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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

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2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

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WHEN: March 30, at 1:00 p.m.
WHERE: 841 Chestnut Street, Room 705, Philadelphia, Pa
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WHEN: April 11, at 9:00 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC
RESERVATIONS: 202-523-5240

SALT LAKE CITY, UT

WHEN: April 12, at 9:00 a.m.
WHERE: State Office Building Auditorium, Capitol Hill, Salt Lake City, UT
RESERVATIONS: Call the Utah Department of Administrative Services, 801-538-3010

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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.

Rules and Regulations

Federal Register
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DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Parts 1910 and 1941

Delinquent Borrowers; Annual Operating Loans; Implementation of Provisions of the Supplemental Appropriations Act

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its authority that became effective on March 16, 1988, for the making of annual operating (OL) loans to delinquent borrowers for production purposes, or the granting of subordinations to delinquent borrowers to enable them to obtain annual operating credit from another lending source. This action is necessary in order to clarify eligibility criteria so that assistance is provided to deserving farmers. The intended effect is to assure compliance with the intent of Congress as stated by the Supplemental Appropriations Act of 1987 (Pub. L. 100–71), dated July 11, 1987, and in conjunction with the Agricultural Credit Act of 1987 (Pub. L. 100–233). Consideration for such assistance will be given only to delinquent borrowers whose accounts have not been accelerated and FmHA has not completed the process of debt restructuring as provided for by the Agricultural Credit Act of 1987.

EFFECTIVE DATE: March 20, 1989.

ADDRESS: The Regulatory Impact Analysis Statement (RIA) will be available for public inspection during regular working hours at the following address: Office of the Chief, Directives and Forms Management Branch, Farmers Home Administration, USDA, Room 6348, South Agriculture Building, 14th Street and Independence Avenue SW., Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Mark Falcone, Senior Loan Officer, Farmer Programs Loan Making Division, Farmers Home Administration, USDA, South Agriculture Building, 14th Street and Independence Avenue SW., Washington, DC 20250, telephone (202) 475–4019.

SUPPLEMENTARY INFORMATION:

Classification

This action was reviewed under USDA procedures established in Department Regulation 1512–1, which implements Executive Order 12291, and was determined to be major because it will result in an annual effect on the economy of $100 million or more.

Memorandum of Law

I have reviewed the regulations which the Farmers Home Administration (FmHA) is issuing as a final rule to implement a provision in Chapter X of Pub. L. 100–71, the Supplemental Appropriations Act for 1987 (101 Stat. 429). I find that these regulations comply with that statute and that FmHA has the authority to issue such regulations pursuant to section 339 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1989).

Christopher Hicks,
General Counsel.

Summary of RIA

The USDA developed a Regulatory Impact Analysis (RIA), which was summarized in the original final rule, and was published in the **Federal Register** (53 FR 8738–8740), dated March 16, 1988. A study was done to document the cost of implementing this rule. Since implementation, annual operating loans and subordinations were made to delinquent borrowers in nearly every state during FY 1988. We anticipate continued loan making activity in FY 1989. No comments were received that addressed the RIA. Therefore, no revisions to the estimates contained in the RIA have been made.

Intergovernmental Consultation

For the reasons set forth in the final rule related to Notice 7 CFR Part 3015, Subpart V (48 FR 29115, June 24, 1983) and FmHA Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and Activities" (December 23, 1983), Farm Operating Loans are excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Programs Affected

These changes affect the FmHA operating loan program, as listed in the Catalog of Federal Assistance: 10.406—Farm Operating Loans.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

Discussion of Final Rule

The regulations authorizing the making of annual operating loans or granting of subordinations for delinquent borrowers were published on March 16, 1988, to comply with a provision in Chapter X of Title I of the Supplemental Appropriations Act for 1987 (Pub. L. 100–71), dated July 11, 1987. Due to comments received from a member of the public several days before the final rule was published (three months after the comment period ended), another proposed rule was published on September 26, 1988 (53 FR 37317–19), to address these important issues. The commenter stated the existing regulation is more restrictive than the policy that was in effect under FmHA Administrative Notice (AN) No. 1113 (1960), dated November 30, 1984, to which the law states FmHA must adhere. Pub. L. 100–71 states that FmHA shall make or service farm loans to delinquent borrowers on the basis of the policies contained in the AN. That AN set forth certain conditions delinquent borrowers had to meet in order to qualify for assistance. One of those conditions was, the borrower had to have been unable to pay accounts as scheduled. The AN listed three acceptable examples of why they were unable to make payments: (1) Reduction in income from a non-farm job; (2) reduction in income due to illness,

injury, or death of the individual or a member of the entity borrower; or (3) reduction in income due to a natural disaster, uncontrollable disease, or insect damage. When FmHA published the proposed rule on November 16, 1987 (52 FR 43766–68), and the final rule on March 16, 1988, these examples were converted to conditions. It was this change in wording that the commenter claimed made the regulation much more restrictive.

The commenter also requested the following:

(1) All delinquent borrowers who inquire or apply for operating loans or request a subordination should be notified in writing by FmHA about the availability of the program.

(2) FmHA should reconsider assistance to all operating loan applicants who were denied assistance since enactment of the law on July 11, 1987.

(3) FmHA should change the present sentence on non-disturbance agreements to the way it was stated in AN No. 1113 (1960).

The above issues were all discussed in the proposed rule, and comments were solicited.

FmHA also addressed an issue in the proposed rule relating to the new debt restructuring/writedown program that is available to borrowers as a result of the 1987 Agricultural Credit Act of 1987. FmHA proposed to limit "Continuation Loans" to only those farm borrowers whose loans and accounts have not been fully considered for such restructuring/writedown. Comments were also solicited on this important issue.

The purpose of this final rule is to revise the existing regulation and assure that it is no more restrictive than AN No. 1113 (1960) was.

Discussion of Comments and Changes

Ten comment letters were received by the close of business on October 31, 1988. The deadline for receiving written comments was October 26, 1988. Comments were received from individuals, including several FmHA borrowers, and from various groups representing farmers.

All commenters addressed their concerns on eligibility criteria relating to the use of "examples" in AN No. 1113 (1960) and the change in the final rule published on March 16, 1988. Specifically, they all felt the eligibility criteria were much more restrictive than Congress intended. Everyone agreed with FmHA's proposed change not to use the three reasons as conditions. Most favored listing them as examples, or specifying that they were examples only, thus allowing borrowers to show that other circumstances beyond their control caused them to be unable to make payments as scheduled. Several expressed that FmHA should drop the examples completely and clarify the intent by stating the borrower has been unable to pay his/her accounts as scheduled "due to circumstances beyond his/her control."

One commenter stated that County Supervisors should have used the continuation policy to assist delinquent borrowers instead of using the restrictive language to deny them assistance. Two commenters said they or their clients were denied assistance as a result of these restrictions, but had previously received assistance under the AN.

While most commenters said it was common knowledge that the list of examples in the AN were treated as examples by County Supervisors, one commenter believed that FmHA failed to implement the policy in 1984 and 1985, as very few loans were made in that commenter's locality during that period. This commenter stated that Continuation Loans must not be denied simply because FmHA County Supervisors had denied such loans in earlier years; and it should be stated that the program will be no more restrictive than the 1982 Continuation Policy.

FmHA will adopt these comments concerning the issue on "examples" by specifying in the regulations that consideration of the borrower's eligibility will not be limited to the examples. FmHA will not adopt the comment that the program will be no more restrictive than the Continuation Policy in effect in 1982, as the law clearly states the program will be based on the policies contained in the AN dated November 30, 1984.

Several comments were received requesting that FmHA publicize the program to ensure borrowers are aware the program exists. One respondent commented it was naive, as well as a poor decision on the part of FmHA, to leave to chance that the County Supervisor will "automatically consider" borrowers for this program. This respondent also mentioned that during the early years of the Continuation Program many farmers were discouraged from applying, as they were told they would not be eligible; and the only ones who received assistance were the ones the County Supervisor wanted to help. Another commenter, a member of the same group who addressed this issue shortly before the final rule was published March 16, 1988, addressed this issue again. The commenter emphasized that the County Supervisor should be required to verbally notify delinquent borrowers of the availability of the Continuation Policy loans whenever such borrower inquires about or submits an application for an operating loan.

The commenter agreed with the Agency's explanation in the proposed regulations that "automatic consideration" by the County Supervisor is appropriate, but went on to explain that reports to the group's office indicate automatic consideration has not been happening; and borrowers are generally uninformed about the program. The commenter suggests the regulations should require that automatic consideration be given; and when an application for an operating loan is denied, the denial letter must clearly explain why the borrower is not eligible for a regular operating loan, and why the borrower is not eligible for assistance (loan or subordination) under this program. FmHA will adopt these comments.

The same commenter also requested that a "Notice of Continuation Policy" should be drafted and given to all delinquent borrowers who inquire about or submit applications for operating loans or subordinations, or who are denied an operating loan or subordination. The Agency will not adopt this comment.

Several commenters addressed the issue of reconsidering assistance to applicants who were denied operating loan assistance since enactment of the law on July 11, 1987. One respondent recommended that the Agency reconsider retroactive availability, citing a court case decision that he contends is a legal basis for considering retroactive eligibility. The Agency will not adopt this comment. This issue was addressed in the proposed rule.

Another respondent understood that the law does not require retroactive consideration, but expressed that since it has taken 18 months to publish what the respondent considered "correct proposed regulations" that it is only fair to reconsider borrowers who were previously denied under the more restrictive regulation. Since Pub. L. 100–71 did not require any notice to delinquent borrowers, FmHA declines to provide a notice when amending the regulations which implemented the statute.

One comment was received on the Agency's proposal to change the present sentence on non-disturbance agreements to the way it was in AN 1113. The respondent agreed with this

change. The Agency will adopt the proposed revision.

Several comments were received addressing the proposed revision to prohibit assistance under this program to all delinquent borrowers who have been fully considered for restructuring/writedown in accordance with Subpart S of Part 1951 of this chapter. One commenter stated this proposal is too broad, and should not include those who were successful at restructuring their debt, as they should be treated like any other borrower who is current and in good standing. The commenter pointed out that the Agency's new regulations published as an interim rule in the **Federal Register** on September 14, 1988 (53 FR 35638–35798) clearly state that debt restructuring cannot be considered as an indication of unacceptable credit history, and since the regulations allow such a borrower to apply for debt restructuring if he/she becomes delinquent in the future, the borrower should also have the opportunity to apply for a Continuation loan in order to keep operating while the debt restructuring is being considered.

Other commenters agreed that those who are successful with restructuring their debt may need Continuation Loans in the future, if they again become delinquent due to circumstances beyond their control. As a result of these comments, the Agency will modify the proposed rule to allow Continuation Loans to those borrowers who are successful in restructuring their debt in accordance with Subpart S of Part 1951 of this chapter, and at a later date become delinquent again for a reason(s) beyond their control.

One commenter stated borrowers should not be denied assistance for a Continuation Loan once the account is accelerated, as many accounts have been wrongfully accelerated. Such borrowers were afforded their appeal rights prior to acceleration. Therefore, the Agency will not adopt this comment.

The same commenter stated the Agency should not deny consideration for a Continuation Loan from anyone. The Agency will not deny anyone the opportunity to apply for assistance. However, in order to receive assistance, all eligibility criteria must be met by the applicant.

Another commenter stated the debt restructuring options should not be considered as a substitute for continued financing during the production year. The Agency does not intend to consider them as a substitute, but sees no purpose or benefit to the borrower or the Government in making Continuation Loans to borrowers who have no chance of repaying large amounts of debt, especially after all servicing actions, including the writedown of debt, cannot make their operation feasible.

One respondent commented there is a contradiction concerning eligibility criteria in §§ 1941.12 and 1941.14 of Subpart A of Part 1941 of this chapter. The commenter states that in order to qualify for a Continuation Loan, the regulations require that delinquent borrowers must otherwise meet the eligibility requirements of § 1941.12 of this subpart, along with the conditions stated in § 1941.14 of this subpart. The commenter claims one of his clients was denied assistance by the FmHA County Committee for repayment ability under § 1941.12(a)(5), while § 1941.14(a)(5) states that all debts do not have to show repayment for a Continuation Loan. He suggests that § 1941.12(a)(5) be revised by adding a clause exempting Continuation Loan applicants. FmHA will not adopt this comment, as the commenter has misinterpreted the regulations. These are two different types of eligibility criteria. Section 1941.12(a)(5) addresses eligibility criteria which are determined by a County Committee. This paragraph refers to management ability, based on past repayment of debt and reliability. It is the FmHA Loan Approval Official's decision to determine repayment ability, as stated in § 1941.33(b)(1)(iv), taking into consideration the definition of a feasible plan, as defined in § 1941.4. Section 1941.14(a)(5) excepts the requirement for a feasible plan, when all debt installments are considered, for Continuation Loan applicants. However, management ability must still be considered by the County Committee for all operating loan applicants.

Several administrative changes have been made in the final rule that differ from the proposed rule in an effort to eliminate misinterpretation by County Supervisors.

In the introductory language of § 1941.14, we have clarified which servicing options delinquent borrowers must be considered for before being determined eligible for annual production loans or subordinations. They will be the same servicing options as those published under the original final rule in the **Federal Register**, dated March 16, 1988, and include the following: Consolidation, rescheduling and/or reamortizing at regular interest rates; consolidation, rescheduling and/or reamortizing at limited resource rates; and deferral of principal and interest payments, including the softwood timber program.

Section 1941.14(b) has been revised by deleting reference to § 1941.16 and adding a cross reference to § 1962.17(b)(2)(ii)(A) of Subpart A of Part 1962 of this chapter to clarify the purposes for which loan funds can be used.

List of Subjects

7 CFR Part 1910

Applications, Credit, Loan programs—Agriculture, Loan programs—Housing and community development, Low and moderate income housing, Marital status, Discrimination, Sex discrimination.

7 CFR Part 1941

Crops, Livestock, Loan programs—Agriculture, Rural areas, Youth.

Therefore, Chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

PART 1910—GENERAL

1. The authority citation for Part 1910 is revised to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

Subpart A—Receiving and Processing Applications

2. Section 1910.1(a) is revised to read as follows:

§ 1910.1 General.

* * * * *

(a) The County Supervisor will provide information about FmHA services to all persons making inquiry about FmHA programs. This information may be provided by individual interviews, correspondence, or distribution of pamphlets, leaflets, and appropriate FmHA regulations. When a presently indebted farmer program borrower, whose account is delinquent, inquires about an OL loan, the County Supervisor will inform the borrower of the availability of annual production loans to delinquent borrowers, as outlined in § 1941.14 of Subpart A of Part 1941 of this chapter.

* * * * *

3. In § 1910.3, the following sentence is added after the second sentence in paragraph (c) to read as follows:

§ 1910.3 Receiving applications.

* * * * *

(c) * * * When a presently indebted farmer program borrower, whose account is delinquent, applies for OL assistance, County Office employees will inform the borrower of the availability of annual production loans to delinquent borrowers, as outlined in

§ 1941.14 of Subpart A of Part 1941 of this chapter. * * *

* * * * *

4. In § 1910.6, the following sentence is added after the first sentence in paragraph (d) to read as follows:

§ 1910.6 Notification of applicant.

* * * * *

(d) * * * When denial of an OL loan to a delinquent borrower is involved, the County Supervisor must clearly explain to the borrower why he/she is not eligible for the OL loan; and also why the borrower is not eligible for an annual production loan, as outlined in § 1941.14 of Subpart A of Part 1941 of this chapter. * * *

* * * * *

5. In § 1910.7, the following sentence is added after the first sentence in paragraph (b) to read as follows:

§ 1910.7 Counseling.

(b) * * * If the application request, from a delinquent borrower, is for OL assistance, the County Supervisor will automatically consider the borrower for assistance under § 1941.14 of Subpart A of Part 1941 of this chapter.

* * * * *

PART 1941—OPERATING LOANS

6. The authority citation for Part 1941 is revised to read as follows:

Authority: 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Operating Loan Policies, Procedures, and Authorizations

7. Section 1941.14 is amended by revising the introductory text, and paragraphs (a)(2) and (a)(6); by adding new paragraph (a)(7); and by revising paragraph (b) to read as follows:

§ 1941.14 Annual production loans to delinquent borrowers.

Delinquent borrowers who otherwise meet the eligibility criteria in § 1941.12 of this subpart, and whose accounts have not been accelerated by FmHA, and who cannot be assisted after considering consolidation, rescheduling and/or reamortizing at regular interest rates and consolidation, rescheduling and/or reamortizing at limited resource rates and deferral of principal and interest payments, including distressed Farmer Program loans for softwood timber production in applicable areas, all in accordance with Subpart S of Part 1951 of this chapter, will automatically be considered for annual production loans under this section or subordinations under Subpart A of Part 1962 and Subpart A of Part 1965 of this chapter, when the conditions in paragraph (a) of this section are met.

(a) * * *

(2) The borrower has been unable to pay accounts as scheduled. The following are examples, but eligibility is not limited to these examples:

* * * * *

(6) Nondisturbance agreements will be obtained from other creditors, as necessary.

(7) If FmHA has completed the process of considering the borrower for debt restructuring, pursuant to Subpart S of Part 1951 of this chapter, and the borrower has received the benefits of conservation easement or debt write-down, bringing the account current, the borrower may be considered for an annual production loan or subordination in the future, if the account again becomes delinquent due to circumstances beyond the borrower's control. Those borrowers for whom FmHA has completed the process of consideration for debt restructuring (including any administrative appeal and further review), who are determined not eligible for conservation easement or debt write-down benefits, and whose accounts have been accelerated, will not be eligible for assistance under this section. If FmHA has not completed the process (including any administrative appeal and further review) of considering the borrower for debt restructuring, the borrower may be considered for assistance under this section.

(b) Loan funds will be used to pay essential annual operating and family living expenses only, as defined in § 1962.17(b)(2)(ii)(A) of Subpart A of Part 1962 of this chapter.

* * * * *

8. Section 1941.33 is amended by revising paragraphs (b)(1)(iv) and (c)(2) to read as follows:

§ 1941.33 Loan approval or disapproval.

* * * * *

(b) * * *

(1) * * *

(iv) The proposed loan is based on a feasible plan, or meets the requirements set forth in § 1941.14(a)(5) of this chapter for annual production loans to delinquent borrowers. Planning forms other than Form FmHA 431–2 may be used when they provide all the necessary information.

* * * * *

(c) * * *

(2) The County Supervisor will notify the applicant in writing of the action taken, and include any suggestions that could result in favorable action. When denial of an OL loan to a delinquent farmer program borrower is involved, the County Supervisor must clearly explain why the borrower is not eligible for the OL loan and why the borrower is not eligible for an annual production loan as outlined in § 1941.14 of this chapter. The applicant will be notified, in writing, of the opportunity to appeal (see Subpart B of Part 1900 of this chapter).

* * * * *

Date: February 23, 1989.

Roland R. Vautour,

Under Secretary for Small Community and Rural Development.

[FR Doc. 89–6494 Filed 3–17–89; 8:45 am]

BILLING CODE 3410–07–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88–NM–56–AD; Amdt. 39–6165]

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Boeing Model 737 series airplanes, which would require replacement or modification of certain Generator Control Unit (GCU) filter modules. This amendment is prompted by reports of smoke in the cockpit as a direct result of the GCU filter module failures. This condition, if not corrected, could lead to additional GCU failures producing smoke in the cockpit, and partial loss of electrical power.

DATES: Effective April 28, 1989.

ADDRESSES: The applicable service information may be obtained from Westinghouse, Electrical Systems Division, P.O. Box 989, Lima, Ohio 45802. 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. Mark Perini, Systems & Equipment Branch, ANM–130S; telephone (206) 431–1944. 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 modification of the GCU filter modules on Boeing Model 737 series airplanes, was published in the Federal Register on June 17, 1988 (53 FR 22659).

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 provided comments from five of its member operators:

One member questioned the need to include GCU P/N 915F212–4 within the applicability of the proposed rule. This member indicated that the filter module of the –4 unit has never failed and is of another type design than the filter module that is installed in the P/N 915F212–5 and 948F458–1 units. The FAA agrees. The final rule has been revised to include only Westinghouse GCU P/N 915F212–5 and P/N 948F458–1 as subject to the required replacement or modification actions.

One member stated that the problem appeared to be one of "infant mortality" and units that have not failed by the time they have operated for two years should not be affected. The FAA does not concur. The service history data available to the FAA does not support an "infant mortality" theory.

Several members requested that the proposed 12-month compliance time be extended, and stated that they will need a minimum of 18 months to accomplish the required work on their respective fleets. One member provided data to substantiate that the proposed compliance time will present a problem to all operators in timely acquisition and installation of required parts. The FAA has reviewed this data and has determined that the compliance time may be increased from 12 to 18 months without adversely affecting safety.

One commenter stated they have not experienced any problems with GCU filter module P/N 941D770–4, and requested that this part number be removed from the applicability of the rule. The FAA does not agree. This GCU filter module was used in GCU P/N 948F458–1 manufactured from June 1984 through July 1986, and in GCU P/N 915F212–5 starting April 1982. More than 50 percent of the failures in the last two years have involved the –4 GCU filter module. Therefore, the FAA has determined that it is appropriate that this filter module be included in this AD action.

Two commenters noted that the 1.5 manhour estimate per airplane, as indicated in the economic analysis, appeared low and that 8.0 manhours per airplane would be more accurate. The FAA has reviewed the estimation and concurs with the commenter's estimate, based on the "worst case" assumption, that is, three GCU's on every airplane will be affected and GCU filter modification will be performed instead of filter module replacement. The cost estimate has been revised, as reflected below, and is based on a worst case condition.

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 as proposed with the revisions noted above.

There are approximately 1,500 Boeing Model 737 airplanes of the affected design in the worldwide fleet. It is estimated that 1,200 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 the AD on U.S. operators is estimated to be $384,000.

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, Boeing Model 737 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 Model 737 series airplanes, certificated in any category. Compliance required within the next 18 months after the effective date of this AD, unless previously accomplished.

To prevent smoke in the cockpit and partial loss of electrical power caused by the failures of the Generator Control Unit (GCU) filter modules, accomplish the following:

A. Replace or modify the GCU filter modules, in Westinghouse GCU P/N 915F212–5 and GCU P/N 948F458–1, in accordance with Westinghouse Service Bulletin 87–101, dated March 1987, or Westinghouse Service Bulletin 87–102, dated August 1987.

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 for the accomplishment of the modification 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 Westinghouse, Electrical Systems Division, P.O. Box 989, Lima, Ohio 45802. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, FAA, 9010 East Marginal Way, Seattle, Washington.

This amendment becomes effective April 28, 1989.

Issued in Seattle, Washington, on March 10, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–6403 Filed 3–17–89; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 86-ANE-25; Amdt. 39-6140]

Airworthiness Directives; Garrett Engine Division (Hereinafter Called "Garrett"), Allied-Signal, Inc., Models TPE331-25AA, -25AB, -25DA, -25DB, -25FA, -43A, -43BL, -47A, -55B, -61A, -1, -2, -2UA, -3U, -3UW, -5, -6, -6A, -8, -10, -10R, -10U, -10UA, -10UF, -10UG, 10UGR, -10UR, -11U Turboprop and TSE331-3U Turboshaft Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Garrett turboprop and turboshaft TPE/TSE331 engine models, which currently requires spectrometric analysis of oil samples or the replacement or rework of the turbine oil scavenge pump. This amendment is prompted by incidents that indicated that the Spectrometric Oil Analysis Program (SOAP) was not effective in detecting Beryllium/Copper (Be/Cu) nut erosion. This AD is needed to prevent blockage of the oil scavenge pump outlet port which could lead to erosion and failure of the Be/Cu main shaft nut. This AD requires the replacement or rework of the oil scavenge pump and retains the inspection of the spur gearshaft assembly which drives the oil scavenge pump.

DATES: *Effective*—April 9, 1989.

Compliance—As required in the body of the AD.

Incorporation by Reference—Approved by the Director of the Federal Register as of April 9, 1989.

ADDRESSES: The applicable engine manufacturer's service bulletin (SB) may be obtained from Garrett General Aviation Services Division, Distribution Center, 2340 East University, Phoenix, Arizona 85034.

A copy of the SB is contained in the Rules Docket, Docket No. 86-ANE-25, in the Office of the Assistant Chief Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, and may be examined between the hours of 8:00 a.m. to 4:30 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Joseph Costa, Aerospace Engineer, Propulsion Branch, ANM-140L, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5246.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations by superseding AD 86-12-02, Amendment 39-5371 (51 FR 31607; September 4, 1986), applicable to certain Garrett turboprop and turboshaft TPE/TSE331 engine models, to require the replacement or rework of the oil scavenge pump assembly and inspection of the spur gearshaft length to ensure proper positioning of the spur gearshaft assembly, was published in the **Federal Register** on September 19, 1988 (53 FR 36342).

The proposal was issued after discovering that required SOAP was not effective in detecting Be/Cu nut erosion and that this erosion was not limited to infant mortality cases. Since this condition is likely to exist or develop on other Garrett TPE/TSE331 series engines of the same type design, this AD supersedes Amendment 39-5371, AD 86-12-02.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Even though no objections from the public were received, the wording in the final rule has been changed for clarity and does not change the requirements or the intent of the proposed rule.

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.

Conclusion

The FAA has determined that this regulation involves 8,000 engines and the approximate cost would be $160 per engine. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT**".

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. By adding to § 39.13 the following new airworthiness directive (AD), which supersedes AD 86-12-02, Amendment 39-5371 (51 FR 31607), as follows:

Garrett Engine Division, Allied-Signal, Inc. (formerly Garrett Turbine Engine Co., GTEC, formerly AIResearch Manufacturing Company of Arizona): Applies to Garrett Models TPE331-25AA, -25AB, -25DA, -25DB, -25FA, -43A, -43BL, -47A, -55B, -61A, -1, -2, -2UA, -3U, -3UW, -5, -6, -6A, -8, -10, -10R, -10U, -10UA, -10UF, -10UG, -10UGR, -10UR, -11U turboprop and TSE331-3U turboshaft engines.

Compliance is required as indicated, unless already accomplished.

To prevent turbine failure, accomplish the following:

(a) Inspect and modify applicable engines in accordance with the Accomplishment Instructions of Garrett Service Bulletin (SB) TPE-331-72-0533, Revision 2, dated March 11, 1988, at first access to the oil scavenge pump assembly, or within 1,800 operating hours after the effective date of this AD, or within 18 months after the effective date of the AD, whichever occurs first.

(b) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(c) Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 3229 East Spring Street, Long Beach, California 90806-2425.

(d) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, the Manager, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, Aircraft Certification Service, may adjust the compliance time specified in this AD.

Garrett SB TPE331-72-0533, Revision 2, dated March 11, 1988, identified and described in this document, is incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received this

document from the manufacturer may obtain copies upon request to Garrett General Aviation Services Division, Distribution Center, 2340 East University, Phoenix, Arizona 85034. This document may also be examined at the Office of the Assistant Chief Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, Room 311, Docket No. 86-ANE-25, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

This amendment supersedes Amendment 39-5371 (51 FR 31607; September 4, 1986) AD 86-12-02.

This amendment becomes effective on April 9, 1989.

Issued in Burlington, Massachusetts, on February 1, 1989.

Jack A. Sain,

Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 89-6410 Filed 3-17-89; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200, 230, and 239

[Release No. 33-6825; File No. S7-4-88]

Regulation D; Accredited Investor and Filing Requirements

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Commission announces the adoption of an amendment to the definition of "accredited investor" for purposes of the section 4(6) and Regulation D exemptions from the registration requirements of the Securities Act of 1933 (the "Securities Act") to include those plans established and maintained by the governments of the States and their political subdivisions, as well as their agencies and instrumentalities for the benefit of their employees, that have total assets in excess of $5 million. Additional amendments to Regulation D also have been made. While the filing of Form D has been retained, it will no longer be a condition to any exemption under Regulation D. New Rule 507 will disqualify any issuer found to have violated the Form D filing requirement from future use of Regulation D. New Rule 508 provides that an exemption from the registration requirements will be available for an offer or sale to a particular individual or entity, despite failure to comply with a requirement of Regulation D, if the requirement is not designed to protect specifically the complaining person; the failure to comply is insignificant to the offering as a whole; and there has been a good faith and reasonable attempt to comply with all requirements of the regulation. Rule 508 specifies that the provisions of Regulation D relating to general solicitation, the dollar limits of Rules 504 and 505 and the limits of non-accredited investors in Rules 505 and 506 are deemed significant to every offering and therefore not subject to the Rule 508 defense. Further, the rule specifies that any failure to comply with a provision of Regulation D is actionable by the Commission under the Securities Act.[1] Changes in those requirements designed to reflect the "restricted" character of securities issued in a Regulation D transaction also have been adopted.

Additional new amendments to Regulation D revise the definitional provisions, relating to "aggregate offering price", the calculation of the number of purchasers, and "purchaser representative" to codify staff interpretive positions. Revisions also are adopted with respect to the informational requirements of Regulation D. Another amendment explicitly recognizes that an offering to the appropriate number of and/or sophistication of investors is acceptable, whether or not the issuer has a reasonable basis to believe that such is the case.

EFFECTIVE DATE: April 19, 1989.

FOR FURTHER INFORMATION CONTACT: Richard K. Wulff or William E. Toomey, (202) 272-2644, Office of Small Business Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: On December 20, 1988, the Commission published for comment [2] a number of proposed revisions and reproposals of amendments to Regulation D,[3] the limited offering exemptive provisions from the registration requirements of the Securities Act. Today, the Commission is adopting all of those proposals and reproposed amendments without change.

I. Amendments to Regulation D

A. Accredited Investors Release

The Commission initially proposed adding certain plans established and maintained by the governments of the states and their political subdivisions, as well as their agencies and instrumentalities for the benefit of their employees to the list of accredited investors [4] in March 1988.[5] This addition to the list of accredited investors was proposed because the language contained in the existing definition limits its coverage to plans "within the meaning" of Title I of the Employee Retirement Income Security Act of 1974 ("ERISA").[6] Since government plans are exempted from ERISA, they have not been considered to be accredited investors within the meaning of the rule. As initially proposed, a plan would have been deemed accredited if its trustee were a bank, savings and loan association, insurance company or registered investment adviser, and if the plan imposed standards of fiduciary responsibility similar to those imposed under ERISA. Commenters on this proposal felt that such plans should be accredited but took substantial issue with the criteria proposed, urging instead a standard similar to that imposed on ERISA plans, *i.e.*, some asset-based test.

In the Accredited Investor Release, the Commission, responding to these suggestions, proposed to include within the definition of the term "accredited investors" those governmental employee benefit plans that have total assets in excess of $5 million. All of the public commenters on this issue supported the Commission's proposal. The amendment being adopted today places governmental plans on the same footing as employee plans which are subject to ERISA.

B. 508 Release—New Rules 507 and 508 and Various Procedural Revisions to Regulation D

In the 508 Release, the Commission published for comment reproposals of new Rules 507 and 508, and new proposed amendments to various provisions of the regulation. Rules 507

[1] 15 U.S.C. 77a *et seq.*; in particular section 20 thereof, 15 U.S.C. 77t.

[2] Release Nos. 33-6811, 33-6812 (December 20, 1988) (54 FR 308, 309) ("Accredited Investor Release" and "508 Release" respectively). Nineteen persons commented on the Accredited Investor Release; eleven responded to the 508 Release. The comment letters are available at the Commission's Public Reference Room in Washington, DC.

[3] 17 CFR 230.501-230.508.

[4] The definition of "accredited investor" is the same for both section 4(6) and Regulation D transactions. Section 2(15) of the Securities Act and Rule 215, 17 CFR 230.215, provide the identical listing of investors as Rule 501(a). Amendments are being made today to Rule 215 to maintain the consistency.

[5] Release No. 33-6759 (March 3, 1988) [53 FR 7870].

[6] 29 U.S.C. 1101 *et seq.*

and 508 had been initially proposed for comment in March 1988.

(1) New Rule 507

The proposals to eliminate the Form D [7] filing requirement as a condition to every Regulation D exemption and the Rule 507 disqualification provisions were favorably received by the public commenters. These revisions have been adopted without change. The Rule 503 requirement to file a Form D within 15 days of the first sale of securities remains, but will no longer be a condition to the establishment of any exemption under Regulation D. Rule 507 will serve as a disqualification to the use of Regulation D for future transactions by any issuer, if it, or a predecessor or affiliate, has been enjoined by a court for violating the filing obligation established by Rule 503. The Commission has the authority to waive a disqualification upon a showing of good cause.[8]

(2) New Rule 508

As reproposed in December, Rule 508 provided that failure to comply with a term, condition or requirement of Regulation D would not cause a loss of the exemption for any offer or sale to a particular individual or entity if the person relying on the exemption were to demonstrate that (1) the term, condition or requirement violated was not directly intended to protect the complaining party, (2) the failure to comply was insignificant to the offering as a whole, and (3) a good faith and reasonable attempt was made to comply with all of the regulation's terms, conditions and requirements. In a separate provision, proposed Rule 508 indicated that any failure to comply would, nevertheless, be actionable by the Commission.[9] With regard to significance to the offering as a whole, the Commission proposal specifically indicated that the conditions relating to dollar ceilings, numerical purchaser limits and general solicitation would always be deemed significant and therefore beyond the protection of the rule.[10] The public comments supported the Commission proposal and Rule 508 has been adopted without change.[11]

In excluding general solicitation from the ambit of the Rule 508 defense, the Commission reiterates its view, expressed in the 508 Release, that, inasmuch as general solicitation is not defined in Regulation D, the question of whether or not particular activities constitute a general solicitation must always be determined in the context of the particular facts and circumstances of each case. Thus, for example, if an offering is structured so that only persons with whom the issuer and its agents have had a prior relationship [12] are solicited, the fact that one potential investor with whom there is no such prior relationship is called may not necessarily result in a general solicitation.

(3) Definitions

The Commission also proposed a number of revisions to the definitional provisions of Rule 501 to codify staff interpretations and to reduce ambiguities in the regulation. For example, the Commission proposed to amend the definition of "aggregate offering price" to indicate that payments made in a foreign currency would be translatable into U.S. dollars at the exchange rate in effect within a reasonable time period prior to or on the date of the sale of securities. The proposed amendments would also have provided that valuations, which must be made prior to the sale of the securities, of non-cash consideration must be reasonable when they are made.

The definition of the manner in which the number of purchasers in a Rule 505 or Rule 506 offering should be calculated would be clarified under the proposed amendments. Thus, when a corporation, partnership or other entity must be pierced through to its beneficial owners because it has been formed for the specific purpose of making an investment, the provisions of Rule 501(e)(1) governing exclusions from the calculation, such as those applicable to related parties sharing the same household, would apply to the beneficial owners. The Commission also proposed to revise the definition of "purchaser representative" so that disclosure of material conflicts of interest might be made a reasonable time before purchase rather than (as currently required) prior to the purchaser's acknowledgement of the purchaser representative as his agent.

Commenters endorsed the proposed revisions and the amendments have been adopted as proposed.

(4) Information Requirements

The Commission also proposed to eliminate the requirement to provide specified disclosure to an accredited investor whenever one or more purchasers in the transaction are non-accredited investors. Additional amendments were proposed to clarify that non-accredited investors must be advised of, and furnished upon request, all material information furnished to accredited investors. Under the proposed amendments, required information would have to be furnished a reasonable time prior to sale. Finally, the Commission proposed that written disclosure of resale restrictions be required to be provided to all non-accredited investors in Rule 505 and 506 offerings.

In general, the commenters supported these proposals.[13] These revisions will remove uncertainties in the terminology of the regulation and ensure that those investors most likely to be unaware of the transfer restrictions applicable to most Regulation D securities have written information in this regard. These provisions have been adopted as proposed.

The amendment with regard to Rule 502(b)(2)(i)(D) concerning the certification requirements for certain foreign issuers also has been adopted, eliminating a confusing reference to inapplicable disclosure standards.

(5) Demonstrating the "Restricted" Nature of the Securities

Under the Commission's proposal in the 508 Release, the list of actions formerly required by Rule 502(d) in order to demonstrate reasonable care that purchasers in a Regulation D transaction are not underwriters, *i.e.*, purchaser inquiry, written notification and legending, would have become a non-exclusive method of satisfying the provision. The commenters also supported this provision. Rule 502(d) has thus been amended as proposed.

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[7] 17 CFR 239.500.

[8] In order to facilitate the processing of waiver requests under this provision, the Commission has delegated authority to the Director of the Division of Corporation Finance to grant such applications in appropriate cases, and has amended its delegation of authority rules in this regard. The Commission finds, in accordance with section 553(b) of the Administrative Procedure Act, 5 U.S.C. 553(b), that this action relates solely to agency organization, procedure or practice and thus obviates the necessity for notice and prior publication.

[9] *See* section 20 of the Securities Act, 15 U.S.C. 77t.

[10] 17 CFR 230.502(c), 230.504(b)(2)(i), 230.505(b)(2)((i), (ii), and 230.506(b)(2)(i).

[11] Several of the commenters objected to the elimination of certain items from the coverage of insignificance; another objected to the insignificance to the offering as a whole concept.

[12] The Commission's staff has issued a number of interpretive letters concerning the general solicitation requirement which have involved prior relationships, *e.g.*, *In re* Mineral Lands Research and Marketing Corp. (November 4, 1985). The staff has never suggested, and it is not the case, that prior relationship is the only way to show the absence of a general solicitation.

[13] Several of the commenters objected to the imposition of the writing requirement on resale restrictions.

(6) Revisions to Rule 504

Rule 504 provides an exemption for offerings by companies which are neither reporting companies under Section 13 or 15(d) of the Securities Exchange Act of 1934 [14] nor investment companies registered or required to be registered under the Investment Company Act of 1940 [15] for up to $1 million. In the 508 Release, the Commission proposed to add a requirement that an issuer provide purchasers in a Rule 504 transaction written disclosure of any resale restrictions and this requirement is being adopted today. In discussing this requirement in the 508 Release, the Commission noted that the provision would make it impossible to rely on Rule 504 to provide an exemption for an issue that otherwise would comply with the conditions of the exemption, albeit inadvertently. Commenters were asked to address the question as to whether, at least under some circumstances (such as a transaction involving a limited number of participants or a small amount of money) the delivery of such a written statement need not be required. The North American Securities Administrators Association, Inc. ("NASAA") and others urged the Commission to adopt the provision as proposed.[16] While the Commission continues to believe that such an exclusion may be appropriate, it is persuaded that the regulation should be amended as proposed and that, as suggested in the NASAA comment letter, the states and the Commission should work together to develop a mutually acceptable resolution of the issue. In any case, the availability of the statutory exemption under section 4(2) of the Securities Act is unaffected by today's action on this matter.

(7) Revisions to Rules 505 and 506

The Commission also proposed to amend Rules 505 and 506 to reflect expressly the staff interpretations that the requirements of those rules are satisfied whether or not the issuer had a reasonable belief as to the number of non-accredited investors or their sophistication, as long as the number and sophistication requirements are in fact met. No objections were raised with regard to these proposals by the commenters. The changes have been made as proposed.

II. NASAA Cooperation

The Commission is pleased to acknowledge the continuing cooperation of NASAA.[17] Because Regulation D serves as the core for the Uniform Limited Offering Exemption ("ULOR"),[18] an official policy guideline of NASSA,[19] this cooperation is essential to continuing the uniformity between Federal and State exemptive systems envisions by the Congressional mandate set forth in section 19(c) of the Securities Act.[20] The Commission understands that the membership of NASSA has supported the amendments to Regulation D being made today. Further, amendments to ULOE are presently being formulated by the NASAA Small Business Capital Formation Committee incorporating these amendments and, where appropriate, making additional changes which apply the principles reflected in these amendments.

III. Availability of Final Regulatory Flexibility Analysis

A final Regulatory Flexibility Analysis regarding the revisions to Regulation D has been prepared in accordance with the Regulatory Flexibility Act. A summary of the corresponding Initial Regulatory Flexibility Analyses were included in the Accredited Investor Release and the 508 Release, respectively. Members of the public who wish to obtain a copy of the final Regulatory Flexibility Analysis should contact Twanna Young in the Office of Small Business Policy, Division of Corporation Finance, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

IV. Cost-Benefit Analysis

No specific data was provided on the Commission's request for costs and benefits of the proposals. Nonetheless, all of the amendments which are designed to facilitate compliance or reduce regulatory burden should provide significant benefits to issuers, reduce their costs of compliance without having a significant impact upon the protection of investors.

V. Conforming Amendment to the Description of Form D

On October 2, 1986, the Commission adopted significant changes to Form D and its filing requirements.[21] Through an oversight, the description of the Form contained in the Code of Federal Regulations was not similarly revised. The Commission is making the conforming amendments at this time. Because this action is a conforming amendment that involves no substantive change, the Commission finds that there is good cause to dispense with the prior notice and public procedure of the Administrative Procedure Act,[22] which is unnecessary under these circumstances since prior notice was given and public comment received on the substance of the change before the amendments were adopted in 1986.

VI. Statutory Basis, Text of Amendments and Authority

The amendments to the Commission's rules are being made pursuant to sections 2(15), 3(b), 4(2), 4(6), 19(a) and 19(c) of the Securities Act.

List of Subjects in 17 CFR Parts 200, 230 and 239

Administrative practice and procedure, Freedom of information, Privacy, Reporting and recordkeeping requirements Securities.

Text of Amendments

In accordance with foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION REQUESTS

1. The authority citation for Part 200 continues to read, in part, as follows:

Authority: Secs. 19, 23, 48 Stat. 85, 901, as amended, sec. 20, 49 Stat. 833, sec. 319, 53 Stat. 1173, secs. 38, 211, 54 Stat. 841, 855; 15 U.S.C. 77s, 78w, 79t, 77sss, 80a–37, 80b–11, unless otherwise noted. * * *

2. Section 200.30–1 is amended by revising paragraph (d) as follows:

§ 200.30–1 Delegation of authority to Director of Division of Corporation Finance.

* * * * *

(d) With respect to the Securities Act of 1933 (15 U.S.C. 77a, *et seq.*) and

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[14] 15 U.S.C. 78m, 78o(d).

[15] 15 U.S.C. 80a–1 *et seq.*

[16] "[W]e strongly urge the Commission accept the proposed Rule 504 without further modification, and if the Commission considers the matter to be of sufficient importance, that it be the subject of further discussions. Since both the Commission and NASAA are in basic agreement that rules should not have the effect of penalizing the small, innocent offeror and further, that rules should not have the effect of facilitating fraudulent activity, such discussions may may produce a mutually acceptable resolution of this issue." Letter from NASAA dated February 21, 1989, contained in File No. S7–4–88.

[17] NASAA is an association of the securities administrators of each of the 50 states, the District of Columbia, Puerto Rico and several of the Canadian provinces.

[18] CCH NASAA Rep. ¶6201 at 6101.

[19] An official policy guideline represents endorsement of a principle which NASAA believes has general application. NASAA has no power to enact legislation, promulgate regulations or otherwise bind the legislatures or administrative agencies of its members.

[20] 15 U.S.C. 77s(c).

[21] Release No. 33–6663 (October 2, 1986) (51 FR 36385).

[22] 5 U.S.C. 553(b).

Regulation D thereunder (§ 230.501, *et seq.* of this chapter), to authorize the granting of applications under Rule 505(b)(2)(iii)(C), (§ 230.505(b)(2)(iii)(C) of this chapter) and under Rule 507(b) (§ 230.507(b) of this chapter) upon the showing of good cause that it is not necessary under the circumstances that the exemption under Regulation D be denied.

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

3. The authority citation for Part 230 continues to read, in part, as follows:

Authority: Sections 230.100 to 230.174 issued under Sec. 19, 48 Stat. 85 as amended; 15 U.S.C. 77s, * * *

4. Section 230.215 is amended by revising paragraph (a) as follows (the introductory text is republished):

§ 230.215 Accredited investor.

The term "accredited investor" as used in section 2(15)(ii) of the Securities Act of 1933 (15 U.S.C. 77b(15)(ii)) shall include the following persons:

(a) Any savings and loan association or other institution specified in section 3(a)(5)(A) of the Act whether acting in its individual or fiduciary capacity; any broker or dealer registered pursuant to section 15 of the Securities Exchange Act of 1934; any plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees, if such plan has total assets in excess of $5,000,000; any employee benefit plan within the meaning of Table I of the Employee Retirement Income Security Act of 1974, if the investment decision is made by a plan fiduciary, as defined in section 3(21) of such Act, which is a savings and loan association, or if the employee benefit plan has total assets in excess of $5,000,000 or, if a self-directed plan, with investment decisions made solely by persons that are accredited investors;

* * * * *

5. Section 230.501 is amended by revising the introductory text, paragraphs (a)(1), (c), (e)(2) and (h)(4) as follows ((e) and (h) introductory texts are republished; notes following (h)(4) remain unchanged):

§ 230.501 Definitions and terms used in Regulation D.

As used in Regulation D (§§ 230.501–230.508), the following terms shall have the meaning indicated:

(a) * * *

(1) Any bank as defined in section 3(a)(2) of the Act, or any savings and loan association or other institution as defined in section 3(a)(5)(A) of the Act whether acting in its individual or fiduciary capacity; any broker or dealer registered pursuant to section 15 of the Securities Exchange Act of 1934; any insurance company as defined in section 2(13) of the Act; any investment company registered under the Investment Company Act of 1940 or a business development company as defined in section 2(a)(48) of that Act; any Small Business Investment Company licensed by the U.S. Small Business Administration under section 301(c) or (d) of the Small Business Investment Act of 1958; any plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees, if such plan has total assets in excess of $5,000,000; any employee benefit plan within the meaning of the Employee Retirement Income Security Act of 1974 if the investment decision is made by a plan fiduciary, as defined in section 3(21) of such act, which is either a bank, savings and loan association, insurance company, or registered investment adviser, or if the employee benefit plan has total assets in excess of $5,000,000 or, if a self-directed plan, with investment decisions made solely by persons that are accredited investors;

* * * * *

(c) *Aggregate offering price.* "Aggregate offering price" shall mean the sum of all cash, services, property, notes, cancellation of debt, or other consideration to be received by an issuer for issuance of its securities. Where securities are being offered for both cash and non-cash consideration, the aggregate offering price shall be based on the price at which the securities are offered for cash. Any portion of the aggregate offering price attributable to cash received in a foreign currency shall be translated into United States currency at the currency exchange rate in effect at a reasonable time prior to or on the date of the sale of the securities. If securities are not offered for cash, the aggregate offering price shall be based on the value of the consideration as established by bona fide sales of that consideration made within a reasonable time, or, in the absence of sales, on the fair value as determined by an accepted standard. Such valuations of non-cash consideration must be reasonable at the time made.

* * * * *

(e) *Calculation of number of purchasers.* For purposes of calculating the number of purchasers under §§ 230.505(b) and 230.506(b) only, the following shall apply:

* * * * *

(2) A corporation, partnership or other entity shall be counted as one purchaser. If, however, that entity is organized for the specific purpose of acquiring the securities offered and is not an accredited investor under paragraph (a)(8) of this section, then each beneficial owner of equity securities or equity interests in the entity shall count as a separate purchaser for all provisions of Regulation D (§§ 230.501–230.508), except to the extent provided in paragraph (e)(1) of this section.

* * * * *

(h) *Purchaser representative.* "Purchaser representative" shall mean any person who satisfies all of the following conditions or who the issuer reasonably believes satisfies all of the following conditions:

* * * * *

(4) Discloses to the purchaser in writing a reasonable time prior to the sale of securities to that purchaser any material relationship between himself or his affiliates and the issuer or its affiliates that then exists, that is mutually understood to be contemplated, or that has existed at any time during the previous two years, and any compensation received or to be received as a result of such relationship.

* * * * *

6. Section 230.502 is amended by revising the introductory text, revising paragraph (b)(1) including a new Note thereto, revising paragraph (b)(2)(i) (introductory text), (b)(2)(i)(D), (b)(2)(ii) (introductory text), (b)(2)(iii) and (b)(2)(iv), adding a new paragraph (b)(2)(vii), revising paragraph (d) introductory text and adding a new (d) concluding paragraph thereto, as follows:

§ 230.502 General conditions to be met.

The following conditions shall be applicable to offers and sales made under Regulation D (§§ 230.501–230.508):

* * * * *

(b) *Information requirements*—(1) *When information must be furnished.* If the issuer sells securities under § 230.505 or § 230.506 to any purchaser that is not an accredited investor, the issuer shall furnish the information specified in paragraph (b)(2) of this section to such purchaser a reasonable time prior to sale. The issuer is not required to furnish the specified information to purchasers when it sells

securities under § 230.504, or to any accredited investor.

Note: When an issuer provides information to investors pursuant to paragraph (b)(1), it should consider providing such information to accredited investors as well, in view of the anti-fraud provisions of the federal securities laws. In addition, specific disclosure requirements regarding limitations on resale are contained in § 230.504(b)(2)(ii)

(2) *Type of information to be furnished.* (i) If the issuer is not subject to the reporting requirements of section 13 or 15(d) of the Exchange Act, at a reasonable time prior to the sale of securities the issuer shall furnish to the purchaser the following information, to the extent material to an understanding of the issuer, its business, and the securities being offered:

* * * * *

(D) If the issuer is a foreign private issuer eligible to use Form 20–F (§ 249.220f of this chapter), the issuer shall disclose the same kind of information required to be included in a registration statement filed under the Act on the form that the issuer would be entitled to use. The financial statements need be certified only to the extent required by paragraph (b)(2)(i)(B) or (C), as appropriate.

(ii) If the issuer is subject to the reporting requirements of section 13 or 15(d) of the Exchange Act, at a reasonable time prior to the sale of securities the issuer shall furnish to the purchaser the information specified in paragraph (b)(2)(ii)(A) or (B) of this section, and in either event the information specified in paragraph (b)(2)(ii)(C) of this section:

* * * * *

(iii) Exhibits required to be filed with the Commission as part of a registration statement or report, other than an annual report to shareholders or parts of that report incorporated by reference in a Form 10–K report, need not be furnished to each purchaser that is not an accredited investor if the contents of material exhibits are identified and such exhibits are made available to a purchaser, upon his written request, a reasonable time prior to his purchase.

(iv) At a reasonable time prior to the sale of securities to any purchaser that is not an accredited investor in a transaction under § 230.505 or § 230.506, the issuer shall furnish to the purchaser a brief description in writing of any material written information concerning the offering that has been provided by the issuer to any accredited investor but not previously delivered to such unaccredited purchaser. The issuer shall furnish any portion or all of this information to the purchaser, upon his written request a reasonable time prior to his purchase.

* * * * *

(vii) At a reasonable time prior to the sale of securities to any purchaser that is not an accredited investor in a transaction under § 230.505 or § 230.506, the issuer shall advise the purchaser of the limitations on resale in the manner contained in paragraph (d)(2) of this section. Such disclosure may be contained in other materials required to be provided by this paragraph.

* * * * *

(d) *Limitations on resale.* Except as provided in § 230.504(b)(1), securities acquired in a transaction under Regulation D shall have the status of securities acquired in a transaction under section 4(2) of the Act and cannot be resold without registration under the Act or an exemption therefrom. The issuer shall exercise reasonable care to assure that the purchasers of the securities are not underwriters within the meaning of section 2(11) of the Act, which reasonable care may be demonstrated by the following:

* * * * *

While taking these actions will establish the requisite reasonable care, it is not the exclusive method to demonstrate such care. Other actions by the issuer may satisfy this provision. In addition, §§ 230.502(b)(2)(vii) and 230.504(b)(2)(ii) require the delivery of written disclosure of the limitations on resale to investors in certain instances.

7. Section 230.503 is amended by revising paragraph (a) as follows:

§ 230.503 Filing of notice of sales.

(a) An issuer offering or selling securities in reliance on § 230.504, § 230.505 or § 230.506 shall file with the Commission five copies of a notice on Form D (17 CFR 239.500) no later than 15 days after the first sale of securities.

* * * * *

8. Section 230.504 is amended by revising paragraph (b)(1) and adding a new paragraph (b)(2)(ii) after Note 3 as follows:

§ 230.504 Exemption for limited offerings and sales of securities not exceeding $1,000,000.

* * * * *

(b) *Conditions to be met*—(1) *General Conditions.* To qualify for exemption under this § 230.504, offers and sales must satisfy the terms and conditions of §§ 230.501 and 230.502, except that the provisions of § 230.502(c) and (d) shall not apply to offers and sales of securities under this § 230.504 that are made:

(i) Exclusively in one or more states each of which provides for the registration of the securities and requires the delivery of a disclosure document before sale and that are made in accordance with those state provisions; or

(ii) In one or more states which have no provision for the registration of the securities and the delivery of a disclosure document before sale, if the securities have been registered in at least one state which provides for such registration and delivery before sale, offers and sales are made in the state of registration in accordance with such state provisions, and such document is in fact delivered to all purchasers in the states which have no such procedure before the sale of the securities.

(2) * * *

(ii) *Advice about the limitations on resale.* Except where the provision does not apply by virtue of paragraph (b)(1) of this section, the issuer, at a reasonable time prior to the sale of securities, shall advise each purchaser of the limitations on resale in the manner contained in paragraph (d)(2) of § 230.502.

9. Section 230.505 is amended by revising paragraph (b)(1) and (b)(2)(ii) as follows:

§ 230.505 Exemption for limited offers and sales of securities not exceeding $5,000,000.

* * * * *

(b) *Conditions to be met*—(1) *General conditions.* To qualify for exemption under this section, offers and sales must satisfy the terms and conditions of §§ 230.501 and 230.502.

(2) * * *

(ii) *Limitation on number of purchasers.* There are no more than or the issuer reasonably believes that there are no more than 35 purchasers of securities from the issuer in any offering under this section.

* * * * *

10. Section 230.506 is amended by revising paragraphs (b)(1), (b)(2)(i) and (ii) as follows (the note following (b)(2)(i) remains unchanged):

§ 230.506 Exemption for limited offers and sales without regard to dollar amount of offering.

* * * * *

(b) *Conditions to be met*—(1) *General conditions.* To qualify for an exemption under this section, offers and sales must satisfy all the terms and conditions of §§ 230.501 and 230.502.

(2) *Specific Conditions*—(i) *Limitation on number of purchasers.* There are no more than or the issuer reasonably

believes that there are no more than 35 purchasers of securities from the issuer in any offering under this section.

* * * * *

(ii) *Nature of purchasers.* Each purchaser who is not an accredited investor either alone or with his purchaser representative(s) has such knowledge and experience in financial and business matters that he is capable of evaluating the merits and risks of the prospective investment, or the issuer reasonably believes immediately prior to making any sale that such purchaser comes within this description.

11. By adding a new § 230.507 to read as follows:

§ 230.507 Disqualifying provision relating to exemptions under §§ 230.504, 230.505 and 230.506.

(a) No exemption under § 230.505, § 230.505 or § 230.506 shall be available for an issuer if such issuer, any of its predecessors or affiliates have been subject to any order, judgment, or decree of any court of competent jurisdiction temporarily, preliminary or permanently enjoining such person for failure to comply with § 230.503.

(b) Paragraph (a) of this section shall not apply if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the exemption be denied.

12. By adding a new § 230.508 to read as follows:

§ 230.508 Insignificant deviations from a term, condition or requirement of Regulation D.

(a) A failure to comply with a term, condition or requirement of § 230.504, § 230.505 or § 230.506 will not result in the loss of the exemption from the requirements of section 5 of the Act for any offer or sale to a particular individual or entity, if the person relying on the exemption shows:

(1) The failure to comply did not pertain to a term, condition or requirement directly intended to protect that particular individual or entity; and

(2) The failure to comply was insignificant with respect to the offering as a whole, provided that any failure to comply with paragraph (c) of § 230.502, paragraph (b)(2)(i) of § 230.504, paragraphs (b)(2)(i) and (ii) of § 230.505 and paragraph (b)(2)(i) of § 230.506 shall be deemed to be significant to the offering as a whole; and

(3) A good faith and reasonable attempt was made to comply with all applicable terms, conditions and requirements of § 230.504, § 230.505 or § 230.506.

(b) A transaction made in reliance on § 230.504, § 230.505 or § 230.506 shall comply with all applicable terms, conditions and requirements of Regulation D. Where an exemption is established only through reliance upon paragraph (a) of this section, the failure to comply shall nonetheless be actionable by the Commission under section 20 of the Act.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

13. The authority citation for Part 239 continues to read, in part, as follows:

Authority: The Securities Act of 1933, 15 U.S.C. 77a, *et seq.*

14. Section 239.500 is revised as follows:

§ 230.500 Form D, notice of sales of securities under Regulation D and section 4(6) of the Securities Act of 1933.

(a) Five copies of a notice on this form shall be filed with the Commission no later than 15 days after the first sale of securities in an offering under Regulation D (§ 230.501—§ 230.508 of this chapter) or under section 4(6) of the Securities Act of 1933.

(b) One copy of every notice on Form D shall be manually signed by a person duly authorized by the issuer.

(c) When sales are made under § 230.505, the notice shall contain an undertaking by the issuer to furnish to the Commission, upon the written request of its staff, the information furnished to non-accredited investors.

(d) Amendments to notices filed under paragraph (a) need only report the issuer's name and the information required by Part C and any material change in the facts from those set forth in Parts A and B.

(e) A notice on Form D shall be considered filed with the Commission under paragraph (a) of this section:

(1) As of the date on which it is received at the Commission's principal office in Washington DC; or

(2) As of the date on which the notice is mailed by means of United States registered or certified mail to the Commission's principal office in Washington, DC, if the notice is delivered to such office after the date on which it is required to be filed.

By the Commission.

March 14, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-6447 Filed 3-17-89; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 24

Current IRS Interest Rate Used in Calculating Interest on Overdue Accounts and Refunds

AGENCY: U.S. Customs Service, Treasury.

ACTION: Notice of calculation of interest.

SUMMARY: The Tax Reform Act of 1986 established a new method of determining the adjusted rate of interest on applicable overpayments or underpayments of Customs duties. The new method provides a two-tier system based on the short-term federal rate and is adjusted quarterly. This notice advises the public that the interest rates, as set by the Internal Revenue Service, will be 12 percent for underpayments and 11 percent for overpayments for the quarter beginning April 1, 1989. It is being published for the convenience of the importing public and Customs personnel.

EFFECTIVE DATE: April 1, 1989.

FOR FURTHER INFORMATION CONTACT: Robert B. Hamilton, Jr., Revenue Branch, National Finance Center, U.S. Customs Service, 6026 Lakeside Boulevard, Indianapolis, Indiana 46278 (317) 298-1308.

SUPPLEMENTARY INFORMATION:

Background

By notice published in the **Federal Register** on January 5, 1987 (52 FR 255), Customs advised the public that the Tax Reform Act of 1986 (Pub. L. 99-514) amended 26 U.S.C. 6621, and mandated a new method of determining the interest rate paid on applicable overpayments or underpayments of Customs duties. The new method provides a two-tier system based on the short-term federal rate. As amended, 26 U.S.C. 6621 provides that the interest rate that Treasury pays on overpayments will be the short-term federal rate plus two percentage points. The interest rate paid to the Treasury for underpayments will be the short-term federal rate plus three percentage points. The rates will be rounded to the nearest full percentage.

The interest rates, which are to fluctuate quarterly, are determined by the Internal Revenue Service on behalf of the Secretary of the Treasury based on the average market yield on outstanding marketable obligations of the U.S. with remaining periods to maturity of three years or less. These

rates are determined during the first month of a calender quarter and become effective for the following quarter.

Determination

It has been determined that the rates of interest for the period April 1, 1989–June 30, 1989, are 12 percent for underpayments and 11 percent for overpayments. These rates will remain in effect through June 30, 1989, and are subject to change on July 1, 1989. They will remain in effect until changed by another notice in the **Federal Register**.

Dated: March 14, 1989.

William von Raab,

Commissioner of Customs.

[FR Doc. 89-6435 Filed 3-17-89; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Ch. I and Part 19

Appeals Regulations and Rules of Practice; Status of Legal Interns, Law Students and Paralegals, and Scheduling and Notice of Hearing

AGENCY: Department of Veterans Affairs.

ACTION: Final Regulations; Technical Amendment.

SUMMARY: The Department of Veterans Affairs (VA) is issuing final regulatory amendments regarding representation and requests for a change of hearing date in the Rules of Practice of the Board of Veterans Appeals (38 CFR Part 19). The existing regulation now only refers to attorney "designation" and "revocation or change of representation by an attorney." The amendments include "attorneys employed by recognized organization," legal interns, law students and paralegals. The amendments also include guidelines in instances where a change of hearing date is requested. The revisions are designed to improve the VA's ability to assure high quality representation of appellants.

EFFECTIVE DATE: April 19, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Jan Donsbach (01C), Special (Legal) Assistant to the Chairman, Board of Veterans Appeals, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 (202) 233-2978.

SUPPLEMENTARY INFORMATION: In addition to the final rule, this document contains a technical amendment to change the title of Title 38, Code of Federal Regulations, Chapter 1, Veterans Administration, to Title 38, Code of Federal Regulations, Chapter 1, Department of Veterans Affairs, to conform to the redesignation of the Veterans Administration as the Department of Veterans Affairs (Pub. L. 100-527). On June 6, 1988, the VA published in the **Federal Register** (53 FR 20653-20654) a notice of proposed rulemaking to amend Part 19.

Interested persons were given 30 days in which to submit comments regarding the proposal. The VA received three suggestions. The comments and our action on those comments are listed below.

One commenter requested that the rule be clarified to show that the decision to grant a change in hearing date need not be made within the 60-day hearing period and that in the examples of good cause, the reference to obtaining records should indicate that the records are relevant to the issue.

The rule does not require that the decision to grant the request be made within the 60-day period. What is required is that the request for a change of date be filed within 60 days and that only one request will be considered.

Another commenter claimed that the rule restricts access to hearings and requires hearings to be scheduled at the convenience of the VA.

The rule permits a change in the hearing date for the personal convenience of the appellant provided the request is received within 60 days. Thereafter, the appellant may seek further rescheduling but must do so in writing and provide good cause for change in the date.

Another commenter wrote in support of the proposed changes but suggested that the regulations be clarified to provide that paralegals, legal interns and law students employed by organizations such as the Legal Aid Foundation of Los Angeles be permitted to represent veterans before the VA.

Under the law, paralegals may not represent veterans before the VA unless they qualify as agents. However, they may participate in the representation of a veteran provided they are under the supervision of an attorney who is the representative of record. (See Rule 56, 38 CFR 19.156.)

Rule 52 (38 CFR 19.152) simply clarifies that paralegals working for an attorney who is an employee of a service organization may also participate.

We appreciate the comments and suggestions of those who responded to the publication of the proposed regulations. The proposed regulations are, therefore, adopted as final without change. The final regulations are set forth below.

The Secretary hereby certifies that these final regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. These final regulations are in no way directed toward, and impose no regulatory burdens upon, small entitied. Therefore, pursuant to 5 U.S.C. 605(b), these regulations are exempt from the initial and final regulatory flexibility analyses requirements of §§ 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the VA has determined that these final regulations are nonmajor for the following reason: They will not have any adverse impact on or increase costs to consumers, individual industries, Federal, State, and local government agencies, or geographic regions.

There is no Catalog of Federal Domestic Assistance program number involved.

List of Subjects in 38 CFR Part 19

Administrative practice and procedure, Claims, Veterans.

Approved: February 27, 1989.

Thomas E. Harvey,

Acting Administrator.

Title 38, Code of Federal Regulations, is amended as follows:

1. The title for Chapter I, Title 38, Code of Federal Regulations, is revised to read as follows:

CHAPTER I—DEPARTMENT OF VETERANS AFFAIRS

PART 19—APPEALS

2. In § 19.152, paragraph (b) and the cross-reference are revised, and paragraph (c) is added so that the added and revised material read as follows:

§ 19.152 Rule 52; Attorneys.

* * * * *

(b) *Attorneys employed by recognized organization.* A recognized organization (Rule 51, § 19.151 of this part) may employ an attorney to represent an appellant. If the attorney so employed is not an accredited representative of the recognized organization, the signed consent of the appellant must be obtained and the attorney will be the recognized representative (Rule 55, § 19.155(a) of this part) of the appellant. An attorney employed by a recognized organization may, with the written consent of the appellant, use legal interns, law students, and paralegals to assist in the appeal.

(Authority: 38 U.S.C. 3401)

(c) *Revocation or change of representatives by an attorney.* An appellant may revoke a declaration of representative by an attorney at any time, irrespective of whether another representative is concurrently designated. The revocation is effective when notice of such is received by the Department of Veterans Affairs.

(Authority: 38 U.S.C. 3404)

Cross References: Requirements for accreditation of representatives, agents, and attorneys. See § 14.629(c). Powers of attorney. See § 14.631. Legal interns, law students and paralegals. See Rule 56, § 19.156.

3. In § 19.159 paragraphs (b) and (c) are revised to read as follows:

§ 19.159 Rule 59; Scheduling and notice of hearing.

* * * * *

(b) *Notification of hearing.* When a hearing is scheduled, the person requesting it will be notified of its time and place, and of the fact that the government may not assume any expense incurred by the appellant, the representative or witnesses attending the hearing. The appellant or the representative has a period of 60 days from the date of the letter of notification in which to request a different date for the hearing. Only one request for a change of the date of the hearing will be granted during the 60-day period, and this will be stated in the letter to the appellant and/or the representative at the time a response is given in regards to scheduling a hearing. Consideration will also be given to the interests of other parties if a contested claim is involved. Thereafter, the date of the hearing will become fixed and cannot be changed, except as provided in paragraph (c) of this section. Failure by the appellant or the representative to appear at the hearing as scheduled will result in the case being forwarded to a Section of the Board for continuation of the appellate process.

(Authority: 38 U.S.C. 4002)

(c) *Extension of time.* After a hearing date has become fixed, an extension of time for appearance at a hearing may be granted for good cause shown, with due consideration of the interests of other parties if a contested claim is involved. The request for extension should be in writing and must be filed with the Chief of the Hearing Section. Ordinarily, hearings will not be postponed more than 30 days. Examples of good cause include the following: illness of the appellant and/or representative, difficulty in obtaining records, and unavailability of a witness.

(Authority: 38 U.S.C. 4002, 4005A)

[FR Doc. 89-6427 Filed 3-17-89; 8:45 am]
BILLING CODE 8320-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 675

[Docket No. 90369-9069]

Foreign Fishing, Groundfish of the Bering Sea and Aleutian Islands Area

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

ACTION: Emergency interim rule.

SUMMARY: The Secretary of Commerce (Secretary) has determined that an emergency exists in the groundfish fishery in the Bering Sea. This emergency results from the absence of regulatory control over the bycatch of the prohibited species *Chionoecetes bairdi* Tanner crab, red king crab (*Paralithodes camtschatica*), and Pacific halibut (*Hippoglossus stenolepis*) by the groundfish fisheries in the Bering Sea. In the absence of such control, the bycatch of these species could be excessive. The North Pacific Fishery Management Council (Council) soon will be submitting, for consideration by the Secretary, an amendment to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP), which, if implemented, will effect longer term control over prohibited species bycatch. Until then, the Secretary, to the extent possible, intends to (1) assure that the bycatch of crabs and halibut does not cause biological harm to those resources, (2) provide for the complete harvest of the allowable catch of groundfish, and (3) maintain the bycatch of these crab and halibut species within recommended prohibited species catch (PSC) limits. The Secretary by this rule closes certain areas of the Bering Sea to trawl fishing. An exception to these closures provides for trawling to occur in limited areas in accordance with a scientific data collection and monitoring program established by the Director, Alaska Region, NMFS (Regional Director). In addition, the Secretary intends to monitor prohibited species bycatch in the Bering Sea in accordance with monitoring guidelines established herein and intends to implement further controls should they prove necessary. This action is necessary to maintain prohibited species bycatch within conservative limits to assure conservation of the identified crab species and Pacific halibut and the distribution in the future of this conservation burden among affected fisheries.

EFFECTIVE DATES: March 15, 1989 until June 13, 1989.

ADDRESS: A copy of the environmental assessment (EA) supporting this action may be requested from Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802-1668. Comments are invited on the EA until April 14, 1989.

FOR FURTHER INFORMATION CONTACT: Jay J. C. Ginter (Fishery Management Biologist, NMFS), (907) 586-7229.

SUPPLEMENTARY INFORMATION: Domestic and foreign groundfish fisheries in the exclusive economic zone (EEZ) of the Bering Sea and Aleutian Islands (BSAI) area are managed in accordance with the FMP. The FMP was prepared by the Council under authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). The FMP is implemented by regulations appearing at 50 CFR 611.93 and 50 CFR Part 675.

Background

Fishing for groundfish, especially for species of flatfish or other demersal species, often involves towing trawl gear in contact with the sea bottom. Other bottom-dwelling species, such as crabs and halibut, also are vulnerable to capture by trawl gear. Pacific halibut, and *C. bairdi* Tanner and red king crabs are among those species defined as prohibited species in the FMP implementing regulations (§ 675.20(c)). By this rule, groundfish fisheries are required to minimize their catches of prohibited species and immediately return them to the sea. The Council's policy is to provide additional incentive to avoid bycatches of Pacific halibut, and *C. bairdi* Tanner and red king crabs by using PSC limits and closed area controls. The Council's policy attempts to balance these controls with a reasonable opportunity for trawl fisheries to harvest their groundfish target species. The reason for this policy is that discarding crab and halibut bycatch is a waste of these resources which may adversely affect their use as target species in other commercial fisheries, and potentially result in their being overfished.

The Council will soon be submitting a bycatch control FMP amendment to the Secretary for consideration. If this FMP amendment is approved, its implementation would not occur until June or July of 1989. Hence, the bycatch

of crabs and halibut in the first half of 1989 would be uncontrolled.

The intent of this emergency interim rule is to prevent excessive bycatches of Pacific halibut, and *C. bairdi* Tanner and red king crabs in the Bering Sea groundfish fisheries. It is an interim measure that serves to control bycatch in the most biologically critical area until a more permanent regulatory regime is implemented.

Given the scientific data now available, the Secretary believes this rule is an appropriate response to the emergency. This action does not prejudge the Council's bycatch control amendment. The Secretary will decide whether to approve that amendment on the basis of the record developed at that point, including public comments on the amendment and implementing regulations.

Description of Emergency Interim Measures

This emergency interim bycatch control program is as follows:

1. Closed Area

A. All fishing with trawl gear is prohibited in the area south of 58°00′ N. latitude and north of the Alaskan Peninsula and between 160°00′ and 162°00′ W. longitude (See Figure 1). This is the same area in which trawl gear was prohibited during 1987 and 1988 under Amendment 10 to the FMP. The purpose of this closure is to protect red king crabs and *C. bairdi* Tanner crabs from trawl gear. The red king crab stock continues at depressed population levels and this area is considered the principal locus of the stock.

An exception to the trawling prohibition in the area south of 58°00′ N. latitude and between 160°00′ and 162°00′ W. longitude is provided for fishing for Pacific cod south of a line connecting the coordinates 56°43′ N. latitude, 160°00′ W. longitude and 56°00′ N. latitude, 162°00′ W. longitude and north of the Alaskan Peninsula (See Figure 1). This is the same exception provided during 1987 and 1988 under Amendment 10. The excepted area is in relatively shallow water and is important to the cod fishery. Data from required observers on vessels operating in this fishery in the previous two years indicated relatively low red king crab bycatch rates. Fishing in this excepted area will continue to require compliance with a scientific data collection and monitoring program approved by the Regional Director. Further, the total bycatch of red king crab must be less than 12,000 animals.

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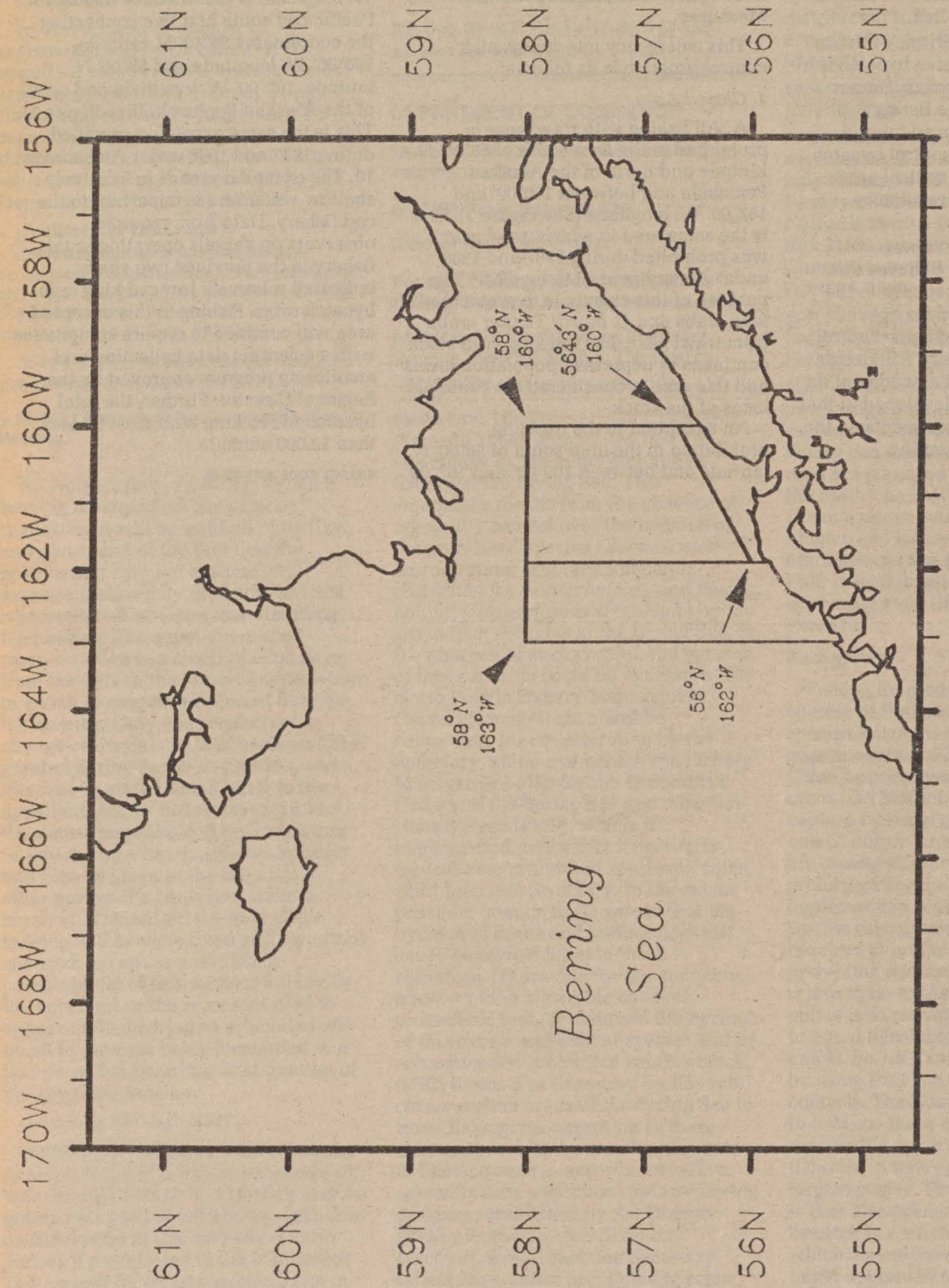

Figure 1. Closure areas for trawl gear
(See exceptions described in regulatory text).

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B. All fishing with trawl gear is likewise prohibited in the area south of 58°00′ N. latitude and north of the Alaskan Peninsula and between 162°00′ and 163°00′ W. longitude (See Figure 1). The Secretary may allow trawl fishing in accordance with a scientific data collection and monitoring program established by the Regional Director. This restriction is intended to provide additional protection to red king crabs, especially females during a critical molting and mating period when their shells are soft and more vulnerable to damage by trawl gear. This measure is based on a 1988 scientific survey of red king crab distribution which indicates a significant movement of red king crabs, especially mature female animals, into this area.

Closure of these two areas (160° to 162° W. longitude and 162° to 163° W. longitude) will protect an estimated 66 percent of the male and 84 percent of the female red king crab population from interaction with trawl gear. Closure of the two areas also will protect the majority (62 percent of the legal-sized males and 52 percent of the mature females) of the large *C. bairdi* Tanner crabs.

C. Should the Secretary determine that significant concentrations of red king crab, *C. bairdi* Tanner crab, or Pacific halibut exist in areas other than as described in A. and B. above, further area closures or modification of existing closure(s), and/or gear restrictions, may be implemented by the Regional Director by notice in the **Federal Register**. Such action shall be: (1) Based upon a determination by the Regional Director that it is necessary to prevent excessive waste of or biological harm to prohibited species or to prevent an unfair allocation of fishery resources among gear and/or user groups, (2) designed to minimize the interaction between trawl gear and prohibited species, (3) in accordance with the monitoring principles described below, (4) consistent with the goals and objectives of the FMP, and (5) consistent with the Magnuson Act and other applicable federal law.

An unfair allocation of fishery resources could occur if, for example, one gear or user group took prohibited species at such a high rate that, if the rate were allowed to continue, cessation of groundfish trawling for the rest of the season could be required to protect the prohibited species.

2. Effective period

These bycatch management measures are implemented under authority of Section 305(e)(1) of the Magnuson Act. Therefore, they may remain in effect for 90 days after filing with the **Federal Register**, except that they may be extended, by agreement of the Secretary and the Council, for one additional period of 90 days (305(e)(3)).

3. Observers

Fishing with trawl gear may occur in the closed area, if the Regional Director determines that such fishing would likely not cause overfishing or biological harm to crab and halibut fishery resources. In this event, this rule requires U.S. fishing vessels trawling in the closed areas under the stated exceptions to do so in accordance with a scientific data collection and monitoring program implemented by the Regional Director. This program requires the carrying of domestic fishery observers on all fishing vessels delivering to domestic processors operating under the closure exceptions. The purpose of such a program is to collect statistically sound data on the catch of groundfish and prohibited species.

Description of Monitoring Guidelines and Principles

In addition to the regulatory measures described above, this action serves as notice of possible subsequent regulatory actions, should they be necessary.

The Secretary will be guided by the Council's January 1989 recommendations for annual PSC limits.

The Regional Director will monitor the bycatches as compared to the PSC limits. The Secretary may take additional regulatory action such as discussed above. The Secretary will be guided by the following three principles in order of priority:

I. The bycatch of the identified species of crab and halibut in the Bering Sea groundfish fisheries will not be allowed to cause overfishing or biological harm to these crab and halibut resources;

II. The total allowable groundfish catch will be allowed to be harvested to the extent that overfishing or biological harm to crab and halibut resources does not occur; and

III. The bycatch of the identified species of crab and halibut in the Bering Sea groundfish fisheries will be maintained within the Council's recommended PSC limits and bycatch allowance.

The overall guideline PSC limits for the areas defined below under "Bycatch limitation zones" are as follows: 1,000,000 C. bairdi Tanner crabs in Zone 1; 3,000,000 C. bairdi Tanner crabs in Zone 2; 200,000 red king crabs in Zone 1; 4,400 metric tons of Pacific halibut in Zones 1 and 2H; and 5,333 metric tons of Pacific halibut in the BSAI, overall.

Two key parts to carrying out the bycatch monitoring program are described as follows:

1. Bycatch Limitation Zones

For monitoring purposes, the Regional Director will use the same two bycatch limitation zones that were defined under Amendment 10 during 1987 and 1988 as Zones 1 and 2. Zone 1 includes statistical areas 511 and 512, and Zone 2 includes statistical areas 513 and 521. For monitoring halibut bycatch, a new bycatch limitation zone, Zone 2H, will be used in the Bering Sea subarea between 165° and 170° W. longitude and south of 56°30′ N. latitude. Zone 2H includes statistical area 515 and a new statistical area 517, which is that part of Zone 2 that is south of 56°30′ N. latitude. For monitoring crab bycatch, a new statistical area 516 will be used. This new statistical area is that part of Zone 1 that is south of 58°00′ N. latitude and north of the Alaskan Peninsula and between 162° and 163° W. longitude.

2. Observers

All groundfish fishing operations in the Bering Sea subarea are encouraged voluntarily to carry fishery observers in cooperation with the scientific monitoring program developed by the Regional Director. The ability to collect data from such a program is critical to the Regional Director's ability to monitor prohibited species bycatch by the groundfish fisheries. In the absence of reliable data on which to base bycatch estimates, the Regional Director will act conservatively in determining the need for subsequent regulatory actions to prevent excessive bycatches of prohibited species.

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this rule is necessary to respond to an emergency situation and that it is consistent with the Magnuson Act and other applicable law.

The Assistant Administrator also finds that reasons justifying promulgation of this rule on an emergency basis also make it impracticable and contrary to the public interest to provide notice and opportunity for prior comment or to delay for 30 days its effective date under section 553 (b) and (d) of the Administrative Procedure Act.

The Assistant Administrator has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal

zone management program of the State of Alaska. This determination has been submitted for review by the responsible State agency under section 307 of the Coastal Zone Management Act.

This emergency rule is exempt from the normal review procedures of Executive Order 12291 as provided in section 8(a)(1) of that order. This rule is being reported to the Director of the Office of Management and Budget with an explanation of why it is not possible to follow the usual procedures of that order.

The Assistant Administrator prepared an EA for this rule and concluded that there will be no significant impact on the human environment. A copy of the EA is available from the Regional Director at the above address.

This rule does not contain a collection of information requirement for purposes of the Paperwork Reduction Act.

The Regulatory Flexibility Act does not apply to this rule because, as an emergency rule, it is issued without opportunity for prior public comment. Since notice and opportunity for comment are not required to be given under section 553 of the Administrative Procedure Act, and since no other law requires that notice and opportunity for comment be given for this rule, under sections 603(a) and 604(a) of the Regulatory Flexibility Act, no initial or final regulatory flexibility analysis has been or will be prepared.

List of Subjects

50 CFR Part 611

Fisheries, Foreign fishing.

50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

Dated: March 15, 1989.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR Parts 611 and 675 are amended as follows:

PART 611—[AMENDED]

1. The authority citation for Part 611 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 971 *et seq*, 22 U.S.C. 1971 *et seq.*, and 16 U.S.C. 1361 *et seq.*

2. In § 611.93, paragraph (c)(2)(ii) is amended by temporarily suspending paragraphs (F) and (G) and temporarily adding new paragraphs (H) and (I), effective June 13, 1989, to read as follows:

§ 611.93 Bering Sea and Aleutian Islands groundfish fishery.

* * * * *

(c) * * *

(2) * * *

(ii) * * *

(H) At all times in the area enclosed by straight lines connecting the following coordinates: 57°30′ N. latitude, 162°00′ W. longitude; 58°00′ N. latitude, 162°00′ W. longitude; 58°00′ N. latitude, 160°30′30″ W. longitude.

(I) At all times in the area south of 58°00′ N. latitude, west of 162°00′ W. longitude, and east of 163°00′ W. longitude, except that foreign fishing vessels authorized to receive domestic catches may be allowed in this area subject to the provisions of § 675.22 of this title.

* * * * *

PART 675—[AMENDED]

3. The authority citation for 50 CFR Part 675 continues to read as follows:

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

4. In § 675.7, paragraph (c) is temporarily revised effective June 13, 1989, to read as follows:

§ 675.7 General prohibitions.

* * * * *

(c) Use a vessel to fish with trawl gear in that part of the Bering Sea subarea south of 58°00′ N. latitude and between 160°00′ W. longitude and 163°00′ W. longitude unless specifically authorized by and in compliance with provisions of § 675.22 of this part or to fish with trawl gear in any part of the Bering Sea subarea other than in compliance with the provisions of § 675.22 of this part.

5. A new § 675.22 is temporarily added effective June 13, 1989, to read as follows:

§ 675.22 Time and area closures.

(a) No fishing with trawl gear is allowed at any time in that part of the Bering Sea subarea south of 58°00′ N. latitude and between 160°00′ W. longitude and 163°00′ W. longitude except as provided under paragraphs (b) and (c) of this section.

(b) The Secretary may allow fishing for Pacific cod with trawl gear in that portion of the area defined in paragraph (a) of this section that lies south of a straight line connecting the coordinates 56°43′ N. latitude, 160°00′ W. longitude and 56°00′ N. latitude, 162°00′ W. longitude, provided that such fishing is conducted in full compliance with a scientific data collection and monitoring program, established by the Regional Director, designed to provide data necessary for management of the trawl fishery and to assess the bycatch of prohibited species by that fishery, and provided that the total bycatch of red king crab does not exceed 12,000 animals.

(c) The Secretary may allow fishing with trawl gear in the area south of 58°00′ N. latitude and between 162°00′ W. longitude and 163°00′ W. longitude provided that such fishing is conducted in full compliance with a scientific data collection and monitoring program, established by the Regional Director, designed to provide data necessary for management of the trawl fishery, and to assess the bycatch of prohibited species by that fishery.

(d) If the Regional Director determines that concentrations of red king crab, *C. bairdi* Tanner crab, or Pacific halibut exist in areas outside the area closed by paragraph (a) of this section, and that harvests in such areas might result in excessive waste or biological harm to prohibited species, or in unfair allocation of fishery resources among different gear or user groups, the Secretary may, by notice in the **Federal Register**:

(1) Close an area or modify a closed area of the Bering Sea subarea; and

(2) Modify the allowable gear to be used in all or part of the Bering Sea subarea.

[FR Doc. 89-6473 Filed 3-15-89; 4:27 pm]

BILLING CODE 3510-22-M

March 15 date

per 54 FR 12989, 3-29-89

Proposed Rules

Federal Register
Vol. 54, No. 52
Monday, March 20, 1989

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89-NM-10-AD]

Airworthiness Directives: Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to all Boeing Model 727 series airplanes, which would require inspection of the number 1 and 3 engine aft mount support fittings, and repair or replacement, if necessary. This proposal is prompted by reports of cracks in the aft engine mount support fittings. This condition, if not corrected, could lead to an engine separating from the airplane.

DATES: Comments must be received no later than May 11, 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-10-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: Ms. Kathi N. Ishimaru, Airframe Branch, ANM-120S; telephone (206) 431-1525. 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 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. 89-NM-10-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion: There have been reports of cracks in 14 aft engine mount support fttings on Boeing Model 727 series airplanes. The cracks were located both inboard and outboard of the body skin. All of the fittings with reported cracks were made of 7079-T6 material. While there have been no reports of cracks in the support fittings made from 7075-T73 material. The FAA has determined that, due to similar fatigue characteristics of 7079-T6 and 7075-T73, fatigue cracks in the support fittings made from 7075-T73 material are anticipated as the service time of these fittings increases.

Eight of the reported cracks were less than 3 inches in length and were suspected of having been caused by stress corrosion. Six cracks were between 6 and 15 inches in length. On one fitting, the crack severed the upper horizontal flange and extended down the web into the lower horizontal flange. Analysis of this fitting indicated the crack initiated at two fastener holes in the upper flange, propagated through the flange as a result of stress corrosion and fatigue, and continued down the web due to fatigue and static loads exceeding the fitting's residual strength. One fitting had a crack initiated and propagated by fatigue. This fitting had 57,000 flight hours and 50,000 flight cycles.

Undetected cracking of the number 1 or 3 engine aft mount support fittings can result in separation of the engine from the airplane.

The FAA has reviewed and approved Boeing Service Bulletin 727-54-0017, dated December 22, 1988, which describes the aft mount support fitting inspection.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require inspection of the number 1 and 3 engine aft mount support fittings in accordance with the service bulletin previously mentioned. Repair or replacement of any cracked fittings detected would be required to be accomplished in a manner approved by the Manager, Seattle Aircraft Certification Office.

There are approxiamtely 1,710 Model 727 series airplanes in the worldwide fleet. It is estimated that 1,143 airplanes of U.S. registry would be affected by this AD, that it would take approximately 12 manhours per airplane to accomplish the required inspections, 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 $548,640.

The regulations proposed herein would not have substantial direct effects of 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 purusant 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 727 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.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

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

To detect cracking in the number 1 or 3 engine aft mount support fitting, accomplish the following:

A. Conduct a detailed visual inspection for cracks of the number 1 and number 3 engine aft mount support fittings, in accordance with Section III.D and Figure 1 of Boeing Service Bulletin 727–54–0017, dated December 22, 1988, in accordance with the following schedule:

1. For airplanes with engine aft mount support fittings made of 7079–T6 material: prior to the accumulation of 25,000 flight cycles, or within the next 1,000 flight cycles, after the effective date of this AD, whichever occurs later, unless previously accomplished within the last 2,000 flight cycles.

Note: 7079–T6 material is used in the aft support fitting on the number 1 engine strut on airplanes line numbers 001 through 883, and the number 3 engine strut on airplanes line numbers 001 through 880.

2. For airplanes with engine aft support fitting made of 7075–T73 material: prior to the accumulation of 40,000 flight cycles, or within the next 1,000 flight cycles after the effective date of this AD, whichever occurs later unless previously accomplished within the last 2,000 flight cycles.

Note: 7075–T73 material is used in the aft support fitting on the number 1 engine strut on airplanes line number 884 and all later airplanes, and number 3 engine strut on airplanes line number 881 and all later airplanes

B. For the initial inspection required in paragraph A., above, as an option to the detailed visual inspection, perform an eddy current inspection of the support fittings outboard of the body skins, and a detailed visual inspection of the support fittings inboard of the body skins, in accordance with Section III.A and Figure 1 of Boeing Service Bulletin 727–54–0017, dated December 22, 1988.

C. Repeat the detailed visual inspection required by paragraph A., above, at intervals not to exceed 3,000 flight cycles.

D. If cracked fittings are found as a result of the inspections required by this AD, prior to further flight, repair or replace in accordance with a procedure approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

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, 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 9, 1989.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–6404 Filed 3–17–89; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 89–AGL–6]

Proposed Alteration to Transition Area; Litchfield, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the existing Litchfield, MN, transition area to accommodate new VOR–A, RNAW Runway 13, and RNAV Runway 31 Standard Instrument Approach Procedures (SIAPs) to the new Litchfield Municipal Airport, Litchfield, 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.

DATES: Comments must be received on or before May 3, 1989.

ADDRESS: Send comments on the proposal in triplicate to: Federal Aviation Administration, Reginal Counsel, AGL–7, Attn: Rules Docket No. 89–AGL–6, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Reginal Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

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

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. 89–AGL–6". 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 talking 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 Rules Docket, FAA, Great Lakes Region, Office of Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, 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, Office of Public Affairs, Attention: Public Information Center, APA–430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 426–8058. 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 alter the designated transition area airspace near Litchfield, MN. The present transition area is being modified to accommodate VOR–A, RNAV Runway 13, and RNAV Runaway 31 SIAPs to the new Litchfield Municipal Airport.

The new Litchfield Municipal Airport is being established at latitude 40°05'47" N., longitude 94°30'21" W., which is approximately 2.6 nautical miles south of the existing airport. The proposal to establish this new airport was circularized to the aviation public under Airspace Case Number 82–AGL–421–NRA.

The development of the SIAPs requires that the FAA alter the designated airspace to insure that the procedures will be contained within controlled airspace. The minimum descent altitude for these procedures may be established below the floor of the 700-foot controlled airspace. Aeronautical maps and charts will reflect the defined area which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

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—[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:

Litchfield, MN [Revised]

That airspace extending upward form 700 feet above the surface within a 5-mile radius of the Litchfield Municipal Airport (lat. 45°05'47" N., long. 94°30'21" W.); and within 3.25 miles each side of the 102° bearing extending from the 5-mile radius to 6.5 miles southeast of the airport; within 3.25 miles each side of the 137° bearing extending from the 5-mile radius to 6.5 miles southeast of the airport; within 3.25 miles each side of the 317° bearing extending from the 5-mile radius to 6.5 miles northwest of the airport.

Issued in Des Plaines, Illinois, on March 8, 1989.

Teddy W. Burcham,

Manager, Air Traffic Division.

[FR Doc. 89–6402 Filed 3–17–89; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[File No. 882 3108]

General Rent-A-Car Systems, Inc., et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, the Miami, Fla. national car rental company to disclose charges that are mandatory or are not reasonably avoidable to every consumer who inquires about the prices and also to disclose to consumers the car models they would receive under the car size classification the consumer selects.

DATE: Comments must be received on or before May 19, 1989.

ADDRESS: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Joel C. Winston or Michael R. MacPhail, FTC/S–4002, Washington, DC 20580. (202) 326–3153 or 326–3084.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

List of Subjects in 16 CFR Part 13

Automobiles, Rental cars, Trade practices.

Agreement Containing Consent Order To Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of General Rent-A-Car Systems, Inc, a corporation, and General Rent-A-Car, Inc., a corporation, hereinafter referred to as

proposed respondents, and it now appearing that proposed respondents are willing to enter into an agreement containing an order to cease and desist from the use of certain acts and practices being investigated,

It is hereby agreed by and between General Rent-A-Car Systems, Inc., by its duly authorized officer, and General Rent-A-Car, Inc., by its duly authorized officer, and their attorney, and counsel for the Federal Trade Commission that:

1. General Rent-A-Car Systems, Inc. is a corporation organized, existing, and doing business under and by virtue of the law of the State of Florida. Respondent General Rent-A-Car, Inc. is a corporation organized, existing, and doing business under and by virtue of the law of the State of Delaware. Respondents' offices and principal places of business are located at 2741 North 29th Avenue, Hollywood, Florida 33020.

2. Proposed respondents admit all the jurisdictional facts set forth in the draft complaint here attached.

3. Proposed respondents waive:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. All claims under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to the proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondents' address as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondents have read the proposed complaint and order contemplated hereby. Proposed respondents understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I.

For the purposes of this order, all required disclosures shall be made in a clear and conspicuous manner.

It is ordered that respondents General Rent-A-Car Systems, Inc., a corporation, and General Rent-A-Car, Inc., a corporation, their successors and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or any other device, in connection with the promotion, offering for rental or rental of any vehicle, in or affecting commerce, as commerce is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

A. Failing to disclose to consumers, in connection with any discussion or inquiry relating to the price of a contemplated rental, all airport surcharges or fees that are applicable to the contemplated rental or are not reasonably avoidable by consumers.

B. Failing to disclose to consumers, in connection with any discussion or inquiry relating to the price of a contemplated rental, all fuel charges that are applicable to the contemplated rental or are not reasonably avoidable by consumers.

C. Failing to disclose to consumers, in connection with any discussion or inquiry relating to the price of a contemplated rental, any other charges sought to be imposed in connection with a contemplated rental that are mandatory or that are not reasonably avoidable by consumers.

D. Failing to disclose to consumers, in connection with any discussion or inquiry in which an automobile reservation is made, the automobile model or models that they may receive under the classification rented.

II.

It is further ordered, That respondents shall for a period of three (3) years distribute, or cause to be distributed, a copy of this order to all present and future operating divisions, subsidiaries, franchisees, dealers, and managerial employees.

III.

It is further ordered, That respondents shall notify the Commission at least thirty (30) days prior to any proposed change in either corporation such as a dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation that may affect compliance obligations under this order. Respondents shall require, as a condition precedent to the closing of any sale or other disposition of all or a substantial part of their assets, that the acquiring party file with the Commission, prior to the closing of such sale or other disposition, a written agreement to be bound by the provisions of the order.

IV.

It is further ordered, That respondents shall, within sixty (60) days after service upon it of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an

agreement to enter a proposed consent order from General Rent-A-Car, Inc. and General Rent-A-Car Systems, Inc.

The proposed consent order has been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action, or make final the proposed order contained in the agreement.

This matter concerns oral representations made by respondents' reservations agents in response to consumer inquiries regarding contemplated automobile rentals. The Commission's complaint charges the proposed respondents with failing to disclose in such discussions (a) the existence and amount of mandatory fuel charges imposed on renters, (b) the existence and amount of mandatory airport fees imposed on consumers who travel in respondents' vehicles from certain airport locations to one of their rental offices, and (c) the car models falling within size categories selected by consumers. The latter information would be material to consumers, because respondents classify certain automobile models generally regarded as "subcompacts" or "compacts" as "compacts" and "intermediates," respectively.

The consent order contains provisions designed to remedy the violations charged and to require respondents to disclose mandatory charges in the future.

Paragraph I requires respondents to disclose to consumers all charges that are mandatory or not reasonably avoidable, including mandatory fuel and airport charges. Paragraph I also requires respondents to disclose the automobile model or models that consumers may receive under a desired size classification.

Paragraph II of the order requires respondents to distribute copies of the order to all divisions, subsidiaries, franchisees, dealers, and managerial employees for a three year period. Paragraph III requires respondents to notify the Commission at least thirty days prior to any dissolution, merger, or other change in corporate status that may affect their compliance obligations. Paragraph IV requires respondents to file a report with the Commission within sixty days describing how it has complied with the order.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 89-6423 Filed 3-17-89; 8:45 am]

BILLING CODE 6750-01-M

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16 CFR Part 460

Trade Regulation Rule; Labeling and Advertising of Home Insulation

AGENCY: Federal Trade Commission.

ACTION: Proposed rule.

SUMMARY: The Federal Trade Commission, in response to a petition filed by an industry group and pursuant to the Federal Trade Commission Act (15 U.S.C. 45 *et seq.*), has tentatively decided to issue a technical, non-substantive amendment to § 460.5(a)(2) of its Trade Regulation Rule Concerning the Labeling and Advertising of Home Insulation (16 CFR Part 460). The Rule as interpreted by the Commission currently requires use by manufacturers of loose-fill cellulose insulation of one of two specific settled density test procedures. The amendment, if made final, would require use of the settled density test procedure adopted in ASTM C739-86.

DATE: All comments and data should be received by the Commission no later than May 19, 1989.

ADDRESS: Comments and data should be sent to Secretary, Federal Trade Commission, Sixth and Pennsylvania Avenue, NW., Washington, DC 20580. Submissions should be identified as "R-value Rule—proposed rule amendment comment."

FOR FURTHER INFORMATION CONTACT: Kent C. Howerton, R-value Rule Coordinator, Federal Trade Commission, Washington, DC 20580, (202) 326-3013.

SUPPLEMENTARY INFORMATION:

I. Summary of Petition

The Cellulose Industry Standards Enforcement Program ("CISEP"), an industry association of cellulose insulation manufacturers, requested that the Commission adopt a revised version of the blower cyclone shaker ("BCS") settled density test procedure under § 460.5(a)(2) of the Commission's Trade Regulation Rule Concerning the Labeling and Advertising of Home Insulation (the "R-value Rule") 16 CFR Part 460.[1] The revised procedure has been adopted by the American Society of Testing and Materials ("ASTM") in its ASTM C739-86 material standard for cellulose insulation. The Commission tentatively has decided to adopt the revised test procedure as a technical amendment to the R-value Rule, and solicits written public comments on this decision.

II. Background

The R-value of an insulation product is dependent upon its density and thickness. Loose-fill insulations normally settle, becoming more dense and less thick, after they are installed in an open space such as an attic. Therefore, § 460.5(a)92) of the R-value Rule requires that tests to determine the R-value of loose-fill cellulose insulation be conducted on samples prepared at the product's "settled density," *i.e.*, the density to which the product can be expected to settle over time. R-values and other coverage chart information on product labels and fact sheets and in promotional materials must be for the product at its settled density and settled thickness.

Section 460.5(a)(2) requires that manufacturers determine the settled density of loose-fill cellulose insulation according to the settled density test procedure required by Federal Specification HH-I-515D for loose-fill cellulose insulation issued by the General Services Administration ("GSA"). At the time the Commission promulgated the Rule, the GSA specification required use of a settled density test commonly known as the "Canadian drop box test," or "drop box test."

GSA thereafter amended its specification to require use of a different settled density test commonly known as the "blower cyclone shaker test," or "BCS," which had been developed by the Consumer Product Safety Commission ("CPSC") for a safety standard it issued for cellulose insulation. In an advisory opinion issued on September 25, 1980, the Commission announced that it would permit, but not require, the use of the BCS test procedure contained in the amended GSA specification for compliance with § 460.5(a)(2) of the R-value Rule.[2]

More recently, GSA has been eliminating all of the Federal Specifications [3] for insulation products,

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[1] The request, plus attachments, has been placed on the public record as Doc. No. BB-2 in FTC File No. 215-59.

[2] During the original R-value rulemaking proceeding and since the Rule has been in effect, the commission and its staff have attempted to make the R-value Rule's testing requirements consistent with those of other Federal agencies.

[3] GSA's Federal Specifications were issued as purchase specifications for purchases by the federal government or for use in programs financed by the federal government, such as in HUD financed housing. They were not mandatory material standards for other purposes.

as ASTM issues complete material specifications for the products. GSA has eliminated Federal Specification HH–I–515 because ASTM issued C739–86. Instead, GSA regulations now cite the current version of the ASTM insulation specification for cellulose insulation purchases by the Federal Government. Therefore, GSA has in effect accepted the revised version of ASTM C739.

Both the Canadian drop box and the original BCS test procedures attempt to replicate actual long-term, on site measurements of settled density in a laboratory setting. Under the Canadian drop box test procedure, settled density is determined by comparing the product's density as originally installed (or "blown") and product settlement resulting from dropping tests and climatic cycling over a 28 day period. Under the BCS test procedure, settled density is determined by measuring the volumetric difference before and after applying concentrated vibration to a measured sample for approximately five minutes.

The Commission believes that most or all loose-fill cellulose insulation manufacturers in the United States today use the BCS test procedure instead of the Canadian drop box test procedure. The BCS procedure is much simpler to conduct and gives a result much faster, and thus is useful for on-going quality control ("QC"). However, some cellulose manufacturers have argued that the original BCS test procedure results in a too dense result and that the repeatability [4] of the results between laboratories, and even within the same laboratory, has been inadequate. Some manufacturers argue that the reason for these problems is that the original BCS procedure used a small scale laboratory blowing machine to blow the sample at the beginning of the test, and that this small scale blower does not sufficiently break up products that are particularly tightly packed by the manufacturer. They argue that the sample should be preblown using the same type of equipment that is used by installers in the field to replicate field applications more closely. The major revision to the BCS test procedure in the revised ASTM C739–86 specification is the addition of this "preblow" step.

III. Discussion of CISEP Request

In support of its request, CISEP submitted test data that was prepared for presentation at an ASTM C–16 [5] meeting in October 1984. The data are for "Round-Robin" tests conducted on loose-fill cellulose insulation samples produced especially for the test round. The primary objectives of the Round-Robin were: (1) To determine whether the results of the BCS test were significantly affected by how densely the insulation was bagged or compacted; and (2) if the results were significantly affected, to determine whether use of commercial blowing equipment (like that used to install insulation in the field) to prepare (*i.e.*, "preblow") the insulation sample for the settled density test procedure would significantly reduce differences in settled density results between separate tests.

According to the petition, all the test samples were manufactured simultaneously with production equipment that had seven bagging outlets. Three of the bagger outlets produced the dense pack sample material, three outlets produced the sample material that was loosely packed with a ram, and the seventh outlet fed unbagged sample material into open boxes. The insulation samples were prepared in this manner in order to examine the first objective. In order to examine the second objective, bags of the prepared dense pack and loose pack samples were then blown through a commercial blower and hopper to prepare control "preblow" samples from the dense pack and loose pack sample material. This preblow step was repeated by each of the participants in the study, using their own blowing equipment, to prepare the remaining two samples.

Insulation from each of the prepared samples was sent to 12 laboratories.[6] The 12 laboratories participating were not informed that the samples they tested were identical in composition. Each laboratory conducted five settled density tests on material from each of the seven different samples.[7] The report included in the CISEP request contains each separate test result.

Based on the results, CISEP asserts that the BCS settled density result is directly related to the blown density that is determined at an earlier stage of the BCS procedure, and that the blown density result is strongly affected by the material's compaction in its packaging at the manufacturing plant. CISEP states that the variability (*i.e.*, the standard deviation) between the test results in its study decreased with decreased initial compaction, going from the densely packed material down through the unbagged material. CISEP also indicated that the variability of the results on prebagged samples decreased when the preblow step was added to the test procedure.

CISEP argues that the preblow step at the beginning of the settled density test procedure, using the type of commercial blowing equipment used in the field to install loose-fill cellulose, provides a necessary standardized reference point to remove much of the variability in settled density test results that is due to the material's compaction in bagging. In support of this proposition, CISEP points to the reduction in the standard deviation of the test results in its study that occurred when the preblow step was added to the test procedure.

Based on its results and on the acceptance of the revised test procedure as an ASTM standard, CISEP requests that the Commission adopt the revised BCS test procedure in ASTM C739–86 for compliance by loose-fill cellulose manufacturers with § 460.5(a)(2) of the R-value Rule.

IV. The Commission's Decision

The Commission is concerned that the Rule not have the undesirable effect of chilling advances in thermal testing technology, or for that matter in manufacturing and installation procedures. It therefore standards ready to consider seriously proposals to adapt the requirements of the Rule to changing technology. In this case, the Commission believes that CISEP's analysis of the test results it submitted is accurate and that the results demonstrate a decrease in the variability of the settled density results obtained after addition of the pre-blow step to the test procedure.[8] Indeed, it appears that CISEP's data and analysis led to ASTM's adoption of the pre-blow step to its standard. The Commission also believes that

[4] Repeatability refers to how closely the results of a test can be repeated. Thus, repeatability helps assure that test results have value to consumers in comparing different products.

[5] The ASTM C–16 Committee is the committee that covers test and material specifications for insulation products.

[6] Eight of the laboratories were insulation manufacturers's in-house laboratories, one was a manufacturer of fire-retardant chemicals used by cellulose manufacturers, three were independent testing laboratories, and one was Oak Ridge National Laboratory.

[7] Sample #1 was the dense pack material; #1A was the dense pack material preblown with the participant's blower; #4 was the dense pack material preblown with the control blower; #2 was the loose packed material #2A was the loose pack material preblown with the participant's blower; #5 was the loose pack material preblown with the control blower; and #3 was the unbagged material.

[8] The Commission drawns no statistical conclusions about the variability of the BCS test procedure based on the CISEP test results.

improvements to the test procedures that reduce variability benefit consumers and the industry and improve the Rule.

Accordingly, the Commission has tentatively decided to adopt the revised test procedure as the only settled density test procedure allowed under § 460.5(a)(2). In issuing the proposed amendment, the Commission finds that the revision to the BCS procedure adopted by ASTM in its C739–86 specification is a technical or housekeeping change. The amendment, if the Commission makes it final, would require that all future settled density tests by loose/fill cellulose manufacturers for compliance with the Rule be conducted according to the ASTM C739–86 procedure. Manufacturers who have not changed their products could continue to rely on their previous results.

To give all interested parties an opportunity to respond to the proposed amendment, the Commission will allow interested parties to submit written public comments on these two decisions for 60 days. The Commission will announce its final decision and an effective date after reviewing the comments.

List of Subjects in 16 CFR Part 460

Advertising, Insulation, Labeling, Trade practices.

Accordingly, the Commission proposes to amend 16 CFR Part 460 to read as follows:

PART 460—[AMENDED]

1. The authority citation for Part 460 continues to read as follows:

Authority: 38 Stat. 717, as amended, 15 U.S.C. 41 *et seq.*

2. Section 460.5(a)(2) is revised to read as follows:

§ 460.5 R-value tests.

* * * * *

(a) * * *

(2) For loose-fill cellulose, the tests must be done at the settled density determined under ASTM C739–86.

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By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 89–6424 Filed 3–17–89; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

Schedules of Control Substances; Proposed Placement of 1-[1-(2-Thienyl)Cyclohexyl]Pyrrolidine Into Schedule I

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice of proposed rulemaking is issued by the Administrator of the Drug Enforcement Administration (DEA) to place 1-[1-(2-thienyl)cyclohexyl]pyrrolidine into Schedule I of the Controlled Substances Act (CSA) (21 U.S.C. 801 *et seq.*). This proposed action by the DEA Administrator is based on data gathered and reviewed by DEA and on the recommendation of the Assistant Secretary for Health, Department of Health and Human Services. If finalized, this proposed action would impose the regulatory control mechanisms and criminal sanctions of Schedule I on the manufacture, distribution and possession of this substance.

DATE: Comments must be submitted on or before April 19, 1989.

ADDRESS: Comments and objections should be submitted to the Administrator, Drug Enforcement Administration, 1405 I Street, NW., Washington, DC 20537, Attention: DEA Federal Register Representative.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug Control Section, Drug Enforcement Administration, 1405 I Street, NW., Washington, DC 20537, Telephone: (202) 633–1366.

SUPPLEMENTARY INFORMATION. DEA has gethered and reviewed the available information regarding the actual abuse and relative potential of abuse of 1-[1-(2-thienyl)cyclohexyl]pyrrolidine. By letter dated October 8, 1988, the DEA Administrator submitted data which DEA had gathered on 1-[1-(2-thienyl)cyclohexyl]pyrrolidine to the Assistant Secretary for Health, Department of Health and Human Services. In accordance with 21 U.S.C. 811(b), the DEA Administrator also requested a scientific and medical evaluation of the relevant information and a scheduling recommendation for 1-[1-(2-thienyl)cyclohexyl]pyrrolidine from the Assistant Secretary for Health. A recommendation to place 1-[1-(2-thienyl)cyclohexyl]pyrrolidine in Schedule I of the CSA was received by the DEA Administrator from the Assistant Secretary for Health on February 6, 1989.

1-[1-(2-Thienyl)cyclohexyl]pyrrolidine (TCPy) is an analog of the hallucinogenic agents 1-(1-(2-thienyl)cyclohexyl)piperidine (TCP) and 1-(1-phenylcyclohexyl)piperidine (phenycyclidine, PCP) which are in Schedule I and II of the CSA, respectively. Results of various pharmacological tests indicate that TCPy has a pharmacological profile qualitatively similar to that of PCP. The only difference between the two drugs is in potency for producing various effects; for some effects TCPy is more potent than PCP, while for other effects PCP is more potent that TCPy. Based on preclinical pharmacology data, it is expected that TCPy will produce similar adverse reactions to that produced by PCP. As is the case with PCP, TCPy is self-administered by rats and baboons, thus suggesting that TCPy has positive reinforcing effects in these laboratory animals. In drug discrimination experiments, TCPy evokes PCP-like appropriate responding in animals trained to distinguish PCP from vehicle.

TCPy has been identified in drug evidence submissions to forensic laboratories. It is produced in clandestine laboratories and sold in the illicit drug market as PCP.

The DEA Administrator, based on the information gathered and reviewed by his staff and after consideration of the factors in 21 U.S.C 811(c), and relying on the scientific and medical evaluation and scheduling recommendation of the Assistant Secretary for Health finds that:

(1) 1-[1-(2-thienyl)cyclohexyl]pyrrolidine has a high potential or abuse;

(2) 1-[1-(2-thienyl)cyclohexyl]pyrrolidine has no currently accepted medical use in treatment in the United States;

(3) There is a lack of accepted safety for use of 1-[1-(2-thienyl)cyclohexyl]pyrrolidine under medical supervision.

The above findings are consistent with the placement of 1-[1-(2-thienyl)cyclohexyl]pyrrolidine into Schedule I of the CSA.

The DEA Administrator will consider relevant comments on the proposed scheduling of 1-[1-(2-thienyl)cyclohexyl]pyrrolidine from concerned paties. Interested persons are invited to submit their comments, objections or requests for hearing in writing with regard to this proposal. Requests for a hearing should state with particularity the issues concerning which the person desires to be heard.

All correspondence regarding this matter should be submitted to the Administrator, Drug Enforcement Administration, 1405 I Street, NW., Washington, DC 20537, Attention: DEA Federal Register Representative.

In the event that comments, objections or requests for a hearing raise one or more issues which the Administrator finds warrant a hearing, the Administrator shall order a public hearing by notice in the **Federal Register**, summarizing the issues to be heard and setting the time for hearing.

Pursuant to Title 5, United States Code, section 605(b), the Administrator certifies that the scheduling of 1-[1-(2-thienyl)cyclohexyl]pyrrolidine, as ordered herein, will not have a significant impact upon small businesses or other entities whose interests must be considered under the Regulatory Flexibility Act (Pub. L. 96–354).

This action involves the control of a substance that is not manufactured and has no legitimate medical use in the United States.

In accordance with the provisions of section 201(a) of the CSA (21 U.S.C. 811(a)), this schedulng action is a formal rulemaking "on the record after opportunity for a hearing." Such proceedings are conducted pursuant to the provisions of 5 U.S.C. 556 and 557 and, as such, have been exempted from the consultation requirements of Executive Order 12291 (46 FR 13193). This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this matter does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

Under the authority vested in the Attorney General by section 201(a) of the CSA (21 U.S.C. 811(a)), and delegated to the Administrator of DEA by Department of Justice Regulations (28 CFR 0.100), the Administrator hereby proposes that 21 CFR Part 1308 be amended as follows:

PART 1308—[AMENDED]

1. The authority citation for 21 CFR Part 1308 continues to read as follows:

Authority: 21 U.S.C.811,812,871(b).

2. § 1308.11(d) is amended by adding new paragraph (d)(26) to read as follows:

§ 1308.11 Schedule I.

* * * * *

(d) * * *

(26) 1-[1-(2-thienyl)cyclohexyl]pyrrolidine.....7473

Some trade or other names: TCPy.

* * * * *

Date: March 31, 1989.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 89–6456 Filed 3–17–89; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

Ohio Permanent Regulatory Program; Revision of Administrative Rules

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

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing the receipt of proposed Program Amendment Number 39 to the Ohio permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments are intended to revise eight administrative rules of the State program to be consistent with the corresponding Federal regulations. The proposed amendments concern definitions, financial interests, subsidence control, threatened and endangered species, self-bonding, bond release notices, and individual civil penalties.

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

DATES: Written comments must be received on or before 4:00 p.m. on April 19, 1989. If requested, a public hearing on the proposed amendments will be held at 1:00 p.m. on April 14, 1989. Requests to present oral testimony at the hearing must be received on or before 4:00 p.m. on April 4, 1989.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand-delivered to Ms. Nina Rose Hatfield, Director, Columbus Field Office, at the address listed below. Copies of the Ohio program, the proposed amendments, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendments by contacting OSMRE's Columbus Field Office.

Office of Surface Mining Reclamation and Enforcement, Columbus Field Office, 2242 South Hamilton Road, Room 202, Columbus, Ohio 43232, Telephone: (614) 866–0578.

Office of Surface Mining Reclamation and Enforcement, 1100 "L" Street, NW., Room 5131, Washington, DC 20240, Telephone: (202) 343–5492.

Ohio Department of Natural Resources, Division of Reclamation, Fountain Square, Building B–3, Columbus, Ohio 43224, Telephone: (614) 265–6675.

FOR FURTHER INFORMATION CONTACT: Ms. Nina Rose Hatfield, Director, Columbus Field Office, (614) 866–0578.

SUPPLEMENTARY INFORMATION:

I. Background

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program submission, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1982 **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Discussion of the Proposed Amendments

By letter dated November 3, 1988 (Administrative Record No. OH–1113), the Director of OSMRE notified the Ohio Department of Natural Resources, Division of Reclamation (Ohio) of a number of Federal regulations promulgated between October 1, 1983 and June 15, 1988 for which OSMRE had determined that the corresponding Ohio rules were now less effective than the new Federal counterparts.

Also, on December 22, 1988, the Director of OSMRE announced the approval, with certain exceptions, of Ohio Program Amendment No. 34 (53 FR 51543). In this announcement, the Director disapproved the definition of "property to be mined" at OAC 1501:13–

1–02 (MMMM) as submitted by Ohio on May 24, 1988. The Director required that Ohio submit a proposed amendment to revise the definition of "property to be mined" so as to require that permit applications identify all owners of record of mineral estates to be removed or displaced by surface excavation activities during the proposed coal mining operations.

In response to the OSMRE requirements of November 3 and December 22, 1988, Ohio submitted proposed Program Amendment No. 39 by letter dated March 1, 1989 (Administrative Record No. OH–1168). Proposed Program Amendment No. 39 would revise the Ohio program at Ohio Administrative Code (OAC) sections 1501:13–1–02, 13–1–03, 13–4–14, 13–5–01, 13–7–04, 13–7–05, and 13–9–11 and would create a new rule at 1501:13–14–06.

Nonsubstantive changes are proposed throughout these rules to correct paragraph letter notations, to refer to OSMRE using the full name of the Office of Surface Mining Reclamation and Enforcement, and to correct typographic errors.

The substantive changes in these rules are discussed briefly below:

(1) OAC section 1501:13–1–02 paragraph (S)(1): This paragraph is being rewritten to clarify those activities included under the definition of the term "coal mining operation." As proposed, the definition would include "in situ distillation or retorting; leaching or other chemical or physical processing; and the cleaning, concentrating, or other processing or preparation of coal" and would also include "the loading of coal at or near the mine site."

(2) OAC section 1501:13–1–02 paragraph (HHHH): This paragraph is being rewritten to define "previously mined area" as "land previously mined on which there were no surface coal mining operations subject to the standards of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*)."

(3) OAC section 1501:13–1–02 paragraph (MMMM): This paragraph is being rewritten to delete the phrase "to be mined" from the definition of "property to be mined." The revised definition would read "the surface estates and mineral estates within the permit area and the area covered by underground workings."

(4) OAC section 1501:13–1–03 paragraph (C): This paragraph is being added to require that members of the Ohio Reclamation Board of Review (RBR) recuse themselves from proceedings which may affect their direct or indirect financial interests.

(5) OAC section 1501:13–1–03 paragraph (F)(1): This paragraph is being rewritten to require that members of the Ohio RBR file a statement of employment and financial interest.

(6) OAC section 1501:13–1–03 paragraph (G)(1): This paragraph is being rewritten to specify that members of the Ohio RBR shall file statements of employment and financial interest annually on February first of each year or at such other dates as may be agreed to by the Director of OSMRE.

(7) OAC section 1501:13–1–03 paragraph (H)(1): This paragraph is being rewritten to specify that members of the Ohio RBR shall file their statements of employment and financial interest with the Chief of the Division of Reclamation, Ohio Department of Natural Resources.

(8) OAC section 1501:13–4–14 paragraph (M)(2)(d): This paragraph is being moved and revised from paragraph (M)(2)(e)(v). The new paragraph would require that subsidence control plans include "a description of monitoring, if any, needed to determine the commencement and degree of subsidence so that, when appropriate, other measures can be taken to prevent, reduce, or correct material damage in accordance with paragraph (D) of rule 1501:13–12–03 the Administrative Code."

(9) OAC section 1510:13–5–01 paragraph (E)(14): This paragraph is being rewritten to provide that, for approval by the State, permit applications must demonstrate that the mining operations "are not likely to jeopardize the continued existence of endangered or threatened species or are not likely to result in the destruction or adverse modification of their critical habitats as determined under the Endangered Species Act of 1973, as amended (16 U.S.C. 1513 *et seq.*)."

(10) OAC section 1510:13–5–01 paragraph (E)(18): This paragraph is being added to require that, for approval by the State, permit applications for proposed remining operations must demonstrate that the site of the mining operation is a "previously mined area" as defined at OAC Section 1501:13–1–02(HHHH).

(11) OAC section 1501:13–7–04 paragraph (D): This paragraph is being added to provide that the Chief of the Division of Reclamation, Ohio Department of Natural Resources (the Chief) may accept a written guarantee for an applicant's self-bond from any corporate guarantor whenever the applicant and the guarantor meet the conditions of paragraphs (B) (1), (2), and (4) of this rule. Such a written guarantee shall be referred to as a "non-parent corporate guarantee," the terms of which shall provide for compliance with paragraph (C) of this rule. Further, the Chief may require the applicant to submit any information specified in paragraph (B)(3) of this rule in order to determine the financial capabilities of the applicant.

(12) OAC section 1501:13–7–04 paragraph (E): This paragraph is being rewritten to add that "for the Chief to accept a non-parent corporate guarantee, the total amount of the non-parent corporate guarantor's present and proposed self-bonds and guaranteed self-bonds shall not exceed twenty-five per cent of the guarantor's tangible net worth in the United States."

(13) OAC section 1501:13–7–04 paragraph (F)(2): This paragraph is being rewritten to read as follows: "Corporations applying for a self-bond, and parent and non-parent corporations guaranteeing an applicant's self-bond shall submit an indemnity agreement signed by two corporate officers who are authorized to bind their corporations. A copy of such authorization shall be provided to the Chief along with an affidavit certifying that such an agreement is valid under all applicable Federal and State laws. In addition, the guarantor shall provide a copy of the corporate authorization demonstrating that the corporation may guarantee the self-bond and execute the indemnity agreement."

(14) OAC section 1501:13–7–04 paragraph (F)(4): This paragraph is being rewritten to provide that, if the approved reclamation plan is not completed, the applicant, the parent corporate guarantor, or the non-parent corporate guarantor shall be required to complete the approved reclamation plan for the lands in default or to pay to the Chief an amount necessary to complete the approved reclamation plan, not to exceed the bond amount.

(15) OAC section 1501:13–7–04 paragraphs (G) and (H): These paragraphs are being rewritten to include mention of non-parent corporate guarantors at references to parent corporations guarantors.

(16) OAC section 1501:13–7–05 paragraph (A)(3): This paragraph is being rewritten to add that advertisements of requests for performance bond release shall contain the permittee's name.

(17) OAC section 1501:13–9–11 paragraph (B)(1): This paragraph is being rewritten to clarify that no coal mining operation shall be conducted which is likely to jeopardize the continued existence of endangered or threatened species listed by the United

States Secretary of the Interior or is likely to result in the destruction or adverse modification of designated critical habitats of such species in violation of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

(18) OAC section 1501:13–14–06: This new rule is being proposed to authorize the assessment of individual civil penalties by the Chief against any corporate director, officer, or agent of a corporate permittee who knowingly and willfully authorized, ordered, or carried out a violation, failure, or refusal. The proposed rule contains the following:

(a) Definitions.

(b) Conditions for assessment and non-assessment of individual civil penalties.

(c) Amounts of penalties.

(d) Procedure for assessment of penalties.

(e) Due dates and/or postponement of penalties in consideration of petitions for review, abatement agreements, and/or appeals.

(f) Collection of delinquent penalties after forty-five days.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSMRE is now seeking comment on whether the amendments proposed by Ohio satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Ohio program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **"DATES"** or at locations other than the Columbus Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **"FOR MORE INFORMATION CONTACT"** by 4:00 p.m. on April 4, 1989. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSMRE representatives to discuss the proposed amendments may request a meeting at the Columbus Field Office by contacting the person listed under **"FOR FURTHER INFORMATION CONTACT."** All such meetings shall be open to the public and, if possible, notices of the meetings will be posted at the locations listed under **"ADDRESSES"**. A written summary of each public meeting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 935.

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

Date: March 13, 1989.

Carl C. Close,

Assistant Director, Eastern Field Operations.

[FR Doc. 89–6488 Filed 3–17–89; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 6 and 8

Optional Settlements on Insurance Calculations; United States Government Life Insurance; National Service Life Insurance

AGENCY: Department of Veterans Affairs.[1]

ACTION: Proposed regulatory amendment.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend its regulations to reflect that all future annuity payments authorized under the Veterans Special Life Insurance (VSLI), Veterans Reopened Insurance (VRI), Service Disabled Veterans Insurance (SDVI) and option 5 payments under both the National Service Life Insurance (NSLI) and United States Government Life Insurance (USGLI) programs will be calculated using the appropriate male mortality tables. The female mortality tables that are currently used to calculate payments will be raised to the male annuity payment amount, on a prospective basis. This proposed regulation change will implement the recommendation of the VA Advisory Committee on Women Veterans to end gender differentiation in the calculation of annuities in the affected programs.

DATES: Comments must be received on or before April 19, 1989. Comments will be available for public inspection until May 1, 1989. The effective date of this regulation will be 30 days after the date of publication of the final rule.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, and objections regarding the proposed regulatory amendments to the Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, Room 132, of the above address, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays) until May 1, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Gregory Hosmer, Insurance Specialist, Department of Veterans Affairs Regional Office and Insurance Center, P.O. Box 8079, Philadelphia, PA 19101, (215) 951–5710.

SUPPLEMENTARY INFORMATION: The Secretary hereby certifies that these proposed regulatory amendments, if promulgated, will not have a significant impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b) these proposed regulatory amendments are, therefore, exempt from the initial and final regulatory flexibility analyses requirements of §§ 603 and 604. The reason for this certification is that these regulatory amendments affect only certain annuitants. The amendments will, therefore, have no significant direct impact on small entities in terms of compliance costs, paperwork requirements or effects on competition.

The VA has also determined that these proposed regulatory amendments are nonmajor in accordance with Executive Order 12291, Federal Regulations. These proposed regulatory amendments will not have a large effect on the economy, will not cause an increase in costs or prices, and will not

[1] On March 15, 1989, the Veterans Administration became the Department of Veterans Affairs (see 54 FR 10476).

otherwise have any significant adverse economic effects.

The Catalog of Federal Domestic Assistance Program number for these proposed regulatory amendments is 64.103.

List of Subjects

38 CFR Part 6

United States Government Life Insurance.

38 CFR Part 8

National Service Life Insurance.

Approved: February 1, 1989.

Thomas E. Harvey,

Acting Administrator.

38 CFR Part 6, United States Government Life Insurance, and Part 8, National Service Life Insurance, are proposed to be amended as follows:

PART 6—[AMENDED]

2. In § 6.69a, the Optional Settlement table which appears at the end of the section is revised and an authority citation is added to read as follows:

§ 6.69a Optional settlement of insurance under the refund life income option authorized by 38 U.S.C. 752(b).

* * * * *

Age of insured at date of entitlement	Number of guaranteed installments	Amount of each monthly installment per $1,000
45	227	$4.42
46	224	4.48
47	220	4.55
48	217	4.62
49	214	4.69
50	210	4.77
51	207	4.85
52	203	4.93
53	200	5.02
54	196	5.11
55	192	5.21
56	189	5.31
57	185	5.41
58	182	5.52
59	178	5.64
60	174	5.76
61	170	5.89
62	166	6.03
63	163	6.17
64	159	6.32
65	155	6.48
66	151	6.65
67	147	6.83
68	143	7.02
69	139	7.22
70	135	7.44
71	131	7.66
72	127	7.90
73	123	8.16
74	120	8.39
75	120	8.56
76	120	8.72
77	120	8.87
78	120	9.01
79	120	9.14
80	120	9.26
81	120	9.36
82	120	9.46
83	120	9.54
84	120	9.60
85	120	9.66
86	120	9.71
87	120	9.74
88	120	9.77
89	120	9.79
90	120	9.81
91	120	9.82
92	120	9.82
93 and over	120	9.83

(Authority: 38 U.S.C. 706)

PART 8—[AMENDED]

3. In § 8.80, the Optional Settlement table for Option 3 and the introductory text and the Optional Settlement table for Option 4 are revised and an authority citation is added to read as follows:

§ 8.80 Optional settlements on insurance issued under the provisions of section 620 or 621 of the National Service Life Insurance Act, as amended, and section 722(a) of Title 38, United States Code.

* * * * *

Option 3. Insurance payable in installments throughout life. * * *

Age of beneficiary at date of death of insured	Amount of each monthly installment per $1,000 of insurance payable to original beneficiary
10 and under	$2.49
11	2.50
12	2.52
13	2.54
14	2.56
15	2.58
16	2.60
17	2.63
18	2.65
19	2.67
20	2.70
21	2.73
22	2.75
23	2.78
24	2.81
25	2.84
26	2.87
27	2.91
28	2.94
29	2.98
30	3.02
31	3.06
32	3.10
33	3.14
34	3.19
35	3.24
36	3.29
37	3.34
38	3.39
39	3.45
40	3.51
41	3.57
42	3.64
43	3.71
44	3.78
45	3.85
46	3.93
47	4.01
48	4.09
49	4.18
50	4.27
51	4.37
52	4.46
53	4.57
54	4.67
55	4.78
56	4.90
57	5.02
58	5.15
59	5.28
60	5.41
61	5.56
62	5.71
63	5.86
64	6.02
65	6.18
66	6.35
67	6.52
68	6.70
69	6.88
70	7.06
71	7.24
72	7.43
73	7.60
74	7.78
75	7.95
76	8.12
77	8.27
78	8.42
79	8.55
80	8.68
81	8.79
82	8.89
83	8.97
84	9.04
85	9.10
86	9.16
87	9.19
88	9.22
89	9.24
90	9.26
91	9.27
92	9.28
93	9.28
94	9.28
95	9.28
96 and over	9.29

Option 4. Refund life income. The amount of the installments noted below will be payable monthly throughout the lifetime of the designated beneficiary, but, if such beneficiary dies before payment of the number of installments certain noted below, the remaining unpaid monthly installments payable for such period certain as may be required in order that the sum of the installments certain (including a last installment of such reduced amount as may be necessary) shall equal the face value of

the contract less any indebtedness will be payable as provided in §§ 8.89, 8.90, or 8.91, whichever may be applicable. The law does not authorize settlement under this option in any case in which less than 120 installments may be paid; if a beneficiary is 78 or more years of age at the time of the death of the insured, payment will be made as provided in option 3; (Beneficiaries of any age up to and including 77: Payable for life of first beneficiary with number of installments stated below guaranteed).

Age of beneficiary at date of death of insured	Number of guaranteed monthly installments	Amount of each monthly installment per $1,000 insurance payable to original beneficiary
10 and under	405	$2.47
11	402	2.49
12	400	2.50
13	397	2.52
14	394	2.54
15	391	2.56
16	388	2.58
17	385	2.60
18	382	2.62
19	378	2.65
20	375	2.67
21	372	2.69
22	368	2.72
23	364	2.75
24	362	2.77
25	358	2.80
26	354	2.83
27	350	2.86
28	347	2.89
29	343	2.92
30	338	2.96
31	335	2.99
32	331	3.03
33	327	3.06
34	323	3.10
35	319	3.14
36	315	3.18
37	310	3.23
38	306	3.27
39	302	3.32
40	297	3.37
41	293	3.42
42	289	3.47
43	285	3.52
44	280	3.58
45	275	3.64
46	271	3.70
47	266	3.77
48	262	3.83
49	257	3.90
50	252	3.98
51	247	4.05
52	243	4.13
53	238	4.21
54	233	4.30
55	228	4.39
56	224	4.48
57	219	4.58
58	214	4.69
59	209	4.79
60	204	4.91
61	199	5.03
62	194	5.16
63	190	5.29
64	185	5.43
65	180	5.58
66	175	5.73
67	170	5.90
68	165	6.07
69	160	6.26
70	155	6.46
71	151	6.66
72	146	6.88
73	141	7.11
74	136	7.36
75	132	7.63
76	127	7.90
77	122	8.20
78		(1)

[1] For higher ages use installment given under option 3.

(Authority: 38 U.S.C. 706)

4. In § 8.80c, the Optional Settlement table for Option 3, the introductory text for option 4 and the Optional Settlement table are revised and an authority citation is added to read as follows:

§ 8.80c Optional settlements on insurance issued under the provisions of section 723(b) of Title 38, United States Code.

* * * * *

Option 3. Insurance payable in installments throughout life. * * *

Age of beneficiary at date of death of insured	Amount of each monthly installment per $1,000 insurance payable to original beneficiary
10 and under	$2.64
11	2.66
12	2.67
13	2.69
14	2.71
15	2.73
16	2.75
17	2.78
18	2.80
19	2.82
20	2.85
21	2.87
22	2.90
23	2.93
24	2.96
25	2.99
26	3.02
27	3.05
28	3.09
29	3.12
30	3.16
31	3.20
32	3.24
33	3.28
34	3.33
35	3.38
36	3.43
37	3.48
38	3.53
39	3.59
40	3.65
41	3.71
42	3.78
43	3.85
44	3.92
45	3.99
46	4.07
47	4.15
48	4.23
49	4.32
50	4.41
51	4.51
52	4.61
53	4.71
54	4.81
55	4.93
56	5.04
57	5.16
58	5.29
59	5.42
60	5.56
61	5.70
62	5.85
63	6.00
64	6.16
65	6.32
66	6.49
67	6.66
68	6.84
69	7.02
70	7.20
71	7.38
72	7.56
73	7.74
74	7.91
75	8.08
76	8.25
77	8.40
78	8.55
79	8.68
80	8.80
81	8.91
82	9.01
83	9.09
84	9.16
85	9.22
86	9.26
87	9.30
88	9.33
89	9.35
90	9.37
91	9.38
92	9.38
93 and over	9.39

Option 4. Refund life income. The amount of the installments noted below will be payable monthly throughout the lifetime of the designated beneficiary, but, if such beneficiary dies before payment of the number of installments certain noted below, the remaining unpaid monthly installments payable for such period certain as may be required in order that the sum of the installments certain (including a last installment of such reduced amount as may be necessary) shall equal the face value of the contract less any indebtedness, will be payable as provided in §§ 8.89, 8.90,

or 8.91, whichever may be applicable. The law does not authorize settlement under this option in any case in which less than 120 installments may be paid; if a beneficiary is 77 or more years of age at the time of the death of the insured, payment will be made as provided in option 3.

OPTION 4

Beneficiaries of any age up to and including 76: Payable for life of first beneficiary with number of installments stated below guaranteed.

Age of beneficiary at date of death of insured	Number of guaranteed monthly installments	Amount of each monthly installment per $1,000 insurance payable to original beneficiary
10 and under	382	$2.62
11	379	2.64
12	376	2.66
13	374	2.68
14	372	2.69
15	370	2.71
16	367	2.73
17	364	2.75
18	360	2.78
19	358	2.80
20	355	2.82
21	351	2.85
22	349	2.87
23	345	2.90
24	343	2.92
25	339	2.95
26	336	2.98
27	333	3.01
28	329	3.04
29	326	3.07
30	322	3.11
31	319	3.14
32	315	3.18
33	312	3.21
34	308	3.25
35	304	3.29
36	300	3.34
37	296	3.38
38	393	3.42
39	389	3.47
40	285	3.52
41	281	3.57
42	276	3.63
43	272	3.68
44	268	3.74
45	264	3.80
46	260	3.86
47	256	3.92
48	251	3.99
49	247	4.06
50	242	4.14
51	238	4.21
52	234	4.29
53	229	4.38
54	225	4.46
55	220	4.56
56	216	4.65
57	211	4.75
58	206	4.86
59	202	4.97
60	197	5.09
61	192	5.21
62	188	5.34
63	183	5.47
64	178	5.62
65	174	5.77
66	169	5.93
67	164	6.10
68	160	6.28
69	155	6.47
70	150	6.67
71	146	6.88
72	141	7.11
73	137	7.35
74	132	7.60
75	128	7.87
76	123	8.16
77	(1)	(1)

[1] For higher ages use installment given under Option 3.

(Authority: 38 U.S.C. 706)

5. In § 8.81, the Optional Settlement table for Option 3, Option 4, the introductory text and the Optional Settlement table for Option 5 are revised and an authority citation is added to read as follows:

§ 8.81 Optional settlements on insurance issued under the provisions of section 725 of Title 38, United States Code.

* * * * *

Option 3. Insurance payable in installments throughout life. * * *

Age of beneficiary at date of death of insured	Amount of each monthly installment per $1,000 insurance payable to original beneficiary
10 and under	$3.28
11	3.30
12	3.31
13	3.33
14	3.35
15	3.36
16	3.38
17	3.40
18	3.42
19	3.44
20	3.47
21	3.49
22	3.52
23	3.54
24	3.57
25	3.60
26	3.63
27	3.66
28	3.69
29	3.72
30	3.76
31	3.80
32	3.84
33	3.88
34	3.92
35	3.97
36	4.02
37	4.07
38	4.12
39	4.17
40	4.23
41	4.29
42	4.36
43	4.42
44	4.49
45	4.57
46	4.64
47	4.72
48	4.80
49	4.89
50	4.98
51	5.07
52	5.17
53	5.27
54	5.37
55	5.48
56	5.59
57	5.71
58	5.83
59	5.96
60	6.09
61	6.23
62	6.38
63	6.53
64	6.68
65	6.84
66	7.01
67	7.18
68	7.35
69	7.52
70	7.70
71	7.88
72	8.05
73	8.22
74	8.39
75	8.56
76	8.72
77	8.87
78	9.01
79	9.14
80	9.26
81	9.36
82	9.46
83	9.54
84	9.60
85	9.66
86	9.71
87	9.74
88	9.77
89	9.79
90	9.81
91	9.82
92	9.82
93 and over	9.83

Option 4. Refund life income. The amount of the installments noted below will be payable monthly throughout the lifetime of the designated beneficiary, but, if such beneficiary dies before payment of the number of installments certain noted below, the remaining unpaid monthly installments payable for such period certain (including a last installment of such reduced amount as may be necessary) shall equal the face value of the contract less any indebtedness, will be payable as provided by §§ 8.89, 8.90, or 8.91, whichever may be applicable. The law

does not authorize settlement under this option in any case in which less than 120 installments may be paid; if a beneficiary is 74 or more years of age at the time of the death of the insured, payment will be made as provided in option 3.

Option 5. (Beneficiaries of any age up to and including 73: Payable for life of first beneficiary with number of installments stated below guaranteed.)

Age of beneficiary at date of death of insured	Number of guaranteed monthly installments	Amount of each monthly installment per $1,000 insurance payable to original beneficiary
10 and under	306	$3.27
11	305	3.28
12	304	3.30
13	302	3.32
14	301	3.33
15	299	3.35
16	297	3.37
17	295	3.39
18	294	3.41
19	292	3.43
20	290	3.45
21	289	3.47
22	287	3.49
23	285	3.52
24	283	3.54
25	281	3.57
26	278	3.60
27	276	3.63
28	274	3.66
29	272	3.69
30	269	3.72
31	266	3.76
32	264	3.79
33	262	3.83
34	259	3.87
35	256	3.91
36	254	3.95
37	251	3.99
38	248	4.04
39	245	4.09
40	242	4.14
41	239	4.19
42	236	4.24
43	233	4.30
44	230	4.36
45	227	4.42
46	224	4.48
47	220	4.55
48	217	4.62
49	214	4.69
50	210	4.77
51	207	4.85
52	203	4.93
53	200	5.02
54	196	5.11
55	192	5.21
56	189	5.31
57	185	5.41
58	182	5.52
59	178	5.64
60	174	5.76
61	170	5.89
62	166	6.03
63	163	6.17
64	159	6.32
65	155	6.48
66	151	6.65
67	147	6.83
68	143	7.02
69	139	7.22
70	135	7.44
71	131	7.66
72	127	7.90
73	123	8.16
74	[1]	

[1] For beneficiaries over age 73 Use Option 3.

(Authority: 38 U.S.C. 706)

7. In § 8.92a, the Optional Settlement table is revised and an authority citation added to read as follows:

§ 8.92a Optional settlement under the refund life income option authorized by 38 U.S.C. 717(e) on participating National Service Life Insurance and nonparticipating insurance issued under section 602(c)(2) of the National Service Life Insurance Act, as amended, on which the requirements of good health were waived.

Age of insured at date of entitlement	Number of guaranteed installments	Amount of each monthly installment per $1,000
40	262	$3.83
41	258	3.88
42	255	3.93
43	251	3.99
44	247	4.05
45	244	4.11
46	240	4.17
47	236	4.24
48	233	4.31
49	229	4.38
50	225	4.45
51	221	4.53
52	217	4.61
53	213	4.70
54	209	4.79
55	205	4.88
56	201	4.98
57	197	5.08
58	193	5.19
59	189	5.31
60	185	5.43
61	181	5.55
62	177	5.68
63	172	5.83
64	168	5.98
65	164	6.13
66	159	6.30
67	155	6.47
68	151	6.65
69	146	6.85
70	142	7.06
71	138	7.28
72	133	7.52
73	129	7.76
74	125	8.02
75	121	8.31
76	120	8.48
77	120	8.63
78	120	8.78
79	120	8.91
80	120	9.03
81	120	9.14
82	120	9.23
83	120	9.31
84	120	9.38
85	120	9.44
86	120	9.48
87	120	9.52
88	120	9.55
89	120	9.57
90	120	9.59
91	120	9.60
92	120	9.60
93 and over	120	9.61

(Authority: 38 U.S.C. 706)

[FR Doc. 89-6239 Filed 3-17-89 8:45 am]

BILLING CODE 8320-01-M

POSTAL RATE COMMISSION

39 CFR Part 3001

[Docket No. RM88-2]

Establishment of Special Rules of Practice and Procedure for Use in Consideration of Express Mail Market Response Filings; Amendment of Rules Applicable to Requests for Changes in Rates or Fees and Rules Applicable to the Filing of Periodic Reports by the U.S. Postal Service

Issued: March 14, 1989.

AGENCY: Postal Rate Commission.

ACTION: Notice of proposed rulemaking (second notice).

SUMMARY: In response to a petition filed by the Postal Service, the Postal Rate Commission initiated this rulemaking to determine whether to adopt special rules of practice and procedure for use in considering Postal Service requests for changes in Express Mail rates prompted by developments in the market. Interested persons were invited to participate. 53 FR 16885-86 (May 12, 1988). Having considered the presentations of the participants in this rulemaking, the Commission has fashioned a set of procedural rules which we are publishing for public comment. This set of rules compresses, to the extent consistent with due process, the time necessary for the procedural steps in such a case. The proposed rules also make provision for automatic intervention, and set out filing requirements.

DATES: Comments on the proposed rules are due May 1, 1989.

ADDRESS: Correspondence should be sent to Charles L. Clapp, Secretary of the Commission, 1333 H Street NW., Suite 300, Washington, DC 20268 (telephone: 202/789-6840).

FOR FURTHER INFORMATION CONTACT:
David F. Stover, General Counsel, 1333 H Street NW., Suite 300, Washington, DC 20268 (telephone: 202/789-6820).

SUPPLEMENTARY INFORMATION:

I. Introduction and Summary

The Postal Rate Commission proposes amending its rules of practice (39 CFR Part 3001) by providing for expedited proceedings on certain requests by the United States Postal Service ("Postal Service" or "Service") for changes in rates for its Express Mail service. The proposed new provisions aim to allow rapid responses to changes in the market for expedited delivery services in order to avoid the possibility of unduly hindering competition between Express Mail and similar, nonregulated services provided by other carriers, while preserving the procedural rights of rate-case participants as required by 39 U.S.C. 3624.[1]

The proposed rules would be experimental in character, and would be subject to a five-year sunset provision. In addition to rules governing the conduct of expedited Express Mail cases, the proposal includes additional periodic data reporting requirements designed to facilitate completion of these cases within the planned schedule.

The Commission initiated this rulemaking in response to a petition from the Postal Service, which included a draft of suggested rules. Those provisions would, among other things, have established a 90-day schedule for decision (30 days if no hearings were found necessary), placed on intervenors the burden of showing that substantial fact issues required hearing, and (arguably) limited the scope of issues that could be addressed. The Service offered testimony of three witnesses to support certain propositions about the market for expedited services. In general, the Service's position as developed in the testimony has been that the expedited delivery market is highly competitive; that price is the most important determinant of competitive success; and that Express Mail is as fully subject to this price competition as any rival product. The competitive policy the Service wishes to follow envisions price reductions where needed to maintain (or minimize reductions in) the contribution of Express Mail to institutional costs.[2]

A number of parties, including competitors of Express Mail, filed comments. The Commission's Office of the Consumer Advocate (OCA) and the staff of the Federal Trade Commission offered alternative suggestions; American Newspaper Publishers Association suggested expanding the type of case to be considered under expedited rules (also discussed in more detail below).

A. Scope of This Rulemaking

The Postal Service petitioned the Commission to initiate this rulemaking to consider whether to establish new procedures for expeditiously considering requests to adjust Express Mail rates between omnibus rate cases when certain developments have occurred in the market. The Commission, in the exercise of its discretion, agreed to consider the Service's presentation.

It is clear that whether or not to enact new procedural regulations is entirely within the Commission's authority. Section 3603 of the Postal Reorganization Act provides that the Commission may promulgate rules and establish procedures, consistent with the Administrative Procedure Act, which enable it to carry out its functions and obligations under the Act. "Such rules, regulations, procedures, and actions shall not be subject to any change or supervision by the Postal Service." Thus, the Commission has been granted authority to implement whatever procedural rules it deems necessary to facilitate the performance of its duties.

The Postal Service presentation attempted to accomplish two things: First, to make a convincing showing that new procedural rules were warranted, and useful to the Commission in the performance of its duties; and second, to show that it was possible to draft rules that would produce the desired level of expedition while not compromising procedural due process rights provided by law. The Postal Service initially provided testimony from witnesses Shipman and Kahn arguing that new rules for rapidly processing rate change requests made necessary by actions of competitors are required if Express Mail is to remain a viable entrant in the expedited delivery market. Subsequently, the Postal Service filed rebuttal testimony by witness Michelson to buttress its argument that the continued health of Express Mail depended on having the ability to react within 90–120 days to changed rates introduced by competitors. Tr. 2/55.

We do not decide today that this testimony has shown conclusively that Express Mail would be likely to be eliminated as an effective service by any particular competitor price changes taking place in the future. However, it is not necessary for us to make such a finding in order to conclude that providing a vehicle for expeditious review of market response rate change requests is in furtherance of our duties as assigned by the Act. The Postal Service has shown that Express Mail competes to a greater or lesser extent with expedited delivery services offered by firms in the private sector, and that the market for expedited delivery services is quite competitive. *See also* PRC Op. R87–1, paras. 5995–6002.

In this rulemaking, the Postal Service has requested the Commission to consider implementing procedures to expedite rate requests designed to react to changes in the expedited delivery market—such as competitor's price cuts. The Postal Service petition limited the application of these procedures to cases in which it proposes reducing Express Mail rates for the purpose of preserving, to the extent feasible, the level of Express Mail contribution to institutional costs found appropriate in the most recent omnibus rate case. We have analyzed the material concerning the position of Express Mail in the expedited delivery market provided by the Postal Service in support of its petition. This evidence was not challenged by other participants. We conclude that, to the extent that we can fashion procedures to review rapidly rate change requests designed to respond to developments in this competitive market, those procedures will, in fact, be consistent with our obligations as prescribed in the Act. 39 U.S.C. 3624 provides that the Commission may adopt procedures to facilitate conducting cases "with the utmost expedition consistent with procedural fairness to the parties".

In addition to providing evidence in support of its request that the Commission fashion rules to conduct Express Mail market response rate cases with the utmost expedition, the Postal Service presented suggested procedural rules which it thought would meet this test. The development of the suggested rules, and the rationales underlying particular aspects of these rules were not discussed in testimony. This fact did not in any way detract

[1] Section 3624(a) requires that participants be given an opportunity for hearing on the record as provided by the Administrative Procedure Act (5 U.S.C. 556–557). Within this general framework, section 3624(b) directs the Commission to achieve "utmost expedition consistent with procedural fairness to the parties."

[2] The Service's suggested rules do not allow for price increase proposals. As of the last omnibus rate case, decided in March 1988, the revenue target for Express Mail was 169% of its attributable costs (*i.e.*, a "cost coverage" of 169).

from the seriousness of the consideration given to these suggestions, although a more detailed explanation for some of the specific suggestions might have aided our efforts. Postal Service responded to Presiding Commissioner Information Requests and discovery requests from participants concerning these rules. We are satisfied that they were fully understood and thoroughly briefed by interested parties.[3]

Our review of the rules suggested by the Postal Service leads us to conclude that in several important respects these rules are not acceptable. Our analysis of these problems is set out in some length in the sections that follow.

The deficiencies in the rules suggested by the Postal Service are not inherent in procedures to expedite limited rate requests such as Express Mail market response cases. Although we find ourselves unable to adopt the procedural suggestions made by the Postal Service in its petition, the set of rules put forward by the OCA or the suggestions of the staff of the Bureau of Economics of the Federal Trade Commission, we can continue to attempt to develop rules to expedite such cases which satisfy legitimate due process concerns. Therefore, we have prepared for comment proposed rules of practice for use in Express Mail market response rate request cases. Those rules are set forth in the final section of this notice, along with the invitation for interested persons to comment on the proposed rules within 40 days.

The proposal we are publishing herewith has the same goal of accommodating regulatory proceedings to claimed market exigencies, and accomplishes approximately the same degree of expedition as suggested by the Postal Service, but without unduly limiting the issues that may be considered, or the procedural rights of participants (particularly with regard to discovery), or inappropriately shifting burdens of proof. In part, expedition would be achieved through additional periodic reporting of relevant Postal Service data, which would make available from the beginning of an expedited case—or in many instances prior to its filing—much of the fundamental quantitative information needed to try it.

The rules we propose today are subject to a sunset provision; that is, they will expire in five years unless we reissue them. Our decision to propose these rules as experimental provisions rests on two conclusions:

1. While indicative of probabilities, the record in this case does not establish with certainty that the degree of expedition contemplated is in fact required by market circumstances; and

2. Decision of a contested rate proceeding, even limited to one class of mail, in approximately 90 days is likely to be a difficult undertaking and—once it is attempted—these rules should be re-examined.

In this Notice, we provide—

—A summary of the proceedings held,
—A description of the Postal Service's suggested rules, and the participants' criticisms thereof,
—A discussion of the OCA and FTC Staff suggestions, and
—An explanation of our own proposed rules (including the periodic reporting and sunset provisions, which were not suggested by any participant) and a schedule for comments thereon.

II. Procedural History

On April 29, 1988, the Postal Service filed a petition requesting the Commission to begin a rulemaking to establish a modified procedure for adjusting rates for Express Mail in periods between omnibus rate cases. The Postal Service said that it needed the ability to respond quickly to changes in the market. Along with the petition, the Postal Service filed suggested language for rule changes and supporting testimony. George A. Shipman (USPS–T–1) discussed the expedited delivery market and the Postal Service's disadvantages caused by delay in implementing rate changes. Alfred E. Kahn (USPS–T–2) discussed how the rules would facilitate promotion of economic efficiency and permit the Postal Service to remain in the expedited delivery market.

On May 6, 1988, the Commission issued Order No. 784 (53 FR 16885–86 (May 12, 1988)) which provided notice of the Postal Service's filing and invited comments on the desirability of instituting a rulemaking. Persons were also invited to notify the Commission if they wished their names on a service list for this rulemaking. The Commission issued Order No. 790 on June 16, 1988 (53 FR 23776 (June 24, 1988)). It instituted this rulemaking to consider both the underlying situation which led to the Postal Service request, and the specific suggestion presented by the Postal Service. The Order directed that Stephen A. Gold, as Director of the Office of the Consumer Advocate (OCA), participate in the proceeding in accordance with the responsibilities under 39 CFR 3002.7 and Part 3002, Appendix A.

On June 21, 1988, the Commission held a conference to discuss the procedures to be used in this proceeding. In addition to the Postal Service and the OCA, representatives of United Parcel Service (UPS), Federal Express Corporation (Federal Express), Direct Marketing Association, Inc. (DMA), Magazine Publishers Association (MPA), Harte-Hanks Direct Marketing/Southern California (Harte-Hanks) and Time Incorporated (Time Inc.) attended. In addition to these parties, Air Courier Conference of America (ACCA), American Newspaper Publishers Association (ANPA), American Postal Workers Union AFL–CIO (APWU), American Retail Federation (ARF) and the staff of the Bureau of Economics of the Federal Trade Commission (Bureau Staff) asked that their names be included on the service list.

Presiding Commissioner's Ruling No. 1, issued July 11, 1988, set up the procedures to be used in this case. Discovery concerning the Postal Service's presentation was permitted, and the Postal Service was asked to file a memorandum providing further explanation of its suggestion. Because the parties found that they could obtain sufficient information through written discovery, the scheduled appearances of the Postal Service's witnesses were cancelled at the request of the parties. The OCA and the Bureau Staff filed alternative proposals.

The parties were given an opportunity to investigate these alternatives and to address them prior to the briefing period. At the request of the Postal Service, the procedural schedule was modified to permit it to file rebuttal testimony. A hearing on the testimony of Robert E. Michelson (USPS–RT–1) was held on December 16, 1988. After the filing of initial briefs on January 9, 1989, and reply briefs on January 19, 1989, oral argument was held on January 25, 1989.

The Postal Service has presented considerable information on the need for an expedited method of changing Express Mail rates to respond to changes in the market. We have decided to propose rules for that purpose, with a view to adopting them for a trial period to see if they can bring about the benefits cited by the Postal Service. While the Service's suggestions have been of great significance in the development of these rules, we emphasize that this notice represents our current view of the best way to achieve the objective. The Postal Service's suggested rules do not comport, in several respects, with the

[3] Whether procedural rules adequately protect due process rights is fundamentally a legal question more appropriate for legal memoranda and briefs than for expert testimony.

requirements of our Act and due process standards. Similarly, the suggestions of the OCA and the Bureau Staff do not adequately advance the goal of speed and preservation of consistency with the statute. We have drafted, for public comment, rules which are intended to strike the correct balance between the Postal Service's need for expedition and the requirements imposed by the statute.

III. Description of the Postal Service Presentation

The Postal Service explains that its requested rule changes deal only with requests to change Express Mail rates in the period between omnibus rate cases. These requests would have the purpose of preserving its contribution to institutional costs when the competitive market experiences changes. The Postal Service anticipates changes in the market, but is unable to predict their timing or specific nature. The Postal Service says that the expedited delivery market is too volatile for Express Mail to compete effectively if rates are only changed in the 3-year postal rate cycle of recent years. According to the Postal Service, if an expedited delivery firm cannot meet competitors' price changes, it will lose significant business. Postal Service Petition at 5.

Under the Postal Service's suggested rules, the rates requested in these cases could not be below the average per-piece attributable cost for Express Mail as found in the most recent omnibus rate case or as determined by the Postal Service for the most recent fiscal year for which the information is available, whichever is higher. The rates proposed could not be above those adopted by the Governors in the most recent rate case.

There are a number of distinctive facets to the Postal Service's suggested rules for accelerated Express Mail rate changes including: reduced Postal Service filing requirements, means for automatic intervention, required showings to obtain a trial-type hearing, and compressed procedural schedules.

Information requirements. Under the Postal Service's suggested rules, the usual filing requirements of rule 54 (39 CFR 3001.54) would not apply. Rather, the Postal Service would have to file only information specified in its suggested rules. It would provide an explanation of why the requested rates are a reasonable response to the change in the market, a statement of Express Mail attributable costs, its revenues for the most recent four quarters for which the information is available, audited financial statements, workpapers, and a description of the change in the market which the Postal Service wishes to meet.

Automatic intervention. The Postal Service suggests a number of innovations to reduce the time necessary at the initial stage of the case. Interested persons could have their names put on a register kept by the Commission, and they would automatically be made parties whenever the Postal Service filed an Express Mail interim rate request under the rules. The Postal Service would deliver a copy of its filing to everyone on the list when it filed a request with the Commission.

Another feature of the automatic intervention which the Postal Service suggests is a concomitant requirement of supplying certain evidence. If Postal Service states its rate request is a response to an action taken by a registrant, that party would have to file a sworn statement admitting or denying that it is charging the rates that the Postal Service has cited in its request to change Express Mail rates.

Limitations on opportunity for hearing. The Postal Service's suggested rules would limit the availability of a trial-type hearing as well as restrict the issues which could be raised in it. Parties would have 10 days from the Postal Service's filing to request a hearing. The Postal Service would limit the issues that could be raised to (1) the costs have not been calculated in accordance with the methods from the last rate case, (2) the change in the market cited by the Postal Service has not, in fact, occurred, or (3) the proposed rates are not a reasonable response to that change. Postal Service Suggested Rule 3001.57b(4).

In a request for a hearing, the party would have to state which of the Postal Service's assertions it disagrees with, and describe the facts it believes to be true. Additionally, the party would name the witnesses it proposes to present and summarize their testimony. The Commission would then decide whether a genuine issue of material fact had been raised for which a hearing was necessary.

Time schedules. The Postal Service's suggested rules include the time periods for each stage. Rule 3001.57b(5)(e) would provide that the Commission may shorten any of the time limits, but will not extend any of them. If no hearing were to be held, the Commission would issue its decision within 30 days of the filing of the request. If a hearing were held, it would be scheduled to begin no later than 20 days after the filing of the request. Testimony from parties would be submitted within 30 days of the Postal Service's filing, with hearings starting 15 days later. Rebuttal testimony would be due 5 days after the conclusion of hearings on parties' direct testimony, with hearings on rebuttal beginning in another 5 days. Briefs would be filed 10 days after the hearings were finished and reply briefs in another 10 days. The Postal Service suggestion would give the Commission 10 days after the filing of the reply briefs to issue its decision.

Items not addressed. The text of the Postal Service's rules do not address a number of items involved in our proceedings. The suggested rules are silent concerning procedural steps when the Commission determines it is not required to hold a hearing. The Commission's decision is to be issued 20 days after the deadline for a party to request a hearing. It is not clear whether those rules contemplate the filing of briefs and reply briefs, and how those steps—and the Commission's issuing a decision—could be fit into those 20 days.

Another matter not addressed by the Postal Service's rules is intervention by a person not on the list for the automatic process. Often, the Commission gives interested parties 30 days from the time notice appears in the **Federal Register** to intervene. Under the Postal Service's suggestion, in cases not requiring a hearing, the Commission would issue its decision within 30 days of the Postal Service's request.

IV. Analysis of the Postal Service's Presentation

A. The Potential Need for Expedition in Express Mail Market Response Rate Requests Warrants Development of Procedural Rules for These Cases

Federal Express and UPS assert that the Postal Service has failed to prove that a need exists for specialized rules for accelerated consideration of rate changes for Express Mail. Federal Express argues that the existing procedural rules have never been tested with regard to how much expedition is possible. Federal Express Brief at 20. UPS agrees that the Postal Service should not be given a rule change until it has shown that the current procedures are inadequate. This showing would be done by its filing a request for Express Mail rate changes and asking for expeditious consideration. UPS Brief at 26. UPS points out that the Commission decides myriad-issue rate cases in 10 months. Therefore, a limited-issue Express Mail interim rate change case could be expected to take much less time. UPS Reply Brief at 3–4. According to UPS, there are a number of methods currently available to the Postal Service that it could use to speed consideration

of a rate request without amending the Commission's rules—including undertaking to provide all relevant data in its request and to respond fully and promptly to discovery. UPS Brief at 26.

The Postal Service points to its testimony in this proceeding and asserts that it has proved the need for an expedited method of changing Express Mail rates to meet developments in the market. The Postal Service states that previous losses of Express Mail volume and revenue are due to competitors' changes in the market to which it could not respond because they were introduced after the completion of an omnibus rate case. Postal Service Brief at 1. ANPA accepts the premise of a possible need for the Postal Service to be able to make reasonably rapid changes in response to market conditions in order to preserve contribution to institutional costs. ANPA Brief at 3.

The Postal Service's presentation in this case is sufficient to persuade us to attempt to fashion a set of procedural rules to help expedite Express Mail rate changes—at least for a trial period. These rules would be used to speed consideration of Express Mail rate requests made in the limited circumstances described by the Postal Service, while preserving the rights of interested parties in accordance with the Act.

While expedition in considering limited rate change requests is certainly possible without amending our rules, we believe that the procedures we are fashioning will be helpful. We have seen that in dealing with cases of first impression, much time can be spent at the initial stages in discussions concerning how best to proceed. Another source of controversy is often the informational and other filing requirements. If, as we are attempting to do here, rules can give the Postal Service and interested parties advance notice of what is expected of them and how the Commission intends to proceed, the expedition that always remains the Commission's goal can be furthered.

Our willingness to modify our rules of practice to accommodate the Postal Service's request for as much expedition as is consistent with the Act and due process is in accordance with our role in regulating rates. The Supreme Court has stated: "Regulatory agencies do not establish rules of conduct to last forever; they are supposed, within the limits of the law and of fair and prudent administration, to adapt their rules and practices to the Nation's needs in a volatile, changing economy. They are neither required nor supposed to regulate the present and the future within the inflexible limits of yesterday." *American Trucking Associations, Inc.* v. *Atchison, Topeka & Santa Fe Railway*, 387 U.S. 397, 416 (1967).

We believe that it may very well be possible to devise rules to expedite consideration of these unique cases the Postal Service may need to file in the future. No party has shown why developing procedures to speed our process must be deferred until time has been expended discussing such matters in the midst of an actual case. Although a review of how accelerated processes have worked will be important after a case is decided under these rules, and the insight gained from actual experience may tell us much more than we can determine in this rulemaking, we believe it best to do what we can at this point to make expedition possible.

This approach is wiser than trying to develop procedures after such a request is filed. Items such as filing requirements must be resolved before a case begins; and time spent on developing procedures during a case is time taken from analyzing issues raised by the actual request. We realize that only experience with actual cases can show how well such rules are able to work. Therefore, we are setting a date when these rules will expire unless they are renewed following a public notice of proposed rulemaking.

As the Postal Service has made a reasonable, if not conclusive, case for the need for expedition once it decides market forces indicate change is required, it seems reasonable to define procedures now in order that the case may be accelerated as much as possible once it is filed. In particular, we are trying to compress the initial stages to the extent consistent with due process concerns. Automatic intervention and service can give parties a "head start" in their review of the Postal Service's request. Similarly, regular data filing requirements can permit the Commission and parties to do their analysis more quickly, because they can be familiar with important trends and relevant background material.

The potential benefits of affording the Postal Service a means of expediting rate changes when the market indicates such action may be called for if Express Mail is to remain a viable service, making a significant per-piece contribution to institutional costs, have been demonstrated on our record. *E.g.*, USPS–T–2 at 22–24. Witness Shipman describes the recent experience of the market with the competitors' actions to attract expedited delivery business. *E.g.*, USPS–T–1 at 17–18. Witness Kahn finds the expedited delivery market to be highly competitive, with firms competing vigorously—actively varying their prices and quality to attract customers. USPS–T–2 at 15–16.

B. Restricting Procedural Rules to Use with Express Mail Does Not Violate the Statutory Directive Forbidding Undue Discrimination

Some of the parties contend that adopting rules for use only with Express Mail would be impermissibly discriminatory. For the reasons explained in detail below, we believe that it is appropriate to establish new procedural rules only for Express Mail at this time. The record before us has been developed adequately only in regard to Express Mail and the rule changes we are proposing are designed specifically to meet the requirements for considering an Express Mail rate request described by the Postal Service in this proceeding.

Federal Express, UPS and the OCA[4] state that adopting expedited procedures for only one class of mail raises questions concerning violation of section 403(c) of the Act. Section 403(c) states that "the Postal Service shall not, except as specifically authorized in this title, make any undue or unreasonable discrimination among users of the mails, nor shall it grant any undue or unreasonable preferences to any such user."

We first turn to the generalized argument that providing the benefit of these rules to only one class of mail—in this case, Express Mail—raises questions of violation of the discrimination prohibition of section 403(c). The argument has some appeal as a call for equal treatment of the mail classes, but it is not persuasive. In supporting its suggestion to limit the rules, the Postal Service points out that the other parties have not shown that all classes of mail face the same type of competitive situation as Express Mail. Postal Service Reply Brief at 10.

ANPA states that it might be appropriate to permit the consideration of specific Express Mail rate proposals under expedited proceedings. ANPA Brief at 3. According to ANPA, the evidence on the record indicates a need for speed in changing Express Mail rates in certain circumstances; the anticipated effects of possible changes on the other classes of mail are minimal. ANPA urges that cases heard under such expedited procedures must be limited as the Postal Service has suggested: that is, rate changes solely to help retain Express

[4] Federal Express Brief at 21; UPS Brief at 14–16; OCA Brief at 11–12.

Mail's contribution to institutional costs in the face of changes in the market brought about by competitors. *Id.* at 3–5.

The Act prohibits only "undue or unreasonable discrimination." Differing treatment of the various mail classes is contemplated by the statutory scheme. *See* 39 U.S.C. 3622–23. In the *NESS* case,[5] the court explained that section 403(c) requires that a reasoned justification be given for differential treatment of the classes of mail. Restricting the application of expedited rules of procedure to one class at this time meets the dictates of section 403(c), as Express Mail is the only class for which evidence supporting such rules has been given. Dynamic market conditions with direct competition for a class that makes a relatively large institutional cost contribution per piece—circumstances which have not been shown to exist for other classes—are expected to prevail.

The record is sufficient to support a presumption that—in light of the limited impact on other classes and subclasses of mail—Express Mail interim rate changes could reasonably be considered in a separate, expedited rate case. With regard to some of the other mail classes, our record does not show how rate changes to respond to as yet unspecified market changes could be reasonably considered outside a case where the impact of proposed rate changes on other classes and subclasses of mail can be considered. Rate changes for some classes and subclasses could have direct and indirect impacts which affect the Postal Service's finances to such an extent that the appropriate revenue contribution of each of the classes must be subject to litigation in the proceeding.

That a similar expedited procedure cannot be provided for all classes does not require its rejection, without a trial period, for the one class where there is reason to believe that it may be appropriate. If it later appears that similar procedures might be suitable for another class, the Commission may extend the applicability of these rules.

The Postal Service must also accompany any request under these rules with evidence demonstrating that its proposal meets all the statutory criteria in the Act, including section 3622(b)(3). Therefore, arguments—which would be valid if indeed Express Mail rates making no contribution to institutional costs were permitted—that the Postal Service's suggested rules are unduly discriminatory with respect to those elements have been answered by our proposed rules which do not suffer from the flaws described by UPS. *See* UPS Brief at 15.

C. Our Proposed Rules Anticipate Rates Established With Reference to Future Costs

Strenuous objections were made to the Service's proposal to use as the cost base for an expedited case

> * * * a statement of the attributable costs by segment and component for Express Mail service as determined in the most recent omnibus rate case and for each fiscal year thereafter for which information is available.

Postal Service Suggested § 3001.57a(5). That these historical cost data would determine the rate floor in a rule 57 case is clear from suggested § 3001.57b(2). By contrast, the Commission's rules for a conventional rate case require costs for a fiscal year "beginning not more than 24 months subsequent to the filing date" of the Service's request. 39 CFR 3001.54(f)(2). We have determined that rate adjustments in market response rate cases should also reflect rolled-forward test year costs as provided in rule 54(f)(2).

One commenter argues that 39 U.S.C. 3621 requires rates to be set on future costs, and that the Service's proposal is thus, on its face, unlawful. UPS Initial Brief at 2–5. In addition, UPS contends that by singling out Express Mail for historical-cost rate treatment the proposed rules would lead to violation of the "undue or unreasonable discrimination" standard of section 403(c). *Id.* at 15. The Service responds that its proposal is for a different style of rate proceeding, to deal with particularized problems; and that the Board of Governors' freedom to choose the timing of rate requests (39 U.S.C. 3622(a)) leads to the result that rates are often in effect after the expiration of the test year for the proceeding in which they were set. Postal Service Reply Brief at 2–4.

While not fully accepting the arguments made on either side, we do think UPS has pointed out a significant problem. We do not construe section 3621 as absolutely requiring future, rather than historical, costs as a ratemaking basis. Use of future costs is an accepted regulatory practice,[6] reflecting the need to synchronize the incidence of rates and costs. Where rates become effective only after the conclusion of regulatory proceedings, as is the case under sections 3622 and 3641 of the Act, such synchrony calls for a future test period. However, UPS appropriately questions whether users of one class—whose rates are being adjusted prospectively, just as they would be in an omnibus case—should escape the otherwise applicable rule of synchrony with costs.

The Postal Service's argument that rates set in omnibus cases often outlive the test year does not really respond to this point. We agree that in our practice the Commission chooses a test year that is expected to be representative of, rather than identical with, the life of the resulting rate schedule. The troublesome question is whether one class of mail, faced with private-sector competition, should in principle[7] pay rates set on a different basis. The Service argues unequivocally that they should:

> * * * Unlike an omnibus request made to insure that the overall break-even standard is satisfied at some specific future point in time, they would be limited, interim rate reductions designed to minimize the loss in contribution to institutional costs from just one class following an unforeseen change in market conditions * * *.

Reply Brief at 4. This argument appears to have two bases: (i) The decline in revenue (and thus, presumably, its ultimate effect on other users) will be small; and (ii) the object of a rule 57 case is not to achieve overall breakeven but to preserve Express Mail's contribution to institutional costs. Accepting both premises arguendo, we do not think either proves the Service's point.

The first point is subject to the objection that, if we assume a general, continued increase in costs,[8] the impact on mailers as a whole will be still less if we base Express Mail rates on rolled-forward costs. The second is undercut by the recognition that, when rates are set prospectively and the precise amount of their contribution to institutional costs is of major importance, we cannot fully determine what that contribution will be without at least approximately synchronous cost data.

The comments filed in this proceeding demonstrate that institutional-cost contribution is a principal key to the problem. The Service, in its filings and through its witnesses, has repeatedly stated that its object is to preserve, as far as it can, the substantial contribution

[5] National Easter Seal Society for Crippled Children and Adults v. United States Postal Service, 656 F.2d 754, 760–62 (DC Cir. 1981).

[6] *See, e.g.*, 18 CFR 35.13(d) (2)–(4) (Federal Energy Regulatory Commission rules for electric rate filings) and American Public Power Assoc. v. FPC, 522 F.2d 142 (DC Cir. 1975).

[7] We deal below with questions of practicality suggested by the need for special expedition in these cases.

[8] Presumably if the Service expected costs to decline it would have provided in its proposal for use of a future (lower-cost) test period.

Express Mail now makes to institutional costs. Its adversaries have, no less frequently, insisted that—whatever the Service's policy goals—its draft rules would permit it to propose rates barely above attributable cost. *See, e.g.,* UPS Brief at 6–8; Tr. 4/449–50; Comments of Federal Express in Response to Commission Order No. 784 (June 13, 1988) at 11. Institutional cost contribution must reflect, inter alia, a balance between Postal Service competitiveness and concern for competitive private-sector firms. *See* section 3622(b)(4). While we must use informed judgment in arriving at an appropriate markup for each class (PRC Op. R87–1, paras. 4001–21), there is no justification for handicapping ourselves ab initio by allowing the proposed contribution to be the essentially fictitious result of dividing expected future revenues by past-period costs.

There are, accordingly, two compelling arguments against the Service's historical-cost proposal: (i) It is inherently defective as a means of arriving, prospectively, at accurately cost-based rates, and (ii) insofar as it would tend to facilitate or magnify rate reductions, it would favor users of the only class to which it would apply over all other users. While these defects, taken alone, might disqualify it, we must recognize that it is proposed as an expediting mechanism and that expedition is the raison d'être of the proposal as a whole. The Postal Service argues that

> * * * given the need for a speedy resolution if the rate reduction is to achieve its purpose, it is neither necessary nor practical to repeat the entire roll-forward process for just one class.

Reply Brief at 4. This concern for expedition is quite appropriate; we part company from the Service, however, when it also assumes that avoiding protracted controversy over the cost basis in an expedited case justifies using historical rather than rolled-forward costs.[9]

We believe expedition can be maintained without abandoning estimated future costs for these cases, and so we expect an adequate set of prospective costs to be furnished when a case is begun.

We are also proposing to amend 39 CFR 3001.102 by adding a subpart, (e) Express Mail Volume Statistics. This new provision would require that the Postal Service file quarterly data on Express Mail pieces and weight, and should significantly assist in achieving more expeditious treatment of Express Mail market response rate proposals. These data on volumes by service and rate cell will provide a sound basis for evaluating market trends when a market response rate request is filed. The data will be of public record as soon as received, and those expecting to be interested in any market response case may generally familiarize themselves with the data ahead of time. Obscurities can be elucidated informally outside the formalities and time constraints of a section 3622 proceeding. It should thus be possible to dispense with many otherwise-necessary discovery questions and related motions practice. In this way, participants in a market response rate case can concentrate to a greater extent on substantive rate issues, rather than on developing a record on historical volumes (or other quantitative data insofar as volumes affect them).

D. The Postal Service's Procedural Suggestions Fail to Protect Adequately Parties' Statutory Due Process Rights

1. The Notice Provision in the Postal Service's Suggested Rules is Not Sufficient to Give Adequate Notice of a Request for Change in Express Mail Rates

UPS argues that the Postal Service's proposal violates the due process requirement of providing notice to interested persons. UPS points out that, if someone relied on seeing a **Federal Register** notice rather than signing the list for automatic service and intervention, the 10-day period to ask for a hearing would probably have passed before notice was actually received. UPS Brief at 24–25. The Postal Service responds that most interested parties would receive actual notice because they would be on the Commission's list. According to the Postal Service, the Commission could extend the deadline if a party offered good cause. Postal Service Reply Brief at 12–13.

The innovative procedure the Postal Service developed—allowing interested persons to register with the Commission and automatically receive notice and intervenor status—is useful, but in and of itself does not provide adequate notice to the public. The suggested rules assume that every person likely to be affected by a proposed Express Mail rate change would pre-register with the Commission. Particularly in light of the dynamic nature of the market, future rate requests may affect customers and providers of related businesses who previously were not concerned with Express Mail issues. These parties should be afforded the opportunity to participate meaningfully in proceedings that they believe will affect their interests.

It is unreasonable to expect all entities who might conceivably be affected by one or another Express Mail rate requests to pre-register with the Commission. Therefore, the notice provided in the Postal Service suggested rules is so inadequate as to be unreasonable as an exclusive procedure. Persons who had not thought to pre-register to participate in future Express Mail market response rate cases would have to rely on **Federal Register** notification. The time consumed by the publication of the notice, the filing of the notice to intervene, and then obtaining a copy of the request would significantly diminish the ability of those parties to participate in a case whose accelerated schedule had been set with the expectation that every participant had a complete copy of the request and supporting evidence on the day it was filed with the Commission.

During the latter stages of Phase I of this proceeding, and especially during the testimony of Postal Service witness Michelson, it was suggested that the Commission or the Presiding Officer could waive provisions of the rules should they be found to be working an unreasonable hardship on the public. While it is true that in special circumstances rules can be waived, this fact does not support the adoption of unreasonable rules. Our procedural rules are intended as an effective guide to what is expected of participants. Promulgating unreasonable rules would discourage public participation and might even be the basis for collateral attack on Commission action taken under such rules.

There is a further problem with this procedure as initially suggested by the Postal Service. The Service would require each party registered with the Commission to provide information on its rates if the Postal Service identified those rates as the reason for a market response rate request filing. It appears that some competitors believe that at least some of their pricing practices are trade secrets. *E.g.,* Federal Express answer to Postal Service interrogatory 4 (Docket No. R87–1). We do not want to include a provision in these procedural

[9] It is of course not certain that even historical costs would be free of controversy. The Postal Service's own proposal—narrow as it is—would allow parties to challenge the costing method the Service has followed in attributing (historical) costs to Express Mail. Suggested section 57b(4). In past cases, the Service itself has felt the need to "adjust" its own cost data judgmentally, *see* PRC Op. R84–1 para. 5310, a procedure that may also give rise to dispute. In addition, the Postal Service has at times introduced innovations in handling Express Mail, which require changes in the costing (*e.g.,* PRC Op. R87–1, paras. 3625–29).

rules which would discourage interested parties from being included on the list. We also note that no similar scheme has been cited in this rulemaking, and we have serious doubts as to its consistency with the Administrative Procedure Act. A more balanced procedure will be possible through the use of discovery rather than mandatory filing requirements. Postal Service may file interrogatories or requests for admission seeking clarification of the pricing practices of any party. Use of discovery will provide prompt information for the record while preserving the opportunity to interject any valid privilege claims.

2. The Postal Service, as Proponent of the Change, Retains the Burden of Proof; Parties Must be Allowed to Raise Any Relevant and Material Issues of Fact

ACCA, Federal Express, OCA and UPS all argue that the Postal Service's suggested allocation of burden of proof violates due process. According to the OCA, the Postal Service, as the proponent of a rate change, has the burden of presenting a prima facie case that its request is consistent with the Act. OCA argues that the rules suggested by the Service incorporate such narrow evidentiary requirements that they relieve the Postal Service of this burden. The burden of going forward with evidence would then fall—improperly—to opponents of the change.[10] Federal Express emphasizes that the Postal Service's suggestion would not even require it to demonstrate that the change in the market sparking its request would actually have a serious negative effect on Express Mail. Federal Express Brief at 3–4.

The Postal Service argues that the Administrative Procedure Act permits the shifting of the burden of going forward with the evidence from the proponent of a rule to those opposing it. Postal Service Brief at 24. The Postal Service says that its suggested rules would create a rebuttable presumption it could rely on as making its *prima facie* case. *Id.* at 25. Regulatory developments allowing more pricing freedom for regulated entities and increasing the difficulty involved in challenges are cited. *Id.* at 26–28. According to the Postal Service, its showings that a change had occurred in the market and that its request is a reasonable response would be sufficient to meet the demands of the APA. Postal Service Reply Brief at 14. The Postal Service adds that it is not necessary to re-litigate in interim rate change cases issues, such as Express Mail elasticity, which can be expected to be litigated in every omnibus rate case. *Id.* at 15–17.

Burden of proof in the contemplated cases has two aspects: What the Postal Service has to present to support its case and what other parties have to present in requesting a hearing.

Postal Service required presentation. Turning first to the issue of the Postal Service's presentation, the Postal Service's suggestion does not make clear what is included in the required showing that its request "is a reasonable response to the change in the market," Postal Service Suggested § 3001.57a(3). If the showing of reasonable response encompasses all the strictures of the Act, what the Postal Service suggests is not so very different from what the intervenors demand, or what is specified in the rules we have fashioned. Our proposed rules, presented for public comment in this Notice of Proposed Rulemaking, make it clear that the Postal Service has the affirmative obligation to provide evidence showing that its request is consistent with the Act.

We accept the Postal Service's assertions about a general trend toward greater pricing flexibility for firms subject to regulation.[11] We are charged, however, to follow the dictates of the ratemaking provisions of the Postal Reorganization Act. Within the confines of that law, we will cooperate with the Postal Service in attempting to move these cases forward as quickly as is consistent with the requirements of due process. Nonetheless, the Service has the burden of showing that requested rate changes are consistent with the Act.

In this regard we take specific note of the statement by Postal Service counsel, Tr. 2/94–95, that the Service believes it will not have to show the elastic nature of Express Mail in future market response rate request cases because that issue will have been settled by its presentation in this docket. Such is not the case. While the Service may choose to rely on recently submitted evidence from other cases, central facts such as the likely reaction of customers to price changes cannot be deemed settled for all time. Markets, service offerings, and customer perceptions change; and the Commission must recognize changes when they occur.[12]

Limitation of issues. Associated with the due process concerns of a right to a hearing and burden of proof, is the Postal Service's suggestion to limit the issues permitted to be raised to: (1) The consistency of cost calculation with the methods used by the Commission in the last omnibus rate case, (2) the authenticity of the purported change in the market, and (3) the reasonableness of the Postal Service's proposed response. Apparently any other issue would be resolved by reference to the most recent omnibus rate case.

ACCA, Federal Express and UPS strongly oppose this suggestion. Federal Express argues that the Commission does not have the statutory authority to limit the issues otherwise made relevant by the Act. Federal Express Brief at 15. UPS points out that important issues, such as elasticity, may not fall within a category for which the Postal Service's suggestion would permit a hearing. UPS Brief at 22. The Postal Service states that the Commission would be acting reasonably in deciding that issues addressed in the most recent omnibus rate case could be foreclosed from re-litigation in interim Express Mail market response rate cases. Postal Service Brief at 23.

We find that parties should be permitted to request a hearing for any genuine issue of relevant and material fact regarding any of the policies set forth in the Act. If a party can identify such an issue and requests a hearing after the Postal Service has filed a request for a change, due process, and section 3624, require that a hearing be granted. The discussion of such an issue in the previous omnibus rate case, however, may help to expedite its consideration. *Compare* PRC Op. R87–1, paras. 5901–02.

With regard to the Postal Service's suggestion that parties be precluded from re-litigating issues addressed in the last rate case, it has failed to show us how that action could be consistent with the Act. In dealing with Express Mail interim rate cases—or any request under the Act—the Commission and the parties are not dealing with a blank slate. Indeed, many references to the last rate case are to be expected—as well as some reliance on the data and decisions found there. *Compare* PRC Op. R87–1, App. J, CS IX; PRC Op. R87–1, paras. 5995–6040.

There are a number of issues that regularly are addressed with reference to the disposition found in the previous case—often an omnibus rate case, but sometimes a more limited classification case. *E.g.*, PRC Op. R87–1, paras. 3587–621. In particular, the Commission

[10] OCA Response to Memorandum of the USPS, 4–6, (August 15, 1988).

[11] It should be noted, however, that such initiatives are likely to accompany efforts to eliminate monopoly positions held by the regulated firms—a feature not, of course, present here.

[12] We also believe it appropriate to point out that we do not find any specific point elasticity for Express Mail in this case.

treatment of costing methods is similar in some respects to the Postal Service's rebuttable presumption suggestion. After adopting a costing method in one case, it has been the Commission's practice to retain it in subsequent cases absent a persuasive, affirmative showing that it should be changed. This practice speeds the proceedings and encourages advances in postal costing. We also note that ANPA argues that the costs used in interim Express Mail rate cases should be based upon the attribution principles from the last omnibus rate case. ANPA Brief at 10.

The combination of the reliance on established costing methods and the addition of new requirements for Postal Service periodic Express Mail data filings will foster the expedition that the Postal Service would pursue through its use of rebuttable presumptions to narrow the area of permissible inquiry. *See* Postal Service Brief at 20–26. We can foresee situations in which costing issues should be revisited in an interim rate case, as for example, if a processing or transportation feature has been modified. The difference, however, is that the Commission would not foreclose the consideration of issues which appeared in the most recent omnibus rate case.

When the Postal Service re-opens the subject of Express Mail by filing a rate request, the interested parties must be given the opportunity to address any genuine issues of material fact. As only a limited number of issues will be present—compared to an omnibus rate case—we expect, with the Postal Service's co-operation, that they may be addressed with dispatch. Issues in addition to those involved in costing, such as the appropriate contribution to institutional costs, are also regularly addressed in Commission proceedings in ways which explicitly take into account their disposition in previous rate cases. This reliance on what has been learned before can be used to speed the cases contemplated by the Postal Service without any necessity to resort to cumbersome and elaborate presumptions or foreclosure of further consideration of relevant issues. The difference—an important one in our view—might be summarized by saying that normal reliance on precedent helps to provide a *substantive* rule of decision without either forbidding production or excusing nonproduction of certain evidence by any party. A presumption, on the other hand, defines who must produce what evidence if an issue is to be decided; its applicability therefore has to be determined before the case can proceed. Turning a matter ordinarily governed or influenced by precedent into an evidentiary presumption therefore may be counterproductive so far as expedition is concerned.

Requirements for obtaining a hearing. Turning to the showing necessary to obtain a hearing, the Postal Service suggests rules which require that within 10 days of their first opportunity to see the Service's rate request, participants must make an extensive demonstration of the questions of fact which warrant a hearing. While the Postal Service's presentation in this rulemaking has focused on the market and the competitors, it will be coming to the Commission with requests to change Express Mail rates. The Postal Service is the entity holding most of the information concerning Express Mail. It would not be proper administrative practice to hold parties to the compelling need standard suggested by the Postal Service. *Advanced Micro Devices* v. *CAB*,[13] cited by the Postal Service to support its idea of shifting the burden of proof, concerns a CAB policy statement describing the circumstances in which it intended to exercise its statutory discretion to suspend rate changes and order an inquiry. Parties opposing the changes were not required to meet the high evidentiary standards the Postal Service suggests. Rather, the showing needed to trigger a suspension was any showing—such as especially steep increases—that could negate the CAB's premise that competitive market forces were regulating the market. 742 F.2d 1534.

It is reasonable to ask parties to be as specific as possible in requesting a hearing and describing the issues to be litigated. Furthermore, we do not intend to provide a hearing unless a genuine issue of material fact concerning the Postal Service's request has been identified. *Compare* Order No. 726. However, the Postal Service suggestion that parties must identify their positions and supporting evidence within 10 days of its filing or forfeit the opportunity to question the Postal Service in public hearings is patently unreasonable.

3. Discovery Will Be Available in Express Mail Market Response Cases

The Postal Service's suggested rules do not address the subject of discovery. Federal Express complains that the Postal Service's rules do not provide an opportunity for discovery, even though the parties would be required to make a compelling showing on an issue subject to litigation in order to obtain a hearing. Federal Express Brief at 13. In its reply brief, the Postal Service states that discovery would not be denied, since the Commission's regular rules of practice (with the exception of the information requirements of rule 54) are to apply except as otherwise stated. *See* Postal Service Reply Brief at 18. We note that under the Postal Service's suggested rules hearings on the Service's direct case would begin 20 days after a request is filed, while answers to discovery requests under the Commission's regular discovery deadlines (39 CFR 3001.26(b)) are also due in 20 days. Under these circumstances discovery would be of little or no benefit to parties in their preparation for cross-examination of Postal Service witnesses.

We have found discovery very helpful in narrowing and defining issues as well as clearing up ambiguities. Cross-examination is more effective when there has been an opportunity to receive answers to preliminary written queries. Our experience shows that discovery also can hasten proceedings significantly. Discovery permits the hearings to move much more quickly and can sometimes be a substitute for them. In this rulemaking, for example, the parties who had requested the appearance of the Postal Service's direct witnesses for oral examination, withdrew these requests after the Postal Service filed answers to interrogatories.

We conclude that meaningful opportunity for discovery on the Postal Service is an important means for facilitating effective participation by intervenors. Additionally, in these cases where we wish to co-operate with the Postal Service in its desire to move the proceedings forward as quickly as possible, discovery can play a very important role in accelerating consideration of Express Mail rate requests. We believe, therefore, that it is appropriate to assure an opportunity for meaningful discovery in rules for expedited consideration of these requests.[14]

4. Rules the Commission Adopts Must Appear to Be Workable in an Actual Case

ACCA, Federal Express and the OCA state that the Commission could not actually consider a case using the procedural rules suggested by the Postal Service. Federal Express points to the suggested rule 57b(5)(e), which states that the Commission will not extend any

[13] 742 F.2d 1520 (DC Cir. 1984).

[14] Our proposed rules make specific provision for discovery on an accelerated schedule. The answers are to be filed in 10 days, rather than the 20 usually given.

of the time limits established in the rules for these cases, and contrasts that unambiguous language with witness Michelson's statement that, in some circumstances, the Postal Service might not object to an extension of time. Federal Express Brief at 12–13. The OCA states that promulgating a set of rules that even a representative of its proponent believes might not be followed would be poor administrative practice, perhaps in violation of the Administrative Procedure Act. OCA Brief at 8–10. ACCA says that the suggested limitation of issues, taken with Postal Service Michelson's assurance that the Commission could consider additional ones, would make for "chaotic, unpredictable proceedings." ACCA Brief at 13.

In its reply brief, the Postal Service states that it has consistently held the position that the Commission would retain its authority to extend a deadline if necessary. Postal Service Reply Brief at 14. The Postal Service argues that in all foreseeable cases, the Commission could consider requests using the suggested rules. If an unanticipated situation arose, the Commission could modify the rules. *Id.* at 22.

Having considered the rules which the Postal Service suggested, we agree with the opponents who state that it would be impossible to adhere to them while protecting the due process rights of interested parties. We believe that rules can be fashioned which provide a much more realistic framework to consider market response rate requests on an expedited schedule. In establishing rules of procedure, it is best to begin with schedules that appear workable. Thus we are publishing for comment proposed rules which we believe to be both fair and realistic. We are not including a provision similar to the Postal Service's that no deadline may be extended. The Postal Service acknowledges that situations may arise such that due process demands could be satisfied only by extending the very tight deadlines suggested. In cases under the accelerated rules, we intend to put parties on notice, however, that a request for extension of time will not be looked on with favor and should be accompanied by a full explanation of why it is thought to be necessary.

5. Consideration of Express Mail Rates in Expedited Proceedings Will Not Substitute for Rate Case Review

In its brief, ANPA expresses the concern that cumulative Express Mail rate changes under the suggested rules could have an unforeseen effect on postal finances and the other classes of mail. ANPA states that it is important to review periodically all the classes of mail in one proceeding—the omnibus rate cases. ANPA Brief at 3. During oral argument, UPS warned that, if the Postal Service's rules were adopted and rates were set under them, the Postal Service might decide not to include Express Mail in omnibus rate cases. According to UPS, the court's decision in the *Dow Jones* case [15] might preclude the Commission from making a legal recommendation concerning Express Mail rates in an omnibus rate case if the Postal Service chose not to request consideration of them in its request. Tr. 4/454–55.

The situation described by UPS would make us hesitant to adopt rules for accelerated proceedings if we found it likely to be an accurate prediction. However, we do not read *Dow Jones* to say that the Commission may not recommend rate changes for a type of mail that the Postal Service has omitted from its request initiating an omnibus rate case. The situation in *Dow Jones* dealt with a case begun under the classification section of the statute—3623, rather than the section applicable to rate changes—3622.

It is clear that the Commission may not initiate a rate case under section 3622. But the Commission's jurisdiction in omnibus rate cases, initiated by the Postal Service, extends to all domestic mail classes. The Court in *Time, Inc.* v. *Postal Service* addressed the Commission's statutory mandate in omnibus rate cases. The court explained that the recommended rates should reflect the Commission's carefully considered judgment of the appropriate interrelationship among the various classes and subclasses of mail—taking into account the evidence presented and the factors set out in section 3622(b).[16] In the past, the Commission has recommended rate changes for a class which the Postal Service had not included in its request. *See* PRC Op. R80–1, paras. 1126–35.

We anticipate that the Postal Service will explicitly include Express Mail rates for review and possible modification in each omnibus rate case; but in any event, we believe that the Commission must consider all classes in any such case, and may include valid Express Mail rates in its recommended decision. There have been instances in omnibus rate cases where the Commission relied on decisions made in recently completed classification cases and did not change rates for the type of mail that had been involved in the previous case. *E.g.* Docket Nos. MC83–2 and R84–1 (Zip + 4 discount). We note, however, the parties in the subsequent rate case were given the opportunity to present evidence concerning the appropriate amount for the discount which had just been adopted.

The situation feared by UPS—consideration of Express Mail rates only in accelerated proceedings—is not a plausible hypothesis. Such a situation would, indeed, be contrary to the Postal Service's stated intent in requesting modified rules, and our purpose in fashioning rules to meet the needs described in this rulemaking. Further, both the Service's suggestions, and the rules the Commission is proposing, tie rate changes to findings in the previous omnibus rate case, thereby requiring that Express Mail costs and rates be the subject of such findings. Finally, through proposing a sunset provision, we are undertaking to reconsider our rules. If there is any sign that they are being used to avoid consideration of Express Mail in omnibus rate cases, that fact would be a serious argument in favor of abolishing rules for accelerated consideration of these requests.

V. The Staff of the Bureau of Economics of the Federal Trade Commission Suggestion

A. Introduction and Summary

On October 14, 1988, the staff of the Bureau of Economics of the Federal Trade Commission filed an alternative to the Postal Service's suggested rule changes.[17] The Bureau Staff suggests that the Postal Service be given a "zone of discretion" in pricing Express Mail. The lower bound of this zone would be rates equal to Express Mail's attributable cost after adjustments made for what the Bureau Staff believes are subsidies to the Postal Service. The upper bound would be the rates adopted in the most recent omnibus rate case. In return for this pricing flexibility, the Postal Service would permit competitors in the expedited delivery market more freedom by relaxing its regulations governing permissible pricing by competitors—issued in accordance with its discretion given by the Private Express Statutes. In the Bureau Staff's view, the Postal Service is disadvantaged by rate inflexibility caused by regulation, while private firms are disadvantaged by minimum rate restrictions and subsidies to the Postal Service. Bureau Staff Brief at 5.

[15] Dow Jones & Company v. United States Postal Service, 656 F.2d 786 (DC Cir. 1981).

[16] 685 F.2d 760, 771–72 (2d Cir. 1982).

[17] Brief, in the Form of Comments, of the Staff of the Bureau of Economics of the Federal Trade Commission.

The Bureau Staff's comments provide a useful theoretical approach to this competitive market. Much of the analysis and reasoning which it has presented is helpful in considering the goals which should be pursued with regard to pricing in the expedited delivery market. However, as explained in greater detail below, this alternative has not been shown to comport with actual pricing practice or statutory requirements. The Bureau Staff recognized that the Commission might not be able to implement this change under current law when it acknowledged that establishing the zone of pricing discretion in the rate making process might "require the PRC to seek additional legislative authority." Bureau Staff Brief at 17, fn. 43. The Bureau Staff has presented a model for all-inclusive reform in this market, which would require statutory amendments. In this rulemaking, however, we are focusing on changes which can be made at this time under our present statutory authority and might assist in promoting efficient functioning in the market under the conditions which currently prevail.

B. Details of the Staff of the Bureau of Economics of the Federal Trade Commission Proposal

The Bureau Staff supports greater pricing freedom for both the Postal Service and the competitors in the expedited delivery market. Bureau Staff Brief at 3–4. The Postal Service has some authority over the activity of its competitors in the market in light of its authority under the Private Express Statutes to either prohibit or regulate the commercial carriage of letters [18] without the payment of postage. The Postal Service has established a number of exceptions that expedited delivery firms may use — and indeed are using — to compete for the business of carrying letters.

Currently, under the suspension for "extremely urgent" letters, private competitors are permitted to carry letters which would otherwise be subject to the restrictions of the Private Express Statutes. Without this suspension, with private commercial carriage over post roads, postage would also have to be paid to the Postal Service. The Postal Service's regulation states that it will presume letters are extremely urgent if the amount paid to the private carrier is the greater of $3 or double the applicable First-Class postage, including the Priority Mail rates. 39 CFR 320.6.

With regard to competitors' flexibility in pricing, the Bureau Staff argues that the "cost test" for the Postal Service's suspension of the Private Express Statutes is set too high. Bureau Staff Brief at 10. The Bureau Staff concludes that the Postal Service regulates its competitors' minimum rates. *Id.* at 11. However, the Bureau Staff makes no objection to the Postal Service's use of the Private Express Statutes to protect demand for First-Class Mail.[19] *Id.* at 10. The Bureau Staff believes it best to lower the price floor for private firms without eroding the demand for the protected classes of mail. *Id.* at 13.

The Bureau Staff states that it fully agrees with the Postal Service's idea of increasing competition in the market by increasing rate flexibility. The Bureau Staff adds that when only some of the competitors in a market are bound by price regulation, it is likely that those firms may not be able to compete effectively, and so, the overall competition in the market is reduced. Bureau Staff Brief at 7. The Bureau Staff is concerned that the "cost test" may be set so high that private firms may not be able to match Express Mail's price and quality offerings. *Id.* at 14.

Additionally the Bureau Staff surmises that private firms may not be able to compete with Express Mail unless certain additions are made to its attributable costs. Bureau Staff Brief at 16. As part of its suggestion, the Bureau Staff believes that the costs used in Express Mail ratemaking should be increased to reflect advantages that originate from the Postal Service's status as a government enterprise: Exemption from sales, property and income taxes; access to lower rate financing because of government backing of the debt; and subsidization of unfunded liability for medical and retirement benefits to retired employees. *Id.* at 15–16.

C. Positions of the Parties

ACCA and UPS support the Bureau Staff's recommendation that the Commission not permit the Postal Service any increased pricing flexibility for Express Mail until the Postal Service exercises its discretion to lower the cost test for the extremely urgent letter suspension. ACCA explains that the essence of the Bureau Staff's and its own position is that any pricing constraint on competitors should apply equally to the Postal Service. ACCA Reply Brief at 1. UPS says that the Postal Service should not be given rules that can be used in lowering its prices while it retains the power to force up competitors' rates. UPS Brief at 30.[20] ACCA states that it has filed a petition with the Postal Service to lower the cost test to $1—applicable regardless of the weight of the piece.[21] ACCA notes that in Docket No. R87–1, the Commission expressed its concern about potential anti-competitive effects of the double postage test and ameliorated them to some extent in its rate recommendations for Priority and Express Mail. *See* ACCA Brief at 4.

The Postal Service opposes the Bureau Staff's recommendation as contrary to the basic policies of the Postal Reorganization Act. Postal Service Brief at 37. In the view of the Postal Service, setting the cost test at $1 would permit competition with First-Class Mail and, therefore, run counter to statutory policy. *Id.* at 38. Objecting to the Bureau Staff's idea of including representations for the Postal Service's advantages as a government entity for ratemaking purposes, it points out that the Commission has previously decided that only costs which are actually incurred may be attributed—and adds that competitors have their own advantages not available to the Postal Service. *Id.* at 39. The Postal Service points out that part of the Bureau Staff's suggestion would require legislative amendments, which could not be obtained within an adequate timeframe. *Id.* at 39.

D. Commission Analysis of This Presentation

1. Introduction.

We will not follow the suggestion of the staff of the Bureau of Economics of the Federal Trade Commission to tie the provision of rules to accelerate consideration of these Express Mail rate requests to action by the Postal Service reducing constraints on the market caused by its administration of the Private Express Statutes. The record does not support any finding that the Postal Service is so restricting the ability of the other firms to compete in the expedited delivery market through use

[18] The general definition of "letter" for purposes of the Private Express Statutes is a message directed to a specific person or address and recorded in or on a tangible object. 39 CFR 310.1[a].

[19] ACCA, on the other hand, states that the potential for incidental competition for First-Class Mail resulting from the elimination or lowering of the cost test is not relevant to the issues in this proceeding. ACCA Reply Brief at 4.

[20] To support its position that the Postal Service's suggested rules should be rejected at this time, UPS also argues that not all of Express Mail's attributable costs have been identified and the Postal Service receives benefits from its status as a government entity which are unavailable to competitors. UPS Brief at 30–31.

[21] The petition was filed December 22, 1988. The Postal Service had taken no action on it when briefs were filed. ACCA Brief at 9.

of the Private Express Statutes that it should not be given even the potential to change its rates more quickly in response to developments in the market. Consistent with our decision in Docket No. R87–1, however, in recommending rates under the proposed rules, we will take into account the effect on the market that the Postal Service's action might be causing. See PRC Op. R87–1, para. 6029.

2. The Record Does Not Show Postal Service Actions Have Had a Serious Anti-Competitive Effect on the Expedited Delivery Market

In Docket No. R87–1, ACCA raised this issue, and asked that the Postal Service's request for increased Priority Mail rates and decreased Express Mail rates be denied until it modified its double postage test and so eliminated the anti-competitive harm it was causing private firms. ACCA, however, presented no evidence tending to show any effect on the market. Taking ACCA's argument and other factors into account, the Commission reduced the potential for competitive harm from the double postage test by holding Priority Mail rates constant and setting Express Mail rates to meet the double postage test where practicable. PRC Op. R87–1, paras. 6029–30.

In this proceeding, we have additional information on the effect of the double postage rule on the expedited delivery market, and we do not find evidence of much actual constraint on the competitors' pricing. In dealing with this issue, one must always remember that the Private Express Statutes apply only to letters. The Postal Service has no authority over any other material that a customer might want delivered. Comparing the discounted Federal Express and the UPS Next Day Air rate schedules filed in this proceeding (USPS–LR–1) to doubled Priority Mail rates—in all zones—the discounted Federal Express rates were lower for 30% of the rate cells and the UPS rates were lower for 58% of the rate cells. The Bureau Staff's premise that the double postage rule is, in fact, controlling the rate setting of the competitors is, therefore, shown to be incorrect. Additionally, from the information filed in Docket No. R87–1, it appears that the Bureau Staff's concerns that the Postal Service's advantages might result in the private firms' inability to compete in the expedited delivery market is not supported by the trends showing increased volume carried by competitors. PRC Op. R87–1, para. 5997.

The evidence available in this record also indicates that the Postal Service is not using its enforcement of the Private Express Statutes as a "price squeeze" to divert volume from competitors to Express Mail. ACCA cited the reports of enforcement filed as USPS–LR–2 as evidence of anti-competitive effects. ACCA Brief at 5. However, ACCA does not point to any instance in which the sender transferred business to Express Mail. Although the theoretical argument remains sound, considerably more evidence would be required to demonstrate that the potential for actual harm is so great that the drastic remedy suggested is necessary. ACCA and other interested parties will be free to raise this issue, and submit any additional supporting evidence that should be taken into account in setting rates, when an actual case is brought under the proposed rules.

3. The Record Does Not Support the Inclusion of Amounts to Represent Advantages to the Postal Service When Determining Express Mail Attributable Costs for Ratemaking

In accordance with our prior decision, we are not persuaded by the argument that additions should be made to the attributable costs of Express Mail in setting rates to reflect advantages not available to competitors. It has been our consistent interpretation of the statute that the attributable costs used in ratemaking are those which we expect to occur. PRC Op. R83–1, paras. 6028–37. The factors that the Bureau Staff believes should be reflected in the rates are appropriately taken into account, if at all, as part of the consideration in setting the cost coverage. These issues will be addressed, as appropriate, in dealing with specific requests for rate changes.

VI. Office of the Consumer Advocate Presentations

A. Description of Office of the Consumer Advocate Suggested Rules

The OCA, believing that smaller rate and classification cases should have accelerated procedural rules available, offered a set of procedural rules that it thought the Commission should adopt in place of those suggested by the Postal Service. Rather than the demands of the market, on which the Postal Service bases its request for accelerated rules, the OCA argues that the availability of the rules should turn, in the first instance, on the significance of the new rate or classification for the Postal Service's finances. The OCA believes that the less significant types of requests would most likely be appropriate for expedited treatment. OCA Brief at 4. Noting that the Commission rules used in considering previous interim rate requests do provide some opportunity for streamlining the procedure, the OCA argues they are incomplete in not including any indication of when that action is appropriate. OCA Brief at 17. The OCA asserts that the greater availability of its suggested procedures makes them superior to the Postal Service's. *Id.* at 14.

Under the OCA's suggestion, any request that would result in a change of less than 1% of the Postal Service's aggregate revenue would be eligible for consideration under procedures requiring a decision within 150 days of the filing. The OCA's suggestion is based on the procedural rules we fashioned to consider Postal Service proposals for experimental changes in rates and classifications. OCA Brief. at 13.

The OCA suggestion calls for the parties' filing, at the earliest possible time, statements identifying what they believe to be the issues of genuine, material fact. The Commission would use these statements in ordering the limitation of issues at trial-type hearings. Under the OCA's suggestion, as in our proposed rules, the Postal Service would have to meet the regular filing requirements in the absence of an explanation of the data's unavailability and a waiver. If the Postal Service intended to collect data during the time in which the requested rates were in effect, a complete description of the plan for data collection would be required. OCA Suggested Rules at 3–6.

The OCA suggests that in cases filed under its rules, the Commission have 30 days to decide whether the accelerated procedure is appropriate and then 120 days to issue a decision. In the first 30 days, the Commission would have to publish a notice of the filing, permit interested parties to intervene and address the issue of whether the accelerated rules are appropriate, give the Postal Service an opportunity to respond to any opposition to proceeding under the rules, determine whether their use is, indeed, appropriate, and issue an order to that effect.

In deciding whether to proceed under the OCA's suggested rules, the parties and ultimately the Commission would consider a number of factors: Novelty, complexity, scope, magnitude, availability of data and its quality, and the apparent need for expedition. The OCA would permit cases that exceeded its financial impact test to be considered under its suggested rules when extraordinary circumstances, which it does not define, were present. *See* OCA Brief at 15.

B. Positions of the Parties

No other party in this rulemaking supports the OCA suggestion. A primary objection is the assertion of lack of notice. Several parties state that the Commission's notice in the **Federal Register** initiating this rulemaking was not adequate for the adoption of procedural rules concerning classes other than Express Mail, since parties interested in other classes would not have had any indication that the pertinent procedures might be modified. *E.g.*, Federal Express Brief at 17.

The Postal Service adds that proceedings under the OCA's suggestion would take too long because of the longer deadline for decision and the requirement that it file all of the data called for by current rule 54 unless specifically waived. Postal Service Brief at 30. The Postal Service points out that the OCA provides no guidance regarding which cases should be considered under its suggested rules. Additionally, the OCA's rules lack a suggested procedural schedule demonstrating how the 120 days could be allocated to the various steps needed to consider a filing. *Id.* at 31. According to the Postal Service, the OCA's suggestion simply does not address the need for expedited Express Mail rate changes. *Id.*

C. The Office of the Consumer Advocate Suggested Rules Are Not Appropriate for Use With the Type of Case Described on This Record

The parties' contention that further notice would be necessary before adopting the OCA's suggestion as a final rule is well-founded. However, we have considered the suggested rules on their merits and conclude that they are not appropriate for our adoption and use. The focus in this rulemaking is whether more expeditious consideration of proposals to change Express Mail rates may be warranted under certain circumstances, and whether that goal could be accomplished while protecting the due process rights of interested parties.

The rules for experiments are not a good model. With a generic rule for experiments, an initial period in which parties may challenge the characteristic of "experimentality" can be said to be a necessity—regardless of whether it is specifically provided for in the rules. Because of the nature of experiments, it would not be possible to establish, in advance, all the identifying characteristics making the rules for considering an experiment appropriate. With the situation we have before us regarding the Postal Service's stated intentions concerning Express Mail, we can foresee the type of cases which will be filed. If the Postal Service adheres to the description it has given us, we may proceed with our consideration of the filing without an initial round of litigation to determine whether to use the proposed rules. When fashioning rules for expedition, it is important to make as many determinations as possible before the request is filed and to make the identification of the cases to be considered under those rules as noncontroversial as possible.

A wide diversity of cases could arguably meet the OCA's threshold test of minor impact. Thus it is likely that the Commission would be faced with deciding within 30 days whether a particular request met the broad five-part test OCA offers to identify "minor" cases. We believe that establishing a set of rules of practice with so little idea of when they might be used would not be good administrative practice. Only when necessary should time be taken up litigating which set of rules should be used to consider a filing. OCA proposes its alternative rules in part because it considers rules applicable to only one class unduly discriminatory. We have rejected that argument previously in this decision.

The Postal Service requests the most expeditious proceedings possible for changes in Express Mail rates to react to developments in the market. We believe it best to tailor our accelerated procedures to the cases expected to be filed. In trying to design rules of more general application, the OCA's suggestion fails to develop procedures which will be most useful in expediting the market response cases Postal Service expects to file. For this reason, OCA's proposal does not satisfy our goals in this rulemaking.

D. The Office of the Consumer Advocate Alternative Suggestion is Not Appropriate When More Guidance Can Be Given the Postal Service and Interested Parties

In its reply brief, the OCA states that, if the Commission decides not to adopt the OCA's suggested rules, it should issue a policy statement concerning its intention to expedite Postal Service requests for Express Mail rate changes filed for the purpose of meeting developments in the market. The OCA explains that this alternative would notify interested parties of the Commission's plans to accelerate consideration of market response rate cases without adopting rules which might be unjustified or premature.[22] OCA Reply Brief at 8–9.

We are not accepting this alternative suggestion. We believe that it is better to establish rules, at least for a trial period, in advance of the filing of the type of case contemplated by the Postal Service. As explained previously in this decision, expedition can be best promoted by settling as many procedural matters beforehand as possible.

Some of the specific provisions of our proposed rules are definite improvements over the policy statement proposed by the OCA. Our adoption, with modifications, of the Postal Service's idea for automatic intervention and concurrent service of the request is designed to reduce the time the parties will need to familiarize themselves with the details of the filing. Similarly, our requirement that the Postal Service make periodic filings of Express Mail data should facilitate analysis of the issues in requests made at a later time.

Since we are able to set up specific procedures to give the parties and the Postal Service a more complete idea of what will be expected of them in a market response rate case, it is better to do so. This course is preferable to litigating the procedures for speeding a request while simultaneously trying to determine its merits. In this manner, the means for promoting expedition may be given a more realistic test.

VII. American Newspaper Publishers Association's Suggestion That Express Mail Complaint Proceedings Be Considered Under Expedited Rules Can Not Be Adopted on This Record

Description. In its brief, ANPA states that the Commission should also provide rules for the expedited consideration of complaints that Express Mail is failing to cover its costs if it adopts rules for expedited consideration of Postal Service requests for Express Mail rate changes. ANPA Brief at 11. It is not entirely clear whether the complaints to be considered under expedited procedures could include those involving assertions merely that Express Mail is not making an appropriate contribution to institutional costs, rather than challenges that Express Mail is not covering its attributable costs. *See id.* at 11-12. ANPA considers its suggestion to be a matter of fairness, as well as a method of furthering the goal for which the Postal Service filed the petition

[22] The OCA argues that the problems pointed out with regard to the Postal Service's suggested rules are such that they must be rejected. OCA Reply Brief at 8.

considered here –preserving Express Mail's contribution to institutional costs. *Id.*

Commission analysis. We are not adopting the ANPA suggestion at this time. In this proceeding, we have been told that the Postal Service contemplates the filing of particular cases for which it would like special, expedited rules of procedure. There has been no indication that the Commission will be faced in the foreseeable future with the type of complaint ANPA hypothesizes. While we cannot predict the frequency with which the Service might file market response cases, it is reasonable to suppose that Express Mail's covering of its attributable costs may be tested—in these cases and in omnibus rate cases—comparatively often; this more frequent review would reduce the likelihood that an interested party would have to resort to initiating complaint proceedings.

ANPA did not elaborate on the specifics of expedited procedures for such complaint cases. There are considerable differences between rate change requests and rate complaints, particularly as to access to the underlying facts which the two separate proponents (the Postal Service and private competitors) of the changes would have. Therefore, we do not believe that any type of "mirror image" set of rules for complaints would, in fact, be fair to the complainant. In a complaint, we would expect that the party bringing the case would require a longer time for discovery against the Postal Service than is necessary in market response rate cases, where the Postal Service will be able to file all necessary supporting testimony at the beginning of the case.

We too are concerned with assuring that after a market response rate adjustment, Express Mail continues to recover its costs and make a contribution to institutional costs. The requirements for periodic filing of Express Mail data will provide an on-going opportunity for both the Commission and interested parties to assess the status of that class. We think this requirement will be of more value to these parties than setting up expedited procedures for cases whose dimensions and issues are currently unknown.

Opportunity to re-visit issue. The rules we are proposing are to be experimental, and we are committed to review them in 5 years. At that time, or earlier if serious problems concerning complaint cases arise, we can re-consider whether some specific procedures for expediting complaint cases concerning Express Mail rates should be established. It is not appropriate now to set up procedures for such cases. We have no information on the likelihood of such complaints being filed at all, and our record does not support a good estimate of the scope of issues that might be involved.

VIII. Commission's Proposed Rules for Use in Express Mail Market Response Cases

A. The Benefit of Establishing Procedures To Expedite Market Response Cases Has Been Shown

This notice of proposed rulemaking offers for public comment procedural rules which would govern requests for, and conduct of, Express Mail market response rate requests. These rules provide that in limited circumstances a Postal Service rate change request shall be considered subject to these procedures, which provide for the most expeditious review of a rate change request.

As discussed in detail above, this case was initiated by a Postal Service request that the Commission consider the adoption of special rules of practice for use in considering market response rate requests. While we have found that the specific rules suggested by the Postal Service were flawed, the goal of developing procedural rules which will enable the Postal Service to respond in a timely fashion to changes in the market for expedited delivery services is worthwhile. Several intervenors, while objecting to the specific proposals put forward by the Service, expressed their view that the Commission could process a limited rate request as expeditiously as necessary to provide meaningful relief should the Postal Service be faced with a situation in which prompt rate adjustments were necessary. ANPA Brief at 3; OCA Brief at 3; UPS Brief at 26.

In our opinion, establishing in advance filing rules and hearing procedures which can be used to expedite the conduct of such a rate request should be beneficial. Having filing requirements and a procedural schedule set in advance will free participants from the need to prepare pleadings and attend preliminary conferences to formalize these matters. In particular, developing filing requirements now should reduce expenditures of time and energy on disputes relating to the adequacy of documentation supporting a market response rate request, and allow participants to move directly to analyzing the potential impact of any Postal Service request of this nature. The rules proposed herein provide for the development of an evidentiary record, and the analysis of that record, in a highly compressed time period. Under these rules, it will be possible to proceed from request to decision within the 90-day time period requested by the Postal Service.

The Commission fully recognizes that a 90-day rate case will put strain on participants, the Postal Service and the Commission itself. We present for comment the procedures set forth herein, with the expectation that they would enable the Postal Service and interested participants to develop a complete evidentiary record, and assuming the good faith efforts of all participants, allow us sufficient time so that it will be possible to hear and decide on market response rate requests within this limited time.

This notice of proposed rulemaking should elicit additional thoughts from interested persons on the feasibility of these rules.

B. Incorporating a "Sunset" Provision Will Assure Thorough Review of the Practical Effects of These Rules

A feature not suggested by any participant, but in our view necessitated by the record in the docket and the novelty of the concept underlying the Service's proposal, is the "sunset" provision. We include it not only to make clear that we will be interested in suggestions for improvement in these rules, but also to emphasize their experimental character.

In offering opportunities for hearing in this docket, we went beyond the strict procedural requirements for promulgation of rules of practice.[23] We followed this course primarily because the Service's petition rested on certain factual premises apparently susceptible of confirmation, if not absolute proof, through the hearing process: That Express Mail exists in a generally competitive market, that price is a main factor for competitive success in that market, and that Express Mail is fully subject to this principle. The Postal Service also implicitly treated these questions as matters of fact; it volunteered the direct testimony of Dr. Kahn and Mr. Shipman, and later offered Mr. Michelson's rebuttal testimony.

Nonetheless, the issuance of amended procedural rules remains in our reasonably-exercised discretion. This fact is significant here because it allows

[23] The Commission has customarily not taken advantage of the language in 5 U.S.C. 553(b) exempting rules of practice from the notice-and-comment requirement. In this docket we have gone a step farther, inviting not only comments but production and examination of witnesses.

us, with appropriate safeguards, to issue expedited rules *not because we find the associated factual premises unequivocally established, but because we think (i) there is a substantial chance they are true and (ii) the risk of ignoring them is greater than the risk entailed by experimenting with new rules.* If the Postal Service has shown a sufficient probability (even though far short of certainty) that its premises are true, and the public benefits to be expected from a viable Express Mail service are adequate, the procedural difficulties that may be caused by novel and highly expedited procedures do not seem an excessive price.

We think this approach is most appropriate since we see no absolute necessity for establishing the above-stated premises as facts in the same sense that, for example, certain cost premises must be established in order to recommend rates in a section 3622 case. A set of procedural rules does not in itself impose consequences, favorable or otherwise, on the Service or other interested parties. The decision whether to establish a specialized set of procedural rules, therefore, may appropriately turn on the existence of a substantial likelihood of their being needed.

Conceivably, this problem could be approached by arguing that—taking for granted that continuance of Express Mail service is beneficial—the existence of *any* probability, however minute, that nonexpedited rate-case treatment could lead to its decline or extinction should require creation of expedited rules. This approach is simple, but unsatisfactory because it ignores both certain real costs[24] and the possibly unquantifiable but nonetheless mandatory interests of ratemaking under a regime of administrative due process.

On the other hand, we do not consider it appropriate to require that the Service demonstrate, in effect, that it could always substantially prevail in an expedited case before we will consider creating rules allowing for such cases. Our experimental approach attempts to avoid the pitfalls on both sides.

As proposed, these rules will cease to be effective after five years if the Commission does not act to reissue them. This assures that questions concerning weaknesses in the rules themselves or inequities in the impact of their operation will have to be addressed prior to the expiration of the five-year period. Five years is suggested as a reasonable length of time for the Commission and interested participants to experience the impact of these rules and evaluate whether and what adjustments might be necessary.

C. Details of Commission's Proposed Rules

Introduction. The rules presented for public comment in this Notice of Proposed Rulemaking contain several important differences from the rules proposed by the Postal Service in its request which initiated this docket. These changes are largely designed to overcome the serious problems identified by participants in the first phase of this rulemaking, and discussed in the previous section of this opinion.

The format of these rules follows the basic outline of the specific proposal presented by the Postal Service. There was nothing inherently improper in the organization of the new rules suggested by the Service, and by casting the Commission's draft rules in this outline we expect to facilitate public understanding of what these proposed rules would accomplish, and of the differences between our proposal and the one initially offered by the Postal Service.

Throughout, the rules are described as applicable to Market Response Rate Requests. The rules as proposed would only apply to Express Mail Market Response Rate Requests, but if these rules effectively facilitate Postal Service responses to changes in the market for Express Mail, and a need arises to allow for Market Response Rate Requests in other classes of mail, expanding the applicability of these rules could be considered.

Section 3001.57—Purpose and Duration of Rules.

This introductory section serves two purposes. First, it describes the limited circumstances under which the Commission would utilize these special procedures for considering a Postal Service rate request. Second, the proposal contains a self-enforcing "sunset" provision.

The Postal Service initially requested rules of this nature in order to enable it to respond promptly to changes in the market for expedited delivery services—a market which it considers both highly competitive and highly volatile. It presented evidence indicating that Express Mail was competing in the expedited delivery market with other closely substitutable services, and that providers of these substitute services had in the past implemented changes in rate design, rate levels, or service options, and that future changes of this nature would be likely to attract a significant amount of business away from Express Mail. Postal Service indicated that rules for market response rate cases would only be used to respond to a change in the market for expedited delivery services. This restriction was written into the first section of the rules proposed by the Postal Service.

In support of its proposal, the Postal Service promised that it would only propose rate changes under these expedited rules for the explicit purpose of preventing or minimizing the erosion of contribution from Express Mail to institutional costs which would occur if the Service failed to respond to a competitor initiated change in the expedited delivery market. USPS–T–1 at 1–2.

The rules presented for public comment today specifically incorporate both of these circumstances as prerequisites to a Postal Service rate request presented for consideration under these rules of practice. Section 3001.57 states that these sections apply only when the proposed changes "are intended to respond to a change in the market for expedited delivery services for the purpose of preserving the Express Mail contribution to institutional costs recommended in the most recent omnibus rate case." Since the Postal Service has stated it requests authority for expeditious rules to be used only in such a case, it is proper to specify the limited circumstances when these procedures would be appropriate in the rules themselves. Making these explicit prerequisites may promote expedition by reducing controversy over whether any particular rate request qualifies for consideration under these procedures. This provision adds the further clarification that these rules cannot be used while an omnibus rate case is pending.

The second important aspect of proposed rule 57 is that it contains a sunset provision. By its own terms, this rule would be effective for only five years. During that time the Commission would review the experience gained in cases brought under these rules to determine whether the rules in fact preserve the proper balance between the need for prompt responses in a competitive market and the need for an adequate opportunity to analyze and comment on Postal Service proposals for changing mail rates.

If during this initial period, it should appear that the market for expedited

[24] It is not unlikely that litigating and deciding a case on an extremely compressed schedule will impose extra costs on all concerned, including the Commission. These may be as straightforward as the need to schedule overtime for clerical workers or as diffuse as losses in efficiency or sales caused by a less-than-fully refined analysis of some complex problem presented by the case.

delivery services has changed by becoming less volatile or competitive, or that the position of Express Mail in that market has become less subject to erosion from alternative services, then the need for procedures forcing extraordinary expedition in reviewing market response rate requests may be less acute. On the other side of the equation, the ability of interested parties to participate in market response rate request cases, and the ability of the Commission to fulfill its statutory obligations in cases handled with the extreme emphasis on expedition contained in these rules, can better be assessed after actual experience. Additionally, improvements and changes to remedy problem areas can be drafted with more precision after the Commission and the parties have had actual experience with the operation of these procedures.

Section 3001.57a—Data Filing Requirements

One of the areas of concern stressed by parties commenting on the rules proposed by the Postal Service was the limited amount of information to be provided by the Postal Service in support of its request. The Postal Service suggested that in market response rate request cases the focus of inquiry should be on whether a change has occurred in the market for expedited delivery services, and on whether the rates proposed by the Postal Service are a reasonable response to that change.

The comments we received in the first phase of this case correctly emphasize that the statutory criteria applicable to postal rates must be applied even when the proposed rate changes are designed to respond to a change in a particular market or sub-market. With this principle in mind, the proposed rules published today balance the benefits of allowing the Postal Service to file and litigate a request promptly and without unnecessary preliminary data collection, with the need for an evidentiary record adequate to evaluate any rate request made by the Service.

The initial Postal Service proposal would have made the Commission's rules which set forth the information which should be provided in support of normal rate change requests inapplicable to market response rate requests. The Postal Service never explained why compliance with any particular requirement within these rules would be particularly onerous.

We understand that the Service may wish to act quickly to meet competitive challenges. Nonetheless, we are confident that Postal Service management will attempt to craft reasoned responses to such challenges, and will gather and review relevant and material information prior to proposing rate adjustments. There is no *a priori* reason why such information, and the analysis that leads management to conclude that a particular proposal is a proper response to a change in the expedited delivery market, should not be provided to the Commission when such a request is filed.

It appears that the most appropriate way to proceed is to retain the requirements of rule 54, at least insofar as requiring information on the subclasses and services for which the Postal Service requests rate changes. Thus, if the Service were to request only changes in Express Mail rates, then only data and information on Express Mail need be provided.

Postal Service is familiar with the scope of rule 54, and maintains regular data collection systems which produce the vast majority of the required information. If information required by rule 54 is not available, and cannot be readily developed, the rule allows for a waiver as is permissible under our current rules of practice, subject to a statement of explanation being provided. *See* rule 54(a)(2). It seems clear that when information relevant and material to a proposed rate change is available, that information should be provided with the request. This is particularly true in the context of a market response rate request, which is to be handled in the most expeditious fashion possible.

In other respects the data filing requirements suggested in this Notice of Proposed Rulemaking are largely similar to those presented by the Postal Service. In several specifics, however, more detailed information is required to be filed with the Postal Service request so that the scope and purpose of the request can be more clearly understood at the outset.

Proposed rule 57a(7) directs the Postal Service to describe the change in the market for expedited delivery services to which its proposal is responding, how that change is likely to affect the market, and how the Postal Service proposal will meet that competitive challenge. Further, rule 57a(8) requires the Postal Service to provide its analysis showing that its proposal is consistent with the applicable statutory ratemaking criteria, and that it will avoid or minimize losses in the Express Mail contribution to institutional costs.

Other benefits of the proposed rule include clarification of the methodologies which the Postal Service may use in developing its cost and volume estimates, and the requirement that potential changes in the Postal Service operating rules, as described in the Domestic Mail Manual, are to be described to the parties.

Section 3001.57b—Expedition of Public Notice and Procedural Schedule

This portion of the proposed rules sets forth those procedures which can enable the Commission to proceed from the filing of a request to the issuance of a recommended decision within 90 days. When the Postal Service proposed procedures for hearing cases with the utmost expedition, it included an innovative method to notify members of the public known to be interested in changes in Express Mail rates. The Service suggested that the Commission maintain a list of persons indicating a desire to receive immediate notice of Express Mail market response rate requests, and that the Postal Service would make immediate service on all persons on that list whenever such a rate request is filed.

We shall adopt this proposal. Additionally, we suggest several other innovations designed to reduce the time needed to provide adequate public notice. We also suggest new means for expediting the hearing process, should public hearings be required to resolve issues of fact involved in a market response rate request.

Postal Service expressed its willingness to serve its request by hand on registrants maintaining an address for service within the Washington metropolitan area, and for serving other addresses by expedited delivery service. In addition to this requirement, we believe that the Postal Service should also send a notice briefly describing its proposal to all participants in the most recent omnibus rate case. That notice would clearly state that it was a notice of an Express Mail market response rate request, and would identify the last day for filing a notice of intervention with the Commission.

The rules proposed by the Postal Service allowed members of the public only 10 days to request a hearing following a Postal Service request, and required the Commission to issue its recommended decision within 30 days if no request for a hearing was granted. Commenters in the first phase of this docket correctly argued that 10 days was not an adequate opportunity for affected persons to make their views known. This is particularly true since it is easy to conceive of circumstances in which previously unaffected businesses or individuals could be significantly affected by a market response rate change. Since it is not reasonable to

assume that all potentially affected persons would preregister with the Commission, 10 days does not provide adequate notice for all interested parties to express a desire to be heard. Further, the Postal Service proposal did not allow an adequate opportunity for briefing legal and policy issues.

Today's proposed rules allow 28 days for parties to indicate a desire for evidentiary hearings. This schedule allows for publication in the **Federal Register** in addition to the written notice to be provided by the Postal Service to parties in the previous rate case.

Another unacceptable aspect of the rules proposed by the Postal Service as part of its request for expedited market response rate cases was a procedural timetable that assured that discovery on the Postal Service would not generate information usable in intervenors' evidentiary presentations. This was the result of two proposed requirements: First, that interested parties had to describe the contents of their evidentiary presentations within 10 days of the Postal Service filing its request; second, that any intervenor testimony had to be filed no later than 30 days after the Postal Service submitted its request. Again, as discussed above, commenters objected and we found these complaints well grounded.

The rules proposed in this notice include a new rule applicable to discovery in market response rate requests, rule 57c(5)(d). This provision allows for discovery as soon as a market response rate request is filed, with answers to such requests due within 10 days. To reduce potential delay from motion practice, objections to discovery requests in market response rate cases are to be made in the form of a Motion to Excuse From Answering, with service on the questioning participant by hand, facsimile or expedited delivery. Answers to such motions must be made within seven days, and the Commission foresees prompt Presiding Officer Rulings on all such motions. As a result of this rule, interested participants should be able to receive responses to an initial round of discovery prior to determining whether it is necessary to request an evidentiary hearing. In past Commission dockets, parties have successfully dealt with similar, tight discovery timetables, particularly near the scheduled conclusion of hearings in 10-month rate cases; *and see* Presiding Officer's Ruling No. MC86–1/5 and Presiding Officer's Ruling of June 27, 1983 (Docket No. MC83–2).

In the most recent omnibus rate case, Docket No. R87–1, intervenors agreed to respond to discovery requests in 14 days in order that additional time would be available to prepare direct evidentiary presentations. This proposed rule would require answers in only 10 days, which could become difficult for the Postal Service, should it receive a large number of discovery requests simultaneously. However, the Service is the primary advocate for completing market response rate request cases in 90 days, and as such, it should be willing to commit the resources necessary to answer intervenor questions as completely and expeditiously as possible.

A procedural schedule for hearings in market response rate cases is also set out in the proposed rules. By specifying the procedural schedule, the rules provide participants with notice of when evidence will be due and when hearings will be held, which should help parties to plan witness availability and resource allocation. The proposed rules do make it clear, however, that the dates prescribed are subject to adjustment by the Presiding Officer. To further facilitate discussion of schedule adjustments, the rules also specify two considerations which will be central to requests for additional time: whether the requesting participant has exercised due diligence, and whether the Postal Service has unreasonably delayed participants from fully understanding the ramifications of its rate request.

The hearing schedule initially proposed by the Postal Service was flawed in several important respects. Intervenors had to request hearings within 10 days, and those hearings were to begin on the twentieth day after the Postal Service filed its request. That schedule would prevent participants from using written discovery to clarify and narrow issues.

The hearing schedule contained in this Notice of Proposed Rulemaking is set out in rule 3001.57b(5)(e). It allows interested persons 28 days to request an evidentiary hearing and schedules hearings on the Postal Service request to begin 35 days after the filing. As a result, intervenors should be able to utilize discovery to shorten the length of time needed for oral cross-examination of Postal Service witnesses. Intervenor testimony is to be filed 49 days after the Postal Service submits a market response rate request. Postal Service suggested that only 30 days be allowed to prepare and submit intervenor testimony. Again, the additional time for preparation should allow the incorporation of discovery responses in intervenor testimony.

This schedule reflects the expectation that market response rate requests will not involve numerous new issues or novel complex technical analyses. As generally described by the Postal Service, these cases would involve the Postal Service proposing a rate adjustment to counter changes in the market made by its competitors. Such a case would seem to focus on the market or submarket affected, and the likely reaction of customers. Assuming a straight forward request in these circumstances, the scope of testimony should be rather narrow, and the schedule does not allot additional time for testimony in response to intervenor presentations.[25]

Initial briefs are scheduled for the 70th day after Postal Service files its direct case, approximately the same time that briefs would be due under the schedule proposed by the Postal Service.

Section 3001.57c—Rule for Decision.

This brief provision incorporates the rule for decision suggested by the Postal Service in its initial submission, that Commission decisions will be in accord with the statutory requirements contained in the Postal Reorganization Act. Additional language has been added to reiterate that the purpose of these proposed rules is to provide the most expeditious consideration possible for market response rate requests, consistent with the procedural due process rights of interested persons. *Cf.* 39 U.S.C. 3624(b). In its proposed rules, Postal Service established arbitrary dates for Commission decisions. Since such arbitrary dates might conflict with our ability to satisfy statutory obligations, they have been excised from the rules proposed today. There is no dispute that statutory obligations take precedence over procedural dates established by Commission rulemaking. Nonetheless, it should be clear that the purpose of these rules is to provide for the most rapid consideration of market response rate requests that is consistent with a careful exploration of the scope and impact of such requests.

Section 3001.102(e)—Express Mail Market Response Volume Statistics.

We propose adding to the regular data filing requirements of the Postal Service a new section to facilitate the tracking of Express Mail volumes changes. The explicit assumption underlying the adoption of rules for expeditious consideration of Express Mail market response rate requests, is that Express Mail volumes will vary as a direct result

[25] Rule 3001.57b(5)(f) specifically allows for rebuttal presentations, should any party support a request for an additional opportunity to be heard. The delay caused by adjusting the schedule to allow rebuttal should be minor.

of acts of other participants in the expedited delivery service market. In order to identify existing market trends, and to evaluate changes made in response to competitor initiatives, it will be necessary to have detailed volumes statistics available at the inception of a market response rate case.

In discussing its initial proposal, Postal Service implies that rule 57 cases will be more likely to focus on adjustments in a limited number of rate cells, in order to meet specific competitive challenges, than to seek across-the-board rate reductions. Rule 102(e) will provide the Commission and the parties with volume trends by quarter, and within certain large volume rate cells, data indicating shifts in the weight of a typical piece. Having this information on file with the Commission will allow for preliminary analysis of trends, and will avoid the need for extensive discovery on these central issues when a market response rate request is filed. Additionally, the rule will require that special transportation cost data associated with Express Mail is available for use in these cases.

The significance of this data can be seen from review of certain historical Express Mail statistics. The Postal Service Cost and Revenue Analysis (CRA) report for FY 1985 shows the average weight of Express Mail as 51 ounces. In Docket No. Rs7–I an Express Mail weight study presented by the Postal Service showed average weight as 29.6 ounces. Similar changes appear in volume and revenue per piece figures. The Revenue Pieces and Weight (RPW) report for FY 1988 shows volume increasing 6.27% (to 44.1 million) and revenue increasing substantially less—1.32% (to $505.3 million). These figures yield a revenue Per piece of, $11.46, yet we find an average revenue per piece of only $10.85 for the fourth quarter of FY 1988.

These changes are particularly significant in light of the introduction, in Docket No. R87–1, of a reduced letter rate ($8.75) for pieces weighing less than eight ounces. While we recognize that the temporal proximity of these two events does not prove that one caused the other, it is suggestive of a significant, rate related change in the volume profile of Express Mail. But it also seems that the mix of Express Mail was changing toward lighter pieces even before this new rate was implemented. We conclude that more detailed information than is currently available will be needed to predict and evaluate the effect on volume and revenue per piece of market response rate changes.

We are therefore proposing to require quarterly reporting of:

1. Volume by rate cell, for each Express Mail service

2. Total pounds, for the volumes mailed respectively at:

a. The letter rate;

b. The uniform rate for pieces up to two pounds; and

c. The uniform rate for pieces up to five pounds.

3. The pound-miles carried on the hub contracts (currently those operating from Terre Haute, Indiana, and Las Vegas, Nevada).[26]

Impact of proposed changes.

Pursuant to Executive Order 12291, the Commission finds that this proposed rule change does not constitute a "major rule." It affects only rules of practice governing hearing procedures, not the substance of the proceeding. Its economic impact will be negligible, including its impact on the costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions. Additionally, the procedural rule change will have no measurable effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The above analysis that the rule change does not constitute a major rule applies, as well, to the Regulatory Flexibility Act.

The proposed rule change does not contain policies with Federalism implications, and therefore does not warrant preparation of a Federalism assessment under E.O. 12612.

List of Subjects in 39 CFR Part 3001

Administrative practice and procedure, Postal Service.

For the reasons set forth in the preamble, 39 CFR Part 3001 is proposed to be amended as follows.

PART 3001—RULES OF PRACTICE AND PROCEDURES

Subpart B—Rules Applicable to Requests for Changes in Rates or Fees

Subpart G—Rules Applicable to the Filing of Periodic Reports by the U.S. Postal Service.

1. The authority citation for 39 CFR Part 3001 continues to read as follows:

[26] *See* PRC Op. R87–1, paras. 3625–51, especially 3629.

Authority: 39 U.S.C. 404(b), 3603, 3622–3624, 3661, 3662, 84 Stat. 759–762, 764, 90 Stat. 1303; (5 U.S.C. 553), 80 Stat. 383.

2. Sections 3001.57, 3001.57a, 3001.57b, and 3001.57c are added to read as follows:

§ 3001.57 Market Response Rate Requests for Express Mail service—purpose and duration of rules.

(a) This section and §§ 3001.57a through 3001.57c only apply in cases in which the Postal Service requests a recommended decision pursuant to section 3622 of the Postal Reorganization Act on changes in rates and fees for Express Mail service, where the proposed changes are intended to respond to a change in the market for expedited delivery services for the purpose of preserving the Express Mail contribution to institutional costs recommended in the most recent omnibus rate case. These rules set forth the requirements for filing data in support of such rate proposals and for providing notice of such requests, and establish an expedited procedural schedule for evaluating Market Response Rate Requests. These rules may not be used when the Postal Service is requesting changes in Express Mail rates as part of an omnibus rate case.

(b) This section and §§ 3001.57a through 3001.57c are initially to be effective for the limited period of five years from the date of their adoption by the Commission. During that period the Commission will continue to analyze the need for these rules to enable the Postal Service to respond to changes in the market for expedited delivery services, and the impact of these procedures on the ability of participants to review and comment on Postal Service proposals. These rules will cease to be effective at the end of this period unless they have been reissued by the Commission following a Notice of Proposed Rulemaking published in the **Federal Register** which provides an appropriate opportunity for public comments.

§ 3001.57a Market Response Rate Requests—data filing requirements.

(a) Except as otherwise expressly provided in this section, the information required by § 3001.54 (b) through (r) must be filed only for those subclasses and services for which the Postal Service requests a change in rates or fees.

(b) Each formal request made under the provisions of §§ 3001.57 through 3001.57c shall be accompanied by such information and data as are necessary to inform the Commission and the

parties of the nature and expected impact of the change in rates proposed. Except for good cause shown, the information specified in paragraphs (c) through (i) of this section shall be provided.

(c) Every formal request made under the provisions of §§ 3001.57 through 3001.57c shall contain an explanation of why the change proposed by the Postal Service is a reasonable response to the change in the market for expedited delivery services to which it is intended to respond.

(d) Every formal request made under the provisions of §§ 3001.57 through 3001.57c shall be accompanied by the then effective Domestic Mail Manual sections which would have to be altered in order to implement the changes proposed by the Postal Service, and, arranged in a legislative format, the text of the replacement Domestic Mail Manual sections the Postal Service intends to make effective to implement its proposed changes.

(e) Every formal request made under the provisions of §§ 3001.57 through 3001.57c shall be accompanied by a statement of the attributable costs by segment and component for Express Mail service as determined in the most recent omnibus rate case and for each fiscal year thereafter for which information is available, set forth in accordance with the attributable cost methodology adopted by the Commission in the most recent omnibus rate case. If the Postal Service believes that an adjustment to that methodology is warranted it may also provide costs using alternative methodologies as long as a full rationale for the proposed changes is provided.

(f) Every formal request made under the provisions of §§ 3001.57 through 3001.57c shall be accompanied by a statement of the actual Express Mail revenues of the Postal Service from the then effective Express Mail rates and fees for the most recent four quarters for which information is available.

(g) Each formal request made under the provisions of §§ 3001.57 through 3001.57c shall be accompanied by a complete description of the change in the market for expedited delivery services to which the Postal Service proposal is in response, a statement of when that change took place, the Postal Service's analysis of the anticipated impact of that change on the market, and a description of characteristics and needs of customers and market segments affected by this change which the proposed Express Mail rates are designed to satisfy.

(h) Each formal request made under the provisions of §§ 3001.57 through 3001.57c shall include analyses to demonstrate: (i) That the proposed rates are consistent with the factors listed in 39 U.S.C. 3622(b), and (ii) that the proposed rates will preserve, or minimize erosion of, the Express Mail contribution to institutional costs recommended in the most recent omnibus rate case.

(i) Each formal request made under the provisions of §§ 3001.57 through 3001.57c shall be accompanied by a certificate that service of the filing in accordance with §3001.57b(3) has been made.

§ 3001.57b Market Response Rate Requests—expedition of public notice and procedural schedule.

(a) The purpose of this section is to provide a schedule for expediting proceedings when a trial-type hearing is required in a proceeding in which the Postal Service proposes to adjust rates for Express Mail service in order to respond to a change in the market for expedited delivery services.

(b) The Postal Service shall not propose for consideration under the provisions of §§ 3001.57 through 3001.57c rates lower than (1) the average per piece attributable cost for Express Mail service determined in the most recent omnibus rate case, or (2) the average per piece attributable cost for Express Mail service as determined by the Postal Service in accordance with § 3001.57a(5) for the most recent fiscal year for which information is available, whichever is higher. Neither shall the Postal Service propose a rate for any rate cell which is lower than the attributable cost of providing that rate cell with service, or higher than the rate for that rate cell established by the Governors in the most recent omnibus rate case.

(c)(1) Persons who are interested in participating in Express Mail Market Response Rate Request cases may register at any time with the Secretary of the Postal Rate Commission, who shall maintain a publicly available list of the names and business addresses of all such Express Mail Market Response Registrants. Persons whose names appear on this list will automatically become parties to each Express Mail Market Response rate proceeding. Other interested persons may intervene pursuant to § 3001.20 within 28 days of the filing of a formal request made under the provisions of §§ 3001.57 through 3001.57c. Parties may withdraw from the register or a case by filing a notice with the Commission.

(2) When the Postal Service files a request under the provisions of §§ 3001.57 through 3001.57c it shall on that same day effect service by hand delivery of the complete filing to each Market Response Express Mail Registrant who maintains an address for service within the Washington metropolitan area and serve the complete filing by expedited delivery service on all other Registrants. Each Registrant is responsible for insuring that his or her address remains current.

(3) When the Postal Service files a request under the provisions of §§ 3001.57 through 3001.57c, it shall on that same day send to all participants in the most recent omnibus rate case a notice which briefly describes its proposal. Such notice shall prominently indicate on its first page that it is a notice of an Express Mail Market Response Rate Request to be considered under §§ 3001.57 through 3001.57c, and identify the last day for filing a notice of intervention with the Commission.

(d) In the absence of a compelling showing of good cause, the Postal Service and parties shall calculate Express Mail costs in a manner consistent with the methodologies used by the Commission in the most recent omnibus rate case. In the analysis of customers' reactions to the change in the market for expedited delivery services which prompts the request, the Postal Service and parties may estimate the demand for segments of the expedited delivery market and for types of customers which were not separately considered when estimating volumes in the most recent omnibus rate case.

(e)(1) In the event that a party wishes to dispute as an issue of fact whether the Postal Service properly has calculated Express Mail costs or volumes (either before or after its proposed changes), or wishes to dispute whether the change in the market for expedited delivery services cited by the Postal Service has actually occurred, or wishes to dispute whether the rates proposed by the Postal Service are a reasonable response to the change in the market for expedited delivery services or are consistent with the policies of the Postal Reorganization Act, that party shall file with the Commission a request for a hearing within 28 days of the date that the Postal Service files its request. The request for hearing shall state with specificity the fact or facts set forth in the Postal Service's filing that the party disputes, and when possible, what the party believes to be the true fact or facts.

(2) The Commission will not hold hearings on a request made pursuant to §§ 3001.57 through 3001.57c unless it determines that there is a genuine issue

of material fact, and that a hearing is needed to resolve this issue.

(3) If a hearing is not held, the Commission may request briefs and/or argument on an expedited schedule, but in any circumstance it will issue its recommended decision as promptly as is consistent with its statutory responsibilities.

(4) In order to assist in the rapid development of an adequate evidentiary record, all participants may file appropriate discovery requests on other participants as soon as an Express Mail Market Response Rate Request is filed. Answers to such discovery requests will be due within 10 days. Objections to such discovery requests must be made in the form of a Motion to Excuse from Answering, with service on the questioning participant made by hand, facsimile, or expedited delivery. Responses to Motions to Excuse from Answering must be submitted within seven days, and should such a motion be denied, the answers to the discovery in question are due within seven days.

(5) If, either on its own motion, or after having received a request for a hearing, the Commission concludes that there exist one or more genuine issues of material fact and that a hearing is needed, the Commission shall expedite the conduct of such record evidentiary hearings to meet both the need to respond promptly to changed circumstances in the market and the standards of 5 U.S.C. 556 and 557. The procedural schedule, subject to change as described in paragraph (e)(6) of this section, is as follows: Hearings on the Postal Service case will begin 35 days after the filing of an Express Mail Market Response Rate Request; parties may file evidence either in support of or in opposition to the Postal Service proposal 49 days after the filing; hearings on the parties' evidence will begin 56 days after the filing; briefs will be due 70 days after the filing; and reply briefs will be due 77 days after the filing.

(6) The Presiding Officer may adjust any of the schedule dates prescribed in paragraph (e)(5) of this section, in the interests of fairness, or to assist in the development of an adequate evidentiary record. Requests for the opportunity to present evidence to rebut a submission by a participant other than the Postal Service should be filed within three working days of the receipt of that material into the record, and should include a description of the evidence to be offered and the amount of time needed to prepare and present it. Requests for additional time will be reviewed with consideration to whether the requesting participant has exercised due diligence, and whether the Postal Service has unreasonably delayed participants from fully understanding its proposal.

§ 3001.57c Express Mail Market Response—rule for decision.

The Commission will issue a recommended decision in accordance with 39 U.S.C. 3622(b) which it determines would be a reasonable response to the change in the market for expedited delivery services. The purpose of §§ 3001.57 through 3001.57c is to allow for consideration of Express Mail Market Response Rate Requests within 90 days, consistent with the procedural due process rights of interested persons.

3. Section 3001.102 is amended by adding paragraph (e) to read as follows:

§ 3001.102 Filing of reports.

* * * * *

(e) Express Mail Market Response Volume Statistics. This section is to be effective for the limited period of five years from the date of the initial adoption of rule 57. It will cease to be effective at the end of this period unless reissued by the Commission. Postal Service will file within 90 days of the end of each quarter:

(1) Volume by rate cell, for each Express Mail service.

(2) Total pounds of Express Mail rated at (a) up to ½ pound, (b) ½ pound up to 2 pounds, (c) 2 pounds up to 5 pounds.

(3) Pound-miles carried on hub contracts for each subclass.

By the Commission.

Charles L. Clapp,

Secretary.

[FR Doc. 89-6290 Filed 3-17-89; 8:45 am]

BILLING CODE 7715-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3539-8]

PM_{10} State Implementation Plan (SIP) Revision; State of Kansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On December 14, 1988, the state of Kansas submitted draft PM_{10} regulations and a committal SIP in order to bring the state into conformance with the requirements to implement the new PM_{10} standard and regulations published in the July 1, 1987, **Federal Register**. EPA is parallel processing the state's submittal. EPA is proposing in this document to approve the state's draft rules and committal SIP. The state will hold a public hearing and comment period with the intent to adopt final PM_{10} rules following the comment period on these draft rules. The purpose of today's rulemaking is to solicit public comments on this proposed action.

DATE: Comments must be received on or before April 19, 1989. Public comments on this document are requested and will be considered before taking final action on these SIP revisions.

ADDRESSES: Comments should be addressed to Wayne A. Kaiser, Environmental Protection Agency, Region VII, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101. Copies of the documents relevant to this proposed action are available for inspection during normal business hours at the above address and at the following location: Kansas Department of Health and Environment, Division of Air Quality and Radiation Control, Forbes Field, Topeka, Kansas 66620.

FOR FURTHER INFORMATION CONTACT: Wayne A. Kaiser at (913) 236-2893 (FTS 757-2893).

SUPPLEMENTARY INFORMATION: On July 1, 1987, EPA promulgated a new national ambient air quality standard (NAAQS) for particulate matter. The new standard applies only to particles with a nominal aerodynamic diameter of 10 micrometers or less (PM_{10}). The new standard replaces total suspended particulates (TSP) as an ambient air quality standard.

In order for states to regulate PM_{10}, they must make certain changes in their rules and regulations and in the SIPs. The changes to the rules and the SIP must insure that the PM_{10} NAAQS are attained and maintained; that new and modified sources which emit PM_{10} are reviewed; that PM_{10} is one of the pollutants to trigger alert, warning, and emergency actions; and that the state's monitoring network be designed to include PM_{10} monitors. These changes must be made regardless of the existing levels of PM_{10} in any area of the state.

Where preliminary monitoring data indicate it is likely that PM_{10} standards are being exceeded in an area, a control strategy is required to show how PM_{10} emissions will be reduced to provide for attainment and maintenance of the PM_{10} NAAQS. This is called a group I area. If the data show that the PM_{10} standards could possibly be met in an area but there is some uncertainty, the states are required to commit to perform additional PM_{10} monitoring in that area and to prepare a control strategy if the data show with certainty that the standards are being exceeded. This is

called a group II area. The commitments must be submitted in the form of a SIP revision and are termed a "committal" SIP. The regulations call for the PM_{10} SIPs to be submitted nine months after the federal PM_{10} regulations went into effect on July 31, 1987. However, because of the burdensome administrative requirements for adoption of rules in some states, they were given some flexibility in the scheduling of their PM_{10} SIP submissions.

Historical TSP monitoring data and all available PM_{10} data in Kansas indicate there are no areas where the PM_{10} standards are likely to be exceeded and only one area in the state where PM_{10} NAAQS might be exceeded. This area is the Fairfax District in Kansas City, Kansas. The area is presently designated secondary nonattainment for TSP. Preliminary data collected in 1985 and 1986 indicated the annual average PM_{10} concentration in the area was very close to the standard. Thus, the area was identified as group II, which means that a committal SIP is required and PM_{10} monitoring will continue in accordance with the 40 CFR Part 58 monitoring regulations.

Therefore, based on available PM_{10} data and in accordance with the Clean Air Act (CAA) and EPA regulations, Kansas must meet the following requirements in order for EPA to approve its SIP for PM_{10}: (1) Adopt acceptable revisions to the preconstruction review rules, (2) submit a committal SIP for Kansas City, Kansas, (3) revise the emergency episode plans to incorporate PM_{10}, and (4) revise the air monitoring plan, if necessary, and update the monitoring network to add PM_{10}.

The Kansas submittal consists of: (1) Revisions to the Kansas new source review rules, (2) a draft of the committal SIP for Kansas City, Kansas, (3) revised emergency episode rules which include PM_{10}, and (4) a revised Air Quality Surveillance Plan with updated network descriptiosn for the National Air Monitoring Systems, and the State and Local Air Monitoring Systems. Because the rule changes have not been adopted, EPA is parallel processing the draft submittal. The state will announce a public hearing date shortly after EPA publishes this proposal to approve the Kansas PM_{10} SIP submission.

The Kansas submittal has been reviewed to determine if it meets the requirements of the CAA, EPA regulations, and applicable policies. These requirements are summarized in the technical support document. Also, references are included which point out the provisions in the Kansas laws and rules which satisfy these requirements.

The following discussion addresses relevant changes made to the Kansas rules.

There are definitions sections in several Kansas rules. The general definitions are contained in state rule 28–19–7. The state revised its definition of particulate in rule 28–19–7(p) to define particulate matter as any airborne finely divided solid or liquid material, except uncombined water. The state definition differs from that at 40 CFR 51.100(oo) in that it does not limit the upper size of particles to less than 100 micrometers, and excludes uncombined water. The state does not desire to restrict its ability to control particulate matter emissions larger than 100 micrometers. Additionally, the Kansas Air Quality Act contains a definition of "air contaminate" which excludes water vapor or steam condensate and, therefore, in order to be consistent with the state law, the rules must not include uncombined water. These two differences are acceptable. State rule 28–19–7(q) establishes a definition of PM_{10} which is consistent with 40 CFR 51.100(pp), and 28–19–7(x) establishes a definition of total suspended particulate which is consistent with 40 CFR 51.100(ss).

Rule 28–19–8 concerns new source reporting requirements. The state has revised its reporting requirement for particulate in 28–19–8b(1) and 28–19–8b(2) to read "particulate matter including but not limited to PM_{10}." This is acceptable. Similarly, rule 28–19–14, concerning permits required, has been revised to refer to particulate matter rather than particulate.

Rule 28–19–17 pertains to new source permit requirements for designated attainment or unclassified areas. Rule 28–19–17a, Definitions, adopts all the pertinent definitions contained in 40 CFR 52.21(b) by reference; therefore, both PM_{10} and TSP are addressed in the Kansas definitions of major stationary source, major modification, stationary source, emission unit, best available control technology (BACT), and significant. Rule 28–19–17a(c) contains a definition of "applicable maximum allowable increase" which refers to the Prevention of Significant Deterioration (PSD) increments in Section 163 of the CAA. The rule indicates that particulate matter in this case means total suspended particulate, which is defined at 28–19–7q. Rule 28–19–17b(h), which establishes the significance levels for determining whether a source shall be considered to cause or contribute to a violation of an NAAQS, was revised to include PM_{10} levels.

Rule 28–19–17d adopts 40 CFR 52.21(j), Control technology review, by reference. This rule requires that each major stationary source shall apply BACT for each pollutant subject to regulation under the Act if the source would have the potential to emit significant amounts of the pollutant, or if a major modification caused a significant net emissions increase at the source.

The state adopted other federal requirements by reference. For example, rule 28–19–17c adopts 40 CFR 52.21(k), pertaining to source impact analysis; and rule 28–19–17g adopts 40 CFR 52.21(m), pertaining to air quality analysis. The state has revised rule 28–19–56 to be consistent with 40 CFR Appendix L, pertaining to alert, warning, and emergency levels contained in emergency episode plans.

Rule 28–19–17b(h) was revised to satisfy the requirement of 40 CFR 51.165(b). Because nonattainment provisions of the CAA and the Kansas rules will not apply to PM_{10}, the state was required to insert a new requirement in its rules to meet the requirements of 40 CFR 51.165(b). This provision prohibits the construction or modification of sources not subject to PSD with respect to PM_{10} if they would: (1) Cause a violation of applicable portions of the control strategy for particulate matter, or (2) interfere with attainment or maintenance of the PM_{10} NAAQS.

The state has submitted a draft of the committal SIP for Kansas City, Kansas. The committal SIP contains all the requirements identified in the July 1, 1987, final promulgation of the SIP requirements for PM_{10} (40 FR 24681) except for one deviation. This concerns reporting of PM_{10} data which exceed the standard within 45 days of the exceedance. The state of Kansas will commit to report such data within 60 days rather than 45 days. The state contends that the extra time is required for filter collection and transport by the local agency in the group II area, weighing of the filter by the state, and quality assurance and reporting of the data. EPA believes this is not a significant deviation from the requirements and finds the state has good cause for the extra reporting time.

Kansas rule 28–19–17a provides for application of PSD requirements for any pollutant designated attainment or unclassified by section 307(d). The state will request that those areas of the state not already designated attainment for TSP be redesignated to unclassifiable (Kansas City, Kansas). The entire state

will be designated attainment or unclassified for TSP and, therefore, PSD review requirements will be triggered if a major source is constructed or modified anywhere in the state. This review will include TSP, particulate matter emissions, PM_{10}, and PM_{10} emissions.

The state made a number of other technical corrections and minor wording changes in its regulations which are unrelated to PM_{10}. EPA concurs with these changes.

EPA is soliciting public comments on this notice and on issues relevant to EPA's proposed action. Comments will be considered before taking final action. Interested parties may participate in the federal rulemaking procedure by submitting written comments to the address above.

The revisions are being proposed under a procedure called "parallel processing" (47 FR 27073). If the proposed revisions are substantially changed, EPA will evaluate those changes and may publish a revised notice of proposed rulemaking. If no substantial changes are made, EPA will publish a final rulemaking notice on the revisions. The final rulemaking action by action by EPA will occur only after the SIP revisions have been adopted by Kansas and submitted to EPA for incorporation into the SIP. Parallel processing will reduce the time necessary for final approval of these SIP revisions.

Proposed Action

EPA is proposing to approve the draft Kansas SIP revisions and the PM_{10} committal SIP described in this notice.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

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

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

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations, Particulate matter.

Authority: 42 U.S.C. 7401–7642.

Date: March 13, 1989.

Morris Kay,

Regional Administrator.

[FR Doc. 89–6436 Filed 3–17–89; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[Gen. Docket No. 89–44; FCC 89–53]

Procedure for Measuring Electromagnetic Emissions From Digital Devices

AGENCY: Federal Communications Commission.

ACTION: Proposed rules.

SUMMARY: This action proposes a revision of the FCC's procedure for measuring the interference potential of computers and other digital electronic devices. The proposed changes to this procedure, currently designated MP–4, reflect issues raised in a request for rule making filed by the Computer Business and Equipment Manufacturers Association and the Commission's own observations on the need for changes this measurement procedure based on experience in testing computers over the last six years. The proposed revision of the digital device measurement procedure, to be renamed TP–1, would be incorporated into Part 15 of the Commission's rules by reference.

DATES: Interested persons may file comments on or before May 8, 1989, and reply comments on or before June 7, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Hugh L. Van Tuyl, Office of Engineering and Technology, (301) 725–1585.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making in GEN Docket No. 89–44 adopted February 13, 1989, and released March 7, 1989.

The full text of this Commission proposal 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 proposal also may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of the Notice of Proposed Rule Making

1. On August 7, 1987, the Commission issued a Public Notice inviting comments on the need for revisions to the FCC procedure for measuring the electromagnetic emissions (EME) of digital devices, MP–4, and specific proposals for revising this procedure that were submitted by the Computer Business and Equipment Manufacturers Association (CBEMA). The comments filed in response to the Public Notice raised a number of important issues concerning the suitability and effectiveness of the current measurement procedure and the burden it imposes on equipment suppliers. In addition, the Commission observed that over the past five years its staff and the industry have gained experience that can now be used to improve the measurement procedure for digital devices. In view of these considerations, the Commission issued a *Notice of Proposed Rule Making* (*Notice*) to initiate a comprehensive review and revision of its EME measurement procedure for digital devices.

2. The *Notice* first addresses several general issues relating to the measurement procedure for digital devices. In particular, it: (1) Proposes to incorporate the measurement procedures for Class A and B devices into a sigle document, (2) requests comments on the extent to which the measurement procedure should conform to that of the International Special Committee on Radio Interference (CISPR); (3) proposes to re-establish a Digital Device Panel of FCC staff to address non-routine requests for interpretations of the test procedure and to make a summary of these interpretations available through the FCC Laboratory's PAL computer system; and (4) to implement the revised procedure over a period of at least one year.

3. The *Notice* sets also forth specific proposals for revising the existing measurement procedure and incorporates these proposals into a complete revised procedure. The significant features of the revised procedure include proposals to: (1) Use as 1 to four meter scan height range for antennas at test distances of 3 to 30 meters; (2) reduce the number of data points that must be reported or recorded; (3) test a system in a single fixed position, i.e. without moving peripherals, so that only the interconnecting cables would be moved; (4) continue to use the scrolling "H" pattern in operating emissions tests;

and, (5) change the minimum distance of device from the back wall conducting surface from 2 meters to 40 cm and use two line impedance stabilization networks (LISNs), one for the equipment under test and one for peripherals, in conducted emissions tests. The proposed new procedure would be renamed TP–1 and would be incorporated into Part 15 of the Commission's rules by reference.

4. The Commission invites comments on all aspects of the proposed new measurement procedure for digital equipment and any other issues that may bear on the effectiveness of this procedure for safeguarding the radio frequency environment.

5. This is a non-restricted notice and comment rule making proceeding. *See* § 1.1231 of the Commission's rules, 47 CFR 1.1231, for rules governing permissible *ex parte* contracts.

6. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, it is certified that the proposed rules will, if promulgated, have a significant effect on manufacturers of digital devices and laboratories performing certification and verification tests on such devices. The proposed changes are expected to reduce the regulatory burden imposed on these parties. Public comment is requested on the initial regulatory flexibility analysis set out in full in the Commission's complete decision.

7. The proposals contained herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose a new or modified information collection requirement on the public. Implementation of any new of modified requirement will be subject to approval by the Office of Management and Budget as prescribed by the Act.

8. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before May 8, 1989, and reply comments on or before June 7, 1989. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

9. This Further Notice of Proposed Rule Making is issued pursuant to authority contained in sections 4(i) and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 4(i) and 303.

10. For further information on this proceeding, contact Hugh L. Van Tuyl or Richard F. Fabina, FCC Laboratory, 7435 Oakland Mills Road, Columbia, MD 21046, (301) 725–1585.

List of Subjects in 47 CFR Part 15

Radio frequency devices.

Federal Communications Commision.

Donna R. Searcy,

Secretary.

[FR Doc. 89–6476 Filed 3–17–89; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 89–15; FCC 89–28]

Broadcast; Selection From Among Competing Applicants for New AM, FM, and Television Stations by Lottery

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission initiates this proceeding to explore the possibility of improving the system used to award licenses for new broadcast facilities. Specifically, the Commission seeks comment on the use of a random selection or lottery procedure for new AM, FM, and television broadcast stations instead of the present comparative hearing process.

DATES: Comments are due May 8, 1989, and reply comments are due by June 22, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Roderick K. Porter (202) 632–6460, Stephen A. Bailey (202) 632–5414, or Andrew J. Rhodes (202) 632–7792, Mass Media Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making* (*Notice*) in MM Docket No. 89–15, adopted January 30, 1989, and released March 10, 1989. The complete text of this *Notice* is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Notice of Proposed Rule Making

1. The Commission initiates this proceeding to consider revising the system used to award licenses for new broadcast facilities. Specifically, it is proposing the use of a random selection or lottery procedure for new AM, FM, and television broadcast stations instead of the present comparative hearing process.

2. After more than 20 years of experience in using the existing comparative hearing procedures to select among mutually exclusive applicants for new broadcast stations, several difficulties, discussed in more detail below, have become apparent. First, this selection process frequently operates to delay service to the public significantly without providing substantial offsetting benefits in terms of selecting a "better" applicant. In addition, the process unduly drains the Commission's limited administrative resources as well as the resources of potential licensees. Moreover, the public may never benefit from our ultimate selection because the permittee decides, or is forced by unforeseen circumstances, to modify its proposed operation, the nature of its ownership, or proposed involvement in management, or is compelled to assign the permit, without profit, to a third party. Finally, even when there is no change in the proposed operation of the station or subsequent assignment of the permit, it is highly questionable whether this elaborate and costly process actually results in a material benefit to the public. This is especially true in those cases where the comparative distinction between a winning and losing applicant, both of whom are basically qualified, is marginal.

3. In view of these difficulties with the current system, we are inviting comment on whether use of the random selection procedures ("lotteries") prescribed by section 309(i) of the Communications Act would, on balance, better serve the public interest without any diminution (or, at most, without any significant diminution) in the quality of service provided to the public. We have already exercised our statutory authority to use random selection procedures in many of those radio services hampered by application backlogs, and from a legal standpoint, it is our tentative conclusion based on the statutory language of section 309(i) itself, that we have the authority to use these procedures to award licenses in other broadcast services.

4. In order to appreciate fully our reasons for considering revision of the existing process in choosing between competing applicants, it is necessary to understand the complexity and expense involved in that adjudicatory process. As detailed in paras. 5–13 of the *Notice*, that process involves the time, money, and energy spent on filing motions to enlarge issues, oppositions, and replies; on discovery procedures; on hearing preparation and the hearing itself; on preparation and filing of proposed findings of fact and conclusions of law; on the Administrative Law Judge's (ALJ) Initial Decision selecting a comparative

winner; on filing exceptions and reply exceptions to the Initial Decision and awaiting decision by the Review Board; on filing Applications for Review and other responsive pleadings to the full Commission; on the Commission's decision; and, in some instances, appealing the Commission's decision to the U.S. Court of Appeals and, less often, on filing for review of the Court of Appeals' decision with the U.S. Supreme Court.

5. The adjudicatory procedures can be so intricate and time-consuming that cases which employ all of the possible steps available as part of the comparative hearings process can take 3 to 5 years or more to complete *after* the case has first been designated for hearing. Even cases which are concluded by settlement agreement prior to the issuance of an Initial Decision can be time-consuming and costly. For example, we examined the orders issued by the ALJs from January 1, 1988, through June 30, 1988, which terminated cases on a non-comparative basis. Approximately 61 such cases were resolved by approval of settlement agreements at the ALJ level. Of these, the average settlement cost per case for FM stations was $79,872.70; for AM stations, $15,850; and, for TV stations, $64,805. (A listing of the cases involved in this study and the amount of settlement for each case is being incorporated into MM Docket No. 89–15.) Cases which reach settlement *subsequent* to an Initial Decision not only entail these same costs but also many expenses involved in litigating a comparative hearing case.

6. While the Commission recognizes that the comparative hearing procedures are designed to ensure that all parties are afforded maximum due process consistent with the requirements of the Administrative Procedure Act, the overriding questions are whether this process is superior or inferior to a lottery selection method, after analyzing the respective costs and benefits of both procedures, and, therefore, which process operates better to serve the public interest.

7. Moreover, it is essential to ascertain whether the existing process results in discernibly better service to the public than an alternative procedure. The object of the existing elaborate process is to use the comparative qualification criteria to select the applicant that will best serve the public interest. These criteria and qualitative enhancements include, *inter alia*, (1) the extent to which an applicant would diversify ownership of the mass media; (2) whether owners would be integrated into management positions at the proposed station; (3) whether the integrated personnel are present or proposed local residents of the community of license or service area of the proposed station; (4) whether such integrated owners are minorities or females; (5) whether they have past broadcast experience or past participation in civic activities; (6) the broadcast record of the applicant; (7) proposed program service; (8) the daytimer preference; and (9) comparative coverage proposals. On the basis of the evidence adduced, the ALJ awards preferences, based on these criteria that range from "very slight" to "slight" to "moderate" to "substantial" to "overwhelming" and then determines, on an overall basis, the best applicant.

8. Although the Commission's *Policy Statement on Comparative Broadcast hearings*, 1 FCC 2d 393 (1965), sought to clarify the policies regarding these criteria and their use in broadcast licensing hearings, we have tentatively concluded, as set forth in paras. 23–29 of the *Notice*, that, generally, the criteria do not lend themselves to consistent and easily predictable results, and that the process often functions to produce only marginal benefits to the public. Moreover, based upon our review of 39 comparative new cases designated for hearing in the first and third quarters of calendar year 1982—which are described in footnote 12 of the *Notice* and in materials that have been placed in MM Docket No. 89–15 for public inspection—approximately 80% of such cases are terminated by settlement, voluntary dismissal or other reasons, none of which are based on a comparative selection among competing applicants. This in turn calls into question whether comparative hearings are needed to select permittees for new stations. Furthermore, even with respect to the remaining 20% of the cases that are decided upon comparative grounds, the process utilized is so complex—due to the myriad of factors involved and the fine gradations of weight accorded to each of these factors—that one level of evaluation might reach one result, a second level a different result, and a third level the same result as one of the other levels but for substantially different reasons. Therefore, the process is viewed as inconsistent, unpredictable, and as producing results which appear arbitrary in nature.

9. Another reason for concern with the effectiveness of the comparative hearing process lies with the extent to which changed circumstances may undermine the basis for a final comparative selection. Even though regulatory constraints exist to prevent abuse of the comparative licensing process, changed circumstances may occur that could obviate the reasons for having granted preferences to the winning applicant, or for having conducted the hearing altogether. For example, *legitimate* changed circumstances might prevent an applicant from using a particular transmitter site, or a significant shareholder of a permittee or licensee from participating full-time in a key management position, even though preferences might have been granted based on a specific transmitter site or integration proposal. Equally significant, even though a comparative hearing had resulted in the selection of what appeared to be the best qualified applicant, *legitimate* changed circumstances may occur which could prevent that entity from ever providing service to the public, and instead, could result in transfer of the permit to a third party that had no connection with the prior hearing.

10. In view of the magnitude of the problems involved in the comparative hearing process, the Commission tentatively concludes that it is especially appropriate to consider a different method of selecting between competing applicants. For a number of reasons, which we solicit comment on, we believe that a lottery procedure would be substantially superior to comparative hearings. First, the statutory lottery would significantly simplify the process of selecting among mutually exclusive applications. Procedurally, there would be no need for lengthy and complex comparative hearings. Rather, applications would be screened for completeness prior to the lottery, and, only after a tentative selectee had been chosen, would parties be able to file petitions to deny against the winner. Such petitions would be limited to the basic qualifications of the tentative selectee. Moreover, from a substantive standpoint, lotteries would simplify the licensing process by replacing the numerous comparative criteria with a system of granting significant preferences, as required by section 309(i) of the Communications Act, to applicants who would diversify mass media ownership and/or who are minority owners.

11. A second advantage of the random selection process is that it would be more objective and, therefore, easier to administer than comparative hearings. This is because a lottery system would substantially reduce, if not eliminate, the need to resolve cases on exceedingly narrow or insignificant factors and

would rely, instead, on the preferences mandated by the statute.

12. Third, a lottery approach would speed up the licensing process. For example, based upon our review of 39 cases designated for hearing in 1982, we found that there was a 32.5 month average period of time from the filing of the successful application to grant of a construction permit. By way of contrast, by examining 58 lottery winners that filed applications in the June, 1987, low power television window, the average time from filing to grant for 44 of these construction permits granted so far was 14 months. A summary of the data and/or other materials used to derive this information is available for public inspection in MM Docket 89–15.

13. Fourth, a lottery system would be less expensive to applicants and to the Commission. This is because applicants would avoid many of the often substantial fees for legal services, transportation costs, and assorted administrative expenses. Likewise, the Commission can use fewer personnel and other administrative resources to implement the lottery than comparative hearings.

14. Fifth, because we have no reason to believe that our comparative criteria (and, indeed any alternative comparative criteria) necessarily leads to "better" licensees and "better" service to the public, we do not believe that the quality of licensees and the service they provide to the public would deteriorate under a lottery process. Our experience in selecting licensees through lottery in other services (such as low power television) does not suggest any such degradation in licensees or public service. We specifically seek comment on this view, as well as the other tentative conclusions set forth in paras. 10–14 of this summary.

15. Next, we ask for comment on whether utilizing a random selection procedure for selecting AM, FM, and television permittees is permissible under section 309(i) of the Communications Act. We tentatively believe that the express wording of the statute empowers the Commission to award licenses to qualified applicants using a system of random selection "in any instance in which the Commission, in its discretion, determines that such use is appropriate * * *" Moreover, the United States Court of Appeals for the District of Columbia Circuit has recently confirmed this interpretation of the statute in *Telecommunications Research and Action Center v. FCC*, 836 F.2d 1349, 1354, (D.C. Cir. 1988). Although the Conference Report accompanying Section 309(i) listed a number of factors for the Commission to consider in deciding whether to use lotteries—such as whether there is a large number of licenses available in the service under consideration; whether there is a large number of mutually exclusive applications; whether there is a significant backlog of applications; whether employing a lottery would significantly speed up the process of getting service to the public; and whether a lottery would significantly improve diversity of information—the court held that these factors do not rise to the level of statutory requirements.

16. Nevertheless, bearing these factors in mind, we believe that a lottery approach would be especially beneficial for the licensing of new FM stations. In this regard, recent rules changes in BC Docket 80–90 have resulted in allocation of new FM channels to 689 communities. As a result, as of December 1, 1988, we had approximately 2,300 applications pending for new FM stations or for major changes in FM facilities, of which about 1,700 are mutually exclusive. This could require hearings for approximately 377 separate mutually exclusive FM groups, with an average of 4.5 applications per group. Even greater numbers of new FM stations may be possible as a result of a proposal in MM Docket No. 88–375 (53 FR 38743, October 3, 1988) to create a new class of FM channel, C–3.

17. Although our proposal to utilize lottery procedures for FM licensing is a departure from our prior position that we would refrain from altering the existing comparative hearing procedures once we had made announcements of filing windows for new FM allotments, we believe that the sizable backlog of applications to be designated for hearing for the original Docket 80–90 allotments, as well as numerous other post-Docket 80–90 allotments, may warrant a different course. Given the amount of time that would be involved if these cases were to run the entire gamut of the hearing process, we question whether a lottery approach would be more appropriate and, therefore, solicit comment on this aspect of our proposal.

18. We also recognize that the number of stations available and the volume of mutually exclusive applications are not as great for AM and full service television as for the FM service. Indeed, as detailed in footnote 61 of the *Notice*, there are currently about 205 applications pending for new AM stations or for major changes in existing facilities, of which approximately 55 are mutually exclusive and comprise 15 separate hearing groups. Likewise, as of January 11, 1989, there were 38 applications pending for new TV stations, of which 20 were mutually exclusive and constitute 5 separate hearing groups. Nevertheless, in spite of the smaller volume of applications in these services, we believe that the use of lotteries for licensing new AM and TV stations would result in a fairer, more efficient, and less onerous system for those interested in applying for such licenses because many of the problems inherent in the comparative hearing process would be avoided. It would also promote diversity of opinion and viewpoint in these services, as well as in FM, because of the significant preferences afforded minority ownership and diversification of media ownership under the lottery statute. For example, as explained in footnote 63 of the *Notice* and in materials that have been placed in MM Docket No. 89–15 for public inspection, we reviewed lottery results from 371 lottery groups in the low power television service for the third fiscal quarters of 1986, 1987, and 1988 and found that, while minorities filed only 25% of the applications, they won 38% of the total number of lottery groups. Also, of the 231 lottery groups in which there was at least one minority applicant, minorities won 61% of the time. On the media diversity side, applicants with a diversity preference won 56% of the lottery groups. By way of contrast, of the 39 comparative new hearing cases previously referred to and described in footnotes 12 and 63 of the *Notice*, 33 involved settlements or voluntary dismissals of applications and, therefore, neither media diversity nor minority ownership was a decisional factor in the agency's final grant (or denial) of a construction permit in these cases. Of the six cases that did not result in settlements or voluntary dismissals, four resulted in granting of construction permits to applicants with significant minority ownership. However, one of these cases was for a noncommercial TV station where the level of minority ownership is not a relevant comparative factor. In two of the non-settlement cases, diversity was a comparative factor.

19. In addition, although we previously held that inclusion of a preference for women under either the "media ownership" or "minority ownership" preferences would not be permissible under the lottery statute, we invite comment on the impact of the court's statement in *Pappas* v. *FCC*, 807 F.2d 1019, 1024 (D.C. Cir. 1986), that it has not decided whether the Commission may have residual authority to grant to female applicants (or, presumably, others) a preference of a different kind or lesser magnitude than the preferences established in section

309(i) of the Communications Act. In particular, we invite comment on whether it would be possible to create additional preferences (for female ownership, "AM daytimers," or FM applicants who file petitions for rule making that lead to the addition of a new channel) without diluting the preferences mandated by the statute. In addition, we seek comment on whether these possible preferences or any other would serve the public interest.

20. However, as explained in footnote 62 of the *Notice*, if the Commission were to decide at the conclusion of this proceeding to retain the comparative hearing process in its existing form, it would leave intact both the minority and women preferences currently used in comparative hearings because recent appropriations legislation for the FCC—Pub. L. No. 100-459—contains language that prohibits use of any Commission funds to repeal either of these criteria in the comparative licensing process. Yet, the appropriations language is expressly directed at the comparative licensing process, not lotteries, and neither the express words of the appropriations legislation nor the legislative history accompanying it suggests Congress' intent to apply this restriction to lotteries under section 309(i) to determine when a random selection process would serve the public interest. Comment is requested on this analysis.

21. We also solicit comment on the lottery procedures to be utilized. In this regard, we propose to use our mass media lottery procedures—which are set forth in §§ 1.1601–1.1604 and 1.1621–23 of the Commission's Rules and currently applied only to low power television—for licensing new AM, FM, and TV stations. Under these procedures, applications would be prescreened for acceptability. Preferences would be given for minority ownership and diversification of ownership by granting the applicant additional chances to be selected on the basis of any preferences. After the tentative selectee is determined, petitions to deny may be filed against that selectee. If a substantial and material question of fact is raised by the petitions, the question would be designated for hearing. The hearing would be a paper hearing unless oral testimony is required, in which case a trial type hearing would be conducted by ALJ. We welcome comment on this approach and encourage alternative suggestions regarding the specific implementation of the lottery for AM, FM, and full power television services.

22. For example, under what circumstances should a limited partnership applicant be eligible for a minority preference? Currently, in the low power television service, limited partnership applicants must show that the majority of the partnership (computed on the basis of profits) is in the hands of members of minority groups. This appears to be more restrictive than the basis for employing minority preferences in comparative hearings and, accordingly, we question whether the latter standard should be utilized.

23. In addition, we seek comment on several other ways of refining the lottery process in order to limit the potential for abuses that could occur. For example, since a lottery may stimulate an increase in the number of applications, should we use, as proposed in para. 44 of the *Notice*, a higher standard for acceptability of applications than is currently used, such as requiring applications to be "complete and sufficient" as in the low power television service?

24. We also seek comment on whether we should impose more stringent financial qualifications requirements on applicants as a way of minimizing potential abuses. Currently, broadcast applicants merely have to certify that net liquid assets are on hand or that sufficient funds are available from committed sources to construct and operate the requested facilities for three months without revenue. When such certifications are challenged, they are examined to determine whether the applicant has reasonable assurances of the availability of the funds relied upon. However, given the increase in the number of applications that may be expected if a lottery were utilized, should we require applicants to submit, at the time they file their applications, documentation that they have a firm financial commitment from a state or federally chartered bank or savings and loan association, another financial institution, or the financial arm of a capital equipment supplier indicating that the lender is committed to lending a sum certain to the particular applicant? If an applicant intends to rely on personal or internal resources, we invite comment on whether we should require submission of audited financial statements, certified within one year of the application date, or balance sheets, current within 60 days of the filing date, showing the availability of sufficient net current assets to construct and operate the proposed station. We also seek comment on whether balance sheets should be accompanied by a certification of an officer of the applicant attesting to the validity of unaudited balance sheets. Finally, what rules or procedures, if any, should be adopted concerning financial commitments to an applicant for stations in various markets? In this regard, commenters are invited to consider the appropriateness of using rules similar to those set forth in § 22.917(c) for the rural cellular service, under which financial commitments may cover more than one application but, overall, the financial commitment must be sufficient to cover the costs of the various systems applied for.

25. In lieu of a "firm financial commitment standard," commenters are also requested to consider the appropriateness of retaining the current "reasonable assurance" standard and requiring applicants to submit documentation indicating that they have net liquid assets on hand or sufficient funds available from committed sources to construct and operate the requested facilities for three months without revenue. Such documentation could include information such as an itemization of the funds that will be necessary to apply for, construct, and operate the station, and the sources of funds that will be relied upon to meet these obligations. In that regard, an applicant could be required to submit balance sheets, bank commitment letters, and documentation that any conditions of a bank or other loan can be met by the applicants, including security provisions and personal guarantees. Such information may be sufficient for ensuring that applicants are financially qualified yet may be easier to obtain than the documentation necessary to prove the existence of a firm financial commitment.

26. Likewise, problems involving multiple filings by a single party and real party in interest abuses could be resolved, as for low power television, by requiring applicants to certify that they have not entered into agreements for the purposes of transferring any license awarded through the lottery. In addition, applicants for low power television also must certify that they do not have interests of one percent or more in any other mutually exclusive application, and that no party to their applications is an officer, director, or has an interest of one percent or more in any other mutually exclusive application. Because that provision may not have been effective in limiting these kinds of abuses, should parties be barred from having any interest in more than one application in a mutually exclusive group? Such an approach was utilized in the rural cellular service, and is currently set forth in § 22.921(b)(1), and commenters are asked to consider its

applicability in the mass media area. Also, we seek comment on the extent to which the Commission's inconsistent and multiple application rules (Sections 73.3518 and 73.3520) are sufficient to address such abuses for full service stations.

27. We also require low power applicants to provide detailed ownership information so that we can identify the real party in interest. Corporate applicants must disclose their officers, directors, and ownership interests, and similar information is required of a partnership applicant with regard to its general partners and any limited partners. We welcome comment on utilizing these measures in other mass media services, and encourage other suggestions on how to maintain the integrity of the lottery process without imposing undue barriers to *bona fide* applicants.

28. Further, we seek comment on whether we should place any restriction on settlement agreements, partial or otherwise, among mutually exclusive applicants as another step that may be taken to discourage the filing of sham applications. For example, we recently prohibited partial settlements among competing non-wireline applicants in the rural cellular service because experience showed that such arrangements increased litigation and delayed issuance of construction authorizations. Would such an approach serve the public interest in the AM, FM, and TV services? Also, what restrictions, if any, should be placed on settlements generally?

29. Finally, we invite comment on four additional matters. First, we seek comment on what role, if any, section 307(b) issues should have if a system of lotteries is adopted for licensing AM, FM, and TV stations. In this regard, we foresee no problem arising for FM and TV because section 307(b) determinations are made in rule making proceedings to amend the FM and TV Tables of Allotment before applications are permitted for a given channel. However, in AM licensing section 307(b) issues are made at the applications stage because there is no table of allotments for AM. Thus, we seek comment on the extent to which any such section 307(b) issues for AM should be considered. Similarly, we ask commenters to consider the impact that the adoption of lotteries would have on comparative coverage issues. We ask commenters to address whether such issues should be considered at all and, if so, how and when. As a third and related matter, we presently encourage mutually exclusive applicants for new radio or television stations to obtain approval as early as possible from the Federal Aviation Administration (FAA) for proposed transmitter sites. Accordingly, we seek comment on whether we should, instead, require only lottery tentative selectees to obtain and submit its approval of its transmitter site in order to reduce paperwork burdens on applicants as well as eliminate needless processing of this information by our own staff. Fourth, we solicit comment on how and when requests for waiver of sections of the Commission's Rules—such as for short-spacing or multiple ownership rules—should be considered. One option would be to consider these requests prior to the lottery, which would have the effect of eliminating from the lottery proposals that could not be granted. Alternatively, we could await the results of the lottery and then consider such waiver requests only with respect to the tentative selectee as part of our determination of the selectee's basic qualifications.

Paperwork Reduction Act Statement

30. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose a new or modified information collection requirement on the public. Implementation of any new or modified requirement will be subject to approval by the Office of Management and Budget, as prescribed by the Act.

Ex Parte Consideration

31. This is a non-restricted proceeding. *See* § 1.1206 of the Commission's Rules, 47 CFR 1.1206, for rules governing permissible *ex parte* contacts.

Comment Information

32. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before May 8, 1989, and reply comments on or before June 22, 1989. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

Initial Regulatory Flexibility Act Analysis

33. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, this proceeding could benefit future AM, FM, and television applicants, by relieving the burden of time and expense invested by competing applicants in comparative hearings. Public comment is requested on the initial regulatory flexibility analysis set out in full in the Commission's complete decision.

34. As required by section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IFRA) of the expected impact on small entities of the proposals suggested in this document. Written public comments are requested on the IFRA. These comments are to be filed in accordance with the same filing deadlines as comments on the rest of the *Notice*, but they must have a separate and distinct heading designating them as responses to the Regulatory Flexibility Analysis. The Secretary shall send a copy of this *Notice*, including the IFRA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act (Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. section 601 *et seq.* (1981)).

35. Authority for this proposed rule making is contained in sections 4(i), 303 (g) and (r), 309(i), and 403 of the Communications Act of 1934, as amended.

List of Subjects in 47 CFR Part 73

Radio broadcasting, Television broadcasting.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-6475 Filed 3-16-89; 8:45 am]

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Notices

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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

Farmers Home Administration

Submission of Information Collection to OMB

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice.

SUMMARY: The information collection requirement described below has been submitted to OMB for emergency clearance under 5 CFR Part 1320.18. The Agency solicits comments on subject submission. This action is necessary in order to comply with the requirement of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (Pub. L. 100–628).

ADDRESSES: Interested persons are invited to submit comments regarding this submission. Comments should refer to the proposal by name and should be sent to: Lisa Grove, USDA Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Michael S. Feinberg, Senior Loan Specialist, Farmers Home Administration, USDA, Room 5334–S, South Agriculture Building, 14th and Independence SW., Washington, DC 20250, Telephone (202) 382–1474.

SUPPLEMENTARY INFORMATION: The Agency has submitted the proposal for the collection of information, as described below, to OMB for clearance as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). It is requested that OMB approve this submission within 7 days.

In December 1987, Congress passed the Housing and Community Development Act of 1987. This bill became law on January 27, 1988. The authorization for a demonstration program for guaranteed rural housing loans was amended by the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (Pub. L. 100–628), which was enacted on November 7, 1988. These bills provide for a demonstration program for guaranteed rural housing loans.

The reason for the emergency clearance request is because of a legislative requirement contained in the Stewart B. McKinney Homeless Assistance Amendments Act that the Secretary of Agriculture issue regulations that take effect not later than 120 days of the bill becoming law.

This submission consists of the regulation and associated forms to implement the guaranteed demonstration program.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507.

Supporting Statement

7 CFR Part 1980 Subpart D, Rural Housing Loans

A. Justification

1. The Farmers Home Administration (FmHA) is the credit agency for agriculture and rural development for the U.S. Department of Agriculture. FmHA offers supervised credit programs to finance family farms, modest housing, sanitary water and sewer systems, essential community facilities and businesses and industries in rural areas. This regulation prescribes the policies and responsibilities, including the collection and use of information, necessary to process guaranteed Rural Housing loans to moderate applicants.

Section 501 of Title V of the Housing Act of 1949, as amended, authorizes the Secretary of Agriculture to extend financial assistance to construct, improve, alter, repair, replace, or rehabilitate dwellings, farm buildings, and/or related facilities to provide decent, safe, and sanitary living conditions and other structures in rural areas.

Section 517(d) of Title V of the Housing Act of 1949, as amended, provides the authority for the Secretary of Agriculture to issue loan guarantees for the purposes described above.

Section 304 of the Housing and Community Development Act of 1987 (Pub. L. 100–242) provided for the Secretary of Agriculture to carry out a guaranteed housing demonstration program.

Section 1041 of the Stewart B. McKinney Homeless Assistance Amendments Act (Pub. L. 100–628) amends the above mentioned provision for the guaranteed demonstration program and calls for the Secretary to issue regulations that take effect within 120 days of the bill becoming law.

7 CFR Part 1980 Subpart D is currently being revised in accordance with the requirement of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988. Currently, there is no approved paperwork burden for this regulation.

This regulation authorizes loan guarantees for single family housing loans made by approved lenders in order to make credit available to households unable to get credit without the loan guarantee to assist rural families in obtaining decent, safe, and sanitary dwellings.

Loans may be made to buy, build, rehabilitate, improve, or relocate a dwelling and provide related facilities for use by the applicant as a primary residence and for various other uses to assist applicants in obtaining decent, safe, and sanitary dwellings.

Loans are made by lenders and guaranteed by FmHA. The loan guarantee provides the lender additional security in the event of a loss. Under the guaranteed rural housing program, FmHA can guarantee up to 90 percent of the loss.

Guarantees may be issued only to lenders submitting necessary information to become Approved Lenders as defined in the regulation. Approved Lenders are those lenders who have submitted information to FmHA regarding their lending experience and financial condition. FmHA uses this information to determine that the lender can carry out the objectives of the program. In return for submission to and approval in the Approved Lender process, FmHA permits the lender to process loans without obtaining prior approval or input from FmHA. Once a lender is prepared to approve the loan, they need only notify FmHA and provide information for FmHA to identify the guarantee. FmHA issues a conditional commitment for a loan guarantee upon receipt of a package from the lender. The commitment process is provided to provide a control mechanism to assure that a guarantee is not approved when no funds are available and to list any

requirements that must be met before the guarantee can be issued.

Once a loan has been guaranteed, the lender is responsible for servicing the loan. This consists of assuring that payments are made on a timely basis and protecting the security property. The lender is required to memorialize its servicing efforts in the form of a memorandum.

When all servicing efforts fail and a decision to liquidate is made, the lender is required to carry out the necessary actions for liquidation. Once a loan is liquidated, the lender reports any losses suffered for payment under the guarantee.

One other aspect of the guarantee not considered above is the lender's ability to sell the guaranteed portion of the loan on the secondary market. Sale of loan notes is a common practice in mortgage lending. The regulations provides for a mechanism to assign the guarantee to the new holder when the loan is closed. Basically, the lender must identify the new holder to FmHA and authorize the transfer of the guarantee.

Information collection in this regulation consists of two basic types, that is, information required of lenders and information required of applicants.

2. The lender must provide FmHA with information regarding its experience and qualifications in mortgage lending. This information is used by FmHA to determine the lender's ability to carry out the objectives of the program without the need for FmHA assistance and input.

Information pertaining to individual loan applications is collected and assembled by the applicant and provided directly to the Lender who then passes it on to the FmHA loan approval official. This process is necessary because of the nature of the program. The applicant must provide the lender with information necessary to make an informed credit decision. The lender then provides information to FmHA so that FmHA can identify the loan, issue the guarantee, and account for the agency's liability created by the guarantee.

When the loan is made, the lender is requested to advise FmHA on any plans it has to sell the loan on the secondary market. This information is necessary so that FmHA will know who owns the guarantee as this party is a beneficiary of the guarantee.

After the loan is made, the lender is responsible for servicing. The lender need not submit reports to FmHA regarding the loan unless the borrower defaults. The lender submits a report to FmHA regarding the default status of the loan. This information is necessary so that FmHA can properly evaluate its position in the guarantee and provide any necessary consultation with the lender to protect the government's interest in the loan.

When all efforts to cure the default fail and the decision is made to liquidate, the lender is responsible for carrying out the liquidation and reporting the results to FmHA. The lender must make its records available to FmHA for audit when FmHA is requested to pay on a loss.

The specific information collection to be cleared with this regulation is described below:

No Forms

Uniform Residential Appraisal Report

FmHA requires that the Lender obtain an appraisal on the collateral property using the Uniform Residential Appraisal Report form. This form is not an FmHA form, although FmHA uses this form for its residential appraisals. The Uniform Residential Appraisal form is a widely accepted appraisal reporting format and is considered standard in the appraisal industry. The burden for which clearance is requested is that of providing FmHA with a copy of said appraisal.

The annual number of responses is estimated to be equal to the number of loans expected under the program, 2,234 (more fully discussed below).

The average time required to obtain a copy of the appraisal and submit it to FmHA is 10 minutes.

Inspections of Construction

The Lender is responsible for carrying out and documenting 3 construction inspections. These inspections are carried out at three definite stages of construction so the inspector can observe the necessary items. This is the reason for the requirement of more than one inspection. The burden for Lenders consists of the time required to carry out and document the inspection. The burden on the applicant is the time to read and comprehend the inspection report.

The annual number of responses from lenders is estimated to be 1,005. This figure is based on the maximum expected number of loans (2,234) multiplied times the expected percentage of loans that involve new construction (45%). The percentage of new construction loans was derived from FmHA's loan activity in Single Family Housing loans. The average number of inspections per loan is 3.

The average public time required to carry out and document each inspection is 30 minutes for lenders and 5 minutes for applicants.

Lender Certification

After the lender reviews the Conditional Commitment for Guarantee (discussed below), the lender is required to certify that all conditions have been met. This would consist of signing the "Acceptance or Rejection of Conditions" section on the conditional commitment form and returning a copy to FmHA.

The annual number of respondents is estimated to be 2,234, the same as the number of possible loans since this would need to be done one time for each loan.

The average public time required to prepare and complete the information required is estimated to be 1 hour.

Lender Report of Marketing Plan

This information is necessary to FmHA in order for the agency to know whether to prepare the necessary materials for assignment of the guarantee agreement. FmHA believes the lender's marketing plans for a loan would be based on the lender's normal business practices. This report is necessary when the lender plans to market the loan in the secondary market.

FmHA expects a high percentage of the loans guaranteed under this regulation will be sold in the secondary market. The annual number of respondents is estimated to be 1,787 or 80 percent of the number of possible loans.

The average public time required to prepare and complete the information required is estimated to be 15 minutes.

Loan Servicing

The lender is responsible for providing the necessary servicing for the guaranteed loan. The burden imposed by this regulation consists of a requirement that the lender document its servicing actions. This would typically be done through a memorandum.

The annual number of respondents is estimated to be 90 per year for each year of loanmaking. For the three year period for which clearance is requested for this burden, the average number of loans requiring servicing would be 312. This estimate was arrived at by considering the total number of loans and assuming a 7 percent delinquency rate. This rate is somewhat higher than the typical mortgage lender's delinquency rate, however the higher figure represents the additional risk to the lender causing the need for the guarantee.

The average time required for the lender to prepare and complete the

information required is estimated to be 15 minutes to complete the documentation of servicing actions for FmHA purposes.

Eligible Loan Transfers

An eligible loan transfer occurs when an eligible loan applicant makes application to assume the loan of an existing guaranteed loan borrower. A loan transfer is very similar to an application for a new loan. The paperwork needed to complete a transfer is considered the same as for a loan application.

There are no figures available to estimate how often this would occur so an estimate of ten percent of the loans made was used to determine the burden or 234 transfers per year.

The average time for applicants to assemble, prepare, and submit the necessary information for a loan application is 1 hour. The average time for the lender to evaluate the application and assemble it for submission to FmHA is estimated to be ½ hour.

Ineligible Loan Transfers

An ineligible loan transfer occurs when an ineligible loan applicant makes application to assume the loan of an existing guaranteed loan borrower. A loan transfer is very similar to an application for a new loan. The paperwork needed to complete a transfer is considered the same as for a loan application.

There are no figures available to estimate how often this would occur so an estimate of five percent of the loans made was used to determine the burden or 117 transfers per year.

The average time for applicants to assemble, prepare, and submit the necessary information for a loan application is 30 minutes. The average time for the lender to evaluate the application and assemble it for submisstion to FmHA is estimated to be 1 hour.

Forms

Form FmHA 1980–16

All guarantees issued under this regulation will be on loans made by FmHA Approved Lenders. FmHA believes that use of approved lenders will provide the most expedient means of loan processing. Eligible lenders may apply for approved lender status. The information to be collected provides the basis for FmHA to determine that the lender has the capacity and experience necessay to assure that a minimal amount of FmHA supervision and oversight is necessary. This is necessary because the Approved Lender Status will permit the lender to take a high degree of responsibility in assuring loans are made to eligible applicants for eligible loan purposes.

Respondents in this information collection activity consist of lenders interested in Approved Lender Status. The annual number of respondents is estimated to be 68 based on FmHA's estimate of available loan funds. Specifically, FmHA estimated that lender interest in application for approved lender status would be limited based on the amount of funding expected for the program. FmHA assumed that there would be an average of 2 lenders per state interested in making application for approved lender status in each state with the potential to fund not less than 10 loans.

The average time required for a lender to assemble, prepare, and submit the information necessary to obtain Approved Lender status is estimated to be 4 hours.

Form FmHA 1980–18

Upon receipt of the application package from the Lender, FmHA will issue a Conditional Commitment for Guarantee. This form is used by FmHA to convey the results of any loan review done by FmHA to the lender and any loan closing requirements imposed by FmHA. This form will assure the lender that the loan can be guaranteed by FmHA subject to any conditions above.

The estimated number of respondents for this form is directly related to the number of loans that can be made under the program, 2,234.

The average time required for the lender to review the requirements of the Conditional Commitment and assemble and submit the necessary information for response is estimated to be 1 hour.

Form FmHA 1980–21

In order to be considered for a loan, each applicant must submit to the lender all information necessary for the lender and FmHA to make a determination of credit worthiness. Information will be collected by the lender and passed on to FmHA. This collection of information is considered to impact on the lender and the applicant. The applicant will submit to the lender information on who the applicant is, such as, name, address, telephone number, statement of current annual income, net worth, age, number of persons in the household, and citizenship status. Most of this information may be found in any typical lender's application form with the possible exception of household size and citizenship. The lender will also need to submit information on the amount of the loan request, the name, address, contact person, and telephone number of the proposed lender, a brief description of the dwelling being financed, the proposed loan rates and terms, a certification statement that the loan could not be made without the guarantee, a statement of the applicant's present housing circumstances, and evidence of legal admittance when the applicant is not a U.S. citizen. The lender will also submit certain information on the applicant's sex, race, and veteran status.

Since FmHA has presently has no program authorized for applicants in the moderate income range, there are no actual records on which to make this estimate. Based on the average size loan made in each state in the last fiscal year and the estimated amount of loan funds, the agency estimates a maximum of 2,234 loans per year could made under the program.

The average time for applicants to assemble, prepare, and submit the necessary information for a loan application is 1 hour. The average time for the lender to evaluate the application and assemble it for submission to FmHA is estimated to be ½ hour.

1980–17

The Loan Note Guarantee and Assignment Guarantee Agreement form consists is an agreement form involving lenders and holders reading, comprehending, and signing the form. This form is considered of a routine nature in that it is more than likely that a number of guarantees will be issued to the same lender. After the initial exposure to the form, the lender will be familiar enough with the form that reading the form will not be necessary each time it is issued. The same form may also be used to assign the guarantee to a holder when the lender sells the loan. Assignment forms are considered routine in the secondary market and FmHA believes that the holders are likely to purchase multiple loans with guarantees that may be assigned.

The number of lender responses involved is equal to the number of loan guarantees issued under the program, 2,234. The number of holders responses is estimated to be 1,787.

Since the Guarantee and the Assignment are considered to be a routine part of business, the average public time required by this form is 5 minutes for lenders and 5 minutes for holders.

Recordkeeping

Lender File

The lender is required to set up and maintain a borrower file for each loan made under the guarantee program. This file is used to maintain documents relating to the loan and the guarantee.

The number of lenders impacted is estimated to be 250. This figure includes those 68 lenders estimated to apply for loan guarantees and those lenders who presently enjoy guarantees of existing loans under the previous guaranteed loan program.

The average public time required to maintain the required records is 1 hour.

3. The information collected is of such type and nature that the use of improved technology would not significantly reduce the public burden.

Information from lenders applying for Approved Lender status is required only once and is valid for two years. This information is not of a nature that lends itself to improved technology. Information for each loan application is unique and cannot take significant advantage of improved technology.

Once a loan is made, FmHA requires no reports from the lender unless the borrower defaults. Instead, FmHA simulates the repayment of the account on its own systems thus relieving the public from the need to report the normal status of the account.

Improved technology is not possible for reporting loan servicing efforts and liquidation of loan accounts because each case is unique.

4. Event effort has been made to identify and avoid unnecessary duplication of information collection. A lender need only submit one application to become an approved lender. Loan applicants need submit only one application for loan assistance that serves both the lender and FmHA. Loan servicing reports and liquidation reports are prepared and submitted only based on actual need and not required when there are no unusual occurrences. Duplication of reporting is minimized by the one time collection of information and the one time submission to FmHA to the maximum extent possible. The only burden identified that requires more than one annual report is that of the construction inspections for new construction dwellings. Inspections are required at three different stages of construction. This is necessary to monitor the progress of construction and because certain items cannot be observed at a single inspection, such as footings or unenclosed walls for electrical, plumbing, etc.

5. The conditions involved with every loan/grant request are unique. This information is not available through other sources because of its nature. The information collected under this regulation would be very similar in nature to that collected under Subpart A of Part 1944, 7 CFR.

6. The information collected in this regulation places no burden on small businesses or other small entities beyond that which is performed in normal business practice. FmHA has minimized the burden of collecting this information by allowing the submission of as much information as possible without a prescribed reporting format. There are four prescribed forms with this regulation.

7. Lenders apply for consideration for Approved Lender status one time and that once approved, the lender's status is valid for two years. If the lender wishes to continue its Approved Lender status, it is requested to update the information near the end of the two year period. Approved Lender status must be based on reasonably current information because FmHA relies on the Approved Lender's ability to make and service loans with minimal supervision.

Information is collected one time only per applicant for loan making purposes. An effective lending program would be impossible to run if information were collected less frequently.

Collection of servicing information is made only as needed and not on any periodic basis.

8. There are no circumstances requiring collection to be inconsistent with the guidelines of 5 CFR 1320.6. FmHA does not anticipate that it will be necessary to use methods inconsistent with 5 CFR 1320.6.

9. Consultations were made with persons outside the agency to obtain their views on the reporting burdens contained in this regulation. Due to the emergency nature of the implementation of this regulation responses have not been received from all sources contracted at this time. This regulation and burden assessment is also published for public comment.

a. Responses were received from the following persons on the information burden.

Brian J. Chappelle, Mortgage Bankers Association of America, Tele: (202) 861–8194

Dave Crum, Georgia Residential Finance Authority, Tele: (404) 320–4840

b. There were no major problems that could not be resolved during these consultations.

c. Opportunity will be provided for public comment by publication in the **Federal Register.**

10. No assurance of confidentiality will be offered. This information is considered public information.

11. The information being collected that may be considered of a sensitive nature consists of the applicant's financial condition, credit worthiness, and income. These things are commonly considered to be private in nature but necessary to make a determination of whether to grant credit.

12. The annualized cost to the Government to develop and administer this regulation is $151,000 based on multiplying the number of employees directly involved on the preparation and administration of this regulation (102), times an annualized cost factor ($29,500), times a national average of time the employees are involved (5%). The cost factor includes salaries, equipment, and overhead.

Annual cost to respondents is estimated to be $418,368 based on multiplying the estimated burden times a specified wage class for two types of respondents. One class of respondent was the lender. Estimates used for the cost to the lender was based on a cost factor of $35,000 per year. This cost factor considers that the lender's time will consist of both professional and clerical employees and operational expenses and other expenses of the lender in carrying out the required responses. The other wage class was that of the applicant. The applicants wage used was $17,610. This figure was obtained using the average income of FmHA borrowers for loans made in the last fiscal year and adding a factor of 20 percent since this program is directed to moderate income applicants.

13. Attached is a chart indicating an estimate of the annual public burden. This burden was not included in the agency's information budget because the program has been inactive since the late 1970's. The program is now proposed as a demonstration program under the Housing and Community Development Act of 1987, as amended. The detailed methodology for each burden is in item 2 above.

7 CFR 1980–D

Section of regulation	Title	Form No. (if any)	Est. No. respondents	Reports filed annually	Total annual responses	Est. No. man-hrs per response	Est. total manhours	Total cost
		Reporting Requirements—No Forms—Approved with this Docket						
1980.334	Uniform Residential Appraisal Report (Lender).	URAR	2,234	1	2,234	0.167	373	$6,274
1980.341	Inspections of Construction (Lender).		68	on occasion	3,015	0.5	1,508	25,367
	(Applicant)		1,005	3	3,015	0.08	241	2,042
1980.360(a)	Lender Certification (Lender).		2,234	1	2,234	1	2,234	37,591
1980.360(c)	Lender report of marketing plan (Lender).		1,787	1	1,787	0.25	447	7,517
1980.370	Loan Servicing (Lender)		90	1	312	0.25	78	1,313
1980.381	Eligible Loan Transfers (Lender).		68	on occasion	234	1	234	3,938
	(Applicant)		234	1	234	0.5	117	991
	Ineligible Loan Transfers (Lender).		68	on occasion	117	1	117	1,969
	(Applicant)		117	1	117	0.5	59	413
		Record Keeping Requirements—Approved with this Docket						
1980.360(f)	Lender File (Lender)		250			1	250	1,764
		Reporting Requirements—Approved Under Other OMB Numbers						
1980.302	Certification of Disability or Handicap.	1944–4 (0575–0059).						
1980.309(c)(8)	Loan Note Guarantee Report of Loss.	449–30 (0575–0024).						
1980.312(c)	Subdivision Clearance	Written Statement (0575–0099).						
1980.315	Intergovernment Review (Clerearinghouse comments).	Written Statement (0575–0024).						
1980.317	Equal Opportunity Requirements.	400–1 Written Statement (0575–0018).						
1980.353(d)	Equal Opportunity Agreement.	400–1 (0575–0018).						
1980.362(d)	Reporting Loan closing	1980–19 (0575–0024).	(2,234)	(1)	(2,234)	(1)	(2,234)	(37,591)
		A separate clearance will be requested to increase the existing burden for the increased burden herein						
	Assignment Guarantee Agreement.	449–36 (0575–0024).						
1980.371(a)	Guaranteed Loan Borrower Default Status.	1980–42 (0575–0024).						
1980.372	Loan Note Guarantee Report of Loss.	449–30 (0575–0024).						
		Reporting Requirements—Forms—Approved with this Docket						
1980.309(c)	Approved Lender Agreement for Single Family Housing Loan Guarantee.	FmHA 1980–16	68	1	68	4	272	4,577
1980.353(d)	Lender's Transmission of Request for Single Family Housing Loan Guarantee (Lender).	FmHA 1980–21	68	on occasion	2,234	0.5	1,117	18,796
	(Applicant)		2,234	1	2,234	1	2,234	18,914
1980.355	Lender review of Conditional Commitment (Lender).	FmHA 1980–18	68	on occasion	2,234	1	2,234	37,591
1980.360	Loan Note Guarantee and Assignment Guarantee Agreement (Lender).	FmHA 1980–17	68	on occasion	2,234	0.08	179	3,007
	(Holder)		1,787	1	1,787	0.08	143	2,406
Reporting Total					20,084	0	11,586	172,708
Recordkeeping Total							250	1,764
Docket Total					20,084		11,836	174,472

14. This is a new report.

15. Some of the information collected will be used for statistical purposes. Information on the characteristics of individual loan applicants will be used to monitor program activity for Equal Opportunity and other similar purposes. Some information will be maintained for informational reports on program activity reports to Congress. Information obtained through lender servicing and liquidation reports will be used by the Agency to evaluate the program's effectiveness and the Agency's liabilities to lenders and holders. Information will not be published for statistical purposes.

Date: March 14, 1989.

Neal Sox Johnson,

Acting Administrator, Farmers Home Administration.

[FR Doc. 89-6493 Filed 3-17-89; 8:45 am]

BILLING CODE 3410-07-M

Forest Service

Allegheny National Forest Motel/ Restaurant Complex, Warren County, PA; Intent To Prepare Environmental Impact Statement

The USDA, Forest Service, will prepare an environmental impact statement to identify the best site(s) to develop a motel/restaurant complex adjacent to the Allegheny Reservoir on the Bradford Ranger District of the Allegheny National Forest.

The *Allegheny National Forest Land and Resource Management Plan* was completed and approved in 1986. One of the management decisions was to study the implementation of a motel/restaurant complex—through private capital and under a special use permit—at a site on or adjacent to the Kinzua Beach recreation area.

Alternative locations in the area around Kinzua Beach will be considered, as well as an option that no site in this area is acceptable for the proposed development. The development proposed in each location will include motel-restaurant building(s) not more than two stories high, with a total capacity of up to 160 rooms. The complex will not exceed 109,000 square feet, including associated meeting and support space.

Auxiliary outdoor facilities may include such items as parking, walkways, outdoor lighting, sewer and water facilities, tennis courts, lawn games, volleyball, horseshoes, and nature center.

The facility will meet the following standards identified in the Forest Plan:

All structures and facilities will be designed and located to maintain a natural or rustic appearance;

Structures will not be more than two stories high;

Natural building materials, such as stone and wood, will be used on the exterior of all structures;

Earth-tone colors will be used for all exterior finishes;

Visual quality objectives will be met primarily through vegetative screening of structures seen from a distance.

David Wright, Forest Supervisor, Allegheny National Forest, Warren, Pennsylvania, is the responsible official.

The analysis should be complete in about two months. The draft environmental impact statement should be available for public review by May 1989. The final environmental impact statement should be completed about November 1989.

Information regarding the proposed action and the analysis may be obtained by calling 814/723-5150, or by writing to MOTEL STUDY, Allegheny National Forest, P.O. Box 847, Warren, PA 16365.

David J. Wright,

Forest Supervisor.

Date: March 13, 1989.

[FR Doc. 89-6438 Filed 3-13-89; 8:45 am]

BILLING CODE 3410-11-M

National Agricultural Statistics Service

Lard Production Program Changes

Notice is hereby given that the National Agricultural Statistics Service (NASS) will discontinue publication of monthly U.S. lard production estimates effective July 1989. Currently, totals of U.S. Lard Production are included each month in the NASS *Livestock Slaughter* report.

This change was made necessary by the Food Safety and Inspection Service discontinuing the collection of lard production data effective October 1, 1988.

Comments regarding this action should be sent to William L. Pratt, Chief, Livestock, Dairy, and Poultry Branch, Estimates Division, Room 5906-S, NASS/USDA, Washington, DC 20250.

Dated: March 13, 1989.

Charles E. Caudill,

Administrator.

[FR Doc. 89-3410 Filed 3-17-89; 8:45 am]

BILLING CODE 3410-20-M

Rural Electrification Administration

Programs Covered Under Executive Order 12372

AGENCY: Rural Electrification Administration, USDA.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform State and local governments and other interested persons of the proposed coverage of the Rural Electrification Administration's (REA), Rural Economic Development Loan and Grant Program, under Executive Order (E.O) 12372, Intergovernmental Review of Federal Programs. A full understanding of the requirements of the Order may be gained by referring to the final rules published in 7 CFR Part 3015, Subpart V, at 48 FR 29100, dated June 24, 1983.

DATE: Comments must be received on or before April 19, 1989.

ADDRESS: Submit written comments to Blaine D. Stockton, Jr., Rural Electrification Administration, Room 4063-South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Blaine D. Stockton, Jr., Rural Electrification Administration, Room 4063-South Building, U.S. Department of Agriculture, Washington, DC 20250, telephone number (202) 382-9552.

SUPPLEMENTARY INFORMATION: With the exception of loans and grants for feasibility studies, the Department is proposing to include the program listed below by Catalog of Federal Domestic Assistance (CFDA) for review under E.O. 12372. Loans and grants for feasibility studies under this program are being proposed for exclusion because they will not have a direct effect on State and local governments.

Section 10.853 Rural Economic Development Loan and Grant Program

The purpose of this new program is to provide zero interest loans or grants to borrowers under the Rural Electrification Act for the purpose of promoting rural economic development and job creation projects. The program may provide funds for project feasibility studies, project start-up costs, incubator projects, and other reasonable expenses for the purpose of fostering rural economic development. These are several limited examples of the types of projects that may be funded through this program. Funds may be awarded for other reasonable proposals which meet the above stated objective.

Because loans or grants made for feasibility studies under this program

would not directly affect State and local governments, the Department believes they would not meet the criteria for inclusion under the Order. However, awards made for project start-up costs, incubator projects or other types of projects may potentially affect State and local governments and would be subject to coverage under the Order.

REA loans to electric and telephone utilities to finance the provision of utility service are exempt from the Intergovernmental Review Process. Although exempt, the electric and telephone utilities have maintained a very close relationship with State and local government entities. This existing informal relationship will provide State and local government input for feasibility studies under the rural economic development program.

Dated: March 14, 1989.

Jack Van Mark,

Acting Administrator.

[FR Doc. 89-6495 Filed 3-17-89; 8:45 am]

BILLING CODE 3410-15-M

DEPARTMENT OF COMMERCE

Agency Form 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 the Census
Title: Survey of Income and Program Participation—1989 Panel Wave 3
Form Number: SIPP 9300 Questionnaire SIPP 9305 (L) Introductory Letter
Agency Approval Number: 0607-0643
Type of Request: Revision
Burden: 12,180 hours
Number of Respondents: 24,360
Avg Hours Per Response: 30 minutes
Needs and Uses: This survey will provide statistics concerning the distribution of income received directly as money or indirectly as in-kind benefits and the effect of tax and transfer programs on this distribution. These data are used by the Executive and Legislative branches to formulate domestic policy.
Affected Public: Individuals or households
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 H6622, 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 15, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization

[FR Doc. 89-6486 Filed 3-17-89; 8:45 am]

BILLING CODE 3510-07-M

Bureau of Export Administration

[Docket Nos. 8103-01, 8103-02]

Actions Affecting Export Privileges; Hon Kwan Yu et al.

Summary

Pursuant to the February 9, 1989, Recommended Decision and Order of the Administrative Law Judge, which Decision and Order is attached hereto and affirmed in principal part by me, Hon Kwan Yu, individually and doing business as Seed H.K. Ltd., both with an address of 7/F Cheung Kong Building, 661 Kings Road, North Point, Hong Kong, is, and the Respondents are collectively, assessed a civil penalty in the amount of $35,000, to be paid within 30 days of the date hereof, and denied for a period two years from the date hereof all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States, in whole or in part, or to be exported, or that are otherwise subject to the regulations (14 CFR Parts 768-700); provided, however, that commencing from the date of the payment of the civil penalty herein assessed the denial of export privileges set forth shall be suspended for the balance of the two year term, and shall be terminated at the end of such period, provided that Respondents have committed no further violations of the Act, the Regulations, of the Final Order entered in this proceeding.

Discussion

In the Recommended Decision and Order of February 9, 1989, the Administrative Law Judge (ALJ) apparently inadvertently misspoke himself in paragraph III of his Order. In that Paragraph, the ALJ provided that the two year denial period provided for in Paragraph II would be suspended for three years. This provision is not in keeping with general suspension provisions and is inconsistent with the rational advanced for the penalty by the ALJ on page 12 of his Recommended Decision and Order. This final Decision and Order modifies the ALJ's Order in that respect.

Paragraph III of the ALJ's Recommended Decision and Order also provides that the suspension of the denial of export privileges shall commence upon the date of this final action. In view of the fact that a civil fine has been assessed and that the ALJ has held that the suspension will be in effect only so long as, *inter alia*, there is no violation of the final Order entered in this proceeding, it is more appropriate for the suspension to begin upon payment of the fine by the Respondents. This final Order reflects this modification of the ALJ's Recommended Order.

One further issue must be disposed of in this case. That issue involves the Department's contention—raised by brief in this proceeding and by Motion for Reconsideration in *In re Behar*, 53 FR 48666 (Dec. 2, 1988)—that in a matter submitted to the ALJ for resolution pursuant to a consent agreement between the Department and the Respondent, it is inappropriate for the Administrative Law Judge to make a finding of violation of the Export Administration Act before imposing penalties for past action. In *Behar* this office held, as quoted in full on page 3 of the attached Recommended Decision and Order of the ALJ, that while a Respondent may be free to maintain in a consent pleading that the imposition of penalties does not necessarily maintain an admission of a violation of the Act, where there is to be a penalty imposed, whether a denial period with respect to export privileges, a fine, or both, there must be some finding by the Under Secretary—and hence the ALJ—of a violation of the Act to support the imposition of that penalty. In challenging that holding, the Department cites section II(i)(2) of the Export Administration Act which provides that "nothing in subsections (c), (d), (f), (h), or (h) limits * * * the authority to compromise and settle administrative proceedings with respect to violations of [the] Act or any regulation, order, or license issued under [the] Act * * *." The Department also cites some general authorities on compromise and settlement of claims, and relies specifically on *United States* v. *ITT Continental Baking Company*, 420 U.S. 160 (1975). In that case, the court made the general observation that consent degrees are like contracts, "are arrived at by negotiations between the parties

and often admit no violation of law * * *." *Id* at 236. Counsel also cites *Ford Motor Company* v. *Federal Trade Commission*, 547 F2d 954 (6th Cir. 1976)—for the proposition that the principal purpose of a consent order is to avoid fact-finding and the ajudicatory process—and Coch, *Administrative Law and Practice*, West Publishing Company, 1985, section 5.81—for the proposition that an agency in accepting a consent degree by the parties need not support the order by any fact-finding or conclusions of law.

The Department's arguments are correct insofar as they go, but superficial with respect to the real issue. To take Department's authority in reverse order, the Coch treatise does not stand for the proposition that the agency must not support an order by fact-finding or conclusions of law. With respect to *Ford Motor Company* v. *Federal Trade Commission, supra*, there are many purposes for a consent order, only one of which is the avoidance of fact-finding and the ajudicatory process. Finally, *U.S.* v. *ITT Continental Baking Company, supra*, is certainly correct that consent agreements between parties often admit to no violation of law. However, that simple statement is not dispositive of the issue of whether or not a tribunal, whether judicial or administrative, may impose penalties absent a finding of violation of a particular law or regulation.

The principal starting point for a discussion of the law as it relates to consent decrees is the Meat Packers Consent Decree of 1920. That consent decree related to alleged violations of the Sherman Anti-Trust Act and the Clayton Act. In *Swift & Company v. the U.S.*, 276 U.S. 311 (1927), one of the Respondents attempted to vacate the consent decree entered into in 1920 by itself and others. The consent decree had been entered on the same day as the filing of the original complaint by the Government and general denials by the Respondents. The consent decree expressly provided that the Respondents did not admit to violation of either of the Acts involved, but did provide that the Government's allegations were sufficient to state a cause of action under the two Acts. The decree then went on to enjoin the Respondents, by consent, from certain future actions. In the Motion to Vacate, Swift attacked the decree upon several grounds, the main one being that the court lacked jurisdiction to render an enforceable injunction because there was no case or controversy within the meaning of Article III, section 2 of the Constitution. The argument advanced was that since there had been no proof of facts constituting a violation to overcome the Respondent's general denial, indeed since the consent decree had specifically stipulated that there would be no such finding, technically the Court and Government petitioner had abandoned all charges that the Respondents had violated the law. Thus, Swift argued that the decree was null and void for want of adjudication.

In rejecting the Respondent's claim, a unanimous court, by Brandeis J., held that the Respondent's argument "ignores the fact that a suit for an injunction deals primarily, not with past violations, but with threatened future ones; and that an injunction may issue to prevent future wrong, although no rights had been violated." *Id* at 326. The court implicitly accepted the claim of the petitioners that an imposition of a penalty for past acts must be based upon a finding of wrongdoing. Since the consent decree that the Department has advanced in both *Behar* and the case at bar would have imposed penalties based on past acts rather than the approval of an injunctive order relative to future action, the Department's claim falls under the rationale of *Swift*. Section 11(i)(2) of the Export Administration Act merely gives the Department the right to compromise and settle administrative proceedings, it does not mandate that the *Swift* rationale be rejected. Indeed, as in anti-trust litigation, the Department might conceivably enter into a consent agreement with a Respondent which would call for the Department's abandonment of claims relative to past action in return for an injunctive agreement with the Respondents relative to future action.

A case which relies on *Swift* is *Securities and Exchange Commission v. Dennett*, 429 F2d 1303, 10th Circuit 1970. In that case a defendant had challenged not a penalty for past action, and not even the general terms of the injunction to which he had agreed relative to future activity, but rather, he had challenged the wording of the final order of the court which apparently implied misconduct on his part. The Court held as follows at 1304:

> We gleen from defendant's brief that he is agreeable to the general injunction requiring him to obey the law but objects to the specifics of the injunction granted because it implies misconduct. The judgment granted the relief sought in the complaint. It says that the defendant does not admit to the allegations of the complaint. In affect, we have a plea of *nolo contendre* and a judgment pursuant thereto. If the defendant is innocent of the charges, as he insists, he had full opportunity to contest them. He chose not to do so and is in no position to object on the grounds that the injunction was specific rather than general.

Thus, even in a case where under the *Swift* doctrine there need not have been a finding of misconduct, the court was free to find the same. The parties to a consent agreement can always go forward on the merits if they do not like this risk. There are many reasons in an Export Administration case for agreeing to a penalty, even if it involves a finding by the Under Secretary of a violation in order to impose that penalty. Recently a Respondent has been denied export privileges for 35 years. In the face of that possibility, a future Respondent might feel that it is in his or her best interest to agree to a stipulated finding upon an agreement by Departmental counsel to recommend the imposition of a lesser penalty.

Finally, *Janus Films, Inc. v. Miller*, 801 F2d 578 (2nd Cir. 1986) explains that one must differentiate between suits involving the public interest and those involving only private interests in dealing with consent agreements. It is axiomatic that in a suit between private litigants the parties are free to frame consent decrees in whatever form is agreeable to themselves, subject only to the limitation of contracting for illegal purposes. In cases involving the public interest that is not the case. "The court must be satisfied of the fairness of the settlement." *Id* at 582. In dealing with a national security program, the violation of the statute and regulations relating thereto carrying with them not only the possibility of administrative sanction but criminal penalty as well, it is incumbent upon this office to have some showing by Departmental counsel of what its case was based on, and to impose a penalty for past action only if a fair reading of the unchallenged submission constitutes a violation of the Act or Regulations. While a Respondent is free to agree that the evidence submitted to support the settlement between the parties need not be tested by the ajudicatory process, the evidence is necessary if the Under Secretary is asked to impose a penalty based on past action. Thus the holding of this office in the *Behar* decision is reaffirmed.

Finally, in this case the ALJ recommends imposition of a penalty which had apparently been agreed to by the parties before the consent process broke down. The Department complains that the penalty is not severe enough given the fact that it has been imposed pursuant to a default proceeding rather than a consent proceeding. The argument lacks merit. Presumably, the Department would not have agreed to

propose an unreasonably lenient penalty to the ALJ in the consent proceeding, thus it can hardly complain now that the penalty it had agreed to propose is in fact unreasonable. That being the case, and the penalty not appearing unreasonable on its face, this Office is not inclined to modify the same.

Order

A. The decision in *In re Behar*, 53 Fed. Register 48666 (December 2, 1988), is reaffirmed.

B. On February 9, 1989 the Administrative Law Judge (ALJ) entered his Recommended Decision and Order in the captioned matter. That Decision and Order, a copy of which is attached hereto and made a part hereof has been referred to me for final action. Subject to the following modifications, I hereby affirm the Recommended Decision and Order of the ALJ:

1. Suspension of the two year denial period shall begin only after the payment in full of the $35,000 fine assessed in this case; and

2. The suspension of the denial period shall begin upon the payment of the $35,000 fine as above and shall be in effect for the balance of the two year period of denial provided the Respondents, or either of them, commit no further violations of the Act, the Regulations, or this final Order in this proceeding.

This constitutes final agency action in this matter.

Date: March 10, 1989.

Paul Freedenberg,

Under Secretary, Bureau of Export Administration.

Default Decision and Order

Appearance for Respondent: Stanley J. Marcuss, Esq., Arthur R. Watson, Esq., Milbank, Tweed, Hadley & McCloy, International Square Building, 1825 Eye Street, NW. Washington, DC 20006

Appearance for Agency: Anthony K. Hicks, Esq., Office of Chief Counsel for Export Administration, U.S. Department of Commerce, Room H–3329, 14th & Constitution Ave., NW., Washington, DC 20230

Preliminary Statement

This proceeding against Respondent Hon Kwan Yu, individually and doing business as Respondent Seed H.K. Ltd, began with the issuance February 9, 1988 of a charging letter by the Office of Export Enforcement ("the Agency"), Bureau of Export Administration, U.S. Department of Commerce. This charging letter was issued under the authority of the Export Administration Act of 1979 (50 U.S.C.A. app. sections 2401–2420), as amended ("the Act"), and the Export Administration Regulations ("the Regulations")[1]

The charging letter alleged that Respondents had violated sections 387.4 and 387.6 of the Regulations in 1982–84 by reexporting six U.S.-origin computers from Hong Kong to the People's Republic of China (P.R.C.) without the required U.S. authorization.[2] On May 16, 1988 the original February 9, 1988 charging letter was amended by increasing from six to seven the number of such alleged unauthorized reexports.

An Order of September 30, 1988 declared Respondents to be in default since, although they had been granted two extensions for filing an answer, they had not filed any. Accordingly, the Order of September 30 directed the Agency to make the submission provided for default cases by § 388.8 of the Regulations.

The Agency instead submitted a Consent Agreement, under section 388.17 of the Regulations, signed on behalf of Respondents by their Counsel (Agency's October 28, 1988 Response). In the Consent Agreement, the parties agreed to settle this matter by Respondents' paying a $35,000 civil penalty and accepting a two-year denial of U.S. export privileges that would be suspended.

By an Order of December 7, 1988, this Tribunal directed the Agency to submit evidence that would support its charge that Respondents had violated the Regulations, citing *Behar*, 53 Fed. Reg. 48666 (December 2, 1988). In *Behar*, which also concerned a consent agreement under the Act and the Regulations, the Under Secretary for Export Administration stated as follows (53 FR 48666, 48667).

> [I]n the imposition of civil penalties under the Export Administration Act and Regulations, a respondent may admit to certain facts for the purposes of accepting the imposition of a penalty which will bring the matter to a close, while maintaining that the admitted facts do not necessarily constitute violation of the act of [sic] the regulations. However, the ALJ, as in the case of a plea of *nolo contendere*, is free to find that the facts thus admitted constitute violations of the Export Administration Act or Regulations. Indeed, the Under Secretary's authority for imposing civil penalties in such cases is based on the finding of a violation * * *. For Export Administration Act cases in which there will be the imposition of a penalty, whether a denial period with respect to export privileges, a fine, or both, there must be some finding by the Under Secretary of a violation to support the imposition of the penalty.

In reply to the Order of December 7, the Agency stated that it had filed a motion with the Under Secretary for reconsideration of that part of *Behar* pertinent to this case (Agency's December 28, 1988 Response 3). The Agency argued that, until it obtains a ruling on that motion in *Behar*, it would be "premature for it to file the requested evidence" in this case (*id.*), and accordingly it requested a stay in the Order of December 7 until it obtains such a ruling (*id.* 4).

This Tribunal, in an Order of January 9, 1989, denied the requested stay, and instead scheduled a January 17, 1989 informal hearing. The nature and purpose of this hearing, and the reason for directing that it be a step in resolving this case, were explained as follows (January 17 Order 1–2).

> For this case, and future consent submissions, the following policy and practice is adopted. This approach is essentially similar to that which existed under Hearing Commissioner Levinson and which were followed * * * in the 1973 and 1974 era.
>
> Upon receipt of consent agreements, an informal, tape recorded, hearing will be scheduled, usually within 10–15 days, at which the representatives of both parties may be present. It is not expected that testimony will normally be taken, however, a 'paper case' consisting of documents, diagrams, records, statements and the like, along with the explanations of the representatives will be received and made a part of the record. Following receipt of these materials, the Administrative Law Judge's action, with the record, will be forwarded to the Under Secretary for the 30-day statutory review and final Agency action.
>
> The history of review of settlement proposals by this Office reflects almost unanimous concurrence with those submissions. It is not expected that this will change * * *. On the other hand, this Office and the Under Secretary each have the statutory responsibility to take informed actions. Not merely rubber stamp * * *. The review should be meaningful. Without some record, * * * it cannot be. [footnote omitted]

Counsel for Respondents filed a letter stating that Respondents had instructed Counsel not to attend the January 17 hearing, indicating that "budgetary constraints" were the reason (Respondents' January 17, 1989 Letter).

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[1] The Act was reauthorized and amended by the Export Administration Amendments Act of 1985, Pub. L. 99–64, 99 Stat. 120 (July 12, 1985), and amended by the Omnibus Trade and Competitiveness Act of 1988, Pub. L. 100–418, 102 Stat. 1107 (August 23, 1988).

The Regulations, formerly codified at 15 C.F.R. Parts 368– 399, were redesignated as 15 CFR Parts 768–799, effective October 1, 1988 (53 FR 37751, September 28, 1988).

[2] As the charging letter noted (at 1 n.1), the 1982–84 period during which the alleged violations occurred included a time during 1983 when the Act had lapsed and the Regulations were maintained in effect pursuant to the authority of the International Emergency Economic Powers Act, 50 U.S.C. 1701–1706 (1982)).

Respondents have not participated in this proceeding since the filing of that letter.

Agency Counsel did appear at the January 17 informal hearing, but declined to present evidence of Respondents' alleged violations. Agency Counsel filed a written statement setting forth its position as follows (Agency's January 17, 1989 Statement 3).

> As agreed to by both the Department and Yu, the Consent Agreement does not address the issue of whether Yu in fact violated the Regulations. Accordingly, in the context of the review of the Consent Agreement in this matter and as a matter of law, the Department does not believe that that issue should be the subject of further discussion.

Based upon Agency Counsel's declining to present evidence of the alleged violations, this Tribunal issued an Order of January 19, 1989 rejecting the proposed settlement between the parties. The Order of January 19 further reinstated the Order of September 30, which had declared Respondents to be in default, and again directed the Agency to make the submission provided for default cases.

The Agency then filed a motion for default that set forth evidence to support its allegations against Respondents and proposed a ten-year denial of Respondents' U.S. export privileges (Agency's January 30, 1989 Motion). In filing this motion, the Agency expressly stated that the Agency in no way conceded any concurrence with this Tribunal's basis for rejecting the Consent Agreement (*id.* 4).

Discussion

The Agency's evidence documented its charges that in 1982–84 Respondents obtained seven computers from their U.S. manufacturer and reexported them to the P.R.C. without the required U.S. authorization. Five computers were of one type, and two of another.

For the five computers, the Agency's evidence included Respondent Yu's March 14, 1983 order for them from their U.S. manufacturer (Agency Exhibit (hereinafter "Exh.") 4), and the manufacturer's shipping document for them, dated April 7, 1983, from the United States to Hong Kong (*id.*). The manufacturer shipped these computers to Respondents under a distribution license (Agency Exh. 11, 12, 13).

From April 1983 through January 1984, according to the Agency's presentation, Respondents reexported these five computers to five different P.R.C. end users. Here the Agency's evidence consisted of the U.S. manufacturer's reports of its investigation of the situation (Agency Exh. 11, 13) and of parts of applications for U.S. authorizations, made after the reexports, in which each of the P.R.C. end users apparently affirmed its possession of one of these computers (Agency Exh. 6–10). The Agency showed that each of the five reexports required U.S. authorization for national security reasons (although a properly filed application would have benefited from a presumption of approval) (Agency Exh. 5), and showed that Respondents had not obtained the required authorization (Agency Exh. 14).

The Agency argued that each of these five reexports violated § 387.6 of the Regulations, which proscribes unauthorized exports and reexports. The Agency contended that in making each of these five reexports Respondents violated also § 387.4, which proscribes participating in an export or reexport knowing, or having reason to know, that it is unauthorized. To show Respondents' knowledge, or reason to know, that the reexports were unauthorized, the Agency cited the invoices billing Respondents for the five computers; each invoice stated that the computer was licensed by the United States for ultimate destination in Hong Kong, and diversion contrary to U.S. law was prohibited (Agency Exh. 6–10). The Agency cited also the certification that Respondents signed in order to become a consignee on the U.S. manufacturer's distribution license under which the five computers were shipped to Respondents; in the certification, Respondents agreed to comply with the Regulations (Agency Exh. 12).

As to the first of the remaining two computers of the other type that were the subject of the charging letter, the Agency introduced Respondents' order, dated September 10, 1982 and addressed to the U.S. manufacturer (Agency Exh. 2(a)). The Agency presented also a manufacturer's shipping document, dated October 1, 1982, showing that the order was filled by a shipment to Respondents from a West European facility of the manufacturer (Agency Exh. 2(b)).

To prove that Respondents subsequently reexported the computer to the P.R.C. at some point after December 4, 1982 (Agency Exh. 2(c)) and before some time in January 1984 (Agency Exh. 13), the Agency introduced two documents. The first was a manufacturer's report of its investigation of the situation (Agency Exh. 13); and the second was part of an application for U.S. authorization, made after the reexport, in which the P.R.C. end user apparently affirmed its possession of the computer (Agency Exh. 2(d)).

The Agency showed that reexport of the computer from Hong Kong to the P.R.C. required a U.S. authorization for national security reasons (although a properly filed application would have benefited from a presumption of approval) (Agency Exh. 3), and showed that Respondents did not obtain the required authorization (Agency Exh. 14). Therefore the Agency asserted that Respondents' reexport violated §§ 387.4 and 387.6 of the Regulations, the same two sections it named for the five reexports discussed above. To indicate that Respondents knew, or had reason to know, that the reexport was unauthorized, the Agency cited a statement on the manufacturer's invoice to Respondents to the effect that the United States had licensed the computer, ultimate destination Hong Kong, and diversion contrary to U.S. law was prohibited (Agency Exh. 2(b)).

The last of the reexports raised by the charging letter concerned the other one of this second type of computer. According to a manufacturer's report of its investigation of the situation that the Agency introduced (Agency Exh. 11), Respondents had obtained this computer from the manufacturer pursuant to a validated license authorizing its reexport to a particular P.R.C. end user, but in 1984 had instead reexported it to a different P.R.C. end user. Apparently the originally intended end user had decided against buying the computer (*id.*).

The Agency again cited its evidence that reexport of this computer to the P.R.C. required U.S. authorization for national security reasons (although, as before, a properly filed application would have benefited from a presumption of approval) (Agency Exh. 3). Further, the Agency cited the manufacturer's report to show that no authorization had been obtained for reexporting the computer to that P.R.C. end user to which it was actually shipped (Agency Exh. 11). As with the other six reexports, the Agency charged a violation of both §§ 387.4 and 387.6.

To show Respondents' knowledge, or reason to have knowledge, that the reexport was unauthorized, the Agency noted that Respondents had received the computer initially pursuant to a validated license, which indicated that at least up to that point the computer had been subject to the Regulations. Then the Agency cited the evidence it advanced for its § 387.4 charge for the other six reexports, and argued that Respondents therefore knew, or had reason to know, that this reexport also required U.S. authorization, especially since the computer was the same type as the computer that was involved in one of these other reexports.

Conclusion

The evidence of record sustains the allegations of the May 16, 1988 amended charging letter that Respondents during 1982–84 reexported seven U.S.-origin computers from Hong Kong to the P.R.C. without the U.S. authorization that was required. The record shows both that Respondents made these seven reexports, and also that Respondents knew, or had reason to know, that they lacked a U.S. authorization that was required. Thus each of these seven unauthorized reexports violated § 387.4 and § 387.6 of the Regulations.

For a sanction, the settlement arrived at in the parties' Consent Agreement—a $35,000 civil penalty and a suspended two-year denial of U.S. export privileges—is reasonable. The violations that Respondents committed are serious; but the sanction proposed by the Agency in its default motion—ten years denial of U.S. export privileges with no suspension—seems unduly severe. The sanction arrived at through the bargaining that produced the Consent Agreement is appropriate to serve the interests of justice here.

Order

I. Respondent Hon Kwan Yu, individually and doing business as Respondent Seed H.K. Ltd., is assessed a civil penalty of $35,000, to be paid within thirty days of the date of the final Agency action.

II. For a period of two years from the date of the final Agency action, as modified by the suspension set forth in paragraph III below, Respondents:

Hon Kwan Yu, individually and doing business as:

Seed H.K. Ltd., 7/F Cheung Kong Building, 661 King's Road, North Point, Hong Kong.

and all successors, assignees, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Regulations.

III. Commencing from the date that this Order becomes effective, the denial of export privileges set forth above shall be suspended, in accordance with § 388.16 of the Regulations, for a period of three years commencing from the date that this Order becomes effective, and shall be terminated at the end of such period, provided that Respondents have committed no further violation of the Act, the Regulations, or the final Order entered in this proceeding. During the three-year suspension period, Respondents may participate in transactions involving the export of U.S.-origin commodities or technical data from the United States or abroad in accordance with the requirements of the Act and the Regulations. The provisions of Paragraphs IV to VII of this Order shall also be suspended during the three-year period.

IV. Participation prohibited in any such transaction, either in the United States or abroad, shall include, but not be limited to, participation:

(i) As a party or as a representative of a party to a validated or general export license application;

(ii) In preparing or filing any export license application or request for reexport authorization, or any document to be submitted therewith;

(iii) In obtaining or using any validated or general export license or other export control document;

(iv) In carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported; and

(v) In the financing, forwarding, transporting, or other servicing of such commodities or technical data.

Such denial of export privileges shall extend to those commodities and technical data which are subject to the Act and the Regulations.

V. After notice and opportunity for comment, such denial of export privileges may be made applicable to any person, firm, corporation, or business organization with which any Respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services.

VI. All outstanding individual validated export licenses in which Respondents appear or participate, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Respondents' privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

VII. No person, firm, corporation, partnership, or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Licensing, shall, with respect to commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with any Respondent or any related person, or whereby any Respondent or any related person may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly:

(i) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for any Respondent or related person denied export privileges, or

(ii) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance or otherwise service or participate in any export, reexport, transshipment or diversion of any commodity or technical data exported or to be exported from the United States.

VIII. This Order as affirmed or modified shall become effective upon entry of the Secretary's final action in this proceeding pursuant to the Act (50 U.S.C.A. app. § 2412(c)(1)).

Dated: February 9, 1989.

Thomas W. Hoya,

Administrative Law Judge.

To be considered in the 30 day statutory review process which is mandated by section 13(c) of the Act, submissions must be received in the Office of the Under Secretary for Export Administration, U.S. Department of Commerce, 14th & Constitution Ave., NW., Room 3898B, Washington, DC, 20230, within 12 days. Replies to the other party's submission are to be made within the following 8 days. 15 CFR 388.23(b), 50 FR 53134 (1985). Pursuant to section 13(c)(3) of the Act, the final order of the Under Secretary may be appealed to the U.S. Court of Appeals for the District of Columbia within 15 days of its issuance.

Attachment to Administrative Law Judge Order

Instruction for Payment of Civil Penalty

1. The civil penalty check should be made payable to: U.S. Department of Commerce.

2. The check should be mailed to: U.S. Department of Commerce, Office of the Assistant General Counsel for Export Administration, Room H–3845, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Attn: Pamela P. Breed, Esq.

[FR Doc. 89–6428 Filed 3–17–89; 8:45 am]

BILLING CODE 3510–DT–M

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of Application for an Amendment to an Export Trade Certificate or Review.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an amendment to an Export Trade Certificate of Review. This notice summarizes the amendment and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Thomas H. Stillman, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (Pub. L. 97-290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Reveiw protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from privatge, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether the Certificate should be amended. An original and five (5) copies should be submitted not later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1223H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 87-p4A004."

OETCA has received the following application for a fourth amendment to Export Trade Certificate of Review No. 87-000004, which was issued on May 19, 1987 (52 FR 19371, May 22, 1987), and previously amended on December 11, 1987 (52 FR 48454, December 22, 1987), and January 3, 1989 (54 FR 637, January 10, 1988).

Summary of Application

Applicant: National Machine Tool Builders' Association ("NMTBA") a.k.a. NMTBA—The Association for Manufacturing Technology, 7901 Westpark Drive, McLean, Virginia 22102-4269 Contact: James R. Atwood, legal Counsel Telephone: 202/662/6000

Application No.: 87-4A004

Date Deemed Submitterd: March 7, 1989

Request For Amended Conduct

NMTBA seeks to amend its Certificate to:

1. Add each of the following companies as a "Member" of the Certificate: Bryant Grinder Corporation, Springfield, VT; Command Corporation, Minneapolis, MN; Cross & Trecker Corporation, Bloomfield Hills, MI; Dayton Machine Tool Company, Dayton, OH; Empire Abrasive Equipment Corporation, Langhorne, PA; Fadal Engineering Company, Inc., N. Hollywood, CA; Genesis Systems Group Inc., Davenport, IA; Haumiller Engineering Company, Elgin, IL; Kleer-Flo Company, Eden Prairie, MN; Komo Machine, Inc., Sauk Rapids, MN; Lapmaster International, Morton Grove, IL; MHP Machines Inc., Cheektowaga, NY; Milman Engineering Inc., Chehalis, MA; Positech Corporation, Laurens, IA; Preco Industries, Lenexa, KS; PS Group, Inc., Telford, PA; R & B Machine Tool Company, Saline, MI; Rush Machinery Inc., Rushville, NY; Servo Producers Company, Pasadena, CA; Siber Hegner North America Inc., Stamford, CT; Truxton Machinery, Inc., Hudson, NY; Unison Corporation, Ferndale, MI; Wes-Tech Automation Systems, Buffalo Grove, IL.

2. Delete each of the following companies as a "Member" of the Certificate: ACRO LOC/CNC Systems; Laser Industries, Inc.; Oerlikon Motch Corporation; Quamco, Inc.; Superior Die Set Corporation; Turchan Enterprises, Inc.; and WCI Machine Tool & Systems Co.

3. Change the listing of the company name for each current "Member" cited in this paragraph to the new listing cited in this paragraph in parentheses as follows: Katy Industries, Inc. (American Machine & Science (Katy Inds.)); Cooper-Weymouth, Peterson (Cooper-Weymouth, Peterson Div., Reed National Corp.); Danley Machine Division/Connell Ltd. Partnership (Danly Machine Division/Connell Ltd. Partnership); Dake Division, JSS Corporation (Drake Division, JSJ Corporation); DeVlieg Machine Company (DeVliege-Sundstrand); Drake Manufacturing Services, Inc. (Drake Manufacturing Services Company, Inc.); ES/Tech-Equipment Systems Technology Co. (Equipment Systems Technology Company); Gehring Corporation (Gehring Fischer-Bohle Machine Toos Corp.); Gidding & Lewis—A Division of AMCO International Corp. (Giddings & Lewis, A Division of AMCA International Corp.); Greenfield Industries (Greenfield Industries—Geometric Division); Litton Industries Automation System, Inc. (Litton Industrial Automation—Machining & Assembly Sys. Div.); MG Systems Division (MG Industries); National Broach & Machine (National Broach & Machine Company); P/A Industries (P/A Indistries Inc.); Schmidt, Geo. T. (Schmidt Inc., Geo. T.); Service Precision Grinding Co. (Service Precision Grinding Co., Inc.,); Kayex-Spitfire (Spitfire, a unit of General Signal; T-Drill (T-Drill Industries); Versa-Mil, Inc. (Versa-Mil Inc./Phillips Corporation); Vulcan Tool Corp. (Vulcan Tool Company); and Whitnon Spindle Division (Whitnon Spindle Division/GMN)

Dated: March 13, 1989.

Thomas H. Stillman,

Director, Office of Export Trading Company Affairs.

[FR Doc. 89-6449 Filed 3-17-89; 8:45 am]

BILLING CODE 3510-DR-M

Export Trade Certificate of Review

ACTION: Notice of Issuance of an Amended Export Trade Certificate of Review, Application No. 86-A0003.

SUMMARY: The Department of Commerce has issued an amendment to the Export Trade Certificate of Review granted to the International Shippers Association on July 11, 1986. Notice of issuance of the Certificate was published in the **Federal Register** on July 18, 1986 (51 FR 26031). Notice of the change of name of the Certificate holder to the First International Shippers Association was published in the **Federal Register** on January 21, 1988 (53 FR 1656). Notice of application for an amendment to an Export Trade Certificate of Review was published in the **Federal Register** on December 14, 1988 (53 FR 50275). While the application for an amendment was under review, the Washington Fish & Oyster Company of California, Inc., one of the companies sought to be added as a member under the certificate, changed its name to TEMA, Inc.

FOR FURTHER INFORMATION CONTACT: Thomas H. Stillman, Director, Office of Export Trading Company Affairs,

International Trade Administration, 202–377–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. No. 97–290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR Part 325 (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

Export Trade Certificate of Review No. 86–00003 was issued to the International Shippers Association ("ISA") on July 11, 1986. The current name of the Certificate holder, published in the **Federal Register** on January 21, 1988 (53 FR 1656), is the First International Shippers Association ("FISA"). FISA's Export Trade Certificate of Review is amended as follows:

1. The following companies have been added as "Members" to FISA's Export Trade Certificate of Review:

AJC International, Inc.; Bayshore Seafords, Inc.; Carriage House Foods, Clouston Foods Pacific, Ltd.; Copper River Fishermen's Cooperative; Diamond Fruit Growers, Inc.; Duckwall-Pooley Fruit Co.; Golden Alaska Seafoods; Home Harbor Seafoods, Inc.; George F. Joseph; Keet Seafoods, Inc.; Northwest Fresh, Inc.; Odyssey Enterprises, Inc.; Ore-Ida Foods, Inc.; Pacific Alaska Seafood, Inc.; Peter Pan Seafoods, Inc.; Prevor Marketing International; San Juan Seafoods, Inc.; SPI-SEA FOODS; Stemilt Growers, Inc.; TEMA, Inc. (formerly Washington, Fish & Oyster Company of California, Inc.); Wenoka Sales; and Windjammer Seafoods, Inc.

EFFECTIVE DATE: December 6, 1988.

A copy of the amended Certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: March 13, 1989.

Thomas H. Stillman,

Director, Office of Export Trading Company Affairs.

[FR Doc. 89–6450 Filed 3–17–89; 8:45 am]

BILLING CODE 3510-DR-M

National Oceanic and Atmospheric Administration

Caribbean Fishery Management Council; Shallow-Water Reef Fish Fisheries Amendment 1; Public Hearings

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

ACTION: Notice of public hearings and request for comments.

SUMMARY: The Caribbean Fishery Management Council will hold public hearings on Amendment 1 to the Shallow-Water Reef Fish Fishery Management Plan. The amendment, among other things, intends to establish or modify management measures relating to Nassau grouper, red hind, and fish trap mesh size. Comments are requested from the public and oral and/or written presentations will be accepted.

DATES: Written comments will be accepted until May 5, 1989. The public hearings are scheduled as follows:

1. April 5, 1989, 7:30 p.m., St. Croix, U.S. Virgin Islands.
2. April 6, 1989, 7:30 p.m., St. Thomas, U.S. Virgin Islands.
3. April 18, 1989, 4:00 p.m., Joyuda, Cabo Rojo, Puerto Rico.
4. April 19, 1989, 2:00 p.m., Ponce, Puerto Rico.
5. April 20, 1989, 3:00 p.m., Las Croabas, Fajardo, Puerto Rico.

ADDRESSES: Written comments should be sent to the Caribbean Fishery Management Council, Suite 1108, Banco de Ponce Building, Hato Rey, Puerto Rico 00918. The hearings will be held at the following locations:

1. St. Croix—Conference Room, Legislature Building, St. Croix, U.S. Virgin Islands.
2. St. Thomas—Conference Room, Legislature Building, St. Thomas, U.S. Virgin Islands.
3. Joyuda, Cabo Rojo—Costamar Restaurant, Road 102, Km. 13.8, Joyuda, Cabo Rojo, Puerto Rico.
4. Ponce—Ponce Room, Ponce Holiday Inn, Road 2, Ponce, Puerto Rico.
5. Las Croabas, Fajardo—Meson Criollo Restaurant, Road 987, Km. 3.2, Las Croabas, Fajardo, Puerto Rico.

FOR FURTHER INFORMATION CONTACT: Miguel A. Rolon, Executive Director, Caribbean Fishery Management Council, 809–786–5926.

Dated: March 14, 1989.

Richard H. Schaefer,

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

[FR Doc. 89–6474 Filed 3–17–89; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of Import Limits for Certain Cotton Textile Products Produced or Manufactured in Yugoslavia

March 14, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: March 21, 1989.

FOR FURTHER INFORMATION CONTACT: Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Governments of the United States and the Socialist Federal Republic of Yugoslavia agreed to amend further the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of October 26 and 27, 1978, as amended, to include limits for cotton textile products in Categories 300/301, 313 and 338/339.

A copy of the agreement is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647–1998.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of

the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 14, 1989.

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229.

Dear Mr. Commissioner:

This directive amends, but does not cancel, the directive of December 16, 1988, issued to you by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Socialist Federal Republic of Yugoslavia and exported during the period which began on January 1, 1989, and extends through December 31, 1989.

Effective on March 21, 1989, you are directed to include limits for cotton textile products in the following categories:

Category	Twelve-Month Limit [1]
300/301	1,682,828 kilograms
313	11,521,835 square meters
338/339	466,400 dozen of which not more than 279,840 dozen shall be in categories 338-S/339-S [2]

[1] The limits have not been adjusted to account for any imports exported after December 31, 1988.

[2] In Categories 338-S/339-S, only HTS number 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.3010, 6109.10.0035, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.0068, 6112.11.0030 and 6114.20.0005 in Category 338; and 6104.22.0060, 6104.29.2046, 6106.10.0010, 6106.10.0030, 6106.90.2010, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.0070, 6112.11.0040, 6114.20.0010 and 6117.90.0022 in Category 339.

These limits may be adjusted in the future under the provisions of the current bilateral agreement between the Governments of the United States and the Socialist Federal Republic of Yugoslavia.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 533(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-6416 Filed 3-17-89; 8:45 am]

BILLING CODE 3510-DR-M

Amendment to the Export Visa Requirements for Certain Cotton Textile Products Produced or Manufactured in the Socialist Federal Republic of Yugoslavia

March 14, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending the visa arrangement.

EFFECTIVE DATE: March 21, 1989.

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

SUPPLEMENTARY INFORMATION: Under the terms of the current Export Visa Arrangement between the Governments of the United States and the Socialist Federal Republic of Yugoslavia, agreement was reached to further amend the visa arrangement to require visas for the entry of cotton textile products in Categories 300/301, 313, 338/339 and 338-S/339-S.

Goods exported on and after January 1, 1989 and entered or withdrawn from warehouse on and after April 18, 1989 which are not accompanied by an appropriate export visa shall be denied entry.

A description of the textile categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 51 FR 4413, published in the **Federal Register** on February 4, 1986.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 14, 1989.

Commissioner of Customs, Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on January 30, 1986, as amended and clarified, by the Chairman of the Committee for the Implementation of Textile Agreements that directed you to prohibit entry of certain cotton, wool and man-made fiber textile products, produced or manufactured in Yugoslavia which were not properly visaed.

Effective on March 21, 1989 you are directed to also prohibit entry of cotton textile products in Categories 300/301, 313, 338/339 and 338-S/339-S entered for consumption or withdrawn from warehouse for consumption into the Customs territory of the United States (i.e., the 50 States, the District of Columbia and the Commonwealth of Puerto Rico) on or after April 18, 1989 which have been produced or manufactured in Yugoslavia and exported from Yugoslavia on or after January 1, 1989 for which the Socialist Federal Republic of Yugoslavia has not issued an appropriate export visa.

Goods in Categories 300/301, 313, 338/339 [1] and 338-S/339-S [2] which were exported prior to January 1, 1989 shall not be denied entry for lack of a visa.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-6417 Filed 3-17-89; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Pub. L. 92-463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, April 4, 1989; Tuesday, April 11, 1989; Tuesday, April 18, 1989; and Tuesday April 25, 1989 at 10:00 a.m. in Room 1E801, The Pentagon, Washington, DC.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Force Management and Personnel) concerning all matters involved in the development and authorization of wage schedules for federal prevailing rate employees pursuant to Public Law 92-392. At this meeting, the Committee will consider

[1] In Categories 338/339, only HTS numbers 6109.10.0010, 6109.10.0015, 6109.10.0025 and 6109.10.0030 in Category 338; and 6109.10.0040, 6109.10.0045, 6109.10.0060 and 6109.10.0065 in Category 339.

[2] In Categories 338-S/339-S, only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.3010, 6109.10.0035, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.0068, 6112.11.0030 and 6114.20.0005 in Category 338; and 6104.22.0060, 6104.29.2046, 6106.10.0010, 6106.10.0030, 6106.90.2010, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.0070, 6112.11.0040, 6114.20.0010 and 6117.90.0022 in Category 339.

wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Pub. L. 92–463, meetings may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency," (5 U.S.C. 552b.(c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b.(c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b.(c)(2)), and the detailed wage data considered by the Committee during its meetings have been obtained from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552(c)(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, Room 3D264, The Pentagon, Washington, DC 20301.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

March 15, 1989.

[FR Doc. 89–6443 Filed 3–17–89; 8:45 am]

BILLING CODE 3810–01–M

Per Diem, Travel and Transportation Allowance Committee

AGENCY: Per Diem, Travel and Transportation Allowance Committee.

ACTION: Publication of Changes in Per Diem Rates: Correction, Bulletin Number 146 Effective February 1, 1989.

SUMMARY: This notice corrects the previous publication of per diem rate changes of the Per Diem, Travel and Transportation Allowances Committee that appeared in the **Federal Register**, 54 FR 6566, 13 February 1989.

The rate for Sabana Seca during the period 5–16—12–15 was incorrectly printed as $163 in Civilian Personnel Per Diem Bulletin 146. The correct rate is $133, as was published in Civilian Personnel Per Diem Bulletin Number 145 in the **Federal Register**, 53 FR 44409, 12 December 1988.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

March 15, 1989.

[FR Doc. 89–6444 Filed 3–17–89; 8:45 am]

BILLING CODE 3810–01–M

Department of the Air Force

Air Force Reserve Office Training Corps Advisory Committee Meeting

February 23, 1989.

The Air Force Reserve Officer Training Corps (AFROTC) Advisory Committee will meet on April 25, 1989, from 8:15 a.m. to 4:30 p.m. and on April 26, 1989, from 8:15 a.m. to 12:00 p.m. at 500, Room 19, Maxwell Air Force Base (AFB), Alabama.

The AFROTC Advisory Committee meets to offer advice, views, and recommendations regarding the educational mission of AFROTC. The Committee is an external source of expertise and serves in an advisory capacity to the Commander, Air Training Command and the Commandant, AFROTC.

The meeting is open to the public.

For further information, contact: Air Force Reserve Officer Training Corps Advisory Committee, Mr. John D. Pickett, Jr., Project Officer, AFROTC/XPX, Maxwell AFB, Alabama 36112–6663, telephone (205) 293–7856.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 89–6490 Filed 3–17–89; 8:45 am]

BILLING CODE 3910–01–M

USAF Scientific Advisory Board; Meeting

March 13, 1989.

The USAF Scientific Advisory Board Ad Hoc Committee on Conventional Munitions will meet on 5–6 April, 1989 at the Army Research & Development Center, Picatinny Arsenal, Dover, NJ.

The purpose of this meeting is to gather information on Army requirements and technological advances in conventional munitions. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 89–6491 Filed 3–17–89; 8:45 am]

BILLING CODE 3910–01–M

USAF Scientific Advisory Board; Meeting

March 14, 1989.

The USAF Scientific Advisory Board Ad Hoc Committee on Munitions Effectiveness will meet on 11–12 April, 1989 from 8:00 a.m. to 5:00 p.m. at SRI International, Menlo Part, CA.

The purposes of this meeting are to assess the changes in the threat over the past ten years and to study how to take full advantage of potential technology improvements in the development and manufacturing of munitions. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 89–6492 Filed 3–17–89; 8:45 am]

BILLING CODE 3910–01–M

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 17–18 April 1989.

Time of Meeting: 0830–1600 hours.

Place: Aberdeen Proving Ground, Maryland.

Agenda: The Army Science Board's Effectiveness Review Panel of the US Army Chemical, Research, Development and Engineering Center will visit the Center to gather data for the conduct of the effectiveness review of the facility. The panel will meet in executive session to discuss the methodology for conducting the review, and observations made as a result of the briefings. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and

unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. Contact the Army Science Board Administrative Officer, Sally Warner, for further information at 202–695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 89–6406 Filed 3–17–89; 8:45 am]

BILLING CODE 3710–8–M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Date of Meeting: 6 April 1989.

Time of Meeting: 0830–1700 hours.

Place: The Pentagon, Washington, DC.

Agenda: The Army Science Board Ad Hoc Subgroup on the Army's Technology Base Strategy for the 1990's will hold its final meeting. The purpose of the meeting is to conduc a technical working group review of the Panel's findings on the Army Technology Base Master Plan. Proprietary informational briefings will be conducted. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. Contact the Army Science Board Administrative Officer, Sally Warner, for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 89–6407 Filed 3–17–89; 8:45 am]

BILLING CODE 3710–8–M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Date of Meeting: 13 April 1989.

Time of Meeting: 0800–1600 hours.

Place: Adelphi, Maryland.

Agenda: The Army Science Board's Effectiveness Review of the Harry Diamond Laboratories will visit the Harry Diamond Laboratory at Adelphi, Maryland. The purpose of the visit is to gather data for the conduct of the review. Briefings will be presented and small group interviews will be conducted with a cross-section of the laboratory staff. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. Contact the Army Science Board Administrative Officer, Sally Warner, for further information at 202–695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 89–6408 Filed 3–17–89; 8:45 am]

BILLING CODE 3710–8–M

Army Science Board, Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 8–21 April 1989.

Time of Meeting: Variable.

Place: 8–9 April—US/Europe.
10–11 April—Israel (Tel Aviv).
12 April—Travel.
13–14 April—UK (London).
15 April—Travel.
16 April—Open.
17–18 April—France (Paris).
19–20 April—Germany (Bonn).
21 April—US.

Agenda: The Army Science Board 1989 Summer Study on International Cooperation and Data Exchange to Enhance the Army's Technology Base will conduct a data gathering field trip with the major objective of finding out how well the current system is operating in the realm of International Cooperation and Data Exchange. The Army Science Board will attempt to get both host country and the U.S. viewpoint at each location. This meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. Contact the Army Science Board Administrative Officer, Sally Warner, for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 89–6409 Filed 3–17–89; 8:45 am]

BILLING CODE 3710–8–M

DEPARTMENT OF ENERGY

The Site Characterization Plan (SCP) for the Yucca Mountain Site, State of Nevada

AGENCY: Office of Civilian Radioactive Waste Management, DOE.

ACTION: Extension of the comment period.

SUMMARY: In the **Federal Register** dated December 30, 1988, (53 FR 53057), the Department of Energy announced that it had published and made available to the State of Nevada, the Nuclear Regulatory Commission, and the public the Site Characterization Plan (SCP) for the Yucca Mountain, Nevada site for a 90-day comment period to end on April 15, 1989. Public hearings on the SCP during the comment period were also announced in that Notice.

Upon consideration of a request from the Honorable Bob Miller, Acting Governor, State of Nevada, the Department of Energy has extended the close of the comment period on the SCP from April 15 to June 1, 1989. The Department has also made arrangements to ensure that all persons wishing to provide comments at the scheduled hearings will have an opportunity to do so.

Please refer to the above **Federal Register** notice dated December 30, 1988, for public hearing dates, locations, times, and comment procedures.

FOR FURTHER INFORMATION CONTACT: Carl P. Gertz, Project Manager, Yucca Mountain Project Office, U.S. Department of Energy, P.O. Box 98518, Las Vegas, Nevada 89193–8518.

Issued in Washington, DC March 16, 1989.

Samuel Rousso,

Acting Director, Office of Civilian Radioactive Waste Management.

[FR Doc. 89–6631 Filed 3–17–89; 8:45 am]

BILLING CODE 6450–01–M

Office of Fossil Energy

Organization, Functions and Authority Delegations; Assistant Secretary, Fossil Energy

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of transfer of certain functions from the Office of Fuels Programs of the Economic Regulatory Administration to the Assistant Secretary for Fossil Energy.

SUMMARY: The Assistant Secretary for Fossil Energy of the Department of Energy gives notice that on January 6, 1989, certain functions previously

performed by the Economic Regulatory Administration's (ERA) Office of Fuels Programs were transferred to the Office of Fossil Energy (FE). DOE Delegation Order No. 0204–127 (attached as Appendix) specifies the transferred functions, which include the administration of the natural gas import and export authorization program pursuant to the Natural Gas Act of 1938 (NGA), administration of electricity export licensing activities in accordance with the Federal Power Act (FPA), the issuance of Presidential permits for construction and use of transmission facilities for international exchanges of electricity pursuant to Executive Order 10485, and the administration of the coal conversion program pursuant to the Powerplant and Industrial Fuel Use Act of 1978 (FUA).

All filings made pursuant to section 3 of the NGA, section 202(e) of the FPA, Executive Order 10485, and Titles II and III of FUA, shall be filed with the Office of Fuels Programs, Fossil Energy, Docket Room, 3F–056, FE–50, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. There will be no change in the way filings are processed at this time. Technical changes to the current administrative procedures applicable to these programs will be made as necessary, in response to this transfer of functions and published at a later date.

Any questions should be directed to:

Larine A. Moore, Docket Room, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F–056, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478.

Michael T. Skinker, 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.

Lise Howe, International Affairs, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6A–167, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–2900.

Issued in Washington, DC, March 10, 1989.

J. Allen Wampler,

Assistant Secretary, Fossil Energy.

[Delegation Order No. 0204–127]

To The Assistant Secretary For Fossil Energy

Pursuant to the authority vested in me as Secretary of Energy ("Secretary") and by the Department of Energy Organization Act (Pub. L. No. 95–91) (the "DOE Act")—

(a) There is hereby delegated to the Assistant Secretary for Fossil Energy ("Assistant Secretary"), the authority to:

1. Monitor compliance with the prohibition against the construction of new powerplants without the capability to use coal or another alternate fuel as a primary energy source, pursuant to section 201 of the Powerplant and Industrial Fuel Use Act of 1978 (Pub. L. No. 95–620) ("FUA"), as amended; grant or deny exemptions from such prohibition, pursuant to sections 211 through 214 of FUA; issue prohibitions against the use of oil or natural gas to certifying existing electric powerplants under section 301 of FUA; grant or deny exemptions to certifying existing electric powerplants under sections 311 through 314 of FUA; and take such other actions as may be necessary or appropriate to perform any of the above functions pursuant to section 701 of FUA;

2. Issue notices of effectiveness, modification or rescission to coal conversion orders issued pursuant to section 2 of the Energy Supply and Environmental Coordination Act of 1974 (Pub. L. No. 93–319), as amended;

3. Establish, modify and encourage regional districts in the country for the voluntary interconnection and coordination of facilities for the generation, transmission, and sale of electric energy, and promote and encourage such interconnection and coordination within each such district and between such districts, pursuant to the provisions of section 202(a) of the Federal Power Act (Pub. L. No. 74–333);

4. Investigate and determine, upon the Assistant Secretary's own motion or the request of any State commission, the cost of production or transmission of electric energy by means of facilities that are subject to the jurisdiction defined by section 201 of the Federal Power Act, as the Assistant Secretary determines is necessary or appropriate to perform his functions, pursuant to the provisions of section 206(b) of the Federal Power Act;

5. Conduct investigations regarding the generation, transmission, distribution, and sale of electric energy, however produced, throughout the United States and its possessions, including the generation, transmission, distribution, and sale of electric energy by any agency, authority or instrumentality of the United States, or of any State or municipality or other political subdivision of a State, as the Assistant Secretary determines is necessary or appropriate to perform his functions, pursuant to section 311 of the Federal Power Act;

6. Regulate the export of electric energy to a foreign country, pursuant to the provisions of sections 202(e) and 202(f) of the Federal Power Act; and authorize the construction, connection, operation and maintenance of facilities, at the borders of the United States, for the transmission of electric energy between the United States and a foreign country, pursuant to the provisions of Executive Order 10485, as amended by Executive Order 12038;

7. Establish and review priorities for the curtailment of natural gas pursuant to the Natural Gas Act (Pub. L. No. 75–688), sections 401, 402, and 403 of the Natural Gas Policy Act of 1978 (Pub. L. No. 95–621); and consult with the Assistant Secretary for International Affairs and Energy Emergencies concerning energy emergency-related curtailment policy guidance, as necessary or appropriate.

8. Regulate natural gas imports and exports, pursuant to the Natural Gas Act, in accordance with Delegation Order No 0204–111;

9. Participate in any proceeding before the Federal Energy Regulatory Commission, pursuant to the provisions of section 405 of the DOE Act, or in any proceeding before any Federal or State agency or commission whenever such participation is related to the exercise of authority delegated to the Assistant Secretary;

10. Adopt rules, formulate and establish enforcement policy, initiate and conduct investigations, conduct conferences, administrative hearings and public hearings, prepare required reports, issued orders, and take such other action as may be necessary or appropriate to perform any of the above functions.

(b) This authority may be further delegated, in whole or in part, with the exception of the authority to propose or adopt rules.

(c) In exercising the authority delegated by this Order or as redelegated pursuant thereto, the Assistant Secretary and his delegate(s) shall be governed by the rules, regulations and procedures of DOE and the policies prescribed by the Secretary or his delegate(s).

(d) Delegation Order Nos. 0204–111 and 0204–112 are amended by changing "Administrator of the Economic Regulatory Administration" to "Assistant Secretary for Fossil Energy" wherever it appears and by changing "Administrator" to "Assistant Secretary" wherever it appears.

(e) Nothing in this Order shall preclude the Secretary from exercising or further delegating any of the authorities hereby delegated, whenever, in his judgment, the exercise of such

authority is necessary or appropriate to administer the functions vested in him.

(f) All actions pursuant to any authority delegated prior to this Order or pursuant to any authority delegated by this Order taken prior to and in effect on the date of this Order are hereby confirmed and ratified, and shall remain in full force and effect as if taken under this Order, unless or until rescinded, amended or superseded.

This Order is effective February 7, 1989.

Date: February 7, 1989.

Donna R. Fitzpatrick,

Acting Secretary of Energy.

[FR Doc. 89-6501 Filed 3-17-89; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. QF89-185-000]

Cogentrix of Petersburg, Inc.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

March 15, 1989

On March 6, 1989, Cogentrix of Petersburg, Inc. (Applicant), c/o Mr. Donald A. Dowling, Senior Vice President, 9405 Arrowpoint Boulevard, Charlotte, North Carolina 28217, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Dinwiddie County, Virginia. The facility will consist of four steam generators and two extraction/condensing steam turbine generators. Thermal energy recovered from the facility will be used to provide process steam for the Union Camp Manufacturing Plant. The net electric power production capacity of the facility will be approximately 108,004 KW. The primary source of energy will be coal. The facility is scheduled to begin operation on or about March 1, 1991.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. 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 petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-6429 Filed 3-17-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF89-184-000]

Cogentrix of Rocky Mount, Inc.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

March 15, 1989.

On March 6, 1989, Cogentrix of Rocky Mount, Inc. (Applicant), c/o Mr. Donald A Dowling, Senior Vice President, 9405 Arrowpoint Boulevard, Charlotte, North Carolina 28217, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Edgecomb and Nash Counties, North Carolina. The facility will consist of four steam generators and two extraction/condensing steam turbine generators. Thermal energy recovered from the facility will be used to provide process steam for the Abbot Laboratories. The net electric power production capacity of the facility will be approximately 111.05 MW. The primary source of energy will be coal. The facility is scheduled to begin operation on or about November 1990.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. 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 petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-6430 Filed 3-17-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-103-000]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

March 15, 1989.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on March 9, 1989, tendered for filing to its FERC Gas Tariff, Second Revised Volume No. 1 the following tariff sheet:

Proposed to be Effective November 1, 1988

Second Revised Sheet No. 372
Fifth Revised Sheet No. 374
Fifth Revised Sheet No. 375
First Revised Sheet No. 376
Second Revised Sheet No. 377
First Revised Sheet No. 378
First Revised Sheet No. 380

Algonquin states that it is making the instant filing pursuant to Article 12 section 3 of the Stipulation and Agreement approved by Commission order dated June 18, 1984 in Docket No. CP82-119 *et seq.* authorizing F-3 service and section 7.4 of Rate Schedule F-3 to reflect changes made by its pipeline supplier, National Fuel Gas Supply Corporation ("National") in the service conditions and changes underlying Algonquin's Rate Schedule F-3.

Algonquin further states that on August 9, 1988 in Docket No. CP84-007 *et seq.*, National made a filing to, *inter alia*, move its Gas Service agreements from its FERC Gas Tariff First Revised Volume No. 2 into its First Revised Volume No. 1 under Rate Schedule CD pursuant the Stipulation and Agreement and the Commission Order, approving such Stipulation and Agreement, of June 18, 1984 (27 FERC 61,426 (1985)). National received approval of its filing on December 1, 1988, in Docket No. CP84-007-006 and 007.

Algonquin contends that as a result of the movement of the Gas Service agreements to National's Rate Schedule CD, Algonquin's Winter Requirement Quantity has been recalculated in accordance with Section 7 of National's Rate Schedule CD. Algonquin is making the instant filing in order to flow through, on a current basis, those changes made by National in the service underlying Algonquin's Rate Schedule F-3.

Algonquin further states that the changes made to the Winter

Requirement Quantities will have a projected annual effect on decreasing revenues and expensed by approximately $16,000.

Algonquin notes that copies of this filing were served upon each affected party and interested state commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before 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 in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-6431 Filed 3-17-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP82-121-003]

Tennessee Gas Pipeline Co.; Filing of Changes in Rates

March 15, 1989

Take notice that on March 7, 1989, Tennessee Gas Pipeline Company (Tennessee) tendered for filing changes in its FERC Gas Tariff pursuant to the Commission's orders in the referenced proceeding. *Tennessee Gas Pipeline Company*, 45 FERC ¶ 61,031, *reh'g granted in part*, 45 FERC ¶ 61,470 (1988). The following revised tariff sheets are to be effective January 1, 1989:

Second Revised Volume No. 1

Third Substitute Tenth Revised Sheet No. 20
Second Substitute Seventh Revised Sheet No. 20A
Second Substitute Sixth Revised Sheet No. 22
Second Substitute Third Revised Sheet No. 22A
Second Substitute Sixth Revised Sheet No. 23
Fourth Substitute Sixth Revised Sheet No. 24
Second Substitute First Revised Sheet No. 63
Third Substitute First Revised Sheet No. 64
Third Substitute Fifth Revised Sheet No. 220
Third Substitute Fifth Revised Sheet No. 222
Substitute Fifth Revised Sheet No. 223
Substitute Fifth Revised Sheet No. 224
Third Substitute Third Revised Sheet No. 226

Original Volume No. 2

Third Substitute Eleventh Revised Sheet No. 5
Third Substitute Tenth Revised Sheet No. 6
Fourth Substitute Fourth Revised Sheet No. 7
Fourth Substitute Sixth Revised Sheet No. 8
Fourth Substitute Fifth Revised Sheet No. 9
Second Substitute Seventh Revised Sheet No. 10

Tennessee states that the revised tariff sheets reflect the following changes:

1. A 100% load factor rate for interruptible sales under Rate Schedule R.

2. The Opinion No. 352, single centroid Mcf-mile method of allocation of mileage-related transmission costs.

3. A one-part rate based on an imputed load factor of 60% for full requirements customers purchasing under Rate Schedule GS.

4. The use of peak-day deliveries to allocate downstream commodity transmission costs to storage services.

Tennessee states that it originally filed to reflect these changes on January 19, 1989; however that filing was rejected on the grounds that the supporting workpapers were insufficient to determine compliance with the Commission's orders. (*See* Letter Order issued February 23, 1989.) Tennessee has provided detailed workpapers with its March 7, 1989 filing showing the steps taken to revise Tennessee's rates effective January 1, 1989 in strict compliance with the Commission's orders.

Although Tennessee does not believe any waivers are necessary for the Commission to accept the revised tariff sheets to be effective as proposed, Tennessee requests that the Commission grant any waivers it deems necessary.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 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. 89-6432 Filed 3-17-89; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Proposed Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the proposed procedures for disbursement of $5,048,242.96 plus accrued interest obtained by the DOE from Kaiser International Corporation (KEF-0125), Century Resources Development, Inc. (KEF-0126) and Entex Petroleum, Inc. (KEF-0127). The OHA has tentatively determined that the funds will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Cases, 51 FR 27899 (August 4, 1986).

DATE AND ADDRESS: Comments must be filed in duplicate within 30 days of the publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All comments should display a reference to case number KEF-0125.

FOR FURTHER INFORMATION CONTACT: Richard T. Tedrow, Deputy Director, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-8018.

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision and Order sets forth the procedures that the DOE has formulated to distribute funds obtained from Kaiser International Corporation, Century Resources Development, Inc. and Entex Petroleum, Inc. The funds are being held in an interest-bearing escrow account pending distribution by the DOE.

The DOE has tentatively determined to distribute these funds in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Cases, 51 FR 27899 (August 4, 1986). Under the Modified Policy, crude oil overcharge monies are divided among the states, the federal government, and injured purchasers of refined products. Refunds to the states will be distributed in proportion to each state's consumption of petroleum products during the period of price controls. Refunds to eligible purchasers will be based on the number of gallons of

petroleum products which they purchased and the extent to which they can demonstrate injury.

Applications for refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to provide two copies of their submissions. Comments must be submitted within 30 days of publication of this notice in the **Federal Register**, and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1 p.m. and 5 p.m., Monday through Friday, except Federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, SW., Washington, DC 20585.

Date: March 14, 1989.

George B. Breznay,

Director, Office of Hearings and Appeals.

Names of Firms: Kaiser International Corporation, Century Resources Development, Inc., Entex Petroleum, Inc.

Date of Filings: January 31, 1989.

Case Numbers: KEF-0125, KEF-0126, KEF-0127.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special refund procedures. 10 CFR 205.281. These procedures are used to refund monies to those injured by actual or alleged violations of the DOE price regulations.

In this Decision and Order, we consider three Petitions for the Implementation of Special Refund Procedures filed by the ERA for crude oil overcharge funds. The first Petition deals with Kaiser International Corporation (Case No. KEF-0125). This Office issued a Remedial Order against Kaiser for violations of the crude oil resale regulations. *Kaiser Aluminum International Corporation*, 15 DOE ¶ 83,007 (1986). Kaiser subsequently appealed to the Federal Energy Regulatory Commission. Kaiser and the ERA then entered into a Consent Order (No. 6C0X00280W) under which Kaiser remitted $1,950,000 in settlement of the ERA's claims. Century Resources Development, Inc. (Case No. KEF-0126) was also a reseller of crude oil. In order to resolve the ERA's claims against the firm, the ERA and Century entered into a Consent Order (No. 6C0X00287W)[1] under which the company paid $1,500,000 plus interest in installments for a total of $1,663,582.31. Finally, Extex Petroleum, Inc. (Case No. KEF-0127) was charged with pricing violations in first sales of crude oil. This Office issued a Remedial Order to Entex. *Entex Petroleum, Inc.*, 5 DOE ¶ 83,012 (1980), *modified*, 11 DOE ¶ 83,023 (1984). OHA later issued a second Remedial Order to Entex, also for crude oil price violations. *Entex Petroleum, Inc.*, 12 DOE ¶ 83,003 (1984), *modified*, 12 DOE ¶ 82,507 (1984). Entex then intervened in a suit against the DOE, *Sun Company* v. *United States*, C.A. No. 83-204/JRR (D.Del.), and the DOE counterclaimed to enforce the Remedial Orders. In 1987, Extex and the DOE entered into a Settlement Agreement (No. 660C00404W)[2] which was approved by the Department of Justice. Under this agreement, Entex has remitted $1,434,660.65 to settle the claims.

In sum, these three firms have remitted a total of $5,048,242.96 to the DOE. An additional $411,251.48 in interest has accrued on that amount as of December 31, 1988. This Proposed Decision and Order sets forth the OHA's plan to distribute these funds. Comments are solicited.

In general guidelines which the OHA may use to formulate and implement a plan to distribute refunds are set forth in 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE cannot readily identify the persons who may have been injured as a result of actual or alleged violations of the regulations or ascertain the amount of the refund each person should receive. *See Office of Enforcement*, 9 DOE ¶ 82,508 at 85,046-049 (1981) (discussing Subpart V and the authority of the OHA to fashion procedures to distribute refunds). *See also Office of Enforcement*, 8 DOE ¶ 82,597 at 85,398 (1981). We have considered the ERA's requests to implement Subpart V procedures with respect to the monies received from the three firms listed above, and have determined that such procedures are appropriate.

I. Background

On July 28, 1986, the DOE issued a Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986) ("the MSRP"). The MSRP, issued as a result of a court-approved Settlement Agreement in *In Re: The Department of Energy Stripper Well Exemption Litigation*, M.D.L. No. 378 (D. Kan.), provides that crude oil overcharge funds will be divided among the states, the federal government, and injured purchasers of refined petroleum products. Under the MSRP, up to 20 percent of these crude oil overcharge funds will be reserved initially to satisfy valid claims by injured purchasers of petroleum products. Eighty percent of the funds, and any monies remaining after all valid claims are paid, are to be disbursed equally to the states and federal government for indirect restitution.

The OHA has been applying the MSRP to all Subpart V proceedings involving alleged crude oil violations. *See* Order Implementing the MSRP, 51 FR 29689 (August 20, 1986). That Order provided a period of 30 days for the filing of any objections to the application of the MSRP, and solicited comments concerning the appropriate procedures to follow in processing refund applications in crude oil refund proceedings.

On April 6, 1987, the OHA issued a Notice analyzing the numerous comments which it received in response to the August 1986 Order. 52 FR 11737 (April 10, 1987). The Notice set forth generalized procedures and provided guidance to assist claimants that wish to file refund applications for crude oil monies under the Subpart V regulations. All applicants for refunds would be required to document their purchase volumes of petroleum products during the period of price controls and to prove that they were injured by the alleged overcharges. The Notice indicated that end-users of petroleum products whose businesses are unrelated to the petroleum industry will be presumed to have absorbed the crude oil overcharges, and need not submit any further proof of injury to receive a refund. Finally, we stated that refunds would be calculated on the basis of a per gallon refund amount derived by dividing crude oil violation amounts by the total consumption of petroleum products in the United States during the period of price controls. The numerator would include the crude oil overcharge monies that were in the DOE's escrow account at the time of the settlement and a portion of the funds in the M.D.L. 378 escrow at the time of the settlement.

The DOE has applied these procedures in numerous cases since the April 1987 Notice. *See, e.g., Amorient*

[1] The Consent Order itself is numbered 6C0X00288. Both the ERA and the DOE Controller's Office, however, assure us that the designation in the text is in fact the correct one.

[2] The Implement Petition in this case makes reference to Case No. 6C0C00404. In our review of the file, however, we have determined that the designation in the text is in fact the correct one.

Petroleum Company, California, 18 DOE ¶———, No. KEF–0101 (February 3, 1989); *New York Petroleum, Inc.*, 18 DOE ¶85,435 (1988); *Shell Oil Co.*, 17 DOE ¶85,204 (1988) (*Shell Oil*); *Ernest A. Allerkamp*, 17 DOE ¶85,079 (1988) (*Allerkamp*). These procedures have been approved by the United States District Court for the District of Kansas and the Temporary Emergency Court of Appeals (TECA). Various States had filed a Motion with the District Court, claiming that the OHA violated the Stripper Well Settlement Agreement by employing presumption of injury for end-users and by improperly calculating the refund amount to be used in those proceedings. On August 17, 1987, Judge Theis issued an Opinion and Order denying the States' Motion in its entirety. The court concluded that the M.D.L. 378 Settlement Agreement "does not bar OHA from permitting claimants to employ reasonable presumptions in affirmatively demonstrating injury entitling them to a refund." *In Re: The Department of Energy Stripper Well Exemption Litigation*, 671 F. Supp. 1318, 1323 (D. Kan. 1987). The court also ruled that, as specified in the April 1987 Notice, the OHA could calculate refunds based on a portion of the M.D.L. 378 overcharges. *Id.* at 1323–24. The States appealed the latter ruling. In affirming Judge Theis' decision, the TECA found, "It is clear that OHA is only creating a formula for calculating the proper allocation of funds in the overcharge escrow accounts which were specifically reserved by the Settlement for Subpart V claimants." This the Court concluded was a reasonable and a rational choice well within OHA's authority. *In Re: The Department of Energy Stripper Well Exemption Litigation*, 857 F.2d 1481, 1484 (Temp. Emer. Ct. App. 1988).

II. The Proposed Refund Procedures

A. Refund Claims

We now propose to apply the procedures discussed in the April 1987 Notice to the crude oil Subpart V proceedings that are the subject of the present determination. As noted above, $5,048,242.96 in alleged crude oil violation amounts is covered by this Proposed Decision. We have decided to reserve initially the full 20 percent of the alleged crude oil violation amounts, or $1,009,648.59 (plus interest), for direct refunds to claimants, in order to ensure that sufficient funds will be available for refunds to injured parties. The amount of the reserve may be adjusted downward later if circumstances warrant.

The process which the OHA will use to evaluate claims based on alleged crude oil violations will be modeled after the process the OHA has used in Subpart V proceedings to evaluate claims based upon alleged overcharges involving refined products. *See MAPCO, Inc.*, 15 DOE ¶ 85,097 at 88,191–92 (1986); *Mountain Fuel Supply Co.*, 14 DOE ¶ 85,475 at 88,869 (1986) (*Mountain Fuel*). As in non-crude oil cases, applicants will be required to document their purchase volumes and to prove that they were injured as a result of the alleged violations. Following Subpart V precedent, reasonable estimates of purchase volumes may be submitted. *See Greater Richmond Transit Company*, 15 DOE ¶ 85,028 at 88,050 (1986). Generally, it is not necessary for applicants to identify their suppliers of petroleum products in order to receive a refund.

Applicants who were end-users or ultimate consumers of petroleum products, whose businesses are unrelated to the petroleum industry, and who were not subject to the DOE price regulations are presumed to have absorbed rather than passed on alleged crude oil overcharges. In order to receive a refund, end-users need not submit any further evidence of injury beyond volumes of product purchased during the period of crude oil price controls. *See A. Tarricone, Inc.*, 15 DOE ¶ 85,495 at 88,893–96 (1987) (*A. Terricone*). The end-user presumption of injury, however, is rebuttable. *Berry Holding Company*, 16 DOE ¶ 85,405 at 88,797 (1987). If an interested party, however, submits specific evidence which is of sufficient weight to cast serious doubt on whether a particular refund applicant was actually injured, and thus ineligible for the application of the end-user presumption, that individual applicant will be required to purchase further evidence of injury to prove actual end-user status.

Reseller and retailer claimants must submit detailed evidence of injury, and may not rely on the presumptions of injury utilized in refund cases involving refined petroleum products. *See A. Tarricone*, 15 DOE at 88,896. They can, however, use econometric evidence of the type employed in the OHA Report to the District Court in the Stripper Well Litigation, 6 Fed. Energy Guidelines ¶ 90,507 (June 19, 1985). Applicants who received a crude oil refund pursuant to one of the escrows established in the Settlement Agreement have waived their rights to apply for crude oil refunds under Subpart V. *See Boise Cascade Corp.*, 16 DOE ¶ 85,214 at 88,411 (1987), *reconsideration denied*, 16 DOE ¶ 85,494 (1987); *Sea-Land Service, Inc.*, 16 DOE ¶ 85,496 at 88,991 n.1 (1987).

Refunds to eligible claimants who purchased refined petroleum products will be calculated on the basis of a volumetric refund amount derived by dividing the crude oil violation amounts involved in this determination ($5,048,242,96) by the total consumption of petroleum products in the United States during the period of price controls (2,020,997,335,000 gallons). *See Mountain Fuel*, 14 DOE at 88,868. This approach reflects the fact that crude oil overcharges were spread equally throughout the country by the Entitlements Program.[3] This yields a volumetric refund amount of $0.0000024979 per gallon. We propose to adopt a deadline of October 31, 1989 for refund applications submitted pursuant to this Decision. *See Amorient Petroleum Company, California*, 18 DOE ¶ ———, No. KEF–0101, slip op. at 8 (February 3, 1989).

As we stated in previous Decisions, a crude oil refund applicant will be required to submit only one application for crude oil overcharge funds. *See Allerkamp*, 17 DOE at 88,176. Any party that has previously submitted a refund application in crude oil refund proceedings need not file another application; that application will be deemed to be filed in all crude oil proceedings finalized to date. Applicants may be required to submit additional information to document their refund claims for these future amounts. Notice of any additional amounts available in the future will be published in the **Federal Register.**

B. Payments to the States and Federal Government

Under the terms of the MSRP, we propose that the remaining 80 percent of the alleged crude oil violation amounts subject to this Proposed Decision, or $4,038,594.37 plus interest, be disbursed in equal shares to the states and federal government for indirect restitution. Refunds to the states will be in proportion to the consumption of petroleum products in each sate during the period of price controls. The share or ratio of the funds which each state will

[3] The Department of Energy established the Entitlements Program to equalize access to the benefits of crude oil price controls among all domestic refiners and their downstream customers. To accomplish this goal, refiners were required to make transfer payments among themselves through the purchase and sale of "entitlements". This balancing mechanism had the effect of evenly disbursing overcharges resulting from crude oil miscertifications throughout the domestic refining industry. *See* Amber Refining Inc., 13 DOE ¶ 85,217 at 88,564 (1985).

receive is contained in Exhibit H of the M.D.L. 378 Settlement Agreement. These funds will be subject to the same limitations and reporting requirements as all other crude oil monies received by the states under that Settlement Agreement.

Before taking the actions we have proposed in this Decision, we intend to publicize our proposal and solicit comments on it. Comments regarding the tentative distribution process set forth in this Proposed Decision and Order should be filed with the OHA within 30 days of its publication in the **Federal Register.**

It is therefore ordered, That: The refund amounts remitted to the Department of Energy by Kaiser International Corporation, Century Resources Development, Inc., and Entex Petroleum, Inc. shall be distributed in accordance with the foregoing Decision.

[FR Doc. 89-6502 Filed 3-17-89; 8:45 am]

BILLING CODE 6450-01-M

EXPORT-IMPORT BANK OF THE UNITED STATES

Open Meeting of the Advisory Committee of the Export-Import Bank of the United States; Correction

In the document appearing on page 9562 in the issue of March 7, 1989, the paragraph under *Time and Place*, is changed to read as follows:

Time and Place: Tuesday, April 4, 1989, from 9:30 a.m. to 12:00 noon. The meeting will be held at Eximbank in Room 1143, 811 Vermont Avenue NW., Washington, DC 20571.

All other information remains the same.

Joan P. Harris,

Corporate Secretary.

[FR Doc. 89-6418 Filed 3-17-89; 8:45 am]

BILLING CODE 6690-01-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

March 10, 1989.

The Federal Communications Commission has submitted the following information collection requirements to the Office of Management and Budget for review and clearance under the Paperwork Reduction Act, as amended (44 U.S.C. 3501 et seq.).

Copies of the submissions may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037. Persons wishing to comment on these information collections should contact Eyvette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-3785. Copies of these comments should also be sent to the Commission. For further information contact Jerry Cowden, Federal Communications Commission, (202) 632-7513.

OMB Number: 3060-0360
Title: Section 80.409(c), Public coast station logs
Action: Extension
Respondents: Individuals or households, state or local governments, nonprofit institutions, and businesses (including small businesses)
Frequency of Response: Recordkeeping requirement
Estimated Annual Burden: 316 recordkeepers; 30,020 hours; 95 hours each
Needs and Uses: Rule is needed to implement statutory and treaty requirements for public coast stations. Information is used by FCC Field Operations Bureau personnel during inspections and investigations to ensure compliance with applicable rules and to assist in accident investigations.

OMB Number: 3060-0364
Title: Section 80.409 (d) & (e), Ship radiotelegraph logs and ship radiotelephone logs
Action: Extension
Respondents: Individuals or households, state or local governments, nonprofit institutions, and businesses (including small businesses)
Frequency of Response: Recordkeeping requirement
Estimated Annual Burden: 10,950 recordkeepers; 517,935 hours; 47.3 hours each
Needs and Uses: Rule is needed to implement statutory and treaty requirements for compulsory radio equipped ships. Information is used by FCC Field Operations Bureau personnel during inspections and investigations and to assist in vessel distress and disaster investigations.

OMB Number: 3060-0362
Title: Section 80.401, Station documents requirement
Action: Extension
Respondents: Individuals or households, state or local governments, nonprofit institutions, and businesses (including small businesses)
Frequency of Response: Recordkeeping requirement
Estimated Annual Burden: 10,208 recordkeepers; 44,200 hours; 4.33 hours each
Needs and Uses: Rule is needed to implement documentation requirements for the specified maritime radio stations contained in the ITU international radio regulations. A portion of the documentation may be used by government officials during inspections and investigations and the remainder is used by radio operators to support communications capability at sea.

OMB Number: 3060-0361
Title: Section 80.29, Change during license term
Action: Extension
Respondents: Individuals or households, state or local governments nonprofit institutions, and businesses (including small businesses)
Frequency of Response: On occasion
Estimated Annual Burden: 250 responses; 250 hours; 1 hour each
Needs and Uses: Rule is needed to ensure name and address of licensees in the Maritime Radio Services remain accurate.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-6477 Filed 3-17-89; 8:45 am]

BILLING CODE 6712-01-M

Information Collection Requirement Approval by Office of Management and Budget

March 9, 1989.

The following information collection requirements have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). For further information contact Doris Benz, Federal Communications Commission, telephone (202) 632-7513.

OMB No.: 3060-0021
Title: Civil Air Patrol Radio Station License [Application/Authorization]
Form No.: FCC 480

A revised form FCC 480 has been approved for use through 12/31/91. The January 1987 edition with an expiration date of 9/30/89 will remain in use until revised forms are available.

OMB No.: 3060-0093
Title: Application for Renewal of Radio Station License in Specified Services
Form No.: FCC 405

A revised form FCC 405 has been approved for use through 11/30/90. The March 1988 edition with an expiration

date of 11/30/90 will remain in use, with additional data to be included as required by Public Notice dated November 4, 1988 re: Renewals.

OMB No.: 3060–0128
Title: Application for Private Land Mobile and General Mobile Radio Services
Form No.: FCC 574

A revised form FCC 574 has been approved for use through 12/31/91. The November 1987 edition with an expiration date of 9/30/90 will remain in use until revised forms are available.

OMB No.: 3060–0132
Title: Supplemental Information 72–76 MHz Operational Fixed Stations
Form No.: FCC 1068–A

The approval on form FCC 1068–A has been extended through 12/31/91. The current edition will remain in use until updated forms are available.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc.89–6478 Filed 3–17–89; 8:45 am]

BILLING CODE 6712–01–M

[Report No. 1770]

Petitions for Reconsideration and Clarification Applications for Review and Motions for Stay of Action in Rule Making Proceedings

Petitions for reconsideration and clarification, applications for review and motions for stay have been filed in the Commission rule making proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, NW., Washington, DC, or may be purchased from the Commission's copy contractor International Transcription Service (202–857–3800). Oppositions to these petitions and applications must be filed within 15 days of the date of public notice of the petitions and applications in the **Federal Register**. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Ponte Vedra Beach, Florida) (MM Docket No. 85–376, RM's 4988 & 5378). Number of petitions received: 1.

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Live Oak and St. Augustine, Florida) (MM Docket No. 87–264, RM's 5729 & 6097). Number of petitions received: 1

Subject: Filing and Review of Open Network Architecture Plans. (CC Docket No. 88–2, Phase I). Number of petitions received: 11.

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Moscow, Ohio; Paris, Wilmore, Morehead, Falmouth, Winchester, Carrollton, Elizabethtown, Dry Ridge, Somerset, and Williamstown, Kentucky) (MM Docket No. 88–31, RM's 5682, 5848, 5979, 6166, 6384 & 6385). Number of petitions received: 1

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Ariton, Alabama and Bonifay, Florida. (MM Docket No. 88–148, RM's 6033 & 6101). Number of petitions received: 1.

Application for Review

Subject: Amendment of § 73.202(b), Table of FM Allotments, FM Broadcast Station. (Terrell and Daingerfield, Texas). Number of applications received: 1.

Motion for Stay

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Ponte Vedra Beach, Florida) (MM Docket No. 85–376, RM's 4988 & 5378). Number of motions received: 1.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89–6479 Filed 3–17–89; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL HOME LOAN BANK BOARD

Mesa 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 Mesa Federal Savings and Loan Association, Grand Junction, Colorado, on March 8, 1989.

Dated: March 14, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89–6419 Filed 3–17–89; 8:45 am]

BILLING CODE 6720–01–M

Mid-America Federal Savings and Loan Association, Parsons, 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 Mid-America Federal Savings and Loan Association, Parsons, Kansas on February 28, 1989.

Dated: March 14, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89–6420 Filed 3–17–89; 8:45 am]

BILLING CODE 6720–01–M

United Guaranty Federal Savings Bank, Tullahoma, 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 United Guaranty Federal Savings Bank, Tullahoma, Tennessee, on March 8, 1989.

Dated: March 14, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89–6421 Filed 3–17–89; 8:45 am]

BILLING CODE 6720–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title

46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-010776-043.
Title: Asia North America Eastbound Rate Agreement.
Parties:
American President Lines, Ltd.
Kawasaki Kisen Kaisha, Ltd.
A.P. Moller-Maersk Line
Mitsui O.S.K. Lines, Ltd.
Neptune Orient Lines, Ltd.
Nippon Liner System, Ltd.
Nippon Yusen Kaisha Line
Sea-Land Service, Inc.

Synopsis: The proposed amendment would clarify procedures for the discussion and modification or cancellation of proposed or effective independent actions.

Agreement No.: 202-010776-044.
Title: Asian North America Eastbound Rate Agreement.
Parties:
American President Lines, Ltd.
Kawasaki Kisen Kaisha, Ltd.
A.P. Moller-Maersk Line
Mitsui O.S.K. Lines, Ltd.
Neptune Orient Lines, Ltd.
Nippon Liner System, Ltd.
Nippon Yusen Kaisha Line
Sea-Land Service, Inc.

Synopsis: The proposed modification would permit the Agreement Executive to draw upon a party's security deposit in the event that such party fails to renew or restore its security deposit upon expiration.

Agreement No.: 202-010776-045.
Title: Asia North America Eastbound Rate Agreement.
Parties:
American President Lines, Ltd.
Kawasaki Kisen Kaisha, Ltd.
A.P. Moller-Maersk Line
Mitsui O.S.K. Lines, Ltd.
Neptune Orient Lines, Ltd.
Nippon Liner System, Ltd.
Nippon Yusen Kaisha Line
Sea-Land Service, Inc.

Synopsis: The proposed modification would authorize the parties to establish penalties to be paid for failure to file cargo statistics with the Agreement Office in a timely manner according to an agreed upon schedule.

Agreement No.: 202-010950-003.
Title: Aruba Bonaire Curacao Liner Association.
Parties:
Calypso Container Line, Inc.
Genesis Container Line, Ltd.
King Ocean Service de Venezuela, S.A.
Sea-Land Service, Inc.

Synopsis: The proposed modification would prohibit members from taking independent action to enter into loyalty contracts.

Agreement No.: 212-011213-006.
Title: Spain-Italy/Puerto Rico Island Pool Agreement.
Parties:
Compania Trasatlantica Espanola, S.A.
Nordana Line AS
Sea-Land Service, Inc.

Synopsis: The proposed modification would clarify the definition of "Pool Periods" with respect to delayed vessel sailings.

Agreement No.: 212-011234.
Title: U.S.A./South Europe Pool Agreement.
Parties:
Evergreen Marine Corporation
Lykes Lines (Lykes Bros. Steamship Co., Inc.)
Sea-Land Service, Inc.
Zim Israel Navigation Company, Ltd.
Italia Di Navigazione, S.p.A.
Nedlloyd Lines (Nedlloyd Lijnen B.V.)
P & O Containers (TFL) Ltd.

Synopsis: The proposed Agreement would authorize the parties to establish and maintain a revenue pool, agree upon a system and procedures for allocating space on their vessels for cargo carried in the Agreement eastbound trade from United States Atlantic and Gulf ports and U.S. interior points (except U.S. West Coast ports) via such ports to Italian, French and Spanish ports (excluding the Canary Islands), and points in Continental Europe via such ports.

By Order of the Federal Maritime Commission.

Dated: March 15, 1989.

Joseph C. Polking,
Secretary.

[FR Doc. 89-6472 Filed 3-17-89; 8:45 am]
BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

March 14, 1989.

Background

Notice is hereby given of final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.9 (OMB Regulation on Controlling Paperwork Burdens on the Public).

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Frederick J. Schroeder—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3822).

OMB Desk Officer—Gary Waxman—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202-395-7340).

Final approval under OMB delegated authority of the implementation of the following report:

Report title: Report on Total Foreign Exchange Turnover.
Agency form number: FR 3036A, B, C.
OMB Docket Number: 7100-0240.
Frequency: One-time survey for month of April 1989.
Reporters: 154 banks, 15 brokers, and 15 nonbank financial institutions.
Annual reporting hours: 1,840.
Estimated average hours per response: 10.
Estimated number of respondents: 184.

Small businesses are not affected.

General description of report:

This information collection is voluntary [12 U.S.C. 248(a), 353-358, 3105(b)] and is given confidential treatment [15 U.S.C. 552(b) (4) and (8)].

This survey will gather information for April 1989 on turnover volume in the U.S. foreign exchange market from 154 banking institutions, 15 brokers and 15 nonbank financial institutions. The information will assist in assessing market structure and in implementing monetary policy.

Board of Governors of the Federal Reserve System, March 14, 1989.

William W. Wiles,
Secretary of the Board.

[FR Doc. 89-6401 Filed 3-17-89; 8:45 am]
BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Agency Information Collection Activities Under OMB Review

The GSA hereby gives notice under the Paperwork Reduction Act of 1980 that it is requesting the Office of Management and Budget (OMB) to renew expiring information collection 3090-0021, Profit/Loss Statement—Operating Statement, GSA Form 2817. This form is used by offerors submitting proposals to perform GSA food service contracts.

AGENCY: Concession Branch (PMFC), GSA.

ADDRESSES: Send comments to Bruce McConnell, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to Mary L. Cunningham, GSA Clearance Officer, General Services Administration (CAIR), F Street at 18th NW., Washington, DC 20405.

Annual Reporting Burden: Firms responding, 250; responses, 1 per year; average hours per response, 1; burden hours, 250.

FOR FURTHER INFORMATION CONTACT: Alice Anderson, 202–566–0542.

Copy of Proposal: A copy of the proposal may be obtained from the Information Collection Management Branch (CAIR), Room 3014, GS Building, Washington, DC 20405, or by telephoning 202–535–7691.

Dated: March 3, 1989.

Emily C. Karam,

Director, Information Management Division (CAI).

[FR Doc. 89–6439 Filed 3–17–89; 8:45 am]

BILLING CODE 6820–23–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committees; Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meetings: The following advisory committee meetings are announced:

Obstetrics—Gynecology Devices Panel

Date, time, and place. April 10, 1989, 9 a.m., Rm. 800, Hubert H. Humphrey Bldg., 200 Independence Ave. SW., Washington, DC.

Type of meeting and contact person. Open public hearing, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 5 p.m.; Colin M. Pollard, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the committee contact person before March 24, 1989, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will review, discuss, and make a recommendation on a premarket approval application (PMA) for an absorbable adhesion barrier that is indicated as a surgical adjuvant for reducing the incidence, extent, and severity of postoperative pelvic adhesions. The panel will also discuss data requirements for PMA applications on preamendments class III bipolar coagulators used in laparoscopic tubal sterilization (21 CFR 884.4150). Specifically, the panel will address: (1) FDA's PMA guidelines on this device, and (2) the effect upon human fallopian tubes of different waveforms of electrical energy at advancing power settings.

Dental Products Panel

Date, time, and place. April 20 and 21, 1989, 9 a.m., Conference Rm. G, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, April 20, 1989, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 5 p.m.; open public hearing, April 21, 1989, 9 a.m. to 10 a.m., unless public participation does not last thal long; open committee discussion, 10 a.m. to 5 p.m.; Gregory Singleton, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the committee contact person before April 5, 1989, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On April 20, 1989, the committee will discuss a premarket approval application for a periodontal test kit. On April 21, 1989, the committee will make a classification recommendation for temporomandibular joint implants.

Veterinary Medicine Advisory Committee

Date, time, and place. April 25 and 26, 1989, 8:15 a.m., Conference Rm. G, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open committee discussion, April 25, 1989, 8:15 a.m. to 10:15 a.m.; open public hearing, 10:30 a.m. to 11:30 a.m., unless public participation does not last that long; open committee discussion, 1 p.m. to 2 p.m.; open public hearing, 2 p.m. to 3:15 p.m., unless public participation does not last that long; open committee discussion, 3:15 p.m. to 4:15 p.m.; open committee discussion, April 26, 1989, 8:15 a.m. to 8:45 a.m.; open public hearing, 8:45 a.m. to 11 a.m., unless public participation does not last that long; open committee discussion, 11 a.m. to 11:30 a.m.; Gary E. Stefan, Center for Veterinary Medicine (HFV–244), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–0830.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational new animal drugs, feeds, and devices for use in the treatment and prevention of animal diseases and increased animal production.

Agenda—Open public hearing. Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should notify the committee contact person.

Open committee discussion. The committee will discuss: (1) The status of sulfamethazine products, (2) consumption factors used to establish drug residue tolerances, and (3) implementation of the Generic Animal Drug and Patent Restoration Act.

Psychopharmacologic Drugs Advisory Committee

Date, time, and place. April 26, 1989, 9 a.m., Conference Rms. G and H, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, April 26, 1989, 9

a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to conclusion; Frederick J. Abramek, Center for Drug Evaluation and Research (HFD–120), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4020.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational human drugs for use in the practice of psychiatry and related fields.

Agenda—Open public hearing. Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should notify the committee contact person.

Open committee discussion. The committee will discuss new drug application 19–758 submitted by Sandoz Pharmaceuticals Corp. for Clozaril® (clozapine), a neuroleptic agent.

Fertility and Maternal Health Drugs Advisory Committee

Date, time, and place. April 27 and 28, 1989, 9 a.m., Conference Rms. G and H, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, April 27, 1989, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 5 p.m.; open public hearing, April 28, 1989, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 5 p.m.; Philip A. Corfman, Center for Drug Evaluation and Research (HFD–510), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3510.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational human drugs for use in the control of fertility and women's health.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the committee contact person before April 14, 1989, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On April 27, 1989, the committee will discuss a new drug application (NDA) submitted by the Population Council for a new contraceptive, Norplant™. On April 28, 1989, the committee will discuss an NDA submitted by Syntex, Inc., for nafarelin acetate for the treatment of endometriosis.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI–35), Food and Drug Administration, Rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: March 13, 1989.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 89–6426 Filed 3–17–89; 8:45 am]

BILLING CODE 4160–01–M

National Institutes of Health

Establishment of the Divison of Research Grant Advisory Committee

Pursuant to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463, 86 Stat. 770–776), and section 402(b)(6) of the Public Health Service Act, (42 U.S. Code 282(b)(6) as amended, the Director, NIH, announces the establishment, effective April 1, 1989, of the Division of Research Grants Advisory Committee.

The Division of Research Grants advisory Committee shall provide technical and scientific advice to the Director, NIH, and the Director of Research Grants, on matters relating to (a) review procedures and policies for the evaluation of scientific and technical merit of applications for grants and awards and for (b) the development and management of modern information

systems relevant to the support of biomedical and behavioral research and training programs.

Duration is continuing unless formally determined by the Director, NIH, that termination would be in the best public interest.

Dated: March 14, 1989.

James B. Wyngaarden,

Director, NIH

[FR Doc. 89-6508 Filed 3-17-89; 8:45 am]

BILLING CODE 4140-01-M

National Cancer Institute; Meeting of the National Cancer Advisory Board, Subcommittee on Cancer Centers

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Cancer Advisory Board, Subcommittee on Cancer Centers, May 3, 1989, at the O'Hare Hilton Hotel, O'Hare Airport, Chicago, Illinois, 60666. The entire meeting will be open to the public from 9:30 a.m. to 4 p.m. Attendance by the public will be limited to space available.

This is a prelude to a session on the Cancer Centers Program at the full Board later in May. Discussions will include a long-range plan for the Cancer Center Program, organizational location of the Program, criteria for comprehensiveness, and other related issues.

Mrs. Winifred J. Lumsden, Committee Management Officer, National Cancer Institute, 9000 Rockville Pike, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496-5708) will provide summaries of the meeting and a roster of the Subcommittee members, upon request.

Ms. Judith Whalen, Executive Secretary, Subcommittee on Cancer Centers, National Cancer Institute, Building 31, Room 11A19, National Institutes of Health, Bethesda, Maryland 20892 (301/496-5515) will furnish substantive program information.

Dated: March 14, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-6504 Filed 3-17-89; 8:45 am]

BILLING CODE 4140-01-M

National Cancer Institute; Meetings of the National Committee To Review Current Procedures for Approval of New Drugs for Cancer and AIDS

Pursuant to Pub. L. 92-463, notice is hereby given of the meetings of the National Committee to Review Current Procedures for Approval of New Drugs for Cancer and AIDS to be held at the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland, 20892. These meetings will be open to the public and attendance by the public will be limited to space available. All meetings will begin at 9 a.m. and adjourn at 4 p.m. The dates and location of the meetings are listed below.

Dr. Elliott H. Stonehill, Assistant Director, National Cancer Institute, 9000 Rockville Pike, Building 31, Room 11A29, National Institutes of Health, Bethesda, Maryland 20892 (301/496-1148) will provide agenda details, transcripts or summaries of the meetings and rosters of the Committee members upon request.

1989 Meetings of the Committee are as follows:

May 2—Tuesday; Conference Room 10, Building 31C
July 20—Thursday; Wilson Hall, Building 1
September 13—Wednesday; Wilson Hall, Building 1
October 25—Wednesday; Conference Room 10, Building 31C
November 9—Thursday; Conference Room 10, Building 31C
December 7—Thursday; Conference Room 10, Building 31 C

Dated: March 14, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-6505 Filed 3-17-89; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Dental Research; Meeting of Dental Research Programs Advisory Committee

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Dental Research Programs Advisory Committee, National Institute of Dental Research, April 25-26, 1989, in Building 31, Conference Room 7, National Institutes of Health, Bethesda, Maryland, from 9 a.m. to recess of April 25 and 9 a.m. to adjournment on April 26.

The entire meeting will be open to the public to discuss research progress and ongoing plans and programs on the causes, nature, diagnosis, treatment and prevention of oral diseases and conditions. Attendance by the public will be limited to space available.

Dr. Wayne Wray, Deputy Director for Extramural Program, NIDR, NIH, Westwood Building, Room 504, Bethesda, MD 20892 (telephone 301/496-7748) will provide a summary of the meeting, roster of committee members and substantive program information upon request.

(Catalog of Federal Domestic Assistance Program Nos. 13.121—Diseases of the Teeth and Supporting Tissues: Caries and Restorative Materials; Periodontal and Soft Tissue Diseases; 13.122—Disorders of Structure, Function, and Behavior, Craniofacial Anomalies, Pain Control, and Behavioral Studies; 13.845—Dental Research Institutes, National Institutes of Health.)

Dated: March 14, 1989.

Betty J. Beveridge,

Committee Management Office, NIH.

[FR Doc. 89-6506 Filed 3-17-89; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

[Docket No. N-89-1917; FR 2606]

Unutilized and Underutilized Federal Buildings and Real Property Determined To Be Suitable for Use for Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized and underutilized Federal property determined by HUD to be suitable for possible use for facilities to assist the homeless.

DATE: March 20, 1989.

ADDRESS: For further information, contact Morris Bourne, Director, Transitional Housing Development Staff, Room 9140, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 755-9075; TDD number for the hearing- and speech-impaired (202) 426-0015. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988, court order in *National Coalition for the Homeless v. Veterans Administration*, D.C.D.C. No. 88-2503-CG, HUD publishes a Notice, on a weekly basis, identifying unutilized and underutilized Federal buildings and real property determined by HUD to be suitable for use for facilities to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable this week.

Dated: March 14, 1989.

James E. Schoenberger,

General Deputy, Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 89-6414 Filed 3-17-89; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

Applicant: Frank J. Mazzotti, University Park, PA. PRT-713497.

The applicant requests a permit to continue the following activities on American crocodiles (*Crocodylus acutus*) in the adjacent to Everglades National Park, Dade and Monroe counties, Florida, to determine the effects of water management practices and human activities upon crocodiles: (a) Locate and monitor nests and relocate nests to prevent loss when necessary; (b) Capture, sex, weigh, and mark crocodiles and relocate as necessary; (c) Attach radio transmitters to no more than 20 hatchlings and 10 juveniles per year; and (d) Perform chemical analysis on tissues taken from dead crocodiles and failed eggs.

Applicant: James A. Herring, Agoura, CA. PRT-735960.

The applicant requests a permit to import the personal sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*), culled from the captive-herd maintained by Mr. F.W.M. Bowker, Jr., Grahamstown, Repubic of South Africa, for the purpose of enhancement of survival of the species.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm), Room 403, 1375 K Street NW., Washington, DC 20005, or by writing to the Director, U.S. Office of Management Authority, P.O. Box 27329, Central Station, Washington, DC 20038-7329.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Date: March 10, 1989.

R.K. Robinson,

Chief, Branch of Permits, U.S. Office of Management Authority.

[FR Doc. 89-6510 Filed 3-17-89; 8:45 am]

BILLING CODE 4310-AN-M

Receipt of Applications for Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

Applicant: William Conway, Bronx, NY. PRT-735515.

The applicant requests a permit to import one pair of proboscis monkeys (*Nasalis larvatus*), from the Koln Zoo, Koln, West Germany for the purpose of enhancement of propagation. The male is captive-born and the female is of unknown origin.

Applicant: Hawthorn Corporation, Grayslake, IL. PRT-735644.

The applicants requests a permit to import one male and one female captive born tigers (*Panthera tigris*) from Japan. These tigers are the progeny of applicant's own tigers that are currently performing in Japan. The tigers will be imported for purposes of exhibition and captive breeding. In the future, the applicant will export and re-import these animals for the same purposes.

Applicant: Hawthorn Corporation, Grayslake, IL. PRT-735645.

The applicants requests a permit to import two captive born female tigers (*Panthera tigris*) from Germany. These tigers are the progeny of applicant's own tigers that are currently performing in Germany. The tigers will be imported for purposes of exhibition and captive breeding. In the future, the applicant will export and re-import these animals for the same purposes.

Applicant: International Animal Exchange, Inc., Fernale, MI. PRT-735397.

The applicant requests a permit to purchase one male snow leopard (*Panthera uncia*) from the Miller Park Zoo, Bloomington, Illinois, and export the leopard to the Zoological and Botanical Garden of the City of Budapest, Budapest, Hungary, for zoological display and breeding purposes.

Applicant: San Diego Zoo, San Diego, CA. PRT-735556.

The applicant requests a permit to export five captive-hatched male Andean condors (*Vultur gryphus*) to the Instituto National para el Desarrollo de los Recursos Naturales y Renovables (INDERENA), Bogota, Columbia. These birds will be released to the wild in the Paramo Chingaza and Biological Reserve "La Planada", Columbia, as a part of the release program.

Applicant: San Diego Zoo, San Diego, CA. PRT-735800.

The applicant requests a permit to import blood and tissue samples taken from Chinese monals (*Lophophorus lhuysii*), Elliot's pheasants (*Syrmaticus elliotí*) and brown eared pheasants (*Crossoptilon mantchuricum*) that died of natural causes. These samples will be imported from the Beijing Center for Breeding Endangered Animals, Beijing, China for the purpose of scientific research. They plan to import 4 vials of blood serum and 6 vials of tissue from 10 individuals of each species for a total of 300 vials.

Applicant: San Diego Zoo, San Diego, CA. PRT-735799.

The applicant requests a permit to import two male and two female white eared pheasants (*Crossoptilon crossoptilon*) that were captive-hatched at Tierpark Berlin, East Berlin, German Democratic Republic. These birds will be included as a part of their captive breeding program.

Applicant: David Anderson, Lomita, CA. PRT-735858.

The applicant requests a permit to import the personal sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*), culled from a captive-herd maintained in the Republic of South Africa, for the purpose of enhancement of survival of the species.

Applicant: Burnet Park Zoo, Syracuse, NY. PRT-735664.

The applicant requests a permit to purchase in interstate commerce four captive-born white-handed gibbons (*Hylobates lar*) from the Zoo Atlanta, Atlanta, GA, for the purpose of enhancement of propagation.

Applicant: Seattle Aquarium, Seattle, WA 98101. PRT-735871.

The applicant requests a permit to import two wild-caught giant Japanese salamanders (*Andrias davidianus japonicus*) from Suma Aqualife Park, Kobe, Japan, for the purpose of public display and conservation education.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 a.m. to 4:15 p.m.) Room 403, 1375 K Street NW., Washington DC 20005, or by writing to the Director, U.S. Office of Management Authority, P.O. Box 27329, Central Station, Washington, DC 20038-7329.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above

address. Please refer to the appropriate PRT number when submitting comments.

Date: March 10, 1989.

R.K. Robinson,

Chief, Branch of Permits, U.S. Office of Management Authority.

[FR Doc. 89-6511 Filed 3-17-89; 8:45 am]

BILLING CODE 4310-AN-M

Ivory Export Quotas Issued by the Secretariat of the Convention on International Trade in Endangered Species of Wild Fauna and Flora's Ivory Control System

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The African Elephant Conservation Act prohibits the import of raw or worked ivory that is in violation of the Convention on International Trade in Endangered Species of Wild Fauna and Flora's Ivory Control System (CITIES). As ivory export notifications of quotas are received from the Secretariat by the Fish and Wildlife Service (Service), they will be published in the **Federal Register**. This Notice announces 1989 quotas for Botswana, Cameroon, Central African Republic, Congo, Ethiopia, Malawi, Mozambique, South Africa (Transvaal Province), Zambia and Zimbabwe. Ethiopia is a non-CITES party therefore, only sport-hunted trophies can be imported from Ethiopia.

EFFECTIVE DATE: March 20, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Frank McGilvrey, Office of Management Authority, telephone (202) 343-1095.

SUPPLEMENTARY INFORMATION: On October 7, 1988, the President signed into law the African Elephant Conservation Act (Act), Title II of the Endangered Species Act of 1973, Appropriations Authorizations for Fiscal Years 1988-1992 (Pub. L. 100-478, 102 Stat. 2306). Section 2203(3) states that it is unlawful for any person "to import raw or worked ivory that was exported from an ivory producing country in violation of that country's laws or of the CITES Ivory Control System." This System allows import of raw ivory only from producer countries that have submitted a quota to the Secretariat. In addition, section 2202(e) states that "Individuals may import sport-hunted elephant trophies that they have legally taken in an ivory producting country that has submitted an ivory quota." The law prohibits import of commercial ivory from non-CITES parties. However, sport-hunted trophies may be imported from non-CITES parties if they have an approved quota. Therefore, ony sport-hunted trophies may be imported from Ethiopia.

Through the **Federal Register**, notices will be published of quotas as notifications are received from the CITES Secretariat. Raw ivory and sport-hunted trophies may be imported into the United States only from nations which have quotas for the year in which the import will take place. As of this date, import of raw ivory and trophies will be allowed for 1989 only from the following nations:

Country	1989 Raw Ivory Quota
Botswana	1000 tusks
Cameroon	298 tusks
Central African Republic	800 tusks
Congo	1042 tusks
Ethiopia	870 tusks
Malawi	238 tusks
Mozambique	17,961 tusks
South Africa	2236 tusks
Zambia	3772 tusks
Zimbabwe	5000 tusks

This notice was prepared by Frank McGilvery, U.S. Fish and Wildlife Service, Office of Management Authority.

Date: March 15, 1989.

Marshall P. Jones, Jr.,

Chief, Office of Management Authority.

[FR Doc. 89-6484 Filed 3-17-89; 8:45 am]

BILLING CODE 4310-55-M

Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora; Eighteenth Meeting of the Standing Committee

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The Service announces a public meeting to discuss the results of the eighteenth meeting of the Standing Committee and agenda items for the seventh regular meeting of the Conference of the Parties.

DATES: The public meeting will be held on March 29, 1989, from 2:00-4:00 p.m. The Service will consider information and comments concerning nonspecies items on the provisional agenda for the seventh meeting of the Conference of the Parties received by May 31, 1989.

ADDRESS: The public meeting will be held in the North Penthouse of the Department of the Interior's Main Building at 18th and C Streets, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Arthur Lazarowitz, Acting Chief, Operations Branch, Office of Management Authority, U.S. Fish and Wildlife Service, P.O. Box 27329, Washington, DC 20038-7329, telephone (202) 343-4963.

SUPPLEMENTARY INFORMATION: On December 8, 1988, the service announced that it had received notice from the Secretariat of the Convention on International Trade in Endangered Species of Wild Fauna and Flora ("CITES") that the seventh meeting of the Conference of the Parties ("COP7") would be held in Lausanne, Switzerland from October 9-20, 1989 and that the provisional agenda for that meeting would be prepared by the Secretariat and the Standing Committee at its eighteenth meeting (see 53 FR 49611). The Service participated in the 18th Meeting of the Standing Committee and by this notice calls for a public meeting to discuss the results of that meeting and the agenda items for COP7. While it has not yet received formal notice of the provisional agenda for COP7, the Service here produces a draft of that document:

Convention on International trade in Endangered Species of Wild Fauna and Flora

Seventh Meeting of the Conference of the Parties

Lausanne (Switzerland), 9 to 20 October 1989

Agenda (provisional)

I. Official opening ceremony
II. Welcoming address
III. Adoption of the Rules of Procedure
IV. Election of the Chairman and Vice-Chairman of the meeting and of Committees I and II
V. Adoption of the Agenda and Working Programme
VI. Establishment of the Credentials Committee and Committees I and II
VII. Report of the Credentials Committee
VIII. Admission of the observers
IX. Matters related to the Standing Committee
  1. Report by the Chairman
  2. Election of new members
  3. Election of alternate regional members
X. Report of the Secretariat
XI. Financing and budgeting of the Secretariat and of meetings of the Conference of the Parties 1. Financial report for 1987-1988
  2. Anticipated expenditure for 1989
  3. Budget for 1990-1991 and Medium Term Plan for 1992-1993

4. External funding
XII. Committee reports and recommendations
1. Animals Committee
2. Plants Committee
3. Identification Manual Committee
4. Nomenclature Committee
XIII. Interpretation and implementation of the Convention
1. Report on national reports under Arcitle VIII, Paragraph 7, of the Convention
2. Review of alleged infractions
3. Trade in ivory from African elephants
4. Trade in rhinoceros products
5. Trade in leopard skins
6. Trade in plant specimens
7. Marking of specimens
8. Significant trade in Appendix II species
9. Implementation of the Convention with regard to tourist souvenir specimens
10. Export/re-export permits/certificates
11. Treatment of genuine re-export certificate for illegal specimens
12. Guidelines for evaluating marine turtle ranching proposals
13. Review of Resolution Conf.5.21 on Special Critiera for the Transfer of Taxa from Appendix I to Appendix II
14. Review and implementation of Berne Criteria
15. Consideration of applications for inclusions of new species in the "Register of Operations which Breed Specimens of Species Included in Appendix I in Captivity for Commercial Purposes"
16. Transport of live animals
XIV. Consideration of proposals for amendment of Appendices I and II
1. Regular proposals
2. Ten year Review proposals
3. Proposals concerning export quotas
XV. Conclusion of the meeting
1. Determination of the time and venue of the next regular meeting of the Conference of the Parties
2. Closing remarks

Announcement of Public Meeting Concerning the 18th Meeting of the Standing Committee and the Provisional Agenda for COP7

To inform the public of the results of the eighteenth meeting of the Standing Committee and discuss the items of the provisional agenda for COP7, the Service announces that it will hold a public meeting on March 29, 1989, from 2:00–4:00 p.m. in the North Penthouse of the Department of the Interior's Main Building, at 18th and C Streets NW., Washington, DC.

Request for Information and Comments

The Service invites information and comments on the COP7 provisional agenda items, exclusing item XIV, Consideration of proposals for amendment of Appendices I and II. Item XIV will be the subject of a separate series of notices. Information and comments should be submitted to the Service no later than May 31, 1989.

Observers

Article IX, Paragraph 7 of the Convention provides:

> Any body or agency technically qualified in protection, conservation or management of wild fauna and flora, in the following categories, which has informed the Secretariat of its desire to be represented at meetings of the Conference by the observers, shall be admitted unless at least one-third of the Parties object:
>
> (a) International agencies or bodies, either governmental or non-governmental, and national governmental agencies and bodies; and
>
> (b) National non-governmental agencies or bodies which have been approved for this purpose by the State in which they are located. Once admitted these observers shall have the right to participate, but not to vote.

Persons wishing to be observers representing United States national non-governmental organizations must receive prior approval of the Fish and Wildlife Service. Requests for such approval should include evidence of technical qualification in protection, conservation or management of wild fauna and flora which should be sent to the Management Authority Office (see "**ADDRESSES**" above).

Other Meeting and Notices

The Service plans to publish a notice of proposed negotiating positions for COP7 around the middle of July and to hold a public meeting with regard to them soon thereafter.

This notice was prepared by Arthur W. Lazarowitz, Office of Management Authority.

Date: March 15, 1989.

Marshall P. Jones, Jr.,

Chief, Office of Management Authority.

[FR Doc. 89–6485 Filed 3–17–89; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Land Management

[AK–980–09–5101–09–XLKE; AA–58353]

Public Scoping Meeting on Environmental Impactment Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent to Conduct a Public Scoping Meeting and Prepare an EIS.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act, the Bureau of Land Management, Alaska State Office, will be directing the preparation of an EIS to be prepared by a third party contractor on the impacts of developing a large underground gold mine and associated surface facilities including a hydroelectric dam, the Alaska-Juneau Mine Project, proposed on public and private lands in the City and Borough of Juneau in southeast Alaska.

DATES: In accordance with 40 CFR 1501.7 a public scoping meeting has been scheduled at the following location: Juneau, Alaska—Assembly Chambers, Municipal Building, 155 South Seward Street, April 19, 1989. Public Scoping Meeting 7–10 pm AST.

Written scoping comments must be received not later than May 3, 1989.

ADDRESSES: The Alaska-Juneau Mine Project Description and right-of-way application are available for public inspection at the following locations:

Bureau of Land Management, Alaska State Office, Public Room, Federal Office Building, Anchorage, Alaska.

Bureau of Land Management, Anchorage District, Branch of Field and Office Services, 6881 Abbott Loop, Anchorage, Alaska.

Department of Community Development, City and Borough of Juneau, Municipal Building, 155 South Seward Street, Juneau, Alaska.

Written comments and suggestions should be sent to:

A–J Mine Project Manager, Bureau of Land Management, Alaska State Office (983), 222 West 7th Avenue, #30, Anchorage, Alaska 99513.

FOR FURTHER INFORMATION CONTACT: J. David Dorris or William M. Fowler at (907) 267–1218 or within Alaska (800) 478–1236.

SUPPLEMENTARY INFORMATION: On June 20, 1986, Echo Bay Exploration, Inc. (EBE) was granted a right-of-way for a mine access road across Federal lands to access the Sheep Creek Portal of the inactive Alaska-Juneau (A–J) Mine (a historic gold mine) located on patented mining lands near Juneau, Alaska. After three years of exploration and study EBE, on March 1, 1989, applied for a right-of-way on Federal lands and State of Alaska selected lands to allow for construction and operation of facilities to access and reopen the A–J Mine and construction and operation of a 345 feet high by 675 feet long dam across Sheep Creek for tailings disposal and a 4.9 MW hydroelectric power plant.

Adits of approximately 11,000 feet in length and underground milling facilities

about 2.5 miles south of Juneau will be constructed on lands selected by the State of Alaska and currently on the priority list for conveyance to the State. These lands should be conveyed to the State prior to the beginning of mine development. The dam, the tailings impoundment area, a 5,200 foot long penstock, and a new access road to the Sheep Creek Portal will be located on Federal lands withdrawn under a powersite classification.

Other development facilities will be constructed and operated on lands owned by the City and Borough of Juneau and the Alaska Electric Light and Power Company. Alternative tailings disposal sites proposed by EBE are located on lands administered by the Juneau Ranger District, U.S. Forest Service (USFS) of the Tongass National Forest.

The A–J Mine Project will process 22,500 tons per day of low grade (0.047 oz/ton gold) ore and 1,000 tons per day of waste rock. Total mine tailings are estimated to be 100,000,000 tons. The capital cost of the project is approximately $170,000,000. The mine will employ a workforce of 450 people for about 13 years of mining. Processing of the ore will consist of a variety of mechanical processes for about 96 percent of the ore with the remaining four percent going through a cyanide leaching process.

On March 13, 1989, EBE filed an application with the Alaska District, U.S. Army Corps of Engineers (Corps) for facilities of the project which are subject to permits under Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act.

EBE also must file applications with the Environmental Protection Agency (EPA) for National Pollutant Discharge Elimination System (NPDES) permits and with the Federal Energy Regulatory Commission (FERC) for a Powersite License.

In addition to Federal permits, EBE intends to file a right-of-way application with the State of Alaska to use State ownerships.

In accordance with section 102(2)(c) of the National Environmental Policy Act, the BLM has identified the need to prepare an Environmental Impact Statement (EIS). In accordance with 40 CFR 1506.5 BLM will assume lead and act as the Federal focal point. In accordance with 40 CFR 1506.2 the BLM, the Corps, the EPA, the USFS and the FERC are preparing a coordinated public involvement and decision process to reduce to the fullest extent possible duplication of effort.

All interested parties are invited to participate in the scoping process which will:

1. Determine the scope and significant issues to be analyzed in depth in the EIS.

2. Eliminate insignificant issues, concerns and opportunities.

3. Determine whether significant issues, concerns and opportunities are addressed in depth prior to the Department of the Interior grant of right-of-way.

Specific issues may involve the following questions:

What actions are necessary to protect subsistence resources?

What actions are necessary to protect fish and wildlife?

What actions are necessary to protect recreational opportunities?

What actions are necessary to protect or minimize impacts to wetlands, waterbodies, streams, and the marine environment?

What significant social and economic impacts need to be considered?

What are the cumulative impacts of several ongoing or planned large scale mining projects in the region near Juneau?

In accordance with 40 CFR 1501.6 the following agencies have been requested to participate in the EIS process by BLM:

State of Alaska

Department of the Interior—Fish and Wildlife Service

Environmental Protection Agency

Department of Agriculture—Forest Service

Department of Commerce—National Marine Fisheries Service

Department of the Army—Corps of Engineers

Federal Energy Regulatory Commission

The EIS will be prepared under third party contract by James M. Montgomery Consulting Engineers. A draft EIS is expected to be available for public review and comment in the summer of 1989 with the final EIS completed in the winter of 1989–90. Echo Bay Exploration proposes to begin construction in June of 1990.

John F. Santora,

Deputy State Director for Mineral Resources, Bureau of Land Management, Alaska.

[FR Doc. 89–6422 Filed 3–17–89; 8:45 am]

BILLING CODE 4310–JA–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–55; Sub-No. 289X]

CSX Transportation, Inc.; Abandonment Exemption in Baltimore, MD

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 0.4-mile line of railroad between milepost 1.34 near Mt. Clare "A" Yard and milepost 1.74 near Curtis Bay Jct., in Baltimore, MD.

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 19, 1989 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail

[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 I.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 effecive date of this exemption.

[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).

banking statements under 49 CFR 1152.29 must be filed by March 30, 1989.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by April 10, 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:

Lawrence H. Richmond, CSX Transportation, 100 North Charles Street, Baltimore, MD 21201,
and
Charles M. Rosenberger, 500 Water Street, Jacksonville, FL 32202.

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 the EA by March 24, 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 13, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89–6363 Filed 3–17–89; 8:45 am]

BILLING CODE 7035–01–M

[Service Order No. 1506; Supplemental Order No. 1]

The New York, Susquehanna and Western Railway Corp. Authorized To Operate Tracks of Delaware and Hudson Railway Co., Debtor (Francis P. Dicello, Trustee)

AGENCY: Interstate Commerce Commission.

ACTION: Service Order No. 1506, Supplemental Order No. 1.

SUMMARY: This supplemental order extends Service Order No. 1506 and authorizes the New York, Susquehanna and Western Railway Corporation (NYS&W) to continue to operate without Federal subsidy or other Federal compensation over tracks of the Delaware and Hudson Railway Company (D&H) through March 16, 1990.

Under 49 U.S.C. 11123(a), the Commission may issue a service order for up to 30 days when it finds that a "failure in traffic movement exists which creates an emergency situation of such magnitude as to have substantial adverse effects on rail service in the United States or a substantial region of the United States." Extension of the order requires that the Commission, after a hearing, certify the continued existence of the emergency.

In Service Order No. 1506, served February 13, 1989, we found that such an emergency situation existed and authorized the NYS&W to operate without Federal subsidy or other Federal compensation over tracks of the D&H for 30 days (*i.e.*, from February 14 through March 15, 1989). After reviewing comments and responses filed pursuant to our February 13 order, as well as the views presented at an oral argument held March 8, 1989, we certify the continued existence of the emergency and extend our order.

DATES: This order shall become effective at 12:01 a.m., March 16, 1989, and shall remain in effect until 11:59 p.m., March 16, 1990, unless otherwise modified, amended, or vacated by order of this Commission.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 275–7245 or Bernard Gaillard (202) 275–7849 (TDD for hearing impaired: (202) 275–1721)

SUPPLEMENTARY INFORMATION: Section 11123(a) of the Interstate Commerce Act authorizes the Commission to act in emergency situations where it finds that a "failure in traffic movement exists which creates an emergency situation of such magnitude as to have substantial adverse effects on rail service in the United States or a substantial region of the United States." The initial period for the service order may not exceed 30 days and the order may be extended only after the full Commission, after a hearing, certifies the continued existence of a transportation emergency.

On June 20, 1988, the D&H filed a petition for reorganization under Chapter 11 of the Bankruptcy Code, 11 U.S.C. 1161, *et seq.*, in the U.S. District Court for the District of Delaware (Bankruptcy Filing No. 88–342). Upon notification from D&H that it was terminating operations on June 23, 1988, by orders served June 22, and June 23, 1988, pursuant to the provisions of 49 U.S.C. 11125, the Commission found that D&H's impending cessation of service without authority met the statutory criteria for directed service and authorized the NYS&W to operate the entire 569 miles of D&H owned lines and 1,012 miles of D&H trackage rights. The orders specified that there would be no Federal subsidy or compensation under 49 U.S.C. 11125(b)(5). NYS&W's authority to provide service under section 11125 expired February 13, 1989.

In Service Order No. 1506, dated February 10, and served February 13, 1989, we found that a "failure in traffic movement exists which creates an emergency situation of such magnitude as to have substantial adverse effects on rail service in the United States or a substantial region of the United States" and authorized the NYS&W to provide emergency service, without Federal subsidy or other Federal compensation, over the tracks of the D&H for 30 days. We sought comments on an extension of the authority beyond 30 days and set the matter for hearing.

Comments and/or responses were filed by the D&H Trustee, the NYS&W, Federal, state and local officials, the U.S. Department of Transportation, numerous shippers, labor interests, and several railroads. Oral argument was held at the Commission on March 8, 1989.

In our February 13 order we concluded that a transportation emergency existed under section 11123. Our review of the comments, responses, and oral argument leads us to conclude that such an emergency continues to exist. The D&H Trustee cannot resume operations of the D&H. Local shippers would be significantly harmed by cessation of NYS&W's service over the D&H system. The City of Oneonta, NY, would be left totally without rail service should NYS&W's emergency operations cease. The New York Department of Transportation (NYDOT) states that the D&H directly serve 50 on-line shippers in New York State that generate 30,000 carloads annually and employ 11,000 people. Between February 17 and 22, 1989, NYDOT conducted a survey of 22 major on-line shippers accounting for approximately 26,000 carloads annually on the D&H and employing over 5,500 people. According to the NYDOT survey, 19 of the shippers indicated that interruption of rail service on the D&H system would have major service and/or cost implications, resulting in severe business disruptions. Of the 19 firms, 7 indicated that service disruption would force them to cease operations.

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[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

We have also received numerous comments from on-line shippers citing serious harm stemming from the loss of NYS&W's interim service. For example, Finch, Pruyn & Co, Inc., asserts that if NYS&W's emergency rail service is halted at its Glens Falls, NY facility, it would have to shut down, with the resultant loss of over 900 jobs. International Paper Company (IPC) states that its hazardous inbound raw materials, such as chlorine and chemicals, must move by rail. Should emergency service cease, IPC assertedly would be forced to close its Corinth and Ticonderoga, NY facilities, which would directly affect 1,400 employees. General Electric asserts that its Waterford, NY facility would have to cease production if this emergency service terminated because many of its inbound raw materials and outbound hazardous commodities move exclusively or almost exclusively by rail. Agway, Inc., contends that a loss of D&H service would necessitate the closing of its feed manufacturing facilities at Voorheesville and Oneonta, NY, and termination of 60 employees' jobs. Surpass Chemical Company, Inc., indicates that, because chlorine it requires can be shipped only by rail, a loss of NYS&W's operations will prevent it from operating its Albany, NY manufacturing facility. Blue Seal Feeds, Inc., is dependent upon D&H service for the flow of bulk raw materials to its Bainbridge, NY mill, and asserts that any interruption of service at the mill will have an immediate, serious impact on the company and its employees.[1]

Further, we believe that the importance of continued operation over D&H's system was recognized when the line was designated as a key segment of the United States Railway Association's Final System Plan for the northeast under the Regional Rail Reorganization Act of 1973. The comments received in the record before us confirm the fact that a competitive rail transportation environment is both desired and needed for the state of New York and the region affected.

The magnitude of this emergency situation adversely affects a substantial area in the northeastern region of the United States. D&H provides important service to the region and its loss would constitute a genuine emergency. The operations of the D&H should be continued temporarily by another carrier, and the NYS&W, under the provisions of 49 U.S.C. 11123, can best provide for the continuation of emergency services. We will extend our order to allow service through March 16, 1990.[2]

The Trustee contends that the bankruptcy Court requires incorporation of the two agreements entered into between the Trustee and the NYS&W, and among NYS&W, the Trustee, and CSX Transportation, Inc., in any Commission decision, as a condition of the court's approval of the Trustee's arrangement with NYS&W. As indicated in a February 15, 1989 letter from the Commission's General Counsel to the Trustee, the matter was adequately treated in our February 13 order under the statutory provisions applicable. That order provides that compensation accruing to D&H shall be one such terms as the parties may establish between themselves.

We play a concurrent role with the Bankruptcy Court in these matters. The Bankruptcy Court oversees the financial transactions of the D&H estate. We, on the other hand, are concerned with the transportation aspects of the D&H situation and examine the issue of financial compensation only when there is disagreement among the parties. Under the Interstate Commerce Act, that is the extent of our statutory authority. 49 U.S.C. 11123(a)(1)(C) and (b)(2). Inasmuch as the Trustee has indicated that there is, in fact, an agreement among the parties as to compensation, there is no need or basis for further action by the Commission at this time.

In order to monitor the situation, we will require quarterly reports from: (1) The NYS&W regarding its operations on the D&H system; and (2) the Trustee regarding his progress as to the ultimate resolution of the problems facing the D&H. These reports will be due within 30 days of the close of each 3 calendar month period beginning with the 3-month period ending May 31, 1989.

Should the Trustee determine that it wishes to resume service (or dispose of the railroad), or the NYS&W determine that it is no longer able to continue its interim operations, the interim service may be terminated upon 10 days' notice to the Commission.

We find: That a continued failure in traffic movement exists that creates an emergency situation of such magnitude as to have a substantial adverse effect on rail service in a substantial region of the United States.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered: 49 CFR 1033.1506, The New York Susquehanna and Western Railway Corporation authorized to operate over tracks of Delaware and Hudson Railway Company, debtor (Francis P. Dicello, trustee).

(a) *Authority.* The NYS&W is authorized to continue its operations over all tracks of the D&H and to continue its operations as a substitute for D&H over 1,012 miles of trackage rights over which D&H presently has the right and obligation to operate.

(b) *Application.* The provisions of this order shall apply to intrastate, interstate, and foreign traffic.

(c) *Rates.* Inasmuch as this operation by NYS&W is due to D&H's cessation of service, the rates applicable to traffic moved by NYS&W over these lines shall be the rates applicable to traffic routed over D&H unless modified by NYS&W.

(d) *Employees.* In providing service under this emergency service order, NYS&W shall comply with the requirements of section 11123(a)(3) with respect to the use of employees.

(e) *Compensation.* The D&H through its Trustee has expressed its willingness to make its tracks available to permit interim service required to fulfill its common carrier obligation. For purposes of this order, compensation accruing to D&H shall be on such terms as the parties may establish between themselves, or shall be subject to 49 U.S.C. 11123(b)(2). Compensation to Conrail for continued use of D&H's trackage rights shall be upon the terms provided in the various agreements.

(f) The NYS&W shall file quarterly reports with the Commission regarding its interim operations. The Trustee shall file quarterly reports with the Commission regarding his progress toward resolution of the D&H problems.

(g) The Trustee or the NYS&W may terminate the interim operations upon 10 days' notice to the Commission.

(h) *Effective date.* This supplemental order shall be effective at 12:01 a.m., March 16, 1989.

(i) *Expiration date.* The provisions of this supplemental order shall expire at 11:59 p.m. on March 16, 1990, unless otherwise modified, amended, or vacated by order of this Commission.

This action is taken under authority of 49 U.S.C. 1123(a).

This order will be served on all parties to this proceeding including those listed in our June 22, 1988 decision

[1] We note that although Finch, Pruyn and Surpass Chemical provided us with their statements, those commentors apparently failed to serve the parties of record

[2] Although the NYS&W has offered to provide emergency service for up to 18 months, we hope that 12 months will be a sufficient time period for the Trustee to reach a permanent solution to D&H's problems. The public interest is not served by having carriers in trust for long periods of time. However, should difficulties remain at the end of 12 months, we would consider an extension request.

in Finance Docket No. 31295, as well as the Trustee in Bankruptcy and the U.S. District Court for the District of Delaware (Bankruptcy Filing No. 88–342). This order shall also be served upon the Federal Railroad Administration, the Association of American Railroads as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. Notice of this order shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, DC, and by filing a copy with the Director, Office of the Federal Register.

Decided: March 14, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 89–6425 Filed 3–17–89; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 31406]

Norfolk and Western Railway Co.—Merger Exemption—Des Moines Union Railway Co.

The Norfolk and Western Railway Company (NW) and the Des Moines Union Railway Company (DMU) have filed a notice of exemption to merge DMU into NW, on or about March 1, 1989.

NW, a class I rail common carrier, is a wholly owned subsidiary of Norfolk Southern Corporation (NS). DMU, a class III terminal freight switching railroad, is controlled through stock ownership by NW and, in turn, by NS.

This is a transaction within a corporate family of the type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). It is a transaction that 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. The transaction will be effected by merger of DMU into NW, with NW as the surviving corporation. DMU presently owns 25 percent of the common stock of Iowa Transfer Railway Company (Transfer). As a result of the merger, NW will succeed to ownership of DMU's shares of the common stock of Transfer.

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: Robert J. Cooney, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510–2191.

Decided: March 10, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89–6360 Filed 3–17–89; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree; Perez Interboro Asphalt Co.

In accordance with Department Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a proposed Consent Decree in *United States v. Perez Interboro Asphalt Co.*, Civil Action No. CV–85–1170, was lodged with the United States District Court for the Eastern District of New York on March 7, 1989. The proposed Consent Decree provides for the implementation of a comprehensive operation and maintenance program at Perez Interboro Asphalt Company's asphalt concrete plant at 99 Paidge Avenue, Brooklyn, New York; performance of environmental monitoring at the plant; and payment of a civil penalty for alleged past violations of the Clean Air Act, 42 U.S.C. 7401 *et seq.*, and the New Source Performance Standard for asphalt concrete plants, 40 CFR Part 60, Subparts A and I.

The Department of Justice will receive for a period of 30 days from the date of publication of this notice, written comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, United States Department of Justice, Washington, DC 20530, and should refer to *United States v. Perez Interboro Asphalt Co.*, D.J. Ref. No. 90–5–2–1–801.

The proposed Consent Decree may be examined at the office of the United States Attorney, Eastern District of New York, United States Court House, 225 Cadman Plaza East, Brooklyn, New York 11201; at the Region II office of the United States Environmental Protection Agency, 26 Federal Plaza, New York, New York 10278; and at the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, at the above address. In requesting a copy, please enclose a check in the amount of $2.10, payable to the Treasurer of the United States, to cover the costs of reproduction.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89–6441 Filed 3–17–89; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree; City of Siloam Springs, AR, et al.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on January 4, 1989, a proposed consent decree in *United States* v. *City of Siloam Springs, Arkansas, The State of Arkansas, and Allen Canning Co., Inc.*, Civil Action No. 88–5062, was lodged with the United States District Court for the Western District of Arkansas. The proposed consent decree concerns a complaint filed by the United States that alleged violations of section 301 of the Clean Water Act, 33 U.S.C. 1311, at the City of Siloam Spring's (the "City") wastewater treatment plant. The compliant alleged that the City discharged pollutants into navigable waters in excess of the limitations in the City's National Pollutant Discharge Elimination System ("NPDES") permit, violated Administrative Orders issued by EPA, violated its permit monitoring and reporting requirements, and failed to meet the pretreatment requirements in its NPDES permit. The State of Arkansas was named as party pursuant to section 309(e) of the Act, 33 U.S.C. 1319(e). Allen Canning Co. Inc., ("Allen Canning") is alleged to have violated section 307 of the Act, 33 U.S.C. 1317, by introducing pollutants into the City's wastewater treatment plant in violation of the general pretreatment regulations, 40 CFR 403.5. The complaint sought injunctive relief to require the City to comply with its NPDES permit and the Administrative Orders and civil penalties for past violations. Among other things, the consent decree requires the City to conduct sampling of the industrial users of the wastewater

treatment plant, and to take appropriate and timely enforcement actions against such users found in violation of applicable wastewater contribution permits or pretreatment requirements. The City is also required to pay a civil penalty of $20,000 in settlement of the government's civil penalty claims. This consent decree only resolves the liability of the City of Siloam Springs and the State of Arkansas, and does not address the portions of the complaint against Allen Canning. The United States has entered into a separate consent decree which settled its claims for civil penalties for past violations and injunctive relief against Allen Canning.

The Department of Justice will receive for a period of thirty (30) days from the date of the publication comments relating to the proposed consent decree. Comments should be addressed to the Acting Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *City of Siloam Springs, Arkansas et al.*, D.J. Ref. 90-5-1-1-2792.

The proposed consent decree may be examined at the office of the United States Attorney for the Western District of Arkansas, U.S. Post Office and Courthouse Buiding, 6th and Rogers, Fort Smith, Arkansas 72910 and at the Region VI Office of the United States Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202. Copies of the consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $2.30 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-6434 Filed 3-17-89; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

The National Cooperative Research Act of 1984; Portland Cement Association

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 et seq. ("the Act"), the Portland Cement Association ("PCA") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission on February 24, 1989 disclosing that there have been two changes in the membership of PCA. Specifically, Moore McCormack Cement, Inc. has been acquired by Southwestern Portland Cement Company, and thus will not be listed as a separate member company. In addition, Southern California Cement Group became an affiliate member effective January 1, 1989. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Accordingly, at present the members of the PCA are those companies listed below:

United States

Aetna Cement Corporation
Alamo Cement Company
Alaska Basic Industries
Ash Grove Cement Company
Ash Grove Cement West, Inc.
Blue Circle Atlantic, Inc.
Blue Circle, Inc.
Blue Circle West Inc.
Calaveras Cement Company
CalMat Co.
Capitol Aggregates, Inc.
Capitol Cement Corporation
Continental Cement Company Inc.
Coplay Cement Company
Davenport Cement Company
Dragon Products Company
Dundee Cement Company
Glens Fall Cement Company, Inc.
Hawaiian Cement
Ideal Basic Industries, Inc.
Independent Cement Corporation
Lafarge Corporation
Lehigh Portland Cement Company
LoneStar-Falcon
Lone Star Industries, Inc.
Lone Star Northwest
Medusa Cement Corporation
Missouri Portland Cement Company
The Monarch Cement Company
National Cement Company, Inc.
National Cement Company of California, Inc.
Northwestern States Portland Cement Co.
Phoenix Cement Company
Rinker Materials Corporation
RMC Lonestar
Rochester Portland Cement Corporation
St. Marys Peerless Cement Company
St. Marys Wisconsin Inc.
The South Dakota Cement Plant
Southwestern Portland Cement Company
Tarmac-LoneStar, Inc.
Tilbury Cement Company

Canada

Federal White Cement Ltd.
Ideal Cement Company Ltd.
Inland Cement Limited
Lafarge Canada Inc.
Lake Ontario Cement Limited
North Star Cement Limited
St. Lawrence Cement Inc.
St. Marys Cement Corporation
Tilbury Cement Limited

Mexico

Instituto Mexicano del Cemento y del Concreto (IMCYC)
Cementos Acapulco, S.A.
Cementos Apasco, S.A.
Cementos de Chihuahua, S.A.
Cementos Mexicanos, S.A.
Cementos Moctezuma, S.A.
Cooperativa de Cementos Cruz Azul
Cooperativa de Cementos Hidalgo

Affiliate Members

Cement and Concrete Promotion Council of Texas
Florida Concrete and Products Association
Mississippi Concrete Industries Association
North Central Cement Promotion Association
Northern California Cement Promotion Group
Northwest Concrete Promotion Group
Rocky Mountain Cement Promotion Council
South Central Cement Promotion Association
Southern California Cement Group

In addition, the following equipment suppliers are involved as "Participating Associates," together with PCA members, in the activities of the Manufacturing Process Subcommittee of PCA's General Technical Committee:

Baker-Dolomite (DBCA)
C-E Raymond
Holderbank Consulting Ltd.
Humboldt Wedag Company
F. L. Smidth and Company
Claudius Peters, Inc.
Polysius Corp.
The Fuller Company
W.R. Grace & Company

On January 7, 1985, PCA filed its original notification pursuant to section 6(a) of the Act. The Department of Justice (the "Department") published a notice in the **Federal Register** pursuant

to Section 6(b) of the Act on February 5, 1985, 50 FR 5015. On March 14, 1985, August 13, 1985, January 3, 1986, February 14, 1986, May 30, 1986, July 10, 1986, December 31, 1986, February 3, 1987, April 17, 1987, June 3, 1987, July 29, 1987, August 6, 1987, October 9, 1987, February 18, 1988, March 9, 1988, March 11, 1988, July 7, 1988, August 9, 1988, August 23, 1988, and January 23, 1989, PCA filed additional written notifications. The Department published notices in the **Federal Register** in response to these additional notifications on April 10, 1985 (50 FR 14175), September 16, 1985 (50 FR 37594), February 4, 1986 (51 FR 4440), March 12, 1986 (51 FR 8573), June 27, 1986 (51 FR 23479), August 14, 1986 (51 FR 29173), February 3, 1987 (52 FR 3356), March 4, 1987 (52 FR 6635), May 14, 1987 (52 FR 18295), July 10, 1987 (52 FR 28183), August 26, 1987 (52 FR 32185), November 17, 1987 (52 FR 43953), March 28, 1988 (53 FR 9999), August 4, 1988 (53 FR 29397), September 15, 1988 (FR 35935), September 28, 1988 (53 FR 37883), and February 23, 1989, respectively.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 89-6440 Filed 3-17-89; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

[Docket No. 88-89]

Gerald I. Busch, M.D., Houston, TX; Hearing

Notice is hereby given that on August 31, 1988, the Drug Enforcement Administration, Department of Justice, issued to Gerald I. Busch, M.D., an Order to Show Cause as to why the Drug Enforcement Administration should not deny your application for a DEA Certificate of Registration.

Thirty days have elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Tuesday, April 4, 1989, commencing at 9:00 a.m., at the Westside Command Center, 3203 S. Dairy Ashford Road, Houston, Texas.

Dated: March 14, 1989.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 89-6457 Filed 3-17-89; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 88-85]

Geoffrey A. DiBella, M.D., Bowling Green, Kentucky; Hearing

Notice is hereby given that on September 2, 1988, the Drug Enforcement Administration, Department of Justice, issued to Geoffrey A. DiBella, M.D., an Order to Show Cause as to why the Drug Enforcement Administration should not deny your application for a DEA Certificate of Registration.

Thirty days have elapsed since the said Order to Show Cause was received by Respondent, and written request for hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Tuesday, May 16, 1989, commencing at 10:00 a.m., at the United States Court of Appeals for the Federal Circuit, 717 Madison Place NW., Courtroom 2, fourth floor, Washington, DC.

Dated: March 14, 1989.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 89-6458 Filed 3-17-89; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 88-98]

Fred J. Duhon, M.D., Lafayette, GA; Hearing

Notice is hereby given that on September 9, 1988, the Drug Enforcement Administration, Department of Justice, issued to Fred J. Duhon, M.D., an Order to Show Cause as to why the Drug Enforcement Administration should not revoke your DEA Certificate of Registration, AD4296369, and deny any pending applications for registration.

Thirty days have elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Tuesday, March 28, 1989, commencing at 9:30 a.m., at the Federal Trade Commission, 1718 Peachtree Street, Room 1010, Atlanta, Georgia.

Dated: March 14, 1989.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 89-6459 Filed 3-17-89; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 88-68]

Flavio D. Gentile, M.D., Union City, NJ; Hearing

Notice is hereby given that on June 30, 1988, the Drug Enforcement Administration, Department of Justice, issued to Flavio D. Gentile, M.D., an Order to Show Cause as to why the Drug Enforcement Administration should not deny your application for a DEA Certificate of Registration.

Thirty days have elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Tuesday, March 21, 1989, commencing at 10:00 a.m., at the United States Court of Appeals for the Federal Circuit, 717 Madison Place, NW., Courtroom 1, second floor, Washington, DC.

Dated: March 14, 1989.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 89-6460 Filed 3-17-89; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 88-70]

David J. Hacket, D.O., Allentown, PA; Hearing

Notice is hereby given that on July 13, 1988, the Drug Enforcement Administration, Department of Justice, issued to David J. Hackett, D.O., an Order to Show Cause as to why the Drug Enforcement Administration should not deny your application for a DEA certificate of Registration.

Thirty days have elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Thursday, May 18, 1989, commencing at 10:00 a.m., at the United States Court of Appeals for the Federal Circuit, 717 Madison Place NW., Courtroom 2, fourth floor, Washington, DC.

Dated: March 14, 1989.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 89-6461 Filed 3-17-89; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 88-84]

Richard T. Lowe, M.D., Haleyville, AL; Hearing

Notice is hereby given that on August 22, 1988, the Drug Enforcement Administration, Department of Justice, issued to Richard T. Lowe, M.D., an Order to Show Cause as to why the Drug Enforcement Administation should not deny your application for a DEA Certificate of Registration.

Thirty days have elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Thursday, March 30, 1989, commencing at 9:00 a.m., at the Federal Trade Commission, 1718 Peachtree Street, Room 1010, Atlanta, Georgia.

Dated: March 14, 1989.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 89-6462 Filed 3-17-89; 8:45 am]

BILLING CODE 4410-09-M

Richard J. Oliver, D.D.S.; Revocation of Registration

On December 14, 1988, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Richard J. Oliver, D.D.S., of 1591 Phoenix Boulevard, Suite 6, College Park, Georgia, proposing to revoke his DEA Certificate of Registration A01133874, and to deny any pending applications for renewal of his registration as a practitioner under 21 U.S.C. 823(f). The statutory predicate for the issuance of the Order to Show Cause was Dr. Oliver's lack of authorization to handle controlled substances in the State of Georgia. In addition, the Order to Show Cause alleged that his continued registration is inconsistent with the public interest, as that term is used in 21 U.S.C. 823(f) and 824(a)(4), thereby providing a second statutory basis for the revocation of his registration.

A returned registered-mail receipt indicates that the Order to Show Cause was received by counsel for Dr. Oliver on December 19, 1988. A copy of the Order to Show Cause also received at his registered address on December 29, 1988. More than thirty days have passed since the Order to Show Cause was received by Dr. Oliver and the Drug Enforcement Administration has received no response thereto. Therefore, the Administrator concludes that Dr. Oliver has waived his opportunity for a hearing on the issues raised in the Order to Show Cause and, pursuant to 21 CFR 1301.54(d) and 1301.54(e), enters this final order based on the information contained in the DEA investigative file. 21 CFR 1301.57.

The Administrator finds that the Georgia Board of Dentistry (hereinafter referred to as the "Board") received reliable information and evidence that, due to Dr. Oliver's chemical dependency, his continued practice of dentistry was detrimental to the public health, safety and welfare. Based upon his inability to practice dentistry with reasonable skill and safety, the Board executed an Order for Mental/Physical Examination on March 28, 1988. On the same date, Dr. Oliver admitted himself to Talbott Recovery Systems for substance abuse treatment. In April 1988, he sold his dental practice.

On August 3, 1988, the Board determined that Dr. Oliver posed a continued threat to the public health, safety and welfare, and ordered that his license to practice dentistry in the State of Georgia be suspended, pending proceedings for revocation for further action. Consequently, Dr. Oliver is no longer authorized to handle controlled substances in Georgia.

The Drug Enforcement Administration does not have the authority to maintain the registration of a practitioner who is not authorized to handle controlled substances in the state in which he conducts his business. 21 U.S.C. 823(f) and 824(a)(3). The Administrator has consistently so held. See *Fazal Ahmad, M.D.*, Docket No. 85-46, 51 FR 9543 (1986); *Avner Kauffman, M.D.*, Docket No. 85-8, 50 FR 34208 (1984); and *Aquostino Carlucci, M.D.*, Docket No. 82-20, 49 FR 33184 (1984). In the instant case, Dr. Oliver is not currently authorized to handle controlled substances in the State of Georgia. Without the appropriate state authority to handle controlled substances, he cannot hold a DEA Certificate of Registration.

The Administrator also finds that Dr. Oliver's continue registration is inconsistent with the public interest.

On August 30, 1988, an Alabama pharmacist called the DEA Atlanta Field Division and provided information concerning Dr. Oliver's prescribing practices. On August 21, 1988, this pharmacist had filled a prescription for 15 Lorcet tablets, a Schedule III controlled substance, written by Dr. Oliver. According to the Pharmacist, Dr. Oliver had visited the pharmacy on August 21, 1988, and August 29, 1988, both times after 8:00 p.m., accompanied by the woman for whom the prescription was issued. The pharmacist became suspicious after Dr. Oliver told her that he had relocated his practice from Atlanta to Columbus, Georgia. The pharmacist called the Boards of Dentistry in Alabama and Georgia and discovered he had no valid license in either state. Based on this information, the Administrator finds that Dr. Oliver continued to issue prescriptions for controlled substances when he did not maintain a dental practice and following the suspension of his Georgia State dental license.

Additionally, the Administrator finds that Dr. Oliver has a history of personal use of controlled substances for other than legitimate medical purposes. Reliable information received by the Georgia Bureau of Investigation indicates that on numerous occasions, Dr. Oliver illegally obtained controlled substances for his personal use at various local pharmacies by writing prescriptions in other people's names.

In addition to illegally obtaining controlled substances for his own abuse, on several occasions Dr. Oliver issued prescriptions for controlled substances to his friends for other than legitimate medical purposes and outside the scope of his professional practice. He gave one of his friends a prescription for Valium, a Schedule IV controlled substance, prior to oral surgery. This individual informed police that she felt Dr. Oliver prescribed a larger quantity of drugs than was medically necessary to be "favorable" toward her. She also advised Georgia authorities that Dr. Oliver gave her permission to contact a local pharmacy and pose as his employee when she wished to have the prescription refilled for "recreational" use. This individual later was arrested for possession of controlled substances and was found to be in possession of Dr. Oliver's DEA Certificate of Registration. Dr. Oliver issued two prescriptions for Valium to another friend on the same day. This individual indicated that Dr. Oliver was aware that he wanted the Valium for recreational use.

Reports on file with the Georgia Bureau of Investigation (GBI) document that Dr. Oliver kept illicit cocaine at his dental office. Individuals reported seeing ounces of cocaine in Dr. Oliver's dental office. GBI reports reveal that Dr. Oliver was involved with a drug distribution network which moves illicit drugs from Darien, Georgia, into the Atlanta Metropolitan area and had, on occasion, knowingly allowed other individuals to use his dental office to weigh cocaine prior to distribution.

The Administrator may revoke a registration or deny an application for registration if he determines that such registration would be inconsistent with the public interest. The factors which are considered in determining whether the registration would be in the public interest are enumerated in 21 U.S.C. 823(f). The Administrator has considered these factors and finds that Dr. Oliver's continued registration would be contrary to the public interest. The factors relevant to this case are Dr. Oliver's compliance with Federal, state or local laws relating to controlled substances, his experience in dispensing controlled substances, and such other conduct which may threaten the public health and safety. Based upon the evidence previously discussed, the Administrator concludes that Dr. Oliver improperly handled controlled substances by issuing controlled substance prescriptions for himself and his friends for no legitimate medical purpose. In addition, Dr. Oliver issued several prescriptions for controlled substances at a time when he did not possess a valid state license. These violations demonstrate that Dr. Oliver cannot handle controlled substances with the care and restraint required for registrants. In addition, Dr. Oliver has demonstrated a disregard for the laws and regulations under which he is registered. Such behavior is inconsistent with the public interest and cannot be tolerated. Further, Dr. Oliver's personal abuse of and participation in the illicit distribtution of controlled substances poses a significant threat to the public health and safety.

Based upon Dr. Oliver's lack of state authorization to handle controlled substances, the Administrator concludes that his registration must be revoked. Also, evidence of Dr. Oliver's unlawful prescribing practices, participation in illicit drug distribution, and personal abuse of controlled substances support the conclusion that his continued registration is contrary to the public interest. Therefore, the Administrator concludes that Dr. Oliver's registration must be revoked and that any pending applications for renewal thereof must be denied.

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), orders that DEA Certificate of Registration A01133874, previously issued to Richard J. Oliver, D.D.S., be, and it hereby is, revoked. It is further ordered that any pending applications for renewal of said registration be, and they hereby are, denied.

This order is effective March 20, 1989.

Dated: March 14, 1989.

John C. Lawn,

Administrator.

[FR Doc. 89-6411 Filed 3-17-89; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 87-79]

Jerome S. Pittman, M.D.; Revocation of Registration

On October 1, 1987, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Jerome S. Pittman, M.D., (Respondent), of 320 South Arnaz Boulevard, Los Angeles, California, proposing to revoke his DEA Certificate of Registration, AP2286501, and to deny any pending applications for renewal of his registration. The Order to Show Cause alleged that Respondent was convicted of a felony offense relating to controlled substances, and that his continued registration would be inconsistent with the public interest, as that term is used in 21 U.S.C. 823(f) and 824(a)(4).

Respondent, through counsel, timely filed a request for a hearing on the issues raised in the Order to Show Cause and the matter was docketed before Administrative Law Judge Francis L. Young. Following prehearing procedures, a hearing was held in San Francisco, California, on March 29, 1988.

On December 14, 1988, the Administrative Law Judge issued his opinion and recommended ruling, findings of fact, conclusions of law and decision. The Administrative Law Judge recommended that the Administrator revoke Respondent's registration and deny any pending applications for renewal based upon Respondent's felony conviction relating to controlled substances and other wrongdoing. On January 18, 1989, Respondent's counsel filed exceptions to the opinion and recommended ruling, findings of fact, conclusions of law and decision of the Administrative Law Judge. On February 6, 1989, the Government filed a response to Respondent's exceptions. On February 9, 1989, Judge Young transmitted the record of these proceedings, including the aforementioned exceptions, to the Administrator. Following the transmittal of the record, Respondent's counsel filed Amended Exceptions to the Administrative Law Judge's opinion and recommended ruling. These exceptions were not filed in accordance with 21 CFR 1316.66 (a) and (c) , but nevertheless were given consideration by the Administrator. The Administrator has considered the record in its entirety and, pursuant to 21 CFR 1316.67, issues his final order in this matter based upon the findings of fact and conclusions of law as hereinafter set forth.

The Administrative Law Judge found that on October 14, 1986, in the United States District Court for the Central District of California, Respondent was convicted, after entering a plea of guilty, of one count of knowingly and intentioally distributing Talwin, a Schedule IV controlled substance, by writing a prescription outside the course of medical practice and not for a legitimate medical purpose, in violation of 21 U.S.C. 841(a)(1). He was sentenced to serve five years probation, provide 300 hours per year of community service, and not write controlled substance prescriptions except as determined by his probation officer. Based solely on Respondent's felony conviction there is sufficient cause to revoke Respondent's DEA Certificate of Registration.

In addition, the Administrative Law Judge found that Respondent's history of dispensing controlled substances indicates that his continued registration would be inconsistent with the public interest. Respondent's conviction resulted from his involvement with Frances and Anthony Roberson and his employment at the Z & Z Weight Clinic in Los Angeles during 1985 and 1986. Evidence presented at the hearing established that the Robersons were engaged in a scheme involving the diversion of large quantities of controlled substances. They brought scores of individuals using fictitious names to the clinic. The individuals received various controlled substance prescriptions, primarily for Preludin, Dilaudid, APC #4, Talwin and Darvon from Respondent. Respondent admitted to DEA Special Agents that he almost always wrote a Preludin prescription for each patient the Robersons brought him. During the administrative hearing Respondent admitted that he gave some controlled substance prescriptions to Frances Roberson without performing complete medical examinations on the alleged patients. In the instances where Respondent gave the prescriptions directly to the alleged patients, they would then give the prescriptions to the Robersons who would, in turn, take them to Fashion Plaza Pharmacy for filling. The Robersons would then sell the controlled substances on the street.

The Administrative Law Judge also found that Respondent sold blocks of prescriptions for Schedule III, IV and V substances to Frances Roberson.

Testimony at the hearing revealed that during discussions with DEA Special Agents and an Assistant United States Attorney, Respondent admitted to giving blocks of controlled substance prescriptions to Frances Roberson.

A review by DEA Special Agents of controlled substance prescriptions issued by Respondent in 1984 and 1985, and filled at Fashion Plaza Pharmacy, revealed that Respondent issued several hundred such prescriptions. Preludin prescriptions issued by Respondent and found at the pharmacy were in blocks of sequentially numbered triplicate prescriptions with patent names listed in alphabetical order. The Agents subsequently contacted several of the persons whose names appeared on the prescriptions. None of the several dozen persons contacted had ever heard of Respondent, nor did they ever receive Preludin prescriptions from him. Respondent testified at the hearing that he was unaware of the Robersons' diversion scheme until DEA Investigators told him about it and about his possible implication in it. Respondent also testified that he never wrote a Preludin prescription without first seeing a patient. However, the Administrative Law Judge found the fact that large numbers of Respondent's prescriptions were written for persons named in alphabetical order cast considerable doubt on Respondent's truthfulness.

The sheer multitude of prescriptions issued by Respondent also denigrates his claim of ignorance. During a seven month period in 1983, Respondent issued 495 Schedule II prescriptions for Preludin, for a total of 29,700 dosage units of that drug. During 1984, Respondent issued 297 Schedule II prescriptions for Preludin, for a total of 17,800 dosage units of the drug, and seven prescriptions for Dilaudid, for a total of 700 dosage units of that drug. In 1985, Respondent issued 565 Preludin prescriptions for a total of 33,920 dosage units of the drug. During that 31-month period, Respondent issued 1,367 Schedule II controlled substance prescriptions, for a total of 82,420 dosage units. In fact, on one day alone, August 26, 1983, Respondent issued 42 Preludin prescriptions. Respondent always wrote prescriptions for the most potent strength of the drug in quantities which far exceeded those recommended by the manufacturer in the *Physicians Desk Reference*. Respondent's prescribing figures are even more astounding when one considers that he only worked at the clinic on a part-time basis.

The Administrative Law Judge concluded that there is a lawful basis for revocation of Respondent's DEA registration and recommended that Respondent's DEA registration be revoked. The Administrator adopts the recommended ruling of the Administrative Law Judge. In this instance, there is no dispute that Repondent was convicted of a felony offense relating to controlled substances in October 1986. Such conviction alone can support the revocation of a DEA registration. See 21 U.S.C. 824(a)(2). See, *Raymond A. Carlson, M.D.*, Docket No. 86-50, 53 FR 7425.

The Administrator also finds that Respondent's continued registration would be inconsistent with the public interest. In determining whether a registration would be inconsistent with the public interest, the Administrator must consider the following factors:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety. 21 U.S.C. 823(f).

In this case, primarily the second through fifth factors are applicable in considering whether Respondent's registration is inconsistent with the public interest. With respect to these factors, the administrative record in this proceeding is replete with example of Respondent's violations relating to controlled substances. Respondent was convicted of a felony offense relating to controlled substances. Respondent repeatedly ignored his duty to protect against the diversion of controlled substances into the illicit market and instead prescribed controlled substances without conducting adequate medical examinations and for no legitimate medical need. The Administrator finds that Respondent's conviction, and his conduct which resulted in the diversion of thousands of dosage units of controlled substances per month into illicit channels, require that Respondent's registration be revoked.

In his expectations to the Administrative Law Judge's opinion and recommended ruling, Respondent raises four main points in urging that he be permitted to retain his registration. First, he argues that the Administrative Law Judge misinterpreted testimony regarding Respondent's admissions of selling blocks of prescriptions to the Robersons. After careful review of the testimony, the Administrator finds no merit in Respondent's argument. Even assuming, arguendo, that Repondent's version of the admission is credible, the fact remains that he issued blocks of controlled substance prescriptions for other than legitimate medical purposes. Second, he argues that the Administrator should take into consideration the fact that he is a first-time offender. Although it is true that this conviction is Respondent's first, it did not involve one isolated instance of misjudgment on his part. The record establishes Respondent's violative behavior of improper and unlawful controlled substance prescribing as early as 1983, and continuing through 1985. While first offender status may be relevant in sentencing, it has no relevance here. To accept Respondent's theory would mean that every registrant who chose to divert controlled substances could do so with impunity until caught a second time. The Administrator will not take that alternative. Third, Respondent contends that the conditions of his probation are sufficient to ensure his compliance with the law. Again, the Administrator finds no merit to this contention. The hearing record already establishes that in the past Respondent has not fully complied with the terms of his probation. Further, the Administrator cannot rely on a probation officer, who may be unfamiliar with controlled substance laws and regulations, to supervise Repondent's controlled substance activities. Also, Respondent's probation is only for a limited period of time. Once it is completed, his activities will not be supervised. Finally, Respondent claims that revocation of his registration will be detrimental to his continued medical practice. He bases this claim on the contention that he cannot maintain hospital privileges without a registration. The Administrator is not persuaded by this argument either. Revocation of a physician's registration only restricts his ability to handle controlled substances, not his general ability to practice medicine. The fact that some hospitals may require physicians to maintain DEA registrations to have certain hospital privileges is irrelevant to this proceeding. DEA does not maintain registrations for such purposes. See, e.g., *Roy R. Kinder, M.D.*, 52 FR 24352 (1987) The only purpose for the issuance of such registrations is to permit individuals to handle controlled

substances. Therefore, the Administrator concludes that Respondent's exceptions are without merit and do not provide justification for the retention of Respondent's DEA registration.

Accordingly, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), the Administrator of the Drug Enforcement Administration orders that DEA Certificate of Registration AP2286501, previously issued to Jerome S. Pittman, M.D., be, and it hereby is, revoked. He further orders that any pending applications for renewal of said registration be, and they hereby are, denied.

This order is effective April 19, 1989.

Dated: March 13, 1989.

John C. Lawn,

Administrator.

[FR Doc. 89-6412 Filed 3-17-89; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 88-103]

Boris Pukay, M.D., Mystic, CT; Hearing

Notice is hereby given that on October 14, 1988, the Drug Enforcement Administration, Department of Justice, issued to Boris Pukay, M.D., an Order to Show Cause as to why the Drug Enforcement Administration should not revoke your DEA Certificate of Registration, AP9770353, and deny any pending applications for renewal.

Thirty days have elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Friday, April 28, 1989, commencing at 10:00 a.m., at the United States Court of Appeals for the Federal Circuit, 717 Madison Place, NW., Courtroom 2, fourth floor, Washington, DC.

Dated: March 14, 1989.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 89-6463 Filed 3-17-89; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 88-100]

Horace M. Rosteing, M.D., Buffalo, NY; Hearing

Notice is hereby given that on September 29, 1988, the Drug Enforcement Administration, Department of Justice, issued to Horace M. Rosteing, M.D., an Order to Show Cause as to why the Drug Enforcement Administration should not deny your application for a DEA Certificate of Registration.

Thirty days have elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Tuesday, April 11, 1989, commencing at 10:00 a.m. at the United States Court of Appeals for the Federal Circuit, 717 Madison Place NW., Courtroom 1, second floor, Washington, DC.

Dated: March 14, 1989.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 89-6464 Filed 3-17-89; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 88-93]

Felix Sesin, M.D.; Denial of Application

On September 12, 1988, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause proposing to deny the application for registration submitted by Felix Sesin, M.D., 225 60th Street, West New York, New Jersey (Respondent), dated January 21, 1988. The grounds for the Order to Show Cause were that Respondent's registration with DEA would be inconsistent with the public interest based upon prior criminal acts involving controlled substances, and the restrictions on Respondent's medical license by the State of New Jersey.

Respondent, through counsel, requested a hearing on the issues raised in the Order to Show Cause in a letter dated October 3, 1988. The matter was docketed before Administrative Law Judge Francis L. Young. On October 21, 1988, Judge Young issued an order directing the agency to file a prehearing statement on or before November 14, 1988, and Respondent to file a prehearing statement on or before December 5, 1988. In the Order for Prehearing Statements, Judge Young stated that, "Respondent is cautioned that failure to timely file a prehearing statement as directed above may be considered a waiver of hearing and an implied revocation of a request for hearing." Agency counsel timely filed its prehearing statement, however, Respondent never submitted such a filing. Judge Young terminated the proceedings by order dated December 29, 1988. The Administrator finds that Respondent has waived his right to a hearing by failing to file a prehearing statement, and now enters his final order in this matter without a hearing and based on the record before him. 21 CFR 1301.57.

The Administrator finds that an undercover investigation of Respondent's prescribing practices was conducted by New Jersey state and county investigators between April 1982 and March 1983. During the investigation, four undercover Agents made a total of eleven visits to Respondent's office. On the first visit of each of the four Agents, he or she informed Respondent of recent or current drug use, including the use of heroin or methadone, or described symptoms which Respondent allegedly identified during the visit as withdrawl symptoms. In most instances, Respondent made no attempt to physically examine the Agent. Respondent did ask to listen to one Agent's heart. However, Respondent accepted the Agent's statement that he did not want an examination. When Respondent did perform a physical examination of one of the Agents, it was cursory at best.

On each occasion, Respondent either dispensed or prescribed a variety of Schedule III and IV controlled substance to the undercover Agents, including Vicodin, Valrelease, Paxipam, Centrax, Valium and Darvocet N-100. In addition, Respondent often dispensed or prescribed various non-controlled substances, including Sinequan and Vistaril. On at least one occasion, Respondent told the undercover Agent to go to a different drugstore with the new prescription. This statement clearly shows that Respondent was attempting to cover up his illegal prescribing practices. In another instance, Respondent wrote an undercover Agent a prescription for Paxipam while Respondent was in his car on the street. From numerous conversations between Respondent and the undercover Agents, it was evident that Respondent knew or should have known that the drugs would be illicitly consumed or distributed.

Pursuant to the results of the investigation, on or about August 4, 1983, the Hudson County Grand Jury returned a 17-count indictment against Respondent, charging him with unlawful distribution of controlled substances. Respondent was subsequently admitted into a pre-trial intervention program. Respondent complied with the directives imposed by that program and the indictment was dismissed in July 1985.

Based on Respondent's unlawful prescribing practices, on November 9, 1983, the New Jersey State Board of Medical Examiners ("the Board")

ordered Respondent's controlled substance privileges temporarily suspended pending a final determination by the Board. On August 10, 1984, the Board entered a final order in Respondent's case. The Board ordered, among other things, that Respondent's license to practice medicine and surgery, and his New Jersey State Controlled Dangerous Substances (C.D.S.) Registration be suspended for one year effective July 15, 1984. Subsequently, the decision to suspend Respondent's full license privileges was reversed by the Supreme Court of New Jersey. That reversal, however, left in place the Board's Order suspending Respondent's C.D.S. privileges for one year.

Respondent is presently practicing at St. Mary's Hospital in Hoboken, New Jersey. Respondent's license to practice medicine is on probation, and pursuant to the Board's Order, he is restrained from administering, prescribing, or dispensing any and all controlled dangerous substances. Respondent's only privilege is that he may write orders for controlled substances in the hospital charts for patients who are being cared for by him at St. Mary's Hospital.

During his period of suspension, Respondent was reprimanded by the New Jersey Department of Health for incorrectly filing a C.D.S. renewal application. This resulted in the erroneous issuance of a New Jersey State C.D.S. Certificate in March, 1985. Respondent should not have submitted the application because, among other reasons, the DEA number he listed on the application was invalid and statements made upon this application were false. Additionally, Respondent's use of controlled substances is restricted to in-house hospital use. Respondent's renewal application listed the address of his private practice, instead of the hospital's address. The Board cautioned Respondent that before he commenced practice after his license reinstatement, he had to provide the Board with the location at which he was restricting his hospital practice.

Respondent was reprimanded a second time by the Department of Health on February 25, 1988. This reprimand again resulted from Respondent's falsification of his application for a New Jersey State C.D.S. Registration. Respondent failed to state the institution at which he was working, and applied for a registration at the address of his private practice. As noted, Respondent's use of controlled substances upon reinstatement was to be restricted to in-house hospital use. Respondent's action resulted in the erroneous issuance of a New Jersey C.D.S. Certificate with the address of his private practice. The Department contacted Respondent by letter on February 25, 1988, and questioned his failure to correct the address on his C.D.S. Registration upon renewal date of March 26, 1987.

On June 7, 1985, Respondent executed an application for a DEA registration as a practitioner under 21 U.S.C. 823(f). Based upon Respondent's experience in dispensing controlled substances and his failure to comply applicable state laws relating to the dispensing of controlled substances, the Administrator found that Respondent's registration would be inconsistent with the public interest and denied his application. The Administrator concluded that Respondent must have been aware that it was not legitimate medical practice to prescribe or dispense controlled substances to a patient without first performing a physical examination or, at the very least, inquiring into the medical history of the patient so as to determine whether the patient has medical need for the drug. Additionally, the Administrator found that Respondent must have known that it is not acceptable to write a controlled substance prescription, or any prescription, while sitting in his car. Thus, the Administrator concluded that Respondent knew that what he was doing was wrong. See *Felix Sesin, M.D.*, 51 FR 3863 (1986).

The Administrator may deny an application for registration if he determines that such registration would be inconsistent with the public interest. The factors which are considered in determining whether the registration would be in the public interest are enumerated in 21 U.S.C. 823(f). Two of the factors to be considered include the applicant's experience in dispensing controlled substances and compliance with applicable state law relating to controlled substances. All factors need not be present for the Administrator to deny an application for registration. Instead, the Administrator may accord each factor the weight he deems appropriate in determining the public interest. See *Paul Stepak, M.D.*, 51 FR 17556 (1986).

In this instance, there is no question that Respondent's experience in dispensing controlled substances is abysmal. The same logic which compelled the Administrator to deny Respondent's first application for registration must also apply here. Respondent's actions exhibit a total disregard for the tremendous responsibilities which accompany DEA registration. Respondent unlawfully prescribed or dispensed approximately 600 dosage units of controlled substances to four undercover Agents over the course of eleven visits. Respondent ignored this duty as a registrant and instead prescribed or dispensed controlled substances without conducting even cursory medical examinations. Respondent's conduct also violated New Jersey state law. The sanctions placed on Respondent's medical license by the New Jersey State Board of Medical Examiners clearly manifest an intention to substantially restrict Respondent's access to controlled substances. The fact that Respondent continues to provide false information to the State of New Jersey shows a continuing disregard for the responsibility associated with handling controlled substances.

A DEA registration carries with it a serious responsibility for the proper use of controlled substances. The Administrator requires assurance that the registrant will uphold his responsibility to handle controlled substances with sufficient care to protect the public interest. Respondent has yet to provide the Administrator with that degree of assurance. The only evidence of rehabilitation presented has been Respondent's participation in a 114 hour mini-residency in the use and abuse of controlled substances given at the University of Medicine and Dentistry of New Jersey in 1984. While this step is commendable, there is no other evidence that Respondent has come to fully appreciate the responsibilities of DEA registration. Respondent's past repeated unlawful activities stand uncontradicted. Consequently, the Administrator determines that issuing a DEA registration to Respondent would be inconsistent with the public interest.

Having concluded that Respondent's registration would be inconsistent with the public interest, the Administrator of the Drug Enforcement Administration, pursuant to the powers vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), orders that the application for registration, executed by Felix Sesin, M.D., on January 21, 1988, be, and it hereby is, denied.

This order is effective March 20, 1989.

Dated: March 13, 1989.

John C. Lawn,

Administrator.

[FR Doc. 89-6413 Filed 3-17-89; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 88-104]

Dean A. Steinberg, M.D., Doylestown, PA; Hearing

Notice is hereby given that on October 24, 1988, the Drug Enforcement Administration, Department of Justice, issued to Dean A. Steinberg, M.D., an Order to Show Cause as to why the Drug Enforcement Administration should not revoke your DEA Certificate of Registration, AS2190471, and deny any pending applications for renewal.

Thirty days have elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Tuesday, May 23, 1989, commencing at 10:00 a.m., at the United States Court of Appeals for the Federal Circuit, 717 Madison Place, NW., Courtroom 2, Fourth Floor, Washington, DC.

Dated: March 14, 1989.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 89-6465 Filed 3-17-89; 8:45 am]

BILLING CODE 4410-09-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 89-19]

Aerospace Safety Advisory Panel; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting change.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 54FR8610, Notice Number 89-13, March 1, 1989.

PREVIOUSLY ANNOUNCED TIMES AND DATES OF MEETING: March 20, 1989, 2 p.m. to 3:30 p.m.

CHANGES IN THE MEETING: Date changed to March 28, 1989, 2 p.m. to 3:30 p.m.

CONTACT PERSON FOR INFORMATION: Mr. Gilbert L. Roth, Staff Director, Aerospace Safety Advisory Panel, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-8971.

Dated: March 16, 1989.

Philip D. Waller,

Director, General Management.

[FR Doc. 89-6539 Filed 3-17-89; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Humanities

Meetings of the Humanities Panel

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506:

FOR FURTHER INFORMATION CONTACT: Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone 202/786-0322.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; or (3) information the disclosure of which would significantly frustrate implementation of proposed agency action, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

1.
Date: April 13-14, 1989
Time: 8:30 a.m. to 5:30 p.m.
Room: 415
Program: This meeting will review applications submitted for Humanities Projects in Media, submitted to the Division of General Programs, for projects beginning after October 1, 1989.

2.
Date: April 20-21, 1989
Time: 8:30 a.m. to 5:30 p.m.
Room: 415
Program: This meeting will review applications submitted for Humanities Projects in Media, submitted to the Division of General Programs, for projects beginning after October 1, 1989.

3.
Date: April 20-21, 1989
Time: 8:30 a.m. to 5:30 p.m.
Room: 430
Program: This meeting will review applications submitted for Humanities Projects in Libraries and Archives, submitted to the Division of General Programs, for projects beginning after October 1, 1989.

4.
Date: April 24-25, 1989
Time: 8:00 a.m. to 5:00 p.m.
Room: 430
Program: This meeting will review applications submitted for Public Humanities Programs, submitted to the Division of General Programs, for projects beginning after October 1, 1989.

5.
Date: April 26-27, 1989
Time: 8:30 a.m. to 5:30 p.m.
Room: 415
Program: This meeting will review applications submitted for Humanities Projects in Media, submitted to the Division of General Programs, for projects beginning after October 1, 1989.

6.
Date: April 27, 1989
Time: 8:30 a.m. to 5:00 p.m.
Room: 315
Program: This meeting will review applications in Elementary and Secondary Education, submitted to the Division of Education Programs, for projects beginning after October 1, 1989.

7.
Date: April 28, 1989
Time: 8:30 a.m. to 5:30 p.m.
Room: 316-2
Program: This meeting will review applications to direct Summer Seminars for College Teachers in English and American Literature, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1990.

Stephen J. McCleary,

Advisory Committee, Management Officer.

[FR Doc. 89-6470 Filed 3-17-89; 8:45 am]

BILLING CODE 7536-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-483]

Union Electric Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-30, issued to Union Electric Company (the licensee), for operation of the Callaway Plant, located in Callaway County, Missouri.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would revise the provisions in the Technical Specifications (TS) relating to reducing the required Residual Heat Removal (RHR) system flowrate during Mode 6 operation, deleting the RHR autoclosure interlock (ACI) function, and allowing the safety injection (SI) pumps to be energized with the head on and with water level not above the top of the reactor vessel flange, in Modes 5 and 6.

The proposed action is in accordance with the licensee's application for amendment dated January 6, 1989, as supplemented by a letter dated February 10, 1989.

The Need for the Proposed Action

The proposed change to the TS is required in order to provide greater margin against vortexing and preclude an inadvertent loss of decay heat removal capability due to air entrainment and cavitation of the RHR pumps, to prevent a loss of decay heat removal due to failures and spurious signals in the ACI circuitry, and to allow the operators to start the SI pumps from the control room if needed to mitigate a loss of decay heat removal. These changes address certain NRC staff concerns raised in Generic Letter 88-17, Loss of Decay Heat Removal.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revision to TS and concludes that the proposed changes will result in a significant decrease in the probability of a loss of decay heat removal capability and result in a net safety benefit. Therefore, the proposed changes do not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

The Notice of Consideration of Issuance of Amendment and Opportunity for Prior Hearing in connection with this action was published in the **Federal Register** on February 8, 1989 (54 FR 6222). No request for hearing or petition for leave to intervene was filed following this notice.

With regard to potential nonradiological impacts, the proposed change to the TS involves systems located within the restricted area as defined by 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

Alternatives to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Callaway Plant dated January 1982.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated January 6, 1989 and a supplement dated February 10, 1989, which are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC and at the Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251 and the John M. Olin Library, Washington University, Skinker and Lindell Boulevards, St. Louis, Missouri 63130.

Dated at Rockville, Maryland, this 13th day of March 1989.

For the Nuclear Regulatory Commission.

Timothy G. Colburn,

Acting Director, Project Directorate III-3, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-6451 Filed 3-17-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-440]

The Cleveland Electric Illuminating Co. et al.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-58, issued to The Cleveland Electric Illuminating Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company and Toledo Edison Company (the licensees), for operation of the Perry Nuclear Power Plant, Unit 1, located in Lake County, Ohio.

The amendment would revise Tables 3.6.4-1 and 3.3.7.4-1 of the Technical Specifications to add two additional automatic containment isolation valves to the Containment Isolation Valve Table and one valve control switch to the Division 1 Remote Shutdown System Control Table. The valves are being added to separate the Suppression Pool Cleanup System from the Residual Heat Removal (RHR) System.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By April 19, 1988, the licensees may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hering and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10

CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularly the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Dcoument Room, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (in Missouri 1-800-342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John N. Hannon: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC, 20037, attorney for the licensees.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its intent to make a no significant hazards consideration finding in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated January 18, 1989, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the local public document room, Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

Dated at Rockville, Maryland, this 13th day of March, 1989.

For the Nuclear Regulatory Commission.

Timothy G. Colburn,

Acting Director, Project Directorate III-3, Division of Reactor Projects—III, IV, V and Special Projects Office of Nuclear Reactor Regulation.

[FR Doc. 89-6452 Filed 3-17-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-335

Withdrawal of Application for Amendment to Facility Operating License; Florida Power & Light Co.; St. Lucie Plant, Unit No. 1

The United States Nclear Regulatory Commission (the Commission) has granted the request of the Florida Power & Light Company (the licensee) to withdraw their application dated September 5, 1978 for the St. Lucie Plant, Unit No. 1 located in St. Lucie County, Florida. The proposed amendent would have revised Technical Specifications (TS) for the emergency diesel generators (EDG).

The Commission issued a Notice of Consideration of Issuance of Amendment in the **Federal Register** On June 22, 1983 (48 FR 28580).

At a meeting held on September 17, 1986, It was agreed that the staff would stop its review of the application and the licensee would refashion the proposed amendment to be consistent with the proposed license amendment for the St. Lucie Unit 2 EDG TS, also under review at that time.

On February 7, 1989, the Commission issued the amendment revising the TS for the St. Lucie Unit 2 EDG and the licensee is currently preparing a request which will supersede the September 5, 1978 submittal. For that reason, by letter dated March 6, 1989, the licensee withdrew the September 5, 1978 application.

For further details with respect to this action, see (1) the application for amendment dated September 5, 1978, (2) the licensee's letter dated March 6, 1989, and (3) our letter dated March 10, 1989.

All of the above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the Local Public Document Room located at the Indian River Junior College Library, 3209 Virginia Avenue, Ft. Pierce, Florida.

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

For the Nuclear Regulatory Commission.

Jan A. Norris, Sr.

Project Directorate II-2 Division of Reactor Projects—I/II Office of Nuclear Reactor Regulation.

[FR Doc. 89-6453 Filed 3-17-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-395]

South Carolina Electric & Gas Co.; South Carolina Public Service Authority; Withdrawal of Application for Amendment to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has granted the request of South Carolina Electric & Gas Company (the licensee) to withdraw its December 8, 1983 application for a proposed amendment to the Virgil C. Summer Nuclear Station, Unit No. 1, located in Jenkinsville, South Carolina. The proposed amendment would have implemented a Technical Specification change to Tables 3.3-1 and 4.3-1 for reactor trip breakers surveillance testing as a part of the response to Item 4.3 of Generic Letter 83-28, "Required Actions Based on Generic Implications of Salem ATWS Event." The Commission issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on February 24, 1984 (48 FR 50638). By letter dated January 20, 1989 licensee withdrew its application for the proposed amendment.

For further details with respect to this action, see the application for amendment dated December 8, 1983, and the licensee's letter dated January 20, 1989, withdrawing the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW, Washington, DC, and at the Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180.

Dated at Rockville, Maryland, this 13th day of March 1989.

For the Nuclear Regulatory Commission.

Edward A. Reeves,

Acting Director, Project Directorate II-1, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89-6454 Filed 3-17-89; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-26624; File No. SR-Amex-89-02]

Self-Regulatory Organizations; Proposed Rule Change by American Stock Exchange, Inc.; Relating to Restrictions on Options Specialists and Affiliated Member Firms

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice hereby is given that on January 30, 1989, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex is proposing to amend Exchange policy to permit a member firm affiliated with an options specialist to conduct an upstairs over-the-counter ("OTC") market making business in the stock underlying the specialty option, and to revise its Chinese Wall guidelines (Rule 193 Commentary) to reflect and accommodate this change. The Exchange also is proposing to amend Rule 950 to clarify the general prohibition on such market making activity. The text of the proposed rule change follows as Exhibit A to this notice.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-regulatory organization's statement of the purpose of, and the statutory basis for, the proposed rule change

(1) Purpose

In 1986, the Exchange adopted rules and procedures designed to facilitate diversified members firms' participation in the specialist business while ensuring a functional separation (known as a "Chinese Wall") between the specialist and the member firm's other activities. The Chinese Wall procedures adopted by the Exchange, however, did not provide for "integrated market making" of stocks and options (the trading of individual options and their underlying stocks by different areas within the same firm). Integrated market making has traditionally been considered a form of "side-by-side" trading, which, since the inception of listed stock options, the SEC and the options exchanges have opposed, based on concerns regarding the potential for abuse.

While integrated market making involving Amex listed stocks and Amex traded options will continue to be prohibited, the Exchange is proposing to amend its policy to permit member firms affiliated with Exchange options specialists to act as upstairs OTC market makers in stocks underlying the specialty options, provided satisfactory Chinese Wall procedures between the specialist unit and upstairs firm are established and approved by the Exchange. The Chinese Wall must be designed to prohibit the upstairs firm from furnishing market or corporate information to, or otherwise influence particular trading decisions of, its affiliated specialist unit, and to prevent the misuse of specialist market information by the upstairs firm. In addition, the specialist organization and its affiliated upstairs firm must develop procedures to ensure that there is no communication between the OTC market maker participating in the National Association of Securities Dealers' Automated Quotation System ("NASDAQ") and the specialist in connection with the execution of proprietary transactions by the market maker in the overlying option or by the specialist in the underlying stock.

To clarify the general Exchange policy that without satisfactory Chinese Wall procedures, a member firm affiliated with an Exchange option specialist may not engage in OTC market making activity in the stock underlying a specialty option, it is also proposed that a new subparagraph be added to Exchange Rule 950 specifically setting forth this prohibition.

(2) Basis

The proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it is designed to remove impediments to and perfect the mechanism of a free and open market.

B. Self-regulatory organization's statement on burden on competition

The proposed rule change will impose no burden on competition.

C. Self-regulatory organization's statement on comments on the proposed rule change received from members, participants or others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Amex consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to the file number in the caption above and should be submitted by April 10, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: March 10, 1989.

Appendix A

(Italics indicates words to be added; brackets [ ] indicate words to be deleted.)

Rule 193 Affiliated Persons of Specialists

(a)—(e) No Change.

Commentary

Guidelines for Exemptive Relief under Rule 193 for Approved Persons or Member Organizations Affiliated with a Specialist Member Organization.

(a) The Exchange Rules listed below impose certain restrictions on an approved person or member organization which is affiliated with a specialist or specialist unit (collectively referred to herein as an "affiliated upstairs firm"):

- Rule 170(e) provides that an affiliated upstairs firm may not purchase or sell any security in which the specialist is registered for any account in which such person or party has a direct or indirect interest.
- Rule 175 provides that an affiliated upstairs firm may not hold or grant any option in any stock in which the specialist is registered.
- Rule 190(a) prohibits an affiliated upstairs firm from engaging in any business transaction with the issuer of a specialty stock and its insiders.
- Rule 190(b) prohibits an affiliated upstairs firm from accepting orders in specialty stock directly from the issuer, its insiders and certain designated institutions.
- Rule 190 Commentary prohibits an affiliated upstairs firm from "popularizing" a stock in which a specialist is registered, e.g., making recommendations and providing research coverage.
- Rule 950(k) extends certain of the above prohibitions contained in Rule 190 and its Commentary to the trading of option contracts.
- *Rule 950(n) extends the prohibition contained in Rule 170 and Commentary to the trading of options contracts and further prohibits an affiliated upstairs firm from engaging in market making in a ANASDAQ stock which underlies an option in which the affiliated specialist is registered.*

Exchange Rule 193 provides a means by which an affiliated upstairs firm may obtain an exemption from the restrictions discussed above. This exemption is only available to an affiliated upstairs firm which obtains prior exchange approval for procedures restricting the flow of material, non-public information between it and its affiliated specialist, i.e., a "Chinese Wall." These guidelines set forth, at a minimum, the steps an affiliated upstairs firm must undertake to seek to qualify for exemptive relief. Any firm that does not obtain Exchange approval of its procedures in accordance with these guidelines will remain subject to the restrictions in the Rules set forth above.

(b) No change.

(i) the affiliated upstairs firm and the specialist organization must be organized as separate and distinct organizations. At a minimum, the two organizations must maintain separate and distinct books, records and accounts and satisfy separately all applicable financial and capital requirements. While the Exchange will permit the affiliated upstairs firm and the specialist organization to be under common management, in no instance may persons on the upstairs firm's side of the "Wall" exercise influence over or control the specialist organization's conduct with respect to particular securities or vice versa. Any general managerial oversight must not conflict with or compromise in any way the specialist's market making responsibilities pursuant to the Rules of the Exchange.

(ii) In addition to the requirements set forth in paragraph (b)(i), an affiliated upstairs firm that makes a market in a NASDAQ stock underlying an option in which the affiliated specialist organization is registered must develop procedures to ensure that there is no communication between the NASDAQ market maker and the specialist in connection with the execution of proprietary transactions by the market maker in the overlying option, or by the specialist in the underlying stock. Such procedures may include a requirement that an unaffiliated broker be used to effect transactions in the overlying option and that an unaffiliated market maker be used to effect transactions in the underlying stock, or any other requirements designed to prevent direct communication between the NASDAQ market maker and the Amex option specialist that have been approved by the Exchange.

[(ii)] *(iii)* The affiliated upstaris firm and the specialist organization must establish procedures designed to prevent the use of material non-public corporate or market information in the possession of the affiliated upstairs firm to influence the specialist organization's conduct and avoid the misuse of specialist market information to influence the affiliated upstairs firm's conduct. Specifically, the affiliated upstairs firm and the specialist organization must ensure that material non-public corporate information relating to, or trading positions taken by the affiliated upstairs firm in, a specialty security are not disclosed or made available to the specialist organization or to any member, partner, director or employee thereof; that no trading is done by a specialist in the specialist organization while in possession of non-public corporate information derived by the affiliated upstairs firm from any transaction or relationship with the issuer or any other person in possession of such information; that advantage is not taken of knowledge of pending transactions or the upstairs firm's recommendations; and that all information pertaining to positions taken or to be taken by the specialist and to the specialist's "book" in a specialty security, is kept confidential and is not made available to the affiliated upstairs firm. *In addition, an affiliated upstairs firm that acts as a market maker in a NASDAQ stock which underlies an option in which the affiliated specialist organization is registered as a specialist must establish procedures to ensure that all information pertaining to positions taken or to be taken by the options specialist is kept confidential and not made available to the NASDAQ market maker, and that information pertaining to positions taken or to be taken by the NASDAQ market maker is kept confidential and not made available to the options specialist.*

(c) An affiliated upstairs firm seeking the Rule 193 exemption shall submit to the

Exchange a written statement which shall set forth:

(i)—(vi) No change.

(vii) Whether the firm intends to clear proprietary trades of the specialist and, if so, the procedures established to ensure that information with respect to such clearing activities will not be used to compromise the firm's Chinese Wall (The procedures followed shall, at a minimum, be the same as those used by the firm to clear for unaffiliated third parties); [and]

(viii) That no individual associated with it may trade as a Registered Trader, a Registered Equity Market Maker, or a Registered Options Trader in any stock or option in which the associated specialist organization specializes [.]; *and*

(ix) That the specialist organization and the affiliated upstairs firm will implement procedures to ensure that market information in possession of the options specialist and market information in possession of the NASDAQ market maker for the underlying stock is not used directly or indirectly to influence either the specialist organization's conduct or the affiliated upstairs firm's conduct.

(d)—(e) No change.

(f) The written statement required by Paragraph (c) of these Guidelines shall detail the internal controls which both the affiliated upstairs firm and the specialist organization intend to adopt to satisfy each of the conditions stated in subparagraphs (c)(i) through (c) [(viii)] *(ix)* of these Guidelines, and the compliance and audit procedures it proposes to implement to ensure that the international controls are maintained. If the Exchange determines that the organizational structure and the compliance and audit procedures proposed by the upstairs firms and its affiliated specialist organization are acceptable under the Guidelines, the Exchange shall so inform the upstairs firm and its affiliated specialist organization, in writing, at which point the exemptions provided by Rule 193 shall be granted. Absent such prior written approval, the exemptions provided by Rule 193 shall not be available. The written statement should identify the individuals in senior management positions (and their titles/levels of responsibility) of the affiliated upstairs firm to whom information concerning the specialist member organization's trading activities and security positions, and information concerning clearing and margin financing arrangements, is to be made available, the purposes for which it is to be made available, the frequency with which the information is to be made available, and the format in which the information is to be made available. If any partner, director, officer or employee of the affiliated upstairs firm intends to serve in any such capacity with the specialist organization, or vice versa, the written statement must include a statement of the duties of the particular individual at both entities, and why it is necessary for such individual to be a partner, director, officer or employee of both entities. The Exchange will grant approval for service at both entities only if the dual affiliation is for overall management control purposes for administrative and support purposes. Dual affiliation will not be permitted for an individual who intends to be active in the day-to-day business operations of both entities. Nothing in the foregoing, however, shall preclude an employee of one entity who performs strictly administrative or support functions (such as facilities, accounting, data processing, personnel and similar types of services) from performing similar functions on behalf of the other entity, provided that such individual is clearly identified, and the functions performed on behalf of each entity are specified, in the written statement described above, and all requirements in Paragraph (b) above as to maintaining the confidentiality of information are met.

* * * * *

Rules of General Applicability

Rule 950. (a) The following Floor Rules shall apply to Exchange option transactions and other transactions on the Exchange in option contracts: 100, 101, 103, 104, 105, 106, 109, 110, 112, 117, 123, 129, 130, 135, 150, 151, 152 155, 157, [170,] 172, 173, 174, 175, 176, 177, 180, 181, 183, 184, 185, 192 and 193. Unless the context otherwise requires, the term "stock" wherever used in the foregoing Rules shall be deemed to include option contracts. Except as otherwise porvided in this Rule, all other Floor Rules (series 100 et seq.) shall not be applicable to Exchange options transactions.

(b)—(m) No change.

(n) The provisons of Rule 170 apply to trading of options contracts with the addition of the following Commentary:

Commentary

.10 No member, officer, employee or approved person who is affiliated with a specialist or specialist member organization, shall, during the period of such affiliation, be registered as a marker maker in a NASDAQ stock which underlies an option in which the affiliated specialist organization is registered as a specialist.

[FR Doc. 89-6496 Filed 3-17-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26625; File No. SR-Amex-89-4]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by American Stock Exchange, Inc.; Relating to Closing Rotations in Expiring Options

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice hereby is given that on February 28, 1989, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange, pursuant to Rule 19b-4 under the Act, hereby submits its proposal to amend Rule 918, Commentary .01, paragraph (c) as set forth below. Italics indicate material proposed to be added; brackets [ ] indicate material proposed to be deleted from the existing rule.

Rule 918. Trading Rotations, Halts and Suspensions

No change.

Commentary

.01 Trading rotations, which shall be conducted by the Specialist acting in such specialty options, shall be conducted in the following manner:

(a) Opening rotations—No Change.

(b) Modified Trading rotations—No Change.

(c) Closing Rotations in Expiring Options—No Change.

(c) Closing rotations in expiring options—The closing rotations in each series of options subject to Rule 918(a)(4) shall commence at or as soon as practicable after [4:00 p.m.] *4:10 p.m.* but not until a final price for the underlying stock is established in the primary market for such security. Orders may be entered, modified or cancelled in a particular series of options until the commencement of rotation in such series. The Specialist shall proceed in the following manner: Taking each class of option contracts in which he is acting in turn, the Specialist should generally close the one or more series of each class having the lowest exercise price; then proceed to those series having the highest exercise price and so forth, until all series have been closed. Except as otherwise provided by the Exchange if both puts and calls covering the same underlying security are traded, the specialist may determine which type of option should close first, and may alternate the closing of put series and call series or may close all series of one type before closing any series of the other type, depending on current market conditions.

.02 through .05—No Change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of

these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-regulatory organization's statement of the purpose of, and statutory basis for, the proposed rule change

Currenlty, on the Friday prior to expiration, trading in expiring stock options ceases at 4:00 p.m., followed by a closing rotation. The proposed rule change would permit the trading in expiring stock options to continue until 4:10 p.m., followed by a closing rotation. As a result of this change, the Exchange rule will be consistent with the rules of the Chicago Board Options Exchange ("CBOE") the Philadelphia Stock Exchange ("PHLX") and the Pacific Stock Exchange ("PSE").

Moreover, approval of the proposal will eliminate possible investor confusion arising from different procedures at different options exchanges and will provide guidance to investors in submitting their options orders in individual series that are scheduled to expire.

Therefore, the proposed rule change is consistent with section 6(b)(5) of the 1934 Act, which provides in pertinent part, that the rules of the Exchange be designed to promote just and equitable principles of trade and to protect the investing public.

B. Self-regulatory organization's statement on burden on competition

The AMEX believes that the proposed rule change will not impose a burden on competition.

C. Self-regulatory organization's statement on comments on the proposed rule change received from Members, Participants, or Others

The Options Committee, a committee of the AMEX Board of Governors comprised of members and representatives of member firms, has endorsed the proposed rule change.

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange requests that the proposed rule change be granted accelerated effectiveness pursuant to section 19(b)(2) of the Act. In particular, the Amex would like to be able to implement its revised procedures on Friday, march 17, which is the next quarterly Expiration Friday.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations applicable to a national securities exchange, and, in particular, the requirements of sections 6 and the rules and regulations thereunder. By permitting trading in expiring stock options to continue until 4:10 p.m., rather than 4:00 p.m., on the Friday prior to expiration, the Exchange will conform its procedures with those of the CBOE, PHLX, and PSE and eliminate the possibility of investor confusion. In addition, continuing trading until 4:10 will provide the Amex with additional time to receive closing stock prices from the stock exchanges for purposes of pricing expiring stock options.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof. In particular, the CBOE, PHLX, and PSE already have implemented identical provisions. In addition, accelerated approval will permit the Exchange to implement its revised trading procedures on March 17, 1989, the next Expiration Friday.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by April 10, 1980.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

March 10, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-6497 Filed 3-17-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26626; File No. SR-DTC-89-03]

Self-Regulatory Organizations; Depository Trust Company; Order Approving a Proposed Rule Change Concerning the International Institutional Delivery System

I. Introduction

On January 30, 1989, the Depository Trust Company ("DTC") filed a proposed rule change (File No. SR-DTC-89-03) with the Commission pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act").[1] The proposed rule change would establish as a full service the International Institutional Delivery ("IID") System. The Commission published notice of the proposed rule change in the **Federal Register** on February 8, 1989.[2] No comments were received. As discussed below, the Commission is approving this proposed rule change.

II. Description

The proposed rule change would establish as a full DTC service the International Institutional Delivery System for the centralized, automated processing of international, institutional trades. DTC has been operating the IID System as a pilot program with limited participation since December 1988.[3] Operation of the IID System as a full service is expected to increase efficiency in settling many institutional trades executed in foreign securities [4] by centralizing and automating the communication of trade details, confirmations, affirmations, and deliver and receive instructions among many parties to an international, institutional trade.[5]

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[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No 26505 (January 31, 1989), 54 FR 6223.

[3] Approval of the pilot program was granted in Securities Exchange Act Release No. 26374 (December 20, 1988), 53 FR 52283.

[4] "Foreign securities" means non-U.S. and non-Canadian securities that are not eligible for automated book-entry settlement, and that, for various reasons, *e.g.*, lack of a compatible securities identification number, are not conducive to processing in the domestic ID System.

[5] The IID System is an extension of DTC's domestic ID system, with certain differences. For

Continued

Generally, the IID System will process trade data input from broker-dealers at various cutoff times during the day.[6] Certain fields contain mandatory data, such as identification numbers for all parties, International Standards Organization ("ISO") currency codes, ISO security-type codes, and numbering system codes.[7] Confirms are generated and available approximately one-half hour after the cutoff time for trade data input.[8] Confirms are sent to broker-dealers, agent banks/global custodians, and institutions. Confirms identify sub-custodians for both trading parties. Affirmation processing occurs throughout the day, from 8 a.m. until 7:30 p.m. Affirmations are received from agent banks/global custodians and institutions. Affirmations may contain payment and settlement instructions for communication among institutions and agent banks/global custodians. Information about errors in affirmations is available about one-half hour after affirmations are received. The IID System generates deliver and receive instructions throughout the day, about one-half hour after affirmations are processed. In addition, inquiry capability is available to broker-dealers, agent banks/global custodians, and institutions. A more complete description of the IID System may be found in Securities Exchange Act Release No. 26374.[9]

III. DTC"s Rationale

In its filing, DTC stated that the purpose of the proposed rule change is to provide information that is intended to increase efficiency in settling many international, institutional trades. DTC further stated that such purpose is consistent with the requirements of the Act and the rules and regulations thereunder applicable to DTC.

IV. Discussion

Section 17A of the Act sets forth the duties and requirements of registered clearing agencies. Section 17A(b)(3)(F) of the Act provides that a clearing agency's rules must be designed, among other things, to promote the prompt and accurate clearance and settlment of securities transactions, to assure the safeguarding of securities and funds in the clearing agency's custody or control, and to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions.

In recent years, the volume of international trading, including institutional trading, has increased significantly.[10] Moreover, international trading is complicated by the lack of uniformity in settlement procedures and time frames, and the involvement of a large number of geographically distant parties. The increased volumes and non-uniform practices make international trading complex and vulnerable to the risks of delays or failed settlements.

The Commission believes that DTC's IID System has the potential to improve the clearance and settlement of a significant number of international, institutional trades, thereby reducing the risks of cross-border trading. The IID System centralizes and automates communications among the various entities involved in cross-border transactions. The IID System has the capability of turning around, on a same-day basis, trade data input, confirmations, affirmations, and deliver and receive instructions, thereby enabling more timely settlements. By providing deliver and receive instructions, the IID System also enables the parties to settle trades wherever they choose, in accordance with local settlement practices. Thus, the IID System potentially will promote the prompt and accurate clearance and settlement of securities transactions by providing fast, efficient communications among the parties.

Pursuant to temporary Commission approval, DTC has been operating the IID System as a pilot program.[11] DTC reports that, based on informal conversations with pilot program participants, no operational difficulties have been encountered, and the program has been running successfully. For the period from December 27, 1988 to February 24, 1989, four institutions, four broker-dealers, and seven global custodians used the IID System. In addition, eighteen sub-custodians were identified on confirms generated in the IDD System. Identified sub-custodians are located in Japan, the United Kingdom, West Germany, Amsterdam, and Belgium. DTC reports that approximately 136 confirmations were processed in the IID System during that period, resulting in settlement for 83 affirmed trades. DTC believes that many more participants will use and enjoy the benefits of the IID System when it becomes available to them as a full service.

As noted in Securities Exchange Act Release No. 26374, the Commission specifically approves of DTC's decision to design the IID System to accommodate a variety of securities identification numbering systems. The Commission believes that, until an internationally recognized securities identification numbering system is developed and in use in major market centers, any service designed to enhance international clearance and settlement must account for the myriad numbering systems currently used in international trading centers.[12]

The Commission urges DTC to consider future inclusion of sub-custodians as direct participants in the IID System. Although the current IID System configuration permits identification of sub-custodians, sub-custodians do not receive any communications from the IID System. Instead, they receive notification of settlements directly from agent banks/global custodians. Inclusion of sub-custodians in the IID System could further reduce the risk of delays in communications between agent banks/global custodians and sub-custodians.

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example, IID accommodates the need to identify foreign currencies and a variety of securities numbering systems that are used in different markets and international clearance and settlement systems. In addition, IID enables participants to identify foreign sub-custodians who will effect delivery or receipt of securities and collection or payment of related funds. Also, processing times differ for domestic and international institutional trades: IID is capable of same-day processing of participant input and related DTC output. In the domestic system, participant input and DTC output generally are processed over a minumum of three days. Another important difference is that domestic ID will continue to provide for automated settlement at a registered clearing agency, while IID enables parties to communicate deliver/receive instructions for settlement outside DTC, presumably between foreign sub-custodians.

[6] Cutoff times for computer-to-computer ("CCF") users occur at 10 a.m., 2 p.m., 6 p.m., and 2 a.m. Data from Participant Terminal System ("PTS") users will be processed immediately.

[7] The IID System is designed to accommodate any recognized securities identification numbering system. The numbering system itself must be identified in the IID System by using codes developed for this purpose.

[8] Confirms for trade data input after the 2 a.m. cutoff will be available at 7 a.m.

[9] *See* note 3, *supra*.

[10] For example, in 1987, purchases and sales comprising foreign activity in U.S. corporate stocks totalled approximately $482 billion, compared with approximately $278 billion in 1986. Purchases and sales comprising U.S. activity in foreign corporate stocks in 1987 totalled approximately $189 billion, compared with approximately $100 billion in 1986.

[11] Approval of the temporary pilot program has been extended twice, in Securities Exchange Act Release Nos. 26492 (January 26, 1989), 54 FR 5184, and 26577 (February 28, 1989), 54 FR 9954.

[12] Among other efforts, the board of trustees that governs the CUSIP numbering system in the United States has approved developing a Cusip International Numbering System ("CINS"). CINS would consist of nine digit symbol, an arrangement that is compatible with systems currently used by U.S. broker-dealers.

According to DTC, the inclusion of sub-custodians is not critical at this time, primarily because the broker-dealers and agent banks/global custodians that requested the IID System and that are expected to be the major users of IID already have communications networks and procedures in place for transmitting deliver and receive instructions to sub-custodians. The Commission nevertheless urges DTC to be especially sensitive to any requests from participants to enhance the IID System to include sub-custodians.[13]

Pilot program users are eager to use the IID System for a greater number of transactions. The Commission understands that pilot program users informed DTC that they expect the IID System to be much more useful and efficient when a greater number of users participates in the System. Approval of this proposed rule change will make the IID System available generally to DTC participants.

Approval of the IID System also will make the IID System available to all participants in the national clearance and settlement system through links with other registered clearing agencies. Thus, the IID System will foster cooperation and coordination in the clearance and settlement of institutional, international transactions among all participants in the national clearance and settlement system.

V. Conclusion

For the reasons discussed above and in Securities Exchange Act Release No. 26374, the Commission finds that the proposed rule change is consistent with the Act and, in particular, section 17A.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–DTC–89–03) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: March 14, 1989.

[FR Doc. 89–6498 Filed 3–17–89; 8:45 am]

BILLING CODE 8010–01–M

[13] In Securities Exchange Act No. 26374, the Commission also noted that DTC intends to offer to CCF users the option of a standardized ISO format for deliver/receive instructions for sub-custodians. The Commission continues to encourage DTC to expand the use of this format to all IID System users, and, where appropriate, generally to introduce internationally-standardized procedures and formats into all its services and systems.

[Release Nos. 34–26627; File No. SR–NYSE–88–36]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approxing Proposed Rule Change

On November 10, 1988, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Commission a proposed rule change under section 19(b) of the Securities Exchange Act of 1934 ("Act"). The proposal provides for next-day comparison of securities transactions.[1] Notice of the proposed rule change was published in the **Federal Register** on December 12, 1988, to solicit comments form interested persons.[2] No comments were received. This order approves the proposal.

I. Description of the Proposal

The proposed rule change consists of new NYSE Rule 130, captioned "Next Day Comparison of Exchange Transactions." Rule 130 generally would require that all transactions be compared or closed out by the close of business on the business day following the trade date (*i.e.*, "T+1").[3] Under existing NYSE rules, transactions must be compared or otherwise closed out by T+5.[4] Thus, the proposal, when implemented, would shorten a transaction's comparison cycle by four business days. The proposal, however, would have no effect on the settlement of transactions, the majority of which would continue to settle on T+5.[5]

The NYSE expects to make the proposed rule change effective within 18 months after Commission approval. Accordingly, the Exchange recognizes that this rule filing is only the first of several steps toward implementation of its next-day "compare or close out" rule.[6] Moreover, this proposal, in essence, is an enabling rule that provides a conceptual framework for the proposal's components. As discussed below, each of the major components will be the subject of an independent rule filing dealing with its operations and its implementation.

The NYSE states in its filing that proposed Rule 130 would mandate the use of a new automated system called the Overnight Comparison System ("OCS"),[7] which is being developed jointly by NYSE and National Securities Clearing Corporation ("NSCC").[8] The NYSE further states that OCS mainly will consist of two automated sub-systems, both of which are now under development: (1) NYSE's On-Line Correction System, and (2) NSCC's Comparison Redesign System. As a general matter, the NYSE's system will be directed at the automated pairing of trade sides that have not been properly matched, and the NSCC's system will be directed at shortening the comparison cycle. This rule filing seeks approval only for the NYSE's proposed Rule 130, and enabling rule that embodies the concepts of the On-Line Correction System and the Comparison Redesign System (T+1 trade comparison).[9]

[1] Trade comparison, or the matching of the two sides of a transaction, is the process after a trade has been executed by which broker-dealers confirm with each other the trade's terms (*e.g.*, security, number of units, and price) and the existence of a contract. Comparison is the first of the three major steps in processing a securities transaction (the other two being clearance and settlement). *See* Division of Market Regulation, Securities and Exchange Commission, *The October 1987 Market Break*, Ch. 10 at 2–4 (hereinafter *Division Report*).

[2] *See* Securities Exchange Act Release No. 26342 (December 6, 1988; 53 FR 49949.

[3] Proposed NYSE Rule 130 would apply only to contracts for "regular way" (*i.e.*, T+5) settlement in stocks, rights, and warrants, as provided in NYSE Rules 64(2), 131, 132, and 133. The rule proposal would not apply to contracts that: (1) Are designated for cash settlement, next day settlement, or seller's option settlement; or (2) involve other securities such as bonds or options.

[4] *See* NYSE Rule 134.A(f). Currently, NYSE trades typically are compared on or after the morning of T+2, and an NYSE trade that remains uncompared after 2:00 p.m. on T+2 is known as a "questioned trade," or a "QT." *See* NYSE Rule 134.A(c); *Division Report*, ch. 10 at 3.

[5] Settlement, the final step in securities processing (following comparison and clearance), is the process of exchanging money for securities (*i.e.*, delivery and payment) that consummates a transaction. *See Division Report*, Ch. 10 at 2, 5.

[6] The NYSE notes that apart from the proposal's prospective systems development work, the Exchange also must amend, by subsequent filings with the Commission, certain of its rules, including: NYSE Rule 115A.30 (Opening Automated Report Service), and NYSE Rule 134.A (Differences and Omissions—Cleared Transactions ("QT's")).

[7] OCS, as proposed, is known in the securities industry by various names and acronyms including the Next-Day Comparison System, or NDC; the Floor-Derived Comparison System, or FDC; and the T+1 Comparison System, or T+1. These names all refer to the same system.

[8] For a more operational description of OCS, *see* NYSE Membership Bulletins (May 27, 1988 and July 15, 1988), and NYSE Membership Notice (August 19, 1988). These documents are reprinted in Exhibit B of the instant rule filing at pages 1, 6, and 54, respectively.

[9] The Commission understands that, within the next few months, the NSCC will file with the Commission under section 19(b)(2) of the Act its own OCS rule proposal for the Redesign System dealing with T+1 comparison of transactions executed on the NYSE. *See* NSCC Important Notice A3049 (August 19, 1988), reprinted as Exhibit B, page 63, of the instant NYSE filing. *See also* letter to all NYSE members from Donald J. Solodar, Senior Vice President, NYSE (August 19, 1988), reprinted as Exhibit B, page 54, of the instant NYSE filing.

A. NYSE's On-Line Correction System

Under the proposal, NYSE and NSCC would implement OCS in stages. The initial stage would be the introduction of the NYSE's On-Line Correction System (which itself will be implemented in stages) to computerize the adjustment processing of uncompared trades. Specifically, the Correction System would automate: (1) The daily advisory and adjustment cycle currently operated by NSCC, and (2) the existing QT process currently operated at the Exchange and processed by NSCC.[10]

The Correction System would replace current paper handling with an on-line data base of all uncompared trades. The System's terminal screens would display relevant trade data on the uncompared trades and would permit direct entry (by typewriter keyboard) into computer terminals that could send and receive on-line inquiries. The System also would have the flexibility to operate within existing comparison time frames or in a more compressed comparison cycle.

Operationally, the On-Line Correction System would work as follows: Terminals would be installed in the operations areas of clearing firms, specialist firms, and in NYSE's QT area.[11] During the evening of T+1, all uncompared trade data would be sent by NSCC to the NYSE, and the NYSE would make the data available to participants on the morning of T+2, concurrent with NSCC regular-way contracts.[12] All firms would be required to stamp "advisories" and add, through the System, additional sides for advisories that are participant securities.[13] At the close of business on T+2, NYSE would send all compared items to NSCC; and on the morning of T+3, these compared items would appear on the NSCC Supplemental Contract Sheet.[14]

Clearing firms would ensure that all uncompared trades remaining on their file by the end of T+2 are valid QTs, which would be submitted to their QT clerks on the morning of T+3. These items would remain in the OCS file. Additionally, on the morning of T+3, uncompared items would be displayed on the QT terminals for resolution. On normal volume days, QT terminals and advisory screens would be available from about 8:00 a.m. to 6:00 p.m. All submitting clearing firms would have access to the data, but contra firms would only have the ability to accept or "Dk" (indicating they don't know) the items.[15] QTs that were resolved through the appropriate key strokes on the terminals would be sent automatically to NSCC for processing.[16]

All NYSE member organizations having uncompared trades in securities that are not yet eligible for OCS processing would continue to resolve these trades under existing QT rules.[17] Nevertheless, the NYSE states that as experience is gained with the new System, additional securities would be added until all NYSE securities are eligible, and eventually the existing QT rules would become obsolete.

B. Implementation Schedule

The NYSE recognizes that before it can require its members to compare or close out transactions by T+1, the systems must be in place (and members must be able to use them) to permit routine trade comparison by T+1. During late March 1989, NYSE plans to load clearing member accounts into the On-Line Correction System. Also, in late March 1989, NYSE plans to load all NYSE securities beginning with the letter "A." Thereafter, for a three week period, firms would practice with the system, with the third week involving live trades. Gradually, from April through June more letters would be added until all letters (A through Z) has been loaded into the system. When fully operation, the Correction System would be able to handle 50,000 to 60,000 QTs per day.[18] Two screens would be available: (1) A clearing firm's screen that would display all its trade data, and (2) a specialist's screen that would display all data on the specialist's securities.

The NSCC's Comparison Redesign System is scheduled for implementation at the end of June 1989, after the Correction System is fully operational. The NSCC plans to have the Redesign running in May 1989 and to have a shake-out phase in June 1989. While the NSCC hopes to implement the Redesign in June with all letters running, it indicates that Redesign's implementation will depend on the Correction System's being ready and that the NSCC is taking a flexible position with regard to the Redesign's implementation date.

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[10] For definition of "QT," *see, supra*, note 4. For definitions of uncompared and advisory trades, *see, infra*, note 12.

[11] NYSE's QT Center is located at 11 Wall Street. As noted, the NYSE recommends in its filing that those firms ordinarily having a substantial number of trade adjustments should install terminals in their operational areas. NYSE further notes, however, that smaller firms or other firms without a substantial number of adjustments would be able to process their adjustments by using common terminals and printers in the NYSE's Post Trade Processing Center, also located at 11 Wall Street.

[12] On T+2, NSCC currently issues clearing member reports (known as "contract sheets") that list: (1) compared trades, (2) uncompared trades, and (3) advisory trades. Uncompared trades are trades submitted by a member that have not been matched; and advisory trades are trades submitted by the contra-side, against the member, that have not been matched. *See Division Report*, Ch. 10 at 3.

[13] NSCC has informed the Commission that it would no longer accept adjustments on securities after they have been integrated into NYSE's On-Line Correction System as participant securities.

[14] As stated above, NSCC is developing a Comparison Redesign System, *i.e.*, a new trade comparison system, to assist the NYSE in its efforts to complete trade comparison by T+1. Under the new NSCC system, NYSE would continue to send its systemized locked-in (automatically compared) trades to NSCC on the evening of the trade date. This process would remain unchanged.

The match routine would remain unchanged except for one modification, *i.e.*, the addition of a new match element with audit trail data. The remaining four elements of the existing match routine (exact match, summarization, suggested name, and partial suggested name for omnibus accounts) would remain the same. On T+1, NSCC would require its participants to submit their remaining nonsystemized ("crowd side") input to NSCC no later than 2:00 a.m. New York time. After all participant data has been received, NSCC would begin its initial match routine for these trades.

The trade resolution process would begin after participants receive the results of NSCC's initial match. NSCC plans to allow participants to submit the following adjustments until 12 noon on T+1: deletion of an uncompared trade and of a compared suggested name, acknowledgement of any advisory, and as-ofs. At approximately 12 noon on T+1, NSCC will process all adjustments through an exact match, with the results to be available in a Preliminary Adjustment Listing at approximately 1:00 p.m. As the Preliminary Adjustment Listing is being distributed to the member organizations, NSCC will generate an uncompared file to QTs for any transactions not yet resolved through the NYSE's On-Line Correction System or NSCC's adjustment process.

Participants then would resolve any open items through OCS. The NYSE would submit its QTs to NSCC by 5:00 p.m. for subsequent settlement. The NSCC would generate a Final Adjustment Contract displaying the compared QTs at approximately 8:00 p.m. For further description of NSCC's Comparison Redesign System, *see* NSCC's Important Notice A3049 (August 19, 1988), reprinted as Exhibit 2, page 63, of the instant NYSE filing.

[15] NYSE states in its filing that this provision eliminates the possibility of the comparison of erroneous trades or of having the trade terms changed by a contra party. *See* NYSE Rule 134.A(e), for the Exchange's current treatment of "Dks."

[16] NYSE notes in its filing that as a consequence of this procedure no multi-part QT forms will be delivered to Securities Industry Automation Corporation for keypunching.

[17] *See*, generally, NYSE Rule 134.A for the Exchange's existing rules governing "QTs."

[18] The NYSE's QTs on T+4 averaged 8,000 per day in the Fall of 1987, and on October 19, 1987, during the Market Break, they peaked at 56,626. *See Division Report*, Table 1, Ch. 10, p. 59.

II. Rationale for the Proposal

The NYSE states in its filing that the proposal, by shortening the comparison cycle for most trades to T+1, would: (1) Increase the efficiency of the post trade comparison process; and (2) shorten the length of time that investors and NYSE member organizations are exposed to the risk of market fluctuations on uncompared trades. The NYSE states that, consequently, the proposal would protect investors and the public interest as called for in section 6(b)(5) of the Act.

Further, the NYSE states that, as required in section 6(b)(5), the proposal, by shortening the comparison cycle, would help: (1) Prevent manipulative acts and practices; and (2) promote just and equitable principles of trade and foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities. The NYSE also emphasizes that the proposal meets the requirements of section 17A(a)(1) of the Act in that it will enhance the prompt and accurate clearance and settlement of securities transactions.

III. Discussion

The Commission believes that this proposal is consistent with the Act, particularly sections 6(b) and 17A of the Act. The proposed automated comparison system, by shortening the comparison cycle to T+1 from as long as T+5, would reduce the risk exposure to investors and NYSE member organizations as well as contribute to the prompt and efficient clearance and settlement of securities transactions.[19]

The Exchange's current proposal marks the first major overhaul to its comparison system since the 1970s. Additionally, the NYSE's proposed On-Line Correction System will constitute the first phase of the Overnight Comparison System, with the NSCC's Comparison Redesign System to be the second phase.

A. General Concerns

The Commission notes, as a general matter, that the goal of prompt and efficient clearance and settlement of securities transactions (including the comparison of securities transactions) and the use of automated systems in pursuit of this goal are expressly contemplated in section 17A(a)(1) of the Act. Congress stated in that provision that inefficient procedures for the clearance and settlement of securities transactions impose unnecessary risks and costs on investors and that prompt and accurate clearance and settlement are necessary for investor protection.

Congress further stated in sections 6(b)(5) and 17A(b)(3)(F) that the rules of exchanges and clearing agencies, respectively, should be designed to promote the prompt and accurate clearance and settlement of securities transactions. Moreover, in section 17A(a)(2) of the Act, Congress directed the Commission to use its authority to facilitate a natural system for the prompt and accurate clearance and settlement of securities transactions.

B. The Market Break of October 1987

The risks posed by uncompared trades came under intense scrutiny following the Market Break of October 1987.[20] During the Market Break, uncompared trades on the NYSE (as well as other markets) increased alarmingly and, for several reasons, became a major stress point in the clearance and settlement process. First, uncompared trades required special labor-intensive treatment ("exception processing") under working conditions already rendered chaotic by record trading volume.[21] Second, the NYSE's rate of uncompared trades did not remain at its usual percentage of trading volume, but as the NYSE's trading volume increased to 2½ times normal levels during the week of October 19, NYSE's uncompared trades doubled as a percentage of total trades.[22] And, third, the record market volatility (primarily downward) threatened to impose financial penalties on those firms that could not resolve trade comparison errors quickly, or at any rate before settlement with their customers on T+5.[23]

Based on the experience of October 1987, with its unprecedented trading volume and price volatility, the Commission concluded that, among other things, efficient markets will require same-day, floor-derived trade comparison.[24] Thus, the NYSE's proposal (which will shrink the comparison cycle from T+5 to T+1), while it does not constitute the final objective of same-day comparison, is consistent with the Commission's desire to shorten the comparison cycle. The NYSE's proposed next-day comparison likewise is consistent with the *Working Group Report*, which concluded that the development of on-line trade matching systems would enhance the capacity of market participants to monitor their intra-day exposure.[25] The proposal also is consistent with the intermarket clearing and credit mechanisms espoused by the *Brady Report* to reduce market exposure to clearing corporations.[26]

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[19] The NYSE's proposed On-Line Correction System is comparable to the NASDAQ's Trade Acceptance and Resolution System ("TARS"), which has been operating since 1988. TARS was designed to assist its subscribers in resolving and reducing their uncompared and advisory over-the-counter ("OTC") trades that were being processed through participating clearing corporations. TARS permits subscribers to view on their terminal screens all the information contained on their daily OTC contract sheets that they have received from the clearing corporation and to take actions to resolve the outstanding items. *See* NASD Market Services, Inc., *Trade Acceptance and Reconciliation Service User Guide* (May 20, 1988).

The *Brady Report* noted that OTC OTs could be resolved by utilizing TARS, whereas listed OTS that could not be reconciled by the buyer and seller required a return to the trading floor for resolution. *See Report of the Presidential Task Force of Market Mechanisms*, Study VI at 16 (December 1988) (hereinafter *Brady Report*).

[20] *See, e.g., Division Report*, Ch. 10 at 5–13; *Brady Report* 51–52, Study VI at 48–49; *Interim Report of the Working Group on Financial Markets*, Appendix D at 6 (May 1988) (hereinafter *Working Group Report*).

[21] *See Division Report*, Ch. 10 at 5. During the market break, to resolve uncompared trades, the NYSE required its member organizations and specialists to meet: in the mounting before trading opened, in the evening after trading closed, and on weekends. The NSCC extended its 6:00 p.m. deadline to as late as 1:00 a.m. for its participants to report the resolution of unmatched trade sides. Additionally, from October 23 to 30, 1989, the Exchange closed trading two hours early to allow firms to catch up on their back office work. *See Division Report*, Ch. 10 at 9.

[22] For NYSE executions during the week of October 19, 1987, T+2 uncompared trades processed by two-sided comparison increased from an average rate of 4.6% to 9.7% *See Division Report*, ch. 10 at 7.

For NYSE executions on October 19 and 20 (the peak volume days with 604 million shares and 608 million shares, respectively), T+2 uncompared trades for two-sided input increased from an average of 4.6% to 12.6% and 10.2%, respectively. In arithmetic terms, however, uncompared trades on T+2 increased from a daily average of 8,000 to 56,626 on October 19 and 49,413 on October 20. *See id.* Table 10–1 at Ch. 10, p. 59. *See also Brady Report*, Study IV at 48.

[23] *See Division Report*, Ch. 10 at 5–6. In terms of price volatility, on Monday, October 19, 1987, the Dow Jones Industrial Average ("FJIA") closing value had declined a record 508.32 points (22.6%, also a record) from its previous close, i.e., from 2246.74 to 1738.41. After two more daily reversals of over 100 points, the DJIA closed out the week of Friday, October 23, 1987, at 1950.76, a net 5-day decline (from Friday, October 16) of 295.98 points (13.2%). *See id.*, Appendix D at Tables 2 and 3.

[24] *See* Securities and Exchange Commission Recommendations regarding the October 1987 Market Break, contained in Testimony delivered by David S. Ruder, Chairman, SEC, before the Senate Committee on Banking, Housing and Urban Affairs, 23–24 (February 3, 1988). *See also Division Report*, Ch. 10 at 12; *Working Group Report*, Appendix D at 6.

[25] The *Working Group Report* called for same-day, floor-derived comparison of securities transactions. *See Working Group Report*, Appendix D at 6.

[26] *See Brady Report* at 64–65.

Accordingly, the Commission favors the efforts of this proposal to reduce the Exchange's trade comparison cycle by four business days, from T+5 to T+1. The Commission expects too that the NYSE will consider its currently proposed next-day comparison system not to be a final goal but only a near-term phase in its efforts toward the development and implementation of same-day, floor-derived comparison of NYSE transaction.[27]

C. Comment Letters to NYSE

The Commission recognizes that the NYSE's trade comparison process, in order to operate smoothly, requires cooperation from many different parties, including: executing brokers (whether house brokers or two dollar brokers), specialists, floor clerical staff, clearing members, service bureaus, the Exchange's staff, the NSCC, and Securities Industry Automation Corporation. Under these circumstances, the Commission believes that comments from member organizations and other sources are important to the success of this effort and deserve special attention from the NYSE and the NSCC.

While the Commission has received no comments in response to its notice of this proposal in the **Federal Register**, the NYSE reported in its filing that it had received 36 comment letters in response to its May 27, 1988 Membership Bulletin. Of those 36 comments (33 from NYSE member organizations, one from a correspondent broker, and two from trade organizations): (1) 24 commentators favored the proposal; (2) eight commentators favored the proposal, but provided added suggestions or questions; and (3) two commentators opposed the proposal. Most significantly, two commentators suggested that the proposal leaves too many operational details to future determination, and two commentators suggested that the proposal would favor large brokerage firms and New York City brokerage firms over other firms.[28]

The Commission understands that the Exchange has involved many of these commentators in its deliberations on systems design and implementation. The Commission commends the Exchange for its early involvement of key user representatives.

In determining whether this proposal is consistent with the Act, the Commission has reviewed all the comment letters to the NYSE.[29] The Commission finds that the comments suggesting that the proposal leaves too many of its operational aspects to future determination are without merit. While it is true that proposed Rule 130 and its companion releases do not provide the full operating details of this far-reaching proposal, it also is true that the proposal intentionally was submitted to the Commission as an enabling rule that later would be supplemented by rules of implementation governing the proposal's sub-systems and their operations.[30] Secondly, the Commission finds the two comments suggesting that the proposal would favor large brokerage firms and New York City firms over other firms to be unsubstantiated and likewise without merit. The Commission believes that the proposal is consistent with the Act in all respects.

D. Summary

The Commission believes that the proposed rule change, by shortening the NYSE's comparison cycle from T+5 to T+1, would make the NYSE's comparison process: (1) Safer with regard to the risks of market price volatility, and (2) more efficient in terms of the time and expense involved in trade processing. The Commission further believes that the proposal would help protect investors and that it also would help protect the brokers and other persons that safeguard investors' funds and facilitate their transactions. In the Commission's opinion, this rule change will provide fundamental and important improvements to the marketplace. Moreover, the Commission believes that the proposal is consistent with the Act, particularly sections 6(b)(5) and 17A of the Act, and that it warrants approval.

IV. Conclusion

For the reasons discussed in this order, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b) of the Act that the above-mentioned proposed rule change (File No. SR–NYSE–88–36) be and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 14, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–6499 Filed 3–17–89; 8:45 am]

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[27] The Commission's staff has met with the NYSE's staff and discussed at length the technical and other problems associated with the NYSE's change to a same-day floor-derived comparison system. The Commission is cognizant of the various concerns, including: (1) The need for further systems development to handle efficiently the Exchange's level of trading volume; (2) the need to install terminals for a floor-derived comparison system on the trading floor itself and the current lack of any available space on the trading floor; (3) the probable need for an expanded clerical staff to operate such a system; (4) the potential disruptions to Exchange operations during the phasing-in period; and (5) the scope and financial cost of the undertaking.

The Commission also notes that several regional exchanges (*e.g.*, the Options Floor of the Philadelphia Stock Exchange) already have floor-derived comparison systems in operation on their trading floors. With these systems, all trades are matched on the floor at the time of execution. Such automated systems, by locking-in the trade data in this manner, can almost totally eliminate uncompared trades. *See Division Report*, Ch. 10, note 1 and 2.

[28] One commentator suggested that among the many basic questions the proposal leaves to future interpretative releases are: What would be a clearing firm's responsibilities for the firms it clears for? If a clearing firm clears for a market maker, would the clearing firm be responsible for the market maker's trades? If so, could the clearing firm set position and trading limits? The Commission believes that these questions, while important, are not critical aspects of Rule 130, which is an enabling rule, and that these issues properly should be dealt with in the coming rules of implementation.

Another commentator questioned how OCS would be phased in, noting that the Exchange prefers a one-step change from T+5 to T+1, which would require only one system modification; but that his firm would prefer a step-by-step change (T+3 to T+2 to T+1) to lessen problems of night personnel recruitment and the re-scheduling of computer time. The Commission has discussed this issue with the staffs of NYSE and NSCC. Whether the comparison cycle should be reduced in one step or several steps from T+5 to T+1 remains the subject of continuing analysis. Again, however, this matter is not an issue of the current proposal.

Thirdly, two smaller brokerage firms have suggested that the OCS proposal favors New York City firms and national firms over smaller Midwest and West Coast retail firms whose customers tend to hold their own securities certificates. These firms apparently sense that shortening the comparison cycle forecasts an eventual shortening of the settlement cycle, which could disadvantage firms lacking New York delivery capabilities. The Commission is sensitive to the concern that this proposal might favor large firms or New York firms over other firms. But the Commission notes that the Exchange's development of a more efficient trade comparison system could not be prohibited solely on the ground that it might lead to a shorter settlement cycle.

[29] The Commission's staff has contacted, either by telephone or personal visit, most of the commentators who offered suggestions, raised questions, or objected to this proposal.

[30] In this connection, the Commission notes that on March 6, 1989, it received from the NYSE two rule proposals concerning its On-Line Correction System (File Nos. SR–NYSE–89–3 and SR–NYSE–89–04) providing for the implementation of the Exchange's new system for the electronic resolution of uncompared transactions.

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Order 89-3-33; Docket 46006]

Application of Private Jet Expeditions, Inc., for Certificate Authority Under Subpart Q

AGENCY: Department of Transportation.

ACTION: Notice of order to show cause.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Private Jet Expeditions, Inc., fit and awarding it a certificate of public convenience and necessity to engage in foreign charter air transportation of persons and property.

DATES: Persons wishing to file objections should do so no later than March 30, 1989.

ADDRESSES: Objections and answers to objections should be filed in Docket 46006 and addressed to the Documentary Services Division (C-55, Room 4107), U.S. Department of Transportation, 400 Seventh Street, SW., Washington DC 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Mr. James A. Lawyer, Air Carrier Fitness Division (P-56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-1064.

Dated: March 14, 1989.

Patrick V. Murphy, Jr.

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 89-6445 Filed 3-17-89; 8:45 am]

BILLING CODE 4910-62-M

[Order 89-3-34; Docket 46180]

Order Instituting Western U.S.-Mexico Service Proceeding

AGENCY: Department of Transportation.

ACTION: Institution of the *Western U.S.-Mexico Service Proceeding* to select U.S. carriers to provide combination scheduled service between the Western United States and Mexico.

SUMMARY: A recently amended U.S.-Mexico Air Transport Agreement provides, among other things, for an improved route structure for U.S. carriers, including small aircraft operators. The routes may be divided into separate city-pair markets and generally only one carrier may be designated to provide service over each market. By Order 88-7-43, the Department invited carriers interested in serving the U.S.-Mexico market to file applications. In addition to numerous other applications, five carriers filed competing certificate applications for 17 city-pair markets between the Western United States and Mexico. These carriers are Alaska Airlines, Continental Airlines, United Air Lines, Resort Commuter d/b/a Resorts, and Sun Pacific Airlines.

The Department has decided to institute an evidentiary proceeding to select carriers to serve these markets. The Department is also dismissing the certificate applications to the extent they request city-pair markets that are not available. In these markets, another U.S. carrier currently holds authority and is providing nonstop service.

In addition, the Department is placing at issue whether the dormant authority of Delta Air Lines, Northwest Airlines, and Pacific Southwest Airlines (subsequently acquired by USAir) should be suspended or revoked to the extent it authorizes service for the markets at issue.

DATES: Applications, requests for designation by small aircraft operators, motions to consolidate, petitions for leave to intervene and petitions for reconsideration are due not later than March 27, 1989. Answers are due not later than April 5, 1989.

ADDRESS: Applications, requests for designation, motions to consolidate, petitions for leave to intervene and petitions for reconsideration should be filed in Docket 46180 addressed to the Documentary Services Division, U.S. Department of Transportation, 400 Seventh Street, SW, Room 4107, Washington, DC 20590, and should be served on all parties in Docket 46180, and Robert Goldner, Room 9216.

Dated: March 15, 1989.

Patrick V. Murphy, Jr.,

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 89-6446 Filed 3-17-89; 8:45 am]

BILLING CODE 4910-62-M

[Notice 89-3]

Commercial Space Transportation Advisory Committee; Open Meeting

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 Commercial Space Transportation Advisory Committee. The meeting will take place on Tuesday, April 4, 1989 from 9:00 a.m. to 5:00 p.m. in Room 2230 of the Department of Transportation's headquarters building at 400 Seventh Street, SW. in Washington, DC. This will be the ninth meeting of the Committee. The meeting will address the status of issues related to commercial launches, component research study, access of foreign nationals to national ranges, launch scheduling report, range use agreements, launch-related procurements, international competition, and subcommittee reports.

This meeting is open to the interested public, but may be limited to the space available. Additional information may be obtained by contacting Linda H. Strine at (202) 366-5770.

Dated: March 6, 1989.

Carol S. Lane,

Director, Office of Commercial Space Transportation.

[FR Doc. 89-6601 Filed 3-17-89; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

[Summary Notice No. PE-89-10]

Petitions for Exemption; Summary and Disposition

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief fom specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: April 10, 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 March 14, 1989.

Denise Donohue Hall,

Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Exemption

Docket No.: 22569.
Petitioner: Skybird Aviation.
Regulations Affected: 14 CFR 135.89.
Description of Relief Sought: To allow operation of Gulfstream II and Gulfstream IV aircraft above FL350 and up to and including FL410 feet without requiring at least one pilot seated at the controls to wear a secured and sealed oxygen mask.

Docket No.: 25779.
Petitioner: JBH Air Charter.
Sections of the FAR Affected: 14 CFR 43.3.
Description of Relief Sought: To allow petitioner's flightcrews to remove passenger seats and cabinets and install patient stretchers or cargo floors and nets.

Docket No.: 23465.
Petitioner: Everts Air Fuel.
Sections of the FAR Affected: 14 CFR 91.31(a).
Description of Relief Sought: To extend and amend Exemption No. 4296A that allows petitioner to operate its DC–6B aircraft at a 5 percent increase in zero fuel and landing weight. The amendment would allow operation of a second DC–6B aircraft at the increased zero and landing weight.

Docket No.: 25786.
Petitioner: United Parcel Service.
Sections of the FAR Affected: 14 CFR 121.337.
Description of Relief Sought: To allow the combination of oxygen masks and smoke goggles that are approved to FAA TSO–C99 and are presently in use on petitioner's all-cargo aircraft to be used in meeting the requirements of the FAR.

Docket No.: 25798.
Petitioner: Embry-Riddle Aeronautical University.
Sections of the FAR Affected: 14 CFR 61.71.
Description of Relief Sought: To allow the petitioner's students who are enrolled in its Part 141 approved commerical pilot certification course to apply for an instrument rating prior to receiving their commercial pilot certificate without meeting the flight experience requirements of § 61.65(e)(1).

Docket No.: 25822.
Petitioner: Jet Express, Inc.
Sections of the FAR Affected: 14 CFR Part 93, Subparts K and S.
Description of Relief Sought: Petitioner requests an exemption from 14 CFR Part 93, Subparts K and S, in order to permit the use of two additional commuter operations in two of the five high density hours at John F. Kennedy Airport (JFK). The additional slots would be used only by STOL aircraft under the Separate Access Landing System. This exemption would permit further evaluation of RNAV approaches to the cross runways at JFK.

Docket No.: 22690.
Petitioner: Boeing Commercial Airplane Company.
Regulations Affected: 14 CFR 61.57(c).
Description of Relief Sought/ Disposition: To extend and amend Exemption No. 4779 that permits certain pilots employed by petitioner to satisfy the general recent flight experience requirements of that section by alternate means. *GRANT, March 3, 1989, Exemption No. 4779A.*

Docket No.: 24283.
Petitioner: American Flyers.
Sections of the FAR Affected: 14 CFR 141.65.
Description of Relief Sought/ Disposition: To extend Exemption No. 4287, as amended, that allows petitioner to hold examining authority for flight instructor and airline transport pilot written tests. *GRANT, February 27, 1989, Exemption No. 4287B*

Docket No.: 25052.
Petitioner: Temsco Helicopters, Inc.
Sections of the FAR Affected: 14 CFR 135.203(a)(1).
Description of Relief Sought/ Disposition: To extend Exemption No. 4760 that allows petitioner and other operators to conduct seaplane operations inside the Ketchikan, Alaska, control zone under Special Visual Flight Rules below 500 feet above the surface. *GRANT, February 28, 1989, Exemption No. 4760A*

Docket No.: 25659.
Petitioner: Eastern Air Charter, Inc.
Sections of the FAR Affected: 14 CFR 91.191(a)(4) and 135.165(b) (5), (6), and (7).
Description of Relief Sought/ Disposition: To allow petitioner to operate its Cessna Citation CE–500, registration number N30SB, in extended overwater operations with only one operative long-range navigational system and one operative high-frequency communication system. *GRANT, February 27, 1989, Exemption No. 5022*

Docket No.: 25680.
Petitioner: U S Air, Inc.
Sections of the FAR Affected: 14 CFR 121.411(a) (1), (2), (3), and (6) and 121.413 (b) and (c).
Description of Relief Sought/ Disposition: To allow petitioner to utilize certain highly qualified Fokker B.V. pilots for the purpose of training petitioner's intitial cadre of pilots in the Fokker 100 (FK100) type airplane in Pittsburgh, Pennsylvania, and Amsterdam, Holland, without holding appropriate U.S. certificates and ratings and without meeting all of the applicable training requirements of Subpart N of Part 121 of the FAR. *GRANT, March 2, 1989, Exemption No. 5023*

Docket No.: 25754.
Petitioner: Air Serv International, Inc.
*Sections of the FAR Affected:*14 CFR 61.75.
Description of Relief Sought/ Disposition: To allow Messrs. Kenneth Martin, Martin Voss, Keith Ketchum, Douglas Dyck, and Kenneth Janzen and any other pilots flying for Air Serv International, Inc., to operate U.S.-registered aircraft in support of famine relief operations in Sudan. *GRANT, March 2,1989, Exemption No. 5024*

Docket No.: 25445.
Petitioner: Aviation Systems, Inc.
Sections of the FAR Affected: 14 CFR 91.79 (b) and (c), 91.87 (d)(2) and (d)(3), 91.109(a)(1), and 91.121(b)(1).
Description of Relief Sought/ Disposition: To allow petitioner to conduct its own flight check of petitioner-installed NAVAID's more thoroughly thereby expediting the availability of such NAVAID's to the public and reducing flight-check costs for the FAA. *PARTIAL GRANT, February 22, 1989, Exemption No. 5025.*

[FR Doc. 89–6405 Filed 3–17–89; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: March 14, 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: 1545–0367.
Form Number: IRS Forms 4804 and 4802.
Type of Review: Revision.
Title: Form 4804, Transmittal of Information Returns Reported on Magnetic Media (Revised 1989); Form 4802, Transmittal for Multiple Magnetic Media Reporting (Continuation of Form 4804).
Description: 26 U.S.C. 6041 and 6042 require that all persons engaged in a trade or business and making payments of taxable income must file reports of this income with IRS. In certain cases, this information must be filed on magnetic media. Forms 4804 and 4802 are used to provide a signature and balancing totals for magnetic media filers of information returns.
Respondents: State and local governments, Farms, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations.
Estimated Number of Respondents: 37,640.
Estimated Burden Hours Per Response: 18 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 45,406 hours.

OMB Number: 1545–0387.
Form Number: IRS Form 4419.
Type of Review: Revision.
Title: Application for Filing Information Returns on Magnetic Media.
Description: 26 U.S.C. 6041 and 6042 require that all persons engaged in a trade or business and making payments of taxable income must file reports of this income with IRS. Payers are required to file certain returns on magnetic media after reaching a certain volume of returns. Payers required to file on magnetic media must complete Form 4419 to receive authorization to file.
Respondents: State and local governments, Farms, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations.
Estimated Number of Respondents: 7,000.
Estimated Burden Hours Per Response: 25 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 2,917 hours.

OMB Number: 1545–0757.
Form Number: None.
Type of Review: Extension.
Title: Special Lien for Estate Taxes Deferred Under Section 6166 or 6166A; Procedure and Administration.
Description: Section 6324A permits the executor of a decedent's estate to elect a lien on section 6166 in favor of the United States in lieu of a bond or personal liability if an election under section 6166A was made.
Respondents: Individuals or households, Businesses or other for-profit.
Estimated Number of Respondents: 34,600.
Estimated Burden Hours Per Response: 15 minutes.
Frequency of Response: Other (nonrecurring).
Estimated Total Reporting Burden: 8,650 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. 89–6487 Filed 3–17–89; 8:45 am]
BILLING CODE 4810–25–M

Internal Revenue Service

[Delegation Order No. 234]

Delegation of Authority; Assistant Commissioner (Planning, Finance and Research), et al

AGENCY: Internal Revenue Service, Treasury.
ACTION: Delegation of authority.

SUMMARY: This Delegation Order authorizes Assistant Commissioners (Planning, Finance and Research), (Human Resources Management and Support), (Computer Services), and (Information Systems Development) to approve certain revenue procedures arising from, relating to, or concerning the functions each administers, but that do not pertain to substantive tax law matters or procedures.

The text of the delegation orders appears below.

EFFECTIVE DATE: March 20, 1989.

FOR FURTHER INFORMATION CONTACT: Barbara Bailey, CS:P, Room 7575 NO, 1111 Constitution Ave., NW., Washington, DC 20224, (202) 535–4094 (not a toll-free number).

Delegation of Approval Authority for Revenue Procedures

Pursuant to the authority vested in the Commissioner of Internal Revenue by Treasury Order 150–10, the Assistant Commissioners (Planning, Finance and Research), (Human Resources Management and Support), (Computer Services), and (Information Systems Development) are hereby authorized to approve revenue procedures which arises out of, relate to, or concern the activities or functions each administers. This authority is limited to revenue procedures for non-substantive tax matters and procedures. All revenue procedures are subject to review by the Associate Chief Counsel (Technical).

Each Assistant Commissioner shall be responsible for referring to the Commissioner or the appropriate Deputy Commissioner any matters on which action would appropriately be taken by the Commissioner or Deputy Commissioner.

This authority may not be redelegated.

Date: March 6, 1989.

Approved:

John L. Wedick, Jr.,
Deputy Commissioner (Planning and Resources).
[FR Doc. 89–6471 Filed 3–17–89; 8:45 am]
BILLING CODE 4830–01–M

UNITED STATES INFORMATION AGENCY

United States Advisory Commission on Public Diplomacy; Meeting

A meeting of the U.S. Advisory Commission on Public Diplomacy will be held March 22, 1989 in Room 600, 301 4th Street, SW., Washington, DC from 10:00 a.m. to 11:00 a.m.

The Commission will meet with Mr. Richard Carlson, Director, Voice of America, to discuss VOA modernization and programming to the Soviet Union and Eastern Europe.

Please call Gloria Kalamets, (202) 485–2468, if you are interested in attending the meeting since space is limited and entrance to the building is controlled.

Dated: March 14, 1989.

Ledra L. Dildy,
Staff Asstant, Federal Register Liaison.
[FR Doc. 89–6415 Filed 3–17–89; 8:45 am]
BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 52
Monday, March 20, 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).

UNITED STATES INSTITUTE OF PEACE

TIME AND DATE: 4:00–7:00 p.m. Monday, March 20, 1989.

PLACE: First Floor Conference Room, 1550 M Street, NW., Washington, DC.

STATUS: Open.

PURPOSE AND AGENDA: The sixth of a series of Public Workshops scheduled by the United States Institute of Peace. "Development and Peace," will focus on the relationship between economic development and peace. Among other issues, the question of whether development ameliorates structural violence in Third World nations will be addressed. The panel will consist of six expert commentators, drawn from the scholarly and policymaking worlds.

CONTACT: Ms. Aileen C. Hefferren, Telephone 202–457–1700.

Dated: March 9, 1989.

Charles Duryea Smith,

General Counsel.

[FR Doc. 89–6522 Filed 3–16–89; 10:40 am]

BILLING CODE 3155–01–M

Corrections

Federal Register
Vol. 54, No. 52
Monday, March 20, 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 AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 3

[Docket No. 87-004]

Animal Welfare-Standards

Correction

In proposed rule document 89-5613 beginning on page 10897 in the issue of Wednesday, March 15, 1989, make the following correction:

On page 10897, in the third column, under **DATES**, in the third line, "August 14, 1989" should read "July 13, 1989".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 712 and 716

[OPTS-8402A; FRL-3528-4]

Addition of Chemicals to Information Rules; Certain Pesticide Inert Ingredients

Correction

In rule document 89-4303 beginning on page 8484 in the issue of Tuesday, February 28, 1989, make the following corrections:

On page 8485, in the second column, in the last line, and in the third column, in the first complete paragraph, in the fourth line, "June 12, 1989" should read "June 13, 1989".

BILLING CODE 1505-01-D

Federal Register

Monday
March 20, 1989

Part II

Department of Education

Office of Postsecondary Education

34 CFR Part 607

Strengthening Institutions Program; Final Rule

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

34 CFR Part 607

Strengthening Institutions Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary issues final regulations amending regulations for the Strengthening Institutions Program. The amendment is needed to conform the regulations to a statutory change made to Title III of the Higher Education Act of 1965, as amended by Pub. L. 100–369.

The statutory change prohibits an historically Black college or university (HBCU) from receiving grant funds awarded under the Strengthening Institutions Program and the Strengthening Historically Black Colleges and Universities (HBCU) Program in the same fiscal year. The Secretary will, however, give HBCUs the option of selecting the more advantageous grant.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. However, these regulatory provisions merely reflect statutory provisions that were enacted and took effect on July 18, 1988.

FOR FURTHER INFORMATION CONTACT: Dr. Caroline J. Gillin, Director, Division of Institutional Development, 400 Maryland Avenue SW., Washington, DC 20202–5250, Telephone (202) 732–3308.

SUPPLEMENTARY INFORMATION: The Strengthening Institutions Program is one of several programs authorized by Title III of the Higher Education Act and known collectively as the Institutional Aid Programs. These programs provide Federal financial assistance to certain institutions of higher education for specified types of projects designed to equalize educational opportunity.

Under the Strengthening Institutions Program, the Secretary awards grants to eligible institutions of higher education to enable them to improve their academic quality, institutional management, and fiscal stability. An HBCU, however, may not receive grant funds under both the Strengthening Institutions Program and the Strengthening HBCU Program in the same fiscal year.

Waiver of Notice of Proposed Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)) and the Administrative Procedure Act, 5 U.S.C. 553, it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, since the regulations merely incorporate a statutory change into existing regulations, public comment could have no effect on the substance of the change. Therefore, the Secretary has determined, pursuant to 5 U.S.C. 553(b)(B), that public comment on the regulations is unnecessary and contrary to the public interest.

Executive Order 12291

These 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

The Secretary certifies that these regulations would not have a significant economic impact on a substantial number of small entities. The small entities that would be affected by these regulations are colleges and universities. However, the regulations would not have a significant economic impact on the colleges and universities because the regulations merely incorporate a statutory change.

Paperwork Reduction Act of 1980

These regulations have been examined under the Paperwork Reduction Act of 1980 and have been found to contain no information collection requirements.

Assessment of Educational Impact

The Secretary has determined that the regulations in this document do not 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 in 34 CFR Part 607

Colleges and universities, Comprehensive development plan, Education.

Dated: March 2, 1989.

Lauro F. Cavazos,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number 84.031A—Strengthening Institutions Program)

The Secretary amends Part 607 of Title 34 of the Code of Federal Regulations as follows:

PART 607—STRENGTHENING INSTITUTIONS PROGRAM

1. The authority citation for Part 607 continues to read as follows:

Authority: 20 U.S.C. 1057–1059, 1066–1069f, unless otherwise noted.

2. The title of Part 607 is revised to read "Strengthening Institutions Program."

3. Section 607.2 is amended by removing "and (d)" in paragraph (a) and adding, in its place, ", (d), and (f)" and adding a new paragraph (f) to read as follows:

§ 607.2 What institutions are eligible to receive a grant under the Strengthening Institutions Program?

* * * * *

(f) An institution that qualifies for a grant under the Strengthening Historically Black Colleges and Universities Program (34 CFR Part 608) and receives a grant under that program for a particular fiscal year is not eligible to receive a grant under the Strengthening Institutions Program for that same fiscal year.

(Authority: 20 U.S.C. 1058)

[FR Doc. 89–6509 Filed 3–17–89; 8:45 am]

BILLING CODE 4000–01–M

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Federal Register

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Monday, March 20, 1989

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LIST OF PUBLIC LAWS

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

H.J. Res. 22/Pub. L. 101-2

To designate the week beginning March 6, 1989, as "Federal Employees Recognition Week". (Mar. 15, 1989; 103 Stat. 4; 1 page) Price: $1.00

CFR CHECKLIST

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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[2] No amendments to this volume were promulgated during the period Jan.1, 1988 to Dec.31, 1988. The CFR volume issued January 1, 1988, should be retained.

[3] No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1988. The CFR volume issued January 1, 1987, should be retained.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1988. The CFR volume issued as of Apr. 1, 1980, should be retained.

[5] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[6] No amendments to this volume were promulgated during the period July 1, 1986 to June 30, 1988. The CFR volume issued as of July 1, 1986, should be retained.

[7] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.