of the month following the date on which an application for such transfer is received by the market administrator. Such application shall be on a form approved by the market administrator and signed by the baseholder or the legal representative of the baseholder's estate and the person to whom the base is to be transferred. If a base is held jointly, the application shall be signed by all joint holders or the legal representative of the estate of any deceased baseholder.

(b) A producer who transferred base on or after February 1 may not receive by transfer additional base that would be applicable during March through June of the same year. A producer who received base by transfer on or after February 1 may not transfer a portion of the base to be applicable during March through June of the same year, but may transfer the entire base.

(c) The base established by a partnership may be divided between the partners on any basis agreed to in writing by them if written notification of the agreed-upon division of base signed by each partner is received by the market administrator prior to the first day of the month in which such division is to be effective.

(d) The base assigned a person who was a producer during any of the immediately preceding months of August through November may be increased to 90 percent of such producer's average daily producer milk deliveries in the month immediately preceding the month during which a condition described in paragraph (d) (1), (2), or (3) of this section occurred, providing such producer submitted to the market administrator in writing on or before March 1 a statement that established to the satisfaction of the market administrator that in the immediately preceding August through November base-forming period the amount of milk produced on such producer's farm was substantially reduced because of conditions beyond the control of such person, which resulted from:

(1) The loss by fire or windstorm of a farm building used in the production of milk on the producer's farm;

(2) Brucellosis, bovine tuberculosis, or other infectious diseases in the producer's milking herd as certified by a licensed veterinarian; or

(3) A quarantine by a Federal or State authority that prevents the dairy farmer from supplying milk from the farm of such producer to a plant.

§ 1005.94 Announcement of established bases.

On or before February 1 of each year, the market administrator shall calculate a base for each person who was a producer during any of the immediately preceding months of August through November and shall notify each producer and the handler receiving milk from such dairy farmer of the base established by the producer. If requested by a cooperative association, the market administrator shall notify the cooperative association of each producer-member's base.

Proposed by Virginia Milk Commission:

Proposal No. 2:

Amend § 1005.7(a)(1) to read as follows:

§ 1005.7 Pool plant.

* * * * *

(a) * * *

(1) Route disposition, except filled milk, in the marketing area is not less than 15 percent of its total route disposition, except filled milk, during the month; and

* * * * *

Proposed by Richfood Dairy, Richmond, Virginia:

Proposal No. 3:

Amend § 1005.7(a)(1) to read as follows:

§ 1005.7 Pool plant.

* * * * *

(a) * * *

(1) Route disposition, except filled milk, in the marketing area is not less than 15 percent of its total Class I disposition on routes, except filled milk, during the month; and

* * * * *

Proposed by Sumter Dairies, Carolina Jersey Milk Producers Cooperative, and Midlands Milk Producers Association:

Proposal No. 4:

1. Revise § 1005.30(a) (1) and (2) and (c)(1) to read as follows:

§ 1005.30 Reports of receipts and utilization.

* * * * *

(a) Each handler shall report the quantities and the butterfat and nonfat milk solids content thereof of receipts at each of his pool plants of:

(1) Producer milk, including milk diverted pursuant to § 1005.13 (c) or (d);

(2) Receipts of milk from cooperative associations pursuant to § 1005.9(c);

* * * * *

(c) * * *

(1) The quantities of producer milk received, and the pounds of butterfat and nonfat solids contained therein; and

* * * * *

2. Revise § 1005.31(a) (3) and (4) to read as follows:

§ 1005.31 Payroll reports.

(a) * * *

(3) The pounds of butterfat and nonfat milk solids contained in such milk; and

(4) The price per pound to be paid producers for butterfat and nonfat milk solids, the "Average Differential Price" per hundredweight for such milk, the gross amount due, the amount and nature of any deductions, and the net amount paid.

* * * * *

3. Revise the section heading and the introductory language of § 1005.50 and add 3 new paragraphs to read as follows:

§ 1005.50 Prices for classes and components.

Subject to the provisions of § 1005.52, the class prices per hundredweight and

the component prices per pound for the month shall be as follows:

* * * * *

(d) *Butterfat price.* The butterfat price per pound shall be computed by subtracting from the basic formula price an amount determined by multiplying the average of the wholesale selling prices per pound for Grade A (92 score) butter for the month, f.o.b. Chicago, as reported by the Department for the month, (using the mid-point of any price range as one price) f.o.b. by 4.025, dividing by 100, and adding thereto the current month's butter price multiplied by 1.15. The resulting figure shall be rounded to the nearest whole cent.

(e) *Nonfat milk solids price.* The price per pound for nonfat milk solids shall be computed by subtracting from the basic formula price the butterfat price multiplied by 3.5 and dividing the result by the average percentage of nonfat milk solids in all producer milk for the preceding month, and rounding to the nearest whole cent.

(f) *Skim milk price.* The skim milk price per hundredweight shall be determined by subtracting the value of 3.5 pounds of butterfat, as computed by multiplying the wholesale selling price per pound for Grade A (92 score) butter specified in paragraph (d) of this section, by 4.025, from the basic formula price for the month, and rounding the resulting figure to the nearest whole cent.

4. Revise § 1005.53 to read as follows:

§ 1005.53 Announcement of prices.

The market administrator shall announce publicly on or before:

(a) The 5th day of each month the Class I price for the following month.

(b) The 15th day of each month, the tentative Class II price for the following month.

(c) The 5th day after the end of each month the basic formula price, the butterfat price, the nonfat milk solids price, the skim milk price, and the final Class II price for the preceding month.

(d) The 12th day after the end of each month for the preceding month the "Average Differential Price" computed pursuant to § 1005.61, together with a computed uniform price (at 3.5 percent butterfat, and average marketwide test for nonfat solids) to be arrived at by adding the basic formula price to the "Average Differential Price."

(e) The 12th day after the end of each of the months of March through June for the preceding month the "Base Milk Differential Price," and the "Excess Milk Differential Price."

5. Revise the center heading and §§ 1005.60, 1005.61, and 1005.62 to read as follows:

Differential Pool and Handler Obligations

§ 1005.60 Computation of handlers' obligations to differential pool.

The market administrator shall compute each month for each handler defined in § 1005.9(a) with respect to each of his pool plants, and for each handler defined in § 1005.9 (b) and (c), an obligation to the differential pool by combining the values computed as follows:

(a) Multiply the hundredweight of butterfat and skim milk and producer milk and milk from a handler defined in § 1005.9(c) that were assigned to Class I pursuant to § 1005.44(c) by the difference between the Class I price adjusted pursuant to § 1005.52, and the basic formula price;

(b) Multiply the hundredweight of butterfat and skim milk in producer milk and milk from a handler defined in § 1005.9(c) that were assigned to Class II milk as determined pursuant to § 1005.44(c) by the difference between the Class II price and the basic formula price;

(c) Multiply the hundredweight of any overage of butterfat and skim milk assigned to Class I pursuant to § 1005.44(a)(14) and the corresponding step in § 1005.44(b) by the difference between the Class I price, as adjusted pursuant to § 1005.52, and the basic formula price for the month;

(d) Multiply the pounds of any overage of butterfat as determined pursuant to the step of § 1005.44(b) which corresponds to § 1005.44(a)(14) by the butterfat price computed pursuant to § 1005.50(d);

(e) Determine the value of any skim milk overage by combining the values computed to (1) and (2) as follows:

(1) Multiply the pounds of skim milk assigned to Class II and Class III pursuant to § 1005.(a)(14) times the average percentage of nonfat milk solids in all producer milk assigned pursuant to § 1005.44(c) and multiply the resulting pounds by the nonfat milk solids price as computed pursuant to § 1005.50(e); and

(2) Multiply the hundredweight of skim milk assigned to Class I pursuant to § 1005.44(a)(14) times the skim milk price as computed pursuant to § 1005.50(f);

(f) Multiply the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1005.44(a)(9) and the corresponding step in § 1005.44(b) by the difference between the Class I price for the month, adjusted pursuant to § 1005.52 and the basic formula price;

(g) Multiply the hundredweight of skim milk and butterfat subtracted from Class II pursuant to § 1005.44(a)(9), and the corresponding step in § 1005.44(b) by the difference between the Class II price for the month, and the basic formula price;

(h) Multiply the pounds of butterfat subtracted from Class I, and Class II pursuant to the step in § 1005.44(b) which corresponds to § 1005.44(a)(9) by any plus or minus difference between the butterfat price for the preceding month, and that for the current month;

(i) Multiply the pounds of skim milk subtracted from Class I pursuant to § 1005.44(a)(9) by any plus or minus difference between the skim milk price for the preceding month, and that for the current month;

(j) Multiply the pounds of skim milk subtracted from Class II pursuant to § 1005.44(a)(9) by the percentage of nonfat solids in the milk computed pursuant to § 1005.44(c), and multiply the resulting pounds by any plus or minus difference between the nonfat milk solids price for the previous month, and that for the current month;

(k) Multiply the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1005.44(a)(7) (i) through (iv) and (vii), and the corresponding steps of § 1005.44(b), excluding fluid cream products received from another order plant, by the difference between the Class I price adjusted pursuant to § 1005.52 for the location of the pool plant at which received, and the basic formula price for the month;

(l) Multiply the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1005.44(a)(7) (v) and (vi), and the corresponding steps of § 1005.44(b), by the difference between the Class I price adjusted pursuant to § 1005.52 for the location of the plant from which received, and the basic formula price for the month;

(m) Multiply the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1005.44(a)(11), and the corresponding step of § 1005.44(11), (less any receipts of fluid milk products in bulk form from an unregulated supply plant to the extent that fluid milk products classified and priced as Class I milk were received at such unregulated supply plants from handlers fully regulated under any Federal order, and were not used to avoid payment of an obligation under any other Federal order), by the difference between the Class I price f.o.b. the nearest unregulated supply plant(s) from which an equivalent volume of bulk fluid milk products was received, and the basic formula price;

(n) Multiply the hundredweight of skim milk in producer milk and milk from handlers defined in § 1005.9(c) classified as Class I pursuant to § 1005.44(c) by the skim milk price for the month; and

(o) Multiply the pounds of skim milk in producer milk and milk from handlers defined in § 1005.9(a) classified as Class II and Class III pursuant to § 1005.44(c) by the average percent of nonfat solids contained in the total of the skim milk and butterfat included under § 1005.44(c), and multiply the resulting pounds of solids by the nonfat milk solids price for the month.

§ 1005.61 Computation of Average differential price, and Base and Excess milk differential prices.

(a) For each month the market administrator shall compute the "Average Differential Price", for milk containing 3.5 percent butterfat and the marketwide average nonfat milk solids content of producer milk as follows:

(1) Combine into one total the values computed pursuant to § 1005.60 for all handlers who made reports pursuant to § 1005.30, and who made payments pursuant to § 1005.71 for the preceding month;

(2) Add an amount equal to the sum of the deductions to be made for location adjustments with respect to all producer milk pursuant to § 1005.75;

(3) Add an amount equal to not less than one-half the unobligated balance in the producer-settlement fund;

(4) Divide the resulting amount by the sum of the following for all handlers included in these computations;

(i) The total hundredweight of producer milk;

(ii) The total hundredweight for which a value is computed pursuant to § 1005.60(m).

(5) Subtract not more than 5 cents per hundredweight. The result shall be known as the "Average Differential Price."

(b) For each of the months of March through June the market administrator shall compute a "Base Milk Differential Price", and an "Excess Milk Differential Price" for base and excess milk containing 3.5 percent butterfat and the marketwide average nonfat milk solids content of producer milk as follows:

(1) Combine into one total the values computed pursuant to § 1005.60 for all handlers who made reports pursuant to § 1005.30, and who made payments pursuant to § 1005.71 for the preceding month;

(2) Add an amount equal to the sum of the deductions to be made for location adjustments all producer milk qualified as base milk pursuant to § 1005.75;

(3) Add an amount equal to not less than one-half the unobligated balance in the producer-settlement fund;

(4) Subtract any plus amount arrived at as follows:

(i) Multiply the hundredweight of base milk for the month by the Class I differential of $3.08;

(ii) Add an amount equal to the value of the location adjustment deductions as computed pursuant to § 1005.61(b)(2) hereof;

(iii) Subtract the foregoing amount from the sum computed pursuant to § 1005.61(b)(3) hereof;

(5) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(i) The total hundredweight of producer milk qualified as base milk;

(ii) The total hundredweight for which a value is computed pursuant to § 1005.60(m);

(6) Subtract not more than 5 cents per hundredweight. The result shall be known as the "Base Milk Differential Price" for milk testing 3.5 percent butterfat, and the marketwide average nonfat milk solids content of producer milk.

(c) For each of the months of March through June, the market administrator shall compute an "Excess Milk Differential Price" for excess milk containing 3.5 percent butterfat with market average nonfat milk solids content received from producers by dividing any amount subtracted pursuant to § 1005.61(b)(4) hereof by the total hundredweight of excess producer milk received by all handlers during the month, and rounding such price downward to the nearest whole cent. If the amount subtracted pursuant to § 1005.61(b)(4) is equal, or less than one cent per hundredweight the Excess Milk Differential Price shall be "0".

* * * * *

§ 1005.62 Computation of producers' nonfat solids price.

For each month the market administrator shall compute a "Producers' nonfat solids price" to be paid all producers for the pounds of nonfat milk solids contained in milk marketed as producer milk as follows:

(a) Combine into one total the values computed pursuant to § 1005.60 (n) and (o) for all handlers who made reports pursuant to § 1005.30 and who made payments pursuant to § 1005.71 for the preceding month;

(b) Divide the resulting amount by the total pounds of nonfat milk solids in producer milk; and

(c) Round to the nearest whole cent. The result is the "Producer's nonfat solids price."

6. Revise § 1005.71(a) to read as follows:

§ 1005.71 Payments to the producer-settlement fund.

(a) On or before the 12th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section;

(1) The total obligation of the handler for such month as computed pursuant to § 1005.60.

(2) The sum of:

(i) The obligation of the handler for milk computed based on the appropriate "Average", or "Base and Excess Milk Differential" prices as computed pursuant to § 1005.61 adjusted pursuant to § 1005.75 with respect to such handler's receipts of milk from producers, and handlers defined in § 1005.9(c).

(ii) The value at the "Average Differential Price" for the month applicable at the location of the plant from which received, of other source milk for which a value is computed pursuant to § 1005.60(m).

* * * * *

7. Revise § 1005.73(a)(1) and (2), (c)(1), and (2) and (d)(2) to read as follows:

§ 1005.73 Payments to producers and to cooperative associations.

(a) * * *

(1) On or before the last day of each month, for milk received during the first 15 days of the month from each producer who has not discontinued delivery of milk to such handler before the 25th day of the month at not less than the basic formula price for the preceding month, or 90 percent of a price determined by adding the Average Differential and basic formula prices for the preceding month, whichever is higher.

(2) On or before the 15th day of the following month, an amount equal to not less than the sum of the following:

(i) The total pounds of butterfat in producer milk received from the producer multiplied times the butterfat price;

(ii) The total pounds of nonfat milk solids in producer milk received from the producer multiplied times the "Producer nonfat solids price,"

(iii) The total pounds of producer milk received from the producer multiplied times the "Average Differential Price," or the "Base Milk Differential, and Excess Milk Differential Prices," multiplied times the base milk, and

excess milk pounds received, as appropriate for the month;

(iv) Less payments made to such producer pursuant to paragraph (a)(1) of this section;

(v) Less deductions for marketing services made pursuant to § 1005.86;

(vi) Plus or minus adjustments for errors made in previous payments made to such producer;

(vii) Less proper deductions authorized in writing by such producer; and

(viii) Less an amount equal to no more than a pro rata share of any underpayment by the Market administrator at the time this payment is due, of the amount due the handler pursuant to § 1005.72. Provided that the payment to the producer shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following, after the receipt by the handler of the balance due from the Market Administrator.

* * * * *

(c) * * *

(1) On or before 2 days prior to the last day of the month for milk received during the first 15 days of the month, not less than the basic formula price for the preceding month, or 90 percent of a price determined by adding the basic formula, and Average Differential prices for the preceding month, whichever is higher; and

(2) On or before the 13th day of the following month for milk received during the month not less than the following:

(i) The total pounds of butterfat in producer milk received from the producer multiplied times the Butterfat price;

(ii) The total pounds of nonfat milk solids in producer milk received from the producer multiplied times the "Producer nonfat solids price;" and

(iii) The total pounds of producer milk received from the producer multiplied times the "Average Differential Price," or the "Base Milk Differential, and Excess Milk Differential Prices," multiplied times the Base milk, and Excess milk pounds received, as appropriate for the month, adjusted pursuant to § 1005.75.

(d) * * *

(2) The daily and total pounds of milk received, and the pounds of butterfat and nonfat milk solids contained therein.

§ 1005.74 [Removed]

8. Delete § 1005.74 Butterfat differential.

Copies of this notice of hearing may be procured from USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, or may be inspected there.

Copies of the transcript of testimony taken at the hearing will not be available for distribution through the Hearing Clerk's Office. If you wish to purchase a copy, arrangements may be made with the reporter at the hearing.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture
Office of the Administrator, Agricultural Marketing Service
Office of the General Counsel
Dairy Division, Agricultural Marketing Service (Washington office only)

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Signed at Washington, DC, on: March 13, 1989.

J. Patrick Boyle,

Administrator.

[FR Doc. 89–6218 Filed 3–16–89; 8:45 am]

BILLING CODE 3410–02–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 4

Enforcement of Nondiscrimination on the Basis of Handicap in Federally Assisted Programs; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a proposed rule appearing in the Federal Register on March 8, 1989 (54 FR 9966) which would amend regulations issued for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended, in Federally assisted programs or activities. This action is necessary to correct the address and hours of operation presented for the NRC Public Document Room. The information in the **"ADDRESSES"** section for the Nuclear Regulatory Commission on page 9968 should be corrected to read as set forth below.

DATE: Comments must be received by May 8, 1989.

ADDRESSES: Comments should be sent to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Docketing and Service Branch. Comments received will be available for public inspection at the NRC Public Document Room 2120 L Street, NW., lower level of the Gelman Building, Washington, DC 20555 from 7:45 am to 4:15 pm except legal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Edward E. Tucker, Manager, Civil Rights Program, Office of Small and Disadvantaged Business Utilization/Civil Rights, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 492–7697 (voice) or (800) 638–8282 (TDD).

Dated at Bethesda, Maryland, this 10th day of March 1989.

For the Nuclear Regulatory Commission.

Donnie H. Grimsley,

Director, Division of Freedom of Information and Publications Services, Office of Administration.

[FR Doc. 89–6331 Filed 3–16–89; 8:45 am]

BILLING CODE 7590–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89–CE–03–AD]

Airworthiness Directives; British Aerospace (BAe) PLC, Jetstream 3101 (Includes Model 3100) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This Notice proposes to adopt a new Airworthiness Directive (AD), applicable to British Aerospace (BAe) PLC, Jetstream 3101 (includes Model 3100) airplanes which have incorporated Omnibus Modification 7380 and Kit 3279A for increased gross weight. The action proposes to modify or replace the existing pilot's and copilot's operating limitations placards and incorporate an Airplane Flight Manual (AFM) revision, in accordance with Particular Amendment P/46, which reduces the maximum maneuvering speed from 180 knots Indicated Airspeed (IAS) to 176 knots IAS. The original instructions for incorporating Omnibus Modification 7380 to increase the gross weight from 14,550 pounds to 15,212 pounds inadvertently omitted revised operating limitation placards and the AFM revision necessary to reduce the

maximum maneuvering speed (V_A) appropriate to the heavier weight. If the erroneous speeds are not corrected, continued use of higher than design speeds will result in reduced fatigue life of major structural components which may cause premature failure. Revising the operating limitation placards and the AFM so that the correct airspeed limitations are presented, will permit operation within the established design load factors and service life of life-limited parts.

DATES: Comments must be received on or before May 16, 1989.

ADDRESSES: British Aerospace (BAe) Jetstream Alert Service Bulletin (ASB) 11–A–JA880140, dated February 23, 1988, and Particular Amendment P/46 to AFM Document No. HP.4.10, applicable to this AD, may be obtained from British Aerospace, Inc., Technical Librarian, P.O. Box 17414, Dulles International Airport, Washington, DC 20041; Telephone (703) 435–9100. This information also may be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to the Federal Aviation Administration, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 89–CE–03–AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. Ted Ebina, Aircraft Certification Division, AEU–100 Europe, Africa, and Middle East Office, FAA, c/o American Embassy, B–1000 Brussels, Belgium; Telephone (322) 513.38.30 or Mr. John P. Dow, Sr., FAA, Project Support Section-Foreign, ACE–109, 601 E. 12th Street, Kansas City, Missouri 64106; Telephone (816) 426–6932.

SUPPLEMENTARY INFORMATION:

Comments invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. Comments are specifically invited on the overall regulatory, economic, environmental and energy aspects of the proposed rule. All comments submitted will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report summarizing each FAA public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 89–CE–03–AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion: British Aerospace (BAe) PLC, made design changes to the Jetstream Model 3101 (including 3100) series airplanes that would permit increasing the maximum takeoff gross weight from 14,550 pounds to 15,212 pounds. The airplane modifications necessary to permit operation at the heavier gross weights were classified as Omnibus Modification 7380, and Kit 3279A of modification 7380.

Several airplanes were so modified during production and others have been field modified. Subsequently, it was discovered that the placards provided in Kit 3279A and the associated AFM revision did not revise the maximum permissible maneuvering airspeed (V_A) in accordance with the approved design data. Because of the increased gross weight, the maximum maneuvering speed (the maximum speed at which full control deflection may be used without exceeding design structural loads) was reduced from the previously approved speed of 180 knots IAS to 176 knots IAS. The use of flight controls to full deflection at airspeeds greater than 176 knots IAS, may cause excessive structural loads and invalidate existing life-limits on major structural components of the airplane. As a result, the manufacturer has issued BAe ASB 11–A–JA880140, dated February 23, 1988, and Particular Amendment P/46 to AFM Document No. HP.4.10 which make provisions for modifying or replacing the existing operating limitations placards and revising the existing AFM. The Civil Airworthiness Authority—United Kingdom (CAA–UK), which has responsibility and authority to maintain the continuing airworthiness of these airplanes in the United Kingdom, has classified this ASB and the actions recommended therein by the manufacturer as mandatory to assure the continued airworthiness of the affected airplanes. On airplanes operated under United Kingdom registration, this action has the same effect as an AD on airplanes certified for operation in the United States. The FAA relies upon the certification of the CAA–UK combined with FAA review of pertinent documentatioin in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness conformity of products of this type design certificated for operation in the United States. The FAA has examined the available information related to the issuance of BAe ASB 11–A–JA880140, dated February 23, 1988, and the mandatory classification of this ASB by the CAA–UK. Based on the foregoing, the FAA believes that the condition addressed by BAe ASB 11–A–JA880140, dated February 23, 1988, is an unsafe condition that may exist on other products of this type design certificated for operation in the United States. Consequently, the proposed AD would require that BAe Jetstream 3101 (includes Model 3100) airplanes which have incorporated Omnibus Modification 7380 for increased gross weight, revise the operating limitations placard and AFM in accordance with the provisions of the above ASB.

The FAA has determined there are approximately 122 airplanes that may be affected by the proposed AD. The estimated cost of modifying the operating limitations placard and AFM for these airplanes is estimated to be $50 per airplane. The maximum total cost is estimated to be $6,100 to the private sector. The cost of compliance with this proposed AD is so small that the expense of compliance will not be a significant financial impact on any small entities operating these airplanes.

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or in the distribution of power and responsibilities among the various level of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Therefore, I certify that this action (1) Is not a "major rule" under the provisions of Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the public

docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Section 39.13 of Part 39 of the FAR as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. By adding the following new AD:

British Aerospace (BAe) PLC: Applies to Jetstream Model 3101 (includes Model 3100) (all serial numbers) airplanes which have Kit 3279A embodied as part of Omnibus Modification 7380, certificated in any category.

Compliance: Compliance is required within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished. To assure operation of the airplane within the design airspeed limitations, accomplish the following:

(a) Modify the pilot's and copilot's operating limitations placards and revise the Airplane Flight Manual in accordance with British Aerospace Alert Service Bulletin 11-A-JA880140, dated February 23, 1988, and operate the airplane in accordance with these limitations.

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

(c) An equivalent means of compliance with this AD may be used if approved by the Manager, Aircraft Certification Office, AEU-100, Europe, Africa, Middle East Office, FAA, c/o American Embassy, B-1000 Brussels, Belgium.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to British Aerospace, Inc., Technical Librarian, P.O. Box 17414, Dulles International Airport, Washington, DC 20041; or may examine these documents at the FAA, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on March 3, 1989.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-6278 Filed 3-16-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-NM-08-AD]

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Withdrawal of Notice of Proposed Rulemaking.

SUMMARY: This action withdraws a Notice of Proposed Rulemaking (NPRM) which proposed to amend an existing airworthiness directive (AD), applicable to certain Boeing Model 737 series airplanes, which currently requires visual inspection for cracking, and repair or replacement, as necessary, of the skin along the upper row of fasteners of certain fuselage lap joints. The proposal would have required the accomplishment of certain eddy current inspections, which were optional in the existing AD. Since the issuance of the NPRM, the FAA has superseded the existing AD with an AD which requires more stringent inspections than those in the existing AD. Accordingly, the NPRM is withdrawn.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara J. Mudrovich, Airframe Branch, ANM-120S; telephone (206) 431-1927. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to amend an existing airworthiness directive, applicable to certain Boeing Model 737 airplanes, was published in the Federal Register on March 10, 1988 (53 FR 7765). The proposal would have amended AD 87-21-08, Amendment 39-5752 (52 FR 38395; October 16, 1987), to require the accomplishment of certain eddy current inspections which were optional in the existing AD. Since issuance of the NPRM, there has been an accident involving a Model 737 airplane in which a large portion of the fuselage departed the airplane. Subsequently, the FAA determined that inspections more stringent than those required by AD 87-21-08, were necessary, and therefore, issued AD 88-22-11, Amendment 39-6059 (53 FR 44156; November 1, 1988), which supersedes AD 87-21-08. Accordingly, the FAA has determined that the proposed amendment is not necessary, and the NPRM is hereby withdrawn.

Withdrawal of this Notice of Proposed Rulemaking constitutes only such action, and does not preclude the agency from issuing another Notice in the future, or commit the agency to any course of action in the future.

Since this action only withdraws a Notice of Proposed Rulemaking (NPRM), it is neither a proposed nor final rule, and therefore, is not covered under Executive Order 12291, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

List of Subjects: 14 CFR Part 39

Aviation safety, Aircraft.

The Withdrawal

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration withdraws a proposal to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

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

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

2. By withdrawing the Notice of Proposed Rulemaking, Docket 88-NM-08-AD, published in the Federal Register on March 10, 1988 (53 FR 7765), F.R. Doc. 88-5206.

Issued in Seattle, Washington, on March 8, 1989.

Darrell M. Pederson,

Assistant Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-6276 Filed 3-16-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-NM-13-AD]

Airworthiness Directives; Israel Aircraft Industrie (IAI) Model 1121, 1121A, 1121B, 1123, 1124, and 1124A Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposed to supersede an existing airworthiness directive (AD), applicable to Israel Aircraft Industrie (IAI) Model 1121, 1121A, 1121B, 1123, 1124, and 1124A series airplanes, which currently requires repetitive dye penetrant inspections to detect cracks in the horizontal stabilizer aft spar splice fitting, and replacment, as necessary. That action was prompted by reports of cracks in the splice fitting lugs on

several airplanes. This proposal would require repetitive visual inspections for cracks in the hinge lugs of the horizontal stabilizer aft spar splice fitting, and replacement of any fittings found cracked. This action is prompted by reports of cracks found in the outer hinge lugs during a visual inspection, which were apparently missed during the previously required dye penetrant inspection. Such cracking, if not detected and corrected, could lead to failure of the outer and inner hinge lugs, which would compromise the structural integrity of the horizontal stabilizer assembly.

DATES: Comments must be received no later than May 8, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-13-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Israel Aircraft Industrie (IAI), Delaware Office, P.O. Box 10086, Wilmington, Delaware 19850. This information may be examined at the FAA, Northwest Mountain region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Standardization Branch, ANM-113; telephone (206) 431-1978. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filled in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-13-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

On June 19, 1986, the FAA issued AD 86-14-02, Amendment 39-5341 (51 FR 23217; June 26, 1986), to require a 600-hour repetitive dye penetrant inspection to detect cracks in the horizontal stabilizer aft spar splice fitting on all IAI Models 1121, 1121A, 1123B, 1123, 1124, and 1124A series airplanes and replacement, as necessary. The action was promoted by reports of cracks found in the splice fitting lugs on several airplanes. This condition, if no corrected, could lead to failure of the fitting, which would compromise the structural integrity of the horizontal stabilizer assembly.

Since issuance of that AD, there have been several reports of cracks and consequent breaking of the outer lugs in the horizontal stabilizer aft hinge Part No. 453005-501. The reported cracks were found during a visual inspection, and were apparently not detected during the previous 600-hour required dye penetrant inspection.

Analysis by the manufacturer has detemined that the crack propagation rate in the outer lug is such that any crack would be visually detectable at a 300-hour inspection interval. Damage tolerance analysis demonstrates that the two outer lugs will break consecutively and then the inner lugs will begin to carry higher loads. The lug design is redundant and, when coupled with a 300-hour visual inspection, will provide an adequate margin of detection before total hinge lug failure. For this reason, it has been determined that the currently required 600-hour dye penetrant inspections are apparently inadequate to detect such cracking, and that a 300-hour repetitive visual inspection is appropriate.

IAI has issued Service Bulletin 1121-55-003, Revision 1, dated August 8, 1988, applicable to Model 1121, 1121A, and 1121B Commodore Jet series airplanes; Service Bulletin 1123-55-006, Revision 1, dated August 8, 1988, aplicable to Model 1123 Westwind; and Service Bulletin 1124-55-020, Resision 2, dated August 8, 1988, applicable to Model 1124 and 1124A, Westwind I and II; which describe procedures for repetitive visual inspections of the horizontal stabilizer aft spar splice fitting Part Number 453005-501 (hinge assembly). Additionally, IAI has issued the following service bulletins, which describe procedures for replacement of the horizontal stabilizer aft spar splice fitting:

Service Bulletin 1121-55-004, Revision 2, dated August 8, 1988 (Model 1121, 1121A, and 1121B); or

Service Bulletin 1123a-55-007, Revision 2, dated August 8, 1988 (Model 1123 Westwind); or

Service Bulletin 1124-55-021, Revision 3, dated October 21, 1988 (Model 1124 and 1124A, Westwind I and II).

The Israeli Civil Aviation Administration (CAA) has classified these service bulletins as mandatory, and has issued Airworthiness Directive (AD) 85-001 addressing this subject.

This airplane model is manufactured in Israel and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Administration and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of this same type design registered in the United States, and AD is proposed which would supersede AD 86-14-02 to require repetitive visual inspections for cracks in the hinge lugs of the horizontal stabilizer aft spar splice fitting, and replacement, as necessary, in accordance with the service bulletins previously described.

It is estimated that 410 airplanes of U.S. registry would be affected by this AD, that it would take approximately one-half manhour per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $8,200 for the initial inspection cycle.

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

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant

to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because of the minimal cost of compliance per airplane ($20). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

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

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

2. By superseding AD 86-14-02, Amendment 39-5341 (51 FR 23217; June 26, 1986), with the following new airworthiness directive:

Israel Aircraft Industries (IAI): Applies to Model 1121, 1121A, 1121B, 1123, 1124, and 1124A series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To detect cracks in the hinge lugs of the horizontal stabilizer aft spar splice fitting (hinge assembly), accomplish the following:

A. Within the next 75 flight hours time-in-service after the effective date of this AD, unless previously accomplished within the last 225 flight hours time-in-service, conduct a visual inspection of the horizontal stabilizer aft spar fitting (hinge assembly), Part Number 453005-501, in accordance with the following IAI Service Bulletins, entitled "Horizontal Stabilizer Aft Spar Splice Fitting P/N 453005-501 (Hinge Assembly) Inspection", as appropriate:

Model	Service Bulletin
1121, 1121A, 1121B	1121-55-003, Revision 1, dated August 8, 1988.
1123	1123-55-006, Revision 1, dated August 8, 1988.
1124, 1124A	1124-55-020, Revision 2, dated August 8, 1988.

B. If no cracks are found, repeat the inspection required by paragraph A., above, at intervals not to exceed 300 hours time-in-service.

C. If cracks are found, replace the splice fitting prior to further flight, in accordance with the following IAI service bulletins entitled "Horizontal Stabilizer Assembly—Inspection, Repair, and Improvement (AFC 2037)," as appropriate:

Model	Service Bulletin
1121, 1121A, 1121B	1121-55-004, Revision 2, dated August 8, 1988.
1123	1123-55-007, Revision 2, dated August 8, 1988.
1124, 1124A	1124-55-021, Revision 3, dated October 21, 1988.

D. Following replacement of the splice fitting, described in the above service bulletins, repeat the inspection required by paragraph A. of this AD at intervals not to exceed 300 hours time-in-service.

E. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Standardization Branch, ANM-113.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the inspection and modification required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Israel Aircraft Industries, Delaware Office, P.O. Box 10086, Wilmington, Delaware 19850. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on March 6, 1989.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-6279 Filed 3-16-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-NM-100-AD]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to amended an earlier proposed airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, that would have required ultrasonic inspection for cracks and corrosion, and overhaul, if necessary, of the wing landing gear beam outboard end fittings. That action was prompted by the report of a fracture of a left wing landing gear beam outboard end fitting on one airplane. This condition, if not corrected, could result in separation of the outboard end of the landing gear beam and possible damage to adjacent control cables or hydraulic lines. This action would revise the original proposal to add a requirement for visual inspections for corrosion. The FAA has determined that ultrasonic inspection will not detect the corrison and that an additional visual inspection is necessary to maintain an acceptable level of safety.

DATES: Comments must be received no later than April 12, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-100-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Dan R. Bui, Airframe Branch, ANM-120S; telephone (206) 431-1919. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the propsoed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for

examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-100-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires inspection and overhaul, if necessary, of the wing landing gear beam outboard end fittings on certain Boeing Model 747 series airplanes was published in the Federal Register on August 18, 1988 (53 FR 31365). The comment period for the proposal closed on October 12, 1988.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The Air Transport Association (ATA) of America, on behalf of its members, expressed no objections to the proposed rule.

The National Transportation Safety Board (NTSB) supported the proposed rule, but recommended that the proposed rule should be changed to require those airplanes which have accumulated more than 30,000 flight hours be inspected at the earliest opportunity compatible with the airplanes scheduled maintenance program. In developing the proposed compliance time, the FAA did consider the earliest period that would, on the average, be commensurate with the affected operators' scheduled maintenance. The FAA determined that the proposed compliance time of 18 months met this criteria. However, as explained below, this Supplemental NPRM proposes to revise the compliance time.

The manufacturer recommended that paragraphs A., B., and C. of the proposal be revised to indicate that the ultrasonic inspections are to be conducted to detect cracks only, not "* * * cracks or corrosion." During the process of developing an ultrasonic technique to find cracks or corrosion, it was determined that the ultrasonic inspection would not detect the corrosion but would detect cracks. The FAA has considered the manufacturer's recommendation and has determined that the proposed ultrasonic inspection requirement is adquate to detect cracks. However, the FAA has determined that additional visual inspections for corrosion are necessary to maintain an acceptable level of safety. Service experience has shown that the cracking which prompted this AD initiated from corrosion pits and propagated by stress corrosion.

Since the addition of visual inspection requirements increases the scope of this rulemaking action, the comment period has been reopened to provide adequate time for public comment. To partially compensate for the additional comment period, the proposed compliance time has been reduced by 4 months.

Since issuance of the NPRM Boeing has issued Revision 1 to Service Bulletin 747-57-2244, dated July 28, 1988. The revision is primarily of a corrective and clarifying nature. The FAA has reviewed and approved the revision. The proposed rule has been changed to reflect this later document as the appropriate service information.

This proposed revision to the original Notice would not affect any additional airplanes presently on the U.S. register or significantly increase the burden on operators.

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

For thse reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Model 747 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

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

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

2. By revising paragraph A. of the Notice of Proposed Rulemaking, Docket No. 88-NM-100-AD, published in the Federal Register on August 18, 1988 (53 FR 31365), as follows:

Boeing: Applies to Model 747 series airplanes, listed in Boeing Service Bulletin 747-57-2244, Revision 1, dated July 28, 1988, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent failure of a wing landing gear beam outboard end fitting with possible damage to control cables or hydraulic lines in the area of the landing gear, beam, accomplish the following:

A. Prior to the accumulation of 30,000 flight hours, or 8 years in service, whichever occurs first, or within the next 14 months after the effective date of this AD, whichever occurs later, visually inspect around the fitting lug bushings at the wing landing gear beam outboard end fittings for corrosion, and ultrasonically inspect the wing landing gear beam outboard end fittings for cracks, in accordance with Boeing Service Bulletin 747-57-2244, Revision 1, dated July 28, 1988.

If no cracking or corrosion is found, repeat the inspection required by paragraph A., above, at intervals not to exceed 18 months.

C. If cracking or corrosion is found, prior to further flight, remove the wing landing gear beam outboard fitting, and rework in accordance with Boeing Service Bulletin 747-57-2244, Revision 1, dated July 28, 1988.

D. Terminating action for the inspections required by paragraphs A. and B., above, consists of rework of the wing landing gear beam outboard fittings in accordance with Boeing Service Bulletin 747-57-2244, Revision 1, dated July 28, 1988.

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

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on March 6, 1989.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-6277 Filed 3-16-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 89-ASO-11]

Proposed Amendment of Transition Area; Tifton, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This notice proposes to amend the Tifton, GA, Transition Area. The Eaglehead Airport, located approximately 7 miles southwest of the Henry Tift Myers Airport, has been closed. Therefore, a need no longer exists for the 700-foot transition area within a 5-mile radius of the airport. Also, the geographic position coordinates of the Henry Tift Myers Airport need to be corrected.

DATES: Comments must be received on or before: April 28, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, ASO-530, Manager, Airspace and Procedures Branch, Docket No. 89-ASO-11, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763-7646.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89-ASO-11." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace and Procedures Branch (ASO-530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Tifton, GA, Transition Area. The existing transition area includes a 5-mile radius area around the Eaglehead Airport located approximately 7 miles southwest of the Henry Tift Myers Airport. The Eaglehead Airport has been closed. The proposed action would eliminate the 700-foot transition area around the Eaglehead Airport. Also, it would correct the geographic position latitude/longitude coordinates of the Henry Tift Myers Airport. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6D dated January 4, 1988.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Transition Area.

The Proposed Amendment

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

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

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

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Public Law 97-449, January 12, 1983); 14 CFR 11.69.

2. Section 71.181 is amended as follows:

Tifton, GA [Amended]

By amending the coordinates of Henry Tift Myers Airport to read, "(Lat. 31°26'00"N., Long. 83°29'00"W.)" and deleting the clause, "within a 5-mile radius of Eaglehead Airport (31°23'00"N., Long. 83°36'00"W.)".

Issued in East Point, Georgia, on February 24, 1989.

William D. Wood,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 89-6281 Filed 3-16-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 88-ASW-48]

Proposed Revision of Transition Area: Lake Charles, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This action corrects the proposed revision to the transition area located at Lake Charles, LA. The development of a new VOR RWY 33 standard instrument approach procedures (SIAP) to the Chennault Industrial Airpark, utilizing the Lake Charles Very High Frequency Omnidirectional Radio Range/Tactical Air Navigation (VORTAC), made this proposed revision necessary. However, in the original Airspace Docket No. 88-AWS-48, issued on December 2, 1988, the arrival extension was incorrectly described/depicted as being northwest of the Chennault Industrial Airpark, where in fact, the arrival extension should have been described/depicted as being southeast of the airpark. The intended effect of this action is to correct the arrival extension of the transition area as well as to provide adequate controlled airspace for aircraft executing the new VOR RWY 33 SIAP.

DATE: Comments must be received on or before April 17, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Docket No. 88-ASW-48, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530; telephone: (817) 624-5561.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88-ASW-48." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, 4400 Blue Mound Road, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Manager, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of the Federal Aviation Regulations (14 CFR Part 71) by revising the transition area located at Lake Charles, LA. The development of a new VOR RWY 33 SIAP to the Chennault Industrial Airpark, utilizing the Lake Charles VORTAC, necessitated this proposed revision. However, the original Airspace Docket No. 88-ASW-48, issued on December 2, 1988, incorrectly described and depicted the arrival extension for the VOR RWY 33 SIAP as being northwest of the Chennault Industrial Airpark. The correct arrival extension for the VOR RWY 33 SIAP is southeast of the airpark. The intended effect of this correction to the proposed revision is to correctly describe and depict the arrival extension as being southeast of the airpark and to provide adequate controlled airspace for aircraft executing the new VOR RWY 33 SIAP. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 1, 1988.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

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

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

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

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Lake Charles, LA [Revised]

That airspace extending upward from 700 feet above the surface within an 8.5-mile radius of the Lake Charles Municipal Airport (latitude 30°07'32" N., longitude 93°13'22" W.); and within an 8.5-mile radius of the Chennault Industrial Airpark (latitude 30°12'37" N., longitude 93°08'35" W), and within 5.0 miles each side of the 155° radial of the Lake Charles VOR (latitude 30°08'29" N., longitude 93°06'20" W.), extending from the 8.5-mile radius area of the Chennault Industrial Airpark to 15 miles southeast of the Chennault Industrial Airpark.

Issued in Fort Worth, TX, on February 9, 1989.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 89-6376 Filed 3-16-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 89-AWP-3]

Proposed Establishment of Transition Area, Lovelock, NV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This notice proposes to establish transition areas at Lovelock, Nevada, to provide controlled airspace for instrument approaches to be conducted at Derby Field.

DATES: Comments must be received on or before April 28, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace and Procedures Branch, AWP-530, Docket No. 89-AWP-3, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

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

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

FOR FURTHER INFORMATION CONTACT: Daniel K. Martin, Airspace and Procedures Specialist, Airspace and Procedures Branch, AWP-530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (213) 297-0166.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89-AWP-3." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Airspace and Procedures Branch, Air Traffic Division, at 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

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

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish transition areas at Derby Field, Lovelock, NV. This action will establish controlled airspace for aircraft executing instrument approach procedures and missed approach procedures at Derby Field.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

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

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

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

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. § 71.181 is amended as follows:

Lovelock, NV [New]

The airspace extending upward from 700 feet above the surface within a 5-mile radius of Derby Field, Lovelock, NV, lat. 40°40'05"N., long. 118°33'42"W. and within 4 miles each side of the 333° radial (317T) of Lovelock VORTAC extending to 12 milies north Lovelock VORTAC, and that airspace extending upward from 1,200 feet above the surface beginning at lat. 40°37'00"N., long. 118°36'30"W., to lat. 40°12'00"N., long. 118°55'00"W., to lat. 40°03'00"N., long. 118°52'00"W., to lat. 40°18'00"N., long. 118°22'00"W., to lat. 40°27'00"N., long. 118°34'00"W., to point of beginning and beginning at lat. 40°05'30"N., long. 118°27'00"W., to lat. 40°06'00"N., long. 118°23'00"W., to lat. 40°03'00"N., long. 118°22'00"W., to lat. 40°01'00"N., long. 118°28'00"W., thence via a 5-mile radius of Derby Field to point of beginning.

Issued in Los Angeles, California, on February 27, 1989.

Jacqueline L. Smith,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 89-6280 Filed 3-16-89; 8:45 am]

BILLING CODE 4910-13-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 33

Domestic Exchange-Traded Commodity Options; Margins

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of petition for rulemaking; request for comments.

SUMMARY: The Chicago Board of Trade ("CBT" or "Exchange") and the Chicago Mercantile Exchange ("CME" or "Exchange") have petitioned the Commodity Futures Trading Commission for repeal of Commission Regulation 33.4(a)(2), 17 CFR 33.4(a)(2). The Commission is publishing notice of the Exchanges' petitions and requesting public comment.

DATE: Comments must be received on or before May 16, 1989.

ADDRESS: Comments should be sent to Jean A. Webb, Secretary of the Commission, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Patterson, Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254-8955.

SUPPLEMENTARY INFORMATION: By letters dated July 11, 1988 and July 27, 1988, the Chicago Board of Trade and the Chicago Merchantile Exchange, respectively, petitioned the Commission for repeal of Commission Regulation 33.4(a)(2), 17 CFR 33.4(a)(2). Regulation 33.4(a)(2) requires that when a commodity option is purchased each clearing member must pay to its clearing house, each member must pay to its clearing member, and each option customer must pay to his futures commission merchant ("FCM"), the full option premium.[1] The Exchanges have asked the Commission to delete this regulation in order to permit the development of "futures-style margining" of commodity options.[2]

A futures-style margining system for options would include two components: original margin, set according to the underlying risk, and variation margin, reflecting the daily change in the value of the premium. Long and short option positions would be marked to market and gains and losses paid and collected daily. The Exchanges contend that futures-style margining would improve cash flow in futures and options markets generally, thereby increasing liquidity and efficiency.

I. Background

A. Option Pilot Program

In 1981, the Commission instituted a pilot program for exchange-traded options on non-agricultural futures contracts. 46 FR 54500 (November 3, 1981). Concurrently, the Commission adopted Part 33 of its regulations, including the full-payment-of-premium requirement of Regulation 33.4(a)(2). In explaining its determination to prohibit the margining of option premiums, the Commission noted that:

> A critical distinction between options and futures contracts traditionally has been that, with respect to options, the one-time payment of a premium gives the option purchaser the right, over a fixed period of time, to elect the exercise of the option without incurring any additional obligations on this option contract. In contrast, the purchaser's initial payment of margin on a futures contract is recognized as the deposit of earnest money to insure performance of the contract, but does not represent the full extent of the purchaser's potential liability on the futures contract.

46 FR 54504.

The Commission's decision to prohibit the margining of option premiums was "intended to preserve this critical distinction." *Id.* Further, the Commission viewed the requirement as "essential to the protection of option purchasers who otherwise could reasonably expect that an initial payment of margin on an option contract constituted the full extent of their obligation on the option." *Id.* Finally, the Commission stated that "the rule removes a potentially significant impediment to the financial stability of FCMs, clearing members and the clearing organizations and also facilitates the monitoring, by the exchanges, of their members' financial condition." *Id.*

B. Other Developments

Although Regulation 33.4(a)(2) has remained unchanged throughout the pilot and permanent phases of the option program,[3] market participants have continued to discuss the concept of futures-style margining of options. As early as June of 1982, the Coffee, Sugar & Cocoa Exchange, Inc. ("CSC") petitioned the Commission to delete Regulation 33.4(a)(2). The Commission denied CSC's petition, but resolved to reconsider margining of option premiums "after the Commission and the industry ha[d] gained some experience with the trading of options under the pilot program."[4] The following year, in a March 13, 1983 **Federal Register** release, the Commission solicited comments concerning "[t]he advantages and disadvantages of permitting margining of option premiums paid by floor traders." 48 FR 10857, 10858 (March 13, 1983). After considering comments made in response to that **Federal Register** release, the Commission published a "Notice of proposed rulemaking" in which it proposed to allow contract markets to adopt rules permitting their members to make a deposit with respect to the option premium. 49 FR 8937 (March 9, 1984). However, the intervening circumstance of the 1985 Volume Investors margin default in the gold futures option market on the Commodity Exchange, Inc., raised concerns about option margining which caused the Commission to delay further consideration of futures-style margining.

More recently, in the wake of the October, 1987 market break, the Working Group on Financial Markets recommended in its *Interim Report* that market participants and regulators study the potential for improving liquidity through the use of futures-style margining of options.[5] The Working

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[1] Regulation 33.4 states:

§ 33.4 Designation as a contract market for the trading of commodity options.

The Commission may designate any board of trade . . . as a contract market for the trading of options . . . when the applicant complies with and carries out the requirements of the Act (as provided in § 33.2), these regulations, and the following conditions and requirements with respect to the commodity option for which the designation is sought:

(a) Such board of trade * * *.

(2) Provides that the clearing organization must receive from each of its clearing members, that each clearing member must receive from each other person for whom it clears commodity option transactions, and that each futures commission merchant must receive from each of its option customers, the full amount of each option premium at the time the option is purchased.

[2] Implementation of futures-style margining also might require the amendment of other Commission regulations or interpretations. *See e.g.* Financial and Segregation Interpretation No. 8—Proper Accounting, Segregation and Net Capital Treatment of Exchange-Traded Option Transactions, Comm. Fut. L. Rep. (CCH), ¶7118 (August 12, 1982).

[3] Over the years, the pilot program was expanded to options on non-agricultural physicals and options on agricultural futures, and by February 9, 1987, was permanent for all these option products. Option trading on non-agricultural futures was made permanent effective August 1, 1986. 51 FR 17464 (May 13, 1986); 51 FR 27529 (August 1, 1986). Options on agricultural futures and options on non-agricultural physicals were made permanent effective February 9, 1987. 52 FR 777 (January 9, 1987).

[4] Letter from Jane K. Stuckey, Secretary of the Commission, to Bennett J. Corn, President of CSC, dated July 2, 1982.

[5] *Interim Report of The Working Group on Financial Markets*, Submitted to the President of the United States, May 1988.

Group noted the "particular promise" of "cross-margining * * * [c]oupled with futures-style margining."[6] In light of the Working Group's recommendations and the Chicago Exchanges' recent petitions, the Commission now is seeking public comment on issues related to futures-style margining of options.

II. Comparison of Option Margining Systems

Under the current "stock-style" option system the option buyer or "long" must pay the entire premium when the transaction is initiated. No further payments are required. The premium is credited to the account of the option seller or "short," who must keep it posted as margin. The option seller also must put up risk margin to cover potential adverse market moves in his obligation. If the option increases in value, the short must deposit additional funds into the account. These funds, however are not transferred to the long, who must exercise or offset the option in order to realize any increase in its value. By contrast, if the option value decreases, the short may withdraw any excess funds from its account.

Under the proposed "futures-style" margin system, both the long and the short position holders would post risk-based original margin upon entering into their option positions. During the life of the option, the option value would be marked to market daily. Any increase in value would result in a credit to the long option holder's account and a corresponding debit against the short's account. Conversely, any decrease in value would result in a credit to the short's account and a corresponding debit to the long's account. Thus the cash flows in option contracts would be symmetric with those in futures contracts. The change in the margin system, however, would not alter the fundamental nature of each party's overall obligation. The short's potential for loss would remain essentially unlimited while the long would never pay more than the value of the original option premium.

The differences between the current stock-style margin system and the proposed futures-style margin system are illustrated by the following examples. In each case assume that an at-the-money call with an exercise price of 270 and sixty days to expiration is purchased for a premium of $5,000. Further assume that the minimum price tick in both the futures and the option is $500.

Example 1: Option Value Decreases. At expiration the futures price has fallen below the exercise price and the option expires out-of-the-money. Under both stock-style and futures-style margining, the long's loss is limited to the initial premium. Only the timing of the payments differs.

STOCK-STYLE MARGINING

Long	Short
Day 1—Pays full premium of $5,000.	Day 1—Posts full premium received from long plus initial margin.
Day 2-59—Pays no additional funds.	Day 2-59—May withdraw amount equal to decrease in value of option position since day of purchase.
Day 60—Option expires valueless. Nothing is returned.	Day 60—Option expires valueless. Initial margin is returned.

FUTURES-STYLE MARGINING

Long	Short
Day 1—Posts initial margin..	Day 1—Posts initial margin
Day 2-59—Pays aggregate settlement variation of $5,000.	Day 2-59—Collects aggregate settlement variation of $5,000
Day 60—Option expires value-less. Initial margin is returned.	Day 60—Option expires valueless. Initial margin is returned.

Example 2: Option Value Increases. By expiration the futures price has risen above the exercise price to 285. The option is "in the money" by 15 points and the premium is $7,500 ($500 x 15 points) per contract. Under both systems, the long's profits are the same. Again, only the timing of the payments differs.

STOCK-STYLE MARGINING

Long	Short
Day 1—Pays full premium of $5,000.	Day 1—Posts full premium received from long plus initial margin.
Day 2-59—Collects nothing over life of option.	Day 2-59—Posts additional funds equal to the increase in value of option position over the life of the option.
Day 60—Liquidates position by selling the option for $7,500 for a gain of $2,500..	Day 60—Liquidates position by buying the option for $7,500 for a loss of $2,500. Margin is returned.

FUTURES-STYLE MARGINING

Long	Short
Day 1—Posts initial margin.	Day 1—Posts initial margin
Day 2-59—Over life of option collects aggregate settlement variation of $2,500.	Day 2-59—Over life of option pays aggregate settlement variation of $2,500
Day 60—Liquidates position. Margin is returned.	Day 60—Liquidates initial position. Initial margin is returned.

The long might also choose to exercise the in-the-money call. Exercising a futures-style option is analogous to taking delivery on a futures position. In order to receive a cash commodity by taking delivery on a futures contract, the long must pay the settlement price of the futures contract prevailing at the time of delivery. Similarly, in order to obtain a futures position by exercising an option, the long must pay the settlement price of the option prevailing at the time of exercise. In other words, the long must pay the full premium marked to market on the day of exercise. Under a futures-style margining system, this payment is offset by the variation pays received by the long during the life of the option. The differences between this procedure and the exercise of stock-style options are demonstrated in a final example.

Example 3: Exercise of In-the-money Option. As in Example 2, the futures price has risen to 285 by September. The long option holder decides to exercise the call.

STOCK-STYLE MARGINING

Long	Short
Exercises option.	Option is exercised.
Receives long futures position at strike price of 270. Futures position is marked-to-market by the Clearing House and the long is credited with $7,500 ((285 - 270) x $500).	Receives short futures position at strike price of 270. Futures position is marked-to-market by the Clearing House and the short is debited $7,500.

FUTURES STYLE MARGINING

Long	Short
Exercises option.	Option is exercised.
Clearing House debits account for premium settlement price of $7,500.	Clearing House credits short with $7,500 settlement of premium.
Receives long futures position at option strike price of 270. Futures position is marked-to-market by the Clearing House and the long is credited with $7,500 ((285 - 270) x 500).	Receives short futures position at option price of 270. Futures position is marked-to-market by the Clearing House and the short is debited $7,500.

[6] *Interim Report*, p. 8. The Commission approved the Intermarket Clearing Corporation's proposal for cross-margining of proprietary accounts on June 1, 1988. The Securities and Exchange Commission approved the corrsponding proposal of the Options Clearing Corporation on October 7, 1988. The proposal, however, has not been implemented to date.

FUTURES STYLE MARGINING—Continued

Long	Short
Option position is closed through exercise, but risk margin is retained until the futures position is offset.	Option position is closed through exercise, but risk margin is retained until the futures position is offset.

III. Potential Advantages of Futures-Style Margining

The Exchanges foresee a number of benefits arising from futures-style margining of options. The primary benefits identified would be the potential for more efficient cash flows across markets and a resulting decrease in the potential for defaults occurring as the result of the inability to secure third-party financing for long futures based on long option values.

In this connection the Exchanges point out that, at present, certain spread or risk neutral positions can give rise to substantial funds requirements due to asymmetrical cash flows. The problem arises, for example, where a short futures position is hedged with a long call option. If the short price of the futures position increases, the value of the call also increases. However, the trader cannot apply the increased option value toward the corresponding loss in the futures position.[7] Instead, the trader must put up funds to pay the futures variation requirement. Similar cash flow shortages can arise for traders holding arbitrage positions such as conversions, reverse conversions, and box spreads. The Exchanges state that such problems may be particularly acute when there are major market moves.

With futures-style margining of options, these asymmetrical cash flows could be eliminated or reduced. Each increase in an option position's value (long or short) would result in a related variation payment which would be accessible to the option trader. The trader could in turn put his option gains toward margin payments on other positions with corresponding losses.

The Exchanges also state that market liquidity would increase under a futures-style margining system because the incentive for early exercise of options would be reduced. Under the present system, an option purchaser can realize increases in the value of an option only by offsetting or exercising that option. Thus, some long option holders may choose to exercise their options early in order to obtain the option profits. This possibility of early exercise acts as a disincentive to writing options due to the uncertainty it creates. The daily pay and collect feature of the futures-style system would eliminate the incentive for early exercise.

The Exchanges assert that futures-style margining also may reduce financing requirements for market participants. Under the present margining system, FCMs are exposed to financing risk because long option equity cannot be used to make variation margin payments on short option or futures positions. Moreover, financing based on option equity may not be readily available to market participants because many banks are reluctant to provide such financing due to option volatility and the uncertain legal status of options as collateral. Futures-style options, with their variation pay and collect feature, would reduce the need for market participants to borrow against their long option equity. Thus, FCMs no longer would be exposed to a credit risk beyond their control.

Some operational efficiency may also be gained through the adoption of futures-style margining of options. Once such a system were in place for all option contracts on a contract market, the exchange would be able to maintain one basic margining system, for option and futures contracts. Exchange members would benefit in the same manner.

IV. Potential Concerns Raised By Futures-Style Margining

One area of concern with respect to futures-style margining would be the increase in leverage which would accompany it. A long would be required to put up a smaller initial payment to purchase a given option than he would under the current system. This could introduce the risk of default in instances where long positions are not paid in full.[8]

Another issue is the extent to which customers will understand the scope of their liability. When the option pilot program was instituted in 1981, the Commission cited customer (and trader) confusion over futures-style margining as the primary reason for requiring full payment of option premiums. The full premium requirement was viewed by the Commission "as essential to the protection of option customers who otherwise could reasonably expect that an initial payment of margin on an option contract constituted the full extent of their obligation on the option." 46 FR 54504.

The Commission's early concern over customer confusion may retain some validity today, particularly because full payment of premiums on commodity options has been required for a number of years. The Exchanges acknowledge that the institution of futures-style margining would require major exchange efforts to educate market participants. Of course, full and accurate disclosure of potential liability also would be necessary at the time an option position was entered in order to ensure investor protection.[9]

A perhaps more significant source of confusion could be the differences in option pricing which could result from futures-style margining. Option premiums potentially would be higher under a futures-style system because shorts would demand a higher price to compensate for the loss of interest income on the full premium and longs would be willing to pay a higher price because they would be gaining such interest income. To the extent a uniform system of margining is not in place, market participants would have to be made aware of the effects of margining systems on pricing. For example, identical options on the same commodity traded at different exchanges might have significantly different premiums if one exchange used futures-style margining and the other did not. Moreover, this pricing inconsistency also could affect various strategies, for example, potentially negating the usefulness of certain "buy-write" strategies.

In this connection, the Commission believes based on past experience with margining proposals that there could be substantial costs to the industry in making a transition to futures-style margining. It is unlikely that all exchanges would be ready (or willing) to switch from stock-style option margining to futures-style option margining at the same time. Thus FCMs trading on more than one exchange might incur significant operational costs in order to maintain multiple option

[7] Of course, the trader may obtain the excess funds by exercising or offsetting the option, but this would eliminate the hedge strategy or require re-establishing the option with the ensuing transactions costs.

[8] Of course, FCMs would remain free to require an initial payment equal to the value of the option premium. In any event, under a futures-style margining system, FCMs could be expected to apply the same standards of creditworthiness to option customers that they apply to futures customers.

[9] Both the Commission and the NFA have alleged that in some instances options have been marketed to the public through fraudulent misrepresentations of risk. These cases often involve assertions by options salespersons that, because the full option premium is paid up front, options are risk-free investments. Any adoption of futures-style margining could create additional or different concerns about fraudulent marketing techniques.

margining systems and to comply with different disclosure requirements for different exchanges. Customers could find themselves subject to multiple requirements as well. This piecemeal change could be avoided by instituting futures-style margining across-the-board after all exchanges had adopted futures-style margin rules, but such an approach might delay implementation of the system for an indefinite period of time.

Moreover, even if all exchanges introduced futures-style margining simultaneously there would be a necessary transition period during which exchanges and market participants would be required to deal with both stock-style and futures-style margining systems. Because of the impact of futures-style margining on option pricing, only a newly-issued option series could be margined in the proposed manner. Any previously-issued option series would require margining under the existing stock-style system. Thus a change to futures-style margining would necessitate the maintenance of a two-tiered margining system for a period of time.

V. Request for Comments

The Commission invites interested persons to comment on the foregoing as well as any additional issues concerning futures-style margining. In particular, the Commission encourages commenters to address the following issues:

1. The nature and extent of potential benefits resulting from futures-style margining to (a) clearing organizations, (b) FCMs, (c) floor traders, and (d) customers.

2. The nature and extent of potential risks created by futures-style margining to (a) clearing organizations, (b) FCMs, (c) floor traders, and (d) customers.

3. The nature and extent to which customer protection issues, including potential fraudulent marketing, would arise under the proposal and suggested means of addressing those issues, such as enhancing risk disclosure requirements.

4. The nature and extent to which operational difficulties would arise from implementation of futures-style margining and suggested ways to minimize such difficulties.

5. Whether the implementation of futures-style margining would necessitate the creation or enhancement of other safeguards such as additional assessments for market participants carrying large positions concentrated in particular contracts.

6. Whether futures-style margining would affect market liquidity by changing the identity of market participants.

7. Whether the benefits and risks of futures-style margining would be any different under gross margin and net margin systems.

8. Whether the benefits and risks of futures-style margining would be different depending on the nature of the underlying commodity, *e.g.*, physical commodities as contrasted to stock indices.

9. Whether the potential that some options traded on futures markets might be futures-style while others would be stock-style would create significant problems and what those problems would be.

10. Whether the proposed dichotomy between futures-style options traded on futures markets and stock-style options traded on securities markets would create significant problems and what those problems would be.

11. Whether the proposed deletion of Regulation 33.4(a)(2) and the proposed implementation of futures-style margining would necessitate additional changes to the Commission's regulations.

12. Whether there are alternative means of obtaining the benefits of futures-style margining. For example, could symmetrical cash flows be achieved while requiring full payment of the premium? Or, could the asserted benefits be achieved while limiting futures-style margining to certain classes of traders (e.g., institutions)?

Copies of the Exchanges' petitions for rulemaking will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Copies may also 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 the proposed rule amendments, 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 March 14, 1989, by the Commission.

Jean A. Webb,

Secretary.

[FR Doc. 89–6348 Filed 3–16–89; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 31, and 35a

[INTL–52–86]

Income Taxes; Information Reporting and Backup Withholding

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 the requirement that certain payments must be reported to the International Revenue Service and that, in certain instances, 20 percent of a reportable payment must be deducted and withheld under section 3406 of the Internal Revenue Code of 1954 (26 U.S.C. 3406).

DATES: The public hearing will begin at 10:00 a.m. on Thursday, June 15, 1989, and continue, if necessary, at the same time on Friday, June 16, 1989. Outlines of oral comments must be delivered or mailed by Thursday, May 25, 1989.

ADDRESS: The public hearing will be held in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The requests to speak and outlines of oral comments should be submitted to the Commissioner of Internal Revenue, Attn: CC:CORP:T:R (INTL–52–86), Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Robert Boyer of the Regulations Unit, Assistant Chief Counsel (Corporate), Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, telephone 202–566–3935 (not a toll-free call).

SUPPLEMENTARY INFORMATION: The subject of the public hearing relates to proposed regulations under section 3406 of the Internal Revenue Code of 1954 (26 U.S.C. 3406) on the requirement that certain payments must be reported to the Internal Revenue Service and that, in certain instances, 20 percent of a reportable payment must be deducted and withheld. This provision was added to the Code by section 104 of the Interest and Dividend Tax Compliance Act of 1983 (Pub. L. 98–67, 97 Stat. 369, 371). These amendments are proposed to be issued under the authority contained in section 3406(a), section 6041(a), section 6042 (a), (b), and (c), section 6043, section (a) and (c), section 6045, section 6049 (a), (b), (c), and (d), and section

6050A. On February 29, 1988, a notice of proposed rulemaking interpreting section 3406 of the Internal Revenue Code of 1954 was published in the Federal Register (53 FR 5991).

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 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 Thursday, May 25, 1989, an outline of the oral comments to be presented at the hearing and the time they wish to devote to each subject.

Each speaker 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 admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

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

By direction of the Commissioner of Internal Revenue:

Dale D. Goode,

Chief, Regulations Unit Assistant Chief Counsel (Corporate).

[FR Doc. 89-6335 Filed 3-16-89; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF DEFENSE

Office of the Inspector General

32 CFR Part 284

Office of the Inspector General, Freedom of Information Act Program

AGENCY: Office of the Inspector General (OIG), Defense.

ACTION: Proposed rule.

SUMMARY: The Department of Defense, Office of the Inspector General has been designated a DoD Component for the purposes of responding to requests made pursuant to the Freedom of Information Act (FOIA). This proposed rule establishes the policy and procedures by which the public may request information from the Office of the Inspector General under the FOIA.

DATES: Written comments must be received by April 17, 1989.

ADDRESS: Send comments to the Assistant Director, FOIA/PA Division, Assistant Inspector General for Investigations, Room 1016, 400 Army Navy Drive, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Dominick D. Wasielewski, (202) 697-6035.

SUPPLEMENTARY INFORMATION: In FR Doc. 88-28271 appearing on December 13, 1988, the Office of the Secretary of Defense published a notice announcing the redesignation of the Department of Defense, Office of the Inspector General as a DoD Component for responding to FOIA requests.

List of Subjects in 32 CFR Part 284

Freedom of Information.

Accordingly, Title 32, Chapter I, Subchapter P, is proposed to be amended to add Part 284 as follows:

PART 284—OFFICE OF THE INSPECTOR GENERAL, FREEDOM OF INFORMATION ACT PROGRAM

Sec.

Authority: 5 U.S.C. 552, as amended by Freedom of Information Reform Act of 1986, 32 CFR Part 285, and 32 CFR Part 286.

§ 284.1 Purpose.

This Part establishes the policy and sets forth the procedures by which the public may obtain information/records from the Office of the Inspector General (OIG) under the Freedom of Information Act (FOIA). It implements Title 5, U.S.C. 552, as amended by the Freedom of Information Reform Act 1986, 32 CFR Part 285 and 32 CFR Part 286.

§ 284.2 Applicability.

The provisions of this Part are applicable to all elements of the OIG and govern the procedures by which records may be released under the FOIA.

§ 284.3 Organization and Mission.

(a) The organization of the OIG includes the Headquarters located in Washington, DC, consisting of the Inspector General, Deputy Inspector General, the Assistant Inspector General (AIG) for Analysis and Followup, the AIG for Audit Policy and Oversight, the AIG for Auditing with its subordinate field elements located throughout the Continental United States (CONUS) and Hawaii, the AIG for Criminal Investigations Policy and Oversight, the AIG for Investigations with its field elements located throughout the CONUS, Hawaii, and Europe, the AIG for Administration and Information Management, the AIG for Special Programs, the AIG for Inspections, and the Director, IG Regional Office-Europe (IGROE) located in Wiesbaden, Germany. The IGROE has representatives assigned from the AIG for Investigations, the AIG for Inspections, the AIG for Auditing and the AIG for Special Programs, who fulfill the missions of their respective OIG elements.

(b) The "Organization and Staff Listing" (Inspector General, Defense List (IGDL) 1400.7[1]), provides organization charts for the OIG elements and mailing addresses of all OIG operating locations and will be made available to the public upon written request.

(c) As an independent and objective office in the Department of Defense (DoD), the mission of the OIG is to:

(1) Conduct, supervise, monitor, and initiate audits, inspections and investigations relating to programs and operations of the DoD.

(2) Provide leadership and coordination and recommend policies for activities designed to promote economy, efficiency, and effectiveness in the administration of, and to prevent and detect fraud and abuse in, such programs and operations.

(3) Provide a means for keeping the Secretary of Defense and the Congress fully and currently informed about problems and deficiencies relating to the administration of such programs and operations and the necessity for and progress of corrective action.

(d) Further information regarding the responsibilities and functions of the OIG is encompassed in Public Law 95-452, the "Inspector General Act of 1978," as amended and 32 CFR Part 373.

§ 284.4 OIG "Records" Defined.

(a) The products of data compilation, regardless of physical form or characteristics, made or received by any element of the OIG in connection with the transaction of public business and preserved by the OIG as evidence of the organization, policies, functions, decisions, or procedures of the OIG. Such records include current data and are not limited to permanent or historical data.

[1] Copies may be obtained, if needed, from the Assistant Director, FOIA/PA Division, AIG for Investigations, Room 1016, 400 Army Navy Drive, Arlington, VA 22202

(b) This definition of "records" does not include:

(1) Objects or articles, such as structures, furniture, paintings, sculpture, three-dimensional models, vehicles and equipment and similar items, whatever their historical value, or value as evidence.

(2) Library and museum material made, acquired, and preserved solely for reference or exhibition.

(3) Commercially exploitable resources including, but not limited to, formulae, designs, drawings, map compilation manuscripts, map research material and data or computer programs that were not created for, or are not being used as, primary sources of information about the OIG organizations, policies, functions, decisions or procedures. This does not include the underlying data which is processed and produced by computer programs which may, in some instances, be stored with the programs.

(4) Unaltered publications and processed documents, such as regulations, manuals, directives, instructions, maps, charts, and related materials that are available to the public through an established distribution system by sale or without charge, such as documents available through the Superintendent of Documents, U.S. Government Printing Office.

(5) Anything that is not a tangible or documentary record, such as an individual's memory or oral communication.

(6) Personal notes or other like records of an OIG employee not subject to agency creation or retention requirements, created and maintained exclusively by the employee for his/her convenience, and not made available to any other employee, or otherwise disseminated, or filed with OIG records.

(7) Information stored within a computer for which there is no existing computer program or printout.

§ 284.5 Policy.

(a) *General.* (1) It is the policy of the OIG to promote public trust by making the maximum amount of information available to the public, with due regard for the protection of records that may be specifically exempted from release under the FOIA or prohibited by statutory or other regulatory requirements.

(2) Records that may be withheld under the FOIA exemptions will be released when it has been determined that no governmental interest will be jeopardized by their release and no inconsistency with other statutory or regulatory requirements exist. The determination of whether governmental interests will be jeopardized by releasing the records, or other prohibitions against release exist is within the sole discretion of the Initial Denial Authorities (IDAs) or Appellate Authority identified in § 284.6, or other higher authority.

(3) Records may be withheld from the public only as authorized by 5 U.S.C. 552, as amended, and upon the determination of the IDAs or Appellate Authority that the records, or portions thereof, are exempted or prohibited from release.

(4) Any request for OIG records that either explicitly or implicitly cites the FOIA will be processed under the provisions set forth in this Part; or, in the event the request is from the subject of the records, under the Privacy Act unless the record is in a system of records exempt from release under that Act.

(b) *Availability of Records.* (1) A record must exist and be in the possession or control of the OIG at the time of the request to be considered subject to release under FOIA. Mere possession of a record, or identifiable portions thereof, does not assume OIG ownership and any such records or portions will be referred to the originating agency for a release determination and/or direct response to the requester. There is no obligation to create nor compile a record to satisfy a FOIA request; however, the OIG may compile a record from available data when doing so would result in a more useful response to the requester, or be less burdensome to the OIG than providing the existing records, and the requester does not object.

(2) When a request seeks records which are part of an ongoing audit, inspection, or investigation, the requester will be advised of such (subject to the "Exclusions" under the FOIA identified in Appendix B of this Part) and asked if he/she objects to the request being held in abeyance pending completion of the respective audit, inspection, or investigation. This procedure does not apply to the following types of records within the above mentioned files:

(i) Any documents clearly in the public domain, such as excerpts from nonexempt publications or unsealed court records, will be released to the requester so long as the release will not jeopardize or interfere with the ongoing process.

(ii) Any documents provided by the requester will be released to him/her or his/her duly authorized representative, so long as the release will not jeopardize or interfere with the ongoing process, is consistent with any applicable OIG Privacy Act rules and procedures; and, where the requester has provided information that is company proprietary/confidential, certification that the requester is acting as the company's representative has been received in accordance with the procedures outlined in § 284.7(a)(4). These records will be provided as an interim response to the initial request. If the requester objects to his/her request being held in abeyance, then an appropriate release determination shall be made consistent with the statutory provisions of the FOIA.

(3) A request made by an individual for access to a record pertaining to him/herself, hereinafter referred to as a personal record, which cites the FOIA and/or implementing directives, regulations or instructions thereto, will be processed under the provisions of that reference. A request made by an individual for access to his/her personal record which cites the Privacy Act and/or implementing directives, regulations or instructions thereto, will be processed under the provisions of that reference. A request made by an individual for access to his/her personal record which cites both Acts and/or implementing directives, regulations or instructions thereto, or neither Act will be processed in accordance with both references, using the fee provisions of the Privacy Act and the time constraints of the FOIA. No individual will be denied access to personal information or records concerning him/herself that would be releasable to him/her under either Act solely because he/she fails to cite either Act or cites the wrong Act, and/or implementing directives, regulations or instructions.

(4) Nonexempt records released under the provisions of this Part and in accordance with DoD Directive 5230.9,[2] "Clearance of DoD Information for Public Release", are considered to be in the public domain. Exempt records released pursuant to this Part or other statutory or regulatory authority, however, may be considered to be in the public domain only when their release constitutes a waiver of the relevant FOIA exemption(s). When the release does not constitute such a waiver, such as when disclosure is made to a DoD contractor so that the contractor may comply with the requirements of the contract, or to a properly constituted advisory committee, or to a Congressional Committee, the released

[2] Copies may be obtained, if needed, from the National Technical Publications and Forms Center, Attn: Code 1053, 5801 Tabor Avenue, Philadelphia, PA 19120.

records do not lose their exempt status. While exempt records may be provided to individuals in their official capacity for their official use, such records do not lose their exempt status and the provisions of this rule apply if the same individual seeks to use the records, or seeks records for use, in a private or personal capacity.

(c) *Index and (a)(2) Materials.* (1) No order, opinion, statement of policy, interpretation, staff manual (except as specified in Chapter II, Section 1, of DoD 5400.7–R,[3] "DoD Freedom of Information Act Program"), or instruction issued after July 4, 1967, which is not indexed and either made available or published, may be relied upon, used, or cited as a precedent against any member of the public unless that individual has actual and timely notice of the contents of such materials. Such actual and timely notice may not be after-the-fact; i.e., after the individual has suffered some adverse effect.

(2) Thus, materials considered to meet the definition of the FOIA (a)(2) requirements as described in Chapter II, Section 1, of 5400.7–R (32 CFR Part 286), will be made available for public inspection and copying upon written request to the address indicated in § 284.7(a), unless such materials have been published and are offered for sale or subscription. Upon receipt of the request, arrangements will be made at a time convenient to both the requester and the OIG, for the review and copying. If the publishing activity is out of stock of the published, for sale material and does not intend to reprint, then the preceding procedure will apply to the published material as well.

(3) The cost of copying any (a)(2) materials will be imposed upon the individual requesting the copy in accordance with Chapter VI of DoD 5400.7–R.

(4) The OIG has determined that it is not practical nor feasible to prepare an index of the (a)(2) materials on a quarterly basis, nor to publish the annual "Index of IG, DoD, Publications" in the **Federal Register** because of the volume. This index is available to the public at no cost and upon written request to the address indicated in § 284.7(a); however, it may be necessary to deny all or portions of documents listed in the index that fall within one or more exemptions of the FOIA. Material in the index has been arranged by numbering system, as well as topically.

(d) *Describing Records Sought.* (1) A member of the public must describe the records sought with sufficient information to permit the OIG to conduct an organized, nonrandom search for records based on filing arrangements and existing retrieval systems. For example, a request for "all records about cost cutting" would be too broad and lacking in sufficient description, but a request for "any internal OIG guidance issued during 1987 on measures for cutting costs" would provide sufficient information to identify the type of record being sought.

(2) Requests that fall into the category of "fishing expeditions" will not be honored and the requester will be so advised. Guidance will also be provided to the requester for describing the records sought with greater sufficiency, and for resubmitting the request.

(e) *Promptness of Response.* (1) A request for OIG records from a member of the public will be responded to within 10 working days of the date of its receipt in the FOIA/PA Division.

(2) Receipt of the request will be acknowledged and it will be placed in a queue system as outlined in paragraphs §§ 284.7(b) (5) through (9), of this Part.

(3) These provisions also apply to a request received on referral from another DoD Component or government agency and time limits will begin on the date of receipt in the OIG FOIA/PA Division.

(f) *Requests from Congress.* (1) Records requested by a Member of Congress, or his/her staff, on behalf of a constituent will be processed as if the constituent had written directly to the OIG, and in accordance with the policy established and the procedures set forth in this Part.

(2) Records requested by a Member of Congress or his/her staff in an official capacity will be processed in accordance with DoD Directive 5400.4,[4] "Provision of Information to Congress."

(g) *Requests from the News Media.* (1) Requests from news media representatives for records that would not be exempt from release under the FOIA, or prohibited from release under other statutory or regulatory authority, will be released promptly by the OIG element originating the record.

(2) Records containing information that is exempt from release under the FOIA, or prohibited from release under other statutory or regulatory authority will be reviewed for release under the provisions of the FOIA by the FOIA/PA Division, and the news media representatives will be so advised.

(3) Extracts of the nonexempt portions of such records may be prepared in response to a specific request from a news media representative but will be coordinated for release with the FOIA/PA Division. Extracts will be prepared in accordance with the sample at Attachment to § 284.5.

(h) *Referrals.* (1) The OIG will refer a FOIA request to another DoD Component or other government agency when the OIG has no records responsive to the request, but believes or knows the other Component or agency may have, and any necessary coordination on the request has been effected with the Component or agency. The requester will be notified of the referral with the following exceptions:

(i) If the existence or nonexistence of the record itself is classified, as determined by the other Component or agency, the OIG will so notify the requester and will not refer the record.

(ii) If the record falls under one or more of the "Exclusions" under the FOIA (see Appendix B of this Part), as determined by the other Component or agency, the OIG will advise the requester that there is no OIG record and no further action will be taken.

(2) The OIG will refer a record, or portions of a record held by the OIG, that originated with another DoD Component or Government agency to that Component or agency (unless the agency is not subject to the FOIA) for a release determination and/or direct response to the requester, after any necessary coordination. The requester will be notified of any such referral, consistent with any security requirements and "Exclusion" provisions of the FOIA.

(3) The OIG will refer a FOIA request for a classified record that it holds, but did not originate, to the originating DoD Component or government agency. If the record originated with the OIG but the classification is derivative, i.e., contains classified information that originated elsewhere and was incorporated in the OIG record, the record will be referred to the originating authority with a recommendation for release.

(4) The OIG may also refer a request for a record that was originated by the OIG for the use of another DoD Component or government agency, to that Component or agency with a recommendation for release, after any necessary coordination. The requester will be notified of such action consistent with any security requirements or "Exclusion" provisions of the FOIA.

(5) A FOIA request for investigative, intelligence, or any other type of records on loan from other DoD Components or agencies to the OIG for a specific purpose, will not be honored if the

[3] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

[4] See footnote 2 to § 284.5(b)(4).

records are restricted from further release and so marked. Such requests will be referred to the Component or agency that provided the records.

(6) Notwithstanding anything to the contrary in this section, all requesters seeking National Security Council (NSC) or White House documents will be advised that they should write directly to the NSC or White House for such documents. OIG/DoD documents in which the NSC or White House has a concurrent reviewing interest will be forwarded by the FOIA/PA Division to the Director, Freedom of Information and Security Review (DFOISR), Office of the Assistant Secretary of Defense (OASD) (Public Affairs), which shall effect coordination with the NSC or White House, and return the documents to the originating agency after NSC review and determination. The FOIA/PA Division will forward any documents found in OIG files that are responsive to the FOIA request to DFOISR, OASD (Public Affairs) for their coordination with the NSC or White House, and return to the OIG with a release determination for final processing of the request.

(7) The Government Accounting Office (GAO) is outside of the Executive Branch, therefore, requests for GAO documents containing DoD information, either received directly from requesters or as referrals from GAO, will be processed as follows:

(i) FOIA requests received directly by the OIG for unclassified or classified GAO documents containing OIG/DoD information (including GAO documents unidentified as to classification) will be transferred by the FOIA/PA Division to the appropriate GAO office for their action, and the requester will be advised accordingly.

(ii) FOIA requests referred from the GAO for those documents containing OIG/DoD information will be processed in accordance with the procedures for security review and mandatory declassification review as set forth in DoD Directive 7650.2,[5] "General Accounting Office Audits and Reports".

(i) *For Official Use Only (FOUO).* The use of FOUO markings will be accomplished in accordance with the provisions of Appendix A of this Part, and exemptions (b)(2) through (b)(9) as set forth in Appendix B of this Part. Additional guidance will be provided to OIG elements, as needed, by the FOIA/PA Division.

(j) *Use of Exemptions.* (1) An exempted record, other than those being withheld pursuant to exemptions (b)(1), (b)(3) or (b)(6), will be made available upon request from a member of the public when, in the judgment of the Initial Denial Authority (IDA), Appellate Authority or other higher authority, no jeopardy to Government interest would occur if release is made. Such judgments will be on a case-by-case basis.

(2) If a record requested under the FOIA meets the exemption (b)(4) withholding criteria set forth in this Part, the OIG will not ordinarily exercise its discretionary power to release, absent circumstances in which a compelling public interest would be served by release of the record.

(3) The categories of records which are exempted from release, i.e., may be withheld in whole or in part, are identified in Appendix B of this Part.

(k) *Fees and Fee Waivers.* (1) Fees will be assessed under the FOIA as set forth in Chapter VI of DoD 5400.7–R.

(2) Requesters must indicate their willingness to pay fees in their initial FOIA request. If a waiver of fees is requested, a statement regarding their willingness to pay fees in the event a waiver or reduction of fees is denied is still required. Any requests not containing a statement regarding a willingness to pay assessed fees will not be processed and the requester will be so advised.

(3) Fees will not be required to be paid in advance of processing the request for release of the records requested except:

(i) When the requester is known to be in default of payment of fees incurred in connection with a previous request.

(ii) When the total amount of estimated fees assessable to the requester exceeds $250.00 and waiver is not appropriate, a "good faith" deposit of half of the amount of the estimated fees may be required before completing the processing of the request, or providing the requested records.

(4) Fee waivers will be granted on a case-by-case basis; and, in any request for waiver of fees, the requester must provide sufficient information to enable the IDA to make a proper determination of whether or not the fees should be waived.

(5) Requests for waivers merely stating that release would be in the public interest, identifying a tax status of the requester, or asserting an intention to make the record public will not be considered to provide sufficient persuasive information upon which to make a determination. In such cases, the requester shall be so informed and given the opportunity to submit additional justification. Absent such justification, the requester may be required to pay fees appropriate to his/her category, if provision of the information is determined not to be in the public interest or benefit.

(6) Ordinarily, fees will not be assessed to a FOIA requester where a search for records was unproductive, or where all responsive records are denied.

(7) Payments of fees must be by check or U.S. Postal money order made payable to the Treasurer of the United States. Cash payments cannot be accepted.

(l) *Appeals and Judicial Action.* (1) All appeals should be received by the OIG no later than 60 calendar days after the date of the initial denial letter. In cases where incremental release actions have been take on an initial request, the time for the appeal will not begin until the date of the last denial of release letter.

(2) A "no record" finding may not be appealed; however, the requester may ask the OIG to conduct another search of files if more detailed information is provided that will assist in the additional search.

(3) All final decisions rendered on appeals will be made to the requesters in writing by the Appellate Authority, after consultation with the Office of General Counsel representative to the OIG, and other appropriate OIG elements.

(4) A requester will be deemed to have exhausted his/her administrative remedies after he/she has been denied the requested record, or waiver/reduction of fees, by the designated Appellate Authority, or when the OIG FOIA/PA Division fails to respond to the request within the time limits prescribed by the FOIA, DoD 5400.7–R and this Part. The requester may then seek judicial action from a U.S. District Court in the district in which the requester resides, has a principal place of business, in the district in which the record is located, or in the District of Columbia.

(m) *Authentication of Records.* Records provided under the FOIA will be authenticated upon written request, to fulfill an official Government or other legal function. A fee of $5.20 may be charged for each such authentication.

(n) *Privileged Release to Officials.* (1) Subject to the provisions of DoD Regulation 5200.1–R,[6] "Information Security Program Regulation", applicable to classified information, DoD Directive 5400.11,[7] "Department of Defense Privacy Program", and 32 CFR Part 286a or other applicable law; records exempt from release under Appendix B of this Part may be

[5] See footnote 2 to § 284.5(b)(4).

[6] See footnote 3 to § 283.5(c)(1).

[7] See footnote 2 to § 284.5(b)(4).

authenticated and released to officials requesting them on behalf of local, state, or Federal Governmental bodies, whether legislative, executive, administrative, or judicial, as follows:

(i) To Congress in accordance with DoD Directive 5400.4 and this Part.

(ii) To the Federal courts whenever ordered by officers of the court as necessary for the proper administration of justice.

(iii) To other Federal agencies both executive and administrative as determined by the IG or his/her designee.

(iv) To state and local officials as determined by the IG or his/her designee.

(2) On all such releases, the officials receiving records under the above provisions shall be informed in writing that the records are exempt from public release under the FOIA and are privileged, along with any special handling instructions.

Attachment to § 284.5—Extract

The material contained herein is an Extract of information from (Name of Original Document), which has been determined to be in the public domain. The remaining material not provided herein may be requested under the provisions of the Freedom of Information Act.

§ 284.6 Responsibilities.

(a) The Assistant Inspector General (AIG) for Investigations is responsible for the overall implementation and administration of the FOIA program in the OIG, and for the designation of the Initial Denial Authorities (IDAs).

(b) The Director, Investigative Support Directorate is a designated IDA and is responsible for the overall operation of the FOIA program in the OIG.

(c) The Assistant Director, FOIA/PA Division, Investigative Support Directorate is a designated IDA and will:

(1) Serve as the point of contact on all FOIA matters for the OIG.

(2) Process and respond to all requests received from the public for records in accordance with the policy established and procedures set forth in this Part, and in all applicable DoD directives, regulations and instructions.

(3) Coordinate requests received from the public for records to the extent considered necessary, with the DFOISR, OASD (Public Affairs), other DoD Components, other Federal agencies, and other OIG elements.

(4) Arrange for the collection of fees as prescribed by the policy established in this rule.

(5) Maintain the case files in accordance with IGD Manual (IGDM) 5015.2,[8] "Records Management Program".

(6) Recommend action to be taken on all appeals of fees, and appeals of denials to access of records requested, to the Appellate Authority.

(7) Review OIG publications to assure that those which meet the FOIA (a)(1) and (a)(2) requirements for publication in the "**Federal Register**" are prepared in proper form and transmitted promptly for publication in the "**Federal Register.**"

(8) Maintain copies of material required to be made available under the (a)(2) provisions of the FOIA for examination and copying by the public, and provide the required FOI Reading Room for the public's use in doing so.

(9) Establish a training program for OIG personnel who are involved in preparing responsive records for release to the public under the FOIA.

(10) Prepare the Annual Report on the FOIA for forwarding to DFOISR, OASD (Public Affairs) as required by 32 CFR Part 286.

(d) The AIGs and the Director, Inspector General Regional Office Europe (IGROE) will:

(1) Comply with and assure compliance by all of their subelements with, the policy established and the procedures set forth in this Part.

(2) Appoint a Point of Contact (POC) to interact with the FOIA/PA Division on all FOIA matters.

(e) The AIGs and IGROE POC's will:

(1) Comply with the policy established and the procedures set forth in this Part.

(2) Provide all records responsive to a request as directed by the FOIA/PA Division.

(3) Recommend release/denial action to be taken, indicate applicable exemptions, and provide appropriate rationales.

(f) The AIG for Criminal Investigations Policy & Oversight is designated as the Appellate Authority and will:

(1) Determine the action to be taken on all appeals made by the public for fees, fee waiver/reduction denials, and access denials in accordance with Chapter V, Section 3, of DoD 5400.7–R.

(2) Coordinate all appellate decisions with the Office of General Counsel, Assistant General Counsel (Fiscal and Inspector General).

(g) The AIG for Administration and Information Management will:

(1) Prepare annually an index of OIG publications, statements and documents pertaining to any matter issued, adopted, or promulgated and required to be made available to the public by publication or sale.

[8] See footnote 1 to § 284.3(b).

(2) Establish and implement any necessary procedures to effect disciplinary action recommended by the Special Counsel of the Merit Systems Protection Board in cases involving the arbitrary and capricious withholding of information and records requested under the FOIA as required by Chapter V, Section 4, of DoD 5400.7–R.

§ 284.7 Procedures.

(a) *Submitting Requests.* (1) Members of the pubic may make requests in writing for copies of records, or permission to examine or copy records, directly to the FOIA/PA Division at: Assistant Director, FOIA/PA Division, AIG for Investigations, Room 1016, 400 Army Navy Drive, Arlington, VA 22202.

(2) Requests must identify each record sought with sufficient specificity to enable the custodian to locate the record with a reasonable amount of effort. Requesters should provide such information as where the record originated and by whom, its subject matter, its approximate date or timeframe, which element of the OIG is likely to have custodianship, or any other similar information that would assist in locating the record. Requests must also contain a statement regarding willingness to pay fees.

(3) A request for a personal record or investigative record pertaining to the individual making the request, that is in a system of records whether nonexempt or exempted from mandatory release under the Privacy Act, must be notarized to avoid the risk of invasion of personal privacy. In any such request, the individual may designate another individual to act as his/her representative in making the request and in receiving the records on his/her behalf; however, the authorization must be in writing, specificially name the representative and kinds of records authorized to be provided, and be notarized to avoid the risk of invasion of personal privacy.

(4) A request for a record that was obtained from a non-U.S. Government source, or containing information that was provided by a non-U.S. Government source, and that is subject to exemption (b)(4) under the FOIA, will be released to the individual or firm making the request without further exception, if:

(i) The individual or firm is clearly the submitter of the information and/or is clearly acting on behalf of the submitter in making the request.

(ii) The request contains a statement from a company official or other representative of the submitter clearly capable of certifying that the requester is acting on behalf of the submitter of

the information in making the request; i.e., a Vice-President certifies on his/her company letterhead that XYZ Law Firm is acting on behalf of the company in requesting copies of documents submitted to the government by the company. A mere assertion by the requester that the requester is acting on behalf of the submitter in making the request will not be honored, if it can not be readily verified through records available to the OIG.

(5) Requests misdirected to other OIG elements will be forwarded promptly to the FOIA/PA Division. The statutory period allowed for response to a request misdirected by the requester shall not begin until the request is received in the FOIA/PA Division. The OIG field elements receiving misdirected requests should advise the requester that the request is being forwarded to the office having the authority to act on and respond to the request.

(b) *Processing Requests.* (1) Upon receipt in the FOIA/PA Division, a request for records will be assigned a control number, logged, and reviewed for adequacy and compliance with the procedures for submitting requests outlined in § 284.6(a).

(2) If the request does not meet the adequacy of description test, contain a statement regarding fees, and/or contain a notarization/authorization or certification of submitter representation, if applicable; it will not be processed until the requester has been notified and allowed the opportunity to comply with the procedures. If the requester does not comply within the time allowed (generally 30 calendar days) in the notice, the request will be closed, and the requester so notified.

(3) When it is determined that a request complies with all applicable procedures, the necessary search and collection of responsive records will be initiated through the element or elements of the OIG likely to have custodianship of the sought records.

(4) Where the appropriate OIG element has determined that no record responsive to the request exists, the POC for the element will advise the FOIA/PA Division. The requester will be so notified in writing by the IDA within 10 working days from the date of receipt of the request.

(5) When responsive records have been located, the POC for the OIG element having the records will forward the records to the FOIA/PA Division with a recommendation for release. The FOIA/PA Division will make an initial review, determine the placement of the request in the established queue system; and, within 10 working days, forward to the requester in writing, an acknowledgment of receipt of the request. The acknowledgment will advise of the request's location within the queue system and of the determination made of whether to comply with the request and the reasons therefore.

(6) Requests that have been placed in the queue system will be processed on a first-in-first-out basis within each queue and the responsive records will be provided at the time the request comes up in the queue for final processing. The requester will be advised of any documents or portions thereof determined to be exempt from release by the IDA and the specific exemptions that apply, at that time, along with the procedures for appeal and addressing of an appeal, and of the fees due.

(7) When it is determined that the fees assessable to a request undergoing final processing may exceed the limit established by the requester, or be in excess of $250, the processing will be discontinued and the requester notified so that he/she may advise of his/her desire to continue. If a "good faith" deposit is required, the requester will be allowed a reasonable time (generally 30 calendar days) in which to provide payment. If the requester fails to provide the "good faith" deposit within the time allowed, the request will be closed and the requester so notified.

(8) The queue system consists of the following categories:

(i) Those requests which are undergoing initial search and collection procedures—00.

(ii) Those requests undergoing appeal of fees, fee waiver/reduction denials, and denial of access—01.

(iii) Those requests involving records in the process of being created or compiled on open investigations and ongoing inspections or audits—02.

(iv) Those requests involving completed investigations, inspections and audits or other records, for which the responsive records are small in volume—03.

(v) Those requests involving completed investigations, inspections and audits or other records, for which the responsive records are large in volume—04.

(vi) Those requests that have been referred from other DoD Components or Government agencies, along with any OIG-originated records contained in their files—05.

(vii) Those requests for records made under the Privacy Act, whether or not in a system of records exempt from the Privacy Act—06.

(viii) Those requests for which no responsive records were found—07.

(ix) Those requests undergoing litigation, whether or not a final determination has been made for the release of responsive records—08.

(9) The amount of time spent on processing requests in a queue will be proportional to the volume of requests for each queue; i.e., if 25 percent of the requests are located in the 03 queue category, 25 percent in the 02 queue category and 10 percent in the 04 queue category, then 25 percent of the weekly available manhours will be spent processing 03 queue category requests, 25 percent on 02 queue category requests, and 10 percent on 04 queue category requests. Notwithstanding this volume of requests criteria, unusual circumstances may require a temporary reallocation of available manhours among the categories on a limited basis as determined by the Assistant Director, FOIA/PA Division.

(c) *Records of Non-U.S. Government Sources.* (1) When it is determined that the records or data contained within the records responsive to a request were obtained from a non-U.S. Government source by the OIG, and the requester is not the submitter of the non-U.S. Government material nor acting as the submitter's representative; and it is further determined the source or submitter may have a valid objection to release of the material, the submitter will be promptly notified of the request and afforded a reasonable time (generally 30 calendar days) to present any objections to the release.

(2) This procedure is required for those FOIA requests for data not deemed clearly exempt from disclosure under exemption (b)(4). It is not required for FOIA requests for data which may or may not be exempt under the remaining FOIA exemptions where it is clear there can be no valid basis for objection by the source or submitter. If, for example, the record or data was submitted by the non-U.S. Government source with the actual or presumptive knowledge of the source, and established that it would be made available to the public upon request, there is no requirement to notify the source.

(3) All objections will be evaluated. When a substantial issue has been raised, the OIG may seek additional information and afford the source and requester reasonable opportunities to present their arguments on the legal and substantive issues involved prior to making a determination.

(4) The OIG will not ordinarily exercise its discretionary authority to release information clearly meeting the exemption (b)(4) criteria. Further, the final decision to disclose information

not deemed to clearly meet exemption (b)(4) criteria will be made by an official equivalent in rank or greater to the official who would make the decision to withhold that data under a FOIA appeal.

(5) When the source or submitter advises of the intent to seek a restraining order or to take court action to prevent release of the data, the requester will be notified and action will not be taken on the request until after the outcome of the court action is known. When the requester brings court action to compel disclosure, the source shall be promptly notified of this action.

(6) These procedures also apply to any non-U.S. Government record in the possession and control of the OIG from multi-national organizations, such as NATO and NORAD, or foreign governments. Coordination of such FOIA requests with foreign governments will be made through the Department of State by the FOIA/PA Division.

(d) *Coordination with Department of Justice.* (1) Where the custodian of an OIG element determines that records responsive to a FOIA request are pertinent to pending or potential litigation involving the United States, the FOIA/PA POC for the element shall promptly notify the FOIA/PA Division so that the necessary coordination can be effected with the Office of General Counsel (OGC) representative to the OIG.

(2) The OGC representative shall effect all necessary coordination with the United States Attorney and/or Department of Justice prior to any release of such records.

(e) *Denials of Records.* (1) When requests are denied in whole or in part, the requester will be informed in writing of the reasons for the denial, the identity of the official making the denial, the right of appeal of the decision, and the identity and address of the official to whom an appeal may be made.

(2) Other than statutory denials, there are seven other reasons for not complying with a request for a record:

(i) The request is transferred to another DoD Component or Federal agency.

(ii) The request is withdrawn by the requester.

(iii) The information requested is not a record within the meaning of the FOIA and § 284.4(a) of this Part.

(iv) A record has not been sufficiently described so that a reasonable search can be conducted by the OIG.

(v) The requester has failed unreasonably to comply with the procedural requirements, including the payment of fees, imposed by 32 CFR Part 286 and this Part.

(vii) The OIG has determined through knowledge of its files and reasonable search efforts that it neither controls nor possesses the requested record.

(viii) The record meets the "Exclusion" provisions of the FOIA.

(f) *Procedures for Appeals.* (1) Appeals of denials to access of requested records, fees assessed and fee waiver/reduction denials must be in writing and addressed to the Assistant Director, FOIA/PA Division (FOIA Appeal), AIG for Investigations, Room 1016, 400 Army Navy Drive, Arlington, VA 22202.

(2) All appeals should provide sufficient information and justification upon which a determination may be made by the Appellate Authority as to whether to grant or deny the appeal. A copy of the initial request and initial denial letter should be included.

(3) Acknowledgment of receipt of appeals will be made in writing within 10 working days and the requester advised of its location within the appeal queue category. Review will be undertaken of the appeal and the denied documents and a recommendation made to the Appellate Authority, who will make the final determination. The requester will be advised in writing within 20 working days of the initial determination of whether to comply with the appeal.

(4) If the appeal is approved in part or in whole, the requester will be informed and provided the records determined to be releasable. For records granted in part, the requester will be advised of the right to judicial review for the denied portions.

(5) If the appeal is denied, the requester will be informed of the right to judicial review.

§ 284.8 Annual Report.

The FOIA Annual Report, assigned Report Control System DD-PA (A) 1365, will be prepared by the FOIA/PA Division for the preceding calendar year and submitted to the Assistant Secretary of Defense (Public Affairs) on or before February 1 of each year. The report will be compiled and formatted in accordance with Chapter VII, DoD 5400.7-R.

Appendix A—For Official Use Only (FOUO)

I. General Provisions

A. General

Information that has not been given a security classification pursuant to the criteria of an Executive Order, but which may be withheld from the public for one or more of the reasons cited in FOIA exemptions 2 through 9 shall be considered as being for official use only. *No other material shall be considered or marked "For Official Use Only"* (FOUO), and FOUO is not authorized as an anemic form of classification to protect national security interests.

B. Prior FOUO Application

The prior application of FOUO markings is not a conclusive basis for withholding a record that is requested under the FOIA. When such a record is requested, the information in it shall be evaluated to determine whether, under current circumstances, FOIA exemptions apply in withholding the record or portions of it. If any exemption or exemptions apply or applies, it may nonetheless be released when it is determined that no governmental interest will be jeopardized by its release.

C. Historical Papers

Records such as notes, working papers, and drafts retained as historical evidence of actions enjoy no special status apart from the exemptions under the FOIA.

D. Time to Mark Records

The marking of records at the time of their creation provides notice of FOUO content and facilitates review when a record is requested under the FOIA. Records requested under the FOIA that do not bear such markings, shall not be assumed to be releasable without examination for the presence of information that requires continued protection and qualifies as exempt from public release.

E. Distribution Statement

Information in a technical document that requires a distribution statement pursuant to DoD Directive 5230.24 [1], "Distribution Statements on Technical Documents," shall bear that statement and shall not be marked FOUO.

II. Markings

A. Location of Markings

(1) An unclassified document containing FOUO information shall be marked "For Official Use Only" at the bottom on the outside of the front cover (if any), on the first page, on the back page, and on the outside of the back cover (if any).

(2) Within a classified document, an individual page that contains both FOUO and classified information shall be marked at the top and bottom with the highest security classification of information appearing on the page.

(3) Within a classified or unclassified document, an individual page that contains FOUO information but no classified information shall be marked "For Official Use Only" at the bottom of the page.

(4) Other records, such as, photographs, films, tapes, or slides, shall be marked "For Official Use Only" or "FOUO" in a manner that ensures that a recipient or viewer is aware of the status of the information therein.

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[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, Attn: Code 1053, 5801 Tabor Avenue, Philadelphia, PA 19120.

(5) FOUO material transmitted outside the Department of Defense requires application of an expanded marking to explain the significance of the FOUO marking. This may be accomplished by typing or stamping the following statement on the record prior to transfer:

This document contains information exempt from mandatory disclosure under the FOIA. Exemptions apply.

* * * * *

III. Dissemination and Transmission

A. Release and Transmission Procedures

Until FOUO status is terminated, the release and transmission instructions that follow apply:

(1) FOUO information may be disseminated within DoD Components and between officials of DoD Components and DoD contractors, consultants, and grantees to conduct official business for the Department of Defense. Recipients shall be made aware of the status of such information, and transmission shall be by means that preclude unauthorized public disclosure. Transmittal documents shall call attention to the presence of FOUO attachments.

(2) DoD holders of FOUO information are authorized to convey such information to officials in other departments and agencies of the executive and judicial branches to fulfill a government function, except to the extent prohibited by the Privacy Act. Records thus transmitted shall be marked "For Official Use Only", and the recipient shall be advised that the information has been exempted from public disclosure, pursuant to the FOIA, and that special handling instructions do or do not apply.

(3) Release of FOUO information to Members of Congress is governed by DoD Directive 5400.4,[2] "Provision of Information to Congress". Release to the General Accounting Office (GAO) is governed by DoD Directive 7650.1,[3] "General Accounting Office Access to Records". Records released to the Congress or GAO should be reviewed to determine whether the information warrants FOUO status. If not, prior FOUO markings shall be removed or effaced. If withholding criteria are met, the records shall be marked FOUO and the recipient provided an explanation for such exemption and marking. Alternatively, the recipient may be requested, without marking the record, to protect against its public disclosure for reasons that are explained.

B. Transporting FOUO Information

Records containing FOUO information shall be transported in a manner that precludes disclosure of the contents. When not commingled with classified information, FOUO information may be sent via first-class mail or parcel post. Bulky shipments, such as distributions of FOUO Directives or testing materials, that otherwise qualify under postal regulations may be sent by fourth-class mail.

C. Electrically Transmitted Messages

Each part of electrically transmitted messages containing FOUO information shall be marked appropriately. Unclassified messages containing FOUO information shall contain the abbreviated "FOUO" before the beginning of the text. Such messages shall be transmitted in accordance with communications security procedures for FOUO information.

IV. Safeguarding FOUO Information

A. During Duty Hours

During normal working hours, records determined to be FOUO shall be placed in an out-of-sight location if the work area is accessible to non-governmental personnel.

B. During Non-duty Hours

At the close of business, FOUO records shall be stored so as to preclude unauthorized access. Filing such material with other unclassified records in unlocked files or desks, etc., is adequate when normal U.S. Government or government-contractor internal building security is provided during non-duty hours. When such internal security control is not exercised, locked buildings or rooms normally provide adequate after-hours protection. If such protection is not considered adequate, FOUO material shall be stored in locked receptacles such as file cabinets, desks, or bookcases. FOUO records that are subject to the provisions of Pub. L. 86–36, National Security Agency Act shall meet the safeguards outlined for that group of records.

V. Termination, Disposal and Unauthorized Disclosures

A. Termination

The originator or other competent authority, e.g., initial denial and appellate authorities, shall terminate "For Official Use Only" markings or status when circumstances indicate that the information no longer requires protection from public disclosure. When FOUO status is terminated, all known holders shall be notified, to the extent practical. Upon notification, holders shall efface or remove the "For Official Use Only" markings, but records in file or storage need not be retrieved solely for that purpose.

B. Disposal

(1) Nonrecord copies of FOUO materials may be destroyed by tearing each copy into pieces to preclude reconstructing, and placing them in regular trash containers. When local circumstances or experience indicates that this destruction method is not sufficiently protective of FOUO information, local authorities may direct other methods but give due consideration to the additional expense balanced against the degree of sensitivity of the type of FOUO information contained in the records.

(2) Record copies of FOUO documents shall be disposed of in accordance with the disposal standards established under Inspector General Defense Manual (IGDM) 5012.2,[4] "Records Management Program".

C. Unauthorized Disclosure

The unauthorized disclosure of FOUO records does not constitute an unauthorized disclosure of DoD information classified for security purposes. Appropriate administrative action shall be taken, however, to fix responsibility for unauthorized disclosure whenever feasible, and appropriate disciplinary action shall be taken against those responsible. Unauthorized disclosure of FOUO information that is protected by the Privacy Act may also result in criminal sanctions against responsible persons. The DoD Component that originated the FOUO information shall be informed of its unauthorized disclosure.

Appendix B—FOIA Exemptions

I. General

The exemptions listed apply to categories of records that may be withheld in whole or in part from public disclosure, unless otherwise prescribed by law. The examples provided of the types of records that may be exempted from release are not at all inclusive.

II. Exemptions

A. Exemption (b)(1)

Those properly and currently classified in the interest of national defense or foreign policy, as specifically authorized under the criteria established by executive order and implemented by regulations, such as DoD 5200.1–R [1], "Information Security Program Regulation". Although material is not classified at the time of the FOIA request, a classification review may be undertaken to determine whether the information should be classified. The procedures in DoD 5200.1–R, Section 2–204f, apply.

B. Exemption (b)(2)

(1) Those containing or constituting rules, regulations, orders, manuals, directives, and instructions relating to the internal personnel rules or practices of the OIG if their release to the public would substantially hinder the effective performance of a significant function of the Department of Defense and they do not impose requirements directly on the general public.

(2) Examples include:

(a) Those operating rules, guidelines, and manuals for DoD investigators, inspectors, auditors, or examiners that must remain privileged in order for the OIG to fulfill a legal requirement.

(b) Personnel and other administrative matters, such as examination questions and answers used in training courses or in the determination of the qualifications of candidates for employment, entrance on duty, advancement, or promotion.

(c) Lists of DoD personnel names and duty addresses (civilian and military) created primarily for internal, trivial, housekeeping purposes for which there is no legitimate public interest or benefit. This exemption is

[2] See footnote 1 to Section I.E. of this Appendix.

[3] See footnote 1 to Section I.E. of this Appendix.

[4] Copies may be obtained, if needed, from the Assistant Director FOIA/PA Division, AIG for Investigations, Room 1016, 400 Army Navy Drive, Arlington, VA 22202.

[1] Copies may be obtained, if needed, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

appropriate when it would impose an administrative burden to process the request, and the requester is not seeking the information for the benefit of the general public (also see paragraph (3) under exemption (b)(6)).

C. Exemption (b)(3)

(1) Those concerning matters that a statute specifically exempts from disclosure by terms that permit no discretion on the issue, or in accordance with criteria established by that statute for withholding or referring to particular types of matters to be withheld.

(2) Examples of Statutes are:

(a) National Security Agency Act information exemption, Pub. L. 86–36, Section 6.

(b) Patent Secrecy, 35 U.S.C. 181–188. Any records containing information relating to inventions that are the subject of patent applications on which Patent Secrecy Orders have been issued.

(c) Restricted Data and Formerly Restricted Data, 42 U.S.C. 2162.

(d) Authority to Withhold from Public Disclosure Certain Technical Data, 10 U.S.C. 130, and 32 CFR Part 250.

D. Exemption (b)(4)

(1) Those containing trade secrets or commercial or financial information that the OIG receives from a person or organization outside the Government with the understanding that the information or record will be retained on a privileged or confidential basis in accordance with the customary handling of such records. Records within the exemption must contain trade secrets, or commercial or financial records, the disclosure of which is likely to cause substantial harm to the competitive position of the source providing the information; impair the Government's ability to obtain necessary information in the future; or impair some other legitimate Government interest.

(2) Examples include records that contain:

(a) Commercial or financial information received in confidence in connection with loans, bids, contracts, or proposals, as well as other information received in confidence or privileged, such as trade secrets, inventions, discoveries, or other proprietary data.

(b) Statistical data and commercial or financial information concerning contract performance, income, profits, losses, and expenditures, if offered and received in confidence from a contractor or potential contractor.

(c) Personal statements given in the course of inspections, investigations, or audits, when such statements are received in confidence from the individual and retained in confidence because they reveal trade secrets or commercial or financial information normally considered confidential or privileged.

(d) Financial data provided in confidence by private employers in connection with locality wage surveys that are used to fix and adjust pay schedules applicable to the prevailing wage rate of employees within the Department of Defense.

(e) Scientific and manufacturing processes or developments concerning technical or scientific data or other information submitted with an application for a research grant, or with a report while research is in progress.

(f) Technical or scientific data developed by a contractor or subcontractor exclusively at private expense and technical or scientific data developed in part with Federal funds and in part at private expense, wherein the contractor or subcontractor has retained legitimate proprietary interests in such data in accordance with Title 10, U.S.C. 2320–2321 and DoD Federal Acquisition Regulation Supplement (DFARS), Subpart 27.4. Technical data developed exclusively with Federal funds may be withheld under exemption (b)(3) if it meets the criteria of Title 10, U.S.C. 130 and DoD Directive 5230.25.

E. Exemption (b)(5):

(1) Except as provided in subsections (3) through (5), below, internal advice, recommendations, and subjective evaluations, as contrasted with factual matters, that are reflected in records pertaining to the decision-making process of an agency, whether within or among agencies (as defined in 5 U.S.C. 552(e)) or within or among DoD Components.

(2) Examples include:

(a) The nonfactual portions of staff papers, to include afteraction reports and situation reports containing staff evaluations, advice, opinions, or suggestions.

(b) Advice, suggestions, or evaluations prepared on behalf of DoD by individual consultants or by boards, committees, councils, groups, panels, conferences, commissions, task forces, or other similar groups that are formed for the purpose of obtaining advice and recommendations.

(c) Those non-factual portions or evaluations by DoD Component personnel of contractors and their products.

(d) Information of a speculative, tentative, or evaluative nature or such matters as proposed plans to procure, lease or otherwise acquire and dispose of materials, real estate, facilities or functions, when such information would provide undue or unfair competitive advantage to private personal interests or would impede legitimate Government functions.

(e) Trade secret or other confidential research development, or commercial information owned by the Government, where premature release is likely to affect the Government's negotiating position or other commercial interests.

(f) Records that are exchanged among agency personnel and within and among DoD Components or agencies as part of the preparation for anticipated administrative proceeding by an agency or litigation before any federal, state, or military court, as well as records that qualify for the attorney-client privilege.

(g) Those portions of official reports of inspection, reports of the Inspector Generals, audits, investigations, or surveys pertaining to safety, security, or the internal management, administration, or operation of one or more DoD Components, when these records have traditionally been treated by the courts as privileged against disclosure in litigation.

(3) If any such intra or interagency record or reasonably segregable portion of such record hypothetically would be made available routinely through the "discovery process" in the course of litigation with the agency, i.e., the process by which litigants obtain information from each other that is relevant to the issues in a trial or hearing, then it should not be withheld from the general public even though discovery has not been sought in actual litigation. If, however, the information hypothetically would only be made available through the discovery process by special order of the court based on the particular needs of a litigant, balanced against the interests of the agency in maintaining its confidentiality, then the record or document need not be made available under this Part.

(4) Intra or interagency memoranda or letters that are factual, or those reasonably segregable portions that are factual, are routinely made available through "discovery," and shall be made available to a requester, unless the factual material is otherwise exempt from release, inextricably intertwined with the exempt information, so fragmented as to be uninformative, or so redundant of information already available to the requester as to provide no new substantive information.

(5) A direction or order from a superior to a subordinate, though contained in an internal communication, generally cannot be withheld from a requester if it constitutes policy guidance or a decision, as distinguished from a discussion of preliminary matters or a request for information or advice that would compromise the decision-making process.

(6) An internal communication concerning a decision that subsequently has been made a matter of public record must be made available to a requester when the rationale for the decision is expressly adopted or incorporated by reference in the record containing the decision.

F. Exemption (b)(6):

(1) Information in personnel and medical files, as well as similar personal information in other files, that, if disclosed to the requester would result in a clearly unwarranted invasion of personal privacy.

(2) Examples of other files containing personal information similar to that contained in personnel and medical files include:

(a) Those compiled to evaluate or adjudicate the suitability of candidates for civilian employment or membership in the Armed Forces, and the eligibility of individuals (civilian, military, or contractor employees) for security clearances, or for access to particularly sensitive classified information.

(b) Files containing reports, records, and other material pertaining to personnel matters in which administrative action, including disciplinary action, may be taken.

(3) In determining whether the release of information would result in a "clearly unwarranted invasion of personal privacy," consideration shall be given to the stated or ascertained purpose of the request. When determining whether a release is "clearly unwarranted," the public interest in satisfying this purpose must be balanced against the sensitivity of the privacy interest being threatened. One example of such is

lists of names and duty addresses of DoD personnel (civilian and military) assigned to units that are sensitive, routinely deployable, or stationed in foreign territories. Release of such information could aid in the targeting of DoD employees and their families by terrorists (see also paragraph (2)(c) under exemption (b)(2)). This exemption shall not be exercised in an attempt to protect the privacy of a deceased person, but it may be used to protect the privacy of the deceased person's family.

(4) Individuals' personnel, medical, or similar file may be withheld from them or their designated legal representative only to the extent consistent with DoD Directive 5400.11 (32 CFR Part 286a). Any determination to withhold such records will be made by the designated Initial Denial Authority (IDA).

(5) A clearly unwarranted invasion of the privacy of the persons identified in a personnel, medical or similar record may constitute a basis for deleting those reasonably segregable portions of that record, even when providing it to the subject of the record.

G. Exemption (b)(7)

(1) Records or information compiled for law enforcement purposes; i.e., civil, criminal, or military law, including the implementation of executive orders or regulations issued pursuant to law. This exemption applies, however, only to the extent that production of such law enforcement records or information could result in the following:

(a) Could reasonably be expected to interfere with enforcement proceedings—(b)(7)(A).

(b) Would deprive a person of the right to a fair trial or to an impartial adjudication—(b)(7)(B).

(c) Could reasonably be expected to constitute an unwarranted invasion of personal privacy of a living person, including surviving family members of an individual identified in such a record—(b)(7)(C).

(d) Could reasonably be expected to disclose the identity of a confidential source, including a source within the DoD, a state, local, or foreign agency or authority, or any private institution which furnishes the information on a confidential basis—(b)(7)(D) (first part).

(e) Could disclose information furnished from a confidential source and obtained by a criminal law enforcement authority in a criminal investigation or by an agency conducting a lawful national security intelligence investigation—(b)(7)(D) (second part).

(f) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law—(b)(7)(E).

(g) Could reasonably be expected to endanger the life or physical safety of any individual—(b)(7)(F).

(2) Examples include:

(a) Statements of witnesses and other material developed during the course of the investigation and all materials prepared in connection with related Government litigation or adjudicative proceedings.

(b) The identity of firms or individuals being investigated for alleged irregularities involving contracting with Department of Defense when no indictment has been obtained nor any civil action filed against them by the United States.

(c) Information obtained in confidence, expressed or implied, in the course of a criminal investigation by a criminal law enforcement agency or office within a DoD Component, or a lawful national security intelligence investigation conducted by an authorized agency or office within a DoD Component. National security intelligence investigations include background security investigations and those investigations conducted for the purpose of obtaining affirmative or counterintelligence information.

(3) The right of individual litigants to investigative records currently available by law (such as, the Jencks Act, 18 U.S.C. 3500) is not diminished.

(4) When the subject of an investigative record is the requester of the record, it may be withheld only as authorized by DoD Directive 5400.11.

H. Exemption (b)(8)

Those contained in or related to examination, operation or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions.

I. Exemption (b)(9)

Those containing geological and geophysical information and data (including maps) concerning wells.

III. Exclusions:

Excluded from the exemptions are the following two situations as applicable to the OIG:

A. Whenever a request is made that is subject to exemption (b)(7)(A) and the investigation or proceeding involves a possible violation of criminal law where there is reason to believe that the subject of the investigation or proceeding is unaware of its pendency, and the disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, the OIG, during only such times as that circumstance continues, may treat the records or information as not subject to exemption (b)(7). In such situations, the response to the requesters will state that no records were found.

B. Whenever informant records maintained by a criminal law enforcement organization within the OIG under the informant's name or personal identifier are requested by a third party using the informant's name or personal identifier, the OIG may treat the records as not subject to the requirements of (b)(7) unless the informant's status as an informant has been officially confirmed. If it is determined that using a (b)(7) exemption would acknowledge the informant's identity, then the response to the requester will state that no records were found.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

March 13, 1989

[FR Doc. 89-6112 Filed 3-16-89; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

45 CFR Part 1340

Child Abuse and Neglect Prevention and Treatment Program

AGENCY: Administration for Children, Youth, and Families (ACYF), Office of Human Development Services, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Health and Human Services is proposing technical and conforming changes to its rule for the child abuse and neglect program to implement the changes made in the Child Abuse Prevention and Treatment Act (Act) by Pub. L. 100-294.

DATE: Comments must be received on or before May 16, 1989.

ADDRESSES: Comments may be mailed to the Commissioner, Administration for Children, Youth, and Families, P.O. Box 1182, Washington, DC 20013, Attention: Mary McKeough.

Comments received in response to this rule may be reviewed in Room 3763 of the Donohoe Building, 400 Sixth St., SW., Washington, DC between the hours of 9:30 a.m. and 5:00 p.m., Monday through Friday except Federal holidays, beginning two weeks after the date of publication in the **Federal Register.**)

FOR FURTHER INFORMATION CONTACT: Mary McKeough, (202) 245-2856.

SUPPLEMENTARY INFORMATION:

I. Program Description

In 1974, the Child Abuse Prevention and Treatment Act (Pub. L. 93-247, 42 U.S.C. 5101, *et seq.*) established in the Department the National Center on Child Abuse and Neglect (NCCAN). NCCAN is located organizationally within the Children's Bureau of the Administration for Children, Youth and Families in the Office of Human Development Services.

Under the Act, the NCCAN carries out, among other activities, the following responsibilities:

• Makes grants to States that comply with Federal requirements to implement

State child abuse and neglect prevention and treatment programs.

- Funds public or nonprofit private organizations to carry out research, demonstration, and service improvement programs and projects designed to prevent, identify and treat child abuse and neglect.
- Collects, analyzes, and disseminates information, e.g., compiles and disseminates training materials, prepares an annual summary of recent and ongoing research on child abuse and neglect, and maintains a national information clearinghouse.
- Assists States and communities in implementing child abuse and neglect programs.
- Coordinates Federal programs, activities, and information, in part through the Advisory Board on Child Abuse and Neglect and the Inter-Agency Task Force on Child Abuse and Neglect.

Regulations applicable to State and discretionary grants are found at 45 CFR Part 1340, with the most recent revision having been published on February 6, 1987 (52 FR 3990).

Each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands are eligible to apply for State grants. We will refer to these jurisdictions as "States" in this preamble discussion.

II. New Provisions

The Child Abuse Prevention, Adoption, and Family Services Act of 1988, Pub. L. 100–294, was signed into law on April 25, 1988. Title I of that Act, the Child Abuse Prevention and Treatment Act (the Act), was reorganized; new provisions were added; and other changes were made. The amended Act includes provisions that:

- Increase the public membership and revise the role of the Advisory Board on Child Abuse and Neglect;
- Establish an Inter-Agency Task Force on Child Abuse and Neglect to coordinate Federal efforts with respect to child abuse prevention and treatment programs;
- Provide authority for the Secretary to extend previous waivers of State eligibility requirements;
- Continue the requirement to establish a national child abuse and neglect data collection and analysis program;
- Authorize discretionary grants in several new areas;
- Increase from three to five years the maximum duration of support allowable for research grants;
- Continue to require the Secretary to publish NCCAN proposed research priorities for comment and also make that requirement applicable to demonstration priorities;
- Require NCCAN to establish a formal peer review process for purposes of evaluating applications for grants and contracts; and
- Require the conduct of four new studies, i.e., studies on the incidence of child abuse of handicapped children, the incidence of child abuse in alcoholic families, the legal representation of children in child abuse or neglect cases, and the incidence of child abuse or neglect among children who are members of historically underserved or unserved groups.

Based on the changes contained in Pub. L. 100–294, we are proposing to make technical and conforming changes in 45 CFR Part 1340, the regulations applicable to the Child Abuse and Neglect Prevention and Treatment Program. In addition, we are proposing to clarify the fact that the statutory prerequisites to Federal funding apply to basic State grants under section 8(b) of the Act, but not compliance and education grants under section 8(f).

We are issuing these regulations as a Notice of Proposed Rulemaking (NPRM) in accordance with section 401 of Pub. L. 100–294, which requires the Secretary to publish proposed regulations, allow a minimum of 45 days for public comment, and publish a final rule.

III. Section by Section Discussion of Proposed Technical Amendments

We propose to amend the Authority Statement to remove unnecessary references to the Act and to cite only the United States Code citation for the Act.

We propose a technical change in § 1340.1(a) to remove the words "of 1974, as amended" in the first sentence to conform to the Act's new title, the "Child Abuse Prevention and Treatment Act." (See section 1 of the Act.)

In § 1340.2(h), we propose to make two corrections in the definition of "State" to conform with the language in the Act. We have added the words "Commonwealth of" before the words "Puerto Rico" and changed "Trust Territories of the Pacific" to "Trust Territory of the Pacific Islands." Currently, the Compact of Free Association (Pub. L. 99–239, amended by Pub. L. 99–658, section 104(c)) limits the amount of formula grant funding to the Federated States of Micronesia and the Marshall Islands in fiscal year 1989 to twenty-five percent of the amount provided in fiscal year 1986. The funding for the Republic of Palau continues at the fiscal year 1986 level. In light of the statutory provision and the current fluid situation, we have continued to refer to these entities collectively as "the Trust Territory of the Pacific Islands."

We propose to revise the statement of purpose in § 1340.10 to conform with the renumbering of the Act and to reflect new language in section 8 of the Act. The revised language will reflect the statutory direction that grants to States are intended to "develop, strengthen, and carry out" State child abuse and neglect prevention and treatment programs. We also propose to delete the modifier "discretionary" before "grants" to clarify that requirements must be met by States for them to receive basic grants.

We propose to make a technical change in § 1340.13(a)(2) to insert February 6, 1987, in place of the phrase "the effective date of these regulations."

Under the prior legislation, the Secretary had authority to grant waivers, in some circumstances, to States which did not comply with Federal requirements (other than those requirements for disabled infants with life-threatening conditions now in section 8(b)(10) of the Act) but were found to be making a good faith effort to do so. Pub. L. 100–294 authorized an extension, under certain circumstances, of waivers granted under the prior provision. Specifically, only a State which had been granted a waiver that expired at the end of fiscal year 1986 may be granted a continuation of that waiver, if the Secretary finds that the State is making a good faith effort to comply with all requirements. Waivers may be extended through the end of fiscal year 1988 or, in the case of a State the legislature of which meets biennially, through the end of fiscal year 1989 or the next regularly scheduled session of such legislature, whichever is earlier. Accordingly, we propose technical changes in § 1340.13(c) to reflect the Secretary's authority to extend waivers of State eligibility requirements. Technical changes are also proposed to conform with the renumbering of the Act which placed State eligibility requirements in section 8(b) of the Act.

A technical change is proposed in § 1340.14(a) to conform with the renumbering of the Act which placed State eligibility requirements in section 8(b) of the Act.

A technical change is proposed to § 1340.15(a) to conform with the renumbering of the Act which placed State eligibility requirements pertaining to medical neglect in section 8(b)(10) of the Act.

A technical change is proposed to § 1340.15(b) to conform with the renumbering of the Act which placed definitions in section 14 of the Act.

In § 1340.15(c)(1), we are proposing to delete the words "this section" and substitute the words "section 8(b) of the Act." This change is intended to clarify and remove any ambiguity about the requirements States must meet in order to receive grants under section 8 of the Act. Our policy is that in order for a State to receive basic State grant funds under section 8(b) of the Act, it must meet all the eligibility requirements specified in section 8(b) as implemented by Part 1340, including § 1340.15. On the other hand, compliance with the section 8(b) requirements is not a prerequisite for grants under section 8(f). These points would be clarified by the proposed change in § 1340.15(c)(1) and the corresponding change proposed in § 1340.15(d).

Technical changes are proposed to § 1340.15(c)(4) to conform with the renumbering of the Act which placed State eligibility requirements in section 8(b) of the Act.

We have added an Editorial Note at the beginning of the Appendix to Part 1340 as an aid to future reference. The note clarifies the context in which the interpretative guidelines were developed and refers the reader to the appropriate sections of the Act, as amended. We have also corrected the citation to the House Conference Committee Report in item #6.

Finally, section 12 of the Act requires the Secretary to prescribe regulations and make such arrangements as may be necessary or appropriate to coordinate program related to child abuse and neglect which are assisted by Federal funds. The Department believes that new regulations are not necessary at this time to implement this provision. The newly structured Advisory Board on Child Abuse and Neglect and the Inter-Agency Task Force on Child Abuse and Neglect will be effective mechanisms to ensure program coordination.

IV. Impact Analysis

Executive Order 12606: The Family

Executive Order 12606 requires Federal agencies, in formulating and implementing policies and regulations, to assess the impact on family formation, maintenance and general well-being. We believe these proposed regulations will serve to strengthen and preserve the family by assisting agencies and organizations at the State and community levels in their efforts to develop, strengthen, and carry out child abuse and neglect prevention and treatment activities.

Executive Order 12291

Executive Order 12291 requires that a regulatory impact analysis be prepared for major rules—defined in the Order as any rule that has an annual effect on the national economy of $100 million or more or certain other specified effects. Nothing in either the statute or the proposed rule is likely to create substantial costs. Therefore, the Secretary concludes that this regulation is not a major rule within the meaning of the Executive Order because it does not have an effect on the economy of $100 million or more or otherwise meet the threshold criteria.

Regulatory Flexibility Act of 1980

Consistent with the Regulatory Flexibility Act of 1980 (5 U.S.C. Ch. 6), the Department tries to anticipate and reduce the impact of rules and paperwork requirements on small businesses. For each rule with a "significant economic impact on a substantial number of small entities," an analysis is prepared describing the rule's impact on small entities. Small entities are defined in the Regulatory Flexibility Act to include small businesses, small non-profit organizations, and small governmental entities.

The primary impact of these regulations is on the States, which are not "small entitles" within the meaning of the Regulatory Flexibility Act. For these reasons, the Secretary certifies that these rules will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act of 1980

Under the Paperwork Reduction Act of 1980, Pub. L. 96–511, all Departments are required to submit to the Office of Management and Budget (OMB) for review and approval any reporting or recordkeeping requirement inherent in a proposed or final rule. This proposed rule does not contain information collection requirements or increase the Federal paperwork burden on the public or the private sector.

List of Subjects in 45 CFR Part 1340

Child abuse and neglect, Child welfare, Disabled, Family violence, Grant programs—health, Grant programs—social.

(Catalog of Federal Domestic Assistance Program Number 13.669, Child Abuse and Neglect Prevention and Treatment)

Dated: January 25, 1989.

Sydney Olson,

Assistant Secretary for Human Development Services.

Approved: January 27, 1989.

Don M. Newman,

Acting Secretary, Department of Health and Human Services.

For the reasons set forth in the preamble, 45 CFR Part 1340 is amended as follows:

PART 1340—CHILD ABUSE AND NEGLECT PREVENTION AND TREATMENT

1. The authority citation for Part 1340 is revised to read as follows:

Authority: 42 U.S.C. 5101 *et seq.*

2. Section 1340.1(a) is revised to read as follows:

Subpart A—General Provisions

§ 1340.1 Purpose and scope.

(a) This part implements the Child Abuse Prevention and Treatment Act, ("Act"). As authorized by the Act, the National Center on Child Abuse and Neglect seeks to assist agencies and organizations at the national, State and community levels in their efforts to improve and expand child abuse and neglect prevention and treatment activities.

* * * * *

3. Section 1340.2(h) is revised to read as follows:

§ 1340.2 Definitions.

* * * * *

(h) "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

4. Section 1340.10 is revised to read as follows:

Subpart B—Grants to States

§ 1340.10 Purpose of this subpart.

This subpart sets forth the requirements and procedures States must meet in order to receive grants to develop, strengthen, and carry out State child abuse and neglect prevention and treatment programs under section 8 of the Act.

5. Section 1340.13 is amended by revising paragraphs (a)(2) and (c) and the introductory text in paragraph (a) is republished to read as follows:

§ 1340.13 Approval of applications.

(a) The Commissioner shall approve an application for an award for funds under this subpart if he or she finds that:

* * * * *

(2) Either by statute or regulation having the force and effect of law, the State modifies its definition of "child abuse and neglect" to provide that the phrase "person responsible for a child's welfare" includes an employee of a residential facility or a staff person providing out of home care no later than the close of the first general legislative session of the State legislature which convenes following February 6, 1987;

* * * * *

(c) Subject to the restriction that the Secretary may grant no waiver of the requirement under section 8(b)(10) of the Act, any State which had been granted a waiver which expired as of the end of fiscal year 1986 may be granted an extension of such waiver, if the Secretary makes a finding that such State is making a good faith effort to comply with all State eligibility requirements under section 8(b) of the Act. Any such waiver extension will be effective, retroactive to October 1, 1986, through the end of fiscal year 1988 or, in the case of a State the legislature of which meets biennially, through the end of fiscal year 1989 or the next regularly scheduled session of such legislature, whichever is earlier. In order to apply for a waiver, the Governor of the State must submit documentation of the specific measures the State has taken and will be taking to meet the as yet unmet eligibility requirement(s).

* * * * *

6. Section 1340.14(a) is revised to read as follows:

§ 1340.14 Eligibility requirements.

* * * * *

(a) State must satisfy each of the requirements in section 8(b) of the Act.

* * * * *

7. Section 1340.15 is amended by revising paragraphs (a), (b)(1), (c)(1), (c)(4), and (d)(1) to read as follows:

§ 1340.15 Services and treatment for disabled infants.

(a) *Purpose.* The regulations in this section implement certain provisions of the Act, including section 8(b)(10) governing the protection and care of disabled infants with life-threatening conditions.

(b) *Definitions.* (1) The term "medical neglect" means the failure to provide adequate medical care in the context of the definitions of "child abuse and neglect" in section 14 of the Act and § 1340.2(d) of this part. The term "medical neglect" includes, but is not limited to, the withholding of medically indicated treatment from a disabled infant with a life-threatening condition.

* * * * *

(c) *Eligibility requirements.* (1) In addition to the other eligibility requirements set forth in this part, to qualify for a basic State grant under section 8(b) of the Act, a State must have programs, procedures, or both, in place within the State's child protective service system for the purpose of responding to the reporting of medical neglect, including instances of withholding of medically indicated treatment from disabled infants with life-threatening conditions.

* * * * *

(4) These programs and/or procedures must be in writing and must conform with the requirements of section 8(b) of the Act and § 1340.14 of this part. In connection with the requirement of conformity with the requirements of section 8(b) of the Act and § 1340.14 of this part, the programs and/or procedures must specify the procedures the child protective services system will follow to obtain, in a manner consistent with State law:

* * * * *

(d) *Documenting eligibility.* (1) In addition to the information and documentation required by and pursuant to § 1340.12 (b) and (c), each State must submit with its application for a basic State grant sufficient information and documentation to permit the Commissioner to find that the State is in compliance with the eligibility requirements set forth in paragraph (c) of this section.

* * * * *

8. An Explanatory Note is added at the beginning of the Appendix to Part 1340 to read as follows:

Appendix to Part 1340—Interpretative Guidelines Regarding 45 CFR 1340.15—Services and Treatment for Disabled Infants

Explanatory Note: The interpretative guidelines which follow were based on the proposed rule (49 FR 48160, December 10, 1984) and were published with the final rule on April 15, 1985 (50 FR 14878). References to the "proposed rule" and "final rule" in these guidelines refer to these actions.

Since that time, the Child Abuse Prevention and Treatment Act was revised, reorganized, and reauthorized by Pub. L. 100-294 (April 25, 1988). Accordingly, the definitions formerly in section 3 of the Act are now found in section 14; the State eligibility requirements formerly in section 4 of the Act are now found in section 8; and references to the "final rule" mean references to § 1340.15 of this part.]

* * * * *

9. The Appendix is further amended by revising the 3rd paragraph, and the flush reference following the 3rd paragraph of item #6 to read as follows:

* * * * *

6. *The term "not be effective in ameliorating or correcting all of the infant's life-threatening conditions" in the context of a future life-threatening condition.*

* * * * *

Under the definition, if a disabled infant suffers more than one life-threatening condition and, in the treating physician's or physicians' reasonable medical judgment, there is no effective treatment for one of those conditions, then the infant is not covered by the terms of the amendment (except with respect to appropriate nutrition, hydration, and medication) concerning the withholding of medically indicated treatment. H. Conf. Rep. No. 1038, 98th Cong., 2d Sess. 41 (1984).

* * * * *

[FR Doc. 89-6116 Filed 3-16-89; 8:45 am]
BILLING CODE 4130-01-M

FEDERAL MARITIME COMMISSION

46 CFR Parts 550, 580, and 581

[Docket No. 89-04]

Equipment Interchange Agreements Tariff Publication of Free Time And Detention Charges

AGENCY: Federal Maritime Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Commission by notice published February 3, 1989 (54 FR 5506), proposed to amend its domestic offshore tariff, foreign tariff and service contracts filing regulations pertaining to the publication of free time and detention charges applicable to carrier equipment interchanged with shippers or their agents. The proposal is intended to simplify the filing of equipment interchange agreements. This Notice extends the time to comment on the proposed rule. Transpacific Westbound Rate Agreement's (TWRA) request for a 30-day extension thereby is granted in part. The extension provides an overall total of 60 days for comments, which appears to be a reasonable amount of time to complete the steps anticipated by TWRA in formulating comments.

DATE: Comments due April 4, 1989.

ADDRESS: Comments (Original and fifteen (15) copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523-5725.

FOR FURTHER INFORMATION CONTACT: Robert G. Drew, Director, Bureau of

Domestic Regulation, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523–5796.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 89–6316 Filed 3–16–89; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89–56, RM–6589]

Radio Broadcasting Services; Zebulon and Montezuma, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Hogan Broadcasting System to allot Channel 223A to Zebulon, Georgia, as the Community's first local FM service, and substitute Channel 236A for Channel 223A at Montezuma, Georgia, for which an application is pending. Channel 223A can be allotted to Zebulon in compliance with the Commission's minimum distance separation requirements with a site restriction of 1.1 kilometers (0.7 miles) south to avoid a short-spacing to Station KZGC, Channel 225C1, Atlanta, Georgia. The coordinates for this allotment are North Latitude 33–05–36 and West Longitude 84–20–34. Channel 236A can be allotted to Montezuma in compliance with the Commission's minimum distance separation requirements and can be used at the site specified in the outstanding application of Macon County Broadcasting Co. (ARN–871123MC). The coordinates for this allotment are North Latitude 32–17–58 and West Longitude 84–01–34.

DATES: Comments must be filed on or before May 1, 1989, and reply comments on or before May 16, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Billy C. Hogan, President, Hogan Broadcasting System, Rt. 1, Box 183, Elkmont, Alabama 35620 (Petitioner).

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–56, adopted February 14, 1989, and released March 8, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission

Karl A. Kensinger,

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

[FR Doc. 89–6342 Filed 3–16–89; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 89–54, RM–6634]

Radio Broadcasting Services; Derby, Augusta and Herington, KS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by New West Radio, Inc., proposing the substitution of FM Channel 242C2 for 240A at Derby, Kansas, and modification of its license for Station KRZZ–FM, to specify operation on the higher class channel. The coordinates for Channel 242C2 are 37–37–03 and 97–20–11. To accommodate Channel 242C2 at Derby, two additional channel substititions would be necessary. Channel 289A must be substituted for Channel 242A at Herington, Kansas. An application for channel 242A at Herington has been filed by Marie Willis and Donald D. Willis at coordinates 38–38–17 and 96–57–46. Channel 283A must be substituted for Channel 242A at Augusta, Kansas. Applications for Channel 242A at Augusta have been filed by Gregory Ray Streckline (880727MO), at coordinates 37–39–56 and 97–02–12, Douglas D. Law (880729MB), at coordinates 37–38–46 and 96–59–01, Curtis R. McClinton, Jr. (880728NI), at coordinates 37–43–21 and 97–03–55, and Jeannine T. Rainbolt (880728MV), at coordinates 37–42–00 and 97–02–33.

DATES: Comments must be filed on or before May 1, 1989, and replay comments on or before may 16, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: David Tillotson, Robert S. Koppel, Arent, Fox, Kintner, Plotkin & Kahn, 1050 Connecticut Ave., NW., Washington, DC 20036–5339. (Counsel for New West Radio, Inc.)

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–54, adopted February 14, 1989, and released March 8, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR § 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission
Karl Kensinger,
Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.
[FR Doc. 89-6344 Filed 3-16-89; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-55, RM-6593]

Radio Broadcasting Services; Warner Robbins, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Donald W. Earnhart seeking the allotment of Channel 273A to Warner Robbins, Georgia, as the community's second local FM service. Channel 273A can be allotted to Warner Robbins in compliance with the Commission's minimum distance separation requirements with a site restriction of 3.5 kilometers (2.2 miles) south to avoid a short-spacing to station WKZR at Milledgeville, Georgia. The coordinates for this allotment are North Latitude 32-35-44 and West Longitude 83-37-00.

DATES: Comments must be filed on or before May 1, 1989, and reply comments on or before May 16, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Donald W. Earnhart, P.O. Box 3878, Jackson, GA 30233 (Petitioner) and Larry G. Fuss, P.O. Box 4010, Opelika, AL 36803 (Consultant to petitioner).

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-55, adopted February 14, 1989, and released March 8, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission
Karl A. Kensinger,
Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.
[FR Doc. 89-6343 Filed 3-16-89; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-93, RM-5632]

Radio Broadcasting Services; Montour Falls, NY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission herein requests further information on the proposal of Twin Tiers Communications Corp. to substitute Channel 258A for Channel 285A at Montour Falls, New York, and modify its license for Station WNGZ-FM accordingly. Twin Tiers is requested to provide information concerning the availability of, and FAA approval for, the transmitter site it proposes to utilize. The coordinates for this allotment are North Latitude 42-14-15 and West Longitude 76-52-02. Counterproposals to this proposal will not be accepted since an opportunity for such filings has already been provided.

DATES: Comments must be filed on or before May 1, 1989, and reply comments on or before May 16, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Thomas A. Haight, Station WNGZ-FM, 421 North Franklin Street, Watkins Glen, New York 14891 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Request for Supplemental Information, MM Docket No. 87-93, adopted February 15, 1989, and released March 8, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission
Karl A. Kensinger,
Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.
[FR Doc. 89-6341 Filed 3-16-89; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

RIN 2127-AC46

Federal Motor Vehicle Safety Standards Rear-view Mirrors—Denial of Rulemaking Petition

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Denial of petition for rulemaking.

SUMMARY: This notice denies a second petition for rulemaking submitted by Sure-View, Inc. to amend Federal Motor Vehicle Safety Standard No. 111, *Rearview mirrors*, to require that both the driver's and passenger's side of all motor vehicles be equipped with a mirror system consisting of a plane mirror and a convex mirror in the same casing. This second petition is essentially the same as the first petition

filed by Sure-View. On November 8, 1988, the agency denied the first petition because the petitioner had not shown that the agency should require this mirror system and because the system could be voluntarily added to a motor vehicle under Standard No. 111. No new information was submitted with Sure-View's second petition. Therefore, this second petition is denied for the same reasons that the first petition was denied.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin Cavey, Office of Vehicle Standards, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington DC 20590, (202) 366–5271.

SUPPLEMENTARY INFORMATION: Federal Motor Safety Standard No. 111, *Rearview mirrors*, specifies requirements for the performance and location of rearview mirrors on all types of motor vehicles. On October 6, 1986, Sure-View Mirrors Inc. (Sure-View) first submitted a petition for rulemaking requesting that the agency amend FMVSS 111. Specifically, the petitioner sought performance specifications that would require a mirror system containing one plane mirror and one convex mirror fixed in the same casting with a pre-aligned, fixed relationship between the two mirrors, to be installed on the outside of both the driver's and passenger's sides of a vehicle.

In a denial notice dated November 8, 1988, the National Highway Traffic Safety Administration (NHTSA) determined that the petitioner had not shown that the agency should amend Standard No. 111 to require a convex/plane mirrors system. In addition, the agency noted that the standard does not prohibit the installation of a convex/plane mirror system, provided that one or the other mirror meets the requirements prescribed for a mirror in that location on the vehicle. 53 FR 45126.

In response to the denial notice, on December 7, 1988, the agency received a document from Sure-View entitled "Request and Motion to Reconsider Petition Denied in 49 CFR 571, RIN 2127–AC46." The agency notes that its procedural rules at 49 CFR 553.35(a) state that "any interested person may petition the Administrator for reconsideration of any rule issued under this part." The agency wishes to explain that a denial of a petition is not a "rule" under these regulations, and thus this provision for submitting reconsideration petitions does not apply to the denial of Sure-View's 1986 rulemaking petition. Consequently, the agency has treated Sure-View's December 1988 letter as a new petition for rulemaking.

Sure-View's December 1988 petition contains its 1986 petition, the original attachments, and a brief narrative restating the petitioner's belief that its convex plane mirror system would improve motor vehicle safety. The narrative contains the petitioner's earlier arguments but provides no new or additional information that would support the grant of its petition. The narrative in Sure-View's 1988 petition also states general policy statements.

After carefully reviewing Sure-View's 1988 petition, the agency has decided to deny this rulemaking petition for the following reason. The agency thoroughly has considered the merits of the petitioner's claims in its denial of the 1986 petition. (see 53 FR 45126) The petitioner offered no new or additional information in the 1988 petition which warrants reaching a different decision.

(15 U.S.C. 1392, 1401, 1403, 1407, delegation of authority at 49 CFR 1.50)

Issued on March 14, 1989.

Barry Felrice,

Assistant Administrator for Rulemaking.

[FR Doc. 89–6386 Filed 3–16–89; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 642

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic

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

ACTION: Notice of availability of an amendment to a fishery management plan, and a minority report, and requests for comments.

SUMMARY: NOAA issues this notice that the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) have submitted Amendment 3 to the Fishery Management Plan for Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP) for Secretarial review and are requesting comments from the public. The Councils also submitted a minority report.

DATE: Comments will be accepted on or before May 12, 1989.

ADDRESSES: Comments should be sent to Mark F. Godcharles, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Fl 33702. Mark envelopes, "Comments on Amendment 3." Copies of the amendment and the minority report are available from the South Atlantic Fishery Management Council, Southpark Building, Suite 306, 1 Southpark Circle, Charleston, SC 29407–4699.

FOR FURTHER INFORMATION CONTACT: Mark F. Godcharles, 813–893–3722.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (Magnuson Act), as amended, requires that a council-prepared fishery management plan or amendment be submitted to the Secretary of Commerce (Secretary) for review and approval or disapproval. The Magnuson Act requires that the Secretary, upon receiving the amendment, immediately publish a notice of its availability for public review and comment. The Secretary will consider the public comments in determining whether to approve the amendment.

Amendment 3 proposes to: (1) Prohibit the use of purse seines for the Atlantic migratory group of king mackerel, a prohibition already in the effect for the Gulf of Mexico migratory group of king mackerel and the Atlantic and Gulf migratory groups of Spanish mackerel, (2) prohibit the use of drift gill nets for all coastal migratory pelagic species, and (3) prohibit the use of run-around gill nets for the Atlantic migratory group of king mackerel. Amendment 3 would also add to the FMP: (1) An objective to minimize waste and bycatch in the fishery, (2) the most recent information available to the Councils concerning habitat, and (3) an evaluation of the effects of the FMP on vessel safety. Amendment 3 addresses the allocation of limited mackerel resources among competing commercial users and conforms the FMP to recent amendments to the Magnuson Act.

The minority report objects to the amendment's prohibition of the use of drift gill nets for coastal migratory pelagic species. Regulations proposed by the Councils to implement Amendment 3 are scheduled to be published within 15 days.

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

Dated: March 14, 1989.

Richard H. Schaefer,

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

[FR Doc. 89–6333 Filed 3–14–89; 3:13 pm]

BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 54, No. 51
Friday, March 17, 1989

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

Office of the Secretary

Privacy Act of 1974; Systems of Records

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of revision of Privacy Act Systems of Records.

SUMMARY: Notice is hereby given pursuant to 5 U.S.C. 552a(e)(4) that the United States Department of Agriculture (USDA) proposes to revise the exemptions, routine uses, and procedures in its Privacy Act Systems of Records maintained by the Office of Inspector General (OIG).

The proposed exemption revision applies to two systems of records: USDA/OIIG–2, "Intelligence Records, USDA/OIG;" and USDA/OIG–3, "Investigative Files and Subject/Title Index, USDA/OIG."

The proposed revision reflects a proposed amendment to 7 CFR 1.122 published elsewhere in today's issue of the Federal Register that would provide a general exemption under 5 U.S.C. 552a(j)(2) for the two systems of records, and indicates that the preexisting exemption under 5 U.S.C. 552a(k) is more specifically under 5 U.S.C. 552a(k)(2) and (5).

The proposed routine use revision applies to all OIG systems of records—USDA/OIG–1 through USDA/OIG–6—and replaces previous routine use provisions with revised and additional routine uses. Routine use means, with respect to disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected. The additional routine uses are compatible with the purpose for which the information was collected and are needed to enable the agency to carry out its assigned mission. In addition, this revision recognizes recent developments in information law. Disclosure for routine use is authorized by the Privacy Act of 1974, 5 U.S.C. 552a(b)(3), as amended.

The revision to the procedures for access to records or for contesting records applies to USDA/OIG–2, "Intelligence Records, USDA/OIG." These procedures are added to bring this system of records into conformity with other USDA/OIG systems of records procedures.

DATE: This action is effective upon final publication of the addition of 7 CFR 1.122 published in proposed form elsewhere in today's issue of the Federal Register unless changes are made in response to comments received from the public. Comments must be received by the contact person listed below on or before April 17, 1989.

ADDRESSES: Interested persons may submit written comments to Dianne Drew, Assistant Inspector General for Administration, Office of Inspector General, USDA, Washington, DC 20250 (202–447–6915).

FOR FURTHER INFORMATION CONTACT: Dianne Drew, Assistant Inspector General for Administration, Office of Inspector General, USDA, Washington, DC 20250 (202–447–6915).

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 552a (b)(3) and (e)(4)(D), OIG is proposing a revised set of routine uses for all OIG systems of records. The publication of these routine uses would permit individuals to determine what records pertaining to them are used or disseminated by OIG. These routine uses are necessary and lawful, and would permit OIG to disclose records for purposes compatible with the purposes for which they were collected.

Accordingly, USDA hereby proposes to amend the OIG Systems of Records published in 50 FR 50814, December 12, 1985, by revising the following section:

USDA/OIG–1

System name:

Employee Records, USDA/OIG.

* * * * *

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

(1) A record from the system of records, which indicates, either by itself or in combination with other information, a violation or potential violation of law, whether civil, and whether arising by statute, regulation, rule or order issued pursuant thereto, may be disclosed, as a routine use, to a Federal, State, local, or foreign agency or other public authority that investigates or prosecutes or assists in investigation or prosecution of such violation, or enforces or implements or assists in enforcement or implementation of the statute, rule, regulation or order.

(2) A record from the system of records may be disclosed, as a routine use, to a Federal, State, local, or foreign agency or other public authority, or professional organization, maintaining civil, criminal, or other relevant enforcement records or other pertinent records, such as current licenses, or to a consumer reporting agency, in order to obtain information relevant to an agency investigation, audit, or other inquiry, or relevant to a decision concerning the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the letting of a contract, the issuance of a license, grant or other benefit, the establishment of a claim, or the initiation of administrative, civil, or criminal action.

(3) A record from the system of records may be disclosed, as a routine use, to a Federal, State, local, or foreign agency or other public authority, or professional organization, if relevant to the recipient's hiring or retention of an employee or other personnel action, the issuance of a security clearance, the letting of a contract, the issuance of a license, grant or other benefit, the establishment of a claim, or the initiation of administrative, civil, or criminal action.

(4) A record from the system of records may be disclosed, as a routine use, to any source, private or public, to the extent necessary to secure from such source information relevant to a legitimate agency investigation, audit, or other inquiry.

(5) A record from the system of records may be disclosed, as a routine use, to a court, magistrate, or administrative tribunal, in a proceeding before any of the above, or to opposing counsel in such a proceeding or in the course of settlement negotiations.

(6) A record from the system of records may be disclosed, as a routine use, to a Member of Congress from the record of an individual in response to an

inquiry from the Member of Congress made at the request of that individual. In such cases, however, the Member's right to a record is no greater than the individual's right; thus, a record or any part of such record could be withheld if it contains information that otherwise would not be disclosed.

(7) A record from the system of records may be disclosed, as a routine use, to the Department of Justice for the purpose of obtaining its advice, or in connection with litigation in which the agency, its employees, or the United States is a party.

(8) A record from the system of records may be disclosed, as a routine use, to the Office of Management and Budget for the purpose of obtaining its advice regarding agency obligations under the Privacy Act, or in connection with the review of private relief legislation.

(9) A record from the system of records may be disclosed, as a routine use, to a medical or health advisor if, in the sole judgment of the agency, nondisclosure could have an adverse effect upon the individual.

(10) A record from the system of records may be disclosed, as a routine use, in response to a subpoena issued by a Federal agency having the power to subpoena records of other Federal agencies.

(11) A record from the system of records may be disclosed, as a routine use, to a private contractor for the purpose of compiling organizing, analyzing, programming, or otherwise refining records.

(12) A record from the system of records may be disclosed, as a routine use, to a grand jury agent pursuant either to a Federal or State grand jury subpoena, or to a prosecution request that such record be released for the purpose of its introduction to a grand jury.

(13) A record from the system of records may be disclosed, as a routine use, to a Federal agency responsible for considering suspension or debarment action where such record would be relevant to such action.

(14) A record from the system of records may be disclosed, as a routine use, to an entity or person, public or private, where disclosure of the record enables the recipient of the record to take action that benefits the Government.

(15) A record from the system of records may be disclosed, as a routine use, to a Federal, State, local, or foreign agency, or other public authority, for use in computer matching programs to prevent and detect fraud and abuse in benefit programs administered by any agency, to support civil and criminal law enforcement activities of any agency and its components, and to collect debts and overpayments owed to any agency and its components.

(16) A record from the system of records may be disclosed, as a routine use, to a public or professional licensing organization when such record indicates, either by itself or in combination with other information, a violation or potential violation of professional standards, or reflects on the moral, educational, or professional qualifications of an individual who is licensed or who is seeking to become licensed.

(17) A record from the system of records may be disclosed, as a routine use, to debt collection contractors for the purpose of collecting delinquent debts as authorized by law.

* * * * *

USDA/OIG-2

SYSTEM NAME:

Intelligence Records, USDA/OIG.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Routine uses (1) through (17) listed in the system of records designated USDA/OIG–1.

* * * * *

RECORD ACCESS PROCEDURES:

To request access to information in this system write to Director, Management Operations and Budget Staff, Office of Inspector General, U.S. Department of Agriculture, Washington, DC 20250.

CONTESTING RECORD PROCEDURES:

To contest information in this system, send request to Director, Management Operations and Budget Staff, Office of Inspector General, U.S. Department of Agriculture, Washington, DC 20250.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a(j)(2), this system of records has been exempted from all provisions of the Privacy Act of 1974, 5 U.S.C. 552a, as amended, except subsections (b), (c) (1) and (2), (e)(4) (A) through (F), (e) (6), (7), (9), (10) and (11), and (i).

Pursuant to 5 U.S.C. 552a(k)(2) and (k)(5), this system has been exempted from the following provisions of the Privacy Act of 1974, 5 U.S.C. 552a: subsections (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I), and (f).

USDA/OIG-3

SYSTEM NAME:

Investigative Files and Subject/Title Index, USDA/OIG.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Routine uses (1) through (17) listed in the system of records designated USDA/OIG–1.

* * * * *

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a(j)(2), this system of records has been exempted from all provisions of the Privacy Act of 1974, 5 U.S.C. 552a, as amended, except subsections (b), (c) (1) and (2), (e)(4) (A) through (F), (e) (6), (7), (9), (10) and (11), and (i).

Pursuant to 5 U.S.C. 552a(k)(2) and (k)(5), this system has been exempted from the following provisions of the Privacy Act of 1974, 5 U.S.C. 552a: subsections (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I), and (f).

USDA/OIG-4

SYSTEM NAME:

Liaison Records, USDA/OIG.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Routine uses (1) through (17) listed in the system of records designated USDA/OIG–1.

* * * * *

USDA/OIG-5

SYSTEM NAME:

Management Information and Data Analysis System, USDA/OIG.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Routine uses (1) through (17) listed in the system of records designated USDA/OIG–1.

* * * * *

USDA/OIG–6

SYSTEM NAME:

Audit Information System, USDA/OIG.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Routine uses (1) through (17) listed in the system of records designated USDA/OIG–1.

* * * * *

Done this 13th day of March 1989, at Washington, DC.

Clayton Yeutter,

Secretary.

[FR Doc. 89–6302 Filed 3–16–89; 8:45 am]

BILLING CODE 3410–23–M

Animal and Plant Health Inspection Service

[Docket No. 89–029]

U.S. Veterinary Biological Product and Establishment Licenses Issued, Suspended, Revoked, or Terminated

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The purpose of this notice is to advise the public of the issuance, suspension, revocation, or termination of veterinary biological product and establishment licenese by the Animal and Plant Health Inspection Service during the month of January 1989. Such actions are taken in accordance with the regulations issued pursuant to the Virus-Serum-Toxin Act.

FOR FURTHER INFORMATION CONTACT: Dr. Peter L. Joseph, Senior Staff Veterinarian, Veterinary Biologics Staff, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–6332.

SUPPLEMENTARY INFORMATION: The regulations in 9 CFR Part 102, "Licenses for Biological Product," require that every person who prepares certain biological products that are subject to the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*) shall hold an unexpired, unsuspended, and unrevoked U.S. Veterinary Biological Product License. The regulations set forth the procedures for applying for a license, the criteria for determining whether a license shall be issued, and the form of the license.

Pursuant to these regulations, the Animal and Plant Health Inspection Service (APHIS) issued the following U.S. Veterinary Biological Product Licenses during January 1989:

Product license code	Date issued	Product	Establishment	Establishment license No.
1177.21	01–06–89	Bovine Rhinotracheitis-Virus Diarrhea-Parainfluenza$_3$ Vaccine, Modified Live and Killed Virus.	SmithKline Beckman Corporation	189
1187.21	01–06–89	Bovine Rhinotracheitis-Virus Diarrhea-Parainfluenza$_3$-Respiratory Syncytial Virus Vaccine, Modified Live and Killed Virus.	SimthKline Beckman Corporation	189
4469.22	01–06–89	Bovine Rhinotracheitis-Virus Diarrhea-Parainfluenza$_3$-Respiratory Syncytial Virus Vaccine-Leptospira Canicola-Grippotyphosa-Hardjo-Icterohaemorrhagiae-Pomona Bacterin, Modified Live and Killed Virus.	SimthKline Beckman Corporation	189
44B9.22	01–06–89	Bovine Rhinotracheitis-Virus Diarrhea-Parainfluenza$_3$ Respiratory Syncytial Virus Vaccine-Campylobacter Fetus-Leptospira Canicola-Grippotyphosa-Hardjo-Icterohaemorrhagiae-Pomona Bacterin, Modified Live and Killed Virus.	SmithKline Beckman Coropration	189
A0C1.10	01–25–89	Avian Paramyxovirus, Type 3, Live Virus, for Further Manfacture.	Maine Biological Laboratories, Inc.	240
7057.00	01–26–89	Bordetella Bron-Chiseptica-Escherichia Coli-Pasteurella Multocida Bacterin-Toxoid.	CEVA Laboratories, Inc.	243–A
4595.21	01–27–89	Bovine Virus Diarrhea Vaccine-Leptospira Canicola-Grippotyphosa-Hardjo-Icterohaemorr-Hagiae-Pomona Bacterin, Killed Virus.	Smithkline Beckman Corporation	
45B5.21	01–27–89	Bovine Virus Diarrhea Vaccine-Campylobacter Fetus-Leptospira Canicola-Grippotyphosa-Hardjo-Icterohaemorrhagiae-Pomona Bacterin, Killed Virus.	SimthKline Beckman Corporation	189

The regulations in 9 CFR Part 102 also reqiure that each person who prepares biological products that are subject to the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*) shall hold a U.S. Veterinary Biological Establishment License. The regulations set forth the procedures for applying for a license, the criteria for determining whether a license shall be issued, and the form of the license. No U.S. Veterinary Biological Establishment Licenses were issued during January 1989.

The regulations in 9 CFR Parts 102 and 105 also centain provisions concerning the suspension, revocation, and termination of U.S. Veterinary Biological Product Licenses and U.S. Veterinary Biological Establishment Licenses. No product or establishment licenses were suspended, revoke, or terminated during January 1989.

Done at Washington, DC, this 14th day of March 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89–6356 Filed 3–16–89; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Export Administration.

Title: Notification of Commercial Invoices That Do Not Contain a Destination Control Statement.

Form Number: Agency—EAR 786.6; OMB–0694–0038.
Type of Request: Extension of the expiration date of a currently approved collection.
Burden: 40 respondents; 21 reporting/recordkeeping hours. Average hours response is approximately one-half hour.
Needs and Uses: Commercial invoices, bills of lading, and other shipping documents contain destination control statements. These statements are used by the Customs Bureau, in conjunction with Shippers Export Declarations, to ensure that U.S. exports are shipped to legally authorized destinations. When a forwarding agent finds that the documentation lacks the appropriate destination control statement, then he is required to notify the exporter of the problem and obtain a written assurance from the exporter that all copies have been corrected.
Affected Public: Businesses or other for-profit institutions; small businesses or organizations.
Frequency: On occasion.
Respondent's Obligation: Required to obtain or retain a benefit.
OMB Desk Officer: Francine Picoult, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC.

Dated: March 9, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89–6251 Filed 3–16–89; 8:45 am]

BILLING CODE 3510–CW–M

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration.
Title: Survey of Coastal Pelagic Fishermen.
Form Number: None.
Type of Request: New collection.
Burden: 583 respondents, 292 reporting hours. Average hours per response is .5 hours.
Needs and Uses: Persons holding permits for the Coastal Migratory Pelagic Fishery will be sampled to obtain economic and vessel data. The information is needed to evaluate the possible effects of proposed amendments to the existing Fishery Management Plan.
Affected Public: Businesses or other for-profit, small businesses or organizations.
Frequency: One-time.
Respondent's Obligation: Voluntary.
OMB Desk Officer: Francine Picoult, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: March 9, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89–6252 Filed 3–16–89; 8:45 am]

BILLING CODE 3510–CW–M

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Export Administration (BSA).
Title: Swedish Consignee's Letter of Assurance.
Form Number: Export Administration Regulations, Part 772.5; OMB—0625–0142.
Type of Request: Extension of the expiration date of a currently approved collection.
Burden: 259 respondents; 139 reporting/recordkeeping hours. Approximate hours per response is one-half hour.
Needs and Uses: This information is submitted to BXA by Swedish importers of controlled U.S. origin goods or technology. The purpose of these collections is to provide the U.S. with an extra measure of security against the diversion of these goods or technology to proscribed destinations.
Affected Public: Businesses or other for-profit institutions; small businesses or organizations.
Frequency: On occasion.
Respondent's Obligation: Required to obtain or retain a benefit.
OMB Desk Officer: Francine Picoult, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208 New Executive Office Building, Washington, DC 20503.

Dated: March 9, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89–6253 Filed 3–16–89; 8:45 am]

BILLING CODE 3510–CW–M

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Export Administration.
Title: International Import Certificate.
Form Number: Form BXA–645P; OMB—0694–0017.
Type of Request: Extension of the expiration date of a currently approved collection.
Burden: 37,000 respondents; 9,867 reporting/recordkeeping hours. Average time per respondent is 16 minutes.
Needs and Uses: This collection of information is the certification of the U.S. importer to the U.S. Government that he/she will import specific commodities into the United States and will not reexport such commodities except in accordance with U.S. export regulations.
Affected Public: Businesses or other for-profit institutions; small businesses or organizations.
Frequency: On occasion.
Respondent's Obligation: Required to obtain or retain a benefit.
OMB Desk Officer: Francine Picoult, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: March 9, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89-6254 Filed 3-16-89; 8:45 am]

BILLING CODE 3510-CW-M

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Export Administration.

Title: Report on Unscheduled Loading.

Form Number: Agency—EAR 786.5(b); OMB—0694-0040.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: One respondent and one reporting/recordkeeping hour. Average hours per response is one hour.

Needs and Uses: On rare occasions a carrier may find itself in an emergency situation in which controlled goods or technology are unloaded in a destination other than shown on the Shippers Export Declaration. The unscheduled loading must be for reasons beyond the control of the carrier such as acts of God, strikes, damage to the carrier, etc. In those cases, the carrier must inform BXA of the situation so that a decision can be made as to what to do with the controlled goods.

Affected Public: Businesses or other for-profit institutions; small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Francine Picoult, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: March 9, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89-6255 Filed 3-16-89; 8:45 am]

BILLING CODE 3510-CW-M

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Export Administration.

Title: Application for Transfer of Licenses to Another Party.

Form Number: Part 772.13, Export Administration Regulations; OMB—0694-0051.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 130 respondents; 115 reporting/recordkeeping hours. Approximate hours per response is .87 hours.

Needs and Uses: The Transfer of Licenses procedure is necessary to approve the transfer of unexpired export licenses from the original licensee to another party. This also transfers the legal responsibility for the export of controlled goods and technology.

Affected Public: Businesses or other for-profit institutions; small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Francine Picoult, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230. Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208 New Executive Office Building, Washington, DC 20503.

Dated: March 9, 1989.

Edward Michals,

Department Clearance Officer, Office of Management and Organization.

[FR Doc. 89-6256 Filed 3-16-89; 8:45 am]

BILLING CODE 3510-CW-M

Foreign-Trade Zones Board

[Docket 2-89]

Foreign-Trade Zone 41—Milwaukee, WI; Application for Extension of FTZ Subzone Status For SZ 41F, Ambrosia Chocolate Company Plant, Milwaukee, WI

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Foreign-Trade Zone of Wisconsin, Ltd. (FTZW), grantee of FTZ 41, requesting a 2-year time extension for FTZ subzone status at the chocolate products manufacturing plant of Ambrosia Chocolate Company (Ambrosia) in Milwaukee, Wisconsin. The application was formally field on March 2, 1989.

In March 1987, the Board authorized subzone status for the Ambrosia plant (Board Order 346, 52 FR 10247, 3/31/87) for a two-year period (from date of activation), subject to extension. Subzone activity is restricted to the production of sugar-containing products subject to the sugar quota program.

Zone procedures are being used for entries on the foreign sugar (approx. 3 mil. lbs. in fiscal 1988) used to produce the intermediate product sweetened cocoa. Customs entries are made on the latter product, and the sugar is ex-quota.

In requesting the extension, Ambrosia indicates that subzone status has helped it compete with lower priced sugar-containing imports, preserving employment at its Milwaukee plant as had been contended in the original application.

Subzone authority is due to expire on April 24, 1989, and the FTZ Board is considering a temporary time extension of up to one year, during which time the proposal would be evaluated as part of an overall review of sugar-related activity in zones, which would be the subject of a separate **Federal Register** notice.

The application for a 2-year extension is being reviewed by the FTZ Staff. Comments are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before April 14, 1989.

A copy of the application is available for public inspection at each of the following locations:

U.S. Department of Commerce, District Office Federal Building, 517 E. Wisconsin Avenue, Milwaukee, Wisconsin 53202.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 2835, 14th and Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: March 10, 1989.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 89-6352 Filed 3-16-89; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-580-603]

Brass Sheet and Strip From the Republic of Korea; Preliminary Results of Antidumping Duty Administrative Review

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

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

SUMMARY: In response to a request by the petitioner, the Department of Commerce has conducted an administrative review of the antidumping duty order on brass sheet and strip from the Republic of Korea. The review covers one manufacturer/exporter of this merchandise to the United States and the period August 22, 1986 through December 31, 1987. The review indicates the existence of dumping margins during this period.

As a result of the review, the Department has preliminarily determined to assess antidumping duties equal to the calculated differences between United States price and foreign market value. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: March 17, 1989.

FOR FURTHER INFORMATION CONTACT: Linda L. Pasden or Robert J. Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5255.

SUPPLEMENTARY INFORMATION:

Background:

On January 12, 1987, the Department of Commerce ("the Department") published in the **Federal Register** (52 FR 1215) an antidumping duty order on brass sheet and strip from the Republic of Korea. The petitioner requested in accordance with § 353.53a(a) of the Commerce Regulations that we conduct an administrative review. We published a notice of initiation of the antidumping duty administrative review on March 2, 1988 (53 FR 6681). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule ("HTS"), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item number(s).

Imports covered by this review are shipments of brass sheet and strip. During the review period, such merchandise was classifiable under item 612.3900 of the Tariff Schedules of the United States Annotated. This merchandise is currently classifiable under HTS items 7409.21.00 and 7409.29.00. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers one manufacturer/exporter, Poongsan Metal Corporation, of brass sheet and strip from the Republic of Korea and the period August 22, 1986 through December 31, 1987.

United States Price

In calculating United States price the Department used purchase price as defined in section 772 of the Tariff Act. Purchase price was based on the packed, f.o.b., c. and f., or c.i.f. price to unrelated purchasers in the United States, as appropriate. We made adjustments, where applicable, for U.S. and foreign brokerage, ocean freight, marine insurance, U.S. and foreign inland freight, processing fees, harbor fees, warehousing fees, and duty drawback. We disallowed a claimed adjustment for document handling charges paid to United States banks and postage expenses paid to Korean banks as direct expenses. However, we included these expenses in the calculation for credit. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used home market prices as defined in section 773 of the Tariff Act since sufficient quantities of such or similar merchandise were sold at or above the cost of production to provide a basis for comparison. The petitioners alleged sales below cost in the home market during the period. Our cost analysis covered only alloy 70/30 because there were no other alloys sold in the home market during the period that were contemperaneous with the sales to the United States. Based on our analysis, we found all sales of alloy 70/30 to be at or above cost.

We did not use the price to the related purchaser in the home market because our comparison of the related and the unrelated sales of alloy 70/30 with identical product codes, sold in the same month, showed that a vast majority of the related sales received a more favorable price. As a result, home market price was based on the packed ex-factory or f.o.b. warehouse price to unrelated purchasers. We made adjustments, where appropriate, for inland freight and differences in packing, warranty, credit expenses, and physical characteristics of the merchandise. We disallowed a claimed adjustment for advertising expenses because the advertising was not directed to the customer's customer, and did not promote any particular brass. Such generalized institutional advertising is an indirect rather than a direct selling expense. We did not adjust home market price for the document handling charges paid to a related party because there are indirect selling expenses. No other adjustments were claimed or allowed.

Preliminary Results of the Review

As a result of our review, we preliminary determine that a margin of 25.58 percent exists for Poongsan Metal Corporation for the period August 22, 1986 through December 31, 1987.

Interested parties may request disclosure and/or an administrative protective order within 5 days of the date of publication of this notice and may request a hearing within 8 days of publication. Any hearing, if requested, will be held 35 days after the date of publication or the first workday thereafter. Pre-hearing briefs and/or written comments from interested parties may be submitted not later than 25 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 32 days after the date of publication. The Department will publish the final results of the administrative review, including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Further, as provided by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margins shall be required. For any future entries of this merchandise from a new exporter, not covered in this administrative review, whose first shipments occurred after December 31, 1987, and who is unrelated to any reviewed firm, a cash deposit of 25.58 percent shall be required.

These deposit requirements are effective for all shipments of Korean brass sheet and strip entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

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 § 353.53a(a) of the Commerce Regulations (19 CFR 353.53a).

Jan W. Mares,

Assistant Secretary for Import Administration.

Date: March 13, 1989.

[FR Doc. 89-6353 Filed 3-16-89; 8:45 am]

BILLING CODE 3510-DS-M

Subcommittee on Export Administration of the President's Export Council; Partially Closed Meeting

A partially closed meeting of the President's Export Council, Subcommittee on Export Administration will be held April 13, 1989, 9 a.m. to 3 p.m., U.S. Department of Commerce, Herbert Hoover Building, Room 4830, 14th and Constitution Avenue, NW., Washington, DC.

The Subcommittee provides advice on matters pertinent to those portions of the Export Administration Act, as amended, that deal with United States' policies of encouraging trade with all countries with which the United States has diplomatic or trading relations, and of controlling trade for national security and foreign policy reasons.

Open Session

9:00–11:45 a.m. Briefings by Commerce officials on matter relating to export control. Selected reports by Committee chairpersons.

Executive Session

9:00 a.m.–3:00 p.m. Discussion of matters properly classified under Executive Order 12356 pertaining to the control of exports for national security, foreign policy or short supply reasons under the Export Administration Act of 1979, as amended. The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on October 27, 1987, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Subcommittee, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public. A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC.

For further information, contact Sharon A. Gongwer (202) 377–3586.

Date: March 13, 1989.

Michael E. Zacharia,

Assistant Secretary for Export Administration.

[FR Doc. 89-6319 Filed 3-16-89; 8:45 am]

BILLING CODE 3510-DT-M

Short-Supply Review on Certain Galvanized Steel Wire; Request for Comments

AGENCY: Import Administration/ International Trade Administration, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for a short-supply determination under Article 8 of the U.S.-Brazil Arrangement Concerning Trade in Certain Steel Products, with respect to certain galvanized steel wire.

DATE: Comments must be submitted no later than March 27, 1989.

ADDRESS: Send all comments to Nicholas C. Tolerico, Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230, (202) 377–0159.

SUPPLEMENTAL INFORMATION: Article 8 of the U.S.-Brazil Arrangement Concerning Trade in Certain Steel Products provides that if the U.S. "* * * determines that because of abnormal supply or demand factors, the United States steel industry will be unable to meet demand in the USA for a particular product, (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors) an additional tonnage shall be allowed for such product or products * * *."

We have received a short-supply request for certain steel wire, galvanized with a 0.03 ounce per square foot minimum zinc coating, meeting Class I tensile strength per American Society of Testing Materials (ASTM) specification A 227, in diameters ranging from 0.037 to 0.062 inch.

Any party interested in commenting on this request should send written comments as soon as possible, and no later than March 27, 1989. Comments should focus on the economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly so label the business proprietary portion of the submission and also provide a non-proprietary submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Room B-099, Import Administration, U.S. Department of Commerce, at the above address.

Jan W. Mares,

Assistant Secretary for Import Administration.

March 13, 1989.

[FR Doc. 89-6355 Filed 3-16-89; 8:45 am]

BILLING CODE 3510-DS-M

University of California et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 2841, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC

Docket Number: 88-113R. *Applicant:* University of California, San Diego, La Jolla, CA 92093. *Instrument:* Mass Spectrometer, Model VG 5400.

Manufacturer: VG Micromass, United Kingdom. *Intended Use:* See notice at 53 FR 37017, September 23, 1988. *Reasons for This Decision:* The foreign instrument provides a multiple collector (6) system capable of simultaneous collection of isotopes (neon and/or nitrogen).

Docket Number: 88–144R. *Applicant:* University of Minnesota, Minneapolis, MN 55455. *Instrument:* Bridgman Stockbarger Growth System. *Manufacturer:* Crystalox Ltd., United Kingdom. *Intended Use:* See notice at 53 FR 37017, September 23, 1988. *Reasons for This Decision:* The foreign instrument provides an angular resolution of 10,000 steps per revolution for precise translation of crystal seed and slow growth rates.

Docket Number: 88–252 *Applicant:* Oregon State University, Corvallis, OR 97331–5503. *Instrument:* Electron Probe Microanalyzer, Model CAMEBAX SX–50. *Manufacturer:* Cameca, France. *Intended Use:* See notice at 53 FR 37017, September 23, 1988. *Reasons for This Decision:* The foreign instrument is capable of simultaneous analysis of EDS and WDS signals and permits realtime display of spectral acquisition.

Docket Number: 88–246. *Applicant:* University of California, Berkeley, CA 94720. *Instrument:* Mass Spectrometer, Model 354S. *Manufacturer:* VG Isotopes, United Kingdom. *Intended Use:* See notice at 53 FR 32420, August 25, 1988. *Reasons for This Decision:* The foreign instrument provides a multicollector (8) capable of simultaneously collecting and measuring several different masses with a precision of ±0.000014 on a measured (8 samples over 12 hours) NBS987 standard.

Docket Number: 88–247. *Applicant:* University of Pittsburgh, Pittsburgh, PA 15261. *Instrument:* Constant Temperature Air Bath and Rocking Mechanism for PVT Cell, Model JEFRI. *Manufacturer:* D.B. Robinson and Associates, Canada. *Intended Use:* See notice at 53 FR 32420, August 25, 1988. *Reasons for This Decision:* The foreign article provides an orbital motion for maximum mixing action and temperature up to 200°C to facilitate rapid equilibrium of components within a PVT cell.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as each is intended to be used, is being manufactured in the United States. The capability of each of the foreign instruments described above is pertinent to each applicant's intended purposes. We know of no instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 89–6354 Filed 3–16–89; 8:45 am]

BILLING CODE 3510–DS–M

Minority Business Development Agency

Business Development Center Applications: State of Connecticut (Service Area)

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for approximately a 3-year period, subject to the availability of funds. The cost of performance for the first 12 months is estimated at $184,260 in Federal funds and a minimum of $32,516 in non-Federal contributions for the budget period August 1, 1989 to July 31, 1990. Cost-sharing contributions may be in the form of cash contributions, client fees for services, in-kind contributions, or combinations thereof. The MBDC will operate in the Connecticut SMSA geographic service area.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can coordinate and broker public and private resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodology) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive.

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. Client fees for billable management and technical assistance (M&TA) rendered must be charged by MBDCs. Based on a standard rate of $50 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less and 35% of the total cost for firms with gross sales of over $500,000.

The MBDC may continue to operate, after the initial competitive year, for up to 2 additional budget periods. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds and Agency priorities.

CLOSING DATE: The closing date for applications is April 26, 1989. Applications must be postmarked on or before April 26, 1989.

ADDRESS: New York Regional Office, Minority Business Development Agency, Jacob K. Javits Federal Building, Room 3720, New York, New York 10278, Area Code/Telephone Number (212) 264–3262.

FOR FURTHER INFORMATION CONTACT: Gina A. Sanchez, Regional Director, New York Regional Office. (212) 264–3262.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372 "Intergovernmental Review of Federal Programs" is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address. A Pre-application Conference to assist all interested applicants will be held on March 22, 1989, at 10:00 a.m. in Hartford, Connecticut at the Hartford Federal Building, 450 Main Street, Rm., 126. For information please contact the MBDA Boston District Office at (617) 565–6850.

11.80 Minority Business Development.

(Catalog of Federal Domestic Assistance)
William Fuller,
Deputy Regional Director, NYRO Regional Office.

Date: March 6, 1989.

[FR Doc. 89-6325 Filed 3-16-89; 8:45 am]
BILLING CODE 3510-21M-M

Business Development Center Applications: New York City (Manhattan) NY (Service Area)

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for approximately a 3 year period, subject to the availability of funds. The cost of performance for the first 12 months is estimated at $165,000 in Federal fund and a minimum of $29,118 in non-Federal contributions for the budget period August 1, 1989 to July 31, 1990. Cost-sharing contributions may be in the form of cash contributions, client fees for services, in-kind contributions, or combinations thereof. The MBDC will operate in the Manhattan, NY SMSA geographic service area.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can coordinate and broker public and private resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as as conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and ogranizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodology) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive.

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. Client fees for billable management and technical assistance (M&TA) rendered must be charged by MBDCs. Based on a standard rate of $50 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less and 35% of the total cost for firms with gross sales of over $500,000.

The MBDC may continue to operate, after the initial competitive year, for up to 2 additional budget periods. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds and Agency priorities.

CLOSING DATE: The closing date for applications is April 26, 1989. Applications must be postmarked on or before April 26, 1989.

ADDRESS: New York Regional Office, Minority Business Development Agency, Jacob K. Javits Federal Building, Rm. 3720, New York, New York 10778, Area Code/Telephone Number (212) 264-3262.

FOR FURTHER INFORMATION CONTACT: Gina A. Sanchez, Regional Director, New York Regional Office, (212) 264-3262.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372 "Intergovernmental Review of Federal Programs" is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address. A Pre-application Conference to assist all interested applicants will be held on March 27, 1989, at 10:00 a.m. in Manhattan, New York at the Jacob K. Javits Federal Building, 26 Federal Plaza, Rm. 305B. For further information please contact the NYRO at (212) 264-3262.

11.80 Minority Business Development.

(Catalog of Federal Domestic Assistance)
William Fuller,
Deputy Regional Director, NYRO Regional Office.

Date: March 6, 1989.

[FR Doc. 89-6326 Filed 3-16-89; 8:45 am]
BILLING CODE 3510-21-M

Business Development Center Applications: San Juan, Puerto Rico (Service Area)

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for approximately a 3 year period, subject to the availability of funds. The cost of performance for the first 12 months is estimated at $368,020 in Federal funds and a minimum of $64,945 in non-Federal contributions for the budget period August 1, 1989 to July 31, 1990. Cost-sharing contributions may be in the form of cash contributions, client fees for services, in-kind contributions, or combinations thereof. The MBDC will operate in the San Juan, Puerto Rico, SMSA geographic service area.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can coordinate and broker public and private resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodology) to performing the work requirements included in the application (20 points);

and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive.

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. Client fees for billable management and technical assistance (M&TA) rendered must be charged by MBDCs. Based on a standard rate of $50 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less and 35% of the total cost for firms with gross sales of over $500,000.

The MBDC may continue to operate, after the initial competitive year, for up to 2 additional budget periods. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA on such factors as an MBDC's satisfactory performance, the availability of funds and Agency priorities.

CLOSING DATE: The closing date for applications is April 19, 1989. Applications must be postmarked on or before April 19, 1989.

ADDRESS: New York Regional Office, Minority Business Development Agency, Jacob K. Javits Federal Building, Room 3720, New York, New York 10278, Area Code/Telephone Number (212) 264–3262.

FOR FURTHER INFORMATION CONTACT: Gina A. Sanchez, Regional Director, New York Regional Office. (212) 264–3262.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372 "Intergovernmental Review of Federal Programs" is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development.

(Catalog of Federal Domestic Assistance)

Gina A. Sanchez,

Regional Director, NYRO Regional Office.

Date: March 6, 1989.

[FR Doc. 89–6327 Filed 3–16–89; 8:45 am]

BILLING CODE 3510–21–M

COMMITTEE FOR THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1989; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to Procurement List 1989 commodities and services to be produced or provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: April 17, 1989.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION:

On January 6, 1989 and January 13, 1989, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (54 F.R. 458 and 1407) of proposed additions to Procurement List 1989, which was published on November 15, 1988 (53 F.R. 46018).

No comments were received concerning the proposed additions to the Procurement List. After consideration of the material presented to it concerning capability of qualified workshops to produce the commodities and provide the services at fair market prices and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.6. I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities listed.

c. The actions will result in authorizing small entities to produce the commodities procured by the Government.

Accordingly, the following commodities and services are hereby added to Procurement List 1989:

Commodities

Folder, File, 7530–00–205–3613, 7530–00–290–2009, 7530–00–634–1785, 7530–00–985–7009, 7530–00–985–7010.

Services

Janitorial/Custodial, U.S. Army Reserve Center, 2997 North 2nd Street, Harrisburg, Pennsylvania.

Laundry Service (Excluding Dry Cleaning and Rental), Uniformed Services, University of the Health Sciences, F. Edward Hebert School of Medicine, Bethesda, Maryland.

Beverly L. Milkman,

Executive Director.

[FR Doc. 89–6320 Filed 3–16–89; 8:45 am]

BILLING CODE 6820–33–M

THE COMMITTEE FOR THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1989; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee has received proposals to add to Procurement List 1989 commodities and a service to be produced or provided by workshops for the blind or other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: April 17, 1989.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION:

This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed action.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities and service listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities and service to Procurement List 1989, which was published on November 15, 1988 (53 F.R. 46018):

Commodities

Webbing

1055–01–141–5205.
(Requirement of U.S. Army Military Missile Command, Redstone Arsenal, Alabama, only).

Back Pack, Tripod

1260–01–046–2840.
(Requirement of U.S. Army Military Missile Command, Redstone Arsenal, Alabama, only).

Pouch, Cover

1260–01–244–2833.
(Requirement of U.S. Army Military Missile Command, Redstone Arsenal, Alabama, only).

Cover, Protective

1420–01–049–5358.
(Requirement of U.S. Army Military Missile Command, Redstone Arsenal, Alabama, only).

Insulation

1430–01–134–7893.
(Requirement of U.S. Army Military Missile Command, Redstone Arsenal, Alabama, only).

Kit, Tiedown

1440–01–132–9719.
(Requirement of U.S. Army Military Missile Command, Redstone Arsenal, Alabama, only).

Strap, Webbing

4935–00–784–0118, 4935–00–889–5595, 4935–00–922–2480, 4935–00–928–6097, 5340–01–130–6020, 5340–01–231–3750.
(Requirement of U.S. Army Military Missile Command, Redstone Arsenal, Alabama, only).

Strap Set, Webbing

4935–00–824–5469.
(Requirement of U.S. Army Military Missile Command, Redstone Arsenal, Alabama, only).

Panel, Side Flex

5340–00–NSH–0005.
(Requirement of U.S. Army Military Missile Command, Redstone Arsenal, Alabama, only).

Drape, Surgical

6530–01–032–4089.

Curtain, Blackout

7230–01–136–7054.
(Requirement of U.S. Army Military Missile Command, Redstone Arsenal, Alabama, only).

Service

Commissary Warehouse Service, Little Rock Air Force Base, Arkansas.

Beverly L. Milkman,

Executive Director.

[FR Doc. 89–6321 Filed 3–16–89; 8:45 am]

BILLING CODE 6820–33–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on SDIO Technology Assessment; Meeting

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on SDIO Technology Assessment will meet in closed session on April 5–6 and May 3–4, 1989 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will receive classified briefings on critical SDIO technologies.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. II, (1982)), it has been determined that these DSB Task Force meetings, concern matters listed in 5 U.S.C. 552b(c) (1) (1982), and that accordingly these meetings will be closed to the public.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

March 14, 1989.

[FR Doc. 89–6295 Filed 3–16–89; 8:45 am]

BILLING CODE 3810–01–M

Defense Science Board

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board will meet in closed session on July 23–August 4, 1989 at the Naval Ocean Systems Center, San Diego, California.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At that time the Board will examine the substance, interrelationships, and the US national security implications of three critical areas identified and tasked to the Board by the Secretary of Defense and Under Secretary of Defense for Acquisition. The subject areas are: Improving Test and Evaluation Effectiveness, National Space Launch Strategy, and Noncooperative Identification. The period of study is anticipated to culminate in the formulation of specific recommendations to be submitted to the Secretary of Defense, via the Under Secretary of Defense for Acquisition, for his consideration in determining resource policies, short- and long-range plans, and in shaping appropriate implementing actions as they may affect the U.S. national defense posture.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

March 14, 1989.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89–6294 Filed 3–16–89; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

Intent to Repay to the California State Department of Education Funds Recovered as a Result of a Final Audit Determination

AGENCY: Department of Education.

ACTION: Intent to award grantback funds.

SUMMARY: Under section 456 of the General Education Provisions Act (GEPA), the U.S. Secretary of Education (Secretary) intends to repay to the California State Department of Education, the State educational agency (SEA), an amount equal to 75 percent of the funds recovered by the U.S. Department of Education (Department) as a result of a final audit determination. This notice describes the SEA's plan, submitted on behalf of the San Francisco Unified School District, the local educational agency (LEA), for the use of the repaid funds and the terms and conditions under which the Secretary intends to make those funds available. The notice invites comments on the proposed grantback.

DATE: All written comments must be received on or before April 17, 1989.

ADDRESS: All written comments should be submitted to Dr. James Spillane, Director, Division of Program Support, Compensatory Education Programs, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 2043), Washington, DC 20202–6132.

FOR FURTHER INFORMATION CONTACT: Dr. James Spillane. Telephone: (202) 732–4692.

SUPPLEMENTARY INFORMATION:

A. Background

In August 1988, the Department completed recovery of $1,469,500 plus accrued interest from the California SEA for claims arising from an audit of the San Francisco Unified School District covering the period September 1, 1973 through August 31,1975. The claims involved the SEA's administration of Title I of the Elementary and Secondary Education Act of 1965 (Title I), program that addressed the special educational needs of educationally deprived children in areas with high concentrations of children from low-income families. Specifically, the LEA did not satisfy the Title I comparability requirements in 45 CFR 116.26 (1973) that an LEA could receive Title I funds only if it used its State and local funds in each Title I area to provide services that, taken as a whole, were at least comparable to services provided in non-Title I schools. The LEA also used school year 1973–74 teacher assignment schedules rather than the actual October 1, 1974 work assignment schedules in preparing its 1974–75 comparability report. This resulted in an inaccurate report to the SEA in violation of 45 CFR 116.26(b)(7) (1973), which specified that the data required must be of a date as specified by the Commissioner. The date specified by the Commissioner for 1974–75 was October 1, 1974.

B. Authority for Awarding a Grantback

Section 456(a) of GEPA, 20 U.S.C. 1234e(a), provides that whenever the Secretary has recovered funds following a final audit determination with respect to an applicable program, the Secretary may consider those funds to be additional funds available for the program and may arrange to repay to the SEA or LEA affected by that determination an amount not to exceed 75 percent of the recovered funds. The Secretary may enter into this "grantback" arrangement if the Secretary determines that the—

(1) Practices and procedures of the SEA or LEA that resulted in the audit determination have been corrected, and the SEA or LEA is, in all other respects, in compliance with the requirements of the applicable program;

(2) SEA has submitted to the Secretary a plan for the use of the funds to be awarded under the grantbank arrangement that meets the requirements of the program, and, to the extent possible, benefits the population that was affected by the failure to comply or by the misexpenditures that resulted in the audit exception; and

(3) Use of funds to be awarded under the grantback arrangement in accordance with the SEA's plan would serve to achieve the purposes of the program under which the funds were originally granted.

C. Plan for Use of Funds Awarded Under a Grantback Arrangement

Pursuant to section 456(a)(2) of GEPA, the SEA has applied for a grantback of $1,102,125 and has submitted a plan on behalf of the LEA for use of the grantback funds to meet the special educational needs of educationally deprived children in programs administered under Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965, as amended (Chapter 1). According to the plan, the LEA would use the grantback funds to provide a tutorial program to supplement the Chapter 1 program funded from the regular Chapter 1 entitlement for school years 1988–89 and 1989–90. The regular Chapter 1 program provides for in-class and resource teacher support in reading, writing, language, and mathematics. The tutorial program would provide additional reinforcement in these programs. Approximately 500 eligible Chapter 1 children in grades 1–12 would benefit each year. The grantback funds would be used for salaries for a program facilitator, teachers, paraprofessionals, student aides, and parent advocates and for minimal supplies. On a voluntary basis Chapter 1 participants would receive individualized and computer-assisted instruction at 20 Chapter 1 sites for eight hours a week before and after school or on Saturdays. Biliterate/bilingual parent advocates would contact parents of middle and high school Chapter 1 students in writing and by phone to make them aware of the tutorial program and to encourage them to have their children participate. The parent advocates would also monitor attendance for these students throughout the year. Eligible children attending nonpublic schools would be provided an equitable opportunity to participate in the tutorial program.

D. The Secretary's Determinations

The Secretary has carefully reviewed the plan submitted by the SEA. Based upon the review, the Secretary has determined that the conditions under section 456 of GEPA have been met.

These determinations are based upon the best information available to the Secretary at the present time. If this information is not accurate or complete, the Secretary is not precluded from taking appropriate administrative action. In finding that the conditions of section 456 of GEPA have been met, the Secretary makes no determination concerning any pending audit recommendations or final audit determinations.

E. Notice of the Secretary's Intent to Enter Into a Grantback Arrangement

Section 456(d) of GEPA requires that, at least 30 days before entering into an arrangement to award funds under a grantback, the Secretary must publish in the **Federal Register** a notice of intent to do so, and the terms and conditions under which the payment will be made.

In accordance with section 456(d) of GEPA, notice is hereby given that the Secretary intends to make funds available to the California SEA under a grantback arrangement. The grantback award would be in the amount of $1,102,125, which is 75 percent—the maximum percentage authorized by the statute—of the funds recovered by the Department as a result of the audit.

F. Terms and Conditions Under Which Payments Under a Grantback Arrangement Would Be Made

The SEA and LEA agree to comply with the following terms and conditions under which payment under a grantback arrangement would be made:

(1) The funds awarded under the grantback must be spent in accordance with—

(a) All applicable statutory and regulatory requirements;

(b) The plan that the SEA submitted and any amendments to that plan that are approved in advance by the Secretary; and

(c) The budget that was submitted with the plan and any amendments to the budget that are approved in advance by the Secretary.

(2) All funds received under the grantback arrangement must be obligated by September 30, 1990, in accordance with section 456(c) of GEPA and the SEA's plan.

(3) The SEA, on behalf of the LEA, will, not later than January 1, 1991, submit a report to the Secretary which—

(a) Indicates that the funds awarded under the grantback have been spent in accordance with the proposed plan and approved budget, and

(b) Describes the results and effectiveness of the project for which the funds were spent.

(4) Separate accounting records must be maintained documenting the expenditures of funds awarded under the grantback arrangement.

(5) Before funds will be repaid pursuant to this notice, the SEA must repay to the Department all overdue debts, or enter into a repayment agreement for those debts.

Dated: March 14, 1989.

Lauro F. Cavazos,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number 84.010, Educationally Deprived Children—Local Educational Agencies)

[FR Doc. 89-6398 Filed 3-16-89; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Office of Fossil Energy

[FE Docket No. 89-14-NG]

Transamerican Natural Gas Corp.; Application To Export and Import Natural Gas

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of application for blanket authorization to export natural gas to Mexico and to import natural gas from Mexico and Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on February 21, 1989, of an application filed by TransAmerican Natural Gas Corporation (TransAmerican) for blanket import and export authority over separate two-year terms beginning on the dates the first import and the first export commence.

The application is filed pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-111. Protests, motions to intervene, notice of intervention, and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed no later than April 17, 1989.

FOR FURTHER INFORMATION:

Edward J. Peters, Jr., Office of Fuels Programs, Office of Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3H-087, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-8162.

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION:

TransAmerican, an independent natural gas producer with its principal place of business in Houston, Texas, proposes to import up to a two-year total of 150 Bcf of Canadian and Mexican natural gas from a variety of suppliers, either for its own account or as agent on behalf of others. The imported gas would be sold on a short-term or spot basis to a wide range of markets in the U.S., including local distribution companies, pipelines, municipalities, and end-users. TransAmerican also request authority to export to Mexico under similar short-term arrangements up to 15 Bcf of gas secured either from its own production operations or from other domestic suppliers.

TransAmerican states that the specific terms of each transaction would be negotiated on an individual basis, including price and volumes, in response to market conditions. TransAmerican intends to utilize existing pipeline facilities for the transportation of the volumes to be imported and exported, and indicates that it will furnish quarterly reports giving the details of each transaction.

TransAmerican requests that an authorization be granted on an expedited basis. A decision on TransAmerican's request for expedited treatment will not be made until all responses to this notice have been received and evaluated.

The decision on the application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In reviewing natural gas export applications, the domestic need for the gas to be exported is considered, and any other issues determined to be appropriate in a particular case, including whether the arrangement is consistent with the DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties, especially those that may oppose this application, should comment in their responses on these matters as they relate to the requested import and export authority. The applicant asserts that import and export arrangements transacted under the requested authority will be competitive, and that there is no current need for the domestic gas that would be exported under the proposed arrangements. Parties opposing the arangement bear the burden of overcoming these assertions.

All parties should be aware that if this blanket import/export application is granted, the authorization may permit the import and export of the gas at any point of entry or exit on the international boundary where existing pipeline facilities are located.

NEPA Compliance

On August 9, 1988, the DOE published in the **Federal Register** (53 FR 29934) a notice of proposed amendments to its guidelines for compliance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, effective on an interim basis upon publication. In that notice, the DOE proposed to amend the Department's NEPA guidelines to add to its list of categorical exclusions the approval or disapproval of an import/export authorization for natural gas in cases not involving new construction. Application of the categorical exclusions in any particular case raises a rebuttable presumption that the action is not a major Federal action under NEPA. Unless comments are received indicating the presumption does not or should not apply in this case, no further NEPA review will be conducted by the DOE.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written

comments should be filed with the Office of Fuels Programs, Fossil Energy, Room 3F–056, FE–50, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585. They must be filed no later than 4:30 p.m., e.d.t., April 17, 1989.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial questions of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice to all parties will be provided. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of TransAmerican's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

J. Allen Wampler,

Assistant Secretary, Fossil Energy.

[FR Doc. 89–6371 Filed 3–16–89; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. G–11551–003 et al.]

ARCO Oil and Gas Co., Division of Atlantic Richfield Company et al.; Applications for Certificates, Abandonment of Service and Amendment of Certificates [1]

March 14, 1989.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce, to abandon service or to amend certificates as described herein, all as more fully described in the respective applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before March 31, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). 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 in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Description
G–11551–003, B, 2–13–89	ARCO Oil and Gas Company, Division of Atlantic Richfield Company, P.O. Box 2819, Dallas TX 75221.	El Paso Natural Gas Company, Emma Field, Andrews County, Texas.	Lease expired prior to 1975.
G–18748–006, B, 2–9–89	ARCO Oil and Gas Company, Division of Atlantic Richfield Company.	El Paso Natural Gas Company, Texas and Mocane Fields, Beaver and Ellis Counties, Oklahoma, and Lipsomb and Ochiltree Counties, Texas.	Certain acreage released. Certain other acreage assigned to Harper Oil Company 2–23–60; to Thomas E. Berry 5–25–61; to Earl C. Funk, Jr. 9–2–60; to White Eagle Oil Company 3–25–55; to Dyco Petroleum Corporation 9–9–76 and 2–7–77; to Robert R. Ditto 6–13–60 and 4–5–61; to the Shamrock Oil and Gas Corporation 5–18–61 and 8–1–60; and to Crest Exploration Company 12–7–59.
C189–63–000 (C179–369), B, 11–14–88.	Tenneco Oil Company, P.O. Box 2511, Houston, TX 77252.	ANR Pipeline Company Mocane-Laverne Field, Beaver County, Oklahoma.	Certain acreage released. Certain other acreage assigned to Oliver Hilderbrand 1–22–79.
C189–303–000 (G–16030), B, 2–13–89.	Chevron U.S.A. Inc., P.O. Box 3725, Houston, TX 77253.	Panhandle Eastern Pipe Line Company, Forgan Field, Beaver County, Oklahoma.	Leases canceled in 1956 and 1960.
C189–304–000, B, 2–14–89	Whilte & Ellis Drilling, Inc., 401 E. Douglas, Suite 500, Wichita, KS 67202.	K N Energy, Inc., Koehn Lease, Zook Field, Pawnee County, Kansas.	Production declined to uneconomic levels.
C189–311–000 (C162–105), B, 2–17–89.	ARCO Oil and Gas Company, Division of Atlantic Richfield Company.	Northern Natural Gas Company, Division of of Enron Corp., North Harper Ranch and Sitka Field, Clark County, Kansas.	Leases expired.
C189–314–000, F, 2–21–89	Amoco Production Company, 1670 Broadway, Room 1754, Denver, CO 80202.	Northwest Pipeline Corporation, Basin Dakota Field, San Juan County, New Mexico.	Acreage acquired 3–1–86 from Atlantic Richfield Company.
C189–320–000, E, 2–24–89	OXY USA Inc., P.O. Box 300, Tulsa, OK 74102.	Northern Natural Gas Company, Division of Enron Corp., Myers # 1 Well, Guymon-Hugoton Field, Texas County, Oklahoma.	Acreage acquired 8–1–88 from Resources Investment Corporation.

Docket No. and date filed	Applicant	Purchaser and location	Description
C189-321-000, E, 2-24-89	OXY USA Inc.	Northern Natural Gas Company, Division of Enron Corp., Eaton # 1 Well, Guymon-Hugoton Field, Texas County, Oklahoma.	Acreage acquired 8-1-88 from Resources Investment Corporation.
C189-322-000, E, 2-28-89	Conoco Inc., P.O. Box 2197, Houston, TX 77252.	Tennessee Gas Pipeline Company, East Cameron Block 62, Offshore Louisiana.	Acreage acquired 3-1-88 from Newmont Oil Company.

FILING CODE A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[FR Doc. 89-6364 Filed 3-16-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-4547-002 et al.]

ARCO Oil and Gas Co., Division of Atlantic Richfield Company et al.; Applications for Termination or Amendment of Certificates [1]

March 14, 1989.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7 of the Natural Gas Act for authorization to terminate or amend certificates as described herein, all as more fully described in the respective applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before March 31, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). 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 in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Description
G-4547-002, D, 2-17-89	ARCO Oil and Gas Company, Division of Atlantic Richfield Company, P.O. Box 2819, Dallas, TX 75221.	El Paso Natural Gas Company, San Juan County, New Mexico.	Assigned 1-1-87 to to Hondo Oil and Gas Company.
G-6629-002, D, 1-6-89	Sun Exploration and Production Company, P.O. Box 2880, Dallas, TX 75221.	Transcontinental Gas Pipeline Corporation, Starr County, Texas.	Assigned 12-8-89 to Fredonia Resources, Inc.
G-20020-000, D, 12-19-88	ARCO Oil and Gas Company, Division of Atlantic Richfield Company.	Tennessee Gas Pipeline Company, Grand Isle Area (South Timbalier Bay), Offshore Louisiana.	Assigned 10-1-87 to Chevron U.S.A. Inc.
CI63-851-000, D, 2-13-89	Texaco Producing Inc., P.O. Box 52332, Houston, TX 77052.	KN Energy, Inc., Dombey Field, Beaver County, Oklahoma.	Assigned 11-1-88 to Triton Oil and Gas Corp.
CI79-43-001, D, 2-13-89	Texaco Inc., P.O. Box 52332, Houston, TX 77052.	Willims Natural Gas Company, Hewitt East Field, Carter County, Oklahoma.	Assigned 11-1-88 to Dunlap and Company.
CI89-216-000, (CI72-175), D, 1-9-89.	Tenneco Oil Company, P.O. Box 2511, Houston, TX 77252.	United Gas Pipe Line Company, Cotton Valley Field, Webster Parish, Louisiana.	Assigned 11-30-87 to Marathon Oil Company.
CI89-217-000 (CI64-1048), D, 1-9-89.	Tenneco Oil Company	United Gas Pipe Line Company Cotton Valley Field, Webster Parish, Louisiana.	Assigned 11-30-87 to Marathon Oil Company.
CI89p219-000 (CI64-1024), D, 1-9-89.	Tenneco Oil Company	United Gas Pipe Line Company, Cotton Valley Field, Webster Parish, Louisiana.	Assigned 11-30-87 to Marathon Oil Company.
CI89-200-000 (CI64-1042), D, 1-9-89.	Tenneco Oil Company	United Gas Pipe Line Company, Cotton Valley Field, Webster Parish, Louisiana.	Assigned 1-1-88 to Fina Oil and Chemical Company.
CI89-233-000 (CI71-595), D, 1-13-89.	Tenneco Oil Company	Tennessee Gas Pipeline Company, East Cameron Block Field, Offshore Louisiana.	Assigned 12-16-87 to Amoco Production Company.
CI89-300-000 (CI60-158), D, 2-13-89.	Texaco Producing Inc	Colorado Interstate Gas Company, Mocane Field, Beaver County, Oklahoma.	Assigned 11-18-88 to Samson Resources Company.
CI89-301-000 (CI80-245), D, 2-13-89.	Sohio Petroleum Company, P.O. Box 4587, Houston, TX 77210.	Panhandle Eastern Pipe Line Company, Totem Field, Adams County, Colorado.	Assigned 10-6-88 to Presidio Oil Company.
CI89-307-000 (G-3873), D, 2-16-89.	ARCO Oil and Gas Company, Division of Atlantic Richfield Company.	Williston Basin Interstate Pipeline Company, Worland Field, Washakie County, Wyoming.	Assigned 1-1-87 to Hondo Oil and Gas Company.
CI89-308-000 (G-7823), D, 2-16-89.	ARCO Oil and Gas Company, Division of Atlantic Richfield Company.	Williston Basin Interstate Pipeline Company, Worland Field, Washakie and Big Horn Counties, Wyoming.	Assigned 1-1-87 to Hondo Oil and Gas Company.

Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[FR Doc. 89-6365 Filed 3-16-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP86-578-021; RP85-13-029]

Northwest Pipeline Corp.; Change in FERC Gas Tariff

March 13, 1989.

Take notice that on March 2, 1989, Northwest Pipeline Corporation ("Northwest") filed the tariff sheets listed below in compliance with the Commission's order dated January 31, 1989 in the above referenced dockets:

Original Volume No. 1-A

First Revised Sheet No. 304

Second Revised Sheet No. 318

Northwest states that the above listed tariff sheets reflect new provisions setting forth a receipt point flexibility policy for both interruptible and firm

transportation rate schedules. An effective date of April 1, 1989 is requested for the tendered tariff sheets.

Northwest states that a copy of this filing has been served on all parties of record in the referenced dockets and on all jurisdictional customers and affected state commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 20, 1989. 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. 89-6366 Filed 3-16-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-102-000]

Transwestern Pipeline Co.; Filing

March 14, 1989.

Take notice that on March 8, 1989, Transwestern Pipeline Company (Transwestern) tendered for filing to become a part of Transwestern's F.E.R.C. Gas Tariff, Second Revised Volume No. 1 (Volume No. 1 Tariff) proposed to be effective April 7, 1989:

4th Revised Sheet No. 81
Original Sheet No. 81A

Transwestern proposes to establish a "no bump" provision under the General Terms and Conditions of its Volume No. 1 Tariff to protect Buyers under Rate Schedule ITS-1 from disruption of the interruptible transportation quantities scheduled and transported on its pipeline system within a calendar month. The new provision, designed to improve continuity of service for Buyers under Rate Schedule ITS-1, prohibits Transwestern from interrupting transportation service under Rate Schedule ITS-1 during a calendar month to schedule transportation quantities for another ITS-1 Buyer with a higher scheduling priority date. An exception is retained for Buyers not willing to pay the maximum rates when Transwestern is unable to receive all gas nominated on a given day.

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 the Commission's Rules of Practice & Procedure (18 CFT 385.211, 385.214). All such motions or protests should be filed on or before March 22, 1989. 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. 89-6367 Filed 3-16-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP89-974-000, et al.]

Northwest Pipeline Corp., et al.; Natural Gas Certificate Filings

March 14, 1989.

Take notice that the following filings have been made with the Commission:

1. Northwest Pipeline Corporation

[Docket No. CP89-974-000]

Take notice that on March 9, 1989, Northwest Pipeline Corporation (Northwest), P.O. Box 8900, Salt Lake City, Utah 84108-0900 filed in Docket No. CP89-974-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for Fina Oil & Chemical Company (Fina), a producer of natural gas, under its blanket certificate issued in Docket No. CP86-578-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northwest states that it would transport up to 4,000 MMBtu per day of natural gas for Fina pursuant to an agreement dated October 10, 1988, as amended October 10, 1988, under Rate Schedule TI-1, for a term continuing on a month to month basis, subject to termination upon 30 business days written notice by either party. Northwest further states that it would transport the natural gas through its transmission system from wells located in Garfield and Rio Blanco Counties, Colorado to the North Douglas Creek and Foundation Creek delivery points located in Garfield County, Colorado and to the existing interconnect with Questar Pipeline Company from the Clough system in Garfield County, Colorado. Nothwest indicates that no construction of new facilities would be required to provide the proposed transportation service.

Northwest states that the maximum day, average day and annual transportation volumes would be approximately 4,000 MMBtu, 2,000 MMBtu and 730,000 MMBtu, respectively.

Northwest advises that it commenced the transportation of natural gas for Fina on January 1, 1989, as reported in Docket No. ST89-2395-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations (18 CFR 284.223(a)).

Comment date: April 28, 1989 in accordance with Standard Paragraph G at the end of the notice.

2. Panhandle Eastern Pipe Line Company

[Docket No. CP89-920-000]

Take notice that on February 28, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas, 77001, filed in Docket No. CP89-920-000 an application pursuant to section 7(b) of the Natural Gas Act requesting an order permitting and approving partial abandonment of sales service to Centeral Illinois Light Company (CILCO), an existing jurisdictional sales customer, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Panhandle states that pursuant to §§ 284.10 of the Commission's Regulations, Panhandle and CILCO have entered into a Sales Agreement dated April 1, 1989, which provides for a 15% reduction of its sales contract demand (CD) level which will be converted to firm transportation service effective on April 1, 1989. Thus, Panhandle seeks authority for partial abandonment of CILCO's daily sales contract quantity. Panhandle further states that it will provide such firm transportation service in accordance with the terms and conditions of Panhandle's Rate Schedule PT-Firm, as such may be amended from time to time, or a successor tariff.

Specifically, Panhandle states that it seeks authority for partial abandonment of CILCO's current sales CD, to be effective April 1, 1989, by the daily amount in Column No. 2, as shown below:

Month	Current CD Mcf/d	Reduction Mcf/d	Resulting CD Mcf/d
January	247,240	29,060	218,180
February	247,240	29,060	218,180
March	247,240	29,060	218,180
April	171,640	29,060	142,580
May	119,350	29,060	90,290
June	68,770	29,060	39,710
July	65,260	29,060	36,200
August	65,260	29,060	36,200
September	98,830	29,060	69,770
October	156,430	29,060	127,370
November	247,240	29,060	218,180
December	247,240	29,060	218,180

It is stated that this proposed abandonment will reduce the annualized total CD from 60,105,740 Mcf to 49,498,840 Mcf.

Comment date: April 4, 1989, in accordance with Standard Paragraph F at the end of this notice.

3. El Paso Natural Gas Company

[Docket No. CP89-896-000]

Take notice that on February 24, 1989, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas, 79978, filed in Docket No. CP89-896-000, an application pursuant to section 7(c) of the Natural Gas Act, for authorization to construct and operate approximately 26.1 miles of new loop pipeline, compression facilities, and associated appurtenances to facilitate the probable transportation of projected gas supplies on its existing San Juan Triangle interstate pipeline system (hereinafter referred to as the "San Juan Triangle System"), all as more fully set forth in the application on file with the Commission and open to public inspection.

El Paso states that certain major natural gas producers expect to develop and acquire approximately 500 MMcf of coal seam gas per day from the San Juan Basin area. El Paso further states that this gas is expected to be available in the third quarter of 1990 and is located in the immediate vicinity of its San Juan Triangle System. El Paso asserts that the existing design capacity of its San Juan Triangle System is approximately 1,500 MMcf per day and that its remaining available capacity is not adequate to transport such projected supplies.

In order to provide additional capacity sufficient to accommodate the 500 MMcf per day of coal seam gas which is expected to be available for transportation through the San Juan Triangle System by October 1990, El Paso proposes to construct and operate: (i) Approximately 14.2 miles of 30" O.D. loop pipeline on its existing 24" O.D. Ignacio to Blanco pipeline; (ii) approximately 11.9 miles of 34" O.D. loop pipeline on its existing 34" O.D. Blanco to Gallup pipeline; (iii) an additional 3,580 horsepower gas turbine-driven centrifugal compressor unit at its Bondad Compressor Station; (iv) tailshaft compression at its Blanco Plant; and (v) an uprate of the existing gas turbines at the White Rock and Gallup Compressor Stations. Such facilities are expected to cost $22,907,450 and El Paso plans to finance this cost with internally generated funds.

Comment date: April 4, 1989, in accordance with Standard Paragraph F at the end of this notice.

4. Northern Natural Gas Company, Division of Enron Corp.

[Docket No. CP89-965-000

Take notice that on March 8, 1989, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP89-965-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to add a delivery point for Minnegasco, Inc. (Minnegasco), in Lakeville, Minnesota, under Northern's blanket certificate issued in Docket No. CP82-401-000 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.

Northern states that the delivery point, which is an existing facility, would be used for the delivery of up to 4,750 MMBtu equivalent of natural gas on a daily basis and 745,000 MMBtu equivalent on an annual basis to Minnegasco for consumption by the community of Lakeville. It is asserted that the delivery point was installed under the self-implementing authorization of Section 311 of the Natural Gas Policy Act and that Northern is now proposing to use the delivery point for jurisdictional deliveries. It is explained that the deliveries would be within Minnegasco's currently authorized entitlement and would not have a detrimental effect on Northern's peak day and annual deliveries.

Comment date: April 28, 1989, in accordance with Standard Paragraph G at the end of this notice.

5. Southern Natural Gas Company

[Docket No. CP89-975-000]

Take notice that on March 9, 1989, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP89-975-000 a request pursuant to §§ 157.205 and 284.223(b) of the Commission's Regulations under the Natural Gas Act for authorization to provide an interruptible transportation service for Sonat Marketing Company (Sonat), a marketer of natural gas, under its blanket certificate issue in Docket No. CP88-316-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Southern states that the maximum daily, average daily and annual quantities that it would transport for Sonat would be 4,000 MMBtu equivalent of natural gas, 2,750 MMBtu equivalent of natural gas and 1,003,750 MMBtu equivalent of natural gas, respectively.

Southern states that it would transport natural gas for Sonat from various receipt points in Louisiana, offshore Louisiana, Texas, Mississippi, Alabama, and offshore Texas to a delivery point in Geogia.

Southern indicates that in a filing made with the Commission in Docket ST89-2253-000, it reported that transportation service for Sonat commenced on January 12, 1989 under the 120-day automatic authorization provisions of Section 284.223(a).

Comment date: April 28, 1989, in accordance with Standard Paragraph G at the end of this notice.

6. Southern Natural Gas Company

[Docket No. CP89-978-000]

Take notice that on March 9, 1989, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 3502-2563 filed in Docket No. CP89-978-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of the City of Sylvania, Georgia (Sylvania), a local distribution company, under its blanket authorization issued in Docket No. CP88-316-000, 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.

Southern would perform the proposed interruptible transportation service for Sylvania, pursuant to an interruptible transportation service agreement dated December 30, 1988. The transportation agreement is effective for a primary term of one month and month-to-month thereafter subject to termination by either party giving five days written notice. Southern proposes to transport 2,894 MMBtu of natural gas on a peak day; 1,500 MMBtu on an average day; and on an annual basis 547,500 MMBtu of natural gas for Sylvania. Southern proposes to receive the subject gas at various existing points of receipt located

in Alabama, Louisiana, offshore Louisiana, Mississippi, Texas and offshore Texas, for redelivery to a point located in Screven County, Georgia. Southern avers that no new facilities are required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's Regulations. Southern commenced such self-implementing service on January 5, 1989, as reported in Docket No. ST89–2244–000.

Comment date: April 28, 1989, in accordance with Standard Paragraph G at the end of this notice.

7. Southern Natural Gas Company

[Docket No. CP89–977–000]

Take notice that on March 9, 1989, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP89–977–000 a request pursuant to §§ 157.205 and 284.223(b) of the Commission's Regulations under the Natural Gas Act for authorization to provide an interruptible transportation service for City of LaFayette, Georgia (Lafayette), a local distribution company, under its blanket certificate issued in Docket No. CP88–316–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Southern states that the maximum daily, average daily and annual quantities that it would transport for LaFayette would be 5,199 MMBtu equivalent of natural gas, 1,200 MMBtu equivalent of natural gas and 438,000 MMBtu equivalent of natural gas, respectively.

Southern states that it would transport natural gas for LaFayette from various receipt points in Louisiana, offshore Louisiana, Texas, Mississippi, Alabama, and offshore Texas to a delivery point in Georgia.

Southern indicates that in a filing made with the Commission in Docket ST89–2236–000, it reported that transportation service for LaFayette commenced on January 5, 1989 under the 120-day automatic authorization provisions of § 284.223(a).

Comment date: April 28, 1989, in accordance with Standard Paragraph G at the end of this notice.

8. ANR Pipeline Company

[Docket No. CP89–967–000]

Take notice that on March 8, 1989, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP89–967–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of Entrade Corporation (Entrade), a marketer, under its blanket certificate issued in Docket No. CP88–532–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

ANR proposes to transport for Entrade on an interruptible basis up to 100,000 dt equivalent of natural gas on a peak day, 100,000 dt equivalent of natural gas on an average day, and 36,500,000 dt equivalent of natural gas on an annual basis. It is stated that service under § 284.223(a) commenced as reported in Docket No. ST89–2336. ANR indicates that no new facilities are proposed herein. ANR proposes to charge Entrade a rate pursuant to ANR's Rate Schedule ITS.

Comment date: April 28, 1989, in accordance with Standard Paragraph G at the end of this notice.

9. K N Energy, Inc.

[Docket No. CP89–966–000]

Take notice that on March 8, 1989, K N Energy, Inc. (K N), P.O. Box 15265, Lakewood, Colorado 80215, filed in Docket No. CP89–966–000 a request for authorization pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act to construct and operate sales taps for the delivery of gas to end users, under K N's blanket certificate issued in Docket Nos. CP83–140–000, CP83–140–001, and CP83–104–002 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.

K N proposes the construction and operation of sales taps to various end users are to be located in the states of Kansas, Nebraska, Colorado, and Wyoming located along its jurisdictional pipelines. K N states that the proposed sales taps are not prohibited by any of its existing tariffs and that the additional taps will have no significant impact on K N's peak day and annual deliveries.

Comment date: April 28, 1989, in accordance with Standard Paragraph G at the end of this notice.

10. Tennessee Gas Pipeline Company

[Docket No. CP89–960–000]

Take notice that on March 8, 1989, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89–960–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) and the Natural Gas Policy Act (18 CFR 284.223) for authorization to transport gas for Mitchell Marketing Company (Mitchell), a marketer/producer of natural gas, under Tennessee's blanket certificate issued in Docket No. CP87–115–000 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.

Tennessee proposes to transport on an interrruptible basis up to 35,000 dekatherm (dkt) of natural gas per day on behalf of Mitchell pursuant to a transportation agreement dated February 2, 1989, between Tennessee and Mitchell. Tennessee would receive gas at various existing points of receipt on its system in Texas and offshore Texas and redeliver equivalent volumes, less fuel and lost and unaccounted for volumes, at various existing delivery points in Texas.

Tennessee further states that the estimated average daily and annual quantities would be 35,000 dkt and 12,755,000 dkt, respectively. Service under § 284.223(a) commenced on February 2, 1989, as reported in Docket No. ST89–2482, it is stated.

Comment date: April 28, 1989, in accordance with Standard Paragraph G at the end of the notice.

11. Northwest Pipeline Corporation

[Docket No. CP89–944–000]

Take notice that on March 2, 1989, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89–944–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for Utah Gas Service Company (Utah Gas) under the blanket certificate issued in Docket No. CP86–578–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northwest states that pursuant to a Transportation Agreement dated February 10, 1988 as amended April 15, 1988, December 5, 1988 and January 9, 1989, it proposes to transport up to 11,500 MMBtu per day of natural gas for Utah Gas under Rate Schedule TI–1, for a term continuing to February 28, 1998, and month to month thereafter.

Northwest will transport the subject gas through its transmission system from any transportation receipt point on its system to any transportation delivery points on its system.

Northwest also states that the maximum day, average day, and annual transportation volumes would be approximately 11,500 MMBtu, 30 MMBtu and 11,500 MMBtu, respectively.

Northwest further states that it commenced their service January 21, 1989, as reported in Docket No. ST89–2274–000.

Comment date: April 28, 1989, in accordance with Standard Paragraph G at the end of this notice.

12. Texas Gas Transmission Corporation

[Docket No. CP89–947–000]

Take notice that on March 6, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89–947–000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to construct and operate a new delivery point for Western Kentucky Gas Company (Western) in Logan County, Kentucky, under Texas Gas' blanket certificate issued in Docket No. CP82–407–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Texas Gas proposes to construct and operate the delivery point for the delivery of approximately 3,300 MMBtu equivalent of natural gas on a daily basis and 88,000 MMBtu equivalent on an annual basis to Western for consumption by Agri-En-Co, Inc.'s greenhouse facilities. It is stated that the delivery point would be located on Texas Gas' Elkton-Mitchellville 10-inch pipeline in Logan County. It is asserted that the deliveries would not result in an increase in Western's existing contract demand and would not have a detrimental effect on Texas Gas' peak day and annual deliveries.

Comment date: April 28, 1989, in accordance with Standard Paragraph G at the end of this notice.

13. Southern Natural Gas Company

[Docket No. CP89–957–000]

Take notice that on March 7, 1989, Southern Natural Gas Company (Southern) filed in Docket No. CP89–957–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 C.F.R. 157.205) for authorization to transport gas, on an interruptible basis, for Sonat Marketing Company (Sonat), under Southern's Blanket certificate issued in Docket No. CP88–316–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Pursuant to a transportation service agreement dated January 18, 1989, Southern seeks to perform the proposed transportation service for Sonat a gas marketer, under Southern's Rate Schedule IT. Southern states that the service agreement is for a primary term of one month with successive terms of one month thereafter, unless cancelled by either party. Southern further states that the service agreement provides for a maximum transportation quantity of 2,000 MMBtu of gas per day; however, Sonat anticipates requesting transportation for only 200 MMBtu of gas on an average day, and accordingly, 73,000 MMBtu of gas on an annual basis. Southern proposes to receive the gas at various existing receipt points in Louisiana, offshore Louisiana, Texas, offshore Texas, Mississippi, and Alabama and transport it to an existing point of delivery in Marengo County, Alabama. Southern advises that it commenced transporting gas for Sonat on January 19, 1989, as reported in Docket No. ST89–2252–000, pursuant to Section 284.223(a)(1) of the Commission's Regulations.

Comment date: April 28, 1989, in accordance with Standard Paragraph G at the end of this notice.

14. Williams Natural Gas Company

[Docket No. CP89–971–000]

Take notice that on March 9, 1989, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89–971–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for End-Users Supply System (End-Users), a marketer, under the blanket certificate issued in Docket No. CP86–631–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

WNG states that pursuant to a transportation service agreement dated January 9, 1989, under its Rate Schedule ITS, it proposes to transport up to 7,733 MMBtu per day equivalent of natural gas for End-Users. WNG states that it would transport the gas from various receipt points in Kansas, Missouri, Oklahoma, Texas and Wyoming, and deliver such gas to various delivery points on WNG's pipeline system located in Kansas, Missouri and Nebraska.

WNG advises that service under § 284.223(a) commenced January 9, 1989, as reported in Docket No. ST89–2182–000. WNG further advises that it would transport 7,733 MMBtu on an average day and 2,822,545 MMBtu annually.

Comment date: April 28, 1989, in accordance with Standard Paragraph G at the end of this notice.

15. Williams Natural Gas Company

[Docket No. CP89–973–000]

Take notice that on March 9, 1989, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89–973–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Amoco Production Company (Amoco), a producer, under the blanket certificate issued in Docket No. CP86–631–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

WNG states that pursuant to a transportation service agreement dated October 5, 1988, under its Rate Schedule ITS, it proposes to transport up to 2,000,000 MMBtu per day equivalent of natural gas for Amoco. WNG states that it would transport the gas from various receipt points in Kansas, Missouri, Oklahoma, Texas and Wyoming, and deliver such gas to various delivery points on WNG's pipeline system located in Kansas, Missouri, Oklahoma, Texas and Wyoming.

WNG advises that service under § 284.223(a) commenced January 27, 1989, as reported in Docket No. ST89–2417–000. WNG further advises that it would transport 2,000,000 MMBtu on an average day and 730,000,000 MMBtu annually.

Comment date: April 28, 1989, in accordance with Standard Paragraph G at the end of this notice.

16. Transwestern Pipeline Company

[Docket No. CP89–953–000]

Take notice that on March 6, 1989, Transwestern Pipeline Company (Transwestern) 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP89–953–000 a request pursuant to § 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 284.223) for authority to provide interruptible transportation service for Apache Marketing, Inc. (Apache), a marketer of

natural gas, under Transwestern's blanket transportation certificate authority issued March 1, 1988, in Docket No. CP88–133–000, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transwestern states it will receive the gas at various existing points on its system in the states of Texas and Oklahoma, and deliver the gas for the account of Apache in the states of California, Texas, Oklahoma and New Mexico.

Transwestern proposes to transport up to 50,000 MMBtu of gas per peak day and approximately 37,500 MMBtu and 18,250,000 MMBtu of gas per average day and annually, respectively. Transwestern states that the transportation service commenced under the 120-day automatic authorization of § 284.223(a) of the Commission's Regulations on January 25, 1989, pursuant to a transportation agreement dated November 16, 1988. Transwestern notified the Commission of the commencement of the transportation service in Docket No. ST89–2154–000 on February 8, 1989.

Comment date: April 28, 1989, in accordance with Standard Paragraph G at the end of this notice.

17. Northwest Pipeline Corporation

[Docket No. CP89–940–000]

Take notice that on March 2, 1989, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89–940–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authorization to transport natural gas for the account of Natural Gas Clearinghouse, Inc. (NGCH), a marketer of natural gas, under Northwest's blanket certificate issued in Docket No. CP86–578–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest proposes to transport up to 150,000 MMBtu of natural gas on a peak day, 2,000 MMBtu on an average day, and 700,000 MMBtu on an annual basis for NGCH. Northwest states that it would perform the transportation service for NGCH under Northwest's Rate Schedule TI–1 for a term continuing until February 13, 1990, and continue on a monthly basis thereafter, subject to termination upon 30 days notice. Northwest indicates that it would transport the gas from any transportation receipt point on its system to any transportation delivery point on its system.

It is explained that the service has commenced under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89–2272–000. Northwest indicates that no new facilities would be necessary to provide the subject service.

Comment date: April 28, 1989, in accordance with Standard Paragraph G at the end of this notice.

18. Northwest Pipeline Corporation

[Docket No. CP89–942–000]

Take notice that on March 2, 1989, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89–942–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authorization to transport natural gas for the account of James River II, Inc. (James River), an end user of natural gas, under Northwest's blanket certificate issued in Docket No. CP86–578–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest proposes to transport up to 62,500 MMBtu of natural gas on a peak day, 37,000 MMBtu on an average day and 13,500,000 MMBtu on an annual basis for James River. Northwest states that it would perform the transportation service for James River under Northwest's Rate Schedule TI–1 for a primary term continuing until January 31, 1990, and continue on a monthly basis thereafter, subject to termination upon 30 days notice. Northwest indicates that it would transport the gas from any transportation receipt point on its system to any transportation delivery point on its system.

It is explained that the service has commenced under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89–2275–000. Northwest indicates that no new facilities would be necessary to provide the subject service.

Comment date: April 28, 1989, 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 filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commision's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by section 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 Section 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 therefor, 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 89–6368 Filed 3–16–89; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3539-4]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA)

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202 382–2740).

DATE: Comments must be submitted on or before April 17, 1989.

SUPPLEMENTARY INFORMATION:

Office of Pesticide and Toxic Substances

Title: FIFRA Reregistration Fees (EPA ICR #1495). This is a new collection.

Abstract: Under the 1988 amendments to the Federal Insecticide, Fungicide and Rodenticide Act, pesticide registrants must pay a one-time fee to cover the costs of reregistering the active ingredients in their products. To determine the amount of this fee, EPA will ask registrants to indicate the source of the active ingredient in their products and the quantity marketed. EPA will use this information to decide whether a pesticide producer is exempt from the fee requirement and, if not, for what market share of product sales it is responsible. Also, small businesses may apply for a waiver of fees by competing a certification form.

Burden Statement: The public reporting burden for the Reregistration Fee Apportionment form is estimated to average 5 hours per respondent and for the Small Business Waiver Certification 1 hour. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Respondents: Pesticide producers.

Estimated No. of Respondents: 4,985.

Estimated Total Annual Burden on Respondents: 30,499 hours.

Send comments regarding the burden estimate, or any other aspect of these information collections, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223), 401 M Street, SW., Washington, DC 20460.

and

Tim Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place, NW., Washington, DC 20530.

OMB Responses to Agency PRA Clearance Requests

EPA ICR #1158; Revisions to Standards of Performance for New Stationary Sources, Rubber Tire Manufacturing Industry; was approved 3/1/89; OMB #2060–0156; expires 03/31/92.

Date: March 10, 1989.

Paul Lapsley,

Director, Information and Regulatory Systems Division.

[FR Doc. 89–6305 Filed 3–16–89; 8:45 am]

BILLING CODE 6560–50–M

[FRL-3539-5]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 382–2740.

SUPPLEMENTARY INFORMATION:

Office of Pesticides and Toxic Substances

Title: Preliminary Assessment Information Rule (EPA ICR #0586); OMB #2070–0054. This is an existing collection.

Abstract: Under the Preliminary Information Assessment Rule, manufacturers and importers of chemical substances must report to the EPA production, use, and exposure data. EPA will use this information to support our chemical risk analysis and risk management programs.

Burden Statement: The public reporting burden for this collection of information is estimated to average 46 hours per respondent. This estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Respondents: Chemical manufacturers and importers.

Estimated No. of Respondents: 219.

Estimated Total Annual Burden on Respondents: 10,139 hours.

Frequency: On occasion.

Send comments regarding the burden estimate, or any other aspect of these information collections, including suggestions for reducing the burden to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223), 401 M Street, SW., Washington, DC 20460.

and

Tim Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place, NW., Washington, DC 20503, (Telephone (202) 395–3084).

Date: March 10, 1989.

Paul Lapsley,

Information and Regulatory Systems Division.

[FR Doc. 89–6306 Filed 3–16–89; 8:45 am]

BILLING CODE 6560–50–M

Office of Pesticides and Toxic Substances

[OPTS–44527; FRL–3539–3]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the receipt of test data on 1,2-dichloropropane (CAS No. 78–87–5) and ethyl methacrylate (CAS No. 97–63–2) submitted pursuant to final test rules under the Toxic Substances Control Act (TSCA). Publication of these notices is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB–44, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: Section 4(d) of TSCA requires EPA to publish a notice in the **Federal Register** reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(a) within 15 days after it is received.

I. Test Data Submissions

Test data for 1,2-dichloropropane was submitted by Dow Chemical Company pursuant to a test rule at 40 CFR 799.1550. It was received by EPA on February 22, 1988. The submission describes chronic toxicity to Mysid (Mysidopsis bahia) under flow-through conditions. Chronic toxicity testing is required by this test rule. This chemical is used as a captive intermediate in the production of perchloroethylene; as a solvent in ion exchange resin manufacture, toluene diisocyanate production, photographic film manufacture, paper coating, and petroleum catalyst regeneration; and in a mixture that is marketed as a soil fumigant.

Test data for ethyl methacrylate was submitted by the Methacrylate Producers Association pursuant to a test rule at 40 CFR 799.5055. It was received by EPA on March 1, 1989. The submission describes a hydrolysis study of C14 ethyl methacrylate. Chemical fate testing is required by this test rule.

EPA has initiated its review and evaluation process for these data submissins. At this time, the Agency is unable to provide any determination as to the completeness of the submissions.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPTS-44527). This record includes copies of all studies reported in this notice. The record is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, Rm. NE-G004, 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

Dated: March 6, 1987.

Joseph J. Merenda,

Director, Existing Chemical Assessment Division, Office of Toxic Substances.

[FR Doc. 89-6307 Filed 3-16-89; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3539-6]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075. Availability of Environmental Impact Statements, filed March 6, 1989 through March 10, 1989, pursuant to 40 CFR 1506.9.

EIS No. 890049, Final, AFS, GA, AL, FL, SC, LA, NC, MS, TX, Coastal Plain/Piedmont National Forest and Grasslands Vegetation Management Plan, Implementation, U.S. Forest Service Southern Region, AL, GA, FL, SC, NC, LA, MS AND TX, Due: April 16, 1989, Contact: Steve McCorquodale (404) 347-7076.

EIS No. 890051, Draft, AFS, SD, Norbeck Wildlife Preserve Land Management Plan, Implementation, Black Hills National Forest, Custer and Pennington Counties, SD, Due: May 1, 1989, Contact: Paul Ruder (605) 343-1567.

EIS No. 890052, Final, NOA, PAC, CA, Cordell Bank National Marine Sanctuary, Designation and Management Plan, Implementation, Pacific Continental Shelf, West of Point Reyes, CA, Due: April 16, 1989, Contact: Frank Christhilf (202) 673-5126.

EIS No. 890053, Draft, BLM, CA, Castle Mountain Open Pit Heap Leach Gold Mine Project, Construction and Operation, Permit Approval, San Bernardino County, CA, Due: May 15, 1989, Contact: John Bailey (619) 326-3896.

EIS No. 890054, Final, FHW, OR, OR-42/Coos Bay/Roseburg Highway Widening and Realignment, Cedar Point Road to Main Street, Funding and 404 Permit, City of Coquille, Coos County, OR, Due: April 16, 1989, Contact: Dale Wilken (503) 399-5749.

EIS No. 890055, Final, NAS, MS, FL, LA, Advance Solid Rocket Motor Program, Design, Construction and Operation, Site Selection, John C. Stennis Space Center, Hancock Co., MS; Yellow Creek Site, Tishomingo Co., MS; John F. Kennedy Space Center, Brevard Co., FL; Michoud Assembly Facility, New Orleans Parrish, LA and Slidell Computer Center, St. Tammany Parish LA, Due: April 17, 1989, Contact: Rebecca C. McCaleb (601) 688-3155.

EIS No. 890056, Draft, MMS, MXG, LA, AL, TX, MS, Central and Western Gulf of Mexico Outer Continental Shelf (OCS) Oil and Gas Lease Sales Nos. 123 and 125, Offshore AL, MS, TX, and LA, Due: May 9, 1989, Contact: Ken Havran (703) 678-7078.

Amended Notices

EIS No. 890004, Final, COE, TX, Applewhite Dam/Reservoir and Leon Creek Diversion Dam/Lake Water Supply Project, Permit Application, Implementation, Section 404 and 10 Permits, Bexar County, TX, Due: March 22, 1989, Contact: Timothy L. Tandy (817) 334-2095. Published FR 01-19-89—Review period extended.

Dated: March 14, 1989.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 89-6399 Filed 3-16-89; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3539-7]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared February 27, 1989 through March 3, 1989 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the **Federal Register,** dated April 22, 1988 (53 FR 13318).

Draft EISs

ERP No. DS-BLM-J70005-WY, Rating LO, Whiskey Mountain and Dubois Badlands, WSAs, Wilderness Recommendations, Designation or Nondesignation, Lander Resource Area, Rawlins District, Fremont County, WY.

Summary

EPA has a lack of objections to BLM's recommendations of nonwilderness status for a 5020 acre and 484 acre wilderness study area. Off-road vehicles would be restricted and wilderness valves supported.

Final EISs

ERP No. F-IBR-J28016-UT, Weber Basin Project, Willard Reservoir Water Use Change, Irrigation to Municipal and Industrial Water Supply Conversion, Implementation, Davis and Weber Counties, UT.

Summary

EPA finds no major objections to the plan, but urges the agencies involved to cooperate to preserve these recreational uses to the maximum extent possible and to coordinate its implementation with outer related local initiatives to prolong recreational use as long as possible.

Dated: March 14, 1989.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 89-6400 Filed 3-16-89; 8:45 am]

BILLING CODE 6560-50-M

[AMS-FRL-3539-1]

Control of Air Pollution from New Motor Vehicle Engines; Federal Certification Test Results for 1989 Model Year

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Section 206(e) of the Clean Air Act, as amended August 1977, directs the Administrator of the Environmental Protection Agency to announce in the **Federal Register** the availablility of the results of certification tets. These tests are conducted on new motor vehicles and new motor vehicle engines to determine vehicles'/engines' conformity with Federal standards for the control of air pollution caused by motor vehicles. The Federal Certification Test Results for the 1989 model year are now available and may be obtained by writing: U.S. Environmental Protection Agency, Office of Mobile Sources, Certification Division, 2565 Plymouth Road, Ann Arbor, Michigan 48105.

FOR FURTHER INFORMATION CONTACT: Maureen Levens, Certification Division, U.S. Environmental Protection Agency, Office of Mobile Sources, 2565 Plymouth Road, Ann Arbor, Michigan 48105, (313) 668–4266.

Date: March 9, 1989.

Don R. Clay,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 89–6314 Filed 3–16–89; 8:45 am]

BILLING CODE 6560–50–M

[FRL-3538-6]

Science Advisory Board Skills Mix Subcommittee; Open Meeting

SUMMARY: Under the Federal Advisory Committee Act, Pub. L. 92–463, notice is hereby given that a meeting of the Skills Mix Subcommittee of the Executive Committee of the Science Advisory Board (SAB) will be held on March 23, 1989. The meeting will begin at 10:00 a.m. and will be held at the Environmental Protection Agency's Headquarters at 401 M St., SW., Washington, DC in the Mall, Room 3307. The meeting will adjourn at 12:00 p.m.

The Subcommittee has been charged with evaluating the scientific and technical mixture of personnel that are employed by EPA Research and Development divisions. The breadth of disciplinary coverage will be examined in light of current research programs. In addition, the mix of scientific and engineering specialties will be considered with regard to future directions and new core program emphasis within the Office of Research and Development (ORD).

Purpose: The specific purpose of this meeting is to review the inventory of information that ORD has prepared to describe the various types of scientists and engineers that currently comprise EPA's research strength. The Subcommittee will evaluate this information and make assessments as to the appropriateness of the mixture of skills based on current and future focus of research programs.

FOR FURTHER INFORMATION: This meeting will be open to the public. Any member of the public who wishes to present information, or receive further details should contact Ms. Janis C. Kurtz, Executive Secretary or Mrs. Dorothy Clark, Staff Secretary (A–101 F) Science Advisory Board, U.S. EPA, 401 M Street, SW., Washington, DC. Telephone (202) 382–2552 or FTS–8–382–2552. Written comments will be accepted and fifteen copies can be sent to Ms. Kurtz at the address above. Persons interested in making brief oral statements before the Subcommittee must contact Ms. Kurtz no later than March 20, 1989, to be assured of space on the agenda.

Dr. Donald G. Barnes,

Director, Science Advisory Board.

Date: March 9, 1989.

[FR Doc. 89–6310 Filed 3–16–89; 8:45 am]

BILLING CODE 6560–50–M

[FRL-3538-7]

Science Advisory Board: Indoor Air Quality and Total Human Exposure Committee; Open Meeting, March 28–29, 1989

SUMMARY: Pursuant to the Federal Advisory Committee Act, Pub. L. 92–463, notice is hereby given of a public meeting of the Indoor Air Quality and Total Human Exposure Committee (IAQTHE) of the Environmental Protection Agency's (EPA) Science Advisory Board (SAB). The meeting will be held from 9:00 a.m. to 4:30 p.m. on March 28–29, 1989 in Conference Room K of the Grand Ball Room of the Marriott Crystal Gateway Hotel, 1700 Jefferson Davis Highway, Arlington, Virginia 22202.

Purpose: The purpose of the meeting is twofold. First, for the committee to review the draft port prepared by the Office of Air and Radiation (OAR) entitled: "Report to Congress on Indoor Air Quality". Second, to brief the Committee on progress made by the Agency's Office of Research and Develpment (ORD) in developing and implementing strategies for conducting research in human exposure.

SUPPLEMENTARY INFORMATION: For information concerning the indoor air program, please contact Ms. Elizabeth Agle, Indoor Air Division, Office of Air and Radiation, (202) 382–7753. For information concerning the human exposure program, please contact Dr. Wayne Ott, Environmental Monitoring Systems Division, Office of Research and Development, (202) 382–5793.

FOR FURTHER INFORMATION: Any member of the public wishing further information concerning the meeting, including a draft agenda and a roster of the participants should contact Mr. Robert Flaak, Executive Secretary, Indoor Air Quality and Total Human Exposure Committee, Science Advisory Board (A–101F), U.S. EPA, Washington, DC 20460, (202) 382–2552, (FTS) 382–2552, (FAX) (202) 475–9693. Seating at the meeting will be on a first-come basis.

Date: March 9, 1989.

Donald G. Barnes,

Director, Science Advisory Board.

[FR Doc. 89–6311 Filed 3–16–89; 8:45 am]

BILLING CODE 6560–50–M

[FRL-3538-8]

Science Advisory Board/Clean Air Scientific Advisory Committee Joint Study Group On Lead; Open Meeting

Under Pub. L. 92–463, notice is hereby given that a meeting of the Science Advisory Board/Clean Air Scientific Advisory Committee (SAB/CASAC) Joint Study Group on lead will be held on March 30, 1989 at the Capitol Hill Hotel, 200 C Street SE., Washington, DC 20003. This meeting will start at 9:00 a.m. and will adjourn no later than 5 p.m. and is open to the public.

The purpose of this meeting will be to review and evaluate the weight of evidence classification of lead and lead compounds as carcinogens as proposed by the Office of Research and Development (ORD). The Study Group will receive briefings from Staff scientists of the ORD Office of Health and Environmental Assessment concerning the issues and will review the draft document entitled "Evaluation of The Potential Carcinogenicity of Lead and Lead Compounds." The document is being prepared in support of reportable

quantity adjustments pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, section 102.

The lead evaluation document will be available to the public prior to the meeting of the Joint Study Group on Lead. The Agency will announce its availability for a 60-day public comment period in a subsequent **Federal Register** Notice. Copies of the document may be requested from the ORD Center for Environmental Research Information (CERI), 26 West Martin Luther King Drive, Cincinnati, OH 45268. Requests may be made in writing or by telephone to (513) 569–7562, or via the Federal Telecommunications System at 8–684–7562. CERI will maintain a backorder request list and will distribute the document to requesters when it becomes available.

An agenda for the meeting is available from Mary L. Winston, Staff Secretary, Science Advisory Board (A101F), U.S. Environmental Protection Agency, Washington, DC 20460 (202–383–2552). Members of the public desiring additional information should contact Mr. Samuel Rondberg, Executive Secretary, Joint Study Group, by telephone at (202) 382–2552, or by mail to the Science Advisory Board (A101F), 401 M Street, SW., Washington, DC 20460 no later than c.o.b. March 20, 1989. Anyone wishing to make a presentation at the meeting should forward a written statement to Mr. Rondberg by the date noted above. The Science Advisory Board expects that the public statements presented at its meetings will not be repetitive of previously submitted written statements. In general, each individual or group making an oral presentation will be limited to a total time of 10 minutes.

Dated: March 9, 1989.

Donald Barnes,

Director, Science Advisory Board.

[FR Doc. 89–6312 Filed 3–16–89; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3538–9]

Science Advisory Board; Modeling Study Group; Open Meeting—April 6–7, 1989

Under Pub. L. 92–463 notice is hereby given that a meeting of the Science Advisory Board's Modeling Study Group will be held at the U.S. Environmental Protection Agency, Administrator's Conference Room 1103, 11th Floor, Waterside Mall, 401 M Street, SW., Washington, DC on April 6–7, 1989. The meeting will begin at 1:00 p.m. on Thursday and adjourn no later than 3:00 p.m. on Friday.

The purpose of the meeting is to discuss the state-of-the-art of environmental modeling, gather information on modeling as practiced at the Environmental Protection Agency, and plan activities of the Study Group for 1989.

The meeting is open to the public; however, seating is limited. Any member of the public wishing to attend or obtain information should contact Mrs. Kathleen W. Conway, Executive Secretary, or Mrs. Dorothy M. Clark, Staff Secretary, (A–101F) Radiation Advisory Committee, Science Advisory Board, by the close of business on April 3, 1989. The telephone number is (202) 382–2552.

Donald G. Barnes,

Director, Science Advisory Board.

Date: March 8, 1989.

[FR Doc. 89–6313 Filed 3–16–89; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL HOME LOAN BANK BOARD

Alpine Federal Savings and Loan Association, Steamboat Springs, CO; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A)(i), of the Home Owner's Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(A)(i), and 12 U.S.C. 1701c (c)(2)(1982), as amended, the Federal Home Loan Bank Board has duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for Alpine Federal Savings and Loan Association, Steamboat Springs, Colorado on March 8, 1989.

Dated: March 13, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89–6387 Filed 3–16–89; 8:45 am]

BILLING CODE 6720–01–M

Ameriway Savings, Houston, TX; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in sections 406(c)(1)(B)(i)(I) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B)(i)(I) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for Ameriway, Savings Houston, Texas on March 8, 1989.

Dated: March 13, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89–6388 Filed 3–16–89; 8:45 am]

BILLING CODE 6720–01–M

Century Federal Savings Bank Trenton, TN; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A)(i), of the Home Owner's Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(A)(i) and 12 U.S.C. 1701c (c)(2)(1982), as amended, the Federal Home Loan Bank Board has duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for Century Federal Savings Bank, Trenton, Tennessee on March 8, 1989.

Dated: March 14, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89–6389 Filed 3–16–89; 8:45 am]

BILLING CODE 6720–01–M

Enterprise Federal Savings & Loan Association, Marrero, LA; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A)(i), of the Home Owner's Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(A)(i), and 12 U.S.C. 1701c(c)(2) (1982), as amended, the Federal Home Loan Bank Board has duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for Enterprise Federal Savings and Loan Association, Marrero, Louisiana, on February 28, 1989.

Dated: March 14, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89–6390 Filed 3–16–89; 8:45 am]

BILLING CODE 6720–01–M

First Federal Savings and Loan Association of Colorado Springs, Colorado Springs, CO; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A)(i), of the Home Owner's Loan

Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(A)(i), and 12 U.S.C. 1701c(c)(2) (1982), as amended, the Federal Home Loan Bank Board has duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for First Federal Savings and Loan Association of Colorado Springs, Colorado Springs, Colorado on March 8, 1989.

Dated: March 13, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-6391 Filed 3-16-89; 8:45 am]

BILLING CODE 6720-01-M

First Federal Savings and Loan Association, Summerville, GA; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A)(i), of the Home Owner's Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(A)(i), and 12 U.S.C. 1701c(c)(2) (1982), as amended, the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for First Federal Savings and Loan Association Summerville, Georgia, on March 8, 1989.

Dated: March 13, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-6392 Filed 3-16-89; 8:45 am]

BILLING CODE 6720-01-M

First Federal Savings and Loan Association of Coffeyville, Coffeyville, KS; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A)(i), of the Home Owner's Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(A)(i), and 12 U.S.C. 1701c(c)(2) (1982), as amended, the Federal Home Loan Bank Board has duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for First Federal Savings and Loan Association of Coffeyville, Coffeyville, Kansas, on February 28, 1989.

Dated: March 14, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-6393 Filed 3-16-89; 8:45 am]

BILLING CODE 6720-01-M

First Savings of LA, FSA La Place, LA; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A)(i), of the Home Owner's Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(A)(i), and 12 U.S.C. 1701c(c)(2) (1982), as amended, the Federal Home Loan Bank Board has duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for First Savings of LA, Federal Savings Association, La Place, Louisiana on February 28, 1989.

Dated: March 14, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-6394 Filed 3-16-89; 8:45 am]

BILLING CODE 6720-01-M

Germantown Trust Savings Bank Germantown, TN; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in section 406(c)(1)(B)(i)(I) of the Natinal Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B)(i)(I) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for Germantown Trust Savings Bank, Germantown, Tennessee on March 8, 1989.

Dated: March 14, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-6395 Filed 3-16-89; 8:45 am]

BILLING CODE 6720-01-M

Modern Federal Savings And Loan Association Grand Junction, CO; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A)(i), of the Home Owner's Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(A)(i), and 12 U.S.C. 1701c(c)(2) (1982), as amended, the Federal Home Loan Bank Board has duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for Modern Federal Savings and Loan Association, Grand Junction, Colorado, on March 8, 1989.

Dated: March 13, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-6396 Filed 3-16-89; 8:45 am]

BILLING CODE 6720-01-M

Unipoint Federal Savings Bank Trumann, AR; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A)(i), of the Home Owner's Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(A)(i), and 12 U.S.C. 1701c(c)(2) (1982), as amended, the Federal Home Loan Bank Board has duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for Unipoint Federal Savings Bank, Trumann, Arkansas on February 28, 1989.

Dated: March 14, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-6397 Filed 3-16-89; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW, Room 10325. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirement for comments and protests are found in § 560.7 and/or 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 002-010071-005.

Title: The Cruise Lines International Association Agreement ("Association").

Parties:

Admiral Cruises
Aloha Pacific Cruises
American Hawaii Cruises
Bermuda Star Line
Carnival Cruise Lines
Chandris Fantasy Cruises
Clipper Cruise Line

Commodore Cruise Line, Ltd.
Costa Cruises
Crown Cruise Line
Crystal Cruises
Cunard Line, Ltd.
Cunard/Norwegian American Cruises
Cunard Sea Goddess
Delta Queen Steamboat Co.
Dolphin Cruise Line
Dolphin Hellas Cruises
Epirotiki Lines, Inc.
Holland America Line
Norwegian Cruise Line
Ocean Cruise Lines, Inc.
Pearl Cruises of Scandinavia, Inc.
Premier Cruise Lines
Princess Cruises/(SITMAR Cruises)
Regency Cruises
Royal Caribbean Cruise Line, Inc.
Royal Cruise Line
Royal Viking Line
Seabourn Cruise Line
Sea Venture Cruises
Society Expeditions Cruises
Sun Line Cruises
Windstar Sail Cruises
World Explorer Cruises

Synopsis: The proposed modification would list the current membership of the Association, restate the Agreement, and make other non-substantive administrative changes.

Filing Party: Edward Schmeltzer, Esquire, Schmeltzer, Aptaker & Sheppard, P.C., The Watergate, Suite 1000, 2600 Virginia Avenue, NW., Washington, DC 20037–1905.

By Order of the Federal Maritime Commission.

Dated: March 14, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89–6248 Filed 3–16–89; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Center Financial Corp.; 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. section 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. section 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 April 7, 1989.

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Center Financial Corporation,* Waterbury, Connecticut; to become a bank holding company by acquiring 100 percent of the voting shares of Centerbank, Waterbury, Connecticut, and 100 percent of the voting shares of Burritt InterFinancial Bancorporation, New Britain, Connecticut, both of which engage in the sale of Connecticut Savings Bank Life Insurance.

Board of Governors of the Federal Reserve System, March 13, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89–6240 Filed 3–16–89; 8:45 am]

BILLING CODE 6210–01–M

Dresdner Bank AG et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have 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. section 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.

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 on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 7, 1989.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Dresdner Bank AG,* Frankfurt/Main 11, Federal Republic of Germany; to engage *de novo* through its subsidiary, Oechsle International Advisors L.P., Boston, Massachusetts, in investment advisory activities pursuant to § 225.25(b)(4) of the Board's Regulation Y.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Central-State Bancorp, Inc.,* Frankfort, Michigan; to engage *de novo* through its subsidiary, Central State Leasing, Inc., Frankfort, Michigan, in the leasing of real and personal property pursuant to § 225.25(b)(5) of the Board's Regulation Y.

2. *Nevada National Co.,* Omaha, Nebraska; to engage *de novo* through its subsidiary, Yanney Hughes Investment Corporation, Omaha, Nebraska, in lending activities pursuant to § 225.25(b)(1) of the Board's Regulation Y. These activities will be conducted in Nebraska and Iowa.

Board of Governors of the Federal Reserve System, March 13, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89–6241 Filed 3–16–89; 8:45 am]

BILLING CODE 6210–01–M

First Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies; Correction

This notice corrects a previous **Federal Register** notice (FR Doc. 89–3599) published at page 7097 of the issue for Thursday, February 16, 1989.

Under the Federal Reserve Bank of San Francisco, the entry for First Bancorp, Inc. is amended to read as follows:

1. *First Bancorp, Inc.*, Ketchikan, Alaska; to become a bank holding company by acquiring 100 percent of the voting shares of First Bank, Ketchikan, Alaska. A subsidiary of First Bank, Dock Street Title Insurance Agency, Inc., engages in title insurance agency activities. Dock Street does not engage in any other insurance activities. First Bancorp has committed to divest Dock Street or otherwise render its activities in compliance with section 4(c)(8) of the Bank Holding Company Act within two years of the proposed consummation of this proposal.

Comments on this application must be received by March 31, 1989.

Board of Governors of the Federal Reserve System, March 13, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-6243 Filed 3-16-89; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control; Acquisition of Shares of Banks or Bank Holding Companies; Jay A. Fischer

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. section 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. section 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 31, 1989.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Jay A. Fischer*, trustee under trust agreements for Paola M. Luptak, Leslie Beznos, and Samuel Beznos; and Michael J. Mehr for Lauren Beznos; to acquire 6.92 percent of the voting shares of Capital Bancorp, Ltd., Lansing, Michigan, and thereby indirectly acquire Capitol National Bank, Lansing, Michigan.

Board of Governors of the Federal Reserve System, March 13, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-6242 Filed 3-16-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

Meeting; Scientific Counselors Board

ACTION: Notice of meeting.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix 2), the Agency for Toxic Substances and Disease Registry (ATSDR) announces the following committee meeting.

Name: Board of Scienfific Counselors, ATSDR.

Time and Date: 2:00 pm–9:30 pm—April 14, 1989, 8:30 am–1:30 pm—April 15, 1989.

Place: Ritz-Carlton Hotel, 181 Peachtree Street, NE., Atlanta, Georgia 30303.

Status: Open.

Purpose: The Board of Scientific Counselors, ATSDR, advises the Administrator, ATSDR, on ATSDR programs to ensure scientific quality timeliness, utility, and dissemination of results. Specifically, the Board advises on the adequacy of the science in ATSDR-supported research, emerging problems that require scientific investigation, accuracy and currency of the science in ATSDR reports, and program areas to emphasize and/or to de-emphasize.

Agenda: The entiree meeting will be open to the public. Written comments for consideration by the Board are welcome and should be received by the Executive Secretary prior to the opening of the meeting. The meeting will include a review of the ATSDR Health Assessment Format, Guidelines and Methodology and the proposed ATSDR research grant program on generic issues related to health assessments and toxicological profiles. Also, the agenda will include a review of health problems of minority populations (relative importance of potential exposure to hazardous chemicals) and the ATSDR initiative on minority populations and hazardous waste sites. A brief presentation on human exposure assessment strategies and specific methodologies is also planned. Agenda items are subject to change as priorities dictate.

FOR FURTHER INFORMATION CONTACT: Charles Xintaras, Sc.D., Executive Secretary, Board of Scientific Counselors, ATSDR, Chamblee 27, Mail Stop F-38, 1600 Clifton Road, NE., Atlanta, Georgia 30333, Telephone: FTS: 236-4800; Commercial: 404-488-4800.

Dated: March 10, 1989.

Elvin Hilyer,

Associate Director for Policy Coordination.

[FR Doc. 89-6347 Filed 3-16-89; 8:45 am]

BILLING CODE 4160-70-M

Alcohol, Drug Abuse, and Mental Health Administration

Demonstration Grants for the Prevention, Treatment and Rehabilitation of Drug and Alcohol Abuse Among High Risk Youth

AGENCY: Office for Substance Abuse Prevention.

ACTION: Notice of request for applications.

Introduction and Background

The use of alcohol and other drugs by children and youth is a serious national problem. Hundreds of thousands of the children of this nation are endangering their lives and their futures. Crime, Violence, and tragedy sear the lives of victims, families, and friends.

In response to this national problem, the Congress, in October 1986, passed and the President signed into law, the Anti-Drug Abuse Act of 1986 (Pub. L. 99-570) as part of the new Federal initiative to prevent alcohol and drug abuse. Section 4005 of that law amended Part A of Title 5 of the Public Health Service Act by adding a section establishing the Office for Substance Abuse Prevention (OSAP) in the Alcohol, Drug Abuse and Mental Health Administration (ADAMHA) and authorizing the Director of OSAP to support a demonstration grant program that "shall make grants to public and nonprofit private entities for projects to demonstrate effective models for the prevention, treatment, and rehabilitation of drug abuse and alcohol abuse among high risk youth" (sec. 509A.(a)).

In October 1988, Congress further amended this law by broadening the categories of high risk youth, directing OSAP to give priority to applications with a strong evaluation component, and by elevating OSAP to Institute level status (Pub. L. 100-690). These statutory guidelines and the experience OSAP has gained from the demonstration grant projects funded under the earlier grant

announcement are the basis for the orientation of this announcement.

The programs covered by this announcement are one part of a broad Federal initiative to establish effective drug and alcohol abuse prevention, treatment, and rehabilitation programs. OSAP strongly encourages potential applicants to proposed innovative methods for improving coordination and collaboration among health, criminal justice, education, voluntary and other relevant community-based organizations and service systems to provide comprehensive, multilevel substance abuse prevention messages. This announcement emphasizes the importance of a comprehensive holistic approach to the prevention and treatment of alcohol and other drug use by high risk youth.

Program Goals

The OSAP goals for this Grant Announcement are to support a small number of demonstration programs that will develop and evaluate approaches at the client and/or service systems levels targeted toward:

(a) Decreasing the incidence and prevalence of drug and alcohol use among high risk youth;

(b) Reducing the risk factors for using alcohol and other drugs as they impact on individual high risk youth, and on the environments in which high risk youths and their families function;

(c) Increasing resiliency and protective factors within high risk youth and within high risk families and communities to reduce the likelihood that youths will use alcohol and other drugs;

(d) Coordinating and integrating the non-use messages and activities of the many human service systems and other social influences affecting high risk youth into comprehensive, multilevel prevention communities;

(e) Increasing the availability and accessibility of prevention, treatment and rehabilitation service of these populations;

(f) Reducing the severity of impairment and promoting the rehabilitation of youths already using alcohol and other drugs.

The specific aims and objectives of an applicant need not address all of these OSAP program goals. However, proposed projects should be consonant with one or more of these goals.

Program Emphasis

OSAP will fund service and service systems demonstration projects that propose promising models or innovative approaches for prevention, treatment, and rehabilitation services for high risk youth. OSAP especially encourages applications to demonstrate effective models in primary prevention and in early intervention.

Projects supported under this announcement may be client or systems oriented. That is, the focus of the project may be on reducing specific risk factors for alcohol and other drug use among youth in a targeted population or on developing a system of linked, coordinated, community-based services so as to address multiple risk factors for alcohol and other drug use among high risk youth. However, projects that propose to address systems-level change must eventually relate these changes to client benefit. Applicants' approaches to service delivery or service system collaboration must be based on state-of-the-art practices and relevant knowledge and theories in the prevention and treatment fields.

Recent evidence suggests that substance abuse among youth is associated with multiple risk and resiliency factors that are inherent within the individual (e.g. genetics, personality, physical health), the individual's environment (e.g. family, peers) and the individual's interaction with his/her environment. Likelihood that a young person will use and abuse alcohol and other drugs appears to increase as the number of risk factors increase and the number of resiliency or protective factors decrease. Risk and resiliency factors affecting high risk youth may include immediate and extended family, peers, school, neighborhood, community and the larger society. Special stresses and protective factors may be associated with the membership of many high risk youth in racial-ethnic minorities. Any preventive or treatment intervention is likely to be more effective if it focuses on reducing the power of risk factors and increasing the potency of resiliency factors across several environmental levels. Prevention/intervention models proposing to target single risk factors are likely to be less effective.

OSAP intends to fund applications that target youths with multiple risk factors, and propose comprehensive, multilevel prevention/intervention strategies that address clearly specified risk factors. When these risk factors involve several human service systems (e.g., juvenile justice system, educational system, social welfare system, mental health system, substance abuse service system, etc.), a coordinated prevention/intervention model is encouraged. Proposals to demonstrate effective comprehensive service systems, particularly model service systems directed at primary prevention and early intervention, are a priority focus of this announcement.

The following guidelines reflecting the emphases of this announcement are offered to optimize the potential for successful projects.

A. Project Model

This announcement will fund projects that hold promise for demonstrating effective models for the prevention, early intervention, treatment and rehabilitation of alcohol and other drug use by high risk youth as defined below. OSAP especially encourages applications to demonstrate effective models in primary prevention and in early intervention.

1. Primary prevention focuses on high risk youth who are not users of alcohol or other drugs;

2. Early intervention focuses on youth who have an early involvement or are experimenting with alcohol, tobacco, marijuana, or other illicit substances (such as inhalants, solvents, or prescription medications);

3. Treatment/rehabilitation focuses on youth who are users of alcohol or other drugs and in need of treatment and/or rehabilitation.

B. Target Populations

High Risk Youth

This legislation, as modified by the Anti-Drug Act of 1988 (Pub. L. 100–690), defines "high risk youth" as "any individual who has not attained the age of 21 years, who is at high risk of becoming or who has become a drug abuser or an alcohol abuser and who:

(1) Is identified as a child of a substance abuser;

(2) Is a victim of physical, sexual, or psychological abuse;

(3) Has dropped out of school;

(4) Has become pregnant;

(5) Is economically disadvantaged;

(6) Has committed a violent or delinquent act;

(7) Has experienced mental health problems;

(8) Has attempted suicide;

(9) Has experienced long-term physical pain due to injury; or

(10) Has experienced chronic failure in school." (sec. 509A(f); Pub. L. 100–690)

These are illustrative categories of youth that have a high probability of being at risk for the use of alcohol and other drugs. The list is not exhaustive and it is not meant to exclude other documented groups of high risk youth.

There are many factors that place a child at risk for using alcohol and other drugs. Some of these factors are a function of the individual; some a

function of the physical, cultural, social, political, and economic environment in which the individual resides. It is the multiplicity of these risk factors that increases the probabilities of alcohol and other drug use among youth. High risk youth are those who experience multiple risk factors.

Age Groups

Projects should be designed to address the risks associated with specific developmental age groups. These age groupings roughly correspond to major school divisions (e.g., preschool [3–5 years]; elementary school [6–11 years]; middle school [12–14 years]; high school [15–18 years]; and college [19–20 years]. If more than one developmental age group is included in a single application, separate evaluations must be planned for each group so that it is possible to assess independently the efficacy of the intervention on this developmental group.

C. Comprehensiveness of Project

Current prevention theory recognizes that the use of alcohol and other drugs by youth is caused by multiple risk factors involving personality, environmental and behavioral variables. It is the intent of this program to encourage the planning and implementation of prevention and treatment strategies that address the individual holistically by considering a multiplicity of risk factors for alcohol and other drug use. Priority will be given to prevention as well as early intervention models that address specified risk factors for the use of alcohol and other drugs at the individual level as well as some risk factors associated with the environment in which such youth reside (e.g., family or significant others in the environment of such youth, peers, school and/or recreation environment, community and society).

D. Coordination with Other Agencies

The use of alcohol and other drugs, juvenile delinquency, impaired and reckless driving, chronic school failure, dropping out of school, and sexual activity at an early age are closely related problem behaviors frequently found in the same young people. Depending upon which problem behavior is manifested, a different human service system may be activated. Priority will be given to prevention as well as early intervention projects that coordinate with and/or establish service linkages with other human service systems that have an appropriate vital stake in the target population.

E. Project Orientation

Projects supported under this program may be client or system oriented. Applicants' programs may focus on reducing specific risk factors for alcohol and other drug use among specific youth served in a targeted population. Projects may also propose to develop a system of linked, coordinated, community-based services, public policy initiatives, and media campaigns to address multiple environmental and individual risk factors. Effective models are needed of both client- and system-level prevention and early intervention strategies. Applicants proposing to address systems-level change must relate their program activities ultimately to changes in the behaviors of high risk youths. Measuring effectiveness of system-level interventions, then, must include both service system and client level outcome indicators. An applicant proposing a system-level intervention may plan one or two years of system development before expecting to measure client level behavior changes in high risk youth. Applicants may also propose projects that include aspects of both client and system approaches.

F. Evaluation

The Anti-Drug Abuse Act of 1988 (Pub. L. 100–690) stipulates that funding priority should be given to prevention demonstration grant applications that employ appropriate strategies for evaluating the effectiveness of their proposed projects. OSAP will support only projects with a well-developed evaluation plan. Evaluation plans will be expected to include process evaluation strategies sufficient to facilitate replication of the project if the approach proves promising. Therefore, program evaluation plans should address how the program was implemented, including what services were provided, to whom, when, how often, and in what settings.

Proposals must also include plans to evaluate the effectiveness of their interventions. The evaluation plan should be logically derived from the service or service system objectives of the project. A strong evaluation component of prevention demonstration efforts is essential if programs are to add to our knowledge of effective prevention and treatment interventions with high risk youth. Well intended prevention programs do not always have good outcomes. Typically, outcome evaluations include collection of pre- and post-intervention measurements on pre-planned indicators of effectiveness. Outcome variables and instruments should logically relate to the planned program activities and the theories and models which underlie the planned program.

Priority will be given to projects that have access to evaluation expertise on staff or by means of contract or linkage with a university or other appropriate organization with evaluation expertise. It is advisable that evaluation expertise be involved in the design of the project and development of the application so as to ensure the integration of evaluation in the conceptualization of the project. Between 15 percent to 20 percent of the budget should be allocated to evaluation activities. Applicants are further encouraged to explore the possibility of in-kind support and cost-sharing with universities or public or private organizations to enhance the project's evaluation component.

This Request for Applications solicits applications for *service demonstration* projects that propose promising models or innovative approaches to the issues outlined above. All projects will be expected to have a well developed program evaluation plan which is derived from the service activities of the project. Applicants should propose approaches with a sound conceptual basis consistent with state of the art practices, knowledge and theories in the field of prevention.

However, OSAP does not support prevention research or prevention research demonstrations. Accordingly, applications using rigorously controlled experimental designs for the purpose of assessing the efficacy of particular interventions may be more appropriate for the National Institute on Drug Abuse (NIDA), the National Institute on Alcohol Abuse and Alcoholism (NIAAA), or the National Institute of Mental Health (NIMH). Individuals interested in prevention research or research demonstrations should contact NIDA, NIAAA, or NIMH which support prevention research.

Project Requirements

—Allow for two persons (project director and one other person to be designated by the project director) to attend one national meeting in the Washington, DC area each year.

—Include a commitment to cooperate fully in the development and conduct of a national evaluation of the grant program including meeting the OSAP grant reporting guidelines.

—Provide a final report that can serve as an implementation manual, in accordance with OSAP guidelines.

—Involve a range of interest groups, relevant organizations and agencies in the planning and implementation of the project along with documentation of such involvement e.g., letters of support and/or commitment.

Eligibility

Any public or nonprofit entity is eligible to apply for this grant program. Current recipients of OSAP demonstration grants are eligible if they propose new projects in response to this announcement. OSAP grantees who have completed or are completing their project period are eligible to apply for competitive renewals. Competitive renewal applicants may apply for three additional years provided their proposed project meet the conditions of this grant announcement. Women and minority organizations are encouraged to apply.

Period of Support

Support may be requested for a period of up to five years. Annual awards will be made subject to continued availability of funds and progress achieved.

New applicants may apply for a period of up to five years. Competing renewal applicants may add up to three years for a total of five years provided their grant applications meet the conditions of this announcement.

Availability of Funds

It is estimated that approximately $7 million will be available to support approximately 35 grants under this announcement. The expected average amount of an award is approximately $200,000. However, the amount of funding will depend upon appropriated funds and program priorities at the time of award.

Application Procedures

Application kits (PHS 398; rev. 9/86) and PHS 5161–1; rev. 4/88) with guidance for OSAP applications, (pages 12–18 of the announcement) are available from: National Clearinghosue for Alcohol and Drug Information (NCADI), Post Office Box 2345, Rockville, Maryland 20852, (301) 468–2600.

Applicants who obtain a copy of the application kit (PHS 398, rev. 9/86; or PHS 5161–1, rev. 4/88) from their local university need to obtain a copy of the grant announcement and OSAP guidelines for preparing an application that is acceptable for review. The NCADI may be contacted for a copy of these guidelines.

State and local governments should use Form PHS 5161–1. The title of announcement "Demonstration Grants of the Prevention, Treatment, and Rehabilitation of Drug and Alcohol Abuse Among High Risk Youth" should be typed in Item 9 on the face page of the PHS 5161–1. Other applicants should use Form PHS 398 and identify the title of the announcement in Item 2.

Applicants should return the signed original form PHS 398 and six (6) permanent, legible copies (original and 2 copies if using the form PHS 5161–1) of the completed application to: OSAP Programs, Division of Resarch Grants, NIH, 5333 Westbard Avenue, Bethesda, Maryland 20892.

IMPORTANT—The mailing envelope (including that provided by an express carrier) must be clearly marked "OSAP High Risk Youth Demonstration Grants".

Applications must be complete and contain all information needed for review. No addenda will be accepted later unless specifically requested by the Executive Secretary of the review committee.

The intergovernmental review requirements of Executive Order 12372, as implemented through DHHS regulations at 45 CFR Part 100, are applicable to this program. Through this process, States, in consultation with local governments, are provided the opportunity to review and comment on applications for Federal financial assistance. Applicants should contact the State's Single Point of Contact (SPOC) as early as possible to determine the applicable procedure. A current listing of all SPOCs is enclosed with the application kit. Applicants should note that comments received from the State will be considered as a factor in the review of their applications. SPOC comments should be sent to the Executive Secretary, Initial Review Group no later than 60 days after the relevant receipt date. Applicants will be informed as to the Executive Secretary's name and address after receipt of the application.

The application must include a copy of a letter sent to the Single Stage Agency (SSA) briefly describing the grant proposal.

Application Characteristics

The narrative section should be written in a manner that is clear to outside reviewers unfamiliar with prior related activities of the applicant. It should be well organized, succinct, and contain all information necessary for reviewers to understand the project fully. The narrative (Sections A through E) may not exceed 25 single spaced pages. The Project Management Plan (Section F), Resources (Section G), may not exceed a total of ten pages. Appendices will not be counted towards the page limits. Appendices may be attached for technical or specialized materials but should not be used merely to extend the narrative. Applications exceeding these pages limits on the narrative section (Sections A through G) will not be accepted for review.

Abstract

The narrative section of the application must be preceded by a single spaced abstract not to exceed 30 lines. The abstract will be included in the summary statement. Competing renewal applications from demonstration projects currently funded by OSAP should identify themselves as such in the first sentence of the abstract, and should include the OSAP number assigned in the past (e.g. H894 AD ——). The abstract will not be counted toward the total page limit of the narrative. The abstract should provide readers with the following information: "Who—will do that—to whom—how—when—where—and the underlying rationale or model for this approach."

Index

Immediately following the abstract page, the applicant will be required to provide an index page identifying the page where each section of the application outline begins. Sections A–E of the outline may not exceed 25 single spaced pages. Sections F and G may not exceed 10 pages, so that the total length of these sections will not exceed 35 pages.

The following sections A through G replace the general instructions for completing the program narrative of the application form PHS 5161–1 or section 2 (research plan) of Form PHS 398.

A. Specific Aims

This section should state concisely the objectives of the project, and describe briefly what the project intends to accomplish. Suggested length of section: One-half to one page.

The applicant must clearly outline the objectives for the proposed project and show how these objectives relate to OSAP goals listed in Section A of this announcement. Applicants should address the following types of questions in this section of the application:

What is the intervention expected to accomplish (e.g., improve grades; improve family parental skills; change family attitude toward drug use; increase unfavorable attitudes towards alcohol and other drug use in school environment; initiate community effort

to find after-school employment for high risk youth)?

Which risk factors are expected to be reduced by the intervention proposed by this project? Which resiliency factors will be enhanced?

How many youth (and/or families) are expected to be reached and in what time frame?

What changes are anticipated in the relevant services delivery system to high risk youth as a result of the intervention proposed by this project?

Why do you anticipate changes in these objectives? What model, theory, evidence from clinical practice, or other grounds suggest that these goals will be met?

B. Background and Significance

This section should sketch the background that led to the proposed project, cite and evaluate pertinent literature, identify gaps/needs which the project will fill, and state how the project will relate to objectives or specific aims identified in the previous section. A brief and focused review of the literature as well as any relevant prior work, observations, or experiences of the applicant must be included in this section. Competing renewal applications must include a progress report as part of the pertinent background. Suggested length of section: three to five pages.

For systems oriented applications, include a description of any current or planned statewide and/or community-wide activities aimed at improving community based services for the target population(s), and a discussion of problem areas still needing to be addressed.

C. Target Population

Identify the target population(s) the project is intended to serve. Include special characteristics of the target population, such as risk factors, incidence and prevalence data, location, demographic and socioeconomic characteristics, and ethnic/cultural minority composition. Suggested length of section: One to three pages.

D. Approach/Method

This section describes how the project would actually be accomplished. Applications must clearly describe the approaches and methods to be used, including screening measures, recruitment procedures, and curricular or intervention strategies. The only page length guideline that can be given is that this section forms the core of the proposal, and sufficient detail should be provided to provide reviewers a clear understanding of the approach planned.

Applications should include the following information in this section:

Procedures for gaining access to the target group. Applicants should indicate plans for dealing with the difficult and critical issues of identification, recruitment, involvement, retention, and follow-up with these populations;

Where appropriate, plans for any special attention to be given to the unique needs and concerns of members of cultural and ethnic minority groups within the target populations;

A plan of action that describes the project, discusses how each activity related to the project will be approached, coordinated with existing programs (where appropriate), and implemented. Program components should be related to information from the background section of the proposal (e.g. needs, existing service, previous accomplishments).

An impact model that provides reasoning for the linkages between specific program activities and immediate and longer term expected outcomes. This impact model provides the logical rationales for expecting planned interventions to have desired effects.

Where appropriate to the planned program (e.g. in systems oriented interventions), provide plans for and evidence of coordination with existing local, State, and/or Federal programs. Specific working agreements (pending funding) should be included as appendices, where appropriate. Justification should be provided if no such working agreements are included. Evidence of existing or previous joint efforts should be submitted, if available. At a minimum, letters of support from all cooperating organizations should be provided. Such letters should be specific with respect to the commitment (e.g., personnel and other resources, access to populations) and the intent of the organizations involved. Specific working agreements and letters of support should be attached as appendices.

E. Evaluation Plan

OSAP will support only projects with well developed program evaluation plans. Such plans will be expected to include process evaluation strategies sufficient to facilitate replication of the project if the approach proves promising. Proposals must also include plans for outcome/impact evaluations to determine whether the program was effective in meeting its goals. Therefore, program evaluation plans should address how the program will document program implementation and outcome, including means for determining what services were provided, to whom, when, how often, in what settings, and to what effect. Applications determined to have an inadequate evaluation design, or that provide insufficient detail concerning evaluation plans will be judged to be incomplete and removed from further review. Suggested section length: Two to five pages.

Applicants should demonstrate plans to secure appropriate evaluation expertise either on their staff or through arrangements with university or other appropriate organization providing evaluation expertise. Letters of agreement should be referenced in this section, and included as appendices.

Process evaluation involves the design and collection of data that permits a quantitative and qualitative description of the implementation of the project (e.g., description of size and nature of client population, staff characteristics, amount and types of services provided). The results of process evaluation should be a description that others who wish to replicate the program could use to set up their own program. Process evaluations may include qualitative and quantitative data collection procedures.

The purpose of the outcome evaluation is to demonstrate whether the implemented intervention(s) had the desired effect on the target population and where possible to show that these effects are specific to the implemented intervention(s) as opposed to other factors. The nature of the outcome data will vary as a function of the goals of the project. Applicants should describe their evaluation designs, proposed instruments (with copies of measures included in the appendices), a tentative schedule and procedure for the collection of data, and a description of the data analysis plan.

For client-focused projects, evaluation plans should include measures of the results/benefits anticipated from the proposed intervention on the target population. For systems-focused projects, evaluation plans should include indicators of system benefits as well as benefits for individuals in the target population.

Depending on the complexity of the proposed program, and the degree to which early program activities are devoted to implementation and stabilization of programs, it may be unrealistic to expect evidence of effectiveness during the first year of funding. However, it would be considered advisable to collect evaluation data on a trial or pilot basis during the first year of the demonstration program in order to gather baseline information for comparison purposes.

F. Project Management Plan

The Project Management Plan must include a description of the tasks to be performed, a schedule of the tasks, and their relationship to each other and to the program goals. The individual/staff positions responsible for each task should be identified, as well as the manner that each position and task will relate to the project director. Biographical sketches of key personnel should be included on the appropriate pages of form PHS 398 or included in a readily identifiable appendix.

The management plan should show how tasks are related to the project goals and objectives, as well as to the management of the project. A PERT or Gantt chart and/or flow diagrams may be helpful to display these tasks.

1. *Organizational structure.* A narrative description of the organizational structure of the proposed demonstration project should indicate the organizational relationships and responsibilities of the Project Director and each project unit or activity.

The responsibilities and composition of governing or supervisory boards should be included, where applicable. Organizational relationships between the applicant and other State/local level health and human services agencies should be briefly described, if these relate to the proposed project. An organizational chart should be provided which illustrates relationships and lines of responsibility.

2. *Organizational capability.* Applicants should provide evidence that the organization is capable of implementing the proposed project. Documentation of experience in similar or other relevant activities, access to the target population(s), expertise in service delivery and evaluation, experience in developing and effectively using interorganizational agreements, and other indicators of capability should be provided as appropriate. The use of external expertise is encouraged when helpful (e.g., evaluation consultants) and not available within the organization.

3. *Staffing.* Briefly described the jobs/roles that will make up the proposed project. Job descriptions should be included in the appendices for each key professional position identified in the proposed budget. Job descriptions should include: Job title, description of duties and responsibilities, qualifications for the position, supervisory relationships, skills and knowledge required, prior experience required, educational background required, and job site (if appropriate). Include as appendices resumes for all key staff and consultants proposed for the project. These resumes should include names, present citizenship, educational background, major professional interest(s), membership in professional organizations, professional experience, honors received, and recent relevant publications. Experience and/or training pertinent to the proposed project should be highlighted.

This portion of the management plan should include a brief description of staff recruitment and selection procedures, and any planned mix of background, skills, and/or personal qualities needed for the project.

Consideration must be given to the use of multidisciplinary staff and staff representing the race, gender, ethnic, and cultural characteristics of the population to be served by the project.

G. Resources

Describe the facilities, equipment, service capabilities, and other resources available to carry out the project.

Confidentiality of Alcohol and Drug Abuse Patient Records

Awardees must agree to maintain the confidentiality of alcohol and drug abuse client data in accordance with the regulations governing "Confidentiality of Alcohol and Drug Abuse Patient Records", (42 CFR Part 2).

Review Process

Applications submitted in response to this announcement will be reviewed in accordance with ADAMHA peer review procedures for grants. Applicants must submit completed applications. OSAP staff will screen submitted applications and return those that are judged to be incomplete, non-responsive to this announcement or non-conforming (e.g., exceed the page limits). Returned applications will *not* be accepted for this review schedule but may be submitted for the next review cycle. Those applications which are complete will enter a multi-stage review process. In the first stage, the valuation component will be assessed. Applications judged to be lacking in the measures or method to assess the proposed project will be considered non-competitive and removed from further review consideration. OSAP will notify and advise the applicant and the institutional business official of this action. Applicants judged to be conforming, responsive and competitive will be continued to be reviewed for technical merit in accord with the PHS and ADAMHA policies for peer/objective review. The initial review group(s) (IRGs) will be composed primarily of non-Federal experts. OSAP reserves the right to conduct the multi-stage review at one time or in two discrete steps. In addition, the recommendations of the initial review groups may be submitted for information and additional consultation to an OSAP Advisory Board.

Notification of the review outcome will be sent to the applicant upon completion of the review.

Review Criteria

Criteria for technical merit review of applications will include the following:

—Relevance of project objectives to OSAP objectives for the grants program.

—Appropriateness and soundness of the procedures for identifying, recruiting, and retaining the target population(s).

—Availability of and access to the target population(s).

—Adequacy of documentiton of the need for the project and the quality of the problem definition in the narrative.

—Adequacy and appropriateness of the intervention approach as it relates to the goals and objectives of the project. Consistency of approach with state-of-the-art practices and relevant knowledge and theories in the prevention and treatment of substance abuse with high risk youth.

—Adequacy of approach to meet multiple needs/risk factors of the target population(s). Interventions are developmental age appropriate and sensitive to ethnic and cultural issues.

—Evidence of support and *specific commitments* from relevant State and/or local groups/agencies involved in the project (e.g., school system, family groups, juvenile justice system, social service, drug and alcohol abuse agencies, etc.).

—Feasibility of the proposed project within the resources and time frames proposed.

—Significance of the proposed intervention as a potential new approach to the prevention of substance abuse among high risk youth.

—Clarity, feasibility, and appropriateness of evaluation plan for recording the activities and effects of the proposed project.

—Capability of project director, consultants, and other key staff proposed for the project, and adequacy of the staffing plan to accomplish proposed tasks.

—Evidence of organizational capability and experience relevant to

successfully implement the proposed project.
—Evidence that the proposed project is ethnically, racially, and culturally acceptable and relevant to target population(s) (e.g. through use of minority professional staff, cross-cultural training of staff, fitting services in settings already serving minoritty communities).
—Logic and reasonability of project management plan.
—Reasonableness of the proposed budget.
—Potential for replicability at other sites if program objectives are met.
—Evidence of support for the proposed project from the Single State Authority for Drug and/or Alcohol Abuse.

Award Criteria

Applications will be considered for funding on the basis of overall technical merit of the project as determined by the review process. Other criteria will include:
—Potential for national significance of the proposed project in terms of developing an approach with applicability elsewhere;
—Geographical distribution;
—Balance among types of interventions and approaches (particularly emphasizing primary prevention and early intervention approaches, and client- and systems-oriented intervention approaches);
—Focus on cultural and ethnic minority populations; and
—Availability of funds.

Terms and Conditions of Support

Grant funds may be used for expenses clearly related and necessary to carry out the described project, including both direct costs which can be specifically identified with the project and allowable indirect costs of the organizations. In order for programs to be able to recover allowable indirect costs, it may be necessary to negotiate and establish an indirect cost rate (unless such a rate has already been established for your organization). For information and assistance regarding the timing and submission of an indirect cost rate proposal, you should contact the appropriate HHS Division of Cost Allocation office referenced in the list of "Offices Negotiating Indirect Cost Rates", included with the application kit for this program.

Funds cannot be used to supplant current funding for existing activities.

Allowable items of expenditure for which grant support may be requested include:

• Salaries, wages, and fringe benefits of professional and other supporting staff engaged in the project activities;
• Travel directly related to carrying out activities under the approved project;
• Supplies, communications, and rental of space directly relate to approved project activities;
• Contracts for performance of activities under the approved project; and
• Other such items necessary to support project activities.

Grants must be administered in accordance with the *PHS Grants Policy Statement* (Rev. January 1, 1987), which is available for $4.50 from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. When ordering copies, the GPO stock number, GPO 017–020–00092–7 should be referenced. This publication contains additional guidelines on allowable items of expenditure.

Federal regulations at Title 45 CFR Parts 74 and 92, "Administration of Grants", are applicable to these awards.

Grant Product Ownership

All curricula and other products developed with these grant funds (with the exception of publications in scientific journals) are in the public domain and may not be copyrighted, unless prior approval is obtained from the Grants Management Officer. In addition, such products must prominently state: This document is in the public domain, is not copyrighted and may be duplicated and used without prior approval.

Receipt and Review Schedule

For Initial Receipt:

Receipt Date	IRG review	Earliest start
May 15, 1989	July 1989	September 1989.

For Subsequent Receipt and Review Schedule: (This schedule is subject to change in accordance with program priorities.)

Receipt date	IRG review	Earliest start
November 15	February	April.
April 15	July	September.

Applications received on or before the established receipt date or sent on or before the receipt date and received in time for orderly processing will be considered to be on time. Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing. Late applications will be returned to the applicant or held for the next cycle.

Contacts for Additional Information

Questions concerning program issues or grants management issues may be directed to the office listed below:

Division of Demonstrations and Evaluation, Office for Substance Abuse Prevention, 5600 Fishers Lane Room 13A–53, Rockville, Maryland 20857, (301) 443–4564, (301) 443–0353.

The Catalog of Federal Domestic Assistance Number is 13.144.

Joseph R. Leone,

Associate Administrator for Management, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 89–6246 Filed 3–16–89; 8:45 am]

BILLING CODE 4160–20–M

Model Projects for Pregnant and Postpartum Women and Their Infants

AGENCY: Office for Substance Abuse Prevention.

ACTION: Notice of request for applications.

Introduction and Background

In October 1988, Congress passed the Anti-Drug Act. Pub. L. 100–690. Sections 509F and 509G of that law authorized grants to public and private profit and nonprofit entities to demonstrate model projects for substance using pregnant and postpartum women and their infants. In accordance with this legislation, the Office for Substance Abuse Prevention (OSAP) will fund projects that focus on prevention, education, and treatment located in community, inpatient, outpatient, and residential settings.

The Office of Maternal and Child Health (OMCH) has broad, ongoing mandate to promote the health of mothers and infants. Therefore, OMCH is joining with OSAP in providing funds for a collaborative, inter-agency grant program to support demonstration projects.

There is increased clinical and research evidence of the wide array of potential consequences of maternal use of alcohol and other drugs to offspring. These effects include retarded fetal growth, premature and/or complicated delivery, low birth weight, infant mortality, drug-specific neonatal withdrawal syndromes, and infant mental and physical developmental

deficits. Even with improved obstetrical service, many infants born to mothers using some substances are difficult to nurse. These babies show signs of poor motor control, have difficulty learning, and appear either hyperactive or hypoactive in response to their environment.

Women using substances during pregnancy have multiple needs, including the need for alcohol and drug abuse treatment, health care needs, and a variety of psychosocial needs. They often face simultaneous stresses of poverty, addiction, and new motherhood with inadequate support and social resources.

To exacerbate these problems, service delivery systems are often uncoordinated and/or inadequate. For example, many substance abuse treatment programs refuse to serve pregnant women. Many maternal health care facilities are inadequately prepared for the problems of substance using women. Furthermore, these women are often difficult to locate. Once located, they are often reluctant or simply disinterested in receiving services. Even after successful identification and recruitment, program attrition rates are usually high.

Despite these difficulties, it is important that new and continuing efforts be made to minimize fetal exposure effects. Towards this end, it is necessary to coordinate a variety of service delivery systems and/or to provide new or expanded services where gaps exist. Such services must include a continuum of therapeutic programs, comprehensive supportive services, and medical care in a readily accessible form. Service providers should take a longitudinal perspective, considering the needs of the women and their babies before, during and after delivery. Extensive community outreach and retention efforts must be made to eliminate existing barriers to treatment.

This Request for Applications solicits applications for *service demonstration projects* that propose promising models or innovative approaches to the issues outlined above. All projects will be expected to have a well developed program evaluation plan which is derived from the service activities of the project. Applicant should propose approaches with a sound conceptual basis consistent with state of the art practices, knowledge and theories in the fields of prevention and treatment.

However, OSAP does not support *research or research demonstrations.* Accordingly, applications using rigorously controlled comparative experimental designs for the purpose of assessing the efficacy of particular interventions may be more appropriate for the National Institute on Drug Abuse (NIDA) or the National Institute on Alcohol Abuse and Alcoholism (NIAAA). In particular, see RFA DA–89–03 available from NIDA. Applications may not be submitted to both NIDA and OSAP for the same programmatic activities and/or the same client population.

Program Goals

The goals of this announcement are to identify and fund a number of programs to develop and implement promising or innovative service programs and activities to:

—Promote the involvement and coordinated participation of multiple organizations in the delivery of comprehensive services for substance using pregnant and postpartum women and their infants:

—Increase the availability and accessibility of prevention, early intervention, and treatment services for these populations;

—Decrease the incidence and prevalence of drug and alcohol use among pregnant and postpartum women;

—Improve the birth outcomes of women who used alcohol and other drugs during pregnancy and to decrease the incidence of infants affected by maternal substance use; and

—Reduce the severity of impairment among children born to substance using women.

The specific aims and objectives of an applicant need not address all of these program goals. However, proposed projects should be consonant with one or more of these goals.

Program Emphasis Parameters

A. *Populations.* The ultimate target of projects should be potential or current substance using pregnant and postpartum women and their infants, with priority for low-income women. These populations (thereafter referred to as the target populations) may be targeted directly or through other populations, including women entering the family planning process, male partners of substance abusing pregnant or postpartum women, foster parents of infants affected by maternal substance use, physical and mental health service providers, drug abuse treatment providers, and a variety of social service agents who have contact with the target populations.

B. *Settings.* Project activities may be community-based or may be located in inpatient, outpatient, or residential settings.

C. *Modes of intervention.* Project incorporating prevention (including education), early intervention, and/or treatment are eligible.

D. *Target substances.* All non-prescribed drugs, including alcohol and tobacco, are eligible targets for intervention. A project may focus on poly-substance use or the use of a single substance.

E. *Needs.* Applicants are encouraged to address the complex and varied needs of the target populations in a comprehensive, holistic manner, where appropriate. These needs can be broadly categorized as:

1. Biological/physical (e.g., detoxification, dietary, obstetrical)
2. Psychological (e.g., support, treatment for anxiety, depression, low self-esteem)
3. Instrumental (e.g., child care and transportation to facilitate the receipt of services, housing)
4. Informational and educational—multiple skills and behaviors (e.g., prenatal and post partum health, substance use, parenting)

Many desired outcomes (e.g., drug-free pregnant women, healthy infants) require attention to all of these need categories.

The combinations of these parameters (needs, substances, populations, settings, and intervention modalities) result in numerous potential projects which could meet the intent of the grants program. While a variety of approaches will be funded, the diverse needs of the target population(s) and the frequent gaps in the service delivery systems require an emphasis on programs which provide or coordinate a comprehensive service system meeting multiple needs.

The development of entirely new services would often duplicate existing services, thus creating inefficiency and further fragmenting service delivery in the eyes of clients. For these reasons, it is *highly recommended,* whenever possible, to create structures and processes which will result in the coordinated use of existing services. Development of new service components should be limited to situations where such services do not currently exist, or where they are inadequate.

These systems of comprehensive services should be "user friendly" or otherwise structured to insure that high-risk clients actually receive the intended services. One means of increasing the use of services is the involvement of existing social networks and natural support systems (e.g., family, neighbors, churches). These entities can be

employed at the multiple points of identification, recruitment, and service delivery.

It is also recognized that, in many communities, existing services are inadequate or even non-existent. Where such gaps exist, applicants may propose the addition of new services, or the expansion or augmentation of existing services if they are incomplete or not meeting the existing levels of need. Applicants may therefore propose any of the following types of projects (or combinations thereof):

1. Coordination and integration of existing services
2. Outreach—Identification of the target populations and encouragement (e.g., social or instrumental support) for receipt of services
3. Reduction of cost or other means of increasing the accessibility and acceptance of services
4. Expansion of existing services (where need exceeds supply or where certain populations are not adequately served)
5. Augmentation of existing services (e.g., the addition of prenatal and/or post partum care to drug treatment programs or vice versa)
6. The creation of new comprehensive services

An outreach approach with no service delivery component would only be acceptable if the applicant could provide evidence that sufficient services are already in place. Conversely, the creation of entirely new comprehensive services would only be acceptable if the applicant can demonstrate there are no appropriate existing services.

Activities for Which Grant Support Is Available

Proposed activities should be consistent with the orientation described above. Examples of such activities, to be implemented individually or (preferably) in some combination, may include, but are not limited to:

Primary Prevention

—Information and education on substance use at the point of family planning

—Media campaigns and other forms of public education concerning the risks of substance use during pregnancy

Intervention With Pregnant and Post Partum Women

—Implementation and routinization of effective screening of pregnant women for past and present substance use and abuse

—Innovative methods of outreach to identify and recruit the target populations for services, preferably early in the pregnancy

—Integration and coordination of alcohol and other drug treatment with prenatal and/or post partum health care

—Psychological and emotional support for pregnant and/or post partum substance using women

—Education and skill-building for the target populations designed to increase the likelihood of positive familial and social functioning (e.g., parenting skills, job-seeking skills)

—Support services (e.g., childcare, transportation) to facilitate women's use of other services (auxiliary to other service delivery)

—Advocacy for the assurance of rights and development of resources for the target populations

Infant Interventions

—Direct intervention/treatment/rehabilitation with infants and very young children (up to 36 months of age) to reduce or attenuate the impact of maternal substance use

—Instrumental, informational, and emotional support and resources for biologic or foster parents of infants affected by maternal substance use (follow-up services)

Service Delivery Strategies

—Coordination for purposes of identification and/or service delivery with other likely points of access for high-risk women (e.g., shelters, AFDC, WIC programs, crisis pregnancy centers, public housing, law enforcement, jails)

—Involvement of significant others (e.g., male partners) as direct intervention targets or to aid in the outreach and service delivery processes for women

—Co-location or multiple locations (e.g., satellite centers, extension services, "one-stop shopping") to increase access and facilitate service delivery

—Innovative strategies (e.g., case management) to insure the coordinated utilization of generally unrelated service systems

Personnel Strategies

—Inter-organizational personnel exchange for the creation of interdisciplinary teams within multiple service settings

—Expaneded roles of professionals and other caregivers to encourage a comprehehsive system of services

—Continuing education of professionals regarding the needs and intervention strategies appropriate for the target populations

Project Requirements

In addition to each individual project's evaluation plans, all projects will be required to participate in a national process evaluation. Reporting requirements will be provided to grantees at the time of award.

The proposed budget should allow for two persons (project director and one other person to be designated by the project director) to attend one national meeting in the Washington, D.C. area each year.

Grantees will be required to submit quarterly reports, as well as a final report using formats provided at the time of award.

Eligibility

Applications may be submitted by public or private nonprofit or profit organizations such as universities, colleges, hospitals, community-based organizations, units of State or local governments and private organizations. Women and minorities are especially encouraged to apply.

Period of Support

Support must be requested for a period of at least three years but may not exceed five years. Annual awards will be made subject to continued availability of funds and progress achieved.

Availability of Funds

In FY 1989, it is estimated that approximately $4.5 million will be available to support approximately 20–25 grants. It is expected that individual project funding needs will vary widely. The average amount of an award is expected to be approximately $200,000 per year, including direct and indirect costs. Applicants are discouraged from applying for more than $300,000. However, the amount of funding will depend upon the availability of funds and program priorities at the time of the award.

Application Procedure

Application kits (PHS 398; rev. 9/86) and (PHS 5161; rev. 4/88) with guidance for OSAP applications (pages 10–16 of the announcement) are available from: National Clearinghouse for Alcohol and Drug Information (NCADI) P.O. Box 2345, Rockville, MD 20852, Telephone: (301) 468–2600.

Applicants who obtain a copy of the application kit (PHS 398; rev. 9–86; or PHS 5161–1, rev. 4/88) from their local university need to obtain a copy of the grant announcement and OSAP guidelines for preparing applications acceptable for review. The NCADI may

be contacted for a copy of these guidelines.

State and local govenments should use form PHS 5161–1. The title of this Announcement, "Model Projects for Pregnant and Postpartum Women and Their Infants (Substance Abuse)", should be typed in item 9 on the face page of the PHS 5161–1. Other applicants should use Form PHS 398 and the identify the title of the announcement in Item 2.

Applicants should return the signed original Form PHS 398 and six (6) permanent, legible copies (original and 2 copies, if using the PHS 5161) of the completed application to: OSAP Programs, Division of Research Grants, NIH, 5333 Westbard Avenue, Bethesda, Maryland 20892.

IMPORTANT—The mailing envelope (including that provided by an express carrier) must be clearly marked "OSAP Demonstration Grant for Pregnant and Postpartum Women."

Applications must be completed and contain all information needed for review. No addenda will be accepted later unless specifically requested by the Executive Secretary of the Initial Review Group, (IRG).

Applications submitted in response to this announcement are subject to the intergovernmental review requirements of Executive Order 12372, as implemented through Department of Health and Human Services Regulations at 45 CFR Part 100. Through this process, States, in consultation with local governments, are provided the opportunity to review and comment on applications for Federal financial assistance. Applicants should contact the State's Single Point of Contact [SPOC] as early as possible to determine the applicable procedure. A current listing of SPOCs will be included in the application kit. Applicants should note that comments received from the State will be considered as a factor in the review of their applications. SPOC comments should be sent to the Executive Secretary, Initial Review Group no later than 60 days after the relevant receipt date. Applicants will be informed as to the Executive Secretary's name and address after receipt of the application.

The application must include a copy of a letter sent to Single State Agency (SSA) briefly describing the grant proposal.

Application Characteristics

The narrative section should be written in a manner that is self-explanatory to outside reviewers unfamiliar with prior related activities of the applicant. It must be well-organized and contain the information necessary for reviewers to understand the project. Sections A–E may not exceed a total length of 25 single-spaced pages. Sections F and G may not exceed a total length of 10 pages. Applications exceeding these page limits (for the narrative section) will not be accepted for review. The page limit will be rigorously enforced. Returned applications will be eligible for resubmission, after appropriate revisions, at the next application receipt date. Suggestions for page lengths for specific sub-sections of the narrative are merely for guidance and may be modified by the applicant. Appendices may be attached for technical or specialized materials but should not be used merely to extend the narrative.

Abstract—This should precede the body of the narrative, be single-spaced, and should not exceed 30 lines. The abstract should clearly present the grant application in summary form, from a "who-what-when-how-where" point of view. It should allow reviewers to see how the multiple parts of the application fit together to form a coherent whole. The abstract should not be counted toward the narrative page total.

Index Page—Immediately following the abstract page, the applicant is required to provide an index page identifying the page where each section of the outline begins. Sections A–E of the outline may not exceed 25 single spaced pages. Sections F and G may not exceed 10 pages, so that the total length of these sections will not exceed 35 pages.

The following sections A–G replace the general instructions for completing section 2 (Research Plan) of the application form 398 or the program narrative of the application Form PHS 5161–1:

A. Specific Aims

Identify the goals and specific objectives for the proposed project and how these relate to the goals stated in this grant announcement. (Suggested length: one-half to one page)

B. Background and Significance

Demonstrate familiarity with and understanding of previous work done in the area of the proposed project. A brief review of the literature and of other related projects or studies, as well as any relevant prior work, observations, or experiences of the applicant should be included in this section. (Suggested length: 1–3 pages)

C. Target Population—Confidentiality

This section should include a rationale, preliminary analysis and operational definition(s) of the target population(s) in the proposed project; a summary of currently available data on the target population(s) (e.g., incidence and/or prevalence, location, demographic and socioeconomic characteristics, minority composition); discussion of available human services for the target population(s); and a discussion of the gaps and other problems in the availability and acceptability of prevention and/or treatment services for the population(s).

Given the legitimate fears of retribution or loss of custody felt by many substance abusing pregnant women, all projects should attempt to create a supportive, rather than punitive atmosphere. *Applicants should describe procedures used to insure confidentiality and protection of clients in this section.* At a minimum awardees must agree to maintain the confidentiality of alcohol and drug abuse client data in accordance with the regulations governing, "Confidentiality of Alcohol and Drug Abuse Patient Records," (42 CFR Part 2). (Suggested length; 2–4 pages)

D. Approach/Method

Discuss the approach to be used in conducting the proposed demonstration project with attention to detail. The following information must be provided:

—Procedures for gaining access to the target group. Applicants should indicate plans for dealing with the difficult issues of identification, recruitment, involvement, retention, and follow-up with these populations.

—Where appropriate, plans for any special attention to be given to the unique needs and concerns of members of social and ethnic minority groups within the target population(s).

—A plan of action that describes the project, discusses how each activity related to the project will be approached, coordinated with existing programs (where appropriate), and implemented. Program components should be related to information from the background section of the proposal (needs, existing services, previous accomplishments).

—An impact model that provides reasoning for the linkages between specific program activities and immediate as well as eventual expected outcomes (intervention rationale).

—Where appropriate, evidence of coordination with related Federal, State, and local programs. There is a strong need for coordination among health, social service, voluntary and other relevant community-based organizations and service systems. Such coordination

allows more efficient use of funds and reduces duplication of services. Demonstration of a proposed comprehensive and coordinated service delivery can be accomplished using a continuum of approaches. At one end of the continuum, applications from a consortium of organizations would be accepted, though one organization would be required to accept responsibility for project management. Specific working agreements (pending funding) should be included as appendices, where appropriate. Justification should be provided if no such working agreements are included. Evidence of existing or previous joint efforts should be submitted, if available. At a minimum, letters of support from all cooperating organizations should be provided. Such letters should be specific with respect to the commitment (e.g., personnel and other resources, access to populations) and the intent of the organizations involved. Specific working agreements and letters of support should be attached as appendices.

The applicant should also discuss the anticipated impact of the project on the problems of the target population(s) and the gaps in the service delivery systems for this population(s). The following must be addressed:

—Estimated the number and composition of individuals to be served or otherwise addressed for each year.

—State the anticipated specific program accomplishments for each year (e.g., program linkages made, materials developed, procedures implemented).

—State specific anticipated outcomes for each year (e.g., number of clients served, reduction in substance use in target population, increase in skills).

E. Evaluation Plan

OSAP will support only projects with a well-developed evaluation plan. As part of the application screening and review processes, applications will be examined for the presence of a viable evaluation component. Applications with a clearly inadequate evaluation plan will be judged to be incomplete and removed from further review.

Applicants should have appropriate evaluation expertise on their staff or should make arrangements for obtaining such consultation to assist in achieving these objectives. The results of such consultation should be apparent in the application.

All projects should conduct both process and outcome evaluations. Together, the process and outcome evaluations should allow an assessment of the extent to which the project's goals were met.

The process evaluation should be sufficient to facilitate replication of the project if the approach proves promising. The process evaluation consists of the collection of quantitative and qualitative data that permit a description of the implementation of the project (e.g., description of size and nature of client population, staff characteristics, amount and types of services provided). The results of the process evaluation should be a useful description and operationalization of who provided what services to whom, when, how often, and in what setting(s).

Program evaluation plans should also include outcome/impact evaluation plans directed toward assessing whether the program was effective in meeting its goals and where possible show that these effects are specific to the implemented intervention(s) as opposed to other factors. The nature of the outcome data will vary as a function of the goals of the project. Examples of outcome variables for projects focused on the provision of prenatal care might include the number of prenatal visits, the month of pregnancy during which the first visit occurred, characteristics of the birth (e.g., length of gestation, birthweight, Apgar score, special care requirements).

At a minimum, applicants should include a plan and timeline for an outcome evaluation, to be operational by at least the start of Year 2. Depending on the complexity of the program and the degree to which the first year of funding is devoted to implementation and stabilization, it may be unrealistic to expect evidence of effectiveness during the first year. However, it would be considered advisable to collect such data on a trial or pilot basis, as well as to provide baseline information for comparison purpose.

If the proposed project contains linkages with other programs, the evaluation should address the total comprehensive service array and not just the specific services provided by the applicant (if any).

For both outcome and process evaluations, applications should provide an evaluation design, including a description of the proposed instruments (with copies added as appendices if available), a schedule and procedure for the collection of data, and a description of the data analysis plan. (Suggested length 2–3 pages)

F. Project Staffing, Management and Organization

1. Organizational Structure

Provide a narrative description of the organizational structure of the proposed demonstration project. This description should clearly indicate the organizational relationships and responsibilities of the Project Director and each project unit or activity. It should also indicate the percentage of time devoted to the project by all staff. Indication should be provided as to which positions require new hiring.

The responsibilities and composition of Boards—of Supervisors, Directors, Trustees, and/or Advisors—should be included, where applicable.

Provide a description of organizational relationships between the applicant and other State/local level health and human services agencies as these relate to the proposed project. If the applicant agency is responsible to or receives program and/or management direction from a State, regional, or other office or agency, this relationship should be clearly described. An organizational chart should be provided which illustrates relationships and lines of responsibility.

2. Organizational Capability

Provide evidence that the organization is capable of implementing the proposed project. Documentation of experience in similar or other relevant activities, access to the target population(s), expertise in service delivery and evaluation, experience in developing and effectively using inter-organizational agreements, and other indicants of capability should be provided as appropriate. The use of external expertise is encouraged when helpful (e.g., evaluation consultants) and should also be presented in this section.

3. Staffing Pattern

Biographical sketches should be included on the appropriate pages of the form PHS 398 or included in a readily identifiable appendix. These sketches should not be counted toward the page limit. Experience and/or training pertinent to the proposed project should be highlighted.

Job descriptions must be submitted, as appendices, for each key professional position identified in the proposed budget. Only one job description needs to be submitted for identical positions. Job descriptions should include: job title description of duties and responsibilities, qualifications for position, supervisory relationships, skills and knowledge required, prior

experience required, educational background required, and job side (if appropriate). Documentation should be provided to assure that staff loaned to the project from other units or agencies will be available for the amount of time required.

The narrative must include a brief section describing how staff will be recruited and selected, and whether any particular mix or background, skills, and/or personal qualities is proposed. The relationship or staff characteristics to the objectives of the demonstration project should be discussed.

Consideration must be given to the use of multidisciplinary staff and staff representing the sexual, ethnic, and cultural characteristics of the population to be served.

4. Project Task Plan

The management plan must include a description of tasks to be performed, their sequence, performance schedule, and their relationship to each other. The accomplishment of these tasks should be related to the project goals and objectives, as well as to the management of the project. The level of effort required for each task also should be shown.

A PERT or Gantt chart and/or flow diagrams may be helpful to display these tasks.

G. Resources

Describe the facilities, equipment, services, and other resources available to carry out the project.

Review Process

Applications submitted in response to this Announcement will be reviewed in accord with ADAMHA peer/objective review procedures for grants. Applicants should be sure to submit completed applications. OSAP staff will screen applications upon receipt and return those that are judged to be incomplete, non-responsive to this announcement or non-conforming (e.g., exceed the page limits). Returned applications will *not* be accepted for this review schedule but may be submitted for the next receipt/review cycle. Those applications which are complete will enter a multi-stage review process. In the first stage, the evaluation component will be assessed. Applications judged to be lacking in the measures or methods used to assess the proposed program will be considered as non-competitive and removed from further review considerations. OSAP will notify and advise the applicant and the institutional business offficial of this action. Applicants judged to be conforming, responsive and competitive will be continued to be reviewed for technical merit in accord with the PHS and ADAMHA policies for peer/objective review. The review group(s) (IRG) will be composed primarily of non-Federal experts. OSAP reserves the right to conduct the multi-stage review at one time or in two discrete steps. Notification of the review outcome will be sent to the applicant upon completion of the initial review. In addition, the recommendations of the technical merit review groups may be submitted for information and additional consultation to an OSAP Advisory Board.

Review Criteria

Criteria for technical merit review of applications will include the following:

—Potential for national significance of the proposed project in terms of developing an approach with applicability and replicability elsewhere

—Relevance of project objectives

—Appropriateness and soundness of the procedures for identification and recruitment of the target population(s)

—Adequacy of information documenting the needs and availability of the target population(s)

—Adequacy and appropriateness of the intervention approach as it relates to the goals and objectives of the project

—Adequacy of approach to meet multiple needs of the population(s) (at individual developmental stages and across stages) through service delivery and/or coordination of existing services

—Evidence of coordination with relevant State and/or local drug and alcohol abuse prevention programs, treatment or rehabilitation programs, health care facilities, community or voluntary groups, and/or other relevant programs and systems. Where appropriate, there should be documentation of *specific commitments* and support from these organizations.

—Feasibility of the proposed project and likelihood that it will significantly address program gaps and improve services and opportunities for the target population(s)

—Evidence of familiarity with relevant studies and the state of the art prevention, treatment, and rehabilitation services.

—Evidence that the proposed project is ethnically, racially, and culturally relevant (for example, use of minority professional staff or staff that have received, or will receive, cross-cultural training)

—Capability and experience of project director, consultants, and other key staff proposed for the project and adequacy of staffing plan

—Evidence of organizational capability relevant to the proposed project

—Clarity, feasibility, and appropriateness of evaluation plans

—Logic and feasibility of project management plan

—Reasonableness of the proposed budget

Award Criteria

Applications will be considered for funding on the basis of overall technical merit of the project as determined by the review process. Other criteria will include:

—Geographical distribution

—Balance among types of interventions, approaches, and target populations

—Availability of funds

—Focus on low income and/or minority populations

—Evidence of support for the proposed project from the Single State Authority for Drug and/or Alcohol Abuse

Terms and Conditions of Support

Grant funds may be used for expenses clearly related and necessary to carry out the described project, including both direct costs which can be specifically identified with the project and allowable indirect costs of the organization. In order for you to be able to recover those allowable costs which cannot be readily identified with your individual project, it may be necessary to negotiate and establish an indirect cost rate (unless such a rate has already been established for your organization). For information and assistance regarding the timing and submission of an indirect cost rate proposal, you should contact the appropriate HHS Division of Cost Allocation office referened in the list of "Offices Negotiating Indirect Cost Rates," included with the application kit for this program.

Funds cannot be used to supplant current funding for existing activities.

Allowable items of expenditure for which grant support may be requested include:

- Salaries, wages, and fringe benefits of professional and other supporting staff engaged in the project activities;
- Travel directly related to carrying out activities under the approved project;
- supplies, communications, and rental of space directly related to approved project activities;
- Contracts for performance of activities under the approved project; and
- Other such items necessary to support project activities.

Grants must be administered in accordance with the *PHS Grants Policy*

Statement (Rev. January 1, 1987), which is available for $4.50 from the Superintendent of documents, U.S. Government Printing Office, Washington, DC 20402. When ordering copies, the GPO stock number, GPO 017–020–00092–7 should be referenced.

Federal regulations at Title 45 CFR Parts 74 and 92, "Administration of Grants," are applicable to these awards.

Grant Product Ownership

All products developed under this grant project (with the exception of publications in scientific journals) are in the public domain and may not be copyrighted, unless prior approval is obtained from the Grants Management Officer, OSAP. In addition, such products must prominently state: This document is in the public domain, is not copyrighted and may be duplicated and used without prior approval.

OSAP Application Receipt and Review Schedule

For initial receipt receipt date	IRG review	Earliest start date
May 15, 1989	July	September.

Subsequent Receipt and Review Schedule (This schedule is subject to change in accordance with program priorities)

Receipt date	IRG review	Earliest start date
November 15, 1989.	February	April.
April 15, 1990	July	September.

Applications received on or before the established receipt date or sent on or before the receipt date and received in time for orderly processing will be considered to be on time. Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing. Later applications will be returned to the applicant or held for the next cycle.

Contracts for Additional Information

Questions concerning program issues or grants management issues may be directed to the offices listed below:

Division of Demonstrations and Evaluation, OSAP, Room 13A53, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–4564, (301) 443–0353.

Office of Maternal and Child Health, Room 6–37, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–5720.

The Catalog of Federal Domestic Assistance Number is 13.169.

Joseph R. Leone,

Associate Administrator for Management, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 89–6247 Filed 3–16–89; 8:45 am]

BILLING CODE 4160–20–M

Centers for Disease Control

Vital and Health Statistics National Committee; Meeting

ACTION: Notice of Meeting.

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that the National Committee on Vital and Health Statistics Subcommittee on Long-Term Care Statistics established pursuant to 42 U.S.C. 242K, section 306(k)(2) of the Public Health Service Act, as amended, announces the following Subcommittee meeting.

Name: National Committee on Vital and Health Statistics Subcommittee on Long-Term Care Statistics.

Time and Date: 10:30 a.m.–5:00 p.m.—April 10, 1989.

Place: Hubert H. Humphrey Building, Room 303A–305A, 200 Independence Avenue, SW., Washington, DC 20201.

Status: Open.

Purpose: To finalize comments on the Long-Term Care Facilities Minimum Data Set, to review other aspects of charge, and to take testimony on the potential impact of the HCFA Uniform Data Set for Nursing Home Resident Assessment.

CONTACT PERSON FOR MORE INFORMATION: Substantive program information as well as summaries of the meeting and roster of Committee members may be obtained from Richard J. Havlik, M.D., Staff, National Committee on Vital and Health Statistics, Room 2–12, Center Building, 3700 East West Highway, Hyattsville, Maryland 20782, telephone (301) 436–7050.

Dated: March 10, 1989.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 89–6345 Filed 3–16–89; 8:45 am]

BILLING CODE 4160–18

Vital and Health Statistics National Committee; Meeting

ACTION: Notice of Meeting.

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that the National Committee on Vital and Health Statistics Subcommittee on Medical Classification Systems established pursuant to 42 U.S.C. 242k, section 306(k)(2) of the Public Health Service Act, as amended, announces the following Subcommittee meeting and working session.

Name: National Committee on Vital and Health Statistics Subcommittee on Medical Classification Systems.

Time and Date: 9:00 a.m.–5:00 p.m.—April 17, 1989, 9:00 a.m.–11:30 a.m.—April 18, 1989, 12:30 p.m.–3:30 p.m.—April 18, 1989 (working session).

Place: Hubert H. Humphrey Building, Room 703A, 200 Independence Avenue, SW., Washington, DC 20201.

Status: Open.

Purpose: To discuss current status of ICD 10 and copyright, to discuss the structural process of a potential secretariat for ICD 10 and to hear a status report on the use of ICD in long-term care settings.

CONTACT PERSON FOR MORE INFORMATION: Substantive program information as well as summaries of the meeting and roster of Committee members may be obtained from Richard J. Havlik, M.D., Staff, National Committee on Vital and Health Statistics, Room 2–12, Center Building, 3700 East West Highway, Hyattsville, Maryland 20782, telephone (301) 436–7050.

Dated: March 10, 1989.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 89–6346 Filed 3–16–89; 8:45 am]

BILLING CODE 4160–18

Health Care Financing Administration

Privacy Act of 1974; Report of New System

AGENCY: Health Care Financing Administration (HCFA), Department of Health and Human Services (HHS).

ACTION: Notice of New System of Records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to establish a new system of records, "HCFA Medicare Severity of Illness Data File," HHS/HCFA/HSQB No. 09–70–1514. We have provided background information about the proposed system in the "Supplementary Information" section below. Although the Privacy Act

requires only that the "routine uses" portion of the system be published for comment, HCFA invites comments on all portions of this notice.

DATES: HCFA filed a new system report with the Chairman of the Committee on Government Operations of the House of Representatives, the Chairman of the Committee on Governmental Affairs of the Senate, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB, on March 14, 1989.

The new system of records, including routine uses, will become effective May 16, 1989, unless HCFA receives comments which would necessitate alteration to the system.

ADDRESS: The public should address comments to Richard A. DeMeo, HCFA Privacy Act Officer, Office of Budget and Administration, Health Care Financing Administration, Room G–M–1, East Low Rise, 6325 Security Boulevard, Baltimore, Maryland 21207. Comments received will be available for inspection at this location.

FOR FURTHER INFORMATION CONTACT: Randy Daily, R.R.A., Office of Program Assessment and Information, Health Care Financing Administration, 2–D–2 Meadows East Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

SUPPLEMENTARY INFORMATION: HCFA proposes to initiate a new system of records and collect data for that system on severity of illness of Medicare patients on admission to a hospital under the authority of Section 1875 of the Social Security Act (42 U.S.C. 139511) (a), as amended, which authorizes studies "relating to health care of the aged and disabled." In addition, Section 1874 of the Social Security Act (42 U.S.C. 1395kk) (a), (b), provides additional authority to obtain information needed to administer the Medicare program. HCFA has studied and published variations in mortality rates among Medicare patients admitted to acute care hospitals. These mortality rates contain diagnosis and procedure codes, but lack the clinical data needed to satisfactorily assess the physiological condition (severity of illness) of the patient on admission. The systems of records of severity of illness of patients at admission allows HCFA to statistically and scientifically evaluate the role of adjustment for severity of illness in the estimation of hospital mortality rates. Data in the system will include clinical information including history, pre-admission findings, and findings during the initial period of hospitalization, i.e., the first 48 hours following admission or the pre-operative period if an operation was performed during the first 48 hours. This information may then be used to demonstrate better ways to risk-adjust mortality rates for such differences to the extent found to be necessary. The Privacy Act permits us to disclose information without consent of the individual for "routine uses"—that is, disclosure for purposes that are compatible with the purpose for which we collect the information. The proposed routine uses in the new system meet the compatibility criteria, since the information is collected for the purpose of addressing the issues of assessing the adequacy of care and linking adverse outcomes with inadequate care. We anticipate that disclosure under the routine uses will not result in any unwarranted adverse effects on personal privacy.

Date: March 10, 1989.

Terry Coleman

Acting Administrator, Heath Care Financing Administration.

09–70–1514

SYSTEM NAME:

HCFA Severity of Illness Data File HHS/HCFA/HSQB.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Health Care Financing Administration, 6325 Security Boulevard, Baltimore, Maryland 21207, Contact: MediQual Systems, Inc., 1900 West Park Drive, Westborough, MA 01581.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

A statistically stratified sample of Medicare patient cases selected by HCFA from hospitals nationwide.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains the first six characters of the individual's last name, health insurance claim number or social security number (SSN), date of admission, date of discharge, assigned DRG, clinical information including history, pre-admission findings, and findings during the initial period of hospitalization, i.e., the first 48 hours following admission or the pre-operative period if an operation was performed during the first 48 hours.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 1874 (42 U.S.C. 1395kk) (a), (b), and Section 1875 (42 U.S.C. 139511) (a), as amended by the Social Security Act.

PURPOSE OF THE SYSTEM:

To obtain clinical data characterizing the severity of illness of patients upon hospital admission in order to assess its impact upon mortality rates.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Disclosure may be made to:

1. A contractor for the purpose of:

a. Identifying specific medical records and abstracting those medical records for severity of illness information to be used in this study; or

b. Collating, analyzing, aggregating or otherwise refining or processing records in this system or for developing, modifying and/or manipulating ADP software. Data would also be disclosed to contractors incidental to consultation, programming, operation, user assistance, or maintenance for ADP or telecommunication systems containing or supporting records in the system.

2. A Congressional office from the records of an individual in response to an inquiry from the Congressional office at the request of the individual;

3. To the Department of Justice, to a court or other tribunal, or to another party before such tribunal, when:

a. HHS or any component thereof; or

b. Any HHS employee in his or her official capacity; or

c. Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

d. The United States or any agency thereof (when HHS determines that the litigation is likely to affect HHS or any of its components),

is a party to litigation or has interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the tribunal, or the other party is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected;

4. Organizations deemed qualified by the Health Care Financing Administration to carry out quality assessment, medical audit, or utilization review;

5. To an individual or organization for a research, evaluation, or epidemiological project related to the prevention of disease or disability, or the restoration or maintenance of health if HCFA:

a. Determines that the use or disclosure does not violate legal limitations under which the record was provided, collected, or obtained;

b. Determines that the purpose for which the disclosure is to be made: (1) Cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring, and (3) there is reasonable probability that the objective for the use would be accomplished;

c. Requires the recipient to: (1) Establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and (2) remove or destroy the information that allows the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the project unless the recipient presents an adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except: (a) In emergency circumstances affecting the health or safety of any individual, (b) for use in another research project, under these same conditions, and with written authorization of the HCFA, (c) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purposes of the audit, or (d) when required by law;

d. Secures a written statement attesting to the information recipient's understanding of, and willingness to abide by these provisions.

POLICES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and magnetic media.

RETRIEVABILITY:

Records are retrieved by the health insurance claim number or SSN, patient name, or hospital patient number.

SAFEGUARDS:

a. Authorized Users: Agency employees and contractor personnel whose duties require the use of information in the system. In addition, such agency employees and contractor personnel are advised that the information is confidential and of criminal sanctions for unauthorized disclosure of information.

b. Physical Safeguards: Records are stored in locked files or secured areas. Computer terminals are in secured areas.

c. Procedural Safeguards: Employees who maintain records in the system are instructed to grant regular access only to authorized users. Data stored in computers are accessed through the use of passwords known only to authorized personnel.

Contractors who maintain records in this system are instructed to make no further disclosure of the records except as authorized by the system manager and permitted by the Privacy Act. Privacy Act language is in contracts related to this system.

d. Implementation Guidelines: Safeguards implemented in accordance with all guidelines required by the Department of Health and Human Services. Safeguards for automated records have been established in accordance with the Department of HHS' Automated Data Proceeding Manual, Part 6, "ADP System Security."

RETENTION AND DISPOSAL:

Records are retained for 5 years after the last action on the record.

SYSTEM MANAGER(S) AND ADDRESS:

Director, HSQB, Health Care Financing Administration, 2–D–2 Meadows East Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

NOTIFICATION PROCEDURES:

Inquiries and requests for system records should be addressed to: Director, BDMS, Health Care Financing Administration, 1–E–9 Oak Meadows Building, 6340 Security Boulevard, Baltimore, Maryland 21207.

The requestor must specify the health insurance claim number or SSN.

RECORD ACCESS PROCEDURES:

Same as notification procedure. Requestors should also reasonably specify the record contents being sought. (These procedures are in accordance with HHS Regulations (45 CFR 5b.5(a)(2).)

CONTESTING RECORD PROCEDURES:

Contact the system manager named above, and reasonably identify the record and specify the information to be contested. State the reason for contesting it (e.g., why it is inaccurate, irrelevant, incomplete, or not current). (These procedures are in accordance with HHS Regulations (45 CFR 5b.7).)

RECORDS SOURCE CATEGORIES:

HCFA obtains the identifying information in this system from the hospital records and from existing systems.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 89–6249 Filed 3–16–89; 8:45 am]
BILLING CODE 4120–03–M

[BERC–635–N]

Medicare and Medicaid Programs; ICD–9–CM Coordination and Maintenance Committee Meeting

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

ACTION: Notice.

SUMMARY: This notice announces the next meeting of the International Classification of Diseases, Ninth Revision, Clinical Modification (ICD–9–CM) Coordination and Maintenance Committee. The public is invited to participate in the discussion of the topic areas.

DATE: The meeting will be held on Tuesday, April 4, 1989, from 9:00 a.m. to 5:00 p.m. Eastern Standard Time.

ADDRESS: The meeting will be held in Room 503A of the Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jan Niessing, (301) 966–5319.

SUPPLEMENTARY INFORMATION: The ICD–9–CM is the clinical modification of the World Health Organization's International Classification of Diseases, Ninth Revision. It is the coding system required for use by hospitals and other health care facilities in reporting both diagnoses and surgical procedures for Medicare, Medicaid, and all other health-related DHHS programs. The work of the ICD–9–CM Coordination and Maintenance Committee will allow this coding system to continue to be an appropriate reporting tool for use in Federal programs.

The Committee is composed entirely of representatives from various Federal agencies interested in the International Classification of Diseases (ICD) and its modification, updating, and use for Federal programs. It is co-chaired by the National Center for Health Statistics and the Health Care Financing Administration.

At this meeting, the Committee will discuss: obstetric and gynecology procedures, arthroscopy of temporomandibular joint, arthroscopic operations on musculoskeletal structures, dermatochalasis, admission for preparation for renal dialysis, post

operative complication, perineum mass, adult sleep apnea syndrome, visual display tube syndrome, vasovagal syncope and other topics.

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program; No. 13.773, Medicare—Hospital Insurance Program; No. 13.774, Medicare—Supplementary Medical Insurance).

Dated: March 10, 1989.

Terry Coleman,

Acting Administrator, Health Care Financing Administration.

[FR Doc. 89-6514 Filed 3-16-89; 8:45 am]

BILLING CODE 4120-01-M

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given to amend the notice of the Cancer Biology-Immunology Contract Review Committee meeting which was published in the **Federal Register** (54 FR 6451) on February 10, 1989.

The Committee originally scheduled for a two day meeting will now be held on March 20 only, from 9 a.m. to adjournment at the Guest Quarters Hotel, Mongomery II Conference Room, 7335 Wisconsin Avenue, Bethesda, Maryland 20814. The meeting will be closed to the public from 9:30 a.m. to adjournment.

Dated: March 14, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-6503 Filed 3-16-89; 8:45 am]

BILLING CODE 4140-01-M

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on March 10, 1989.

(Call Reports Clearance Officer on 202-245-2100 for copies of package).

1. Physically Demanding Employment and Pregnancy Outcome: A Study of Women in Medical Residency—NEW—Women in physically demanding occupations are more likely to be of low socioeconomic status and are at increased risk for adverse pregnancy outcome. The proposed study, a survey of all of the women who graduated from medical school in 1986 to obtain information about their pregnancy outcomes, particularly those pregnancies occurring during residency, will examine the risk of physically demanding occupation without the complicating effect of low socioeconomic status. Respondents: Individuals or households; Number of Respondents: 8,130; Number of Responses per Respondent: 1; Average Burden per Response: .073 hours; Estimated Annual Burden: 593 hours.

2. Importation and Shipment of Etiologic Agents—0920-0199—Type of Review: Extension. The Office of Management and Budget has set a common review period for all known Federal agency information collections used to obtain information necessary for the importation of merchandise into the United States. The purpose of the review is to plan for the elimination of the collection of duplicate information elements required from the importing public. This data collection is the application for a permit to import or transfer agents or vectors of human diseases. The importer provides information on methods of transportation and proposed uses of materials imported. In the interstate shipment of these vectors, carriers must report the discovery of damaged packages and the sender must report any lost shipments. Respondents: State or local governments, businesses or other for-profits; Number of Respondents: 383; Number of Responses per Respondent: 1; Average Burden per Response: .289 hours; Estimated Annual Burden: 111 hours.

3. Regulation-Foreign Quarantine (42 CFR Part 71)—0920-0134—Type of Review: Extension. The Office of Management and Budget has set a common review period for all known Federal agency information collections used to obtain information necessary for the importation of merchandise into the United States. The purpose of the review is to plan for the elimination of the collection of duplicate information elements required from the importing public. Foreign quarantine regulations implement the provisions of the PHS Act in preventing the introduction, transmission, or spread of communicable diseases from foreign countries into the United States. Inspections and control measures are undertaken with respect to conveyances, persons and shipments of animals and etiologic agents. Respondents: Individuals or households, businesses or other for-profit.

	No. of respondents	No. of hrs. per response	No. of responses per respondent
Vehicle Reporting (71.21, 71.33(c), 71.35)	208	.02	10.2
Reporting: Dogs and Cats (71.51(b)(3), 71.51(d))	2,505	.25	1.0
Reporting: Turtles (71.52(d))	10	.5	1.0
Reporting: Nonhuman Primates (71.53(d))	100	.167	1.0
Recordkeeping; Nonhuman Primaries (71.53(e)	175		

Estimated Annual Burden: 777 hrs.

4. Food Additive Petitions (21 CFR Part 171)—0910-0016—section 409(a) of the FD&C Act provides that a food additive will be considered unsafe unless its use is permitted by a regulation providing safe conditions of use. Section 409(b) of the Act specifies the information which must be submitted in order to establish the safety of the food additive and to secure the assurance of a regulation permitting its use. Respondents: Business or other for-profit, small businesses or organizations; Number of Respondents: 75; Number of Responses per Respondent: 1; Average Burden per Response: 2,700 hours; Estimated Annual Burden: 200,000 hours.

OMB Desk Officer: Shannah Koss-McCallum.

Written comments and recommendations for the proposed information collections should be sent directly to the OMB Desk Officer designated above at the following address:

OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

Steven A. Grossman,

Deputy Assistant Secretary for Health, (Planning and Evaluation).

[FR Doc. 89-6283 Filed 3-16-89; 8:45 am]

BILLING CODE 4160-17-M

Social Security Administration

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with Pub. L. 96-511, The Paperwork Reduction Act. The following clearance packages have been submitted to OMB since the last list was published in the **Federal Register** on March 10, 1989.

(Call Reports Clearance Officer on (301) 965-4149 for copies of package).

1. Notice of Continuing Disability Review-Report of Continuing Work Activity—0960-0108—The information collected on the SSA-3945 will be used to determine whether work performed by an individual after his or her entitlement to disability benefits is cause for that entitlement to end. The respondents are individuals for whom significant earnings are reported after their entitlement to disability benefits.

Number of Respondents: 100,000.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 16,667 hours.

2. Payment of Certain Travel Expenses—0960-0434—The information required by these regulations is used to reimburse an individual who has been required to travel over 75 miles to appear at a medical examination or disability hearing. The respondents are claimants for disability benefits.

Number of Respondents: 50,000.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 8,333 hours.

OMB Desk Officer: Justin Kopca.

Written comments and recommendations regarding these information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address:

OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

Date: March 13, 1989.

Ron Compston,

Social Security Administration, Reports Clearance Officer.

[FR Doc. 89-6293 Filed 3-16-89; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-89-1956]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to:

John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: March 10, 1989.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Lead-Based Paint Hazard Elimination in CDBG, UDAG, Secretary's Funds, section 312 Rehabilitation Loan, Rental Rehabilitation, and Urban Homesteading.

Office: Community Development and Planning.

Description of the need for the information and its proposed use: Sections 510.410(c)(8), 511.11(f)(3)(viii), and 570.608(c)(8) require local governments to keep for at least three years, the inspection reports for HUD-assisted housing units where lead-based paint hazards are found and treated due to the presence of a child under seven years old in the unit.

Form Number: None.

Respondents: State or Local Governments.

Frequency of submission: Recordkeeping.

Reporting burden:

	Number of Respondents	x	Frequency of Response	x	Hours per Response	=	Burden Hours
Recordkeeping	1,000		1		10		10,000

Total estimated burden hours: 10,000.

Status: Extension.

Contact: David M. Cohen, HUD, (202) 755–5970, John Allison, OMB, (202) 395–6880.

Date: March 10, 1989.

[FR Doc. 89–6318 Filed 3–16–89; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. N–89–1957]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESS: Interested persons are invited to submit comment regarding these proposals. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collections of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: March 13, 1989.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Emergency Shelter Grants Program.

Office: Community Planning and Development.

Description Of The Need For The Information And Its Proposed Use: The information collected will be used to ensure that cities, counties, states, and territories comply with the requirements for eligibility relative to renovation, rehabilitation, or conversions of buildings; supportive services; maintenance, operation (other than staff), insurance, utilities and furnishing; and homeless prevention for emergency shelter for the homeless.

Form Number: SF–424, SF–269, HUD–7015–15, and Certifications.

Respondents: State or Local Government and Non-Profit Institutions.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Application (Annual) to HUD	375		1		16		6,000
Initial Report to HUD	375		1		12		4,500
Annual Report to HUD	375		1		12		4,500
Environmental Submission to HUD by Local Governments Funded by HUD.	325		1		0.4		130
Environmental Recordkeeping by Local Governments Funded by HUD.	325		1		30		9,750
Environmental Submission to States by Local Government Funded by States.	300		1		0.4		120
Environmental Recordkeeping by Local Governments Funded by States.	300		1		30		9,000
Environmental Submissions from States to HUD for Nonprofits Funded by States.	200		1		0.4		80
Environmental Recordkeeping by States for Nonprofits Funded by States.	50		1		8		400
Waiver Requests to HUD	25		1		4		100
Local Government Certification to States for Nonprofit Seeking Funding from States.	200		1		0.25		50
Local Government Site Change Certification to HUD	25		1		0.25		6.25

Total Estimated Burden Hours: 34,636.

Status: Extension.

Contact: James R. Broughman, (202) 755–5977, John Allison, OMB, (202) 395–6880.

Date: March 13, 1989.

Proposal: Tenant Participation on Multifamily Housing Projects.

Office: Housing.

Description of the need for the information and its proposed use: This rule provides tenants in certain types of subsidized multifamily housing projects an opportunity to comment on the project owners request for HUD approval of certain specified actions, including the continuation of the requirement for tenants participation in project rent increases. HUD must take their comments into consideration when making approval decisions.

Form Number: None.

Respondents: Individuals or Households, State or Local Governments, Businesses or Other For-Profit, and Small Businesses or Organizations.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Increase in Rents	160		1		13		2,080
Utility Conversion	160		1		23		3,680
Conversion-Residential to Other	160		1		18		2,880
Partial Release of Security	160		1		17		2,720
Major Capital Addition	160		1		22		3,520
Recordkeeping	160		1		5		800

Total Estimated Burden Hours: 15,680.
Status: Extension.
Contact: Judy Lemeskewsky, HUD, (202) 426–3944, John Allison, OMB, (202) 395–6880.

Date: March 13, 1989.

[FR Doc. 89–6369 Filed 3–16–89 8:45 am]
BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chater 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Service's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Service Clearance Officer and the Office of Management and Budget, Paperwork Reduction Act Project (1018–0015), Washington, DC 20503, telephone 202–395–7340.

Title: Waterfowl Harvest Survey.
*OMB Approval Number:*1018–0015.
Abstract: Migratory waterfowl hunting is authorized throughout the United States. Information on the magnitude and composition of the harvest is needed for sound management and to preclude over-harvest of the species involved. Information is also needed on the species, age, and sex composition within the harvest, including the geographic and chronologic distribution of these components as they relate to various hunting regulations. Three forms are used to collect such information. Service Form No. 3–1823, Contact Cards, are postage paid postcards and provide the Service with names and addresses of waterfowl hunters who purchase duck stamps at sample post offices throughout the country. Form 3–2056G are questionnaires sent to purchasers of Duck Stamps who returned a contact card indicating that they intend to hunt waterfowl and supplies information on the total harvest by State. Form 3–165 is a Waterfowl Parts Collection Envelope, and enables Service biologists to obtain information on the species, sex and age in the harvest.

Service Form Numbers: 3–1823, 3–2056G, and 3–165.
Frequency: On occasion.
Description of Respondents: Individuals and households.
Estimated Completion Time: 3–1823, 8 minutes per response; 3–2056G, 2 minutes per response, and 3–165, 5 minutes per response. In addition, it will take about 1 minute for a hunter to record successes for each hunting trip—hunters average 6.8 trips.
Annual Responses: 195,500.
Annual Burden Hours: 17,585.
Service Clearance Officer: James E. Pinkerton, 202–653–7500, Room 859 Riddell Building, U.S. Fish and Wildlife Service, Washington, DC 20240.

Dated: February 3, 1989.

Rollin D. Sparrowe,
Acting Assistant Director, Refuges and Wildlife.

[FR Doc. 89–6245 Filed 3–16–89; 8:45 am]
BILLING CODE 4310–55–M

Bureau of Land Management

Minto Flats Final Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: Pursuant to section 102(2)c of the National Environmental Policy Act of 1969, as amended, the Department of the Interior, Bureau of Land Management (BLM) prepared a final environmental impact statement (FEIS) covering placer mining within the drainages of the Tolovana and Chatanika Rivers and Goldstream Creek, which flow into the Tanana River through the area know as the Minto Flats. The watershed is located directly north of Fairbanks, Alaska.

Primarily, the issues addressed are the cumulative impacts of multiple mining operations on the environment (particularly water quality), subsistence uses in and around the study area, and BLM permitting and monitoring procedures under the Alaska National Interest Lands Conservation Act.

Comments on the draft EIS have been considered in the preparation of this document. A proposed action and the environmental consequences of all the alternatives are analyzed and presented.

DATES: The 30-day wait period for the FEIS will begin on the day that the Environmental Protection Agency publishes its Notice of Availability.

FOR FURTHER INFORMATION CONTACT: Howard Levine, Project Manager, U.S. Bureau of Land Management, Alaska State Office, Section 918, 222 West 7th Street, #13, Anchorage, AK 99513 or at (907) 271–3114.

Lester K. Rosenkrance,
Acting State Director.

[FR Doc. 89–6334 Filed 3–16–89; 8:45 am]
BILLING CODE 4310–JA–M

[UT–020–09–4212–13–2410]

Salt Lake District; Availability of Environmental Assessment and Proposed Planning Amendment, Pony Express Resource Area, Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of Environmental Assessment and Proposed Planning Amendment, Pony Express Resource Areas, Utah.

SUMMARY: The Bureau of Land Management has completed an Environmental Assessment concerning the exchange of 10,858 acres of public land for 9,662 acres of private land in Skull Valley, Tooele County, Utah. The final Environmental Assessment revealed no significant environmental impacts from the proposed action.

A Notice of Intent proposing to amend Decisions 1–1–1a and 1–1–4 of the Tooele Management Framework Plan in order to allow the land exchange was published in the **Federal Register** on December 17, 1987.

Public land to be exchanged is described as follows:

Selected (public) lands:

T. 3 S., R. 8 W., SLM	
Section 1: lots 2 & 3, SW¼NE¼, SE¼NW¼, NE¼SW¼, SW¼NE¼	239.44
Section 10: NW¼, N½SW¼, N½NE¼, SW¼NE¼, NW¼SE¼	400.00
Section 219: S½NW, NE¼NW¼, SW¼	280.00
Section 30: Lots 3 & 4, E½SE¼, SE¼	320.68
Section 31: Lots 1–4, E½W½, E½ (All)	639.52
T. 3S., R. 9 W., SLM	
Section 25: S½	320.00
Section 26: S½	320.00
Section 35: All	640.00
T. 4 S., R. 8 W., SLM	
Section 5: Lots 1–4, S½N½, S½ (All)	639.52
Section 6: Lots 1–7, S½NE¼, SE¼NW¼,E½SW¼ (All)	641.20
Section 7: Lots 1–4, E½W½, E½ (All)	646.80
Section 8: All	640.00
Section 9: S½	320.00
Section 17: All	640.00
Section 18: Lots 1–4, E½W½, E½ (All)	645.92
Section 19: Lots 1–4, E½W½, E½ (All)	644.32
Section 20: All	640.00
Section 21: NW¼, N½SW¼, SW¼NE¼, NW¼SE¼	320.00
Section 30: Lots 1–4, E½W½, W½, (All)	641.20
Section 31: Lots 1–4, E½W½, E½ (All)	640.32
T. 4 S., R. 9 W., SLM	
Section 1: Lots 1–4, S½N½ S½ (All)	639.20
Total	10,858.12

Notice is hereby given that the period for public protest of the proposed amendments will run from March 17 to April 17, 1989.

FOR FURTHER INFORMATION CONTACT: Howard Hedrick, Pony Express Resource Area Manager, Salt Lake District Office, 2370 South 2300 West, Salt Lake City, Utah 84119, (801) 524–6764.

Copies of the Environmental Assessment and Proposed Amendment are available for review at the Salt Lake District Office.

James M. Parker,

Utah State Director.

[FR Doc. 89–6324 Filed 3–16–89; 8:45 am]

BILLING CODE 4310-DQ-M

[NV-930-09-4212-11; N-48675]

Realty Action; Lease/Purchase for Recreation and Public Purposes Clark County, NV

The following described public land in Las Vegas, Clark County, Nevada has been identified and examined and will be classified as suitable for lease/purchase under the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.). The lands will not be offered for lease/purchase until at least 60 days after the date of publication of this notice in the Federal Register.

Mount Diablo Meridian, Nevada

T. 20 S., R. 60 E

Sec. 33, Lot 43.

Aggregating 5.00 acres (gross).

This parcel of land contains approximately 5.00 acres. The Clark County School District intends to use the land for an elementary school site. The lease and/or patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

and will be subject to:

1. An easement for streets, roads and public utilities in accordance with the transportation plan for Clark County.

The land is not required for any federal purpose. The lease/purchase is consistent with the Bureau's planning for this area.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for recreation and public purposes and leasing under the mineral leasing laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126. Any adverse comments will be reviewed by the State Director.

In the absence of any adverse comments, the classification of the lands described in this Notice will become effective 60 days from the date of publication in the **Federal Register**.

Date: March 7, 1989.

Ben F. Collins,

District Manager, Las Vegas, NV.

[FR Doc. 89–6261 Filed 3–16–89; 8:45 am]

BILLING CODE 4310-HC-M

Minerals Management Service

Fifth Seminar on Technology Assessment and Research Program for Outer Continental Shelf Oil and Gas Operations

The Technology Assessment and Research Program, Minerals Management Service, is holding its Fifth Seminar on April 6–7, 1989, at the National Center, Reston, Virginia.

The program consist of contract research at universities, Government laboratories, and private companies in the categories of well-control, NO_x exhaust control, oil spill containment and cleanup, structural inspection and monitoring, geotechnical, ice mechanics, materials, and risk assessment. The agenda for the Seminar follows:

Technology Assessment and Research Program Seminar, April 6–7, 1989

Thursday, April 6, 1989

Morning Session

8:00: Registration—Coffee

8:55 Preliminary Remarks—John Gregory, Chief, Technology Assessment and Research Branch, Minerals Management Service

9:00 Welcome—Robert Kallman—Director, Minerals Managment Service

9:15 Nitrogen Oxide Control Technology for Offshore Oil and Gas Operations—Laurence Philp, Arthur D. Little, Inc., Santa Barbara, California.

An assessment has been performed of technologies that could be developed for reducing nitrogen oxide in gas turbine and diesel engine exhausts. Strategies have been devised and a workshop held to establish a cooperative plan for developing and demonstrating candidate systems offshore.

9:45 Development of the Raprenox Process for Nitrogen Oxide Reduction/Control in Diesel Exhausts—Dr. Robert Perry, Technor, Inc., Livermore, California

An exhaust gas treatment process using cyanuric acid as a reagent has been invented and is being developed.

10:15 Coffee

10:45 Seafloor Earthquake Measurement System—Recent

Advances in the SEMS Project—Dr. Gerry Sleefe, Sandia National Laboratories, Albuquerque, New Mexico

Significant improvements have been made in the SEMS units for collecting seismic data from remote ocean floor sites. Data on the response of seafloor sediments to earthquake-induced motion are scarce, thereby introducing uncertainty into seismic-hazard aspects of offshore platform design.

11:15 Flow-Induced Excitation of Marine Structures—Dr. Owen Griffin, Naval Research Laboratory, Washington, D.C.

Many types of marine structures are susceptible to vortex-induced oscillations, and this project investigates the effects of these motions and consequent increased hydrodynamic drag on complaint risers and Tension Leg Platform tendons.

11:45 Development of Methods to Evaluate the Tension Capacity of Drilled and Grouted Piles—Dr. Jean-Louis Briaud, Texas A&M University, College Station, Texas

The feasibility has been determined for adapting cement logging technology to the inspection of the grouted annulus of large diameter drilled and grouted piles, and, hence, the identification of defective grouted zones that contribute to reductions in pile capacity or integrity.

12:15 Lunch

Afternoon Session

1:15 Deepwater Developments in the 1990's—F. Patrick Dunn, Shell Oil Company, Houston, Texas

Guest Speaker—Technological and economic considerations for deepwater oil and gas developments in the coming decade.

2:00 Ice-Structure Interaction—Dr. Shyam Sunder, Massachusetts Institute of Technology, Cambridge, Massachusetts

Numerical models are being developed to investigate the deformation and progressive failure in ice for the purpose of predicting global and local pressures generated on offshore arctic platforms.

2:30 Punching Shear Resistance of Lightweight Concrete Offshore Structures for the Arctic—Dr. H. S. Lew, National Institute of Standards and Technology, Gaithersburg, Maryland

An investigation was conducted on the punching shear resistance of heavily reinforced, high-strength lightweight concrete slab and shell sections representative of proposed concrete offshore structures for the Arctic.

3:00 Coffee

3:30 In-Situ Burning as an Oil Spill Response—Dr. David Evans, Center for Fire Research, National Institute of Standards and Technology

Burning of spilled oil in-place is being evaluated as a primary response technique. Combustion products have been quantified and constituent behavior is being modeled.

4:00 Recent Evaluations of Oil Spill Chemical Additives—Dr. Mervin Fingas, Conservation and Protection, Environment Canada

Two oil spill chemical additives, which alter the physical properties of spilled oil so that the oil may be more easily recovered, have been evaluated in the laboratory and at sea. Both additives have shown to be successful in increasing the overall efficiency of conventional response methods.

4:30 Shipboard Navigational Radar as an Oil Spill Tracking Tool—Edward Tennyson, Technology Assessment and Research Branch, Minerals Management Service

Field evaluations of specially tuned shipboard navigational radar units have indicated that oil slicks can be tracked in a wide range of sea conditions.

5:00 Adjourn, First Day

5:30 Social Hour

Friday, April 7, 1989

Morning Session

8:00 Coffee

8:30 Improved Diverter Design and Operations—Dr. Ted Bourgoyne, Louisiana State University, Baton Rouge, Louisiana

Theoretical modeling, together with laboratory and large-scale field tests, have been conducted on the flow and erosion problems associated with the design and operation of diverters.

9:00 Resistance of Tendon Steel to the Ripple-Load Effect on Stress Tension Leg Platform Corrosion Cracking in Sea Water—Dr. Peter Pao, NRL, Washington, DC.

The susceptibility to ripple-load cracking effects of candidate tendon steels and associated weldments has been studied and compared with a new theoretical model developed at NRL to make predictions of the ripple-load degradation process.

9:30 Inspectability of Tension Leg Platform (TLP) Tendons—Dr. John Halkyard, Arctec Offshore Corporation, Escondido, California

A new theoretical ultrasonic model was investigated for predicting the minimum detectable flaw for proposed TLP tendons.

10:00 Coffee

10:30 Interference/Clearance Problems of Risers in Floating Production Systems—Dr. Farhad Rajabi, Brown & Root Development, Inc., Houston, Texas

Long, unbraced risers of deepwater production platforms, such as Tension Leg Platforms, are of growing concern. The potential for risers impacting with each other, with the hull structure, or with mooring lines or tethers is addressed.

11:00 Quality Control Tests for Fracture Toughness in Weldments of Offshore Platforms—Dr. Harry McHenry, National Institute of Standards and Technology, Boulder, Colorado

A review and assessment of test methods used to measure the fracture toughness of steel weldments and to recommend methods for quality control purposes are presented.

11:30 Future Developments in the AIM Program—Robert Bea, University of California, Berkeley, California

Development of a methodology to assess the integrity of old or damaged platforms and to identify the potential for continued platform service or the most appropriate type of repair measures required is discussed.

12:00 Lunch

Afternoon Session

1:00 Computer Assisted Measurements While Drilling (MWD) for Deep Ocean Well Control—Dr. Robert Desbrandes, Louisiana State University (LSU), Baton Rouge, Louisiana

A fluidic mud pulser, capable of transmitting safety related bottom hole data in a timely manner, has been developed by the Henry Diamond Laboratories. At LSU, a process control computer and logic have been devised to receive the pulsed signals for the purpose of operating a Warren surface choke. The system has been under test in a simulated deep ocean well.

1:30 Environment Canadian-Minerals Management Service Joint Investigations on Oil Spill Response: An Overview—Kenneth

Meikle, Conservation and Protection, Environment Canada

Various innovative oil spill response techniques have been evaluated and improved through this cooperative program. Both Agencies are engaged in a jointly funded program directed at the quantification of existing oil spill response techniques and the investigation of innovative technologies.

2:00 Erosional/Corrosional Velocity Criterion for Sizing Multi-Phase Flow Lines—Danny Deffenbaugh, Southwest Research Institute, San Antonio, Texas

Improved guidelines are required for sizing piping and flow lines. These guidelines need to consider the various classes of multiphase flow, the fluid chemistry, mixture density, flow velocity, gas-liquid void fraction, sand concentration, temperature, and concentration of corrosive materials.

2:30 Blast Effects from Explosive Removal of Platform Legs—Joseph Connor, Naval Surface Warfare Center, Silver Spring, Maryland

The Naval Surface Warfare Center has measured the blast overpressures generated during the use of explosives to remove an abandoned platform in the Gulf of Mexico.

3:00 Open Discussion of the TA&R Program and MMS Offshore Operations, Richard B. Krahl, Deputy Associate Director for Offshore Operations.

3:15 Adjourn

The Seminar is being held for the public without charge. Interested parties should write for invitations and technical material to Mr. Charles E. Smith, Research Program Manager, Technology Assessment and Research Branch, Minerals Management Service, 647 National Center, Reston, Virginia 22091 or call (703) 648–7752.

Date: March 9, 1989.

William D. Bettenberg,

Associate Director for Offshore Minerals Management.

[FR Doc. 89–6260 Filed 3–16–89; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

Concession Contract Negotiations; Pan Isles, Inc.

AGENCY: National Park Service, Interior.

ACTION: Public Notice.

SUMMARY: Public notice is hereby given that the National Park Service proposes to negotiate a concession contract with Pan Isles, Inc., authorizing it to continue to provide ferry boat transportation and related services for the public at Gulf Islands National Seashore for a period of ten (10) years through December 31, 1998.

EFFECTIVE DATE: May 16, 1989.

ADDRESS: Interested parties should contact the Regional Director, Southeast Region, 75 Spring Street, SW., Atlanta, Georgia 30303, for information as to the requirements of the proposed contract.

SUPPLEMENTARY INFORMATION: This contract has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which expires by limitation of time on December 31, 1992, and therefore pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract as defined in 36 CFR, 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before May 16, 1989 to be considered and evaluated.

Date: February 2, 1989.

Frank Catroppa,

Acting Regional Director, Southwest Region.

[FR Doc. 89–6372 Filed 3–16–89; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

Agricultural Cooperative Notice to the Commission of Intent To Perform Interstate Transportation for Certain Nonmembers

The following Notices were filed in accordance with section 10526(a)(5) of the Interstate Commerce Act. These rules provide that agricultural cooperatives intending to perform nonmember, non-exempt, interstate transportation must file the Notice, Form BOP 102, with the Commission within 30 days of its annual meetings each year. Any subsequent change concerning officers, directors, and location of transportation records shall require the filing of a supplemental Notice within 30 days of such change.

The name and address of the agricultural cooperative (1) and (2), the location of the records (3), and the name and address of the person to whom inquiries and correspondence should be addressed (4), are published here for interested persons. Submission of information which could have bearing upon the proprietary of a filing should be directed to the Commission's Office of Compliance and Consumer Assistance, Washington, DC 20423. The Notices are in a central file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, DC.

(1) Flav-O-Rich, Inc.

(2) 10140 Linn Station Road, Louisville, KY 40223.

(3) Various Locations—contact main office for specific locations.

(4) Beverly L. Williams, 10140 Linn Station Road, Louisville, KY 40223.

Noreta R. McGee,

Secretary.

[FR Doc. 89–6359 Filed 3–16–89; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 31423]

Missouri Pacific Truck Lines, Inc.—Merger Exemption—Katy Transportation Co.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Pursuant to 49 U.S.C. 10505, the Interstate Commerce Commission exempts from the requirements of 49 U.S.C. 11343 the merger of Katy Transportation Company into Missouri Pacific Truck Lines, Inc., subject to standard labor protective conditions.

DATES: This exemption will be effective on March 20, 1989. Petitions for reconsideration must be filed by March 27, 1989.

ADDRESSES: Send pleadings referring to Finance Docket No. 31423 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Joseph D. Anthofer, General Attorney, Jeanna L. Regier, Registered Practitioner, 1416 Dodge Street, Omaha, NE 68179.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245. [TDD for hearing impaired: (202) 275–1721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic

Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone (202) 289–4357/3459. (Assistance for hearing impaired is available through TDD services at (202) 275–1721.)

Decided: March 14, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 89–6339 Filed 3–16–89; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 31421]

Chattooga & Chickamauga Railway Co.—Acquisition and Operation of Trackage Rights Exemption—Columbus and Greenville Railway Co.

Chattooga & Chickamauga Railway Co. (C&C) has filed a notice of exemption to acquire and operate via trackage rights a 2-mile line of railroad owned by Columbus and Greenville Railway Company (C&G) between milepost 4, at Davis and milepost 6, at Waters, in Lowndes County, MS. The trackage rights granted to C&C include the right to serve all industrial side tracks and team tracks appurtenant to the rail line and the right to use C&G's existing rail terminals located along the line. C&C's right to use the line is not exclusive, but shall be in common with C&G. The trackage rights became effective on February 28, 1989.

C&C is a new corporation being duly organized by CAGY Industries Inc. (CAGY) to operate via the trackage rights described above. CAGY, a noncarrier, is the majority stock holder of C&G, a rail carrier.

A transaction relating to the control of C&C by CAGY is the subject of a petition for exemption filed concurrently in Finance Docket No. 31422, *CAGY Industries, Inc.—Control Exemption—Chattooga & Chickamauga Railway Co.* Any comments must be filed with the Commission and served on: Lester A. Sittler, Esq., 137 Main Street, P.O. Box 128, Cooperstown, NY 13326.

The notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: March 13, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89–6361 Filed 3–16–89; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 31335]

Missouri Pacific Railroad Co.—Merger Exemption—San Antonio Belt & Terminal Railway Co. et al.

San Antonio Belt & Terminal Railway Company (SAB&T), Oklahoma-Kansas-Texas Railroad Company (OKT), Missouri-Kansas-Texas Railroad Company (MKT), Galveston, Houston & Henderson Railroad Company (GH&H) (Collectively, the subsidiaries) and Missouri Pacific Railroad Company (MP) have filed a notice of exemption for the mergers of the subsidiaries into MP. SAB&T and OKT are wholly owned subsidiaries of MKT. MKT is a wholly owned subsidiary of MP. The ownership of GH&H is divided equally between MKT.

The transactions are to be accomplished as follows: (1) SAB&T was to be merged into MKT on or about March 1, 1989; (2) OKT will be merged into MKT on or about March 31, 1989; (3) MKT will be merged into MP on or about April 1, 1989; and (4) GH&H (which as of April 1, 1989, will be wholly owned by MP) will be merged into MP as soon as possible after April 1, 1989. MP will be the surviving corporate entity.

The mergers involve a series of transactions that are within a corporate family of the type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). These transactions 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 minimum 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: Joseph D. Anthofer, 1416 Dodge Street, Omaha, NE, 68179.

Decided: March 13, 1989.

By Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89–6358 Filed 3–16–89; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–33 (Sub-No. 57X)]

Union Pacific Co.—Abandonment Exemption—Near Anaheim in Orange County, CA

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 0.7-mile line of railroad (a portion of the line known as the Anaheim Branch) between milepost 19.28 and milepost 19.98 (end of line) near Anaheim, Orange County, CA.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on April 16, 1989 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1]

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 4 U.C.C.2d 400 (1988). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by March 27, 1989.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed April 6, 1989, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representatives: Joseph D. Anthofer, Jeanna L. Regier, 1416 Dodge Street, Room 830, Omaha, NE 68179.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue by EA by March 22, 1989. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275–7316. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: March 9, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89–6362 Filed 3–16–89; 8:45 am]

BILLING CODE 7035–01–M

Intent To Engage In Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

A. 1. Parent corporation and address of principal office: American National Can Co.—Greenwich, CT.

2. Wholly owned subsidiaries which will participate in the operations and State(s) of incorporation: Color Ad Packaging, Inc., Incorporated in Minnesota.

B. 1. Parent corporation and address of principal office: Beaver Coaches, Inc., 20545 Murray Road, Bend, Oregon 97701.

2. Indirect Wholly-owned subsidiary which will participate in the operations, and State of incorporation: BDC, Inc., an Oregon Corporation, having the same two shareholders as the parent corporation.

C. 1. Parent corporation and address of princial office: Olin Corporation 427 North Shamrock Street East Alton, IL 62024–1174. State of Incorporation: Virginia.

2. Wholly-owned subsidiaries which will participate in the operations, and State(s) of incorporation:

a. Bridgeport Brass Corporation State of Incorporation: Indiana.

b. Bryan Metals, Inc., State of Incorporation: Ohio.

D. 1. Parent corporation and address of principle office: SYSCO Corporation 1390 Enclave Parkway Houston, Texas 77077.

2. Wholly-owned subsidiaries and divisions which will participate in the operations, and States of incorporation:

SUBSIDIARY—Name & Address	STATE of Incorporation
Allied-Sysoc Food Services, Inc	California.
Arrow-Sysoc Food Services, Inc	Delaware.
Baraboo-Sysoc Food Services, Inc.	Wisconsion.
Bell-Sysoc Food Services, Inc	North Carolina.
Cochran-Sysoc Food Services, Inc.	Delaware.
Deaktor-Sysoc Food Services, Co.	Pennsylvania.
DiPaolo-Sysoc Food Services, Inc.	Ohio.
Food Service Specialists, Inc	Delaware.
Glencoe-Sysoc Food Services, Company.	California.
Global-Sysco	Delaware.
Grants-Sysoc Food Services, Inc	Michiogan.
HFP-Sysoc Food Services, Inc	Virginia.
Hallsmith-Sysoc Food Services	Massachusetts.
Hardin's-Sysoc Food Services, Inc.	Tennessee.
Hardin's-Sysoc Food Services, Inc.	Tennessee.
K. W. Food Distributors, Ltd	British Columbia.
Koon-Sysoc Food Services, Inc	Kentucky.
Lankford-Sysoc Food Services, Inc.	Kentucky.
Maine-Sysco, Inc	Maine.
Major-Sysco, Inc	California.
Mid-Central/Sysco Food Services, Inc.	Missouri.
Miesel-Sysoc Food Service, Co	Michigan.
Miesel-Sysoc Food Services, Company.	Michigan.
New York Tea-Sysco Food Service Co.	Minnesota.
Nobel-Sysoc Food Services, Company.	Colorado.
Nobel-Sysoc Food Services, Company.	Colorado.
Robert Orr-Sysoc Food Services, Co.	Tennessee.
Robert Orr-Sysoc Food Services, of GA.	Tennessee.
Pegler-Sysoc Food Services, Company.	Nebraska.
Select-Sysoc Foods Inc	California.
Select-Sysco Foods, Inc	California.
Sugar Food Company	Delaware.
The Sygma Network, Inc	Delaware.
Sysco/Continental-Atlanta	Delaware.
Sysco/Continental-Avard, Inc	California.
Sysco/Continental-Central Florida.	Delaware.
Sysco/Continental-Century City	Delaware.
Sysco/Continental-Chicago	Delaware.
Sysco/Continental-indianapolis	Delaware.
Sysco/Continental-institutional	Delaware.
Sysco/Continental-Iowa	Delaware.
Sysco/Continental-Keil	Delaware.
Sysco/Continental-Los Angeles	Delaware.
Sysco/Continental-Miami	Delaware.
Sysco/Continenial-Minnesota	Delaware.
Sysco/Continental-Mulberry	Delaware.
Sysco/Continental-Phoenix	Delaware.
Sysco/Continental-Pittsburgh	Delaware.
Sysco/Continental-Portland	Delaware.
Sysco/Continental-Seattle	Delaware.
Sysco/Continental-Smelkinson	Delaware.
Sysco Frosted Foods	Michigan.
Sysco-General Food Services, Inc.	Idaho.
Sysco/Gulf Atlantic-Food Services.	Florida.
Sysco Intermountain Food Services.	Utah.
Sysco/Louisville Food Services Co.	Kentucky.
Sysco Military Distribution Division.	Florida.
Sysco-Rome Food Service, Inc	Georgia.
Theimer/Sysco Food Services	Virginia.
Thomas/Sysco Food Services	Ohio.
Vogel/Sysco Food Service, Inc	Arkanasas.

Noreta R. McGee,

Secretary.

[FR Doc. 89–6357 Filed 3–16–89; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 87–68]

Edward R. Burka, M.D.; Revocation of Registration

On September 2, 1987, the Administrator of the Drug Enforcement Administration (DEA), issued to Edward R. Burka, M.D. (Respondent), of 330 South Ninth Street, second floor, Philadelphia, Pennsylvania 19107, an Order to Show Cause proposing to revoke his DEA Certificate of Registration, AB5984910, and to deny any pending applications for registration. The Order to Show Cause alleged that the continued registration of Respondent would be inconsistent with the public interest, as set forth in 21

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987), and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440–48446).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

U.S.C. 823(f) and 824(a)(4). Additionally, citing his preliminary finding that Respondent's continued registration posed an imminent danger to the public health and safety, the Administrator ordered the immediate suspension of DEA Certificate of Registration AB5984910 during the pendency of these proceedings. 21 U.S.C. 824(d).

On September 28, 1987, Respondent, through counsel, filed a request for a hearing on the issues raised by the Order to Show Cause and asked that such a hearing be held "as early as reasonably possible." The matter was docketed before Administrative Law Judge Francis L. Young. Judge Young issued an Order for Prehearing Statements stating that both sides were to file such statements on or before October 19, 1987. Both parties timely filed the prehearing statements, however, Respondent's statement did not include the required summaries of the proposed witnesses' testimony nor a list of proposed documentary evidence.

Subsequently, Respondent's counsel filed various motions including a motion to discover the search warrant affidavit, a first motion for discovery, a motion to take depositions, and a request for issuance of subpoenas. By November 24, 1987, the Administrative Law Judge denied all of Respondent's motions and gave Respondent until December 28, 1987, to file a prehearing statement conforming to the requirements of the Order for Prehearing Statements issued on September 29, 1987. On December 28, 1987, Respondent filed his second prehearing statement.

The Administrative Law Judge conducted the first prehearing conference in this matter on January 12, 1988, and ordered Government counsel to supply Respondent's counsel with additional information by January 27, 1988.

On February 8, 1988, Respondent filed a motion to suppress certain evidence at the administrative hearing. Following the receipt of the Government's opposition to the motion to suppress, on March 18, 1988, Judge Young denied Respondent's motion and gave Respondent until April 11, 1988, to file a final prehearing statement conforming to the requirements of the Order for Prehearing Statements issued on September 29, 1987.

Respondent filed his third prehearing statement on April 11, 1988, and a second prehearing conference was held on May 19, 1988. During this conference, the hearing was scheduled to begin in mid-September 1988.

On May 26, 1988, a grand jury in the United States District Court for the Eastern District of Pennsylvania returned a 22-count indictment against Respondent charging him with violations of 21 U.S.C. 841(a)(1), 21 U.S.C. 843(a)(4)(A) and 18 U.S.C. 1505. A superseding indictment charged Respondent with 60 counts of violations of the same statutes. The criminal trial was scheduled to begin in late September 1988. On June 29, 1988, Respondent moved the District Court for a continuance of the criminal trial and the trial was rescheduled to begin on November 28, 1988.

On August 5, 1988, Government counsel filed a motion for a stay of the administrative proceeding pending the outcome of Respondent's criminal trial. After considering the Government's motion and Respondent's response thereto, on August 17, 1988, the Administrative Law Judge granted the Government's motion for a stay. Judge Young found that cross-examination of the Government's witnesses during the administrative hearing would give Respondent the opportunity to obtain advantage in connection with the criminal trial which Respondent would not otherwise have. Judge Young further stated that pursuant to 21 CFR 1301.46, Respondent has a right to have an administrative hearing in this proceeding "as early as reasonably possible." However, any right can be waived and the Administrative Law Judge concluded that Respondent waived his right to an early administrative hearing. Judge Young specifically stated that, "it is only Respondent's repeated efforts to find out more about the cards in the Government's hand which have postponed the setting of the hearing."

On December 7, 1988, Respondent entered a plea of guilty to three counts of the indictment in the United States District Court for the Eastern District of Pennsylvania. Pursuant to the plea agreement, Respondent agreed to withdraw his request for an administrative hearing and consent to the revocation of his DEA Certificate of Registration. On January 24, 1989, Respondent was sentenced and on February 2, 1989, counsel for Respondent sent a letter to the Administrative Law Judge withdrawing the request for a hearing. Accordingly, on February 3, 1989, Judge Young entered an order terminating the proceedings before him. The Administrator now enters his final order in this matter without a hearing and based on the investigative file. 21 CFR 1301.57.

The administrator finds that Respondent is a physician and was, at all relevant times to this administrative proceeding, licensed to practice medicine in the Commonwealth of Pennsylvania. Respondent specialized in hematology and treated patients suffering from sickle cell anemia. DEA initiated an investigation of Respondent's controlled substance handling practices after receiving information that Respondent had purchased over 140,000 dosage units of Schedule II controlled substances between January 1986 and May 1987. In addition, DEA learned that Respondent was among the top three practitioner purchasers of secobarbital, hydromorphone and morphine, all Schedule II controlled substances, for 1985, 1986, and January through September 1987.

As a result of this information, in May 1987, DEA Investigators conducted an administrative inspection at Respondent's office. During the course of the inspection, the Investigators discovered that Respondent did not maintain appropriate records of receipt of controlled substances as required by 21 U.S.C. 827 and its attendant regulations. When asked to produce his dispensing records, which are also required to be maintained by 21 U.S.C. 827, Respondent stated that he kept this information in his computer. A review of the computer records revealed that a number of Respondent's patients were allegedly dispensed large quantities of Schedule II controlled substances, however, the dispensing of the drugs was not noted in the patients' medical records.

On June 16 and July 9, 1987, DEA Investigators interviewed Respondent's nurse. On both occasions, the nurse stated that she was neither aware of Respondent's excessive ordering of controlled substances nor of his dispensing of controlled substances in the large amounts noted in the computer records. She further stated that when Respondent did dispense drugs to his patients, it was the office practice for the patients to show the nurse the medication on their way out of the office so she could ensure that the patients' charts were properly annotated and the billing records correct.

DEA Investigators also interviewed four hematologists who rotated and treated Respondent's patients on Thursdays, when Respondent was normally out of his office. All four physicians stated unequivocally that they were not aware that Respondent was ordering such large quantities of controlled substances or dispensing controlled substances to the patients in the amounts listed on the computer printout.

Between June 30, 1987 and August 14, 1987, DEA Investigators interviewed 31 of Respondent's patients listed in his computer records as having been dispensed controlled substances and obtained written sworn statements from all but a few of them. Of those interviewed, 28 denied being dispensed *any* controlled substances by Respondent. The remaining individuals stated that they may have been dispensed a few tablets of a controlled substance, however denied being dispensed the large amounts of the drugs attributed to them in Respondent's computer printout.

During the course of the investigation, Respondent continued to order large quantities of controlled substances. For the period May 5, 1987 to August 11, 1987, Respondent purchased 25,400 dosage units of Schedule II controlled substances.

On July 9, 1987, Respondent's nurse told DEA Investigators that Respondent was altering patient charts. Normally, she would pull patient charts in the morning for the day's patients. Since the investigation of Respondent began, however, she would arrive in the morning and the charts had already been pulled. She stated that some of these charts contained annotations relating to prior visits that were not previously noted. She further stated that some of these charts completed by Respondent reflected his dispensation of controlled substances for visits which had not yet occurred. This information was corroborated by Respondent's secretary in an interview conducted on August 17, 1987. In addition, both Respondent's nurse and secretary stated that they overheard Respondent telling his patients, both in person and over the telephone, that should they be contacted by DEA they should state that they probably were dispensed medications, but that the Investigators should contact Respondent since such information was contained in their medical charts.

On August 24, 1987, a search warrant was executed at Respondent's office. Typed statements were discovered that were allegedly signed by Respondent's patients refuting all statements previously given to DEA Investigators. Subsequent interviews of these patients by DEA Investigators revealed that Respondent used various ploys to cause the patients to sign these statements without reading them first. These individuals stated that the statments which they signed for Respondent contained false information and they would not have signed them had they read them first.

Following Respondent's indictment, Respondent entered into a plea agreement whereby he entered a plea of guilty to three counts of the indictment. On January 24, 1989, Respondent was convicted in the United States District Court for the Eastern District of Pennsylvania and sentenced to four and one-half years imprisonment and ordered to forfeit specific property in lieu of a fine. Also, pursuant to the plea agreement, Respondent agreed to permanently surrender his license to practice medicine and surgery in the Commonwealth of Pennsylvania and in any other state.

The Administrator may revoke a registration if he determines that the continued registration would be inconsistent with the public interest. 21 U.S.C. 824(a)(4). The factors which are considered in determining whether the registration is consistent with the public interest are enumerated in 21 U.S.C. 823(f). After considering these factors, the Administrator concludes that there is no question but that Respondent's continued registration is inconsistent with the public interest.

Respondent ordered large quantities of highly abused Schedule II controlled substances. He falsified records in an unsuccessful attempt to account for these drugs. Even after Investigators discovered that his patients had not received the drugs he claimed to have dispensed to them, Respondent continued his deceitful practices. He tricked his patients into signing statements refuting everything that they had previously told DEA Investigators. As a result of his illegal activities, Respondent was convicted of controlled substance-related felony offenses and one count of obstruction of an agency proceeding, sentenced to four and one-half years imprisonment and ordered to surrender his medical licenses.

Respondent's actions are not those of an individual who can be trusted to handle controlled substances responsibly. Respondent miserably abused the trust and privilege accorded by his controlled substance registration. Respondent's DEA Certificate of Registration must be revoked.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration AB5984910, previously issued to Edward R. Burka, M.D., be, and it hereby is, revoked, and any pending applications for registration under the Controlled Substances Act, be, and they hereby are, denied. This order is effective immediately.

When the Order to Show Cause/ Immediate Suspension was served on Respondent, all controlled substances possessed by him under the authority of his then-suspended registration were placed under seal and removed for safekeeping. 21 U.S.C. 824(f) provides that no disposition may be made of such controlled substances under seal until all appeals have been concluded or until the time for taking an appeal has elapsed. Accordingly, these controlled substances shall remain under seal until April 17, 1989, or until any appeal of this order has been concluded. At that time, all such controlled substances shall be forfeited to the United States and shall be disposed of pursuant to 21 U.S.C. 881(e).

Dated: March 13, 1989.

John C. Lawn,

Administrator.

[FR Doc. 89–6250 Filed 3–16–89; 8:45 am]

BILLING CODE 4410–09–M

Office of Justice Programs

Office of Victims of Crime; Assistance of Victims of Federal Crime in Indian Country; Discretionary Grants

AGENCY: Department of Justice, Office of Justice Programs, Office of Victims of Crime, Jane Nady Burnley, Director.

ACTION: Notice of availability of funds.

SUMMARY: The Office of Victims of Crime (OVC) is publishing this notice to announce a $700,000 discretionary grant program aimed at providing assistance to Native American Indians, and others, who are victims of Federal crimes in Indian country in areas that fall under the jurisdiction of the Federal government.

This is the second announcement of availability of funds to provide victim assistance in Indian country. The first notice of July 21, 1988, culminated in the award of nine grants to states for a total of $1 million to support the development of victim assistance services through subgrants awarded by the states to tribes, Native American organizations, or other eligible victims assistance service agencies in Indian country, where, due to geographical isolation or a scarcity of victim assistance programs, there are either no existing or insufficient victim assistance services.

Background

The money for these grants will come from the Victims of Crime Act of 1984 (VOCA), as amended, 42 U.S.C. 10601 *et seq.* The Act established a Crime Victims Fund in the Department of Treasury made up of monies received from certain Federal criminal fines; special penalty assessments; forfeited

appearance, bail bonds, and collateral security; and literary profits due certain convicted Federal defendants. Under 42 U.S.C. 10603(c)(1)(B) a portion of these funds may be used to assist victims of Federal crimes.

This money, set aside to improve the treatment of victims of Federal crime, can be used for a wide variety of activities that include, but are not limited to: (a) Crisis intervention services such as counseling to provide emotional support to victims following a violent crime; (b) emergency short-term child care services or temporary shelter for family violence victims; (c) assistance in participation in Federal criminal justice proceedings; (d) payment of reasonable costs for a forensic medical examination to a Federal crime victim; (e) training of law enforcement personnel in the delivery of services to Federal crime victims and publications of related materials; and (f) the payment of salaries of personnel who provide assistance services to victims of Federal crime.

During Fiscal Year 1988 OVC has assisted victims of Federal crime by supporting training of Victim-Witness Coordinators in the U.S. Attorneys' offices, by co-sponsoring a conference attended by teams of Assistant U.S. Attorneys, Victim-Witness Coordinators, and Federal investigators on the investigation and prosecution of child sexual abuse and through an interagency agreement with the Federal Law Enforcement Training Center to develop a curriculum and to train Federal law enforcement agencies regarding victim witness responsibilities, issues and services prescribed by the Victim and Witness Protection Act of 1982. In addition, funds have been made available, through the U.S. Attorneys' offices, for direct assistance, e.g., mental health services, to victims of Federal crimes when no other source of support was available.

Recognizing the need to provide information and training regarding victim assistance services in Indian country, OVC co-sponsored a conference, "Indian Nations: Justice for Victims of Crime", in November of 1988 in Rapid City, South Dakota. The conference focused on the special needs of crime victims on American Indian reservations and how these needs could be met through the development of victim assistance services. Approximately 450 persons representing tribes, law enforcement and state victim assistance agencies were in attendance. Native Americans as well as other Federal, state and local professionals who work with the legal, law enforcement or victim assistance aspects of providing services to victims of crime in Indian country helped plan the conference. Many of the speakers were Native Americans who were involved in managing successful programs in their own communities.

Consistent with Congressional intent, 132 *Cong. Rec.* H11294 (daily ed. October 17, 1986), nearly all of the funds OVC has allocated to date for providing direct assistance to victims of Federal crime have been used to aid Native American Indians. This experience has convinced OVC of the need to commit significant funds to develop and expand new or existing victim assistance services that will provide direct services to victims of Federal crime in Indian country. Consequently, in July of 1988, OVC announced the availability of $1 million for the purpose of providing direct services to victims of Federal crime in Indian country by expanding existing services to make victim assistance services accessible in geographically remote areas or to develop new programs where none existed to meet the clear and pressing needs of these crime victims. The response was tremendous; eighteen state victim assistance agencies applied for funds on behalf of tribes in their states. Requests for funds far exceeded the $1 million and both the descriptions of populations to be served and the need for services detailed in the grant applications made it clear that a greater effort was needed. OVC resolved to use the major portion of funds available under section 1404(c)(1)(B) [42 U.S.C. 10603(c)(1)(B)] of the Victims of Crime Act to continue the effort to establish victim assistance services in Indian country.

In this second announcement OVC will make available between six and eight grants to selected state agencies presently administering VOCA victim assistance grants. These agencies will in turn either subgrant or contract with Indian tribes or Native American and other eligible organizations for victim assistance services in Indian country where currently no program exist or where services need to be augmented. This notice describes the availability and purposes of this grant program. Individual states that have a qualifying target population eligible to receive these services should contact OVC and request a grant information and application package. Eligible states which did not receive grant awards under the July 21, 1988, announcement are urged to apply; states which did receive awards under the previous announcement will not be eligible for funds under the current announcement.

EFFECTIVE DATE: May 16, 1989.

FOR FURTHER INFORMATION CONTACT: Questions concerning this notice should be directed to Susan Shriner, Program Specialist, OVC, or Toni Thomas, Program Specialist, OVC, 633 Indiana Avenue, NW., Washington, DC, 20531, (202) 272–6500.

Purpose

The Office for Victims of Crime is making $700,000 available to selected states to promote the development of direct services to victims of Federal crimes in Indian country. The purposes of these grants are: (1) To address the clear and pressing needs of victims of Federal crime, particularly Native American Indians on Federal enclaves, who have limited access to existing victim assistance programs primarily due to geographic remoteness; and (2) to build upon the existing base of victim services in Indian country and to support the development of new programs where currently there are none. It is not our intention to establish a separate service system to assist victims of Federal crimes. Instead, our intention is to use a significant portion of funds available for Federal crime victims to foster the development of an expanded network of victim assistance services which will enable victims of Federal crimes in Indian country to have improved access to victim assistance and support services.

Eligible Applicants

Applications may be submitted by agencies designated by the chief executive officer of each state as responsible for applying for and administering VOCA victim assistance funds. Grants will be limited to those states where the United States Government, e.g., the Bureau of Indian Affairs, the Federal Bureau of Investigation, or the U.S. Attorney's office, has the authority to investigate or prosecute crimes in Indian country. Portions of Indian country where cases of serious crime are handled by local or state authorities and the Federal government does not have the authority to investigate or prosecute crimes are not eligible. States which received awards under the July 21, 1988 announcement will not be eligible for funds under this announcement. Copies of a program instruction detailing the application requirements and procedures will be sent to eligible states upon request. State agencies will either subgrant or contract the funds to eligible organizations that will establish or

improve victim assistance programs in Indian country. In the subgrant process, preference will be given to Indian tribes or Native American organizations. When subgrants are awarded to Indian tribes or Native American organizations in Indian country, no matching funds will be required of the applicant.

Selection Criteria

Applications from states will be reviewed for criteria that will be described in full in the program instruction package. In determining which state applications to fund, OVC will consider: (a) Documentation to show that no existing victim assistance program currently serves the target population in Indian country, or that current direct services are not adequate in relation to the targeted population in Indian country; (b) evidence of cooperation between tribal, local, state, and Federal agencies and officials, including the U.S. Attorney who has responsibility for the prosecution of Federal criminal matters and victim and witness coordination; (c) a description of the U.S. Attorney's authority to prosecute crimes in the land areas of Indian country covered by the application; (d) a description of the population(s) that could be served and a brief description of the victim service needs; (e) a description of services to be developed; and (f) a description of how the state agency intends to disperse the funds to organizations that will develop or expand victim services in Indian country.

Application Deadline

May 16, 1989.

Award Amounts

Awards to states will vary in size depending on the number of victims to be served and the number of grants awarded. Generally, awards will range from between $30,000 and $200,000.

Additional Information

Requirements relating to the preparation of the application, and reporting, financial management, civil rights, and other issues will be contained in the program instruction/application package.

Approved:

Jane Nady Burnley,

Director, Office for Victims of Crime.

[FR Doc. 89-6291 Filed 3-16-89; 8:45 am]

BILLING CODE 4410-18-M

DEPARTMENT OF LABOR

Employment Standards Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3504, Washington, DC 20210.

Corrections to General Wage Determination Decisions

Pursuant to the provisions of the Regulations set forth in Title 29 of the Code of Federal Regulations, Part 1, § 1.6(d), the Administrator of the Wage and Hour Division may correct any wage determination that contains clerical errors.

Corrections being issued in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon And Related Acts" are indicated by Volume and are included immediately following the transmittal sheet(s) for the appropriate Volume(s).

Volume III:

Wage Decision No. AZ87-3, Modification 2
Wage Decision No. AZ88-3
Wage Decision No. AZ89-3, as published on January 6, 1989 (with no modifications)

Pursuant to the Regulations, 29 CFR Part 1, § 1.6(d), such corrections shall be included in any bid specifications containing the wage determinations, or in any on-going contracts containing the wage determinations in question, retroactively to the start of construction.

New General Wage Determination Decisions

The numbers of the decisions being added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon And Related Acts" are listed by Volume, State, and page number(s).

Volume III

North Dakota:
ND89-5 ..... pp. 240a-240b.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon And Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Delaware:
DE89-2 (Jan. 6, 1989) ..... pp. 94-95. pp. 97-98.

Volume II

Iowa:
IA89-4 (Jan. 6, 1989) ..... p. 38.
Kansas:
KS89-7 (Jan. 6, 1989)..... pp. 368-368b.
KS89-8 (Jan. 6, 1989)..... p. 370.

Volume III

California:
CA89-2 (Jan. 6, 1989)..... p. 51-64a.
Idaho:
ID89-1 (Jan. 6, 1989)..... pp. 146-149.
North Dakota:
ND89-1 (Jan. 6, 1989)..... pp. 223-227.
ND89-3 (Jan. 6, 1989)..... p. 236.
Washington:
WA89-1 (Jan. 6, 1989) ..... pp. 364, 368. pp. 373-374.
Listing by location (index)..... p. xxvi.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 10th Day of March 1989.

Robert V. Setera,

Acting Director, Division of Wage Determinations.

[FR Doc. 89-6041 Filed 3-16-89; 8:45 am]

BILLING CODE 4510-27-M

[Application Nos. D-7433 and D-7444 through D-7447]

Pension and Welfare Benefits Administration

Hearing on Proposed Exemption From Certain Prohibited Transaction Restrictions of ERISA for Pan American World Airways, Inc. Plans

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of hearing.

SUMMARY: Notice is hereby given that the Department of Labor will hold a hearing on May 1 and, if necessary, May 2, 1989, relating to a proposed exemption from certain prohibited transaction provisions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) for Pan American World Airways, Inc. Cooperative Retirement Income Plan; Pan American World Airways, Inc. Defined Benefit Plan for Flight Engineers; Pan American World Airways, Inc. Non-Contract Employees' Pension Plan; Pan American World Airways, Inc. Mechanical Stores and Related Employees' Pension Plan; and Pan American World Airways, Inc. Clerical, Office, and Station Employees' Pension Plan (collectively, the Plans). A notice of pendency of the proposed exemption was published in the **Federal Register** at 54 FR 707 (January 9, 1989).

DATE: The hearing will be held on May 1 and, if necessary, May 2, 1989, beginning at 9:30 a.m., e.s.t.

ADDRESS: The hearing will be held in the auditorium of the Department of Labor Building, 200 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc, Pension and Welfare Benefits Administration, U.S. Department of Labor, Washington, DC 20210 (202) 523-8883 (not a toll free number).

SUPPLEMENTARY INFORMATION:

On January 9, 1989, the Department of Labor (the Department) published in the **Federal Register** (54 FR 707) a notice of pendency of a proposed exemption for the Plans from the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and from the taxes imposed by section 4975(c)(1) (A) through (E) of the Internal Revenue Code of 1986. In that notice, the Department invited interested persons to submit written comments and any requests for a hearing on the proposed exemption.

As explained in the notice of pendency, the proposed exemption was requested in applications filed on behalf of the Plans, pursuant to section 408(a) of the Act and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). The proposed exemption, if granted, would permit: (1) The purchase by the Plans from Pan American World Airways, Inc. (Airways) of a portion of the leasehold estate (the Leasehold) in the "Worldport" airline passenger terminal (the Terminal) and the land underlying the Terminal located at John F. Kennedy International Airport; (2) the contribution in kind to the Plans by Airways of the remaining value of the Leasehold following reduction for that portion of the Leasehold sold to the Plans by Airways; and (3) the sublease of the Terminal by the Plans to Airways for the duration of the remaining term of the Leasehold at a fixed monthly rental rate; provided the terms of the transactions are not less favorable to the Plans than those negotiated at arm's length in similar circumstances between unrelated third parties, and an independent fiduciary, among other things, reviews, monitors, and approves the proposed transactions.

In response to the solicitation of comments from interested persons, the Department received 276 letters, 96 of which requested that a hearing be held on the proposed exemption. In addition, the Department received letters from the applicant, Airways, and Bear Stearns Fiduciary Services, Inc., the independent fiduciary acting on behalf of the Plans with respect to the transactions. Airways' submission contained factual updates to the applications and indicated certain technical errors it believed were contained in the notice of pendency. Bear Sterns Fiduciary Services, Inc.'s submission intended to clarify certain representations made to the Department as part of the

applications and attributed to it in the notice of pendency.

While a number of comments received by the Department supported adoption of the proposed exemption, the majority of commenters expressed concern generally about the affect of the exemption on the Plans. The concerns expressed related to, among other things, the lack of diversification and liquidity of the assets of the Plans, if the exemption is granted; the valuation of the Leasehold; the effects of the proposed transactions on the Plans in the event that Airways files for bankruptcy; the proposed sale by Airways of a portion of the Leasehold to the Plans in return for cash; and the adequacy of the proposed safeguards which are intended to protect the Plans' interests.

All submissions received by the Department relating to the January 9, 1989 notice of pendency are available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, Room N-5507, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

In view of the comments requesting a hearing on the proposed exemption, the Department has decided to hold a hearing on the proposed exemption on May 1 and, if necessary, May 2, 1989, beginning at 9:30 a.m., e.s.t., in the auditorium of the Department of Labor, 200 Constitution Avenue, NW., Washington, DC.

Any interested person who wishes to be assured of an opportunity to present oral comments at the hearing should submit by 3:30 p.m., e.s.t., April 21, 1989: (1) A written request to be heard; and (2) an outline (preferably five copies) of the topics to be discussed. The request to be heard and accompanying outline should be sent to: Office of Regulations and Interpretations, Room N-5671, Pension and Welfare Benefits Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, "Attention: Pan Am Exemption Hearing."

The Department will prepare an agenda indicating the order of presentation of oral comments. In the absence of special circumstances, each commenter will be allotted ten minutes in which to complete his or her presentation. Information about the agenda may be obtained on or after April 26, by contacting Angelena C. Le Blanc, Washington, DC, (202) 523-8883. Those individuals who make oral comments at the hearing should be prepared to answer questions regarding their comments. The hearing will be transcribed.

Notice to Interested Persons

Airways has agreed that, no later than March 31, 1989, it will provide notice to interest persons of the hearing to be held on the January 9, 1989 proposed exemption. Notice to interested persons will include a copy of this hearing notice, in its entirety, as published in the **Federal Register.**

Notice of Public Hearing

Notice is hereby given that a public hearing will be held on May 1 and, if necessary, May 2, 1989, regarding a proposed exemption from certain prohibited transaction restrictions of the Employee Retirement Income Security Act and certain taxes imposed by the Internal Revenue Code of 1986 (published at 54 FR 707, January 9, 1989) for transactions involving the Pan American World Airways, Inc. Cooperative Retirement Income Plan, Pan American World Airways, Inc. Defined Benefit Plan for Flight Engineers, Pan American World Airways, Inc. Non-Contract Employees' Pension Plan, Pan American World Airways, Inc. Mechanical Stores and Related Employees' Pension Plan, Pan American World Airways, Inc. Clerical, Office, and Station Employees' Pension Plan. The hearing will be held, beginning at 9:30 a.m., e.s.t., in the auditorium of the U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC.

Signed at Washington, DC, this 14th day of March, 1989.

Robert J. Doyle,

Director of Regulations and Interpretations.

[FR Doc. 89-6323 Filed 3-16-89; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Institute of Museum Services; Privacy Act of 1974; Notice of Systems of Records

AGENCY: Institute of Museum Services, NFAH.

ACTION: Notice of Systems of Records.

SUMMARY: The Institute of Museum Services (IMS), an independent agency within the Executive Branch, was established by an Act of Congress in 1976 to encourage and assist museums in modernizing their methods and facilities so that they may be better able to conserve our nation's heritage; and to meet financial burdens resulting from increased use by the public. In 1984, the Institute of Museum Services became part of the National Foundation on the Arts and the Humanities pursuant to Pub. L. 97-394 (December 30, 1982) and Pub. L. 98-306 (May 31, 1984). Under the terms of an inter-agency agreement, the National Endowment for the Humanities (NEH), is responsible for providing certain administrative services to IMS. Consequently, many IMS records are maintained by NEH. However, as a result of a recent review, the systems of records listed in this notice have been identified as being maintained by IMS.

DATES: Comments are invited from other Federal agencies and the public. They must be received on or before April 17, 1989.

Comments should be sent to Lisa Robinson, Director, Policy, Planning and Budget, Institute of Museum Services, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506.

FOR FURTHER INFORMATION CONTACT: Lisa Robinson, Director, Policy, Planning and Budget, Institute of Museum Services, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506. (202) 786-0536.

Lois Burke Shepard,

Director, Institute of Museum Services.

List of System Names

Reviewers and Panelists—IMS-1

Personnel—IMS-2

IMS-1

SYSTEM NAME:

Reviewers and Panelists—IMS-1.

SYSTEM LOCATION:

IMS—1100 Pennsylvania Avenue, NW., Washington, D.C. 20506.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Past and present members of application review panels and experts who may be called upon to review grant applications.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains name, address and telephone number of individual. Contains compensation claims, travel diaries, notification of personnel actions, correspondence. May contain curriculum vitae and press clippings.

AUTHORITY FOR MAINTENANCE:

National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 965).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The records are used by IMS staff in administration of the grant review system, including identification of experts serve as reviewers and panelists; disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual about whom the record is maintained.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in 9 inch by 12 inch folders or computer data base.

RETRIEVABILITY:

Indexed by name or indexed keys.

SAFEGUARDS:

Records are maintained in file cabinets in lockable rooms or computer controlled by passwords.

RETENTION AND DISPOSAL:

Retained indefinitely.

SYSTEM MANAGER AND ADDRESS:

Rebecca Danvers, Program Director, Institute of Museum Services, 1100 Pennsylvania Avenue, NW, Washington, D.C. 20506.

NOTIFICATION PROCEDURE:

See Title 45 CFR Part 1115.

RECORD ACCESS PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Individual on whom record is maintained, newspapers and journals, IMS employees.

IMS–2

SYSTEM NAME:

Personnel Records—IMS–2.

SYSTEM LOCATION:

National Endowment for the Humanities, Room 417, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506.

This system of records is part of the Office of Personnel Management's government-wide system of personnel records "OPM/GOVT-1-General Personnel Records" and subject to that agency's rules.

[FR Doc. 89–6350 Filed 3–16–89; 8:45 am]

BILLING CODE 7036-01-M

NUCLEAR REGULATORY COMMISSION

Correction to Bi-Weekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

On March 8, 1989, the **Federal Register** published the Bi-Weekly Notice of Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations. On page 9935, for the Sequoyah Nuclear Plant, Units 1 and 2, the date of the Amendment Request read "January 27, 1981." The correct date of application is January 27, 1989.

Jack Donohew,

Acting Assistant Director for Projects, TVA Projects Division, Office of Nuclear Reactor Regulation.

[FR Doc. 89–6332 Filed 3–16–89; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–16861; (811–4682)]

The Benelux Fund, Inc.; De-Regulation

March 10, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Declaration of De-Registration under the Investment Company Act of 1940 ("1940 Act").

Registrant: The Benelux Fund, Inc.

Relevant 1940 Act Section: Section 8(f).

Summary of Proposed Action: The SEC proposes to declare by order on its own motion that Registrant has ceased to be an investment company and that its registration has ceased to be in effect.

Hearing or Notification of Hearing: If no hearing is ordered, the motion will be granted. Any interested person may request a hearing on this motion, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on April 4, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the registrant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, in the case of an attorney-at-law, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549; Registrant, c/o Dillon Read & Co. Inc., 535 Madison Avenue, New York, New York 10022.

FOR FURTHER INFORMATION CONTACT: Thomas C. Mira, Staff Attorney, (202) 272–3047, or Brion R. Thompson, Branch Chief (202) 272–3016 (Office of Investment Company Regulation).

Statement of Facts

1. Registrant filed a Form N–8A to register under the 1940 Act on May 30, 1986. Registrant did not subsequently file a registration pursuant to section 8(b) of the 1940 Act.

2. Registrant filed Articles of Dissolution with the State of Maryland on March 3, 1987, thereby terminating its existence as a Maryland corporation. Registrant never engaged in a public offering of its securities, or otherwise ever became engaged in the business of an investment company.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–6297 Filed 3–16–89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC–16860; File No. 812–7196]

Order Granting Exemption; The Guardian Insurance and Annuity Co., Inc., et al.

March 10, 1989.

The Guardian Insurance and Annuity Company, Inc., Guardian Investor Services Company, and the Guardian Separate Account C filed an application on December 12, 1988 and amended applications on January 24, 1989 and February 7, 1989, for an order under section 6(c) of the Investment Company Act of 1940 (the "Act") exempting them from the provisions of sections 26(a), 27(a)(1) and 27(c)(2) of the Act and Rules 6e–2(b)(1), 6e–2(b)(13), and 6e–2(c)(4) thereunder, to the extent necessary to permit: (1) The use of the 1980 CSO Table rather than the 1958 CSO Table in calculating the cost of insurance deduction; (2) the deduction of the cost of insurance charge from the investment base; and (3) the Account to hold shares of the underlying mutual funds under an open account arrangement.

A notice of filing of the application was issued on February 14, 1989 (Investment Company Act Release No. 16812). The notice gave interested persons an opportunity to request a hearing and stated than an order disposing of the matter would be issued as of course unless a hearing should be ordered. No request for a hearing has

been received, and the Commission has not ordered a hearing.

The matter has been considered and it is found that the granting of the exemptions is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

It is Ordered, pursuant to section 6(c) of the Act, that the requested exemptions from sections 26(a), 27(a)(1) and 27(c)(2) of the Act and Rules 6e–2(b)(1), 6e–2(b)(13), and 6e–2(c)(4), thereunder, be and hereby are, granted, effective forthwith.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–6298 Filed 3–16–89; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–16862; (812–7139)]

The RBB Fund, Inc., et al.; Application

March 10, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for approval under section 11(a) of the Investment Company Act of 1940 (the "1940 Act") of certain offers of exchange.

Applicants: The RBB Fund, Inc. (the "Fund") and Planco Financial Services, Inc. (the "Distributor").

Relevant 1940 Act Section: Section 11(a).

Summary of Application: Applicants seek an order under section 11(a) of the 1940 Act approving certain exchange offers to be made by the Fund with respect to its existing or future classes of shares of common stock of the Fund on a basis other than the relative net asset values of the shares to be exchanged.

Filing Dates: The application was filed on October 3, 1988, and amended on February 16 and March 7, 1989.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on the application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on April 3, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549; Applicants, c/o William H. Rheiner, Esquire, Ballard, Spahr, Andrews & Ingersoll, 30 South 17th Street, Philadelphia, PA 19103.

FOR FURTHER INFORMATION CONTACT: H.R. Hallock Jr., Special Counsel (202) 272–3030, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

Applicants' Representations

1. The Fund is a diversified management investment company registered under the 1940 Act. The shares of common stock of the Fund ("Shares") are currently classified into fourteen classes, which have been designated as classes "A" through "N". The Board of Directors of the Fund may further classify and reclassify unissued Shares from time to time. All such existing and future classes of common stock are collectively referred to as "Classes". The Fund currently offers Shares in seven investment portfolios ("Investment Portfolios"): (1) The Equity Growth and Income Portfolio, which currently has one Class of Shares (Class A); (2) the Fixed Income Portfolio, which currently has one Class of Shares (Class B); (3) the Balanced Portfolio, which currently has one Class of Shares (Class C); (4) the Tax-Free Portfolio, which currently has one Class of Shares (Class D); (5) the Government Obligations Money Market Portfolio, which currently has two Classes of Shares (Classes K and N); (6) the Money Market Portfolio, which currently has four Classes of Shares (Classes E, G, I an L); and (7) the Tax-Free Money Market Portfolio, which currently has four Classes of Shares (Classes F, H, J and M). The Distributor acts as principal underwriter of the Shares of all Classes pursuant to a separate distribution agreement for each Class.

2. Applicants have received an exemptive order from sections 18(f)(1), 18(g) and 18(i) of the 1940 Act under section 6(c) of the 1940 Act (Investment Company Act Release No. 16539, August 29, 1988) to permit the Fund to offer multiple Classes of Shares in the Money Market Portfolio, the Tax-Free Money Market Portfolio and the Government Obligations Money Market Portfolio, together with any other existing or future investment portfolios of the Fund that in the future declare dividends on a daily basis ("Daily Dividend Portfolios").

3. Six Classes of Shares of the Fund (the "SafeGuard Classes"), which are designated as Classes A through F, are offered and sold continuously to the public by registered broker/dealers principally to individuals. Each of the SafeGuard Classes is sold either with a front-end sales load or is a no-load money market fund. Four of the SafeGuard Classes (designated Classes A, B, C and D) represent interest in non-money market Investment Portfolios (the Equity Growth and Income Portfolio, Fixed Income Portfolio, Balanced Portfolio and Tax-Free Portfolio, respectively). Shares of such SafeGuard Classes (the "Non-Money Market SafeGuard Classes") are sold at net asset value plus a maximum sales charge of 5 percent of the offering price. Classes E and F of the SafeGuard Classes represent interests in the Money Market Portfolio and Tax-Free Money Market Portfolio. Shares of such SafeGuard Classes (the "Money Market SafeGuard Classes") currently may be acquired only through the exercise of an exchange privilege and are offered at net asset value without a sales charge.

4. Two Classes of Shares of the Fund (the "Cash Preservation Classes"), are designated as Classes G an H and represent interests in the Money Market Portfolio and the Tax-Free Money Market Portfolio, respectively. Shares of the Cash Preservation Classes are currently expected to be offered and sold principally to individuals who are recipients of insurance policy payments (such as annuities). Three Classes of Shares of the Fund (the "Sansom Street Classes"), are designated as Classes I, J and K and represent interests in the Money Market Portfolio, the Tax-Free Money Market Portfolio and the Government Obligations Money Market Portfolio, respectively. Shares of the Sansom Street Classes are sold to banks affiliated with PNC Financial Corp, a multi-bank holding company, on bahalf of their customers. The remaining three Classes of Shares (the "Bedford Classes"), are designated as Classes L, M and N and represent interests in the Money Market Portfolio, the Tax-Free Money Market Portfolio and the Government Obligations Money Market Portfolio, respectively. Shares of the Bedford Classes are primarily sold to registered broker/dealers on bahalf of their customers, generally as a sweep vehicle for cash balances in customers'

brokerage accounts. Shares of each of the Cash Preservation Classes, the Sansom Street Classes and the Bedford Classes are sold at net asset value without a sales charge.

5. The Non-Money Market SafeGuard Classes, and any other Classes of Shares of the Fund that may in the future be offered with a similar sales charge are collectively referred to as the "Load Classes." The Money Market SafeGuard Classes, the Cash Preservation Classes, the Sansom Street Classes, the Bedford Classes and any other Classes of Shares of Fund that may in the future be offered without a sales charge are collectively referred to as the "No-Load Classes."

6. Each Class of the Fund is sold pursuant to a separate plan of distribution adopted pursuant to Rule 12b–1 under the 1940 Act. A separate prospectuses is used for the offering of Shares of each of the four "families" of the Fund (the SafeGuard Classes, the Cash Preservation Classes, the Sansom Street Classes and the Bedford Classes.) Shares of the Bedford Classes are also offered through three additional prospectus (a separate prospectus for each Bedford Class.)

7. Currently, Shares of any Non-Money Market Safeguard Class may be purchased directly by investors or through an exchange of Shares from another Non-Money Market SafeGuard Class or from a Money Market SafeGuard Class. Shares of any Money Market SafeGuard Class, however, may be purchased only through an exchange of Shares of another Money Market SafeGuard Class or from a Non-Money Market SafeGuard Class. In addition, Shares of either Cash Preservation Class currently may be exchanged for Shares of the other Cash Preservation Class.

8. Under the proposed exchange program, Shares of any existing or future Class of the Fund could be exchanged for Shares in any other existing or future Class as follows:

(i) Shares in any Load Class and Shares in any No-Load Class may be exchanged for Shares in any No-Load Class, without a sales charge; Shares in any Load Class may be exchanged for Shares in any other Load Class without a sales charge; and Shares in any No-Load Class which were acquired through a previous exchange with a Load Class may be subsequently exchanged for Shares in any Load Class without a sales charge; and

(ii) Shares in any No-Load Class, whether acquired directly or through a previous exchange with Shares of another No-Load Class (which Shares were not acquired through a previous exchange with Shares of a Load Class), may be exchanged for Shares in any Load Class at the then current offering price (which includes a sales charge) for the particular Load Class.

9. When the Distributor believes it is appropriate and in the best interests of shareholders to do so, the Distributor may reduce or eliminate the sales charge applicable to exchanges by existing shareholders from a No-Load Class to a Load Class. Shareholders will be notified of any variation in the sales charge for exchanges by means of the applicable prospectus or a supplement thereto. Any such variation would be uniformly applied to all offerees of the Load Classes or specified Load Classes, and would otherwise comply with Rule 22d–1 under the 1940 Act.

10. For purposes of the proposed exchange program, Shares exchanged from any Load Class which were acquired through reinvestment of dividends or capital gains distributions would be deemed to have been acquired with a sales charge equal to the sales charge paid on the Shares on which the dividend was paid or the distribution was made.

11. The Fund has reserved the right to impose a maximum service fee of $5 on each exchange to defray the costs of effecting the exchange. The imposition of this fee will be disclosed in the relevant prospectuses of the Fund offering the exchange program and in any sales literature or advertising relating to the exchange program. The service fee, if any, or any scheduled variation will be uniformly applied to all shareholders participating in the exchange program.

12. The Fund reserves the right to limit the availability of the exchange program to investors who have been shareholders of a Class for a minimum period of time. Each prospectus of the Fund that offers an exchange program will also state that the Fund reserves the right to modify or terminate the exchange program at any time, and that shareholders will be notified in writing at least 60 days prior to any such modification or termination, except in the case of a reduction of any administrative fee, in which case no such prior notice is required.

Applicants' Legal Analysis

1. Applicants state that the Distributor has the exclusive right to distribute shares of each of the Load Classes and the No-Load Classes through unaffiliated dealers who have dealer agreements with the Distributor (with the exception of the Sansom Street Classes, which are not distributed through dealers). Where a shareholder is charged a differential in sales charge upon an exchange, any commission paid to a sales representative is the same or less than it would be on a direct purchase of the Shares being acquired if there were no exchange program. Therefore, Applicants do not believe that implementing the exchange program would provide any additional financial incentive for any person involved in the distribution of Shares of any of the Load Classes to initiate exchanges for his or her own financial benefit. The Distributor will not by telephone actively solicit shareholders to make exchanges or notify shareholders of the exchange program. In addition, dealers who distribute the Fund's Shares will not receive any greater commission, and in certain instances will receive a lesser commission, from an exchange transaction rather than a direct purchase. The Distributor offers Shares only to dealers with which it has entered into dealer agreements which require that the dealers affirm that they will abide by applicable law. The Distributor will diligently pursue customer complaints and will be alert to abuses that may occur.

2. The purpose of the exchange program is to permit investors to purchase Shares of the Money Market SafeGuard Classes directly, and to permit holders of Shares of Load Class or a No-Load Class to exchange their Shares for Shares of any other Load Class or No-Load Class when their investment objectives change or when market conditions favor one type of investment over another. Consequently, the exchange program provides shareholders with desirable flexibility for their financial planning.

3. The purpose of the service fee, if imposed in the future, is to defray costs to the Fund in effecting an exchange. Applicants state that shareholders of the Fund will be informed of the service fee by means of the Fund's prospectuses and other communications, including any sales literature or advertising which describes the exchange program.

Applicants' Conditions

If the requested order is granted, Applicants agree to the following conditions:

1. Applicants undertake to obtain an amended order from the Commission prior to any modification (*e.g.*, as to manner, frequency or basis) of the exchange program in a manner not described in the application, provided no such order is required in order to terminate the exchange program, and provided further that no such order is required in order to comply with condition 2 below.

2. Applicants will comply with the terms and conditions of proposed Rule 11a–3 under the 1940 Act, and, if that Rule or any similar rule relating to exchange programs is adopted, they will conform the proposed exchange program to comply with the terms of that rule.

3. Any future Classes of the Fund sold with a sales charge that offer an exchange program and that seek to rely on the exemption requested in the application will have a sales charge structure and exchange privileges substantially identical to one or more of the Classes included in the application and will be subject to the representation and conditions included therein.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–6379 Filed 3–16–89; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended

March 10, 1989.

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 application, or motion 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 No. 46167

Date Filed: March 9, 1989

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: April 6, 1989

Description: Application of America West Airlines, Inc., pursuant to Section 401 of the Act and Subpart Q of the Regulations applies to renew its certificate of public convenience and necessity for Route 441 authorizing it to provide service between the terminal point Las Vegas, Nevada and the coterminal points Calgary and Edmonton, Alberta, Canada.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 89–6384 Filed 3–16–89; 8:45 am]

BILLING CODE 4910–62–M

Aviation Proceedings; Agreements Filed During the Week Ending March 10, 1989

The following agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 408, 409, 412, and 414. Answers may be filed within 21 days of date of filing.

Docket No. 43412

Parties: Saudi Arabian Airlines Corporation, The Flying Tiger Line Inc.

Date Filed: March 9, 1989.

Subject: Application of Saudi Arabian Airlines Corporation and The Flying Tiger Line Inc., for a six-month extension of approval of agreement pursuant to section 412 and renewal of antitrust immunity, pursuant to section 414 of the Federal Aviation Act of 1958, as amended.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 89–6385 Filed 3–16–89; 8:45 am]

BILLING CODE 4910–62–M

Federal Aviation Administration

Noise Exposure Map; Receipt of Noise Compatibility Program and Request for Review, Alexander Hamilton Airport, Christiansted, St. Croix, VI

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the Noise Exposure Maps submitted by the Virgin Islands Port Authority for the Alexander Hamilton Airport, St. Croix, V.I., under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR Part 150 are in compliance with applicable requirements. The FAA announces that it is reviewing a proposed Noise Compatibility Program that was submitted for the Alexander Hamilton Airport under Part 150 in conjunction with the Noise Exposure Map, and that this program will be approved or disapproved on or before August 22, 1989.

EFFECTIVE DATE: The effective date of the FAA's determination on the Noise Exposure Maps and the start of its review of the associated Noise Compatibility Program is February 24, 1989. The public comment period ends April 24, 1989.

FOR FURTHER INFORMATION CONTACT: Ilia A. Quinones-Flott, Airport Planning Specialist, Orlando Airports District Office, 4100 Tradecenter Street, Orlando, FL, telephone (407) 648–6583. Comments on the proposed Noise Compatibility Program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the Noise Exposure Maps submitted for the Alexander Hamilton Airport are in compliance with applicable requirements of Part 150, effective February 24, 1989. Further, FAA is reviewing a proposed Noise Compatibility Program for that airport which will be approved or disapproved on or before August 22, 1989. This notice also announces the availability of this program for public review and comment.

Under section 103 of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA Noise Exposure Maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted Noise Exposure Maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a Noise Compatibility Program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has completed its review of the Noise Exposure Maps and related descriptions submitted by the Virgin Islands Port Authority. The specific maps under consideration are the 1985 Existing Noise Exposure Map and the 1990 Recommended Noise Exposure Map in the submission. The 1990 Recommended Noise Exposure Map reflects implementation of Noise Control Strategy Alternative II of the Noise Compatibility Program. The FAA has determined that these maps for the

Alexander Hamilton Airport are in compliance with applicable requirements. This determination is effective on February 24, 1989. FAA's determination on an airport operator's Noise Exposure Maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a Noise Compatibility Program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a Noise Exposure Map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the Noise Exposure Maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of Noise Exposure Maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the Noise Compatibility Program for Alexander Hamilton Airport effective February 24, 1989. It was requested that the FAA review this material and that the noise mitigation measures to be implemented jointly by the airport and the surrounding communities be approved as a Noise Compatibility Program under section 104(b) of this Act. Preliminary review of the material submitted indicates that it conforms to the requirements for the submittal of Noise Compatibility Programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before August 22, 1989.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to specific land use authorities, will be considered by FAA to the extent practicable.

Copies of the Noise Exposure Maps, the FAA's evaluation of the maps, and the proposed Noise Compatibility Program, are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., Room 617, Washington, DC 20591.

Federal Aviation Administration, Orlando Airports District Office, 4100 Tradecenter Street, Orlando, FL 32827.

Virgin Islands Port Authority, Alexander Hamilton Airport, Christiansted, St. Croix, VI 00802.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Orlando, Florida, February 24, 1989.

James E. Sheppard,

Manager, Orlando Airports District Office.

[FR Doc. 89-6379 Filed 3-16-89; 8:45 am]

BILLING CODE 4910-13-M

Burbank-Glendale-Pasadena Airport (BUR) Burbank, CA; Receipt of Noise Compatibility Program and Request for Review

AGENCY: Federal Aviation Administration, DOT

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces that it is reviewing a proposed noise compatibility program that was submitted for Burbank-Glendale-Pasadena Airport (BUR), Burbank, California under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) (hereinafter referred to as "the Act") and 14 CFR Part 150 by Burbank-Glendale-Pasadena Airport Authority. This program was submitted subsequent to a determination by FAA that associated noise exposure maps submitted under 14 CFR Part 150 for the subject airport were in compliance with applicable requirements effective April 22, 1988. The proposed noise compatibility program will be approved or disapproved on or before August 1, 1989.

EFFECTIVE DATE: The effective date of the start of FAA's review of the noise compatibility program is February 2, 1989. The public comment period ends April 3, 1989.

FOR FURTHER INFORMATION CONTACT: Howard S. Yoshioka, Supervisor, Planning Section, AWP-611, Federal Aviation Administration, Western-Pacific Region, P.O. Box 91007, World Way Postal Center, Los Angeles, California 90009, (213) 297-1250. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA is reviewing a proposed noise compatibility program for the subject airport which will be approved or disapproved on or before August 1, 1989. This notice also announces the availability of this program for public review and comment.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has formally received the noise compatibility program for the subject airport, effective on February 2, 1989. It was requested that the FAA review this material and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before August 1, 1989.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, § 150.33. The primary

considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., Room 617, Washington, DC 20591.

Federal Aviation Administration, Western-Pacific Region, Airports Division, 15000 S. Aviation Boulevard, Room 6E25, Hawthorne, California 90261.

Mr. Richard Vacar, Manager, Airports Affairs, 2627 Hollywood Way, Burbank, California 91505.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Hawthorne, California, on February 2, 1988.

Herman C. Bliss,

Manager, Airports Division, Western-Pacific Region.

[FR Doc. 89-6380 Filed 3-16-89; 8:45 am]

BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA); Special Committee 165—Minimum Operational Performance Standards for Aeronautical Mobile Satellite Services; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given for the second meeting of RTCA Special Committee 165 on Minimum Operational Performance Standards for Aeronautical Mobile Satellite Services to be held March 20-22, 1989, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005, comencing at 1:00 p.m.

The agenda for this meeting is as follows: (1) Chairman's remarks; (2) approval of the first meeting's minutes, RTCA Paper No. 24-89/SC165-8; (3) technical presentations; (4) Working Group Reports on Operation and Implementation Working Group Report, Equipment Standards Working Group Report, and Service Performance Criteria Working Group Report; (5) review of overall draft progress; (6) Working Group sessions; (7) assignment of tasks; (8) other business; and (9) date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005, (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on February 27, 1989.

Geoffrey R. McIntyre,

Acting Designated Officer.

[FR Doc. 89-6381 Filed 3-16-89; 8:45 am]

BILLING CODE 4910-13-M

Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review; Alexander Hamilton Airport, Christiansted, St. Croix, VI

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the Noise Exposure Maps submitted by the Virgin Islands Port Authority for the Alexander Hamilton Airport, St. Croix, V.I., under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR Part 150 are in compliance with applicable requirements. The FAA announces that it is reviewing a proposed Noise Compatibility Program that was submitted for the Alexander Hamilton Airport under Part 150 in conjunction with the Noise Exposure Map, and that this program will be approved or disapproved on or before August 22, 1989.

EFFECTIVE DATE: The effective date of the FAA's determination on the Noise Exposure Maps and the start of its review of the associated Noise Compatibility Program is February 24, 1989. The public comment period ends April 24, 1989.

FOR FURTHER INFORMATION CONTACT: Ilia A. Quinones-Flott, Airport Planning Specialist, Orlando Airports District Office, 4100 Tradecenter Street, Orlando, FL, telephone (407) 648-6583. Comments on the proposed Noise Compatibility Program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the Noise Exposure Maps submitted for the Alexander Hamilton Airport are in compliance with applicable requirements of Part 150, effective February 24, 1989. Further, FAA is reviewing a proposed Noise Compatibility Program for that airport which will be approved or disapproved on or before August 22, 1989. This notice also announces the availability of this program for public review and comment.

Under section 103 of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA Noise Exposure Maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted Noise Exposure Maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a Noise Compatibility Program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has completed its review of th Noise Exposure Maps and related descriptions submitted by the Virgin Islands Port Authority. The specific maps under consideration are the 1985 Existing Noise Exposure Map and the 1990 Recommended Noise Exposure Map in the submission. The 1990 Recommended Noise Exposure Map reflects implementation of Noise Control Strategy Alternative II of the Noise Compatibility Program. The FAA has determined that these maps for the Alexander Hamilton Airport are in compliance with applicable requirements. This determination is effective on February 24, 1989. FAA's determination on an airport operator's Noise Exposure Maps is limited to a finding that the maps were developed in accordance with the procedures

contained in appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a Noise Compatibility Program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a Noise Exposure Map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the Noise Exposure Maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of Noise Exposure Maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the Noise Compatibility Program for Alexander Hamilton Airport effective February 24, 1989. It was requested that the FAA review this material and that the noise mitigation measures to be implemented jointly by the airport and the surrounding communities be approved as a Noise Compatibility Program under section 104(b) of this Act. Preliminary review of the material submitted indicates that it conforms to the requirements for the submittal of Noise Compatibility Programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before August 22, 1989.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to specific land use authorities, will be considered by FAA to the extent practicable.

Copies of the Noise Exposure Maps, the FAA's evaluation of the maps, and the proposed Noise Compatibility Program, are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., Room 617, Washington, DC 20591

Federal Aviation Administration, Orlando Airports District Office, 4100 Tradecenter Street, Orlando, FL 32827

Virgin Islands Port Authority, Alexander Hamilton Airport, Christiansted, St. Croix, V.I. 00802

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Orlando, Florida, February 24, 1989.

James E. Sheppard,

Manager, Orlando Airports District Office.

[FR Doc. 89-6264 Filed 3-16-89; 8:45 am]

BILLING CODE 4910-13-M

[Summary Notice No. PE-89-8]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of a petition received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of the FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before March 27, 1989.

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

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

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on February 28, 1989.

Denise Donohue Hall,

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

Petition for Exemption

Docket No. 063C3

Petitioner: Fairchild Aircraft Corporation

Regulations Affected: 14 CFR 23.777(g)

Description of Relief Sought: Petition for exemption from § 23.777(g) to allow the landing gear control handle to be located to the right of the throttle center line.

[FR Doc. 89-6377 Filed 3-16-89; 8:45 am]

BILLING CODE 4910-13-M

[Summary Notice No. PE-89-9]

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

AGENCY: Federal Aviation Administration (FAA), DOT.

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

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified rquirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of the FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before March 27, 1989.

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

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

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on February 28, 1989.

Denise Donohue Hall,

Manager, Program Management Staff Office of the Chief Counsel.

Petitions for Exemption

Docket No.: 25776
Petitioner: Lynch Flying Service Inc.
Regulations Affected: 14 CFR 43.3(g)
Description of Relief Sought: To allow properly certificated and trained petitioner's pilots to remove and replace passenger seats, ambulatory stretchers, and base assemblies in its Cessna 400 aircraft.

Docket No.: 24941
Petitioner: The Perris Valley Skydiving Center
Sections of the FAR Affected: 14 CFR 105.43
Description of Relief Sought/ Disposition: To allow foreign parachutists to participate in the petitioner's parachute jumps without complying with the parachute equipment and packing requirements of § 105.43.

Denial, February 23, 1989, Exemption No. 5021

Docket No.: 24998
Petitioner: Aeron International Airlines, Inc.
Regulations Affected: 14 CFR 121.371(a) and 121.378
Description of Relief Sought/ Disposition: To extend Exemption No. 4742 that permits petitioner to contract with specific foreign repair facilities for the performance of maintenance, preventive maintenance, and alterations on certain Canadair CL–44 aircraft components, accessories, engines, and propellers.

Grant, January 31, 1989, Exemption No. 4742A

Docket No.: 25494
Petitioner: Bohlke International Airways
Sections of the FAR Affected: 14 CFR 43.3(g)
Description of Relief Sought/ Disposition: To extend Exemption No. 4911 that allows appropriately trained and certificated pilots employed by the petitioner to remove and install aircraft cabin seats, and certain stretcher and base assemblies in petitioner's Aero Commander 680V and Piper Seneca aircraft. The amendment would add the Cessna 402 aircraft to the exemption.

Grant, January 21, 1989, Exemption No. 4911A

[FR Doc. 89–6378 Filed 3–16–89; 8:45 am]
BILLING CODE 4910–13–M

Meeting of Air Traffic Procedures Advisory Committee

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Air Traffic Procedures Advisory Committee Meeting.

SUMMARY: The FAA is issuing this notice to advise the public that a meeting of the Federal Aviation Administration Air Traffic Procedures Advisory Committee (ATPAC) will be held to review present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures.

DATES: The meeting will be held from April 17, at 9 a.m., through April 20, 1989, at 5 p.m.

ADDRESS: The Meeting will be held in the Administrator's Round Room, FAA headquarters, 800 Independence Avenue, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Paul H. Strybing, Executive Director, ATPAC, Air Traffic Operations Service, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–3725.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 1), notice is hereby given of a meeting of the ATPC to be held from April 17, at 9 a.m., through April 20, 1989, at 5 p.m., in the Administrator's Round Room, FAA headquarters, 800 Independence Avenue, SW., Washington, DC. The agenda for this meeting is as follows: a continuation of the Committee's review of present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures. It will also include:

1. Approval of minutes.
2. Discussion of agenda items.
3. Discussion of urgent priority items.
4. Report from Executive Director.
5. Old Business.
6. New Business.
7. Discussion and agreement of location and dates for subsequent meetings.

Attendance is open to the interested public but limited to the space available. With the approval of the Chairperson, members of the public may present oral statements at the meeting. Persons desiring to attend and persons desiring to present oral statements should notify the person listed above not later than April 14, 1989. The next quarterly meeting of the FAA ATPAC is planned to be held from July 11 through July 14, 1989, in Anchorage, AK. Any member of the public may present a written statement to the Committee at any time.

Issued in Washington, DC, on March 10, 1989.

Paul H. Strybing,

Executive Director, Air Traffic Procedures Advisory Committee.

[FR Doc. 89–6262 Filed 3–16–89; 8:45 am]
BILLING CODE 4910–13–M

Meeting on Windshear Study

Time and Date: 9:00 AM, March 22, 1989

Place: 3rd Floor Auditorium, Federal Aviation Administration Building (FOB–10A), 800 Independence Avenue, SW., Washington, DC 20591.

Status: Meeting is open to the public.

Matters to be Considered: In 1985, the Federal Aviation Administration (FAA) contracted with a consortium of aviation specialists to study the subject of windshear. As a result of this study, the Windshear Training Aid was developed. In order to ensure that the Windshear Training Aid is kept up-to-date, the FAA will host meetings for the purpose of reviewing new information on the subject of windshear. These meetings will be to solicit information from the original contract team, as well as from other qualified industry sources, in proposing and evaluating changes to the Windshear Training Aid.

The March 22, 1989 meeting will be the second meeting for the purpose of updating the Windshear Training Aid.

Contact Person for More Information: Steve Morrison, 479–0285.

D.C. Beaudette,

Deputy Director, Flight Standards Service.

[FR Doc. 89–6263 Filed 3–16–89; 8:45 am]

BILLING CODE 4910–13–M

Airport Improvement Program

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent to receive grant applications.

SUMMARY: This notice announces the intention of the Federal Aviation Administration to receive grant applications from airport sponsors for repairs to airports having suffered storm-related damage. This is authorized by section 340 of the Department of Transportation and Related Agencies Appropriations Act of 1989 (Pub. L. 100–457).

DATES: Applications for a grant made under this notice must be received by the local Federal Aviation Administration Airports District Office (or regional Airports Division Office, if there are no Airports District Offices) no later than March 31, 1989.

FOR FURTHER INFORMATION CONTACT: Ben Castellano, Program Guidance Branch (APP–510), Office of Airport Planning and Programming, Federal Aviation Administration, 800 Independence Ave, SW., Washington, DC 20591. Telephone (202) 267–8822.

SUPPLEMENTARY INFORMATION: Section 340 of Pub. L. 100–457 makes available to the Federal Aviation Administration $100,000 for the purpose of issuing grants to carry out emergency repairs to airports sustaining storm-related damage. Such funds, while appropriated from the Airport and Airway Trust Fund, are outside the scope of the Airport Improvement Program. The Federal share provided for such repairs shall not exceed 50% of the total cost of such repairs.

Airports which have sustained storm-related damage should submit an application for funds, specifying the work to be performed and the total cost of such repairs. These applications should be made using Standard Form 424 and sent to the nearest Airports District Office or to the Airports Division Office in the region in which the airport is located. These offices may be contacted for the appropriate forms. Applications received by these offices after March 31, 1989 will not be considered. Along with the application, each airport applying for such grant must certify that the damage for which it seeks funds was in fact storm-related. As stated in the Conference Committee Report (House Report 100–957), the Congress is particularly concerned about damage caused by a tornado on May 9, 1988, at the Middlesboro, Kentucky, airport and has directed the FAA to give high priority consideration to applications for assistance from this airport.

Issued in Washington, DC, on February 17, 1989.

Paul L. Galis,

Director, Office of Airport Planning and Programming.

[FR Doc. 89–6382 Filed 3–16–89; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: March 13, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New.

Form Number: 940–EZ.

Type of Review: New Collection.

Title: Employer's Annual Federal Unemployment (FUTA) Tax Return.

Description: Form 940–EZ is a new, simplified form that most employers with uncomplicated tax situations (e.g., only pay unemployment contributions to one state and paying them on time) can use to pay their FUTA tax. Most small businesses and household employers will be able to use the form.

Respondents: Individuals or households, Farms, Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 3,600,000.

Estimated Burden Hours Per Response/Recordkeeping:

Recordkeeping: 5 hours 20 minutes.
Learning about the law or the form: 7 minutes.
Preparing and sending the form to IRS: 26 minutes.

Frequency of Response: Annually.

Estimated Total Recordkeeping/ Reporting Burden: 21,168,000 hours.

Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 89–6284 Filed 3–16–89; 8:45 am]

BILLING CODE 4810–25–M

Internal Revenue Service (IRS)

Commissioner's Advisory Group; Open Meeting

There will be a meeting of the Commissioner's Advisory Group on March 29 & 30, 1989. The meeting will be held in Room 3313 of the Internal Revenue Service Building. The building is located at 1111 Constitution Avenue, NW., Washington, DC. The meeting will begin at 8:30 a.m. on Wednesday, March 29 and 8:30 a.m. on Thursday, March 30, 1989. The agenda will include the following topics:

Wednesday, March 29, 1989

Filing Season Update, IRS Human Resources and Budget, Information Systems Development, The Penalty Study, Liaison Function.

Thursday, March 30, 1989

Taxpayer Bill of Rights, Ad hoc topics, Q & A.

Note.—Last minute changes to the day or order of topic discussion are possible and could prevent effective advance notice.

The meeting, which will be open to the public, will be in a room that accommodates approximately 50 people, including members of the Commissioner's Advisory Group and IRS officials. Due to the limited conference space, notification of intent to attend the meeting must be made with Robert F. Hilgen, Assistant to the Senior Deputy Commissioner no later than March 20, 1989. Mr. Hilgen may be reached on (202) 566–4143 [not toll-free].

If you would like to have the committee consider a written statement, please call or write Robert F. Hilgen, Assistant ot the Senior Deputy Commissioner, 1111 Constitution Avenue, NW., Room 3014, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Robert F. Hilgen, Assistant to the Senior Deputy Commissioner, [202] 566–4143 [Not toll-free].

Michael J. Murphy,

Acting Commissioner.

[FR Doc. 89–6336 Filed 3–16–89; 8:45 am]

BILLING CODE 4830–01–M

[Delegaton Order No. 67 (Rev. 18)]

Delegation of Authority

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of Authority.

SUMMARY: The specific authorization to sign the name of, or on behalf of, Michael J. Murphy, Acting Commissioner of Internal Revenue. The text of the Delegation Order appears below.

EFFECTIVE DATE: March 4, 1989.

FOR FURTHER INFORMATION CONTACT: Melva Scruggs, 1111 Constitution Avenue, NW., PFR:P:I, Room 3524, Washington, DC 20224 (telephone 202–566–4273, not a toll-free number).

Order No. 67 (Rev. 18)

Effective date: March 4, 1989.

Signing the Commissioner's Name or on His Behalf

Effective 12:01 a.m., March 4, 1989, standing authorizations to sign the name of, or on behalf of, Lawrence B. Gibbs, Commissoner of Internal Revenue, are hereby amended to authorize the signing of the name of, or on behalf of, Michael J. Murphy, Acting Commissioner of Internal Revenue.

Delegation Order No. 67 (Rev. 17) effective August 4, 1986, is superseded.

Date: March 4, 1989.

Michael J. Murphy,

Acting Commissioner.

[FR Doc. 89–6337 Filed 3–16–89; 8:45 am]

BILLING CODE 4830–01–M

United States Information Agency

Meeting of Advisory Board for Radio Broadcasting to Cuba

The Advisory Board for Radio Broadcasting to Cuba will conduct a meeting on March 30, 1989, in Room 3557, 400 Sixth Street, SW., Washington, DC. Below is the intended agenda.

Thursday, March 30, 1989

Part One—Closed to the Public

10:00 a.m.
1. Report by the Director of Radio Marti

10:45 a.m.
2. TV Marti

11:30 a.m.
3. Status of selection of executive director

Part Two—Open to the Public

11:40 a.m.
4. Status of annual report

11:50 a.m.
5. Renewal of Board charter

12:00 noon
6. Public testimony period

Items one through three, which will be discussed from 10:00 a.m. to 11:40 a.m., will be closed to the public. Items one and two involve discussion of classified information. Closing such deliberations to the public is justified under 5 U.S.C. 552b (c)(1). Item three relates solely to internal personnel rules and practices. Authority for closing such deliberations is provided by 5 U.S.C. 552b (c)(2).

Members of the public interested in attending the meeting should contact Kathy Litwak at (202) 485–7013 to make prior arrangements, as access to the building is controlled.

Dated: March 10, 1989.

Marvin L. Stone,

Acting Director.

Determination to Close Advisory Board Meeting of March 30, 1989

Based on information provided to me by the Advisory Board for Radio Broadcasting to Cuba, I hereby determine that the 10:00 a.m. to 11:40 a.m. portion of the meeting may be closed to the public.

The Advisory Board has requested that this part of the March 30, 1989 meeting be closed because it will involve a discussion of classified information (5 U.S.C. 552b (c)(1)) and of matters which relate solely to the internal personnel rules and practices of an agency 5 U.S.C. 552b (c)(2).

Dated: March 10, 1989.

Marvin L. Stone,

Acting Director.

[FR Doc. 89–6238 Filed 3–16–89; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 51
Friday, March 17, 1989

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 MARITIME COMMISSION

TIME AND DATE: 10:00 a.m.—March 22, 1989.

PLACE: Hearing Room One—1100 L Street, NW., Washington, DC 20573-0001.

STATUS: Part of the meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Portion Open to the public:

1. Controlled Carrier Status of Neptune Orient Lines, Inc.

Portion Closed to the public:

1. Docket No. 87-13—*Pate Stevedore Company of Mobile, et al. v. The Alabama State Docks Department and Aetna Casualty and Surety Company* and Docket No. 87-17—*Atlantic & Gulf Stevedores of Alabama and Alabama Insurance Guaranty Association v. The Alabama State Docks Department and Aetna Casualty and Surety Company*—Compliance with Commission Order.

2. Docket No. 87-29—*Hemisphere Navigation Co. Inc. v. Sea-Land Service, Inc.*—Motion for Discontinuance and Motion to Vacate Initial Decision.

3. Docket No. 88-14—*Direct Container Line, Inc. et al. v. Atlantic Container Line, et al.*—Appeal of Order Dismissing Complaint.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary, (202) 523-5725.

Joseph C. Polking,

Secretary.

[FR Doc. 89-6466 Filed 3-15-89; 3:15 pm]

BILLING CODE 6730-01-M

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Meeting.

TIME AND DATE: 9:30 a.m., Thursday, March 23, 1989.

PLACE: Filene Board Room, 7th Floor, 1776 G Street, NW., Washington, DC 20456.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meetings.

2. Long Range ADP Plan. Closed pursuant to exemption (2).

3. Administrative Action under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).

4. Appeals of Denials of Insurance Coverage on Accounts Maintained in a FCU. Closed pursuant to exemptions (6), (8), (9)(B), and (10).

5. Establishment of Office of Inspector General. Closed pursuant to exemption (2).

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (202) 682-9600.

Becky Baker,

Secretary of the Board.

[FR Doc. 89-6469 Filed 3-15-89; 8:45 am]

BILLING CODE 7535-01-M

Corrections

Federal Register
Vol. 54, No. 51
Friday, March 17, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

10 CFR Part 430

[Docket No. CAS-RM-78-110]

Energy Conservation Program for Consumer Products: Final Rulemaking Regarding Regulations Related to Energy Conservation Standards for Consumer Products

Correction

In rule document 89-2716 beginning on page 6062 in the issue of Tuesday, February 7, 1989, make the following corrections:

1. On page 6076, in the third column, in the 31st line from the bottom, "C_j1.7" should read "C_j=1.7".

2. On the same page, in the same column, in the 29th line from the bottom, "$L_{Kjacket}$" should read "L_{Lj}=jacket".

3. On page 6086, in the second column, in equation (6a), in the parenthetical expression, the broken line should be a solid line; and "EPA" should read "EPS".

4. On the same page, in the third column, in equation (6b), in the parenthetical expression, the broken line should be a solid line.

5. On the same page, in the same column, in the 13th line from the bottom, remove the last two symbols immediately preceeding "min".

6. On page 6087, in the first column, in the 13th line from the bottom, "≧" should read ">".

7. On the same page, in the second column, in the third line above the heading *Manufacturer—Option Testing*, "≦" should read "<".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88D-0367]

Bacteriological Analytical Manual, Chapter 29--Listeria Isolation; Revised Method of Analysis; Correction

Correction

In notice document 89-4257, beginning on page 7995, in the issue of Friday, February 24, 1989, make the following corrections:

On page 7995, in the second column, in the **SUMMARY**, in the tenth line "Listeria" should read "*Listeria*".

On the same page, in the third column in the table, in the first table-column, all entries should be italicized, and in the second and third table-columns the headings should read "*Staphylococcus aureus*" and *Rhodococcus equi*" respectively.

On the same page, in the third column, in item 5, "Monocytogenes" and "monocytogenes", should read *"Monocytogenes"* and *"Monocytogenes"* respectively.

On page 7996, in the first column, in the third paragraph, in the fourth and sixth lines, "*Fermentation*" was misspelled.

BILLING CODE 1505-01-D

DEPARTMENT OF INTERIOR

Bureau of Land Management

Proposed Withdrawal and Opportunity for Public Meeting; Oregon

Correction

In notice document 89-4224 appearing on page 7890 in the issue of Thursday, February 23, 1989, make the following correction:In the 1st column, under **Willamette Meridian**, in the 2nd paragraph, the 11th line should read "6,213.99 feet; thence south 22°36'50" east,".

BILLING CODE 1505-01-DI

federal register

Friday
March 17, 1989

Part II

Department of Justice

Bureau of Prisons

28 CFR Parts 511, 513, 541, 544, and 545
Control, Custody, Care, Treatment, and Instruction of Inmates; Final and Proposed Rules

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 511

Control, Custody, Care, Treatment, and Instruction of Inmates; Searching/Detaining of Non-Inmates; Arresting Authority; Use of Metal Detectors

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: The Bureau of Prisons is publishing final amendments to its rule on searching/detaining of non-inmates; arresting authority; use of metal detectors, to include a requirement that neither a camera nor recording equipment may be used on institution grounds without the written consent of the Warden.

EFFECTIVE DATE: March 17, 1989.

ADDRESS: Office of General Counsel, Bureau of Prisons, Room 754, 320 1st Street NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Michael Pearlman, Office of General Counsel, Bureau of Prisons, phone 202/724–3062.

SUPPLEMENTARY INFORMATION: In this document, the Bureau of Prisons is publishing final amendments to its rule on searching/detaining of non-inmates, arresting authority, and use of metal detectors. The Bureau published an interim rule on this subject July 18, 1986 (at 51 FR 26126) to determine if any revisions or clarifications would be necessary. Interested persons were invited to submit comments on the interim rule. No public comment was received and the Bureau has determined no further revisions are required. Members of the public may submit comments concerning the final rule by writing the previously cited address. These comments will be considered but will receive no response in the **Federal Register**. The present amendment finalizes the Bureau of Prisons' long-standing practice of requiring the Warden's approval for an individual to use either a camera or recording equipment while visiting the institution. The unauthorized use of cameras or recording equipment presents a potential threat to the security of the institution, and may invade an individual's privacy.

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of EO 12291. The Bureau of Prisons has determined that EO 12291 does not apply to this rule since the rule involves agency management. After review of the law and regulations, the Director, Bureau of Prisons, has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96–354), does not have a significant impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 511

Prisoners.

Conclusion

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(q), the interim rule for 28 CFR 511.12(a) published at 51 FR 26126 is affirmed as final with the following change.

Dated: March 14, 1989.

J. Michael Quinlan,

Director, Bureau of Prisons.

In Subchapter A, Part 511, amend Subpart B to read as follows:

SUBCHAPTER A—GENERAL MANAGEMENT AND ADMINISTRATION

PART 511—GENERAL MANAGEMENT POLICY

Subpart B—Searching/Detaining of Non-Inmates; Arresting Authority; Use of Metal Detectors

The authority citation for Part 511, Subpart B is revised to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 751, 752, 1791, 1792, 1793, 3050, 3621, 3622, 3624, 4001, 4012, 4042, 4081, 4082 (Repealed as to conduct occurring on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to conduct occurring after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99, 6.1.

[FR Doc. 89–6288 Filed 3–16–89; 8:45 am]

BILLING CODE 4410–05–M

28 CFR Part 541

Control, Custody, Care, Treatment, and Instruction of Inmates Procedures for Handling of HIV Positive Inmates Who Pose Danger to Others

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document, the Bureau of Prisons is finalizing its interim rule on Procedures for Handling of HIV Positive Inmates Who Pose Danger to Others. This rule, originally published October 8, 1987, establishes the procedures to follow when an inmate who tests HIV positive indicates by his actions or verbally a disposition to engage in conduct which poses a significant threat to transmit the HIV virus to another person. The rule is intended to remove from the general inmate population an inmate whose conduct poses a substantial health risk to others.

EFFECTIVE DATE: March 17, 1989.

ADDRESS: Office of General Counsel, Bureau of Prisons, Room 754, 320 First Street, NW., Washington, DC 20534. Comments received will be available for examination by interested persons at the above address.

FOR FURTHER INFORMATION CONTACT: Mike Pearlman, Office of General Counsel, Bureau of Prisons, phone 202/724–3062.

SUPPLEMENTARY INFORMATION: In this document, the Bureau of Prisons is finalizing its interim rule on Procedures for Handling of HIV Positive Inmates Who Pose Danger to Others. The Bureau published its interim rule on this subject October 8, 1987 (at 52 FR 37730 *et seq.*) and invited public comment on how this rule may be further refined or modified. No public comment was received and the Bureau has determined no major revisions are required. One rule change that was made substitutes the Program Review Division for the Office of General Counsel as the reviewing authority for inmate appeal of the

Regional Director's decision. This change recognizes the relocation of the Administrative Remedy Section from the Office of General Counsel to the Program Review Division.

Because the changes pose no additional restrictions and are primarily intended to substitute one reviewing authority for another, the Bureau of Prisons finds good cause under 5 U.S.C. 553 to make this rule effective immediately without a notice of proposed rulemaking, opportunity for public comment, or delay in effective date.

Members of the public may submit comments concerning the final rule by writing the previously cited address. These comments will be considered but will receive no response in the **Federal Register.**

The rule authorizes Bureau staff to place an inmate in controlled housing status when there is reliable evidence causing staff to believe that the inmate may engage in conduct posing a health risk to others. This evidence may be the inmate's behavior, or statements of the inmate, or other reliable evidence. The rule establishes procedures for referring an inmate for placement in controlled housing status, requires the inmate be afforded a hearing, and provides for regional review of the Hearing Administrator's recommendation. The rule specifies that the inmate, consistent with available resources and security needs of the institution, is to be considered for activities and privileges afforded the general inmate population. The rule requires the inmate to have his status reviewed regularly, and identifies the factors to be considered in evaluating an inmate's readiness for release from controlled housing status.

The scope of this rule is limited to the inmate who tests HIV positive and for whom there is reliable evidence that the inmate is engaged in, or may engage in, conduct posing a health risk to others (e.g., sexual predators). To prevent the spreading of the virus to others, the Bureau has engaged in an educational program for all its inmates and staff. A person who tests HIV positive is given counseling about the risks of his behavior. When, despite such education and counseling, a person engages or shows a disposition to engage in high-risk behavior, the Bureau believes it is necessary to immediately implement procedures for removing such inmates from the general inmate population.

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of EO 12291. The Bureau of Prisons has determined that EO 12291 does not apply to this rule since the rule involves agency management. After review of the law and regulations, the Director, Bureau of Prisons, has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96–354), does not have a significant impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 541

Prisoners.

Conclusion

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(q), the interim rule published at 52 FR 37730 adding a new Subpart E to Part 541 is affirmed as final with the following changes.

Dated: March 14, 1989.

J. Michael Quinlan,

Director.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

I. Authority citation for Part 541 is revised to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 and 4161–4166 (These sections are repealed as to conduct occurring on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to conduct occurring after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

II. Part 541 is amended by revising Subpart E to read as follows:

PART 541—INMATE DISCIPLINE AND SPECIAL HOUSING UNITS

* * * * *

Subpart E—Procedures for Handling of HIV Positive Inmates Who Pose Danger to Others

Sec.

Subpart E—Procedures for Handling of HIV Positive Inmates Who Pose Danger to Others

§ 541.60 Purpose and scope.

In an effort to maintain a safe and orderly environment within its institutions, the Bureau of Prisons may place in controlled housing status an inmate who tests HIV positive when there is reliable evidence that the inmate may engage in conduct posing a health risk to another person.

§ 541.61 Standard for placement in controlled housing status.

An inmate may be placed in a controlled housing status when there is reliable evidence causing staff to believe that the inmate engage in conduct posing a health risk to others. This evidence may be the inmate's behavior, or statements of the inmate, or other reliable evidence.

§ 541.62 Referral for placement.

(a) The Warden shall consider an inmate for controlled housing status when the inmate has been confirmed as testing HIV positive and when there is reliable evidence indicating that the inmate may engage in conduct posing a health risk to others. This evidence may come from the statements of the individual, repeated misconduct (including disciplinary actions), or other behavior suggesting that the inmate may engage in predatory or promiscuous sexual behavior, assaultive behavior where body fluids may be transmitted to another, or the sharing of needles.

(b) The Warden shall submit a recommendation for referral of an inmate for placement in a controlled housing status to the Regional Director in the region where the inmate is located.

(c) Based on the perceived health risk to others posed by the inmate's threatened or actual actions, the Warden may, with the telephonic approval of the Regional Director, temporarily (not to exceed 20 work days) place an inmate in a special housing status (e.g., administrative detention, or a secure hospital room), pending the inmate's appearance before the Hearing Administrator. Reasons for this placement, and the approval of the Regional Director, shall be documented in the inmate central file. The inmate should be seen daily by case management and medical staff while in this temporary status, and a psychological or psychiatric assessment report should be prepared during this temporary placement period.

§ 541.63 Hearing procedure.

(a) The Regional Director in the region where the inmate is located shall review the institution's recommendation for referral of an inmate for controlled housing status. If the Regional Director concurs with the recommendations, the Regional Director shall designate a person in the Regional Office or a person at department head level or above in the institution to conduct a

hearing on the appropriateness of an inmate's placement in controlled housing status. This Hearing Administrator shall have correctional experience, no former personal involvement in the instant situation, and a knowledge of the type of behavior that poses a health risk to others, and of the options available for dealing with an inmate who poses such a health risk to others.

(b) The Hearing Administrator shall provide a hearing to an inmate recommended for controlled housing status. The hearing ordinarily shall take place at the institution housing the inmate.

(c) The hearing shall proceed as follows:

(1) Staff shall provide an inmate with an advance written notice of the hearing and a copy of this rule at least 24 hours prior to the hearing. The notice will advise the inmate of the specific act(s) or other evidence which forms the basis for a recommendation that the inmate be placed in a controlled housing status, unless such evidence would likely endanger staff or others. If an inmate is illiterate, staff shall explain the notice and this rule to the inmate and document that this explanation has occurred.

(2) The Hearing Administrator shall upon request of the inmate provide an inmate the service of a full-time staff member to represent the inmate. The Hearing Administrator shall document in the record of the hearing an inmate's request for, or refusal of staff representation. The inmate may select a staff representative from the local institution. If the selected staff member declines for good reason or is unavailable, the inmate has the option of selecting another representative or, in the case of an absent staff member, of waiting a reasonable period (determined by the Hearing Administrator) for the staff member's return, or of proceeding without a staff representative. When an inmate is illiterate, the Warden shall provide a staff representative. The staff representative shall be available to assist the inmate and, if the inmate desires, shall contact witnesses and present favorable evidence at the hearing. The Hearing Administrator shall afford the staff representative adequate time to speak with the inmate and to inteview available witnesses.

(3) The inmate has the right to be present throughout the hearing, except where institutional security or good order is jeopardized. The Hearing Adminstrator may conduct a hearing in the absence of the inmate when the inmate refuses to appear. The Hearing Administrator shall document an inmate's refusal to appear, or other reason for nonappearance, in the record of the hearing.

(4) The inmate is entitled to present documentary evidence and to have witnesses appear, provided that calling witnesses would not jeopardize or threaten institutional security or individual safety, and further provided that the witnesses are available at the institution where the hearing is being conducted.

(i) The evidence to be presented must be material and relevant to the issue as to whether the inmate can and would pose a health risk to others, if allowed to remain in general prison population. This evidence may come from the statements of the individual, repeated misconduct (including disciplinary actions), or other behavior suggesting that the inmate may engage in predatory or promiscuous sexual behavior, assaultive behavior where body fluids may be transmitted to others, or the sharing of needles.

(ii) Repetitive witnesses need not be called. Staff who recommend placement in a controlled housing status are not required to appear, provided their recommendation is fully explained in the record.

(iii) When a witness is not available within the institution, or not permitted to appear, the inmate may submit a written statement by that witness. The Hearing Administrator shall, upon the inmate's request, postpone any decision following the hearing for a reasonable time to permit the obtaining and forwarding of written statements.

(iv) The Hearing Administrator shall document in the record of the hearing the reasons for declining to hear a witness or to receive documentary evidence.

§ 541.64 Decision of the Hearing Administrator.

(a) At the conclusion of the hearing and following review of all material related to the recommendation for placement of an inmate in a controlled housing status, the Hearing Administrator shall prepare a written decision as to whether this placement is warranted. The Hearing Administrator shall:

(1) Prepare a summary of the hearing and of all information presented upon which the decision is based; and

(2) Indicate the specific reasons for the decision, to include a description of the act, or series of acts, or other reliable evidence on which the decision is based, along with evidence of the inmate's HIV positive status.

(b) The Hearing Administrator shall advise the inmate in writing of the decision. The inmate shall receive the information described in paragraph (a) of this section unless it is determined that the release of this information could pose a threat to individual safety, or institutional security, in which case that limited information may be withheld. The Hearing Administrator shall advise the inmate that the decision will be submitted for review of the Regional Director in the region where the inmate is located. The Hearing Administrator shall advise the inmate that, if the inmate so desires, the inmate may submit an appeal of the Hearing Administrator's decision to the Regional Director. This appeal, with supporting documentation and reasons, must be filed within five working days of the inmate's receipt of the Hearing Administrator's decision.

(c) The Hearing Administrator may order the continuation of the inmate in special housing pending review by the Regional Director. The Hearing Administrator should state the reasons for this order in the record of the Hearing.

(d) The Hearing Administrator shall send the decision, whether for or against placement in a controlled housing status, and supporting documentation to the Regional Director. Ordinarily, this is done within 20 working days after conclusion of the hearing. Any reason for extension is to be documented.

§ 541.65 Regional Director review and appeal.

(a) The Regional Director shall review the decision and supporting documentation of the Hearing Administrator and, if submitted, the information contained in an inmate's appeal. The Regional Director shall accept or reject the Hearing Administrator's decision within 30 working days of its receipt, unless for good cause there is reason for delay, which shall be documented in the record. The authority of the Regional Director may not be delegated below the level of acting Regional Director.

(b) The Regional Director shall provide a copy of his decision to the Warden at the institution housing the inmate, to the inmate, and to the Hearing Administrator.

(c) An inmate may appeal a decision of the Regional Director, through the Administrative Remedy Procedure, directly to the Program Review Division,

Bureau of Prisons, within 30 calendar days of the inmate's receipt of the Regional Director's decision.

§ 541.66 Programs and services.

To the extent consistent with available resources and the security needs of the institution, an inmate in controlled housing status is to be considered for activities and privileges afforded to the general population. This includes, but is not limited to, providing an inmate with the opportunity for participation in an education program, library services, counseling, and religious guidance, as well as access to case management, medical and mental health assistance, and legal services, including access to the institution's law libraries. An inmate in controlled housing status should be afforded at least five hours weekly recreation and exercise out of the cell. The recreation shall be by himself or under close supervision. Unless there are compelling reasons to the contrary, institutions shall provide commissary privileges and reasonable amounts of personal property. The Warden may restrict for reasons of security, fire safety, or housekeeping the amount of personal property that an inmate may retain while in controlled housing status. An inmate shall be permitted to have a radio, provided it is equipped with ear plugs. Visits shall be carefully monitored.

§ 541.67 Review of controlled housing status.

(a) Staff designated by the Warden shall evaluate regularly an inmate's adjustment while in controlled housing status. A medical staff member shall see the inmate daily, and regularly record medical and behavioral impressions. Once every 90 days, staff, comprised of a correctional and case management supervisor, and a member of the medical staff, shall meet with the inmate. The inmate is required to attend this meeting in order to be considered for release to the general population. Any refusal by the inmate to attend this meeting will be documented. Staff, at this meeting, shall make an assessment of the inmate's adjustment while in controlled housing and the likely health threat the inmate poses to others by his actions.

(b) The Warden shall serve as the review authority at the institutional level, and shall make a recommendation to the Regional Director when he believes the inmate should be considered for release from controlled housing.

(c) An inmate may appeal a Warden's decision not to recommend release from controlled housing to the Regional Director within five days of receipt of that decision.

(d) Upon recommendation of the Warden, or upon appeal from the inmate, the Regional Director may decide whether or not to release the inmate to general population from controlled housing status.

(e) An inmate may appeal a decision of the Regional Director, through the Administrative Remedy Procedure, directly to the Program Review Division, Bureau of Prisons within 30 calendar days from the date of the Regional Director's decision.

§ 541.68 Release from controlled housing status.

(a) Only the Regional Director may release an inmate from controlled housing status. The following factors are considered in the evaluation of an inmate's readiness for return to the general population:

(1) Relationship with other inmates and staff members, which demonstrate that the inmate is able to function in a less restrictive environment without posing a health threat to others or to the orderly operation of the institution;

(2) Involvement in work and recreational activities and assignments or other programs; and

(3) Adherence to institution guidelines and Bureau of Prisons rules and policy.

(b) An inmate released from a controlled housing status may be returned to the general population of that institution, or to another federal or non-federal institution.

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DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 513

Control, Custody, Care, Treatment And Instruction of Inmates

AGENCY: Bureau of Prisons.

ACTION: Proposed rules.

SUMMARY: In this document, the Bureau of Prisons is publishing a new proposed rule on release of information. The rule is intended to consolidate, in one document, procedures for releasing requested records in the possession of the Bureau of Prisons. The rule has been developed in conjunction with the statutory requirements in 5 U.S.C. 552 552a, and 28 CFR Part 16.

DATES: Comments must be received on or before May 1, 1989.

ADDRESS: Office of General Counsel, Bureau of Prisons, Room 767, 320 1st Street, NW., Washington, DC 20534. Comments received by the closing date will be available for examination by interested persons at the above address.

FOR FURTHER INFORMATION CONTACT: Mike Pearlman, Office of General Counsel, Bureau of Prisons, phone 202/724/3062.

SUPPLEMENTARY INFORMATION: Pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director of the Bureau of Prisons in 28 CFR 0.96(q), notice is given that the Bureau of Prisons intends to publish in the **Federal Register** its proposed rules on Release of Information. A proposed rule on this subject was published in the **Federal Register** on October 29, 1979 (at 44 FR 62252 *et seq.*). That proposed rule is withdrawn and comments received in response to that rulemaking will not be considered when finalizing this new proposed rule.

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of EO 12291. The Bureau of Prisons has determined that EO 12291 does not apply to this rule since the rule involves agency management. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96–354), does ot have a significant impact on a substantial number of small entities.

Interested persons may participate in this proposed rulemaking by submitting data, views, or arguments in writing to the Bureau of Prisons, room 767, 320 1st Street, NW., Washington, DC 20534. Comments received during the comment period will be considered before final action is taken. The proposed rule may be changed in light of the comments received. No oral hearings are contemplated.

List of Subjects in 28 CFR Part 513

Prisoners.

In consideration of the foregoing, it is proposed to amend 28 CFR, Chapter V as follows: In Subchapter A, amend Part 513 by adding a new Subpart D to read as follows:

SUBCHAPTER A—GENERAL MANAGEMENT AND ADMINISTRATION

Subpart D—Release of Information

Sec.

Authority: 5 U.S.C. 301, 552, 552a, 18 U.S.C. 3621, 4001, 4042, 4081; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99, Part 2, Part 16.

Subpart D—Release of Information

§ 513.30 Purpose and scope.

This rule establishes procedures for release of requested records that are in the possession of the Bureau of Prisons. It is intended to implement provisions of the Freedom of Information Act and the Privacy Act. Reference is also made to 28 CFR Part 16 (Department of Justice Regulations).

§ 513.31 Limitations.

(a) Social security numbers—As of September 27, 1975, Social Security Numbers will not be used as a method of identification for any Bureau of Prisons record system, unless such use was authorized by statute or by regulation adopted prior to January 1, 1975.

(b) Employee records—Access and amendment of employee personnel records under the Privacy Act of 1974 are governed by regulations of the Office of Personnel Management published in Title 5, Code of Federal Regulations (Part 1205).

§ 513.32 Guidelines for disclosure.

(a) The Bureau of Prisons is subject to a variety of federal laws providing for the disclosure of agency information. See, for example, the Freedom of Information Act (5 U.S.C. 552), and the Privacy Act (5 U.S.C. 552a). A record will be released in response to a request made in accordance with this rule, unless a valid legal exemption to disclosure is asserted. The Bureau of Prisons may assert any applicable exemption to disclosure as set forth in 5 U.S.C. 552 (b), or any other provision of federal law or regulation with respect to inmate records or any other records or documents in the possession of the Bureau of Prisons. Pursuant to 28 CFR 16 *et seq.* the authority to release or deny access to records and information is limited to the Director or designee. Questions regarding these legal exemptions may be referred to Regional Counsel or the Office of General Counsel.

(b) Examples of documents or information which may ordinarily be withheld from disclosure include, but are not limited to, the following:

(1) Documents or information which might constitute an unwarranted invasion of personal privacy. Thus, information concerning an individual inmate is not generally available to other inmates or the general public unless the information is a matter of public record or unless the individual inmate has given written consent to the disclosure. See generally § 513.55 for further information.

(2) Documents or information which might reveal sources of information obtained upon a legitimate expectation of confidentiality or otherwise endanger the life or physical safety of any person. Thus, a statement of an inmate witness adverse to another inmate in the context of an ongoing or a completed criminal,

disciplinary, or accident investigation would not be disclosed to the latter inmate if such disclosure would endanger the inmate witness. Conversely, a statement of an inmate witness favorable to another inmate or which clearly has already been made known to that inmate (for example, by trial testimony) may generally be disclosed to that inmate.

(3) Documents or information which might lead to a disruption of a subject inmate's institutional program, on account of the diagnostic or evaluative opinions contained in the document, and which could likely aggravate the inmate's clearly documented adjustment difficulties.

(4) Documents or information which might interfere with ongoing law enforcement proceedings, including administrative investigations. Thus, while certain investigatory information might be disclosed after an administrative investigation is completed, particular care must be exercised regarding disclosure during the course of the investigation. With regard to criminal proceedings, questions regarding the status of the case should be addressed to the appropriate U.S. Attorney's office.

(5) Documents or information which might, through disclosure of law enforcement techniques, information, or procedures, enable the requester to violate any law, or to threaten the security of a Bureau of Prisons institution or the safety of any person. This exemption relates to a few Operations Memoranda and Program Statements, and other documents such as post orders, construction diagrams, etc., the disclosure of which would pose a threat to institutional security. It also may apply to information contained in investigations and similar reports where law enforcement techniques might be outlined.

§ 513.33 Placement of documents in Inmate Central File and Privacy Folder.

(a) When documents are produced or received and are to be placed in an inmate's Central File, the following review should take place with regard to disclosure to the inmate to whom the documents pertain, or to a third party with the prior written consent of the inmate:

(1) If the document originates in the Bureau of Prisons (not including court-ordered studies), staff shall determine whether the document should be withheld from disclosure under § 513.32. Otherwise, it is placed in the disclosable portion of the Inmate Central File, which is all of the Central File except for the Privacy Folder.

(i) It should be noted that all Progress Reports prepared after October 15, 1974 are subject to release and are to be placed in the non-exempt section of the Inmate Central File. All Progress Reports prepared between February 15 and October 15, 1974 are subject to release with the exception of the recommendation section. The recommendation section of Progress Reports prepared between February 15 and October 15, 1974, and *all* Progress Reports prepared before February 15, 1974, will be reviewed as to disclosure in accordance with the standards contained in § 513.32.

(ii) A psychiatric report written at the request of the Parole Commission is also subject to release and should be placed in the non-exempt section of the Inmate Central File. This report should be written in non-technical language so that it can be understood by non-professionals.

(iii) Other psychiatric, psychological, or evaluative reports prepared by the Bureau of Prisons may also be made available to the Parole Commission. Such reports are to be placed in the Parole Commission and Bureau of Prisons Joint Use Section of the Inmate Privacy Folder, and a summary of the document must be placed in the Inmate Central File. The summary may be placed in the Progress Report prepared in connection with the inmate's parole hearing. The summary should be sufficiently detailed to permit the inmate to respond to the substance of the withheld information at the Parole Hearing.

(iv) With regard to disciplinary records, such as IDC or DHO packets (including the IDC/DHO report, Incident Report, notice of hearing, list of inmate rights at IDC/DHO hearing, notice of placement in Administrative Detention, and investigative memoranda), if a portion of an investigation or other disciplinary record contains exempt materials, the original IDC/DHO packet should be maintained together in the Inmate Privacy Folder, but copies of all disclosable documents must be placed together in the non-exempt section of the Inmate Central File.

(2) If a document originates in another federal agency (including components of the Department of Justice but not including federal courts or probation offices), or has been requested by the Bureau from a source outside the federal government (e.g., a state agency), it will be placed in the Privacy Folder. It will be referred to the originating agency for releasability subsequent to a request for records access which includes that document. Unless there is an ongoing need for the document, no copy is retained in the institution Inmate Central File. The originating agency will be asked to provide a memorandum detailing reasons for non-disclosure if it recommends against disclosure. Bureau staff will review these reasons for compliance with § 513.32. If non-disclosure is appropriate, staff shall document their rationale for non-disclosure and the document will be placed in the Privacy Folder. If, prior to request for a document, the Bureau of Prisons deems the document to be disclosable, but the agency objects to disclosure, the document will be returned to that agency and no copy will be retained by the Bureau.

(3) Public documents, such as a copy of the Judgment and Commitment, which originate in a federal court or probation office will be placed in the Privacy Folder. Other documents, such as a court-ordered study prepared by the Bureau, will be referred to the originating or requesting court upon receipt or preparation by the Bureau for that court's instructions as to disclosure, unless such instructions have already been received from the originating or requesting court. There may be an ongoing need for the document while it is being referred for review. Therefore, a copy should be maintained in the Privacy Folder pending decision regarding disclosure. Typical examples of these documents are studies prepared for a court.

(4) Unsolicited documents originating outside the federal government will be reviewed by Bureau staff as to disclosure in accordance with paragraph (a)(1) of this section, and with the provisions on disclosure and need not be returned to the originator for a disclosure recommendation.

(5) Presentence Investigations (PSI)—Pursuant to the Supreme Court decision in *Julian*, Presentence Reports will be released to an inmate upon the inmate's request to institution staff. This decision pertains to the release of federal presentence reports only.

(i) Presentence reports prepared December 1, 1975 and later are to be placed in the non-exempt portion of the inmate's central file, and may be released to the inmate.

(ii) Presentence Reports prepared before December 1, 1975 are to be returned to the sentencing court, since these reports were prepared with the expectation that no part of them would be disclosed to the defendant. Unit staff are to review inmate files and return the "old Presentence Reports" to the sentencing court, along with a cover letter. The cover letter to the sentencing court should indicate that the PSIs are

being returned based on the Supreme Court's decision in *Julian* and the fact that these reports when prepared were not prepared with the expectation of release. No copy of the returned PSI is to be maintained at the institution, although relevant material from the PSI may be incorporated into other documents.

(iii) Presentence Reports with "Do Not Disclose" Markings—Presentence Reports that have some general stamped marking (e.g., on the face sheet of the Report) of "Do Not Disclose" or comparable language will be handled in accordance with paragraphs (a)(5)(i) or (ii) of this section, depending on when they were prepared.

(6) When Bureau of Prisons staff reclassify a document from non-disclosable to disclosable, subsequent to any information request encompassing that document, staff shall place the reclassified document in the non-exempt section of the Inmate's Central File, and notify the inmate of this reclassification and of the availability of the document for review.

(b) [Reserved]

§ 513.34 Inmate access to central file.

An inmate may at any time request to review all disclosable portions of his or her Inmate Central File, this includes Judgment and Commitment and education files, by submitting a request to a staff member designated by the Warden. Staff shall acknowledge the request and schedule the inmate, as promptly as is practical, for a review of the file. Prior to the inmate's review of the file, staff shall remove the Inmate Privacy Folder which contains documents withheld from disclosure pursuant to § 513.32. During the file review, the inmate shall be under direct and constant supervision by staff. The staff member monitoring the review shall enter the date of the inmate's file review on the Work Assignment Sheet and initial the entry. Staff shall also ask the inmate to initial the entry, and if the inmate refuses to do so, shall enter a notation to that effect. Staff shall advise the inmate if there are documents withheld from disclosure and, if so, shall advise the inmate of the right to make a formal request for the documents under the provisions of § 513.46.

§ 513.35 Inmate access to Inmate Central File in connection with parole hearings.

An individual inmate may review disclosable portions of the Inmate Central File prior to the individual's parole hearing, under the general procedures set forth in § 513.34, with the following additional requirements:

(a) The Bureau ordinarily shall permit this review within seven work days of a request by an inmate after the inmate has been scheduled for a parole hearing, except that in the case of reports which have been returned (prior to the inmate's request) to originating agencies for clearance, or which are otherwise not available at the institution, a reasonable extension of time is permitted.

(b) A report received from another agency which is determined to be nondisclosable (see § 513.33 (a)(2)] will be summarized by that agency, in accordance with Parole Commission regulations. Bureau staff shall place the summary in the appropriate disclosable section of the Inmate Central File. The original report (or portion which is summarized in another document) will be placed in the portion of the Inmate Privacy File for Bureau of Prisons and Parole Commission Joint Use.

(c) With regard to Bureau of Prisons documents, it is anticipated that psychiatric or other evaluative reports which are determined nondisclosable to the inmate will be summarized in another document which is disclosable to the inmate (and which is available for review in the disclosable section of the Inmate Central File). The document from which the summary is taken will be placed in the Parole Commission and Bureau of Prisons Joint Use Section of the Inmate Privacy Folder. Nondisclosable documents which are not summarized for the inmate's use are not available to the Parole Commission and are placed in a nondisclosable section of the Inmate Central File.

(d) When no response as to disclosure has been received from an originating agency in time for inmate review prior to the hearing, this fact must be noted for the Parole Commission Hearing Examiner.

§ 513.36 Inmate access to medical records.

(a) Except to the extent otherwise provided in paragraph (b) of this § 513.36, an inmate may review the following records from his or her medical file (including dental records) by submitting a request to a staff member designated by the Warden:

(1) Medical and Related Data Sheets (BP–8);

(2) Report of Medical History (Standard From 89 or 93);

(3) Report of Medical Examination (Standard Form 89);

(4) Laboratory Reports which contain only scientific testing results and which contain no staff evaluation or opinion (such as Standard Form 514A, Urinalysis). Lab results of HIV testing is an exception and may not be released to the inmate while confined in a Bureau of Prisons facility or a Community Treatment Center;

(5) Doctor's Orders (Standard Form 508); and

(6) Medication Sheets (such as Medications and Treatments, PHS Form 2128, Supplement to Standard Form 510).

(b) Medical records containing subjective evaluations and opinion of medical staff relating to the inmate's care and treatment will be provided only to a requesting physician designated in writing by the inmate or former inmate. Such records might include, but are not limited to: Outpatient notes, consultation reports, narrative summaries or reports by a specialist, operative reports by the physician, summaries by specialists as the result of laboratory analysis, or in-patient progress reports. Release of records with respect to appeals of decisions rendered under the Inmate Accident Compensation are governed by 28 CFR Part 301.

§ 513.37 Fees.

An inmate may request personal copies of documents maintained in the Inmate Central File and Medical Record. Institution staff will provide copies of accessible documents. Fees are charged in accordance with 28 CFR 16.10.

§ 513.38 Employee formal access to information.

An employee may make a *formal* request for access to documents in his/her Personnel File and/or other documents concerning the employee which are not contained in the employee's personnel file but which are maintained in a system of records by the Bureau of Prisons, by submitting a written request to the Director, Bureau of Prisons, 320 First Street, NW., Washington, DC 20534. *Such a request is processed pursuant to the applicable provisions of the Privacy Act of 1974, 5 U.S.C. 552a,* the alternative means of access established by the Bureau of Prisons, and the exemptions and fee provisions of the FOIA, 5 U.S.C. 552. The requester shall clearly mark on the face of the letter and on the envelope "PRIVACY ACT REQUEST," and shall clearly describe the records sought, including the approximate dates covered by the record. An employee making such a request must provide their social security number and date of birth for purposes of identification, most conveniently by using Form 361, Certification of Identity.

§ 513.39 Request for records on behalf of an employee or former employee.

A request for records concerning an employee or former employee made by an authorized representative of that employee may be made by writing the Bureau of Prisons, 320 First Street, NW., Washington, DC 20534. Such *formal* requests shall be processed pursuant to the provisions of the Privacy Act, plus the exemptions and fee provisions of the Freedom of Information Act. The request must be clearly marked on the face of the letter and on the envelope "PRIVACY ACT REQUEST", and must describe the record sought, including the approximate dates covered by the record. Verification of the identity of the individual whose records are sought is required. Verification standards are listed in 28 CFR 16.41.

§ 513.40 Acknowledgement of requests—Privacy Act

All *formal* requests for records under the Privacy Act shall be referred to, and acknowledged, by the FOI/Privacy Acts Control Officer, Office of General Counsel. The acknowledgement to the requester shall give some indication as to when a response can be expected, in accordance with time limits set under the governing disclosure statute. Requests for records ordinarily located at a field facility, record storage repository, or in a Regional Office, shall be referred to the Regional Office and responded to by the Regional Director or designee in the region where the records are located.

§ 513.41 Review of documents

If a document is deemed to contain information exempt from disclosure, any reasonably segregable portion of the record shall be provided to the requester after deletion of the exempt portions. If documents, or portions of documents, have been determined to be nondisclosable by institution staff but are later released by Regional or Central Office staff pursuant to a request under this paragraph, appropriate instructions will be given to the institution to move those documents, or portions, out of the Inmate Privacy Folder into the disclosable section of the Inmate Central File.

§ 513.42 Denials, appeals, and requests for correction

Under congressional authority granted to the Attorney General by 5 U.S.C. 552a(j), certain systems of records (listed at 28 CFR 16.97) are exempted from the access and correction requirements of the Privacy Act of 1974. Pursuant to 28 CFR 16.97(c) and consistent with the legislative intent of the Privacy Act, any employee, former employee, or aurhorized representative of that person may gain access to Bureau of Prisons records about that employee or former employee subject to the exemptions listed from disclosure in 5 U.S.C. 552(b) and limited to those systems of records maintained by the Bureau of Prisons.

(a) If a request made pursuant to the Privacy Act is denied in whole or in part, a denial letter must be issued and signed by the Director, the appropriate Regional Director, or designee, and shall state the basis for denial under § 513.32. The requester who has been denied such access shall be advised that he or she may appeal that decision to the Assistant Attorney General, Office of Legal Policy by filing a written appeal within thirty days of the receipt of the denial. The appeal shall be marked on the face of the letter and the envelope "PRIVACY APPEAL—DENIAL OF ACCESS," and shall be addressed to the Office of Information and Privacy, U.S. Department of Justice, 10th Street and Constitution Avenue, NW., Washington, DC 20530.

(b) A person other than an inmate about whom the Bureau maintains records may request correction through the Privacy Act of inaccurate, incomplete, or irrelevant information. An inmate may request correction in writing through Administrative Remedy Procedures. A member of the public (such as a former inmate) may request correction in writing to the Director of the Bureau of Prisons. Any denial of such a request should contain a statement of the reason for denial. Requests for correction of federal or state records prepared outside the Bureau of Prisons will be forwarded to that agency for appropriate action.

§ 513.43 Fees—Privacy Act

(a) Fees for copies of an individual's own records granted under the Privacy Act may be charged in accordance with Department of Justice regulations, 28 CFR 16.47.

§ 513.44 Time limits for response to Privacy Act requests

The Bureau of Prisons attempts to adhere to the time limits established in 28 CFR 16.45 with respect to requests for access to information pursuant to the Privacy Act of 1974.

§ 513.45 Freedom of Information Act requests

Except as specified in § 513.40, all *formal* requests for any agency record (including Program Statements and Operations Memoranda) shall be processed pursuant to the Freedom of Information Act, 5 U.S.C. 552. Such a request must be made in writing and addressed to the Director, Bureau of Prisons, 320 First Street, NW., Washington, DC 20534. The requester shall clearly mark on the face of the letter and the envelope "FREEDOM OF INFORMATION REQUEST," and shall clearly describe the records sought.

§ 513.46 Inmate formal access to information.

An inmate may make a *formal* request for access to documents in that inmate's Central or Medical File (including those documents which have been withheld from disclosure by the institution) and/or other documents concerning the requester which are not contained in the inmate's Central or Medical Files but which are maintained in a system of records by the Bureau of Prisons, by submitting a written request to the Director, Bureau of Prisons. *Such a request is processed pursuant to the applicable provisions of the Freedom of Information Act, 5 U.S.C. 552.* The requester shall clearly mark on the face of the letter and on the envelope "FREEDOM OF INFORMATION ACT REQUEST", and shall clearly describe the records sought, including the approximate dates covered by the record. An inmate making such a request must provide both register number and date of birth for purposes of identification, most conveniently by using Form 361, Certification of Identity.

§ 513.47 Access by former inmates.

Former federal inmates may request copies of their records maintained by the Bureau of Prisons by writing to the Director, Bureau of Prisons, 320 First Street, NW., Washington, DC 20534. Such *formal* requests shall be processed pursuant to the provisions and fee provisions of the Freedom of Information Act. The request must be clearly marked on the face of the letter and on the envelope "FREEDOM OF INFORMATION ACT REQUEST", and must describe the record sought, including the approximate dates covered by the record. Verification of the identity of the individual whose records are sought is required. Verification standards are listed in 28 CFR 16.41(d)(1). The Certification of Identity (Form 361) may be used.

§ 513.48 Request for records on behalf of an inmate or former inmate.

A request for records concerning aninmate or former inmate made by an authorized representative of that inmate or former inmate will be treated as in § 513.46 above on receipt of the inmate's or former inmate's written notarized

authorization. Verification of the identity of the individual whose records are sought is required. Verification standards are listed in 28 CFR 16.41.

§ 513.49 Acknowledgement of requests—Freedom of Information Act.

All *formal* requests for records under the Freedom of Information Act shall be referred to, and acknowledged by, the FOI/Privacy Acts Control Officer, Office of General Counsel. The acknowledgement to the requester shall give some indication as to when a response can be expected, in accordance with time limits set under the governing disclosure statute. Requests for records of inmates and other records ordinarily located at a field facility, record storage depository, or in a Regional Office, shall be referred to the Regional Office and responded to by the Regional Director, or designee in the region where the records are located.

§ 513.50 Review of documents.

If a document is deemed to contain information exempt from disclosure, any reasonable segregable portion of the record shall be provided to the requester after deletion of the exempt portions. If documents, or portions of documents, have been determined to be nondisclosable by institution staff but are later released by Regional or Central Office staff pursuant to a request under this paragraph, appropriate instructions will be given to the institution to move those documents, or portions, out of the Inmate Privacy Folder into the disclosable section of the Inmate Central File.

§ 513.51 Denials, appeals, and requests for correction.

Under congressional authority granted to the Attorney General by 5 U.S.C. 552(a)(j), certain systems of records (listed at 28 CFR 16.97) are exempted from the access and correction requirements with the legislative intent of the Privacy Act of 1974. Pursuant to 28 CFR 16.97(c) and consistent with the legislative intent of the Privacy Act, any inmate, former inmate, or authorized representative of that person may gain access to Bureau of Prison records about that inmate or former inmate subject to the exemptions listed from disclosure in 5 U.S.C. 552(b) and limited to those systems of records maintained at the institution of confinement.

(a) If a request made pursuant to the Freedom of Information Act is denied in whole or in part, a denial letter must be issued and signed by the Director, the appropriate Regional Director, or designee, and shall state the basis for denial under § 513.32. The requester who has been denied such access shall be advised that he or she may appeal that decision to the Office of Information and Privacy, U.S. Department of Justice, 10th Street and Constitution Avenue NW., Washington, DC 20530. Both the envelope and the letter of appeal itself must be clearly marked: "Freedom of Information Act Appeal".

(b) A person other than an inmate about whom the Bureau maintains records may request correction through the Privacy Act of inaccurate, incomplete, or irrelevent information. An inmate may request correction in writing through Administrative Remedy Procedures. A member of the public (such as a former inmate) may request correction in writing to the Director of the Bureau of Prisons. Any denial of such a request should contain a statement of the reason for denial. Requests for correction of federal or state records prepared outside the Bureau of Prisons will be forwarded to that agency for appropriate action.

§ 513.52 Fees—Freedom of Information Act.

Fees for copies of an individual's own records granted under the Freedom of Information Act may be charged in accordance with Department of Justice regulations, 28 CFR 16.10.

§ 513.53 Time limits for response to Freedom of Information Act requests.

The Bureau of Prisons attempts to adhere to the time limits established in 28 CFR 16.1(d) with respect to requests for access to information pursuant to the Freedom of Information Act.

§ 513.54 Production of records in court.

Bureau of Prisons' records are often sought by subpoena, order, or court demand, in connection with court proceedings. These records, by Attorney General Order, may not be produced in court without Attorney General or other appropriate Department of Justice approval. The guidelines are set out in Subpart B of Part 16, Title 28 CFR. Persons who receive such demands should seek advice as to proper handling from Regional Counsel or Office of General Counsel.

§ 513.55 Protection of individual privacy—disclosure of records to third parties.

(a) Requesters from appropriate state offices (e.g., department of corrections, parole board, state attorney general) shall be provided access to all state inmate records. This is one of a number of "routine uses."

(b) On occasion, individual members of Congress may contact the Bureau, on behalf of a constitutent, to request information on an inmate in our custody. Responses to such inquiries shall be limited to public information unless staff have first obtained the express or implied consent of the inmate to provide a fuller response. When practical, staff should obtain the inmate's written permission to respond to the inquiry. When this is not practical, staff should consider whether there is implied consent by the inmate; for example, consent may be implied if the Congressional inquiry is the result of a letter the member of Congress received from the inmate. Implied consent does not exist, however, if a third party (for example, the inmate's spouse or parents) initiated the request for information. When this occurs, the consent of the inmate must be obtained prior to release of non-public information. If consent is not given, the information may not be released.

(c) The Bureau of Prisons may not disclose a list of Bureau of Prisons inmates or employees to a requester except where congressional authority exists for such release (e.g., to the Social Security Administration under Pub. L. 96-473). Certain other exceptions may exist, depending upon local law and Attorney General decisions.

(d) No record or item of information concerning an individual which is contained in a system of records maintained by the Bureau of Prisons shall be disclosed by any means of communication to any persons, or to another agency, without the prior written consent of the individual to whom the record pertains, unless the disclosure would be:

(1) To an employee of the Department of Justice who has need for the record in the performance of duties;

(2) Required to be disclosed by the Freedom of Information Act, 5 U.S.C. 522;

(3) For a *routine use* as described in the Department of Justice "Notice of Records Systems" published in the **Federal Register**;

(4) To the Bureau of Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of Title 13, United States Code;

(5) To a recipient who has provided the Bureau of Prisons with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(6) To the National Archives of the United States as a record which has sufficient historical or other value to

warrant its continued preservation by the United States Government, or for evaluation by the Administrator of General Services or designee to determine whether the record has such value;

(7) To another agency or to an instrumentality of any government jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought.

(Note: The "routine uses" of all Bureau of Prisons records systems include providing information to state and federal law enforcement officials for the purpose of investigations, possible criminal prosecutions, civil court actions, or regulatory proceedings.)

(8) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual;

(9) To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

(10) To the Comptroller General, or any of the Comptroller General's authorized representatives, in the course of the performance of the duties of the General Accounting Office;

(11) Pursuant to the order of a court of competent jurisdiction; or

(12) To a consumer reporting agency in accordance with 31 U.S.C. 3711(f).

§ 513.56 Accounting of disclosures to third parties.

Except for disclosures of information or records made to other employees of the Department of Justice, and all components thereof, and for disclosures required by the Freedom of Information Act (i.e., public information), an accounting of disclosures of any information concerning an individual contained in a system of records maintained by the Bureau of Prisons will be kept in accordance with the following guidelines.

(a) *Oral disclosures:* A memorandum will be prepared and retained in the file from which the record is disclosed, or an appropriate notation will be maintained in the file, attached to the record disclosed. At a minimum this accounting shall include the identification of the particular record disclosed, the name and address of the person to whom disclosed and the name of the agency that person represents, if any, the purpose of the disclosure, and the date of the disclosure. When more than one record is disclosed, the accounting memorandum or notation should clearly indicate the records and scope of the information disclosed.

(b) *Written disclosures:* Accounting for written disclosures may be made in the same manner as for oral disclosures, or may be made by retaining a copy of the correspondence requesting the information and a copy of the response in the file from which the records are disclosed. Other procedures for maintaining an accounting of information and records disclosed may be used provided the method provides, at a minimum, the following information: Identification of the particular records disclosed, the name and address of the person to whom disclosed, and the name of the agency that person represents, if any, the purpose of the disclosure, and the date of the disclosure.

§ 513.57 Government contractors.

(a) No component of the Bureau of Prisons may contract for the operation of a record system by or on behalf of the Bureau of Prisons without the express written approval of the Director or designee.

(b) Any contract which is approved shall contain the standard contract requirements promulgated by the General Services Administration to insure compliance with the requirements imposed by the Privacy Act of 1974. The contracting component shall have the responsibility for insuring that the contractor complies with the contract requirements relating to privacy.

Dated: March 14, 1989.

J. Michael Quinlan,

Director, Federal Bureau of Prisons.

[FR Doc. 89-6289 Filed 3-16-89; 8:45 am]

BILLING CODE 4410-05-M

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28 CFR Part 544

Control, Custody, Care, Treatment and Instruction of Inmates Adult Basic Education (ABE) Program

AGENCY: Bureau of Prisons, Justice.

ACTION: Proposed rule.

SUMMARY: In this document, the Bureau of Prisons is publishing a proposed amendment to its rule on adult basic education (ABE) programs. The proposed rule is intended to establish a prior, verified high school diploma or GED certificate and academic performance at the 8.0 grade level as requirements for promotion to grade one positions in either a Federal Prison Industries, Inc. or performance pay assignment, or assignment to an incentive pay (piece rate) position.

DATE: Public comments must be received on or before May 1, 1989.

ADDRESS: Office of General Counsel, Bureau of Prisons, Room 767, 320 First Street, NW., Washington, DC 20534. Comments received by the closing date will be available for examination by interested persons at the above address.

FOR FURTHER INFORMATION CONTACT: Mike Pearlman, Office of General Counsel, phone (202) 724-3062.

SUPPLEMENTARY INFORMATION: Pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons, in 28 CFR 0.96(q), notice is hereby given that the Bureau of Prisons is publishing a proposed amendment to its rule on adult basic education (ABE) programs. A final rule on this subject was published in the **Federal Register** June 10, 1986 (at 51 FR 21114). The rule was subsequently amended on November 21, 1986 (at 51 FR 42166), and again on April 29, 1988 (at 53 FR 15539). The present amendment proposes to amend § 544.73 to require that an inmate possess either a prior, verified high school diploma or General Equivalency Degree (GED) and be functioning at the 8.0 academic grade level before that inmate can be assigned to a performance pay or Federal Prison Industries, Inc. (UNICOR) work position at the grade one level, or be assigned to an incentive pay (piece rate) position. The existing rule requires that the inmate be able to demonstrate achievement of at least an 8.0 academic grade level before being assigned to either grade one, two, or three pay positions. The proposed amendment is made in recognition of the higher standards of literacy required in the workplace, and in the belief that grade one and incentive pay positions warrant the higher standard. The rule allows the Warden to make exceptions to this policy for good cause.

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of EO 12291. The Bureau of Prisons has determined that EO 12291 does not apply to this rule since the rule involves agency management. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96-354), does not have a significant impact

on a substantial number of small entities.

Interested persons may participate in this proposed rulemaking by submitting data, views, or arguments in writing to the Bureau of Prisons, Room 767, 320 First Street NW., Washington, DC 20534. Comments received will be considered before final action is taken. The proposed rule may be changed in light of the comments received. No oral hearings are contemplated.

List of Subjects in 28 CFR Part 544

Education, Libraries, Prisoners, Recreation.

In consideration of the foregoing, it is proposed to amend Subchapter C of 28 CFR, Chapter V as follows: In Subchapter C, amend Part 544, Subpart H, § 544.73 to read as follows:

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 544—EDUCATION

Subpart H—Adult Basic Education (ABE) Program

A. The authority citation for Part 544, Subpart H is revised to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4081, 4082 (Repealed as to conduct occurring on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to conduct occurring after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

B. In Part 544, Subpart H, revise § 544.73 to read as follows:

§ 544.73 Federal Prison Industries (UNICOR) and Inmate Performance Pay (IPP) assignments.

(a) Inmates who wish to secure a UNICOR or IPP work assignment in either grade two or three of compensation must be able to demonstrate achievement of at least an 8.0 academic grade level. Inmates who wish to secure a UNICOR or IPP work assignment in grade one or who wish to work in incentive pay (piece rate) positions must be able to demonstrate the prior obtainment of a GED or high school diploma and the achievement of at least an 8.0 academic grade level. The Warden may, for good cause, exempt inmates from this requirement.

(b) An inmate may be assigned to the fourth grade of compensation in a UNICOR or IPP work assignment contingent on the inmate's enrollment, and satisfactory participation, in the ABE program. Failure of an inmate to make adequate progress in the ABE program may be used as the basis to remove the inmate from the UNICOR or IPP work assignment.

Dated: March 14, 1989.

J. Michael Quinlan,

Director, Federal Bureau of Prisons.

[FR Doc. 89–6286 Filed 3–16–89; 8:45 am]

BILLING CODE 4410–05–M

28 CFR Part 545

Control, Custody, Care, Treatment, and Instruction of Inmates Inmate Financial Responsibility Program

AGENCY: Bureau of Prisons, Justice.

ACTION: Proposed rule.

SUMMARY: In this document, the Bureau of Prisons is proposing an amendment to its rule on inmate financial responsibility program. The proposed amendment is intended to place into the rules a minimum monthly payment for UNICOR and Non-UNICOR workers.

DATE: Public comments must be received on or before May 1, 1989.

ADDRESS: Office of General Counsel, Bureau of Prisons, Room 767, 320 1st Street, NW., Washington, DC 20534. Comments received by the closing date will be available for examination by interested persons at the above address.

FOR FURTHER INFORMATION CONTACT: Mike Pearlman, Office of General Counsel, Bureau of Prisons, phone 202/724–3062.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is proposing an amendment to its final rule on its inmate financial responsibility program. A final rule on this subject was published in the Federal Register April 1, 1987 (at 52 FR 10529 et seq.). The proposed amendment is intended to place into the rules a minimum monthly payment for non-UNICOR and UNICOR workers.

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of EO 12291. The Bureau of Prisons has determined that EO 12291 does not apply to this rule since the rule involves agency management. After review of the law and regulations, the Director, Bureau of Prisons, has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96–354), does not have a significant impact on a substantial number of small entities.

Interested persons may participate in this proposed rulemaking by submitting data, views, or arguments in writing to the Bureau of Prisons, Room 767, 320 1st Street NW., Washington, DC 20534. Comments received during the comment period will be considered before final action is taken. The proposed rule may be changed in light of the comments received. No oral hearings are contemplated.

List of Subjects in 28 CFR Part 545

Work and compensation.

In consideration of the foregoing, it is proposed to amend Subchapter C of 28 CFR, Chapter V as follows:

In Subchapter C, amend Part 545, Subpart B, § 545.11(b) to read as follows:

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 545—WORK AND COMPENSATION

1. The authority citation for Part 545, Subpart B is revised to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed as to conduct occurring on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to conduct occurring after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

2. In § 545.11 revise paragraph (b) to read as follows:

§ 545.11 Payment.

* * * * *

(b) *Payment.* The inmate is responsible for making all payments required by the financial responsibility plan, and for providing documentation to staff. Payments may be made from earnings of the inmate within the institution or from outside resources. Ordinarily, the minimum payment for non-UNICOR and UNICOR grade 5 inmates will be $25.00 per quarter. Inmates assigned grades 1 through 4 in UNICOR will be expected to allot not less than 50% of their monthly pay to the payment process. Allotments may exceed this percentage after considering the individual inmate's specific obligations and resources. .

* * * * *

Dated: March 14, 1989.

J. Michael Quinlan,

Director, Bureau of Prisons.

[FR Doc. 89–6285 Filed 3–16–89; 8:45 am]

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federal register

Friday
March 17, 1989

Part III

Department of Commerce

Patent and Trademark Office

37 CFR Parts 1 and 10

Duty of Disclosure and Practitioner Misconduct; Proposed Rule

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 1 and 10

[Docket No. 90135-9035]

Duty of Disclosure and Practitioner Misconduct

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Proposed rule.

SUMMARY: The Patent and Trademark Office (Office) proposes to amend the rules of practice in patent cases (1) to clarify the duty of disclosure standard for information required to be submitted to the Office; (2) to make information disclosure statements mandatory for complying with the duty of disclosure; (3) to provide specific deadlines for submitting such statements including the requirement of a fee in some cases if the statement is filed after the first deadline; (4) to eliminate consideration of duty of disclosure issues by the Office except in disciplinary proceedings, and under limited circumstances in the examination of reissue applications; and (5) to eliminate the striking of patent applications which are improperly executed. The Office further proposes to amend the rules governing practice before it by registered attorneys and agents to define acts of misconduct which conform to a failure to comply with the proposed rules on duty of disclosure.

These proposed changes are considered desirable in view of the large amount of resources that are being devoted to duty of disclosure issues both within and outside the Office without significantly contributing to the reliability of the patents being issued. The proposed rules are intended: (1) To reduce the burden on patent applicants and those associated with the filing and prosecution of patent applications in complying with the duty of disclosure to the Office; (2) to minimize the risk that valuable patent rights will be lost by providing procedures and mandatory deadlines for submitting information to the Office in pending patent applications; (3) to ensure consideration of relevant information by the Office before a final decision on patentability is made by the patent examiner; and (4) to permit some of the Office resources now devoted to a consideration of duty of disclosure issues to be directed to the reduction in the backlog of pending patent applications.

DATES: Comments must be submitted on or before June 20, 1989. A public hearing will be held on June 22, 1989, beginning at 9:30 a.m. Requests to present oral testimony should be received on or before June 20, 1989.

ADDRESSES: Address written comments and requests to present oral testimony to Box 8, Commissioner of Patents and Trademarks, Washington, DC 20231, marked to the attention of Charles E. Van Horn. The hearing will be held at the U.S. Patent and Trademark Office in Room 912 of Building 2, Crystal Park, located at 2121 Crystal Drive, Arlington, Virginia. Written comments and a transcript of the public hearing will be available for public inspection in Room 5C15 of Building 2, Crystal Plaza.

FOR FURTHER INFORMATION CONTACT: Charles E. Van Horn or John H. Raubitschek by telephone at (703) 557-4035 or by mail addressed to Box 8, Commissioner of Patents and Trademarks, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: The goal of any patent examination system is to provide for the grant of reliable patents to protect the patent owner and those who must often expend considerable resources in developing the invention. The grant of reliable patents is dependent, in large part, on the examiner making a decision on patentability after a thorough consideration of the scope and content of the prior art. Any intentional withholding from the Office of information which directly affects the determination of patentability of an invention may undermine the reliability of the resulting patent.

This proposed rule change is designed to ensure that the examiner considers the pertinent prior art before making a final decision on patentability and to allow for the reallocation of Office resources regarding the duty of disclosure in the prosecution of patent applications before the Office. It has long been recognized that by reason of the nature of an application for patent, those representing a patent applicant before the Office are required to act in a manner consistent with the highest degree of candor and good faith. *Kingsland* v. *Dorsey*, 338 U.S. 318, 83 USPQ 330 (1949), *reh'g denied*, 338 U.S. 939 (1950).

There have been several attempts to define the duty to disclose information to the Office in 37 CFR 1.56. In addition, an evolving body of case law on fraud and inequitable conduct in the Office has reflected, at times, a lack of cohesive direction. This has led to some uncertainty about the duty of disclosure and to the unproductive use of considerable resources by the Office, the patent bar, patent applicants, and patent owners in addressing issues relating to this duty. See 16 AIPLA Quarterly Journal Nos. 1 and 2 (1988).

The determination of inequitable conduct in the office as it relates to the nondisclosure of information affecting the patentability of an invention has involved a factual determination of two elements: (1) Materiality of the information; and (2) intent to mislead the Office on the part of the individual who did not bring the information to the attention of the Office. After the withheld information and conduct of the individual are determined to meet the threshold levels of materiality and intent, courts balance the findings relating to materiality and intent in order to evaluate whether inequitable conduct has occurred. *J.P. Stevens & Co.* v. *Lex Tex, Ltd.*, 747 F.2d 1553, 223 USPQ 1089 (Fed. Cir. 1984), *cert. denied*, 474 U.S. 822 (1985).

The Office standard for materiality in § 1.56 is considered by the courts to be an appropriate starting point for analysis since it appears to be the broadest, thus encompassing other standards, and because § 1.56 governs how one ought to conduct business with the Office. *American Hoist & Derrick Co.* v. *Sowa & Sons, Inc.*, 725 F.2d 1350, 220 USPQ 763 (Fed. Cir.), *cert. denied*, 469 U.S. 821 (1984). However, the Office believes that an appropriate standard of materiality should take into consideration whether or not the examiner was influenced by the withholding of the information to avoid the harsh effects of *A.B. Dick Co.* v. *Burroughs Corp.*, 798 F.2d 1392, 230 USPQ 849 (Fed. Cir. 1986), Where a patent was held to be unenforceable even though the examiner was aware of and applied the withheld prior art. In addition, there may be a question of the need for applying the concept of materiality to claims which have been canceled or modified in order to find inequitable conduct. *See Driscoll* v. *Cebalo*, 731 F.2d 878, 221 USPQ 745 (Fed. Cir. 1984).

Some court decisions have held that intent to mislead may be inferred from the materiality of the withheld reference(s). *Argus Chemical Corp.* v. *Fibre Glass-Evercoat Co., Inc.*, 759 F.2d 10, 225 USPQ 1100 (Fed. Cir.), *cert. denied*, 474 U.S. 903 (1985). Other decisions require consideration of the attorney's or agent's good faith or lack thereof. *Allen Archery, Inc.* v. *Browning Mfg. Co.*, 819 F.2d 1087, 2 USPQ 2d 1490 (Fed. Cir. 1987). However, recently the Federal Circuit has required that in order to prove inequitable conduct, there must be evidence of intent to mislead the Office beyond the materiality of the withheld references.

FMC Corp. v. *Manitowoc, Co. Inc.*, 835 F.2d 1411, 5 USPQ 2d 1112 (Fed. Cir. 1987) and *Burlington Industries, Inc.* v. *Dayco Corp.*, 849 F.2d 1418, 7 USPQ 2d 1158 (Fed. Cir. 1988). *See also Kingsdown Medical Consultants, Ltd.* v. *Hollister Inc.*, 863 F.2d 867, 9 USPQ 2d 1384 (Fed. Cir. 1988) (en banc).

The requirement for evidence on intent to mislead the Office was also applied to the Office in making a rejection under § 1.56. *In re Harita*, 847 F.2d 801, 6 USPQ 2d 1930 (Fed. Cir. 1988). The recent emphasis by the courts on the element of intent has led the Office to re-examine its policy with respect to § 1.56 because of the difficulty in obtaining probative evidence on intent. The Office makes its decision on the record and does not take live testimony where the demeanor of the witnesses, who are subject to cross-examination, can be observed. For the Office to conduct hearings is not considered to be an effective utilization of resources. Further, the examination procedure is essentially *ex parte* and so the evidence on intent would have to be developed primarily by the Office.

On the other hand, courts hear testimony, have subpoena power, and can easily fashion an equitable remedy to fit the precise facts in those cases where inequitable conduct is established. In addition, a court proceeding generally involves at least two participating adverse parties to develop the evidence. Thus, it seems more appropriate for inequitable conduct issues to be handled by the courts rather than by an administrative body, especially since inequitable conduct is not a statutory criterion for patentability but rather results from a judicial application of the doctrine of unclean hands.

The proposed changes to the rules relating to the duty of disclosure retain the responsibilities of candor and good faith in dealing with the Office and are intended to promote the reliability of issued patents while minimizing the risks that patent rights may be unnecessarily compromised in the examination of patent applications. The Office believes that these purposes can be accomplished by specifying the threshold level of materiality to conform with an objective "but for" standard, and by ensuring that an information disclosure statement will be considered in an application at a point in time before a final determination of patentability is made. The "but for" standard of materiality should result in a more predictable duty of disclosure because it is based on a statutory standard of patentability. Although submission of an information disclosure statement might be acceptable a short time after final action by the examiner with an additional fee to cover the increased costs of examination, the Office considers the establishment of final action as a specific deadline to be a more effective way to ensure that pertinent information will be thoroughly considered by the examiner before the patent issues and to discourage intentional delays in the submission of information disclosure statements.

Under the proposed changes to the rules, the Office will no longer investigate violations of the duty to disclose, except with respect to a charge of misconduct under § 10.131, nor will it reject claims for such violations. Similarly, the Office will not comment upon duty of disclosure issues which are brought to the attention of the examiner except to note in the application file, when appropriate, that such issues are no longer considered by the Office during its examination of patent applications.

Examination of lack of deceptive intent in reissue applications will continue, but without any independent investigation of inequitable conduct issues. The reissue applicant's statement of lack of deceptive intent will be accepted as dispositive except in special circumstances, such as a judicial determination of fraud or inequitable conduct or an admission of facts which would conclusively establish fraud or inequitable conduct without any investigation. In those cases, the claims will be rejected under 35 U.S.C. 251 for failing to satisfy the statutory requirement of a lack of "deceptive intent." *See In re Clark*, 522 F.2d 623, 187 USPQ 209 (CCPA 1975). Accordingly, reissue will not be available to cure a prior judicial determination of inequitable conduct.

It is anticipated that under the proposed change in practice, information pertinent to a determination of patentability will be brought to the attention of the Office in a timely manner. An applicant's desire to minimize the prospect of facing an inequitable conduct charge or decision in any later litigation as well as to assure the greatest benefit of the presumption of validity under 35 U.S.C. 282, should provide sufficient incentive to furnish the necessary information to the Office. By filing information disclosure statements which include close art or information even though it is not considered to render any claim unpatentable, an applicant may thereby avoid inequitable conduct issues or charges and develop a strong defense in the event of such a charge. The practice of citing close art may be helpful in those cases where the art is combinable with other art subsequently found and cited by the examiner especially since a court may find that the withheld information does, in fact, affect patentability.

It should be noted that patentees may have to show later in litigation that there was no "intent" to withhold information or deceive the Office. Thus, until the proposed change by the Office is adopted by the Office and the courts, an applicant and those others who owe a duty to the Office should comply also with the duty as applied by the courts which may find inequitable conduct or fraud with respect to one or more claims, thereby rendering a patent unenforceable or invalid. *See Kingsdown Medical Consultants, Ltd.* v. *Hollister Inc., supra*, at 20.

The proposed change is very unlikely to have a significant impact on the workload of the Federal courts since the duty of disclosure issue was raised in less than 0.3% of the pending applications over the past two fiscal years and patent suits were filed at a rate of about 0.83% of all patents granted in the same time period. Further, enforcement by the Office of the duty of disclosure has rarely avoided the necessity of consideration of this issue by the courts.

Practitioners found to have participated in inequitable conduct or fraud remain subject to disciplinary proceedings. 37 CFR Part 10.

The proposed rules would substantially conform the rules to the policy announced in the Official Gazette: "Patent and Trademark Office Implementation of 37 CFR 1.56," 1095 *Official Gazette* 16 (October 11, 1988), "Further Clarification on Patent and Trademark Office Implementation of 37 CFR 1.56," 1096 *Official Gazette* 19 (November 8, 1988), and "Patent and Trademark Office Implementation of 37 CFR 1.28(d) and 1.56 (c), (f) and (g)," 1098 *Official Gazette* 502 (January 3, 1989).

Discussion of Specific Rule Change Proposals

Section 1.17, if amended as proposed, would add a fee defined in paragraph (p) to be $200.00, which is due upon filing of an information disclosure statement more than three months after the filing date of the application as described in proposed § 1.97 (f) and (g) or more than two months after the date of the order for examination as set forth in proposed § 1.555(b). Two exemptions from this fee requirement are provided

in §§ 1.97(g) and 1.555(b). The information disclosure statement will not be considered to have been filed until the fee is paid in full.

Prior to the changes in the duty of disclosure proposed herein, an applicant assumed the risk of violating the duty if an examiner cited a reference before it was brought to the attention of the Office. Under the proposed rules, which are more flexible in allowing information to be brought to the attention of the Office, the duty would not be violated until a patent issued. Therefore, the proposed fee is being charged to cover a new service as well as to compensate the Office for the extra work caused the examiner who may have to redo part or all of the examination.

Section 1.28(d)(2) is proposed to be amended to remove the references to § 1.56(d) (proposed to be deleted) and to § 1.555 of this part. This proposal retains the identification of a fraud practiced or attempted on the Office, but removes the reference to those sections of this part which provide for rejections based on such fraud.

Section 1.52(c) is proposed to be amended to remove the reference to § 1.56(c), which is proposed to be deleted. As noted below, the Office proposes that it will no longer take steps to strike an application for the reasons defined in § 1.56(c).

Section 1.56 is proposed to be deleted in its entirety to provide a clear demarcation with past practice in the Office and to facilitate future citation and application of the proposed new rule and the principles it embodies. Thus, a legal search of § 1.57 will reveal only cases decided under the new practice, but a search of § 1.56 will be limited to cases decided under the old practice.

Proposed § 1.57 defines the new duty to disclose information to the Office and the limited circumstances in which the Office will take action when it is determined that a violation has occurred. Proposed § 1.57 defines various aspects of Office practice, procedure, and policy as follows:

(a) Who has the duty to disclose;

(b) What information is required to be disclosed;

(c) Circumstances for action by the Office; and

(d) Misconduct—lack of candor and good faith.

Section 1.57(a), as proposed, defines the class of individuals who owe a duty of candor and good faith to the Office. The purpose of § 1.57(a) is to define the same class of individuals included in § 1.56. Thus, the duty is owed by four groups of individuals that are not necessarily mutually exclusive: (1) Any named inventor as defined in paragraph (a)(1); (2) any non-inventor as defined in paragraph (a)(2); (3) each registered attorney or agent as defined in paragraph (a)(3); and (4) any other individual who is both substantively involved in the preparation or prosecution of the application and who is associated with at least one of the entities defined in paragraph (a)(4)(II). The latter group of individuals would include foreign patent attorneys representing an applicant for a U.S. patent through a local correspondent firm. *See In re Harita, supra,* and *Gemveto Jewelry Co., Inc.* v. *Lambert Bros., Inc.,* 542 F. Supp. 933, 216 USPQ 976 (S.D.N.Y. 1982). It would also include a person acting as liaison between the inventor and the attorney or agent handling the prosecution of an application before the Office and who is involved in the preparation or prosecution of the application in a manner that would make a reasonable representative aware of the substantive aspects of the patent application. The person does not have to be a member of a law firm or corporate patent department employed by the assignee of the patent application. On the other hand, merely because the individual worked on related cases for the same assignee would not, without further knowledge of the content and claims of the application being considered, create a duty of disclosure for that individual, nor would there be a duty to inquire of that individual as to whether he or she knew of relevant information.

Section 1.57(b), as proposed, represents a significant departure from the standard defined under § 1.56. It adopts an objective "but for" standard of materiality, which requires a conclusion that a pending claim would not have been permitted to issue in a patent grant "but for" the misrepresentation, concealment, or otherwise culpable conduct with respect to any fact. That is, the "but for" standard of materiality requires a conclusion that a pending claim is (1) patentable in the absence of a given fact which is the subject of misrepresentation, concealment, or otherwise culpable conduct; and (2) unpatentable in the presence of such fact. In deciding the question of materiality under the "but for" standard, a decision maker would first look to the patentability of the claim based on the record and the facts known to the individuals designated in § 1.57(a) without the fact which was misrepresented, concealed, or otherwise subject to culpable conduct, i.e., as though the fact did not exist. Having determined that the claim is patentable without the fact which was misrepresented, concealed, or otherwise subject to culpable conduct, the decision maker would then determine if the claim is unpatentable assuming the fact does exist. If the claim is determined to be unpatentable, the fact would meet the "but for" test standard of materiality proposed in these rules.

Whether or not information meets the "but for" standard of materiality is not dependent upon what the examiner would do with the misrepresented or concealed information if the true facts were known to the examiner, but rather whether or not the information would make a difference in the patentability of the claims if the information had been properly disclosed and not misrepresented nor concealed.

Thus, the determination of patentability under this standard is not based on the subjective determination of any particular examiner or other Office personnel, nor on the subjective determination of any of the individuals defined in proposed § 1.57(a), but consists of an objective legal conclusion as to the patentability of one or more claims under relevant sections of Title 35 and applicable judicial precedent. A person would not be considered by the Office to have violated the duty of disclosure under § 1.57 until a patent issued and it is determined that at least one patent claim is unpatentable based at least in part on information withheld from the Office.

The duty to disclose under proposed § 1.57(b) does not apply to information which is of record in an application. In other words, there would be no violation of the duty if the examiner independently finds the withheld prior art and makes it of record in the application file prior to the issuance of a patent. Further, information and documents cited in international search reports from the European Patent Office (EPO) and Japanese Patent Office (JPO) will be considered to be of record under certain circumstances in the corresponding PCT-based national stage application filed under 35 U.S.C. 371. Those circumstances include the current agreement among the three patent offices (EPO, JPO, USPTO) that international search reports prepared by any of the three offices and designating another office will include a copy of each document cited and an indication of the relevance of such document. This cooperative arrangement has been working informally for about five years and became a formal continuing program recently. Thus, the duty to disclose does not apply to documents

cited in an international search report prepared by any of the three offices because they will be considered by the Office to be of record in the national stage application filed in the United States under 35 U.S.C. 371.

The information which is misrepresented or concealed need not anticipate a pending claim to fall within the "but for" standard of materiality, but must, when added to other facts of record in the application and known to the individuals designated in proposed § 1.57(a) preclude the allowance of at least one pending claim in a patent. Allowance may be precluded under appropriate sections of Title 35 in addition to any judicially created doctrine such as double patenting of the obviousness type.

A pending claim within the meaning of proposed § 1.57(b) is a claim which is presented for examination and has not been canceled. No duty of disclosure would exist as to a claim that is canceled in a preliminary amendment submitted with the application papers. Similarly, no duty of disclosure would exist as to a claim that has been canceled at the time a person defined in proposed § 1.57(a) becomes aware of a publication that would render that claim unpatentable, either by itself or in combination with other evidence of record or known to such a person. On the other hand, a duty of disclosure would exist as to a claim that has been withdrawn from consideration by the examiner—for example, as the result of a restriction requirement—but has not been canceled. Nevertheless, a violation of that duty would not occur unless and until a patent issued with such a claim.

The duty of disclosure arises at the point in time when an individual becomes aware of information not of record in the application that would render unpatentable any claim then pending. Actual knowledge of the pertinent information and its materiality is not required by this proposed paragraph if the individual should have known of the information and its materiality. *See FMC Corp.* v. *Manitowoc Co., supra* and *FMC Corp.* v. *Hennessy Industries, Inc.*, 836 F.2d 521, 5 USPQ 2d 1272 (Fed. Cir. 1987). The duty of disclosure continues until that claim is canceled. If a claim is modified during prosecution in the Office, the scope of the amended claim determines the duty of disclosure. But, as mentioned above, there would be no violation of that duty unless a patent issues with a claim which would be unpatentable over information which includes the withheld prior art or information.

Proposed § 1.57(b) makes mandatory the procedures set forth in proposed §§ 1.97 and 1.98 for disclosing to the Office information that meets the "but for" standard of materiality. The general practice of filing information disclosure statements as a method of complying with the duty of disclosure would no longer be optional.

Finally, proposed § 1.57(b) indicates that an individual designated in proposed § 1.57(a)(4) can satisfy the duty of disclosure by disclosing information to an individual designated in any of proposed § 1.57(a) (1)–(3). This provision relates only to the determination of possible misconduct on the part of the individual designated in proposed § 1.57(a)(4), and does not otherwise satisfy the duty of disclosure owed to the Office.

Proposed § 1.57(c) emphasizes that responsibility for compliance with the duty defined in paragraph (b) rests with the individuals identified in paragraph (a), and that generally no evaluation will be made by the Office in any proceeding as to compliance with paragraph (b). The only circumstances in which the Office will consider compliance with this section under the proposed rules are either with reference to a disciplinary proceeding under 37 CFR Part 10 or in limited situations with a reissue application, as where there is a judicial determination of fraud or inequitable conduct or an admission of facts which would conclusively establish fraud or inequitable conduct without any investigation.

Proposed § 1.57(d) would provide a cross reference to the rules relating to the representation of others before the Office in 37 CFR Part 10 and indicate that the failure of a registered representative to comply with the duty of candor and good faith required by proposed § 1.57 may be cause for instituting disciplinary action under § 10.131 for misconduct.

The provisions of § 1.56 (c), (f), and (g) are proposed to be eliminated because an application may be filed in the Office without an oath or declaration pursuant to § 1.53(d). Further, the defects in executing a patent application listed in § 1.56(c) would have to be cured by filing a supplemental oath or declaration pursuant to proposed § 1.67(c). Accordingly, the Office will not consider striking an application for these defects under the proposed rules and will not entertain a petition directed to such matters. However, the conduct of any practitioner permitting a material alteration of the application papers after the oath or declaration has been signed, which is prohibited by § 1.52(c), is not condoned by the Office and remains subject to a disciplinary proceeding. *See* § 10.23(c)(11).

Similarly, since the Office will not comment on duty of disclosure issues which are brought to its attention in original or reissue applications except in very limited circumstances related to deceptive intent in a reissue application, the provisions of § 1.56 (d), (e), (h), and (i) are proposed to be eliminated. The provision in § 1.56(j) that a time period would be set by the Office for the applicant to provide copies of documents omitted from an information disclosure statement is to be deleted because time may be given only in very limited circumstances in order to complete an information disclosure statement under proposed § 1.97.

Section 1.63(a)(1) is proposed to be revised to require that an oath or declaration be dated when it is signed. Thus, the Office will be able to determine if there has been an unusual length of time between the date of execution of the oath or declaration and the filing date of the application. Also, a cross reference to § 1.64 is added because that section contains several execution requirements.

Section 1.63 (b)(3) and (d) are proposed to be revised to reflect that § 1.56 is being replaced by new § 1.57. The oath or declaration filed with an application would need to acknowledge a duty to disclose information as required by proposed § 1.57. Any oath or declaration, which acknowledges a duty to disclose information material to the examination of the application in accordance with the present § 1.56(a), would be acceptable under the proposed rules since the proposed standard of materiality is included within the standard previously applied by the Office (i.e., if an individual complied with the former standard, that individual would comply with the proposed standard).

Section 1.67 is proposed to be revised to add new paragraph (c) requiring that a new oath or declaration be filed if a prior one contained any of the defects previously listed in § 1.56(c). The new oath or declaration may be sought by the Office or the applicant may voluntarily submit one.

The provisions of present § 1.97 are proposed to be revised to require the submission of a statement regarding information which an individual designated in proposed § 1.57(a) has a duty to disclose under proposed § 1.57(b), to define the time periods for filing an information disclosure statement, and to continue the option to file a statement directed to information which the applicant would like the Office to consider even though the

information may not meet the "but for" level of materiality.

Under proposed § 1.97(a), an information disclosure statement would be required to be filed in each national application or Patent Cooperation Treaty (PCT)-based national stage application where an individual designated in proposed § 1.57(a) knows or should have known of information which meets the objective "but for" test of proposed § 1.57(b). An individual is not obligated to conduct a prior art search nor furnish a negative information disclosure statement. The filing of an information disclosure statement in a reexamination proceeding is addressed in the proposed revision of § 1.555.

Under proposed § 1.97(b), an information disclosure statement may be filed to contain information which an applicant would like the Office to consider in the examination of an application. There is no duty or requirement to disclose information to the Office unless it meets the threshold materiality and knowledge requirements set forth in proposed § 1.57.

Section 1.97(c), as proposed, would make mandatory the time periods for filing an information disclosure statement. This provision differs from current practice which only encouraged the filing of an information disclosure statement within a short period of time after the application is filed. By requiring a statement to be filed within the times specified, the Office seeks to promote the efficiency of the examination process and to help avoid duty of disclosure issues. Specifically, the statement shall be filed in a national patent application within three months of the filing date of the application. For a PCT-based national stage application, the statement shall be filed within three months of entry of the national stage application as set forth in § 1.491. In each type of application, an information disclosure statement may be filed after the three-month period, but this would normally require a fee. The purpose of the fee for information submitted after the three-month period is to compensate the Office for the extra work caused the examiner who may have to redo part or all of the examination because of the late submission.

The time periods for filing a statement are not subject to an extension of time under § 1.136. However, the examiner may allow an additional time period to permit an applicant to provide any information required by § 1.98, which was inadvertently omitted. The concept proposed here is the same as that applied under § 1.135(c). Otherwise, if the applicant needs to supplement an incomplete statement after the three-month period has expired, the additional information would have to be filed as part of a separate statement under § 1.97(f), which may require a fee.

An information disclosure statement timely filed within the three months of the filing date pursuant to proposed § 1.97(c) will be considered by the examiner, even if filed after the mailing of an examiner's final action or a notice of allowance, which in rare instances may occur within three months of the filing date. For the purposes of this proposed section, the statement will be considered to be filed on the day it is received in the Office, or the date of mailing on a properly executed certificate of mailing pursuant to § 1.8 or Express Mail certificate pursuant to § 1.10, whichever is earlier.

Proposed § 1.97(d) would continue the present practice of permitting an applicant to file an information disclosure statement either as a paper or submission separate from the specification or by incorporating the information disclosure statement in the specification of the application.

Proposed § 1.97(e) would stipulate that the mere filing of an information disclosure statement shall not constitute an admission that any information disclosed in that statement renders unpatentable any claim pending in the application, unless the statement contains an admission within the meaning of § 1.106(c). This section would also continue the present policy that the filing of an information disclosure statement will not be construed as a representation that any patentability search has been made.

Proposed § 1.97(f) would expand and revise the existing practice of filing supplemental information disclosure statements under § 1.99. Under the proposed section, an applicant may satisfy the duty of disclosure requirement by filing a statement after the three-month period in paragraph (c) has expired. In addition, a statement would be required to bring to the attention of the Office any information not in the record nor contained in an information disclosure statement filed under proposed paragraph (c), which meets the standard of materiality in proposed § 1.57. As in paragraph (c), a statement filed under paragraph (f) may include other information which an applicant would like the Office to consider in examining the application. Thus, such a statement may be used to supplement one filed under paragraph (c).

It should be noted that the standard of materiality applies to claims pending in the application and relates to information of record in the application being examined in addition to the information known or which should have been known by an individual designated in proposed § 1.57(a). Thus, a document known to such an individual which was not required to be disclosed in an information disclosure statement under proposed § 1.97(c) may need to be disclosed in a statement under proposed § 1.97(f) due to intervening events.

For example, the scope of the claims may be changed to make a document fall within the proposed standard of materiality even though the document was not relevant to the patentability of the claims as originally presented. As an additional example, an inventor may know of a first reference which by itself does not render a claim unpatentable. However, the examiner may find and cite a second reference which makes the first reference fall within the proposed scope of materiality—thereby creating a duty to disclose the first reference. Likewise, the first reference may become relevant due to the citation of a third reference by a foreign patent office or because of the independent discovery by the inventor during the examination process of a fourth reference. All of these possibilities continue to make it important for individuals to bring pertinent information to the attention of the Office as soon as it is discovered.

It is recognized that patentability may be established by the submission to the Office of evidence of unexpected results or commercial success. In addition, a reference may be removed from consideration by filing an antedating affidavit containing evidence of prior invention under § 1.131. It is permissible for an applicant to rely on such evidence in determining whether or not to disclose certain information to the Office even if the evidence is not submitted to the Office for evaluation. Therefore, there would be no violation of the duty of disclosure if, prior to the issuance of a patent, an applicant is or becomes aware of such evidence that would establish patentability of all the claims over the withheld information and the art of record. Of course, a court later might conclude that the evidence was not sufficient to establish patentability and find that there was inequitable conduct. On the other hand, if the applicant becomes aware of such evidence after issuance of a patent, this would not avoid a violation of the duty to the Office because the patent would not have issued *but for* the withholding of information.

A statement under paragraph (f) must be filed no later than the business day prior to the mailing date of the final

action or the notice of allowance, whichever occurs first. This will enable the examiner to consider carefully the statement without disrupting the normal processing of applications within the Office. In the event that a final Office action is withdrawn or a notice of allowance is rescinded, any information disclosure statement that had not been filed in a timely manner would be acceptable if timely resubmitted and otherwise proper in form and content. The application would then be treated as if no final action or notice of allowance had been mailed up to the point that such an action is withdrawn or rescinded. No extensions of time are permitted under § 1.136 although the examiner may set an additional time period to permit an applicant to provide any information required by § 1.98, which was inadvertently omitted.

As noted above, a statement that was untimely when filed under paragraph (f) could be considered timely by the occurrence of subsequent events. If one of those events occurs, the information contained in the statement would be considered by the examiner if the information disclosure statement is timely resubmitted. In the absence of any of those events, such that the statement remains untimely, the information contained in the statement would be considered only if the application in which it is filed is abandoned and the information is disclosed in a continuing application in the manner prescribed in proposed §§ 1.97 and 1.98. This will require that copies of documents cited in the information disclosure statement be resubmitted in the continuing application.

Proposed § 1.97(g) would require that a fee in the amount set forth in proposed § 1.17(p) accompany an information disclosure statement filed under paragraph (f) unless the statement certifies that all of the information disclosed in such a statement was, within three months prior to the date the statement is filed in the Office, either first cited by a foreign patent office in a counterpart foreign patent application or first came to the attention of any person charged with the duty of disclosure in § 1.57(a). The date on the action by the foreign patent office begins the three-month period in the same manner as the mailing of an Office action starts a three-month shortened statutory period for response. Likewise, the filing date of the statement is the date the statement is received in the Office, or the date of mailing if accompanied by a properly executed certificate of mailing under § 1.8, or certificate of Express Mail under § 1.10, whichever occurs earlier.

The term "counterpart foreign patent application" means that a claim for priority has been made in either the U.S. application or a foreign application based on the other, or that the disclosures of the U.S. and foreign patent application are substantively identical. Although paragraph (g) does not require a fee if the information disclosure statement is submitted within certain time periods, this is not intended to modify the requirement in paragraph (f) of this section that a statement must be filed before the final action or notice of allowance is mailed.

Certification by a registered practitioner that the statement was filed within the three-month period of either first citation by a foreign patent office or first discovery of the information (not the materiality of the information) will be accepted as dispositive of compliance with this provision in the absence of evidence to the contrary. A statement on information and belief normally will not be sufficient. Although it is recognized that an individual actually becomes aware of the information in the communication from the foreign patent office sometime after it was mailed, the mailing date of such a communication, if it occurs prior to the first awareness of the same information, would determine the date for filing of an information disclosure statement without a fee. The Office is willing to absorb any additional cost in considering such information submitted three months after filing the application only when it is clear that an applicant is diligent in providing the information to the Office.

Under proposed § 1.97(h), an information disclosure statement would not be considered to be filed until all component parts of a complete statement under proposed § 1.98 are filed with the Office, except for inadvertent omissions. Thus, the filing of a statement identifying relevant documents but intentionally failing to supply available copies of all the cited documents will not be accepted until such copies are supplied. Paragraph (h) also sets forth the consequences and procedures for processing an information disclosure statement that is either not complete and/or not filed in a timely manner. Such a statement will not be deemed to satisfy any applicable duty of disclosure owed to the Office by an individual designated in proposed § 1.57(a) but will be returned to the applicant and not considered by the Office in that application. If the required fee was submitted, it will be refunded. The Office will note in the record of the application that an information disclosure statement was returned to the applicant. It is expected that an applicant will file a continuing application to have the Office consider pertinent prior art which comes to his or her attention after final action or notice of allowance has been mailed if the prior art affects the patentability of any claim.

Under the proposed revision of § 1.98, the administrative details of supplying information to the Office are defined. For the most part, these details remain unchanged from current practice, but the format and wording has been modified to provide greater clarity. Under proposed § 1.98(a), the information disclosure statement must include a listing of the information required to be disclosed by § 1.97, preferably in or on a form which is suitable for inclusion in the record without requiring the examiner to reproduce the same information on a form acceptable to the printer so that the documents will be listed on the patent. Those submitting an information disclosure statement are encouraged to use form PTO–1449, "Information Disclosure Citation." In addition to the listing, the statement must include an explanation of the reason each item of information is listed. Typically, the reason would include a concise explanation of the relevance of each item to the claimed invention, but may further contain an explanation of why the claimed invention should be considered patentable over the item of information.

Proposed § 1.98(b) would continue the present practice and policy of requiring an individual to submit a legible copy of the document or other information cited in the information disclosure statement either in its entirety or at least that portion of each item of information which caused the individual submitting the information to list that item in the information disclosure statement. If a copy of the document or item of information is not in the possession, custody, control or is not otherwise readily available to any individual designated in proposed § 1.57(a), the individual submitting the statement must submit a statement to that effect at the time of presenting the statement to the Office. It is not expected that the latter situation will arise very often, but because of the time deadlines involved in filing an information disclosure statement, it is considered appropriate to provide this flexibility for individuals charged with the duty to bring information to the attention of the Office. The Office will not, however,

assume the responsibility of obtaining a copy of that item of information before making a final determination of patentability.

Copies of pending U.S. patent applications cited in the information disclosure statement should not be submitted to the Office as set forth in proposed § 1.98(b)(1)(III) because this may result in the unnecessary disclosure of the contents of such patent applications when the application in which it was cited matures into a patent.

Proposed § 1.98(c) continues the present practice and policy regarding the identifying information to be listed for each document typically cited in an information disclosure statement. Listing of the patentees or authors in a patent or publication may be limited to the last name of the first listed inventor followed by "*et al.*"

Proposed § 1.98(d) continues the present practice and policy relative to citing and supplying information which is cumulative and relative to supplying a translation of information that is not in the English language. Under this proposed section, if any of the information required to be disclosed is substantially cumulative in terms of its content relative to the patentability of the claims, the statement need be accompanied by only a single copy of a document containing the essential information provided that the omission of the copies of the cumulative information is explained.

In addition, an English language translation of a foreign language document or the relevant portion thereof need only be submitted when it is in the possession, custody or control of, or readily available to any individual designated in proposed § 1.57(a). This does not mean that such an individual must purchase a translation in each case, even though a translating service is readily available. But if the individual has the ability to translate the foreign language into English and has done so for the purposes of reviewing the information relative to the claimed invention, the translation would be considered "readily available" to the individual.

Section 1.175(a)(7) is proposed to be revised to reflect that § 1.56 is being replaced by § 1.57. Any reissue oath acknowledging a duty to disclose information, which is material to the examination of the application in accordance with the present § 1.56(a), would be acceptable under the proposed rules as explained in connection with the proposed change to § 1.63 (b) and (d).

Section 1.193(c) is proposed to be deleted and reserved, reflecting the intention of the Office not to comment on duty of disclosure issues in an original or reissue application except in very limited circumstances related to deceptive intent in a reissue application.

Section 1.291(a) is proposed to be revised to eliminate consideration in a protest of an allegation about duty of disclosure issues. Since the Office will not be investigating these issues, such a protest will merely be placed in the application file without comment. Further, protests which do not adequately identify a pending application will be disposed of because the Office cannot act on such protests.

Section 1.291(c) is proposed to be revised to remove the reference to § 1.56. As explained above, there would be no need to require information in a protest with respect to an issue of duty of disclosure.

Section 1.313(b) is proposed to be revised to include, as a reason for withdrawing an application from issue after the issue fee has been paid, a request by an applicant to consider information which has not been filed in a timely manner. Accordingly, since the Office will not consider information which is untimely filed in an application, it is necessary to provide a mechanism to permit an applicant to withdraw an application from issue in the event that it is desired to have the Office consider information that has come to the attention of an individual specified in proposed § 1.57(a) after the mailing of the final Office action or the notice of allowance. This mechanism is also available to those who belatedly decide to bring the information to the attention of the Office before the patent issues. The Office wishes to provide every reasonable opportunity for an individual to avoid the consequences of misconduct in the Office.

Section 1.555 is proposed to be revised to conform with the duty of disclosure contained in new § 1.57 and to require that an information disclosure statement be filed within certain time periods. Under proposed § 1.555(a), there would be no fee if the statement is filed within two months of the date of the order for reexamination pursuant to § 1.525. An information disclosure statement limited to information not of record as of the date of the order for reexamination will not be considered to be a patent owner's statement pursuant to § 1.530.

Under proposed § 1.555(b), a statement may be filed after the two months if accompanied by a fee in certain circumstances and if filed prior to the mailing of a notice of intent to issue a reexamination certificate. A fee would be due unless it is certified that all of the information disclosed in such a statement was, within two months prior to the date the statement is filed in the Office, either first cited by a foreign patent office in a counterpart foreign patent application or first came to the attention of any person charged with the duty of disclosure in § 1.57(a) if the same information was not earlier cited by a foreign patent office in a counterpart foreign application.

As stated with respect to proposed § 1.97(g), the date on the action by the foreign patent office begins the two-month period and the filing date of the statement is the date the statement is received in the Office, or the date of mailing if accompanied by a properly executed certificate of mailing under § 1.8, or certificate of Express Mail under § 1.10, whichever is earlier. Extensions of time to file an information disclosure statement under either paragraph will not be permitted because 35 U.S.C. 305 requires that reexamination proceedings be conducted with special dispatch and because such a provision would defeat the purpose of the fee to pay for the added costs of examination.

The duty of disclosure is not violated in a reexamination proceeding unless a claim either confirmed or allowed in a reexamination certificate would be rendered unpatentable by withheld information known at the time of the mailing of the notice of intent to issue a reexamination certificate.

Relevant prior art discovered after the mailing of the notice of intent would not be considered in the pending reexamination proceeding. Therefore, the patent owner may wish to file a new request for reexamination under 35 U.S.C. 302 to have the new information considered on the merits. An information disclosure statement filed in a reexamination proceeding must be made in accordance with the form and content specified in proposed § 1.98.

Subparagraph 10 of § 10.23(c) is proposed to be revised to reflect that § 1.56 is proposed to be replaced by proposed § 1.57 and to add a reference to the duty of disclosure requirement in a reexamination set forth in § 1.555. The proposed change in the duty of disclosure will, of course, have an impact on any disciplinary action charging a practitioner with a violation of that duty.

Subparagraph 11 of § 10.23(c) is proposed to be revised to reflect the change that § 1.56(c) is proposed to be deleted. Although applications having defects in their execution will no longer be stricken, the Office desires to continue to discourage practitioners from permitting alterations in the

application papers after the oath or declaration is signed as prohibited by § 1.52(c), especially if such alterations are material.

Mere editing, such as correcting misspellings, would not be considered to involve material changes. Nor would the insertion of filing or patent information of a parent or related application. However, adding to or deleting from the application matters of substance, such as a working example or a claim, would be considered to be a material change.

Other Considerations

The proposed rule change is in conformity with the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, Executive Orders 12291 and 12612, and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

The General Counsel of the Department of Commerce has certified to the Small Business Administration that the rule change will not have a significant adverse economic impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)) because the proposed rules do not require individuals to submit information that they are not already under an obligation to provide to the Office. The proposed rules further promote the efficiency of the examination process by requiring a timely submission of an information disclosure statement and eliminating rejections based on inequitable conduct, thereby reducing the costs to all patent applicants.

The Patent and Trademark Office has determined that this proposed rule change is not a major rule under Executive Order 12291. The annual effect on the economy will be less than $100 million. There will be no major increase in costs or prices for consumers, individual industries, federal, state or local government agencies, or geographic regions. There will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Patent and Trademark Office has also determined that this proposed rule has no Federalism implications affecting the relationship between the National Government and the States as outlined in Executive Order 12612.

This proposed rule contains a collection of information requirement subject to the Paperwork Reduction Act, which has previously been approved by the Office of Management and Budget under Control No. 0651–0011. Each information disclosure statement is estimated to take approximately 30 minutes, including time for reviewing instructions, gathering and maintaining data needed and completing and reviewing the collection of information. Send comments regarding this burden estimate to the Patent and Trademark Office, Office of Management and Organization and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington DC 20503. (Attention Paper Reduction Project 0651–0011)

List of Subjects

37 CFR Part 1

Administrative practice and procedure, Inventions and patents, Reporting and record keeping requirements, Small businesses.

37 CFR Part 10

Administrative practice and procedure, Inventions and patents, Lawyers, Reporting and record keeping requirements.

For the reasons set forth in the preamble, 37 CFR Parts 1 and 10 are proposed to be amended as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

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

Authority: 35 U.S.C. 6, unless otherwise noted.

2. In § 1.17, paragraph (p) is proposed to be added to read as follows:

§ 1.17 Patent Application Processing Fees.

* * * * *

(p) For filing an information disclosure statement under §§ 1.97 (f) and (g) and 1.555(b) * * * 200.00.

3. Section 1.28(d)(2) is proposed to be revised to read as follows:

§ 1.28 Effect on fees of failure to establish status, or change status, as a small entity.

* * * * *

(d)(1) * * *

(2) Improperly and through gross negligence (i) establishing status as a small entity or (ii) paying fees as a small entity shall be considered as a fraud practiced or attempted on the Office.

4. Section 1.52(c) is proposed to be revised to read as follows:

§ 1.52 Language, paper, writing margins.

* * * * *

(c) Any interlineation, erasure, cancellation or other alteration of the application papers filed must be made before the signing of any accompanying oath or declaration pursuant to § 1.63 referring to those application papers and should be dated and initialed or signed by the applicant on the same sheet of paper. No such alterations in the application papers are permissible after the signing of an oath or declaration referring to those application papers. After the signing of the oath or declaration referring to the application papers, amendments may only be made in the manner provided by §§ 1.121 and 1.123 through 1.125.

* * * * *

5. Section 1.56 is proposed to be removed and reserved.

§ 1.56 [Reserved]

6. Section 1.57 is proposed to be added to read as follows:

§ 1.57 Duty of disclosure.

(a) A duty of candor and good faith toward the Office rests on the following individuals:

(1) Any named inventor who signs the oath required by 35 U.S.C. 115;

(2) Any non-inventor who signs the oath required by the last sentence of 35 U.S.C. 115 in an application filed under 35 U.S.C. 117 and 35 U.S.C. 118;

(3) Each registered attorney or agent who prepares or prosecutes the application; and

(4) Every other individual who is:

(i) Substantively involved in the preparation or prosecution of the application; and

(ii) Associated with the inventor, an assignee, or any entity to whom there is an obligation to assign the application or any patent issuing thereon.

(b) Any individual designated in paragraph (a) of this section has a duty to disclose to the Office all information not considered by the Office to be of record in an application, which that individual knows or should have known would render unpatentable any pending claim. This duty continues with respect to the pending claim until it is canceled or the application becomes abandoned at which time the duty ceases. Thus, the duty is violated only if a patent issues with a claim which would be rendered unpatentable by the withheld information when all the facts of record in the patent file and known to the individuals designated in paragraph (a) of this section at the time the patent issues are considered. The manner for submitting the required information to the Office is provided in §§ 1.97 and 1.98. Disclosure to a person designated in paragraphs (a)(1), (a)(2), or (a)(3) of this section by an individual designated in paragraph (a)(4) of this section shall satisfy the duty as to that individual.

(c) No evaluation as to compliance with this section will be made by the Office except as provided below:

(1) In a reissue application where the Office is presented with clear and convincing evidence of deceptive intent in obtaining a patent, such as a judicial determination of fraud or inequitable conduct or an admission of facts conclusively establishing fraud or inequitable conduct without conducting an investigation; or

(2) In a disciplinary proceeding against a practitioner under Part 10.

(d) Failure of a registered patent attorney or agent to comply with the duty of candor and good faith may be cause for instituting disciplinary action under § 10.131 for misconduct. *See also* § 10.23(c)(10).

7. In § 1.63 paragraphs (a)(1), (b)(3), and (d) are proposed to be revised to read as follows:

§ 1.63 Oath or declaration.

(a) * * *

(1) Be signed, dated and executed in accordance with §§ 1.64 and 1.66 or 1.68;

* * * * *

(b) * * *

(3) Acknowledges the duty to disclose information in accordance with § 1.57.

* * * * *

(d) In any continuation-in-part application filed under the conditions specified in 35 U.S.C. 120 which discloses and claims subject matter in addition to that disclosed in the prior copending application, the oath or declaration must also state that the person making the oath or declaration acknowledges the duty to disclose information in accordance with § 1.57 which occurred between the filing date of the prior application and the national or PCT international filing date of the continuation-in-part application.

8. Section 1.67 is proposed to be amended to add paragraph (c) to read as follows:

§ 1.67 Supplemental oath or declaration.

* * * * *

(c) A supplemental oath or declaration meeting the requirements of § 1.63 must also be filed if the application was altered after the oath or declaration was signed or if the oath or declaration was signed:

(1) In blank;

(2) Without review thereof by the person making the oath or declaration; or

(3) Without review of the specification, including the claims, as required by § 1.63(b).

9. Section 1.97 is proposed to be revised to read as follows:

§ 1.97 Filing of information disclosure statement.

(a) An information disclosure statement shall be filed within the time periods set forth in this section in each:

(1) National patent application; and

(2) PCT-based national stage application to disclose all information which any individual charged with the duty of disclosure in § 1.57(a) knows or should have known renders unpatentable any claim pending in the application at the time the information disclosure statement is filed. If there is no such information, an information disclosure statement is not required.

(b) An information disclosure statement may also disclose other information which an applicant would like the Office to consider in examining the application.

(c) An information disclosure statement may be filed without a fee in a national patent application within 3 months of the filing date of the application. In a PCT-based national stage application, the statement may be filed without a fee within 3 months of entry of the national stage application under § 1.491. No extensions of time are permitted under § 1.136 except that if a *bona fide* attempt has been made to comply with § 1.98 but part of the required information was inadvertently omitted, additional time may be given to enable full compliance.

(d) Any information disclosure statement filed under this section may be:

(1) Filed in a paper separate from the specification of the application; or

(2) Incorporated in the specification.

(e) Unless an information disclosure statement contains an admission within the meaning of § 1.106(c), the filing of an information disclosure statement shall not constitute an admission that any information disclosed renders unpatentable any claim pending in the application. Nor shall the mere filing be construed as a representation that a patentability search has been made.

(f) If, after the time for submitting an information disclosure statement under paragraph (c) of this section has expired, there is information not of record which is required to be disclosed under § 1.57(b), a statement shall be timely filed in the form required by § 1.98. The statement may also include other information which the applicant would like to have considered. Any statement filed under this paragraph will be deemed timely only if it is filed prior to the mailing of an examiner's final action under § 1.113 or of a notice of allowance under § 1.311, whichever occurs first. No extensions of time are permitted under § 1.136 except that if a *bona fide* attempt has been made to comply with § 1.98 but part of the required information was inadvertently omitted, additional time may be given to enable full compliance.

(g) The information disclosure statement under paragraph(f) of this section shall be accompanied by the fee set forth in § 1.17(p) unless the statement certifies that, within 3 months prior to the date the statement is filed in the Office, the date of either one of the following events occurred:

(1) The mailing of a communication from a foreign patent office in a counterpart foreign patent application first citing all the patents, publications, and other material disclosed in the statement; or

(2) The first knowledge by any person charged with the duty of disclosure in § 1.57(a) of all the patents, publications, and other material disclosed in the statement if they were not cited earlier by a foreign patent office in a counterpart foreign patent application.

(h) Any information disclosure statement which does not comply with § 1.98 except for inadvertent omissions considered under paragraphs (c) and (f) of this section or any statement which is not timely filed as required by this section, will be:

(1) Deemed not to satisfy any applicable duty of disclosure owed under § 1.57 if a patent subsequently issues;

(2) Returned to the applicant; and

(3) Considered only if:

(i) The application is abandoned, and

(ii) The information is disclosed in an information disclosure statement timely filed in a continuing application.

10. Section 1.98 is proposed to be revised to read as follows:

§ 1.98 Content of information disclosure statement.

(a) The information disclosure statement shall include:

(1) A list of all the patents, publications, or other material required or permitted to be disclosed under § 1.97 (a), (b), and (f); and

(2) A concise explanation of why each patent, publication, or other material is listed.

(b) The information disclosure statement shall be accompanied by:

(1) A legible copy of:

(i) Each U.S. Patent;

(ii) Each publication or foreign patent or that portion of which caused it to be listed; and

(iii) All other material, except patent application files, or that portion of which caused it to be listed; or

(2) A statement that a copy is not in the possession, custody, or control or is

not readily available to any individual designated in § 1.57(a).

(c) Each U.S. patent listed in an information disclosure statement shall be identified by patentee(s), patent number and issue date. Any foreign patent or published foreign patent application shall be identified by the country or patent office which issued the patent or published the application, an appropriate document number, and a publication date indicated on the patent or published application. Each publication shall be identified by author(s), if any, title of publication, relevant pages of the publication, date and place of publication.

(d) When the disclosures of two or more patents or publications required to be reported in an information disclosure statement are substantively cumulative, a single copy of one patent or publication may be submitted and the other patents or publications merely listed in the statement provided that an explanation is included about the omission of the copies of the cumulative information. If an English language translation of a foreign language document, or portion thereof, is within the possession, custody or control of, or is readily available to any individual designated in § 1.57(a), a copy of the translation shall accompany the statement.

[OMB Control No. 0651-0011]

11. Section 1.99 is proposed to be removed and reserved.

§ 1.99 [Reserved]

12. Section 1.175(a)(7) is proposed to be revised to read as follows:

§ 1.175 Reissue oath or declaration.

(a) * * *

(7) Acknowledging a duty to disclose information in accordance with § 1.57.

* * * * *

13. Section 1.193(c) is proposed to be removed and reserved:

§ 1.193 Examiner's answer.

* * * * *

(c) [Reserved]

14. Section 1.291 (a) and (c) are proposed to be revised to read as follows:

§ 1.291 Protests by the public against pending applications.

(a) Protests by a member of the public against pending applications will be referred to the examiner having charge of the subject matter involved. A protest specifically identifying the application to which the protest is directed will be entered in the application file if (1) the protest is timely submitted; and (2) the protest is either served upon the applicant in accordance with § 1.248, or filed with the Office in duplicate in the event service is not possible. Protests raising duty of disclosure issues will be placed in the application file without comment on these issues. Further, protests which do not adequately identify a pending patent application will not be considered by the Office but will be disposed of.

* * * * *

(c) An acknowledgment of the entry of a protest under paragraph (a) of this section in a reissue application file will be sent to the member of the public filing the protest. A member of the public filing a protest under paragraph (a) of this section in an application for an original patent will not receive any communications from the Office relating to the protest, other than the return of a self-addressed postcard which the member of the public may include with the protest in order to receive an acknowledgment by the Office that the protest has been received. The Office will communicate with the applicant regarding any protest entered in the application file and may require the applicant to supply information, including responses to specific questions raised by the protest, in order for the Office to decide any issues raised by the protest. The active participation of the member of the public filing a protest pursuant to paragraph (a) of this section ends with the filing of the protest and no further submission on behalf of the protestor will be acknowledged or considered unless such submission raises new issues which could not have been earlier presented, and thereby constitutes a new protest.

15. Section 1.313(b) is proposed to be revised to read as follows:

§ 1.313 Withdrawal from issue.

* * * * *

(b) When the issue fee has been paid, and the patent to be issued has received its issue date and patent number, the application will not be withdrawn from issue for any reason except (1) a mistake on the part of the Office; (2) an illegality in the application; (3) unpatentability of one or more claims; or (4) consideration of identified information under § 1.57 in a continuing application.

16. Section 1.555 is proposed to be revised to read as follows:

§ 1.555 Duty of disclosure in reexamination proceedings.

(a) The duty of candor and good faith owed to the Office in a reexamination proceeding is the same as that provided in § 1.57, but the duty is not violated unless a claim either confirmed or allowed in a reexamination certificate would be rendered unpatentable by the withheld information known at the time a notice of intent to issue a reexamination certificate under § 1.570 is mailed. Any information disclosure statement bringing patents or printed publications to the attention of the Office shall be in the form required by § 1.98 and may be filed without a fee within two months of the date of the order for reexamination under § 1.525. An information disclosure statement limited to information not of record as of the date of the order for reexamination will not be considered to be a patent owner's statement pursuant to § 1.530.

(b) Upon payment of the fee set forth in § 1.17(p), an information disclosure statement may be filed after two months from the date of the order for reexamination but no later than the mailing of the intent to issue a reexamination certificate. The fee in § 1.17(p) will not be required if the statement certifies that, within two months prior to the date the statement is filed in the Office, the date of either one of the following events occurred:

(1) The mailing of a communication from a foreign patent office in a counterpart foreign patent application first citing all the patents, publications, and other material disclosed in the statement; or

(2) The first knowledge by any person charged with the duty of disclosure in § 1.57(a) of all the patents, publications, and other material disclosed in the statement if they were not cited earlier by a foreign patent office in a counterpart foreign patent application.

(c) No extensions of time are permitted under either paragraph (a) or (b) of this section except that, if a *bona fide* attempt has been made to comply with § 1.98 but part of the required information was inadvertently omitted, additional time may be given to enable full compliance.

PART 10—REPRESENTATION OF OTHERS BEFORE THE PATENT AND TRADEMARK OFFICE

17. The authority citation for Part 10 continues to read as follows:

Authority: 5 U.S.C. 500; 15 U.S.C. 1123; 35 U.S.C. 6, 31, 32, 41.

18. Section 10.23(c), paragraphs (10) and (11) are proposed to be revised to read as follows:

§ 10.23 Misconduct.

* * * * *

(c) * * *

(10) Violating the duty of candor or good faith requirements of § 1.57 (a) and (b) and § 1.555(a) of this subchapter.

(11) Knowingly filing, or causing to be filed, an application containing any material alteration made in the application papers after the signing of the accompanying oath or declaration.

* * * * *

Date: February 2, 1989.

Donald J. Quigg,

Assistant Secretary and Commissioner of Patents and Trademarks.

[FR Doc. 89-6223 Filed 3-16-89; 8:45 am]

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Friday
March 17, 1989

Part IV

Environmental Protection Agency

40 CFR Part 471

Nonferrous Metals Forming and Metal Powders Point Source Category Effluent Limitations Guidelines, Pretreatment Standards and New Source Performance Standards; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 471]

[OW-FRL-3491-2]

Nonferrous Metals Forming and Metal Powders Point Source Category Effluent Limitations Guidelines, Pretreatment Standards and New Source Performance Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final regulation.

SUMMARY: EPA is promulgating amendments to 40 CFR Part 471 which limits discharges to waters of the United States and the introduction of pollutants into publicly owned treatment works by existing and new sources in the nonferrous metals forming and metals powders point source category. Today's amendments only affect facilities that conduct tube reducing operations in the nickel-cobalt forming subcategory (Subpart C) and in the zirconium-hafnium forming subcategory (Subpart I). EPA agreed to propose these amendments in a settlement agreement with General Electric Company and INCO Alloys International. The agreement settles a dispute between these companies and EPA that was the subject of petitions for review of the final nonferrous metals forming regulation promulgated by EPA on August 23, 1985 (50 FR 34242). The proposed amendments were published in the **Federal Register** on July 11, 1988, (53 FR 21774). EPA is today finalizing the amendments as proposed, except for corrections of typographical errors.

The final amendments include: (1) Certain modifications of the effluent limitations for "best practicable technology" (BPT), "best available technology economically achievable" (BAT), and "new source performance standards" (NSPS) for direct dischargers; and (2) certain modifications to the pretreatment standards for new and existing indirect dischargers (PSNS and PSES).

ADDRESS: Address questions to Mr. George M. Jett, Industrial Technology Division (WH-552), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Attention: Attention Nonferrous Metals Forming Rule (WH-552).

The basis for this amendment is detailed in the record. The record for the fnal rule will be available for inspection and copying at the EPA Public Information Reference Unit, Room 2404 (Rear) (EPA Library) 401 M Street, SW., Washington, DC. The EPA information regulation (40 CFR Part 2) provides that a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Questions regarding this notice may be addressed to Mr. Ernst P. Hall at (202) 382-7126.

SUPPLEMENTARY INFORMATION: Organization of this notice:

I. Legal Authority

The amendments described in this notice are promulgated under authority of sections 301, 304, 306, 307, 308, and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1251 et seq., as amended by the Clean Water Act of 1977, Pub. L. 95-217 as amended by the Water Quality Act of 1987 Pub. L. 100-4.).

II. Background

A. Rulemaking

On March 5, 1984, EPA proposed a regulation to establish Best Practicable Control Technology Currently Available (BPT) and Best Available Technology Economically Achievable (BAT) effluent limitations guidelines, New Source Performance Standards (NSPS), Pretreatment Standards for Existing Sources (PSES), and Pretreatment Standards for New Sources (PSNS) for the nonferrous metals forming and metal powders (nonferrous metals forming) point source category (49 FR 8112). The final regulation for the nonferrous metals forming point source category was promulgated on August 23, 1985 (50 FR 34242) and established effluent limitations guidelines and standards to control specific toxic, nonconventional and conventional pollutants for ten subcategories in the nonferrous metals forming and metal powders point source category. Only two of these subcategories, the nickel-cobalt forming subcategory (Subpart C) and the zirconium-hafnium forming subcategory (Subpart I), are affected by today's promulgation.

The subcategories are comprised of various elements or building blocks which are used to calculate the final effluent limits for each discharger. Today's promulgation only affects the tube reducing building blocks in subparts C and I. Tube reducing is a forming operation which may combine amines and nitrates or nitrites in the coolant-lubricant with the high energy input of the process to generate nitrosamine compounds in the wastewater discharge. In sampling conducted by the Agency, nitrosamines have been found in tube reducing process wastewaters. Accordingly, in the final regulation the Agency required that there be no discharge of process wastewater pollutants from tube reducing operations in Subparts C and I. The Agency costed contract hauling as the model treatment technology for these subcategories.

B. Settlement Agreement for Nonferrous Metals Forming

After publication of the nonferrous metals forming regulation, Inco Alloys International, General Electric Co., Oregon Metallurgical Corporation, Teledyne WaChang, AMAX Inc. and Westinghouse Corp. filed petitions for review of the regulation.

Oregon Metallurgical Corp., Westinghouse and Teledyne WaChang subsequently dismissed their petitions for review of the regulation. AMAX Inc. entered into a settlement agreement with EPA on June 29, 1987. That agreement is not the subject of this promulgation. The two remaining petitioners, INCO Alloys International and General Electric Company entered into a settlement agreement with the Agency on November 5, 1986, which resolved all issues raised by these petitioners. That agreement, which is the subject of this rulemaking, only affects the nickel-cobalt forming subcategory (Subpart C) and the zirconium-hafnium forming subcategory (Subpart I). Copies of the Settlement Agreement have been sent to all EPA Regional Offices and to applicable State permitting authorities.

As part of this Settlement Agreement, on November 5, 1986 the parties jointly requested the United States Court of Appeals for the Sixth Circuit to stay the effectiveness of those portions of 40 CFR Part 471 which EPA proposed to amend, pending final action by EPA on the proposed amendments. On February 17, 1987, the Court entered an order staying the following sections of the regulation promulgated on August 23, 1985: 40 CFR 471.31(d); 471.32(d); 471.33(d); 471.34(d); 471.35(d); 471.91(g); 471.92(g); 471.93(g); 471.94(g); and 471.95(g). All limitations

and standards contained in the final nonferrous metals forming regulation published on August 23, 1985, which are not specifically listed in today's amendments are not affected by today's rulemaking and are unchanged.

The Agency proposed the amendments based on the settlement agreement on July 11, 1988, (53 FR 21774). EPA is now finalizing those amendments as proposed (except typographical corrections). Under the settlement agreement, the petitioners have the obligation to seek voluntary dismissal of their petitions for review. The petitioners have also agreed not to seek judicial review of any of these amendments as they are consistent with the Settlement Agreement.

III. Amendments to the Nonferrous Metals Forming and Metal Powders Regulation

The regulation promulgated in 1985 stated that there shall be no discharge of process wastewater pollutants from tube reducing spent lubricants. Because EPA found a nitrosamine compound (N-nitrosodiphenylamine) in a sample taken from a tube reducing spent lubricant used at one facility at a concentration of 28.2 mg/1, EPA established a zero discharge requirement to prevent the release of nitrosamine compounds into the environment from tube reducing spent lubricant wastewater. GE and Inco expressed concern that this regulation would require contract hauling of the process waste stream even in cases where there are no measurable amounts of nitrosamines. EPA is amending the regulation to allow the discharge of tube reducing spent lubricant in the nickel-cobalt and zirconium-hafnium forming subcategories, as an alternative limitation, provided that the spent lubricant process wastewater is analyzed once per month and found not to contain concentrations of three nitrosamines in excess of the method detection limits established for EPA's approved test method 1625 (40 CFR Part 136). These nitrosamines and corresponding limits of 0.050 mg/1 of N-nitrosodimethylamine, 0.020 mg/1 of N/nitrosodiphenylamine, and 0.020 mg/1 of N-nitrosodi-n-propylamine. These three nitrosamines are members of the family of nitrosamine compounds that are referenced in Section 307(a) of the Clean Water Act of 1977. The Agency believes that demonstrating the presence or absence of these three nitrosamine compounds should indicate the presence or absence of the other nitrosamine compounds because they all are formed from the same precursors, i.e., nitrates or nitrites and amines. If, after six months of sampling, none of the samples of the tube reducing lubricant wastewater is found to contain nitrosamines above the concentrations stated above, the frequency of sampling may be reduced to once per quarter. Under the alternative limitation there is no mass allowance for any pollutant discharged.

Nitrosamines can be formed in the presence of precursors under the conditions created by the tube reducing process. If nitrosamines are found in tube reducing spent lubricant, the best method to remove them is to change the tube reducing lubricant to a new formulation in which the precursors are not present; if the precursors are absent, then nitrosamines are not likely to be formed. The Agency believes this control method is technically feasible and should not result in any economic impact beyond that expected under the original regulation. The cost of the new tube reducing lubricant should not be significantly more than the cost of the old tube reducing lubricant. In any case, the facility retains the option of complying with the current regulation (i.e., no discharge of process wastewater pollutants), which as stated earlier, is based on contract hauling. EPA determined that this technology was economically achievable during the initial nonferrous metals forming rulemaking. For all these reasons, EPA finds that this amendment is economically achievable. This alternative limitation should result in similar effluent reduction benefits as the previously promulgated limitation because plants will be prevented from discharging measurable amounts of nitrosamines. The amendment has the additional advantage of creating an incentive to avoid the formation of nitrosamine compounds in the tube reducing process. All other relevant findings made in the original rulemaking are incorporated by reference into this amendment.

Subparagraph (5) of the amendment specifies that the concentration limits for the three nitrosamine compounds listed in subparagraph (2) apply at the point of discharge from the tube reducing process. This provision is intended to make clear that the discharge limits of subparagraph (2), which are expressed in terms of concentration, are not to be met merely by means of dilution. It does not mean, however, that the wastewater must be *sampled* at the point of discharge from the tube reducing process. Nor does it imply that the wastewater must be sampled before being treated or commingled with other wastewater.

To the contrary, because of difficulties in analyzing for nitrosamines at very low concentration levels in an oily matrix, it may very well be necessary to treat the tube reducing spent lubricant wastewater before sampling to determine compliance with subparagraph (2). And, in order to treat the wastewater in an economical manner, it may very well be necessary to commingle it with other wastewater before treatment. Subparagraph (5) allows commingling or treatment of the tube reducing spent lubricant wastewater before sampling. However, if commingling occurs before sampling, any dilution caused by the other wastewater must be taken into account in determining compliance with the concentration limits of subparagraph (2). This would mean that the concentrations of the three nitrosamine compounds in the commingled wastewater would have to be sufficiently lower than the discharge concentrations specified in subparagraph (2), so that, after back-calculating to account for the dilution, it can be determined that the concentrations of the three nitrosamine compounds at the point of discharge from the tube reducing process did not exceed the concentration limits set forth in subparagraph (2). Subparagraph (5) provides that, where sampling occurs after commingling, the analytical method used must be sensitive enough to measure the three nitrosamine compounds at levels sufficiently low as to permit a back-calculation to account for the dilution.

IV. Environmental Impact of the Amendments to the Nonferrous Metals Forming Regulation

The amendment described above may affect 58 facilities in the nickel-cobalt forming and zirconim-hafnium forming subcategories. Under this amendment, tube-reducing operations would be allowed to discharge wastewater under controlled conditions but would not be allowed to increase that mass of pollutants allowed to be discharged by the August 1985 regulation. Therefore, this regulation should not have any significant environmental impact.

V. Economic Impact of the Amendments

The amendments do not alter the model technologies for complying with the nonferrous metals forming regulation. The Agency considered the economic impact of the regulation when the final regulation was promulgated (see 50 FR 34242). EPA concluded at that time that the regulation was economically achievable. Because

today's amendments are based on the same model technologies, EPA's conclusions as to economic impact and achievability are unaffected.

VI. Public Participation and Response to Major Comments

Since proposal of these amendments two commenters have submitted comments on the proposal. These commenters are: General Electric Company and Inco International Alloys. The most significant of these comments are summarized below:

1. Both commenters generally supported the amendments proposed by the Agency and recommended that these amendments be promulgated.

2. Both commenters pointed out typographical errors in the proposal. The Agency has made these corrections.

VII. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. Major rules are defined as rules that impose an annual cost to the economy of $100 million or more, or meet other economic criteria. This proposed regulation, which modestly reduces regulatory requirements, is not a major rule.

VIII. Regulatory Flexibility Analysis

Pub. L. 96–354 requires that EPA prepare a Regulatory Flexibility Analysis for regulations that have a significant impact on a substantial number of small entities. In the preamble to the August 23, 1985 final nonferrous metals forming regulation, the Agency concluded that there would not be a significant impact on a substantial number of small entities (49 FR 8775). for the reason, the Agency determined that a formal regulatory flexibility analysis was not required. That conclusion is equally applicable to these amendments, because the amendments slightly reduce the regulatory requirements.

IX. OMB Review

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291. Any comments from OMB to EPA and any EPA response to those comments are available for public inspection at Room M2404, U.S. EPA, 401 M Street SW., Washington, DC 20460 from 9:00 a.m. to 4:00 p.m. Monday through Friday, excluding Federal holidays.

List of Subjects in 40 CFR Part 471

Metals, nonferrous metals forming, water pollution control, waste treatment and disposal.

Dated: March 9, 1989.

William K. Reilly.

Administrator.

For the reasons set out in the preamble EPA amends Title 40 CFR Part 471 as follows:

PART 471—NONFERROUS METALS FORMING AND METAL POWDERS POINT SOURCE CATEGORY

1. The authority citation for Part 471 continues to read as follows:

Authority: Secs. 301, 304 (b), (c), (e), and (g), 306 (b) and (c), 307, 308, and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendment of 1972, as amended by the Clean Water Act of 1977) (the "Act") 33 U.S.C. 1311, 1314 (b), (c), (e), and (g), 1316 (b) and (c), and 1361; 86 Stat. 816, Pub. L. 92–500; 91 Stat. 1567, Pub. L. 95–217.

§ 471.31 [Amended]

2. Section 471.31 is amended by revising paragraph (d) to read as follows:

* * * * *

(d) Tube Reducing Spent Lubricant—Subpart C—BPT.

(1) There shall be no discharge of process wastewater pollutants except as provided under paragraph (d)(2) of this section.

(2) Process wastewater pollutants may be discharged, with no allowance for any pollutants discharged, provided the facility owner or operator demonstrates, on the basis of analytical methods set forth in or approved pursuant to 40 CFR Part 136, that the concentrations of nitrosamine compounds in the wastewater discharged from the tube reducing process do not exceed 0.050 mg/l of N-nitrosodimethylamine, 0.020 mg/l of N-nitrosodiphenylamine, and 0.020 mg/l of N-nitrosodi-n-propylamine.

(3) The demonstration required under paragraph (d)(2) of this section shall be made once per month until the demonstration has been made for all three nitrosamine compounds for six consecutive months, after which time the demonstration may be made once per quarter. If a sample is found to contain any of the foregoing nitrosamine compounds at concentrations greater than those specified in paragraph (d)(2) of this section, the actions described in paragraph (d)(4) of this section shall be taken, and the demonstration required under paragraph (d)(2) of this section shall be made once per month until it has been made for all three nitrosamine compounds for six consecutive months.

(4) If sampling results show that any of the foregoing nitrosamine compounds is present in the process wastewater at concentrations greater than those specified in paragraph (d)(2) of this section, the facility owner or operator shall ensure that, within thirty days of receiving written notification of the sampling results, there is no further discharge of tube reducing spent lubricant wastewater until the owner or operator:

(i) Performs a subsequent analysis which demonstrates that the concentrations of the foregoing nitrosamine compounds do not exceed the levels specified in paragraph (d)(2) of this section; or

(ii) Substitutes a new tube reducing lubricant and thereafter complies with the requirements of paragraph (d)(3) of this section; or

(iii) Determines the source of the pollutant whose concentration exceeded the level specified in paragraph (d)(2) of this section and demonstrates to the satisfaction of the NPDES issuing authority that such source has been eliminated.

(5) The concentration limits specified in paragraph (d)(2) of this section apply at the point of discharge from the tube reducing process. However, sampling after the tube reducing wastewater has been commingled with other wastewaters is permitted if:

(i) Any dilution caused by the other wastewaters is taken into account in determining the appropriate (i.e., lower) allowable discharge concentration; and

(ii) An analytical method of sufficient sensitivity is used to measure the levels of each of the foregoing nitrosamine compounds in the wastewaters being sampled.

§ 471.32 [Amended]

* * * * *

3. Section 471.32 is amended by revising paragraph (d) to read as follows:

* * * * *

(d) Tube Reducing Spent Lubricant—Subpart C—BAT.

(1) There shall be no discharge of process wastewater pollutants except as provided under paragraph (d)(2) of this section.

(2) Process wastewater pollutants may be discharged, with no allowance for any pollutants discharged, provided the facility owner or operator demonstrates, on the basis of analytical methods set forth in or approved pursuant to 40 CFR Part 136, that the concentrations of nitrosamine

compounds in the wastewater discharged from the tube reducing process do not exceed 0.050 mg/l of N-nitrosodimethylamine, 0.020 mg/l of N-nitrosodiphenylamine, and 0.020 mg/l of N-nitrosodi-n-propylamine.

(3) The demonstration required under paragraph (d)(2) of this section shall be made once per month until the demonstration has been made for all three nitrosamine compounds for six consecutive months, after which time the demonstration may be made once per quarter. If a sample is found to contain any of the foregoing nitrosamine compounds at concentrations greater than those specified in subparagraph (d)(2) of this section, the actions described in paragraph (d)(4) of this section shall be taken, and the demonstration required under subparagraph (d)(2) of this section shall be made once per month until it has been made for all three nitrosamine compounds for six consecutive months.

(4) If sampling results show that any of the foregoing nitrosamine compounds is present in the process wastewater at concentrations greater than those specified in subparagraph (d)(2) of this section, the facility owner or operator shall ensure that, within thirty days of receiving written notification of the sampling results, there is not further discharge of tube reducing spent lubricant wastewater until the owner or operator:

(i) Performs a subsequent analysis which demonstrates that the concentrations of the foregoing nitrosamine compounds do not exceed the levels specified in paragraph (d)(2) of this section; or

(ii) Substitutes a new tube reducing lubricant and thereafter complies with the requirements of paragraph (d)(3) of this section; or

(iii) Determines the source of the pollutant whose concentration exceeded the level specified in paragraph (d)(2) of this section and demonstrates to the satisfaction of the NPDES issuing authority that such source has been eliminated.

(5) The concentration limits specified in paragraph (d)(2) of this section apply at the point of discharge from the tube reducing process. However, sampling after the tube reducing wastewater has been commingled with other wastewaters is permitted if:

(i) Any dilution caused by the other wastewaters is taken into account in determining the appropriate (i.e., lower) allowable discharge concentration; and

(ii) An analytical method of sufficient sensitivity is used to measure the levels of each of the foregoing nitrosamine compounds in the wastewaters being sampled.

* * * * *

§ 471.33 [Amended]

4. Section 471.33 is amended by revising paragraph (d) to read as follows:

* * * * *

(d) Tube Reducing Spent Lubricant—Subpart C—NSPS.

(1) There shall be no discharge of process wastewater pollutants except as provided under paragraph (d)(2) of this section.

(2) Process wastewater pollutants may be discharged, with no allowance for any pollutants discharged, provided the facility owner or operator demonstrates, on the basis of analytical methods set forth in or approved pursuant to 40 CFR Part 136, that the concentrations of nitrosamine compounds in the wastewater discharged from the tube reducing process do not exceed 0.050 mg/l of N-nitrosodimethylamine, 0.020 mg/l of N-nitrosodimethylamine, and 0.020 mg/l of N-nitrosodi-n-propylamine.

(3) The demonstration required under paragraph (d)(2) of this section shall be made once per month until the demonstration has been made for all three nitrosamine compounds for six consecutive months, after which time the demonstration may be made once per quarter. If a sample is found to contain any of the foregoing nitrosamine compounds at concentrations greater than those specified in paragraph (d)(2) of this section, the actions described in paragraph (d)(4) of this section shall be taken, and the demonstration required under paragraph (d)(2) of this section shall be made once per month until it has been made for all three nitrosamine compounds for six consecutive months.

(4) If sampling results show that any of the foregoing nitrosamine compounds is present in the process wastewater at concentrations greater than those specified in paragraph (d)(2) of this section, the facility owner or operator shall ensure that, within thirty days of receiving written notification of the sampling results, there is no further discharge of tube reducing spent lubricant wastewater until the owner or operator:

(i) Performs a subsequent analysis which demonstrates that the concentrations of the foregoing nitrosamine compounds do not exceed the levels specified in paragraph (d)(2) of this section; or

(ii) Substitutes a new tube reducing lubricant and thereafter complies with the requirements of paragraph (d)(3) of this section; or

(iii) Determines the source of the pollutant whose concentration exceeded the level specified in paragraph (d)(2) of this section and demonstrates to the satisfaction of the NPDES issuing authority that such source has been eliminated.

(5) The concentration limits specified in paragraph (d)(2) of this section apply at the point of discharge from the tube reducing process. However, sampling after the tube reducing wastewater has been commingled with other wastewaters is permitted if:

(i) Any dilution caused by the other wastewaters is taken into account in determining the appropriate (i.e., lower) allowable discharge concentration; and

(ii) An analytical method of sufficient sensitivity is used to measure the levels of each of the foregoing nitrosamine compounds in the wastewaters being sampled.

* * * * *

§ 471.34 [Amended]

5. Section 471.34 is amended by revising paragraph (d) to read as follows:

* * * * *

(d) Tube Reducing Spent Lubricant—Subpart C—PSES.

(1) There shall be no discharge of process wastewater pollutants except as provided under paragraph (d)(2) of this section.

(2) Process wastewater pollutants may be discharged, with no allowance for any pollutants discharged, provided the facility owner or operator demonstrates, on the basis of analytical methods set forth in or approved pursuant to 40 CFR Part 136, that the concentrations of nitrosamine compounds in the wastewater discharged from the tube reducing process do not exceed 0.050 mg/l of N-nitrosodimethylamine, 0.020 mg/l of N-nitrosodimethylamine, and 0.020 mg/l of N-nitrosodi-n-propylamine.

(3) The demonstration required under paragraph (d)(2) of this section shall be made once per month until the demonstration has been made for all three nitrosamine compounds for six consecutive months, after which time the demonstration may be made once per quarter. If a sample is found to contain any of the foregoing nitrosamine compounds at concentrations greater than those specified in paragraph (d)(2) of this section, the actions described in paragraph (d)(4) of this section shall be taken, and the demonstration required under paragraph (d)(2) of this section shall be made once per month until it

has been made for all three nitrosamine compounds for six consecutive months.

(4) If sampling results show that any of the foregoing nitrosamine compounds is present in the process wastewater at concentrations greater than those specified in paragraph (d)(2) of this section, the facility owner or operator shall ensure that, within thirty days of receiving written notification of the sampling results, there is not further discharge of tube reducing spent lubricant wastewater until the owner or operator:

(i) Performs a subsequent analysis which demonstrates that the concentrations of the foregoing nitrosamine compounds do not exceed the levels specified in paragraph (d)(2) of this section; or

(ii) Substitutes a new tube reducing lubricant and thereafter complies with the requirements of paragraph (d)(3) of this section; or

(iii) Determines the source of the pollutant whose concentration exceeded the level specified in paragraph (d)(2) of this section and demonstrates to the satisfaction of the POTW control authority that such source has been eliminated.

(5) The concentration limits specified in paragraph (d)(2) of this section apply at the point of discharge from the tube reducing process. However, sampling after the tube reducing wastewater has been commingled with other wastewaters is permitted if:

(i) Any dilution caused by the other wastewaters is taken into account in determining the appropriate (i.e., lower) allowable discharge concentration; and

(ii) An analytical method of sufficient sensitivity is used to measure the levels of each of the foregoing nitrosamine compounds in the wastewaters being sampled.

§ 471.35 [Amended]

* * * * *

6. Section 471.35 is amended by revising paragraph (d) to read as follows:

* * * * *

(d) Tube Reducing Spent Lubricant—Subpart C—PSNS.

(1) There shall be no discharge of process wastewater pollutants except as provided under paragraph (d)(2) of this section

(2) Process wastewater pollutants may be discharged, with no allowance for any pollutants discharged, provided the facility owner or operator demonstrates, on the basis of analytical methods set forth in or approved pursuant to 40 CFR Part 136, that the concentrations of nitrosamine compounds in the wastewater discharged from the tube reducing process do not exceed 0.050 mg/l of N-nitrosodimethylamine, 0.020 mg/l of N-nitrosodiphenylamine, and 0.020 mg/l of N-nitrosodi-n-propylamine.

(3) The demonstration required under subparagraph (d)(2) of this section shall be made once per month until the demonstration has been made for all three nitrosamine compounds for six consecutive months, after which time the demonstration may be made once per quarter. If a sample is found to contain any of the foregoing nitrosamine compounds at concentrations greater than those specified in paragraph (d)(2) of this section, the actions described in paragraph (d)(4) of this section shall be taken, and the demonstration required under paragraph (d)(2) of this section shall be made once per month until it has been made for all three nitrosamine compounds for six consecutive months.

(4) If sampling results show that any of the foregoing nitrosamine compounds is present in the process wastewater at concentrations greater than those specified in subparagraph (d)(2) of this section, the facility owner or operator shall ensure that, within thirty days of receiving written notification of the sampling results, there is no further discharge of tube reducing spent lubricant wastewater until the owner or operator:

(i) Performs a subsequent analysis which demonstrates that the concentrations of the foregoing nitrosamine compounds do not exceed the levels specified in paragraph (d)(2) of this section (2); or

(ii) Substitutes a new tube reducing lubricant and thereafter complies with the requirements of paragraph (d)(3) of this section; or

(iii) Determines the source of the pollutant whose concentration exceeded the level specified in subparagraph (2) above and demonstrates to the satisfaction of the POTW control authority that such source has been eliminated.

(5) The concentration limits specified in paragraph (d)(2) of this section apply at the point of discharge from the tube reducing process. However, sampling after the tube reducing wastewater has been commingled with other wastewaters is permitted if:

(i) Any dilution caused by the other wastewaters is taken into account in determining the appropriate (i.e., lower) allowable discharge concentration; and

(ii) An analytical method of sufficient sensitivity is used to measure the levels of each of the foregoing nitrosamine compounds in the wastewaters being sampled.

§ 471.91 [Amended]

* * * * *

7. Section 471.91 is amended by revising paragraph (g) to read as follows:

* * * * *

(g) Tube Reducing Spent Lubricant—Subpart I—BPT.

(1) There shall be no discharge of process wastewater pollutants except as provided under paragraph (g)(2) of this section.

(2) Process wastewater pollutants may be discharged, with no allowance for any pollutants discharged, provided the facility owner or operator demonstrates, on the basis of analytical methods set forth in or approved pursuant to 40 CFR Part 136, that the concentrations of nitrosamine compounds in the wastewater discharged from the tube reducing process do not exceed 0.050 mg/l of N-nitrosodimethylamine, 0.020 mg/l of N-nitrosodiphenylamine, and 0.020 mg/l of N-nitrosodi-n-propylamine.

(3) The demonstration required under subparagraph (g)(2) of this section shall be made once per month until the demonstration has been made for all three nitrosamine compounds for six consecutive months, after which time the demonstration may be made once per quarter. If a sample is found to contain any of the foregoing nitrosamine compounds at concentrations greater than those specified in subparagraph (g)(2) of this section, the actions described in paragraph (g)(4), of this section shall be taken, and the demonstration required under paragraph (g)(2) of this section shall be made once per month until it has been made for all three nitrosamine compounds for six consecutive months.

(4) If sampling results show that any of the foregoing nitrosamine compounds is present in the process wastewater at concentrations greater than those specified in subparagraph (g)(2) of this section, the facility owner or operator shall ensure that, within thirty days of receiving written notification of the sampling results, there is no further discharge of tube reducing spent lubricant wastewater until the owner or operator:

(i) Performs a subsequent analysis which demonstrates that the concentrations of the foregoing nitrosamine compounds do not exceed the levels specified in paragraph (g)(2) of this section; or

(ii) Substitutes a new tube reducing lubricant and thereafter complies with the requirements of paragraph (g)(3) of this section; or

(iii) Determines the source of the pollutant whose concentration exceeded the level specified in paragraph (g)(2) of this section and demonstrates to the satisfaction of the NPDES issuing authority that such source has been eliminated.

(5) The concentration limits specified in paragraph (g)(2) of this section apply at the point of discharge from the tube reducing process. However, sampling after the tube reducing wastewater has been commingled with other wastewaters is permitted if:

(i) Any dilution caused by the other wastewaters is taken into account in determining the appropriate (i.e., lower) allowable discharge concentration; and

(ii) An analytical method of sufficient sensitivity is used to measure the levels of each of the foregoing nitrosamine compounds in the wastewaters being sampled.

§ 471.92 [Amended]

* * * * *

8. Section 471.92 is amended by revising paragraph (g) to read as follows:

* * * * *

(g) Tube Reducing Spent Lubricant—Subpart I—BAT.

(1) There shall be no discharge of process wastewater pollutants except as provided under paragraph (g)(2) of this section.

(2) Process wastewater pollutants may be discharged, with no allowance for any pollutants discharged, provided the facility owner or operator demonstrates, on the basis of analytical methods set forth in or approved pursuant to 40 CFR Part 136, that the concentrations of nitrosamine compounds in the wastewater discharged from the tube reducing process do not exceed 0.050 mg/l of N-nitrosodimethylamine, 0.020 mg/l of N-nitrosodiphenylamine, and 0.020 mg/l of N-nitrosodi-n-propylamine.

(3) The demonstration required under paragraph (g)(2) of this section shall be made once per month until the demonstration has been made for all three nitrosamine compounds for six consecutive months, after which time the demonstration may be made once per quarter. If a sample is found to contain any of the foregoing nitrosamine compounds at concentrations greater than those specified in paragraph (g)(2) of this section, the actions described in paragraph (g)(4) of this section shall be taken, and the demonstration required under paragraph (g)(2) of this section shall be made once per month until it has been made for all three nitrosamine compounds for six consecutive months.

(4) If sampling results show that any of the foregoing nitrosamine compounds is present in the process wastewater at concentrations greater than those specified in paragraph (g)(2) of this section, the facility owner or operator shall ensure that, within thirty days of receiving written notification of the sampling results, there is no further discharge of tube reducing spent lubricant wastewater until the owner or operator:

(i) Performs a subsequent analysis which demonstrates that the concentrations of the foregoing nitrosamine compounds do not exceed the levels specified in paragraph (g)(2) of this section; or

(ii) Substitutes a new tube reducing lubricant and thereafter complies with the requirements of paragraph (g)(3) of this section; or

(iii) Determines the source of the pollutant whose concentration exceeded the level specified in paragraph (g)(2) of this section and demonstrates to the satisfaction of the NPDES issuing authority that such source has been eliminated.

(5) The concentration limits specified in paragraph (g)(2) of this section apply at the point of discharge from the tube reducing process. However, sampling after the tube reducing wastewater has been commingled with other wastewaters is permitted if:

(i) Any dilution caused by the other wastewaters is taken into account in determining the appropriate (i.e., lower) allowable discharge concentration; and

(ii) An analytical method of sufficient sensitivity is used to measure the levels of each of the foregoing nitrosamine compounds in the wastewaters being sampled.

§ 471.93 [Amended]

* * * * *

9. Section 471.93 is amended by revising paragraph (g) to read as follows:

* * * * *

(g) Tube Reducing Spent Lubricant—Subpart I—NSPS:

(1) There shall be no discharge of process wastewater pollutants except as provided under paragraph (g)(2) of this section.

(2) Process wastewater pollutants may be discharged, with no allowance for any pollutants discharged, provided the facility owner or operator demonstrates, on the basis of analytical methods set forth in or approved pursuant to 40 CFR Part 136, that the concentrations of nitrosamine compounds in the wastewater discharged from the tube reducing process do not exceed 0.050 mg/l of N-nitrosodimethylamine, 0.020 mg/l of N-nitrosodiphenylamine, and 0.020 mg/l of N-nitrosodi-n-propylamine.

(3) The demonstration required under paragraph (g)(2) of this section shall be made once per month until the demonstration has been made for all three nitrosamine compounds for six consecutive months, after which time the demonstration may be made once per quarter. If a sample is found to contain any of the foregoing nitrosamine compounds at concentrations greater than those specified in paragraph (g)(2) of this section, the actions described in paragraph (g)(4) of this section shall be taken, and the demonstration required under paragraph (g)(2) of this section shall be made once per month until it has been made for all three nitrosamine compounds for six consecutive months.

(4) If sampling results show that any of the foregoing nitrosamine compounds is present in the process wastewater at concentrations greater than those specified in paragraph (g)(2) of this section, the facility owner or operator shall ensure that, within thirty days of receiving written notification of the sampling results, there is no further discharge of tube reducing spent lubricant wastewater until the owner or operator:

(i) Performs a subsequent analysis which demonstrates that the concentrations of the foregoing nitrosamine compounds do not exceed the levels specified in paragraph (g)(2) of this section; or

(ii) Substitutes a new tube reducing lubricant and thereafter complies with the requirements of paragraph (g)(3) of this section; or

(iii) Determines the source of the pollutant whose concentration exceeded the level specified in paragraph (g)(2) of this section and demonstrates to the satisfaction of the NPDES issuing authority that such source has been eliminated.

(5) The concentration limits specified in paragraph (g)(2) of this section apply at the point of discharge from the tube reducing process. However, sampling after the tube reducing wastewater has been commingled with other wastewaters is permitted if:

(i) Any dilution caused by the other wastewaters is taken into account in determining the appropriate (i.e., lower) allowable discharge concentration; and

(ii) An analytical method of sufficient sensitivity is used to measure the levels of each of the foregoing nitrosamine compounds in the wastewaters being sampled.

* * * * *

§ 471.94 [Amended]

10. Section 471.94 is amended by revising paragraph (g) to read as follows:

* * * * *

(g) Tube Reducing Spent Lubricant—Subpart I—PSES.

(1) There shall be no discharge of process wastewater pollutants except as provided under paragraph (g)(2) of this section.

(2) Process wastewater pollutants may be discharged, with no allowance for any pollutants discharged, provided the facility owner or operator demonstrates, on the basis of analytical methods set forth in or approved pursuant to 40 CFR Part 136, that the concentrations of nitrosamine compounds in the wastewater discharged from the tube reducing process do not exceed 0.050 mg/l of N-nitrosodimethylamine, 0.020 mg/l of N-nitrosodiphenylamine, and 0.020 mg/l of N-nitrosodi-n-propylamine.

(3) The demonstration required under paragraph (g)(2) of this section shall be made once per month until the demonstration has been made for all three nitrosamine compounds for six consecutive months, after which time the demonstration may be made once per quarter. If a sample is found to contain any of the foregoing nitrosamine compounds at concentrations greater than those specified in subparagraph (g)(2) of this section, the actions described in paragraph (g)(4) of this section shall be taken, and the demonstration required under subparagraph (g)(2) of this section shall be made once per month until it has been made for all three nitrosamine compounds for six consecutive months.

(4) If sampling results show that any of the foregoing nitrosamine compounds is present in the process wastewater at concentrations greater than those specified in subparagraph (g)(2) of this section, the facility owner or operator shall ensure that, within thirty days of receiving written notification of the sampling results, there is no further discharge of tube reducing spent lubricant wastewater until the owner or operator:

(i) Performs a subsequent analysis which demonstrates that the concentrations of the foregoing nitrosamine compounds do not exceed the levels specified in paragraph (g)(2) of this section; or

(ii) Substitutes a new tube reducing lubricant and thereafter complies with the requirements of paragraph (g)(3) of this section; or

(iii) Determines the source of the pollutant whose concentration exceeded the level specified in paragraph (g)(2) of this section and demonstrates to the satisfaction of the POTW control authority that such source has been eliminated.

(5) The concentration limits specified in paragraph (g)(2) of this section apply at the point of discharge from the tube reducing process. However, sampling after the tube reducing wastewater has been commingled with other wastewaters is permitted if:

(i) Any dilution caused by the other wastewaters is taken into account in determining the appropriate (i.e., lower) allowable discharge concentration; and

(ii) An analytical method of sufficient sensitivity is used to measure the levels of each of the foregoing nitrosamine compounds in the wastewaters being sampled.

§ 471.95 [Amended]

* * * * *

11. Section 471.95 is amended by revising paragraph (g) to read as follows:

* * * * *

(g) Tube Reducing Spent Lubricant—Subpart I—PSNS.

(1) There shall be no discharge of process wastewater pollutants except as provided under paragraph (g)(2) of this section.

(2) Process wastewater pollutants may be discharged, with no allowance for any pollutants discharged, provided the facility owner or operator demonstrates, on the basis of analytical methods set forth in or approved pursuant to 40 CFR Part 136, that the concentrations of nitrosamine compounds in the wastewater discharged from the tube reducing process do not exceed 0.050 mg/l of N-nitrosodimethylamine, 0.020 mg/l of N-nitrosodiphenylamine, and 0.020 mg/l of N-nitrosodi-n-propylamine.

(3) The demonstration required under subparagraph (g)(2) of this section shall be made once per month until the demonstration has been made for all three nitrosamine compounds for six consecutive months, after which time the demonstration may be made once per quarter. If a sample is found to contain any of the foregoing nitrosamine compounds at concentrations greater than those specified in subparagraph (g)(2) of this section, the actions described in paragraph (g)(4) of this section shall be taken, and the demonstration required under paragraph (g)(2) shall be made once per month until it has been made for all three nitrosamine compounds for six consecutive months.

(4) If sampling results show that any of the foregoing nitrosamine compounds is present in the process wastewater at concentrations greater than those specified in subparagraph (g)(2) of this section, the facility owner or operator shall ensure that, within thirty days of receiving written notification of the sampling results, there is no further discharge of tube reducing spent lubricant wastewater until the owner or operator:

(i) Performs a subsequent analysis which demonstrates that the concentrations of the foregoing nitrosamine compounds do not exceed the levels specified in paragraph (g)(2) of this section; or

(ii) Substitutes a new tube reducing lubricant and thereafter complies with the requirements of paragraph (g)(3) of this section; or

(iii) Determines the source of the pollutant whose concentration exceeded the level specified in paragraph (g)(2) of this section and demonstrates to the satisfaction of the POTW control authority that such source has been eliminated.

(5) The concentration limits specified in paragraph (g)(2) of this section apply at the point of discharge from the tube reducing process. However, sampling after the tube reducing wastewater has been commingled with other wastewaters is permitted if:

(i) Any dilution caused by the other wastewaters is taken into account in determining the appropriate (i.e., lower) allowable discharge concentration; and

(ii) An analytical method of sufficient sensitivity is used to measure the levels of each of the foregoing nitrosamine compounds in the wastewaters being sampled.

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[FR Doc. 89-6308 Filed 3-16-89; 8:45 am]
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federal register

Friday
March 17, 1989

Part V

Department of Education

34 CFR Parts 600 and 668

Institutional Eligibility Under the Higher Education Act of 1965, as Amended, and Student Assistance Provisions; Notice of Proposed Rulemaking

DEPARTMENT OF EDUCATION

34 CFR Parts 600 and 668

Institutional Eligibility Under the Higher Education Act of 1965, as Amended, and Student Assistance General Provisions

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations governing Institutional Eligibility under the Higher Education Act of 1965, as amended (HEA), and the Student Assistance General Provisions regulations. The proposed regulations would implement the Secretary's initiative to improve the monitoring and accountability of the student financial assistance programs authorized under Title IV of the HEA (Title IV, HEA programs). The purpose of the proposed regulations is to reduce the potential for abuse in the Title IV, HEA programs by strengthening the means of enforcing the Title IV, HEA program requirements.

DATE: Comments must be received on or before May 1, 1989.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Ms. Carney McCullough, Division of Policy and Program Development, U.S. Department of Education, 400 Maryland Avenue SW. (Room 4318, Regional Office Building 3, 7th and D Streets SW.), Washington, DC 20202.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Mr. John De Cleene, Division of Policy and Program Development, U.S. Department of Education, 400 Maryland Avenue SW. (Room 4318, Regional Office Building 3, 7th and D Streets SW.), Washington, DC 20202, telephone number (202) 732–4888.

SUPPLEMENTARY INFORMATION: The regulations for Institutional Eligibility under the Higher Education Act of 1965, as amended (34 CFR Part 600), apply to all postsecondary educational institutions that seek to participate in programs administered under the HEA (HEA programs) by the Department of Education. The Student Assistance General Provisions regulations (34 CFR Part 668) apply to all institutions that seek to participate in the Title IV, HEA programs.

The proposed changes in these regulations result from a review of current policies and procedures. The review identified possible legislative, regulatory, and administrative changes necessary to protect, enhance, and improve the integrity of the Title IV, HEA programs. A summary of the significant proposed regulatory changes follows:

Section 600.30 Institutional changes requiring review by the Secretary

The Secretary proposes to add a requirement to paragraph (a)(4) that an institution report to the Secretary any change in the institution's ownership that results in an individual acquiring or increasing his or her stock holdings to at least 25% of the stock of the institution or its parent corporation. The requirement enables the Secretary to evaluate compliance with the proposed new factor of financial responsibility (see the discussion on § 668.13). The requirement allows an evaluation of an institution's compliance with the new factor of financial responsibility at the time of the ownership change.

Section 600.32 Eligibility of additional locations

The Secretary proposes to add a section to clarify the special conditions governing the eligibility of additional locations that were not included in an institution's original eligibility determination. This section codifies the existing Department practice, which is based on the concept that the addition of a location to an already existing institution is similar to that institution's addition of new educational programs. In general, that practice allows an additional location to qualify for eligibility by meeting the applicable institutional eligibility requirements of this part except the requirement to have been in existence for two years.

To address a serious abuse of HEA program funds, the Secretary also proposes an exception to this treatment for one particular category of new location. Currently, an eligible institution that owes a liability on misspent or unspent HEA program funds or has an agreement with the Secretary to repay that liability, can close or cease to provide educational programs without repaying that liability or honoring that agreement. The owner of the institution can sell its assets or the assets of any of its campuses to the owner of another eligible institution. Ordinarily, under the provisions of § 600.31 governing changes of ownership resulting in a change of control, an acquisition of the assets of an institution that was previously eligible requires the new owner to assume sole responsibility, or joint responsibility with the previous owner, for any liabilities on HEA program funds incurred by the institution that was previously eligible. The new owner's refusal to assume that responsibility would delay the participation of the newly acquired institution in the HEA programs for at least two years, except in the case of certain public or private nonprofit institutions.

However, because the requirement to be in existence for at least two years does not generally apply to additional locations established by a currently eligible institution, the new owner in the above situation can avoid both responsibility for previous liabilities of the acquired institution and the two-year delay if he or she also owns a currently eligible institution. The new owner need only convert the newly acquired institution into an additional campus of the currently eligible institution. In fact, this tactic is becoming a more common occurrence among institutions that close while owing large liabilities to the Department of Education. In three recent cases, major chains of business and technical schools misused HEA funds to the extent that tens of millions of dollars in liabilities are owed to the Department of Education. In each case the owners of the chain closed their schools and thereby attempted to abandon their responsibility for those misused funds. Those owners also sold the closed schools to owners of chains of currently eligible business and technical schools. In each case, the new owners, by acquiring the assets (but not the liabilities) of the closed schools and converting them into additional campuses of the schools that were already eligible, substantially enlarged their own operations, and were able to fund that expansion with an increased flow of Department of Education funds.

The exception in this section would apply all the eligibility requirements, including the "two-year-in-existence" requirement, where relevant, to an additional location acquired from a closed institution, unless the owner of the acquiring institution agrees to be liable for all misspent or unspent HEA program funds received by the institution that was previously eligible. The Secretary believes that the purchaser of the closed institution is facilitating the previous owner's ability to escape responsibility for any liabilities incurred while he or she owned the institution. The Secretary also believes that, like any other purchaser of an institution that is or was eligible, a purchaser in this situation

should assume the liabilities as well as the assets of the closed institution.

Section 668.7 Eligible student

The Secretary proposes to add a new criterion to the definition of *eligible student*. A new paragraph (a)(11) would require a student, at the time that he or she is about to receive cash from the Title IV, HEA programs for the first time, to present credible identification to the institution at which he or she is enrolled or accepted for enrollment. Through impersonation, ineligible individuals sometimes obtain Title IV, HEA program funds. This provision is designed to discourage those individuals. The proposed requirement would apply only to a student who will receive cash from the Title IV, HEA programs, not to a student whose Title IV, HEA program aid is credited entirely to his or her institutional account. In addition, the proposed requirement would be a one-time requirement, in that it would apply only the first time that a student is about to receive cash from the Title IV, HEA programs for attendance at the student's institution. The provision would not require a student, for example, to present credible identification for the first receipt of cash in each academic year, or for the first receipt of cash from each Title IV, HEA program. The proposed requirement also includes examples of documents that constitute credible identification. An institution must document that an applicant for Title IV, HEA program assistance has presented the required identification.

Section 668.12 Institutional participation agreement

The Secretary proposes to amend paragraph (a) to require that in order for an institution to begin participation in a Title IV, HEA program, both (1) the institution's chief administrator or, except for a for-profit institution, another administrative official designated by the chief administrator, and (2) the designated individual who will be responsible for administering that Title IV, HEA program at that institution must complete Title IV, HEA program training offered by the Secretary. This proposed change would apply to any institution applying for participation in a Title IV, HEA program for the first time. For example, if a for-profit institution that currently participates only in the Pell Grant Program wishes to participate in the College Work-Study Program, the institution must send both its chief administrator and financial aid administrator to the Title IV, HEA program training provided by the Secretary before the institution can participate in the College Work-Study Program. The Secretary is concerned that many individuals at institutions that have not previously participated in a specific Title IV, HEA program may lack experience and adequate knowledge concerning the administration of that program.

Section 668.13 Factors of financial responsibility

The Secretary proposes to amend this section to provide that an institution is not considered to be financially responsible if the institution undergoes a change in its ownership that allows an individual to own at least 25% of the stock of the institution or its parent corporation and all of the following conditions apply:

1. The individual previously did not own at least 25% of the stock of the institution or its parent corporation.
2. The individual previously owned at least 25% of the stock of a defunct institution (defined for purposes of this section as one which closed or stopped providing educational programs) or defunct institution's parent corporation when the defunct institution became defunct.
3. The individual, the defunct institution, or the defunct institution's parent corporation owes a liability to the Secretary on misspent or unspent Title IV, HEA funds received by the defunct institution.
4. The liable party is in default on an agreement to repay that liability, if such an agreement exists.
5. The institution cannot show that the individual lacks the ability to affect substantially its actions or lacked the ability to affect substantially the actions of the defunct institution.
6. The individual has not repaid a portion of the subject liability proportionate to his or her ownership in the defunct institution.

Under current regulations, the owner of a defunct institution is able, even if he or she owes or has agreed to pay the Secretary a liability for misspent or unspent Title IV, HEA program funds received by that institution, to purchase part or all of another eligible institution without satisfying any part of the defunct institution's preexisting liability. Further, an individual who owns enough stock to control or to affect substantially the actions of a defunct institution or its parent corporation may not be held personally responsible for any misspent or unspent Title IV, HEA program funds received by that institution. An individual in this second circumstance is protected by the corporate structure of the defunct institution. Thus, that individual can also purchase part or all of another eligible institution and continue to participate in Title IV, HEA programs without helping to pay any portion of the liability owed by the defunct institution. The proposed regulations would prevent individuals closely associated with past mishandling of Title IV, HEA program funds from exerting an influence over the activities of currently participating institutions.

Clearly, the ownership of more than 50% of an institution or its parent corporation confers an ability to affect, and even control, the actions of that institution. However, these proposed regulations reflect the fact that the Secretary also considers the ownership of at least 25% of the stock of an institution or its parent corporation generally to constitute ability to affect substantially the actions of the institution. An institution will be considered financially responsible under these provisions if it can show that its new major stockholder who previously was a major stockholder of a defunct institution or parent corporation does not have the ability to affect substantially the actions of the currently participating institution or did not have the ability to affect substantially the defunct institution's actions.

Section 668.20 Limitations on remedial coursework that is eligible for Title IV, HEA program assistance.

The Secretary proposes to amend this section to require that, to be eligible for Title IV, HEA program assistance, remedial coursework must be provided at least at the secondary school level. The determination of whether the remedial coursework is at least secondary is left to the institution offering the coursework, unless, if applicable, the institution's nationally recognized accrediting agency or association or State legally authorizing or approval agency has procedures for making that determination. Even though Title IV, HEA program funds are intended for students receiving postsecondary education, some students have received aid to pay for remedial courses taught at a level as low as fourth grade. The HEA permits a certain amount of remedial coursework to be eligible for Title IV, HEA program assistance. However, the Secretary does not believe that postsecondary educational assistance is intended for individuals who have not achieved a level of ability to pursue remedial coursework at the secondary level.

Section 668.23 Audits, records and examination.

The Secretary proposes to amend paragraph (b) of this section to clarify that a participating institution must give the Secretary, the Inspector General of the Department of Education, and the Comptroller General, or their authorized representatives timely access to the institution's financial aid-related records and access to institutional personnel involved with the administration of Title IV, HEA program funds. Recently, some institutions have denied the Office of Inspector General (OIG) the right to copy documents related to their participation in the Title IV, HEA programs. Some institutions have also inordinately delayed providing records to the OIG. This proposal clarifies the Secretary's existing policy, which appears to have been subject to misinterpretation by some institutions.

Section 668.90 Initial and final decisions—Appeals

The Secretary proposes to amend this section to provide for the termination of an institution's participation in the Title IV, HEA programs if the institution fails to submit the audit report required under § 668.23 by the applicable statutory or regulatory deadline and either fails to respond in the manner required under § 668.84 to the notices from the designated department official proposing fines or has a history of missing the deadlines over a period of four years. In addition, an administrative law judge would have to uphold a termination action taken against an institution for these reasons.

These audits are critical to the enforcement of Title IV, HEA program requirements, yet many schools have not submitted the audits, some for as many as six years. The Department of Education recently developed a computer system to track the submission of required biennial non-Federal audits. This system had identified over 1,500 schools with overdue audit reports for the award years 1981–85. Notices requiring submission of the reports, requesting explanations, and proposing fines, have been sent to the schools under the procedures in § 668.84. In response, 418 audit reports have been submitted, fines totalling $423,000 have been proposed, and $120,000 in fines has been collected.

The procedures used by the Department allow schools to provide explanations for their failure to meet the audit report deadlines, permit extensions for those schools whose failure is found to be based on sufficiently mitigating circumstances, and propose fines for the late submission of audit reports where those fines are considered appropriate. The Secretary believes that an institution that fails to meet the audit report deadlines and fails to provide the responses required by regulations to the subsequent notices from the designated department official or an institution that has a record of consistently failing to submit its audit reports by the applicable deadlines should be subject to termination from participation in the Title IV, HEA programs.

The Secretary also proposes to amend this section to require the administrative law judge to uphold a termination action against an institution based on the grounds that the institution is not financially responsible under the changes proposed in § 668.13, unless the institution can show that the liable individual has paid the applicable portion of the liability or is not able to affect substantially the actions of the institution whose termination is being considered.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. These proposed regulations will impose certain additional restrictions and requirements on those few small postsecondary educational institutions participating in HEA programs that engage in the sort of abuses that these proposed regulations are aimed at discouraging.

Paperwork Reduction Act of 1980

Sections 600.30 and 668.7 contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these sections to the Office of Management and Budget (OMB) for its review.

(44 U.S.C. 3504(h))

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, Room 3002, New Executive Office Building, Washington, DC 20503; Attention: James D. Houser.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations. The Secretary especially invites comment on the need for the changes proposed in § 600.32 concerning the eligibility of additional locations of institutions and whether those changes would significantly increase burden on eligible institutions. The Secretary also especially invites comments on the potential effectiveness of the proposed changes in § 668.90 concerning the termination of participation of institutions with a history of failure to submit audit reports within applicable deadlines.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 4318, Regional Office Building, 3, Seventh and D Streets SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects

34 CFR Part 600

Administrative practice and procedure, Colleges and universities, Education, Reporting and recordkeeping requirements.

4 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Education, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Student aid.

Dated: March 13, 1989.

Lauro F. Cavazos,

Secretary of Education.

(Catalog of Federal Domestic Assistance Numbers: 84.007 Supplemental Educational Opportunity Grant Program; 84.032 Guaranteed Student Loan Program; 84.032 PLUS Program; 84.032 Supplemental Loans for Students Program; 84.033 College Work-Study Program; 84.038 Income Contingent Loan Program; 84.038 Perkins Loan Program; 84.063 Pell Grant Program; 84.069 State Student Incentive Grant Program; and 84.185 Robert C. Byrd Honors Scholarship Program)

The Secretary proposes to amend Parts 600 and 668 of Title 34 of the Code of Federal Regulations as follows:

PART 600—INSTITUTIONAL ELIGIBILITY UNDER THE HIGHER EDUCATION ACT OF 1965, AS AMENDED

1. The authority citation for Part 600 continues to read as follows:

Authority: 20 U.S.C. 1085, 1088, 1094(c)(3), and 1141, unless otherwise noted.

2. In § 600.30, paragraph (a)(4) is revised to read as follows:

§ 600.30 Institutional changes requiring review by the Secretary.

(a) * * *

(4) Its ownership, if that ownership change results in—

(i) A change in control of the institution; or

(ii) The ownership of at least 25% of the stock of the institution or the institution's parent corporation by an individual who previously did not own at least 25% of the stock of the institution or the institution's parent corporation.

* * * * *

§ 600.33 [Redesignated from § 600.32]

3. Section 600.32 is redesignated as § 600.33, and a new § 600.32 is added to read as follows:

§ 600.32 Eligibility of additional locations.

(a) If an eligible institution seeks to establish eligibility for an additional location, the institution shall apply under § 600.20 for a determination of whether the additional location qualifies for eligibility.

(b) Except as provided in paragraphs (c) and (e) of this section, to qualify for eligibility, an additional location must satisfy the applicable requirements of §§ 600.4 through 600.7.

(c) Except as provided in paragraph (d) of this section, an additional location is not required to satisfy the requirement under § 600.5(a)(7), § 600.6(a)(6), or § 600.7 (a)(5)(i) and (b) to have been in existence for at least two years.

(d) An additional location is required to satisfy the requirement under § 600.5(a)(7), § 600.6(a)(6), or § 600.7 (a)(5)(i) and (b) to have been in existence for at least two years if—

(1) The location is the site of any location of—

(i) A closed institution that was previously an eligible institution; or

(ii) An institution that was previously an eligible institution that has ceased to provide educational programs (except during normal vacation periods);

(2) The assets at the location were transferred, either directly or through an intermediary, from the institution described in paragraph (d)(1) (i) or (ii) of this section to the applicant institution; and

(3) The institution that previously owned the location—

(i) Owes a liability on improperly expended or unspent HEA program funds; and

(ii) Is in default on an agreement with the Secretary to repay that liability, if the institution has entered into such an agreement.

(e) Notwithstanding paragraph (d) of this section, an additional location is not required to satisfy the requirement under § 600.5(a)(7), § 600.6(a)(6), or § 600.7 (a)(5)(i) and (b) to have been in existence for two years if the owner of the applicant institution agrees to be liable for all improperly expended or unspent HEA program funds received by the institution that was previously eligible.

(Authority: 20 U.S.C. 1085, 1088, and 1141)

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

4. The authority citation for Part 668 continues to read as follows:

Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, and 1141, unless otherwise noted.

5. Section 668.7 is amended by redesignating paragraph (a)(11) as paragraph (a)(12), amending paragraph (a)(10) to remove the word "and", and adding a new paragraph (a)(11) to read as follows:

§ 668.7 Eligible student.

(a) * * *

(11) Provides credible identification to the institution at which he or she is enrolled or accepted for enrollment the first time that he or she is about to receive a cash disbursement of Title IV, HEA program funds, or, in the case of the GSL and SLS programs, a direct delivery of loan proceeds. Credible identification includes, but is not limited to—

(i) A birth certificate;

(ii) A driver's license;

(iii) A student identification card that contains a photograph; or

(iv) A social security card; and

* * * * *

6. Section 668.12 is amended by revising paragraph (a) to read as follows:

§ 668.12 Institutional participation agreement.

(a) An institution may participate in any Title IV, HEA program, other than the SSIG Program, only if—

(1) The Secretary determines that the institutions meets the standards established in this subpart;

(2) In the case of an institution seeking to participate for the first time in any Title IV, HEA program, the institution requires the following individuals to complete Title IV, HEA program training provided by the Secretary:

(i) The chief administrator of the institution, or, except for a for-profit institution, another administrative official of the institution designated by the chief administrator; and

(ii) The individual designated by the institution under § 668.14(a); and

(3) The institution enters into a written participation agreement with the Secretary, on a form approved by the Secretary.

* * * * *

7. Section 668.13 is amended by amending paragraph (c)(3) to remove the word "or" after the semicolon, amending paragraph (c)(4) to remove the period and add, in its place, the term "; or", and adding new paragraphs (c)(5) and (d) (3) and (4) to read as follows:

§ 668.13 Factors of financial responsibility.

* * * * *

(c) * * *

(5)(i) The institution undergoes a change of ownership that results in the ownership by an individual of at least 25% of the stock of the institution or its parent corporation;

(ii) The individual previously did not own at least 25% of the stock of the institution or its parent corporation;

(iii) The individual previously owned at least 25% of the stock of a defunct institution or the defunct institution's parent corporation;

(iv) The individual owned the stock referred to in paragraph (c)(5)(iii) of this section on the date that the defunct institution became defunct;

(v) The institution cannot show that the individual lacked the ability to affect substantially the actions of the defunct institution on the date that that institution became defunct; and

(vi) The individual, the defunct institution, or the parent corporation of the defunct institution—

(A) Owes a liability on improperly expended or unspent Title IV, HEA program funds; and

(B) Has defaulted on an agreement with the Secretary to repay that liability, if the individual, the defunct institution, or the parent corporation of the defunct institution has in effect such an agreement.

(d) * * *

(3) The Secretary may determine that an institution is financially responsible even if it would otherwise be considered not to be financially responsible under paragraph (c)(5) of this section if—

(i) The institution notifies the Secretary of the change in its ownership in accordance with 34 CFR 600.30; and

(ii)(A) The individual repays to the Secretary a portion of the liability described in paragraph (c)(5)(vi) of this section, unless an agreement with the Secretary to repay that liability exists, the liable party is not in default on that agreement, and the portion repaid equals or exceeds the percentage of that individual's ownership in the defunct institution or the parent corporation of the defunct institution; or

(B) The institution demonstrates that the individual lacks the ability to affect substantially the institution's actions.

(4) For purposes of this section, a "defunct institution" is an institution that permanently closed or ceased to provide educational programs (except during normal vacation periods).

* * * * *

8. Section 668.20 is amended by amending paragraph (c)(1) to remove the word "or" after the semicolon, amending paragraph (c)(2) to remove the period and add, in its place, the term "; or", and revising the section heading and adding a new paragraph (c)(3) to read as follows:

§ 668.20 Limitations on remedial coursework that is eligible for Title IV, HEA program assistance.

* * * * *

(c) * * *

(3) The educational level of instruction provided in that course is below the secondary level, as determined by—

(i) The institution;

(ii) The State agency that legally authorized the institution to provide postsecondary education, if that agency has procedures for making that determination; or

(iii)(A) In the case of an accredited or preaccredited institution, the nationally recognized accrediting agency or association that accredits or preaccredits the institution, if that agency or association has procedures for making that determination; or

(B) In the case of a public postsecondary vocational institution that is approved by a State agency recognized for the approval of public postsecondary vocational education, the State agency recognized for the approval of public postsecondary vocational education that approves the institution, if that agency has procedures for making that determination.

* * * * *

9. In § 668.23, paragraph (b) is revised to read as follows:

§ 668.23 Audits, records, and examination.

* * * * *

(b) An institution that participates in any Title IV, HEA program shall cooperate with the Secretary, the Education Department's Inspector General, and the Comptroller General of the United States, or their authorized representatives, in the conduct of audits, investigations, and program reviews authorized by law. This cooperation must include—

(1) Providing timely access, for examination and copying, to the records required by the applicable regulations and to any other pertinent books, documents, papers, and records; and

(2) Providing reasonable access to institutional personnel associated with the institution's administration of the Title IV, HEA programs for the purpose of obtaining relevant information. Examples of restrictions that would not result in reasonable access to personnel include the following:

(i) Limiting the extent of relevant information to be supplied.

(ii) Requiring the presence of institutional representatives during personnel interviews.

(iii) Requiring that personnel interviews be tape recorded, for the records of the institution.

* * * * *

10. Section 668.90, as proposed to be revised in a Notice of Proposed Rulemaking published on September 16, 1988 (53 FR 36215), is further amended by removing the word "or" after the semicolon in paragraph (a)(3)(i), removing the period at the end of paragraph (a)(3)(ii), and adding, in its place, a semicolon, removing the period at the end of paragraph (a)(3)(iii) and adding, in its place, a semicolon, and adding new paragraphs (a)(3) (iv) and (v) to read as follows:

§ 668.90 Initial and final decisions—Appeals.

(a) * * *

(3) * * *

(iv) In a termination action against an institution, based on the grounds that the institution has not met an applicable deadline for filing of the institution's audit report under § 668.23(c)(4) or the Single Audit Act (Chapter 75 of Title 31, United States Code), the administrative law judge must find that the termination is warranted if the institution—

(A) Failed either to request a hearing or to submit written material indicating why a fine should not be imposed in response to the notice sent under § 668.84(b)(1) by the designated department official informing the institution of the Secretary's intent to fine the institution for not meeting that deadline; or

(B) Failed, during the four years prior to that deadline, to meet at least one of the previous applicable deadlines for submission of its audit report under § 668.23(c)(4) or the Single Audit Act; or

(v) In a termination action against an institution based on the grounds that the institution is not financially responsible under § 668.13(c)(5), the administrative law judge must find that the termination is warranted unless the institution demonstrates that—

(A) The individual described in § 668.13(c)(5) has met the conditions described in § 668.13(d)(3); or

(B) The individual described in § 668.13(c)(5) lacks the ability to affect substantially the institution's actions.

* * * * *

[FR Doc. 89-6383 Filed 3-16-89; 8:45 am]

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federal register

Friday
March 17, 1989

Part VI

Department of Health and Human Services

Health Care Financing Administration

Medicare Program; Meeting of the Supplemental Health Insurance Panel; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[BPO-085-N]

Medicare Program; Meeting of the Supplemental Health Insurance Panel

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

ACTION: Notice of public meeting.

SUMMARY: This notice announces a meeting of the Supplemental Health Insurance Panel for the purpose of reviewing State Medicare supplemental health insurance programs. The Panel will determine whether such programs meet the minimum standards contained in Section 1882 of the Social Security Act, as amended by the Omnibus Budget Reconciliation Act of 1987 (OBRA 87) and the Medicare Catastrophic Coverage Act of 1988 (MCCA). The meeting will be open to the public. Due to room size, however, seating is limited. Attendees will be seated on a first come, first served basis.

DATE: The meeting will be held on March 21, 1989 from 1:00 to 3:30 p.m., CST.

ADDRESS: The meeting will be held at the Excelsior Hotel, Little Rock, Arkansas. Room location will be posted at the hotel.

FOR FURTHER INFORMATION CONTACT: Theresa DeGrange, (301) 966-7449.

SUPPLEMENTARY INFORMATION:

I. Purpose

The Supplemental Health Insurance Panel (Panel) was established in 1980 by section 507 of the Social Security Disability Amendments of 1980, Pub. L. 96-265, which added section 1882 to Title XVIII of the Social Security Act (the Act). This law established minimum standards for Medicare supplemental health insurance or "Medigap" policies in order to protect Medicare beneficiaries from abuses found to be prevalent in the marketing of such policies. The Panel is comprised of four State Insurance Commissioners and a chairperson. The chairperson is the Director, Bureau of Program Operations, HCFA (by delegation of authority from the Secretary of the Department of Health and Human Services). Panel meetings are open to the public. Initially, under section 1882(b)(2)(A) of the Act, State Commissioners were appointed to the Panel by the President. However, section 221(f) of the Medicare Catastrophic Coverage Act of 1988 (MCCA), Pub. L. 100-360, authorizes the Secretary to make these appointments.

The primary responsibility of the Panel is to review the States' legislative and regulatory requirements for Medicare supplemental health insurance policies to determine whether the individual State standards are equal to or more stringent than certain Federal requirements described in section 1882(b)(1) of the Act. States with Panel-approved programs are not subject to the Federal Voluntary Certification Program (VCP) for Medigap policies. There are at present 49 jurisdictions, including 46 States, that are not subject to VCP for Medigap policies. Also as specified in section 1882 of the Act, the VCP allows individual insurers in States with programs not approved by the Panel to submit Medicare supplemental policies to the Secretary for review. Those policies found to meet or exceed the Federal minimum standards can be certified as such and bear a Federal emblem when marketed in a nonapproved State.

The initial identification of complying and noncomplying State programs was completed in 1982. Since that time the Panel's principal legal responsibility has been to assure that approved States continue to maintain programs meeting Federal standards and to review changes made by States.

Section 1882 of the Act requires the Panel to review all State Medicare supplemental health insurance regulatory programs to determine whether they meet the minimum standards contained in section 1882 of the Act as amended. The States have been asked to submit to the Panel: a description of the State's plan to incorporate the revised minimum standards under section 1882 of the Act, including timetables for both OBRA 87 and MCCA provisions; a copy of the State statute(s) to regulate health insurance policies designed to supplement Medicare; a copy of any State regulations that implement the statute(s); a copy of any material that interprets the State's statute(s) and regulations governing such policies; a copy of any pending legislation that affects such policies; and a copy of any draft State regulations that would affect this area together with an indication of the expected date of final publication of such regulation. The Panel will compare the States' submitted materials with the Federal law and the National Association of Insurance Commissioners (NAIC) Model Regulation for Medicare Supplements, formally adopted on September 20, 1988.

The Panel began making its determinations as to the status of individual State programs in a December 13, 1988 meeting. At that time 5 states were granted conditional approval.

II. Agenda

The major agenda item for the meeting is the review of State programs. Agenda items are subject to change as priorities dictate.

(Catalog of Federal Domestic Assistance Program No. 13.774; Medicare—Supplementary Medical Insurance)

Dated: March 8, 1989.

Terry Coleman,

Acting Administrator, Health Care Financing Administration.

[FR Doc. 89-6515 Filed 3-16-89; 12:34 pm]

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Reader Aids

Federal Register

Vol. 54, No. 51

Friday, March 17, 1989

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-5237

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Data base and machine readable specifications	523-3408
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, MARCH

8519-8722.....1
8723-9024.....2
9025-9194.....3
9195-9412.....6
9413-9752.....7
9753-9978.....8
9979-10134.....9
10135-10266.....10
10267-10534.....13
10535-10620.....14
10621-10970.....15
10971-11156.....16
11157-11362.....17

CFR PARTS AFFECTED DURING MARCH

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

1 CFR

2.....9670
3.....9670
5.....9670
6.....9670
7.....9670
8.....9670
9.....9670
10.....9670
11.....9670
12.....9670
15.....9670
16.....9670
17.....9670
18.....9670
19.....9670
20.....9670
21.....9670
22.....9670

3 CFR

Proclamations:
5938.....8723
5939.....9193
5940.....9195
5941.....10261

Executive Orders:
12171 (Amended by EO 12671).....11157
12670.....10267
12671.....11157

Administrative Orders:
Memorandums:
Feb. 14, 1989.....9753
Presidential Determinations:
No. 89-11 of Feb. 28, 1989.....9413

5 CFR

317.....9755
339.....9761
831.....10135
1204.....8725

Proposed Rules:
1201.....8753

7 CFR

21.....8912
401.....9766, 10621
800.....9197
907.....9025, 10136, 10535, 10971, 11159
910.....9026, 10137, 11160
955.....10972
959.....8519
980.....8521
985.....9766
989.....9415
1809.....8521
1922.....8521
1930.....9197
1944.....8521
1945.....8521
1951.....10269
1965.....8521

Proposed Rules:
1.....11204
15b.....9966
29.....10012
51.....9824, 10014
52.....10333
58.....9452
301.....10992
318.....9453
401.....9825
402.....9826
411.....9827
416.....9828
422.....9829
425.....9830
430.....9831
433.....9831
435.....9832
436.....9833
437.....9834
443.....9835
725.....11001
726.....11001
800.....9054
906.....9455
917.....9457
925.....11004
927.....8544
928.....10155
933.....10341
946.....10156
989.....10158
1005.....11206
1040.....10214
1106.....9458
1137.....10159
1901.....10342
1951.....9217
1955.....10342
1980.....10342

8 CFR

204.....11160
214.....10978

Proposed Rules:
204.....9459
210a.....9054

9 CFR

92.....9768
313.....9198
327.....10621
381.....10621

Proposed Rules:
1.....10822
2.....10835
3.....10897
91.....9459

92 ..... 9836, 10356
145 9842
147 9842
203 10018
317 9370
381 9370

10 CFR

9 10138
50 11161
430 11320
1039 8912

Proposed Rules:

4 ..... 9966, 11224
31 10550
50 9229
600 10670
1040 9966

11 CFR

114 10622

12 CFR

201 10270
202 9416
205 9416
208 10482
226 9417
265 10139

13 CFR

124 10271

Proposed Rules:

113 9966
120 ..... 9233, 9424
129 9424

14 CFR

39 ..... 8527, 9026, 10139, 10276, 10622, 10624, 10625, 11163–11177
71 ..... 8528, 8726, 8727, 9028, 9009, 9406, 10140, 11178, 11179
95 10278
97 ..... 9030, 10284
129 11116
241 9590
1208 8912
1215 10627
1260 9426

Proposed Rules:

1 9276
21 ..... 9738, 10160, 10163
23 ..... 9276, 9338, 10160
25 10160
36 9738
39 ..... 8544–8550, 8758, 8759, 10165, 11224–11228
43 9738
71 ..... 8551–8556, 8760, 8761, 9061, 9063, 10166, 10167 11005, 11230–11232
73 10167
75 9063–9065
91 ..... 9338, 9738
121 10484
135 ..... 9338, 10484
141 9738
147 9738
1251 9966
1259 10357

15 CFR

11 8912
799 9770

Proposed Rules:

787 9233
1150 10550

16 CFR

13 ..... 9198, 9199, 9428
456 10285

17 CFR

30 11179
210 10306
229 9770
240 10306
249 ..... 9770, 10306
270 10306
274 10306

Proposed Rules:

33 11233
34 9460
240 ..... 9842, 10360, 10552, 10675, 10680
270 9843

18 CFR

Ch. I 9031
141 8529
154 8728
157 8728
260 ..... 8529, 8728
277 8529
284 8728
357 8529
385 8728
388 8728
410 9199
1306 8912

Proposed Rules:

270 8557
271 8557

19 CFR

Ch. 1 9429
10 10322
24 10322
113 10536
148 10322

Proposed Rules:

24 10019
132 ..... 10019, 10214
141 10019
142 10019
143 10019

21 CFR

1 9033
2 9033
5 9033
7 9033
10 9033
12 9033
13 9033
14 9033
16 9033
20 9033
21 9033
25 9033
50 9033
56 9033
58 9033
74 9200
176 10627
177 10630
178 9774
184 10482
291 8954
510 ..... 8880, 9979
520 8880
522 9590
558 ..... 9429, 10979, 11182
1308 10632

Proposed Rules:

291 ..... 8973, 8976
1306 11006

22 CFR

51 8531

Proposed Rules:

142 9966
217 9966

23 CFR

646 9039

24 CFR

42 8912
201 10536
219 9708
840 8880
968 ..... 8880, 9039
990 10657

26 CFR

1 ..... 8728, 10537, 10616, 10660 10980
7 9200
601 10660
602 10537

Proposed Rules:

1 ..... 9236, 9460, 11007, 11236
7 9236
31 11236
35a 11236

28 CFR

11 9979
60 9430
64 9043
511 11322
541 11322

Proposed Rules:

513 11326
544 11331
545 11332

29 CFR

12 8912
1910 9294
1952 9044
2520 8624
2610 10660
2619 10661
2676 10662

Proposed Rules:

530 11008
1626 10025

30 CFR

701 9724
773 8982
778 8982
785 9724
843 8982
925 10663
931 ..... 9980, 11183
934 10141

Proposed Rules:

56 10256
57 10256
202 9066
206 9066
210 9066
212 9066
761 9847
931 10562
935 ..... 8561, 8562

31 CFR

203 8532
214 8532
500 11185
515 9431

Proposed Rules:

235 10366
240 10366
245 10366
248 10366

32 CFR

45 9983
199 ..... 8733, 9202
259 8912
358 9989
383 8534
518 ..... 9990, 10541

Proposed Rules:

284 11237

33 CFR

117 ..... 10541, 10665
165 ..... 9775, 9776, 9778, 11185

Proposed Rules:

100 10373–10375
117 ..... 10377, 10562
401 9504

34 CFR

15 8912
237 10966

Proposed Rules:

76 8708
77 8708
104 9966
250 10500
298 8708
300 10500
315 10500
324 10500
332 10500
366 10500
369 10500
385 10500
396 10500
400 10500
600 11354
607 10500
608 10500
609 10500
624 10500
628 10500
629 10500
630 10500
631 10500
637 10500
639 10500
643 10500
644 10500
645 10500
646 10500
649 10500
656 10500
657 10500
658 10500
688 11354
692 10500
745 10500
755 10500

773.....10500

36 CFR

904.....8912

Proposed Rules:

290.....9066

37 CFR

1.....9431

Proposed Rules:

1.....9507, 11009, 11334
2.....9514, 11009
10.....11334

38 CFR

4.....10482
25.....8912

Proposed Rules:

18.....9966
21.....9237, 10377, 10378

39 CFR

111.....9210
777.....10666

Proposed Rules:

111.....10563
3001.....9848

40 CFR

4.....8912
52.....8537, 8538, 9212, 9432–9434, 9780, 9781, 9783, 9796, 9992, 9993, 10145, 10147, 10214, 10322, 10323, 10982, 10983, 11186
61.....10985
62.....9045
124.....9596
147.....8734, 10616
180.....8540, 9799, 10542, 10962
228.....11189
270.....9596
271.....10986
300.....10512, 10520, 11203
370.....10325
372.....10668
471.....11346

Proposed Rules:

7.....9966
52.....8762, 8764, 10380, 10381, 10565, 11016, 11108
60.....8564, 8570
61.....9612
228.....10386
260.....10388
261.....10388
262.....10388
264.....10388
265.....10388
268.....10388
270.....10388

41 CFR

101–6.....9213
101–7.....10543
105–51.....8912
114–50.....8912
128–18.....8912

42 CFR

5.....8735
405.....8994
433.....8738
435.....8738
1001.....9995

Proposed Rules:

110.....9180

43 CFR

Public Land Order:

6710.....9213
6711.....10988

Proposed Rules:

4.....9852, 10784
8380.....9066

44 CFR

25.....8912
65.....8540
352.....10616

Proposed Rules:

59.....9523
60.....9523
65.....9523
67.....10682

45 CFR

15.....8912
233.....10544
306.....10148

Proposed Rules:

84.....9966
605.....9966
1151.....9966
1170.....9966
1232.....9966
1340.....11246
1632.....10569

46 CFR

Proposed Rules:

Ch. I.....8765
221.....10168
550.....11249
580.....11249
581.....11249

47 CFR

1.....10326
2.....9996
21.....10326
15.....9996
22.....10326
65.....9047
73.....8742–8744, 9214, 9437, 9800, 9804, 9997–9999, 12203
74.....10326
76.....9999
80.....8541, 8745, 10007
94.....10326

Proposed Rules:

68.....9067
73.....8765–8767, 10026, 10170–10172, 11250, 11251
76.....10026

48 CFR

204.....9807
219.....9807
252.....9807
501.....9049
505.....10149
514.....9049
532.....9049
552.....9049
553.....10149
932.....9807
952.....9807
1428.....10988
1452.....10988
1532.....9215
1552.....9215
1801.....10796
1804.....10796
1805.....10796
1807.....10796
1815.....10796
1816.....10796
1822.....10796
1823.....10796
1832.....10796
1834.....10796
1835.....10796
1836.....10796
1837.....10796
1842.....10796
1843.....10796
1845.....10796
1846.....10796
1847.....10796
1848.....10796
1852.....10796
1853.....10796

Proposed Rules:

5.....9720
15.....10133
17.....9720
35.....9720
42.....10133
52.....10133
525.....9067
546.....9067
552.....9067

49 CFR

1.....8746, 10009
7.....10009
24.....8912
173.....10010
580.....8747–8750, 9809, 9816
800.....10331
805.....10331
826.....10332
1105.....9822
1135.....8720
1152.....9822
1312.....10533
1314.....9052, 10533

Proposed Rules:

396.....11020
571.....9855, 11251
580.....9858
1016.....9071
1312.....9863
1314.....9863

50 CFR

17.....10150
33.....10544
216.....9438
260.....10547
301.....8542
371.....10989
651.....10010
652.....8751
655.....10549
675.....9216

Proposed Rules:

17.....8574, 9529
20.....8880
642.....11252
671.....9072

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List February 10, 1989

LIST OF ACTS REQUIRING PUBLICATION IN THE FEDERAL REGISTER, 1988

Additions to Table III, March 11, 1988 through November 23, 1988

This table lists the subject matter, public law number, and citations to the U.S. Statutes at Large and U.S. Code for those acts of the second session of the 100th Congress which require Federal agencies to publish documents in the Federal Register.

Table III appears in the CFR Index and Finding Aids volume revised as of January 1, 1989.

Description of Act	*Citation*
To authorize appropriations for the Bureau of the Mint for the fiscal year 1988, and for other purposes.	Public Law 100-274; 102 Stat. 49; 31 U.S.C. 5111.
Child Abuse Prevention, Adoption, and Family Services Act of 1988	Public Law 100-294; 102 Stat. 103; 42 U.S.C. 5102; 102 Stat. 107; 42 U.S.C. 5105.
Augustus F. Hawkins—Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988.	Public Law 100-297; 102 Stat. 189; 20 U.S.C. 2831; 102 Stat. 352; 20 U.S.C. 1234a; 102 Stat. 356; 20 U.S.C. 1234f; 102 Stat. 357; 20 U.S.C. 1234h; 102 Stat. 364; 25 U.S.C. 2005; 102 Stat. 368; 25 U.S.C. 2003.
Abandoned Shipwreck Act of 1987	Public Law 100-298; 102 Stat. 433; 43 U.S.C. 2104.
Big Cyrpress National Preserve Addition Act	Public Law 100-301; 102 Stat. 444; 16 U.S.C. 698m-1.
To amend the Merchant Marine Act, 1920, and for other purposes	Public Law 100-329; 102 Stat. 589; 46 U.S.C. app. 883 note.
To amend the Act providing for the establishment of the Tuskegee Institute National Historic Site, to authorize an exchange between the United States and Tuskegee University, and for other purposes.	Public Law 100-337; 102 Stat. 618; 16 U.S.C. 461 note.
Medicare Catastrophic Coverage Act of 1988	Public Law 100-360; 102 Stat. 705, 711, 712; 42 U.S.C. 1395m; 102 Stat. 737; 42 U.S.C. 1395n; 102 Stat. 740; 42 U.S.C. 1395t-1; 102 Stat. 742; 42 U.S.C. 1395t-2.
To amend the provisions of the Toxic Substances Control Act relating to asbestos in the Nation's schools by providing adequate time for local educational agencies to submit asbestos management plans to State Governors and to begin implementation of those plans.	Public Law 368; 102 Stat. 831; 15 U.S.C. 2645; 102 Stat. 832; 15 U.S.C. 2646.
Independent Safety Board Act Amendments of 1988	Public Law 100-372; 102 Stat. 876; 49 U.S.C. app. 1903.
To provide that certain lands shall be in trust for the Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, California.	Public Law 100-381; 102 Stat. 897.
Technology-Related Assistance for Individuals With Disabilities Act of 1988.	Public Law 100-407; 102 Stat. 1063; 29 U.S.C. 2253.
To settle certain land claims of the Coushatta Tribe of Louisiana against the United States, to authorize the use and distribution of the settlement funds, and for other purposes.	Public Law 100-411; 102 Stat. 1098.
Omnibus Trade and Competitiveness Act of 1988	Public Law 100-418; 102 Stat. 1128; 19 U.S.C. 2903; 102 Stat. 1134; 19 U.S.C. 2905; 102 Stat. 1168; 19 U.S.C. 2411; 102 Stat. 1169; 19 U.S.C. 2412; 102 Stat. 1170; 19 U.S.C. 2413; 102 Stat. 1171, 1172; 19 U.S.C. 2414; 102 Stat. 1174; 19 U.S.C. 2417; 102 Stat. 1177; 19 U.S.C. 2420; 102 Stat. 1181; 19 U.S.C. 2242; 102 Stat. 1190; 19 U.S.C. 1677; 102 Stat. 1196; 19 U.S.C. 1673h; 102 Stat. 1213; 19 U.S.C. 1337; 102 Stat. 1226, 1233; 19 U.S.C. 2252; 102 Stat. 1255; 19 U.S.C. 2397 note; 102 Stat. 1258, 1259; 19 U.S.C. 1862; 102 Stat. 1318; 19 U.S.C. 2702; 102 Stat. 1350, 1351, 1354-1357; 50 U.S.C. app. 2404; 102 Stat. 1434; 15 U.S.C. 278k; 102 Stat. 1440; 15 U.S.C. 278n; 102 Stat. 1543; 42 U.S.C. 1862a.
Commercial Fishing Industry Vessel Safety Act of 1988	Public Law 100-424; 102 Stat. 1588; 46 U.S.C. 4508.
Making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 1989, and for other purposes.	Public Law 100-446; 102 Stat. 1783; 2 U.S.C. 178b.
United States-Canada Free-Trade Agreement Implementation Act of 1988.	Public Law 100-449; 102 Stat. 1854, 1855, 1865, 1870; 19 U.S.C. 2112 note; 102 Stat. 1878, 1880, 1881; 19 U.S.C. 1516a.
National Defense Authorization Act, Fiscal Year 1989	Public Law 100-456; 102 Stat. 2080, 2081; 42 U.S.C. 2286d.
Department of Transportation and Related Agencies Appropriations Act, 1989.	Public Law 100-457; 102 Stat. 2149.
Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1989.	Public Law 100-459; 102 Stat. 2198.
Indian Self-Determination and Education Assistance Act Amendments	Public Law 100-472; 102 Stat. 2296; 25 U.S.C. 450k.
To authorize appropriations to carry out the Endangered Species Act of 1973 during fiscal years 1988, 1989, 1990, 1991, and 1992, and for other purposes.	Public Law 100-478; 102 Stat. 2318; 16 U.S.C. 4221; 102 Stat. 2319; 16 U.S.C. 4222.
Prompt Payment Act Amendments of 1988	Public Law 100-496; 102 Stat. 2456; 31 U.S.C. 3902.
Indian Gaming Regulatory Act	Public Law 100-497; 102 Stat. 2469; 25 U.S.C. 2704; 102 Stat. 2474, 2476, 2479; 25 U.S.C. 2710; 102 Stat. 2486; 25 U.S.C. 2719.
Inspector General Act Amendments of 1988	Public Law 100-504; 102 Stat. 2524; 5 U.S.C. app.
To provide for the establishment of the Coastal Heritage Trail Route in the State of New Jersey,and for other purposes.	Public Law 100-515; 102 Stat. 2563; 16 U.S.C. 1244 note.
Federal Insecticide, Fungicide, and Rodenticide Act Amendments of 1988.	Public Law 100-532; 102 Stat. 2656-2658, 2661; 7 U.S.C. 136a-1; 102 Stat. 2668; 7 U.S.C. 136d.

Description of Act	*Citation*
West Virginia National Interest River Conservation Act of 1987	Public Law 100-534; 102 Stat. 2708; 16 U.S.C. 1274.
Imported Vehicle Safety Compliance Act of 1988	Public Law 100-562; 102 Stat. 2820, 2822; 15 U.S.C. 1397.
Zuri-Cibola National Historic Park Establishment Act of 1988	Public Law 100-567; 102 Stat. 2847; 16 U.S.C. 410pp-1.
Berne Convention Implementation Act of 1988	Public Law 100-568; 102 Stat. 2855; 17 U.S.C. 116A.
National Science Foundation Authorization Act of 1988	Public Law 100-570; 102 Stat. 2876, 2877; 42 U.S.C. 1862c.
Asbestos Information Act of 1988	Public Law 100-577; 102 Stat. 2901; 15 U.S.C. 2607 note.
Hoopa-Yurok Settlement Act	Public Law 100-580; 102 Stat. 2925, 2927; 25 U.S.C. 1300i-1; 102 Stat. 2929; 25 U.S.C. 1300i-4; 102 Stat. 2935; 25 U.S.C. 1300i-10.
To establish procedures for review of tribal constitutions and bylaws or amendments thereto pursuant to the Act of June 18, 1934 (48 Stat. 987).	Public Law 100-581; 102 Stat. 2946.
To provide authorization of appropriations for activities of the National Telecommunications and Information Administration.	Public Law 100-584; 102 Stat. 2970.
Health Omnibus Programs Extension of 1988	Public Law 100-607; 102 Stat. 3066, 3067; 42 U.S.C. 300cc-12.
Outer Continental Self Operations Indemnification Clarification Act of 1988.	Public Law 100-610; 102 Stat. 3177; 16 U.S.C. 668dd note.
To authorize appropriations to carry out titles II and III of the Marine Protection, Research, and Sanctuaries Act of 1972, to establish the National Oceans Policy Commission, and for other purposes.	Public Law 100-627; 102 Stat. 3214; 16 U.S.C. 1434.
Technical and Miscellaneous Revenue Act of 1988	Public Law 100-647; 102 Stat. 3770; 45 U.S.C. 358; 102 Stat. 3811; 16 U.S.C. 429b.
Recreation and Public Purposes Amendment Act of 1988	Public Law 100-648; 102 Stat. 3815; 43 U.S.C. 869-2 note.
Business Opportunity Development Reform Act of 1988	Public Law 100-656; 102 Stat. 3871; 15 U.S.C. 637 note; 102 Stat. 3898; 15 U.S.C. 636 note.
To amend the Act entitled "An Act to provide for the registration and protection of trade-marks used in commerce, to carry out the provisions of certain international conventions, and for other purposes.	Public Law 100-667; 102 Stat. 3953-3955; 17 U.S.C. 119.
Washington Park Wilderness Act of 1988	Public Law 100-668; 102 Stat. 3966.
Generic Animal Drug and Patent Term Restoration Act	Public Law 100-670; 102 Stat. 3975; 21 U.S.C. 360b; 102 Stat. 3986; 35 U.S.C. 156.
Water Resources Development Act of 1988	Public Law 100-676; 102 Stat. 4042, 4045.
Office of Federal Procurement Policy Act Amendments of 1988	Public Law 100-679; 102 Stat. 4061; 41 U.S.C. 422.
National Aeronautics and Space Administration Authorization Act, Fiscal Year 1989.	Public Law 100-685; 102 Stat. 4100; 15 U.S.C. 1534.
Anti-Drug Abuse Act of 1988	Public Law 100-690; 102 Stat. 4211; 42 U.S.C. 290aa-14; 102 Stat. 4257; 42 U.S.C. 11825; 102 Stat. 4436; 42 U.S.C. 5614; 102 Stat. 4446; 45 U.S.C. 5665a; 102 Stat. 4458; 42 U.S.C. 5732; 102 Stat. 4461; 42 U.S.C. 5776; 102 Stat. 4475; 19 U.S.C. 1514 note; 102 Stat. 4525; 23 U.S.C. 410 note.
Delaware and Lehigh Navigational Canal National Canal Heritage Corridor Act of 1988.	Public Law 100-692; 102 Stat. 4553.
Arizona-Idaho Conservation Act of 1988	Public Law 100-696; 102 Stat. 4582; 102 Stat. 4600; 16 U.S.C. 460zz-1.
To establish in the Department of the Interior the Southwestern Pennsylvania Heritage Preservation Commission, and for other purposes.	Public Law 100-698; 102 Stat. 4622; 16 U.S.C. 1244 note.
To correct historical and geographical oversights in the establishment and development of the Utah component of the Confederated Tribes of the Goshute Reservation, to unify the land base of the Goshute Reservation, to simplify the boundaries of the Goshute Reservation, and for other purposes.	Public Law 100-708; 102 Stat. 4718.
Marine Mammal Protection Act Amendments of 1988	Public Law 100-711; 102 Stat. 4755, 4756, 4760, 4762; 16 U.S.C. 1383a; 102 Stat. 4763, 4764; 16 U.S.C. 1383b.