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Briefing on How To Use the Federal Register—
For information on briefing in Washington, DC, see announcement on the inside cover of this issue.

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THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

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

WASHINGTON, DC

WHEN: June 15; 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

Regulation Identifier Numbers (RINs)

Agencies have begun including a Regulation Identifier Number in the headings of their **Federal Register** documents. RINs also appear in entries listed in the *Unified Agenda of Federal Regulations,* which is published in the **Federal Register** in April and October of each year. Assigning RINs makes it easier for the public and agency managers to track the entries at the various stages of their development.

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Presidential Documents

Title 3—

The President

Proclamation 5986 of May 24, 1989

National Day of Remembrance for the Victims of the USS IOWA

By the President of the United States of America

A Proclamation

Each day, on land, at sea, and in the air, the men and women of the United States Armed Forces stand watch. They keep a constant vigil for our security and for the peace and freedom with which we have been blessed. Theirs is an awesome responsibility. Our soldiers, sailors, and airmen are not only indispensable pillars of our national defense, but also visible symbols of our commitment to the principles of liberty, self-determination, and democratic government.

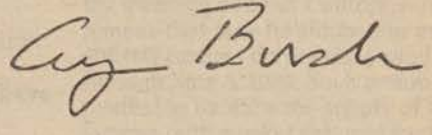
On the world's oceans, even the routine of daily operation is not without substantial hazard for our sailors and marines. The fallen crew members of the USS IOWA understood the risks they would face while serving our country, yet they chose to accept them. They were patriots and professionals.

The people of the United States will long remember the 47 young men killed by the tragic explosion on board the USS IOWA. We shall remember them for their bravery and selflessness, just as we remember the many honored veterans who have gone before them. They served this country with pride and purpose, and we must never forget the sacrifices they made for our sake.

In solemn recognition of the valiant crew members of the USS IOWA who lost their lives on April 19, 1989, and in order to extend to their families the American people's heartfelt sympathy, the Congress, by House Joint Resolution 247, has designated Memorial Day, May 29, 1989, as the "National Day of Remembrance for the Victims of the USS IOWA." House Joint Resolution 247 also authorized and requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim Monday, May 29, 1989, as the National Day of Remembrance for the Victims of the USS IOWA. I call upon all Americans to observe this day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fourth day of May, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and thirteenth.



[FR Doc. 89-12834
Filed 5-25-89; 9:29 am]
Billing code 3195-01-M

Rules and Regulations

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 89-084]

Imported Fire Ant Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: We are affirming without change an interim rule that amended the imported fire ant quarantine and regulations by quarantining the state of Tennessee, and by designating all or portions of two counties in Tennessee, one county in Arkansas, six counties in Mississippi, and three counties in Texas as generally infested areas. This action was necessary to prevent the artificial spread of the imported fire ant.

EFFECTIVE DATE: June 26, 1989.

FOR FURTHER INFORMATION CONTACT: Eddie Elder, Chief Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, USDA, Room 643, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8247.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule published in the Federal Register and effective February 28, 1989 (54 FR 8267-8269, Docket Number 88-158), we amended the imported fire ant regulations (7 CFR 301.81 et seq.). Specifically, we amended § 301.81(a) of the regulations by adding Tennessee to the list of quarantined states and we amended § 301.81-2a by designating all or portions of the following counties as generally infested areas: Hardin and McNairy Counties in Tennessee; Lincoln County in Arkansas; Benton, Lafayette, Marshall, Panola, Tallahatchie and Tate Counties in Mississippi; and Hopkins, Llano and Mason Counties in Texas.

Comments on the interim rule were required to be postmarked or received on or before May 1, 1989. We did not receive any comments. The facts presented in the interim rule still provide a basis for this rule.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse 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.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

This rule affects the interstate movement of regulated articles from specified areas in Arkansas, Mississippi, Tennessee and Texas. Thousands of small entities move these articles interstate from these states, and many more thousands of small entities move these articles interstate from other states.

However, based on information compiled by the Department, we have determined that approximately 33 small entities within the newly regulated areas move articles interstate from the specified areas in those states. Further, the overall economic impact from this action is estimated to be approximately $3,000.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR 3015, Subpart V.)

List of Subjects in 7 CFR Part 301

Agricultural commodities, Imported fire ant, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR Part 301 and that was published at 54 FR 8267-8269 on February 28, 1989.

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164-167; 7 CFR 2.17, 2.51, and 371.2(c).

Done in Washington, DC, this 22d day of May 1989.

Larry B. Slagle,
Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-12598 Filed 5-25-89; 8:45 am]
BILLING CODE 3410-34-M

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 667]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 667 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 400,000 cartons during the period May 28 through June 3, 1989. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 667 (§ 910.967) is effective for the period May 28 through June 3, 1989.

FOR FURTHER INFORMATION CONTACT: Beatriz Rodriguez, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 475–3861.

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

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

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

There are approximately 85 handlers of lemons grown in California and Arizona subject to regulation under the lemon marketing order and approximately 2,500 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona lemons may be classified as small entities.

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

This regulation is consistent with the California-Arizona lemon marketing policy for 1988–89. The Committee met publicly on May 23, 1989, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and, by a 9 to 4 vote, recommended a quantity of lemons deemed advisable to be handled during the specified week. The Committee reports that demand for lemons is strong.

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

List of Subjects in 7 CFR Part 901

Marketing agreements and orders, California, Arizona, Lemons.

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

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZCNA

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

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

2. Section 901.967 is added to read as follows:

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

§ 910.967 Lemon Regulation 667.

The quantity of lemons grown in California and Arizona which may be handled during the period May 28, 1989, through June 3, 1989, is established at 400,000 cartons.

Dated: May 24, 1989.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–12812 Filed 5–25–89; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 133

[Docket No. 84P–0133]

Pasteurized Process Cheese Spread; Amendment of Standard of Identity; Confirmation of Effective Date

AGENCY: Food and Drug Administration.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date for compliance with the amendment of the standard of identity for pasteurized process cheese spread and, by cross-reference, three other cheese standards to permit the optional use of nisin.

EFFECTIVE DATE: Effective date confirmed: April 10, 1989, for all affected products initially introduced or initially delivered for introduction into interstate commerce on or after this date.

FOR FURTHER INFORMATION CONTACT: Karen L. Carson, Center for Food Safety and Applied Nutrition (HFF–414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–485–0110.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 8, 1989 (54 FR 6120), FDA issued a final regulation amending the U.S. standard of identity for pasteurized process cheese spread (21 CFR 133.179) and, by cross reference, pasteurized cheese spread (21 CFR 133.175), pasteurized cheese spread with fruits, vegetables, or meats (21 CFR 133.176), and pasteurized process cheese spread with fruits, vegetables, or meats (21 CFR 133.180) to provide for the optional use of nisin, an antimicrobial agent, to prevent the outgrowth of *Clostridium botulinum* spores and toxin formation in packaged cheese. Any person who would be adversely affected by the regulation could have, at any time on or before March 10, 1989, filed written objections to the final regulation and requested a hearing on the specific provisions to which there were objections. No objections or requests for a hearing were received.

List of Subjects in 21 CFR Part 133

Cheese, Food grades and standards.

PART 133—CHEESES AND RELATED CHEESE PRODUCTS

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 401, 701(e), 52 Stat. 1046, 70 Stat. 919 as

amended (21 U.S.C. 341, 371(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Food Safety and Applied Nutrition (21 CFR 5.62), notice is given that the effective date for compliance with the standard of identity for pasteurized process cheese spread (21 CFR 133.179) and, by cross-reference, pasteurized cheese spread (21 CFR 133.175), pasteurized cheese spread with fruits, vegetables, or meats (21 CFR 133.176), and pasteurized process cheese spread with fruits, vegetables, or meats (21 CFR 133.180), as amended in the Federal Register of February 8, 1989 (54 FR 6120), was April 10, 1989.

Dated: May 15, 1989.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89-12578 Filed 5-25-89; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Parts 510 and 514

New Animal Drugs; Removal of Obsolete Regulations

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its animal drug regulations by removing those sections containing procedures for the certification of new animal drugs that are composed wholly or partly of any kind of penicillin, streptomycin, chlortetracycline, chloramphenicol, or bacitracin. These sections have become obsolete because of enactment of the Generic Animal Drug and Patent Term Restoration Act.

DATE: This revocation becomes effective on May 26, 1989.

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

FOR FURTHER INFORMATION CONTACT: Frank G. Pugliese, Center for Veterinary Medicine (HFV-102), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4500.

SUPPLEMENTARY INFORMATION: On November 16, 1988, the President signed into law the Generic Animal Drug and Patent Term Restoration Act (the new law) (Pub. L. 100-670, 102 Stat. 3971). The new law amended the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 et seq.). The primary thrust of the new law is to establish eligibility for the submission of abbreviated new animal drug applications (ANADA's) for drug products first approved in new animal drug applications (NADA's) after the 1962 amendments to the act. The new law also amended 35 U.S.C. 156 and 271 to authorize the extension of patents for animal drug products. The new law removes from the act all provisions for the certification of antibiotic drugs for animal use: Sections 201(w)(3), 512(a)(1)(C) and (n) of the act (21 U.S.C. 321(w)(3), 360b(a)(1)(C) and (n)).

In 1945, Congress added section 507 to the act (21 U.S.C. 357) requiring the agency to certify batches of drugs composed wholly or partly of any kind of penicillin. No distinction was made between the use of the drugs in man or other animals. Section 507 has been amended several times to include streptomycin, chlortetracycline, bacitracin, chloramphenicol, and their derivatives. The Animal Drug Amendments of 1968 consolidated provisions of the act with respect to new animal drugs (including antibiotics) into new section 512 (21 U.S.C. 360b). Over the years, FDA has determined that batch-by-batch certification is no longer required to assure the safety of antibiotics. For example, in the Federal Register of September 3, 1953 (18 FR 5347), the agency published an exemption from certification for animal feeds containing certifiable antibiotic drugs, provided that the medicated animal feeds were labeled for specific conditions of use that were published in the regulations. Also, in the Federal Register of September 7, 1962 (47 FR 39155), the agency published regulations revoking certification of all antibiotics for human and animal use based upon a finding of an extremely low rejection rate for the certifiable antibiotics.

Against this background, Congress elected to remove from the act all antibiotic certification provisions for animal drugs when it enacted the Generic Animal Drug and Patent Term Restoration Act. Under section 553(b), (d), and (e) of the Administrative Procedure Act (5 U.S.C. 553(b), (d), and (e)) and under 21 CFR 10.40(c)(4)(i), (d), and (e), the Commissioner has determined for good cause that public procedure and delayed effective date are unnecessary and contrary to the public interest. The Commissioner finds that the regulation conforms the regulations to the amendments made by the new law. This revocation will become effective May 26, 1989.

This document is intended solely for the removal of the existing antibiotic procedural regulations. Removal of the technical regulations concerning specific antibiotic drugs will be the subject of a future document.

List of Subjects in 21 CFR

Part 510

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

Part 514

Administrative practice and procedure, Animal drugs, Confidential business information, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Parts 510 and 514 are amended as follows:

PART 510—NEW ANIMAL DRUGS

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

Authority: Secs. 512, 701(a) (21 U.S.C. 360b, 371(a)); 21 CFR 5.10 and 5.83.

§ 510.3 [Amended]

2. Section 510.3 *Definitions and interpretations* is amended in paragraph (g)(2) by removing "; or" and replacing it with a period "." and by removing paragraph (g)(3).

§ 510.5 [Removed]

3. Section 510.5 *Certification of new animal drugs containing any kind of penicillin, streptomycin, chlortetracycline, chloramphenicol, or bacitracin, or derivative thereof* is removed.

§ 510.6 [Removed]

4. Section 510.6 *New animal drugs; transitional provisions re section 512 of the act* is removed.

§ 510.55 [Removed]

5. Section 510.55 *Labeling requirements for antibiotic drugs for animal use* is removed.

§ 510.350 [Removed]

6. Section 510.350 *Records of distribution of animal drugs subject to section 512(n) of the act* is removed.

§ 510.510 [Removed]

7. Section 510.510 *Antibiotic drugs for use in medicated animal feed (antibiotic medicated feed premixes)* is removed.

§ 510.520 [Removed]

8. Section 510.520 *Exemption from batch certification requirements for antibiotic drugs for animal use subject to section 512(n) of the act* is removed.

§ 510.521 [Removed]

9. Section 510.521 *Conditions on the effectiveness of exemptions of antibiotic drugs for animal use from batch certification requirements* is removed.

PART 514—NEW ANIMAL DRUG APPLICATIONS

10. The authority citation for 21 CFR Part 514 continues to read as follows:

Authority: Secs 512(i), (n), 701(a), 52 Stat. 1055; 82 Stat. 343–351 (21 U.S.C. 360b(i), (n), 371(a)); 21 CFR 5.10, 5.11.

§ 514.1 [Amended]

11. Section 514.1 *Applications* is amended by removing paragraph (b)(9) and reserving it.

§ 514.50 [Removed]

12. Section 514.50 *Requests for certification, check tests and assays, and working standards for animal drugs subject to section 512(n) of the act; information and samples required* is removed.

§ 514.51 [Removed]

13. Section 514.51 *Certification of animal drugs subject to section 512(n) of the act* is removed.

§ 514.55 [Removed]

14. Section 514.55 *Forms for certification or exemption of antibiotic drugs for animal use subject to section 512(n) of the act* is removed.

§ 514.60 [Removed]

15. Section 514.60 *Fees for certification of animal drugs subject to section 512(n) of the act* is removed.

§ 514.150 [Removed]

16. Section 514.150 *Conditions on the effectiveness of certificates for animal drugs subject to section 512(n) of the act* is removed.

§ 514.155 [Removed]

17. Section 514.155 *Suspension of certification service for sponsors of animal drugs* is removed.

§ 514.160 [Removed]

18. Section 514.160 *Disposition of outdated animal drugs subject to section 512(n) of the act* is removed.

Dated: May 8, 1989.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89–12577 Filed 5–25–89; 8:45 am]

BILLING CODE 4160–01–M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1615

Enforcement of Nondiscrimination on the Basis of Handicap in Equal Employment Opportunity Commission Programs

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final rule.

SUMMARY: This regulation provides for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicap, as it applies to programs or activities conducted by the Equal Employment Opportunity Commission. It sets forth standards for what constitutes discrimination on the basis of mental or physical handicap, provides a definition for "individual with handicaps" and "qualified individual with handicaps" and establishes a complaint mechanism for resolving allegations of discrimination.

EFFECTIVE DATE: June 26, 1989.

FOR FURTHER INFORMATION CONTACT: Irene L. Hill, Assistant Legal Counsel for Coordination, at (202) 663–4688 (Voice) or (202) 663–4399 (TDD).

SUPPLEMENTARY INFORMATION: On November 5, 1987, the Equal Employment Opportunity Commission published a Notice of Proposed Rulemaking, 52 FR 42450. The Notice invited comments from all interested parties. The Commission received comments from one national organization representing individuals with disabilities and two agencies of state government that administer programs for such individuals. The Commission has carefully considered these comments and has made revisions to the rule and to the discussion of the rule below, in response. The revisions to the rule modify the definition of a "qualified individual with handicaps" and provide greater detail on procedures for filing and processing complaints of discrimination. The discussion below summarizes the comments that were received and the changes made in response to these comments.

The rule and the comments are available for public inspection at the Commission's library at 1801 "L" Street NW., Washington, DC between the hours of 9:00 am and 5:30 pm Monday through Friday. Copies of the rule are available on tape for those with impaired vision from the Commission's Handicap Program Manager, (202) 663–4392; TDD (202) 663–4399.

Section 504 requires that regulations that apply to the programs and activities of Federal executive agencies be submitted to the appropriate authorizing committees of Congress and that such regulations take effect no earlier than the thirtieth day after they have been so submitted. Concurrent with the publication of this final rule the Commission is submitting this regulation to the Senate Committee on Labor and Human Resources and the House Committee on Education and Labor, pursuant to this requirement.

Background

The purpose of this rule is to provide for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), as it applies to programs and activities conducted by the Equal Employment Opportunity Commission. As amended by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Sec. 119, Pub. L. No. 95–602, 92 Stat. 2982), and the Rehabilitation Act Amendments of 1986 (Pub. L. No. 99–506, 100 Stat. 1810), section 504 of the Rehabilitation Act of 1973 states that:

> No otherwise qualified individual with handicaps in the United States, * * * shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978.
>
> 29 U.S.C. 794.

The substantive nondiscrimination obligations of the Commission, as set forth in this rule, are identical, for the most part, to those established by Federal regulations for programs or activities receiving Federal financial assistance. *See* 28 CFR Part 41 (section 504 coordination regulation for federally assisted programs). This general parallelism is in accord with the intent expressed by supporters of the 1978 amendment in floor debate, including its sponsor, Rep. James M. Jeffords, that the Federal Government should have the same section 504 obligations as recipients of Federal financial assistance. 124 Cong. Rec. 13,901 (1978) (remarks of Rep. Jeffords); 124 Cong. Rec. E2668, E2670 (daily ed. May 17, 1978) *Id.*; 124 Cong. Rec. 13,897 (remarks

of Rep. Brademas); *Id.* at 38,552 (remarks of Rep. Sarasin).

There are, however, some language differences between this rule and the Federal Government's section 504 regulations for federally assisted programs. These changes are based on the Supreme Court's decision in *Southeastern Community College* v. *Davis,* 442 U.S. 397 (1979), and the subsequent circuit court decisions interpreting *Davis* and section 504. *See Dopico* v. *Goldschmidt,* 687 F.2d 644 (2d Cir. 1982); *American Public Transit Association* v. *Lewis,* 655 F.2d 1272 (D.C. Cir. 1981) *(APTA); see also Rhode Island Handicapped Action Committee* v. *Rhode Island Public Transit Authority,* 718 F.2d 490 (1st Cir. 1983).

These language differences are also supported by the decision of the Supreme Court in *Alexander* v. *Choate,* 469 U.S. 287 (1985), where the Court held that the regulations for federally assisted programs did not require a recipient to modify its durational limitation on Medicaid coverage of inpatient hospital care for handicapped persons. Clarifying its *Davis* decision, the Court explained that section 504 requires only "reasonable" modifications, *Id.* at 300, and explicitly noted that "[t]he regulations implementing section 504 for federally assisted programs are consistent with the view that *reasonable adjustments* in the nature of the benefit offered must at times be made to assure meaningful access" (*Id.* at 301, n.21) (emphasis added).

Incorporation of these changes, therefore, makes this regulation implementing section 504 for federally conducted programs consistent with the Federal Government's regulations implementing section 504 for federally assisted programs as they have been interpreted by the Supreme Court. Many of these federally assisted regulations were issued prior to the interpretations of section 504 by the courts: the Supreme Court in *Davis,* subsequent lower court cases interpreting *Davis,* and the Supreme Court in *Alexander;* therefore their language does not reflect the interpretation of section 504 provided by the Supreme Court and by the various circuit courts. Of course, these federally assisted regulations must be interpreted to reflect the holdings of the Federal judiciary. Hence the Commission believes that there are no significant differences between this proposed rule for federally conducted programs and the Federal Government's interpretation of section 504 regulations for federally assisted programs.

This regulation has been reviewed by the Department of Justice. It is an adaptation of a prototype prepared by the Department of Justice under Executive Order 12250 (45 FR 72995, 3 CFR, 1980 Comp., p. 298) and distributed to Executive agencies. It has also been reviewed by the Commission under Executive Order 12067 (43 FR 28967, 3 CFR, 1978 Comp., p. 206).

It is not a major rule within the meaning of Executive Order 12291 (46 FR 13193, 3 CFR, 1981 Comp., p. 127) and, therefore, a regulatory impact analysis has not been prepared.

This regulation does not have an impact on small entities. It is not, therefore, subject to the Regulatory Flexibility Act (5 U.S.C. 601–612).

Section-by-Section Analysis

Section 1615.101 Purpose

Section 1615.101 states the purpose of the rule, which is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

Section 1615.102 Application

The regulation applies to all programs or activities conducted by the Commission. Under this section, a federally conducted program or activity is, in simple terms, anything the Commission does. Aside from employment, there are two major categories of federally conducted programs or activities covered by this regulation: those involving general public contact as part of ongoing agency operations and those directly administered by the Commission for program beneficiaries and participants. Activities in the first part include communication with the public (telephone contacts, office walk-ins, or interviews) and the public's use of the Commission's facilities. Activities in the second category include programs that provide Federal services or benefits.

Section 1615.103 Definitions

"Assistant Attorney General." "Assistant Attorney General" refers to the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

"Auxiliary aids." "Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in and enjoy the benefits of the agency's programs or activities. The definition provides examples of commonly used auxiliary aids. Although auxiliary aids are required explicitly only by § 1615.160(a)(1), they may also be necessary to meet other requirements of this part. The regulatory definition of "auxiliary aids" has been amended to include examples of aids for persons who are impaired in their ability to reach or grasp objects. Although aids for such persons were clearly intended to be included within the scope of the definition, the proposed rule only provided examples of aids for visually and hearing-impaired persons. Two commentors requested that we add other specified aids to those listed in the regulation for persons with impaired hearing. We do not think it is necessary to do so. The aids listed in the regulation are examples only and are not intended to be all-inclusive; the regulation refers to "similar services and devices." The Commission has not specified many other aids that would be appropriate for persons with other types of disabilities. We have added language to the regulation stating that the examples provided are not intended to be exclusive either as to the persons entitled to such aids or the type of aids that may be required.

"Commission." For purposes of this regulation "Commission" means the Equal Employment Opportunity Commission.

"Complete complaint." The definition of "complete complaint" enables the Commission to determine the beginning of its obligation to investigate a complaint (*see* § 1615.170(h)). The definition is necessary because the 180 day period for the Commission's investigation begins when it receives a complete complaint. A commentor expressed concern that this definition, requiring a complainant to provide details on the nature and date of an alleged violation when filing a complaint, is too restrictive and may lead to delays or EEOC inaction on valid complaints. Another commentor made a similar point, in requesting revisions to § 1615.170. These comments reflect a misunderstanding of the procedures that the Commission routinely follows to assure that complaints contain needed information. Section 1615.170 of the proposed rule provided for correction of technically incomplete complaints. However, to assure that the public fully understands the Commission's procedures, we have expanded § 1615.170, as described below, to further clarify this process.

"Facility." The definition of "facility" is similar to that in the section 504

coordination regulation for federally assisted programs 29 CFR 41.3(f), except that the term "rolling stock or other conveyances" has been added and the phrase "or interest in such property" has been deleted to clarify its coverage. The phrase, "or interest in such property," is deleted because the term "facility," as used in this regulation, refers to structures and not to intangible property rights. It should, however, be noted that the regulation applies to all programs and activities conducted by the Commission regardless of whether the facility in which they are conducted is owned, leased, or used on some other basis by the Commission. The term "facility" is used in §§ 1615.149, 1615.150 and 1615.170(f).

"Individual with handicaps." The definition of "individual with handicaps" is identical to the definition of "handicapped person" appearing in the section 504 coordination regulation for federally assisted programs (28 CFR 41.31). Although section 103(d) of the Rehabilitation Act Amendments of 1986 changed the statutory term "handicapped individual" to "individual with handicaps," the legislative history of this amendment indicates that no substantive change was intended. Thus, although the term has been changed in this regulation to be consistent with the statute as amended, the definition is unchanged. In particular, although the term as revised refers to "handicaps" in the plural, it does not exclude persons who have only one handicap.

A commentor requested that we revise the definition to include a person who has a "physical, sensory or mental impairment," because deafness is a sensory impairment that should not be lumped under the category of physical impairment. We have not made this revision because the Commission's regulation repeats the statutory definition of an "individual with handicaps."

"Qualified individual with handicaps." Paragraph (1) of the definition of "qualified individual with handicaps" is a revised version of the definition of "qualified handicapped person" appearing in the section 504 coordinatioin regulation for federally assisted programs (28 CFR 41.32(b)).

The Commission has amended the definition of "qualified individual with handicaps" that appeared in the proposed rule to better reflect the nature of its programs and activities and to clarify its obligation to make modifications that will enable individuals with handicaps to participate in these programs and activities. The Commission has deleted subsection (1) of the definition that appeared in the proposed rule, which applied to programs and activities (except employment) under which a person is "required to perform services or reach a level of accomplishment." On reconsideration, the Commission has determined that this part of the definition, which it had adopted from a prototype regulation drafted by the Department of Justice, is unnecessary in its rule, because the Commission does not conduct programs or activities of this nature, other than employment.

Subsection (2) of the proposed rule, which applied to all other programs and activities (except employment), has been redesignated (1) and amended in response to concerns expressed by commentors. The commentors' major concern was that the definition of "qualified individual with handicaps" in the proposed rule might allow the Commission to disqualify an individual without initial consideration of its obligation to provide modifications or aids that would allow the individual to participate in a program or activity.

To ensure that this does not occur, the Commission was urged to incorporate the requirement to make such modifications in this definition. The Commission believed that the proposed rule did require it to make needed modifications to enable individuals with handicaps to participate in its programs, and had stated this specifically in the preamble to the rule. However, to avoid any possibility of a misconception such as that reflected by the commentors, we have revised the definition to make these obligations more explicit in the rule itself. As revised, the definition states that a qualified individual with handicaps, with respect to any program other than employment, is "an individual with handicaps who, with or without modifications or aids required by this part, meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity." The revision makes clear that determining whether a person is qualified is a two step process, which includes, where necessary, the provision of auxiliary aids or program modifications as set out in § 1615.130, § 1615.150 and § 1615.160 of the rule. Sections 1615.150 and 1615.160 also reflect recent Supreme Court rulings indicating limits to such obligations under Section 504 of the Rehabilitation Act.

Paragraph (2) of the definition provides that, for purposes of employment, "qualified individual with handicaps" is defined in 29 CFR 1613.702(f), which is made applicable to this part by § 1615.140. Nothing in this part changes existing regulations applicable to employment.

"Section 504." This definition makes clear that, as used in this regulation, "section 504" applies only to programs or activities conducted by the Commission and not to programs or activities to which it provides Federal financial assistance.

Section 1615.110 Self-evaluation

The Commission shall conduct a self-evaluation of its compliance with section 504 within one year of the effective date of this regulation. The self-evaluation requirement is present in the existing section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.5(b)(2)). Experience has demonstrated the self-evaluation process to be a valuable means of establishing a working relationship with individuals with handicaps that promotes both effective and efficient implementation of section 504.

Individuals and groups with information to offer the agency concerning its self-evaluation study may contact the Commission's Handicap Program Manager, Equal Employment Opportunity Commission, 1801 "L" Street NW., Washington, DC 20507, (202) 663–4392, TDD (202) 663–4399.

Section 1615.111 Notice

Section 1615.111 requires the Commission to disseminate sufficient information to employees, applicants, participants, beneficiaries, and other interested persons to apprise them of rights and protections afforded by section 504 and this regulation. Methods of providing this information include, for example, the publication of information in handbooks, manuals, and pamphlets that are distributed to the public to describe the Commission's programs and activities; the display of informative posters in service centers and other public places; or the broadcast of information by television or radio.

A commentor requested revision of the first sentence of this section to state that the Commission will "effectively apprise" persons of the protections of the regulation. The Commission considers this modification to be unnecessary. It is committed under the regulation and by terms of this section to assure that individuals with handicaps are aware of their rights for access to its programs.

Section 1615.130 General prohibitions against discrimination

Section 1615.130 is an adaptation of the corresponding section of the section

504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.51).

Paragraph (a) restates the nondiscrimination mandate of section 504. The remaining paragraphs in § 1615.130 establish the general principles for analyzing whether any particular action of the Commission violates this mandate. These principles serve as the analytical foundation for the remaining sections of the regulation. Whenever the Commission has violated a provision in any of the subsequent sections, it has also violated one of the general prohibitions found in § 1615.130. When there is no applicable subsequent provision, the general prohibitions stated in this section apply.

Paragraph (b) prohibits the denial of equal opportunities for individuals with handicaps to participate in or benefit from Commission programs as well as overt denial of equal treatment of individuals with handicaps. The agency may not refuse to provide an individual with handicaps with an equal opportunity to participate in or benefit from its programs simply because the person is handicapped. Such blatantly exclusionary practices often result from the use of irrebuttable presumptions that absolutely exclude certain classes of disabled persons (e.g., individuals with epilepsy, hearing-impairments, or heart ailments) from participation in programs or activities without regard to an individual's actual ability to participate. Exclusion of an individual with handicaps from a program or activity based on stereotyped characterizations of persons with his or her handicap is prohibited. Use of an irrebuttable presumption is permissible only when in all cases a physical condition by its very nature would prevent an individual from meeting the essential eligibility requirements for participation in the activity in question.

Section 504, however, prohibits more than just exclusionary practices. As the Supreme Court recognized in *Alexander*, in enacting section 504, Congress intended to reach some conduct, such as the maintenance of architectural barriers, that have a discriminatory effect upon individuals with handicaps. 464 U.S. at 297. It is not enough to admit persons in wheelchairs to a program if the facilities in which the program is conducted are inaccessible. Paragraph (b)(1)(iii), therefore, requires that the opportunity to participate or benefit afforded to an individual with handicaps be as effective as that afforded to others. The later sections on program accessibility (§§ 1615.149–1615.151) and communications (§ 1615.160) are specific applications of this principle.

Paragraph (d) mandates that the Commission administer its programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps. Paragraph (b)(1)(iv) permits the agency to develop separate or different aids, benefits, or services only when necessary to provide individuals with handicaps with an equal opportunity to participate in or benefit from the agency's programs or activities. Paragraph (b)(1)(iv) requires that different or separate aids, benefits or services be provided only when necessary to ensure that the aids, benefits, or services are as effective as those provided to others. Even when separate or different aids, benefits, or services would be more effective, paragraph (b)(2) provides that a qualified individual with handicaps still has the right to choose to participate in the program that is not designed to accommodate individuals with handicaps.

Paragraph (b)(1)(v) prohibits the Commission from denying a qualified individual with handicaps the opportunity to participate as a member of a planning or advisory board.

Paragraph (b)(1)(vi) prohibits the Commission from limiting a qualified individual with handicaps in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving any aid, benefit, or service.

Paragraph (b)(3) prohibits the Commission from utilizing criteria or methods of administration that deny individuals with handicaps access to the agency's programs or activities. The phrase "criteria or methods of administration" refers to official written agency policies and the actual practices of the agency. This paragraph prohibits explicit denials of opportunities to benefit from Commission programs due to handicap. It also prohibits nonessential policies and practices that are neutral on their face, but that operate to deny individuals with handicaps an effective opportunity to participate.

Paragraph (b)(4) specifically applies the prohibition enunciated in § 1615.130(b)(3) to the process of selecting sites for construction of new facilities or existing facilities to be used by the Commission. Paragraph (b)(4) does not apply to construction of additional buildings at an existing site.

Paragraph (b)(5) prohibits the Commission, in the selection of procurement contractors, from using criteria that subject qualified individuals with handicaps to discrimination on the basis of handicap.

Paragraph (c) provides that programs conducted pursuant to a Federal statute or Executive order that are designed to benefit only individuals with handicaps or a given class of individuals with handicaps may be limited to those individuals.

Paragraph (d), discussed above, provides that the agency must administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps, i.e. in a setting that enables individuals with handicaps to interact with nonhandicapped persons to the fullest extent possible.

A commentor requested the Commission to reinstate a provision of the regulations for federally assisted programs that was omitted from these regulations. The provision prohibits recipients of federal financial assistance from providing "significant assistance" to an organization that discriminates. Such a provision would be inappropriate in this regulation that applies to the Commission's federally conducted programs.

Section 1615.140 Employment

Section 1615.140 prohibits discrimination onthe basis of handicap in employment. Courts have held that section 504, as amended in 1978, covers the employment practices of Executive agencies. *Gardner* v. *Morris*, 752 F.2d 1271, 1277 (8th Cir. 1985); *Smith* v. *U.S. Postal Service*, 742 F.2d 257, 259–260 (6th Cir. 1984); *Prewitt* v. *U.S. Postal Service*, 662 F.2d 292, 302–04 (5th Cir. 1981); *Contra, McGuiness* v. *U.S. Postal Service*, 744 F.2d 1318, 1220–21 (7th Cir. 1984); *Boyd* v. *U.S. Postal Service*, 752 F.2d 410, 413–14 (9th Cir. 1985).

Courts uniformly have held that in order to give effect to section 501 of the Rehabilitation Act, which covers Federal employment, the administrative procedures of section 501 must be followed in processing complaints of employment discrimination under section 504. *Morgan* v. *U.S. Postal Service*, 798 F.2d 1161, (8th Cir. 1986); *Smith*, 742 F.2d at 262; *Prewitt*, 662 F.2d at 304. Accordingly, § 1615.140 (Employment) of this rule adopts the definitions, requirements and procedures of section 501 as established in regulations of the Equal Employment Opportunity Commission (EEOC) at 29 CFR Part 1613. In addition to this section, § 1615.170(b) (Compliance Procedures) of this regulation specifies that the Commission will use the existing EEOC procedures to resolve

allegations of employment discrimination. Responsibility for coordinating enforcement of Federal laws prohibiting discrimination in employment is assigned to the EEOC by Executive Order 12067 (43 FR 28967, 3 CFR, 1978 Comp., p. 206). Under this authority, the EEOC establishes government-wide standards on nondiscrimination in employment on the basis of handicap.

Section 1615.149 Program accessibility: Discrimination prohibited

Section 1615.149 states the general nondiscrimination principle underlying the program accessibility requirements of §§ 1615.150 and 1615.151.

Section 1615.150 Program accessibility: Existing facilities

This regulation adopts the program accessibility concept found in the existing section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.57), with certain modifications. Thus, § 1615.150 requires that the agency's program or activity, when viewed in its entirety, be readily accessible to and usable by individuals with handicaps. However, § 1615.150, unlike 28 CFR 41.56–41.57, places explicit limits on the agency's obligation to ensure program accessibility (§ 1615.150 (a)(2)). The regulation also makes clear that the Commission is not necessarily required to make each of its existing facilities accessible (§ 1615.150(a)(1)).

A commentor requested that the Commission delete § 1615.150(a)(1) from its regulation, arguing that failure to require handicapped access to all EEOC programs contravenes the legal requirement of section 504 that all programs be accessible. As noted above, the Commission's regulations adopts the concept in the existing regulations for federally assisted programs that a program or activity in its entirety must be accessible. This does not necessarily require that each of its facilities meet this standard, although the Commission has striven to acheive this goal and will continue to do so. However, in some cases, it may be more effective to provide a program or a service in another facility, in order to achieve accessibility.

Paragraph (a)(2) generally codifies case law that defines the scope of the Commission's obligation to ensure program accessibility. This paragraph provides that in meeting the program accessibility requirement the Commission is not required to take any action that would result in a fundamental alteration in the nature of its program or activity or in undue financial and administrative burdens. A similar limitation is provided in § 1615.160(d). This provision is based on the Supreme Court's holding in *Southeastern Community College* v. *Davis*, 442 U.S. 397 (1979), that section 504 does not require program modifications that result in a fundamental alteration in the nature of a program, and on the Court's statement that section 504 does not require modifications that would result in "undue financial and administrative burdens." 442 U.S. at 412. Since *Davis*, circuit courts have applied this limitation on a showing that only one of the two "undue burdens" would be created as a result of the modification sought to be imposed under section 504. *See, e.g., Dopico* v. *Goldschmidt*, 687 F.2d 644 (2d Cir. 1982); *American Public Transit Association* v. *Lewis (APTA)*, 655 F.2d 1272 (D.C. Cir. 1981). Thus, in *APTA* the United States Court of Appeals for the District of Columbia Circuit applied the *Davis* language and invalidated the section 504 regulations of the Department of Transportation. The court in *APTA* noted "that at some point a transit system's refusal to take modest, affirmative steps to accommodate handicapped persons might well violate section 504. But DOT's rules do not mandate only modest expenditures. The regulations require extensive modifications of existing systems and impose extremely heavy financial burdens on local transit authorities." 655 F.2d at 1278.

In *Dopico* the United States Court of Appeals for the Second Circuit looked at the potential expenditure of $6 million of New York City's total federal capital and operating subsidy for mass transit of $490 million for 1980 and concluded that "[w]hile this is a considerable sum of money, it is not 'massive' either in absolute terms or relative to the City's total receipt of mass transportation. . . ." 687 F.2d at 650.

Paragraphs(a)(2) and § 1615.160(d) are also supported by *Alexander* v. *Choate*, 469 U.S. 287 (1985). *Alexander* involved a challenge to the State of Tennessee's reduction of inpatient hospital care coverage under Medicaid from 20 to 14 days per year. Plaintiffs argued that this reduction violated section 504 because it had an adverse impact on handicapped persons. The Court assumed without deciding that section 504 reaches at least some conduct that has an unjustifiable disparate impact on handicapped people, but held that the reduction was not "the sort of disparate impact" discrimination prohibited by section 504 or its implementing regulation. (*Id.* at 299).

Relying on *Davis*, the Court said that section 504 guarantees qualified individuals with handicaps "meaningful access to the benefits that the grantee offers" (*id.* at 301) and that "*reasonable adjustments* in the nature of the benefit being offered must at times be made to assure meaningful access." (*Id.*, n.21) (emphasis added). However, section 504 does not require " 'changes,' 'adjustments,' or 'modifications' to existing programs that would be 'substantial' or that would constitute 'fundamental alteration(s) in the nature of a program'." (*Id.*, n.20) (citations omitted).

Alexander supports the position, based on *Davis* and the earlier, lower court decisions, that in some situations, certain modifications for a handicapped person may so alter the Commission's program or activity, or entail such extensive costs and administrative burdens that the refusal to undertake the modifications is not discriminatory. Thus, failure to include such an "undue burdens" provision could lead to judicial invalidation of the regulation or reversal of a particular enforcement action taken pursuant to the regulation.

This paragraph, however, does not establish an absolute defense; it does not relieve the Commission of all obligations to individuals with handicaps. Although the Commission is not required to take actions that would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens, it nevertheless must take any other steps necessary to ensure that individuals with handicaps receive the benefits and services of the federally conducted program or activity.

It is our view that compliance with § 1615.150(a) would in most cases not result in undue financial and administrative burdens on the Commission. In determining whether financial and administrative burdens are undue, all Commission resources available for use in the funding and operation of the conducted program or activity are to be considered. The burden of proving that compliance with § 1615.150(a) would fundamentally alter the nature of a program or activity or would result in undue financial and administrative burdens rests with the Commission. The decision that compliance would result in such alteration or burdens must be made by the Chairman of the Commission and msut be accompanied by a written statement of the reasons for reaching that conclusion. Any person who believes that he or she or any specific class of persons has been injured by the

Chairman's decision or failure to make a decision may file a complaint under the compliance procedures established in § 1615.170. Finally, even if there is a determination that making a program acccessible will fundamentally alter the nature of the program, or will result in undue financial and administrative burdens, the Commission must still take action, short of that outer limit, that will open participation in the Commission program to disabled persons to the fullest extent possible.

A commentor requested that this section and § 1615.160 require EEOC to consider the budget of the agency as a whole—rather than the budget of a particular program—in determining undue financial burdens. We have not adopted this recommendation. The regulation provides that a finding that compliance with requirements of this section would result in "undue financial and administrative burden" can be made only by the head of the agency after consideration of all available Commission resources. (Emphasis added). This clearly requires the Commission to consider resources beyond line item funds alloted to a particular program, but necessarily excludes funds that are legally obligated for specific purposes and thus cannot be made available. Because of this commitment to consider all resources available, the Commission believes, as stated above, that it rarely will be faced with "undue burdens" in meeting the program accessibility or communications requirements of the regulation.

A commentor asked EEOC to add a requirement that it will inform individuals of their right to have decisions on accessibility made at the highest level of the Commission. Another commentor requested that more information be provided on how the head of the agency will determine if an action imposes an undue burden. The Commission has not adopted these suggestions. Section 1615.111 (Notice) provides that the Commission will make available information necessary to inform persons of the protections against discrimination assured by this regulation. The Commission intends to issue a management directive to its staff, implementing the regulation, that will emphasize that decisions of this nature must be made by the Chairman of the Commission, and cannot be made at lower levels. It will also make such information available to the public through appropriate means. For example, if the Commission conducts conferences or seminars, registration forms will include such information. The Commission's implementing management directive also will provide that when an accessibility issue raising resource concerns arises at any of its offices, the Handicap Program Manager must be contacted. That official will provide technical guidance and will be responsible for assuring that decisions regarding "undue burdens" will be made within a timeframe that assures that accessibility will not be denied due to untimely consideration.

Paragraph (b) sets forth a number of means by which program accessibility may be achieved, including redesign of equipment, reassignment of services to accessible buildings, and provision of aides. In choosing among methods, the Commission shall give priority consideration to those that will be consistent with provision of services in the most integrated setting appropriate to the needs of individuals with handicaps. Structural changes in existing facilities are required only when there is no other feasible way to make the Commission's program accessible. The Commission may comply with the program accessibility requirement by delivering services at alternate accessible sites or making home visits as appropriate.

Paragraphs (c) and (d) establish time periods for complying with the program accessibility requirement. As currently required for federally assisted programs by 28 CFR 41.57(b), the Commission must make any necessary structural changes in facilities as soon as practicable, but in no event later than three years after the effective date of this regulation.

Where structural modifications are required, a transition plan shall be developed within six months of the effective date of this regulation. Aside from structural changes, all other necessary steps to achieve compliance shall be taken within sixty days.

Section 1615.151 Program accessibility: New construction and alterations.

Overlapping coverage exists with respect to new construction and alterations under section 504 and the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157). Section 1615.151 provides that those buildings that are constructed or altered by, on behalf of, or for the use of the Commission shall be designed, constructed, or altered to be readily accessible to and usable by individuals with handicaps in accordance with 41 CFR 101–19.600 to 101–19.607. This standard was promulgated pursuant to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157). We believe that it is appropriate to adopt the existing Architectural Barriers Act standard for section 504 compliance because new and altered buildings subject to this regulation are also subject to the Architectural Barriers Act and because adoption of the standard will avoid duplicative and possibly inconsistent standards.

Existing buildings leased by the Commission after the effective date of this regulation are not required by the regulation to meet accessibility standards simply by virtue of being leased. They are subject, however, to the program accessibility standard for existing facilities in § 1615.150. To the extent the buildings are newly constructed or altered, they must also meet the new construction and alteration requirements of § 1615.151.

A commentor requested that the rule require that any leased space must comply with Architectural Barriers Act requirements when EEOC renews or initiates a lease. The proposed rule noted that it has been Federal practice to subject newly leased buildings to the lesser accessibility standard for existing buildings, rather than the ABA standard, because retrofitting such buildings raises similar cost problems. In practice, the Commission has endeavored to assure accessibility of its leased buildings in accordance with the Architectural Barriers Act, but it cannot make this a requirement of its regulations because the facilities it occupies are leased by and under the control of the General Services Administration (GSA). However, the Commission has moved field offices from leased buildings that were not accessible and has refused prospective locations offered by GSA because they were not accessible. The Commission recently obtained agreement from GSA that all locations leased for Commission occupancy will be accessible.

In *Rose* v. *United States Postal Service*, 774 F.2d 1355 (9th Cir. 1985), the Ninth Circuit held that the Architectural Barriers Act requires accessibility at the time of lease. The *Rose* court did not address the issue of whether section 504 likewise requires accessibility as a condition of the lease, and the case was remanded to the District Court for, among other things, consideration of that issue. The Commission may provide more specific guidance on section 504 requirements for leased buildings after the litigation is completed.

Section 1615.160 Communications

Section 1615.160 requires the Commission to take appropriate steps to ensure effective communication with

personnel of other Federal entities, applicants, participants, and members of the public. These steps shall include procedures for determining when auxiliary aids are necessary under § 1615.160(a)(1) to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, the Commission's program or activity. They shall also include an opportunity for individuals with handicaps to request the auxiliary aids of their choice. This expressed choice shall be given primary consideration by the Commission (§ 1615.160(a) (1)(i)). The Commission shall honor the choice unless it can demonstrate that another effective means of communication exists or that use of the means chosen would not be required under § 1615.160(d). That paragraph limits the obligation of the Commission to ensure effective communication in accordance with *Davis* and the circuit court opinions interpreting it (*see supra*, preamble § 1615.150(a)(2)). Unless not required by § 1615.160(d), the Commission shall provide auxiliary aids at no cost to the individual with handicaps.

While in some circumstances, a notepad and written materials may be sufficient to permit effective communication with a hearing-impaired person, in many circumstances they may not be, particularly when the information being communicated is complex or exchanged for a lengthy period of time (e.g., a meeting) or where the hearing-impaired applicant or participant is not skilled in spoken or written language. Then a sign language or oral interpreter or assistive listening device may be appropriate. For vision-impaired persons, effective communication might be achieved by several means, including readers and audio recordings. In general, the Commission intends to make clear to the public (1) the communications services it offers to afford individuals with handicaps an equal opportunity to participate in or benefit from its programs or activities, (2) the opportunity to request a particular mode of communication, and (3) the Commission's preferences regarding auxiliary aids if it can demonstrate that several different modes are effective.

The Commission shall ensure effective communication with vision-impaired and hearing-impaired persons involved in hearings conducted by the Commission. Auxiliary aids must be afforded where necessary to ensure effective communication at the proceedings. If sign language interpreters are necessary, the Commission may require that it be given reasonable notice prior to the proceeding of the need for an interpreter. Moreover, the Commission need not provide devices of a personal nature (§ 1615.160(a)(1)(ii)). For example, the Commission need not provide eye glasses or hearing aids to applicants or participants in its programs. Similarly, the regulation does not require the Commission to provide wheelchairs to persons with mobility impairments. Readers will be provided if necessary, to make program materials accessible. Readers will not be available for reading nonprogram materials.

A commentor requested revision of subsection § 1615.160(a)(1)(ii) to state that the Commission need not provide individually prescribed devices or readers for "nonprogram material." The commenter asserted that this would clarify that the distinction is not whether the disabled person receives "personal" assistance, but whether the aid is necessary to assure accessibility to the agency's program. The Commission has not made this revision because § 1615.160(a)(1) already states that it will furnish appropriate auxiliary aids necesary to provide a disabled person an equal opportunity to participate in or benefit from its programs, and that it will give primary consideration to the type of aid requested by the individual. Subsection (a)(1)(ii), which is identical to the language in the Department of Health and Human Services regulations for federally assisted programs (45 CFR 84.44(d)(2)), merely provides added clarification, as indicated by the examples cited above.

Paragraph (b) requires the Commission to provide information to individuals with handicaps concerning accessible services, activities, and facilities. Paragraph (c) requires the Commission to provide signs at inaccessible facilities that direct users to locations with information about accessible facilities.

A commentor requested that the rule state in § 1615.160(c) that EEOC will provide the international symbol for deafness at each public telephone accessible by amplifier or TDD, and at each primary entrance to a facility where other devices are provided to aid hearing-impaired persons. We have not adopted this recommendation. The Commission is committed by this regulation to provide accessibility for all disabled persons. It would be unduly cumbersome to require special signage indicating devices needed to achieve accessibility for every disability. The Commission will provide directions to locations where individuals may obtain information on special aids or devices that will provide accessibility for them.

Section 1615.160(d) limits the obligation of the Commission to ensure effective communication in accordance with *Davis* and the circuit court opinions interpreting it (*see supra*, discussion of § 1615.150(a)(2)). The discussion under § 1615.150, *Program accessibility: Existing facilities*, regarding the determination of undue financial and administrative burdens also applies to this section and should be referred to for a complete understanding of the Commission's obligation to comply with § 1615.160.

Section 1615.170 Compliance procedures

Paragraph (a) specifies that paragraphs (c) through (m) of this section establish the procedures for processing complaints other than employment complaints. Paragraph (b) provides that the Commission will process employment complaints according to procedures established in its existing regulations (29 CFR Part 1613) pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

Paragraph (c) designates the official responsible for coordinating the implementation of § 1615.170.

Paragraph (d) requires complainants to file section 504 complaints within 180 days of the alleged discriminatory act unless they show good cause for a delay in filing. One hundred and eighty days is a time period that the Commission has recommended that other agencies could use in setting up complaint procedures. It is also consistent with the time period for filing charges pursuant to Title VII of the Civil Rights Act of 1964, as amended, and the Age Discrimination in Employment Act of 1967, as amended (in areas without a state or local deferral Commission).

The Commission is required to accept and investigate all complete complaints (§ 1615.170(d)). A commentor requested EEOC to add a provision to this section stating that if it receives a complaint that is not "complete" it will promptly notify the complainant that additional information is needed, and that if EEOC dismisses a complaint after providing opportunity for the complainant to amend it, notice of such dismissal will be given to the complainant.

The Commission routinely utilizes such procedures in processing complaints of employment discrimination; however, specific information of this nature was not provided in this rule, which was modeled on the Department of Justice

prototype regulation. The Commission agrees with the commentor that greater specificity will assist potential complainants. Therefore, it has revised subsection 1615.170(d) and added a new subsection 1615.170(e) to provide more detail on procedures for filing and processing complaints, including procedures requested by the commentor.

If the Commission determines that it does not have jurisdiction over a complaint, it shall promptly notify the complainant and make reasonable efforts to refer the complaint to the appropriate entity of the Federal government (§ 1615.170(f)). A commentor requested revision of subsection (f) to require the Commission to refer a complaint to the appropriate agency when it does not have jurisdiction, rather than merely making "reasonable efforts" to do so. Although the Commission will make every effort to refer complaints over which it does not have jurisdiction to an appropriate federal agency, we have not adopted this suggestion because there may be circumstances in which such referral is not possible. For example, the Commission may receive a complaint over which no Federal agency has jurisdiction or a complaint that does not contain sufficient information to identify the appropriate agency.

Paragraph (g) requires the Commission to notify the Architectural and Transportation Barriers Compliance Board upon receipt of a complaint alleging that a building or facility subject to the Architectural Barriers Act was designed, constructed, or altered in a manner that does not provide ready access to and use by individuals with handicaps.

Paragraph (h) requires the Commission to provide to the complainant, in writing, findings of fact and conclusions of law, the relief granted if noncompliance is found, and notice of the right to appeal. One appeal within the Commission shall be provided (§ 1615.170(i)). The appeal will not be heard by the same person who made the initial determination of compliance or noncompliance (§ 1615.170(i)). A commentor requested EEOC to provide more information in subsection 1615.170(i) describing the basic parameters for submitting and obtaining evidence used by the Commission to decide an appeal. The Commission has not adopted this suggestion. Details of this nature may be provided in an implementing directive, but are not appropriate in this regulation.

Two commentors requested that we add a provision to this section stating that a complainant can pursue a private cause of action in the courts, either without invoking EEOC administrative procedures or without exhausting those procedures. Section 504 does not explicitly establish a private right of action. Courts have ruled that complainants have such a right under section 504 in federally assisted programs, *see Pushkin* v. *Regents of Univ. of Colo.*, 658 F.2d 1372, 1377–78 (10th Cir. 1981) and cases listed therein. One Circuit Court of Appeals has recognized such a right in regard to programs conducted by a Federal agency. *Cousins* v. *Secretary, Department of Transportation*, 47 FEP Cases (1st Cir. Sept. 20, 1988). However, in the latter case, the agency has not yet issued Section 504 regulations for its federally conducted programs. Because the procedures established in this regulation for its federally conducted programs differ from procedures applicable to federally assisted programs, the Commission believes that the availability and scope of judicial review of its actions remains for the courts to determine, and thus cannot be specified in this regulation.

A commentor recommended that the regulation provide a statement with regard to the availability of money damages or other compensatory relief. The lower courts that have ruled on this issue are in disagreement as to whether monetary relief may be awarded under section 504. *See, e.g., Miener* v. *Missouri*, 673 F.2d 969 (8th Cir.) *cert. denied*, 459 U.S. 909 (1982) (damages available to vindicate rights established by section 504). *But see, Ruth Anne M.* v. *Alvin Independent School District*, 523 F. Supp. 460 (S.D. Tex. 1982) (damages remedy not available). Thus, this issue also remains for the courts to decide.

Paragraph (m) permits the Commission to delegate its authority for investigating complaints to other Federal agencies or to contract for such investigations with non-Federal entities. However, the statutory obligation of the Commission to make a final determination of compliance or noncompliance may not be delegated.

List of Subjects in 29 CFR 1615

Blind, Buildings, Civil rights, Deaf, Equal employment opportunity, Federal buildings and facilities, Government employees, Handicapped.

Signed at Washington, DC this 19th day of May 1989.

For the Commission.

Clarence Thomas,

Chairman.

For the reasons set forth in the preamble, Chapter XIV, Title 29 of the Code of Federal Regulations is amended as follows:

Part 1615 is added to read as follows:

PART 1615—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Sec.
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Authority: 29 U.S.C. 794.

§ 1615.101 Purpose.

The purpose of this part is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

§ 1615.102 Application.

This part applies to all programs or activities conducted by the Commission.

§ 1615.103 Definitions.

For purposes of this part, the term—

"Assistant Attorney General" means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

"Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the Commission. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, and other similar services and devices. Auxiliary

aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices. Auxiliary aids useful for persons with impaired ability to reach or grasp include goose neck telephone headsets, mechanical page turners, and raised or lowered furniture. These examples are not intended to be exclusive either as to the persons who are entitled to such aids or as to the type of aids that may be required. Although auxiliary aids are required explicitly only by § 1615.160(a)(1), they may also be necessary to meet other requirements of this part.

"Commission" means the Equal Employment Opportunity Commission.

"Complete complaint" means written statement that contains the complainant's name and address and describes the Commission's actions in sufficient detail to inform the Commission of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

"Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

"Individual with handicaps" means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase:

(1) "Physical or mental impairment" includes—(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

(2) "Major life activities" includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) "Is regarded as having such an impairment" means—(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in subparagraph (1) of this definition but is treated by the agency as having an impairment.

"Qualified individual with handicaps" means—

(1) With respect to any Commission program or activity (except employment), an individual with handicaps who, with or without modifications or aids required by this part, meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity.

(2) With respect to employment, an individual with handicaps as defined in 39 CFR 1613.702(f), which is made applicable to this part by § 1615.140.

"Section 504" means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93–516, 88 Stat. 1617), the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95–602, 92 Stat. 2955) and the Rehabilitation Act Amendments of 1986 (Pub. L. 99–506, 100 Stat. 1810). As used in this part, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

§§ 1615.104–1615.109 [Reserved]

§ 1615.110 Self-evaluation.

(a) The Commission shall, by [insert date one year after the effective date of this part] evaluate its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this part, and, to the extent modification of any such policies and practices is required, the Commission shall proceed to make the necessary modifications.

(b) The Commission shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the self evaluation process by submitting comments (both oral and written).

(c) The Commission shall, for a least three years following completion of the evaluation required under paragraph (a) of this section, maintain on file and make available for public inspection—

(1) A description of areas examined and any problems identified; and

(2) A description of any modifications made.

§ 1615.111 Notice.

The Commission shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the programs or activities conducted by the Commission, and make such information available to them in such manner as the Chairman of the Commission finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this regulation.

§§ 1615.112–1615.129 [Reserved]

§ 1615.130 General prohibitions against discrimination.

(a) No qualified individual with handicaps shall, on the basis of handicap, be excluded from participation in, be denied the benfits of, or otherwise be subjected to discrimination under any program or activity conducted by the Commission.

(b)(1) The Commission, in providing any aid, benefit, or service, may not, directly or through contractual, certifying, or other arrangements, on the basis of handicap—

(i) Deny a qualified individual with handicaps the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified individual with handicaps an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified individual with handicaps with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others.

(iv) Provide different or separate aid, benefits, or services to individuals with handicaps or to any class of individuals with handicaps than is provided to others unless such action is necessary to provide qualified individuals with handicaps with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified individual with handicaps the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified individual with handicaps in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The Commission may not deny a qualified individual with handicaps the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The Commission may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—(i) Subject qualified individuals with handicaps to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(4) The Commission may not, in determining the site or location of a facility, make selections the purpose or effect of which would—(i) Exclude individuals with handicaps from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the Commission; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(5) The Commission, in the selection of procurement contractors, may not use criteria that subject qualified individuals with handicaps to discrimination on the basis of handicap.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive order to individuals with handicaps or the exclusion of a specific class of individuals with handicaps from a program limited by Federal statute or Executive order to a different class of individuals with handicaps is not prohibited by this part.

(d) The Commission shall administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps.

§§ 1615.131–1615.139 [Reserved]

§ 1615.140 Employment.

No qualified individual with handicaps shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the Commission. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by this Commission in 29 CFR Part 1613, shall apply to employment in federally conducted programs or activities.

§§ 1615.141–1615.148 [Reserved]

§ 1615.149 Program accessibility: Discrimination prohibited.

Except as otherwise provided in § 1615.150, no qualified individual with handicaps shall, because the Commission's facilities are inaccessible to or unusable by individuals with handicaps, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the Commission.

§ 1615.150 Program accessibility: Existing facilities.

(a) *General.* The Commission shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with handicaps. This paragraph does not—(1) Necessarily require the Commission to make each of its existing facilities accessible to and usable by individuals with handicaps;

(2) Require the Commission to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where Commission personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the Commission has the burden of proving that compliance with § 1615.150(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the Chairman of the Commission after considering all Commission resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the Commission shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with handicaps receive the benefits and services of the program or activity.

(b) *Methods.* The Commission may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by individuals with handicaps. The Commission is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The Commission, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the Commission shall give priority to those methods that offer programs and activities to qualified individuals with handicaps in the most integrated setting appropriate.

(c) *Time period for compliance.* The Commission shall comply with the obligations established under this section by August 25, 1989 except that where structural changes in facilities are undertaken, such changes shall be made by June 26, 1992 but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the Commission shall develop, by December 26, 1989 a transition plan setting forth the steps necessary to complete such changes. The Commission shall provide an opportunity to interested persons, including individuals with handicaps and organizations representing individuals with handicaps, to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection.

The plan shall, at a minimum—(1) Identify physical obstacles in the Commission's facilities that limit the accessibility of its programs or activities to individuals with handicaps;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the official responsible for implementation of the plan.

§ 1615.151 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the Commission shall be designed, constructed, or altered so as to be readily accessible to and usable by individuals with handicaps. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151–4157), as established in 41 CFR Subpart 101–19.6, apply to buildings covered by this section.

§§ 1615.152–1615.159 [Reserved]

§ 1615.160 Communications.

(a) The Commission shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The Commission shall furnish appropriate auxiliary aids where necessary to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the Commission.

(i) In determining what type of auxiliary aid is necessary, the Commission shall give primary consideration to the requests of the individual with handicaps.

(ii) The Commission need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the Commission communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf persons (TDD's) or equally effective telecommunication systems shall be used.

(b) The Commission shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The Commission shall provide signs at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the Commission to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where Commission personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the Commission has the burden of proving that compliance with § 1615.160 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the Chairman of the Commission after considering all Commission resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the Commission shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with handicaps receive the benefits and services of the program or activity.

§§ 1615.161–1615.169 [Reserved]

§ 1615.170 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs or activities conducted by the Commission.

(b) The Commission shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by EEOC in 29 CFR Part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) Responsibility for implementation and operation of this section shall be vested in the Director, Equal Employment Opportunity Staff.

(d) Filing a complaint. (1) Who may file? Any person who believes that he or she has been subjected to discrimination prohibited by this part, or authorized representative of such person, may file a complaint with the Director, Equal Employment Opportunity Staff. Any person who believes that any specific class of persons has been subjected to discrimination prohibited by this part and who is a member of that class or the authorized representative of a member of that class may file a complaint with the Director. A charge on behalf of a person or member of a class of persons claiming to be aggrieved may be made by any person, agency or organization.

(2) Where and when to file. Complaints shall be filed with the Director, Equal Employment Opportunity Staff, 1801 "L" Street NW., Washington, DC 20507, within one hundred and eighty calendar days of the alleged act of discrimination. A complaint shall be deemed filed on the date it is postmarked, or, in the absence of a postmark, on the date it is received in the Office of the Director. The Commission shall extend the time period for filing a complaint upon a showing of good cause. For example, the Commission shall extend this time limit if a complainant shows that he or she was not notified of the time limits and was not otherwise aware of them, or that he or she was prevented by circumstances beyond his or her control from submitting the matter within the time limits. A technically incomplete complaint shall be deemed timely if the complainant cures any defect upon request.

(e) Acceptance of complaint. (1) The Commission shall accept a complete complaint that is filed in accordance with paragraph (d) of this section and over which it has jurisdiction. The EEO Director shall notify the complainant and the respondent of receipt and acceptance of the complaint.

(2) If the EEO Director receives a complaint that is not complete, he or she shall notify the complainant, within 30 days of receipt of the incomplete complaint, that additional information is needed. If the complainant fails to complete the complaint within 30 days of receipt of this notice, the Director shall dismiss the complaint without prejudice and shall so inform the complainant.

(f) If the Commission receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate government entity.

(g) The Commission shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), is not readily accessible to and usable by individuals with handicaps.

(h) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the Commission shall notify the complainant of the results of the

investigation in a letter containing—(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

(i) Appeals of the findings of fact and conclusions of law or remedies must be filed with the Chairman of the Commission by the complainant within ninety calendar days of receipt from the Commission of the letter required by § 1615.170(h). The Commission shall extend this time for good cause when a complainant shows that he or she was not notified of the prescribed time limit and was not otherwise aware of it or that circumstances beyond his or her control prevented the filing of an appeal within the prescribed time limit. An appeal shall be deemed filed on the date it is postmarked, or, in the absence of a postmark, on the date it is received by the Chairman at 1801 "L" Street NW., Washington, DC 20507. It should be clearly marked "Appeal of section 504 decision" and should contain specific objections explaining why the person believes the initial decision was factually or legally wrong. Attached to the appeal letter should be a copy of the initial decision being appealed.

(j) Timely appeals shall be decided by the Chairman of the Commission unless the Commission determines that an appeal raises a policy issue which should be addressed by the full Commission. The full Commission shall then decide such appeals.

(k) The Commission shall notify the complainant of the results of the appeal within sixty days of the receipt of the request. If the Commission determines that it needs additional information from the complainant, it shall have sixty days from the date it receives the additional information to make its determination on the appeal.

(l) The time limits cited in (h) and (k) of this section may be extended with the permission of the Assistant Attorney General.

(m) The Commission may delegate its authority for conducting complaint investigations to other Federal agencies, or may contract with non-Federal entities to conduct such investigations except that the authority for making the final determination may not be delegated.

§§ 1615.171–1615.999 [Reserved]

[FR Doc. 89–12634 Filed 5–25–89; 8:45 am]

BILLING CODE 6570–06–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR PART 165

[COTP Hampton Roads; Reg. 89–37]

Safety Zone; Chesapeake Bay, off Fort Story, Virginia Beach, VA

AGENCY: Coast Guard, DOT.

ACTION: Final Rule with request for comments.

SUMMARY: The Coast Guard is establishing a safety zone around a U. S. Navy exercise off Fort Story in Virginia Beach, Virginia. The exercise is scheduled to begin May 28, 1989 and end June 8, 1989. The safety zone is intended to minimize the risk of collision between military exercise vessels and other vessels. The Captain of the Port will close all access to the safety zone to non-exercise vessels in the interest of safety. Vessels or individuals will not be permitted to enter the safety zone, except in an emergency and then only in accordance with Captain of the Port orders or directions. In the event of an emergency, the Captain of the Port may be reached at phone: (804) 441–3299 and on VHF–FM channels 13 or 16.

DATES: These regulations are effective from 5:00 a.m., May 28, 1989 to 11:59 p.m., June 8, 1989, unless terminated sooner by the Captain of the Port Hampton Roads, Virginia. Comments are due June 26, 1989.

ADDRESSES: Comments should be mailed to Commanding Officer, U. S. Coast Guard Marine Safety Office Hampton Roads, 200 Granby Street, Norfolk, Virginia 23510–1888. The comments and other materials referenced in this notice will be available for inspection and copying at the above address. Normal working hours are between 7:30 a.m. and 4:00 p.m., Monday through Friday except holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant J. S. Martin at the above address, telephone number (804) 441–3284.

SUPPLEMENTARY INFORMATION: Under 5 U.S.C. 553 a Notice of Proposed Rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impractical. Final arrangements for the exercise did not provide adequate time to prepare and publish a notice of proposed rulemaking and this final rule.

Although this regulation is published as a final rule without prior notice, an opportunity for public comment is nevertheless desirable to ensure that the regulation is both reasonable and workable. Accordingly, persons wishing to comment may do so by submitting written comments to the office listed under "**ADDRESS**" in this preamble. Persons submitting comments should include their names and addresses, identify this notice (COTP Hampton Roads, Regulation 89–37), the specific section of the rule to which their comments apply and give the reasons for each comment. The regulations may be changed in light of the comments received.

Drafting Information

The drafters of this notice are Lieutenant J.S. Martin, Project Officer, and Lieutenant Commander R.K. Kutz, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulations

The Coast Guard is establishing a safety zone around a U.S. Navy exercise in the waters off Fort Story in Virginia Beach, Virginia from May 28, 1989 to June 8, 1989. The safety zone is needed to minimize the risk of collision between military exercise vessels and other vessels. The Captain of the Port will close all access to the safety zone to non-exercise vessels in the interest of safety. Vessels or individuals will not be permitted to enter the safety zone, except in an emergency and then only in accordance with Captain of the Port orders or directions. The boundaries of the safety zone will be marked by special purpose buoys with flashing yellow lights and Coast Guard patrol boats will be stationed along the boundaries of the safety zone. Coast Guard patrol vessels will be on scene at all times while the safety zone is in effect to notify boaters of the zone restrictions and to enforce the safety zone. Coast Guard patrol vessels will be monitoring channels 13 and 16 VHF–FM. Members of other Federal, state, local and private agencies may assist the Captain of the Port in enforcing these regulations.

List of Subjects in 33 CFR Part 165

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

Final Regulation

In consideration of the foregoing, Subpart D of Part 165 of Title 33, Code of Federal Regulations, the Coast Guard proposes to amend as follows:

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

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

2. A new § 165.T0537 is added to read as follows:

§ 165.T0537 Safety Zone: Chesapeake Bay, off Fort Story, Virginia Beach, Virginia.

(a) *Location.* The following area is a safety zone: The waters of the Chesapeake Bay bounded by the shoreline and a line connecting the following points:

Latitude	Longitude
36°55'30.0" N.	76°02'44.0" W.
36°56'35.0" N.	76°04'00.0" W.
36°57'15.0" N.	76°03'49.0" W.
36°56'58.0" N.	76°01'30.0" W.
36°55'54.0" N.	76°01'30.0" W.

(b) For the purposes of this section "representative of the Captain of the Port" means a Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port to act on his behalf with respect to this safety zone.

(c) *Regulations:* (1) No person or vessel, other than those participating in the U.S. Navy exercise, may transit or otherwise enter, remain in or anchor in the safety zone.

(2) The Captain of the Port or a representative of the Captain of the Port may permit access to or open the safety zone to non-exercise vessels if he deems it necessary in the interest of safety or in the event of an emergency. The Captain of the Port may be reached at phone: (804) 441–3299 and on VHF–FM channels 13 or 16.

(3) Any person or vessel given permission to enter the safety zone under the provisions of paragraph (c)(2) of this section shall obey immediately any and all directions or orders of the Captain of the Port or a representative of the Captain of the Port.

(d) *Effective Dates.* These regulations are effective from 5:00 a.m., May 28, 1989 to 11:59 p.m., June 8, 1989, unless terminated sooner by the Captain of the Port Hampton Roads, Virginia.

Dated: May 19, 1989.

E.K. Johnson,

Captain, U.S. Coast Guard, Captain of the Port Hampton Roads.

[FR Doc. 89–12599 Filed 5–25–89; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AB32

Community Residential Care

AGENCY: Department of Veterans Affairs.

ACTION: Correction; Final Regulations.

SUMMARY: On May 15, 1989, commencing on page 20840 (54 FR 20840), the Department of Veterans Affairs published a final rule to incorporate new sections into 38 CFR Part 17 to provide for the community residential care program. In § 17.51j which appears in the right-hand column of page 20842, paragraph (b) was inadvertently omitted. This notice hereby corrects the error and the correction is published below.

EFFECTIVE DATE: June 14, 1989.

FOR FURTHER INFORMATION CONTACT: James R. Kelly, Deputy Director, Patient Treatment Service (181), Office of Geriatrics and Extended Care, Veterans Health Services and Research Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 (202) 233–3692.

List of Subjects in 38 CFR Part 17

Alcoholism, Claims, Dental health, Government contracts, Grants programs-health, Health care, Health facilities, Health professions, Incorporation by reference, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Veterans.

Dated: May 19, 1989.

Charles A. Fountaine III,

Chief, Directives Management Division.

PART 17—[AMENDED]

In 38 CFR Part 17, Medical, § 17.51j is amended by adding paragraph (b) to read as follows:

§ 17.51j Approval of community residential care facilities.

* * * * *

(b) *Health services.* The facility must agree to assist residents in obtaining the statement of needed care developed by VA.

* * * * *

[FR Doc. 89–12581 Filed 5–25–89; 8:45 am]

BILLING CODE 8320–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–3565–9]

Approval and Promulgation of Implementation Plans; Alaska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule.

SUMMARY: EPA today approves three revisions to the Alaska State Implementation Plan as submitted by the State of Alaska Department of Environmental Conservation on June 26, 1987. These revisions include: Anchorage Air Pollution Episode Curtailment Actions, a Fairbanks Emergency Episode Prevention Plan, and minor changes to the Fairbanks motor vehicle inspection and maintenance program design.

EFFECTIVE DATE: This action will be effective on July 25, 1989 unless notice is received before June 26, 1989 that someone wishes to submit adverse or critical comments. If such notice is received, EPA will open a formal 30-day comment period on this action.

ADDRESSES: Copies of materials submitted to EPA may be examined during normal business hours at the following locations:

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

Air Programs Branch, (10A–87–13), Environmental Protection Agency, 1200 Sixth Avenue AT–092, Seattle, Washington 98101.

State of Alaska Department of Environmental Conservation, 3220 Hospital Drive, Juneau, Alaska 99811.

Comments should be addressed to: Laurie M. Kral, Air Programs Branch AT–092, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Laurie M. Kral, Air Programs Branch AT–092, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101, Telephone: (206) 442–0180, FTS: 399–0180.

SUPPLEMENTARY INFORMATION:

I. Statewide Air Episode Plans

On May 31, 1972 (37 FR 10848) EPA approved the Alaska State Implementation Plan (SIP) which included a statewide air episode plan. On April 24, 1984 (49 FR 17501), EPA approved revised regulations for air pollution episodes. However, these

regulations did not include contingency plans for the Anchorage or Fairbanks carbon monoxide nonattainment areas.

On June 26, 1987, the Alaska Department of Environmental Conservation (ADEC) submitted Section III.B.10–1 through 10–6 (Anchorage Air Pollution Curtailment Actions) and Section III.C.1 through 10.9 (Fairbanks Emergency Episode Prevention Plan) of the "State Air Quality Control Plan," Volume II, as revisions to the Alaska SIP. These sections include the required contingency plans. The contingency plans contain those procedures which Anchorage and Fairbanks will follow in the event of a carbon monoxide air episode. As carbon monoxide concentrations exceed certain action levels, more restrictive controls are imposed in order to reduce ambient concentrations and curtail the episode. These two new sections meet the requirements of the Code of Federal Regulations Part 51, Subpart H. Therefore, EPA is rescinding Section V of the Alaska SIP: Air Episode Plan as revised April 21, 1972, and incorporating these two new sections into the approved Alaska SIP.

II. Fairbanks Inspection and Maintenance

On June 26, 1987, Section III.C.5–7 (Fairbanks Inspection and Maintenance Program Design) of Volume II was revised by the administrator of the Fairbanks inspection and maintenance (I/M) program. This revision removes the fuel filler pipe lead restrictor component from the visual inspection standards. These restrictors are sized to prevent the introduction of leaded fuels into a vehicle designed to operate on unleaded fuels only. Leaded fuels severely damage vehicle catalytic converters. On September 15, 1986 (51 FR 32640) EPA approved the Fairbanks I/M program which included the requirement that motor vehicle fuel filler pipe restrictors be properly installed and unmodified in 1975 and later model year vehicles. The I/M program administrator determined that this requirement is unnecessary because a test for lead deposit is used on those vehicles originally equipped with catalytic converters.

While the lead test provides an effective means of testing for the use of leaded fuels in catalyst-equipped vehicles, the test does not identify all vehicles which have been misfueled. The inlet check provides an additional means of identifying misfueled vehicles. Therefore, dropping the inlet check may mean that a small number of misfueled vehicles will go undetected. EPA concludes that this minor change in the inspection and maintenance program will have a negligible impact on overall SIP emission reduction for Fairbanks. The program administrator and ADEC did not hold a public comment period or hearing because this change does not increase program cost or stringency.

III. EPA Action

Today EPA approves the new sections and minor changes to the Alaska State Implementation Plan as follows: Section III.B.10 through III.B.10.6 (Anchorage Air Pollution Episode Curtailment Actions), Section III.C.10–1 through 10.9 (Fairbanks Emergency Episode Prevention Plan) and minor modifications to Section III.C.5–7 (Fairbanks Inspection and Maintenance Program Design).

IV. Administrative Review

The public should be advised that this action will be effective 60 days from the date of this **Federal Register** notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments on any or all of these revisions approved herein, the action on these revisions will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action on those revisions and another will begin a new rulemaking by announcing a proposal of the action on these revisions and establishing a comment period.

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 revision will not have a significant economic impact on a substantial number of small entities (see 46 FR 8709).

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Reporting and recordkeeping requirements, Incorporation by reference.

Dated: April 26, 1989.

Robert S. Burd,

Acting Regional Administrator.

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

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

PART 52—[AMENDED]

Subpart C—Alaska

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

Authority: 42 U.S.C. 7401–7642.

2. Section 52.70 is amended by adding paragraph (c)(13) to read as follows:

§ 52.70 Identification of plan.

* * * * *

(c) * * *

(13) On June 26, 1987, the State of Alaska Department of Environmental Conservation submitted Section III.B.10–1 through III.B.10–6 (Anchorage Air Pollution Episode Curtailment Actions); Section III.C.10–1 through III.C.10–9 (Fairbanks Emergency Episode Prevention Plan); and minor modifications to Section III.C.5–7 (Fairbanks Inspection and Maintenance Program Design).

(i) Incorporation by Reference.

(A) June 26, 1987 letter from the State of Alaska Department of Environmental Conservation to EPA Region 10.

(B) Section III.B.10–1 through III.B.10–6 of Volume II (Anchorage Air Pollution Episode Curtailment Actions) as adopted as an ordinance by the Anchorage Assembly on September 9, 1986.

(C) Section III.C.10–1 through III.C.10–9 of Volume II (Fairbanks Emergency Episode Prevention Plan) as adopted as an ordinance by the Assembly of the Fairbanks North Star Borough on December 19, 1985.

(D) Page number Section III.C.5–7 of Volume II (Fairbanks Inspection and Maintenance Design). This new page supercedes the current page number Section III.C.5–7 of the Alaska Air Quality Control Plan as adopted by the Alaska Department of Environmental Conservation on June 26, 1987.

3. Section 52.75 is revised to read as follows:

§ 52.75 Contents of the approved State-submitted implementation plan.

The following sections of the State Air Quality Control Plan (as amended on the dates indicated) have been approved

and are part of the current State Implementation Plan:

Volume II: Analysis of Problems, Control Action

Section I. *Background*
A. Introduction (7/1/82)
B. Air Quality Control Regions (7/1/82)
C. Attainment/Nonattainment Designations (7/1/83)
Section II. *State Air Quality Control Program* (11/1/83)
Section III. *Areawide Pollutant Control Program*
A. Statewide Transportation Control Program (6/1/85)

B. Anchorage Transportation Control Program (6/1/85), except B.10–1 through 10.6 Anhorage Air Pollution Curtailment Actions (6/26/87)
C. Fairbanks Transportation Control Program (6/1/85), except C.10.1 through 10.9 Fairbanks Emergency Episode Prevention Plan (6/26/87)
D. Total Suspended Particulate Matter (7/1/82)
E. Ice Fog (7/1/82)
F. Open Burning (10/30/83)
G. Wood Smoke Pollution Control (7/1/83)
H. Lead Pollution Control (7/1/83)
Section IV *Point Source Control Program*
A. Summary (10/30/83)
1. Annual Review Report (10/30/83)
B. State Air Quality Regulations (10/30/83)
C. Local Programs (10/30/83)
D. Descriptions of Source Categories and Pollutants
1. Typical Point Sources (10/30/83)
2. Summary of Major Emitting Facilities (10/30/83)
E. Point Source Control
1. Introduction (10/30/83)
F. Facility Review Procedures
1. Who needs a permit? (10/30/83)
2. Standard Application Procedures (10/30/83)
3. PSD Application Procedures (10/30/83)
Preliminary report and meeting (10/30/83)
Pre-construction monitoring (10/30/83)
PSD application format (10/30/83)
4. Nonattainment Application Procedures (10/30/83)
G. Application Review and Permit Development (10/30/83)
1. Application Review (10/30/83)
2. Permit Development Requirements (10/30/83)
Monitoring and Testing Requirements (10/30/83)
Ambient Monitoring (10/30/83)
Continuous Emissions Monitoring (10/30/83)
Source Testing (10/30/83)
3. Prevention of Significant Deterioration Review (10/30/83)
Basis of Program (10/30/83)
PSD Regulations (10/30/83)
PSD Analysis Procedure (10/30/83)
4. Nonattainment Area Review (10/30/83)
5. New Source Performance Standards Source Review (10/30/83)
6. Visibility Review (10/30/83)
7. Sources under EPA Review (10/30/83)
H. Permit Issuance Requirements (10/30/83)
Section V *Ambient Air Monitoring*
A. Purpose (7/1/82)
B. Completed Air Monitoring Projects (7/1/82)
1. Carbon Monoxide (7/1/82)
2. Nitrogen Oxides (7/1/82)
3. Sulfur Dioxide (7/1/82)
4. Ozone (7/1/82)
5. Total Suspended Particulates (TSP) (7/1/82)
6. Lead (7/1/82)
C. Air Monitoring Network (7/1/82)
1. Network Description (7/1/82)
2. Station Designations (7/1/82)
3. Air Quality Monitoring Procedures (7/1/82)
4. Ambient Sampling for Specific Pollutants (7/1/82)
E. Annual Review (7/1/82)

Volume III. Appendices

Section II. *State Air Quality Control Program*
II.A. State Air Statutes, except section 46.03.170 (11/15/83)
State Attorney General Opinions on Legal Authority—(2/29/72, 2/29/80)
Title 18 Environmental Conservation, Chapter 52 Emissions Inspection and Maintenance Requirements For Motor Vehicles (5/19/85)
Title 18. Environmental Conservation, Chapter 50 Air Quality Control (10/30/83)
II.B. Municipality of Anchorage/Cook Inlet/ADEC Agreements (11/15/83)
II.C. Fairbanks North Star Borough Ordinances, except section 8.04.070/FNSB & ADEC Agreements (11/15/83)
Section III. *Areawide Pollutant Control Program*
III.B.3–a Anchorage Graphs of Highest and Second Highest CO Readings for Each Site (11/15/83)
III.B.5–a Anchorage Traffic Improvements (11/15/83)
III.B.5–b Anchorage Contingency Plan (11/15/83)
III.B.5–c Anchorage Transit Ridership (11/15/83)
III.B.8–a Anchorage Graphs of Projected CO Concentrations for Each Site (11/15/83)
III.G. Ordinance of the City and Borough of Juneau (10/6/83)
III.H. Support Documents for Lead Plan (11/15/83)
Section IV. *Point Source Control Program*
IV.I. PSD Area Classification and Reclassifications (11/15/83)
A. Class I Area Boundaries (11/15/83)
B. Areas Protected form Visibility Degradation (11/15/83)
C. Reclassification (11/15/83)
1. Limitations on PSD Reclassification (11/15/83)
2. PSD Reclassification Procedures (11/15/83)
IV.2. Compliance Assurance (11/15/83)
IV.3. Testing Procedures (11/15/83)
Section V. *Ambient Air Monitoring*
ADEC Ambient Analysis Procedures (11/15/83)

[FR Doc. 89–12637 Filed 5–25–89; 8:45 am]
BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 32

[CC Docket No. 85–64; FCC 89–136]

Common Carrier Services; Uniform System of Accounts

AGENCY: Federal Communications Commission.

ACTION: Final Rule.

SUMMARY: The Commission has affirmed its *Report and Order* in CC Docket 85–64 insofar as that decision requires carriers to record judgments and settlement payments in proceedings involving an allegation of federal law violation in accounts not normally recognized for ratemaking purposes. The Commission also affirmed its decision to presumptively disallow for ratemaking purposes the litigation expenses incurred in such cases after an adverse ruling is entered. However, the Commission provided guidance as to circumstances when it would recognize all or part of a settlement payment for ratemaking purposes, and changed the account in which judgments and settlements are recorded for accounting purposes.

EFFECTIVE DATE: November 27, 1989.

ADDRESS. Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Robert W. Spangler, Common Carrier Bureau, (202) 632–7500.

SUPPLEMENTARY INFORMATION: This is a summary of the FCC's *Memorandum Opinion and Order* in CC Docket 85–64, FCC 89–136, adopted May 4, 1989 and released May 19, 1989. The full text of

the FCC's decision is available for inspection and copying in the FCC Dockets Branch, Room 230, 1919 M Street NW., Washington, DC. The complete text of this document may be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Memorandum Opinion and Order

In the *Report and Order*, the Commission adopted rules and policies concerning the manner in which carriers record the costs incurred in litigating proceedings involving an allegation that the carrier has violated a federal law. The Commission concluded that judgments and settlement payments in such proceedings should be recorded in the Uniform System of Accounts in Account 7620, Extraordinary Income Charges. The Commission normally does not allow carriers to recover the costs in that account through the ratemaking process. It noted, however, that the accounting classification does not bar recovery of those costs from ratepayers, but rather places on the carrier the burden of proof to establish that judgments and settlements should be recognized as part of its revenue requirement and borne by the ratepayers.

The Commission allowed the carriers to continue to record the expenses associated with defending charges of Federal law violation in the operating accounts normally recognized for ratemaking. However, the Commission modified its policy with respect to the ratemaking treatment of such expenses. If a carrier settles a suit alleging such violations after entry of an adverse judgment, or if a final adverse judgment is entered against the carrier, the cumulative litigation expenses incurred in the case will be disallowed, with interest, in the next appropriate tariff proceeding.

Six carriers filed petitions for reconsideration of the *Report and Order*. Collectively, they disputed both the accounting treatment of judgments and settlements and the policy allowing litigation expenses to be "recaptured" through the tariff process. They also asserted that the Commission should be concerned about litigation costs, if at all, only in a limited number of proceedings.

The Commission rejected the argument that the rules and policies adopted in the Report and Order should apply only in cases involving allegations that the antitrust laws have been violated, or only in some other limited type of proceedings. It stated that the policies and rules become effective for the most part only after a court has determined that the carrier has violated a federal law. In this situation, the entry of an adverse judgment justifies placing the burden of proof on the carrier to show why the expense should be considered a normal part of its provision of service. The rules and policies balance the need to distinguish between violations that raise public policy implications and judgments that deal with local matters, such as tort actions. The rules provide uniformity in how judgments and settlements are recorded for accounting purposes, while the Commission's willingness to consider violations on a case-by-case basis establishes a safety value when the accounting treatment would produce unfair ratemaking results. Finally, the Commission noted that the carriers will be familiar with all of the circumstances surrounding the proceeding and thus are better placed than the Commission or third parties to challenge the presumption resulting from the accounting treatment.

The Commission again concluded that judgments and settlements should be recorded in an account not normally recognized for ratemaking purposes. The Commission noted that this action did not change its standard of reasonableness of expenses for ratemaking purposes, but merely changed the presumption of who must initially demonstrate the reasonableness of the particular expenditure. Allowability of the costs will finally be determined in a subsequent ratemaking proceeding. The Commission concluded, however, that the proper non-operating account for these costs is not Account 7620, but rather Account 7370, Special charges.

Although the Commission affirmed its position that amounts paid to settle cases involving an allegation of violation of federal law should not be treated as ordinary expenses for ratemaking absent justification, it adopted more specific guidelines as to when carriers may recover such payments in their rates. The Commission determined that when a carrier settles a case before a judgment is rendered, a portion of the settlement payment will be presumptively recoverable from ratepayers. That portion is the amount corresponding to the additional litigation expenses, expressed in present value terms which the carrier reasonably estimates it would have paid if it had not settled and which the carrier would have allocated to the interstate jurisdiction. If the carrier establishes that a reasonable estimate of the present value of its saved litigation expenses allocable to the interstate jurisdiction is equal to or greater than the settlement payment, then the entire settlement payment is presumptively recoverable in its rates. If the expenses are less than the settlement payment, the carrier is free to argue that the difference should be charged to ratepayers but the carrier must make a showing of circumstances justifying such treatment without the benefit of a presumption in favor of recoverability. The Commission stated that this presumption will not discourage cost-saving settlements of frivolous or unfounded claims or permit settlements to be passed on automatically to ratepayers, and will not embroil the Commission unnecessarily in time consuming and burdensome procedures for determining the ratemaking treatment of particular settlements. The Commission also provided examples of the evidence that the carrier may provide to demonstrate that its estimate of saved litigation expenses is reasonable, and as estimated attorney hours to complete the case and the hourly rates associated therewith.

The Commission considered arguments raised on reconsideration against the presumption that the Commission will disallow the cumulative expenses incurred in litigating a case if the court renders a judgment adverse to the carrier, even if the carrier thereafter settles the case. The Commission noted that the petitioners' arguments in this regard repeat positions considered and rejected in the *Report and Order*. The Commission rejected as speculative the petitioners' claim that the disallowance policy is unduly burdensome, and concluded that the policy does not defeat the public interest in settling cases. Finally, the Commission rejected arguments that the disallowance of litigation expenses in proceedings in which an adverse judgment has been issued constitutes retroactive ratemaking.

Ordering Clauses

Accordingly, it is ordered, That pursuant to sections 4(i), 219, 220, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 219, 220, and 405, the Petitions for Reconsideration filed by American Telephone and Telegraph Company; the Ameritech Operating Companies; Mountain States Telephone and Telegraph Company, Northwestern Bell Telephone Company, and Pacific Northwest Bell Telephone Company; New York Telephone Company and

New England Telephone and Telegraph Company; and the United States Telephone Association are denied, except to the extent indicated above.

It is further ordered, That Part 32 of the Commission's Rules, 47 CFR Part 32, is amended, as set forth below, effective November 27, 1989.

It is further ordered, That the Secretary shall serve a copy of this *Memorandum Opinion and Order* on each state commission.

List of Subjects in 47 CFR Part 32

Communications common carriers, Reporting and recordkeeping requirements, Telephone, Uniform system of accounts.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Part 32 of the Commission Rules and Regulations, 47 CFR Part 32, is amended as follows:

1. The authority citation for Part 32 continues to read as follows:

Authority: 47 U.S.C. 154, 47 U.S.C. 219, 220.

2. Section 32.7370(d) is revised to read as follows:

§ 32.7370 Special charges.

* * * * *

(d) Penalties and fines paid on account of violations of statutes. This account shall also include penalties and fines paid on account of violations of U.S. statutes including judgments arising from a violation of antitrust laws, and payments in settlement of civil and criminal suits alleging such violations; and

* * * * *

3. Section 32.7620 is revised to read as follows:

§ 32.7620 Extraordinary income charges.

This account shall be debited with nontypical, noncustomary and infrequently recurring losses which would significantly distort the current year's income computed before such extraordinary items, if reported other than as extraordinary items. Income tax relating to the amounts recorded in this account shall be recorded in Account 7630, Current Income Tax Effect for Extraordinary Items—Net, and Account 7640, Provision for Deferred Income Tax Effect of Extraordinary Items—Net.

[FR Doc. 89-12582 Filed 5-25-89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 204

OMB Control Numbers for NOAA Information Collection Requirements

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

ACTION: Final rule, technical amendment.

SUMMARY: NOAA Fisheries issues this final rule to update the list of Office of Management and Budget (OMB) control numbers assigned to NOAA Fisheries regulations containing information collection requirements.

EFFECTIVE DATE: This rule becomes effective May 26, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia Montanio, Protected Species Management Division, National Marine Fisheries Service, 1335 East West Highway, Silver Spring, MD 20910 (301-427-2322).

SUPPLEMENTARY INFORMATION

Background

50 CFR Part 204 collects and displays OMB control numbers assigned to NOAA Fisheries regulations containing information collection requirements under the Paperwork Reduction Act of 1980 (PRA). This part fulfills the requirements of section 3507(f) of the PRA, which requires that agencies display a current control number assigned by the Director of OMB for each agency information collection requirement.

This rule adds the approved OMB control numbers for the information collections contained in 50 CFR Parts 228 and 229.

Classification

This action is in compliance with E.O. 12291. Notice and comment of this final rule are unnecessary and contrary to the public interest because this rule merely notifies the public of approved OMB control numbers for 50 CFR Parts 228 and 229. This rule is exempt from the procedures of the Regulatory Flexibility Act because it is issued without opportunity for prior public comment. This rule does not contain an information collection requirement subject to the Paperwork Reduction Act.

Regulation Promulgation

For the reasons set out in the preamble, 50 CFR Part 204 is amended as follows:

PART 204—OMB CONTROL NUMBERS FOR NOAA INFORMATION COLLECTION REQUIREMENTS

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

Authority: Paperwork Reduction Act of 1980, 44 U.S.C. 3501-3520 (1982).

2. Paragraph (b) of section 204.1 is amended by adding the following in numerical order:

§ 204.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) *Display.*

50 CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648-)
• • • • •	
§ 228	-0151
§ 229.05	-0224
• • • • •	

Date: May 18, 1989.

James E. Douglas, Jr.,

Acting Assistant Administrator for Fisheries.

[FR Doc 89-12623 Filed 5-25-89; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 54, No. 101
Friday, May 26, 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 THE TREASURY

Comptroller of the Currency

12 CFR Part 19

[Docket No. 89-4]

Rules of Practice and Procedure

AGENCY: Comptroller of the Currency, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency ("Office" or "OCC") is proposing for comment revisions to 12 CFR PART 19—RULES OF PRACTICE AND PROCEDURE—which governs the conduct of administrative proceedings before the Office. The proposed changes include a reorganization of the Part and the addition of new and revised provisions. Provisions that would be added or revised significantly relate to the following: *Ex parte* communications, motions, good faith certifications, interlocutory review, limited participation in a proceeding by a nonparty, prehearing exchange of information by parties, stipulations, discovery, authority of the presiding officer during a hearing, judicial notice and admissibility of copies and proffers, public hearings, proposed findings of fact and conclusions of law, submissions by limited participants, recommended decision of the presiding officer, review of the recommended decision, and informal hearings for persons suspended or removed on the basis of a criminal charge or conviction. In addition, the scope of the Part would be expanded to include sanctions against parties and their counsel and disciplinary rules to govern persons "practicing" before the Office. These disciplinary rules would apply to persons who represent others in matters before the agency and would include attorneys and accountants. Additional changes clarify ambiguities and revise procedures to address more appropriately issues and occurrences that arise in the hearing process. As a whole, the proposed revisions are intended to improve the Office's hearing process and to make its rules of practice more easily understood.

DATE: Comments should be received on or before July 25, 1989.

ADDRESS: Comments should be sent to Docket No. 89-4, Communications Division, 5th Floor, Office of the Comptroller of the Currency, 490 L'Enfant Plaza East, SW., Washington, DC. 20219. Attention: Jackie England. Comments will be available for inspection and photocopying at that address.

FOR FURTHER INFORMATION CONTACT: Brenda Curry, Senior Attorney, Legislative and Regulatory Analysis Division, Telephone (202) 447-1632; or Daniel P. Stipano, Acting Assistant Director, Enforcement and Compliance Division, Telephone (202) 447-1818, Office of the Comptroller of the Currency, 490 L'Enfant Plaza East, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: This notice of proposed rulemaking revises 12 CFR PART 19—RULES OF PRACTICE AND PROCEDURE ("Part 19") which governs the Office's formal and informal administrative proceedings. The proposal has two major components:

(1) A reorganization of the rules, and

(2) a revision of some of the current provisions and the addition of new ones.

I. Reorganization of Part 19

It is proposed that Part 19 be reorganized into a format that will make it easier to use and understand. The reorganization is needed because

(i) certain new provisions are conceptually unrelated to existing subparts and

(ii) certain existing subparts can be divided into more logical groups of provisions to form new subparts that are easier to use. The current Part 19 is organized into eight subparts, A through H. As proposed, Part 19 would be reorganized into 15 subparts, A through O. A chart has been included at the end of the preamble that correlates each section of the proposed regulation with the current sections of Part 19. Each proposed subpart is summarized below.

Subpart A—General Provisions. This subpart would contain provisions which apply to most hearings and formal investigations. Included would be a new, more detailed section covering the scope of Part 19 and an amended section containing definitions of terms used in Part 19. In addition, Subpart A would include amended sections relating to appearance and practice before the OCC, and the Comptroller's retained authority. Subpart A also would include rules governing *ex parte* communications with respect to formal administrative proceedings subject to Part 19.

Subpart B—Institution of Adjudicatory Proceedings; Pleadings; Motions; Interlocutory Review. This subpart would contain revised requirements relating to the initiation of administrative proceedings, pleadings and motions. It also would contain revised procedures for interlocutory review by the Comptroller of certain rulings by the presiding officer.

Subpart C—Parties and Limited Participation by Nonparties. This subpart would contain a new provision that addresses limited participation in a proceeding as a nonparty. The provision provides a procedure for a person who is not a party to a proceeding to petition the presiding officer or the Comptroller to participate in a limited capacity.

Subpart D—Prehearing Procedures; Prehearing Conferences; Discovery. This subpart would contain new provisions regarding prehearing exchange of information, including discovery and stipulations. It also would contain revised provisions governing subpoenas and prehearing conferences.

Subpart E—Formal Hearings. This subpart would contain certain rules and procedures to be followed in all formal hearings conducted under Part 19. It is intended to be read together with other subparts—H, I, J, and L—that contain rules and procedures relating to specific kinds of hearings.

Subpart F—Post Hearing Procedures; Recommended Decision. This subpart would contain a new provision regarding submissions by limited participants in formal hearings. It also would contain revised provisions concerning the effect of the presiding officer's recommended decision. That decision would become the final decision, unless a party appealed the decision or the Comptroller initiated a review or stayed the effective date of the recommended decision.

Subpart G—Review by the Comptroller; Final Decision. This subpart would contain a new provision concerning review of the presiding

officer's recommended decision. Parties would have to file briefs presenting the issues to be decided by the Comptroller and the pertinent arguments regarding those issues.

Subpart H—Cease-and-Desist Proceedings. This subpart would be similar to current Subpart B and contain provisions governing cease-and-desist proceedings. The current § 19.20 regarding temporary cease-and-desist orders is deleted because such orders do not require a proceeding to be conducted pursuant to Part 19. No other substantive change in the cease-and-desist proceeding is proposed.

Subpart I—Assessment of Civil Money Penalty. This subpart would be the same as current Subpart C and contain provisions governing the assessment of civil money penalties. No substantive change in the civil money penalty proceeding is proposed.

Subpart J—Removals, Suspensions and Prohibitions Generally. This subpart would be similar to the current Subpart D and contain provisions governing general removals, suspensions and prohibitions. The current § 19.28 regarding suspension or prohibition by notice has been deleted because such orders do not require a proceeding to be conducted pursuant to Part 19. Minor amendments are made to Subpart J regarding removals and prohibitions in the event of consent to conform the regulation to the language of 12 U.S.C. 1818(e).

Subpart K—Removals, Suspensions and Prohibitions Where a Crime is Charged or a Conviction is Obtained. This subpart would contain similar matter as current Subpart E which governs informal hearing procedures for removals, suspensions and prohibitions where a crime is charged or a conviction is obtained. The procedures in Subpart E would be revised extensively to provide more specific guidance concerning the conduct of informal hearings authorized by 12 U.S.C. 1818(g)(3).

Subpart L—Disciplinary Proceedings Involving Federal Securities Laws. This subpart would correspond to current Subpart F which contains rules and procedures for disciplinary proceedings involving municipal securities dealers. The provisions of Subpart L would be expanded to provide rules and procedures for disciplinary proceedings involving government securities brokers and dealers or any person associated with government securities brokers or dealers, and transfer agents, for which the OCC acts as the appropriate regulatory agency under the Securities Exchange Act of 1934 ("Exchange Act").

Subpart M—Exemption Hearings Under Section 12(h) of the Securities Exchange Act of 1934. This subpart would be the same as current Subpart G and contain provisions governing informal exemption hearings held pursuant to section 12(h) of the Exchange Act. Although no substantive change in the content of this subpart is being proposed, Subpart E is clarified to provide that informal hearings under this subpart are presumed to be public.

Subpart N—Formal Investigations. This subpart would be the same as current Subpart H which contains rules and procedures governing formal investigations. The regulation clarifies that § 19.3(b) of Subpart A, dealing with conflicts of interest in representation, applies to formal investigations.

Subpart O—Sanctions and Suspension and Debarment from Practice Before the OCC. This subpart would be new and contain sections dealing with sanctions that may be imposed on parties and their counsel for failure to comply with the requirements of Part 19. In addition, the subpart would contain sections regarding disciplinary rules governing the censure, suspension and debarment of individuals who practice before the Office in a representational capacity. These sections would relate to (i) censure, (ii) suspension and debarment, (iii) incompetence, (iv) disreputable conduct, (v) the initiation of disciplinary proceedings, and (vi) proceedings under Subpart O.

II. Amendments and New Provisions

The Office last reviewed and made major revisions to Part 19 in April 1979. Since that time, the Office's experience with the application of these rules of practice and procedure has shown that, in some instances, existing Part 19 does not address adequately the issues and situations that arise in administrative proceedings. Some provisions of Part 19 need clarification. In addition, some issues are not addressed at all. The proposed revisions would amend current rules to eliminate certain ambiguities and establish new rules and procedures in order to improve the Office's administrative hearing process.

The proposed revisions and additions to Part 19 are discussed below. The proposals generally are discussed in the order in which they appear in the Part. For an overview of the organization of the proposed revisions to Part 19, refer to the chart located at the end of the preamble that relates sections of proposed Part 19 to those of current Part 19.

A. Substantive Amendments

1. *Ex parte communications (§§ 19.1 and 19.4).* Proposed § 19.4 would add new provisions to govern *ex parte* communications to conform the OCC's rules of practice to the requirements of the Administrative Procedure Act (5 U.S.C. 554–557), specifically 5 U.S.C. 557(d), which addresses *ex parte* communications. The proposal would prohibit *ex parte* communications between any person or party and the Comptroller, the presiding officer, or any decisional employee of the Comptroller relating to the merits of an administrative proceeding (§ 19.4(a)). Section 19.1 would be amended to define the terms "decisional employees" (§ 19.1(d)) and "*ex parte* communication" (§ 19.1(e)).

The Comptroller, the presiding officer or any decisional employee involved in an *ex parte* communication would have to (i) cause the record in the proceeding to reflect the substance of the *ex parte* communication and any response thereto, and (ii) promptly give notice of the *ex parte* communication to all parties to the proceeding (§ 19.4(b)).

A party involved in a prohibited *ex parte* communication would be subject to sanctions. This could include exclusion from the proceeding or an adverse ruling on the issue which is the subject of the prohibited communication (§ 19.4(c)).

2. *Good faith certification (§ 19.13).* Proposed § 19.13 would require that every written presentation made by a party after the issuance of a Notice must be signed by that party or his or her attorney. This signature would constitute a certification that the attorney or party has read the written presentation, that the presentation is well-grounded in fact and is warranted by existing law or a good faith argument for extending or modifying existing law, and is not interposed for any improper purpose to the best of that attorney's or party's knowledge, information, and belief formed after reasonable inquiry.

Failure to sign a written presentation results in it being stricken from the record unless it is signed promptly after the signature omission is called to the attention of the attorney or party (§ 19.13(b)). Section 19.13(c) provides that the making of an oral motion or argument constitutes the same certification as the signing of a written presentation. Finally, § 19.13(d) grants authority to impose sanctions authorized in Subpart O upon the attorney, the represented party, or both for violation of the good faith certification requirements.

3. *Motions (§ 19.14).* Proposed § 19.14 would contain revised provisions relating to motions. The Office is proposing these amendments in an effort

to eliminate unwarranted delays associated with certain motions and otherwise make the administrative hearing process function more effectively. First, this section would provide that, with respect to motions made prior to the appointment of a presiding officer, the Comptroller may rule on or delegate such motions or defer them until the appointment of a presiding officer (§ 19.14(b)).

In addition, a revised § 19.14(c) would be added to cover motions to dismiss. A presiding officer could deny any motion that would dismiss the proceedings or result in a final determination on the merits. The presiding officer would have to submit any ruling that would grant a motion to dismiss to the Comptroller for final determination. In addition, the section would provide that in order to submit a ruling to dismiss a proceeding to the Comptroller, the presiding officer must find for good cause stated with particularity in writing that the granting of the motion is warranted. The amendment also would clarify that the Comptroller rules on motions to dismiss in removal or prohibition proceedings (§ 19.14(c)(1)).

Finally, § 19.14(e) would prohibit dilatory motions—repetitive or numerous motions which raise the same issues or arguments or deal with the same subject matter. This section permits the presiding officer or the Comptroller to assess costs attendant to processing or ruling on dilatory motions against persons who file such motions. It also would provide that dilatory motions may form the basis of disciplinary proceedings under Subpart O, pertaining to sanctions and suspension and debarment from appearance or practice before the OCC.

4. *Interlocutory review (§ 19.15).* Proposed § 19.15 contains revised procedures under which motions for interlocutory review will be considered by the presiding officer and the Comptroller. This revision is included to correct certain problems experienced with the existing section dealing with interlocutory review (current § 19.7(d)). While the Office recognizes that such motions may be appropriate under certain circumstances, it is also aware of the importance of assuring that motions for interlocutory review are made in good faith, upon a well-founded basis, and are not used as dilatory tactics.

Therefore, the Office is proposing the amendments to establish more specific standards and requirements governing the appeal of a presiding officer's ruling to the Comptroller. These standards and a written certification process should help to improve the interlocutory review process. Interlocutory review, without the necessity of certification by the presiding officer, will be allowed for motions for limited participation as a nonparty pursuant to § 19.21. Such review will also be allowed for motions contesting the presiding officer's order regarding documents and sessions of a hearing that may be made public when a motion for a public hearing has been filed (§ 19.42). The Comptroller, without certification and on his or her own motion or the motion of a party, may review any ruling which the Comptroller believes is appropriate and in the interest of justice (§ 19.5(f)).

5. *Limited participation by nonparties (§ 19.21).* Proposed Subpart C contains new procedures that govern when an interested person, including a national bank, may participate in a proceeding in a limited capacity as a nonparty. This proposed section on limited participation sets forth the factors which the applicant must provide to assist the presiding officer in ruling on an application. If an application for limited participation is granted, the presiding officer may impose reasonable limitations on that person's participation in a proceeding. The rule also would allow a limited participant to provide relevant materials or written or oral comments for consideration by the presiding officer.

6. *Prehearing exchange of information (§ 19.31).* Proposed § 19.31 provides for each party to a proceeding to file with the presiding officer within a period of time established by the presiding officer prior to the hearing date a list of witnesses, a brief description of the matter about which each witness is to testify and a discussion of the relevance of the testimony. In addition, each party would file with the presiding officer a list of exhibits to be offered into evidence and a brief description of the exhibits and their relevance.

Section 19.31(c) sets forth limitations on any party that fails to exchange proposed exhibits or a witness list or fails to file exhibits or a witness list as required by subsections (a) and (b). Finally, if any party fails to comply fully and in good faith with the requirements of § 19.31, the presiding officer, on the motion of any party or on his or her own motion, may impose appropriate sanctions authorized in Subpart O, in addition to enforcing the specific limitations set forth in § 19.31(c).

The Office is proposing this change, and the changes in proposed § 19.32 (stipulations) and § 19.33 (discovery), in an effort to promote a more orderly hearing process, including the resolution of factual and legal issues before commencement of a formal hearing.

7. *Stipulations (§ 19.32).* Proposed § 19.32 provides that parties may stipulate to pertinent facts in a proceeding. The stipulation may be made in writing at any stage of the proceeding or made orally upon the record at the hearing. Stipulated facts, made in writing, would be binding on the parties when signed. Oral stipulated facts would be binding when made part of the record.

8. *Discovery (§ 19.33).* The OCC is considering the use of discovery as similarly provided in the rules of some other federal agencies. Proposed § 19.33 would replace the narrow provisions regarding depositions which currently are set forth in current § 19.9. The new provision would provide for the limited use of discovery and would allow the presiding officer to grant a request for discovery only upon a clear showing of relevance, materiality and need.

The proposed revisions include an express provision that requires a party opposing discovery to file within 10 days a response to an application to make discovery (§ 19.33(b)(2)). Failure to file a timely response would be deemed a waiver of objection to discovery. The presiding officer could refuse to grant the application for discovery, in whole or in part, if the discovery would be unnecessary, unreasonable, oppressive, excessive in scope or unduly burdensome (§ 19.33(b)(3)).

Finally, a new provision would be added to permit the presiding officer, upon the motion of a party or deponent, to terminate the discovery or limit its scope if it is shown that the discovery is being conducted in bad faith or in an unreasonable manner to annoy, embarrass, or oppress (§ 19.33(c)).

9. *Authority of the presiding officer (§ 19.41).* Proposed § 19.41 would revise provisions in current § 19.10(a) relating to the authority of the presiding officer. This provision clarifies the authority and responsibilities of the presiding officer and includes a non-exclusive listing of the presiding officer's powers.

10. *Judicial notice; admissibility of copies and proffers (§ 19.42).* Proposed § 19.42 provides that non-repetitive evidence is admissible in accordance with the Administrative Procedure Act and other applicable laws. In addition, any evidence that would be admissible in a United States district court under the Federal Rules of Evidence is admissible in a proceeding under Subpart E.

Section 19.42(b) would allow the presiding officer to take official notice of any material fact that might be judicially noticed by a United States district court and any material information in the

official public records of the OCC. Upon timely request, the parties would be afforded an opportunity to dispute any fact officially noticed or requested to be noticed under this section.

Section 19.42(c) would provide that: (1) A duplicate copy of a document is admissible to the same extent as the original, unless there is a genuine issue as to whether the copy, in some material respect, is not a true and legible copy of the original; (2) OCC examination reports and reports of supervisory activity are admissible with or without a sponsoring witness; and (3) witnesses may use illustrative or summary charts, exhibits, calendars, calculations, or outlines during their testimony which the presiding officer would have discretion to admit into evidence.

Section 19.42(d) would provide that when an objection to a question or a line of questioning is sustained, the examining attorney may make a proffer on the record of what was expected to be proven by the testimony of the witness. This could be done either by representation of counsel or by interrogation of the witness. Further, the presiding officer would be required to retain rejected exhibits, marked for identification, and transmit them with the full record of the proceeding.

11. *Public hearings (§ 19.43).* In 1966 Congress enacted the Financial Institutions Supervisory Act of 1966 ("Act"), Pub. L. No. 89–695, to extend the enforcement authority of federal bank supervisory agencies to address violations of banking laws and unsafe or unsound practices. The Act provides for a private hearing in any administrative proceeding under 12 U.S.C. 1818 "unless the appropriate Federal banking agency in its discretion, after fully considering the views of the party afforded the hearing, determines that a public hearing is necessary to protect the public interest." 12 U.S.C. 1818(h)(1). Current § 19.10(c) reiterates this statutory principle by providing that a hearing shall be private unless, after considering the views of the party or parties afforded a hearing, the Comptroller determines that a public hearing is necessary to protect the public interest.

As a result of its experience with administrative hearings over the past years, the OCC has identified a need to clarify procedures relating to a request for a public hearing and the resolution of collateral issues associated with holding a public hearing in an administrative proceeding. Accordingly, the Office is proposing § 19.43 which sets forth procedures governing the request for a public hearing, as well as procedures for determining what portions of a public hearing, and documents produced at such hearing, should remain private.

Under proposed § 19.43(c), the Comptroller, in his or her discretion, after considering the views of the party to be afforded the hearing and determining that a public hearing is in the public interest, may institute a public hearing as part of, or contemporaneously with, the issuance of a notice of charges. This provision is intended to give the Comptroller added flexibility to initiate public proceedings in appropriate cases.

Under proposed § 19.43 any party may request a public hearing by filing a motion at least 30 days prior to the scheduled commencement of the formal hearing. Other parties to the proceeding will have 10 days to respond to the motion. Any party that fails to respond within the prescribed time limits will be deemed to have no views regarding the holding of a public hearing. The Comptroller may extend the time for parties to respond and may request additional information or arguments concerning whether a public hearing should be held.

If the Comptroller grants a motion for a public hearing, the presiding officer may determine that specific sessions of the hearing or the production of specific documents shall be in private (§ 19.43(g)). The presiding officer's determination is subject to a motion by either party for interlocutory review as set forth in § 19.15(e).

In contrast to the provisions of proposed § 19.43(a), under § 19.43(b), special administrative proceedings brought pursuant to Subpart L—Disciplinary Proceedings Involving the Federal Securities Laws and Subpart M—Exemption Hearings Under Section 12(h) of the Securities Exchange Act of 1934, are presumed to be public. Those proceedings are brought under sections 12(h), 15B, 15C, and 17A of the Securities Exchange Act of 1934 (15 U.S.C. 78(1)(h), 78o–4, 78o–5, and 78q–1). In such cases, hearings shall be public at their inception, and shall be initiated on a public basis, unless the Comptroller, in his or her discretion, and after considering the views of the party afforded the hearing, determines that a private hearing is in the public interest.

12. *Proposed findings and conclusions; briefs (§ 19.50).* Proposed § 19.50 would permit parties to a proceeding to file with the presiding officer written proposed findings of fact and conclusions of law. Parties also could file briefs in support of such findings and conclusions. A party's failure to file any proposed finding or conclusion with the presiding officer could be deemed a waiver of the party's right to file the proposed finding or conclusion.

13. *Submissions by limited participants (§ 19.51).* Proposed § 19.51 would permit any person admitted as a limited participant pursuant to § 19.21 to file submissions under terms and conditions determined by the presiding officer. The submissions would have to be made within the time allowed parties to the proceeding to file their findings and conclusions.

14. *Recommended decision of presiding officer (§ 19.52).* Proposed § 19.52 would require the presiding officer to file a recommended decision containing findings of fact and conclusions of law with respect to the proceeding. That decision would become the final decision of the Comptroller 30 days after service upon the parties, except under the following two conditions. First, the recommended decision would not become final as to any party that files a notice of appeal pursuant to proposed § 19.60 (§ 19.52(b)(1)). Second, the Comptroller may initiate review of the case or stay the effective date of the decision (§ 19.52(b)(2)).

15. *Review of presiding officer's recommended decision (§ 19.60).* The Office is proposing certain changes in the procedure for review by the Comptroller of the presiding officer's recommended decision. The Office is proposing these new procedures in an effort to promote more efficient resolution of issues presented for review by the Comptroller, and thereby improve the overall quality of the administrative hearing process. Current § 19.14, which provides for automatic submission of recommended decisions to the Comptroller for review, would be replaced by proposed § 19.60, which would require a party to seek the Comptroller's review of a presiding officer's recommended decision.

The review process would be initiated through the filing of a notice within 10 days after service of the recommended decision or other order terminating the proceeding (§ 19.60(a)). No extension of time for filing the notice would be available. Failure to file a notice of review would be deemed consent to the findings of fact and conclusions of law in the recommended decision for purposes of the Comptroller's review. The review would be perfected through the filing of a brief (§ 19.60(b)). The review brief would contain the party's exceptions to the recommended decision and would be served on any other party who would be allowed to file an answering brief. Such briefs would be of a prescribed form and content and

include a statement of the issues presented for review and arguments containing the contentions of the party (§ 19.60(d)). Any matter not briefed would be deemed waived and could not be argued before the Comptroller (§ 19.60(d)).

Proposed § 19.60(e) specifies the effect of failing to file a notice of review. Existing sections of Part 19 which would be amended address requests for oral arguments before the Comptroller (proposed § 19.61), notice of submission to the Comptroller (proposed § 19.62), and decision of the Comptroller (proposed § 19.63).

16. *Removals, suspensions, and prohibitions when a crime is charged or a conviction is obtained (Subpart K).* Proposed §§ 19.101 and 19.102 provide for a post-suspension or post-removal hearing for a director, officer, or other person participating in the affairs of a bank who has been charged or convicted of a crime involving dishonesty or breach of trust that is punishable by imprisonment for a term exceeding one year. These suspensions or removals are authorized when the Office believes that continued service or participation by the individual may pose a threat to the interests of the bank's depositors or may threaten to impair public confidence in the bank (12 U.S.C. 1818(g)(1)). This subpart amends the current Subpart E which addresses this issue.

A person who has been suspended or removed pursuant to 12 U.S.C. 1818(g)(1) may petition for an informal hearing to determine whether his or her continued service with, or participation in, the affairs of the bank should be allowed (§ 19.101). In such a hearing, 12 U.S.C. 1818(g)(3) places the burden on the suspended or removed individual to show that such continued service or participation does not, or is not likely to, pose a threat to the interests of the bank's depositors or threaten to impair public confidence in the bank.

Proposed § 19.102 would revise extensively the current procedure set forth in Subpart E for informal hearings conducted pursuant to 12 U.S.C. 1818(g)(3). The revised procedures are intended to (i) ensure that the informal hearing process satisfies due process requirements, while at the same time (ii) comply with the congressional intent of providing expeditious review of orders suspending or removing persons who have been charged with or convicted of a crime.

The proposal provides that requests for hearings will be directed to the District Administrator in the district in which the affected bank is located or to the Director, Multinational and Regional Bank Supervision, in Washington, DC if the affected bank is supervised by the Multinational Banking Department (§ 19.101). The District Administrator or the Director, Multinational and Regional Bank Supervision, would select the date, time and place for the hearing and notify the person who requested the hearing. The OCC reserves the discretion to consider all relevant factors and determine the appropriate place of the hearing. Unless particular circumstances require otherwise, hearings will be held in the OCC's district office in the district in which the affected bank is located. In the case of banks supervised by the Multinational Banking Department, the Director, Multinational and Regional Bank Supervision, will determine if the hearing will be held in Washington or in the district in which the affected bank is located.

Proposed § 19.102(b) would provide that the Comptroller or the Comptroller's delegate would appoint one or more OCC employees to preside over the informal hearing. A presiding official could not be any person who has been involved in the enforcement proceeding, a factually related proceeding, or in a prosecutorial or investigative role in the underlying enforcement action. The informal hearing would not be governed by proposed Subpart E (Formal Hearings), formal rules of evidence, or the provisions of the Administrative Procedure Act applicable to adjudicatory proceedings.

A petitioner could waive an oral hearing and elect to have the presiding officer determine the matter solely on written submissions (§ 19.102(c)). The presiding officer would have broad authority concerning the conduct of the informal hearing, including authority to determine procedural questions, limit the number of witnesses and impose reasonable time limitations on the proceeding (§ 19.102(d)(2)). Witnesses generally would not be permitted to appear at the hearing unless the presiding officer is satisfied that there is a specific need for oral presentations. Witnesses, if permitted, would testify under oath (§ 19.102(d)(3)(ii)). A verbatim transcript of the proceeding would be taken only if (i) the presiding officer determines that the nature of the case warrants a transcript, or (ii) the petitioner requests it and agrees to pay all expenses (§ 19.102(d)(4)).

Proposed § 19.103 would require the presiding officer to make a recommended decision to the Comptroller and serve copies on the parties, who would be allowed to submit comments on the presiding officer's decision. The Comptroller would make a final decision and notify the petitioner of his or her decision within 60 days following the hearing. The Comptroller's decision would include a statement of the reasons for continuing, terminating or modifying the order of suspension or removal (§ 19.103(b)). The decision of the Comptroller would constitute a final and unappealable order. See 12 U.S.C. 1818(h)(2). A removal or suspension would remain in effect until terminated by the Comptroller (§ 19.103(d)). A suspended or removed individual could petition the Comptroller to reconsider the order of removal or suspension after 12 months (§ 19.103(e)).

17. *Disciplinary proceedings involving the federal securities laws and securities offering and sale requirements (§§ 19.110–19.112).* Proposed Subpart L expands the list of persons against whom the OCC may bring disciplinary proceedings. Under current §§ 19.34–19.36, the OCC may take disciplinary action against a bank which is a municipal securities dealer, or any person associated or seeking to become associated with that municipal securities dealer. Under proposed Subpart L, the OCC also may take disciplinary action against a bank which is a government securities broker or dealer, any person associated with a government securities broker or dealer, or a bank which is a transfer agent. Subpart L is further clarified to provide the Comptroller with authority to issue and serve any notices and temporary or permanent cease-and-desist orders, and take any actions authorized by section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) and other subparts of this Part against all of the parties listed above, including clearing agencies. These revisions simply implement in Part 19 authority currently vested in the Comptroller under the federal securities laws, or added by the Government Securities Act of 1986, Pub. L. No. 99–571 (section 15C of the Exchange Act, 15 U.S.C. 78o–5).

18. *Formal investigations [Subpart N].* Proposed Subpart N would be amended to clarify that § 19.3(b) of Subpart A, dealing with conflicts of interest in representation, applies to the formal investigation process.

19. *Parties and representational practice before the OCC: standards of conduct (Subpart O).* The proposed Subpart O would contain rules governing sanctions imposed on parties and their counsel for failure to comply with the requirements of Part 19. In addition, the subpart would establish rules to govern the disciplining of individuals who practice before the OCC. The subpart would not apply to OCC employees. The OCC is proposing

the new subpart in an effort to ensure that attorneys, accountants, and other individuals who practice before the OCC meet appropriate standards of conduct. This is consistent with the OCC's responsibility to the national banking system and the public to promote safe and sound banking practices.

Under proposed § 19.141(a), sanctions may be imposed when any party or representative has acted in a manner contrary to any applicable statute, regulation or order, has engaged in contemptuous conduct or has materially injured or prejudiced some other party. This section is included to clarify that the presiding officer has authority to effectively deal with the problem of parties and their representatives who fail to comply with statutory requirements, Part 19 or an applicable order.

Sanctions imposed in accordance with § 19.141(b) may include one or more of the following: (1) Issuing an order against the party; (2) striking any testimony, rejecting any documentary evidence offered, or striking papers filed by the party; (3) precluding the party from contesting specific issues; (4) precluding the party from challenging certain evidence offered by another party; (5) refusing a late filing or conditioning acceptance of a late filing on any terms that are just; and (6) assessing reasonable expenses, including attorney's fees, incurred by the other party as a result of the offending party's improper action or inaction.

Sanctions could be imposed by the presiding officer upon the motion of any party or upon the presiding officer's own motion. However, any sanction that enters a final order determining the case on the merits must be submitted to the Comptroller for final ruling.

No sanction, other than refusal to accept late filings, shall be imposed without notice and opportunity to be heard in a manner deemed appropriate by the presiding officer.

Parties' requests for sanctions or the presiding officer's imposition of sanctions would be subject to interlocutory review in the same manner as other rulings of the presiding officer (§ 19.141(c)(3)). The rule makes it clear that the imposition of sanctions pursuant to § 19.141 would not preclude the presiding officer or Comptroller from taking any other action authorized by law.

Proposed §§ 19.142 through 19.151, the censure, suspension and debarment provisions, would apply to individuals who practice before the OCC. Proposed § 19.142 sets forth the Comptroller's authority to censure, debar or suspend an individual. The rule authorizes the Comptroller to censure, suspend or debar any individual who, after due notice and opportunity for hearing, is found to be incompetent, disreputable, or who refuses to comply with the rules and regulations of Subpart O, or who with intent to defraud, knowingly or willfully deceives, misleads or threatens any client, prospective client, or other person.

"Practice" is defined as any action connected with presentations to the OCC or any of its officers or employees relating to a client's rights, privileges or liabilities under laws or regulations administered by the OCC. This would include, but not be limited to:

(i) The preparation of any statement, opinion or other paper by an individual which is filed with or submitted to the OCC on behalf of a person in connection with any application, notification, report or document, (ii) the representation of a person at conferences, hearings and meetings, or (iii) the transaction of other business before the OCC on behalf of a person (§ 19.143(a)(1)).

The term "practice" is not intended to apply to any work prepared by an individual for a bank at its request in the ordinary course of business. Thus, for example, an annual audit prepared by a certified public accountant for a bank and used solely by the bank in the ordinary course of business would not be considered practice before the OCC. However, if the CPA prepared the audit pursuant to the OCC's request to the bank, for subsequent submission to the OCC, the CPA could be considered practicing before the OCC. (§ 29.43(a)(2)).

Proposed § 19.145 defines "incompetence" as conduct which reflects a lack of knowledge, judgment or skill that a professional would ordinarily and reasonably be expected to exercise under particular circumstances in representing the rights and interests of a client. This would include: (i) Representing a person in a matter which the professional knows or should know he or she is incompetent to handle Without associating with a person who is competent to handle the matter; (ii) handling any matter without adequate preparation; or (iii) neglect of a matter entrusted to him or her.

Proposed § 19.146 sets forth the bases for suspension and debarment for disreputable conduct. This includes, but is not limited to: (i) The willful violation or aiding and abetting the violation of federal banking laws, rules or regulations, (ii) conviction of any offense involving dishonesty or breach of trust, or (iii) knowingly giving false or misleading information or participating in giving false information to the OCC or any of its employees or any tribunal authorized to pass upon matters administered by the OCC in connection with any matter pending or likely to be pending before it. "Information" includes facts or other statements contained in testimony, financial statements, applications for enrollment, affidavits, declarations or any other documents or written or oral statement.

Disreputable conduct also includes: (i) Directly or indirectly attempting to influence the official action of any OCC officer or employee by use of threats, false accusations, duress or coercion by the offer of special inducement or promise of bestowing any gift, favor or thing of value; (ii) disbarment or suspension from practice by any authority of a state, possession, commonwealth or the District of Columbia for conviction of a felony or misdemeanor involving moral turpitude in matters involving the regulatory responsibility of the OCC; and (iii) knowingly aiding another individual to practice before the OCC during the other individual's period of suspension, disbarment or ineligibility.

Finally, disreputable conduct also would include (i) contemptuous conduct in connection with practice before the OCC, knowingly making false accusations and statements, or circulating or publishing malicious or libelous matter and (ii) willful violation of any regulations governing Subpart O.

Under proposed § 19.147, disciplinary proceedings are initiated by the report to the OCC by any person, including any OCC employee, of conduct by an individual practicing before the OCC in a representative capacity that would serve as a basis for censure, suspension or debarment. If the Comptroller believes that such individual has engaged in conduct that would serve as a basis for censure, suspension or debarment, the Comptroller or the Comptroller's delegate may, after considering the views of the individual, censure such individual or commence a formal disciplinary proceeding. The proceeding is initiated by issuance of a complaint. Except in cases of willfulness, or when time, the nature of the proceeding, or the public interest do not permit, the Comptroller will apprise the individual against whom the proposed action is brought of the conduct that is the basis of the proceeding. That individual will be given the opportunity to comply with all lawful requirements or take whatever action may be necessary to remedy the conduct that is the basis for the initiation of the proceeding.

Proposed § 19.148 provides that regardless of whether a debarment or suspension hearing has been commenced, the Comptroller may initiate a conference with the individual against whom censure, suspension or debarment is being considered, for the purpose of avoiding the institution of, or decision in, a formal debarment or suspension proceeding. If the conference results in a stipulation in connection with a proceeding involving the individual, the stipulation may be entered on the record.

Proposed § 19.149 relates to hearings under the new Subpart O. As proposed, hearings permitted or required under Subpart O would be conducted before an administrative law judge, using the procedures in Part 19 for adjudicatory proceedings. The Comptroller or the Comptroller's delegate shall appoint a person to represent the OCC in the hearing. Any person having prior involvement in the matter which is the basis for the hearing would be disqualified from representing the OCC in the hearing. The hearing would be closed to the public, unless otherwise directed by the Comptroller. The presiding officer would issue a recommended decision to the Comptroller who would make the final decision. The Comptroller would, however, have the discretion to choose disciplinary action other than suspension or debarment, such as a written letter of censure.

Proposed § 19.150 explains the effect of a final order of debarment or suspension. If an individual person is debarred, he or she may not practice before the OCC unless permitted to do so by the Comptroller. If an individual is suspended, he or she would not be permitted to practice before the OCC during the period of suspension. The provision also states that the Comptroller may give notice of the suspension or debarment to appropriate officers and employees of the OCC, interested departments and agencies of the Federal Government, and appropriate state authorities in the state in which the debarred or suspended individual is or was licensed.

Proposed § 19.151 provides that the Comptroller will entertain a petition for reinstatement after the end of one year following debarment or at such other time designated in the order of debarment. The Comptroller will grant reinstatement only if the Comptroller is satisfied that the petitioner's conduct would be in accordance with Part 19 and that granting reinstatement would not be contrary to the public interest.

B. Technical Amendments

This proposed rule includes various amendments to correct minor procedural deficiencies that currently exist in the OCC's administrative process. To correct these problems, which can impede the efficient operation and consistency of the administrative process, the OCC is amending provisions dealing with the filing of documents with the Hearing Clerk (§ 19.11), stipulations for extensions of time (§ 19.5), and motions (§ 19.13).

In addition, various sections of 12 CFR Part 5 must be amended to reflect the changes made to 12 CFR Part 19. Specifically, § 5.50(g), which implements provisions of the Change in Bank Control Act, must be revised. These technical revisions will be made when the final rule is published.

The revised Part 19 shall be applicable to any proceeding that is commenced by the issuance of a notice after the effective date of the final rule. Part 19, as it currently exists, shall apply to any proceeding commenced prior to the effective date of the final rule unless, with the consent of the presiding officer, the parties agree to have the proceeding governed by revised Part 19.

III. Comments Requested

The OCC requests comments on all provisions of the proposed revision of Part 19. In addition, to evaluate the effectiveness of significant proposed amendments and new provisions, the OCC specifically requests comments on certain major issues relating to: (1) Procedures and criteria established for interlocutory review (§ 19.15); (2) limited participation by nonparties (§ 19.21); (3) the amended discovery provisions (§ 19.33); (4) public hearings in administrative proceedings (§ 19.43); (5) procedures provided for removals and suspensions where a crime is charged or a conviction is obtained (Subpart K—§§ 19.100–19.103); and (6) sanctions and suspension and debarment of persons from practicing before the OCC (Subpart O—§§ 19.140–19.151).

IV. Cross Reference Chart

Set forth below is the proposed new format of Part 19 which cross-references the existing sections with the proposed new sections.

	Old section No.	New section No.
Subpart A—General Provisions		
Scope of part	19.1	19.0
Definitions	19.0	19.1
Retained authority	19.17	19.2
Appearance and practice before the OCC	19.3	19.3
Ex parte communications		19.4
Time limits	19.6	19.5
Subpart B—Institution of Adjudicatory Proceedings; Pleadings; Motions; Interlocutory Review		
Commencement of proceedings; notice and answer	19.2	19.10
Filing and service	19.4	19.11
Form and signature of papers	19.5	19.12
Good faith certification		19.13
Motions	19.7	19.14
Interlocutory review	19.7(d)	19.15
Subpart C—Parties and Limited Participation by Nonparties		
Parties		19.20
Limited participation by nonparties		19.21
Comptroller's review of ruling on limited participation		19.22
Subpart D—Prehearing Procedures; Prehearing Conferences; Discovery		
Prehearing conferences; procedural matters	19.10(b)	19.30

	Old section No.	New section No.
Prehearing exchange of information		19.31
Stipulations		19.32
Discovery		19.33
Subpoenas	19.8	19.34
Subpart E—Formal Hearings		
Conduct of formal hearing	19.10	19.40
Authority of the presiding officer	19.10(a)	19.41
Judicial notice; admissibility of copies and proffers		19.42
Public hearings	19.10(c)	19.43
Confidentiality of hearing	19.16	19.44
Subpart F—Post Hearing Procedures; Recommended Decision		
Proposed findings and conclusions; briefs	19.11(a)	19.50
Submissions by limited participants		19.51
Recommended decision of presiding officer	19.11(b)	19.52
Subpart G—Review by the Comptroller; Final Decision		
Review of recommended decision		19.60
Oral arguments before the Comptroller	19.13	19.61
Notice of submission to the Comptroller	19.14	19.62
Remand of the recommended decision		19.63
Decision of the Comptroller	19.15	19.64
Stay of proceeding or final order		19.65
Subpart H—Cease-and-Desist Proceedings		
Scope	19.18	19.70
Notice of charges and answer	19.19	19.71
Cease-and-desist orders	19.21	19.72
Subpart I—Assessment of Civil Money Penalty		
Scope	19.22	19.80
Notice of assessment; request for hearing; answer	19.23	19.81
Notice of hearing	19.24	19.82
Assessment orders	19.25	19.83
Subpart J—Removals, Suspensions and Prohibitions Generally		
Scope	19.26	19.90
Notice of intention to remove and answer	19.27	19.91
Removal or prohibition by order	19.29	19.92
Subpart K—Removals, Suspensions and Prohibitions Where a Crime is Charged or a Conviction is Obtained		
Scope	19.30	19.100
Suspension or removal	19.31	19.101
Informal hearing	19.32	19.102
Recommended and final decisions	19.33	19.103
Subpart L—Disciplinary Proceedings Involving the Federal Securities Laws		
Scope	19.34	19.110
Notice of charges and answer	19.35	19.111
Disciplinary orders	19.36	19.112
Subpart M—Exemption Hearings Under Section 12(h) of the Securities Exchange Act of 1934		
Scope	19.37	19.120
Application for exemption	19.38	19.121
Newspaper notice	19.39	19.122
Informal hearing	19.40	19.123
Decision of the Comptroller	19.41	19.124
Subpart N—Formal Investigations		
Scope	19.42	19.130
Confidentiality of formal investigations	19.43	19.131
Order to conduct a formal investigation	19.44	19.132
Rights of witnesses	19.45	19.133
Service of subpoena and payment of witness fees	19.46	19.134
Subpart O—Parties and Representational Practice Before the OCC: Standards of Conduct		
Scope		19.140
Sanctions relating to conduct in an administrative proceeding		19.141
Censure, suspension and debarment		19.142

	Old section No.	New section No.
Definitions		19.143
Eligibility to Practice		19.144
Incompetence		19.145
Disreputable conduct		19.146
Initiation of disciplinary proceeding		19.147
Conferences		19.148
Proceedings under this subpart		19.149
Effect of suspension, debarment, or censure		19.150
Petition for reinstatement		19.151
Provisions Deleted From Existing Part 19		
Depositions	19.9	
Temporary cease and desist orders	19.20	
Suspension or prohibition by notice	19.28	

V. Special Studies

A. Executive Order 12291

The OCC has determined that this proposed rule is not a "major rule" and therefore does not require a regulatory impact analysis.

B. Regulatory Flexibility Act

It is certified that the proposal, if issued as a final rule, would not have a significant economic impact on a substantial number of small banks or other small entities.

List of Subjects in 12 CFR Part 19

National banks, Banking, Administrative practice and procedure, Hearing procedure, *Ex parte* communication.

Authority and Issuance

For the reasons set out in the preamble, Part 19 of Chapter 1, Title 12 of the Code of Federal Regulations is proposed to be revised as follows:

1. The OCC's rules of practice and procedure, 12 CFR Part 19, are revised to read as follows:

PART 19—RULES OF PRACTICE AND PROCEDURE

Subpart A—General Provisions

Sec.

19.0 Scope of part.
19.1 Definitions.
19.2 Retained authority.
19.3 Appearance and practice before the OCC.
19.4 *Ex parte* communications.
19.5 Time limits.

Subpart B—Institution of Adjudicatory Proceedings; Pleadings; Motions; Interlocutory Review

19.10 Commencement of proceedings; notice and answer.
19.11 Filing and service.
19.12 Form and signature of papers.
19.13 Good faith certification.
19.14 Motions.
19.15 Interlocutory review.

Subpart C—Parties and Limited Participation by Nonparties.

19.20 Parties.
19.21 Limited participation by nonparties.
19.22 Comptroller's review of the ruling.

Subpart D—Prehearing Procedures; Prehearing Conferences; Discovery

19.30 Prehearing conferences; procedural matters.
19.31 Prehearing exchange of information.
19.32 Stipulations.
19.33 Discovery.
19.34 Subpoenas.

Subpart E—Formal Hearings

19.40 Conduct of formal hearings.
19.41 Authority of the presiding officer.
19.42 Judicial notice; admissibility of copies and proffers.
19.43 Public hearings.
19.44 Confidentiality of proceeding.

Subpart F—Post Hearing Procedures; Recommended Decision

19.50 Proposed findings and conclusions; briefs.
19.51 Submissions by limited participants.
19.52 Recommended decision of presiding officer.

Subpart G—Review by the Comptroller; Final Decision

19.60 Review of recommended decision.
19.61 Oral arguments before the Comptroller.
19.62 Notice of submission to the Comptroller.
19.63 Remand of the recommended decision or order.
19.64 Decision of the Comptroller.
19.65 Stay of proceeding or final order.

Subpart H—Cease-and-Desist Proceedings

19.70 Scope.
19.71 Notice of charges and answer.
19.72 Cease-and-desist orders.

Subpart I—Assessment of Civil Money Penalty

19.80 Scope.
19.81 Notice of assessment; request for hearing; answer.
19.82 Notice of hearing.
19.83 Assessment orders.

Subpart J—Removals, Suspensions and Prohibitions Generally

19.90 Scope.
19.91 Notice of intention to remove and answer.
19.92 Removal or prohibition by order.

Subpart K—Removals, Suspensions and Prohibitions Where a Crime is Charged or a Conviction is Obtained

19.100 Scope.
19.101 Suspension or removal.
19.102 Informal hearing.
19.103 Recommended and final decisions.

Subpart L—Disciplinary Proceedings Involving the Federal Securities Laws

19.110 Scope.
19.111 Notice of charges and answer.
19.112 Disciplinary orders.

Subpart M—Exemption Hearings Under Section 12(h) of the Securities Exchange Act of 1934

19.120 Scope.
19.121 Application for exemption.
19.122 Newspaper notice.
19.123 Informal hearing.
19.124 Decision of the Comptroller.

Subpart N—Formal Investigations

19.130 Scope.
19.131 Confidentiality of formal investigations.
19.132 Order to conduct a formal investigation.
19.133 Rights of witnesses.
19.134 Service of subpoena and payment of witness fees.

Subpart O—Parties and Representational Practice before the OCC: Standards of Conduct

19.140 Scope.
19.141 Sanctions relating to conduct in an administrative proceeding.
19.142 Censure, suspension or debarment.
19.143 Definitions.
19.144 Eligibility to practice.
19.145 Incompetence.
19.146 Disreputable conduct.
19.147 Initiation of disciplinary proceedings.
19.148 Conferences.
19.149 Proceedings under this subpart.
19.150 Effect of suspension, debarment or censure.

19.151 Petition for reinstatement.

Authority: 12 U.S.C. 1817(j), 1818, 1820 (secs. 7(j), 8 and 10 of the Federal Deposit Insurance Act); 15 U.S.C. 78*l*(h) and (i), 78o–4(c), 78u, 78W (secs. 15B(c), 15C, 17A, 21 and 23 of the Securities Exchange Act of 1934); 5 U.S.C. 554–557; 12 U.S.C. 504, 93b, 1818(b), 1972 (secs. 101, 103, 107, and 801 of the Financial Institutions Regulatory and Interest Rate Control Act of 1978); 12 U.S.C. 3102, 3108(a) (secs. 4 and 13(a) of the International Banking Act of 1978); 15 U.S.C. 78o–5 (sec. 101 of the Government Securities Act of 1986); 31 U.S.C. 330.

Subpart A—General Provisions

§ 19.0 Scope of part.

The rules of practice and procedure prescribed by this Part are applicable to adjudicative proceedings for which a hearing is provided by law or is for other reason ordered by the Comptroller, and to formal investigations. These adjudications include:

(a) The issuance of a cease and desist order;

(b) The assessment of a civil money penalty;

(c) The issuance of an order to remove or suspend from office any officer or director or prohibit any officer or director or other person from participating in the conduct of the affairs of a bank;

(d) The imposition of sanctions upon the following persons where the OCC is the appropriate regulatory agency:

(1) Any municipal securities dealer or any person associated or seeking to become associated with such a municipal securities dealer;

(2) Any government securities broker or dealer or any person associated with such government securities broker or dealer; or

(3) Any transfer agent.

(e) The exemption of an issuer or class of issuers from the provisions of sections 12(g), 13, or 14 of the Securities Exchange Act (15 U.S.C. 78*l*(g) 78n or 78m), or the exemption from section 16 of the Securities Exchange Act of 1934 ("Exchange Act") (15 U.S.C. 78p) of any officer, director or beneficial owner of securities of an issuer;

(f) The disapproval of a proposed acquisition of control of a national bank or District of Columbia bank;

(g) The suspension or debarment of persons who practice before the OCC; and

(h) The revocation of authority of a bank to exercise trust powers.

§ 19.1 Definitions.

For purposes of this part:

(a) "Adjudicatory proceeding" means a judicial-type proceeding leading to the formulation of a final order.

(b) "Bank" means a national bank, District of Columbia bank, or a foreign bank operating as a Federal branch or agency.

(c) "Comptroller" means the Comptroller of the Currency or persons delegated to perform the function of the Comptroller under this part.

(d) "Decisional employees" means those members of the Comptroller's or presiding officer's staffs who have not engaged in an investigative or prosecutorial role in a proceeding and who may assist the Comptroller or presiding officer in preparing orders, decisions and other documents under this part.

(e) "*Ex parte* communication" means an oral or written communication that is not on the record and for which reasonable prior notice to all parties has not been given, but does not include requests for procedural information or status reports on any matter or proceeding covered by this part.

(f) "Interested person" includes a party or other person who is likely to be adversely affected or aggrieved by matters to be adjudicated in a proceeding, and officers, agents, employees, associates, affiliates, attorneys, accountants or other representatives when acting on behalf of the interested person.

(g) "OCC" means the Office of the Comptroller of the Currency.

(h) "OCC's interested division" means the OCC organizational unit that is engaged in an investigative or prosecutorial function in connection with a proceeding under this part.

(i) "Party" means a person named as a party in any notice which commences a proceeding or any person who is admitted as a party to the proceeding. The OCC's interested division is a party to a proceeding under this part.

(j) "Person" means an individual, sole proprietor, partnership, corporation (including a bank), unincorporated association, trust, joint venture or other entity or organization.

(k) "Presiding officer" means an administrative law judge, or any agency employee or other person designated by the Comptroller or the Comptroller's delegate to conduct a hearing.

§ 19.2 Retained authority.

(a) Nothing in this part impairs the powers of examination and investigation conferred on the Comptroller by 12 U.S.C. 481, 1818(n), 1820(c) or any other provision of law.

(b) The Comptroller may at any time during a proceeding, perform, or direct or waive the performance of, any act that could be performed by a presiding officer. Prior to the appointment of a presiding officer, the Comptroller may act in the place of and with the authority of, a presiding officer, except that the Comptroller may not hear a case on the merits or issue a recommended decision.

§ 19.3 Appearance and practice before the OCC.

(a) *Appearance before the Comptroller or a presiding officer.*

(1) By non-attorneys. An individual may appear in his own behalf; a member of a partnership may represent the partnership; a bona fide and duly authorized employee or officer of a corporation, trust, or association may represent the corporation, trust or association; and an authorized officer or employee of any government unit, agency, or authority may represent that unit, agency, or authority if the individual, partner, officer or employee is not suspended or debarred from practice before the OCC.

(2) By attorneys. Any person who is a member in good standing of the bar of the highest court of any state, possession, territory, commonwealth, or the District of Columbia, and who is not suspended or debarred from practice before the OCC, may represent parties before the OCC.

(3) Notice of appearance. An individual, partner, officer, employee, or attorney appearing in a representative capacity before the OCC in an adjudicatory proceeding shall file a notice of appearance with the Hearing Clerk at or before such time that the representative submits papers or appears on behalf of the person. The notice of appearance must contain a written declaration that the representative is currently qualified as provided in paragraphs (a)(I) or (2) of this section and is authorized to represent the particular party. Any person who files a notice of appearance in an adjudicatory proceeding thereby agrees, and is authorized to accept service on behalf of the represented party.

(b) *Conflict of interest in representation.* No person shall appear in a proceeding or a formal investigation conducted pursuant to Subpart N in a representative capacity if that representation may be materially limited by that person's responsibilities. to a third person, or by the person's own interests. The Comptroller or the presiding officer may take protective measures at any stage of a proceeding or during a formal investigation to cure a potential or actual conflict of interest in representation, including the issuance of an order disqualifying an individual from appearing in a representative

capacity for the duration of the proceeding or investigation.

§ 19.4 Ex parte communications.

(a) *Prohibitions against ex parte communications.* The presiding officer shall not consult with any party on any matter relevant to the merits of a proceeding, prior to entry of a final order which is no longer subject to review or reconsideration, without notice and opportunity for all parties to participate. No party or person shall make or knowingly cause to be made to the Comptroller, the presiding officer, or decisional employees of the Comptroller or the presiding officer an *ex parte* communication relevant to the merits of a proceeding. The Comptroller, presiding officer, or decisional employees shall not make or knowingly cause to be made to a party or any person, an *ex parte* communication relevant to the merits of a proceeding.

(b) *Procedures for handling ex parte communications.* The Comptroller, presiding officer, decisional employee, or party who receives, makes, or knowingly causes to be made an *ex parte* communication prohibited by this section shall:

(1) Place on the record of the proceeding:

(i) All such written communications;

(ii) Memoranda stating the substance of all such oral communications; and

(iii) All written responses, and memoranda stating the substance of all oral responses, to the materials described in paragraph (b)(1)(i) and (ii) of this section;

(2) Promptly serve written notice of the *ex parte* communication and responses thereto on all parties to the proceedings.

(c) *Sanctions.* Any party or person who makes a prohibited *ex parte* communication, or who encourages or solicits another to make any such communication, may be subject to any appropriate sanction or sanctions imposed by the Comptroller or the presiding officer including, but not limited to, exclusion from the proceedings and an adverse ruling on the issue which is the subject of the prohibited communication.

(d) *Applicability of prohibitions and sanctions against ex parte communications.* (1) The prohibitions of this section against *ex parte* communications shall apply:

(i) To any person who has actual knowledge that a proceeding has been or will be commenced pursuant to § 19.10(a).

(ii) To all persons who have been given notice that a proceeding has been or will be commenced pursuant to § 19.10(a).

(2) The prohibitions of this section shall remain in effect until a final order has been entered in a proceeding which is no longer subject to review or reconsideration by the OCC.

§ 19.5 Time limits.

(a) *Computation.* In computing any period of time prescribed or allowed by this part, the date of the act or event from which the period of time begins to run is not included. The last day of the period computed is included, unless it is a Saturday, Sunday, or Federal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or Federal holiday. Intermediate Saturdays, Sundays and Federal holidays are not included in the computation if the time period for performance is 10 days or less. If the period of time runs from the date of service, and service has been made by mail, three days shall be added to the prescribed period from the date when the matter served is deposited in the mail.

(b) *Change of time limits.* Except as otherwise provided by law or this part, the presiding officer may extend the time limits prescribed by these rules or by any notice or order issued in the proceedings. Prior to the appointment of a presiding officer and after the filing of a recommended decision pursuant to § 19.52, the Comptroller may rule on extensions or may delegate the authority to rule on requests for extensions.

(c) *Stipulation of time limits.* The parties may, by stipulation, propose changes to the time limits specified by this part or any notice or order issued thereunder. The parties shall notify the presiding officer or the Comptroller in writing of any stipulation. If the presiding officer or the Comptroller does not within 10 days of receipt of the written notification disapprove the proposed stipulated time limits and set different time limits, the stipulated time limits shall stand.

Subpart B—Institution of Adjudicatory Proceedings; Pleadings; Motions; Interlocutory Review

§ 19.10 Commencement of proceedings; notice and answer.

(a) *Notice.* Proceedings are commenced by a notice served by the OCC's interested division upon the party or parties afforded a hearing and filed with the Hearing Clerk. The notice may, for example, be a notice of charges, described in §§ 19.71 or 19.111 or a notice of assessment of a civil money penalty, described in § 19.81. In the case of a disapproval of a change in bank control, the OCC's interested division shall, after receipt of a timely request for hearing from a proposed acquirer initially disapproved as provided under § 5.50(g)(1)(iv) of this chapter, commence the proceeding by issuance of a notice of reasons for the proposed disapproval. The matters of fact and law alleged in a notice may be amended by the OCC's interested division at any stage of the proceedings. Such amended notice may require an answer from the party or parties served and the presiding officer or Comptroller may set a new hearing date.

(b) *Answer is required.* Unless a different period is specified by the Comptroller or the presiding officer, a party who does not wish to consent to a final order must file an answer within 20 days after being served with a notice which commences the proceeding. Any subsequent notice which contains amended allegations and by its terms requires an answer must similarly be answered within 20 days.

(c) *Content of answer.* An answer filed under this section shall concisely state any defenses and specifically admit or deny each allegation in the notice. Any allegation not denied specifically is deemed to be admitted. A party who lacks information or knowledge sufficient to form a belief as to the truth of any particular allegation shall so state. A statement of lack of information has the effect of a denial. A party who intends in good faith to deny only a part of an allegation shall specify what is true and deny only the remainder.

(d) *Effect of failure to answer.* Failure of a party to file an answer required by this section within the prescribed time or failure of a party to contest any allegation contained in the notice shall constitute a waiver of the right to appear and contest the allegations contained in the notice. If no answer is filed, upon the motion of the OCC's interested division, the presiding officer or the Comptroller, without further notice to the party, may find the facts in the notice to be as alleged and may, without any review of the facts, issue and serve such order as he or she deems appropriate. The Comptroller or the presiding officer, for good cause shown, may permit the filing of a delayed answer.

§ 19.11 Filing and service.

(a) *Filing.* Parties shall submit their filings to the OCC Hearing Clerk or other person designated to receive documents for the OCC in an administrative proceeding. Filings to be made with the Hearing Clerk include

any notice which commences a proceeding and any answer thereto; any amended notice and answer thereto; any notice of hearing; any order or ruling (except one which is entered during the course of a hearing and is part of the hearing transcript); every written motion, memorandum, notice, appearance, proof of service or similar paper; any stipulation of the parties; the hearing transcript together with all exhibits admitted into evidence; proposed findings and conclusions by the parties; the findings and conclusions and recommended decision of the presiding officer; parties' notices of appeal and exceptions; any submissions by limited participants; and the decision and final order of the Comptroller.

(b) *Address for filing.* All materials required to be filed with the OCC or the Comptroller in any proceeding shall be filed with the Hearing Clerk, Office of the Comptroller of the Currency, Washington, DC. Any document submitted for filing may be sent to the Hearing Clerk by mail, express mail or hand delivery but must be received by the Hearing Clerk in Washington, DC, or postmarked on or before the due date for the particular filing. Any party who serves documents on another party shall simultaneously or promptly thereafter file such documents with the Hearing Clerk.

(c) *Service.* Except as otherwise provided in this part, each party who files papers must serve a copy thereof on the presiding officer, the Comptroller or the Comptroller's delegate if a presiding officer has not been appointed, and on the attorney or representative of record of every other party. A copy of all papers filed with the presiding officer or the Comptroller shall be simultaneously or promptly thereafter served on the parties or their representatives. Service may be by personal service, private delivery service or by express, certified or first class mail. If a party is not represented, service shall be made at the last known address of the party as shown on the records of the OCC.

(d) *Proof of service.* A party must file proof of service before action may be taken thereon. The proof shall show the date and manner of service, and may be by written declaration of the person making service, or by certificate of an attorney or other representative of record. Failure to file proof of service shall not affect the validity of service. The presiding officer may allow the proof to be amended or supplied, unless to do so would result in material prejudice to a party.

§ 19.12 Form and signature of papers.

All documents filed by a party must be printed or typewritten, and copies served upon the presiding officer, the Comptroller, and the parties must be clear and legible. The original of all papers filed by any party shall be signed by that party's attorney. If a party is not represented by an attorney, the papers shall be signed by the party, an officer thereof, or a duly authorized representative.

§ 19.13 Good faith certification.

(a) *General requirement.* After the Comptroller or the Comptroller's delegate issues the Notice, every subsequent written presentation by a party represented by an attorney shall be signed by at least one attorney of record in his or her individual name and shall state that attorney's address and telephone number. A party who is not represented by an attorney shall sign his or her presentation of record and state his or her address and telephone number.

(b) *Effect of signature.* (1) The signature of an attorney or party constitutes a certification that the attorney or party has read the written presentation of record; that to the best of his or her knowledge, information, and belief formed after reasonable inquiry, the pleading, motion, or other presentation of record is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(2) If a written presentation of record is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant.

(c) *Effect of making oral motion or argument.* The act of making any oral motion or oral argument by any attorney or party constitutes a certification by him or her that to the best of the attorney's or party's knowledge, information, and belief formed after, reasonable inquiry, the statements are well grounded in fact and are warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law, and are not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(d) *Sanctions for violations.* If a pleading, motion, or other presentation is made in violation of this section, on the motion of any party or on his or her own motion, the presiding officer or the Comptroller may impose upon the attorney, the represented party, or both, an appropriate sanction authorized in Subpart O.

§ 19.14 Motions.

(a) *Written and oral motions.* An application or request for an order or ruling, unless otherwise specifically provided in this part, must be made by a written motion. A motion may be made orally in a hearing unless the presiding officer or the Comptroller directs that the oral motion be reduced to writing. All motions must state the order or relief sought and be supported by a statement which states concisely the grounds or basis for the relief and the authority relied upon. Each party must serve the motion on the opposing party or parties and file the motion with the Hearing Clerk pursuant to § 19.11. All written motions must be accompanied by a proposed order.

(b) *Representation and disposition.* Prior to the appointment of a presiding officer, the Comptroller may rule on all motions, defer them until the appointment of a presiding officer or delegate the authority to rule upon motions for extensions of time. After a presiding officer has been appointed, the presiding officer shall rule on all motions, except that the Comptroller shall rule on motions for public hearings filed pursuant to § 19.43 and motions for interlocutory review which do not require certification by the presiding officer pursuant to § 19.15(e) and § 19.15(f). The presiding officer may for good cause, clearly stated in writing, refer any motion to the Comptroller for ruling. The Comptroller may request that the presiding officer file a proposed disposition of the motion with relevant comments and observations. If the Comptroller does not find sufficient good cause to support the referral of the motion, the Comptroller may remand the motion to the presiding officer. The Comptroller shall rule upon all motions made after a recommended decision is filed by the presiding officer pursuant to § 19.52.

(c) *Motions to dismiss.* (1) The presiding officer may deny but may not grant any motion which would dismiss the proceedings or which would result in a final determination on the merits of the proceedings. The presiding officer must submit any ruling which would grant such a motion as a recommendation to the Comptroller who will make the final ruling. The Comptroller shall make such a final ruling on motions to dismiss in all proceedings covered by this part.

including suspension, removal and prohibition proceedings commenced pursuant to Subpart J.

(2) The presiding officer may not submit a ruling that grants a motion described in paragraph (c)(1) of this section to the Comptroller unless the presiding officer finds for good cause stated with particularity in writing that the granting of the motion is warranted.

(d) *Answers to motions.* Within 10 days after service of any written motion, or within a longer or shorter period established by this part or fixed by the presiding officer or the Comptroller, any party may file a written answer or objection to a motion. All answers to written motions must be accompanied by a proposed order. Any party who does not file a response to a motion is deemed to have consented to the relief sought by the motion. The party requesting the motion has no right to reply to the answer, except as permitted by the presiding officer or the Comptroller. Any requests by parties to file additional replies must be made by filing a motion for leave to respond with the presiding officer or the Comptroller.

(e) *Dilatory motions not permitted.* Repetitive or numerous motions which raise the same issues or arguments or deal with the same subject matter are considered dilatory motions and are not permitted. The Comptroller or the presiding officer may assess costs attendant to processing or ruling on dilatory motions against the filing party. Filing of dilatory motions by a party may form the basis for disciplinary action under Subpart O of this part.

(f) *Oral arguments; briefs.* No oral argument will be held on motions except as otherwise directed by the presiding officer or the Comptroller. Written memoranda, briefs, affidavits and other relevant material or documents may be filed in support of a motion or an answer.

§ 19.15 Interlocutory review.

(a) *General rule.* The Comptroller will not review a ruling of a presiding officer prior to the submission of the record to the Comptroller unless extraordinary circumstances warrant the Comptroller's prompt review.

(b) *Motion to the presiding officer.* (1) During a proceeding any party may file a motion requesting the presiding officer to certify a contested ruling to the Comptroller. The motion shall be made in writing within 10 days of the presiding officer's notification to parties of the ruling. The motion must state the grounds relied on, reasons why the presiding officer should permit interlocutory review, and a statement regarding the manner in which the Comptroller's prompt review will prevent detriment to the public interest or irreparable harm to any person. Any opposing party may file an answer to a motion for interlocutory review within 10 days of receipt of the motion.

(2) (i) A presiding officer may not certify a ruling for interlocutory review to the Comptroller unless a party so requests and the presiding officer determines that the Comptroller's prompt review of the contested ruling is necessary to prevent detriment to the public interest or irreparable harm to any person. Further, the presiding officer must find that (A) the ruling involves a controlling question of law or policy as to which substantial grounds exist for a difference of opinion; or (B) an immediate appeal from the ruling may materially advance the ultimate termination of the proceeding; or (C) subsequent review or consideration of the issue at the conclusion of the proceeding will be an inadequate remedy; or (D) a subsequent reversal of the ruling would cause unusual delay or expense, taking into consideration the probability of such a reversal.

(ii) Upon consideration of the factors enumerated in paragraph (b)(2)(i) of this section, the presiding officer shall either grant or deny the motion. If the motion is granted, the presiding officer shall certify the ruling for review by the Comptroller. The certification must be in writing and shall set forth the relevant issues, an explanation of the ruling on the issues, and specific reasons for granting the moving party's request for review by the Comptroller. If the presiding officer denies the motion or if the Comptroller declines to consider the certified ruling, the objection to the ruling will be reviewed in the ordinary course of the proceeding as if the appeal had not been made.

(c) *Appeal to the Comptroller.* The Comptroller shall dismiss a motion for interlocutory appeal if the presiding officer's certification was improvidently granted or if the Comptroller determines that prompt consideration of the motion is not necessary pursuant to the standards set forth in paragraph (b)(2)(i) of this section.

(d) *Suspension of proceeding.* Neither a motion for interlocutory review nor the granting of a motion under this section shall suspend or stay the proceeding before the presiding officer unless otherwise ordered by the presiding officer or the Comptroller. Any stay or series of stays of longer than 30 days must be approved by the Comptroller upon the motion of a party, or the request of the presiding officer.

(e) *Appeal to the Comptroller without certification.* Interlocutory review by appeal to the Comptroller without certification by the presiding officer is allowed for motions for limited participation as a nonparty pursuant to § 19.21 and for motions contesting the presiding officer's order as to which documents and sessions of a hearing are to be made public when a public hearing has been granted pursuant to § 19.43. The provisions of this section shall apply except that motions for interlocutory review must be addressed to, and ruled upon by, the Comptroller or the Comptroller's delegate. Parties must file motions with the Hearing Clerk.

(f) *Interlocutory review upon Comptroller's motion.* The Comptroller may, as deemed appropriate and in the interest of justice, and on his or her own motion or the motion of any party, review any ruling of the presiding officer which has been denied certification.

Subpart C—Parties and Limited Participation by Nonparties

§ 19.20 Parties.

The parties to an adjudicatory proceeding are the OCC's interested division and each party named in the notice pursuant to § 19.10. A party ceases to be a party when a default is entered against the party named in the notice or when the OCC's interested division accepts an offer of settlement from the party.

§ 19.21 Limited participation by nonparties.

Any person with an official interest in the proceeding and who desires to participate orally or in writing in a proceeding must make a written application in the form of a motion with the presiding officer. The motion shall set forth the grounds upon which the application is based, the nature and extent of the applicant's interest in the proceeding, the issues on which the applicant wishes to participate, and the manner in which the applicant wishes to participate. Any party may file an answer to the motion. The presiding officer shall rule on the motion and may, by order, permit oral or written participation by nonparties to such extent and upon such terms as the presiding officer deems proper.

§ 19.22 Comptroller's review of the ruling.

The presiding officer's rulings on applications under § 19.21 are subject to interlocutory review by the Comptroller without certification by the presiding officer in accordance with § 19.15(e) of this part.

Subpart D—Prehearing Procedures; Prehearing Conferences; Discovery

§ 19.30 Prehearing conferences; procedural matters.

(a) Prehearing conferences and memoranda. In any proceeding the presiding officer may require the submission of prehearing memoranda by the parties. The presiding officer also may schedule one or more prehearing conferences for the purpose of:

(1) Clarifying issues;

(2) Examining the possibility of obtaining stipulations, admissions of fact, or determining the authenticity or content of documents;

(3) Determining matters of which official notice may be taken;

(4) Discussing amendments to pleadings;

(5) Limiting the number of witnesses;

(6) Discussing the adoption of shortened procedures;

(7) Discussing other matters that may aid the orderly disposition of the proceeding; and

(8) Promoting a fair and expeditious hearing.

(b) *Presiding officer's prehearing memorandum.* At or within a reasonable time following the conclusion of a prehearing conference, the presiding officer shall serve each party with a prehearing memorandum containing agreements reached and any procedural determinations made, unless the conference has been recorded and transcribed and a copy of the transcript has been made available to each party. Any agreements reached among the parties at the prehearing conference or otherwise, become part of the record and bind the parties unless the presiding officer permits otherwise for good cause shown.

§ 19.31 Prehearing exchange of information.

(a) *Witnesses.* Within a period of time established by the presiding officer and prior to the scheduled hearing date, each party shall file with the presiding officer a written list of witnesses to be called to testify at the hearing. The list must contain the name and address of each witness, a brief description of the matter about which the witness is to testify and the relevance of the witness' testimony. The party filing the list of witnesses must serve a copy on every other party to the proceeding. The presiding officer shall not allow any witness to testify who is not included in the witness list, except for good cause shown.

(b) *Exhibits.* Within a period of time established by the presiding officer and prior to the scheduled hearing date, each party shall file with the presiding officer a written list of exhibits to be offered into evidence at the hearing. This list of exhibits must contain a brief description of the content and relevance of each exhibit, together with a copy of each exhibit. The party filing the list of exhibits and copies of exhibits must serve a copy on every other party to the proceeding. The presiding officer shall not, except for good cause shown, accept into evidence at hearing any exhibit which is not listed and copied.

(c) *Effect of failure to exchange prehearing information.*

(1) Any party that fails to exchange proposed exhibits or witness lists as required by paragraphs (a) and (b) shall be deemed to have forfeited its right to introduce any exhibits or call any witness in its case-in-chief at the hearing. Any exhibit or witness not included in the party's final exhibit or witness list may not be introduced or called by that party in its case-in-chief at the hearing. Relief from this subsection may be granted by the presiding officer only for good cause shown and upon such terms as are just.

(2) Upon the failure of any party to comply fully and in good faith with the requirements of this section, including without limitation, the failure to stipulate to facts or to the authenticity or admissibility of documents as to which there is no good-faith dispute, the presiding officer may, on the motion of any party, or on the presiding officer's own motion, impose any appropriate sanction authorized in Subpart O.

§ 19.32 Stipulations.

The parties may, by stipulation in writing at any stage of the proceeding, or orally at hearing, agree on any pertinent facts in the proceeding. Signed stipulations and oral stipulations made part of the record shall be binding on the parties.

§ 19.33 Discovery.

(a) *General Rule.* This section does not grant an absolute right to discovery, but allows the presiding officer, upon a showing of relevance, materiality, and need, to permit discovery. Discovery in administrative proceedings is not favored and, in practice, is allowed only when a showing of good cause clearly has been made by the applying party.

(b) *Upon order.* Upon application of a party, the presiding officer may order discovery at any stage of a proceeding.

(1) Application. The party requesting discovery must file a written application in the form of a motion with the presiding officer stating:

(i) The nature or type of discovery requested;

(ii) The matters with which the discovery will be concerned;

(iii) The relevance of the discovery;

(iv) The materiality of the discovery; and

(v) Demonstrated need for the discovery.

The party making the application must serve a copy of the application on every other party to the proceeding.

(2) Response to an application. A party opposing the application for discovery may file a response to the application within 10 days. Failure of a party to respond to an application is deemed a waiver of objection to the discovery sought by the applying party.

(3) Decision. If, after consideration of all circumstances, the presiding officer determines that discovery in whole or in part is unnecessary, unreasonable, oppressive, excessive in scope or unduly burdensome, the presiding officer may refuse to grant the application or may grant it only on such condition as fairness requires. The presiding officer shall notify each of the parties of the action taken on an application.

(c) *Protective orders.* At any time during discovery, on motion of any party, and with sufficient grounds, the presiding officer may terminate discovery or limit the scope and manner of discovery. Grounds for terminating or limiting discovery include a showing that: the discovery is being conducted in bad faith or in such manner that will unreasonably annoy, embarrass, or oppress the witness; there is insistent probing into privileged matters; the discovery is outside of the scope of the application; or there are unwarranted attempts to pry into a party's preparation for trial.

§ 19.34 Subpoenas.

(a) *Issuance.* Upon application of a party, the presiding officer may issue a subpoena or subpoena duces tecum requiring the attendance of a witness or the production of documents in connection with a hearing. The attendance of a witness or the production of documents may be required from any place in any state or territory that is subject to the jurisdiction of the United States.

(1) Application. The party seeking the subpoena or subpoena duces tecum must file a written application with the presiding officer stating:

(i) The name and address of the witness or the person who is to produce the documents;

(ii) The matters about which the witness is expected to testify or the contents of the documents;

(iii) The relevance of the testimony or documents;

(iv) The time and place for testifying or production of documents; and

(v) The address where the testimony is to be taken or the documents are to be produced. The party making the application must serve a copy of the application and the proposed subpoena or subpoena duces tecum on every other party to the proceeding. During sessions of a hearing the application may be made orally on the record.

(2) Response to an application. A party opposing the issuance of a subpoena or subpoena duces tecum may file a response to the application within 10 days. In the case of an oral application during sessions of a hearing, a response may be made orally on the record. Failure of a party to respond to an application is deemed a waiver of the right to object to the subpoena or subpoena duces tecum.

(3) Decision. If, after consideration of all circumstances, the presiding officer determines that the subpoena or subpoena duces tecum in whole or in part is unreasonable, oppressive, excessive in scope or unduly burdensome, the presiding officer may refuse to issue a subpoena or subpoena duces tecum or may issue it only on such conditions as fairness requires. The presiding officer shall serve on each of the parties notice of the action taken on an application.

(b) *Service.* If an application is granted in whole or in part, the party seeking the subpoena or subpoena duces tecum must serve it on the person named therein, or the person's attorney, by personal service or certified mail. The party serving the subpoena or subpoena duces tecum must file with the presiding officer an affidavit as proof of service.

(c) *Fees.* Witnesses who are subpoenaed may be paid the same expenses in the same manner as are paid witnesses in the district courts of the United States. Expenses in accordance with this paragraph shall be paid by the party on whose application the subpoena or subpoena duces tecum is issued.

(d) *Motion to quash.* A person named in a subpoena or subpoena duces tecum who is not a party to the proceeding may file a motion to revoke, quash, or modify the subpoena. A statement of the reasons for the motion must accompany it and a copy of the motion must be served on the party requesting the subpoena. The motion must be made prior to the time for compliance specified in the subpoena and not more than 10 days after the date of service of the subpoena.

Subpart E—Formal Hearings

§ 19.40 Conduct of formal hearing.

(a) *Application of Administrative Procedure Act.* Unless otherwise required by statute or regulation, formal hearings will be conducted in accordance with the requirements of the Administrative Procedure Act (5 U.S.C. 554–557).

(b) *Attendance at hearing.* Except as provided in Subpart L (§§ 19.110–19.112) and unless otherwise ordered by the Comptroller pursuant to § 19.43, a hearing shall be private and shall be attended only by the presiding officer, the parties, parties' representatives or counsel, limited participants and witnesses while testifying and accompanied by their counsel, and other persons determined by the presiding officer of the Comptroller to have an official interest in the proceeding.

(c) *Hearing rules.* The OCC's interested division will be the first party to present an opening statement and a closing statement, and shall make a rebuttal statement after the responding party's closing statement. Every party shall have the right to present its case or defense by oral and documentary evidence and testimony and to conduct such cross-examination as may be required for full disclosure of the facts. Irrelevant, immaterial or unduly repetitious evidence shall be excluded. Objections to the admission or exclusion of evidence shall be concise and, together with rulings thereon, shall become part of the record. Argument on objections may, at the discretion of the presiding officer, take place off the record. Failure to object to admission or exclusion of evidence or to any ruling constitutes a waiver of the right to object.

(d) *Transcript.* The hearing shall be transcribed. The transcript shall be certified by the official reporter and, together with all exhibits accepted into evidence, filed with the Hearing Clerk. Copies shall be furnished to the presiding officer and the OCC's interested division at OCC expense and shall be made available to other parties at their expense for the cost of the transcript. The Hearing Clerk shall notify the parties when the hearing transcript has been filed.

(e) *Conduct during hearings.* All participants in a proceeding before the Comptroller or a presiding officer shall conduct themselves with dignity and in an orderly and ethical manner. Unethical or improper conduct at any proceeding before the Comptroller or a presiding officer shall be grounds for exclusion from the proceeding and suspension for the duration of the proceeding without the benefit of a hearing, or other appropriate action by the Comptroller or presiding officer including disciplinary action authorized by Subpart O of this part.

§ 19.41 Authority of the presiding officer.

In any proceeding under this Part, the presiding officer shall have all powers necessary to conduct a fair and impartial hearing, including, but not limited to the power to:

(a) Conduct formal hearings in accordance with the provisions of this part;

(b) Administer oaths and examine witnesses;

(c) Compel the production of documents;

(d) Compel the appearance of witnesses by the issuance of subpoenas as authorized by law;

(e) Issue decisions and orders;

(f) Take any action authorized by the Administrative Procedure Act;

(g) Disqualify himself or herself by motion made by a party or on his or her own motion;

(h) Exercise, for the purpose of the hearing and in regulating the conduct of the proceeding, the powers vested in the Comptroller as are necessary and appropriate; and

(i) Do all other things necessary to discharge the duties of a presiding officer.

§ 19.42 Judicial notice; admissibility of copies and proffers.

(a) *Admissibility.* Except as is otherwise set forth in this section, relevant, material, and reliable evidence that is not unduly repetitive shall be admissible to the fullest extent authorized by the Administrative Procedure Act, other applicable statutes, and the common law. Without limiting the foregoing, any evidence that would be admissible in a United States district court under the Federal Rules of Evidence is admissible in any proceeding governed by Subpart E.

(b) *Official notice.* Official notice may be taken of any material fact which might be judicially noticed by a district court of the United States and any material information in the official public records of the OCC. All matters officially noticed by the presiding officer shall appear on the record. If official notice is requested or taken of any fact, the parties, upon timely request, shall be afforded an opportunity to establish the contrary.

(c) *Documents.* (1) A duplicate copy of a document is admissible to the same extent as an original, unless a genuine issue is raised as to whether the copy is

in some material respect not a true and legible copy of the original. (2) Relevant Reports of Examination and Reports of Supervisory Activity prepared by the OCC, whether or not such documents were prepared as a result of joint or concurrent examinations or visits, are admissible either with or without a sponsoring witness. (3) Witnesses may use existing or newly created charts, exhibits, calendars, calculations, or outlines to summarize, illustrate, or simplify the presentation of testimony. Such documents may, in the presiding officer's discretion, be used with or without being admitted into evidence.

(d) When an objection to a question or line of questioning propounded to a witness is sustained, the examining attorney may make a specific proffer on the record of what he or she expected to prove by the expected testimony of the witness, either by representation of counsel or by direct interrogation of the witness. The presiding officer shall retain rejected exhibits, adequately marked for identification, for the record.

§ 19.43 Public hearings.

(a) *General rule.* Except as otherwise provided under this part, any hearing conducted pursuant to this subpart shall be private, unless the Comptroller, in his or her discretion and after considering the views of the party afforded the hearing, determines that a public hearing is necessary to protect the public interest.

(b) *Special hearings.* (1) Any hearing conducted under section 12(h) of the Securities Exchange Act of 1934 (15 U.S.C. 78*(1)*(h)) to provide exemptions from Exchange Act reporting requirements, and under sections 15B, 15C, and 17A of the Exchange Act (15 U.S.C. 78o–4, 78o–5, and 78q–1) to remedy violations of the federal securities laws and any applicable regulations involving the offer or sale to, or purchase from, customers of securities, shall be public unless the Comptroller in his or her discretion determines that a private hearing is necessary to protect the public interest. (2) Special hearings shall not be conducted pursuant to the procedures established under paragraphs (a) and (c) through (f) hereunder.

(c) *Institution of public hearing through the issuance of a notice of charges.* The Comptroller, in his or her discretion, after considering the views of the party to be afforded the hearing, and after determining it to be in the public interest, may institute a public proceeding through or contemporaneously with, the issuance of a notice of charges. Public proceedings instituted under this subsection shall not be conducted pursuant to the procedures established under paragraphs (a) and (d) through (f) of this section.

(d) *Motion for public hearings.* After the filing of a notice pursuant to § 19.10 any party may move that the hearing be held in public. The motion shall be filed with the Comptroller in writing at least 30 days prior to the scheduled commencement of the hearing, and shall state reasons why a public hearing is necessary to protect the public interest. Any opposing party may file an answer within 10 days of service of the motion. Any party who does not file an answer to a motion shall be deemed to have no views regarding the holding of a public hearing. At the discretion of the Comptroller, any party may be given an additional opportunity to respond and the Comptroller may request additional information or documents from any party.

(e) *Briefs, oral arguments.* Motions and answers filed pursuant to paragraph (d) of this section may be supported by a brief, written memorandum or any other relevant documents. No oral arguments will be allowed unless the Comptroller so directs.

(f) *Comptroller's decision.* After considering the views of the parties, and such other pertinent information as the Comptroller deems necessary, the Comptroller shall issue an order granting or denying the motion for a public hearing. The Comptroller reserves the right to authorize at any time alternative methods of protecting the public interest, such as the release of the decision, transcript, final order, other documents, or a summary or parts thereof. The Comptroller's order granting a public hearing may direct that particular sessions of the hearing be closed and provide for the protection of any confidential interest that might otherwise be affected.

(g) *Conduct of public hearing by the presiding officer.* (1) If the Comptroller determines that the hearing will be public, the presiding officer shall, prior to the commencement of the hearing, examine the documents to be introduced at the hearing, including transcripts, reports of supervisory authority, and proposed hearing testimony, and determine which sessions will be held and what materials will be produced in private. The remainder of the proceeding, including motions, pleadings, evidence and testimony, will be open to the public in accordance with the usual judicial principles of public disclosure.

(2) The presiding officer's order as to documents and sessions that may be made public is subject to interlocutory review by the Comptroller in accordance with § 19.15(e) upon the request of any party.

§ 19.44 Confidentiality of proceeding.

(a) Unless otherwise ordered by the Comptroller, any information obtained and any papers and documents filed during a proceeding are for the confidential use of the Comptroller, the presiding officer, and the parties.

(b) Unless otherwise ordered by the Comptroller, any information obtained and any papers and documents filed during any proceeding described in § 19.43(b) are available to the public.

Subpart F—Post Hearing Procedures; Recommended Decision

§ 19.50 Proposed findings and conclusions; briefs.

Within 30 days after the hearing transcript has been filed, the parties may file written proposed findings of fact, conclusions of law, and a proposed order with, and as specified by, the presiding officer. Proposed findings and conclusions must be supported by citation to any relevant authorities and refer to applicable pages or portions of the record. Briefs may be filed in support of proposed findings and conclusions either as part of the same document or in a separate document. Any proposed finding or conclusion not timely filed with the presiding officer may be regarded as waived.

§ 19.51 Submissions by limited participants.

Submissions by a person admitted as a limited participant pursuant to § 19.21 of this part are permitted under terms as determined by the presiding officer. The time for filing such submissions shall not be longer than the time allowed for parties to file proposed findings of fact and conclusions of law, pursuant to § 19.50.

§ 19.52 Recommended decision of presiding officer.

(a) *Time for filing.* Within 45 days after the expiration of time allowed for the filing of proposed findings and conclusions by the parties under § 19.50, or within such further time as the Comptroller or the Comptroller's delegate for good cause allows, the presiding officer shall file a recommended decision which must include a statement of findings of fact and conclusions of law supported by citation to any relevant authorities and references to applicable pages or portions of the record. The decision also shall include a recommended order. The presiding officer shall serve promptly a copy of the decision and order on the

parties. After filing a recommended decision, the presiding officer shall certify the complete record to the Hearing Clerk.

(b) *Effect of recommended decision.* The recommended decision becomes the decision of the Comptroller 30 days after service thereof, except:

(1) The decision is not final as to any party who has filed a notice of appeal pursuant to § 19.60; and

(2) The decision is not final as to any party if, within 30 days after receipt of the recommended decision and order, the Comptroller dockets the case for review or stays the effective date of the decision. The Hearing Clerk shall notify the parties if the Comptroller stays the effective date of the decision or accepts the recommended decision as final. In the event that the recommended decision becomes the final decision of the Comptroller with respect to a party, that party will be notified by the Hearing Clerk. The notice to the party will state that the time for filing a notice of appeal by the party has expired and that the Comptroller has determined not to initiate review of the recommended decision. The notice will specify the effective date of the final order.

Subpart G—Review by the Comptroller; Final Decision

§ 19.60 Review of recommended decision.

(a) *Notice of appeal.* Any party to a proceeding may seek review of the presiding officer's recommended decision by the Comptroller. Such review is initiated by filing a notice of review with the Hearing Clerk within 10 days after service of the recommended decision. No extension of the 10-day time limit shall be granted. The Hearing Clerk shall serve a copy of the notice of review on each party.

(b) *Briefs; time for filing.* The review process must be perfected through the filing of a brief by the party seeking review by the Comptroller. Such review brief must be filed within 30 days after the filing of the notice of review or within such further time as the Comptroller for good cause permits pursuant to § 19.5 of this part. The brief must contain a statement of the party's exceptions to the presiding officer's findings of fact and conclusions of law. Within 15 days after service of a review brief on any other party, the served party may file an answering brief. No further briefs shall be permitted by either party, except as permitted by the Comptroller for good cause shown. If a brief is not filed within the time specified, the opposing party may move for dismissal of the review.

(c) *Briefs; number of copies.* A party must file an original and five copies of all briefs submitted under this section with the Hearing Clerk and serve a copy on each party.

(d) *Briefs; content and form.* (1) The review brief should include, in the order indicated:

(i) A statement of the issues presented for review.

(ii) A statement of the case. The statement must first indicate briefly the nature of the case. There shall follow a statement of the facts relevant to the issues presented for review, with appropriate references to the record.

(iii) An argument. The argument may be preceded by a summary. The argument must contain the contentions of the party to the review with the reasons therefor, and citations to supporting authorities, statutes and parts of the record.

(iv) A conclusion. The conclusion stating the precise relief sought.

(2) The answering brief generally shall follow the same style as prescribed for the review brief but may omit a statement of the issues or of the case if the party does not dispute the issues and statement of the case contained in the review brief.

(3) Except by permission of the presiding officer, principal briefs shall not exceed 50 pages and reply briefs shall not exceed 25 pages, exclusive of pages containing the table of contents, table of citations and any addendum containing statutes, rules, regulations, etc.

(4) Any objection or issue not briefed shall be deemed waived and may not be argued before the Comptroller.

(e) *Effect of failure to file a notice of review.* For purposes of the Comptroller's review, failure to file a notice of review constitutes a waiver of the right to object to the findings and conclusions contained in the presiding officer's recommended decision.

§ 19.61 Oral arguments before the Comptroller.

Upon the Comptroller's own initiative or on the written request of any party made within the time for filing a notice of review pursuant to § 19.60, the Comptroller may order and hear oral argument on the recommended decision and the findings and conclusions on which the recommended decision is based. A written request must show good cause for oral argument and state reasons why arguments cannot be presented adequately in writing. Oral argument before the Comptroller is recorded unless otherwise ordered.

§ 19.62 Notice of submission to the Comptroller.

After the expiration of the time for filing a review brief pursuant to § 19.60(b), or after any oral argument before the Comptroller, the Hearing Clerk shall notify the parties promptly that the case has been submitted to the Comptroller for final decision. The Comptroller may request additional briefs, documents or information from the presiding officer or any party and set time limits for the submission of such documents.

§ 19.63 Remand of the recommended decision or order.

The Comptroller may for good cause shown set aside any notice that the case has been submitted for final decision and remand the recommended decision or order or any portion thereof to the presiding officer. The Comptroller shall specify the reasons for the remand, the action required of the presiding officer and the period of time for completion.

§ 19.64 Decision of the Comptroller.

The Comptroller's decisional employees may advise and assist the Comptroller in the consideration of the case. The Comptroller ordinarily will consider the whole record on review and base the determination thereon. However, the Comptroller may limit the issues to be reviewed to those findings and conclusions to which opposing arguments or exceptions have been filed by the parties. The Hearing Clerk shall serve copies of the Comptroller's final decision on the parties.

§ 19.65 Stay of proceeding or final order.

Unless specifically ordered by the Comptroller, neither an action for judicial review of the Comptroller's final decision and order nor an interlocutory appeal or collateral attack of a ruling, order, procedure, or any other aspect of a proceeding subject to this part shall operate as a stay of the proceeding or the order.

Subpart H—Cease-and-Desist Proceedings

§ 19.70 Scope.

This subpart and Subpart E of this part apply to cease-and-desist proceedings instituted by the Comptroller against a bank or any director, officer, employee, agent or other person participating in the conduct of the affairs of a bank. Subparts E and H shall not apply to the issuance of temporary cease-and-desist orders.

§ 19.71 Notice of charges and answer.

A cease-and-desist proceeding is commenced by service of a notice of charges. The notice shall fix a date, time, and place for hearing. The hearing date shall be not earlier than 30 days nor later than 60 days after service of the notice unless an earlier or later date is set by the Comptroller at the request of any party so served. A party served with a notice of charges may file an answer as prescribed by § 19.10. Any party afforded a hearing who does not appear at the hearing personally or by a duly authorized representative shall be deemed to have consented to the issuance of a cease-and-desist order.

§ 19.72 Cease-and-desist orders.

In the event of consent to the issuance of a cease-and-desist order, or if on the record filed by the presiding officer the Comptroller finds that any violation or practice specified in the notice of charges has been established, the Comptroller may issue and serve on the bank or person concerned an order to cease-and-desist from any violation or practice. The order may, by provisions which may be mandatory or otherwise, require the bank or its directors, officers, employees, agents, and other persons participating in the conduct of affairs of the bank to cease-and-desist from the same and, further, to take affirmative action to correct the conditions resulting from any such violation or practice. A cease-and-desist order is effective 30 days after service (except in the case of a cease-and-desist order issued on consent, which is effective at the time specified therein), and remains effective and enforceable as provided therein, except to such extent as it is stayed, modified, terminated, or set aside by action of the Comptroller or a reviewing court.

Subpart I—Assessment of Civil Money Penalty

§ 19.80 Scope.

This subpart and Subpart E apply to proceedings instituted by the Comptroller to assess a civil money penalty against a bank or an officer, director, employee, agent, or person participating in the conduct of the affairs of a bank, for a violation of federal banking laws and regulations.

§ 19.81 Notice of assessment; request for hearing; answer.

A civil money penalty assessment proceeding is commenced by service of a notice of assessment of civil money penalty. The notice shall contain a statement of the facts constituting the alleged violations, the amount of civil money penalty being assessed, and shall inform the bank or person being assessed of the right to request an agency hearing within 10 days after the notice is served. If a hearing is not requested within the prescribed 10-day period, the assessment constitutes a final and unappealable order. A party requesting a hearing must file an answer as prescribed in § 19.10.

§ 19.82 Notice of hearing.

A bank or person requesting a hearing will be informed by notice of the date, time, and place set for hearing. The notice of hearing shall be given at least 30 days in advance of the scheduled hearing date. Any party afforded a hearing who does not appear at the hearing personally or by a duly authorized representative shall be deemed to have consented to the issuance of an assessment order.

§ 19.83 Assessment orders.

In the event of consent, or if on the record filed by the presiding officer the Comptroller finds that any violation specified in the notice of assessment has been established, the Comptroller may serve an order of assessment of civil money penalty on the bank or person concerned. An assessment order is effective immediately on service, or on such other date as may be specified therein, and remains effective and enforceable until it is stayed, modified, terminated, or set aside by action of the Comptroller or a reviewing court.

Subpart J—Removals, Suspensions and Prohibitions Generally

§ 19.90 Scope.

This subpart and Subpart E apply to proceedings by the Comptroller to remove or suspend any director or officer of a bank or any other person participating in the conduct of the affairs of a bank, and prohibit such officer, director or other person from further participation in any manner in the conduct of the affairs of a bank. The Comptroller may by notice suspend from office or prohibit the individual from participating in bank affairs until the administrative proceedings are completed. Subparts E and J shall not apply to the issuance of a temporary suspension order.

§ 19.91 Notice of intention to remove and answer.

Removal and prohibition proceedings are commenced by the service of a notice of intention to remove from office or prohibit an individual from further participation in any manner in the affairs of a bank. The notice shall state the grounds for removal or prohibition and shall fix a time and place for hearing. The hearing date shall not be earlier than 30 days nor later than 60 days after the notice is served, unless the Comptroller sets an earlier or later date at the request of either the party served or the Attorney General of the United States. A party afforded a hearing who does not appear at the hearing personally or by a duly authorized representative shall be deemed to have consented to the issuance of an order of removal from office or prohibition from participation in the affairs of the bank.

§ 19.92 Removal or prohibition by order.

Following the administrative hearing, the findings and conclusions of the presiding officer shall be certified to the Board of Governors of the Federal Reserve System ("Board") for determination of whether any final order of removal or prohibition should be issued. If on the record filed by the presiding officer, the Board finds that the charges have been established, the Board may issue an order of removal from the office or prohibition from participation in the affairs of the bank. In the event of consent, the Comptroller may issue an order of removal from the office or prohibition from participation in the affairs of a bank. An order is effective 30 days after service (except in the case of an order issued on consent, which is effective at the time specified therein), and remains effective and enforceable until stayed, modified, terminated, or set aside by action of the Comptroller or the Board, whichever is appropriate, or a reviewing court.

Subpart K—Removals, Suspensions, and Prohibitions Where a Crime Is Charged or a Conviction Is Obtained

§ 19.100 Scope.

This subpart applies to informal hearings afforded to any officer, director or other person participating in the conduct of the affairs of a bank who has been suspended or removed from office or prohibited from further participation in bank affairs by a notice or order issued by the Comptroller.

§ 19.101 Suspension or removal.

The Comptroller may serve a notice of suspension or order of removal or prohibition on a director, officer or other person who is or has been participating in the conduct of the affairs of a bank. A copy of such notice or order shall be served on the bank, whereupon the individual involved will immediately cease service to the bank or participation in the affairs of the bank. The notice or order shall indicate the

basis for suspension, removal or prohibition and shall inform the individual of the right to request in writing, to be received by the OCC within 30 days of the individual being served with such notice or order, an opportunity to show at an informal hearing that continued service to or participation in the conduct of the affairs of the bank does not, or is not likely to, pose a threat to the interest of the bank's depositors or threaten to impair public confidence in the bank. The written request must be sent by certified mail to, or served personally with a signed receipt on, the District Administrator in the OCC district in which the bank in question is located, or to the Director, Multinational and Regional Bank Supervision, Washington, DC, if the bank is supervised by the Multinational Banking Department. The request must state with particularity the relief desired and the grounds on which that relief is based.

§ 19.102 Informal hearing.

(a) *Issuance of hearing order.* After receipt of a request for hearing, the District Administrator or the Director, Multinational and Regional Bank Supervision, whichever is appropriate, shall notify the petitioner requesting the hearing and the interested division of the OCC of the date, time and place fixed for the hearing. The hearing shall be scheduled to be held not later than 30 days from the date when a request for hearing is received unless the time is extended at the written request of the petitioner. The District Administrator or the Director, Multinational and Regional Bank Supervision, whichever is appropriate, shall extend the hearing date only for a specific period of time and shall take appropriate action to ensure that the hearing is not unduly delayed.

(b) *Appointment of presiding officer.* The Comptroller or the Comptroller's delegate shall appoint one or more agency employees to preside over the hearing. The presiding official(s) shall not have been involved in the proceeding, a factually-related proceeding or the underlying enforcement action in a prosecutorial or investigative role. The OCC's interested division shall appoint an attorney to represent the OCC at the hearing.

(c) *Waiver of oral hearing.* The petitioner may elect to have the matter determined by the presiding officer solely on the basis of written submissions. The petitioner must present the submissions to the presiding officer not later than 10 days prior to the hearing, or within such shorter time period as the presiding officer permits, along with a signed document waiving the statutory right to appear and make oral argument.

(d) *Hearing Procedures.*— (1) *Conduct of hearing.* Hearings under this subpart are not subject to the provisions of Subpart E of these rules or the adjudicative provisions of the Administrative Procedure Act (5 U.S.C. 554–557).

(2) *Powers of the presiding officer.* The presiding officer shall determine all procedural issues that are governed by this subpart and has the authority to permit or limit the number of witnesses and to impose time limitations as he or she deems reasonable. The informal hearing will not be governed by the formal rules of evidence. All oral presentations, when permitted, and documents deemed by the presiding officer to be relevant and material to the proceeding and not unduly repetitious will be considered. The presiding officer may ask questions of any person participating in the hearing, and may make any rulings reasonably necessary to facilitate the effective and efficient operation of the hearing.

(3) *Presentation.* (i) The petitioner may appear personally or through counsel at the hearing to present relevant written materials and oral argument. Copies of affidavits, memoranda or other written material to be presented at the hearing must be provided to the presiding officer and to the other parties in the oral argument not later than 10 days prior to the hearing, or within such other shorter time period as permitted by the presiding officer. (ii) If the petitioner or OCC attorney desires to present oral testimony or witnesses at the hearing, a written request must be made to the presiding officer not later than 10 days prior to the hearing, or within a shorter time period as permitted by the presiding officer. The names of proposed witnesses should be included, along with the general nature of the expected testimony, and the reasons why oral testimony is necessary. Oral testimony or witnesses generally will not be admitted unless a specific and compelling need is demonstrated. Witnesses, if admitted, shall be sworn. (iii) In deciding on any suspension, the presiding officer will not consider the ultimate question of the guilt or innocence of the individual with respect to the criminal charges which are outstanding. In deciding on any removal the presiding officer will not consider challenges to or efforts to impeach the validity of the conviction. The presiding officer may consider facts in either situation, however, which show the nature of the events on which the indictment or conviction was based.

(4) *Record.* A verbatim transcript of the proceedings may be taken if the petitioner requests a transcript and agrees to pay all expenses, or if the presiding officer determines that the nature of the case warrants a transcript. The presiding officer may order the record to be kept open for a reasonable period following the hearing, not to exceed five business days, to permit the petitioner or the OCC attorney to submit additional documents for the record. Thereafter, no further submissions will be accepted except for good cause shown.

§ 19.103 Recommended and final decisions.

(a) The presiding officer shall issue a recommended decision to the Comptroller and shall serve promptly a copy of the decision on the parties to the proceeding. The decision shall include a summary of the facts and arguments of the parties. Within 10 days of service, parties may submit to the Comptroller comments on the presiding officer's recommended decision.

(b) Within 60 days following the hearing or receipt of the petitioner's written submission, the Comptroller shall notify the petitioner by registered mail as to whether the suspension or removal from office, and prohibition from participation in any manner in the affairs of the bank will be affirmed, terminated or modified. The Comptroller's decision shall include a statement of reasons supporting the decision. The Comptroller's decision shall constitute a final and unappealable order.

(c) A finding of not guilty or other disposition of the charge on which a notice of suspension was based shall not preclude the Comptroller from thereafter instituting removal proceedings pursuant to section 8(e) of the Federal Deposit Insurance Act (12 U.S.C. 1818(e)) and Subpart J of this part.

(d) A removal or prohibition by order remains in effect until terminated by the Comptroller. A suspension or prohibition by notice remains in effect until the criminal charge is disposed of or until terminated by the Comptroller.

(e) A suspended or removed individual may petition the Comptroller to reconsider the decision any time after the expiration of a 12-month period from the date of the decision, but no petition for reconsideration may be made within 12 months of a previous petition. The petition must state with particularity the relief sought and the grounds therefor, and may be accompanied by a

supporting memorandum and any other documentation the petitioner wishes to have considered. No hearing need be granted on the petition for reconsideration.

Subpart L—Disciplinary Proceedings Involving the Federal Securities Laws

§ 19.110 Scope.

(a) This subpart and Subpart E apply to proceedings by the Comptroller to determine whether, pursuant to authority contained in section 15B(c)(5), 15C(c)(2)(A), and 17A(c)(3)(A) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. 78o–4(c)(5), 78o–5(c)(2)(A), and 78q–1(c)(3)(A), to take disciplinary action against the following:

(1) A bank which is a municipal securities dealer, or any person associated or seeking to become associated with such a municipal securities dealer;

(2) A bank which is a government securities broker or dealer, or any person associated with such government securities broker or dealer; or

(3) A bank which is a transfer agent.

(b) In addition to the issuance of disciplinary orders after opportunity for hearing, the Comptroller or the Comptroller's delegate may issue and serve any notices and temporary or permanent cease-and-desist orders and take any actions that are authorized by section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), sections 15B(c)(5), 15C(c)(2)(B), and 17A(d)(2) of the Exchange Act, and other subparts of this part against the following:

(1) The parties listed in paragraph (a) of this section; and

(2) A bank which is a clearing agency.

(c) Notwithstanding the provisions of § 19.43, proceedings commenced pursuant to this subpart shall be instituted on a public basis, unless otherwise ordered by the Comptroller. Nothing in this part impairs the powers conferred on the Comptroller by other provisions of law.

§ 19.111 Notice of charges and answer.

Proceedings are commenced by service of a notice of charges on a bank or associated person. The notice shall indicate the type of disciplinary action being contemplated and the grounds therefor and shall fix a date, time and place for hearing. The hearing shall be set for a date at least 30 days after service of the notice. A party served with a notice of charges may file an answer as prescribed in § 19.10. Any party who fails to appear at a hearing personally or by a duly authorized representative shall be deemed to have consented to the issuance of a disciplinary order.

§ 19.112 Disciplinary orders.

(a) In the event of consent, or if on the record filed by the presiding officer, the Comptroller finds that any act or omission or violation specified in the notice of charges have been established, the Comptroller or his or her delegate may serve on the bank or persons concerned a disciplinary order, as provided in the Exchange Act. The order may:

(1) Censure, limit the activities, functions or operations, or suspend or revoke the registration of a bank which is a municipal securities dealer;

(2) Censure, suspend or bar any person associated or seeking to become associated with a municipal securities dealer;

(3) Censure, limit the activities, functions or operations, or suspend or bar a bank which is a government securities broker or dealer;

(4) Censure, limit the activities, functions or operations, or suspend or bar any person associated with a government securities broker or dealer; or

(5) Deny registration to, limit the activities, functions, or operations or suspend or revoke the registration of a bank which is a transfer agent.

(b) A disciplinary order is effective when served on the party or parties involved and remains effective and enforceable until it is stayed, modified, terminated, or set aside by action of the Comptroller or a reviewing court.

Subpart M—Exemption Hearings Under Section 12(h) of the Securities Exchange Act of 1934

§ 19.120 Scope.

The rules in this subpart apply to informal hearings that may be held by the Comptroller to determine whether, pursuant to authority in sections 12(h) and (i) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. 78*l* (h) and (i), to exempt in whole or in part an issuer or a class of issuers from the provisions of section 12(g) or from section 13 or 14 of the Exchange Act, 15 U.S.C. 78*l*(g), 78m or 78n, or whether to exempt from section 16 of the Exchange Act, 15 U.S.C. 78p, any officer, director, or beneficial owner of securities of an issuer. The only issuers covered by this subpart are banks whose securities are registered pursuant to section 12(g) of the Exchange Act, I5 U.S.C. 78*l*(g). The Comptroller may deny an application for exemption without a hearing.

§ 19.121 Application for exemption.

An issuer or an individual (officer, director or shareholder) may submit a written application for an exemption order to the Securities and Corporate Practices Division, Office of the Comptroller of the Currency, Washington, DC 20219. The application must specify the type of exemption sought and the reasons therefor, including an explanation of why an exemption would not be inconsistent with the public interest or the protection of investors. The Securities and Corporate Practices Division shall inform the applicant in writing whether a hearing will be held to consider the matter.

§ 19.122 Newspaper notice.

Upon being informed that an application will be considered at a hearing, the applicant shall publish a notice one time in a newspaper of general circulation in the community where the issuer's main office is located. The notice must state:

(a) The name and title of any individual applicants;

(b) The type of exemption sought;

(c) The fact that a hearing will be held; and

(d) A statement that interested persons may submit to the Securities and Corporate Practices Division, Office of the Comptroller of the Currency, Washington, DC 20219, within 30 days from the date of the newspaper notice, written comments concerning the application and a written request for an opportunity to be heard.

The applicant shall promptly furnish a copy of the notice to the Securities and Corporate Practices Division, and to bank shareholders in conformity with § 11.503(c)(8) of this chapter.

§ 19.123 Informal hearing.

(a) *Conduct of proceeding.* The adjudicative provisions of the Administrative Procedure Act (5 U.S.C. 554–557), formal rules of evidence and Subpart E of this part do not apply to hearings conducted under this subpart.

(b) *Notice of hearing.* Following the comment period, the Comptroller shall send a notice which fixes a date, time and place for hearing to each applicant and to any person who has requested an opportunity to be heard.

(c) *Presiding officer.* The Comptroller shall designate a presiding officer to conduct the hearing. The presiding officer shall determine all procedural questions not governed by this subpart and may limit the number of witnesses and impose time and presentation limitations as are deemed reasonable.

(d) *Attendance.* The applicant and any person who has requested an opportunity to be heard may attend the hearing, with or without counsel. The hearing shall be open to the public. In addition, the applicant and any other hearing participant may introduce oral testimony through such witnesses as the presiding officer shall permit.

(e) *Order of Presentation.* (1) The applicant may present an opening statement of a length within the discretion of the presiding officer. Then each of the hearing participants, or one among them selected with the approval of the presiding officer, may present an opening statement. The opening statement should summarize concisely what the applicant and each participant intends to show.

(2) The applicant shall have an opportunity to make an oral presentation of facts and materials or submit written materials for the record. One or more of the hearing participants may make an oral presentation or a written submission.

(3) After the above presentations, the applicant, followed by one or more of the hearing participants, may make concise summary statements reviewing their position.

(f) *Witnesses.* The obtaining and use of witnesses is the responsibility of the parties afforded the hearing. All witnesses shall be present on their own volition, but any person appearing as a witness may be questioned by each applicant, any hearing participant, and the presiding officer. Witnesses shall be sworn unless otherwise directed by the presiding officer.

(g) *Evidence.* The presiding officer may exclude data or materials deemed to be improper or irrelevant. Formal rules of evidence do not apply. Documentary material must be of a size consistent with ease of handling and filing. The presiding officer may determine the number of copies that must be furnished for purposes of the hearing.

(h) *Transcript.* A transcript of each proceeding will be arranged by the OCC, with all expenses, including the furnishing of a copy to the presiding officer, being borne by the applicant.

§ 19.124 Decision of the Comptroller.

Following the conclusion of the hearing and the submission of the record to the Comptroller for decision, the Comptroller or the Comptroller's delegate shall notify the applicant and all persons who have so requested in writing of the final disposition of the application. Exemptions granted shall be in the form of an order which shall specify the type of exemption granted and its terms and conditions.

Subpart N—Formal Investigations

§ 19.130 Scope.

This subpart and 19.3(b) apply to formal investigations initiated by order of the Comptroller or the Comptroller's delegate and pertain to the exercise of powers specified in 12 U.S.C. 481, 1818(n) and 1820(c), and section 21 of the Securities Exchange Act of 1934, 15 U.S.C. 78u. This subpart does not restrict or in any way affect the authority of the Comptroller to conduct examinations into the affairs or ownership of banks and their affiliates.

§ 19.131 Confidentiality of formal investigations.

Information or documents obtained in the course of a formal investigation are confidential and shall be disclosed only in accordance with the provisions of Part 4 of this chapter.

§ 19.132 Order to conduct a formal investigation.

A formal investigation begins with the issuance of an order signed by the Comptroller or the Comptroller's delegate. The order shall designate the person or persons who will conduct the investigation. Such persons are authorized, among other things, to issue subpoenas duces tecum, to administer oaths, and receive affirmations as to any matter under investigation by the Comptroller. Upon application and for good cause shown, the Comptroller may limit, modify, or withdraw the order at any stage of the proceedings.

§ 19.133 Rights of witnesses.

(a) Any person who is compelled or requested to furnish testimony, documentary evidence, or other information with respect to any matter under formal investigation shall on request be shown the order initiating the investigation.

(b) Any person who, in a formal investigation, is compelled to appear and testify or who appears and testifies by request or permission of the Comptroller may be accompanied, represented, and advised by counsel. The right to be accompanied, represented, and advised by counsel shall mean the right of a person testifying to have an attorney present at all times while testifying and to have the attorney (1) advise the person before, during and after the conclusion of testimony, (2) question the person briefly at the conclusion of testimony to clarify any of the answers given, and (3) make summary notes during the testimony solely for the use of the person.

(c) Any person who has given or will give testimony and counsel representing the person may be excluded from the taking of testimony of any other witness.

(d) Any person who is compelled to give testimony is entitled to inspect any transcript that has been made of the testimony but may not obtain a copy if the Comptroller's representatives conducting the proceedings have cause to believe that the contents should not be disclosed pending completion of the investigation.

(e) Any designated representative conducting an investigative proceeding shall report to the Comptroller any instances where a person has been guilty of dilatory, obstructionist or insubordinate conduct during the course of the proceeding or any other instance involving a violation of this part. The Comptroller may take such action as the circumstances warrant, including exclusion of the offending individual or individuals from participation in the proceedings.

§ 19.134 Service of subpoena and payment of witness fees.

A subpoena may be served on the person named therein, or such person's attorney, by personal service or certified mail. A witness who is subpoenaed shall be paid the same expenses in the same manner as are paid witnesses in the district courts of the United States. The expenses need not be tendered at the time a subpoena is served.

Subpart O—Parties and Representational Practice Before the OCC: Standards of Conduct

§ 19.140 Scope.

This subpart contains rules relating to parties and representational practice before the OCC. This includes the imposition of sanctions by the presiding officer or the Comptroller against parties or their counsel who fail to comply with the requirements of applicable statutory requirements of this part or an applicable order. It also covers disciplinary sanctions—censure, suspension or debarment of individuals before the OCC in a representational capacity. This includes but is not limited to, the practice of attorneys and accountants. Employees of the OCC are not subject to Subpart O disciplinary proceedings. The subpart sets forth the grounds for censure, suspension or debarment from practice before the OCC and rules relating to the initiation and conduct of suspension or debarment proceedings.

§ 19.141 Sanctions relating to conduct in an administrative proceeding.

(a) *General Rule.* Appropriate sanctions may be imposed when any party or person representing a party has failed to comply with an applicable statute, regulation, or order, and that failure to comply (1) constitutes contemptuous conduct; (2) materially injures or prejudices another party in terms of substantive injury, incurring additional expenses including attorney's fees, prejudicial delay, or otherwise; (3) is a clear and unexcused violation of an applicable statute, regulation, or order; or (4) unduly delays the proceeding.

(b) *Sanctions.* Sanctions which may be imposed include any one or more of the following: (1) Issuing an order against the party; (2) rejecting or striking any testimony or documentary evidence offered, or other papers filed, by the party; (3) precluding the party from contesting specific issues or findings; (4) precluding the party from offering certain evidence or from challenging or contesting certain evidence offered by another party; (5) precluding the party from making a late filing or conditioning a late filing on any terms that are just; and (6) assessing reasonable expenses, including attorney's fees, incurred by any other party as a result of the improper action or failure to act.

(c) *Procedure for imposition of sanctions.* (1) Upon the motion of any party, or on his or her own motion, the presiding officer may impose sanctions in accordance with this section, provided that the presiding officer must submit to the Comptroller for final ruling any sanction entering a final order determining the case on the merits. (2) No sanction, other than refusal to accept late filings, authorized by this section shall be imposed without prior notice to all parties and an opportunity for any party against whom sanctions would be imposed to be heard. Such opportunity to be heard may be on such notice, and the response may be in such form, as the presiding officer directs. The opportunity to be heard may be limited to an opportunity to respond orally immediately after the act or inaction covered by this section is noted by the presiding officer. (3) Requests for the imposition of sanctions by any party, and the imposition of sanctions, shall be subject to interlocutory review pursuant to § 19.15 in the same manner as any other ruling by the presiding officer.

(d) *Section not exclusive.* Nothing in this section shall be read as precluding the presiding officer or the Comptroller from taking any other action, or imposing any restriction or sanction, authorized by applicable statute or regulation.

§ 19.142 Censure, suspension or debarment.

The Comptroller may censure an individual or suspend or debar such individual from practice before the OCC if he or she

(a) Is incompetent in representing a client's rights or interest in a significant matter before the OCC; or

(b) Engages, or has engaged, in disreputable conduct; or

(c) Refuses to comply with the rules and regulations in this part; or

(d) With intent to defraud, in any manner willfully and knowingly deceives, misleads, or threatens any client or prospective client.

The suspension or debarment of an individual shall be initiated only upon a finding by the Comptroller that the basis for the disciplinary action is sufficiently egregious.

§ 19.143 Definitions.

As used in §§ 19.142–19.151, the following terms shall have the meaning given in this section unless the content otherwise requires.

(a)(1) "Practice before the OCC" includes any matters connected with presentations to the OCC or any of its officers or employees relating to a client's rights, privileges or liabilities under laws or regulations administered by the OCC. This includes but is not limited to, the preparation of any statement, opinion or other paper or document by an attorney, accountant, or other licensed professional which is filed with or submitted to the OCC, on behalf of another person in, or in connection with, any application, notification, report or document; the representation of a person at conferences, hearings and meetings; and the transaction of other business before the OCC on behalf of another person.

(2) "Practice before the OCC" does not include work prepared by a person for a bank solely at its request for use in the ordinary course of its business.

(b) "Attorney" means any person who is a member in good standing of the bar of the highest court of any state, possession, territory, commonwealth, or the District of Columbia.

(c) "Accountant" means any person who is duly qualified to practice as a certified public accountant or a public accountant in any state, possession, territory, commonwealth, or the District of Columbia.

§ 19.144 Eligibility to practice.

(a) Attorneys. Any attorney who is qualified to practice as an attorney and is not currently under suspension or debarment pursuant to this subpart may practice before the OCC.

(b) Accountants. Any accountant who is qualified to practice as a certified public accountant or public accountant and is not currently under suspension or debarment by the OCC may practice before the OCC.

§ 19.145 Incompetence.

Incompetence in the representation of a client's rights and interests in a significant matter before the OCC is grounds for suspension or debarment. The term "incompetence" encompasses conduct that reflects a lack of the knowledge, judgment and skill that a professional would ordinarily and reasonably be expected to exercise in adequately representing the rights and interests of a client. Such conduct includes, but is not limited to:

(a) Handling a matter which the individual knows or should know that he or she is not competent to handle, without associating with a professional who is competent to handle such matter.

(b) Handling a matter without adequate preparation under the circumstances.

(c) Neglect in a matter entrusted to him or her.

§ 19.146 Disreputable conduct.

Disreputable conduct for which an individual may be censured, debarred or suspended from practice before the OCC includes, but is not limited to:

(a) Willfully violating or willfully aiding and abetting the violation of any provision of the federal banking laws or the rules and regulations thereunder or conviction of any offense involving dishonesty or breach of trust.

(b) Knowingly giving false or misleading information, or participating in any way in the giving of false information to the OCC or any officer or employee thereof, or to any tribunal authorized to pass upon matters administered by the OCC in connection with any matter pending or likely to be pending before it. The term "information" includes facts or other statements contained in testimony, financial statements, applications for enrollment, affidavits, declarations, or any other document or written or oral statement.

(c) Directly or indirectly attempting to influence, or offering or agreeing to attempt to influence, the official action of any officer or employee of the OCC by the use of threats, false accusations, duress or coercion, by the offer of any special inducement or promise of advantage or by the bestowing of any gift, favor, or thing of value.

(d) Disbarment or suspension from practice as an attorney, or debarment or

suspension from practice as a certified public accountant, or public accountant by any duly constituted authority of any state, possession, commonwealth, or the District of Columbia for the conviction of a felony or of a misdemeanor involving moral turpitude in matters relating to the supervisory responsibilities of the OCC, and the conviction has not been reversed on appeal.

(e) Knowingly aiding or abetting another individual to practice before the OCC during that individual's period of suspension, debarment, or ineligibility.

(f) Contemptuous conduct in connection with practice before the OCC, and knowingly making false accusations and statements, or circulating or publishing malicious or libelous matter.

(g) Suspension or debarment from practice before the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board, the Securities and Exchange Commission, the Commodity Futures Trading Commission, or any other federal agency based on matters relating to the supervisory responsibilities of the OCC.

(h) Willful violation of any of the regulations contained in this part.

§ 19.147 Initiation of disciplinary proceedings.

(a) *Receipt of information.* An individual, including any employee of the OCC, who has reason to believe that an individual practicing before the OCC in a representative capacity has engaged in any conduct that would serve as a basis for censure, suspension or debarment under § 19.142 may make a report thereof and forward it to the OCC or such person as may be delegated responsibility for such matters by the Comptroller.

(b) *Censure without formal proceeding.* Upon receipt of information regarding an individual's qualification to practice before the OCC, the Comptroller or the Comptroller's delegate may, after giving the individual notice and opportunity to respond, censure such individual.

(c) *Institution of formal disciplinary proceeding.* When the Comptroller or the Comptroller's delegate has reason to believe that any individual who practices before the OCC in a representative capacity has engaged in conduct that would serve as a basis for censure, suspension or debarment under § 19.142, the Comptroller or the Comptroller's delegate may, after giving the individual notice and opportunity to respond, institute a formal disciplinary proceeding against such individual. The proceeding will be initiated by a complaint which names the individual as a respondent and is signed by the Comptroller or the Comptroller's delegate. Except in cases of willfulness, or when time, the nature of the proceeding, or the public interest do not permit, a proceeding under this section shall not be instituted until the respondent has been informed, in writing, of the facts or conduct which warrant institution of a proceeding and the respondent has been accorded the opportunity to comply with all lawful requirements or take whatever action may be necessary to remedy the conduct that is the basis for the initiation of the proceeding.

§ 19.148 Conferences.

(a) *General.* The Comptroller or the Comptroller's delegate may confer with a proposed respondent concerning allegations of misconduct or other grounds for censure, debarment or suspension, regardless of whether a proceeding for debarment or suspension has been instituted. If a conference results in a stipulation in connection with a proceeding in which the individual is the respondent, the stipulation may be entered in the record at the request of either party to the proceeding.

(b) *Resignation or voluntary suspension.* In order to avoid the institution of, or a decision in, a debarment or suspension proceeding, a person who practices before the OCC may consent to suspension from practice. At the discretion of the Comptroller or the Comptroller's delegate, the individual may be suspended or debarred in accordance with the consent offered.

§ 19.149 Proceeding under this subpart.

Any hearing held under Subpart O shall be held before a presiding officer who is an administrative law judge pursuant to procedures set forth in Subparts E, F and G of this part. The Comptroller or the Comptroller's delegate shall appoint a person to represent the OCC in the hearing. Any person having prior involvement in the matter which is the basis for the suspension or debarment proceeding shall be disqualified from representing the OCC in the hearing. The hearing shall be closed to the public unless the Comptroller on his or her own initiative or on the request of a party otherwise directs. The presiding officer shall issue a recommended decision to the Comptroller who shall issue the final decision and order. The Comptroller may censure, debar or suspend an individual, or take such other disciplinary action as the Comptroller deems appropriate.

§ 19.150 Effect of suspension, debarment or censure.

(a) *Debarment.* If the final order against the respondent is for debarment, the individual will not thereafter be permitted to practice before the OCC unless permitted to do so by the Comptroller.

(b) *Suspension.* If the final order against the respondent is for suspension, the individual will not thereafter be permitted to practice before the OCC during the period of suspension.

(c) *Censure.* If the final order against the respondent is for censure, the individual may be permitted to practice before the OCC, but such individual's future representations may be subject to conditions designed to promote high standards of conduct. If a written letter of censure is issued, a copy will be maintained in the OCC's files.

(d) *Notice of debarment or suspension.* Upon the issuance of a final order for suspension or debarment, the Comptroller or the Comptroller's delegate shall give notice of the order to appropriate officers and employees of the OCC and to interested departments and agencies of the Federal Government. The Comptroller or the Comptroller's delegate shall also give notice to the appropriate authorities of the State in which any debarred or suspended individual is or was licensed to practice.

§ 19.151 Petition for reinstatement.

At the expiration of a period of time designated in the order of debarment, the Comptroller may entertain a petition for reinstatement from any person debarred from practice before the OCC. The Comptroller shall grant reinstatement only if the Comptroller is satisfied that the petitioner is likely to act in accordance with the regulations in this part, and that granting reinstatement would not be contrary to the public interest. Any request for reinstatement shall be limited to written submissions unless the Comptroller, in his or her discretion, affords the petitioner a hearing.

Date: May 18, 1989.

Robert L. Clarke,

Comptroller of the Currency.

[FR Doc. 89-12379 Filed 5-25-89; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

Kentucky Permanent Regulatory Program; Remining

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

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing the receipt of a proposed program amendment to the Kentucky permanent regulatory program (hereinafter referred to as the Kentucky program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consists of new and revised regulations designed to implement Kentucky's Revised Statute (KRS) 350.075, the remining statute enacted by the 1986 Kentucky General Assembly as Senate Bill No. 374.

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

DATES: Written comments must be received on or before 4 p.m. on June 26, 1989. If requested, a public hearing on the proposed amendment will be held ast 10 a.m. on June 20, 1989. Requests to present oral testimony at the hearing must be received on or before 4 p.m. on June 12, 1989.

ADDRESSES: Written comments and requests for a hearing should be mailed or hand delivered to: W. Hord Tipton, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504. Copies of the Kentucky program, the proposed amendment, and all written comments received in response to this notice will be available for review at the addresses listed below, Monday through Friday, from 9 a.m. to 4 p.m., excluding holidays. Each requestor may receive, free of charge, one copy of the proposed amendment by contacting OSMRE's Lexington Field Office.

Office of Surface Mining Reclamation and Enforcement, Lexington Field Office, 340 Legion Drive, Suite 28, Lexingto, Kentucky 40504, Telephone: (606) 233-7327

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

Office of Surface Mining Reclamation and Enforcement, Eastern Field Operations, Ten Parkway Center, Pittsburgh, Pennsylvania 15220, Telephone: (412) 937-2828

Department for Surface Mining Reclamation and Enforcement, #2 Hudson Hollow Complex, Frankfort, Kentucky 40601, Telephone: (502) 564-6940.

If a public hearing is held, its location will be: The Harley Hotel, 2143 North Broadway, Lexington, Kentucky 40505.

FOR FURTHER INFORMATION CONTACT: W. Hord Tipton, Director, Lexington Field Office, Telephone (606) 233-7327.

SUPPLEMENTARY INFORMATION:

I. Background

On May 18, 1982 the Secretary of the Interior conditionally approved the Kentucky program. Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval can be found in the May 18, 1982, **Federal Register** (47 FR 21404-21435). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 917.11, 917.15, 917.16, and 917.17.

II. Discussion of Amendment

By letter dated July 29, 1986, (Administrative Record No. KY-717), Kentucky submitted proposed regulations to implement Senate Bill No. 374. These regulations were intended to address the requirement at 30 CFR 917.16(c)(2) which states that Kentucky is required, prior to implementation of Senate Bill No. 374, to submit proposed regulations to the Director and to receive the Director's approval. On November 26, 1986, OSMRE announced (51 FR 42267), that Kentucky had withdrawn the proposed regulations.

On August 4, 1987, (Administrative Record No. KY-751), Kentucky resubmitted to OSMRE, pursuant to 30 CFR 732.17, a proposed amendment on remining. On September 16, 1987, (52 FR 34932-34933), OSMRE announced receipt of the resubmitted proposed amendment and procedures for a public comment period and a public hearing (Administrative Record No. KY-762). Numerous comments were received on the substance of the proposed amendment prior to the close of the public comment on October 16, 1987. No public hearing was requested and none was held.

On January 14, 1988, a meeting was held between OSMRE and the Kentucky Department for Surface Mining Reclamation and Enforcement (DSMRE) to discuss the comments received and to further clarify the proposed amendments.

By letter dated January 22, 1988, (Administrative Record No. KY-789), OSMRE informed Kentucky that the proposed amendment was less effective than the Federal regulations and could not be approved. On November 22, 1988, (Administrative Record No. KY-840), Kentucky informally submitted revised regulations on remining. In a letter dated January 12, 1989, (Administrative Record No. KY-843), OSMRE found the informal submittal to contain regulations less effective than the Federal regulations. On February 28, 1989, (Administrative Record No. KY-855), Kentucky withdrew the August 4, 1987, proposed amendment on remining.

On April 24, 1989, (Administrative Record No. KY-879), Kentucky resubmitted regulations to implement Senate Bill No. 374. This proposed amendment modifies sections of the Kentucky Administrative Regulations (KAR) at 405 KAR 8:060, and 405 KAR 20:090 as summarized below.

1. Kentucky proposes to add a new regulation 405 KAR 8:060 to set forth permit application requirements for special reclamation of abandoned mine lands. Special reclamation permits are for remining previously mined lands and for secondary coal recovery operations. The proposed rule includes sections on applicability, definitions; general provisions; environmental resources information; maps, drawings and cross-sections; and mining and reclamation plans.

2. Kentucky proposes to add a new regulation, 405 KAR 20:090, to establish performance standards to apply to special reclamation permits. The applicability section of the rule proposes that requirements of 405 KAR Chapters 16, 18, and 20 (the approved program performance standards for surface mines, underground mines, and special categories) would not apply to such lands except as specifically stated in the rule. The rule establishes hydrologic protection requirements, requirements for backfilling and grading, and revegetation standards for special reclamation permits.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSMRE is now seeking comment on whether the amendment proposed by Kentucky satisfy the applicable program approval

criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Kentucky program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commentor's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the Lexington 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 FURTHER INFORMATION CONTACT**" by 4:00 p.m. on June 12, 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 OSMRE, Lexington Field Office listed under "**ADDRESSES**" by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**" All such meetings will be open to the public and, if possible, notices of meetings will be posted in advance 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 917

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

Date: May 19, 1989.

Jesse Jackson, Jr.

Acting Assistant Director, Eastern Field Operations.

[FR Doc. 89-12629 Filed 5-25-89; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 948

West Virginia Regulatory Program; Major Regulatory Reform; and Five Conditions of Program Approval

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

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing the receipt of and requesting public comments on proposed amendments to the West Virginia regulatory program (hereinafter referred to as the West Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). West Virginia's proposed amendments constitute a major reform to the State's regulatory program. These amendments are intended to make the requirements of West Virginia's program no less effective than the Federal program. In addition, the amendments are intended to satisfy five of the remaining six conditions of program approval concerning augering on previously mined areas, coal refuse disposal, applicant violator information, coal exploration, revegetation and show cause orders.

This notice sets forth the times and locations that the West Virginia program and proposed amendments to that program are 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 p.m. on June 26, 1989. If requested, a public hearing on the proposed amendments will be held at 1 p.m. on June 15, 1989. Requests to present oral testimony at the hearing must be received on or before 4 p.m. on June 12, 1989.

ADDRESSES: Written comments should be mailed or hand delivered to the Office of Surface Mining Reclamation and Enforcement, Charleston Field Office, Attention: West Virginia Administrative Record, 603 Morris Street, Charleston, West Virginia 25301.

Copies of the proposed amendments (Administrative Record No. WV 775), the West Virginia program, and the administrative record on the West Virginia program are available for public review and copying at the OSMRE offices and the office of the State regulatory authority listed below, Monday through Friday, 9 a.m. to 4 p.m., excluding holidays.

Office of Surface Mining Reclamation and Enforcement, Charleston Field Office, 603 Morris Street, Charleston, West Virginia 25301, Telephone: (304) 347-7158

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

West Virginia Department of Energy, 1615 Washington Street, East Charleston, West Virginia 25311, Telephone: (304) 348-3500

In addition, copies of the proposed amendments are available for inspection during regular business hours at the following locations:

Office of Surface Mining Reclamation and Enforcement, Morgantown Area Office, 75 High Street, Room 229, Morgantown, West Virginia 26505, Telephone: (304) 291-4004

Office of Surface Mining Reclamation and Enforcement, Beckley Area Office, 101 Harper Park Drive, Beckley, West Virginia 25801, Telephone: (304) 255-5265

Each requester may receive, free of charge, one single copy of the proposed program amendments by contacting the OSMRE Charleston Field Office listed above.

FOR FURTHER INFORMATION CONTACT: Mr. James C. Blankenship, Jr., Director, Charleston Field Office; Office of Surface Mining Reclamation and Enforcement; 603 Morris Street; Charleston, West Virginia 25301; Telephone (304) 347-7158.

SUPPLEMENTARY INFORMATION:

I. Background on the West Virginia Program

On January 21, 1981, the Secretary of the Interior conditionally approved the West Virginia program. Information concerning the general background of the program includes the Secretary's findings, the disposition of comments, and an explanation of the initial conditions of approval of the West Virginia program. This can be found in the January 21, 1981, **Federal Register** (46 FR 5915-5956). Subsequent actions concerning proposed amendments and the conditions of approval are codified at 30 CFR 948.11, 948.12, 948.13, 948.15, and 948.16.

II. Discussion of Proposed Amendments

On August 19, 1986, pursuant to 30 CFR 732.17(f)(1), OSMRE provided West Virginia a list of 221 items (Administrative Record No. WV 711) in its program determined by OSMRE to be

less effective than the Federal requirements. On October 22, 1986, the West Virginia Department of Energy (DOE) responded to OSMRE's list of concerns. Of the 221 deficiencies, DOE indicated that 166 would require regulatory changes; 8 statutory changes; and 10 policy changes. DOE also indicated that 26 were already considered to be as effective as the Federal requirements and eleven would require detailed review. DOE suggested a schedule for addressing the deficiencies (Administrative Record No. WV 712). The proposed schedule was modified several times to establish priorities and to consider State Legislature concerns and Federal regulation amendments.

On October 20, 1987, DOE submitted proposed regulatory changes to OSMRE for informal review that were intended to satisfy all 221 regulatory reform issues.

On December 18, 1987, OSMRE advised DOE that a review identified 204 remaining issues (Administrative Record No. WV 748).

On January 18, 1988, the State provided OSMRE its revised coal refuse disposal regulations (section 22) for informal review. On January 20, 1988, DOE submitted revised regulations to the Legislative Rulemaking Review Committee which were to satisfy most of OSMRE's December 18th concerns. The West Virginia Legislature adjourned in March 1988 without adopting DOE's proposed regulations.

On July 7, 1988, DOE submitted a proposed amendment to OSMRE that contained surface mining reclamation regulations and coal refuse disposal regulations which West Virginia also filed with its Secretary of State on an emergency basis on July 15, 1988 (Administrative Record No. WV 756).

On August 9, 1988, DOE formally submitted to OSMRE a copy of its new proposed surface mining reclamation regulations. The revisions were intended to satisfy all of OSMRE's regulatory reform issues and five of the State's program conditions (Administrative Record No. WV 760).

On September 9, 1988, DOE held a public hearing on the revised legislative rules, and on September 19, 1988, DOE submitted its revised rules to the Legislative Rulemaking Review Committee for consideration. Because these regulations are intended to repeal the emergency regulations that were adopted on July 15, 1988, and subsequently revised on August 5, 1988, these regulations are commonly referred to as the "repealer package".

On November 9, 1988, OSMRE provided West Virginia with a second list of 13 State regulations which were determined to be less effective than Federal regulations promulgated between October 1, 1983, and June 15, 1988. OSMRE gave the State sixty days to submit either proposed amendments or a description of amendments to be proposed to address the identified deficiencies (Administrative Record No. WV 762).

On December 28, 1988, DOE submitted additional revisions to its regulations which were intended to satisfy OSMRE's concerns of November 9, 1988. The State included the proposed revisions in the repealer package so that they would receive consideration by the Legislative Rulemaking Review Committee during the 1989 regular session (Administrative Record No. WV 769).

On March 30, 1989, DOE provided OSMRE with fifty-four amendments to the repealer package. The proposed amendments were submitted to the State Senate Committee on Energy, Industry and Mining and approved on March 27, 1989 (Administrative Record No. WV 771).

On April 8, 1989, the West Virginia Legislature passed DOE's surface mining reclamation regulations with revisions.

On April 17, 1989, DOE provided OSMRE a copy of part of the regulations that were approved by the Legislature (Administrative Record No. WV 772). Because the submittal did not include the State's proposed regulatory reform revisions of December 28, 1988, DOE resubmitted revised regulations on April 26, 1989, which contain all amendments passed by the West Virginia Legislature (Administrative Record No. WV 775). These new regulations were submitted as a program amendment and preempt the July 7, 1988, and August 8, 1988, submittals.

On April 18, 1989, OSMRE requested that DOE delay finalizing the proposed regulations until they are approved by OSMRE. Pursuant to 30 CFR 732.17(g), no changes to regulations that make up an approved program can take effect until they are approved by OSMRE as an amendment (Administrative Record No. WV 773).

As discussed above, the State's regulations were revised to resolve over two hundred inconsistencies that were identified by OSMRE as a result of changes in Federal regulations. The revisions concern inspection and enforcement, civil penalties, small operator assistance program, blasting, prime farmland, topsoil handling, backfilling and grading, fish and wildlife protection, excess spoil disposal, bonding, revegetation, coal exploration, designating lands unsuitable, historic preservation, hydrology, geology, diversions, siltation structures and impoundments, subsidence control, coal refuse disposal, permitting and other miscellaneous provisions.

In addition, DOE substantially revised the format of its regulations. The requirements governing support facilities, surface mining and underground mining operations have been combined, and its coal refuse disposal requirements, which were separate, have been included in the revised surface coal mining reclamation regulations. On March 27, 1989, the Legislature adopted 54 amendments concerning applicability, definitions of active and inactive surface mining operations, ownership and control, head of hollow fills, readvertisement of permit applications, preplans, subsidence control plans, parks and historic lands, hydrologic information, overburden analysis, permit renewals, incidental boundary revisions, permit conditions, sediment control structures, bond forfeiture, underground discharges, steep slope mining, inactive status, backfilling and regrading, availability of permit applications, inspection frequencies and enforcement actions.

The State also made the same revisions to these regulations which were made earlier to its emergency regulations in order to satisfy five of the remaining six conditions of program approval at 30 CFR 948.11(a) concerning augering on previously mined areas, coal refuse disposal, applicant violator information, coal exploration, revegetation success standards and the issuance of show cause orders for pattern of violations. An announcement regarding these and other revisions to the emergency regulations appeared in the Federal Register on April 21, 1989 (54 FR 16136–16138). Because the State has requested that its recent submission preempt its July 7, 1988, and August 8, 1988, submittals, OSMRE's formal review will be limited to the April 26th submission. Any comments received from the public on the revised emergency regulations will be considered in light of this submission.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17, OSMRE is now seeking comments on the proposed amendments submitted by the State of West Virginia to its permanent regulatory program. Specifically, OSMRE is seeking comments on DOE's revised surface coal mining reclamation regulations, Title 38, Series 2, that were submitted on April 26, 1989 (Administrative Record No. WV 775). Comments should address whether

the proposed amendments are in accordance with SMCRA and no less effective than its implementing regulations. If approved, the amendments will become part of the West Virginia permanent regulatory 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 OSMRE Charleston Field Office will not necessarily be considered and included in the Administrative Record for the final rulemaking.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **"FOR FURTHER INFORMATION CONTACT"** by the close of business on June 12, 1989. If no one has requested an opportunity to participate in the hearing by that date, 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 to comment at a hearing, a public meeting, rather than a public hearing, may be held and the results of the meeting included in the Administrative Record.

Persons wishing to meet with OSMRE representatives to discuss the proposed amendments may request a meeting at the OSMRE Charleston Field Office listed under **"ADDRESSES"** by contacting the person listed under **"FOR FURTHER INFORMATION CONTACT"**. All such meetings are open to the public and, if possible, notices of meetings will be posted in advance 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 948

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

Date: May 19, 1989.

Jesse Jackson, Jr.

Acting Assistant Director, Eastern Field Operations.

[FR Doc. 89-12630 Filed 5-25-89; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD09 89-07]

Drawbridge Operation Regulations; Portage River, OH

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the Ottawa County Engineer, the Coast Guard is considering a change to the operating regulations governing the Monroe Street highway bridge at mile 0.4 across the Portage River in Port Clinton, Ohio, by extending the period of time the draw opens on a regulated schedule and by better defining those commercial vessels that are to be passed through the draw even though there are regulated periods in effect. This proposal is being made because of an increase in recreational vessel traffic during periods when the draw is required to open on signal at the beginning and end of the navigation season. Also, an increase in the number of charter vessels licensed to carry fifteen passengers or less is causing the bridge to open within short periods of time before and after a scheduled opening because these vessels are exempt from the hour and half-hour regulated periods. In addition, this proposed change would allow for the removal of bridgetenders from the Monroe Street bridge and the Conrail railroad bridge, mile 1.5 across the Portage River in Port Clinton, Ohio, to begin on December 1 instead of December 2. This action should accommodate the needs of vehicular traffic and should still provide for the reasonable needs of navigation.

DATE: Comments must be received on or before July 10, 1989.

ADDRESSES: Comments should be mailed to Commander (obr), Ninth Coast Guard District, 1240 East Ninth Street, Cleveland, Ohio 44199-2060. The comments and other materials referenced in this notice will be available for inspection and copying at 1240 East Ninth Street, Room 2083D, Cleveland, Ohio. Normal office hours are between the hours of 6:30 a.m. and 3:00 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Robert W. Bloom, Jr., Chief, Bridge Branch, telephone (216) 522-3993.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Ninth Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed operating regulations may be changed in light of comments received.

Drafting Information

The drafters of these regulations are Fred H. Mieser, project officer, and LCDR C.V. Mosebach, project attorney.

Discussion of Proposed Regulations

Presently, the Monroe Street bridge opens on signal at all times from May 1 through May 14 and November 1 through December 1. From May 15 through October 31, between the hours of 12 midnight and 6 a.m., the draw opens on signal; between the hours of 6 a.m. and 12 midnight, the draw is required to open on signal for the passage of recreational vessels only from three minutes before to three minutes after the hour and half-hour. From December 2 through April 30 the draws of the Monroe Street highway bridge and Conrail railroad bridge open on signal if at least a 24-hour advance notice is given. The proposed operating regulations would allow the owners of the Monroe Street bridge to extend the present regulated opening schedule from May 15 through October 31, to include the periods from May 1 through May 14 and from November 1 through November 30 by allowing them to open the draw on signal only from three minutes before to three minutes after the hour and half-hour between the hours of 6 a.m. and 12 midnight; from 12 midnight to 6 a.m. the draw would still be required to open on signal for all vessels.

The owners are also presently required to open the draw on signal as soon as possible at all times for public vessels of the United States, state and local government vessels used for public safety, commercial vessels, vessels in distress and vessels seeking shelter from rough weather. The proposed regulations would allow the owners to reduce the number of openings on signal for certain commercial vessels by only requiring such openings for commercial vessels of ten gross tons and over and vessels licensed to carry fifteen or more passengers.

These changes are being requested by the owners of the Monroe Street bridge because of an increase of tourist traffic crossing over the bridge and an increase of recreational and charter boats transiting the river. Bridgetender logs show that during the periods of time the draw is required to open on signal, from May 1 through May 14 and November 1 through December 1, there were a total of 511 openings. During the regulated period of time when the draw need open only from three minutes before to three minutes after the hour and half-hour, bridgetender logs and a list of charter vessels that transit the river show that charter vessels licensed to carry fifteen or less passengers and vessels less than ten gross tons caused the bridge to open an additional 945 times with 110 of these openings occurring within five minutes of a scheduled opening and caused additional land traffic tie-ups. Also, bridgetenders have problems determining when the fifteen passenger or less charter boats are actually being used for a charter because these boats are also personal pleasure craft.

The owners of the Monroe Street bridge requested the starting date for removal of bridgetenders during the winter months, December 2, be changed to December 1 so that their work schedule ends on the last day of November instead of the first day of a new month, December. In order to keep the starting date for the removal of bridgetenders from bridges over the Portage River consistent, the Conrail railroad bridge has been included in this portion of the proposed change.

Operating regulations identical to the ones in this proposal were issued on a temporary basis for the 1988 navigation season for evaluation purposes. The temporary regulations were published in the Ninth Coast Guard District *Local Notice to Mariners*, LNM 07/88, dated April 22, 1988, with a request for comments from the marine community. No comments were received.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulations and non-significant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact is expected to be so minimal that a full regulatory evaluation is unnecessary. Extending the regulated periods when the bridge opens on the hour and half-hour, is an extension of those days that are presently in existence during the peak navigation season and has helped in reducing the number of traffic tie-ups while still allowing recreational vessels to navigate the river.

Requiring vessels of less than 10 gross tons and vessels licensed to carry 15 passengers or less to comply with the hour and half-hour openings will relieve the problem of traffic tie-ups caused by random bridge openings for these vessels. These vessel operators will be required to make only slight adjustments to their trip schedules because many of the bridge openings for these vessels were within five minutes of a scheduled opening.

Removal of bridgetenders from the Monroe Street bridge and Conrail bridge starting December 1 instead of December 2 will relieve the owners of the burden of having a bridgetender at the bridge for an additional one day at a time when there is little or no navigation on the river. Since the impact of this proposal is expected to be so minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations as follows:

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); 33 CFR 117.43.

2. Section 117.851, paragraphs (a), (c), and (d) are revised to read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

§ 117.851 Portage River.

(a) Except as provided in paragraph (c)(1)(ii) of this section, public vessels of the United States, State or local government vessels used for public safety, commercial vessels, vessels in distress and vessels seeking shelter from rough weather shall be passed through the bridges listed in this section as soon as possible.

* * * * *

(c) The draws of the Monroe Street bridge, mile 0.4 at Port Clinton, shall open as follows:

(1) From May 1 through November 30

(i) Between the hours of 12 midnight and 6 a.m., the draw shall open on signal.

(ii) Between the hours of 6 a.m. and 12 midnight, the draw shall open on signal; except that, for pleasure craft, vessels licensed to carry fifteen or less passengers and commercial vessels of less than ten gross tons, the draw need open only from three minutes before to three minutes after the hour and half-hour.

(2) From December 1 through April 30, the draw shall open on signal if at least 24 hours notice is given.

(d) The draw of the Conrail bridge, mile 1.5 at Port Clinton, shall open on signal; except that, from December 1 through April 30, the draw shall open on signal if at least 24 hours notice is given.

Dated: May 12, 1989.

D.H. Ramsden,

Captain, U.S. Coast Guard, Commander, Ninth Coast Guard District, Acting.

[FR Doc. 89–12600 Filed 5-25-89; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA-340-09-4333-11]

43 CFR Part 8370

Use Authorizations; Special Recreation Permits, Other Than on Developed Recreation Sites; Proposed Adjustment in Fees

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed fee adjustment for commercial outfitters and guides.

SUMMARY: The Bureau of Land Management (BLM) hereby gives notice that it is proposing to adjust the minimum annual fee for commercial special recreation permittees (outfitters and guides) on public lands administered by the BLM every 3 years based upon the Implicit Price Deflator Index (IPDI). The IPDI is published every February as a part of the "Economic Report of the President" to

Congress. The IPDI is also cited monthly in the "Survey of Current Business," a periodical available in most regional, university, and local government depository libraries. The intended effect is to ensure that fees accurately reflect fair market value as required by regulation.

DATE: Comments must be received on or before July 7, 1989.

ADDRESS: Send written comments to Director (340), Room 3660, Main Interior Building, Bureau of Land Management, 1800 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Gary G. Marsh, Recreation and Cultural Resources Branch, (202) 343–9353.

SUPPLEMENTARY INFORMATION: In 1984 (49 FR 5300 and 49 FR 34332), the BLM announced its final regulations and policy concerning special recreation permits for individuals or organizations conducting commercial, competitive, and other uses on the Public Lands and related waters. On September 9, 1987, the BLM incorporated its commercial fee and permit policy in the BLM 8372 Manual and Handbook (H–8372–1, Special Recreation Permits for Commercial Use). As a part of this policy, the BLM established a new system for determining the annual administrative cost to issue permits and provide a fair return to the government for the privilege of conducting commercial recreation activities on the Public Lands and related waters. The fee system bases fees on either a minimum annual fee or 3 percent of the commercial permittee's gross revenue derived from the activity (allowing certain discounts for lodging and transportation), whichever is greater. Office of Management and Budget Circular A–25 specifies that, "Where federally owned resources or property are leased or sold, a fair market value should be obtained." Fees based on revenue and charges to the customer are self-adjusting.

When the fee system was adopted in 1984, the minimum annual fee for a permit was established as $100. It was reduced to $50 on September 9, 1987, to be consistent with the Forest Service (FS) and encourage one-stop shopping (either agency, FS or BLM, can issue the permit) for commercial outfitters who use adjacent BLM/FS lands and waters. The BLM established a site reservation fee of $100 on September 9, 1987, with the issuance of the commercial permit Manual and Handbook. Since 1984, inflation has devalued these fixed fee amounts. Therefore, it is necessary to adjust the minimum and site reservation fees.

The BLM is proposing, along with the FS, that these fees be increased based on the change in the IPDI. Beginning with fees due after March 1990, adjustments will be made in this manner every 3 years using 1984 as a base year. It is proposed that fees will be rounded to the nearest $10.

Because of many areas of adjacent jurisdiction, the BLM and FS coordinate their policies for managing outfitting and guiding and other activities of their recreation service partners. The FS has published its proposal at 54 FR 11962, dated March 23, 1989.

The BLM and FS periodically meet with representatives of the National Forest Recreation Association, North American Outfitters Association, and the Western River Guides Association to discuss outfitting and guiding policy and management. These proposed fee increases were presented at a meeting with representatives of these associations in November 1988.

These changes in the minimum fee and charge for a reserved use of a site would be issued as an amendment to the BLM 8372 Manual and Handbook H–8372–1, Special Recreation Permits For Commercial Use.

Date: May 15, 1989.

Robert F. Burford,

Director.

[FR Doc. 89–12576 Filed 5–26–89; 8:45 am]

BILLING CODE 4310–84–M

LEGAL SERVICES CORPORATION

45 CFR Part 1633

Competitive Bidding for Grants

AGENCY: Legal Services Corporation.

ACTION: Advance notice of proposed rulemaking and request for comment.

SUMMARY: The Legal Services Corporation (LSC or Corporation) is considering establishing a system of competitive grant awards with which to provide legal assistance to eligible clients in civil cases. LSC's current appropriations act, Pub. L. 100–459, 102 Stat. 2227 (1988), mandates that a Board of Directors, appointed by the President of the United States and confirmed by the Senate, develop and implement a competitive grant award system to take effect after September 30, 1989. In order to facilitate timely compliance with the mandate by Congress, after a Board of Directors is appointed and confirmed, LSC is publishing for discussion a draft proposed regulation that would govern the implementation of the competitive award system.

The Corporation hopes to widen the field of potential legal services providers in order to ensure that economic and effective legal assistance is available to needy clients.

DATES: Comments should be received by June 9, 1989, in order to be considered at a June 12–13 meeting of the LSC Board's Committee for the Provision of the Delivery of Legal Services. Any comments received after June 9 will also be considered by the Corporation, but will not be addressed at the June 12–13 meeting in Chicago.

ADDRESS: Comments should be addressed to timothy B. Shea, General Counsel, Legal Services Corporation, 400 Virginia Avenue, SW., Washington, DC 20024–2751.

The meeting of the Committee for the Provision of the Delivery of Legal Services will be held at the Hyatt Regency Woodfield, 1800 East Golf Road, Schaumburg, Illinois.

FOR FURTHER INFORMATION CONTACT: Charles Moses, Office of Field Services, 202–863–1837.

SUPPLEMENTARY INFORMATION: The Legal Services Corporation is issuing this Advance Notice of Proposed Rulemaking in order to obtain comments on a draft regulation governing the competitive award system.

The draft regulation, published for preliminary comment, could be used to implement a competitive award system when a Board of Directors has been appointed by the President and confirmed by the Senate. The Corporation proposes a three-year funding cycle that would be implemented over a three-year transition period. In order to ensure continuous coverage of all existing service areas, a transition grant would be made to all current providers. Grants from 3 to 39 months would be made to current services providers in order to effect a smooth transition to the competitive system. The duration of grants to or contracts with current grantees or contractors would depend on the date LSC chooses to implement the competitive award system in each particular service area.

As the competitive award system is implemented in a particular service area, the Corporation will issue a solicitation for applications to provide legal services in that area. All applicable selection criteria will appear in the solicitation. At a minimum, selection criteria will include caseload, specific objectives, project design, management structure, organizational capability, and reasonable budget. Based on the applications and the peer

review process, two or more applicants may be awarded grants or contracts to provide services within a given service area. Available funding for that service area would be apportioned among the successful applicants.

For the past five years, LSC has successfully used a peer review process to make funding recommendations to the LSC President in connection with law school clinic grants. In the draft regulation, LSC also proposes a peer review process to consider all applications under the competitive award system for grants or contracts made pursuant to section 1006(a) of the LSC Act. At the conclusion of the peer review process, LSC staff would negotiate grtants or contracts with one or more applicants receiving the highest summary ratings from the applicable peer review panel. The final funding decision would be made by the President of LSC.

LSC has scheduled a public hearing at the Hyatt Regency Woodfield, Regency Ballroom, 1800 East Golf Road, Schaumburg, Illinois, on June 12–13, 1989, to receive comments on this proposal. anyone wishing to offer public comment at the hearing should contact Maureen Bozell, Corporation Secretary, at (202) 963–1839.

For the reasons set out above, 45 C.F.R. Chapter XVI is proposed to be amended by adding Part 1633 as follows:

List of Subjects in 45 CFR Part 1633

Grants programs—law.

PART 1633—COMPETITION AND PEER REVIEW PROCEDURES

Subpart A—Competition

Sec.

1633.1 Purpose and applicability.
1633.2 Definitions.
1633.3 Funding of recipients.
1633.4 Transition to competitive grant award system.
1633.5 Selection criteria.
1633.6 Additional competitive application requirements and procedures.

Subpart B—Peer Review and Negotiation

1633.7 Purpose and applicability.
1633.8 Peer review procedures.
1633.9 Use of peer review.
1633.10 Peer review methods.
1633.11 Number of peer reviewers.
1633.12 Use of Legal Services Corporation staff.
1633.13 Selection of reviewers.
1633.14 Qualifications of peer reviewers.
1633.15 Management of peer reviews.
1633.16 Compensation.
1633.17 Delegation of authority.
1633.18 Negotiation.
1633.19 Final review.

Authority: 42 U.S.C. 2996 et seq.; Public Law 100–459.

Subpart A—Competition

§ 1633.1 Purpose and applicability.

(a) The Legal Services Corporation Act charges the Corporation with the responsibility to provide financial support for legal assistance to eligible clients in civil cases. 42 U.S.C. 2996b (a); 42 U.S.C. 2996a (3), (5).

(b) This regulation governs the selection of grantees or contractors under the provision of Public Law 100–459 that required a system of competitive awards for Corporation funds. Private attorneys, including law firms that are professional corporations, professional associations, or nonprofit corporations, are eligible to apply for grants or contracts to provide legal services under the competitive award system.

(c) This subpart governs all grants, contracts, cooperative agreements, and other arrangements for the provision of legal assistance under sections 1006(a)(1) or 1006(a)(3) of the Legal Services Corporation Act (42 U.S.C. 2996e(a)(1) or 42 U.S.C 2996e (a)(3)) that are approved for funding by the Corporation's president.

§ 1633.2 Definitions.

The following definitions shall apply to this part:

(a) "Applicant" means an entity or individual who prepares and forwards to the Corporation an application in response to a competitive solicitation. An applicant must be responsible and responsible in order to be considered for the award of a competitive grant or contract.

(b) "Peer review" means an evaluation by a group of experts of the technical and programmatic merit of an application for a grant or contract to provide legal assistance to eligible poor individuals. This review is based on selection criteria established under Subpart A of this Part.

(c) "Project" means a grant or contract for the provision of legal assistance to eligible clients within a particular service area.

(d) "Provider" means an applicant who is awarded a grant or contract to deliver civil legal services to eligible clients within a service area.

(e) "Responsive" means that an applicant that files an application in response to a competitive solicitation has addressed all the requirements stated in the solicitation. As stated in § 1633.6(f), an applicant filing an application needing minor or technical correction will be given an opportunity to make appropriate corrections.

(f) "Responsible" means that an applicant can demonstrate that it has, or reasonably can be expected to acquire, the financial, managerial, and staff resources to support the economic and effective delivery of legal services to eligible clients.

(g) "Service area" means a geographic area that has been determined by the Corporation to be an appropriate area for the award of a grant or contract under this Part.

(h) "Solicitation" means a notice of a project announcement or request for proposals issued by the Corporation stating that funding for a service area is available for competitive award to responsible and responsive applicants.

§ 1633.3 Funding of recipients.

(a) *Funding cycle.* After the intitial transition period, contracts or grants made pursuant to section 1006(a)(1) or 1006(a)(3) of the Legal Services Corporation Act (42 U.S.C. 2996e(a)(1) or 42 U.S.C. 2996e(a)(3)) will be made for a period of three years. Approximately one-third of the Corporation's service areas shall be subject to competition each year. The competitive funding cycle shall be repeated every three years and each service area shall again be subject to competition as part of the next competitive funding cycle.

(b) *Equalized funding of service areas.* After the results of the 1990 census have been reported, funding of service areas shall be equalized based on the per capita poverty population in each service area.

(c) *Multiple awards within a service area.* Two or more providers may be awarded a grant to provide legal assistance within a service area. After the peer review process has been completed, the Corporation may decide to fund more than one provider in a given service area. If the Corporation decides to fund more than one provider, the funds available for that service area shall be apportioned among the successful applicants.

(d) *Revision of service areas.* In the course of the implementation of the competitive award system, current service areas may be revised in order to facilitate the economic and effective delivery of legal assistance. Revisions of current service areas may be accomplished through the subdivision of a service area or the consolidation, in whole or in part, of two or more service areas.

§ 1633.4 Transition to the competitive grant award system.

(a) A provider of legal services receiving financial assistance under sections 1006(a)(1) or 1006(a)(3) of the Legal Services Corporation Act shall

continue to receive funding under the present system until a competitive award system is implemented in the provider's service area.

(b) During the first year in which grants and contracts for the provision of legal services are awarded competitively, the corporation intends to make available approximately one-third of its service areas for the competitive award of grants and contracts. The Corporation plans to make twelve groups of competitive grant awards each year, with one group of awards made each month. To ensure continuous coverage of each service area, the Corporation shall make one grant to each existing provider at the outset of the competitive cycle, which may be extended to the date on which the winner or winners of the competition to provide service in that service area will begin operation.

(c) Three-year grants shall be awarded after the conclusion of the competition for each service area. Funding for such grants beyond the then current fiscal year shall be subject to the availability of Federal funds.

(d) The order of competition of service areas shall be published prior to the implementation of the competitive award system. The geographic size, amount of funding, and poverty population of a given service area shall be published in connection with the competition for the selection of the provider(s) of legal services in that service area.

§ 1633.5 Selection criteria.

(a) All applications made in response to a solicitation for a competitive award under this part shall, at a minimum, be subject to review based on the extent to which they meet the following general selection criteria;

(1) The types of cases to be handled by the provider are clearly stated and are appropriate cases to be undertaken by a legal services provider;

(2) The objectives of the proposed project are clearly defined and specify a realistic number of cases that may be handled during the term of the contract or grant;

(3) The project design is sound in that it contains programmatic elements linked directly to the provision of legal assistance to eligible clients;

(4) The project management structure is adequate to perform the tasks stipulated in the solicitation;

(5) Organizational capability is demonstrated at a level sufficient to successfully support the project; and

(6) Budgeted costs are reasonable in comparison to the activities proposed to be undertaken, particularly personnel and administrative costs.

(b) The general selection criteria set forth under subsection (a) may be supplemented for each announced competitive project by specific selection criteria applicable to the particular project. Such announcements may also modify the general selection criteria to provide greater specificity or otherwise tailor the general selection criteria to a given project. The relative weight (point value) of each selection criterion shall be specified in the solicitation.

§ 1633.6 Additional competitive application requirements and procedures.

(a) *Applications for grants.* Any applicant seeking financial assistance must submit on or before the submission deadline established in the solicitation, an application containing information in accordance with the forms and instructions prescribed in the solicitation. The application shall be executed by the applicant or an official or representative of the applicant duly authorized to make the application and to assume on behalf of the applicant the obligations imposed by law, applicable regulations, and any additional terms and conditions stipulated in the solicitation. The Corporation may require any applicant to submit a preliminary proposal for review and approval prior to the acceptance of an application. *See* § 1633.9(a).

(b) *Cooperative arrangements.* (1) Eligible parties seeking financial assistance may enter into cooperative arrangements with other eligible parties, including those in another State, to apply for financial assistance.

(2) A joint application made by two or more applicants for financial assistance under this subpart may have separate budgets corresponding to the projects, services, and activities to be performed by each of the joint applicants or may have a combined budget. If joint applications present separate budgets, the Corporation may make separate awards, or may award a single assistance grant or contract authorizing separate amounts for each of the joint applicants.

(c) *Evaluation of applications submitted for competitive award of grant or contract.* All applications received under this subpart shall be evaluated by the President through officers, employees, and/or such experts or consultants engaged for this purpose. The solicitation shall clearly state the review procedures to be used in connection with any competitive awards to be made in response to a competitive solicitation.

(d) *Applicant's performance on prior award.* If the applicant has previously received an award from LSC or a Federal agency, the applicant's compliance or noncompliance with the requirements of such prior award, as reflected in past written evaluation reports and memoranda on performance or other evidence, and the completeness of application in connection with such award may be considered.

(e) *Applicants' conferences.* Approximately 21 days prior to the final date for submission of applications, the Corporation hold a conference for prospective applicants. The conference may be held in a major urban area within the service area.

(f) *Technical or minor noncompliance with requirements in applications.* In the event that an application substantially conforms to the requirements stated in § 1633.5, but reflects a minor or technical discrepancy, the applicant may be advised of such discrepancy and be given seven (7) days to amend the application. If the applicant does not file an amended application within seven days of the applicant's receipt of notice, the application may be rejected.

(g) *Disposition of applications.* On the basis of the competitive review procedures carried out under this part, the President may—

(1) Approve the application for funding, in whole or in part, subject to such conditions as the President deems necessary or desirable for the completion of the approved project;

(2) Determine that although the application is of acceptable quality for funding, in that it meets minimum criteria, the application should be disapproved for funding because it does not rank sufficiently high, in relation to other applications approved for funding, to qualify for an award based on the level of funding allocated to the Legal Services Corporation, or

(3) Reject the application for failure to meet the applicable selection criteria at a sufficiently high level to justify an award of funds, or for any other reason that the President determines adversely impacts upon the applicant's capability to successfully carry out the tasks stipulated in the competitive solicitation.

(h) *Notification of disposition.* The President shall notify the applicant in writing as to the disposition of the application. A signed Grant/Contract form shall be issued to notify the applicant of the approval of a project application.

(i) *Effective date of approved grant.* Financial assistance made under the LSC Act is normally available only to pay obligations incurred subsequent to

the effective date of a grant award. The effective date of the grant award shall be set forth in the Grant/Contract form. Recipients may be reimbursed for costs resulting from obligations incurred before the effective date of the grant award if such costs are authorized by the President in the notification of grant award, or subsequently in writing, and may otherwise be allowable as costs of the grant award under applicable guidelines, regulations, and grant terms and conditions.

Subpart B—Peer Review and Negotiation

§ 1633.7 Purpose and applicability.

Peer reviewers shall determine and select the applications that merit negotiation. LSC staff may negotiate the final details with the selected applicants and make recommendations to the President. Funding decisions rest solely with the President.

§ 1633.8 Peer review procedures.

The LSC peer review process is set forth in the LSC Competition Manual. [This Manual is currently under development. In addition to specifying substantive and procedural matters related to the peer review process, the Manual addresses such issues as standards of conduct, conflict of interest, and compensation of peer reviewers.] The peer review process shall be used in formulating recommendations for making grant awards subject to this subpart and shall be implemented in a manner consistent with this subpart.

§ 1633.9 Use of peer review.

(a) Each solicitation shall identify the peer review procedures and selection criteria to be followed with regard to each competitive solicitation. In instances in which a large number of applications are expected, preliminary proposals may be required at the President's option. Preliminary proposals may be reviewed by qualified LSC staff to eliminate those preapplications that fail to meet minimum project requirements, as specified in the solicitation, or clearly lack sufficient merit to qualify for consideration as potential candidates for funding. Where appropriate, the President may subject both preliminary proposals and formal applications to the peer review process.

(b) When applications are required in response to a solicitation, an initial review may be conducted by qualified LSC staff, in order to eliminate from the peer review process those aplications that do not meet minimum project requirements. All such minimum requirements shall be specified in the solicitation. Applicants determined to be qualified and eligible for further consideration shall then be subject to the peer review process. *See* § 1633.6(f).

(c) All grant applications that go through a particular peer review process shall receive numerical scores, which are derived from a compilation of points assigned by individual peer reviewers. Points assigned are based on evaluations of the applications, which are made using the selection criteria. The numerical scores are then used as a basis for assignment to a summary rating category. Within the summary rating category, the applications receive a ranking based on the numerical scores.

(d) Peer review recommendations in conjunction with the results of internal review and any necessary supplementary review, shall be considered by the President in evaluating competing applications and the selection of applicants for funding.

(e) Comments on applications may also be requested from appropriate specialists and consultants.

(f) Peer review recommendations are advisory only. While the President shall give due weight to Peer Review Panel recommendations, the final decision to award a grant is within the discretion of the President. However, should the President determine to fund an applicant that has not been assigned to the highest category of the summary ratings, the President shall prepare a written justification of his decision.

§ 1633.10 Peer review methods.

(a) Peer review may be conducted at meetings of peer reviewers held under LSC oversight, through reviews conducted by mail, or a combination of the two. Where appropriate, site visits may also be employed. The primary method of peer review anticipated for each announced competitive project, including all evaluation criteria to be used by peer reviewers, shall be specified in each competitive solicitation. Peer review recommendations may consist of written comments provided in response to the general selection criteria established under Subpart A of this part and any project specific selection criteria stipulated in the competitive solicitation, together with the assignment of a summary rating containing numerical values that establish relative rankings among applications.

(b) For peer review conducted through meetings, peer review panelists shall receive instruction (including review of the LSC Manual) from the LSC program manager, who may then oversee the conduct of individual and group review sessions, as appropriate. When time, cost, or other factors preclude the convening of a peer review panel, reviews may be conducted by mail. For competitive projects, mail reviews will be used only when the President makes a written determination of necessity.

§ 1633.11 Number of peer reviewers.

The number of peer reviewers may vary from project to project (as affected by the volume of applications anticipated or received). LSC shall select a minimum of three peer reviewers for each project review in order to insure a diversity of backgrounds and perspectives. In no case shall applications be reviewed by fewer than three peer reviewers.

§ 1633.12 Use of Legal Services Corporation staff.

LSC may use qualified LSC staff as technical and internal reviewers. Technical reviewers shall determine applicant complianace with basic progammatic and statutory requirements and responsiveness to the solicitation. Internal reviewers shall review the results of peer reviews and provide overall project evaluation and recommendations to the President.

§ 1633.13 Selection of reviewers.

The President shall make the final selection of both peer reviewers and internal reviewers. The selection process for peer reviewers shall be set forth in the LSC Competition Manual.

§ 1633.13 Qualifications of peer reviewers.

The general criteria to be used by the President in the selection of qualified peer reviewers are:

(a) a generalized knowledge of the practice of law or related fields, or

(b) specialized knowledge in areas or fields addressed by the applicants to be reviewed in connection with a particular grant award.

Additional details shall be set forth in the LSC Competition Manual.

§ 1633.15 Management of peer reviews.

A technical support contractor may assist the LSC program manager in managing the peer review process.

§ 1633.16 Compensation.

All peer reviewers shall be eligible to be paid an appropriate consulting fee. Detailed information shall be provided in the LSC Competition Manual.

§ 1633.17 Delegation of authority.

The President may delegate all of the authority to select peer reviewers to the

President's designee but may not delegate authority to select the successful applicant for award of a grant or contract. Authority to select peer reviewers may be further delegated by the President's designee, with the President's approval.

§ 1633.18 Negotiation.

At the conclusion of the peer review process, the President shall be advised of the applicants that have received the highest scores. After the President's review, LSC staff shall be directed to enter into negotiation with these applicants. Among the negotiable items are the number and types of tasks to be performed under the grant or contract. Compliance with the provisions of the LSC Act and the LSC regulations is not subject to negotiation.

§ 1633.19 Final review.

After negotiation, the LSC staff shall recommend the award of a grant or contract to an applicant. The proposed grant or contract shall be presented to the President for his final approval.

Date: May 22, 1989.

Timothy B. Shea,

General Counsel.

[FR Doc. 89-12565 Filed 5-25-89; 8:45 am]

BILLING CODE 7050-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[BC Docket No. 78-309]

Television Broadcast Stations; Network Representation Rules

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; petition for reconsideration.

SUMMARY: This Order addresses a Petition for Reconsideration filed by Seven Hills Television Co. (Seven Hills), licensee of Station KTVW-TV, Phoenix, Arizona. The Order finds that in light of a contract signed by Seven Hills to sell its assets to Hallmark Acquisitions, Inc., KTVW-TV will become an "owned and operated" network affiliate, not subject to the prohibitions of the network representation rule contained in 47 CFR 74.658(i). Therefore, subject to final Commission approval of Seven Hills' assignment application and consummation of the proposed assignment to Hallmark Acquisitions, Inc., the Petition for Reconsideration is dismissed.

EFFECTIVE DATE: May 26, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Tatsu Kondo, Policy and Rules Division, (202) 632-6302.

SUPPLEMENTARY INFORMATION: By the Chief, Mass Media Bureau:

1. On May 27, 1988, Seven Hills Television Co. (Seven Hills), licensee of Station KTVW-TV, Phoenix, Arizona, filed a Petition for Reconsideration of the *Further Notice of Proposed Rule Making* in BC Docket No. 78-309, 3 FCC Rcd 2746 (1988) ("*Further Notice*"). In its petition, Seven Hills requests reconsideration of that part of the Commission's actions that excludes Station KTVW-TV from the grant to all other Univision, Inc. (Univision) affiliates of an exemption from the "network representation rule" during the pendency of the above-captioned rule making proceeding.

2. This proceeding was originally commenced to explore possible changes in the Commission's television network representation rule.[1] This rule prohibits television stations, other than those "owned and operated" by a television network, from being represented by their network in the non-network (spot) sales market. At that time, the Commission granted a "temporary" waiver of the network representation rule to affiliates of the Spanish International Network (now known as Univision) pending resolution of the proceeding.

3. Subsequently, the Commission initiated a *Further Notice* to consider, *inter alia*, whether additional options should be considered in light of recent developments. In issuing the *Further Notice*, it found that the temporary waivers relating to the television stations licensed to Spanish International Communications Corporation (SICC) and Bahia de San Francisco Television Co. (Bahia) had become moot because these stations were now "owned and operated" network affiliates of Univision, which had been purchased by Hallmark Cards, Inc. (Hallmark) and thus, no longer subject to the network representation rule.[2] With respect to Seven Hills' waiver status, the Commission stated that final disposition of this matter would be taken in the context of any adjudicatory appeals to the Commission.[3]

4. On May 1, 1989, an order was issued by the General Counsel terminating the adjudicatory proceedings in MM Docket Nos. 83-657 and 84-835 relating to Seven Hills' renewal applications in light of a contract signed by Seven Hills to sell its assets to Hallmark and an application for FCC consent to assignment of KTVW-TV to Hallmark Acquisitions, Inc., a subsidiary of Hallmark.[4] As a consequence, like the other Univision television stations noted above KTVW-TV will become, subject to final Commission approval, an "owned and operated" network affiliate. Therefore, in view of the foregoing and consistent with our previous action in the *Further Notice*, we likewise find that KTVW-TV, subject to final approval of its alignment application and consummation of the proposed assignment of Seven Hills' assets to Hallmark, should also be exempt from the provisions of the network representation provisions of § 73.658(i).

5. Accordingly, *it is ordered*, That, subject to final Commission approval of Seven Hills' assignment application and consummation of the proposed assignment of Seven Hills' assets to Hallmark Acquisitions, Inc., a subsidiary of Hallmark Cards, Inc., the Petition for Reconsideration filed by Seven Hills *is hereby dismissed*. This action is taken pursuant to authority granted under section 4(i), 303(r) of the Communications Act of 1934, as amended, and § 0.283 of the Commission's Rules.

Federal Communications Commission.

Alex D. Felker,

Chief, Mass Media Bureau.

[FR Doc. 89-12583 Filed 5-25-89; 8:45 am]

BILLING CODE 6712-01-M

[1] *See* § 73.658(i) of the Commission's Rules.

[2] *Further Notice*, 3 FCC Rcd at 2755 n.47.

[3] *Id.* at 2757 n.77. The Commission noted that Seven Hills was not one of the original stations granted a waiver and had been required by a Review Board decision to cease operating as if it had a waiver for its station. *Id.* at 2755 n.37.

[4] *See Order in MM Docket Nos. 83-657 and 84-835*, FCC 89I-32 (released May 1, 1989).

Notices

Federal Register
Vol. 54, No. 101
Friday, May 26, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Kings, South Fork Kings, and Middle Fork Kings Wild and Scenic Rivers; Boundary Establishment

AGENCY: Forest Service, Agriculture

ACTION: Notice of availability

SUMMARY: The boundaries and classifications of segments of the Kings, South Fork Kings, and Middle Fork Kings Wild and Scenic Rivers have been established. The boundary descriptions and classifications of the rivers are available at the following Forest Service locations: Office of the Chief of the Forest Service, 12th and Independence Avenue, SW., Washington, DC 20250; Sierra National Forest, Federal Building, 1130 "O" Street, Fresno, CA 93721; Sequoia National Forest, 900 W. Grand Avenue, Porterville, CA 93257; and Pacific Southwest Regional Office, 630 Sansome Street, San Francisco, CA 94111.

Joyce T. Muraoka,

Director, Planning and Budget.

[FR Doc. 89-12619 Filed 5-25-89; 8:45 am]

BILLING CODE 3410-11-M

Soil Conservation Service

Woodrow Watershed, South Carolina; Environmental Statements

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council of Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 65), the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Woodrow Watershed, Lee County, South Carolina.

FOR FURTHER INFORMATION CONTACT: Billy Abercrombie, State Conservationist, Soil Conservation Service, 1835 Assembly Street, Room 950, Columbia, South Carolina 29201, Telephone (803) 765-5681.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicated that the project will not cause significant local, regional or national impacts on the environment. As a result of these findings, Billy Abercrombie, State Conservationist, has determined that the preparation and review of an environmental statement is not needed for this project.

The project concerns a plan for watershed protection. The planned works of improvement include accelerated technical and financial assistance to apply land treatment measures on 458 acres of cropland, and the construction of 1.8 miles of flood prevention grassed waterways.

A copy of the Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment is on file and may be reviewed by contacting Billy Abercrombie.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the Federal Register.

Billy Abercrombie,

State Conservationist.

Date: May 15, 1989.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials.)

[FR Doc. 89-12607 Filed 5-25-89; 8:45 am]

BILLING CODE 3410-16-M

BARRY GOLDWATER SCHOLARSHIP AND EXCELLENCE IN EDUCATION FOUNDATION

Agency Information Collection Under OMB Review

AGENCY: Barry Goldwater Scholarship and Excellence in Education Foundation.

ACTION: Notice.

SUMMARY: The Barry Goldwater Scholarship and Excellence in Education Foundation has sent to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act for review and approval.

DATE: Comments on this information must be submitted on or before June 5, 1989.

ADDRESSES: Send comments to Mr. Gerald J. Smith, Executive Secretary, Barry Goldwater Scholarship and Excellence in Education Foundation, 499 South Capitol Street, SW., Suite 405, Washington, DC 20003-4013, (202+755-2312) and Mr. Jim Houser, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Room 3208, Washington, DC 20503, (202+395-7316).

FOR FURTHER INFORMATION CONTACT: Mr. Gerald J. Smith, Executive Secretary, Barry Goldwater Scholarship and Excellence in Education Foundation, 499 South Capitol Street, SW., Suite 405, Washington, DC 20003-4013, (202+755-2312).

SUPPLEMENTARY INFORMATION: This information Collection Form will be used by the Barry Goldwater Scholarship and Excellence in Education Foundation to verify a Goldwater Scholarship recipient's academic standing and to authorize the disbursement of the financial award to the scholar.

Burden Statement. The estimated public reporting burden for this collection of information is 45 minutes per respondent semiannually. This estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining and reviewing the colleciton of information.

Respondents: Goldwater Scholarship Recipients

Estimated Number of Respondents: 100
Responses: 2 per school year
Total Burden Hours: 150 per year
Recording Burden
Recordkeepers: 1
Total Burden Hours: 50

Gerald J. Smith,
Executive Secretary.

[FR Doc. 89-12575 Filed 5-25-89; 8:46 am]
BILLING CODE 4738-91-M

COMMISSION ON CIVIL RIGHTS

Agenda of Asian Roundtable Conference

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that the United States Commission on Civil Rights will convene an Asian Roundtable Conference at 9:00 a.m. on May 27, 1989, and adjourn at 5:00 p.m. on May 27, 1989, in the Westchase Ballroom of Westchase Hilton Hotel, 9999 Westheimer, Houston, Texas 77042. The purpose of the conference is to elicit input to help set the Commission's agenda for the 1990s on Asian civil rights issues.

Persons desiring additional information should contact Harriet O. Duleep, Project Director, (202) 376-8582. Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Staff Director's office at least five (5) days before the scheduled date of the meeting.

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

Dated at Washington, DC, May 17, 1989.

Melvin L. Jenkins,
Acting Staff Director.

[FR Doc. 89-12635 Filed 5-25-89; 8:45 am]
BILLING CODE 6335-01-M

Arkansas Advisory Committee; Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Arkansas Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 4:00 p.m., on Wednesday, June 14, 1989, at the Camelot Hotel, Markham and Broadway, Little Rock, Arkansas. The purpose of the meeting will be to provide orientation for new members of the Advisory Committee, review Committee projects, discuss current civil rights issues in the state, and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Alan Patteson, Jr., or William F. Muldrow, Civil Rights Analyst of the Central Regional Divisions (816) 426-5253, (TDD 816/426-5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

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

Dated at Washington, DC, May 16, 1989.

Melvin L. Jenkins,
Acting Staff Director.

[FR Doc. 89-12636 Filed 5-25-89; 8:45 am]
BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Foreign Availability Assessment: Initiation of an Assessment on Side Scan Sonar Systems and Their Parts and Components

AGENCY: Office of Foreign Availability, Bureau of Export Administration, Commerce.

ACTION: Notice of initiation of an assessment.

SUMMARY: Pursuant to the receipt of an allegation of foreign availability, the Office of Foreign Availability is initiating a "denied license" assessment to investigate the foreign availability of side scan sonar systems and their parts and components, and is seeking public comments on the foreign availability of side scan sonar systems and their parts and components.

DATES: The period for submission of information will close on or before June 26, 1989.

ADDRESSES: Submit information relating to the allegation of foreign availability to: Dr. Irwin M. Pikus, Office of Foreign Availability, Bureau of Export Administration, U.S. Department of Commerce, Room SB701, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230.

The public record concerning this notice will be maintained in the Bureau of Export Administration's Freedom of Information Record Inspection Facility, Room 4886, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Don Brychczynski, Office of Foreign Availability, Department of Commerce, Washington, DC 20230, Telephone: (202) 377-5953.

SUPPLEMENTARY INFORMATION: Under Sections 5 (f) and (h) of the Export Administration Act of 1979, as amended (EAA), the Office of Foreign Availability (OFA) assesses claims of foreign availability. Part 791 of the Export Administration Regulations (EAR) establishes the procedures and criteria for reviewing claims for foreign availability on items controlled for national security purposes.

Pursuant to Sections 5(f) (1)(B), (3) and (9) of the EAA, as amended by the Omnibus Trade and Competitiveness Act of 1988, OFA is publishing this notice:

On February 10, 1989, OFA accepted for filing an allegation of foreign availability, following denial of a license to export to the USSR, for side scan sonar systems and their parts and components. These items are controlled for national security reasons under Export Control Commodity Number (ECCN) 1510A: Marine or terrestrial acoustic or ultrasonic systems or equipment specially designed for positioning surface vessels or underwater vehicles, or for detecting or locating underwater or subterranean objects of features, and specially designed components of such systems or equipment, including but not limited to hydrophones, transducers, beacons, towed hydrophone arrays, beamformers and geophones (except moving coil or moving magnet electro-magnetic geophones).

Upon acceptance of the submission, OFA initated a "denied license" assessment of the foreign availability of side scan sonar systems. Consistent with the requirements of the EAA, the Department intends to publish the results of the assessment by July 10, 1989.

To assist the Department in assessing the claim, the Office of Foreign Availability will receive any information regarding the foreign availability of side scan sonar systems. A person wishing to submit relevant information relating to this claim may submit it to the Office of Foreign Availability of the Department of Commerce.

Such relevant information may include, but is not limited to: foreign manufacturers' catalogues, brochures, or operations or maintenance manuals, articles from reputable trade publications, photographs, and depositions based upon eyewitness

accounts. Supplement No. 1 to Part 791 provides additional examples of evidence that may be helpful to the investigation

The Office of Foreign Availability will carefully and fully consider all information received. The Office will use information received to supplement other information to evaluate the allegation of foreign availability.

The Department also will accept comments or information accompanied by a request that part or all of the material be treated confidentially because of its proprietary nature or for any other reason. The information for which confidential treatment is requested should be submitted to the Bureau of Export Administration (BXA) separate from any non-confidential information submitted. The top of each page should be marked with the term "Confidential Information". The Bureau of Export Administration will either accept the submission in confidence, or if the submission fails to meet the standards for confidential treatment, will return it. A non-confidential summary must accompany such submissions of confidential information. The summary will be made available for public inspection.

Information accepted by the Bureau of Export Administration as privileged under section (b) (3) or (4) of the Freedom of Information Act (5 U.S.C. 552(b) (3) and (4)) will be kept confidnetial and will not be available for public inspection, except as authorized by law.

Communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

All other information relating to the notice will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires written comments. Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying.

The public record of information received on the allegation for foreign availability will be maintained in the Bureau of Export Administration's Freedom of Information Records Inspection Facility, Room 4886, Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in Part 4 of Title 15 of the Code of Federal Regulations. Information about the inspection and copy of records at the facility may be obtained from Margaret Cornejo, Bureau of Export Administration, Freedom of Information officer, at the above address or by calling (202) 377-2593.

Because of the strict statutory time limitations in which Commerce must make its determination, the period for submission of relevant information will close (30 days from date of publication). The Department will consider all information received before the close of the comment period in developing the assessment. Information received after the end of the period will be considered if possible, but its consideration cannot be assured.

Accordingly, the Department encourages persons who wish to provide information related to this allegation of foreign availability to do so at the earliest possible time to permit the Department the fullest consideration of the information.

Dated: May 19, 1989.

James LeMunyon,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 89-12597 Filed 5-25-89; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration

[A-357-802]

Antidumping Duty Order; Light-Walled Welded Rectangular Carbon Steel Tubing From Argentina

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

ACTION: Notice.

SUMMARY: In separate investigations concerning light-walled welded rectangular carbon steel tubing from Argentina, the U.S. Department of Commerce ("the Department") and the U.S. International Trade Commission ("the ITC") have determined that light-walled welded rectangular carbon steel tubing from Argentina is being sold at less than fair value and that imports of light-walled welded rectangular carbon steel tubing from Argentina are materially injuring, or threatening to injure materially, an industry in the United States. Therefore, based on these findings, all unliquidated entries of light-walled welded rectangular carbon steel tubing from Argentina that are entered, or withdrawn from warehouse, for consumption, on or after November 21, 1988, the date on which the Department published its preliminary determination notice in the Federal Register, will be liable for the possible assessment of antidumping duties. We have directed the U.S. Customs Service to collect a cash deposit of estimated antidumping duties on all entries of light-walled welded rectangular carbon steel tubing from Argentina that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this antidumping duty order in the Federal Register.

EFFECTIVE DATE: May 26, 1989.

FOR FURTHER INFORMATION: Contact Alain Letort or Richard Capwell, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: 202/377-3818 (Letort) or 202/377-2312 (Capwell).

SUPPLEMENTARY INFORMATION: The product covered by this investigation is light-walled welded carbon steel tubing of rectangular (including square) cross-section, having a wall thickness of less than 0.156 inch, which is currently provided for under HTS item number 7306.60.50.00.

In accordance with section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(a)) (the Act), on March 30, 1989, the Department made its final determination that light-walled welded rectangular carbon steel tubing from Argentina is being sold at less than fair value (54 FR 13913; April 6, 1989). On May 15, 1989, in accordance with section 735(d) of the Act, the ITC notified the Department that imports of the subject merchandise from Argentina are materially injuring, or threatening to injure materially, an industry in the United States. Because the vote of the ITC was evenly divided between finding material injury and threat of material injury, the Department is treating this vote, for purposes of duty assessment, as an affirmative finding of material injury consistent with section 771(11) of the Act (19 U.S.C. 1677(11)).

Therefore, in accordance with sections 736 and 751 of the Act (19 U.S.C. 1673e and 1675), the Department is directing U.S. Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act (19 U.S.C. 1673e(a)(1)), antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price on all entries of light-walled welded rectangular carbon steel tubing from Argentina. These antidumping duties will be assessed on all unliquidated entries of light-walled

welded rectangular carbon steel tubing from Argentina that are entered, or withdrawn from warehouse, for consumption, on or after November 21, 1988, the date on which the Department published its preliminary determination notice in the **Federal Register**.

On or after the date of publication of this notice, U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties on light-walled welded rectangular carbon steel tubing from Argentina, a cash deposit equal to the estimated amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price, which is 56.26 percent *ad valorem*.

This notice constitutes an antidumping duty order with respect to light-walled welded rectangular carbon steel tubing from Argentina, pursuant to sections 735(d) and 736(a) of the Act (19 U.S.C. 1673d(d) and 1673e(a)) and § 353.21 of the new Department of Commerce Regulations published on March 28, 1989 (54 FR 12777), to be codified as 19 CFR 353.21. We have deleted from the Commerce Regulations Annex I of 19 CFR Part 353, which listed antidumping duty findings and orders currently in effect. Instead, interested parties may contact the Central Record Unit, room B-099, Import Administration, for copies of the updated list of orders currently in effect.

This notice is published in accordance with sections 735(d) and 736(a) of the Act (19 U.S.C. 1673d(d) and 1673e) and 19 CFR 353.21.

Lisa B. Barry,

Acting Assistant Secretary for Import Administration.

May 19, 1989.

[FR Doc. 89-12573 Filed 5-25-89; 8:45 am]

BILLING CODE 3510-DS-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Export Visa Stamp for Textiles and Textile Products Exported From India

May 19, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a letter to the Commissioner of Customs authorizing the use of a new visa stamp and denying entry of certain textile and textile products.

EFFECTIVE DATE: June 1, 1989.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

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 Government of India has notified the United States Government that they have begun issuing a new export visa stamp. Pursuant to the terms of the current visa arrangement between the Governments of the United States and India, shipments of textiles and textile products, produced or manufactured in India and exported from India on and after June 1, 1989, shall be denied entry for consumption, or withdrawl from warehouse for consumption, in the United States if not accompanied by an invoice using the new visa stamp.

If the visa is not acceptable to U.S. Customs, a new visa or a visa waiver must be obtained. The public should be aware that there will be strict enforcement of the visa requirement.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 19, 1989

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issue to you on November 26, 1979, as amended on December 28, 1982 and as further amended, by the Chairman, Committee for the Implementation of Textile Agreements, that directed you to prohibit entry into the United States for consumption, and withdrawal from warehouse for consumption, of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and and textile products, produced or manufactured in India, for which the Government of India had not issued an appropriate export visa or exempt certification.

Effective on June 1, 1989, the November 26, 1979 directive is amended further to provide for the use of a new visa stamp. You are directed to enforce the use of the new export visa stamp. A facsimile of the visa stamp depicting the actual size, lettering and design of the visa stamp to be enforced is enclosed with this letter.[1]

Consequently, shipments of textiles and textile products, produced or manufactured in India and exported from India on and after June 1, 1989, and entered into the United States for consumption and withdrawn from warehouse for consumption on and after June 1, 1989, which are not accompanied by an invoice using the visa stamp authorized in this directive shall be denied entry. In the size, lettering and design of the visa does not conform to the enclosed facsimile, the visa is not acceptable and a new visa or visa waiver must be obtained.

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. 89-12551 Filed 5-25-89; 8:45 am]

BILLING CODE 3510-DR-M

[1] Editorial Note: The Facsimile is not being printed in this Federal Register.

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1989; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to Procurement List 1989 commodities to be produced by workshops for the blind or other severely handicapped.

Comments Must Be Received on or Before: June 26, 1989.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities to Procurement List 1989, which was published on November 15, 1988 (53 FR 46018):

Clamp, Loop

5340-01-156-5482
5340-01-160-0398

E. R. Alley, Jr.

Deputy Executive Director.

[FR Doc. 89-12654 Filed 5-26-89; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1989; Additions

AGENCY: Committee for Purchase from the Blind and Other severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to Procurement List 1989 commodities to be produced by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: June 26, 1989.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: On March 17, and 24, 1989, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (54 FR 11263 and 12261/2) of proposed additions to Procurement List 1989, which was published on November 15, 1988 (53 FR 46018). No comments were received concerning the proposed additions to the Procurement List. After consideration of the material presented to it concerning capability of qualified workshops to produce the commodities at a fair market price and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities listed.

c. The actions will result in authorizing small entities to produce the commodities procured by the Government.

Accordingly, the following commodities are hereby added to Procurement List 1989:

Webbing

1055–01–141–5205

Back Pack, Tripod

1260–01–046–2840

Pouch, Cover

1260–01–244–2833

Cover, Protective

1420–01–049–5358
1430–00–992–9254
1430–00–994–3086
1440–01–132–7799

Bag, Storage

1430–01–133–8435

Insulation

1430–01–134–7893

Strap, Webbing

1430–01–164–4930
1430–01–174–5095
1450–00–001–1266
1450–01–147–3366
4935–00–784–0118
4935–00–889–5595
4935–00–922–2480
4935–00–928–6097
4935–00–956–4489
5340–00–NSH–0006
5340–00–939–7062
5340–01–130–6020
5340–01–139–3197
5340–01–219–2887
5340–01–231–3750
5340–01–248–2119

Bag, Shroud Assembly

1440–00–078–1641

Cover, Fire Extinguisher

1440–00–410–2296

Kit, Tiedown

1440–01–132–9719

Straps

1440–00–478–0334

Cover Assembly, Pitot

1560–01–208–7831

Strap, Assembly

4935–00–888–7207

Strap, Set

4935–00–888–7208

Strap Set, Webbing

4935–00–770–2724
4935–00–805–3522
4935–00–824–5469

MSL TECH-INTEG-PDAMS

5340–00–NSH–0004

Panel, Side Flex

5340–00–NSH–0005

Weather Strip

5680–01–227–7577

Curtain, Blackout

7230–00–997–1488
7230–01–136–7054

Strap Assembly

8140–01–134–6654

(Requirements of U.S. Army Missile Command, Redstone Arsenal, Alabama only for all items listed in this notice)

E.R. Alley, Jr.

Deputy Executive Director.

[FR Doc. 89–12653 Filed 5–25–89; 8:45 am]

BILLING CODE 6820–33–M

Procurement List 1989; Additions and Correction

The effective date of the additions to the Procurement List appearing on page 22002 of FR Doc. 89–12104 in the issue of Monday, May 22, 1989, should read June 21, 1989, instead of June 19, 1989.

E.R. Alley, Jr.,

Deputy Executive Director.

[FR Doc. 89–12652 Filed 5–25–89; 8:45 am]

BILLING CODE 6820–33–M

DEPARTMENT OF ENERGY

Waste Isolation Pilot Plant (WIPP); Draft Supplement to the Environmental Impact Statement; Change in Hearing Location

AGENCY: U.S. Department of Energy.

ACTION: Waste Isolation Pilot Plant (WIPP); change of hearing location for Draft Supplement to the Environmental Impact Statement.

SUMMARY: The Department of Energy published a notice in the **Federal Register** on April 21, 1989, (Volume 54, Number 76, pp. 16350–2) announcing the availability of a Draft Supplement to the Environmental Impact Statement for the Waste Isolation Pilot Plant near Carlsbad, New Mexico. The notice also announced the beginning of the comment period and the dates and locations for six public hearings on the document. Based on discussions between Governor Cecil Andrus and U.S. Representative Richard Stallings of Idaho and the U.S. Department of Energy, the public hearing announced for Idaho has been changed from Boise of Pocatello.

The Pacatello hearing will be held at the Pocatello Quality Inn, 1555 Pocatello Creek Road, Pocatello, ID 83201, (208) 233–2200. The June 1, 1989, hearing date remains the same.

Persons wishing to be placed on the list of pre-registered commenters at the public hearing should call the U.S. Department of Energy's toll-free telephone number, 1–800–274–0585. Any name that was previously placed on the Boise list will be transferred to the Pocatello list, and DOE will confirm the registration.

FOR FURTHER INFORMATION, CONTACT:
W. John Arthur, III, WIPP SEIS Project Manager, U.S. Department of Energy, Albuquerque Operations Office, P.O. Box 5400, Albuquerque, NM 87115, Telephone: (505) 889–3038
or
Carol Borgstrom, Director, Office of NEPA Project Assistance (EH–25), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, Telephone: (202) 586–4600

Dated in Washington, DC this 24th day of May, 1989, for the U.S. Department of Energy.

Raymond P. Berube,

Acting Assistant Secretary, Environment, Safety and Health.

[FR Doc. 89–12833 Filed 5–25–89; 8:45 am]

BILLING CODE 6450–01–M

Chicago Operations Office; Award on a Noncompetitive Basis; U.S. Export Council for Renewable Energy

AGENCY: Department of Energy.

ACTION: Notice of noncompetitive financial assistance award.

SUMMARY: The Department of Energy (DOE), Chicago Operations Office through its SERI Area Office (SAO), announces that pursuant to the DOE Financial Assistance Rules 10 CFR 600.7 (b)(2), it intends to award a grant on a noncompetitive basis to the U.S. Export Council for Renewable Energy for continued support to the Committee on Renewable Energy Commerce and Trade (CORECT). The objective of the work to be supported by this grant is development of an annual reporting system for renewable energy statistical data, development of briefing materials on renewable energy export assistance activities, and development of a slide show and booklet on exportable biofuels projects.

FOR FURTHER INFORMATION CONTACT: Dr. Stephen L. Sargent, U.S. Department of Energy, SERI Area Office, 1617 Cole Boulevard, Golden, Colorado 80401, (303) 231–1366.

SUPPLEMENTARY INFORMATION: CORECT was created in response to the "Renewable Energy Industry Development Act of 1983" (Pub. L. 98–370), which required the formation of a working group of industry representatives and key federal agency officials to explore ways for promoting the U.S. renewable energy industry over-seas. DOE is a member of CORECT, along with 7 other federal agencies. CORECT undertakes activities in support of the U.S. renewable energy industry's export efforts. In order to carry out these activities, CORECT needs a close liaison with the U.S. renewable energy industry. The U.S. Export Council on Renewable Energy is the only known organization that represents the export interests of the U.S. renewable energy trade associations. Therefore, the grant renewal application is being accepted by DOE because it knows of no other renewable energy trade association which is conducting or planning to conduct these types of export assistance activities.

The project period for the grant renewal is a one year period, expected to begin in May 1989. DOE plans to provide funding in the amount of $132,015 for this project period.

Issued in Chicago, Illinois on May 11, 1989.

Timothy S. Crawford,

Assistant Manager for Administration.

[FR Doc. 89–12574 Filed 5–25–89; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. QF89–238–000 et al.]

Texas Tech University et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

May 19, 1989.

Take notice that the following filings have been made with the Commission:

1. Texas Tech University

[Docket No. QF89–238–000]

On May 5, 1989, Texas Tech University (Applicant), of P.O. Box 4708, Lubbock, Texas 79409–4708, 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 Lubbock, Texas. The facility will consist of back pressure steam turbine generator and a boiler. Thermal energy recovered from the facility will be used for space heating and cooling on the campus of Texas Tech University. The electric power production capacity of the facility will be 935 KW. The primary source of energy will be natural gas. Construction of the facility is scheduled to begin July 1989.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

2. Citizens Power & Light Corp.

[Docket No. EL89–31–000]

Take notice that Citizens Power & Light Corporation (Citizens), on May 2, 1989, tendered for filing pursuant to Rule 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.207(1988), a petition for waivers, blanket approvals, and order accepting rate schedule. Citizens proposes to engage in, or to coordinate for its own account, wholesale electric power and energy transactions. Citizens states that the Commission should disclaim jurisdiction since Citizens neither owns or operates generation or transmission facilities.

Alternatively, Citizens requests the Commission to waive certain of the Commission's regulations which may otherwise apply to the proposed transactions. Citizens' filing also contains its initial FERC Electric service tariff, Rate Schedule 1.

Rate Schedule 1 provides for the sale of energy and capacity at agreed prices subject to a ceiling equal to the purchaser's alternative cost of electric power. Rate Schedule 1 also provides that no sales may be made to affiliates.

The Commission intends to treat Citizens' request for disclaimer of jurisdiction as a request for declaratory order, and will rule on that request in this docket. The Commission will act upon Citizens rate filing, notice of which is also published today, in Docket No. ER89–401–000.

Comment date: June 16, 1989, in accordance with Standard Paragraph E at the end of this notice.

3. Citizens Power & Light Corp.

[Docket No. ER89–401–000]

Take notice that Citizens Power & Light Corporation (Citizens), on May 2, 1989, tendered for filing pursuant to Rule 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.207 (1988), a petition for waivers, blanket approvals, and order accepting rate schedule. Citizens proposes to engage in, or to coordinate for its own account, wholesale electric power and energy transactions. Citizens states that the Commission should disclaim jurisdiction since Citizens neither owns nor operates generation or transmission facilities.

Alternatively, Citizens requests the Commission to waive certain of the Commission's regulations which may otherwise apply to the proposed transactions. Citizens' filing also contains its initial FERC Electric service tariff, Rate Schedule 1.

Rate Schedule 1 provides for the sale of energy and capacity at agreed prices

subject to a ceiling equal to the purchaser's alternative cost of electric power. Rate Schedule 1 also provides that no sales may be made to affiliates.

The Commission will act upon Citizens' rate filing in this docket. The Commssion will treat Citizens' request for disclaimer of jurisdiction as a request for declaratory order, notice of which is also published today, in Docket No. EL89–31–000.

Comment date: June 2, 1989, in accordance with Standard Paragraph E at the end of this notice.

4. Niagara Mohawk Power Corp.

[Docket No. ER89–423–000]

Take notice that on May 9, 1989, Niagara Mohawk Power Corporation (Niagara Mohawk) tendered for filing an agreement between Niagara Mohawk and New England Power Company dated May 1, 1989.

The May 1, 1989 agreement is to provide for the sale by Niagara Mohawk Power Corporation of capacity and related energy to New England Power Company. The terms of this agreement and the period during which the purchase of Capacity can occur shall commence on May 1, 1989 and shall continue until April 30, 1994.

Copies of this filing were served upon New England Power Company and the New York State Public Service Commission.

Comment date: June 2, 1989, in accordance with Standard Paragraph E at the end of this notice.

5. Iowa Public Service Co.

[Docket No. ER89–424–000]

Take notice that on May 9, 1989, Iowa Public Service Company (IPS) on May 9, 1989, tendered for filing an executed contract for Firm Transmission Service dated January 12, 1989, whereby Iowa Public Service Company will provide transmission for Western Area Power Administration to the Omaha Public Power District system for the period December 1, 1988 through December 31, 2008. IPS requests that the agreement be approved retroactive to December 1, 1988, so that Western can at the earliest possible date obtain the services it is seeking pursuant to the arms length negotiated agreements.

Comment date: June 2, 1989, in accordance with Standard Paragraph E at the end of this notice.

6. Minnesota Power & Light Co.

[Docket No. ER89–426–000]

Take notice that on May 10, 1989, Minnesota Power & Light Company (MP&L) tendered for filing a Participation Power Transaction Agreement between MP&L and Interstate Power Company. Under this Agreement, MP&L will sell 35 MW of participation power as available from its Laskin Unit No. 1 on a participation power interchange basis in accordance with the Mid-Continent Area Power Pool Agreement, Service Schedule A. This Agreement provides for energy sales only during the period from May 1, 1989 through October 31, 1989 inclusive. The parties request a waiver of the Commission's 60 day filing period for this Agreement and an effective date of May 1, 1989 for such Agreement.

Comment date: June 2, 1989, in accordance with Standard Paragraph E at the end of this notice.

7. Iowa Public Service Co.

[Docket No. ER 89–429–000]

Take notice that on May 11, 1989, Iowa Public Service Company (IPS) tendered for filing an executed peaking Capacity Sales Agreement dated August 22, 1988, and Supplement No. 1 thereto, dated March 17, 1989, whereby IPS will resell to Kansas City Power & Light Company (KCPL) firm peaking capacity and associated energy. The sale is in accordance with a schedule for providing capacity and energy beginning May 1, 1989 and ending April 30, 1996.

Comment date: June 2, 1989, in accordance with Standard Paragraph E at the end of this notice.

8. Southern California Edison Co.

[Docket No. ER89–427–000]

Take notice that on May 10, 1989, Southern California Edison Company (Edison) tendered for filing a letter agreement dated February 6, 1989, amending the Edison-Vernon CDWR Firm Transmission Service Agreement (Agreement) designated as Rate Schedule FERC 230, which has been executed by Edison and the City of Vernon, California (Vernon).

The letter agreement corrects the time periods that firm transmission service is made available under the Agreement by Edison to Vernon.

The letter agreement is proposed to become effective retroactive to January 1, 1989.

Copies of this filing were served upon the Public Utilities Commission of the State of California and the City of Vernon, California.

Comment date: June 2, 1989, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing shouldd file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–12594 Filed 5–25–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP89–1358–000 et al.]

K N Energy, Inc., et al.; National Gas Certificate Filings

May 22, 1989.

Take notice that the following filings have been made with the Commission:

1. K N Energy, Inc.

[Docket No. CP89–1358–000]

Take notice that on May 12, 1989, K N Energy, Inc. (KN), P.O. Box 15265, Lakewood, Colorado 80215, filed in Docket No. CP89–1358–000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to construct and operate sales taps for the delivery of natural gas to end users under KN's blanket certificate issued in Docket Nos. CP83–140–000, CP83–140–001, and CP83–140–002 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

KN proposes the construction and operation of sales taps to various end users located along its jurisdictional pipelines. KN states that the proposed sales taps are not prohibited by any of its existing tariffs and that the additional taps will have no significant impact on KN's peak day and annual deliveries.

Comment date: July 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

2. United Gas Pipe Line Company

[Docket No. CP89–1368–000]

Take notice that on May 15, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP89–1368–000 a request pursuant to §§ 157.205 and

284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide an interruptible transportation service on behalf of American Central Gas Companies (American Central), a marketer of natural gas, under its blanket certificate issued in Docket No. CP88–6–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United states that it proposes to transport natural gas on behalf of American Central from points of receipt located in Louisiana, Texas, Mississippi and Alabama to points of delivery located in Louisiana, Texas, Mississippi and Alabama.

United further states that the maximum daily, average daily and annual quantities that it would transport on behalf of American Central would be 185,400 MMBtu equivalent, 185,400 MMBtu equivalent and 67,671,000 MMBtu equivalent of natural gas, respectively.

United indicates that in Docket No. ST89–3224, filed with the Commission on April 27, 1989, it reported that transportation service for American Central had begun under the 120-day automatic authorization provisions of § 284.223(a).

Comment date: July 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

3. Transwestern Pipeline Company

[Docket No. CP89–1370–000]

Take notice that on May 15, 1989, Transwestern Pipeline Company (Transwestern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP89–1370–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Enron Gas Marketing, Inc. (Enron), a marketer, under the blanket certificate issued in Docket No. CP88–133–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Transwestern states that pursuant to a transportation agreement dated April 1, 1989, under its Rate Schedule ITS–1, it proposes to transport up to 100,000 MMBtu per day equivalent of natural gas for Enron. Transwestern states that it would transport the gas from receipt points as shown in Exhibit "A" of the transportation agreement and would deliver the gas to delivery points shown in Exhibit "B" of the agreement.

Transwestern advises that service under § 284.223(a) commenced April 1, 1989, as reported in Docket No. ST89–3280–000 (filed April 28, 1989). Transwestern further advises that it would transport 75,000 MMBtu on an average day and 36,500,000 MMBtu annually.

Comment date: July 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

4. Texas Gas Transmission Corporation

[Docket No. CP89–1378–000]

Take notice that on May 15, 1989, Texas Gas Transmission Corporation, (Texas Gas) 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89–1378–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas under its blanket authorization issued in Docket No. CP88–686–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Texas Gas proposes to transport natural gas on an interruptible basis for TXG Gas Marketing (TXG). Texas Gas explains that the service commenced April 1, 1989, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89–2976. Texas Gas proposes to transport on a peak day up to 750 MMBtu; on an average day up to 600 MMBtu; and on an annual basis up to 220,000 MMBtu. Texas Gas proposes to receive the subject gas from various points of receipt and redeliver the gas at Basile, Louisiana.

Comment date: July 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

5. Texas Gas Transmission Corporation

[Docket No. CP89–1380–000]

Take notice that on May 15, 1989, Texas Gas Transmission Corporation, (Texas Gas) 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89–1380–1380–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas under its blanket authorization issued in Docket No. CP88–686–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Texas Gas proposes to transport natural gas on an interruptible basis for PPG Industries, Inc.—Allison Park (PPG). Texas Gas explains that the service commenced April 1, 1989, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89–3013. Texas Gas proposes to transport on a peak day up to 3,000 MMBtu; on an average day up to 350 MMBtu; and on an annual basis up to 127,750 MMBtu. Texas Gas proposes to receive the subject gas from various points of receipt and redeliver the gas in Warren County, Ohio.

Comment date: July 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

6. Texas Gas Transmission Corporation

[Docket No. CP89–1382–000]

Take notice that on May 15, 1989, Texas Gas Transmission Corporation, (Texas Gas) 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89–1382–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas under its blanket authorization issued in Docket No. CP88–686–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Texas Gas proposes to transport natural gas on an interruptible basis for PPG Industries, Inc.—Barberton (PPG). Texas Gas explains that the service commenced April 1, 1989, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89–3024. Texas Gas proposes to transport on a peak day up to 6,000 MMBtu; on an average day up to 1,600 MMBtu; and on an annual basis up to 584,000 MMBtu. Texas Gas proposes to receive the subject gas from various points of receipt and redeliver the gas in Warren County, Ohio.

Comment date: July 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

7. Texas Gas Transmission Corporation

[Docket No. CP89–1383–000]

Take notice that on May 15, 1989, Texas Gas Transmission Corporation, (Texas Gas) 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89–1383–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to provide an interruptible transportation service for Seagull Marketing Services, Inc. (Seagull), a marketer, under Texas Gas' blanket certificate issued in Docket No. CP88–686–000, pursuant to section 7 of the Natural Gas Act, all as more fully

set forth in the request which is on file with the Commission and open to public inspection.

Texas Gas states that pursuant to a transportation agreement dated March 3, 1989, it proposes to transport on an interruptible basis up to 75,000 million Btu of natural gas per day for Seagull from various receipt points located onshore and offshore Louisiana, and in Texas, Kentucky, Tennessee, Illinois, Indiana, Ohio, and Arkansas to specified delivery points in Louisiana. Texas Gas states that it anticipates transporting 75,000 million Btu of natural gas on a peak day, 70,000 million Btu of natural gas on an average day, and 25,550,000 million Btu annually. It is stated that on April 1, 1989, Texas Gas commenced a 120-day transportation service for Seagull under § 284.223(a) as reported in Docket No. ST89–2974–000.

Texas Gas further states that no facilities need be constructed to implement the service. Texas Gas proposes to charge the rates and abide by the terms and conditions of its Rate Schedule IT. It is indicated that Texas Gas would provide the service for a term continuing on a month to month basis unless terminated by either Texas Gas or Seagull on thirty days written notice.

Comment date: July 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

8. Panhandle Eastern Pipe Line Company

[Docket No. CP89–1395–000]

Take notice that on May 15, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP89–1395–000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for the City of Perry, Missouri (Perry), a shipper and local distribution company of natural gas, under its blanket certificate issued in Docket No. CP86–585–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Panhandle states that pursuant to a Transportation Agreement dated April 1, 1989, between Panhandle and Perry (Agreement), it would transport up to 419 Dt. per day on a firm basis on behalf of Perry. Panhandle further states that the Agreement provides for it to receive the natural gas from Arkla, Inc. and Transok in Custer County, Oklahoma and Oklahoma Natural Gas Company in Dewey County, Oklahoma. Panhandle would then transport and redeliver the natural gas, less fuel used and unaccounted-for line loss, to Perry in Audrain County, Missouri.

Panhandle states that Perry has indicated that the estimated daily and estimated annual quantities would be 419 Dt. and 152,935 Dt., respectively.

Panhandle states that it commenced the transportation of natural gas for Perry on April 1, 1989, as reported in Docket No. ST89–3180–000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations (18 CFR 284.223(a)).

Comment date: July 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

9. Stingray Pipeline Company

[Docket No. CP89–1397–000]

Take notice that on May 15, 1989, Stingray Pipeline Company (Stingray), Post Office Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP89–1397–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of the Enron Gas Marketing, Inc. (Enron), a shipper and marketer of natural gas, under the blanket certificate issued by the Commission's Order No. 509, pursuant to section 7 of the Natural Gas Act, corresponding to the rates, terms and conditions filed in Docket No. RP89–70–000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Stingray would perform the proposed interruptible transportation service for Enron, pursuant to a transportation service agreement dated March 23, 1989. The transportation agreement is effective for a primary term of one month from the initial date of service and month-to-month thereafter until terminated by either party upon at least 30 days prior notice. Stingray proposes to transport 200,000 Dekatherms (Dth) of natural gas on a peak and average day; and on an annual basis 72,000,000 Dth of natural gas for Enron. Stingray proposes to receive the subject gas at various existing points of receipt on its system. Stingray will then transport and redeliver the gas less fuel used and unaccounted for line loss to Holly Beach and OXY–NGL Plant located in Cameron Parish, Louisiana and Stingray-HIOS Exchange (EHI–A330) located offshore Texas. No new facilities are required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's Regulations. Stingray commenced such self-implementing service on April 1, 1989, as reported in Docket No. ST89–3152–000.

Comment date: July 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

10. Williams Natural Gas Company

[Docket No. CP89–1398–000]

Take notice that on May 15, 1989, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89–1398–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act for authorization to provide an interruptible transportation service for Terra Resources, Inc. (Terra), a producer of natural gas, under its blanket certificate issued in Docket No. CP86–631–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Williams states that it proposes to transport natural gas for Terra from various points of receipt in Kansas, Missouri, Oklahoma and Wyoming to various points of delivery on Williams' system in Kansas, Oklahoma, Texas and Wyoming.

Williams further states that the maximum daily, average daily and annual quantities that it would transport for Terra would be 30,000 MMBtu equivalent, 20,000 MMBtu equivalent and 7,300,000 MMBtu equivalent of natural gas, respectively.

Williams states that transportation service for Terra began on April 3, 1989 under the 120-day automatic authorization provisions of § 284.223(a) as reported in Docket No. ST89–3286–000 filed with the Commission.

Comment date: July 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

11. Colorado Interstate Gas Company

[Docket No. CP89–1400–000]

Take notice that on May 16, 1989, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP89–1400–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide an interruptible transportation service for Marathon Oil Company (Marathon) under its blanket certificate issued in Docket No. CP86–589, *et al.*, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the

request on file with the Commission and open to public inspection.

CIG states that it proposes to transport natural gas for Marathon from various points of receipt in Texas, Wyoming, Oklahoma, Colorado and Kansas to a point of delivery in Moore County, Texas.

CIG further states that the maximum daily, average daily and annual quantities that it would transport for Marathon would be 60,000 Mcf of natural gas, 30,000 Mcf of natural gas and 11,000,000 Mcf of natural gas, respectively.

CIG indicates that in a filing made with the Commission in Docket No. ST89-3141-000, it reported that transportation service for Marathon commenced on April 12, 1989 under the 120-day automatic authorization provisions of Section 284.223(a).

Comment date: July 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

12. Northern Natural Gas Company

[Docket No. CP89-1402-000]

Take notice that on May 16, 1989, Northern Natural Gas Company, Division of Enron Corp. (Northern), P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP89-1402-000 a request pursuant to §§ 157.205 and 157.212 (18 CFR 157.205 and 157.212) of the Commission's Regulations under the Natural Gas Act for authority to operate an existing sales interconnection for the delivery of gas to Northern State Power Company of Wisconsin (NSP-WI) for service to Grandview Hospital near Ironwood, Gogebic County, Michigan, under Northern's blanket certificate authority issued by Commission order on September 1, 1982, in Docket No. CP82-401-000, all as more fully set forth in the request which is on file with the Commission and open to public insepction.

Northern requests authority to operate and maintain a delivery point previously installed and operated by Northern pursuant to Section 311 of the Natural Gas Policy Act and § 284.3 of the Commission's Regulations. Northern proposes to deliver under its Rate Schedules CD-1 and SS-1 to NSP-WI for the account of Grandview Hospital up to 129 Mcf of gas per peak day or approximately 17,664 Mcf annually. Northern states that the total volumes of gas delivered to NSP-WI will be within current firm entitlements as authorized by Commission order issued December 22, 1988, in Docket No. CP88-774-000.

Comment date: July 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

13. Texas Gas Transmission Corporation

[Docket No. CP89-1403-000]

Take notice that on May 16, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89-1403-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for System Supply for End-Users, Inc. (System Supply), under the blanket certificate issued in Docket No. CP88-686-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Texas Gas states that pursuant to a transportation agreement dated December 29, 1988, under its Rate Schedule IT, it proposes to transport up to 30,000 MMBtu per day equivalent of natural gas for System Supply. Texas Gas states that it would transport the gas from multiple receipt points as shown in Exhibit "B" of the transportation agreement and would deliver the gas to multiple delivery points shown in Exhibit "C" of the agreement. It is stated that the ultimate recipients of the gas are All Steel, American Printers & Litho, Boeing Helicopter, Hatfield Packing, Ithaca Industries, Microswitch, Parks Sausage, and Rhode Poulenc.

Texas Gas advises that service under § 284.223(a) commenced April 14, 1989, as reported in Docket No. ST89-3426. Texas Gas further advises that it would transport 20,000 MMBtu on an average day and 7,300,000 MMBtu annually.

Comment date: July 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

14. Texas Gas Transmission Corporation

[Docket No. CP89-1405-000]

Take notice that on May 16, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89-1405-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Total Minatome Corporation (Total), under the blanket certificate issued in Docket No. CP88-686-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Texas Gas states that pursuant to a transportation agreement dated January 30, 1989, under its Rate Schedule IT, it proposes to transport up to 100,000 MMBtu per day equivalent of natural gas for Total. Texas Gas states that it would transport the gas from multiple receipt points as shown in Exhibit "B" of the transportation agreement and would deliver the gas to multiple delivery points shown in Exhibit "C" of the agreement. It is stated that the ultimate recipient of the gas is Olin Corporation.

Texas Gas advises that service under § 284.223(a) commenced April 7, 1989, as reported in Docket No. ST89-3105. Texas Gas further advises that it would transport 5,000 MMBtu on an average day and 912,500 MMBtu annually.

Comment date: July 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

15. Texas Gas Transmission Corporation

[Docket No. CP89-1407-000]

Take notice that on May 16, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89-1407-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for System Supply for End-Users, Inc. (System Supply), under the blanket certificate issued in Docket No. CP88-686-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Texas Gas states that pursuant to a transportation agreement dated November 11, 1988, it proposes to transport up to 30,000 MMBtu per day equivalent of natural gas for System Supply. Texas Gas states that it would transport the gas from multiple receipt points as shown in Exhibit "B" of the transportation agreement and would deliver the gas to multiple delivery points shown in Exhibit "C" of the agreement. It is stated that the ultimate recipients of the gas are Brown Printing and Union Underwear.

Texas Gas advises that service under § 284.223(a) commenced April 15, 1989, as reported in Docket No. ST89-3427. Texas Gas further advises that it would transport 20,000 MMBtu on an average day and 7,300,000 MMBtu annually.

Comment date: July 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

16. Texas Gas Transmission Corporation

[Docket No. CP89-1409-000]

Take notice that on May 16, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89-1409-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Interstate Gas Marketing, Inc. (Interstate Gas), under the blanket certificate issued in Docket No. CP88-686-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Texas Gas states that pursuant to a transportation agreement dated September 27, 1988, it proposes to transport up to 10,000 MMBtu per day equivalent of natural gas for Interstate Gas. Texas Gas states that it would transport the gas from multiple receipt points as shown in Exhibit "B" of the transportation agreement and would deliver the gas to multiple delivery points shown in Exhibit "C" of the agreement. It is stated that the ultimate consumer of the gas is Corning Glass Works.

Texas Gas advises that service under § 284.223(a) commenced April 1, 1989, as reported in Docket No. ST89-3336. Texas Gas further advises that it would transport 5,000 MMBtu on an average day and 1,825,000 MMBtu annually.

Comment date: July 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

17. Texas Gas Transmission Corporation

[Docket No. CP89-1410-000]

Take notice that on May 16, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89-1410-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to transport natural gas for Union Texas Petroleum Corporation (Union Texas) pursuant to Texas Gas' blanket certificate issued in Docket No. CP88-686-000 and section 7 of the Natural Gas Act, which is on file with the Commission and open to public inspection.

Specifically, Texas Gas requests authority to transport up to 56 billion Btu of natural gas per day for Union Texas on an interruptible basis pursuant to a January 27, 1989, agreement between Texas Gas and Union Texas. Texas Gas states that the transportation agreement provides for Texas Gas to receive the gas at various points in the Offshore Louisiana Area and to deliver the gas at a specified point in the Ship Shoal Area, also in the Offshore Louisiana Area.

Texas Gas states that it would provide the service on a month to month basis unless terminated upon thirty days written notice by either Texas Gas or Union Texas. Texas Gas states that it would charge the rates and abide by the terms and conditions provided by its Rate Schedule IT.

It is indicated that the estimated maximum daily volume, average day volume, and annual volume would be 56 billion Btu, 30 billion Btu, and 10,950,000 billion Btu, respectively. Texas Gas states that it commenced a 120-day transportation service for Union Texas on April 8, 1989, as reported in Docket No. ST89-3109-000. It is indicated that Texas Gas would use existing facilities to implement the service.

Comment date: July 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89-12638 Filed 5-25-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP89-1239-000 et al.]

Tennessee Gas Pipeline Co. et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Tennessee Gas Pipeline Company

[Docket No. CP89-1239-000]

May 18, 1989.

Take notice that on May 10, 1989, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed a supplement to its original application, filed April 19, 1989, Notice of Application issued April 26, 1989, in which Tennessee wishes to revise its Exhibit E of the original application, all as more fully set forth in the supplement which is on file with the Commission and open to public inspection.

Specifically, Tennessee inadvertently failed to identify in Exhibit E in Docket No. CP89-1239-000 that it has an application pending in Docket No. CP88-172-000 for authorization to abandon 15,000 Dt per day of firm sales service to North Penn Gas Company (North Penn) and to increase firm sales service to Public Service Electric and Gas Company (PSE&G). Tennessee requests authorization in Docket No. CP89-1239-000 to reduce sales service to North Penn by 5,571 Dt per day, resulting in a new sales entitlement of 31,568 Dt per day and 11,522,320 Dt annually, effective February 1, 1989.

Tennessee explains that the abandonment of service in Docket No. CP89-1239-000 is not additive to the abandonment requested in Docket No. CP88-172-000 and is not dependent on authorization of any new service to PSE&G. Tennessee further explains that to the extent that the abandonment authorization in Docket No. CP89-1239-000 is granted prior to authorization in Docket No. CP88-172-000, only an additional 9,429 Dt per day of sales service to North Penn would need to be abandoned in the latter docket. Consequently, once both applications are approved, North Penn will have a contract demand of 22,139 Dt per day and an annual quantity of 8,080,735 Dt.

Comment date: June 8, 1989, in accordance with Standard Paragraph F at the end of this notice.

2. Northwest Pipeline Corporation

[Docket No. CP89-1296-000]

May 18, 1989.

Take notice that on May 5, 1989, Northwest Pipeline Corporation (Northwest), P.O. Box 8900, Salt Lake City, Utah 84108-0899, filed in Docket No. CP89-1296-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to provide a transportation service for Caesars World Inc. (Caesars World), an end-user, under Northwest's blanket certificate issued in Docket No. CP86-578-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest states that pursuant to a transportation agreement dated March 10, 1989, it proposes to transport up to one billion Btu of natural gas per day on an interruptible basis. Northwest indicates that it would receive the gas at any receipt point on its system and redeliver an equivalent volume of gas to Caesars World at any transportation delivery point on its system.

Northwest also states that no construction of facilities would be required to provide this service. Northwest further states that the maximum day, average day, and annual volumes would be one billion Btu, 400 million Btu, and 150 billion Btu, respectively. Northwest indicates that it would charge the rates and abide by the terms and conditions set forth in its rate Schedule TI-1.

Northwest indicates that it would provide the service until April 1, 1990, and month to month thereafter until terminated on a 30-day notice. Northwest advises that service under Section 284.223(a) of the Commission's Regulations commenced on April 1, 1989, as reported in Docket No. ST89-3138-000.

Comment date: July 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

3. Southern Natural Gas Co.

[Docket No. CP89-1342-000]

May 18, 1989.

Take notice that on May 9, 1989, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP89-1342-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas on behalf of Shell Trading Comany (Shell), a marketer of natural gas, under Southern's blanket certificate issued in Docket No. CP88-316-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Southern proposes to transport, on an interruptible basis, up to 112,750 MMBtu equivalent of natural gas on a peak day, 112,750 MMBtu equivalent on an average day, and 41,153,750 MMBtu equivalent on an annual basis for Shell. It is stated that Southern would receive the gas at existing points on Southern's system in Louisiana, offshore Louisiana, Texas, offshore Texas, Mississippi, and Alabama. It is stated that Southern would deliver equivalent volumes at existing points on Southern's system in Louisiana. It is asserted that Southern would utilize existing facilities and that no construction of additional facilities would be required. It is explained that the transportation service commenced March 10, 1989, under the automatic authorization provisions of Section 284.223 of the Commission's Regulations, as reported in Docket No. ST89-2894.

Comment date: July 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

4. Panhandle Eastern Pipe Line Company

[Docket No. CP89-1337-000]

May 18, 1989.

Take notice that on May 8, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-1337-000 an application pursuant to section 7(b) of the Natural Gas Act requesting permission and approval to abandon Panhandle's Tuscola Gas Storage Field (Tuscola) and related facilities and the operation thereof, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Panhandle states that Tuscola has become economically unfeasible because operating costs have been increasing while gas recovery has become increasingly inefficient. Panhandle asserts that it would benefit economically by abandoning Tuscola rather than continuing to incur the costs associated with operation of the field. It is stated that the abandonment of the field would not impede Panhandle's ability to meet its purchase, sales and transportation obligations.

It is estimated that the costs associated with abandonment of Tuscola would be $600,000, and the salvage value would be $1.71 million. It is asserted that the abandoment would reduce Panhandle's total working storage capacity by 4 percent. It is further asserted that Panhandle's customers would benefit from more efficient and economical service on Panhandle's system.

Comment date: June 8, 1989 in accordance with Standard Paragraph F at the end of the notice.

5. Northern Natural Gas Co., Division of Enron Corp.

[Docket No. CP89-1345-000]

May 18, 1989.

Take notice that on May 10, 1989, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP89-1345-000 a request pursuant to Northern's blanket authority granted on September 1, 1982, in Docket No. CP82-401-000 and §§ 157.205 and 157.212, of the Commission's Regulations (18 CFR 157.205 and 157.212) for authority to realign certain volumes for Northern States Power Company of Wisconsin (NSP-WI), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern is proposing, at NSP-WI's request, to realign CD-1 firm sales service by reducing firm entitlements for four communities served by NSP-WI. Also, Northern is proposing to realign SS-1 firm sales service by reducing firm entitlements for eleven communities and increasing firm entitlements for sixteen communities served by NSP-WI. The proposed realignment of entitlements will not affect the total level of firm sales service provided by Northern to NSP-WI under either Rate Schedule CD-1 or SS-1.

Comment date: July 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

6. Texas Gas Transmission Corp.

[Docket No. CP89-1348-000]

May 18, 1989.

Take notice that on May 10, 1989, Texas Gas Transmission Corporation (TGT), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89-1348-000 a request pursuant to §§ 157.205 and 284.223 (18 CFR 157.205 and 284.223) of the Commission's Regulations under the Natural Gas Act for authority to provide interruptible transportation service for PPG-Industries, Inc. Circleville (PPG), under Texas Gas' blanket transportation certificate issued by the Commission on September 15, 1988, in Docket No. CP88-686-000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

TGT states it will receive the gas principally from various sources in the offshore areas of Texas and Louisiana and the states of Texas and Louisiana for delivery for the account of PPG to Columbia Gas Transmission Corporation in Warren County, Ohio.

TGT proposes to transport on an interruptible basis up to 8,500 MMBtu of gas on a peak day, approximately 1,825 MMBtu of gas on an average day and an estimated 666,125 MMBtu of gas annually. TGT states the transportation service commenced under the 120-day automatic authorization of § 284.223(a) of the Commisson's Regulations on April 1, 1989, pursuant to a transportation agreement dated November 21, 1988. TGT notified the Commission of the commencement of the transportation

service in Docket No. ST89–3012–000 on April 11, 1989.

Comment date: July 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

7. Southern Natural Gas Co.

[Docket No. CP89–1352–000]

May 18, 1989.

Take notice that on May 10, 1989, Southern Natural Gas Company (Southern) filed in Docket No. CP89–1352–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 for authorization to transport gas, on an interruptible basis, for Superior Natural Gas Corporation (Superior), a gas marketer, under Southern's blanket certificate issued in Docket No. CP88–316–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Pursuant to a service agreement dated February 9, 1989, Southern requests authorization to perform the proposed transportation service for Superior under Southern's Rate Schedule IT. Southern states that the service agreement is for a primary term of one month with successive terms of one month thereafter unless cancelled by either party. Southern further states that the service agreement provides for a maximum transportation quantity of 10,000 MMBtu of gas per day; but, Superior anticipates that 2,739 MMBtu would be transported on an average day, and accordingly, expects that 1,000,000 MMBtu would be transported on an annual basis. Southern proposes to receive the gas at various existing receipt points in Texas, Louisiana, Mississippi, Alabama, offshore Texas, and offshore Louisiana and deliver the gas to existing points of delivery in Refugio County, Texas. Southern advises that the service commenced on March 11, 1989, as reported in Docket No. ST89–2891, pursuant to § 284.223(a)(1) of the Commission's Regulations.

Comment date: July 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

8. Tennessee Gas Pipeline Company

[Docket No. CP89–1353–000]

May 18, 1989.

Take notice that on May 11, 1989, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89–1353–000 a request pursuant to § 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide an interruptible transportation service for Energy Transportation Management, Inc. (ETM), a marketer of natural gas, under its blanket certificate issued in Docket No. CP87–115–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Tennessee states that the maximum daily, average daily and annual quantities that it would transport for ETM would be 75,000 dt equivalent of natural gas, 75,000 dt equivalent of natural gas and 27,375,000 dt equivalent of natural gas, respectively.

Tennessee indicates that in Docket No. ST89–3354, filed with the Commission on May 3, 1989, it reported that transportation service for ETM had begun under the 120-day automatic authorization provisions of § 284.223(a).

Comment date: July 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

9. Northwest Pipeline Corporation

[Docket No. CP89–1354–000]

May 18, 1989.

Take notice that on May 10, 1989, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89–1354–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) and the Natural Gas Policy Act (18 CFR 284.223) for authorization to transport natural gas for Suncor Inc. (Suncor) a producer and marketer of natural gas, under Northwest's blanket certificate issued in Docket No. CP86–578–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest proposes to transport, on an interruptible basis, up to 150,000 MMBtu of natural gas equivalent per day for Suncor pursuant to a gas transportation agreement dated February 1, 1989, between Northwest and Suncor. Northwest would receive the gas at any receipt point on its system and redeliver equivalent volumes, less fuel and lost and unaccounted for volumes, at any delivery point on its system.

Northwest further states that the estimated average daily and annual quantities would be 100 MMBtu and 36,500 MMBtu, respectively. Service under § 284.223(a) commenced on April 1, 1989, as reported in Docket No. ST89–3238–000, it is stated.

Comment date: July 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

10. Arkla Energy Resources, a Division of Arkla, Inc.

[Docket No. CP89–1355–000]

May 18, 1989.

Take notice that on May 11, 1989, Arkla Energy Resources, a division of Arkla, Inc. (AER), 525 Milam Street, P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP89–1355–000 a request pursuant to § 157.205 of the Commission's Regulations (18 CFR 157.205) for authorization to construct and operate a new sales tap and pipeline facilities in LeFlore County, Oklahoma, under AER's blanket certificate issued in Docket Nos. CP82–384–000 and CP82–384–001, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

AER proposes to construct and operate a 4-inch tap and approximately 3.0 miles of 6-inch pipeline in order to deliver natural gas to AES/Shady Point, Inc. (AES), for a cogeneration plant under construction by AES in LeFlore County. It is stated that the delivery of up to 16,500 MMBtu equivalent per day and approximately 300,000 Mcf on an annual basis would be made pursuant to an agreement between AER and AES signed March 24, 1989. It is estimated that the construction cost would be $483,009. It is asserted that AER's system supply is adequate to furnish these deliveries.

Comment date: July 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

11. Northern Natural Gas Company

[Docket No. CP89–1356–000]

May 18, 1989.

Take notice that on May 11, 1989, Northern Natural Gas Company, Division of Enron Corporation (Northern), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP89–1356–000 a request pursuant to Northern's blanket certificate granted in Docket No. CP82–401–000 and §§ 157.205 and 157.212 of the Commission's Regulations for authority to install a delivery point at an existing tap to provide natural gas deliveries to Peoples Natural Gas (Peoples) for resale to a non-right of way grantor, Frank Devine of Meade, Kansas, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern estimates peak day and annual volumes of 36 Mcf and 2,160 Mcf,

respectively, to be delivered to Peoples at the new delivery point in the fifth year of service, for use as irrigation engine fuel. Northern indicates that the volumes to be delivered at the proposed delivery point would be within Peoples' currently authorized firm entitlement and would, therefore, have no impact on Northern's peak day and annual deliveries. Northern estimates that the required facilities would cost $1,429 and states that Peoples would be required to reimburse Northern for $729. Northern also states that installation of the proposed facilities would be financed in accordance with Paragraph 2 of the General Terms and Conditions of Northern's FERC Gas Tariff, Third Revised Volume No. 1.

Comment date: July 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

12. K N Energy, Inc.

[Docket No. CP89-1347-000]

May 19, 1989.

Take notice that on May 10, 1989, K N Energy, Inc., (K N) P.O. Box 15265, Lakewood, Colorado, 80215, filed in Docket No. CP89-1347-000, a request pursuant to §§ 157.205 and 7.216 of the Commission's Regulations under the Natural Gas Act, to abandon certain direct sales and related facilities under its blanket certificate issued in Docket No. CP83-140-000, *et al.* pursuant to section 7 of the Natural Gas Act all as more fully set forth in the request on file with the Commission and open to public inspection.

K N States that two customers, Gothenburg Alfalfa Products Co., Inc., located in Willow Island, Nebraska; and Orleans Milling Co., located in Orleans, Nebraska, to whom K N makes retail sales have requested that K N permanently terminate natural gas service because one plant is on the verge of closing and the other has closed already. Pursuant to the requests, K N seeks authority to abandon the metering stations and appurtenant facilities for and service to the customers.

K N proposes to abandon by removal the facilities mentioned above which were installed under prior authorizations.

Comment date: July 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

13. Transcontinental Gas Pipe Line

[Docket No. CP89-1371-000]

May 19, 1989.

Take notice that on May 15, 1989, Transcontinental Gas Pipe Line Corporation (Transco) Post Office Box 1396, Houston, Texas 77251, field in Docket No. CP89-1371-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of End-Users Supply System (End-Users), under its blanket authorization issued in Docket No. CP88-328-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Transco would perform the proposed interruptible transportation service for End-Users, pursuant to an interruptible transportation service agreement dated April 1, 1989. The term of the transportation agreement is from the date of the contract and shall continue for a primary term ending May 1, 1989, and thereafter unless cancelled by thirty days prior notice by either party. Transco proposes to transport on a peak day up to 40,000 Dekatherms (dt) per day; on an average day 20,000 dt; and on an annual basis 7,300,000 dt of natural gas for End-Users. Transco further states that consistent with its Rate Schedule IT, Transco may agree to accept for transportation additional quantities of gas. Transco proposes to receive the subject gas at various existing receipt points in Georgia, onshore and offshore Louisiana, Maryland, Mississippi, New Jersey, Pennsylvania, onshore and offshore Texas and Virginia. Transco will deliver the gas at an existing delivery point of interconnection in Virginia. Transco avers that no new facilities are required to the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's Regulations. Transco commenced such self-implementing service on April 15, 1989, as reported in Docket No. ST89-3392-000.

Comment date: July 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

14. Texas Gas Transmission Corporation

[Docket No. CP89-1377-000]

May 19, 1989.

Take notice that on May 15, 1989, Texas Gas Transmission Corporation, (Texas Gas) 3800 Frederica Street, Owensboro, Kentucky, 42301 filed in Docket No. CP89-1377-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of PPG Industries, Inc.—Crestline (PPG-Crestline), under its blanket authorization issued in Docket No. CP88-686-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Texas Gas would perform the proposed interruptible transportation service for PPG-Crestline, an end-user, pursuant to a gas transportation agreement dated November 21, 1988. The term of the transportation agreement is from the date of execution by PPG-Crestline and shall continue in effect month-to-month thereafter, unless termninated upon 30 days written notice by either party. Texas Gas proposes to transport on a peak day up to 8,500 MMBtu; and on average day up to 425 MMBtu; and on an annual basis 155,125 MMBtu for PPG-Crestline. Texas Gas proposes to receive the subject gas from an exiting point of receipt on its system for transportation and redelivery for PPG-Crestline's account at an existing point of delivery in Warren County, Ohio. The proposed rate to be charged is contained in Texas Gas' currently effective IT rate schedule.

It is explained that the proposed servcie is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's Regulations. Texas Gas commenced such self-implementing service on April 1, 1989, as reported in Docket No. ST89-3023-000.

Comment date: July 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

15. El Paso Natural Gas Company

[Docket No. CP89-1389-000]

May 19, 1989.

Take notice that on May 15, 1989, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP89-1389-000 a request pursuant to § § 157.205 and 284.223(2)(b) of the Commission's Regulations under the Natural Gas Act for authorization to transport gas for Hondo Oil and Gas Company, a marketer of natural gas, under El Paso's blanket certificate issued in Docket No. CP88-433-000 under Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open for public inspection.

El Paso states that it would transport, on an interruptible basis, up to a maximum of 1,055 MMBtu of natural gas per day for Hondo Oil. El Paso states that the receipt points would be from any point of receipt on El Paso's system to various delivery points located in the

States of New Mexico and Texas. El Paso indicates that the total volume of gas to be transported for Hondo Oil on an average day would be 633 MMBtu and on annual basis would be 231,045 MMBtu. El Paso indicates it would perform the proposed transportation service for Hondo Oil pursuant to a service agreement dated February 9, 1989, between El Paso and Hondo Oil.

El Paso states that it commenced the transportation of natural gas for Hondo Oil on April 1, 1989, at Docket No. ST89–3272–000 for a 120–day period, pursuant to § 284.223(a)(1) of the Commission's Regulations. El Paso further states that existing facilities would be used in order to provide this transportation service.

Comment date: July 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89–12595 Filed 5–25–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CI89–371–000 et al.]

ARCO Oil and Gas Co., Division of Atlantic Richfield Co., et al.; Abandonment of Service [1]

May 18, 1989.

Take notice that each of the Applicants listed herein has filed an application pursuant to Section 7 of the Natural Gas Act for authorization to abandon service as described herein, all as more fully described in the respective applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before June 1, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Description
CI89–371–000, (G–13964), B. 4–20–89.	ARCO Oil and Gas Co., Division of Atlantic Richfield Co. P.O. Box 2819, Dallas, TX 75221.	El Paso Natural Gas Co. Boundary Butte Field, San Juan County, UT.	Leases expired.
CI89–374–000, (CI62–531), B. 4–20–89.	ARCO Oil and Gas Co., Division of Atlantic Richfield Co.	Northern Natural Gas Co., Division of Enron Corp., Sitka Field, Clark County, KS.	Leases surrendered.
CI89–375–000, (CI65–421), B. 4–20–89.	ARCO Oil and Gas Co., Division of Atlantic Richfield Co.	K N Energy, Inc., Bradshaw Area, Hamilton County, KS.	Leases expired.
CI89–380–000, (CI78–585), B. 4–24–89.	Maxus Exploration Co., 717 N. Harwood Street, Suite 3100, Dallas, TX 75201.	Transcontinental Gas Pipe Line Corp., Melville Field, St. Landry Parish, LA.	Certain leases were released and Maxus' interest in the only well under this rate schedule was assigned to Habetz Operating (Michael Habetz).

Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[FR Doc. 89–12592 Filed 5–25–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. FA87-8-000]

Columbia LNG Corp.; Order Establishing Hearing Procedures

Issued May 19, 1989.

Commission staff (staff) recently performed an audit of the books and records of Columbia LNG Corporation (Columbia) for the period January 1, 1979 to December 31, 1985. In a letter dated April 4, 1989 (April 4 letter), the Commission's Chief Accountant formally notified Columbia of the results of the audit. The April 4 letter noted Columbia's disagreement with staff's findings regarding: (1) Columbia's accounting for income tax benefits and the accrual of allowance for funds used during construction related to the LNG facilities; and (2) Columbia's accounting for depreciation expense during the minimum billing period. The April 4 letter directed Columbia to advise the Commission in writing within 30 days as to whether it would consent to the disposition of the disputed matters according to the shortened procedures provided under Part 158 of the Commission's Regulations.[1] By letter dated May 4, 1989, Columbia notified the Commission that it did not consent to the use of the shortened procedure. Consequently, these matters will be set for hearing.

Any interested person seeking to participate in this docket shall file a protest or a motion to intervene pursuant to Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. 385.211 and 385.214) no later than 15 days after the date of publication of this order in the **Federal Register.**

It is ordered: (A) Pursuant to the Natural Gas Act, particularly Sections 8 and 10 thereof, the Commission's Rules of Practice and Procedure, and the Regulations under the Natural Gas Act, a public hearing shall be held concerning the appropriateness of Columbia's accounting and reporting practices as discussed above.

(B) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding, to be held within 45 days of the date of this order, in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. The presiding judge is authorized to establish procedural dates and to rule on motions as provided in the Commission's Regulations.

(C) This order shall be promptly published in the **Federal Register.**

Lois D. Cashell,

Secretary.

[FR Doc. 89-12590 Filed 5-25-89; 8:45 am]

BILLING CODE 6717-01-M8

[1] 18 CFR 158.1, *et. seq.* (1988). The contested audit report is not being published in the **Federal Register** but may be obtained from the Commission's Public Reference Room.

[Docket No. QF86-808-002]

Exeter Energy Limited Partnership; Application for commission Recertification of Qualifying Status of a Small Power Production Facility

May 22, 1989.

On May 11, 1989, the Exeter Energy Limited Partnership (Applicant), c/o The Oxford Energy Group of 3510 Unocal Place, Santa Rosa, California 95403, submitted for filing an application for recertification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Sterling, Connecticut. The facility will consist of a waste-fired boiler and a condensing steam turbine generator. The primary source of energy will be waste in the form of non-recappable rubber tires. The original application was filed on June 4, 1986, and was granted on August 20, 19876 (36 FERC ¶ 62,208 (1986)). Instant recertification is requested due to changes in the fuel usage, power production capacity and ownership. The net electric power production capacity will increase from 25 NW to 28.2 MW. Planned use of fossil fuel for start-up and shut-down and unscheduled interruption of fuel will increase from an equivalent of 2000 gallons of fuel oil to 2,000,000 gallons per year. An electric utility will now hold up to 49.85% ownership interest in the facility.

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. 89-12591 Filed 5-25-89; 8:45 am]

BILLING COD 6717-01-M

[Docket Nos. RP89-37-004, RP89-82-004]

High Island Offshore System; Compliance Tariff Filing

May 19, 1989.

Take notice that on May 1, 1989, High Island Offshore System (HIOS) submitted for filing, in compliance with the Federal Energy Regulatory Commission's Order of March 31, 1989, in the above-referenced consolidated proceeding, the following revised tariff sheets:

First Revised Volume No. 1

First Revised Sheet No. 13
First Revised Sheet No. 14
First Revised Sheet No. 17
First Revised Sheet No. 32
First Revised Sheet No. 53
First Revised Sheet No. 54
First Revised Sheet No. 62
First Revised Sheet No. 63
First Revised Sheet No. 64
First Revised Sheet No. 65
First Revised Sheet No. 66
First Revised Sheet No. 68
First Revised Sheet No. 69
First Revised Sheet No. 70
First Revised Sheet No. 72
First Revised Sheet No. 73

HIOS states that these tariff sheets also contain certain corrections and clarifications of the sheets that are being superseded.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 N. Capitol St. NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's regulations. All such protests should be filed on or before May 26, 1989. All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make protestants parties to

the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-12587 Filed 5-25-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-171-000]

Northwest Alaskan Pipeline Co.; Tariff Changes

May 19, 1989.

Take notice that on May 16, 1989, Northwest Alaskan Pipeline Company ("Northwest Alaskan"), 295 Chipeta Way, Salt Lake City, Utah 84108-0899, tendered for filing in Docket No. RP89-171-000 Twenty-Fourth Revised Sheet No. 5 to its FERC Gas Tariff Original Volume No. 2.

Northwest Alaskan states that it is submitting Twenty-Fourth Revised Sheet No. 5 reflecting an increase in total demand charges for Canadian gas purchased by Northwest Alaskan from Pan-Alberta Gas Ltd. ("Pan-Alberta") and resold to Northwest Alaskan's four U.S. purchasers, Northern Natural Gas Company ("Northern"), Panhandle Eastern Pipe Line Company ("Panhandle"), United Gas Pipe Line Company ("United") and Pacific Interstate Transmission Company ("PIT"), under Rate Schedules X-1, X-2, X-3, and X-4, respectively. The increase in total demand charges for Northwest Alaskan's customers results primarily from an increase in demand charges from Pan-Alberta and from foreign exchange rate fluctuations.

Northwest Alaskan states that it is submitting Twenty-Fourth Revised Sheet No. 5 pursuant to the provisions of the amended purchase agreements between Northwest Alaskan and Northern, Panhandle, United and PIT, and pursuant to Rate Schedules X-1, X-2, X-3, and X-4, which provide for Northwest Alaskan to file 45 days prior to the commencement of the next demand charge period (July 1, 1989 through December 31, 1989) the demand charges and demand charge adjustments which Northwest Alaskan will charge during that period.

Northwest Alaskan requests that Twenty-Fourth Revised Sheet No. 5 become effective July 1, 1989.

Northwest Alaskan states that a copy of this filing has been served on Northwest Alaskan's customers.

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 May 30, 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. 89-12588 Filed 5-25-89; 8:45 am]

BILLING CODE 6717-01-M

Federal Energy Regulatory Commission

[Docket No. CI89-377-000 et al.]

Tenneco Oil Company et al.; Applications for Termination of Certificates[1]

May 18, 1989.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7 of the Natural Gas Act for authorization to terminate a certificate as described herein, all as more fully described in the respective applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before June 1, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition of intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Description
CI89-377-000, (CI64-993), D. 4-21-89.	Tenneco Oil Co., P.O. Box 2511, Houston, TX 77252.	Williams Natural Gas Company, Hugoton Field, Finney County, Kansas..	Assigned 11-30-88 to Santa Fe Andover Oil Company.
CI89-378-000, (CI75-664), D. 4-24-89.	ARCO Oil and Gas Co., Division of Atlantic Richfield Co., P.O. Box 2819, Dallas, TX 75221.	El Paso Natural Gas Company, West Winchester Field, Eddy County, New Mexico..	Assigned 1-1-87 to Hondo Oil and Gas Company.
CI89-395-000, (CI64-1002), D. 4-21-89.	Tenneco Oil Co	Northern Natural Gas Company, Division of Enron Corp., Hugoton Field, Finney County, Kansas..	Assigned 11-30-88 to Santa Fe Andover Oil Company.
CI89-396-000, (CI68-218), D. 4-21-89.	Tenneco Oil Co	Arkla Energy Resources, a division of Arkla, Inc., Massard Field, Sebastian County, Arkansas.	Assigned 11-30-88 to Santa Fe Andover Oil Company.
CI89-397-000, (CI69-683), D. 4-21-89.	Tenneco Oil Co	Arkla Energy Resources, a division of Arkla, Inc., Kinta Field, LeFlore County, Oklahoma.	Assigned 11-30-88 to Santa Fe Andover Oil Company.
CI89-398-000, (CI69-1018), D. 4-21-89.	Tenneco Oil Co	Arkla Energy Resources, a division of Arkla, Inc., Kinta Field, LeFlore County, Oklahoma.	Assigned 11-30-88 to Santa Fe Andover Oil Company.
CI89-399-000, (G-5065), D. 4-21-89.	Tenneco Oil Co	Mobil Oil Corporation, Kansas Hugoton Field, Grant County, Kansas..	Assigned 11-30-88 to Santa Fe Andover Oil Company.
CI89-400-000, (G-5066), D. 4-21-89.	Tenneco Oil Co	Northern Natural Gas Company, Division of Enron Corp., Kansas Hugoton Field, Haskell County, Kansas..	Assigned 11-30-88 to Santa Fe Andover Oil Company.
CI89-401-000 (G-5067), D. 4-21-89.	Tenneco Oil Co	Northern Natural Gas Company, Division of Enron Corp., Kansas Hugoton Field, Haskell County, Kansas..	Assigned 11-30-88 to Santa Fe Andover Oil Company.

Docket No. and date filed	Applicant	Purchaser and location	Description
CI89-402-000, (G-5068), D. 4-21-89.	Tenneco Oil Co	Northern Natural Gas Company, Division of Enron Corp., Kansas Hugoton Field, Haskell County, Kansas..	Assigned 11-30-88 to Santa Fe Andover Oil Company.
CI89-403-000, (G-5070), D. 4-21-89.	Tenneco Oil Co	Northern Natural Gas Company, Division of Enron Corp., Kansas Hugoton Field, Haskell County, Kansas..	Assigned 11-30-88 to Santa Fe Andover Oil Company.
CI89-404-000, (G-5071), D. 4-21-89.	Tenneco Oil Co	Northern Natural Gas Company, Division of Enron Corp., Kansas Hugoton Field, Haskell County, Kansas..	Assigned 11-30-88 to Santa Fe Andover Oil Company.
CI89-405-000, (G-12032), D. 4-21-89.	Tenneco Oil Co	Northern Natural Gas Company, Division of Enron Corp., Kansas Hugoton Field, Grant County, Kansas..	Assigned 11-30-88 to Santa Fe Andover Oil Company.
CI89-406-000, (CI84-534), D. 4-21-89.	Tenneco Oil Co	Northern Natural Gas Company, Division of Enron Corp., Kansas Hugoton Field, Kansas..	Assigned 11-30-88 to Santa Fe Andover Oil Company.
CI89-407-000, (CI84-255), D. 4-21-89.	Tenneco Oil Co	Mobil Oil Corporation, Hugoton Field, Stevens & Seward Counties, Kansas..	Assigned 11-30-88 to Santa Fe Andover Oil Company.

Filing Code. A—Initial Service. B—Abandonment. C—Amendment to add acreage. D—Amendment to delete acreage. E—Total Succession. F—Partial Succession.

[FR Doc. 89-12593 Filed 5-25-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP89-170-000]

Williams Natural Gas Co.; Petition for Tariff Waiver

May 19, 1989.

Take notice that on May 16, 1989, Williams Natural Gas Company (WNG) filed a petition for a limited waiver of certain provisions of Article 25.4 of the General Terms and Conditions of its FERC Gas Tariff, pursuant to Rule 207 of the Commission's Rules of Practice and Procedure.

WNG states that Article 25.4 provides that a transportation customer may offset any underdelivery imbalance it has incurred in a billing period with deliveries of gas in excess of WNG's redeliveries to the customer during the two immediately following billing periods. The customer will receive a credit for such excess deliveries in the same amount it was charged for the underdelivered volumes of the original imbalance invoiced.

WNG states that it has experienced delays in rendering invoices to its transportation customers by the ninth day of the month as contemplated in WNG's tariff. Such delays result in transportation customers not being notified of the amount of their underdelivery imbalance and related imbalance charges until they have lost almost a month of the two-month period provided under Article 25.4 in which to offset any such imbalance through excess deliveries. WNG is presently preparing a filing to modify Article 25.4 of its tariff to provide for a make-up period of two billing periods following the mailing of invoices. Pending the filing and Commission acceptance of such permanent tariff revision, limited waiver is necessary to ensure transportation customers the opportunity to offset imbalances and to eliminate or reduce related charges consistent with the original intent and purpose of the Article 25.4 make-up provision.

Specifically, WNG requests limited waiver to (1) provide all of WNG's transportation customers two full billing periods after issuance of an invoice in which to offset any future imabalances and related charges and (2) provide transportation customers that have previously experienced underdelivery imbalances and incurred imbalance charges under Article 25.4 one additional billing period in which to deliver make-up gas to offset any such past imbalances where WNG's invoice reflecting the imbalance was issued after the ninth day of the month.

Any person desiring to be heard or to protest WNG's petition for waiver should file a motion to intervene or protest with the Secretary, Federal Energy Regulatory Commission, 825 N. Capitol St., NE., Washington, DC 20426, on or before May 30, 1989, and in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). 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 petition are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-12589 Filed 5-25-89; 8:45 am]
BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3576-4]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) (382-2740).

DATE: Comments must be submitted on or before June 26, 1989.

SUPPLEMENTARY INFORMATION:

Office of Solid Waste and Emergency Response

Title: Request for Mineral Processing Waste Characterization Information (EPA ICR # 1501.01). This is a new collection.

Abstract: This information request will be sent to 180 mineral processing plants in June, 1989. Data are to be submitted to EPA within two weeks of receipt of the request. Data will supplement waste characterization information submitted in response to the "National Survey of Wastes from Mineral Processing Facilities" and will be used for a Report to Congress required by court order.

Burden Statement: The estimated average public reporting burden for this

collection of information will range between 4 to 8 hours per respondent. This estimate includes all aspects of the information collection, including time for reviewing instructions, gathering and maintaining the data needed, and submitting data to EPA.

Respondents: Mineral Processing Facilities.

Estimated No. of Respondents: 180.

Estimated Total Annual Burden on Respondents: 1,440 hours.

Frequency of Collection: one time.

Send comments regarding the burden estimate, or any other aspect of these information collections, including suggestions for reducing the burden to: Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223), 401 M Street, SW., Washington, DC 20460 and Marcus Peacock, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place, NW., Washington, DC 20503, (Telephone (202) 395-3084).

OMB Responses to Agency PRA Clearance Requests

EPA ICR # 1237.03; State Sludge Management Program Regulations; was approved 04/19/89; OMB # 2040-0128; expires 04/30/92.

EPA ICR # 1495; FIFRA Reregistration Fees; was approved 04/18/89; OMB # 2070-0101; expires 04/30/92.

EPA ICR # 1100.02; NESHAP for DOE Facilities, NRC Licensees, Elemental Phosphorous Plants, Phosphogypsum Stacks, Uranium Mines and Uranium Mill Tailings Piles; was disapproved 04/27/89.

Date: May 17, 1989.

Paul Lapsley,

Information and Regulatory, Systems Division.

[FR Doc. 89-12558 Filed 5-25-89; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3577-2]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared May 8, 1989 through May 12, 1989 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 14, 1989 (54 FR 15006).

Draft EISs

ERP No. D1-AFS-J64000-SD, Rating EC1, Norbeck Wildlife Preserve Land Management Plan, Implementation, Black Hills National Forest, Custer and Pennington Counties, SD.

Summary

EPA is concerned about the management plan's potential to result in riparian and water/air quality impacts. EPA requests additional information in the final EIS concerning productive measures to address these impacts.

ERP No. D-SFW-A64053-00, Rating EC2, National Wildlife Refuges Management Plan, Implementation.

Summary

EPA expressed concern that this document provided limited information on contaminated waters and soils in the National Wildlife Refuge System and asked for additional discussion on the relationship of the EIS to future NEPA analysis.

Final EISs

ERP No. F-CDB-C89028-NY, Steeplechase Amusement Park Development, Construction and Operation, UDAG, Brooklyn, Kings County, NY.

Summary

EPA expressed environmental concerns about potential water quality and air quality impacts. EPA recommended that the air quality analyses referenced in the final EIS be reviewed by EPA prior to issuance of the Record of Decision (ROD).

ERP No. F-FHW-D40216-VA, VA-199 Construction, VA-5 To I-64, Section 10 and 404 Permits, James City and York Counties, VA.

Summary

EPA believes that the final EIS satisfactorily addresses construction noise and the hydrogeology of the study area. Due to anticipated development in the area, EPA suggests that a comprehensive stormwater management plan be designed to protect the groundwater.

ERP No. FS-IBR-J34007-CO, Dolores Water Supply Project, Salinity Control Program and Towaoc Canal Realignment, Implementation, Mc Elmo Creek Drainage, Delores and Montezuma Counties, CO.

Summary

EPA's primary concerns with this project are the wetland impacts and fulfillment of proposed wetland creation. Although EPA tentatively accepted Bureau of Reclamation's (BOR) proposed wetland habitat creation, submittal of a BOR plan for monitoring and evaluating wetlands mitigation was requested.

ERP No. F-NOA-K90021-CA, Cordell Bank National Marine Sanctuary, Designation and Management Plan, Implementation, Pacific Continental Shelf, West of Point Reyes, CA.

Summary

EPA strongly supports NOAA's designation of the Cordell Bank Marine Sanctuary, but requested that NOAA give strong consideration to a ban on hydrocarbon developments within the Sanctuary's boundaries, in order to protect sensitive marine resource from potential oil spills.

Note: The above summary should have appeared in 05/05/89 **Federal Register** Notice.

Regulations

ERP No. RR-IBR-A39134-00, 43 CFR Part 423; Rules for Emergency Loans, Temporary Water Sales, and Assistance Under the Disaster Assistance Act of 1988 (54 FR 14228).

Summary

EPA identified concerns with the impact of water reallocation on wetlands located along the fringes of reservoirs and requested that the Bureau weigh the benefits of water reallocation against wetland impacts. EPA is also concerned the Bureau continue to achieve water quality standards in reservoirs and in-stream flows during drought periods. EPA also suggested that the Bureau consider requirements that would encourage conservation of water.

ERP No. R-MMS-A02209-00, 30 CFR Part 250; Oil, Gas and Sulphur Operations in the Outer Continental Shelf (OCS), Off Coast of California; Proposed Rule and Proposed Technical Determinations (54 FR 1846).

Summary

EPA believes that this proposed regulation would have environmentally unsatisfactory results and unless a satisfactory agreement is reached on the significant unresolved issues prior to the final publication of the regulation, this regulation is a candidate for referral to Council on Environmental Quality (CEQ) by the Administrator pursuant to his authority under Section 309 of the Clean Air Act.

Note: The above summary should have appeared in 5/19/89 **Federal Register** Notice.

Dated: May 23, 1989.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 12661 Filed 5-25-89; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3577-1]

Environmental Impact Statements; Availability; Weekly receipts

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075. Availability of Environmental Impact Statements Filed May 15, 1989 Through May 19, 1989 Pursuant to 40 CFR 1506.9

EIS No. 890123, Draft, FHW, MI, Haggerty Road Connector Construction, I-96/I-696/I-275 Interchange to Pontiac Trail, Funding and 404 Permit, Oakland County, MI, Due: July 10, 1989, Contact: Thomas A. Fort, Jr. (517) 377-1879.

EIS No. 890124, Draft, AFS, WY, Mountain Meadow Guest Ranch Expansion, Site Development Plan Approval, Special Use Permit Renewal, Medicine Bow National Forest, Albany County, WY, Due: July 10, 1989, Contact: Terry B. Ditts (307) 745-8971.

EIS No. 8909125, DSuppl, AFS, CO, Grand Mesa, Uncompahgre and Gunnison National Forests, Land and Resource Management Plan, Timber Management Amendment, Implementation, Delta, Garfield, Gunnison, Hinsdale, Mesa, Montrose, Ouray, Saguache, San Juan and San Miguel Counties, CO, Due: August 25, 1989, Contact: R. E. Greffenius (303) 874-7691.

EIS No. 890126, Final,. EPA, LA, Mississippi River Gulf Outlet Ocean Dredged Material Disposal Site (ODMDS) Designation, Plaquemines Parish, LA, Due: June 26, 1989, Contact Norm Thomas (214) 655-2260.

EIS No.890127, Final, BLM, NM, White Sands Resource Management Plan, McGregor Range, Implementation, Otero County, NM, Due: June 26, 1989, Contact: P. Robert Alexander (505) 526-8228.

EIS No. 890128, Final, FHW, LA, Old Metairie Railroad Project, Railroad and Traffic Flow Conflicts Alleviation, Orleans Parish and Jefferson Parish Line to the Airline Highway and Causeway Boulevard Intersection, Funding, Jefferson Parish, LA, Due: June 26, 1989, Contact: Kenneth Perret (504) 389-0466.

EIS No. 890129, DSuppl, EPA, MA, Metropolitan Boston Long-Term Treatment, Transport and Disposal Management of Wastewater Treatment System Residuals, Middlesex, Norfolk and Suffolk Counties, MA, Due: July 19, 1989, Contact: Ann Rodney (617) 565-4420.

EIS No. 890130, Draft, AFS, MT, Upper Yaak River Drainage Area, Timber Harvest and Road Construction/ Reconstruction, Kootenai National Forest, Lincoln County, MT, Due: July 10, 1989, Contact: Jim Shadle (406) 293-6211.

EIS No. 890131, Draft AFS/BLM, MT, Ruby A. Federal No. 1-9 Exploratory Oil/Gas Well, Drilling/Road Construction, Application for Permit to Drill. RCRA and 404 Permits, Custer National Forest, Carbon County, MT, Due: July 10, 1989, Contact: Phil Jaquith (406) 446-2103.

EIS No. 80132, Final, BLM, CA, Death Valley and Joshua Tree National Monuments Boundary Adjustments, Transfer of Land Between the Bureau of Land Management and the National Park Service, California Desert District, Inyo and Riverside Counties, CA, Due: June 26, 1989, Contact Gerald E. Hillier (714) 351-6386 (351-5386)

EIS No. 890133, Draft, FHW, CA, I-5 Widening and Interchange Improvements, I-5 at Genesee Avenue, I-805 at Mira Mesa Boulevard and I-5 at Del Mar Heights Road, Funding, 404 and Bridge Permits, City and County of San Diego County, CA, due: July 10, 1989, Contact: Susan Klekar (916) 551-1307.

EIS No. 890134, Final, AFS, OR, Fremont National Forest, Land and Resource Management Plan, Implementation, Lake and Klamath Counties, OR, Due: June 26, 1989, Contact: Sherman A. Radtke (503) 947-2151.

Dated: May 23, 1989.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 89-12660 Filed 5-25-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3576-3]

Proposed Settlement under 122(h) of the Comprehensive Environmental Response, Compensation, and Liability Act

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed administrative settlement and request for public comment.

SUMMARY: The U.S. Environmental Protection Agency is proposing to enter into an administrative settlement to resolve claims under Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9601 *et seq.* Notice is being published to inform the public of the proposed settlement and of the opportunity to comment. This settlement is intended to resolve the past administrative or civil liabilities of one party for costs incurred by EPA at Burns Hill Road Superfund Site in Hudson, New Hampshire.

DATE: Comments must be provided on or before June 26, 1989.

ADDRESS: Comments should be addressed to the Regional Administrator, U.S. Environmental Protection Agency, Region I, J.F.K. Federal Building, Boston, Massachusetts, 02203, and should refer to: In the Matter of: Burns Hill Road Site, Hudson, New Hampshire, U.S. EPA Docket No. I-89-1039.

FOR FURTHER INFORMATION CONTACT: Jeremy M. Firestone, U.S. Environmental Protection Agency, Office of Regional Counsel, RRC-2203, J.F.K. Federal Building, Room 2203, Boston, Massachusetts, 02203, (617) 565-3334.

SUPPLEMENTARY INFORMATION: Notice of Administrative Settlement: In accordance with Section 122(i)(1) of CERCLA, 42 U.S.C. 9622(i)(1), notice is hereby given of a proposed administrative settlement concerning the Burns Hill Road Superfund Site in Hudson, New Hampshire. Section 122(h) of CERCLA provides EPA with authority to consider, compromise and settle a claim for costs incurred by the United States if the claim has not been referred to the Department of Justice. Because the United States has incurred costs of less than $500,000 dollars at the Burns Hill Road Site, EPA may settle the claim without prior written approval of the Attorney General. This Notice pertains to the settlement of a claim that has not been referred to the Department of Justice.

Under the proposed agreement, Mr. Guerette will reimburse the Superfund in the amount of $12,500 fifteen days after the agreement is finalized and an additional $13,625 one year after the agreement is finalized. This is equivalent to Mr. Guerette reimbursing the Superfund $25,000 once the agreement is finalized assuming a simple interest rate of nine (9) percent. In exchange for the settlement payment, EPA will covenant not to sue Mr. Guerette for past civil liabilities under CERCLA in connection with the Site. EPA believes that the settlement is fair and in the public interest. EPA will receive written comments relating to this agreement for thirty (30) days from the date of publication of this notice.

A copy of the proposed administrative settlement agreement may be obtained in person or by mail from EPA's Region I Office of Regional Counsel, J.F.K. Federal Building, Boston, Massachusetts 02203. Additional background information relating to the settlement is available for review at the EPA's Region I Office of Regional Counsel.

Signed:

Paul G. Keough,

Acting, Regional Administrator.

[FR Doc. 89-12659 Filed 5-25-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[DA 89-530]

Meeting of the Systems Subcommittee of the FCC Advisory Committee on Advanced Television Service

May 23, 1989.

The sixth meeting of the Systems Subcommittee of the Advisory Committee on Advanced Television Service will be held at 9:00 a.m. on May 31 in the auditorium on the 23rd floor at New York Telephone's offices at 1095 Avenue of the Americas, in New York City.

The agenda for the meeting will consist of:

1. Introductoy Remarks—Irwin Dorros

—review of status of Second Interim Report of the Advisory Committee
—review of Systems Subcommittee Interim Report

2. Discussion of standards model for accommodating various media

3. Report by Working Part 1 (Systems Analysis)—Birney Dayton

—charter and organization
—review of May "marathon" session schedule of activities

4. Report by Working Party 2 (System Evaluation and Testing)—Ben Crutchfield

—status of receipt of Test Parameter Plans from Planning Subcommittee
—status of Test Procedures Plan
—status of Test Management Plan
—discussion of availability of ATV testing facilities
—schedule of activities

5. Report by Working Party 3 (Economic Assessment)—Larry Thorpe

—work plan/status
—schedule of activities

6. Report by Working Party 4 (System Standard)—Report Hopkins

—work plan/status
—schedule of activities

7. Subcommittee meeting schedule

8. Open discussion

All interested parties are invited to attend. Those interested may also submit written statements at the meeting. Oral statements and discussion will be permitted under the direction of the Committee Chairman.

Any questions regarding this meeting should be directed to Bruce Franca at (202) 632-7060.

Federal Communications Commission,

Donna R. Searcy,

Secretary.

[FR Doc. 89-12639 Filed 5-26-89; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL RESERVE SYSTEM

BMR Financial Group, Inc., et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than June 14, 1989.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *BMR Financial Group, Inc.*, Atlanta, Georgia; to acquire 100 percent of the voting shares of Bay Bankshares, Inc., Clearwater, Florida, and thereby indirectly acquire Ameribank, formerly Clearwater Oaks Bank, Clearwater, Florida; and AmeriBank of Oldsmar, formerly Bank of Oldsmar, Oldsmar, Florida.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Mechanicsville Trust & Savings Bank*, Trustee of The Mechanicsville Trust & Savings Bank Employee Stock Ownership Plan & Trust, Mechanicsville, Iowa; to become a bank holding company by acquiring 58.6 percent of the voting shares of Mechanicsville Bancshares, Inc., Mechanicsville, Iowa, and thereby indirectly acquire The Mechanicsville Trust & Savings Bank, Mechanicsville, Iowa.

2. *SBK Bancshares, Inc.*, Kiel, Wisconsin; to become a bank holding company by acquiring 80 percent of the voting shares of State Bank of Kiel, Kiel, Wisconsin.

C. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Salinas Valley Bancorp*, Salinas, California; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Salinas, Salinas, California.

Board of Governors of the Federal Reserve System, May 22, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-12621 Filed 5-25-89; 8:45 am]

BILLING CODE 6210-01-M

The Fuji Bank, Ltd., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and section 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for

inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than June 9, 1989.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *The Fuji Bank, Limited,* Tokyo, Japan; to acquire certain assets of Natwest Commercial Services, Inc., New York, New York, and thereby engage in making and servicing loans or other extensions of credit for the company's account or for the account of others such as would be made by a factoring company pursuant to section 225.25(b)(1) of the Board's Regulation Y.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Dadeland Bancshares, Inc.,* Miami, Florida; Dadeland Bank, Miami, Florida; and Community Bank of Homestead, Homestead, Flordia; to retain their ownership of the voting shares of Financial Processors, Inc., Miami, Florida, and to continue to engage in data processing activities pursuant to § 225.25(b)(7) of the Board's Regulation Y. These activities will be conducted in the State of Florida.

Board of Governors of the Federal Reserve System, May 22, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-12622 Filed 5-25-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Advisory Committee on the Prevention of HIV Infection; Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control (CDC) announces the following Committee meeting:

Name: CDC Advisory Committee on the Prevention of HIV Infection.

Time and Date: 8:30 a.m.-5:00 p.m.—June 26, 1989; 8:30 a.m.-3:30 p.m.—June 27, 1989.

Place: Auditorium A, Building 2, 1600 Clifton Road, NE, Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available.

Purpose: This Committee is charged with advising the Director, CDC, regarding objectives, strategies, and priorities for HIV prevention efforts including maintaining surveillance of AIDS and HIV infection, the epidemiologic and laboratory study of AIDS and HIV, information/ education and risk reduction activities designed to prevent the spread of HIV infection, and other preventive measures that become available.

Matters to be Discussed: The Committee will discuss its purpose and goals, map out its agenda for the next 12 to 15 months, and set dates for its next four to five meetings. The meeting will include an orientation of CDC programs and activities related to the prevention of HIV infection.

Agenda items are subject to change as priorities dictate.

Contact Person for more Information: Linda Gimmestad, Committee Assistant, Office of the Deputy Director (HIV), CDC, 1600 Clifton Road, NE, Mailstop E-24, Atlanta, Georgia 30333, telephones: FTS: 236-0915; Commercial: 404/639-0915.

Dated: May 22, 1989.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 89-12617 Filed 5-25-89; 8:45 am]

BILLING CODE 4160-18-M

Family Support Administration

Forms Submitted to the Office of Management and Budget for Clearance

The Family Support Administration (FSA) will publish on Fridays, information collection packages submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Following is the **Federal Register** submission by FSA:

(For a copy of package, call the FSA, Reports Clearance Officer on 202-252-5593).

FSA-535 LIHEAP Quarterly Estimate report is used to determine the quarterly allocations to grantees who receive more than $1 million of low-income home energy assistance funds in a fiscal year. Respondents: State Grantees, Number of Respondents: 55; Frequency of Response: 1; Average Burden per Response: .25; Estimated Burden: 14 hours.

OMB Desk Officer: Just in Kopca.

Written comments and recommendations for the proposed information collection should be sent directly to the OMB Desk Officer designated above at the following address:

OMB Reports Management Branch, New Executive Office building, Room 3201, 1725 17th Street, NW., Washington, DC 20503.

Dated: May 18, 1989.

Sylvia E. Vela,

Deputy Associate Administrator, Office of Management and, Information Systems.

[FR Doc. 89-12585 Filed 5-25-89; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

[Docket No. 89F-0148]

Ciba-Geigy Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ciba-Geigy Corp. has filed a food additive petition proposing that the food additive regulations be amended to provide for the safe use of 2,2'-(2,5-thiophenediyl)-bis(5-*tert*-butylbenzoxazole) as an optical brightener for polycarbonate resins complying with 21 CFR 177.1580.

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

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 9B4142) has been filed by Ciba-Geigy Corp., Seven Skyline Dr., Hawthorne, NY 10532-2188, proposing that § 178.3297 *Colorants for polymers* (21 CFR 178.3297) be amended to provide for the safe use of 2,2'-(2,5-thiophenediyl)-bis(5-*tert*-butylbenzoxazole) as an optical

brightener for polycarbonate resins complying with 21 CFR 177.1580.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: May 11, 1989.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89-12580 Filed 5-25-89; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 86E-0278]

Determination of Regulatory Review Period for Purposes of Patent Extension; Marinol®, Correction

AGENCY: Food and Drug Administration.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting the notice of its determination of the regulatory review period for puposes of patent extension for Marinol®(dronabinol) that appeared in the **Federal Register** of April 27, 1989 (54 FR 18158). The notice stated that the patent applicant requested "1,826 days of patent term extension." It should have stated that "730 days of patent term extension" were requested. In addition, the signature block incorrectly identified Stuart L. Nightingale as "Associate Commissioner for Regulatory Affairs." It should have read "Associate Commissioner for Health Affairs." This document corrects those errors.

FOR FURTHER INFORMATION CONTACT: Nancy E. Pirt, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: In FR Doc. 89-10085, appearing on page 18158 in the **Federal Register** of Thursday, April 27, 1989, the following corrections are made:

1. On page 18159, in the second column, in the first complete paragraph, in line 9, "1,826 days" is corrected to read "730 days".

2. On page 18159, in the second column, in the last line of the signature block, "Associate Commissioner for Regulatory Affairs." is corrected to read "Associate Commissioner for Health Affairs."

Dated: May 16, 1989.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 89-12579 Filed 5-25-89; 8:45 am]

BILLING CODE 4160-01-M

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on Friday, May 19, 1989.

(Call Reports Clearance Officer on 202-245-2100 for copies of package)

1. Cardiac Pacemaker Registry—0910-0234—This data collection will collect information from physicians and providers who perform Medicare-covered pacemaker procedures. The information is for the congressionally-mandated pacemaker registry. Providers submit the information for the Registry to the Health Care Financing Administration (HCFA) as part of the request for reimbursement; HCFA then provides the information to the Food and Drug Administration. Respondents: Businesses or other for-profit, non-profit institutions, small businesses or organizations. Number of Respondents: 1; Number of Responses per Respondent: 1; Average Burden per Response: 1 hour; Estimated Annual Burden: 1 hour.

2. National Drug and Alcoholism Treatment Unit Survey (NDATUS)—0930-0106 (expired 4/88)—Information collected by NDATUS on the location, scope and characteristics of all known drug and alcohol abuse treatment and prevention programs in the United States is needed to assess the nature and extent of these resources, to identify gaps in service, and to provide a data base for treatment referrals. Respondents: State or local governments, businesses or other for-profit, Federal agencies or employees, non-profit institutions, small businesses or organizations. Number of Respondents: 13,056; Number of Responses per Respondent: 1; Average Burden per Response: .40 hours; Estimated Annual Burden: 5,148 hours.

3. Feasibility Study of a National Survey of Ambulatory Surgical Centers—New—The purpose of this project is to develop the design for a national survey of patient visits to ambulatory surgical centers (ASCs). The resulting design will be tested and evaluated through actual data collection. Results will be used to implement a national survey of ASCs in the future. Respondents: Businesses or other for-profit, non-profit institutions. Annual Reporting Burden: Since this is a concept clearance, definitive burden estimates are not yet available. These estimates will be provided when the study design and questionnaire are final and the final clearance request is submitted.

4. Resource Data for State Food and Drug Programs—0910-0020—States regulate intrastate commerce of products regulated at the Federal level by the Food and Drug Administration (FDA). Consequently, State agencies and FDA often deal with the same public and industries, frequently encountering similar problems. State data being collected can be correlated to FDA's programmatic approach to regulation, providing some measure of comparability of FDA and State programs. Respondents: State or local governments. Number of Respondents: 194; Number of Responses per Respondent: 1; Average Burden per Response: 1.5 hours; Estimated Annual Burden: 291 hours.

5. Case Control Study of Cancer in Embalmers/Funeral Directors—New—Mortality studies carried out by the National Cancer Institute among funeral directors/embalmers have shown excess risk for leukemia and brain cancer. This case-control study is designed to determine if the excess for cancer is associated with specific etiologic factors in the work environment by interview of next-of-kin and co-workers about occupational history and other possible disease related factors. Respondents: Individuals or households, businesses or other for-profit, small businesses or organizations.

	Number of respondents	Number of hours per response	Number of responses per respondent
Next-of-kin and co-worker ques	2,877	.35	1
Hospital abstraction	150	.5	1

Estimated Annual Burden: 1,092 hours.

OMB Desk Officer: Shannah Koss-McCallum.

Written comments and recommendations for the proposed information collections should be sent

directly to the OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

Date: May 22, 1989.

James M. Friedman,

Acting Deputy Assistant Secretary for, Health (Planning and Evaluation).

[FR Doc. 89-12632 Filed 5-25-89; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF INTERIOR

Bureau of Land Management

[CA-930-09-4410-08]

The Monuments Final Environmental Impact Statement; Availability

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Bureau of Land Management (BLM) has prepared a Final Environmental Impact Statement (FEIS) concerning the transfer of certain lands under the jurisdiction of the BLM to the National Park Service's Death Valley and Joshua Tree National Monuments.

DATE: Comments on the FEIS will be accepted on or before June 26, 1989.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management is considering the transfer of five parcels of public lands currently managed by the Bureau to the Death Valley and Joshua Tree National Monuments. The purpose of the additions is to adjust the boundaries of the monuments so that they are more manageable, and so that natural areas and ecosystems currently bisected by the boundary are managed under a single jurisdiction.

On May 19, 1988, the Western Regional Office of the National Park Service proposed to the California State Office of the BLM that five parcels of land currently under BLM jurisdiction be transferred to the Joshua Tree and Death Valley National Monuments. The parcels, and the acreage of each follow:

Parcel 1

North Death Valley, on the extreme north end of Death Valley National Monument, 84,389 acres. This area is a topographic extension of Death Valley, and its transfer would enhance its manageability.

Parcel 2

Hunter Mountain, on the western boundary of Death Valley National Monument, 26,687 acres. Inclusion of this parcel in the monument would bring all of Hunter Mountain under the jurisdiction of a single agency.

Parcel 3

Pyramid Peak, on the eastern boundary of Death Valley National Monument 14,268 acres. A more definable monument boundary would be established and the entirety of Red Amphitheater and Pyramid Peak would be brought within the monument.

Parcel 4

Greenwater Valley, on the eastern boundary of Death Valley National Monument just south of Pyramid Mountain, 117,505 acres. Transfer of the large Greenwater Valley Parcel would bring the entire Black Mountain watershed within the monument, and would establish a readily-identificable road as the monument's eastern boundary.

Parcel 5

Pinto Basin, on the southern boundary of Joshua Tree National Monument, 4,480 acres. This proposed BLM wilderness area is topographically related to adjacent Monument lands. BLM's planing regulations require that all actions must conform to the approved land use plan. "If a proposed action is not in conformance, and warrants further consideration before a plan revision is scheduled, such consideration shall be through a plan amendment" [43 CFR 1610-.5-3]. Since the lands now proposed for transfer under the preferred alternatives were not designated for disposal under the California Desert Conservation Plan and the management of a portion of these will now change, the transfer is being processed through a plan amendment.

Six alternatives are considered in detail in the FEIS. These include the following:

Alternative A

Park Service proposal.

Modified Alternative A

BLM/NPS Preferred Alternative

Alternative B

Modified Greenwater Valley parcel (excluding a highly mineralized area in the Ibex Hills).

Alternative C

Eagle Mountains Alternative (an additional 25,000 acres proposed for transfer adjacent to the Pinto Basin parcel).

Alternative D

Modified Pyramid Peak parcel. Includes an additional portion of BLM's Funeral Mountains wilderness study.

Alternative E

No action (lands would not be transferred, but would continue to be managed by BLM under the guidance of the California Desert Conservation Area Plan).

The preferred alternative (Modified Alternative A) is to transfer 108,574 acres of public land currently administered by BLM to NPS. Under the alternative, the boundaries of the Death Valley National Monument will be adjusted to include: 79,389 acres in the North Death Valley parcel, 16,998 acres in Pyramid Peak, and 7,387 acres in the northern most portion of Greenwater Valley, for a total of 103,774 acres. Hunter Mountain will be retained by BLM. The boundaries of Joshua Tree National Monument will be adjusted to include 4,800 acres of public land in the Pinto Basin parcel.

Comments on the FEIS should be submitted to the following address: California Desert District, Bureau of Land Management, ATTN: Monuments EIS, 1695 Spruce Street, Riverside, CA 92507.

Limited copies of the FEIS are available upon written request at the same address.

Date: May 18, 1989.

Ed Hastey,

State Director.

[FR Doc. 89-12610 Filed 5-25-89; 8:45 am]

BILLING CODE 4310-40-M

[CO-920-09-4121-10]

Green River-Hams fork Regional Coal Team; Meeting

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Meeting of the Green River-Hams Fork Regional Coal Team to consider, and if appropriate, approve final data adequacy standards for use in the region.

SUMMARY: On Tuesday, June 27, 1989, the Green River-Hams Fork Regional Coal Team (RCT) will hold its annual meeting. The purpose of the meeting will be to (1) review their decision to lease only in response to competitive lease applicaitons in the region; and (2)

discuss, receive public comment, and, if appropriate, approve Final Data Adequacy Standards for use in the region.

DATES: Draft Data Adequacy Standards for the region were made available for a 30-day review period starting May 12, 1989. To receive full consideration, comments on the draft standards should be received at the address below by close of business on June 12, 1989.

The RCT will meet on Tuesday, June 27, 1989, at 9 a.m. at the Colorado State Office (address given below).

ADDRESSES: Copies of the Draft Data Adequacy Standards are available on request from the Public Room, Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215, (303) 236–2100 or (FTS) 776–2100. Comments on the Draft Data Adequacy Standards should be submitted to the Colorado State Office (CO–923), Bureau of Land Management, 2850 Youngfield Street, Denver, Colorado 80215.

The RCT will meet at 9 a.m., in the Conference Room, 4th Floor, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215.

FOR FURTHER INFORMATION CONTACT: Betsy Daniel, (303) 236–1787, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215.

SUPPLEMENTARY INFORMATION: A preliminary meeting agenda for June 27, 1989, follows:

I. Introduction
II. Review of the Decision to Lease-by-Application in the Region
III. Final Regional Data Adequacy Standards
IV. Issues Affecting Production and Mining in the Region

Gary A. McVicker,

Acting State Director.

Dated: May 22, 1989.

[FR Doc. 89–12618 Filed 5–25–89; 8:45 am]

BILLING CODE 4310–84–M

[NV–930–09–4212–24; N–7674]

Termination of Segregation and Opening Order; Nevada

May 18, 1989.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The notice terminates the segregative effect of airport lease application, N–7674, and opens the lands to the operation of the public land laws, including location under the mining laws.

EFFECTIVE DATE: June 26, 1989.

FOR FURTHER INFORMATION CONTACT: Ben Collins, District Manager, Bureau of Land Management, Las Vegas District Office, P.O. Box 26569, Las Vegas, Nevada, 89126, (702) 646–8800.

SUPPLEMENTARY INFORMATION: Pursuant to 43 CFR 2091.3–2(a)(2), the segregative effect on the following described lands will terminate on or before June 26, 1989:

Mount Diablo Meridian, Nevada

T. 24 S., R. 61 E.,
Sec. 17, SW¼;
Sec. 20, N½, SW¼, N½SE¼, SW¼SE¼
Sec. 29, NW¼.

The airport lease application was filed by the Experimental Aircraft Association on July 18, 1973, at which time the lands became segregated from all forms of appropriation under the public land laws and location under the mining laws.

The subject application has been rejected and the case closed.

At 10:00 a.m., on June 26, 1989, the land will be open to the operation of the public land laws, subject to valid existing rights. All valid applicaitons received prior to or at 10:00 a.m., on June 26, 1989, will be considered as simultaneously filed. All other applications received will be considered in the order of filing.

At 10:00 a.m., on June 26, 1989, the land will also be open to location under the mining laws.

Appropriation of lands under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C., section 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determination in local courts.

The land remains open to mineral leasing and material sale laws.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 89–12608 Filed 5–25–89; 8:45 am]

BILLING CODE 4310–HC–M

[OR–943–09–4214–10; GP9–226; OR–10677]

Order Providing for Opening of Public Land; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action will open 3.26 acres of reconveyed public land to surface entry. The land has been and continues to be open to mineral leasing but remains closed to mining.

EFFECTIVE DATE: July 3, 1989.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503–231–6905.

SUPPLEMENTARY INFORMATION: Notice is hereby given that pursuant to the Recreation and Public Purposes Act of June 14, 1926 (44 Stat. 741), as amended and supplemented (43 U.S.C. 869 *et seq.*), the following described land has been voluntarily reconveyed to the United States:

Willamette Meridian

T. 22 S., R. 10 E.,
Sec. 14, lot 161.

The area described contains 3.26 acres in Deschutes County, Oregon.

At 8:30 a.m., on July 3, 1989, the above described land will be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, any segregations of record, and the requirements of applicable law. All valid applications received at or prior to 8:30 a.m., on July 3, 1989, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

B. LaVelle Black,

Chief, Branch of Lands and Minerals Operations.

Dated: May 18, 1989.

[FR Doc. 89–12612 Filed 5–25–89; 8:45 am]

BILLING CODE 4310–33–M

[CA–060–09; CACA 13781]

California; Realty Action; Correction of Land Description for Partial Termination of Classification for Recreation and Public Purposes

Agency: Bureau of Land Management, Interior.

Summary: This notice will correct the description of lands shown in a partial termination of classification for recreation and public purposes.

For Further Information Contact: Mile Selman, Palm Springs-South Coast Area Office, Bureau of Land Management, 1900 Tahquitz-McCallum Way, Suite B–1, Palm Springs, CA 92262.

The land description for serial No. CACA 13781, 54 FR 18159, April 27, 1989 is hereby corrected to read:

San Bernardino Meridian

T. 12 S., R. 1 W.,
Sec. 24, E½NW¼.

The area contains 80.00 acres in San Diego County.

Date: May 18, 1989.

Nancy J. Alex,

Chief, Lands Section, Branch of Adjudication and Records.

[FR Doc. 89-12611 Filed 5-25-89; 8:45 am]

BILLING CODE 4310-40-M

[NM-940-09-4214-10; NM NM 77962]

Proposed Withdrawal and Opportunity for Public Meeting, Correction; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice will correct the error in the land description in a **Federal Register** notice dated March 17, 1989. The land description published at 54 FR 12959-12960 on March 29, 1989, is hereby corrected as follows:

The legal land description on page 12960, first column, line 11 of the description, which reads "Section 27, NE¼SW¼, S½SW¼SE¼;" is hereby corrected to read "section 27, NE¼ SW¼, S½SW¼, SE¼;"

FOR FURTHER INFORMATION CONTACT: Clarence F. Hougland, BLM, New Mexico State Office, P.O. Box 1449, Santa Fe, New Mexico 87504-1449, 505-988-6071.

Gilbert O. Lockwood,

Acting Associate State Director.

May 16, 1989.

[FR Doc. 89-12609 Filed 5-25-89; 8:45 am]

BILLING CODE 4310-FB-M

Fish and Wildlife Service

Klamath Fishery Management Council Meetings

AGENCY: Department of the Interior.

ACTION: Notice of open meetings.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Klamath Fishery Management Council, established under the authority of the Klamath River Basin Fishery Resources Restoration Act (16 U.S.C. 460ss et seq.). The meeting is open to the public.

DATES: The Klamath Fishery Management Council will meet from 1:00 p.m. to 4:30 p.m. on Wednesday, June 7, 1989, and from 8:00 a.m. to 12 noon on Thursday, June 8, 1989.

PLACE: The meeting will be held at the Red Lion Inn, 1929 4th Street, Eureka, California.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald A. Iverson, Project Leader, U.S. Fish and Wildlife Service, 1312 Fairlane Road, Yreka, California 96097, telephone (916) 842-5763.

SUPPLEMENTARY INFORMATION: For background information on the Management Council, please refer to the notice of their initial meeting that appeared in the **Federal Register** on July 8, 1987 (52 FR 25639). The Council will hear a report on the status of 1989 ocean salmon fisheries; will discuss future allocation of salmon harvest among user groups; and will begin discussion of long-term planning and policy-making for harvest of anadromous stocks of fish originating in the Klamath River basin.

Dated: May 11, 1989.

Marvin L. Plenert,

Regional Director, U.S. Fish and Wildlife Service.

[FR Doc. 89-12633 Filed 5-25-89; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

Roosevelt Recreational Enterprises; Concession Contract Negotiations

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Public notice is hereby given that the National Park Service proposes to extend for seven (7) days the acceptance of applications for the concession opportunity at Coulee Dam National Recreation Area now operated by Roosevelt Recreational Enterprises, to July 10, 1989, in lieu of 60 days following the notice which appeared in the **Federal Register**, Vol. 54, No. 84, Wednesday, May 3, 1989, page 18941.

EFFECTIVE DATE: July 10, 1989.

ADDRESS: Interested parties should contact the Regional Director, Pacific Northwest Region, 83 South King Street, Suite, 212, Seattle, Washington 98104, for information as to the requirements of the proposed contract.

SUPPLEMENTARY INFORMATION: The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before July 10, 1989, to be considered and evaluated.

Date: May 17, 1989.

Rory D. Westberg,

Acting Regional Director Pacific Northwest Region.

[FR Doc. 89-12640 Filed 5-25-89; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

Intent To Engage in Compensated Intercorporate Hauling Operations; Motor Carriers

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

A. 1. Parent corporation and address of principle office: Johnson Trucking Company, Inc., Rt. 60 West, Lewisburg, West Virginia 24901.

2. Wholly owned subsidiary which will participate in the operations, and addresses of its respective principle offices: (a) Johnson Limestone Company, Rt. 60, West, Lewisburg, West Virginia.

3. State(s) of Incorporation: (a) Virginia.

B. 1. Super Valu Stores, Inc., P.O. Box 990, Minneapolis, Minnesota 55440.

2. Subsidiaries:

		State of incorporation
Preferred Products, Inc.	Chaska, MN.....	Minnesota
Shopko Stores, Inc.	Green Bay, WI...	Minnesota
SVS Trucking, Inc.	Eden Prairie, MN.	Minnesota
Twin Valu Stores, Inc.	Eden Prairie, MN.	Minnesota

Noreta R. McGee,

Secretary.

[FR Doc. 89-12558 Filed 5-25-89; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31456]

Kansas City Southern Railway Co.; Acquisition and Operation of Trackage Rights Exemption—Arkansas Central Railway Co.

Kansas City Southern Railway Co. (KCS) has filed a notice of exemption to acquire trackage rights to operate over a 1.3-mile line of railroad of Arkansas Central Railway Co. (ACR) between Herzog Stone Products, Inc.'s stone quarry near South Hatton, AR, and KCS milepost 405 at South Hatton. The transaction was expected to be consummated immediately.[1]

[1] KCS notes that it has been providing these operations for some time and that this filing was prompted by ACR's filing in Finance Docket No. 31405 *Arkansas Central Railway Co., Inc.—Operation Exemption—Line Of Herzog Stone*

Continued

Comments must be filed with the Commission and served on: (1) W.J. Wochner, Kansas City Southern Railway Co., 301 W. 11th Street, Kansas City, MO, 64105, and (2) John D. Heffner, Gerst, Heffner, Foldes & Podgorsky, Suite 1107, 1700 K St., NW., Washington, DC 20006.

The notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: May 22, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee

Secretary.

[FR Doc. 89-12646 Filed 5-25-89; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31462]

Southern Pacific Transportation Co.; Trackage Rights Exemption

St. Louis Southwestern Railway Company (Cotton Belt) has agreed to grant overhead trackage rights to Southern Pacific Transportation Company (SPT) between milepost 621.23 at or near Corsicana, TX and milepost 533 or at near Tyler, TX, a distance of approximately 88.3 miles. Cotton Belt is part of the Southern Pacific Lines. The trackage rights became effective on May 15, 1989.

This notice is filed under 49 CFR 1180.2(d) (3) and (7). It is a transaction within a corporate family 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 of the type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). This acquisition of trackage rights is also an exempt transaction under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on Gary A. Laakso, Southern Pacific Transportation Company, One Market Plaza, Room 846, San Francisco, CA 94105.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354, I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: May 18, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-12438 Filed 5-25-89; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31463]

St. Louis Southwestern Railway Co.—Trackage Rights Exemption—Southern Pacific Transportation Co.

Southern Pacific Transportation Company (SPT) has agreed to grant overhead trackage rights to St. Louis Southwestern Railway Company (Cotton Belt) between milepost 207.4 at or near San Antonio, TX and milepost 621.23 at or near Corsicana, TX, a distance of approximately 306.9 miles. Cotton Belt is part of the Southern Pacific Lines. The trackage rights became effective on May 15, 1989.

This notice is filed under 49 CFR 1180.2(d) (3) and (7). It is a transaction within a corporate family 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 of the type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). This acquisition of trackage rights is also an exempt transaction under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on Gary A. Laakso, St. Louis Southwestern Railway Company, One Market Plaza, Room 846, San Francisco, CA 94105.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: May 17, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-12439 Filed 5-25-89; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Anile State Line Pharmacy; Revocation of Registration

On March 10, 1989, the Administrator of the Drug Enforcement Administration (DEA), issued an Order to Show Cause and Immediate Suspension of Registration proposing to revoke DEA Certificate of Registration AA2985349, previously issued to Angelo C. Anile, R.Ph., d/b/a Anile State Line Pharmacy (Respondent), of 3711 Pennsylvania Avenue, Weirton, West Virginia, and to deny any pending applications for renewal of the pharmacy's registration. The basis for the issuance of the Order to Show Cause was that the pharmacy's continued registration was inconsistent with the public interest.

The Order to show Cause was served personally at Respondent's registered location on March 15, 1989. The Order to Show Cause also immediately suspended Respondent's DEA Certificate of Registration during the pendency of administrative proceedings on the ground that the pharmacy's continued registration posed an imminent threat to the public health and safety. During the service of the Order to Show Cause, DEA Special Agents and Diversion Investigators seized Respondent's DEA Certificate of Registration, unused order forms and controlled substances pursuant to the suspension order.

More than thirty days have elapsed since Respondent received the Order to Show Cause. He has not filed either a request for a hearing or a written statement on his behalf. Therefore, the Administrator concludes that Respondent has waived his opportunity for a hearing on the issues raised in the Order to Show Cause and pursuant to 21 CFR 1301.54(e), enters this final order based upon the information contained in the DEA investigative file.

The Administrator finds that on May 20, 1988, investigators from the West Virginia Board of Pharmacy performed a controlled substance audit at Respondent's pharmacy. The audit covered the period from May 1, 1987, to May 20, 1988, and revealed excessive, unexplained shortages of nearly 159,000

Products, Inc. to "convert its private industrial trackage into a common carrier rail line." ACR has filed a motion to dismiss that notice and has raised arguments concerning this agency's jurisdiction over this line. That issue will be addressed in Finance Docket No. 31405.

dosage units of Schedule II–IV controlled substances.

Subsequent to the completion of the audit by the West Virginia Board of Pharmacy, the Weirton, West Virginia Police received reliable information from four individuals who admitted to obtaining controlled substances from the pharmacy during a five-year period without presenting prescriptions or receiving physicians' approval for the drugs. The individuals also stated that both Respondent and Sheldon Hess, a registered pharmacist at the pharmacy would dispense the controlled substances to them in that manner.

Based upon the results of the audit and the information received from the four individuals, on July 6, 1988, the Weirton, West Virginia Police and the DEA Charleston, West Virginia Resident Office served a Federal search warrant at the pharmacy. All controlled substance records were seized and a controlled substance inventory was performed on that date. Using the seized pharmacy records and information received from the pharmacy's suppliers and wholesalers, DEA Diversion Investigators performed another selective audit of the pharmacy's controlled substance stock. The audit revealed the following shortages of controlled substances for the period from May 1, 1987, to July 6, 1988: 19,973 dosage units of Didrex 50 mg., a 67.5% shortage; 5,591 dosage units of Talwin NX, a 46.73% shortage; 1,303 dosage units of Tylenol #3 with codeine, a 44.21% shortage; 36,035 dosage units of Tylenol #3 with codeine, a 69.89% shortage; 33,485 dosage units of Tylenol #4 with codeine, a 67.34% shortage; 13,826 dosage units of Ativan (combined totals for 0.5 mg. and 1 mg. strengths), a 43.53% shortage; and 57,510 dosage units of phentermine (combined totals for all strengths), a 79.21% shortage. A separate audit conducted of the pharmacy's Xanax and Valium stock for the period from May 1, 1987, to May 20, 1988, revealed shortages of 5,591 dosage units of Xanax (combined totals for 0.5 mg. and 1 mg. strengths) a 38.32% shortage; and 11,066 dosage units of Valium (combined totals for all strengths of tablets), a 28,78% shortage.

Also in July 1988, DEA Diversion Investigators interviewed thirteen persons who admitted to receiving controlled substances from Respondent and/or Sheldon Hess at the pharmacy without presenting prescriptions or obtaining physicians' approval. Prescriptions from the pharmacy were shown to three physicians whose names appeared on controlled substance prescriptions issued in some of the names of persons described above. These physicians claimed that they never issued the prescriptions or authorized the dispensing of controlled substances to those persons. Some of the individuals whose names appeared on the prescriptions found in the pharmacy had moved to California in 1982, yet continued to have prescriptions filled in their names several years later. Two individuals also admitted to receiving controlled substances from Respondent in exchange for performing sexual favors.

On February 6, 1989, in the United States District Court for the Northern District of West Virginia, Sheldon Hess pleaded guilty to a four-count information charging him with one count of violating 21 U.S.C. 843(a)(4)(a), furnishing false or fraudulent information in a record required to be kept, and two counts of violating 21 U.S.C. 841(a)(1), unlawful distribution of controlled substances. All of the charges resulted from the investigation of Mr. Hess' unlawful dispensing practices at the pharmacy. Mr. Hess has yet to be sentenced and continues to work as a registered pharmacist at Respondent's pharmacy.

On February 23, 1989, DEA Diversion Investigators interviewed a woman who admitted that she obtained controlled substances for her daughter from Respondent's pharmacy pursuant to fraudulent prescriptions since 1981. She also admitted to having one of the fraudulent prescriptions refilled as recently as February 19, 1989. The original fraudulent prescription was for meprobamate and was allegedly called into the pharmacy on June 26, 1988. The physician whose name appeared on the prescription denied issuing or authorizing the prescription.

On March 3, 1989, DEA Investigators received permission from Respondent and his attorney to remove all controlled substance prescriptions filled at the pharmacy since July 6, 1988. Using the prescriptions, the Weirton, West Virginia Police verified that both Respondent and Mr. Hess have continued to unlawfully dispense controlled substances pursuant to fraudulent prescriptions.

In determining whether a registrant's DEA Certificate of Registration is inconsistent with the public interest, the Administrator considers the following factors enumerated in 21 U.S.C. 823(f) and 824(a)(4):

(1) The recommendation of the appropriate State licensing board of 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.

The information in this case primarily relates to the second, fourth and fifth factors. Respondent, through his pharmacy, was responsible for the diversion of huge quantities of controlled substances. In a fourteen-month period, he could not account for almost 170,000 dosage units of controlled substances. In addition, he and Mr. Hess filled controlled substance prescriptions they knew, or should have known, were not legitimate. They dispensed controlled substances without receiving prescriptions or physicians' authorizations, sometimes in exchange for sexual favors. Little, if any, activity relating to controlled substances at Respondent's pharmacy could be categorized as legitimate. There is no doubt that Respondent flagrantly abused his controlled substance registration and showed no regard for the effect his actions may have had on the community and on the individuals to whom he supplied drugs.

No evidence has been presented which justifies or mitigates the activities which took place in Respondent's pharmacy. Instead, the evidence overwhelmingly suggests that Respondent's controlled substance handling practices pose an imminent threat to the public health and safety and, clearly, his continued registration is contrary to the public interest.

Accordingly, pursuant to 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 AA2985348, previously issued to Angelo C. Anile, R.Ph., d/b/a Anile State Line Pharmacy, be, and it hereby is, revoked. The Administrator further orders that any pending applications for renewal of said registration be, and they hereby are, denied.

At the time the Order to Show Cause and Immediate Suspension of Registration was served at Anile State Pharmacy, all controlled substances possessed by the pharmacy under the authority of the then-suspended registration were placed under seal and removed for safekeeping. 21 U.S.C. 824(f) provides that no disposition may be

made of such controlled substances under seal until all appeals have concluded or until the time for taking appeal has elapsed. Accordingly, these controlled substances shall remain under seal until June 26, 1989, or until any appeal of this order has been concluded. At that time, all such controlled substances shall be forfeited to the United States and shall be disposed of pursuant to 21 U.S.C. 881(e).

This order is effective May 26, 1989.

John C. Lawn,

Administrator.

Dated: May 19, 1989.

[FR Doc. 89-12614 Filed 5-25-89; 8:45 am]

BILLING CODE 4410-09-M

Drug Enforcement Administration Manufacturer of Controlled Substances; Janssen Inc.; Registration

By Notice dated January 25, 1989, and published in the **Federal Register** on February 7, 1989, (54 FR 6040), Janssen Inc., HC 02 Box 19250, Gurabo, Puerto Rico 00658-9629, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Alfentanil (9737)	II
Sufentanil (9740)	II

No comments or objections have been received. Therefore, pursuant to Section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: May 19, 1988.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 89-12655 Filed 5-25-89; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 89-10]

Anthony E. Narducci, M.D.; Revocation of Registration

On January 9, 1989, the Administrator of the Drug Enforcement Administration (DEA), issued an Order to Show Cause and Immediate Suspension of Registration to Anthony E. Narducci, M.D. (Respondent), of 2810 State Street, Erie, Pennsylvania, proposing to revoke DEA Certificate of Registration AN0420783, and to deny any pending applications for renewal of his registration as a practitioner under 21 U.S.C. 823(f). The basis for the issuance of the Order to Show Cause was that Respondent's continued registration was inconsistent with the public interest based upon his improper and unlawful handling of controlled substances.

The Order to Show Cause was served on Respondent on January 10, 1989. The Order to Show Cause also ordered the immediate suspension of Respondent's current DEA Certificate of Registration, during the pendency of administrative proceedings, on the ground that his continued registration posed an imminent threat to the public health and safety. During service of the Order to Show Cause, DEA Special Agents and Diversion Investigators seized Respondent's DEA Certificate of Registration and unused order forms pursuant to the suspension order. No controlled substances were found or seized at that time.

Respondent, through counsel, timely filed a request for hearing on the issue raised in the Order to Show Cause. The matter was placed on the docket of Administrative Law Judge Mary Ellen Bittner. Respondent later filed a motion to withdraw his earlier request for a hearing and, on April 18, 1989, the Administrative Law Judge terminated the proceedings before her. The Administrator determines that Respondent has waived his opportunity for a hearing on the issue raised in the Order to Show Cause and pursuant to 21 CFR 1301.54(e) enters this final order based upon the information contained in the DEA investigative file.

The Administrator finds that, between June 1985 and October 1987, Respondent received three verbal warnings from the Pennsylvania Bureau of Narcotics Investigation and Drug Control (BNIDC) concerning his improper prescribing of Doriden, Tylenol with codeine, Talwin, and pyribenzamine. Individually, each of these drugs is highly abused in the Erie, Pennsylvania area, and the combinations of Doriden and Tylenol with codeine and Talwin and pyribenzamine are also highly abused in that area. Despite the warnings, Respondent continued issuing large quantities of prescriptions for those drugs.

In December 1988, the DEA Pittsburgh Resident Office, the Pennsylvania BNIDC and the Pittsburgh Police Department initiated an investigation concerning Respondent's controlled substance prescribing and dispensing practices. A review of Respondent's registration history with the Drug Enforcement Administration indicates that since November 1983, he has been registered to handle only Schedule III narcotic controlled substances. Cooperating witnesses informed DEA that since 1983, Respondent routinely issued numerous Schedule II prescriptions to approximately 48 individuals. Pennsylvania pharmacy reporting records corroborated the witnesses' allegations. Most of the 48 individuals receiving the drugs from Respondent are known drug abusers or drug dealers. A review of criminal court records also revealed that a majority of those individuals have previoous drug-related convictions or pending cases involving drug charges. Based upon the pharmacy records, it is estimated that Respondent issued unlawful prescriptions for approximately 5,000 dosage units of Schedule II controlled substances per month.

Several registered pharmacists in the area were questioned regarding Respondent's controlled substance issuing practices. Many referred to him as a "script writer," implying that he issued a multitude of controlled substance prescriptions for other than legitimate medical purposes. Some stated that they would not fill his prescriptions and others indicated that they would only fill prescriptions issued by him after checking the patients' names with BNIDC.

During the investigation, Respondent's former receptionist was also interviewed. She stated that most of Respondent's "patients" were drug addicts. The mother of one of Respondent's alleged patients called and pleaded with Respondent not to issue any more prescriptions for controlled substances to her daughter, since she was a drug addict. Respondent ignored her pleas and continued to issue controlled substance prescriptions to her daughter. A registered pharmacist in the area also called Respondent to advise him that a number of the persons to whom he had issued controlled substance prescriptions were drug addicts. Again, Respondent failed to heed her advice and continued to issue controlled substance prescriptions to those individuals.

As part of the investigation, a cooperating individual informed DEA that she began seeing Respondent in 1982 in order to obtain controlled substance prescriptions. She could not recall Respondent ever performing a medical examination on her. She stated that, during her visits to him in the summer of 1984, Respondent began to

touch parts of her body for reasons other than to conduct medical examinations. Eventually, she consented to performing sexual favors for Respondent in exchange for receiving either controlled substances or controlled substance prescriptions. She continued this arrangement with Respondent at his medical office and home from the summer of 1984 to March 1988. Often, he would give her $25.00 per visit for her services, in addition to the controlled substances or prescriptions. The controlled substances or prescriptions she received from Respondent included Percocet, Percodan, Tussionex, Hycodan, Dexedrine, Valium, Levodromoran, Biphetamine, Nembutal, Tuinal, Tylenol #3 with codeine and Doriden.

On December 14, 1988, the cooperating witness assisted in an undercover criminal investigation of Respondent. A tape-recorded conversation revealed that she requested a Tuinal prescription from Respondent. He refused, citing recent drug arrests involving that drug. Instead, he issued her a prescription for Nembutal for other than a legitimate medical purpose and without conducting any medical examination. When Respondent requested that she pay for the prescription, the cooperating witness reminded him that she had not paid him in the past for the prescriptions. The cooperating witness also identified three other women who performed sexual favors in exchange for controlled substances or prescriptions from Respondent.

Another cooperating witness was interviewed in January 1989. She admitted that she had been a drug addict since she was 13 years old. She first abused marijuana and then abused Talwin. She began seeing Respondent in 1980, after she was informed by a friend that Respondent was an "easy mark." When she first visited Respondent's office, she recognized several of his patients as drug addicts from the Erie area. She stated that she never was medically examined by Respondent. During her visits to Respondent, she received Tuinal, Seconal, Percocet, Percodan, biphetamine and Tussionex. As she continued to see Respondent, he stopped charging her for her visits and prescriptions. Respondent then began asking her to come to his office on Saturdays at closing time. During one of her visits, Respondent placed a pillow on the floor in front of his chair and told the woman to make herself comfortable. He then began to remove his pants. At that point, the woman told Respondent she would report him to the authorities. She informed DEA Investigators that she stopped seeing Respondent in late 1987 when she became pregnant. She is currently undergoing counseling and treatment for her drug addiction. A review of controlled substance records for this woman revealed that she received prescriptions from Respondent for Percocet, Percodan, diazepam, Hycomine, APAP with codeine, Tylox, Centrax, Xanax, Tuinal and Tylenol with codeine on a regular basis from January 1986 to March 1987.

On March 10, 1989, in the United States District Court for the Western District of Pennsylvania, Erie Division, Respondent entered pleas of guilty to five counts of violation of 21 U.S.C. 841(a)(1), all felony offenses relating to controlled subtsances. Respondent has yet to be sentenced on those charges.

In determining whether a registrant's continued registration is inconsistent with the public interest, the Administrator considers the following factors listed in 21 U.S.C. 823(f); and referred to in 21 U.S.C. 824(a)(4):

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

In this case, the second, third, fourth and fifth factors are relevant. All of the evidence in this case indicates that Respondent misused his controlled substance handling privileges to unlawfully prescribe dangerous controlled substances to several individuals for other than legitimate medical purposes. Most of his "patients" were known drug addicts or dealers. On several occasions, his motivation for issuing prescriptions or dispensing drugs was the promise or grant of sexual favors or money from these individuals.

To say that, as a result of his unlawful activities, Respondent's continued registration posed a threat to the public health and safety would be an understatement. Even after he was warned by State authorities, a registered pharmacist, and a concerned parent of one of his drug-addicted "patients," Respondent made no effort to cease his abhorrent practices. As a result of his unlawful activities, Respondent was responsible for a significant portion of the unlawful diversion of controlled substances in the Erie, Pennsylvania area. He also continued to supply controlled substances to nearly 50 known drug addicts. It is clear that he showed absolutely no concern or regard for the detrimental effect his prescribing and dispensing practices were having on his "patients" or the community itself.

The DEA investigative file reveals absolutely no positive information concerning Respondent or his controlled substance handling practices. In addition, Respondent chose not to present any information, either in testimonial or documentary form, on his behalf. Therefore, after a thorough consideration of the entire record in this matter, the Administrator finds that Respondent's continued registration would be contrary to the public interest and would pose a continuing threat to the health and safety of his community. Thus, his DEA registration must be revoked.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), orders that DEA Certificate of Registration AN0420783, previously issued to Anthony E. Narducci, M.D., be, and it hereby is, revoked. The Administrator further orders that any pending applications for renewal of said registration be, and they hereby are, denied.

This order is effective May 26, 1989.

Dated: May 19, 1989.

John C. Lawn,

Administrator.

[FR Doc. 89-12615 Filed 5-25-89; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 87-58]

Donald Morton Stevens, M.D.; Revocation of Registration

On June 15, 1987, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Donald Morton Stevens, M.D. (Respondent), of 405 Washington Street, Alexandria, Kentucky 41001, proposing to revoke his DEA Certificate of Registration AS3014660, and to deny any pending applications for registration as a practitioner under 21 U.S.C. 823(f). The Order to Show Cause alleged that Respondent was not authorized to handle controlled substances in the Commonwealth of Kentucky due to a temporary order of restriction issued on November 20, 1986, by the

Commonwealth of Kentucky, State Board of Medical Licensure, whereby Respondent was not allowed to prescribe and/or dispense controlled substances during the pendency of proceedings against his medical license. In addition, the Order to Show Cause alleged that Respondent's continued registration would be inconsistent with the public interest as that term is used in 21 U.S.C. 823(f) and 824(a)(4).

Respondent, through counsel, requested a hearing on the issues raised by the Order to Show Cause and the matter was docketed before Adminstrative Law Judge Mary Ellen Bittner. On October 13, 1987, Government counsel filed a motion for summary disposition based on the fact that the temporary order of restriction issued by the State Board of Medical Licensure was still in effect, and Respondent was therefore not authorized to handle controlled substances by the state in which he practiced. Respondent was given an opportunity to file a response to the Government's motion. Respondent requested an extension of time and was given until December 1, 1987, to file such a response.

Respondent did not file a response to the Government's motion and on December 17, 1987, the Administrative Law Judge issued her opinion and recommended decision. Judge Bittner concluded that Respondent was not authorized by the state to handle controlled substances and therefore, DEA cannot register him. Judge Bittner recommended that Respondent's DEA Certificate of Registration be suspended rather than revoked pending final action by the medical board. Once the state action was complete, Judge Bittner recommended that the Administrator direct the Administrative Law Judge to take appropriate action.

Pursuant to 21 CFR 1316.66, on December 22, 1987, Government counsel filed exceptions to Judge Bittner's recommended decision arguing that Respondent's registration be revoked rather than suspended. On January 11, 1988, Respondent also filed exceptions to the Administrative Law Judge's opinion. Respondent stated that a settlement had been reached regarding his medical license with the Kentucky State Board of Medical Licensure which would become effective January 21, 1988. As part of the settlement, Respondent's license to practice medicine would be placed on probation for five years. In addition, for two years, Respondent would only be permitted to handle Schedule II controlled substances for institutionalized patients in hospitals and nursing homes and would not be permitted to handle certain Schedule III controlled substances. On February 2, 1988, in an agreed order of probation, the Commonwealth of Kentucky, State Board of Medical Licensure accepted the settlement terms.

On February 10, 1988, the Adminstrative Law Judge issued a Memorandum to Counsel and Order for Prehearing Statements, reopening the proceedings before the Administrative Law Judge and ordering that both parties file prehearing statements. The prehearing statements were to include, *inter alia*, a list of proposed witnesses, a summary of each witness' testimony and a list of proposed documentary evidence. In the Memorandum to Counsel and Order for Prehearing Statements, Judge Bittner cautioned both parties that, "evidence not disclosed in the prehearing statement, or per instructions during a prehearing conference, is not likely to be admitted at the hearing over objection."

In his prehearing statement, Respondent specifically listed the names of two potential witnesses and then listed three groups of potential witnesses. Respondent himself was not listed as a potential witness.

Following a prehearing conference conducted by telephone on June 29, 1988, the Administrative Law Judge issued a Prehearing Ruling. Government counsel was ordered to supply Respondent with certain information by July 25, 1988. Respondent's counsel was ordered to provide the Government by September 12, 1988, with a list of specific witnesses as well as a summary of the testimony of each witness and a list of any documents he intended to introduce at the hearing in addition to those already listed in his prehearing statement as well as copies of all of the documents. Judge Bittner cautioned both parties that no additional testimony or documents were likely to be admitted over objection other than that already disclosed in the prehearing statements or that would be disclosed pursuant to the prehearing ruling.

The hearing was scheduled to begin on October 25, 1988, in Louisville, Kentucky. Subsequently, it was determined that both of the Government's witnesses would be unable to attend the hearing and it was therefore rescheduled to begin on January 24, 1989, in Louisville, Kentucky.

On October 4, 1988, Government counsel sent a letter to the Administrative Law Judge, with a copy to Respondent's counsel, stating that the Government had not received any information from Respondent's counsel as ordered in the Prehearing Ruling dated June 29, 1988. On December 23, 1988, Government counsel filed a motion to strike portions of Respondent's prehearing statement in light of Respondent's failure to comply with the Administrative Law Judge's Prehearing Ruling. The Government contended that Respondent should only be permitted to call as witnesses at the hearing the two individuals specifically named in Respondent's prehearing statement and should not be permitted to introduce any documents at the hearing.

On January 5, 1989, a telephonic conference was held regarding the Government's motion to strike. Respondent's counsel consented to the Government's motion, however, he requested that Repsondent be permitted to testify at the hearing and to introduce the order of the Kentucky State Board of Medical Licensure. On June 5, 1989, Judge Bittner issued a Memorandum to Counsel and Ruling on Motion to Strike. The Administrative Law Judge granted the Government's motion to strike as to all documents except the order of the Board of Medical Licensure. Judge Bittner further granted the motion to strike as to all witnesses not specifically named in Respondent's prehearing statement except Respondent himself, provided that Government counsel be provided with a summary of Respondent's proposed testimony on or before January 9, 1989. In addition, the hearing was rescheduled to begin on February 7, 1989, in Washington, D.C.

On February 3, 1989, Respondent's counsel notified the Administrative Law Judge and Government counsel that Respondent wished to withdraw his request for a hearing and instead, submit a written statement pursuant to 21 CFR 1301.54(c). In a Memorandum to Counsel dated February 3, 1989, Judge Bittner cancelled the hearing and gave Respondent until February 24, 1989, to file a written statement. On February 23, 1989, Respondent filed his written statement and on March 2, 1989, the Administrative Law Judge terminated the proceedings before her. The Administrator now enters his final order in this matter, based on the investigative file and Respondent's written statement, pursuant to 21 CFR 1301.54(e) and 1301.57.

The Administrator finds that in 1977, the Drug Enforcement Administration conducted an investigation of Respondent's Schedule II prescribing practices. A prescription survey was conducted at local pharmacies which revealed that Respondent issued approximately 4,000 Schedule II

prescriptions over a 12 month period of time. These prescriptions accounted for more than 300,000 dosage units of controlled substances with the majority of them being dispensed to 15 individuals. It was determined that the frequency and quantity of the drugs prescribed, particularly Dilaudid, Percodan and Quaalude, were in excess of the recommended dosage for those substances.

Between January and August 1980, DEA received information from several law enforcement agencies in the Commonwealth of Kentucky and the Ohio State Medical Board that Respondent continued to prescribe excessive quantities of Schedule II controlled substances. Respondent continued to prescribe large quantities of these drugs to some of the individuals revealed in the 1977 investigation as receiving large quantities of the drugs. In addition, DEA received information from the Northern Kentucky Narcotics Unit that Respondent was prescribing large quantities of controlled substances, particularly Dilaudid and Quaalude, which were then appearing in the illicit market. As a result of this information, in 1981 a joint investigation of Respondent's controlled substance prescribing practices was conducted by DEA and the Kentucky Attorney General's Office. Another prescription survey was conducted which revealed that Respondent continued to prescribe unusually large quantities of Schedule II controlled substances. The prescriptions reviewed indicated that a number of individuals listed different addresses on different prescriptions. The frequency between the dates that prescriptions for controlled substances were issued by Respondent for a number of individuals appeared questionable. On a regular basis, a number of individuals received more than one prescription on the same date from Respondent for different popular drugs of abuse. On a regular basis, several individuals received more than one prescription from Respondent on the same date for the same controlled substance and then subsequently filled these prescriptions at different pharmacies. A number of individuals that received prescriptions from Respondent were known drug abusers. Finally, a significant number of the prescriptions contained false names and addresses.

In January 1985, an individual contacted DEA and stated that her sister and her niece were obtaining prescriptions for controlled substances from Respondent for no legitimate medical purpose. In addition, she stated that her niece often exchanged sexual favors for prescriptions from Respondent.

On December 3, 1985, investigators asked Respondent for 26 patient charts. Respondent was only able to produce 14 of them stating that his office burned in May 1983 and not all of his patient charts were salvaged. However, several of the individuals whose patient charts were allegedly destroyed in the fire received prescriptions for controlled substances after May 1983, yet there were no patient charts for these individuals after the alleged fire.

Another prescription survey was conducted in February 1986. Essentially the same prescribing practices were noted during this survey as were noted in the 1981 survey. A number of individuals received as many as four or five prescriptions for different controlled substances on each occasion. In several of these instances, two out of the four prescriptions were written for Schedule II narcotic controlled substances.

Following the review of the prescriptions, Respondent was asked to produce 23 patient charts, however, he was only able to produce 20 of them. The three individuals whose patient charts could not be located all had received prescriptions for controlled substances from Respondent subsequent to the alleged fire. With regard to one individual for whom Respondent stated that there was no patient chart, he admitted that he saw her on the street and may have issued prescriptions for her outside of his office. Regarding another individual, Respondent had no explanation why there was no patient chart for her. With respect to the individual, Respondent stated that although he had no medical record for her, he saw the individual's husband and gave him prescriptions for her. The 1981 survey revealed that this same husband and wife received controlled substance prescriptions from Respondent on a regular basis. On 49 separate occasions each received a controlled substance prescription from Respondent. On each such occasion, the wife's prescription was filled at one pharmacy and the husband's filled at another.

A local doctor analyzed Respondent's prescription writing practices regarding 30 individuals. In almost all of the cases which he reviewed, the doctor concluded that there was no medical indication for the controlled substances prescribed.

On November 20, 1986, the Commonwealth of Kentucky, State Board of Medical Licensure filed a complaint against Respondent alleging that Respondent "did regularly and frequently prescribe or dispense controlled substances in amounts not justified by patients' medical records." It further alleged that Respondent "did prescribe or dispense controlled substances without performing an adequate history and tests and without maintaining adequate records." Finally, it alleged that Respondent "did prescribe or dispense controlled substances with the intent and knowledge that the controlled substances were being used or likely to be used other than medically or for an accepted therapeutic purpose and in such amounts that [Respondent] knew or had reason to know the amounts were excessive." Simultaneous with the filing of the complaint, the Kentucky State Board of Medical Licensure temporarily restricted Respondent's ability to handle controlled substances pending the outcome of the board proceedings. On February 2, 1988, the Kentucky State Board of Medical Licensure entered an Agreed Order of Probation whereby Respondent is permitted to handle controlled substances in the limited manner previously mentioned above.

The Administrator has considered the written statement submitted by Respondent. Respondent first argued that there is no statutory basis for the revocation of Respondent's DEA registration. Respondent argued that there are only three statutory bases, a felony conviction relating to controlled substances, material falsification of an application for registration and lack of state authorization to handle controlled substances, and none of them apply in this case. Respondent's argument is flawed. The statute clearly sets out a fourth statutory basis. 21 U.S.C. 824(a)(4) states that a registration may be revoked upon a finding that the registrant, "has committed such acts as would render his registration under section 823 of this title inconsistent with the public interest as determined under such section." The Order to Show Cause clearly stated that one of the statutory bases for the proposed revocation was that Respondent's continued registration would be inconsistent with the public interest.

Respondent next argued that the factors for the Administrator to consider in this case to determine whether Respondent's continued registration is in the public interest are listed in 21 U.S.C. 823(b) and 823(e). Once again Respondent is incorrect. The Order to Show Cause clearly states that the factors to be considered are listed in 21 U.S.C. 823(f). The subsections cited by

Respondent relate to the registrations of pharmaceutical distributors.

The Administrator may deny an application or revoke a registration if he determines that such registration would be inconsistent with the public interest. The factors to be considered in determining whether the registration of a practitioner would be in the public interest are enumerated in 21 U.S.C. 823(f). All factors need not be present for the Administrator to revoke a registration or deny an application. Instead, the Administrator may accord each factor the weight he deems appropriate in determining the public interest. See, *Neveille H. Williams, D.D.S.*, 53 FR 23465 (1988); *Paul Stepak, M.D.*, 51 FR 17556 (1986).

Essentially, Responent argued that since the Kentucky State Board of Medical Licensure permits him to continue to handle controlled substances in a limited fashion, DEA should do the same. In addition, Respondent argued that by initially agreeing to let the Board action proceed to completion before continuing with the administrative action, DEA agreed that the order of the Kentucky State Board of Medical Licensure would be dispositive and DEA would be bound by the Board's order.

Respondent's arguments are without merit. First, nowhere in the record is there any evidence that DEA agreed to be bound by the Board's order. Rather, it is clear that the only reason DEA agreed to postpone its case pending the outcome of the Board's proceeding is that if the Kentucky State Board of Medical Licensure had revoked the controlled substance privileges of Respondent, there would be no need for a hearing before the Drug Enforcement Administration since DEA is not able to register an individual if he is not authorized to handle controlled substances by the state in which he practices. See, *Clifford E. Bigott, D.M.D.*, 53 FR 28711 (1988); and cases cited therein. Second, the legislative history regarding 21 U.S.C. 823(f) clearly states that, in considering the recommendation of the State licensing board, "it [is] no longer . . . necessary that the state authority have in fact revoked the practitioner's license or registration before federal registration [may] be denied." S. Rep. No. 98–225, 98th Cong., 1st Sess., at 266 n.36, *reprinted in* 1984 U.S. Code Cong. and Admin. News at 3448 n.36. Clearly, DEA is not bound by the Kentucky State Board of Medical Licensure's order.

The Administrator has considered all of the factors listed in 21 U.S.C. 823(f) and has concluded that Respondent's continued registration is inconsistent with the public interest. The public must be protected against the diversion and misprescribing of controlled substances. In determining the public interest, the Administrator must consider the registrant's past history regarding the handling of controlled substances and whether adequate assurances have been given to prevent diversion in the future.

The record clearly establishes that the Respondent has excessively prescribed controlled substances since the mid to late 1970's. Another doctor, after looking at 30 of Respondent's patient charts, concluded that there was no medical indication for the controlled substances prescribed in the majority of cases reviewed. Respondent prescribed controlled substances for an individual when he saw her on the street and therefore did not perform any physical examination. Respondent issued prescriptions for controlled substances for an individual whom he never saw. Finally, Respondent often issued four or five prescriptions for different controlled substances to single individuals during a given visit.

By waiving his opportunity for a hearing, it is true that Respondent has not admitted the accuracy of any of DEA's allegations. However, Respondent has not offered any explanation of his past practices nor has he presented any assurances that such practices will not continue in the future. In his written statement, Respondent argued that the action of the Kentucky State Board of Medical Licensure is enough to ensure that there will be no diversion or misprescribing of controlled substances in the future. However, after considering the investigative file and Respondent's written statement, the Administrator is far from assured that Resspondent understands the tremendous responsibility which accompanies DEA registration.

For the foregong reasons, the Administrator concludes that Respondent's DEA Certificate of Registration must be revoked. Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), orders that DEA Certificate of Registration AS3014660, previously issued to Donald Morton Stevens, M.D., be, and it hereby is, revoked. The Administrator further orders that any pending applications for registration submitted by Respondent, be, and they hereby are, denied. This order is effective June 26, 1989.

Dated: May 19, 1989.

John C. Lawn,

Administrator.

[FR Doc. 89–12613 Filed 5–25–89; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–16,061 et. al]

Great Western Sugar Co.; Negative Determination on Remand

In the matter of: TA–W–16,061, Loveland, Colorado; TA–W–16,062, Denver, Colorado; TA–W–16,105, Fort Morgan, Colorado; TA–W–16,129, Sterling, Colorado; TA–W–16,150, Goodland, Kansas; TA–W–16,194, Greeley, Colorado; TA–W–16,215, Bayard, Nebraska; TA–W–16,216, Ovid, Colorado; TA–W–16,424, Billings, Montana.

Pursuant to a remand by the U.S. Court of International Trade, dated March 1, 1989, in *Western Conference of Teamsters* v. *William E. Brock, Secretary of Labor* (USCIT 88–04–00436) the Department makes the following negative determination on remand for workers of Great Western at the subject locations.

The Department's initial denial was based on the fact that imports of refined sugar were negligible. The Department also surveyed Great Western customers. The survey showed that none of the surveyed customers increased their imports of refined sugar or high fructose corn syrup (HFCS). Several customers indicated that their increased use of HFCS led to their reduction in purchases from Great Western.

The Department's denial on reconsideration addressed the fact that virtually all raw sugar imported into the U.S. is raw cane sugar which requires further processing before it can be marketed as refined sugar. The Department also found that the subject facilities of Great Western could not convert raw cane sugar into refined sugar without extensive capitalization. The earlier cases (Longmont TA–W–1636 and Johnston TA–W–1637) were distinguished from the present cases because of substantially different conditions that prevailed in the sugar/HFCS market relevant to the respective cases.

The Department requested the first remand to survey the same customers of Great Western for raw sugar to determine if imports may have displaced purchases of refined sugar from Great Western. It was found that most of the respondents to the survey did not import

raw cane sugar. The few customers who imported raw cane sugar also purchased domestic raw sugar and, in general, their purchases of domestic and foreign raw sugar ran in tandem with each other. The respondents indicated that they did not use raw sugar as a substitute for refined sugar. Bottling customers reported reduced reliance on both domestic and foreign raw sugar and increased domestic purchases of HFCS.

In the instant remand the Court states that (1) Labor did not determine whether the economic effect of increased imports of raw sugar was comparable to the effects of the importation of refined sugar to determine whether they were directly competitive and (2) Labor did not distinguish its rationale for departing from its initial analysis in the Longmont certification in 1977 and the instant plants in 1985.

The Department agrees that within the context of the definition of "like or directly competitive" as that term is used in the Trade Act, raw sugar may be considered like or directly competitive with refined sugar. However, the significance of this fact in the instant cases is tempered by the operation of the sugar price support program which effectively insulated raw sugar producers and through them processors, from injurious import competition.

The price support program operated through quotas that limited raw sugar supply to achieve a target support price for sugar. The authority for setting the support price for sugar for the 1981–1985 crops was contained in the 1981 Agriculture and Food Act. The market prices resulting from quotas were intended to yield prices sufficient to repay loans made to sugar processors by the Commodity Credit Corporation (CCC) and allow, but not guarantee, processors a profit. If price targets were not achieved, processors could forfeit the refined sugar as payment for the loans from the CCC.

As a participant and beneficiary in the price support program, Great Western was obligated to purchase domestically grown sugar beets at no less than a specified support level in order to borrow from the CCC. According to sugar experts in the Department of Agriculture, refined beet sugar market prices exceeded the loan rate for sugar beets in the period relevant to this investigation and Great Western should have been able to make a profit in excess of that which may have resulted from the target price level set by the program. Thus, petitioner's allegation that Great Western was unable to secure sugar beet acreage commitments because of low import prices is not supported by the facts.

The Department's denials in the instant cases were issued on October 7, 1985 when the domestic market was insulated from foreign competition. Sugar imports were restricted so as to increase sugar prices to the extent that processing companies sold sugar on the market rather than as payment for loans from the CCC. The average market price for refined beet sugar in the insulated Midwest market was 24.2 cents a pound in the last quarter of 1984; the raw sugar price in New York was 21.7 cents a pound and the average world price for raw sugar in the same period was 5.2 cents a pound. Further, U.S. Department of Agriculture data show the penetration of HFCS into the domestic sugar/HFCS market increasing from 1,046,000 tons in 1977 to 5,380,000 tons in 1985. The market penetration made by HFCS increased from 9.2 percent in 1977 to 41.5 percent in 1985. This fact is confirmed in the Department's survey of Great Western's customers which shows the large bottling companies greatly reducing their purchases of refined sugar from Great Western and shifting purchases to domestic HFCS.

The domestic sugar market applicable to the Longmont certification in 1977 differed substantially from that in which Great Western operated in the 1984/85 period. The Longmont certification was issued on August 16, 1977 when the domestic sugar market was for all practical purposes unregulated. When the Sugar Act, expired on December 31, 1974, prices restrictions and quota levels were removed from sugar. As a result, domestic prices fell to the level of world sugar prices in response to the impact of an increased supply of sugar in a previously regulated market. World raw sugar prices dropped from 29.9 cents a pound average in 1974 to 8.1 cents a pound in 1977. Raw sugar prices in New York dropped from 29.5 cents a pound in 1974 to 11 cents a pound in 1977. In the unregulated market domestic refined beet sugar prices dropped from 32.1 cents a pound in 1974 to 15.1 cents a pound in 1977. It is clear that in the period applicable to the Longmont case world price levels were critical determinants of domestic prices and profitability. This was not true in the instant cases because quotas determined the level of domestic prices as evidenced by the great disparity between world and domestic price level noted above. Also, HFCS had not as yet made the competitive inroads on institutional users of sugar that are reflected in the instant situation on remand.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for adjustment assistance to former workers of the Great Western Sugar Company at the subject locations.

Signed at Washington, DC, this 18th day of May, 1989.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 89–12645 Filed 5–25–89; 8:45 am]

BILLING CODE 4510–30–M

Kenting Drilling Services, Inc.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

TA–W–21, 364, Williston, ND; TA–W–21, 364A, All Locations in Montana

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 6, 1988 applicable to all workers of Kenting Drilling Services, Inc., Williston, North Dakota.

Based on new information from the company, additional workers were separated from Kenting Drilling Services in Montana during the period applicable to the petition. The notice, therefore is amended by including all locations in Montana.

The amended notice applicable to TA–W–21, 364 is hereby issued as follows:

All workers of Kenting Drilling Services, Incorporated, Williston, North Dakota and all locations in Montana who became totally or partially separated from employment on or after October 1, 1985 and before October 1, 1987 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 17th day of May 1988.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 89–12643 Filed 5–25–89; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–21,208]

Revised Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In the matter of Milpark Drilling Fluids (formerly Hughes Drilling Fluids and Milchem/Milpark) headquartered in Houston, TX, and operating in various locations in the following states: TA–W–21,208–A, Alabama;

TA-W-21,208-B, Arkansas; TA-W-21,208-C, California; TA-W-21,208-D, Kansas; TA-W-21,208-E, Louisiana; TA-W-21,208-F, Michigan; TA-W-21,208-G, Mississippi; TA-W-21,208-H, Missouri; TA-W-21,208-J, Montana; TA-W-21,208-K, Nevada; TA-W-21,208-L, New Mexico; TA-W-21,208-M, North Dakota; TA-W-21,208-N, Oklahoma; TA-W-21,208-P, Rhode Island; TA-W-21,208-Q, Texas (excluding Houston); TA-W-21,208-R, Utah; TA-W-21,208-S, Washington; TA-W-21,208-T, Wyoming.

In accordance with section 223 of the Trade Act of 1974, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on November 29, 1988 applicable to all workers of Milpark Drilling Fluids, Houston, Texas.

On May 14, 1989, the Department, on its own motion, reopened its investigation resulting in the certification of workers at the Houston, Texas headquarters of Milpark Drilling Fluids which did not extend coverage to other workers of the firm.

The company furnished additional information which indicates that other operations of the firm met the group eligibility requirements of section 222 of the Trade Act of 1974 (19 U.S.C. 2273), as amended by the Omnibus Trade and Competitiveness Act of 1988. In addition, the information revealed that employee separations occurred throughout the firm's operations subsequent to the termination date established as a result of the initial investigation.

Accordingly, the Department is revising the subject certification to include other operations of Milpark Drilling Fluids and to delete the termination date as previously established.

The intent of the certification is to cover all workers of Milpark Drilling Fluids, in all locations, who were adversely affected by competition from imported crude oil and natural gas. The certification applicable to TA-W-21,208 is hereby issued as follows:

All workers of Milpark Drilling Fluids, formerly Milchem/Milpark and Hughes Drilling Fluids, headquartered in Houston, Texas and operating in Alabama, Arkansas, California, Kansas, Louisiana, Michigan, Mississippi, Missouri, Montana, Nevada, New Mexico, North Dakota, Oklahoma, Rhode Island, Texas (excluding Houston), Utah, Washington and Wyoming who became totally or partially separated from employment on or after October 1, 1985 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC this 18th day of May 1989.

Barbara Ann Farmer,

Director, Office of Program Management, UIS.

[FR Doc. 89-12644 Filed 5-25-89; 8:45]

BILLING CODE 4510-30-M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3504, Washington, DC 20210.

New General Wage Determination Decisions

The numbers of the decisions being added to the Government Printing Office document entitled "General Wade Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume, State, and page number(s).

Volume II
Nebraska, NE89-12..... pp. 742a-742b

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I	
Florida, FL89-38 (Jan. 6, 1989).	p. 191
Georgia, GA89-2 (Jan. 6, 1989).	p. 210
Kentucky:	
KY89-3 (Jan. 6, 1989)	pp. 290-292b
KY89-4 (Jan. 6, 1989)	p. 298
Tennessee, TN89-16 (Jan. 6, 1989).	p. 1119
Appendix	pp. A-1 thru A-10
Volume II	
Indiana, IN89-6 (Jan. 6, 1989).	pp. 314-316 pp. 324-331
Minnesota, MN89-12 (Jan. 6, 1989).	p. 610
Nebraska, NE89-1 (Jan. 6, 1989).	p. 716
Appendix	pp. A-1 thru A-10
Volume III	
Alaska, AK89-1 (Jan. 6, 1989).	pp. 2-8
Arizona, AZ89-2 (Jan. 6, 1989).	p. 19
California:	
CA89-1 (Jan. 6, 1989)	p. 34
CA89-2 (Jan. 6, 1989)	pp. 44, 52-53 p. 56
CA89-4 (Jan. 6, 1989)	pp. 70-71, 73 pp. 75-76
Nevada:	
NV89-1 (Jan. 6, 1989)	pp. 242-261
NV89-2 (Jan. 6, 1989)	pp. 264-267
NV89-5 (Jan. 6, 1989)	pp. 289-290 p. 293
Utah, UT89-3 (Jan. 6, 1989).	p. 354
Washington, WA89-4 (Jan. 6, 1989).	p. 410
Appendix	pp. A-1 thru A-10

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 19th day of May 1989.

Robert V. Setera,

Acting Director, Division of Wage Determinations.

[FR Doc. 89-12451 Filed 5-25-89; 8:45 am]

BILLING CODE 4510-27-M

PHYSICIAN PAYMENT REVIEW COMMISSION

Commission Meeting

AGENCY: Physician Payment Review Commission.

ACTION: Notice of public meeting.

SUMMARY: The Physician Payment Review Commission will hold a public meeting on Thursday, June 1, 1989, from 9:00 a.m. to 5:00 p.m. and on Friday, June 2, 1989, beginning at 8:30 a.m. The meeting will be held at the Dupont Plaza Hotel, 1500 New Hampshire Avenue, NW. (at Dupont Circle), in the Embassy Hall (A) meeting room. A copy of the agenda can be obtained from the Commission office the week of the meeting.

ADDRESS: The Commission office is located in Suite 510, 2120 L Street NW., Washington, DC. The telephone number is 202/653-7220.

FOR FURTHER INFORMATION CONTACT: Lauren LeRoy, Deputy Director, 202/653-7220.

Paul B. Ginsburg,

Executive Director.

[FR Doc. 89-12641 Filed 5-25-89; 8:45 am]

BILLING CODE 6820-SE-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34-26856; File No. SR-MSE-87-13]

Self-Regulatory Organizations; Midwest Stock Exchange, Inc.; Notice of Filing of Amendment No. 1 to a Proposed Rule Change Relating to Modifications to the Co-Specialist Evaluation Questionnaire

Pursuant to section 19(b)(1), 15 U.S.C. 78s(b)(1), of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, 17 CFR 240.19b-4, notice is hereby given that on April 4, 1989, the Midwest Stock Exchange, Inc. ("Midwest" or "Exchange") submitted to the Securities and Exchange Commission ("Commission" or "SEC") Amendment No. 1 to a proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Midwest has submitted a revised Co-Specialist Evaluation Questionnaire ("Questionnaire") which is completed periodically by floor brokers when assessing the performance of co-specialists. This is an amendment to Midwest's previous filing SR-MSE-87-13. The text of the proposed rule change is available at the Office of the Secretary, Midwest, and at the Commission's Public Reference Section.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed amendment is to clarify certain questions and terms used in the Questionnaire. The revisions reflect certain suggestions made by SEC staff and others.

The amendments are intended first to clarify the ranking categories of the Questionnaire. The previously filed Questionnaire did not include a description of average performance for questions 3 through 8. The Questionnaire now provides a description of relevant performance standards for this cateogory. In addition, the weights assigned to various co-specialist duties have been reassessed. In the previous filing, questions regarding the handling of professional orders were more heavily weighted than those questions regarding the handling of public orders. Adjustments have been made to the respective weightings to reflect the importance of adequately handling public orders by sepcialists.

Certain language changes were also made to eliminate perceived ambiguities of certain terms.

The proposed amendment is consistent with section 6 of the Securities Exchange Act of 1934 in that it promotes just and equitable principles of trade by further defining the standards by which a co-specialist's performance is assessed.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Midwest does not believe any burdens will be placed on competition as a result of the proposed amendment.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The amendment reflects in part certain comments made by the SEC staff and the Midwest Members Association.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will: (A) By order approve the proposed rule change, or (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by June 16, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 22, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-12647 Filed 5-25-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-26855; File No. SR-Phlx-89-08]

Self-Regulatory Organizations; Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to CIP Fees

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 1, 1989, the Philadelphia Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange"), pursuant to Rule 19b-4 of the Act, hereby submits this proposed rule change instituting the schedule of fees applicable to the trading of Cash Index Participations ("CIPs"). This schedule is contained in the following Summary of CIP charges:

Summary of CIP Charges

I. Transaction Value Charge

Specialist and market maker trades pay no transaction value charges. Transaction value charges are billed monthly and are assessed upon all retail and firm trades less than 50 round-lots (5,000 CIPs).* Retail and firm trades equal to or greater than 50 round-lots pay no transaction value charges.

Monthly Contract Values

Rate per $1,000: $0 to $10,000,000
$.13
$10,000,000 to $50,000,000
$.11
$50,000,000 to $300,000,000
$.09
$300,000,000 to $500,000,000
$.05
In excess of $500,000,000
$.03

II. *CIP Transaction Charge*

Retail: Less than 50 round-lots
$.05 per round-lot
50 round-lots and greater
$.02 per round-lot
Firm: $.02 per round-lot
Market Maker, Specialist: $.005 per round-lot

III. CIP Floor Brokerage Assessment

5% of net floor broker commission income on CIP transactions, collected monthly

IV. Floor Broker CIP Transaction Fee

$.05 per round-lot, for floor brokers executing transactions for their own member firms

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

The purpose of the proposed rule change is to institute the PHLX schedule of CIP fees. The PHLX has incurred significant costs in the development of CIPs and in making them available for trading. The above-referenced fees are necessary to recover the costs attendant to providing PHLX members with services necessary to the conduct of CIP trading on the Exchange. The initiation of these charges is being undertaken in order to fairly allocate the aforementioned costs.

The proposed rule change is consistent with section 6(b)(4) of the Act, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organizations Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amemdments, 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 above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by June 16, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: May 22, 1989.

[FR Doc. 89–12648 Filed 5–25–89; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Cincinnati Stock Exchange, Inc.

May 19, 1989.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

Allstate Municipal Premium Income Trust, Common Stock, $.01 Par Value (File No. 7–4564)

Blockbuster Entertainment Corp., Common Stock, $10.00 Par Vaue (File No. 7–4565)

Borden Chemical & Plastics, Inc., Cm. Ptc Common Units, No Par Value (File No. 7–4566)

Formica Corp., Common Stock, $.01 Par Value (File No. 7–4567)

Hanna (M.A.) Co., $2.125 Cum. Conv. Exch. Pfd., No Par Value (File No. 7–4568)

InterTan, Inc., Common Stock, $1.00 Par Value (File No. 7–4569)

Kemper Multimarket Income Trust, Common Stock, $.01 Par Value (File No. 7–4570)

Lyondell Petrochemical Co., Common Stock, $1.00 Par Value (File No. 7–4571)

MNC Financial Inc., Common Stock, $2.50 Par Value (File No. 7–4572)

National Mine Service Co., Common Stock, $1.00 Par Value (File No. 7–4573)

Reynolds & Reynolds Co., Common Stock, $.625 Par Value (File No. 7–4574)

Unit Corporation, Common Stock, $.20 Par Value (File No. 7–4575)

Van Kempen Merritt Intermediate Term High Income Trust, Common Stock, $.01 Par Value (File No. 7–4576)

Winchell's Donut House, Common Stock, No Par Value (File No. 7–4577)

Baldwin Technology, Class A Common Stock, $.01 Par Value (File No. 7–4578)

Chambers Development, Class A Common Stock 1/10 Vtg. $.50 Par Value (File No. 7–4579)

Corona Corp., Class A Common Stock, No Par Value (File No. 7–4580)

Houston Oil Trust, Common Stock, No Par Value (File No. 7–4581)

IVAX Corporation, Common Stock, $.10 Par Value (File No. 7–4582)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 12, 1989, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–12603 Filed 5–25–89; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Notice of Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

May 19, 1989.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

AM International, $2.00 Conv. Exch. Pfd., $.01 Par Value (File No. 7–4553)

American President, $3.50 Conv. Exch. Pfd., $.01 Par Value (File No. 7–4554)

Arrow Electronics, Inc., $1.9375 Conv. Exch. Pfd. No Par Value (File No. 7–4555)

Baker Hughes, Inc., $3.50 Conv. Exch. Pfd. $1 Par Value (File No. 7–4556)

Cummins Engine, Inc., $3.50 Conv. Exch. Pfd. No Par Value (File No. 7–4557)

International Minerals & Chemical, $3.25 Conv. Exch. Pfd. $1 Par Value (File No. 7–4558)

Integrated Resources, Corp., $1.8125 Conv. Exch. Pfd. $1 Par Value (File No. 7–4559)

James River Corp. of VA, $14 Conv. Exch. Pfd. No Par Value (File No. 7–4560)

Tosco Corp., $2.375 Conv. Exch. Pfd. $1 Par Value (File No. 7–4561)

XTRA Corp., $1.9375 Conv. Exch. Pfd. B, No Par Value (File No. 7–4562)

Texas Air Corporation, 6¾% Cum. Conv., Jr. Pfd. (File No. 7–4563)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 12, 1989, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-12604 Filed 5-25-89; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Pacific Stock Exchange, Inc.

May 19, 1989.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Nuveen Municipal Value Fund, Inc., Common Stock, $.01 Par Value (File No. 7-4542)

Bank of New England Corporation, Common Stock, $5.00 Par Value (File No. 7-4543)

Birmingham Steel Corporation, Common Stock, $.01 Par Value (File No. 7-4544)

Crossland Savings FSB, Common Stock, $1.00 Par Value (File No. 7-4545)

First Fidelity Bancorp, Common Stock, $1.00 Par Value (File No. 7-4546)

Freeport McMoran, Inc., $1.875 Cumulative Convertible Exchangable Preferred Stock (File No. 7-4547)

Helmerich & Payne, Inc., Common Stock, $.10 Par Value (File No. 7-4548)

Quanex Corporation, Common Stock, $.50 Par Value (File No. 7-4549)

Shoney's Inc., Common Stock, $1.00 Par Value (File No. 7-4550)

Washington Gas & Light Company, Common Stock, $1.00 Par Value (File No. 7-4551)

Oregon Steel Mills, Inc., Common Stock, $.01 Par Value (File No. 7-4552)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 12, 1989, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-12605 Filed 5-25-89; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

May 22, 1989.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Acme Electric Corp., Common Stock, $1 Par Value (File No. 7-4583)

Allstate Municipal Income Trust II, Common Stock, $0.01 Par Value (File No. 7-4584)

Avon Products, Inc., $2.00 Preferred Equity-Redemption Cum. Stock (File No. 7-4585)

Franklin Principal Maturity Trust, Shares of Beneficial Interest (File No. 7-4586)

Golden Valley Microwave Foods, Inc., Common Stock, $0.01 Par Value (File No. 7-4587)

New Line Cinema Corporation, Common Stock, $0.01 Par Value (File No. 7-4588)

Oppenheimer Multi-Sector Income Trust, Shares of Beneficial Interest (File No. 7-4589)

Swift Energy Company, Common Stock, $0.01 Par Value (File No. 7-4590)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 13, 1989, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-12606 Filed 5-25-89; 8:45 am]

BILLING CODE 8010-01-M

[File No. 500-1]

In the Matter of Peacock Investment Co. and Portsmouth Limited; Order of Suspension of Trading

May 23, 1989.

It appears to the Securities and Exchange Commission that there is a lack of current and adequate information concerning the securities of Peacock Investment Co. ("Peacock") and Portsmouth Limited ("Portsmouth") and that questions have been raised concening, among other things, the adequacy and accuracy of information contained in their Form S-18 registration statements filed with the Commission on May 20, 1988 and July 8, 1988, respectively, and in documents entitled "Peacock Investment Co., Information Provided Pursuant to Rule 15c2-11 of the Securities Exchange Act of 1934, as Amended" and "Portsmouth Limited, Information Provided Pursuant to Rule 15c2-11 of the Securities Exchange Act of 1934, as Amended", respectively, which was furnished to, among others,

the National Quotation Bureau and market makers in the stock of Peacock and Portsmouth. The question information pertains to the failure to amend the prospectus of each issuer to disclose: the plan of distribution of the public offerings of both Peacock and Portsmouth; the identity of a statutory underwriter; and that the aftermarket trading price would be artificially influenced by an agreement regarding aftermarket trading price, such agreement having been made in connection with the initial public offering of the securities of Peacock and Portsmouth. The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of Peacock and Portsmouth.

Therefore, it is ordered, pursuant to section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of Peacock Investment Co. and Portsmouth Limited, over-the-counter or otherwise, is suspended for the period from 9:30 a.m. EDT, May 23, 1989 through 11:59 p.m. EDT, on June 1, 1989.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-12649 Filed 5-25-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 35-24888-A]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

May 19, 1989.

On May 11, 1989, the Commission issued a notice of the filing of the following applications and/or declarations:

Company	File No.
The Connecticut Light and Power Co	70-7466
Consolidated Natural Gas Co., et al.	70-7657
New England Electric System, et al.	70-7652
American Electric Power Co., Inc., et al.	70-7622

The May 11, 1989 notice stated that interested persons wishing to comment or request a hearing on the applications and/or declarations were given until May 11, 1989 to submit their views in writing to the Secretary, Securities and Exchange Commission, Washington, DC 20549.

This notice will correct the May 11, 1989 notice by changing the date by which interested persons may submit their views in writing from May 11, 1989 to June 5, 1989. All other matters in the notice of May 11, 1989 remain unchanged.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-12650 Filed 5-25-89; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petitions for Waivers of Compliance; Southern Pacific Transportation Co.

In accordance with 49 CFR § 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received requests for waivers of compliance with certain requirements of its safety standards. The individual petitions are described below, including the parties seeking relief, the regulatory provisions involved, and the nature of the relief being requested.

Southern Pacific Transportation Company

[Waiver Petition Docket Number PB-89-2]

The Southern Pacific Transportation Company (SP) requests a waiver of compliance with certain provisions of the railroad power brakes regulation (49 CFR Part 232). The SP seeks a waiver of compliance with § 232.12(b), which stipulates, "Each carrier shall designate additional inspection points not more than 1,000 miles apart where intermediate inspection will be made to determine that—

(1) Brake pipe leakage does not exceed five pounds per minute;

(2) Brakes apply on each car in response to a 20-pound service brake pipe pressure reduction; and

(3) Brake rigging is properly secured and does not bind or foul."

The SP seeks to extend the intermediate air brake inspection by 250 miles for trains operated between Portland, Oregon, and Los Angeles or West Colton, California, on two routes, the San Joaquin Valley Route and the Coast Route. On the San Joaquin Route, where the distance varies from 1,077 miles to 1,146 miles, the intermediate air brake inspection is performed at either Eugene, Oregon or Roseville, California. On the Coast Route, where the distance varies from 1,181 miles to 1,235 miles, the intermediate air brake inspection is performed at Oakland, California.

The railroad states the increased competition in the transportation industry requires the railroad industry to take full advantage of every opportunity that will improve service and reduce cost without affecting safety. It goes on to say that with the improved technology of air brakes and equipment design, extending the intermediate air brake inspection 250 miles should not be a safety issue.

Davenport, Rock Island and North Western Railway Company

[Waiver Petition Number LI-89-3]

The Davenport, Rock Island and North Western Railway Company (DRI&NW) requests a waiver of compliance with a provision of the railroad locomotive safety standards (49 CFR 229.117) for its five locomotives. The DRI&NW locomotives are switcher type locomotives, Model SW-1200, built in 1950 by the Electro Motive Division of the General Motors Corporation. They are numbered 107, 108, 109, 121 and 602. None of the locomotives is presently equipped, nor were they ever equipped, with speed indicators.

The DRI&NW requests a waiver of § 229.117(a), which requires in part that, "After December 31, 1980, each locomotive used as a controlling locomotive at speeds in excess of 20 miles per hour shall be equipped with a speed indicator * * *." The DRI&NW is a switching railroad that operates in the Quad Cities area (Davenport and Bettendorf, Iowa and Rock Island, Moline, East Moline and Silvis, Illinois). The railroad normally operates three switching assignments per day. For seven months of the year, the DRI&NW operates entirely within yard limits and the locomotives do not exceed a speed of 20 mph. For five months, the railroad will make five trips per week to an industry located 19.5 miles outside yard limits. Those movements would be made at a speed not to exceed 40 mph, although the timetable allows a maximum authorized speed of 49 mph. The authority for movement on the main track is by track warrant. The DRI&NW main track is used by the Soo Line Railroad (Soo Line) as part of its Chicago to Kansas City main line. All movements over the DRI&NW main track are under the control of the Soo Line train dispatcher.

The railroad states that it would be an excessive financial burden to equip its locomotives with speed indicators for a movement that represents only a small percentage of locomotive service hours for the year. Furthermore, the movement is being done for the Soo Line, which is a co-owner of the DRI&NW. It is possible that at any time the Soo Line could resume the switching of the industry, which would make the speed indicators superfluous.

Long Island Rail Road

[Waiver Petition Docket Number LI–89–2]

The Long Island Rail Road (LIRR) requests a waiver of compliance with a provision of the railroad locomotive safety standards regulation (49 CFR 229.81(b)), which states that, "Each locomotive equipped with third-rail shoes shall have a device for insulating the current collecting apparatus from the third rail." The LIRR seeks this waiver for its fleet of 174 M–3 "Metropolitan" self-propelled passenger transit cars. These cars are defined as MU locomotives in the Locomotive Safety Standards (49 CFR Section 229.5(j)).

The LIRR's justification is that a current waiver, FRA Docket Number LI–80–15, covers its fleet of 764 M–1 MU locomotives. The railroad states that the operation of the M–3 MU locomotives is identical to the M–1 MU locomotives with respect to isolation from third-rail power.

As stated by the railroad in its petition, the procedure to isolate both M–1 and M–3 MU locomotives from third-rail power is as follows:

1. One power control center controls all third-rail power. This enables the power director to shut off any section of third-rail power almost instantaneously, anywhere in the LIRR.

2. The entire third-rail system is electrically protected by a "fault sensing pilot wire." This pilot wire detects high resistance ground faults and does not require high amperage overloads to trip the third-rail circuit breakers.

3. All M–1 and M–3 electric MU locomotives and all diesel locomotives have radio communication with the train dispatchers, interlocking towers and other trains. This allows all trains on the LIRR to report any electrical power problems direct to the train dispatcher and have the immediate removal of power from any section of the third rail.

The procedure for having the third-rail power shut off is covered by the LIRR operating rules and does not require the train crews to go near the energized third-rail to remove power from the MU locomotive.

It is the opinion of the railroad that its present procedure for having power removed from the third-rail is a safer method for the train crew to use, than to try to isolate the third-rail shoe of the MU locomotive from the third-rail by using a third-rail shoe insulator.

Therefore, the LIRR requests that it be granted a permanent waiver of compliance with § 229.81(b) allowing the railroad to operate the M–3 MU locomotive fleet without the required insulating apparatus on board each vehicle.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number PB–89–2) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Communications received before July 13, 1989 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m. to 5 p.m.) in Room 8201 Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

Issued in Washington, DC on May 18, 1989.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 89–12631 Filed 5–25–89; 8:45 am]

BILLING CODE 4910–06–M

Research and Special Programs Administration

International Standards on the Transport of Dangerous Goods; Public Meeting

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation.

ACTION: Notice of public meeting.

SUMMARY: This notice is to advise interested persons that RSPA in association with the International Regulations Committee (INTEREC) of the Hazardous Materials Advisory Council will conduct a public meeting to discuss the issues that will be presented at the next Working Group meeting of the International Civil Aviation Organization's (ICAO) Dangerous Goods Panel (DGP).

DATE: June 14, 1989, 9:30 a.m.

ADDRESS: Room 6248, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Richard C. Barlow, Acting International Standards Coordinator, Office of Hazardous Materials Transportation, Department of Transportation, Washington, DC 20590; (202) 366–0656.

SUPPLEMENTARY INFORMATION: This meeting will be used to discuss the proposed changes to the ICAO Technical Instructions for the Safe Transport of Dangerous Goods by Air that will be presented to the next meeting of the DGP meeting which is scheduled to meet in Montreal, Canada from 9 to 20 October, 1989. If adopted, the changes to the Technical Instructions would become effective on January 1, 1991.

Issued in Washington, DC, on May 22, 1989.

Alan I. Roberts,

Director, Office of Hazardous Materials Transportation.

[FR Doc. 89–12601 Filed 5–25–89; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: May 22, 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, 1500 Pennsylvania Avenue NW., Washington DC 20220.

Internal Revenue Service

OMB Number: New
Form Number: 8804, 8805, and 8813
Type of Review: New Collection
Title: Partnership Withholding Tax Payment (Section 1446); Annual Return for Partnership Withholding Tax (Section 1446); Foreign Partner's Information Statement of Section 1446 Withholding Tax
Description: Code Section 1446 requires partnerships to pay a withholding tax if they have effectively connected taxable income that is allocable to foreign partners. Forms 8804, 8805, and 8813 are used by withholding agents to provide IRS and affected partners with data to assure proper withholding, crediting to partners' accounts and compliance.

Respondents: Individuals or households, businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents: 5,000
Estimated Burden Hours Per Response/ Recordkeeping:

	8804	8805	8813
Recordkeeping	1 hr. 12 min.	1 hr. 5 min.	7 min.
Learning about the law or the form.	54 min	53 min	46 min.
Preparing the form.	26 min	28 min	5 min.
Copying, assembling, and sending the form to IRS.	20 min	17 min	10 min.

Frequency of Response: Quarterly, Annually
Estimated Total Recordkeeping/ Reporting Burden: 119,100 hours

Internal Revenue Service

OMB Number: 1545-0045
Form Number: 976
Type of Review: Revision
Title: Claim for Deficiency Dividends Deductions by a Personal Holding Company, Regulated Investment Company, or Real Estate Investment Trust
Description: Form 976 is used by shareholders of certain corporations and trusts to claim a deduction for dividends paid to shareholders. The IRS uses the form to determine if the shareholders have actually included the amount of the dividend in their gross income.
Respondents: Individuals or household, businesses or other for-profit
Estimated Number of Respondents: 500
Estimated Burden Hours Per Response/ Recordkeeping:
Recordkeeping, 5 hours 59 minutes
Learning about the law or the form, 47 minutes
Preparing, copying, assembling, and sending the form to IRS, 56 minutes
Frequency of Response: On occasion
Estimated Total Recordkeeping/ Reporting Burden: 3,850 hours
OMB Number: 1545-0970
Form Number: 8453-P
Type of Review: Revision
Title: U.S. Partnership Declaration for Magnetic Media/Electronic Filing
Description: This form is used to secure the general partners' signature and declaration in conjunction with the Magnetic Media/Electronic Filing Pilot. This form, together with the Magnetic Media/electronic transmission, will comprise the partnership's return
Respondents: Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents: 2,000
Estimated Burden Hours Per Response/ Recordkeeping:
Recordkeeping, 7 minutes
Learning about the law or the form 2 minutes Preparing the form, 13 minutes
Copying, assembling, and sending the form to IRS, 17 minutes
Frequency of Response: Annually
Estimated Total Recordkeeping/ Reporting Burden: 1,360 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. 89-12596 Filed 5-25-89; 8:45 am]
BILLING CODE 4810-25-M

Office of the Secretary

[Department Circular—Public Debt Series—No. 15-89]

Treasury Notes of May 31, 1991, Series Z-1991

Washington, May 18, 1989.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $8,750,000,000 of United States securities, designated Treasury Notes of May 31, 1991, Series Z-1991 (CUSIP No. 91287 XP 2), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated May 31, 1989, and will accrue interest from that date, payable on a semiannual basis on November 30, 1989, and each subsequent 6 months on May 31 and November 30 through the date that the principal becomes payable. They will mature May 31, 1991, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in denominations of $5,000, $10,000, $100,000, and $1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in 51 FR 18260, et seq. (May 16, 1986), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239-1500, prior to 1:00 p.m., Eastern Daylight Saving time, Wednesday, May 24, 1989. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, May 23, 1989, and received no later than Wednesday, May 31, 1989.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $5,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the

term "noncompetitive" on the tender form in lieu of a specified yield.

3.3 A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.500. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.5. must be made or completed on or before Wednesday, May 31, 1989. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Friday, May 26, 1989. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Wednesday, May 31, 1989. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form use to place the Notes allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may, at any time, supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 89-12674 Filed 5-23-89; 4:20 pm]

BILLING CODE 4810-40-M

[Department Circular—Public Debt Series—No. 16-89]

Treasury Notes of August 15, 1994, Series K-1994

Washington, May 18, 1989.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $7,500,000,000 of United States securities, designated Treasury Notes of August 15, 1994, Series K-1994 (CUSIP No. 912827 XQ 0), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued at the average price to Federal Reserve Banks as agents for foreign and international monetary authorities.

1.2. If the interest rate determined in accordance with this circular is identical to the rate on an outstanding issue of United States notes or bonds, and the maturity date and interest payment dates of such outstanding issue are also identical to those of the securities offered by this circular, the interest rate will be adjusted either higher or lower by an increment of ⅛ of one percent, depending upon the range of accepted competitive bids.

2. Description of Securities

2.1. The Notes will be dated June 2, 1989, and will accrue interest from that date, payable on a semiannual basis on February 15, 1990, and each subsequent 6 months on August 15 and February 15 through the date that the principal becomes payable. They will mature August 15, 1994, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in denominations of $1,000, $5,000, $10,000, $100,000, and $1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in 51 FR 18260, et seq. (May 16, 1986), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239-1500, prior to 1:00 p.m., Eastern Daylight Saving time, Thursday, May 25, 1989. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Wednesday, May 24, 1989, and received no later than Friday, June 2, 1989

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the dealine for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 98.750. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide as fair determination of the yield. Tenders received from Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders wil be advised of the acceptance of their bids. Those submitting noncompetitive

tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.5. must be made or completed on or before Friday, June 2, 1989. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Wednesday, May 31, 1989. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Friday, June 2, 1989. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may, at any time, supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 89-12675 Filed 5-23-89; 4:20 pm]

BILLING CODE 4810-40-M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 101
Friday, May 26, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

DATE AND TIME: Thursday, June 1, 1989, 10:00 a.m.

PLACE: 999 E. Street, NW., Washington, D.C. (Ninth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of Dates for Future Meetings.
Correction and Approval of Minutes.
Draft AO 1989-06:
  Thomas Graziano on behalf of Friends of Sherwood Boehlert
Draft AO 1989-07:
  R.S. Petterson on behalf of New Jersey Bell Federal PAC
Regulations:
  Second Notice of Proposed Rulemaking, 11 C.F.R. 100.7(b)(8); 100.8(b)(9) and 110.4(a).
  Administrative Matters

DATE AND TIME: Thursday, June 1, 1989, at Conclusion of Open Meeting.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

PERSON TO CONTACT FOR IMFORMATION: Mr. Fred Eiland, Information Office, Telephone: 202-376-3155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 89-12813 Filed 5-24-89; 2:33 pm]

BILLING CODE 6715-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, May 31, 1989.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda:

Because of their routine nature, no substantive discussion of the following items is anticipated. These matters will be voted on without discussion unless a member of the Board requests that an item be moved to the discussion agenda.

1. Proposed revisions to the methodology for computing the Private Sector Adjustment Factor.

2. Proposed Board comments to the Commodity Futures Trading Commission regarding hybrid financial instruments.

Discussion Agenda:

3. Proposed modifications to the Payment System Risk Reduction Policy of the Federal Reserve System.

4. Proposed amendments to Regulation Z (Truth in Lending) to implement the Home Equity Loan Consumer Protection Act relating to home equity lines of credit. (Proposed earlier for public comment; Docket No. R-0655)

5. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: May 24, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-12729 Filed 5-24-89; 10:54 am]

BILLING CODE 6210-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: Approximately 12:30 p.m., Wednesday, May 31, 1989, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW, Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed purchase of check sorters within the Federal Reserve System.

2. Proposed leasing of computer equipment within the Federal Reserve System.

3. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

4. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: May 24, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 88-12730 Filed 5-24-89; 11:13 pm]

BILLING CODE 6210-01-M

Corrections

Federal Register
Vol. 54, No. 101
Friday, May 26, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 421

[OW-FRL-3774-1]

Nonferrous Metals Manufacturing Point Source Category; Effluent Limitations Guidelines, Pretreatment Standards and New Source Performance Standards

Correction

In proposed rule document 89-8036 beginning on page 18412 in the issue of Friday, April 28, 1989, make the following corrections:

§ 421.262 [Corrected]

1. On page 18425, in the third column, in § 421.262(j), in the table, in the last column of figures, the fourth entry should read "351.600".

§ 421.263 [Corrected]

2. On page 18427, in the second column, in § 421.263(n), in the table, in the last column of figures, the first entry should read "30.500".

§ 421.265(c) [Corrected]

3. On page 18429, in the first column, in § 421.265(c), in the table, under "Maximum for any 1 day," the entry should read "0.300".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 455

[Docket No. 89N-0052]

Antibiotic Drugs; Vancomycin Hydrochloride for Injection

Correction

In rule document 89-11244 beginning on page 20382 in the issue of Thursday, May 11, 1989, make the following correction:

§ 455.285b [Corrected]

On page 20385, in the first column, in § 455.285b(a)(3)(ii)(B)(*1*) in the second line "minimum 10" should read "mininum of 10".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT-060-09-4212-13; MTM-76695]

Realty Action—Exchange; Montana

Correction

In notice document 89-10832 beginning on page 19466 in the issue of Friday, May 5, 1989, make the following corrections:

On page 19466 in the land descriptions under Principal Meridian Montana:

Column	Line(s)	Should Read
1	2	Section 14, NW¼;
1	21	Section 26, E½.
1	33	Section 13, Lots 1-2, W½NE¼, E½NW¼, SW¼NW¼;
1	34	SW¼NW¼;
1	35	Section 23, S½NE¼, SE¼NW¼;
1	36	Section 24, SW¼NW¼;
2	6	[Remove]
2	15	T. 15 N., R. 23 E.,
2	18	Section 3, SW¼SW¼.
2	29	T. 18 N., R. 24 E.,
2	31-32	Section 15, SW¼NE¼, NW¼NW¼, SE¼NW¼, SE¼.
2	38-39	Section 15, SW¼NE¼, NW¼NW¼, SE¼NW¼.
2	46	Section 34, NE¼, E½NW¼, N½SE¼.
2	67	T. 24 N., R. 7 E.,
2	68	Section 2, SE¼SW¼;
2	76	T. 25 N., R. 7 E.,
3	2	Section 5, SW¼NW¼;
3	7	Section 12, NW¼,NW¼;
3	14	Section 19, SE¼NE¼;
3	18	Section 34, SW¼SW¼.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Applicants for Exemptions

Correction

In notice document 89-11536 beginning on page 20943 in the issue of Monday, May 15, 1989, make the following correction:

On page 20944 in the first column, under **DATE**, the date should read "June 14, 1989".

BILLING CODE 1505-01-D

federal register

Friday
May 26, 1989

Part II

Department of Education

Pell Grant, Perkins Loan, College Work-Study, Supplemental Educational Opportunity Grant, and Stafford Loan Programs; Revision of Need Analysis Systems; Notice

DEPARTMENT OF EDUCATION

Pell Grant, Perkins Loan (Formerly the National Direct Student Loan), College Work-Study, Supplemental Educational Opportunity Grant, and Stafford Loan (formerly Guaranteed Student Loan) Programs; Revision of the Need Analysis Systems for the 1990–91 Academic Year

AGENCY: Department of Education.

ACTION: Notice of revision to the Congressional Methodology and the Family Contribution Schedule methodology for the 1990–91 award year.

SUMMARY: The Secretary of Education announces the annual update to tables used in the need analysis methodologies that an institution of higher education must use in calculating expected family contributions for the 1990–91 award year under the Pell Grant, campus-based (Perkins Loan, College Work-Study, and Supplemental Educational Opportunity Grant), and Stafford Loan Programs. The Secretary takes this action under the authority of Title IV of the Higher Education Act of 1965, as amended (HEA).

FOR FURTHER INFORMATION CONTACT: Ms. Wendy Macias, Program Specialist, Pell Grant Branch, Division of Policy and Program Development, U.S. Department of Education, 400 Maryland Avenue SW. (Room 4318, ROB–3), Washington, DC 20202–5444, Telephone (202) 732–4888.

SUPPLEMENTARY INFORMATION: The need analysis methodologies are used to determine student eligibility for assistance under Title IV of the Higher Education Act of 1965, as amended (HEA). There are two need analysis methodologies used under the above programs for determining a student's expected family contribution. One methodology, the Family Contribution Schedule, is used to calculate a student's expected family contribution for the Pell Grant Program. In the Pell Grant Program, a student's expected family contribution is also known as the Student Aid Index (SAI). The second methodology, the Congressional Methodology, is used to calculate a student's expected family contribution for the campus-based (Perkins Loan, College Work-Study, and Supplemental Educational Opportunity Grant) and Stafford Loan Programs. Both of these methodologies are established by statute.

The HEA provides for the following annual updates:

I. Pell Grant Family Contribution Schedule

Sections 411A through 411F of the HEA specify the criteria, data elements, calculations, and tables used to calculate expected family contributions for the Pell Grant Program. The Secretary is required to publish a revised Family Size Offset table for each award year. The family size offset is an allowance for the family's basic living expenses that varies by family size and is offset against the effective family income.

The Secretary must revise the tables by increasing (or decreasing) the comparable amount for the preceding award year by a percentage equal to the percentage increase (or decrease) in the Consumer Price Index for Wage Earners and Clerical Workers published by the Department of Labor, and rounded to the nearest $100. Using the percentage change between the Consumer Price Index for Wage Earners and Clerical Workers for December 1987 and the Consumer Price Index for Wage Earners and Clerical Workers for December 1988 as a predictor, the Secretary determines that the family size offsets will increase by 4.4 percent for the 1990–91 award year. Accordingly, for the 1990–91 award year for the Pell Grant Program, the Family Size Offset Table is revised as follows:

FAMILY SIZE OFFSETS

Family members	Amount
1	$5,700
2	7,200
3	8,800
4	11,300
5	13,400
6	14,900

Note.—Add $1,100 for each additional family member.

The dependent student offset is an offset against the effective income of a dependent student and his or her spouse. The Secretary is required to publish necessary revisions in these offsets for each award year. The dependent student offsets for the 1990–91 award year are revised as follows:

DEPENDENT STUDENT OFFSETS

Marital status	Amount
Single	$3,800
Married	5,500

II. Congressional Methodology

Part F of Title IV of the HEA specifies the criteria, data elements, calculations, and tables for a computation of expected family contributions for the campus-based and Stafford Loan programs. In addition, Part F requires that four of the tables, the Standard Maintenance Allowance, the Adjusted Net Worth of a Business or Farm, the Asset Protection Allowance, and the Assessment Schedules and Rates be adjusted each award year to take into account inflation that has taken place after December 31 of the previous year based, in general, upon increases in the Consumer Price Index.

For award year 1990–91 the Secretary is charged with updating the standard maintenance allowances, adjusted net worth of a business or farm, and the assessment schedules and rates to account for inflation that took place between December 1988 and December 1989. However, since the Secretary must publish these tables before December 1989 the increases in the tables must be based upon a percentage equal to the estimated percentage increase in the Consumer Price Index for all Urban Consumers for 1989.

The Secretary estimates that the increase in the Consumer Price Index for all Urban Consumers for the period December 1988 through December 1989 will be 3.8 percent. Therefore, for the 1990–91 award year for the campus-based and Stafford Loan Programs, the tables set forth in Part F have been updated as follows in sections 1, 2 and 4 in accordance with this estimate and the other relevant provisions of Part F. The Secretary must revise for each award year the table on asset protection allowance as provided for in section 478 of the HEA. The Asset Protection Allowance table for the award year 1990–91 has been updated below in section 3.

Part F also requires the Secretary to increase the amount specified for the Employment Expense Allowance to account for inflation based upon increases in the Bureau of Labor Statistics budget of the marginal costs for a two-earner compared to a one-earner family for meals away from home, apparel and upkeep, transportation, and housekeeping services. Therefore, the Secretary is increasing this allowance as described below in section 5.

1. Standard Maintenance Allowance

This allowance is the amount of reasonable living expenses that would be associated with the maintenance of an individual or family. The allowance is offset against income for the family's basic living expenses, and it varies by family size. The standard maintenance

allowances for dependent students and independent students with dependents for award year 1990–91 are:

Family size (including student)	Number in college				
	1	2	3	4	5
2	$9,270	$7,690			
3	11,550	9,970	$8,380		
4	14,260	12,670	11,090	$9,510	
5	16,820	15,240	13,660	12,080	$9,390
6	19,680	18,090	16,510	14,930	13,350
For each additional family member add $2,220.					
For each additional college student subtract $1,580.					

2. Adjusted Net Worth (NW) of a Business or Farm

A portion of the full net value of a farm or business is excluded from the calculation of an expected-contribution since: (1) The income produced from such assets is already assessed in another part of the formula; and (2) the formula protects a portion of the value of the assets. The portion of these assets included in the contribution calculation is computed according to the following schedule. This schedule is used for dependent students, independent students without dependents, and independent students with dependents.

If the net worth of a business or farm is—	Then the adjusted net worth is:
Less than $1	$0.
$1 to $65,000	$0 + 40% of NW.
$65,001 to $200,000	$26,000 + 50% of NW over $65,000.
$200,001 to $330,000	$93,500 + 60% of NW over $200,000.
$330,001 or more	$171,500 + 100% of NW over $330,000.

3. Asset Protection Allowance

This allowance protects a portion of net worth (assets less debts) from being considered available for postsecondary education expenses. There are three asset protection allowance tables, one each for parents of dependent students, independent students without dependents, and independent students with dependents.

DEPENDENT STUDENTS

If the age of the older parent is—	And there are—	
	Two parents	One parent
	Then the asset protection allowance is—	
25 or less	0	0
26	2,000	1,500
27	4,100	3,000
28	6,100	4,500
29	8,100	6,000
30	10,200	7,500
31	12,200	9,000
32	14,200	10,500
33	16,300	12,000
34	18,300	13,500
35	20,300	15,000
36	22,400	16,500
37	24,400	18,000
38	26,400	19,500
39	28,500	21,000
40	30,500	22,500
41	31,300	23,100
42	32,100	23,500
43	33,000	24,100
44	33,800	24,500
45	34,700	25,100
46	35,600	25,800
47	36,500	26,200
48	37,400	26,900
49	38,700	27,500
50	39,600	28,200
51	40,700	28,900
52	42,000	29,600
53	43,300	30,500
54	44,400	31,200
55	45,800	32,000
56	47,200	32,900
57	48,700	33,700
58	50,200	34,600
59	52,000	35,500
60	53,600	36,500
61	55,500	37,500
62	57,200	38,600
63	59,200	39,700
64	61,300	41,000
65 or more	63,400	42,200

INDEPENDENT STUDENTS WITHOUT DEPENDENTS

If the age of the student is—	Then the asset protection allowance is—
25 or less	0
26	1,500
27	3,000
28	4,500
29	6,000
30	7,500
31	9,000
32	10,500
33	12,000
34	13,500
35	15,000
36	16,500
37	18,000
38	19,500
39	21,000
40	22,500
41	23,100
42	23,500
43	24,100
44	24,500
45	25,100
46	25,800
47	26,200
48	26,900
49	27,500
50	28,200
51	28,900
52	29,600
53	30,500
54	31,200
55	32,000
56	32,900
57	33,700
58	34,600
59	35,500
60	36,500
61	37,500
62	38,600
63	39,700
64	41,000
65 or more	42,200

INDEPENDENT STUDENTS WITH DEPENDENTS

If the age of the student is—	And the student is—	
	Married	Unmarried
	Then the asset protection allowance is—	
25 or less	0	0
26	2,000	1,500
27	4,100	3,000
28	6,100	4,500
29	8,100	6,000
30	10,200	7,500
31	12,200	9,000
32	14,200	10,500
33	16,300	12,000
34	18,300	13,500
35	20,300	15,000
36	22,400	16,500
37	24,400	18,000
38	26,400	19,500
39	28,500	21,000
40	30,500	22,500
41	31,300	23,100
42	32,100	23,500
43	33,000	24,100
44	33,800	24,500
45	34,700	25,100
46	35,600	25,800
47	36,500	26,200
48	37,400	26,900
49	38,700	27,500
50	39,600	28,200
51	40,700	28,900
52	42,000	29,600
53	43,300	30,500
54	44,400	31,200
55	45,800	32,000
56	47,200	32,900
57	48,700	33,700
58	50,200	34,600
59	52,000	35,500
60	53,600	36,500
61	55,500	37,500
62	57,200	38,600
63	59,200	39,700
64	61,300	41,000
65 or more	63,400	42,200

4. Assessment Schedules and Rates

Three separate assessment schedules, one each for dependent students, independent students without dependents, and independent students with dependents, are used to determine the expected contribution toward educational expenses from family financial resources.

For dependent students, the expected parental contribution is derived from an assessment of the parents' adjusted available income (AAI). The AAI represents a measure of a family's financial strength which considers both income and assets. For a dependent student, the parents' AAI is assessed according to the following schedule:

If AAI is—	Then the assessment is—
Less than −$3,409	−$750.
−$3,409 to $8,300	22% of AAI.
$8,301 to $10,400	$1,826+25% of AAI over $8,300.
$10,401 to $12,500	$2,351+29% of AAI over $10,400.
$12,501 to $14,600	$2,960+34% of AAI over $12,500.
$14,601 to $16,700	$3,674+40% of AAI over $14,600.
$16,701 or more	$4,514+47% of AAI over $16,700.

For independent students without dependents the expected family contribution is derived in part from an assessment of the student's available taxable income (ATI). The ATI is based on a calculation of taxable income minus a maintenance allowance and allowances for Federal, State and local income taxes and social security taxes. The assessment of the ATI for an independent student without dependents is computed according to the following schedule:

If ATI is—	Then the assessment is—
Less than $9,501	70% of ATI.
$9,501 or more	$6,650+90% of ATI over $9,500.

For independent students with dependents, the expected contribution is derived from an assessment of the adjusted available income (AAI). The AAI represents a measure of a family's financial strength which considers both income and assets. The assessment of AAI for an independent student with dependents is computed according to the following schedule:

If AAI is—	Then the assessment is—
Less than −$3,409	−$750.
−$3,409 to $8,300	$22% of AAI.
$8,301 to $10,400	$1,826+25% of AAI over $8,300.
$10,401 to $12,500	$2,351+29% of AAI over $10,400.
$12,501 to $14,600	$2,960+34% of AAI over $12,500.
$14,601 to $16,700	$3,674+40% of AAI over $14,600.
$16,701 or more	$4,514+47% of AAI over $16,700.

5. Employment Expense Allowance

This allowance for employment-related expenses, that is used for dependent students and independent students with dependents, recognizes additional expenses incurred by working spouses and single-parent households. The allowance is based upon the marginal differences in costs for a two-earner family compared to a one-earner family for meals away from home, apparel and upkeep, transportation, and housekeeping services. The employment expense allowance for dependent students and independent students with dependents is the lesser of $2,200 or 35 percent of earned income.

(Catalog of Federal Domestic Assistance Numbers: 84.007 Supplemental Educational Opportunity Grant Program; 84.032 Guaranteed Student Loan Program; 84.033 College Work-Study Program; 84.038 Perkins Loan Program; 84.063 Pell Grant Program)

Dated: May 19, 1989.

James B. Williams,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 89-12568 Filed 5-25-89; 8:45 am]

BILLING CODE 4000-01-M

federal register

Friday
May 26, 1989

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 71

Proposed Establishment of the Memphis Terminal Control Area and Revocation of the Memphis Airport Radar Service Area, Tennessee; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 89-AWA-5]

RIN 2120-AD05

Proposed Establishment of the Memphis Terminal Control Area and Revocation of the Memphis Airport Radar Service Area, Tennessee

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a Terminal Control Area (TCA) at the Memphis International Airport, TN. The TCA would consist of airspace from the surface or higher within a 30-mile radius of Memphis International Airport to and including 10,000 feet above mean sea level (MSL). Establishment of this TCA would impose certain operating rules and pilot/equipment requirements, including requirements for an operable two-way radio, a 4096 transponder with automatic altitude-reporting equipment, and an operable very high frequency omni-directional radio range (VOR) or tactical air navigational aid (TACAN) receiver; and restrictions on student pilot operations. This action is intended to increase the capability of the air traffic control (ATC) system to separate all aircraft in the terminal airspace around the Memphis International Airport. The objective of this proposal is to substantially increase safety while accommodating the legitimate concerns of airspace users. Memphis International Airport is currently served by an Airport Radar Service Area (ARSA), which would be rescinded concurrent with the establishment of this TCA.

DATE: Comments must be received on or before July 24, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket [AGC-10], Airspace Docket No 89-AWA-5, 800 Independence Avenue SW., Washington, DC 20591.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, DC 20591.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Alton D Scott, Airspace Branch (ATO-240), Airspace—Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9252.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89-AWA-5." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket 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 Inquiry Center, APA-230, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

Related Rulemaking Actions

On May 21, 1970, the FAA published FAR Amendment 91-78 (35 FR 7782) which enabled the establishment of TCA's. On October 14, 1988, the FAA published a final rule which revised the classification and pilot/equipment requirements for conducting operations in a TCA (53 FR 40318). Specifically, the rule: (a) establishes a single-class TCA; (b) requires the pilot-in-command of a civil aircraft operating within a TCA to hold at least a private pilot certificate, except for a student pilot who has received certain documented training; and (c) eliminates the helicopter exception from the minimum navigational equipment requirement.

The FAA published a final rule on June 21, 1988, which requires Mode C equipment when operating within 30 miles of any designated TCA primary airport from the surface to 10,000 feet MSL, except for operations by certain aircraft types specifically excluded (53 FR 23356).

On February 3, 1987, the FAA published a final rule which established requirements pertaining to the use, installation, inspection, and testing of Air Traffic Control Radar Beacon System (ATCRBS) and Mode S transponders in U.S.-registered civil aircraft (53 FR 3380). The rule adopted continues to require a transponder for operation in each TCA.

Background

The TCA program was developed to reduce the midair collision potential in the congested airspace surrounding an airport with high density air traffic by providing an area in which all aircraft will be subject to certain operation rules and equipment requirements.

The density of traffic and the type of operation being conducted in the airspace surrounding major terminals increase the probability of midair collisions An extensive study in 1970 found that the majority of midair collisions occurred between a general aviation (GA) aircraft and either an air carrier, military or another GA aircraft. The basic causal factor common to these conflicts was the mix of uncontrolled aircraft operating under visual flight rules (VFR) and controlled aircraft operating under instrument flight rules (IFR). TCA's provide a method to accommodate the increasing number of IFR and VFR operations. The regulatory requirements of TCA airspace afford the greatest protection for the greatest number of people by providing ATC with an increased capability to provide aircraft separation service, thereby

minimizing the mix of controlled and uncontrolled aircraft.

To date, the FAA has established a total of 23 TCA's. The FAA is proposing to take action to modify or implement the application of these proven control techniques to more airports to provide greater protection of air traffic in the airspace regions most commonly used by passenger-carrying aircraft.

On August 22, 1987, the Secretary of Transportation announced nine locations for which the FAA would issue NPRM's proposing establishment of TCA's. The nine candidates cited qualify for TCA status by meeting the criteria published in FAA Handbook 7400.2, "Procedures for Handling Airspace Matters." The criteria for establishing a TCA are based on factors which include the number of aircraft and people using that airspace, the traffic density, and the type or nature of operations being conducted. Accordingly, guidelines have been established to identify TCA locations based on two basic elements—the number of enplaned passengers and the number of aircraft operations.

Pre-NPRM Public Input

Airspace Meetings

A pre-NPRM airspace meeting was held on October 4, 1988, to allow local aviation interests and airspace users an opportunity to present input on the design of the proposed Memphis TCA. During the course of this meeting, there were presentations from Air Line Pilots Association (ALPA), two local user groups (Memphis Area TCA Ad Hoc Users' Committee and Memphis Soaring Society), Northwest Airlines, private pilots, and concerned citizens. The FAA also accepted written comments as well.

At the meeting, ALPA centered their concerns on ensuring turbojet containment within the TCA. An earlier TCA design of September 29, 1988, failed to address the requirements for a failed engine at maximum takeoff gross weight for the DC–9 twin jet. The largest passenger air carrier in Memphis, Northwest Airlines, has the largest DC–9 fleet in the world, approximately 50 percent of which are twin jets. ALPA also expressed a need for additional fully qualified controllers and equipment to provide the services required.

The Memphis Area TCA Ad Hoc Users' Committee presented its design for the proposed Memphis TCA. The boundaries of this proposal were based on radials and distance measuring equipment from the Memphis very high frequency omni-directional radio range and tactical air navigational aid (VORTAC). The boundaries of the TCA Ad Hoc Committee's design were relatively the same as the FAA with the exception of the western boundary for Area B. The TCA Ad Hoc Committee suggested a 10-mile radius of the VORTAC; the FAA's proposal is an 11-mile radius of the VORTAC. The lateral limits of the TCA Ad Hoc Committee's proposal extend to 30 miles, with vertical limits of 10,000 feet MSL.

The majority of private pilots' comments supported the concept of "Climb and Descent Corridors" and were opposed to the Mode C rule (Notice No. 88–2). The climb and descent corridors concept would keep jets in a narrow area and at high altitudes until necessary to descend.

The FAA evaluated all the comments and designs received on this proposal A common recommendation was to test the "Climb and Descent Corridors" concept in the Memphis area. Previous tests of this concept did not provide the desired degree of safety nor the most efficient use of the airspace provided by the TCA configuration in a high density terminal area.

Another issue mentioned was adequate staffing and equipment to provide the services required. We are confident that the staffing and equipment are more than adequate to handle the additional workload that may be generated by the establishment of the TCA.

The use of radial and distance measuring equipment from the Memphis VORTAC suggested by the TCA Ad Hoc Users' Committee was incorporated into this proposal. The western boundary of Area B remained an 11-mile radius of the Memphis VORTAC to accommodate parallel approaches.

Another issue mentioned was containment of DC–9 twin jets during a failed engine at maximum takeoff gross weight. This issue is not germane to the establishment or design configuration of a TCA.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish a TCA at Memphis International Airport, TN. Annual enplaned passengers at Memphis International Airport are well above the 3.5 million necessary for consideration as a TCA candidate The total airport operation count at Memphis International Airport is 384,049 of which 58 percent is air carrier. This exceeds the criteria necessary for establishment of a TCA. Additionally, within the proposed boundaries, more than 400,000 flight operations are conducted annually. Consequently, the FAA has determined that establishment of a TCA at Memphis International Airport is in the interest of flight safety and will result in a greater degree of protection for the greatest number of people during flight in that terminal area. Memphis International Airport is currently served by an ARSA, which would be rescinded concurrent with the establishment of this TCA. The proposed location is depicted on the attached chart.

Section 91.90 of Part 91 of the Federal Aviation Regulations (14 CFR Part 91) defines TCA's and prescribes operating rules for aircraft in airspace designated as a TCA. The TCA rule provides, in part, that prior to entering the TCA, any aircraft arriving at any airport within the TCA or flying through a TCA must: (1) Obtain appropriate authorization from ATC; (2) unless otherwise authorized by ATC, all large turbine engine-powered aircraft operating to or from a primary airport shall operate above the designated floors of the TCA; (3) comply with any procedures established by ATC for such operations as pilot training at an airport within a TCA; (4) hold at least a private pilot certificate; (5) meet the requirements of § 61.95 if the aircraft is operated by a student pilot; (6) have an operable VOR or TACAN receiver; (7) have an operable two-way radio capable of communications with ATC on appropriate frequencies for that TCA; and (8) be equipped with the applicable operating transponder and automatic altitude reporting equipment specified in paragraph (a) of § 91.24, except as provided in paragraph (d) of that section. Any aircraft departing from an airport located inside the TCA is required to receive a clearance from ATC prior to takeoff.

All aircraft operating within a TCA are required to comply with all ATC clearances and instructions and any FAA arrival or departure traffic pattern for the airport of intended operation. However, the rule permits ATC to authorize deviations from any of the operating requirements of the rule when safety considerations justify the deviation or more efficient utilization of the airspace can be attained. Ultralight vehicle operations and parachute jumps in a TCA may only be conducted under the terms of an ATC authorization.

Definitions, operating requirements, and specific airspace designations applicable to TCA's may be found in Sections 71.12, 71.401, and 71.403 of Part 71 (14 CFR Part 71) and Sections 91.1 and 91.90 of Part 91 (14 CFR Part 91).

The standard configuration of a TCA consists of three concentric circles centered on the primary airport

extending to 10, 20, and 30 miles respectively. The vertical limits of the TCA are 12,500 feet above MSL, with the floor established at the surface in the inner area and at levels appropriate to containment of operations in the outer areas. Variations of these criteria may be authorized contingent upon terrain, adjacent regulatory airspace, and factors unique to the terminal area. The airspace configuration contained herein is the result of an extensive staff study conducted by the local FAA authority after obtaining public input from informal airspace meetings and coordinating with the FAA regional office. The FAA has determined the following proposed TCA airspace configuration is consistent with TCA objectives and allows consideration of terminal area flight operations and terrain:

1. That airspace extending upward from the surface to and including 10,000 feet MSL within a 7-mile radius of the primary airport extending clockwise from the Memphis VORTAC 075° radial to the Memphis VORTAC 275° radial and within a 5-mile radius of the primary airport extending clockwise from the Memphis VORTAC 275° radial to the Memphis VORTAC 075° radial. This airspace is necessary to contain large turbine-powered aircraft within the confines of the TCA while operating to and from the primary airport and allow for ingress/egress to secondary airports without affecting the primary airport

2. That airspace extending upward from 1,800 feet MSL to and including 10,000 feet MSL within the area bounded by a line beginning at a point 13 miles northeast of the primary airport on the Memphis VORTAC 037° radial extending southward to the Memphis VORTAC 052° radial 10-mile fix, extending to the point where it intercepts the 10-mile radius of the primary airport; thence clockwise along the 10-mile radius of the primary airport until the interception of a line from the Memphis VORTAC 128° radial 10-mile fix extending south to the Memphis VORTAC 148° radial 15-mile fix to the point where it intercepts the 15-mile radius of the primary airport; thence clockwise along the 15-mile radius of the primary airport to the interception of a line from the Memphis VORTAC 211° radial 15-mile fix extending northward to the Memphis VORTAC 224° radial 11-mile fix to the point where it intercepts the 11-mile radius of the primary airport; thence clockwise along the 11-mile radius of the primary airport to the interception of a line from the Memphis VORTAC 316° radial 11-mile fix extending northward to the Memphis VORTAC 324° radial 13-mile fix; thence clockwise along the 13-mile radius of the primary airport to the point of beginning and excluding that airspace within Paragraph 1. This configuration is necessary to maximize parallel approach capabilities.

3. That airspace extending upward from 3,000 feet MSL to and including 10,000 feet MSL within a 20-mile radius of the primary airport, excluding that airspace within Paragraphs 1 and 2. This airspace is needed to allow sufficient airspace for departures and inbound mixing of aircraft.

4. That airspace extending upward from 5,000 feet MSL to and including 10,000 feet MSL within a 30-mile radius of the primary airport, excluding that airspace northwest of a line from the Memphis VORTAC 296° radial to the Memphis VORTAC 355° radial, excluding that airspace southeast of a line from the Memphis VORTAC 115° radial to the Memphis VORTAC 145° radial and excluding that airspace within Paragraphs 1, 2, and 3. This airspace configuration would provide an area to contain aircraft during climb and descent profiles to transition between the terminal and en route structure and allow VFR aircraft to circumnavigate the TCA on the north and south bypass airways.

The preceding general summary of the proposed TCA airspace configuration identifies that airspace which is necessary to contain large turbojet aircraft operations at Memphis International Airport. ATC will provide control and separation of all flights within the proposed airspace boundaries. Furthermore, ATC authorization is requisite to aircraft operations within that airspace. Establishment of this TCA will greatly enhance the safety of flight within the congested airspace overlying the Memphis metropolitan area by facilitating the separation of controlled and uncontrolled flight operations. Section 71.403 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

Regulatory Evaluation Summary

The FAA is required to assess the benefits and costs of each proposed rulemaking action to assure that the public is not burdened with rules having costs which outweigh their benefits. This section contains an analysis which quantifies, to the maximum possible extent, the costs and benefits of establishing a TCA at Memphis, TN. This regulatory evaluation summary should be read in conjunction with the NPRM since it provides additional background information.

This proposal is intended to lower the likelihood of midair collisions by increasing the capability of the ATC system to separate all aircraft in terminal airspace around the Memphis International Airport. This action was prompted by data indicating that a high percentage of near midair collisions reported to the FAA in terminal areas involve VFR aircraft that are not required to be under the control of ATC. Thus, the overall objective of this proposal is to substantially increase safety while accommodating the legitimate concerns of airspace users.

Costs-Benefits Analysis

a. Costs

The FAA estimates the total cost expected to accrue from implementation of the proposed rule to be $4.9 million ($2.7 million, discounted, 15 years) in 1987 dollars. Approximately $2.3 million (discounted) or 84 percent of the total estimated oosts would be incurred by the FAA primarily for additional personnel. The remaining costs would be incurred by small GA aircraft operators who would be required under this proposal to equip their aircraft with Mode C transponders sooner than they would have for the ARSA under the previous FAA rule: "Transponder With Automatic Altitude Reporting Capability Requirement (Mode C)" (53 FR 23356, June 21, 1988). This rule became effective June 21, 1988, and will be implemented in two phases. Phase I, to begin in July 1989, will require a transponder with Mode C at and above 10,000 feet MSL and in the vicinity (30 nautical miles) of TCA primary airports. There are currently 23 TCA's.

Phase II will implement a transponder with Mode C requirement in the airspace in the vicinity (10 nautical miles) of ARSA primary airports. Phase II becomes effective on December 30, 1990, and will affect over 135 ARSA's. Also in Phase II, a transponder with Mode C will be required at other designated airports for which either a TCA or ARSA has not been adopted. Consequently, most aircraft without Mode C transponders would need ATC authorization to fly within 30 nautical miles of a primary TCA airport, within 10 nautical miles of a primary ARSA airport, or within controlled airspace of other designated airports that would also require Mode C transponders.

Thus, this evaluation, as well as the Mode C rule, assumes that all aircraft without Mode C would acquire such equipment rather than circumnavigate

the subject airport. The only aircraft without this equipment would be nonelectrical and antique types. Costs to these types of aircraft operators have already been accounted for by the Mode C rule. As a result, aircraft operators impacted by this proposal would only incur the opportunity cost of capital by requiring them to acquire, install, and maintain Mode C transponders one year earlier than they would be required to do so in accordance with Phase II of the Mode C rule.

b. Benefits

This proposed rule is expected to generate potential benefits primarily in the form of enhanced safety to the aviation community and the flying public. Such safety, for instance, would take the form of reduced casualty losses (namely, aviation fatalities and property damage) resulting from a lowered likelihood of midair collisions because of increased positive control in airspace to be established by the TCA. In addition, potential benefits are expected to accrue in the form of improved operational efficiency on the part of FAA air traffic controllers.

Ordinarily, the potential benefits of this proposal would be the reduction in the probability of midair collisions resulting from converting the existing ARSA to a TCA. However, because of the recent Mode C rule (and to some extent, the rule for Traffic Alert and Collision Avoidance (TCAS), 54 FR 940, January 10, 1989), the number of potential midair collisions avoided by this proposal is expected to be significantly lower. Nevertheless, this proposal is still expected to accrue benefits in terms of enhanced safety, though on a much smaller scale.

This point can be illustrated with the use of statistical models based on actual and projected critical near midair collision (NMAC) incidents in lieu of actual midair collisions. (A critical NMAC is an event involving two aircraft coming within 100 feet of each other; the fact that they do not collide is not due to an action on the part of either pilot, but, rather, is due purely to chance.) Since midair collisions involving Part 135 aircraft and especially Part 121 aircraft are rare, the use of critical NMAC's will serve to illustrate, to some degree, the potential improvements in aviation safety of implementing this proposal.

Simple regression analyses were prepared for this evaluation which focused on critical NMAC's and aircraft operations in the 23 existing TCA's and in a random sample of 23 of the existing 79 ARSA's (as of 1986 and 1987). The results of these analyses indicated that TCA's have approximately 68 percent fewer critical NMAC's annually, on average, than ARSA's. While there is no demonstrated relationship between NMAC's and actual midair collisions, the lower NMAC rate does indicate a more efficient separation of aircraft in congested airspace.

As the result of these findings, if the existing Memphis ARSA were to remain unchanged (and the recent Mode C and TCAS rules were not in effect), the Memphis Terminal Area would be expected to experience approximately 2.2 critical NMAC's annually (or 34 critical NMAC's over the next 15 years). If, however, the ARSA were to become a TCA, this figure would reduce to approximately 0.7 critical NMAC's annually (or 11 critical NMAC's over the next 15 years). Thus, over the next 15 years, this proposal could result in the reduction of approximately 23 critical NMAC's. However, it is important to note that many, if not most, of these potential critical NMAC's would never materialize as predicted primarily because of the "Mode C" rule as it is applied to the Memphis ARSA and, to some extent, the "TCAS" rule.

According to Phase II of the Mode C rule, all aircraft operating within 10 nautical miles (except for flights under the outer 5-mile "shelf") of an ARSA primary airport must be equipped with a Mode C Transponder. Phase I of the Mode C rule requires, as of July 1989, aircraft operating within 30 nautical miles of a TCA to be equipped with a Mode C transponder These requirements are expected to significantly reduce the risk of midair collisions in ARSA's and TCA's. For this reason, the primary safety benefit of this proposal to create a TCA in 1989 at Memphis is that the safety enhancements of the Mode C and TCAS requirements will occur one year earlier than they otherwise would be expected without this proposal. A second safety benefit would be in terms of the lowered likelihood of midair collisions as the result of expanding the lateral boundaries of positive ATC by 20 nautical miles through replacing the Memphis ARSA with a TCA.

Thus, the safety benefits of the establishment of a new TCA, while positive, would be less than would otherwise accrue in the absence of the Mode C and TCAS rules. Since this proposal essentially extends the effects of the Mode C rule, virtually all of its potential safety benefits are assumed to be part of that rule. Such benefits cannot be estimated separately and, therefore, are considered to be inextricably linked primarily to the Mode C rule. Over a 15-year period, the Mode C rule is expected to generate total potential safety benefits of $344 million (discounted, in 1987 dollars). (The Mode C rule benefits estimate of $310 million for 10 years has been adjusted to a 15 year period for the purpose of comparability with the TCAS rule and other FAA rulemaking actions). It is important to note that part of these safety benefits would be attributed to the TCAS rule. Thus, the potential safety benefits of this proposal, and the Mods C and TCAS rules are considered to be inextricably linked.

Another potential benefit of the proposed rule would be improved operational efficiency on the part of FAA air traffic controllers. Under the proposed rule, Mode C transponder requirements would ease controller workload per aircraft being controlled because of the reduction in radio communications. The proposed rule would also make potential traffic conflicts more readily apparent to the controller. As the result of improved operational efficiency, the impact of the controller workload increased by separation requirements in the proposed TCA would be somewhat offset because of the controller's ability to adjust the volume of VFR traffic in any given portion of the TCA.

Improved operational efficiency should generate other types of benefits in the form of significant reductions in the number of VFR aircraft requests denied and VFR aircraft delayed during busy periods. As the result of converting the existing Memphis ARSA to a TCA, the improved operational efficiency would accrue because of the availability of additional air traffic controllers. If the Memphis ARSA were to remain intact, such air traffic personnel would not be required. Therefore, potential benefits of improved operational efficiency, which are not considered to be quantifiable in monetary terms in this evaluation, would be attributed to this proposal rather than either the Mode C rule or TCAS rule.

c. Comparison of Benefits and Costs

The total cost that would accrue from implementation of the proposed rule is estimated to be $2.7 million (discounted, in 1987 dollars). Approximately, 16 percent of this total cost estimate would fall on those GA aircraft operators without Mode C transponders in the form of opportunity costs by requiring them to acquire such avionics equipment, including maintenance, one year sooner than they otherwise would under the status quo. The typical individual GA aircraft operator impacted would incur an estimated one-time cost ranging from $86 to $191 (discounted) under the proposed rule.

(As the result of the opportunity cost concept, the derivation of these cost estimates are too complex to discuss briefly. Therefore, the reader should refer to the detailed regulatory evaluation, which is contained in the docket, for a full explanation of the method by which these costs estimates were made.)

The potential benefits of the proposed rule would be the lowered likelihood of midair collisions from the conversion of the existing ARSA to a TCA. The number of midair collisions avoided and their respective monetary values cannot be estimated for this proposal independent of the Mode C and TCAS rules, but the FAA believes the risk would be substantially reduced. An FAA analysis prepared for this evaluation, however, has shown that critical near midair collisions occur approximately two-thirds less frequently in a TCA than within an ARSA. The FAA believes that even after the aviation community complies with the Mode C and TCAS rules, locations converting from ARSA's to TCA's would continue to experiance reduced critical NMAC's. In addition, the proposed rule would generate improved operational efficiency benefits on the part of FAA air traffic controllers, though they are not considered to be quantifiable in monetary terms.

Clearly, in view of the cost of compliance relative to the significant reduction in the likelihood of midair collisions as well as improved operational efficiency in the Memphis Terminal Area, the FAA firmly believes the proposed rule is cost-beneficial.

The Regulatory Evaluation that has been placed in the docket contains additional detailed information related to the costs and benefits that are expected to accrue from the implementation of this NPRM.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. The RFA requires agencies to review rules which may have "a significant economic impact on a substantial number of small entities."

The small entities which could be potentially affected by the implementation of this proposed rule are unscheduled operators of aircraft for hire who own nine or fewer aircraft.

Virtually all of the aircraft operators impacted by this proposed rule would be those who acquire Mode C transponder capability The FAA believes that all unscheduled aircraft operators (namely, air taxi operators) potentially impacted by this proposed rule already have Mode C transponders due to the fact that such operators fly regularly in or near airports where radar approach control service has been established. Even if some of these operators were to acquire, install, and maintain Mode C transponders, the cost would not have a significant economic impact on a substantial number of them. The annual FAA threshold for significant economic impact is $3,700 (1987 dollars) for a small entity. According to FAA Order 2100.14A (Regulatory Flexibility Criteria and Guidance), the definition of a small entity, in terms of an air taxi operator, is one with nine aircraft owned, but not necessarily operated.

If we were to assume that a particular aircraft operator had nine aircraft without transponders, then the annual one-time cost per impacted aircraft would be approximately $210 (undiscounted, for the purpose of comparability with the figure of $3,700). The total annual one-time cost per small entity would amount to an estimated $1,890. Thus, the annual worst case cost for a small entity would fall far below the FAA's annual threshold of $3,700. Therefore, the FAA believes this proposed rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The proposed rule would neither have an effect on the sale of foreign aviation products or services in the United States, nor would it have an effect on the sale of U.S. products or services in foreign countries. This is because the proposed rule would only potentially impact small GA aircraft operators without Mode C, and not aircraft manufacturers. The average cost of acquiring Mode G capability is estimated to range from $900 (to upgrade from a Mode A transponder) to $2,000 (to acquire a Mode C transponder without having a Mode A transponder). The cost of acquiring Mode C capability is not considered to be high enough to discourage potential buyers of small GA airplanes.

Federalism Implications

This regulation would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, preparation of a Federalism assessment is not warranted.

Conclusion

For the reasons discussed under "Regulatory Evaluation," the FAA has determined that this proposed regulation is not a "major rule" under Executive Order 12291. This rulemaking is considered a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). It is certified that this proposal, if adopted, would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 14 CFR Part 71

Aviation safety, Terminal control areas and airport radar service areas.

The Proposed Amendment

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

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

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

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

§ 71.403 [Amended]

2. Section 71.403 is amended as follows:

Memphis, TN [New]

Primary Airport

Memphis International Airport (lat. 35°02' 59", N., long. 89°58'43" W.)
Memphis VORTAC (lat. 35°03'45" N., long. 89°58'53" W.)

Boundaries.

Area A. That airspace extending upward from the surface to and including 10,000 feet MSL within a 7-mile radius of the Memphis VORTAC extending clockwise from the Memphis VORTAC 075° radial to the Memphis VORTAC 275° radial and within a 5-mile radius of the Memphis VORTAC extending clockwise from the Memphis VORTAC 275° radial to the Memphis VORTAC 075° radial.

Area B. That airspace extending upward from 1,800 feet MSL to and including 10,000 feet MSL within the area bounded by a line beginning at a point 13 miles northeast of the Memphis International Airport on the Memphis VORTAC 037° radial extending southward to the Memphis VORTAC 052° radial 10-mile fix, extending to the point where it intercepts the 10-mile radius of the Memphis VORTAC; thence clockwise along the 10-mile radius of the Memphis VORTAC until the interception of a line from the Memphis VORTAC 126° radial 10-mile fix

extending south to the Memphis VORTAC 147° radial 15-mile fix to the point where it intercepts the 15-mile radius of the Memphis VORTAC; thence clockwise along the 15-mile radius of the Memphis VORTAC to the interception of a line from the Memphis VORTAC 211° radial 15-mile fix extending northward to the Memphis VORTAC 226° radial 11-mile fix to the point where it intercepts the 11-mile radius of the Memphis VORTAC; thence clockwise along the 11-mile radius of the Memphis VORTAC to the interception of a line from the Memphis VORTAC 312° radial 11-mile fix extending northward to the Memphis VORTAC 321° radial 13-mile fix; thence clockwise along the 13-mile radius of the Memphis VORTAC to the point of beginning and excluding that airspace within Area A.

Area C. That airspace extending upward from 3,000 feet MSL to and including 10,000 feet MSL within a 20-mile radius of the Memphis VORTAC, excluding that airspace within Areas A and B.

Area D. That airspace extending upward from 5,000 feet MSL to and including 10,000 feet MSL within a 30-mile radius of the Memphis VORTAC, excluding that airspace northwest of a line from the Memphis VORTAC 296° radial to the Memphis VORTAC 355° radial, excluding that airspace southeast of a line from the Memphis VORTAC 115° radial to the Memphis VORTAC 145° radial and excluding that airspace within Areas A, B, and C.

§ 71.501 [Amended]

3. Section 71.501 is amended as follows:

Memphis International Airport, TN [Removed]

Issued in Washington, DC, on May 22, 1989.

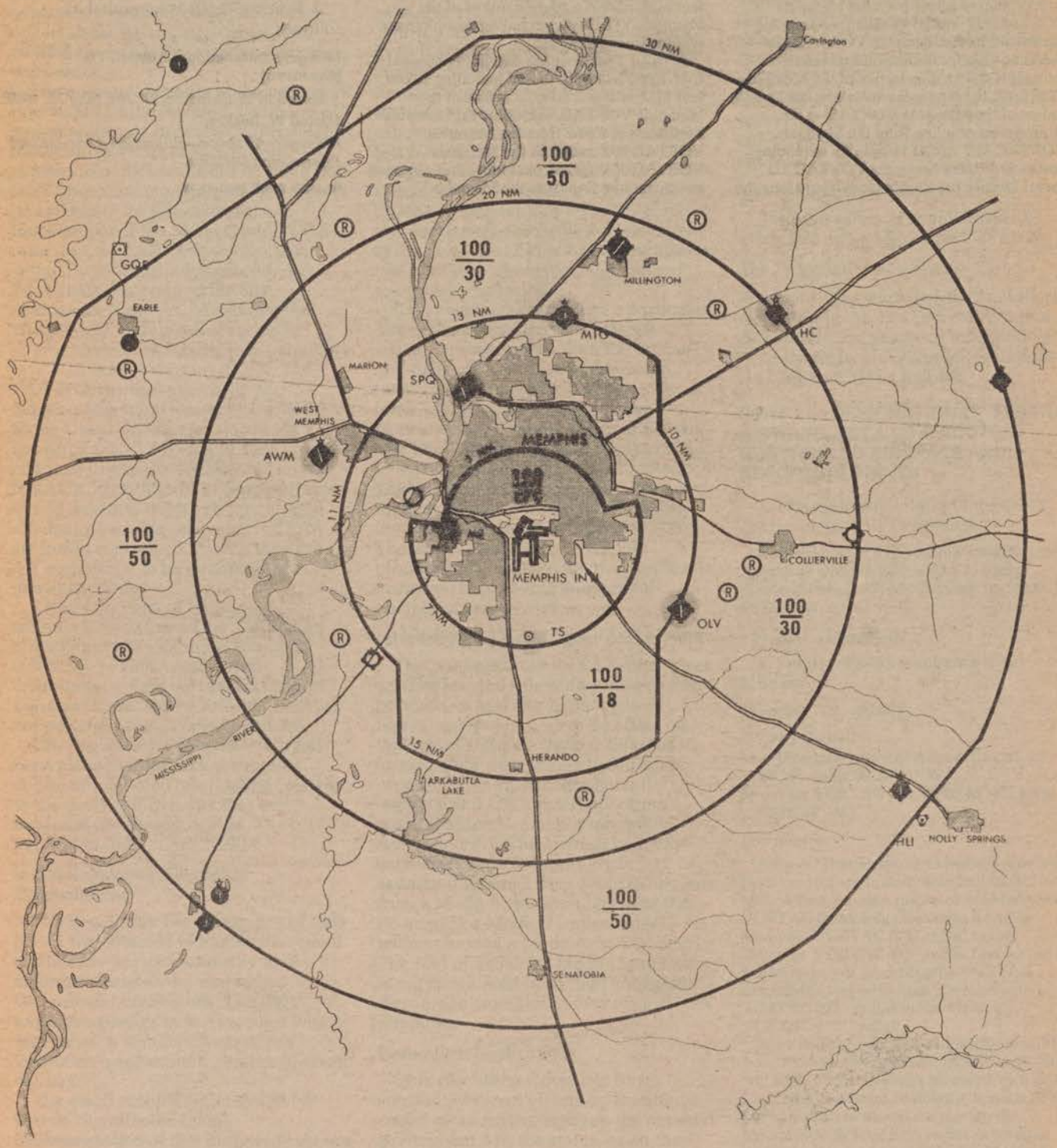
Harold W. Becker,

Manager, Airspace—Rules and Aeronautical Information Division.

BILLING CODE 4910-13-M

MEMPHIS TCA

(NOT TO BE USED FOR NAVIGATION)



[FR Doc. 89-12602 Filed 5-25-89; 8:45 am]

BILLING CODE 4910-13-C

federal register

Friday
May 26, 1989

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Parts 61 and 141

Pilot, Flight Instructor, and Pilot School Certification Rules; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

14 CFR Parts 61 and 141

[Docket No. 25910; Notice No. 89-14]

Pilot, Flight Instructor, and Pilot School Certification Rules

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Federal Aviation Regulations (FAR) governing pilot initial and recurrent training and the operations of Federal Aviation Administration (FAA) certificated pilot schools. The proposed amendments address concerns identified by the National Transportation Safety Board (NTSB) and the public and issues raised in petitions for exemption from the rules. This action is intended to update standards of pilot performance and to respond to technological advances in pilot training since the current rules were issued.

DATE: Comments must be submitted on or before August 24, 1989.

ADDRESSES: Comments on this notice should be mailed, in triplicate, to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-10), Docket No. 25910, 800 Independence Avenue, SW., Washington, DC 20591. Comments delivered must be marked Docket No. 25910. Comments may be examined in Room 915G weekdays between 8:30 a.m. and 5 p.m., except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Edna French—Manager, or John Lynch, Project Development Branch, AFS-850, General Aviation and Commercial Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue SW., Washington,. DC 20591; Telephone (202) 267-8150.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rules by submitting such written data, views, or arguments as they may desire. Comments relating to the economic, environmental, energy, or federalism impacts that might result from adoption of the proposals contained in this notice are also invited. Substantive comments should be accompanied by actual and anticipated cost impact statements, as appropriate. Comments should identify the regulatory docket number and be submitted in triplicate to the Rules Docket address specified above. All comments received on or before the closing date for comments will be considered by the Administrator before action is taken on the proposed amendments. The proposals contained in this notice may be changed in light of comments received. All comments received 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 substantive public contact with FAA personal concerned with this rulemaking will be filed in the docket. Commenters wishing to have the FAA acknowledge receipt of their comments submitted in response to this notice must submit with those comments a preaddressed, stamped postcard on which the following statement is made: "Comments to Docket Number 25910." The postcard will be date stamped and mailed to the commenter.

Availability of This Notice

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 Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the docket number of this NPRM.

Persons interested in being placed on a mailing list for future NPRM's should request from the above office a copy of Advisory Circular 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

Statement of the Problem

The FAA is performing a review of FAR Parts 61, 141, and 143, which regulate aircraft pilot and flight instructor, pilot school, and ground instructor training and certification procedures. The review was undertaken because of advances in aircraft technology, the increasing complexity of the National Airspace System, and as a result of experience gained by the FAA since the last revisions of these parts in the early 1970's. In the course of the review, it was determined that the most immediate areas of attention should be within Parts 61 and 141, the parts being amended by this NPRM. Part 143, Ground Instructors, will be considered in a future phase of this review.

Since the last revisions to Parts 61 and 141, there have been 19 amendments to Part 61 and 1 amendment to Part 141. The agency has completed approximately 3,300 exemption actions under Part 61 since 1973, and approximately 250 under Part 141 since 1974. The number of amendments and exemptions, as well as the recommendations and comments from the NTSB, the public, and the FAA, all demonstrate the need for the regulatory review.

This notice proposes to establish a minimum curriculum for pilots obtaining type ratings; establish a training requirement for high altitude airplanes; require pilots with multiple ratings to complete biennial flight reviews (BFR's) in each category and class of aircraft for which they intend to use pilot-in-command privileges; establish a requirement for a flight instructor endorsement for a pilot to operate a tailwheel airplane; and update required training on avoiding and recovering from stalls and spins. The proposed amendments would eliminate the 100-hour recency of instruction experience requirements for designation of chief flight instructors and reduce total experience time required of assistant chief flight instructors. The proposed changes also would modify the requirement that chief flight instructors be on-site while a school is conducting flight instruction by permitting chief flight instructors to be available by electronic means. The proposed amendments would also permit pilot schools to establish satellite bases beyond the present 25-nautical-mile limit. Other issues require longer term study and evaluation and will be considered in future actions.

History

The regulations under study were codified from the Civil Air Regulations (CAR) in 1962. Part 20 of the CAR, "Pilot and Instructor Certificates," was recodified as Part 61 of the FAR, "Certification: Pilots and Flight Instructors" (27 FR 7955; August 10, 1962). The last major revision to Part 61 was completed in 1973 (38 FR 3156; February 1, 1973). Part 50 of the CAR, "Airman Agency Certificates," was recodified as Part 141, "Pilot Schools" (27 FR 6656; July 13, 1962). The last major revision to Part 141 was completed in 1974 (39 FR 20146; June 6, 1974).

Technological advances in aircraft, as well as the increasing complexity of the National Airspace System, have led to a disparity between the rules and the level of training demanded of pilots in today's aviation environment. In addition, numerous petitions for exemption and letters from the public have indicated that advances in training and testing

techniques necessitate review of the rules.

In January 1988, the FAA completed a historical review of Parts 61, 141, and 143, including related amendments, exemptions, legal interpretations, policy letters, advisory circulars, NTSB and Terminal Control Area Task Force recommendations, and enforcement actions. The study, "Review of Historical FAA Actions in Support of Regulatory Review of FAR Parts 61, 141, and 143," U.S. Department of Transportation, Transportation Systems Center, which is on file in Docket No. 25627, examined items related to pilot training and certification, pilot schools, and ground instructors. Communications and input also were received from pilot schools and aviation departments at colleges and universities operating under Parts 61 and 141. The FAA has identified three needs within this review. First, it is necessary to address issues of immediate concern identified through recommendations from the NTSB as well as through public comments. Second, there is a need for an in-depth examination of overall requirements for aircraft operations in today's environment. Finally, the FAA needs to examine requirements for pilots in the year 2000 and beyond.

Accordingly, this regulatory review is being approached in three phases. This NPRM involves the first phase—amendments to the rules on issues that can be addressed immediately. The issues in this NPRM are based on recommendations from the NTSB and comments from training schools, aviation associations, aviation industries, and the public. This phase will also address certain clean-up items. In some cases, for example, exceptions to the rules are being eliminated when those exceptions contain expiration dates that have passed. Other editorial and clean-up changes that are not addressed by this rulemaking will be addressed in other rulemaking actions. In addition, the FAA agrees with public comments that the use of gender classification in the regulations is not appropriate, and has determined that adjustments in terminology be undertaken progressively as specific paragraphs are addressed with amendments or revisions.

Phase 2 will address Parts 61 and 141 issues that require more extensive research. Any proposed changes to Part 143 will be addressed in Phase 2. Phase 2 began simultaneously with Phase 1, but will continue through 1989 and will require further public hearings and additional rulemaking action. Phase 2 includes a Job Task Analysis (JTA) which will incorporate the results of a detailed study of pilot knowledge, skill and ability levels required in today's aviation environment. This ongoing JTA effort will provide the foundation for development of regulatory requirements, performance levels of certification, testing requirements, and training standards. The management action plan for the Phase 2 Job Task Analysis is in Docket No. 25627, and information will continue to be collected from experienced pilots, flight instructors, and examiners.

The third phase will be a broader and longer-term effort undertaken in the future. The FAA will develop an action plan for Phase 3 that will be available for public comment when it is completed. Implementation will probably not be before the early 1990's.

In the process of this review, two public hearings were held on FAR Parts 61, 141, and 143. Those hearings were announced in the **Federal Register** on June 27, 1988 (53 FR 24178; June 27, 1988) and held July 26–27, 1988, in Washington, DC, and August 3–4, 1988, in Oshkosh, Wisconsin. The hearings focused on NTSB and Terminal Control Area (TCA) Task Force recommendations to the FAA and on issues identified from petitions for exemption. In the course of the hearings, some participants requested additional time to comment on the topics of discussion and the management action plan. Consequently, the comment period was extended to September 9, 1988 (53 FR 29582; August 5, 1988). The FAA continues to receive numerous inquiries, suggestions, ideas, and comments from the public concerning recommended changes to Parts 61, 141, and 143. As a result, the FAA reopened Docket No. 25627 (53 FR 49072; December 5, 1988), in order to provide an organized means of receiving this information from the public throughout this regulatory review. Docket No. 25627 will remain open until the FAA gives notice that the docket is closed. Transcripts of the hearings also are available in Docket No. 25627.

Some comments received during and after those hearings are beyond the scope of Phase 1, and therefore are not covered in this NPRM. However, information and comments pertinent to later phases of this regulatory review will be considered at the appropriate time.

This NPRM proposes a number of amendments to Parts 61 and 141, the two principal parts of the FAR addressing pilot training and certification. Currently, the FAA has initiated a separate rulemaking project that addresses issues concerning increased usage of simulators for Part 61 pilot certification and training. Although the simulator rulemaking project will propose various changes to the same sections being addressed in this NPRM, the issues are different. However, any final rule will reflect earlier changes, if any, to the regulatory structure.

General Discussion of the Proposals

Tailwheel Airplanes

Tailwheel airplanes are particularly prone to loss of directional control during takeoff and landing, and to severe bouncing if the landing is not performed properly. A study, *Single-Engine, Fixed-Wing General Aviation Accidents, 1972–1976* (NTSB–AAS–79–1), showed that the total accident rate for tailwheel airplanes was more than twice that of airplanes with tricycle landing gear.

The NTSB and members of the public who submitted communications and participated in public hearings thus far in this regulatory review have expressed the opinion that the safe operation of tailwheel airplanes requires a measure of training not transferable from experience in tricycle gear airplanes, and that the stringency of requirements for pilots in command of tailwheel airplanes should be increased. The NTSB stated that this training should focus on the pilot's knowledge and level of proficiency regarding crosswind takeoffs and landings and go-around procedures, as well as other phases of flight.

NTSB Recommendations A–80–24 and A–80–25, which address increasing the stringency of requirements for pilots operating tailwheel airplanes, included requiring a one-time flight instructor endorsement in the pilot's logbook, requiring pilots in command of such airplanes to have completed a BFR in tailwheel airplanes, and increasing the takeoff and landing recency of experience minimum requirements.

Public comments received during and after the public hearings for this rulemaking frequently contented that tailwheel airplane competency is adequately covered by present regulations on recency of experience. Some commenters said that accident data did not warrant a change in regulations. Nevertheless, some public communications did maintain that the recency of experience requirements should be increased, or that BFR's in tailwheel airplanes should be required of pilots who operate such airplanes.

The FAA believes that requiring a one-time flight instructor endorsement, which would verify that a pilot was

competent to operate tailwheel airplanes, would improve safety without imposing significant burdens on pilots. This requirement would be accomplished through an amendment to § 61.31, which would create a new endorsement requirement similar to the one now required by § 61.31(e) for high performance airplanes. This new endorsement, affecting pilots who have not logged pilot-in-command time in tailwheel airplanes before the effective date of this amendment, would supplement the current requirements of the FAR and may encourage the use of education materials available through the FAA, such as the *Flight Training Handbook* (Advisory Circular (AC) 61–21A) and publications issued in the Accident Prevention Program. The endorsement would be required for the pilot to act as pilot-in-command of a tailwheel airplane. The endorsement would certify that the pilot was competent in normal and crosswind takeoffs and landings, wheel landings, recovery from bounced landings, and go-around procedures. Together, these measures would provide the basis for a comprehensive checkout of pilots in tailwheel airplanes.

The FAA believes that accident data do not indicate a need for increased currency guidelines for pilots of tailwheel airplanes to enhance safety further. However, the need for any additional requirements for pilots in command of tailwheel airplanes may be addressed during Phase 2 of the Regulatory Review of FAR Parts 61, 141, and 143 as part of an overall consideration of pilot proficiency and currency requirements. The FAA at that time may examine further such questions as whether flight instructors should be required to complete additional training in tailwheel airplanes, or whether BFR's might be required in tailwheel airplanes for pilots to operate such airplanes.

Special Requirements: High Altitude Training and Type Rating Curricula

This section contains general discussion about the proposed training requirements for high altitude flight and approved curricula for airplane type ratings. Specific information regarding each proposal is discussed in the two subsections which follow this general section.

Concern has arisen within the NTSB, FAA, and public that general aviation pilots are able to transition to pressurized high performance airplanes, including turbine-powered airplanes capable of high altitude flight, without sufficient appreciation of the capabilities and limitations of these airplanes. Air carrier and military pilots undergo extensive classroom, simulator, and actual flight training covering aerodynamic, meteorological, and physiological aspects of high performance, high altitude flight. Private and business pilots, however, may fly airplanes of similar sophistication after meeting less stringent training requirements.

Furthermore, the criteria for type ratings in turbine-powered airplanes demands only that the pilot demonstrate competence in operations consistent with the certificate held and instrument proficiency. While such testing may demonstrate a pilot's ability to control the airplane under normal flying conditions, it does not ensure that the pilot is competent to cope with other demands consistent with the unique characteristics of the equipment in a high altitude environment.

Thus, a pilot can progress from single-engine and light twin reciprocating-engine airplanes to high performance, high altitude airplanes, including turbine-powered airplanes, with inadequate training and without having demonstrated a knowledge of factors such as high altitude effects airplane and flightcrew performance, hazards associated with operations near the low or high speed buffet boundaries, effects of maneuvering load factors, potential for loss of control when operating beyond maximum operating limit speed, powerplant characteristics, potential effects of turbulence encounters, and recovery procedures.

In its recommendations on this issue, A–82–127 and A–82–128, the NTSB stated that a structured training curricula for pilots applying for a type rating in turbojet airplanes would ensure an acceptable level of knowledge of turbojet performance characteristics and operating environment. the NTSB recommended that pilots who had no comparable previous training or demonstrated expeience in turbojet airplane operations be required to complete a high altitude training program prior to applying for a type rating in such airplanes. The NTSB has cited various turbojet accidents in its recommendations to support the need for high altitude ground instruction and flight training.

Public comments at hearings on this issue, including statements from the aircraft Owners and Pilots Association (AOPA), AOPA Air Safety Foundation (AOPA ASF), and National Air Transportation Association (NATA), generally supported the tenor of this recommendation. The General Aviation Manufacturers Association (GAMA) submitted a proposal, "Transition Training Master Syllabus," for use in preparing transition training guides. this proposal is on file in Docket No. 25627.

After review of existing general aviation training material for high performance and high altitude airplanes—not just turbojet airplanes—the FAA agrees that additional information on certain aspects of such operations do need to be presented to transitioning pilots.

The FAA therefore proposes changes to §§ 61.31, 61.63, 61.157, and Part 141 appendices A, F, and H to establish a training requirement for pilots transitioning to high altitude airplanes and an approved curriculum for type ratings. Most of the airplanes affected by the proposals will be turbine-powered airplanes, which are capable of operating at high altitudes, and also require type ratings. These pilots would be required to complete a type rating curriculum, which would include ground and flight training on high altitude flight. However, the general aviation fleet still has a number of older, piston-powered airplanes that are not pressurized or designed for high altitude flight but do require type ratings. The fleet also has a number of modern, high performance airplanes that are pressurized and designed for high altitude operations, but do not require type ratings. Pilots transitioning to airplanes in either of these two groups will be required to complete the appropriate training or curriculum, either high altitude or type rating.

Appropriate advisory material will be developed by FAA concurrently with this rulemaking action. The FAA proposes to develop the material based on current practices, Advisory Circulars, flight guides, any other existing standards of performance, and training and operations information published by manufacturers. In the high altitude flight demonstration, as with the minimum curricula for type ratings, the FAA will develop guidelines for procedures and maneuvers. These guidelines will assist both flight instructors administering training, and inspectors and examiners in the conduct of practical tests. Use of an approved simulator will be defined, with an explanation of how high altitude demonstrations would be accomplished on such a device.

(a) High Altitude Flight and Ground Training Requirements. The proposed § 61.31(f) would require a pilot to complete ground and flight training on high altitude flight prior to transitioning to an airplane with a service ceiling or maximum operating altitude, whichever is lower, above 25,000 feet MSL. The

training requirements would include ground training on aerodynamic, meteorological, hypoxia and other high altitude sickness problems, effects associated with prolonged usage of supplemental oxygen, and other physiological aspects of high performance, high altitude flight, and a flight training demonstration on operating at an appropriate enroute altitude above 25,000 feet MSL at cruise flight and at speed ranges compatible with the specified flight envelope of the airplane. The pilot would be required to complete the prescribed training and obtain an authorized instructor endorsement or a written statement in the training record certifying that the pilot had demonstrated competency in high altitude flight operations. An authorized instructor can be either the holder of a valid FAA flight instructor certificate issued under Part 61 or, in the case of an air carrier, a person with an ATP certificate who conforms to the procedures of § 61.169. An advanced ground instructor can sign-off the ground training portion of the training.

The proposed rule includes a "grandfather" provision. Pilots already qualified in an airplane which has a service ceiling or maximum operating altitude, whichever is lower, above 25,000 feet MSL would not be required to undergo the training. Under proposed § 61.31(f)(2), any pilot who has served as pilot in command of that kind of airplane prior to the effective date of the rule would not have to obtain the training or endorsement. Any pilot who qualifies in that kind of airplane by completing a pilot proficiency check under Parts 121, 125, or 135 conducted by the FAA or an approved pilot check airman, would not have to obtain this training or endorsement. Any pilot who completed a pilot proficiency check for a pilot certificate or rating conducted by the FAA prior to the effective date of this rule would likewise not have to obtain the training or endorsement. An official pilot checkout in that kind of airplane given by a member of an armed force of the United States authorized to conduct the relevant pilot check would also satisfy the requirement.

The determination of 25,000 feet MSL as high altitude for the purpose of these amendments has been made on the basis of established requirements. These established requirements include § 91.32(b)(i), which requires supplemental oxygen for pressurized aircraft flying above flight level (FL) 250, and §§ 121.417(e) and 135.331(d), which require advanced inspection in hypoxia, respiration, and other factors and emergencies related to high altitude flight for crewmembers who serve in operations above 25,000 feet. Certain supplemental oxygen requirements under §§ 121.331 and 121.333 also begin above FL 250.

The proposed amendments to § 61.31 recognize that regardless of whether the airplane requires a type rating, high altitude operations require additional, specialized training. This training applies to pilots flying turbine-powered airplanes, or reciprocating engine singles or twins that are pressurized and designed for operations in the same high altitude environment.

(b) Type Rating Curriculum. The proposed amendments to §§ 61.63, 61.157, and Appendix F of Part 141 would add completion of a minimum curriculum to the list of requirements for obtaining a type rating. Because § 61.63 does not include airline transport pilot type ratings, § 61.157 must also be revised to require completion of a minimum curriculum for ATP type ratings. The curriculum would include the maneuvers and procedures of Part 61, Appendix A "Practical Test Requirements for Airplane Airline Transport Pilot Certificates and Associated Class and Type Ratings," as appropriate to the airplane for which the type rating was sought. An applicant for an ATP type rating may, in lieu of the minimum curriculum, complete an air carrier training program approved under FAR Parts 121 or 135. The applicant must also obtain a written statement from an authorized instructor in the applicant's training records certifying satisfactory completion of the training. An authorized instructor can be either the holder of a valid FAA flight instructor certificate issued under Part 61 or, in the case of an air carrier, a person with an ATP certificate who conforms to the procedures of § 61.169. An advanced ground instructor can sign-off the ground training portion of the curriculum. These requirements will apply to applicants for type ratings after 180 days from the effective date of the rule.

There is precedent for the curriculum for obtaining type ratings. Part 121 and 135 certificate holders are required to prepare and keep current a training curriculum for each type of airplane used by their crews. The curricula are required to specify ground and emergency training subjects, and provide descriptions of flight training and testing maneuvers and procedures.

Another precedent for type rating curricula requirements is the FAA-approved curriculum presently required for applicants using simulators under an exemption. This proposal would represent an expansion of the minimum curriculum requirement to all applicants for airplane type ratings. In principle, the FAA supports use of approved simulators for the completion of the training curricula for applicants seeking airplane type ratings, although presently there are no provisions in § 61.63 for accomplishing any portion of type rating flight tests in simulators or training devices. Applicants for an airline transport pilot (ATP) certificate or ATP type rating who have completed an approved training course under Part 121, presently may accomplish the type rating practical tests under Part 61, Appendix A, in simulators meeting the requirements under the Advanced Simulation Plan of Part 121, Appendix H.

Certain training organizations that do not hold Part 121 operating certificates are permitted by exemption from § 61.63 to accomplish type rating flight tests in simulators. The FAA does not propose to modify the rules regarding usage of simulators in this NPRM action. Rule changes to permit simulator usage under Part 61 for high altitude training and airplane type rating curricula will be addressed in a separate rulemaking project currently being developed. Until then, simulator use for type ratings will continue to be handled on an exemption basis and in Parts 121 and 135 training programs.

Biennial Flight Reviews

Currently, § 61.57 requires that pilots must complete a biennial flight review and have their logbook endorsed by the flight instructor, or other person designated by the Administrator, who gave the flight review. The review covers general operating and flight rules of Part 91 and maneuvers and procedures deemed necessary by the person giving the review. A significant reduction in the general aviation accident rate occurred after the inception of the requirement in 1973, and this improvement is attributed in large part to the BFR.

Concern within the NTSB and the aviation community has subsequently focused on perceived gaps in the BFR requirement. That is, pilots have complete latitude in selecting the aircraft to be used in their BFR. Even though their airman certificates may list various category and class ratings, pilots may take their BFR in the least complex of those aircraft in order to continue exercising pilot-in-command privileges in aircraft of greater complexity.

The NTSB, in its recommendations A–79–96 and A–79–97, focused particularly on multiengine airplanes. According to

the NTSB, the percentage of fatal accidents related to engine failure in light twin-engine airplanes was more than four times that of single-engine airplanes. NTSB stated that from 1972 through 1976, there were 477 light twin accidents following engine failures. Of these, 123 were fatal, with 289 persons killed. The NTSB said that there was also a relationship between the rate of occurrence of accidents following engine failures in light twins and the power loading (ratio of gross weight to horsepower) of these airplanes. NTSB stated that these light twin accidents following engine failures often involve lack of proficiency in emergency procedures, but do not always involve low-time pilots.

These figures were cited by the NTSB when it suggested amending § 61.57 on biennial flight reviews to require that a pilot in command of a multiengine airplane must have successfully completed, within the last 24 calendar months, a flight review in a multiengine airplane. The NTSB also suggested that the flight review be based on the flight test guide and emphasize maneuvers related to power loss.

Public opinion expressed during this regulatory review seemed divided as to how to move BFR's toward the more complex aircraft flown by pilots. Despite some public apprehension that pilots with multiple ratings would have to pay for numerous BFR's to maintain their ratings, much of the aviation public believed the BFR should reflect the complexity of the aircraft flown by pilots. For example, the National Business Aircraft Association (NBAA), suggested during the public hearing in Washington that the BFR should be in the most complex aircraft "currently" flown by a pilot, rather than in the most complex aircraft for which the pilot is rated.

Much of the public input has agreed that a multiengine airplane BFR should be required to exercise multiengine privileges. During the public hearings, AOPA ASF stated that the biennial flight review is the only structured recurrency training for many general aviation pilots, and that it should reflect the sophistication of the airplane—for example, multiengine versus single-engine. AOPA ASF also called for more statistical documentation, which the FAA hopes to develop in the course of this rulemaking. AOPA, on the other hand, questioned whether in fact category privileges are now being abused in biennial flight reviews. AOPA nevertheless did voice support for changes in the BFR, including more specifics on required maneuvers and greater use of airplanes that involve more pilot workload—if a more complex aircraft is what the pilot generally flies—rather than the least complex airplane possible. AOPA suggested that perhaps such changes should be addressed through advisory rather than regulatory methods. Some comments by AOPA and others focused on the possibility of reviewing instrument flight rule (IFR) operations as well as maneuvers and procedures necessary for visual flight rule (VFR) operations.

GAMA, which represents manufacturers of airplanes used in general aviation and commuter airline activities, submitted a detailed proposal, "Standardized Biennial Flight Review" (July 1988), available in Docket No. 25627, which covered potential BFR requirements in each category and class of aircraft from the point of view of airman certification. These requirements would apply to airplanes, rotorcraft, gliders and lighter-than-air categories, and all classes including landplane, seaplane, and multiengine. The GAMA proposal examines potentially widening the areas covered by the BFR, based on VFR, IFR, and multiengine privileges, and permitting simulators or ground training devices to be used for all or part of the BFR.

Having taken into account the public input received so far, as well as the NTSB's recommendations, the FAA believes that expanding the BFR requirement would enhance safety and move toward eliminating a potential gap in the BFR requirement.

This NPRM action proposes a modification to § 61.57 to require that a person desiring to exercise pilot-in-command privileges in a given aircraft must have completed a BFR in the preceding 24 calendar months in that category and class of aircraft. The BFR would consist of ground and flight training appropriate to the level of certificate held for that category and class of aircraft. For example: ATP–AMEL Private-Glider BFR in glider to private pilot level.

However, the proposal allows a biennial flight review in a multiengine airplane to simultaneously serve as the BFR for a single-engine airplane, as long as both were either landplanes or seaplanes. Helicopter pilots, however, would not be required to complete BFR's in multiengine and single-engine helicopters, since, as was pointed out in public hearings, some single-engine helicopters may be more complex than some multiengine helicopters. In addition, the FAA does not require separate class ratings for single engine and multiengine helicopters. Completion of any other checks or tests, as specified in § 61.57(a)(2), would continue to substitute for a biennial flight review as long as they were in the same category and class of aircraft.

Pilots would be required to complete BFR's in the categories listed in § 61.5: Airplane, rotorcraft, glider, and lighter than air. And, with the important exception of single engine and multiengine airplanes, they would also have to complete BFR's for different classes listed in § 61.5. However, with the removal of the single and multi-engine class distinction, only land- and seaplane classes remain as significant classes in terms of numbers of affected pilots.

The expanded BFR requirements clearly cannot be put into effect immediately. The FAA proposes to allow sufficient time after adoption of this change to permit pilots gradually to complete BFR's necessary for the aircraft they fly. Under this proposal, a pilot who had completed a BFR within 24 calendar months prior to the rule change taking effect would not be required to take another BFR until 24 calendar months had elapsed from the last BFR. At that time, the pilot would be required to complete one or more flight reviews as appropriate to the categories and classes of aircraft in which pilot-in-command privileges were to be exercised.

The FAA plans to develop guidelines for flight instructors to use in the biennial flight review concurrently with this rulemaking. The guidelines will list specific tasks in pilot operation areas. For example, in the private pilot airplane operation, maximum performance takeoffs and climbs, specific kinds of maximum performance takeoffs and climbs, may be listed for the flight instructor to provide recurrent training to the pilot. In the pilot operation, flight maneuvering by reference to ground objects, the guidelines may identify flying around a point or a rectangular course for the recurrent training. The FAA intends to update these guidelines as necessary to reflect current safety indicators needed for recurrent training to the level of certificate held by the pilot.

The FAA is not proposing to require an "instrument BFR" for pilots to exercise the privileges of an instrument rating. Currently, the FAA is not convinced that "instrument BFR" is needed in light of the instrument currency requirements of § 61.57(e). The FAA invites public comment on the relevancy of a BFR for recurrent training in instrument procedures.

The FAA has also considered the TCA Task Force Recommendation No. 24, which proposed requiring that Certificated Flight Instructors (CFI's) report completion of BFR's to the FAA. A number of commenters proposed various ways to accommodate this requirement. Although the FAA believes that this procedure would be desirable in terms of monitoring the extent and type of flying activity of general aviation pilots, as well as compliance with the BFR requirement, it is necessary to study further how FAA information systems might best respond to such an extensive reporting requirement. The proposed expansion of the BFR requirement, as well as additional studies currently underway regarding alternative methods of tracking this type of information, suggest that this recommendation be given further comprehensive consideration. Therefore, the FAA is not proposing the reporting of BFR's at this time.

Stalls and Spins: Awareness, Training, Testing

Inadvertent spin entry and stall/spin accidnets continue to be a source of concern to the NTSB, the FAA, and the aviation public. Concern has focused both on the ability of general aviation pilots to recognize imminent stall/spin conditions and respond to them, and on the ability of flight instructors to prepare their student pilots to understand, avoid, and recover from inadvertent spins. Currently stall training is a basic element of all pilot training, but only flight instructor candidates are required to undergo spin training.

The FAA has been studying recommendations in this regard in connection with airplanes and gliders. NTSB Recommendation A–78–43 suggested that the FAA incorporate the essential elements of ground and flight training as developed in the FAA's *General Aviation Pilot Stall Awareness Training Study* (Report No. FAA–RD–77–26, September 1976) or their equivalent in FAR Parts 61 and 141. (A copy of this study is in Docket No. 25627, and copies can also be obtained from the National Technical Information Service, Springfield, Virginia 22161.) Another recommendation suggested that the FAA require spin demonstration on the flight portion of all initial flight instructor—airplane certification practical tests. The FAA has considered these recommendations and stall and spin conditions for pilot training and flight instructor certification.

(a) Pilot Training. In evaluating these recommendations the FAA reviewed the history of spin demonstration requirements for pilot certification. Spin test requirements were eliminated for private and commercial pilot applicants in 1949, when the Civil Aeronautics Board determined that greater improvements in safety would be achieved by stressing stall recognition and recovery than by continuing to require pilots to perform spins during their flight tests. The Board also hoped to stimulate manufacturers to build spin-resistant aircraft. (A copy of the 1949 regulation, including the preamble, has been placed in the docket.) The spin demonstration requirement for flight instructors remained in effect.

Since the 1940's, stall/spin accidents have dropped significantly as a percentage of total aircraft accidents. According to "Special Study, General Aviation Stall/Spin Accidents, 1967–1969," (an NTSB report issued in 1972 and on file in the docket) stall/spin accidents accounted for 48 percent of fatal general aviation accidents in 1945–1948, but only 22 percent of fatal occurrences in 1967–1969. Although other factors were undoubtedly involved, according to the NTSB study the data appeared to indicate that "emphasizing recognition of stalls has had a significant effect in reducing their relative numbers." Subsequent studies showed this proportion dropping further during the 1970's to 12 or 13 percent.

FAA policy since 1949 has been to emphasize stall/spin avoidance training rather than require spin training. In 1955, the Civil Aeronautics Board proposed dual instruction in recovery from spins unless the instruction was given in nonspinnable airplanes as a requirement for first solo in airplanes. That proposal was rejected in 1956 on the basis of public comment favoring stall recognition.

Despite the improvements in stall training, stall warning devices, and accident statistics, the NTSB recommended in 1972 (NTSB Special Study General Aviation Stall/Spin Accidents 1967–1969) that the FAA evaluate the feasibility of requiring at least minimal spin training of all pilot applicants. At that time, the FAA found that mandatory spin demonstration was neither feasible nor justified by the accident statistics. Frequently, stall/spin accidents are the culmination of other conditions which overtax the capabilities of the airplane and/or the pilot. Further, most of these accidents occur at altitudes too low for spin recovery to be effected. The NTSB study found that of 1,261 stall/spin accidents in the 3-year period 1967–1969, 60 percent occurred during takeoff or landing; and of the remaining 40 percent, most were related to acrobatics or other low-level flight from which recovery from a fully developed spin would have been unlikely. Only about 7 percent were associated with cruise flight.

In 1976, the FAA conducted a General Aviation Pilot Stall Awareness Training Study (Report No. FAA–RD–77–26, September 1976, copy in docket) in response to the NTSB Safety Recommendations resulting from the 1972 NTSB Study.

The purpose of the General Aviation Pilot Stall Awareness Training Study was

> to place emphasis on Avoiding The Unintentional Stall. The motivation is that the present syllabus emphasizes the execution of an *intentional* stall, whereas the accident problem is created by *unintentional* stalls which result from traps and distractions. Our approach in this experimental program was to educate the pilot about the traps which lead to an unintentional stall and to give him practice in avoiding unintentional stalls when challenged by the distractions that often cause stall accidents.

In that study, four groups of pilots received written and flight evaluations of performance before and after a specified training increment. Group 1, the control group, received no additional experimental instruction prior to the second evaluations. Group 2 received ground school instruction on the subject of stalls and spins prior to the second evaluations. Group 3 received ground instruction and 2 hours of flight instruction on scenarios leading to inadvertent stalls/spins and stall and spin avoidance (rudder effectiveness in delayed recovery stalls), but no intentional spins. Group 4 received the same instruction as Group 3 plus training in intentional spins.

The flight training syllabus available to flight instructors participating in this study included scenarios of typical flight situations where stall/spin accidents frequently occur, such as engine failure on takeoff or initial climb, go-around with full nose-up trim, and cross-controlled turns to final approach. The syllabus also included stall avoidance practice at minimum controllable airspeed, spin avoidance practice (rudder effectiveness in delayed stalls), and full spin training.

The study concluded that: (1) Additional ground training on stalls and spins tended to reduce the occurrence of unintentional stalls and spins; (2) additional flight training on stall awareness or intentional spin training, or both, had a beneficial influence toward reducing inadvertent stalls and spins; and (3) the most effective additional training was slow flight with realistic distractions, which exposed the

student to situations in which inadvertent stalls were likely.

On July 7, 1978, the NTSB issued Safety Recommendation A–78–43 recommending that FAA incorporate all of the essential elements of the ground and flight training increments developed in the "General Aviation Pilot Stall Awareness Training Study," or their equivalent, in FAR Parts 61 and 141.

The FAA concludes that this proposal addresses the basic issues of NTSB Recommendation A–78–43 regarding stall/spin awareness and flight instructor testing without changing current policies regarding spin training for all pilots. The FAA believes that the crucial element in the 1976 study and the NTSB recommendation was increased stall/spin awareness and stall avoidance training for airplane and glider pilots.

Although the *General Aviation Pilot Stall Awareness Training Study* included an optional spin training component, the study clearly stressed stall/spin awareness and avoidance. While the study found that "additional flight training on stall awareness and/or intentional spin training has a positive influence toward reducing inadvertent stalls and spins," it went on to say that "The most effective additional training was slow flight with realistic distractions * * *" The FAA agrees with the study's conclusions, though FAA is not persuaded that spin training is necessary, or indeed preferable, to stall awareness training. The study acknowledged that spin training "might not be feasible."

In addition to accident trends, international standards trends appear to support the FAA's policy favoring stall awareness and avoidance training for private pilot certification. A number of International Civil Aviation Organization (ICAO) member states oppose mandatory spin training based on the accident data and the lack of training aircraft certificated for acrobatic use. A recently adopted amendment to the ICAO standards (International Standards and Recommended Practices, Personnel Licensing, Annex 1 to the Convention on International Civil Aviation, effective November 16, 1989) does not contain any spin requirement, but does emphasize flight at critically slow airspeeds, and recognition of and recovery from incipient and full stalls for private and commercial pilots. Also in Annex 1, commercial pilot applicants are required to receive instruction in spin avoidance.

A spin training requirement for private and commercial pilot applicants, in addition to being potentially hazardous, would also place a burden on flight schools conducting operations in complicated airspace. In such cases, training airplanes would have to fly far outside terminal airspace to climb to altitudes where spins could be safely practiced, or find practice areas much farther from their bases of operation. Due to growth of urban areas and increasing airspace restrictions, such practice areas are increasingly scarce.

There are other obstacles as well. Members of the public who participated in public hearings or submitted comments during this regulatory review have pointed out that currently there is a lack of available training airplanes approved for intentional spinning. Therefore, flight schools and fixed base operators (FBO's) without spinnable airplanes would face increased costs if they needed to gain access to spinnable airplanes. Liability insurance for flight instructors, flight schools, and aircraft manufacturers could increase. Also, maintenance costs would be likely to increase due to airplane stress and damage to gyroscopic instruments.

There appears to be general consensus in favor of the NTSB recommendation to incorporate the essential elements of the *General Aviation Pilot Stall Awareness Training Study* or their equivalent in the FAR. AOPA noted, for example, that most airplane spin accidents occur in the landing pattern on turns from base leg to final approach, and that the critical element is recognizing conditions leading to spins and avoiding those conditions. Glider pilots have noted that many gliders can enter spins especially quickly because of their operational characteristics.

Therefore, on the basic issue of stall/spin awareness, the FAA proposes to modify sections of Part 61 dealing with airplane and glider student, private, and commercial pilot knowledge and proficiency requirements to reflect the importance of stall/spin awareness. The FAA also proposes to more widely disseminate the basic training conclusions gained through the study.

Some of the rule changes would occur in §§ 61.105 and 61.125, which enumerate specific areas of aeronautical knowledge required of private and commercial pilots. The proposed changes would add stall and spin awareness and recovery techniques to the basic subject areas airplane and glider pilots would be required to study. The changes also would expand the requirements of §§ 61.107 and 61.127, which specify the basic operations in which private and commercial student pilots must receive flight instruction. These operations presently include flight at critically slow airspeeds and stall recognition and recovery, but for airplanes and gliders the FAA proposes to also require that slow flight be accomplished with realistic distractions to simulate conditions in which stalls and spins might occur.

The proposed training in stall and spin awareness and recovery techniques and training in slow flight with realistic distractions also would affect pilot certification under Part 141. The proposed areas of training would be listed in Appendix A, Private Pilot Certification Course (Airplanes) and Appendix D, Commercial Pilot Certification Course (Airplanes).

In addition, the FAA intends to prepare an Advisory Circular to ensure that the contents of the *General Aviation Pilot Stall Awareness Training Study* are made available to all pilots and schools. Incorporating the elements of the *General Aviation Pilot Stall Awareness Training Study* in the FAR would substantially strengthen general aviation's training regimens on spins and stalls. Consistent with the study, mandatory demonstration of spins and spin recovery by private and commercial pilot applicants is not proposed.

In summary, this proposal incorporates the training found to be most effective by the *General Aviation Pilot Stall Awareness Study*, namely slow flight with realistic distractions, and additional ground training in the subject of stalls and spins. Furthermore, the FAA believes that the enhanced biennial flight review (BFR) requirements, coupled with the BFR guidelines being developed will prevent the skill degradation which comes when pilots obtain little or no practice in stalls after their initial training. Lastly, this proposal incorporates additional requirements for flight instructor spin training which are discussed in the following section.

The Administrator wishes to acknowledge Mr. Tony LeVier, President, Safe Action In Flight Emergency, Inc., for his outstanding contributions and volunteer service in the area of pilot training that involves stall and spin awareness. Mr. LeVier's dedication and perseverance in this area is to be commended.

(b) Flight Instructor Certification. These proposals for private and commercial pilot training automatically would require the flight instructor curriculum to include greater emphasis on stalls and spins because § 61.185(b) requires flight instructor candidates to cover the material required for the private and commercial pilot

certificates. In addition, the FAA requires examiners and inspectors to evaluate flight instructor-airplane (airplane single engine) and glider applicants on instructional knowledge and skills of spin entry, spins, and spin recovery techniques (FAA–S–8081–6, October 1987; see also Gliders, FAA–S–8081–8). However, an endorsement of spin competency from the flight instructor who conducted the spin instruction may be accepted by the examiner or inspector in lieu of a spin demonstration on the practical test.

The FAA believes it is desirable to emphasize the importance of stall awareness and spin competency in potential applicants for flight instructor-airplane single engine land and flight instructor-glider ratings. Thus, a proposed change to § 61.183 would make the logbook endorsement of spin competency an eligibility requirement for flight instructor-airplane single engine land and flight instructor-glider ratings. The endorsement must certify that the flight instructor has given the applicant instruction in spin entry and recovery, both left and right, and has found the applicant competent to perform and recover from spins. An endorsement such as "spins" or "spins OK" would not be considered acceptable. In addition, proposed changes to § 61.49 would result in a mandatory demonstration of spins on a retest for flight instructor certification, if a candidate for the aforementioned ratings failed either the oral or flight portion of the practical test due to deficiencies in stall/spin awareness and associated procedures and techniques.

The FAA proposes to strengthen the framework of spin training for flight instructors. The training requirements, as proposed in this NPRM, would be spelled out in Appendix H of Part 141, specifying that airplane or glider flight instructor candidates in preparation courses must demonstrate spins and spin recovery techniques. In § 61.187, spin and spin recovery techniques would be added to the list of areas in which flight instructor candidates must demonstrate proficiency.

These changes combined will place much greater weight on awareness and prevention of spin accidents, both by stimulating more emphasis on the issue through regulation and by providing more information through advisory material. The FAA believes that the approach outlined here, as it affects both pilot training and flight instructor certification, addresses the NTSB recommendations and represents a significant step toward improving stall/spin safety in general aviation.

Pilot Schools—Chief Flight Instructors

Certain public comments during the course of this regulatory review thus far have centered on the potentially conflicting duties, and rigorous qualification demands, of chief and assistant chief flight instructors. The chief flight instructors are required to fulfill important management and supervisory duties, while simultaneously meeting regulatory physical presence requirements at the school when instruction is given. Upon designation as chief flight instructors, persons must meet recency of experience requirements in their own instruction time, even though their most recent duties may have been more of a supervisory nature or in flying not related to instruction.

Changes proposed in this NPRM, in §§ 141.35 and 141.85, seek to reconcile these potential conflicts in chief flight instructor's duties while maintaining stringent standards as presently set in designating chief flight instructors under Part 141.

Section 141.85(b) presently requires that the chief or assistant chief flight instructor be available at the school's base of operations during the time that instruction is given for an approved course of training. The FAA has noted different interpretations of what availability means for chief flight instructors or their assistants during the time that instruction is given for an approved course of training at Part 141 schools.

During the public hearings for this regulatory review, it was suggested by some participants that, in practice, it was unrealistic to expect a chief flight instructor to be present at the school whenever flight instruction is being given. They noted the difficulty in having a chief flight instructor and assistant chief flight instructor available to cover all possible times of flight instruction. Furthermore, to require more personnel, in addition to the chief or assistant chief flight instructor, who would meet the requirements of the current § 141.35, would place a significant burden on the pilot school and is similarly unrealistic. One participant in the hearings stated that special need for the chief or assistant chief flight instructor arises only in unusual circumstances, and that usually they did not have to be physically located at the base of operations because availability by telephone normally suffices. Other participants stated that they see chief flight instructor availability as meaning on duty at or near the airport, in an aircraft in the local flying area, or reachable by radio or telephone.

The FAA believes that chief and assistant chief flight instructors can indeed be readily available for supervisory purposes without necessarily being physically present at the school. Availability in the local flying area by telephone or radio while instruction is being given would satisfy the intent of the rule and provide a favorable training atmosphere. This change to § 141.85(b) would serve to define more clearly the chief flight instructor's role as supervisory, and not require the chief flight instructor's physical presence at all times that instruction is being given. A person can be on duty and immediately "available" for the purpose of supervisory duties via various common electronic means, such as telephone, radio, and paging systems, without hampering safety.

Satellite Bases

The FAA believes that improvements in transportation and communications systems no longer require that pilot schools' operations be confined to a single location or to satellite bases within very limited distances from the main base. Therefore, the FAA proposes in this action to eliminate the 25-nautical-mile maximum limit on the distance between satellite bases and the main operations base as presently set by § 141.91(a).

The intent of § 141.91(a) is to ensure that a chief flight instructor is readily available for consultation. The 25-nautical-mile limitation was considered necessary to maintain adequate supervision by the chief flight instructor, who is required by § 141.91(c) to maintain direct supervision over flight instructors at satellite bases. But certain pilot schools have grown considerably, taking advantage of advances in training techniques and standardizing curricula. It is feasible for pilot schools to establish satellite schools and ensure adequate home base control, including supervision by a chief or assistant chief flight instructor.

The FAA has granted numerous exemptions from § 141.91(a) when petitioners demonstrated that more distant satellite bases could be supervised in a manner that satisfied the intent of the rule and did not adversely affect safety. A reason for some exemptions is adverse weather conditions at the main operations base, which is nevertheless considered a valuable location by the school operator. Thus, under an exemption from § 141.91(a), schools have been given the option of shifting some of their

training to other locations, possibly in other states, and avoiding training interruptions. On the other hand, petitions for exemption have been denied when the petitioner could not satisfy the intent of the rule.

As of June 21, 1987, there were approximately 15 pilot schools with more than one certificate, that is, with a satellite base more than 25 nautical miles from the main operations base, according to AC 140–2S, "List of Certificated Pilot Schools," (July 10, 1987). As a result of experience in a number of exemption cases, FAA believes that there may be advantages in satellite bases at locations beyond the present maximum distance from the main operations base. The proposed amendment to § 141.91(a) would allow establishment of satellite bases more that 25 nautical miles away from the main operations base in a fashion that would permit satisfactory supervision by the school as well as FAA surveillance.

The proposal would require designation of an assistant chief flight instructor in charge at each satellite base more than 25 nautical miles from the main base to maintain proper supervision. The proposal would enable flight training organizations to offer identical or nearly identical training programs at remote locations under the supervision of local FAA offices, while responding to policy set by a central chief flight instructor and maintaining the standards set forth in a master training course outline (TCO). Minor adjustments to the training course outline and the equipment can be made for differing terrain or climate, as necessary. These assistant chief flight instructors would be responsible for remaining "available" for supervisory purposes at the satellite bases to which they were assigned, either in person or via the same electronic or telephonic means as discussed in the proposed change to § 141.85(b)

Chief and Assistant Chief Flight Instructors—Experience Criteria

Two other issues affecting pilot school supervisory responsibilities and chief flight instructors are the minimum recency of experience requirements for chief flight instructors upon designation and the total experience prerequisites now required of assistant chief flight instructors. This rulemaking action proposes two important modifications of Part 141 in this regard, both aimed at emphasizing the supervisory responsibility of the chief flight instructor over the activities of flight instructors, assistant chief flight instructors, and other aspects of school operations. These proposed changes would eliminate the need for a chief flight instructor candidate who meets all other criteria to have instructed 100 hours in the preceding year, and would reduce by half the prerequisite hours and years of experience required of assistant chief flight instructor applicants.

Designation as chief or assistant chief flight instructor under current § 141.35 requires that the applicant have at least 100 hours of instruction time within the past year. This recent instruction time must be relevant to the type of course they are to supervise. For example, 100 hours of instruction time are needed for a private pilot course, and 100 hours of instrument flight instruction for an instrument course. For other courses, 100 hours of pilot instruction as a certificated flight instructor in the category of aircraft used in the course are required within the year preceding designation.

The proposed amendment to modify § 141.35 would recognize the need for chief flight instructors and assistants who can meet demands as senior management personnel as well as flight instructors. The 100-hour requirement may actually defeat the intent of the rule by constituting an obstacle to highly qualified candidates with substantial and varied flight experience, including total flying time and instructing time, but whose instructing experience may not have been within the previous year. A chief flight instructor transferring between schools may have been giving only phase checks, which do not necessarily involve a great deal of flying time, and thus not have accumulated enough hours to meet the minimum requirement upon designation at another school.

The oral and practical test given by district offices can determine that a chief flight instructor applicant is familiar with current approved course completion guidelines, regulations, the Airman's Information Manual (AIM), teaching methods, and other criteria. It is the intent of the FAA to expand and emphasize the oral and flight portions of the practical test to ensure that the applicant has sufficient depth of background and experience and also meets the performance standard. The testing process should guarantee that the FAA remains alert, through its inspectors, not only to meeting the requirements intended by the rule, but also to permitting more rapid response to particular circumstances of Part 141 schools than now possible under the exemption procedures. The proposed changes in §§ 141.35 and 141.36 would require, nevertheless, that chief and assistant chief flight instructors meet recency of experience requirements as set forth in § 61.57, including day and night landings, a BFR, and instrument time.

Assistant chief flight instructors presently are subject to the same stringent requirements as chief flight instructors. Under the proposed change in the assistant chief flight instructor criteria, applicants would still be subject to the same rigorous oral and flight testing given to chief flight instructor candidates. The FAA believes that safety standards can be maintained and flight training operations facilitated by reducing the total hour requirements that assistant chief flight instructors must meet. Section 141.36 would be added to separately list such criteria for assistant chief flight instructors. These criteria would be sufficiently different from those of chief flight instructors under the proposed changes as to warrant a separate listing for clarity.

Some of the participants in the public hearings, including Embry-Riddle Aeronautical University and Sierra Academy of Aeronautics, noted that the status of flight instructing as a profession, and not as an early stepping stone to airlines, needs to be enhanced. One possible method of enhancing the status of flight instruction is to provide opportunity for greater responsibility earlier in a flight instructor's career. The FAA believes that reducing the assistant chief flight instructor required aeronautical experience prerequisites across the board by 50 percent will permit pilot training schools to structure their programs and allow less experienced but qualified flight instructors to gain some initial supervisory experience under the purview of the chief flight instructor. The FAA believes that safety standards will be maintained with this change, and that the quality of instructing may improve over time if flight instructing as a career option is encouraged. The additional requirement for assistant chief flight instructors at satellite bases more than 25 nautical miles from main bases also will provide increased opportunity for professional development.

Obsolete Dates and Gender References

The Parts 61 and 141 sections from which obsolete dates and gender references have been proposed for removal are:

Obsolete Dates (§§)	Gender References (§§)
61.1(b)	61.49
61.58(a)	61.57(a)(1), (a)(2), (b)(2)
61.71(b)	61.58(a)
61.113 (a), (b), (d), (e)	61.71(b)
61.131 (a), (b)	61.195(b)
61.195(b)	61.201(a)
61.201(a)	141.35 (a)(1), (a)(1)(i), (a)(2)
141.29(a), (b)	141.85(b)

Paperwork Reduction Act Approval

Information collection requirements for Parts 61 and 141 have previously been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511). Part 61, §§ 61.13 through 61.197, and Part 141 have been assigned OMB control numbers 2120–0021 and 2120–0009, respectively.

Regulatory Evaluation Summary

The FAA's analysis indicates that the proposed amendment in this revision to Parts 61 and 141 would not have a significant impact on the public or any level of government on an annual basis. The amendments are intended to update certain requirements, and in some cases relax requirements where compensating factors ensure that safety standards will be maintained. This summarizes the conclusions of the preliminary regulatory evaluation of the proposal's comparative costs and benefits. The complete initial Regulatory Evaluation, initial Regulatory Flexibility Determination, and International Trade Impact Assessment have been placed in the docket.

The FAA recognizes limitations in certain types of data needed to forecast the impact of this NPRM on general aviation costs and safety and invites the public to address comments specifically to areas where forecasts may be aided by additional information.

The FAA initially concludes that the proposals causing a noticeable increase in training costs are justified over time on an economic basis by savings expected to result from accident reductions. Benefits stemming from averted accidents would compensate for the additional expenditures on training resulting from the requirements. The FAA projects the ratio of benefits to costs at approximately 1.3:1. Over a 10-year period, estimated, discounted costs of implementing the proposals with cost implications would total $151 million, compared with an estimated $190 million in potential savings from averted accidents, also over a 10-year period. A number of the proposals would have minimal or no impact on training costs or pilot school operational expenditures other than to help improve efficiency.

The data used for determining approximate monetary losses due to aircraft accidents including property damage, injuries, and fatalities has been based on FAA estimates and statistics. The basis for this information can be found in *Economic Values for Evaluation of Federal Aviation Administration Investment and Regulatory Programs* (FAA–APO–81–3, September 1981, available through the National Technical Information Service) and updated information developed by the FAA and the DOT.

Section 61.31(g) Tailwheel Airplanes

As the general aviation fleet has modernized, fewer pilots receive training in tailwheel airplane operations. A proposed amendment for § 61.31 would establish a one-time requirement for flight training and a flight instructor endorsement to indicate that a pilot is competent to operate tailwheel airplanes. The purpose of the endorsement would be to verify that a pilot has received flight training and demonstrated abilities in operations related to takeoff and landing of tailwheel airplanes. The FAA believes that takeoff and landing operations differ markedly from the tricycle gear airplanes that now predominate in general aviation.

Recent statistics have shown that tailwheel airplanes continue to experience a disproportionate share of general aviation accidents. For example, in 1986, tailwheel accidents contributed to approximately one-third of the total airplane accidents even though tailwheel airplanes comprised only about 15 percent of the active general aviation airplane fleet.

Pilots who take initial training in tailwheel airplanes receive flight instructor endorsements for solo practice and cross-country operations which would include an endorsement of competency in airport and traffic pattern operations. The proposed rule is intended to provide flight training for certificated pilots who transition from tricycle gear to tailwheel airplanes.

The FAA estimates that 4,000 pilots per year transition into tailwheel airplanes and would be required to incur additional training costs as a result of the proposed rule. The FAA's estimates on projected additional costs to the aviation community are based on average operating costs of $40 per hour for a single-engine piston tailwheel airplane, $20 per hour for a flight instructor, and 5 hours as the average time for a pilot transitioning into tailwheel airplanes to acquire the necessary skills, which amounts to an outlay of $300 per pilot. This would yield a potential annual cost of $1.2 million to implement the proposed rule. In current dollars, this would be the equivalent of preventing 0.76 fatal tailwheel accidents per year (single-engine, 1.5 fatalities per accident), based on recent used aircraft replacement costs and the current value assigned to the loss of a life. If the rule prevented at least one single-engine tailwheel accident per year, the cost to society of implementing the rule would be covered by the potential benefits of prevented accidents. If the rule reduced tailwheel accidents by 2 percent per year, the benefits in current dollars would be about $3.4 million, and over a 10-year period, the discounted benefits to cost ratio would be 2.9:1.

Section 61.31(f) High Altitude Operations

The proposed § 61.31(f) would require ground and flight training for pilots transitioning into pressurized airplanes that have a service ceiling or maximum operating altitude of greater than 25,000 feet MSL. Most of the airplanes affected by this proposal also require type ratings, and thus the high altitude training would be incorporated into the minimum type rating curriculum proposal in § 61.63. Section 61.31(f) is also designed to extend the high altitude training to pilots transitioning to reciprocating engine and turboprop airplanes that do not require type ratings but are pressurized and are capable of operating above 25,000 feet MSL. Costs of the proposed § 61.31(f) will be analyzed in relation to airplanes that do not require type ratings, which are primarily reciprocating multiengine airplanes.

Based on the general aviation airplane fleet and airman statistics, it was estimated that 2,500 pilots annually transition into airplanes that operate at the high altitudes but do not require type ratings. A special 3-hour ground training session for high altitude flight plus a 1-hour dual instruction flight, might typically cost a pilot $450. This cost estimate takes into account the possibility of accomplishing the required flight training in an approved simulator and also the development costs for the high altitude training. The FAA believes that a growing number of pilots are taking advantage of transition programs offered by manufacturers and major training enterprises leaving a minority of pilots who would require the additional training as a result of the rule change. The FAA estimates that approximately 1,250 pilots per year may face this additional training as a result of the rule,

and thus, the cost of this proposal in current dollars would be approximately $560,000, which would be economically justified if the training requirement averted a fatal twin engine airplane accident every 4.5 years. Furthermore, if this proposal reduces accidents among affected airplanes 0.5 percent per year, the annual savings, in current dollars would be $582,000. The FAA projects that over a 10-year period, the discounted benefits to cost ratio would be 1.04:1.

Section 61.63 Type Rating Training Curriculum

The proposed amendments to §§ 61.63 and 61.157(b) and Part 141 Appendix F would require transition training for pilots seeking type ratings. These proposals include establishing an approved curriculum for all airplanes that require type ratings.

The turbine-powered portion of the fixed-wing fleet is expected to grow much faster than piston fleet during the period 1987–1999 covered in *FAA Aviation Forecasts Fiscal Years 1988–1999.* During the period of 1980–86 the number of piston airplanes decreased from 193,500 to 188,260. However, the number of general aviation turbine-powered airplanes increased from 6,200 in 1980 to 10,500 in 1987, which amounts to 5.4 percent of the total fixed wing fleet. By 1999, the FAA projects that the turbine powered airplane fleet will increase to 15,700 or 7.8 percent of the total fleet. The FAA estimates the turbine-powered airplane fleet flying hours will increase 2.4 percent per year, resulting in 6 million hours being flown by 1999. As of 1986, there were only 2,000 piston-powered airplanes requiring type ratings recorded in the U.S. Aircraft Registry. This number is less than 20 percent of the current number of general aviation turbine-powered airplanes, and 13 percent of the projected number of turbine airplanes in the 1999 fleet. Thus, the rule primarily pertains to turbine-powered aircraft.

The FAA expects the demand for pilots with type ratings to increase over the next decade. In addition, the FAA expects air carrier and regional/commuter airline fleets to increase. Airlines are expected to face rapid pilot attrition over the next 10 to 15 years. In 1987, 27 percent of the ATP holders were age 50 or older and 43 percent were age 45 or older. The FAA believes that new airline pilots will have to increasingly come from the general aviation community. The FAA proposed amendments are intended to ensure that this forecast surge in type-rated pilot hiring takes place within a context of proper training.

The FAA's estimates show that approximately 8,000 type ratings are issued annually to corporate or other pilots already training under programs that would meet minimum standards expected to be established under the rule change. Based on current costs associated with type rating courses offered by some of the major training organizations, $6,000 is being used as the average cost for the training. The FAA estimates that approximately 2,000 type ratings are issued to pilots whose present training does not meet the standards of this proposal, and who would be required to receive the additional training. However, the FAA believes that a substantial number of the 2,000 applicants who obtain an airplane type rating each year receive some form of training and incur substantial costs in preparing for their type rating practical test. Therefore, the FAA estimates that only about one-third of the $6,000 would actually be additional training costs. The FAA estimates that the net total additional training expenditures for requiring pilots to receiving training prior to issuance of an airplane type rating to be approximately $3.96 million in current dollars.

Without taking into account accidents involving only property damage or non-fatal injuries, the FAA estimates that if the improved training contributed to a 2.5 percent reduction in turbine-powered airplane fatal accidents, a savings/benefit of $4.38 million could be achieved. The FAA projects a 10-year discounted benefits to cost ratio of 1.1:1.

Biennial Flight Review

The FAA's proposal to amend § 61.57 in expanding the requirements of the biennial flight review (BFR) may cause a number of pilots to take their BFR's in more complex aircraft than what they presently do under the current rules. The proposal would require pilots to take the BFR in every category and class of aircraft on their certificate and for which they desire to continue to exercise pilot-in-command privileges. However, as previously mentioned in this document, some exceptions would apply. For example, a BFR in a multiengine airplane would also serve as a single-engine airplane, as long as both are either landplanes or seaplanes.

The FAA believes that some pilots may already receive BFR training in more than one category and class of aircraft. Some multiengine airplane pilot/owners may prefer to use their own airplane as a matter of convenience and familiarity. Nevertheless, the FAA has determined that while recurrent training is commonly required for pilots of turboprop, jet, and a few of the more sophisticated multiengine piston-powered airplanes, insurance companies' recurrent training requirements are not as stringent for most piston-powered small multiengine airplanes.

FAA records show that a relatively small percentage of general aviation pilots carry multiple category ratings on their certificates. Records show that there were 553,637 active pilot certificates in 1987. (An active pilot is defined as one who has received a medical certificate in the last 25 months.) There are 5,505 active pilots holding private pilot certificates with 2 or more category ratings, and 26,471 hold commercial pilot certificates with 2 or more category ratings. The FAA believes that even though there are 553,637 "active" pilots listed, most are not necessarily active in all categories and classes listed on their certificates. The most common multi-class rating in any given category is multiengine and single-engine airplanes. Based on information in *U.S. Civil Airmen Statistics* and fleet data, the FAA estimates that the total number of pilots per year subject to the additional BFR's would be 5,500 helicopter, 19,000 multiengine airplane, and 3,000 glider rated pilots. These figures represent approximately half the total number of pilots who would be subject to additional BFR's.

The FAA estimates that of 1 hour of ground instruction and 2 hours of dual flight instruction is the norm for a BFR. The estimated total costs of the additional BFR's resulting from the proposed rule would be $9.12 million. This figure is based on operating costs for helicopters, multiengine piston-powered airplanes, and gliders, and then subtracting the cost of BFR's in single-engine airplanes. The FAA believes that the break-even point for additional costs versus safety benefits would require a reduction in fatal accidents in reciprocating multiengine airplanes of 3.6 per year (assuming 2.4 fatalities per accident), or a 5 percent reduction in the 1985 total fatal multiengine piston-powered airplane accidents. The proposed rule would otherwise have to reduce some combination of airplane, glider, and rotorcraft accidents involving injuries and property damage with a savings equivalent to $9.12 million. The FAA estimates that the annual accident dollar loss for general aviation fatal accidents, including multiengine piston-powered airplanes, 25 percent of the turboprop airplanes (most turboprop pilots must take annual checks and are not covered by the BFR), helicopters and

gliders, may be forecast to be $373.6 million over the coming decade. This figure is based on recent general aviation accident rates, and FAA forecasts for general aviation flying activity. Single-engine airplane accidents are excluded from this target pool of accidents, because the presumption is that some pilots who are rated for multiengine airplanes already take BFR's in single-engine airplanes for cost reasons. By adopting the proposed rule, the FAA believes that a reduction in the forecasted accident rate of 2.5 percent per year will result in annual savings of approximately $9.34 million in current dollars. A savings of $9.34 million would outweigh the annual costs of implementation of the proposal. The FAA projects that over 10 years the discounted benefits to cost ratio would be 1.02:1.

The FAA believes it is reasonable to expect that requiring BFR's on the category and class of aircraft for which a pilot desires pilot-in-command authority will contribute to a significant improvement in the general aviation accident rate. The FAA believes the initial BFR training requirement established in 1974 is credited for having helped reduce fatal general aviation accidents by 10 percent.

Stalls and Spins: Pilot Awareness, Training, and Testing

Stall training currently is an integral part of pilot training. Studies have shown, however, that there is a need to enhance pilot awareness of the link between stalls and spins, and to improve understanding of the spin hazard in general. A series of amendments proposed to §§ 61.105, 61.107, 61.125, 61.127, 61.183, 61.187 and Part 141, Appendices A and H, would add stall and spin awareness and recovery techniques for airplanes and gliders to the areas of aeronautical knowledge and basic operations covered in private and commercial pilot training.

The intent of the proposed amendment is to increase pilot awareness of the stall/spin hazard. The likely effect of the changes, if approved, will be to modify ground instruction programs to reflect insights of the FAA's 1976 *General Aviation Pilot Stall Awareness Training Study*, (FAA–RD–77–26, September 1976) as well as to add up to an hour flight training to private and commercial pilot programs. The cost increase from the proposed expansion of stall/spin awareness training would be moderated because the FAA specifically is not incorporating the element of spin training, which was contained in the 1976 study as well.

The study suggested a total of two approximately 1-hour flights including spin training and 2 hours of additional ground school training. Much of the ground training material can be incorporated into existing programs. Under the proposed amendments, flight instructors might spend approximately one additional hour discussing stalls and spins with students. The stall awareness study said flight training should include situations leading to inadvertent stalls/spins, stall and spin practice and avoidance, and full spin training. The FAA proposal excludes the spin training component which amounted to nearly one of the 2 hours. Therefore, under the proposal, additional training for a typical student might include approximately 1 hour of ground training and 1 hour of dual flight instruction. Costs of the additional training would be approximately $85 for airplane students and $65 for glider students.

Based on average numbers of certificates issued to airplane and glider student pilots, the total expenditure by glider pilots would be about $25,000 per year, and the total expenditure for private, commercial, and flight instructor applicants would be $4.41 million, assuming that all other original certificates were obtained in airplanes rather than in helicopters or other aircraft.

The cost of disseminating the results of the stall awareness study by the FAA can be handled in the normal course of developing and issuing an Advisory Circular or other pertinent training materials. This can be done within routine work programs since no additional research is required. The stall awareness study's main contribution is emphasizing the need for additional training in stall and spin avoidance and the need for additional flight training in slow flight with realistic distractions, a number of which are suggested by the study.

It is evident that stall awareness training is effective. Stall/spin accidents dropped dramatically after the United States dropped the spin training requirement in June 1949 in favor of increased stall training. Although other factors were undoubtedly involved, the training approach has also received much of the credit. For example, in the 4 year period 1945–48, stall/spin accidents accounted for 48 percent of all fatal accidents. In 1965–68, this proportion dropped to 27 percent. The NTSB looked at a 3 year period between 1967–69, and found that stall/spin accidents caused 22 percent of all "fatal occurrences." [1] That study looked at the 1,261 stall/spin accidents recorded for the period and noted that while they accounted for only 8 percent of the total number of accidents, they caused 23 percent of the fatalities or serious injuries.

To achieve savings equivalent to the cost of the expanded training, 2.3 single-engine piston airplane accidents would have to be prevented annually.

A four-year period, 1983–86, showed an average of 34 fatal stall/spin accidents per year, with an average of 59 fatalities per year. If the improved stall/spin training leads to a 10 percent improvement in the stall/spin accident rate over time, a total of 3.4 fatal accidents would be averted. Assuming that all of these were single-engine piston airplanes rather than a mix of twin and turbine-powered airplanes, the potential savings would be at least $6.3 million, based on average general aviation airplane replacement costs and FAA estimates of monetary losses in fatal accidents. The FAA projects that over 10 years the discounted benefits to cost ratio would be 1.4:1.

Changes in § 61.49 would require flight instructor single-engine land airplane or glider applicants to demonstrate spin entries, spins, and spin recoveries on their flight test if they have previously failed the oral or flight portion of a practical test due to deficiencies in the stall/spin area. The retesting requirement is unlikely to have an important economic impact. For example, in 1986 5,077 applicants took initial flight instructor exams and most of them were probably single-engine airplane pilots. Less than 10 percent of those applicants failed. If as many as 10 percent of those who failed in 1986 failed because of stall/spin problems, they would collectively spend approximately $2,000, excluding additional fees for the examiners, based on an estimated $40 per hour airplane cost and 30 minutes for the spin demonstration plus flight time to practice areas. The bulk of the practical exam must be taken in complex airplanes and is not subject to this proposed rule change. Even if this additional requirement leads to a 0.1 percent improvement in the stall/spin accident rate, the benefits would be approximately $63,000 per year in current dollars.

In addition, proposed changes to §§ 61.183 and 61.187 would require through regulations specific types of

[1] *Special Study General Aviation Stall/Spin Accidents, 1967–1969*, National Transportation Safety Board AAS–72–8, September 13, 1972.

stall/spin training currently required through other FAA guidelines. This would include instruction for flight instructor candidates, in single-engine airplane land and glider, to cover stall awareness and spin entry, spins and spin recovery techniques. The proposal would make the logbook endorsement of spin competency mandatory, rather than an option, as it is now for applicants seeking to have the spin demonstration waived on their flight test. However, the FAA believes that most candidates currently obtain this endorsement since the complex airplanes they must provide for most of the maneuvers their flight tests are usually not approved for intentional spins. The primary objective of these two proposals is to place greater emphasis on the stall/spin issue.

Part 141 Amendments

The proposed amendments affecting chief and assistant chief flight instructors and aspects of Part 141 pilot school operations collectively are designed to update the rules on school operations. In general, the proposed amendments relax certain requirements which do not serve the original purpose. The economic impacts, if any, would favor the schools, though no such impacts are envisioned. In no case are any adverse safety impacts foreseen.

Chief Flight Instructor Availability

Section 141.85 would be amended under the proposal to clarify that chief flight instructors on duty do not necessarily have to be present at their flight school while instruction is given. The change is designed to enhance efficiency and align the FAR with FAA policy as expressed in FAA Order 8710.5 and AC 141–1. The measure involves no implementation costs.

If any change in school operations did occur as a result of this amendment, it would be to permit schools more efficient use of personnel. However, the proposed rule change probably would have little if any impact since industry practice appears to be based on FAA Order 8710.5 (June 20, 1979) and AC 141–1 (August 29, 1974), which say that the chief flight instructor must only be available for consultation at the school's base of operations.

Satellite Bases

The proposed amendment to § 141.91 would eliminate the 25-nautical-mile maximum distance for establishing satellite school operations bases when an assistant chief flight instructor is designated to be in charge of the satellite base.

The FAA does not expect this proposal to compromise safety since the amendment ensures continued adequate supervision. If the schools choose to take advantage of the rule change, this presumably would be an informed decision made on the basis of expected costs, revenues, and potential profits.

Potential long-term benefits include promoting economies of scale in school operations, permitting development of regional and national chains of schools, utilizing master TCO's, and avoiding the need for multiple FAR Part 141 certificates.

Chief and Assistant Chief Flight Instructors—Experience Criteria

Criteria for designating both chief and assistant chief flight instructors would be substantially modified by amending § 141.35 and creating § 141.36. This would eliminate the 100-hour recent instruction requirement for designating chief flight instructors and would reduce the total prerequisite times for an assistant chief flight instructor by half.

The proposal's rationale is that requiring recent instruction experience might impede more senior personnel whose substantial experience includes supervisory experience from designation as chief flight instructors. Such personnel may have been working in the airlines or other type of aviation activity rather than as flight instructors. Exemption activity has indicated the value of such personnel, and the FAA believes it is desirable to stress the supervisory aspect of the chief flight instructor's job.

Given the largely supervisory nature of the chief flight instructor job, it is important to facilitate designation of assistant chief flight instructors to whom responsibility can be delegated. The present total experience time requirements are the same for chief and assistant chief flight instructors. Under these conditions, flight instructors often quit instructing after acquiring hours but before they meet these minimum experience requirements. The FAA believes it is possible to halve the total required times for the assistant chief flight instructors who will continue to face stringent FAA-administered oral and flight examining procedures.

Given the safeguards of the proposed supervisory arrangement with the chief flight instructor and the current examining requirements, safety standards should not be endangered. There may also be concrete economic benefits in terms of reduced time in pursuing exemption alternatives, and reducing or eliminating program interruptions caused by inability to fill vacancies. However, it does not appear feasible to attempt to quantify the amount of time and expense involved in exemption requests by assuming that they may be avoided.

International Trade Impact

The rules proposed in the NPRM are not believed to have any impact on trade opportunities for either U.S. firms doing business overseas or foreign firms doing business in the United States. The proposed rules primarily affect the domestic activity and operations of individual pilots and pilot schools. The FAA believes that the proposed rules would not affect Part 141 schools in the training of foreign citizens who accomplish pilot training in the United States.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 was enacted to ensure that small entities are not unnecessarily or disproportionately burdened by government regulations. The Act requires a Regulatory Flexibility Analysis if a proposed rule has a significant economic impact, either detrimental or beneficial, on a large number of small business entities. The size threshold for pilot schools is 10 employees, as set forth in Department of Transportation (DOT), FAA Order 2100.14A, September 16, 1986. The threshold for annualized cost levels for pilot schools is $1,053 in current dollars. FAA Advisory Circular 140–2S, July 10, 1987, identifies approximately 830 pilot schools certified under FAR Part 141 as of June 2, 1987. The FAA believes that a significant number of these schools employ fewer than 10 persons and are therefore small business entities and that more than one-third of these would be affected.

However, the amendments proposed by the NPRM would have minimal economic impact on the pilot schools. Some minimal modification of training course materials or internal operational procedures adjustments may be required. The FAA believes that some schools may realize cost reductions as a result of some of the changes proposed in FAR Part 141. For example, modifications in requirements for chief and assistant chief flight instructors are expected to facilitate school operations. Whereas in the past, they may have had to expend a certain amount of additional time and expense advertising for and interviewing chief flight instructor candidates, they would under the proposal be able to select from a broader range of candidates. However, even if this savings amounts to $1,000 every three years or so, the amount is only $300 per year at most, since hiring a chief flight instructor is not presumed to

be an annual need. Additional costs of more than $1,053 are not expected, and some savings may accrue to the schools as a result of the measures. In addition, the small schools may obtain additional revenues as a result of the increased training requirements. Nevertheless, because of inadequate data on market shares, it is not feasible to describe how much additional revenue these businesses would receive. Furthermore, the FAA has sought to respond to the needs of these entities within the limits that safety considerations permit. The FAA has reviewed the rules affected in this NPRM to determine the extent to which requirements could be relaxed without compromising safety, and the FAA believes that this proposal goes as far as possible in this regard without compromising safety.

Other amendments proposed in the NPRM are expected to have an impact on individual pilot training and recurrent training costs. In the case of general aviation pilots flying professionally under Part 91 operating rules and whose training may be paid for by their employers, it is believed that these proposals reflect common practice within the industry and therefore will not represent a significant burden to those firms which may be characterized as small entities. Some small companies which employ pilots flying under Part 91 may face additional training costs as a result of the rule. However, small companies rarely have corporate flight departments, and determining how many such companies would be affected by the proposal would require an extensive study probably out of proportion to the amounts involved.

The FAA has, therefore, determined that under the criteria of the Regulatory Flexibility Act of 1980, the proposed amendments to the regulations would not have a significant economic impact on a substantial number of small entities, and that a Regulatory Flexibility Analysis is not required. Further public comment is invited regarding this initial determination.

Federalism Implications

The regulations proposed by this NPRM, if enacted, would not have substantial direct effects on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposed rule would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

Based on the regulatory evaluation prepared in conjunction with the NPRM, the safety and economic benefits of the proposals within this NPRM can be expected to exceed costs of implementation. For reasons discussed in the preamble and the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this proposed regulation does not qualify as a major rule under Executive Order 12291. In addition, if this proposal is adopted, it is not believed to entail a significant economic impact on a substantial number of small business entities under the criteria of the Regulatory Flexibility Act. The amendments proposed in this NPRM reflect current practice or entail additional training requirements which will mainly affect pilots involved in non-commercial flying. This is particularly true of the tailwheel airplane endorsement and the expanded biennial flight review. The proposed requirement for the minimum curriculum for type ratings may entail additional training expenditures by individual pilots or their employers, but the requirement is believed to promise a savings through safety benefits that would justify the expenditures. In addition, the minimum curriculum for type ratings approach is believed to reflect a growing practice of structured transition training within the general aviation industry needs. Other proposals in the NPRM are editorial changes or reflections of common practice and do not imply additional expenditures by business, the public, or the FAA. This proposal is expected to have a positive impact on safety, which is a matter of substantial public interest. Therefore, the proposal is considered significant under the DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). In accordance with this finding, an initial regulatory evaluation of the proposal, including a Regulatory Flexibility Determination and Trade Impact Analysis which has been summarized in the preamble of this notice, has been placed in the regulatory docket and is summarized in this document. A copy of the full initial evaluation may be obtained by contacting the person identified under **"FOR FURTHER INFORMATION CONTACT."**

List of Subjects

14 CFR Part 61

Aircraft, Aircraft pilots, Airmen, Airplanes, Air safety, Air transportation, Aviation safety, Balloons, Helicopters, Rotorcraft, Students.

14 CFR Part 141

Aircraft, Aircraft pilots, Airmen, Airplanes, Air safety, Air transportation, Aviation safety, Balloons, Business and industry, Education, Educational facilities, Helicopters, Pilots, Rotorcraft, Schools, Students, Teachers.

The Proposed Amendments

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Parts 61 and 141 of the Federal Aviation Regulations (14 CFR Parts 61 and 141) as follows:

PART 61—CERTIFICATION: PILOTS AND FLIGHT INSTRUCTORS

1. The authority citation for Part 61 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1421, 1422, and 1427; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449; January 12, 1983).

2. Section 61.1 is amended by revising paragraph (b) to read as follows:

§ 61.1 Applicability.

* * * * *

(b) Except as provided in § 61.71 of this part, an applicant for a certificate or rating must meet the requirements of this part.

3. Section 61.31 is amended by redesignating paragraph "(f) *Exception.*" as paragraph "(h) *Exception.*" and adding new paragraphs "(f) *High altitude airplanes.*" and "(g) *Tailwheel airplanes.*" to read as follows:

§ 61.31 General limitations.

* * * * *

(f) *High altitude airplanes.* (1) Except as provided in paragraph (f)(2) of this section, a person may not act as pilot in command of a pressurized airplane (that has a service ceiling or maximum operating altitude, whichever is lower, above 25,000 feet MSL) unless that person has completed ground and flight training specified in paragraphs (f)(1) (i) and (ii) of this section and has received a written statement from an authorized instructor in the person's logbook or training records certifying satisfactory completion of the training. The training shall consist of:

(i) Ground training that includes instruction on high altitude aerodynamics and meteorology; the history and causes of some past accidents and incidents involving the pressurization system of the airplane; respiration; effects and causes of hypoxia and any other high altitude sicknesses; duration of consciousness without supplemental oxygen; effects of prolonged usage of supplemental oxygen; causes and effects of gas

expansion and gas bubble formations; preventive measures for eliminating gas expansion, gas bubble formations, and high altitude sicknesses; physical phenomena and incidents of decompression; and any other physiological aspects of high altitude flight; and

(ii) Flight training in an airplane or approved simulator while operating at cruise flight above 25,000 feet MSL and at speed ranges compatible with the specified flight envelope of the airplane;

(2) The training required in paragraph (f)(1) of this section is not required if a person can document accomplishment of any of the following in a pressurized airplane (which has a service ceiling or maximum operating altitude, whichever is lower, above 25,000 feet MSL) or an approved simulator:

(i) Served as pilot in command prior to [the effective date of this rule];

(ii) Completed a pilot proficiency check for a pilot certificate or rating conducted by the FAA prior to [the effective date of this rule];

(iii) Completed an official pilot checkout by the military services of the United States; or

(iv) Completed a pilot proficiency check under Parts 121, 125, or 135 conducted by the FAA or by an approved pilot check airman.

(g) *Tailwheel airplanes.* A person holding a private, commercial, or airline transport pilot certificate may not act as pilot in command of a tailwheel airplane unless that pilot has received flight instruction from an authorized flight instructor who has found the pilot competent to operate a tailwheel airplane and has made a onetime endorsement so stating in the pilot's logbook. The endorsement must certify that the pilot is competent in normal and crosswind takeoffs and landings, wheel landings, recovery from bounced landings, and go-around procedures. This endorsement is not required if a pilot has logged flight time as pilot in command of tailwheel airplanes before (the effective date of this amendment).

(h) *Exception.* * * *

* * * * *

4. Section 61.49 is revised to read as follows:

§ 61.49 Retesting after failure.

An applicant for a—

(a) Written or practical test who fails that test may not apply for retesting until 30 days after the date the test was failed. However, in the case of a first failure, the applicant may apply for retesting before the 30 days have expired provided the applicant presents a written statement or a logbook endorsement from an appropriately certificated and rated FAA instructor, who has given the applicant remedial instruction and finds the applicant competent to pass the test;

(b) Flight instructor certificate with airplane category and single-engine land class rating, or for a flight instructor certificate with a glider category rating, who has failed the practical test due to deficiencies of knowledge or skill relating to stall awareness, spin entry, spins, or spin recovery techniques must, during the retest, satisfactorily demonstrate both knowledge and skill in these areas.

5. Section 61.57 is amended by revising paragraphs (a) and (b), by redesignating paragraphs (c), (d), and (e) as paragraphs (f), (g), and (h), respectively, and by adding paragraphs (c), (d), and (e) to read as follows:

§ 61.57 Recent flight experience: Pilot in command.

(a) Except as provided in paragraphs (c), (d), and (e) of this section, no person holding a category and class rating for an aircraft may act as pilot in command of that category and class of aircraft unless within the preceding 24 calendar months that person has—

(1) Accomplished a review of the current general operating and flight rules of Part 91 of this chapter; and

(2) Accomplished a flight review consisting of tasks from the pilot areas of operations that are appropriate to the certificate level held by the pilot in that category and class of aircraft.

(b) The flight review prescribed in paragraph (a) of this section must be conducted by an appropriately certificated and rated flight instructor or any other person designated by the Administrator, who endorses the pilot's logbook certifying that the pilot has satisfactorily accomplished the flight review.

(c) A person who has, within the preceding 24 calendar months, satisfactorily completed a pilot proficiency check conducted by the FAA, an approved pilot check airman or a member of an armed force of the United States authorized to conduct flight tests for a pilot certificate, rating, or operating privilege need not accomplish a flight review required by this section in the category and class of aircraft used in the proficiency check.

(d) A person who has satisfactorily accomplished a flight review as prescribed in paragraph (a) of this section or a pilot proficiency check, as prescribed in paragraph (c) of this section, in a multiengine land or multiengine sea airplane need not accomplish a flight review in a single-engine land or a single-engine sea airplane respectively.

(e) A person who has satisfactorily accomplished a flight review under the requirements of this section prior to (the effective date of this amendment) need not accomplish any additional flight reviews until 24 calendar months from the date of that pilot's last flight review.

* * * * *

6. Section 61.58 is amended by revising paragraph (a) to read as follows:

§ 61.58 Pilot-in-command proficiency check: Operation of aircraft requiring more than one required pilot.

(a) Except as provided in paragraph (e) of this section, no person may act as pilot in command of an aircraft that is type certificated for more than one required pilot crewmember unless the proficiency checks or flight checks prescribed in paragraphs (b) and (c) of this section are satisfactorily completed.

* * * * *

7. Section 61.63 is amended by revising paragraph (d)(3)(i) and adding paragraph (d)(6) to read as follows:

§ 61.63 Additional aircraft ratings (other than airline transport pilot).

* * * * *

(d) * * *

(3) * * *

(i) The applicant must have met the requirements of this paragraph in a multiengine airplane for which a type rating is required.

* * * * *

(6) After [180 days from the effective date of this rule] the applicant must complete an approved minimum training curriculum that includes the maneuvers and procedures of Appendix A as appropriate to the airplane for which a type rating is sought, and the applicant's training records must include a written statement from an authorized instructor certifying satisfactory completion of the training.

8. Section 61.71 is amended by revising paragraph (b) to read as follows:

§ 61.71 Graduates of certificated flying schools: Special rules.

* * * * *

(b) An applicant for a certificate or rating under this part is considered to meet the aeronautical knowledge and skill requirements, or both, applicable to that certificate or rating if the applicant applies within 90 days after graduation from an appropriate course given by a flying school that is certificated under Part 141 of this chapter and is

authorized to test applicants on aeronautical knowledge or skill, or both.

9. Section 61.105 is amended by revising paragraphs (a)(4), (a)(5), (b)(3) and (b)(4), and adding paragraphs (a)(6) and (b)(5) to read as follows:

§ 61.105 Aeronautical knowledge.

* * * * *

(a) * * *

(4) The safe and efficient operation of airplanes or rotorcraft, as appropriate, including high-density airport operations, collision avoidance precautions, and ratio communication procedures;

(5) Basic aerodynamics and the principles of flight which apply to airplanes or rotorcraft, as appropriate; and

(6) Stall awareness and spin entry, spins, and spin recovery techniques for airplanes.

(b) * * *

(3) Recognition of weather situations of concern to the glider pilot, and the procurement and use of aeronautical weather reports and forecasts;

(4) The safe and efficient operation of gliders, including ground and aero tow procedures, signals, and safety precautions; and

(5) Stall awareness and spin entry, spins, and spin recovery techniques for gliders.

* * * * *

10. Section 61.107 is amended by revising paragraphs (a)(4) and (d)(5) to read as follows:

§ 61.107 Flight proficiency.

* * * * *

(a) * * *

(4) Flight at slow airspeeds with realistic distractions, recognition of and recovery from stalls entered from straight flight and from turns;

* * * * *

(d) * * *

(5) Flight at slow airspeeds with realistic distractions, and the recognition of and recovery from stalls entered from straight flight and from turns; and

* * * * *

11. Section 61.113 is amended by revising paragraph (a), introductory text of (b), paragraph (c), and removing paragraphs (d), (d)(1), (d)(2), (d)(3), and (e), (e)(1), and (e)(2) to read as follows:

§ 61.113 Rotorcraft rating: Aeronautical experience.

* * * * *

(a) *Helicopter class rating.* A total of 40 hours of flight instruction and solo flight time in aircraft, including at least—

* * * * *

(b) *Gyroplane class rating.* A total of 40 hours of flight instruction and solo flight time in aircraft, including at least—

* * * * *

(c) An applicant who does not meet the night flying requirement in paragraph (a)(1)(ii) or (b)(1)(ii) of this section is issued a private pilot certificate bearing the limitation "night flying prohibited." This limitation may be removed if the holder of the certificate demonstrates compliance with the requirements of paragraph (a)(1)(ii) or (b)(1)(ii) of this section, as appropriate.

12. Section 61.125 is amended by revising paragraphs (a)(2), (a)(3), (c)(3) and (c)(4), and adding paragraphs (a)(4) and (c)(5) to read as follows:

§ 61.125 Aeronautical knowledge.

* * * * *

(a) * * *

(2) Basic aerodynamics and the principles of flight which apply to airplanes;

(3) Airplane operations, including the use of flaps, retractable landing gears, controllable propellers, high altitude operation with and without pressurization, loading and balance computations, and the significance and use of airplane performance speeds; and

(4) Stall awareness and spin entry, spins, and spin recovery techniques for airplanes.

* * * * *

(c) * * *

(3) The recognition of weather situations of concern to the glider pilot from the ground and in flight, and the procurement and use of aeronautical weather reports and forecasts;

(4) The safe and efficient operation of gliders, including ground and aero tow procedures, signals, critical sailplane performance speeds, and safety precautions; and

(5) Stall awareness and spin entry, spins, and spin recovery techniques for gliders.

* * * * *

13. Section 61.127 is amended by revising paragraphs (a)(2) and (d)(4) to read as follows:

§ 61.127 Flight proficiency.

* * * * *

(a) * * *

(2) Flight at slow airspeeds with realistic distractions, recognition of and recovery from stalls entered from straight flight and from turns;

* * * * *

(d) * * *

(4) The correct use of sailplane performance speeds, flight at slow airspeeds with realistic distractions, and the recognition of and recovery from stalls entered from straight flight and from turns; and

* * * * *

14. Section 61.131 is amended by revising the introductory text of paragraphs (a) and (b), and removing paragraphs (c) through (c)(4)(iii) and (d) through (d)(4) to read as follows:

§ 61.131 Rotorcraft ratings: Aeronautical experience.

* * * * *

(a) *Helicopter class rating.* A total of 150 hours of flight time, including at least 100 hours in powered aircraft, 50 hours of which must be in a helicopter, including at least—

* * * * *

(b) *Gyroplane class rating.* A total of 150 hours of flight time in aircraft, including at least 100 hours in powered aircraft, 25 hours of which must be in a gyroplane, including at least—

* * * * *

15. Section 61.157 is amended by redesignating paragraphs (b), (c), (d), and (e) as paragraphs (c), (d), (e), and (f), and by adding a new paragraph (b) to read as follows:

§ 61.157 Airplane rating: Aeronautical skill.

* * * * *

(b) After [180 days from the effective date of this rule], an applicant for a type rating to be added to an airline transport pilot certificate must complete an approved training curriculum that includes the maneuvers and procedures of Appendix A as appropriate to the airplane for which a type rating is sought or complete an air carrier course of training appropriate to the rating sought and approved under Part 121 or 135 of this Chapter. The applicant's training records must include a written statement from an authorized instructor certifying satisfactory completion of the training.

* * * * *

16. Section 61.183 is amended by revising paragraph (e) to read as follows:

§ 61.183 Eligibility requirements: General.

* * * * *

(e) Pass a practical test on those items in which instruction is required by § 61.187; and, in the case of an applicant for a flight instructor-airplane single engine land or flight instructor-glider rating, present a logbook endorsement from an appropriately certificated and rated flight instructor who has provided

the applicant with spin entry, spin, and spin recovery training and has found that applicant competent and proficient in those training areas.

17. Section 61.187 is amended by revising paragraph (a)(6) to read as follows:

§ 61.187 Flight proficiency.

(a) * * *

(6) Performance and analysis of standard flight training procedures and maneuvers appropriate to the flight instructor rating sought. For flight instructor-airplane single-engine land and flight instructor-glider applicants, this shall include the satisfactory demonstration of stall awareness and spin entry, spins, and spin recovery techniques.

* * * * *

18. Section 61.193 is amended by revising paragraph (a)(5) to read as follows:

§ 61.193 Flight instructor authorizations.

(a) * * *

(5) The flight review required in § 61.57(a) in a manner acceptable to the Administrator.

* * * * *

19. Section 61.195 is amended by revising paragraph (b) to read as follows:

§ 61.195 Flight instructor limitations.

* * * * *

(b) *Ratings.* Flight instruction may not be conducted in any aircraft for which the flight instructor does not hold a category, class, and if appropriate, a type rating, on the flight instructor's pilot and flight instructor certificates.

* * * * *

20. Section 61.201 is amended by revising paragraph (a) to read as follows:

§ 61.201 Conversion to new system of flight instructor ratings.

(a) *General.* The holder of a flight instructor certificate that does not bear any of the new class or instrument ratings listed in § 61.5(c) (2), (3), or (4) for a flight instructor certificate, may not exercise the privileges of that certificate. The holder of a flight instructor certificate with a glider rating need not convert that rating to a new class rating to exercise the privileges of that certificate and rating.

* * * * *

PART 141—PILOT SCHOOLS

21. The authority citation for Part 141 continues to read as follows:

Authority: Secs. 313(a), 314, 601, 602, and 607 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1355, 1421, 1422, and 1427), and sec. 6(c) of the Dept. of Transportation Act (49 U.S.C. 1655(c)).

§ 141.29 [Removed, reserved]

22. Section 141.29 is removed and reserved.

23. Section 141.35 is amended by revising paragraphs (a), (b), (b)(1), (b)(3)(ii), (c), (c)(1), (c)(4)(ii), (d), (d)(1), (d)(3)(ii), and (e), and by removing paragraphs (b)(4), (c)(5), and (d)(4) to read as follows:

§ 141.35 Chief instructor qualifications.

(a) To be eligible for a designation as a chief flight instructor for a course of training, a person must meet the following requirements:

(1) Possess a commercial pilot or airline transport pilot certificate and a valid flight instructor certificate,

(2) Meet the pilot in command recent flight experience requirements of § 61.57,

(3) Pass an oral test on teaching methods, applicable provisions of the Airman's Information Manual, Parts 61, 91, and 141 of this chapter, and the objectives and approved course completion standards of the course for which the person seeks to obtain designation,

(4) Pass a flight test demonstrating satisfactory performance of and the ability to instruct on the flight procedures and maneuvers appropriate to that course, and

(5) Meet the applicable requirements of paragraphs (b), (c), and (d) of this section. However, a chief flight instructor for a course of training for gliders, free balloons, or airships is only required to have 40 percent of the hours required in paragraphs (b) and (c) of this section.

(b) For a course of training leading to the issuance of a private pilot certificate or rating, a chief flight instructor must have—

(1) At least a commercial pilot or airline transport pilot certificate and a valid flight instructor certificate, each with a rating for the category and class of aircraft used in the course;

* * * * *

(3) * * *

(ii) 1,000 flight hours.

(c) For a course of training leading to the issuance of an instrument rating or a rating with instrument privileges, a chief flight instructor must have—

(1) At least a commercial pilot or airline transport pilot certificate and a valid flight instructor certificate, each with an appropriate instrument rating;

* * * * *

(4) * * *

(ii) 400 flight hours.

(d) For a course of training other than those that lead to the issuance of a private pilot certificate or rating, or an instrument rating or a rating with instrument privileges, a chief flight instructor must have—

(1) At least a commercial pilot or airline transport pilot certificate and a valid flight instructor certificate, each with a rating for the category and class of aircraft used in the course of training and, for a course of training using airplanes or airships, an instrument rating on the instructor's commercial pilot certificate;

* * * * *

(3) * * *

(ii) 1,500 flight hours.

(e) To be eligible for designation as a chief instructor for a ground school course, a person must have 1 year of experience as a ground school instructor in a certificated pilot school.

24. Section 141.36 is added to read as follows:

§ 141.36 Assistant chief instructor qualifications.

(a) To be eligible for a designation as an assistant chief flight instructor for a course of training, a person must meet the following requirements:

(1) Possess a commercial pilot or airline transport pilot certificate and a valid flight instructor certificate,

(2) Meet the pilot-in-command recent flight experience requirements of § 61.57,

(3) Pass an oral test on teaching methods, applicable provisions of the Airman's Information Manual, Parts 61, 91, and 141 of this chapter, and the objectives and approved course completion standards of the course for which the person seeks to obtain designation,

(4) Pass a flight test on the flight procedures and maneuvers appropriate to that course, and

(5) Meet the applicable requirements of paragraphs (b), (c), and (d) of this section. However, an assistant chief flight instructor for a course of training for gliders, free balloons, or airships is only required to have 40 percent of the hours required in paragraphs (b) and (c) of this section.

(b) For a course of training leading to the issuance of a private pilot certificate or rating, an assistant chief flight instructor must have—

(1) At least a commercial pilot or airline transport pilot certificate and a valid flight instructor certificate, each with a rating for the category and class of aircraft used in the course;

(2) At least 500 hours as pilot in command;

(3) Primary flight instruction experience, acquired as either a certificated flight instructor or an instructor in a military pilot primary flight training program, or a combination thereof, consisting of at least—

(i) One year and a total of 250 flight hours; or

(ii) 500 flight hours.

(c) For a course of training leading to the issuance of an instrument rating or a rating with instrument privileges, an assistant chief instructor must have—

(1) At least a commercial pilot or airline transport pilot certificate and a valid flight instructor certificate, each with an appropriate instrument rating;

(2) At least 50 hours of flight time under actual or simulated instrument conditions;

(3) At least 500 hours as pilot in command;

(4) Instrument flight instructor experience, acquired as either a certificated instrument flight instructor or an instructor in a military pilot basic or instrument flight training program, or a combination thereof, consisting of at least—

(i) One year and a total of 125 flight hours; or

(ii) 200 flight hours.

(d) For a course of training other than those that lead to the issuance of a private pilot certificate or rating, or an instrument rating or a rating with instrument privileges, an assistant chief flight instructor must have—

(1) At least a commercial pilot or airline transport pilot certificate and a valid flight instructor certificate, each with a rating for the category and class of aircraft used in the course of training and, for a course of training using airplanes or airships, an instrument rating on the instructor's commercial pilot certificate;

(2) At least 1,000 hours as pilot in command;

(3) Flight instruction experience, acquired as either a certificated flight instructor or an instructor in a military pilot primary or basic flight training program or a combination thereof, consisting of at least—

(i) One and one half years and a total of 500 flight hours; or

(ii) 750 flight hours.

(e) To be eligible for designation as an assistant chief instructor for a ground school course, a person must have one year of experience as a ground school instructor in a certificated pilot school.

25. Section 141.85 is amended by revising paragraph (b) to read as follows:

§ 141.85 Chief instructor responsibilities.

* * * * *

(b) The chief instructor or designated assistant chief instructor shall be available at the pilot school or, if away from the premises, by telephone, radio, or other electronic means during the time that instruction is given for an approved course of training.

26. Section 141.91 is amended by revising paragraphs (a) and (c) to read as follows:

§ 141.91 Satellite bases.

* * * * *

(a) An assistant chief instructor is designated for each satellite base that is greater than 25 nautical miles from the main operations base;

* * * * *

(c) The instructors are under the direct supervision of the chief instructor or assistant chief instructor for the appropriate training course, who is readily available for consultation in accordance with § 141.85(b); and

* * * * *

27. Part 141, Appendix A is amended by redesignating paragraph (2)(d) as paragraph (2)(f) and adding new paragraphs (2)(d) and (e), and by revising paragraph (3)(c)(4) and adding paragraph (3)(c)(11) to read as follows:

Appendix A—Private Pilot Certification Course (Airplanes)

* * * * *

2. * * *

(d) Aerodynamic, meteorological, and physiological aspects of high altitude flight, if the flight training will be conducted in a pressurized airplane that has a service ceiling or maximum operating altitude, whichever is lower, above 25,000 feet MSL. This ground training will in part consist of instruction on the history and causes of some past accidents and incidents involving the pressurization system of the airplane, and such physiological aspects as respiration; the effects and causes of hypoxia and any other high altitude sicknesses; duration of consciousness without supplemental oxygen; effects of prolonged usage of supplemental oxygen; causes and effects of gas expansion and gas bubble formations; preventive measures for eliminating gas expansion, gas bubble formations, and high altitude sicknesses; and physical phenomena and incidents of decompression.

(e) Stall awareness and spin entry, spins, and spin recovery techniques.

(f) The safe and efficient operation of airplanes, including high density airport operations, collision avoidance precautions, and radio communication procedures.

3. * * *

(c) * * *

(4) Flight at slow airspeeds with realistic distractions, recognition of and recovery from stalls entered from straight flight and from turns.

* * * * *

(11) Control and maneuvering an airplane or approved simulator in high altitude cruise flight above 25,000 feet MSL at speed ranges compatible with the specified flight envelope of the airplane, if the training is being conducted in a pressurized airplane having a service ceiling or maximum operating altitude, whichever is lower, above 25,000 feet MSL.

* * * * *

28. Part 141, Appendix F is amended by redesignating paragraph (F)(IV) as paragraph (F)(IV)(a) and adding paragraphs (F)(IV) (b) and (c) to read as follows:

Appendix F—Rotorcraft, Gliders, Lighter-Than-Air Aircraft and Aircraft Rating Courses

* * * * *

F. * * *

IV. *Aircraft type rating.*

(a) An aircraft type rating course must include at least 10 hours of ground training on the aircraft systems, performance, operation, and loading. In addition, it must include at least 10 hours of flight instruction. Instruction in a pilot ground trainer that meets the requirements of § 141.41(a)(1) may be credited for not more than 5 of the 10 hours of required flight instruction. Instruction in a pilot ground trainer that meets the requirements of § 141.41(a)(2) may be credited for not more than 2.5 of the 10 hours of required flight instruction.

(b) For airplanes that require type ratings, the aircraft type rating course must include an approved minimum training curriculum that requires completion of the procedures and maneuvers of Part 61, Appendix A, as appropriate to the airplane for which a type rating is sought.

(c) For pressurized airplanes with a service ceiling or maximum operating altitude, whichever is lower, above 25,000 feet MSL, the aircraft type rating course must include:

(1) Ground training in aerodynamic, meteorological, and physiological aspects of high altitude flight, and this training will in part consist of instruction on the history and causes of some past accidents and incidents involving the pressurization system of the airplane, and such physiological aspects as respiration; the effects and causes of hypoxia and any other high altitude sicknesses; duration of consciousness without supplemental oxygen; effects of prolonged usage of supplemental oxygen; causes and effects of gas expansion and gas bubble formations; preventive measures for eliminating gas expansion, gas bubble formations, and high altitude sicknesses; and physical phenomena and incidents of decompression; and

(2) Control and maneuvering an airplane or approved simulator in high altitude cruise flight above 25,000 feet MSL at speed ranges compatible with the specified flight envelope of the airplane.

29. Part 141, Appendix H is amended by revising paragraphs (3)(a)(2)(i), (4)(a)(2)(i), and (6)(a) (1) and (2) to read as follows:

Appendix H—Test Preparation Courses

* * * * *

3. * * *

(a) * * *

(2) * * *

(i) 10 hours of flight instruction in the analysis and performance of flight training maneuvers, which for students enrolled in a flight instructor airplane certification course and a flight instructor glider certification course includes a demonstration of stall awareness and spin entry, spins, and spin recovery techniques;

* * * * *

4. * * *

(a) * * *

(2) * * *

(i) 10 hours, or 10 flights in a glider in the case of a glider instructor rating course, performing analysis of flight training maneuvers, which in the case of an airplane instructor rating course and a glider instructor rating course includes a demonstration of stall awareness and spin entry, spins, and spin recovery techniques; and

* * * * *

(6) * * *

(a) * * *

(1) *Ground training.* 40 hours, to include training in aerodynamic, meteorological, and physiological aspects of high performance, high altitude flight if the flight training will be conducted in a pressurized airplane that has a service ceiling or maximum operating altitude, whichever is lower, above 25,000 feet MSL. This ground training will in part consist of instruction on the history and causes of some past accidents and incidents involving the pressurization system of the airplane, and such physiological aspects as respiration; the effects and causes of hypoxia and any other high altitude sicknesses; duration of consciousness without supplemental oxygen; effects of prolonged usage of supplemental oxygen; causes and effects of gas expansion and gas bubble formations; preventive measures for eliminating gas expansion, gas bubble formations, and high altitude sicknesses; and physical phenomena and incidents of decompression.

(2) *Flight instruction.* 25 hours, including at least 15 hours of instrument flight instruction, and instruction in control and maneuvering an airplane or approved simulator in high altitude cruise flight above 25,000 feet MSL at speed ranges compatible with the specified flight envelope of the airplane, if the training is being conducted in a pressurized airplane having a service ceiling or maximum operating altitude, whichever is lower, above 25,000 feet MSL.

* * * * *

Robert L. Goodrich,

Director, Flight Standards Service.

Issued in Washington, DC, on May 19, 1989.

[FR Doc. 89-12569 Filed 5-25-89; 8:45 am]

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federal register

Friday
May 26, 1989

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Parts 121 and 135

Smoking Aboard Aircraft; Summary and Disposition of Comments; Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121 and 135

[Docket No. 25590; Amdt. Nos. 121-196 and 135-25]

Smoking Aboard Aircraft; Summary and Disposition of Comments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Disposition of comments.

SUMMARY: This document summarizes and responds to comments received by the FAA concerning the Smoking Aboard Aircraft Final Rule. Due to a congressional mandate, the rule went into effect on April 23, 1988. Because of the early effective date, the FAA did not have sufficient time to issue a notice of proposed rulemaking and receive comments from the public. Therefore, post-effective date comments were invited from the public. The comment period closed on May 31, 1988; however, this document addresses comments received through December 31, 1988.

DATE: Effective Date of Final Rule: April 23, 1988.

ADDRESSES: The Smoking Aboard Aircraft Final Rule docket may be examined at the Federal Aviation Administration, Office of the Chief Counsel, Rules Docket, Room 915-G, 800 Independence Avenue SW., Washington, DC 20591. The Rules Docket is open weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Gary E. Davis, Project Development Branch (AFS-240), Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, Telephone (202) 267-8096.

SUPPLEMENTARY INFORMATION:

Background

In 1984 Congress directed the Secretary of Transportation to commission an independent study by the National Academy of Sciences (NAS) on the cabin air quality in airliners. NAS formed the Committee on Airliner Cabin Air Quality (Committee), and the study was published in August 1986. The Committee presented 21 recommendations, the most controversial of which was to ban smoking on all commercial domestic flights.

In December 1987, Congress enacted an amendment to section 404 of the Federal Aviation Act of 1958 (Act). The amendment (section 404(d)(1)(A)) (smoking ban or ban) banned smoking in the passenger cabin or lavatory aboard domestic flights scheduled for 2 hours or less. Congress required that the ban go into effect on April 23, 1988, and last for a period of 2 years.

Congress also added section 404(d)(2) to the Act which provides for a civil penalty of up to $2,000 for any passenger who tampers with, disables, or destroys a smoke detector in the lavatory of an aircraft. The civil penalty provision took effect immediately and has no expiration date. Congress directed the Secretary of Transportation (Secretary) to issue the implementing regulations. The Secretary has delegated this responsibility to the FAA (Amendment 1-223, 53 FR 10250, March 30, 1988).

The FAA issued the Smoking Aboard Aircraft Final Rule on April 11, 1988 and published it in the **Federal Register** on April 13, 1988 (52 FR 12358). Because Congress required that the smoking ban go into effect on April 23, 1988, the FAA rule became effective on the same date. Post-effective date comments were invited from the public.

The Department of Transportation (DOT) compiled the public comments in response to both the NAS Committee on Airliner Cabin Air Quality recommendations and the FAA rule. With respect to the former—from the date of publication of the Committee's recommendations through December 31, 1988—DOT's Consumer Affairs Office received 3,181 unsolicited letters concerning the Committee's recommendation to ban smoking aboard aircraft, of which 2,871 supported the NAS recommendation. The FAA has been advised by the Office of the Secretary of Transportation that one of the letters supporting the Committee's recommendation to ban smoking aboard aircraft was signed by more than 6,100 people. The remaining 310 letters received opposed the Committee's recommendation to ban smoking and smoking regulations in general.

With respect to the FAA rule—from the date of publication of the rule through December 31, 1988—DOT's Consumer Affairs Office received 6,068 letters and postcards. Seventy-seven comments were in favor of the ban; the balance, most of which were form letters and postcards, opposed the smoking ban. The letters and cards received by DOT since June 8, 1988, are available for review in the Rules Docket.

Discussion of the Comments

Comments on the final rule were invited to be submitted between April 23, 1988, and May 31, 1988. The FAA has reviewed all of the comments received up to December 31, 1988. The comments and the FAA's disposition of the comments are discussed below.

The FAA received 122 comments; 79 supporting the rule, 36 opposing the rule, and 7 neutral. Ninety-three comments received were from private citizens. Twenty-one comments were received from medical and health organizations. The remaining 8 comments received were from airline industry and union organizations, a consumer action group, one air carrier, and a representative of the tobacco industry.

The private citizen commenters opposed to the rule recommended that the FAA repeal the ban. Because the smoking ban was congressionally mandated, only Congress can repeal the smoking ban.

The private citizen commenters supporting the rule and the comments received from the medical and health organizations recommended that the FAA extend the smoking ban to include flights longer than 2 hours and to extend the ban beyond the April 1990 expiration date.

At this time, scientific evidence has not sufficiently established that there is a significant health risk to nonsmoking passengers and crewmembers, while on board an aircraft, when other passengers are smoking and the existing smoking regulations are enforced. DOT is conducting a study to identify the type and level of contaminants created by smoking aboard aircraft and the health risks such contaminants may pose to nonsmoking passengers. With the information provided from the DOT study, and upon consideration of reports and studies from other governmental agencies and scientific and medical groups, options for mitigating the exposure to smoking contaminants aboard aircraft will be evaluated. Further rulemaking at this time is premature.

The scope and duration of the present smoking ban regulations promulgated by the FAA were intended solely to implement the congressional mandate to ban smoking aboard aircraft. Therefore, recommendations to extend the smoking ban in duration or to expand the scope of the ban to flights longer than 2 hours are beyond the scope of this rulemaking. Recommendations for changes to the congressional mandate that bans smoking should be directed to the Congress. Legislation was introduced in the last Congress and at least one bill has been introduced already in the 101st Congress to permanently prohibit smoking on all domestic airline flights.

The remaining 8 comments are discussed below. These commenters addressed the FAA's decision to apply the smoking ban to each flight segment of 2 hours or less during a multistop flight, use of the North American Edition of the Official Airline Guide (OAG) to determine which flights will be covered by the smoking ban, realistic scheduling, compliance and enforcement issues, tampering with smoke detectors, and the requirement to keep the passenger information signs lit during flights of 2 hours or less.

Flights Covered by the Smoking Ban

Flight Segments

One commenter stated that the FAA's determination to apply the smoking ban to each flight segment of 2 hours or less during a multistop flight ignores what the commenter believes is the intent of Congress to strike a balance between the needs of smokers and nonsmokers aboard aircraft. By applying the smoking ban to each flight segment of 2 hours or less, a passenger who is on board an aircraft that makes several stops before arriving at its final destination will be prevented from smoking for the entire length of the trip if each flight segment of the trip is 2 hours or less. The commenter recommended, for the purpose of applying the smoking ban, that a multistop flight be considered one flight, rather than considering each flight segment of a multistop flight as a separate flight.

Congress made no apparent distinction between flights of 2 hours or less and flights that are segments of multiple-flight itineraries (flight segments). Such flight segments are listed individually in schedules as nonstop flights and, for many passengers, a nonstop flight segment is an entire flight. The FAA determined that Congress intended to provide passengers on nonstop flights of 2 hours or less a smoke-free flight, even if that flight may continue after landing to another destination.

Use of the Official Airline Guide

Another commenter stated that the FAA's determination to apply the smoking ban to each flight of 2 hours or less listed in the OAG is too narrow. The commenter recommends that the smoking ban apply to all flights of 2 hours or less, including charter flights which are not listed in the OAG. The commenter raised two concerns: (1) many flights, although not scheduled, are 2 hours or less and passengers aboard such flights should benefit from the smoking ban; and (2) air carriers may stop publishing their flights in the OAG and thereby avoid compliance with the smoking ban.

Charter flights are not scheduled flights. Because the congressional mandate requires that the smoking ban be applied to scheduled flights, nonscheduled flights of 2 hours or less are unaffected. Therefore, applying the ban to charter flights is beyond the scope of this rulemaking.

While, hypothetically, an air carrier might remove a flight listing from the OAG to avoid complying with the smoking ban, the FAA concluded, as noted in the preamble to the rule, that competitive and marketing pressures would discourage this action. The FAA invited comments on its conclusion (52 FR 12359; April 13, 1988). No comment or complaint has been received regarding the removal of a flight listed in the OAG.

One commenter suggested that the air carriers be allowed to use sources other than the OAG to determine scheduled flight times. The computer reservation system was recommended as one alternative to the OAG. The FAA determined that passengers, air carriers, and FAA inspectors should use the same resource to determine which flights are subject to the smoking ban. Thus, a comprehensive and accessible list of scheduled flights must be available. The OAG is such a list. It contains the operations of all major air carriers offering scheduled flights. Any such flights that are not listed in the OAG would almost certainly be utilizing aircraft with less than 30 seats where smoking is totally banned already. (14 CFR 252.5) In addition, the flight information in the OAG is readily available to passengers who want to determine whether smoking will be prohibited on a particular flight. Thus, because of its accessibility and widespread use and acceptance, the FAA continues to believe that the OAG is the best means for determining which scheduled flights are covered by the smoking ban.

Realistic Scheduling

Congress required that the smoking ban apply to flights scheduled for 2 hours or less, notwithstanding the actual duration of the flight. One commenter stated that many flights scheduled for 2 hours or less take longer and that passengers on such flights will be required to refrain from smoking for a longer period of time than intended by Congress. To prevent the ban from applying to scheduled flights that are likely to exceed 2 hours, the commenter suggested that the FAA require the airlines to adjust their schedules, as reported in the OAG, by incorporating an average delay factor that would ensure accurate listings.

This comment should be addressed as a scheduling issue which is more appropriately within the regulatory jurisdiction of the Office of the Secretary of Transportation (OST). OST rules already regulate "unrealistic scheduling," which is defined as a prohibited unfair or deceptive practice (14 CFR 399.81(a)). Persons with evidence of unrealistic scheduling by a particular air carrier should provide it to OST. OST rules also require air carriers to report their on-time performance to OST and to include an on-time performance code for each flight in their computerized reservation systems (14 CFR 234.4). Thus, a regulatory deterrent to unrealistic scheduling is already in place.

Compliance and Enforcement

The preamble to the final rule states that the FAA expects air carriers to enforce the prohibition on smoking (52 FR 12360; April 13, 1988). One commenter requested that the FAA clarify the statement made in the preamble concerning this duty of the air carrier.

The FAA expects air carriers to make reasonable efforts to assist in the enforcement of the rule implementing the smoking ban. There is no indication that air carriers are not making such efforts or that air carriers do not understand how to do so.

Two commenters suggested that the FAA amend the rule to include provisions that the air carriers take such steps as are necessary to obtain a positive identification of the violator including, if necessary, the notification of police authorities at the airport who can meet the passenger and request identification. One of these commenters also suggested that the regulations require air carriers to report violations to the FAA within 48 hours of being informed that the violation occurred and that the FAA notify the alleged violator within 7 days of notification from the air carrier. The commenter is concerned that many violations may go unreported if such provisions are not included in the regulations.

The FAA expects smoking ban enforcement to be similar to enforcement of any other Federal Aviation Regulation (FAR). If a passenger violates the smoking ban, the air carrier should submit the appropriate information to the local FAA Flight Standards District Office (FSDO) so that the FAA can investigate the violation. The FAA does not believe that

enforcement of the smoking ban requires the presence of a local enforcement officer or FAA representative at the gate to immediately initiate enforcement actions. However, if a passenger who is violating the smoking ban interferes with a crewmember while the crewmember is performing his or her duties, a pilot in command may request the presence of a law enforcement officer at the gate.

Limiting the time period for a person to report a violation may actually decrease the number of violations reported to the FAA. Air carriers would not report violations if they could not submit the information within the 48-hour time limitation. The FAA prefers to have as many violations reported as possible despite the amount of time the air carrier needs to submit the information. Similarly, after an air carrier reports a violation, FAA personnel must determine whether the violation can be pursued. To make this determination, FAA personnel must obtain the crewmembers' statements. Obtaining these statements often requires more than 7 days; however, it is not until these steps are taken, that the alleged violator is notified. Therefore, the FAA has determined that time limitations on the air carriers would decrease the number of violations reported and, a requirement that the FAA notify an alleged violator within 7 days would not provide the FAA with sufficient time to open an investigation.

Tampering and Disabling Smoke Detectors

Several comments addressed the rule's provisions governing smoke detectors in aircraft lavatories. One commenter suggested that, as of January 1, 1989, the statement that tampering with smoke detectors is prohibited should be eliminated from the pre-flight briefing because, on January 1, 1989, § 121.317(e) of the FAR will require a placard in all aircraft lavatories stating this same information. Although the placards will be legible to most passengers using the lavatory, there may be some passengers who cannot or may not see or read the sign. In the interest of safety and because a violation may subject a passenger to a civil penalty of up to $2,000, the FAA has determined that an audible, as well as a visual warning is appropriate. By including the statement in the briefing, all passengers will receive notice of the potential penalty for tampering with smoke detectors.

Considering the possibility that the 2-hour smoking ban might increase surreptitious smoking aboard aircraft, the FAA sought comments on the need for tamper-resistant smoke detectors (52 FR 12359; April 13, 1988). Several commenters stated that passengers who insist on smoking can easily disable the smoke detectors. Some commenters suggested that the FAA require "tamper-resistant" smoke detectors and others suggested "tamper-proof" detectors. The commenters recommended a variety of approaches, such as: installing the smoke detectors behind the ceiling panel, development of a technical standard order which would require that an audible and/or visual signal be provided to the flight or cabin crewmembers when tampering occurs, and requirements that smoke detectors be upgraded so that they are as sensitive as the existing technology will permit. In addition to soliciting comments, the FAA contacted local FAA inspectors to determine whether passengers are tampering with smoke detectors. The information received from our requests for comments and from the local FAA maintenance inspectors indicates that there has been some tampering with smoke detectors.

During a House Appropriations Committee hearing on February 24, 1988, Representative Richard Durbin recommended that the FAA require air carriers to install placards stating "Federal law provides for a penalty of up to $2,000 for tampering with the smoke detector installed in this lavatory" in every lavatory equipped with a smoke detector. The recommendation was accepted, and the rule requires that these placards be installed before January 1, 1989. The FAA believes that these placards will help deter passengers from tampering with the smoke detectors. In addition, the FAA will issue an Action Notice to all Principal Maintenance Inspectors requiring the inspectors to conduct a survey and to report the results of the survey to the Flight Standards division within 30 days. The action notice will help obtain the information necessary to determine whether or not further rulemaking is necessary and if so, what action should be taken to prevent tampering with smoke detectors.

Passenger Information Signs

In addition to the passenger briefings, the FAA chose to inform passengers of the no smoking requirement on flights of 2 hours or less by keeping the passenger information signs lit during the flight. This method was chosen for the following reasons: (1) all airplanes used in operations under Part 121 of the FAR and all airplanes with more than 19 passenger seats used in operations under Part 135 of the FAR must be equipped with these signs; (2) such signs have always been used to inform passengers when smoking is not allowed; and (3) passengers are accustomed to such signs. However, in the preamble to the final rule, the FAA solicited comments on whether the use of these signs is the best means of notification and whether any alternative means would be better (52 FR 12359; April 13, 1988). The FAA received one comment on this issue.

The commenter stated that the passenger information signs were not designed for continuous operation. The commenter recommended that the rule allow air carriers to choose between keeping the passenger information signs lit or posting "no smoking" signs in designated areas of the passenger cabin.

The FAA finds that the alternative presented by the commenter would not be an effective way to carry out the ban. Passenger information signs are positioned so that every passenger can see a sign while seated. A passenger's field of vision is limited while seated in an aircraft and posted signs may not always be visible. Therefore, posted no smoking signs might not provide sufficient notice of the smoking ban to all passengers. Furthermore, it is important that the air carriers notify passengers of the smoking ban in a consistent manner. Uniformity of notification will reduce confusion concerning whether the ban applies to a particular flight.

Continuous use of the passenger information signs will not deteriorate the signs. Although the air carrier may need to replace the light bulbs used in the signs more frequently, this should not cause a substantial inconvenience. The bulbs used in the passenger information signs have a useful life of approximately 7,000 hours. In addition, the signs are installed with two bulbs so that the signs dim somewhat before both bulbs burn out. This gives the air carrier sufficient time to change the bulbs before the sign is inoperable. Because no effective alternative to the passenger information signs has been presented, and because use of the passenger information signs create no appreciable additional burden on the air carrier, the FAA will continue to require that the passenger information signs be used to inform passengers that a flight is a nonsmoking flight.

Issued in Washington, DC, on May 18, 1989.

Daniel C. Beaudette,

Acting Director, Flight Standards Service.

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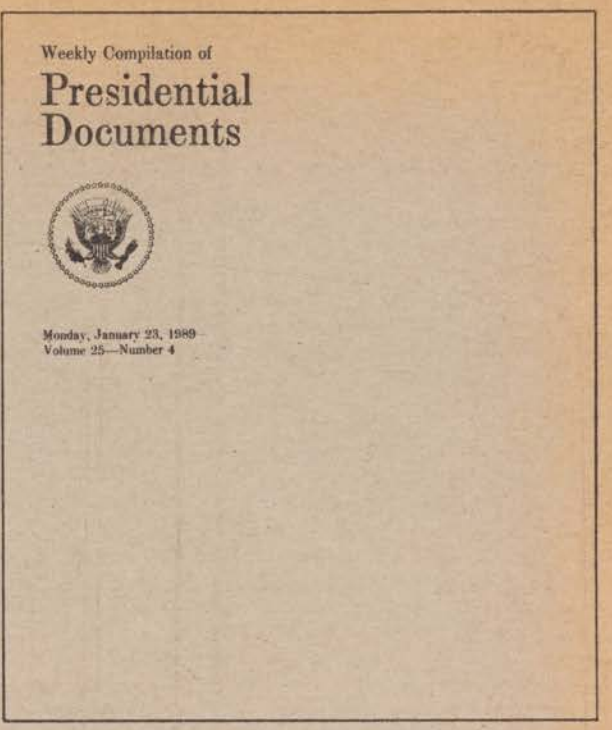
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