6-21-89
Vol. 54 No. 118

federal register

Wednesday
June 21, 1989

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

SECOND CLASS NEWSPAPER
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

6-21-89
Vol. 54 No. 118
Pages 26017-26182

federal register

Wednesday
June 21, 1989

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

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

The **Federal Register** will be furnished by mail to subscribers for $340 per year in paper form; $195 per year in microfiche form; or $37,500 per year for the magnetic tape. Six-month subscriptions are also available at one-half the annual rate. The charge for individual copies in paper or microfiche form is $1.50 for each issue, or $1.50 for each group of pages as actually bound, or $175.00 per magnetic tape. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or charge to your GPO Deposit Account or VISA or Mastercard.

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

How To Cite This Publication: Use the volume number and the page number. Example: 54 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	202–783–3238
Magnetic tapes	275–3328
Problems with public subscriptions	275–3054

Single copies/back copies:

Paper or fiche	783–3238
Magnetic tapes	275–3328
Problems with public single copies	275–3050

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	523–5240
Magnetic tapes	275–3328
Problems with Federal agency subscriptions	523–5240

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

Contents

Federal Register

Vol. 54, No. 118

Wednesday, June 21, 1989

Separate Parts In This Issue

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

CFR PARTS AFFECTED IN THIS ISSUE

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

5 CFR
430 26172
432 26172

12 CFR
522 26017

14 CFR
39 (5 documents) 26019, 26021–26024

Proposed Rules:
39 (6 documents) 26047, 26048, 26050, 26052–26054

17 CFR

Proposed Rules:
240 26055

24 CFR

Proposed Rules:
50 26154
511 26164
961 26154

37 CFR
10 26025

38 CFR
1 26027
2 26027
3 26027

40 CFR
52 26030
60 26041
61 26041
180 (2 documents) 26042, 26043
303 26142

Proposed Rules:
180 26056
186 26057

48 CFR
952 26045

49 CFR
1152 26045

Rules and Regulations

Federal Register
Vol. 54, No. 118
Wednesday, June 21, 1989

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 522

[No. 89-1584]

Election of Directors of the Federal Home Loan Banks

Dated: June 14, 1989.

AGENCY: The Federal Home Loan Bank Board.

ACTION: Temporary rule.

SUMMARY: The Federal Home Loan Bank Board ("Board") is issuing a temporary rule to implement special procedures for the election of directors to the boards of the Federal Home Loan Banks ("Banks") during calendar year 1989. The rule will modify the schedule for election of directors set forth in 12 CFR Part 522 in view of pending legislation to restructure the entities regulating the thrift industry. Specifically, the beginning of the election process for Bank directorship positions for 1989 will be delayed from June 15, 1989, until either thirty days after the enactment of the legislation or September 15, 1989, depending on the progress of the legislation. Once the election process begins, the remaining steps will occur according to the time schedule set forth in the temporary rule, but will otherwise proceed as described in 12 CFR Part 522. According to the schedule set forth in the temporary rule, the election process will end by December 31, 1989.

EFFECTIVE DATE: June 21, 1989. Section 522.30 will expire on June 14, 1990.

FOR FURTHER INFORMATION CONTACT: William Carey, (202) 906-6656, Director, Bank Liaison Division, or Patrick Berbakos, (202) 906-6720, Director, Office of District Banks, Federal Home Loan Bank Board 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: The Senate and House versions of pending legislation restructuring the entities regulating the thrift industry would abolish the Board and remove the regulation of the election of Bank directors to the jurisdiction of a new agency with oversight authority over the Banks.[1] Accordingly, the Board believes it is appropriate to delay the beginning of the election process until after the enactment of the legislation. At that time, elections could be supervised by the agency with oversight over the Banks. Consequently, the Board is issuing a temporary rule, § 522.30, to implement special scheduling procedures for the 1989 election of Bank directors. The rule delays the beginning of the election process from June 15, 1989, which is the date required pursuant to § 522.25(a). If legislation is enacted restructuring the entities regulating the thrift industry but retaining the Board's jurisdiction over the election process, the election process could begin not later than thirty days after the enactment of the legislation. However, the Board believes that for the election process to conclude by the end of this calendar year in time to fill vacancies created by the expiration of existing terms of directorships, the process must begin no later than September 15, 1989.[2] Consequently the rule provides that in any event the process would begin no later than September 15, 1989. Moreover, in order to conclude the election process by the end of the year, the Board is also providing that if legislation is not enacted by September 15, 1989, the election process must begin by that date. The Board also is setting forth an alternative schedule for the election process in the new § 552.30.

The Board is adopting this temporary rule to reduce the likelihood that the ongoing election process might be interrupted by the passage of legislation, while retaining an election process that the Board can implement if no legislation is passed by a certain date or if jurisdiction is not removed from the Board by any such legislation. Alternatively, if jurisdiction over the process is given to another entity, the schedule and process included in the Board's regulation, at the option of such entity, could be used to facilitate the election of new directors. This could enable the District Bank boards to continue conducting business with a minimum of disruption while at the same time allowing the new regulatory entity adequate time to promulgate its own regulations by either permanently adopting the Board's process or setting up a new mechanism for election of directors.

The Board's action today is taken pursuant to its broad statutory powers and obligations to establish and oversee the Federal Home Loan Bank System, including its express responsibility for overseeing the election and appointment of directors to the boards of the District Banks. 12 U.S.C. 1427, 1437. Pursuant to this statutory authority, the Board is issuing new § 522.30 which will operate in conjunction with the existing provisions of § 522.25-26 which generally govern the conduct of the election of directors. However, the special provisions of § 522.30 will govern the scheduling of elections for Bank directorship positions in 1989 only.

Specifically, if legislation restructuring the entities regulating the thrift industry is enacted and jurisdiction over the election process is retained by the Board, the first step in the election process, the Board's notification of members of their rights to nominate candidates for elective directorships, would begin not later than thirty days after the enactment of legislation or by September 15, 1989, if legislation is enacted within thirty days prior to that date, and will otherwise proceed as required by § 522.25(a). Alternatively, if no legislation is enacted by September 15, 1989, the election process will begin on that date. The second step in the election process, the members' nomination of candidates, will be completed not later than sixty days after the enactment of legislation, or, if the election process begins on September 15, 1989, not later than October 15, 1989, and will otherwise proceed as required by § 522.25(b). The next step, the Board's notification of nominees, will occur not later than seventy days after the enactment of legislation, or, if the election process begins on September 15, 1989, not later than October 25, 1989, and will otherwise proceed as required

[1] *See, e.g.*, S. 774, as passed by the Senate on April 19, 1989, 135 Cong. Rec. S4351 (daily ed. April 19, 1989), and H.R. 1278, (Star Print).

[2] The Federal Home Loan Bank Act, 12 U.S.C. 1427, limits the term of each elective directorship to two years. Accordingly, in the absence of elections, the boards of directors of the Banks would be forced to conduct business with a reduced number of voting directors on the boards.

by § 522.25(c), except that the date for receipt of an appointed director's notice of intention to be a candidate for an elective directorship will occur no later than sixty days after enactment of the legislation, or, if the election process begins on September 15, 1989, not later than October 15, 1989. The next step, the Office of District Bank's ("ODB's") receipt of the nominees' completed questionnaires, will conclude not later than eighty-five days after the enactment of the legislation, or, if the election process begins on September 15, 1989, not later than November 9, 1989, and will otherwise proceed as required by § 522.25(c).

Next, the Board's mailing of ballot materials to members, will occur not later than one hundred days after the enactment of legislation, or, if the election process begins on September 15, 1989, not later than November 24, 1989, and will otherwise proceed as required by § 522.26(a). ODB's subsequent receipt of ballot materials from members must be completed not later than one hundred and twenty-one days after the enactment of legislation, or, if the election process begins on September 15, 1989, not later than December 15, 1989, and will otherwise proceed as required by § 522.26(c). Finally, the Board's declaration of elected candidates will occur not later than December 31, 1989, and will otherwise proceed as required by § 522.26(d).

In sum, under the new § 522.30, if legislation restructuring the entities regulating the thirft industry is enacted and jurisdiction over the election process is retained by the Board, the election process will begin not later than thirty days after the enactment of legislation or September 15, 1989, whichever comes first. If no legislation is enacted by September 15, 1989, then the election process will begin on that date. If legislation is enacted and jurisdiction of the election process is given to another entity, then that entity will have the option of using the election schedule and process included in the regulation to facilitate the election of new directors. The Board notes that the expedited schedule included in the new § 522.30 primarily diminishes the time periods applicable to the Board's actions and leaves the time periods allowed for various actions by members and nominees substantially unchanged from those set forth in §§ 522.25 and 522.26. The time period for members' return of their ballots to the Board, however, has been decreased from thirty days to twenty-one days.

The specific action taken today in the form of new § 522.30 will be of limited duration and effect. By its terms, the new rule affects only the elections held under the jurisdiction of the Board in 1989 and will expire by June 14, 1990, the day before which next year's elections could begin if the current regulations remain in effect. The Board understands the possibility that any successor agency with jurisdiction over the election of Bank directors may or may not choose to utilize the election schedule set forth here and that such agency may undertake additional regulatory action that may be of broader scope and effect than the temporary measure taken today.

Since the limited action taken herein pertains to rules for the internal organization, practice, and procedures of the Federal Home Loan Bank System, specifically those rules implementing procedures for the elections of Bank directors, the Board finds that a notice and comment procedure is not necessary under the Administrative Procedure Act ("APA"), 5 U.S.C. 553, and that the APA's thirty-day delayed effective date requirement does not apply.

Assuming *arguendo* that the APA's notice and comment and delayed effective date requirements do apply, those requirements may be waived for "good cause". 5 U.S.C. 553(b)(3)(B), 553(d)(3). *See also* 12 CFR 508.11, 508.14. The Board finds that good cause exists in this case for suspension of notice and comment and of the usual thirty-day delayed effective date. In the absence of this new regulation, the process for election of District Bank directors would begin as early as June 15, 1989, pursuant to § 522.25(a). As discussed above, the Board believes it is impracticable and contrary to the public interest to begin that election process at this time in view of the legislation pending before Congress to restructure the entities that regulate the thrift industry. Moreover, the action taken does not result in any additional burdens to third parties outside the Bank System, and is the alternative least disruptive to the internal operation of the System. Accordingly, the Board finds that the imminence of the beginning of the nominating process at a time when major restructuring legislation is expected to pass the Congress for Bank directors constitutes "good cause" for suspension of the APA's delayed effective date requirement and for adopting the following regulatory amendment effective immediately.

List of Subjects in 12 CFR Part 522

Conflicts of interest, Federal home loan banks.

Accordingly, the Board hereby amends Part 522, Subchapter B, Chapter V of Title 12, *Code of Federal Regulations*, as set forth below.

SUBCHAPTER B—FEDERAL HOME LOAN BANK SYSTEM

PART 522—ORGANIZATION OF THE BANKS

1. The Authority citation for Part 522 continues to read as follows:

Authority: Section 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); secs. 6–7, 47 Stat. 727, 730, as amended (12 U.S.C. 1426–1427); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 402–403, 407, 48 Stat. 1256–1257, 1260, as amended (12 U.S.C. 1725–1726, 1730); sec. 207, 62 Stat. 692, as added by sec. 1a, 76 Stat. 1123, as amended (18 U.S.C. 207); sec. 602, 92 Stat. 2115, as amended (42 U.S.C. 8101 *et seq.*); Reorg. Plan No. 6 of 1961, *reprinted in* 12 U.S.C.A. 1437 App. (West Supp. 1986).

2. A new § 522.30 is added to Subpchapter B, Part 522 which will read as follows:

§ 522.30 Special scheduling provisions for election of directors during calendar year 1989.

(a) This section shall apply to the election of directors of the Banks during calendar year 1989 if the Board retains jurisdiction over that election process. As described herein, this section shall operate in conjunction with §§ 522.25 through 522.26 which generally govern the election of directors. However, the special provisions of this section shall govern the scheduling of elections for Bank directorship positions for 1989 in the case of any conflict with the provisions of §§ 522.25 through 522.26. This § 522.30 will expire on June 14, 1990.

(b) Not later than thirty days after the enactment of legislation restructuring the entities regulating the thrift industry or September 15, 1989, whichever comes first, the Board will take the actions specified in § 522.25(a) of this part.

(c) Not later than sixty days after the enactment of the legislation referred to in paragraph (b) of this section or October 15, 1989, whichever comes first, each member's nominating certificate must be received in the Board's Office of District Banks pursuant to the requirements of § 522.25(b) of this part.

(d) Not later than seventy days after the enactment of the legislation referred to in paragraph (b) of this section or

October 25, 1989, whichever comes first, the Board will take the actions specified in § 522.25(c) of this part; except that no such letter referred to in § 522.25(c) of this part will be sent to any nominee holding an appointive directorship unless the Office of District Banks has received from him, not later than sixty days after the enactment of the legislation referred to in paragraph (b) of this section or October 15, 1989, whichever comes first, notice of his intention to be a candidate for a directorship.

(e) Not later than eighty-five days after the enactment of the legislation referred to in paragraph (b) of this section or November 9, 1989, whichever comes first, the completed questionnaire referred to in § 522.25(c) of this part must be received in the Office of District Banks.

(f) Not later than one hundred days after the enactment of the legislation referred to in paragraph (b) of this section or November 24, 1989, whichever comes first, the Board will mail to each member in each state for which an elective directorship is to be filled a set of ballot materials in a form prescribed by the Board's Office of District Banks pursuant to the requirements of § 522.26(a) of this part.

(g) Not later than one hundred and twenty-one days after the enactment of the legislation referred to in paragraph (b) of this section or December 15, 1989, whichever comes first, the ballot materials described in § 522.26(a) of this part shall be received by the Office of District Banks pursuant to the requirements of § 522.26(c) of this part. Election ballots will not be opened until after 5 p.m., e.s.t., on that date pursuant to the requirements of § 522.26(c) of this part.

(h) Not later than December 31, 1989, the Board will declare the candidates elected as directors pursuant to the requirements of § 522.26(d) of this part.

(i) If any date specified in paragraphs (b) through (h) of this section occurs on a Saturday, Sunday, or holiday, the next business day shall be included in the time allowed pursuant to the requirements of § 522.26(f) of this part.

§ 522.30 [Removed]

3. Effective on June 14, 1990, § 522.30 is removed.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-14592 Filed 6-20-89; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-NM-216-AD; Amendment 39-6247]

Airworthiness Directives; Boeing Model 737-300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Boeing Model 737-300 series airplanes equipped with CFM International CFM56-3 and -3B engines, which requires the deletion of the paragraph from the FAA-approved Airplane Flight Manual (AFM) which permits operations over a route that contains a point farther than one hour flying time at the normal one-engine inoperative cruise speed (in still air) from an adequate airport in deviation from § 121.161 of the Federal Aviation Regulations (FAR), referred to as "extended range," "EROP," or "ETOP" operations. This amendment is prompted by reports of partial and total loss of thrust occurring during operations in moderate to heavy precipitation. This condition, if not corrected, could result in total loss of thrust and could prevent the continued safe flight and landing of the airplane.

EFFECTIVE DATE: July 27, 1989.

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

FOR FURTHER INFORMATION CONTACT: Mr. Richard Simonson, Propulsion Branch, ANM-140S; telephone (206) 431-1965). Mailing address: FAA Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to Boeing Model 737-300 series airplanes, which deletion of the paragraph requires from the FAA-approved Airplane Flight Manual (AFM) which permits operations over a route that contains a point farther than one hour flying time at the normal one-engine inoperative cruise speed (in still air) from an adequate airport in deviation from § 121.161 of the Federal Aviation Regulations (FAR), referred to as "extended range," "EROP," or "ETOP" operations, was published in the Federal Register on February 14, 1989 (54 FR 6691).

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

All of the commenters opposed the proposed rule, claiming it to be unnecessary on the basis of mitigating circumstances or possible alternate procedures, as follows:

Two commenters suggested that one alternate method of accomplishing the same result intended by the proposal would be to deny individual operators' requests for changes in their operation specification until such time as engine improvements are incorporated. The FAA disagrees. Advisory Circular (AC) 120-42A, "Extended Range Operations with Two-Engine Airplanes (ETOPS)," paragraph 7(F), explicitly states that approval for extended range operations consists of two phases: (1) Type Design Approval—a finding by the FAA that the type design of the airplanes is sufficiently reliable for extended range operations; and (2) In-service Experience Approval—each operator desiring approval for extended range operations to show that it has obtained sufficient maintenance and operations familiarity with that particular eligible airplane/engine combination to safely conduct these operations. This airworthiness directive action concerns a problem identified with a specific engine/airplane combination that, had the problems with it been known at the initial request for type design approval for extended range operations, would have resulted in that request being denied.

Several commenters suggested that AD 88-13-51 R1, Amendment 39-6088 (53 FR 49978; December 13, 1988), concerning this same problem, is adequate and that the exposure to severe weather in terminal areas is independent of the type of mission. The FAA disagrees. The main requirement of AD 88-13-51 R1 is the avoidance of operations in adverse weather. In an ETOPS situation, however, avoidance of adverse weather may not be possible because of the relatively small number of adequate alternate airports, thereby making it very difficult to comply with the primary requirement of that AD.

Several commenters commented that the reliability of the CFM56-3 series

engine has not significantly changed and that the in-flight shutdown rate of this engine is much lower than that required by AC 120–42A. The FAA agrees with the comment, but the individual propulsion system reliability and in-flight shutdown rates are not at issue here. As stated in the NPRM, the FAA has identified an unsafe condition relating to Model 737 series airplanes equipped with those engines, and, as stated above, has determined that the only currently identified corrective action for that condition (avoidance of precipitation) may not be available for airplanes engaged in ETOP operations. Therefore, until other corrective action is identified, ETOP operations must be prohibited.

One commenter stated that there have not been any reports of loss of engine thrust during high altitude enroute flight segments. The FAA agrees, but this comment, while true, does not address the fact that, given a single engine failure in flight for whatever reason, the safety of the diversion to an alternate airport is entirely dependent on the integrity of the remaining engine. In addition, due to single engine operating altitude, etc., the diversion could be conducted in weather which could induce the flameout problem.

Another commenter stated that the power levels during single engine operation are sufficiently high to protect the engine from the flameout problem. The FAA disagrees, since the possibility must be considered that the remaining engine during diversion (i.e., flight path adjustment to ATC direction, etc.) might inadvertently have its power reduced below 45% N_1. Again, the FAA has determined that an unsafe condition exists with respect to this engine, for which no remedy is presently available other than the operational limitations required by AD 88–13–51 R1.

Another commenter suggested that the weather radar allows the crew to chart the best course through adverse weather conditions. The FAA disagrees. Due to the lack of suitable alternate airports during an ETOP mission, it may be impossible to avoid the adverse weather.

Several commenters suggested that adoption of the proposed rule would impose an adverse economic burden on foreign operators. The FAA recognizes this possibility; however, foreign operators are not necessarily bound to the requirements of this rule. Under existing bilateral airworthiness agreements, the FAA is obligated, through the AD process, to advise foreign airworthiness authorities of unsafe conditions relating to products produced in the United States, and to provide instructions determined necessary to correct the unsafe condition addressed. If, based on this action, those authorities adopt similar restrictions for aircraft over which they have authority, those restrictions may have an adverse economic effect on the affected operators. The FAA also recognizes that alternate means of compliance with the intent of this rule may also exist; a provision for approval of such means is contained in paragraph B. of the final rule.

Two commenters state that ETOP approval was a factor in selecting the Boeing Model 737–300 series airplane, and that withdrawal of this approval would severely penalize operators who had selected their airplanes on that basis. The FAA recognizes the validity of this statement. However, it is not the intent of the FAA to permanently revoke ETOP approval for this airplane. When other corrective action for the unsafe condition is identified, the FAA will consider revising this AD to reinstate ETOP approval for this airplane upon the accomplishment of that action.

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

There are approximately 600 Model 737–300 series airplanes of the affected design in the worldwide fleet. It is estimated that there are 257 airplanes of U.S. registry; however, no U.S. operator currently has authorization for extended range operations. There would be no cost impact of this AD on those airplanes which have no reference to extended range operations in their AFM. However, for those airplanes with AFM authorization for extended range operation, approximately 1 manhour would be necessary to accomplish the actions required by this AD, and the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on an affected operator is estimated to be $40 per airplane.

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

For the reasons discussed above, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities, under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regultory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 737–300 series airplanes, certificated in any category. Compliance required within 30 days after the effective date of this AD, unless previously accomplished.

To prevent the risk of total engine thrust loss due to unavoidable severe weather penetration during a single engine diversion or an extended range flight, accomplish the following:

A. Delete, from the FAA-approved Airplane Flight Manual (AFM), any reference to approval of suitability of the Model 737–300 airplane for use in extended range operation. This may be accomplished by deleting the existing AFM statement containing the Extended Range Operations suitability and adding a copy of this AD to the AFM. If the existing AFM does not contain such a statement, no action is necessary.

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

Note: The request should be forwarded through an FAA Principal Operations Inspector (POI), who will either concur or comment and then send it to the Manager, Seattle Aircraft Certification Office.

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

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

This amendment becomes effective July 27, 1989.

Issued in Seattle, Washington, on June 12, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-14623 Filed 6-20-89; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 39

[Docket No. 88-NM-184-AD; Amendment 39-6240]

Airworthiness Directives; Boeing Model 737-300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Boeing Model 737-300 series airplanes, which requires repetitive inspections for chafing between the number two engine throttle cables and adjacent right wing front spar bracket. This amendment is prompted by reports of a significant number of the cables inspected and found to be worn or frayed. This condition, if not corrected, could result in throttle cable separations and subsequent loss of engine throttle control.

EFFECTIVE DATE: July 24, 1989.

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

FOR FURTHER INFORMATION CONTACT: Mr. Stephen S. Bray, Propulsion Branch, ANM-140S; Telephone (206) 431-1969. Mailing address: FAA Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to Boeing Model 737-300 series airplanes, which requires a repetitive inspection of the number two engine throttle cable, located near the right wing front spar, for chafing, was published in the Federal Register on January 13, 1989 (54 FR 1387).

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

The Air Transport Association (ATA) of America, on behalf of its members, requested that the initial compliance time be increased from 150 to 300 flight hours to allow operators to inspect the cable during scheduled main base maintenance where facilities are available to change the cable, if necessary. The FAA concurs that safety will not be adversely impacted and has changed the initial inspection from 150 to 300 flight hours.

ATA also requested that operators be given credit for cable inspections accomplished prior to the effective date of this AD. The FAA concurs. This was the FAA's intent by including the statement "* * * unless previously accomplished" in the applicability statement of the proposed rule. Paragraph A. of the final rule, however, has been revised to clarify this item.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described above. These changes will neither increase the economic burden on any operator nor increase the scope of the AD.

This rule is considered an interim action. The FAA may consider further rulemaking once the manufacturer has developed a modification which would prevent the cable wear.

There are approximately 500 Model 737-300 series airplanes of the affected design in the worldwide fleet. It is estimated that 175 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $14,000.

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

For the reasons discussed above, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities, under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 737-300 series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To minimize the potential for cable separation due to the number two engine throttle cable chafing against the right wing front spar bracket, accomplish the following:

A. Prior to the accumulation of 300 flight hours after the effective date of this AD, unless previously accomplished within the last 700 flight hours, and thereafter at intervals not to exceed 1,000 flight hours, gain access to the fuel shut-off cable pulley bracket near the right wing front spar station 124 and inspect the number two engine throttle cable for wear. Replace the cable, before further flight, if cable wear exceeds acceptable wear limits specified in section 20-20-31 of the Model 737 Maintenance Manual.

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

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Seattle Aircraft Certification Office.

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

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

This amendment becomes effective July 24, 1989.

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

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-14630 Filed 6-20-89; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 39

[Docket No. 88-NM-196-AD; Amdt. 39-6241]

Airworthiness Directives; Boeing Model 757 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Boeing Model 757 series airplanes, equipped with steel brakes or interim carbon brake control systems, which requires the replacement of aluminum brake control shafts with steel brake control shafts. This amendment is prompted by reports of four brake control shafts failing in service. This condition, if not corrected, could result in the loss of braking to one side of the airplane or, potentially, the complete loss of braking.

EFFECTIVE DATE: July 24, 1989.

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

FOR FURTHER INFORMATION CONTACT: Mr. David M. Herron, Systems and Equipment Branch, ANM-130S, telephone (206) 431-1949. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to Boeing Model 757 series airplanes, equipped with steel brakes or interim carbon brake control systems, which requires the replacement of aluminum brake control shafts with steel brake control shafts, was published in the **Federal Register** on March 2, 1989 (54 FR 8758).

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

The commenter had no objection to the rule as proposed.

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

There are approximately 110 Boeing Model 757 series airplanes of the affected design in the worldwide fleet. It is estimated that 76 airplanes of U.S. registry will be affected by this AD, that it will take approximately 16 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $48,640.

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

For the reasons discussed above, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities, under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 757 series airplanes, listed in Boeing Service Bulletin 757-32-0083, dated December 15, 1988, certificated in any category. Compliance required within the next 750 landings after the effective date of this AD or prior to the accumulation of 10,000 landings, whichever occurs later, unless previously accomplished.

To prevent the partial loss of braking and, potentially, the complete loss of braking, accomplish the following:

A. Replace aluminum brake metering valve actuation shafts with steel shafts, in accordance with Boeing Service Bulletin 757-32-0083, dated December 15, 1988.

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

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send to the Manager, Seattle Aircraft Certification Office.

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

All persons affected by this directive who have not already received the appropriate service documents from the

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

This amendment becomes effective July 24, 1989.

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

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-14631 Filed 6-20-89; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 39

[Docket No. 88-NM-193-AD; Amdt. 39-6242]

Airworthiness Directives; Boeing Model 767 Series Airplanes Equipped With General Electric CF6 Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to Boeing Model 767 series airplanes equipped with General Electric CF6 engines, which requires the replacement of aluminum brackets with inconel brackets at three locations in each engine strut area to support the hydraulic pressure line. This amendment is prompted by reports that the manufacturer subsequently delivered six airplanes with aluminum brackets that were not included in the applicability of the original AD. This condition, if not corrected, could result in abrasion of the fuel line wall, creating a fuel leak.

EFFECTIVE DATE: July 24, 1989.

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

FOR FURTHER INFORMATION CONTACT: Mr. David M. Herron, Systems and Equipment Branch, ANM-130S, telephone (206) 431-1949. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to amend an existing airworthiness directive, applicable to Boeing Model 767 series airplanes equipped with General Electric CF6 engines, which requires the replacement of aluminum brackets with inconel brackets at three locations in each engine strut area to support the hydraulic pressure line, was published in the **Federal Register** on March 2, 1989 (54 FR 8759).

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

The commenter had no objections to the proposed rule.

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

There are 6 additional Boeing Model 767 series airplanes of the affected design in the worldwide fleet. It is estimated that 1 airplane of U.S. registry will be affected by this AD, that it will take approximately 16 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $640.

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

For the reasons discussed above, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities, under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by revising AD 87-18-05, Amendment 39-5722 (52 FR 34631; September 14, 1987) to read as follows:

Boeing: Applies to Model 767 series airplanes, equipped with General Electric CF6 engines, listed in Boeing Service Bulletin 767-29-0032 dated January 15, 1987, and airplanes Serial Numbers 22322, 23431, 23432, 23494, 23623, and 23624, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent cracking of the hydraulic pressure line aluminum support brackets in the engine strut, and possible fuel line penetration, accomplish the following:

A. For airplanes listed in Boeing Service Bulletin 767-29-0032, dated January 15, 1987: Within the next 3,000 hours time-in-service after October 7, 1987 (which is the effective date of Amendment 39-5722), replace aluminum brackets with inconel brackets at three locations in each engine strut area to support the hydraulic pressure line, in accordance with that service bulletin.

B. For all other airplanes: Within the next 3,000 hours time-in-service after the effective date of this amendment, replace aluminum brackets with inconel brackets at three locations in each engine strut area to support the hydraulic pressure line in accordance with Boeing Service Bulletin 767-29-0032, Revision 1, dated June 16, 1988.

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

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Seattle Aircraft Certification Office.

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

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

This amendment amends Amendment 39-5722, AD 87-18-05.

This amendment becomes effective July 24, 1989.

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

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-14632 Filed 6-20-89; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 39

[Docket No. 88-NM-202-AD; Amendment 39-6239]

Airworthiness Directives; McDonnell Douglas Model DC-9-81, -82, and -87 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to McDonnell Douglas Model DC-9-81, -82, and -87 series airplanes equipped with certain Loral Aircraft Braking Systems main landing gear wheels, which requires inspection of the main landing gear wheels, and modification or replacement of cracked wheels. This amendment is prompted by reports of cracks found in wheels. This condition, if not corrected, could result in wheel failure and potential damage to adjacent tires, engines, or the airplane.

EFFECTIVE DATE: July 24, 1989.

ADDRESSES: The applicable service information may be obtained from Loral Aircraft Braking Systems, 1204 Massillon Road, Akron, Ohio 44306-4186, Attention: Manager of Product Integrity, Mr. J.B. Wright. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or at 3229 East Spring Street, Long Beach, California.

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

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to McDonnell Douglas DC-9-81, -82, and -87 series airplanes equipped with certain Loral Aircraft Braking Systems main landing gear wheels, which requires inspection of the wheels, and modification or replacement of cracked wheels, was published in the **Federal Register** on March 1, 1989 (54 FR 8544).

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

One commenter requested a certain part number key boss screw be included in the AD as an alternate installation. The FAA does not concur since the commenter did not submit the data necessary for the FAA to determine if the alternate part is acceptable. However, under the provisions of paragraph C. of this AD, any operator may apply for approval of an alternate means of compliance which provides an acceptable level of safety, by submitting the necessary data to the FAA.

One commenter requested the repetitive inspection of paragraph B. of the proposed AD be revised from every fourth tire change or 1,500 landings, whichever occurs first, to every fifth tire change or 2,000 landings. The commenter contends that the initial inspection will eliminate cracked wheels from in-service airplanes and the new key boss screw installation will reduce the tendency for cracks to initiate. The FAA does not concur with this request. Although the new key boss screw installation does reduce the tendency for crack initiation, the FAA has determined that inspection of the key boss screw holes for corrosion at fixed intervals is necessary. In developing an appropriate compliance time for this AD action, the FAA considered not only the degree of urgency associated with addressing the subject unsafe condition, but the practical aspect of incorporating the required inspections into affected operators' maintenance schedules in a timely manner. FAA has reviewed data submitted by the airframe and wheel manufacturers as to the recommended inspection intervals and has determined that the inspection intervals as proposed are necessary to provide an acceptable level of safety.

One commenter recommended the proposed AD not be made mandatory, but if adopted, require a one-time inspection only. The commenter contends that operators are now inspecting the key boss screw holes (not previously addressed in the wheel manufacturer's maintenance manual) and, since the maintenance manual is being changed to address this, adherence to the maintenance manual will ensure inspection for cracked wheels. The FAA does not concur. As discussed above, the FAA has determined that it is necessary to require both the initial and the repetitive inspections to ensure that cracks are found and that corrective action is taken. While the revision to the manufacturer's maintenance manual describes these inspections, it is not, by itself, mandatory. Therefore, the AD is necessary to ensure that the inspections are performed.

Since issuance of the proposal, Loral Aircraft Braking Systems has issued Revision 1 to Service Bulletin MD-81-32-1, MD-82-32-1, and MD-87-32-1, dated November 18, 1988. This revision provides for an additional optional key boss screw to be used when replacement is necessary, and includes additional clarifying changes. The final rule has been revised to reference this later revision of the service bulletin.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 170 Model DC-9-81, -82, and -87 series airplanes of the affected design in the worldwide fleet. It is estimated that 32 airplanes of U.S. registry will be affected by this AD, that it will take approximately 10 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $12,800.

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

to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities, under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39 [AMENDED]

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

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

§ 39.13 [AMENDED]

2. Section 39.13 is amended by adding the following new airworthiness directive;

McDonnell Douglas: Applies to Model DC–9–81, –82, and –87 series airplanes, equipped with Loral Aircraft Braking Systems main landing gear wheels, Part Number 5004320–2, –3, –4, –5, –6, and –7, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent wheel failure, accomplish the following

A. Prior to the accumulation of 2,000 landings on the wheel or within the next 350 landings after the effective date of this AD, whichever occurs later, unless the wheel was inspected within the last 700 landings, inspect the wheel assembly for cracks in accordance with Loral Service Bulletin MD 81–32–1, MD–82–32–1, and MD–87–32–1, Revision 1, dated November 15, 1988.

1. If no cracks are found, replace the key boss screws in accordance with the Loral Service Bulletin.

2. If crack(s) are found, replace the wheel before further flight.

B. Within 90 days after the effective date of this AD, revise the FAA-approved maintenance program to include inspection of the wheel assembly, and replacement, if necessary, as specified in paragraph A., above, at every fourth tire change or every 1,500 landings, whichever occurs first.

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

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who, will either concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Loral Aircraft Braking Systems, 1204 Massillon Road, Akron, Ohio 44306–4186, Attention: Manager of Product Integrity, Mr. J.B. Wright. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

This amendment becomes effective July 24, 1989.

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

Darrell M. Pederson,

Acting Manager Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–14633 Filed 6–20–89; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 10

[Docket No. 81146–9134]

RIN 0651–AA41

Exhaustion of Administrative Remedies in Patent and Trademark Office Disciplinary Proceedings

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: This final rule sets forth amendments to 37 CFR 10.155 and 10.157. The purpose of the amendments is to clarify that a respondent dissatisfied with the initial decision by the administrative law judge in a Patent and Trademark Office (PTO) disciplinary proceeding must exhaust available administrative remedies, i.e., appeal to the Commissioner of Patents and Trademarks, before seeking judicial review under 35 U.S.C. 32.

EFFECTIVE DATE: August 1, 1989.

FOR FURTHER INFORMATION CONTACT: Harris A. Pitlick by telephone at (703) 557–4035 or by mail marked to his attention and addressed to Box 8, Commissioner of Patents and Trademarks, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: It is possible that present rules may be interpreted not to explicitly require a respondent dissatisfied with the decision of the administrative law judge (initial decision) in a PTO disciplinary proceeding to file an appeal with the Commissioner of Patents and Trademarks as a condition precedent to filing a petition for review in the United States District Court for the District of Columbia under 35 U.S.C. 32.

Under 37 CFR 10.154(a), in the absence of an appeal to the Commissioner, the initial decision, without further proceedings, becomes the decision of the Commissioner thirty (30) days therefrom. Local Rule 213 of the United States District Court for the District of Columia, 37 CFR 10.157 and 35 U.S.C. 32, together provide for review of the final decision of the Commissioner by a petition in that court within 30 days of the date of that decision. Thus, the rules could be construed to permit a respondent dissatisfied with the initial decision to bypass review by the Commissioner and directly seek judicial review within 60 days of the date of the initial decision.

The purpose of 37 CFR 10.154–10.157 is to outline the steps for seeking review of an initial decision in a disciplinary proceeding. There is no provision for bypassing a determination by the Commissioner unless both parties accept the decision and do not desire any further review of the initial decision. Sections 10.155 and 10.157 have been amended to clarify that a respondent must exhaust available administrative remedies by appeal to the Commissioner before judicial review can be considered ripe.

Subsequent to a notice of proposed rulemaking setting forth the proposed amendments now adopted by this Final Rule, an amendment to 37 CFR 10.156 was adopted. *See* 54 FR 6659 (February 14, 1989). Section 10.156 now explicitly permits the respondent or the Director to make a single request for reconsideration or modification of the Commissioner's decision on appeal from an initial decision. Nothing in that rule, or in the rules adopted by this Final Rule, requires a respondent dissatisfied with the Commissioner's decision to seek reconsideration thereof. Thus, a respondent dissatisfied with the

Commissioner's decision may directly seek judicial review under 35 U.S.C. 32. In other words, for purposes of 37 CFR Part 10, exhaustion of administrative remedies is complete upon appeal to the Commissioner from the initial decision.

A notice of proposed rulemaking was published in the Federal Register on December 28, 1988 (53 FR 52438) and the *Official Gazette* on January 17, 1989 (1098 O.G. 527). Interested parties were requested to submit written comments on or before February 27, 1989. Comments from two (2) sources were received. None of the suggestions made in the comments have been adopted. A detailed analysis of the comments follows:

Comment: The proposed rules do not go quite far enough in order to comply with 5 U.S.C. 704, which specifies that—

> agency action otherwise final is final for purposes of this section whether or not there has been presented or determined an application * * * unless the agency otherwise requires by rule and provides that the action meanwhile is inoperative, for an appeal to superior agency authority.

Since no rule specifies that the initial decision of the administrative law judge shall be inoperative, a sentence should be added to the end of 37 CFR 10.154(a) stating that pending an appeal to the Commissioner in accordance with § 10.155 the decision of the administrative law judge will be inoperative. This would assure compliance with 5 U.S.C. 704 and remove any concern by practitioners subject to disciplinary proceedings that the initial decision has any binding effect prior to action by the Commissioner.

Response: The suggestion has not been adopted since it is not necessary. The above-quoted language from 5 U.S.C. 704 first appeared as part of section 10(c) of the original Administrative Procedure Act, 5 U.S.C. 1009(c) (Act of June 11, 1946, ch. 324, 10(c), 60 Stat. 243). The meaning of the language in that section is explained in the Attorney General's Manual on the Administrative Procedure Act (1947) at 101–05. The purpose of the language quoted in the comment was to provide for judicial review at the time when agency action becomes operative, rather than at some later time, such as when further review available in the agency became exhausted. Under the regulatory scheme for review following an initial decision in a PTO disciplinary proceeding, agency action—i.e., imposition of discipline on a practitioner before the Office—cannot become operative before 20 days after the date of entry of the Commissioner's decision under 37 CFR 10.156(a) or, if a request for reconsideration has been filed within those 20 days, before the date of entry of the decision on reconsideration under 37 CFR 10.156(c). In other words, the initial decision cannot become operative until such time that judicial review becomes available to the affected practitioner. The suggested change to 37 CFR 10.154(a) is, hence, unnecessary.

Comment: The evidence upon which the General Counsel has certified to the Chief Counsel for Advocacy, Small Business Administration that this proposed rule change is not expected to have a significant adverse economic impact on a substantial number of small entities has not been disclosed to the public for review and comment.

Response: No law requires that such evidence, if any, be disclosed to the public for review and comment. *See* 5 U.S.C. 605(b). The basis for the certification was that the proposed rule changes would merely make explicit what was implicitly intended by the rules as originally constituted.

Comment: The proposed rule change will have a significant adverse economic impact on a substantial number of small entities because it prolongs the time for judicial review for a person who has been refused registration to practice before the Office.

Response: Both the proposed rule changes and the rules affected thereby relate solely to practitioners already registered or otherwise permitted to practice before the Office and who have been subject to a PTO disciplinary proceeding. The rules and rule changes have no impact, economic or otherwise, on persons refused registration or permission to practice before the Office.

Other Considerations

The rule change is in conformity with the requirements of the Regulatory Flexibility Act (Pub. L. 96–354), Executive Orders 12291 and 12612 and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

The General Counsel has certified to the Chief Counsel for Advocacy, Small Business Administration that this rule change is not expected to have a significant adverse economic impact on a substantial number of small entities (Regulatory Flexibility Act, Pub. L. 96–354) because it merely makes explicit what was implicitly intended by the rules as originally constituted. Additionally, no more than a few small entities in a given year out of over 13,000 registered patent attorneys and agents and an unknown number of trademark attorneys are expected to be subject to an initial decision in a PTO disciplinary proceeding. Whatever the number of small entities, however, there would not be expected to be a significant impact on them because agency action does not take effect until after a final decision is made by the Commissioner.

The Patent and Trademark Office has determined that this proposed rule change is not a major rule under Executive Order 12291. The annual effect on the economy will be less than $100 million. There will be no major increases in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions. There will be no adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Patent and Trademark Office has also determined that this notice has no federalism implications affecting the relationship between the National Government and the States as outlined in Executive Order 12612.

This rule change does not contain a collection of information subject to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 37 CFR Part 10

Administrative practice and procedure, Courts, Inventions and patents, Lawyers, Trademarks.

For the reasons set out in the preamble and under the authority granted to the Commissioner of Patents and Trademarks by 35 U.S.C. 6, the Patent and Trademark Office amends 37 CFR Part 10 as follows:

PART 10—REPRESENTATION OF OTHERS BEFORE THE PATENT AND TRADEMARK OFFICE

1. The authority citation for 37 CFR Part 10 continues to read as follows:

Authority: 5 U.S.C. 500; 15 U.S.C. 1123; 35 U.S.C. 6, 31, 32, 41.

2. Section 10.155 is amended by adding new paragraph (d) as follows:

§ 10.155 Appeal to the Commissioner.

* * * * *

(d) In the absence of an appeal by the Director, failure by the respondent to appeal under the provisions of this section shall be deemed to be both acceptance by the respondent of the initial decision and waiver by the respondent of the right to further administrative or judicial review.

3. Section 10.157 is amended by revising paragraph (a) as follows:

§ 10.157 Review of Commissioner's final decision.

(a) Review of the Commissioner's final decision in a disciplinary case may be had, subject to § 10.155(d), by a petition filed in the United States District Court for the District of Columbia. See 35 U.S.C. 32 and Local Rule 213 of the United States District Court for the District of Columbia.

* * * * *

Dated: May 26, 1989.

Donald J. Quigg,

Assistant Secretary and Commissioner of Patents and Trademarks.

[FR Doc. 89-14673 Filed 6-20-89; 8:45 am]

BILLING CODE 3510-16-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 1 and 2

Inventions and Patents, Authority Delegations

AGENCY: Department of Veterans Affairs.

ACTION: Final regulations.

SUMMARY: The Department of Veterans Affairs (VA) amends its regulations to implement Executive Order 12591 which requires that the heads of Federal Agencies delegate authority to their government-owned, government-operated Federal laboratories to enter into cooperative research and development and licensing agreements with other Federal laboratories, State and local governments, universities, and the private sector. These final regulations effectuate the requisite delegation of authority to directors of VA Medical Centers, as heads of VA laboratories, to enter into such agreements.

EFFECTIVE DATE: June 21, 1989.

FOR FURTHER INFORMATION CONTACT: Diana M. Bloss, Deputy Assistant General Counsel (024B), Department of Veterans Affairs, 810 Vermont Avenue NW,, Washington, DC 20420, (202) 233-3651.

SUPPLEMENTARY INFORMATION: Executive Order 12591 was issued in response to the Federal Technology Transfer Act of 1986, Pub. L. 99-502, which gave discretionary authority to heads of Federal agencies to allow directors of Federal laboratories to enter into cooperative research and development and licensing agreements. VA Medical Centers are considered Federal laboratories under the Act. In conformance with Executive Order 12591 and the Federal Technology Transfer Act of 1986, this final regulation amends existing regulations to delegate authority to Directors of VA medical centers, to enter into cooperative research and development and licensing agreements consistent with the Executive Order and the Act. The delegation in question is a rule of VA organization, procedure, or practice, therefore, notice of proposed regulatory development and delayed effective date is unnecessary in this instance (5 U.S.C. 553(d)(3); 38 CFR 1.12).

Since notice of proposed rulemaking is unnecesary and will not be published, these amendments do not come within the term "rule" as defined in the Regulatory Flexibility Act, 5 U.S.C. 601(2), and are therefore not subject to the requirements of the Act. Nevertheless, these amendments will not have a significant economic effect on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612.

The Secretary of Veterans Affairs hereby certifies that these regulations do not contain a major rule as the term is defined by Executive Order 12291, Federal Regulation. These regulations will not have a $100 million annual effect on the economy, and will not cause a major increase in costs and prices for anyone. They will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete in domestic or export markets.

These amdnemdnts do not impose any additional reporting or recordkeeping requirements on the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501 et. seq.

List of Subjects

38 CFR Part 1

Administrative practice and procedure, inventions and patents.

38 CFR Part 2

Authority delegations.

Approved: June 14, 1989.

Edward J. Derwinski,

Secretary of Veterans Affairs.

38 CFR Part 1, General, and 38 CFR Part 2, Delegations of Authority, are amended as follows:

PART 1—[AMENDED]

1. Section 1.653 is revised to read as follows:

§ 1.653 Delegation of authority.

The General Counsel is authorized to act for the Secretary of Veterans Affairs in matters concerning patents and inventions, unless otherwise required by law. The Directors of VA Medical Centers are delegated the authority to enter into cooperative research and development and license agreements under the Federal Technology Transfer Act of 1986, Pub. L. 99-502. The determination of rights to invention as between the Government and the employee where there is no cooperative research and development agreement shall be made by the General Counsel, in accordance with 37 CFR Part 500.

(Authority: E.O. 12591)

§§ 1.654, 1.655 [Amended]

2. In §§ 1.654 and 1.655 remove the words "Veterans Administration" wherever they appear and add, in their place, the words "Department of Veterans Affairs".

PART 2—[AMENDED]

3. Section 2.83 is revised to read as follows:

§ 2.83 General Counsel is authorized to act for the Secretary of Veterans Affairs in matters concerning patents and inventions, unless otherwise required by law. The Directors of VA Medical Centers are delegated the authority to enter into cooperative research and development and licensing agreements under the Federal Technology Transfer Act of 1986, Pub. L. 99-502. The determination of rights to an invention as between the Government and the employee where there is no cooperative research and development agreement shall be made by the General Counsel in accordance with 37 CFR Part 500.

This delegation of authority is identical to § 1.653 of this chapter.

(Authority: E.O. 12591)

[FR Doc. 89-14621 Filed 6-20-89; 8:45 am]

BILLING CODE 8320-01-M

38 CFR Part 3

RIN 2900-AD53

Diseases Subject to Presumptive Service Connection, and Payment of the Special Allowance Under Section 156 of Pub. L. 97-377

AGENCY: Department of Veterans Affairs.

ACTION: Final regulations.

SUMMARY: The Department of Veterans Affairs (VA) has amended two regulations to implement recently enacted legislation. The chronic

diseases subject to presumption of service connection and the diseases subject to presumption of service connection for certain prisoners of war (POWs) are expanded. Presumptions of service connection are established for certain cancers for radiation-exposed veterans. The prohibition against payments under the Restored Entitlement Program for Survivors (REPS) for one group of claimants has been removed. The intended effect of these changes is to expand eligibility for certain claimants in accordance with the law.

EFFECTIVE DATE: These changes are effective May 20, 1988, the date of enactment of Pub. L. 100–322, except for § 3.309(d) which is effective May 1, 1988, in accordance with Pub. L. 100–321.

FOR FURTHER INFORMATION CONTACT: Joel Drembus, Legal Consultant, Regulations Staff, Compensation and Pension Service (211B), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233–3005.

SUPPLEMENTARY INFORMATION: On pages 50547–50550 of the **Federal Register** of December 16, 1988, VA published proposals to amend §§ 3.309 and 3.812 to implement Pub. L. 100–321 and Pub. L. 100–322. A correction was published on page 733 of the **Federal Register** of January 9, 1989. Interested persons were invited to submit comments, suggestions, or objections by January 17, 1989. Three comments were received.

One commenter noted that should the amendments to §§ 3.309 and 3.111b (the latter having been published on pages 48551–48552 of the **Federal Register** of December 1, 1988) become final, five of the 13 diseases that could be service-connected by presumption (lymphomas (except Hodgkin's disease), and cancers of the pharynx, small intestine, bile ducts, and gall bladder) would not be considered to be "radiogenic" in § 3.311b(b)(2). It was suggested that the five diseases be added to the list of "radiogenic" diseases in § 3.311b(b)(2) as there is sound scientific and medical evidence to do so.

As the suggested additions to the list of "radiogenic" diseases are outside the scope of the original proposal and have not been subject to public comment, they will be given separate consideration. We will consult with the Veterans' Advisory Committee on Environmental Hazards and will consider whether there is sound scientific and medical evidence to warrant our adding any or all of the five diseases to the list of "radiogenic" diseases. Should we conclude that any or all of the five should be "radiogenic," we will implement a new rulemaking procedure for the further amendment of § 3.311b(b)(2).

Another commenter suggested that § 3.309(d) be amended to include participation in atmospheric nuclear tests conducted by nations other than the United States. We do not concur as the congressional intent expressed in the introductory paragraph to Pub. L. 100–321, in pertinent part, was to provide a presumption of service connection to veterans who participated in atmospheric or underwater nuclear tests as part of the United States nuclear weapons testing program. We have amended § 3.309(d)(4)(ii)(A) to reflect such congressional intent.

A third commenter suggested that the term, "radiation-risk activity," be amended to include the following: (1) Members of any crew aboard a ship or aircraft not assigned to the primary test site who participated in support activities related to the atmospheric testing of nuclear weapons; (2) Members of any military organization involved in the transportation, handling, maintenance, arming of nuclear weapons and/or investigation of nuclear accidents; and (3) Any person who participated in human experimentation involving the use of any radioactive material. As to the first group, such persons are included in § 3.309(d)(4)(iv). We do not concur with including the second and third groups as such persons' exposure is not included in the statutory definition of "radiation-risk activity."

That commenter also referred to diseases, other than the 13 listed in Pub. L. 100–321, which should be included, and objected to the imposition of mandatory latency periods. The commenter recognized, however, that VA cannot enlarge or expand upon statutory criteria, and stated such comments were included "to complete the record."

The same commenter also suggested that prisoners of war who were not interned within 75 miles of Hiroshima or 150 miles of Nagasaki, but who were forced to work at factories within those areas at the time the atomic bombs were dropped on those cities, should be included in the regulation. We concur and have amended § 3.308(d)(4)(vii) to include former prisoners of war who, while not interned within 75 miles of Hiroshima or 150 miles of Nagasaki, can affirmatively show they worked within those areas.

Athough we received no comments regarding our proposed amendment of § 3.812, our review noted that section 1403 of Pub. L. 100–687 amended Subchapter II of Chapter 13, Title 38, United States Code, by adding section 418 and striking out section 410(b). We are therefore making a technical amendment to § 3.812(c)(2) by deleting "410(b)" and inserting "418."

We appreciate the comments and suggestions of those who responded to publication of the proposed rules. The proposed rules are adopted with the amendments noted above. The final rules are set forth below.

The Secretary hereby certifies that these final regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that these final regulations would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), these regulations are exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, we have determined that these final regulations are non-major for the following reasons:

(1) They will not have an annual effect on the economy of $100 million or more.

(2) They will not cause a major increase in costs or prices.

(3) They will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance program numbers are 64.101, 64.109, and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved: May 24, 1989.

Edward J. Derwinski,

Secretary of Veterans Affairs.

PART 3—[AMENDED]

38 CFR Part 3, Adjudication, is amended as follows:

1. In § 3.309(b), in the list of diseases, remove the word "Filiariasis" and add, in its place, the word "Filariasis".

2. In § 3.309, paragraphs (a) and (c) are amended by adding to the list of diseases contained in those paragraphs and paragraph (d) is added, to read as follows:

§ 3.309 Disease subject to presumptive service connection.

(a) * * *

Anemia, primary.
Arteriosclerosis.
Arthritis.
Atrophy, progressive muscular.
Brain hemorrhage.
Brain thrombosis.
Bronchiectasis.
Calculi of the kidney, bladder, or gallbladder.

Cardiovascular-renal disease, including hypertension. (This term applies to combination involvement of the type of arteriosclerosis, nephritis, and organic heart disease, and since hypertension is an early symptom long preceding the development of those diseases in their more obvious forms, a disabling hypertension within the 1-year period will be given the same benefit of service connection as any of the chronic diseases listed.)

Cirrhosis of the liver.
Coccidioidomycosis.
Diabetes mellitus.
Encephalitis lethargica residuals.
Endocarditis. (This term covers all forms of valvular heart disease.)
Endocrinopathies.
Epilepsies.
Hansen's disease.
Hodgkin's disease.
Leukemia.
Lupus erythematosus, systemic. * * *

* * * * *

(c) * * *

Avitaminosis.
Beriberi (including beriberi heart disease).
Chronic dysentery.
Helminthiasis.
Malnutrition (including optic atrophy associated with malnutrition).
Pellagra.
Any other nutritional deficiency.
Psychosis.
Any of the anxiety states.
Dysthymic disorder (or depressive neurosis).

Organic residuals of frostbite, if it is determined that the veteran was interned in climatic conditions consistent with the occurrence of frostbite.

Post-traumatic osteoarthritis.
Irritable bowel syndrome.
Peptic ulcer disease.
Peripheral neuropathy except where directly related to infectious causes.

(Authority: 38 U.S.C. 312)

(d) *Diseases specific to radiation-exposed veterans.* (1) The diseases listed in paragraph (d)(2) of this section shall be service-connected if they become manifest in a radiation-exposed veteran as defined in paragraph (d)(4) of this section to a degree of 10 percent or more within the presumptive period specified in paragraph (d)(3) of this section, provided the rebuttable presumption provisions of §3.307 of this part are also satisfied.

(2) The diseases referred to in paragraph (d)(1) of this section are the following:

(i) Leukemia (other than chronic lymphocytic leukemia).
(ii) Cancer of the thyroid.
(iii) Cancer of the breast.
(iv) Cancer of the pharynx.
(v) Cancer of the esophagus.
(vi) Cancer of the stomach.
(vii) Cancer of the small intestine.
(viii) Cancer of the pancreas.
(ix) Multiple myeloma.
(x) Lymphomas (except Hodgkin's disease).
(xi) Cancer of the bile ducts.
(xii) Cancer of the gall bladder.
(xiii) Primary liver cancer (except if cirrhosis or hepatitis B is indicated).

(3) The presumptive period referred to in paragraph (d)(1) of this section is:

(i) In the case of leukemia (other than chronic lymphocytic leukemia), the 30-year period beginning on the last date on which the veteran participated in a radiation-risk activity.

(ii) In the case of other disease listed in paragraph (d)(2) of this section, the 40-year period beginning on the last date on which the veteran participated in a radiation-risk activity.

(4) For purposes of this section:

(i) The term "radiation-exposed veteran" means a veteran who, while serving on active duty, participated in a radiation-risk activity.

(ii) The term "radiation-risk activity" means:

(A) Onsite participation in a test involving the atmospheric detonation of a nuclear device by the United States.

(B) The occupation of Hiroshima or Nagasaki, Japan, by United States forces during the period beginning on August 6, 1945, and ending on July 1, 1946.

(C) Internment as a prisoner of war in Japan (or service on active duty in Japan immediately following such internment) during World War II which resulted in an opportunity for exposure to ionizing radiation comparable to that of the United States occupation forces in Hiroshima or Nagasaki, Japan, during the period beginning on August 6, 1945, and ending on July 1, 1946.

(iii) The term "atmospheric detonation" includes underwater nuclear detonations.

(iv) The term "onsite participation" means:

(A) During the official operational period of an atmospheric nuclear test, presence at the test site, or performance of official military duties in connection with ships, aircraft or other equipment used in direct support of the nuclear test.

(B) During the six month period following the official operational period of an atmospheric nuclear test, presence at the test site or other test staging area to perform official military duties in connection with completion of projects related to the nuclear test including decontamination of equipment used during the nuclear test.

(C) Service as a member of the garrison or maintenance forces on Eniwetok during the periods June 21, 1951 through July 1, 1952, August 7, 1956 through August 7, 1957 or November 1, 1958 through April 30, 1959.

(D) Assignment to official military duties at Naval Shipyards involving the decontamination of ships that participated in Operation Crossroads.

(v) The term "operational period" means:

(A) For Operation *TRINITY* the period July 16, 1945 through August 6, 1945.

(B) For Operation *CROSSROADS* the period July 1, 1946 through August 31, 1946.

(C) For Operation *SANDSTONE* the period April 15, 1948 through May 20, 1948.

(D) For Operation *RANGER* the period January 27, 1951 through February 6, 1951.

(E) For Operation *GREENHOUSE* the period April 8, 1951 through June 20, 1951.

(F) For Operation *BUSTER-JANGLE* the period October 22, 1951 through December 20, 1951.

(G) For Operation *TUMBLER-SNAPPER* the period April 1, 1952 through June 20, 1952.

(H) For Operation *IVY* the period November 1, 1952 through December 31, 1952.

(I) For Operation *UPSHOT-KNOTHOLE* the period March 17, 1953 through June 20, 1953.

(J) For Operation *CASTLE* the period March 1, 1954 through May 31, 1954.

(K) For Operation *TEAPOT* the period February 18, 1955 through June 10, 1955.

(L) For Operation *WIGWAM* the period May 14, 1955 through May 15, 1955.

(M) For Operation *REDWING* the period May 5, 1956 through August 6, 1956.

(N) For Operation *PLUMBBOB* the period May 28, 1957 through October 22, 1957.

(O) For Operation *HARDTACK I* the period April 28, 1958 through October 31, 1958.

(P) For Operation *ARGUS* the period August 27, 1958 through September 10, 1958.

(Q) For Operation *HARDTACK II* the period September 19, 1958 through October 31, 1958.

(R) For Operation *DOMINIC I* the period April 25, 1962 through December 31, 1962.

(S) For Operation *DOMINIC II/ PLOWSHARE* the period July 6, 1962 through August 15, 1962.

(vi) The term "occupation of Hiroshima or Nagasaki, Japan, by United States forces" means official military duties within 10 miles of the city limits of either Hiroshima or Nagasaki, Japan, which were required to perform or support military occupation functions such as occupation of territory, control of the population, stabilization of the government, demilitarization of the Japanese military, rehabilitation of the infrastructure or deactivation and conversion of war plants or materials.

(vii) Former prisoners of war who had an opportunity for exposure to ionizing radiation comparable to that of veterans who participated in the occupation of Hiroshima or Nagasaki, Japan, by United States forces shall include those who, at any time during the period August 6, 1945, through July 1, 1946:

(A) Were interned within 75 miles of the city limits of Hiroshima or within 150 miles of the city limits of Nagasaki, or

(B) Can affirmatively show they worked within the areas set forth in paragraph (d)(4)(vii)(A) of this section although not interned within those areas, or

(C) Served immediately following internment in a capacity which satisfies the definition in paragraph (d)(4)(vi) of this section, or

(D) Were repatriated through the port of Nagasaki.

(Authority: 38 U.S.C. 312)

3. In § 3.812, paragraph (c)(2) is revised, paragraph (c)(3) is removed and old paragraph (c)(4) is redesignated as new paragraph (c)(3) to read as follows:

§ 3.812 Special allowance payable under section 156 of Pub. L. 97-377.

* * * * *

(c) * * *

(2) Claimants eligible for death benefits under 38 U.S.C. 418. The deaths in such cases are not service connected.

(3) Claimants whose claims are based on an individual's service in:

(i) The Commonwealth Army of the Philippines while such forces were in the service of the Armed Forces pursuant to the military order of the President dated July 26, 1941, including recognized guerrilla forces (see 38 U.S.C. 107).

(ii) The Philippine Scouts under section 14, Pub. L. 190, 79th Congress (see 38 U.S.C. 107).

(iii) The commissioned corps of the Public Health Service (specifically excluded by section 156 of Pub. L. 97-377), or

(iv) The National Oceanic and Atmospheric Administration (specifically excluded by section 156 of Pub. L. 97-377).

* * * * *

[FR Doc. 89-14622 Filed 6-20-89; 8:45 am]
BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region II Docket No. 97; FRL-3602-4]

Approval and Promulgation of Implementation Plans; Revision to the State of New York Implementation Plan for Ozone

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA is approving the State Implementation Plan (SIP) revision submitted by the State of New York. These revisions will reduce emissions of volatile organic compounds from gasoline by limiting the Reid Vapor Pressure (RVP) of gasoline sold between June 30 and September 15 in 1989 and between May 1 and September 15 of each year thereafter to 9 pounds per square inch. EPA is also finding that the New York RVP regulations are "necessary to achieve" the national ambient air quality standard (NAAQS) for ozone and are therefore excepted from preemption under section 211 of the Clean Air Act. The intended effect of this action is to make necessary progress towards attainment of the ozone standard as expeditiously as practicable as required under the Clean Air Act.

EFFECTIVE DATE: This action will be effective June 30, 1989.

ADDRESSES: Copies of the State submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region II Office, Air Programs Branch, 26 Federal Plaza, Room 1005, New York, New York 10278.

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

New York State Department of Environmental Conservation, Division of Air Resources, 50 Wolf Road, Albany, New York 12233.

FOR FURTHER INFORMATION CONTACT: Mr. William S. Baker, Chief, Air Programs Branch, Environmental Protection Agency, 26 Federal Plaza, Room 1005, New York, New York 10278, (212) 264-2517.

SUPPLEMENTARY INFORMATION:

Introduction

This notice describes EPA's decision to approve revisions to the New York SIP which limit the volatility of gasoline from June 30 to September 15 in 1989 and from May 1 to September 15 every year thereafter. The remainder of this preamble is divided into four sections. The first provides the background for this action, with respect to both chronology and the broad issues involved. The second section presents today's action and EPA's rationale. The third section summarizes the comments received on the proposed action and EPA's responses to them. The final section discusses the enforceability of New York's regulation with regard to the test methods as discussed in EPA's proposed rulemaking notice.

Background

On November 12, 1987, the Commissioners of the Northeast States for Coordinated Air Use Management (NESCAUM) signed a Memorandum of Understanding expressing their intention to reduce the Reid Vapor Pressure (RVP) of gasoline to 10 pounds per square inch (psi) starting in the summer of 1988 and to 9 psi in the summer of 1989 and continuing every ozone season thereafter. Since there were delays in adopting necessary regulations, the 1988 limit of 10 psi was eliminated and New York passed a regulation limiting the RVP of gasoline to 9 psi from May 1 to September 15 starting in 1989 and continuing each year thereafter. On January 31, 1989, New York submitted a SIP revision to EPA for approval to implement this provision.

On March 22, 1989, EPA published a **Federal Register** notice (54 FR 11868) taking final action on national regulation of RVP, to take effect this summer. The maximum allowed summertime RVP in New York under the federal regulation is 10.5 psi. Under section 211(c)(4)(A) of the Clean Air Act (the Act), EPA's final action preempted inconsistent state control of RVP, except in California. In its final action, EPA noted that states could be exempted from preemption

only if EPA finds it is "necessary" to achieve the NAAQS as provided in section 211(c)(4)(C) of the Act. Section 211(c)(4)(C) of the Act states: "A state may prescribe and enforce, for purposes of motor vehicle emission control, a control or prohibition respecting the use of a fuel or fuel additive in a motor vehicle or motor vehicle engine if an applicable implementation plan for such State under section 110 so provides. The Administrator may approve such provision in an implementation plan, or promulgate an implementation plan containing such a provision, only if he finds that the State control or prohibition is necessary to achieve the national primary or secondary ambient air quality standard which the plan implements." In its March 22, 1989 notice, EPA made specific note of the NESCAUM states' initiatives and the conditions for EPA approval of state RVP regulations.

On March 28, 1989, EPA published a **Federal Register** notice (54 FR 12656) proposing approval of the New York SIP revision. EPA also proposed to find that these revisions were "necessary" to achieve the NAAQS for ozone within the meaning of section 211(c)(4)(C) of the Act and, thus, meet the requirements for an exception to Federal preemption.

Description of Today's Action

EPA today approves revisions to the New York SEP which limit gasoline volatility to 9 psi between June 30 and September 15 in 1989 and between May 1 and September 15 in each year thereafter. The New York program includes authority for the State to issue waivers to invididual suppliers if necessary to avoid supply dislocations. EPA is approving the program as a whole, including any waivers the State might issue under this authority. This aspect of EPA's approval is discussed in full under section 9 of the next portion of this notice describing EPA's response to comments.

EPA is also explicitly finding that the New York revisions are "necessary to achieve" the NAAQS within the meaning of section 211(c)(4)(C) of the Act. This means that New York's RVP regulations are not preempted by the Federal RVP regulations promulgated on March 22, 1989.

EPA's rationale for this action and its effective date are presented below. In this context many issues raised by commenters on the proposal will be addressed. The remaining comments will be discussed in the next portion of this notice.

In approving the New York RVP SIP revisions, EPA must consider requirements imposed by two different sections of the Clean Air Act. As with all SIP revisions, section 110 provides the requirements for approval into the SIP. In this case, since EPA has promulgated Federal RVP regulations, section 211(c)(4)(A) preempts inconsistent State control. However, section 211(c)(4)(C) provides that the Administrator may except a State RVP control program from preemption if he finds it is "necessary" to achieve the NAAQS. Thus, the New York revisions must satisfy both section 110 and section 211 requirements to gain approval.

EPA has concluded that the New York RVP regulations are "necessary" to achieve the ozone NAAQS. In reaching this conclusion EPA has followed the test first articulated in approving the Maricopa County, Arizona SIP (53 FR 17413 (May 19, 1988) and 53 FR 30228 (August 10, 1988)) and later presented in the proposed approval of the New York revisions. EPA stated that if, after accounting for the possible reductions from all other reasonable control measures, New York could demonstrate that RVP controls are still required to achieve the standard, then RVP controls are necessary within the meaning of section 211(c)(4)(C). EPA will not interpret that provision to require a State to impose more drastic measures such as driving prohibitions or source shutdowns before it can adopt its own fuel control program.

As discused in the notice of proposed rulemaking (NPR), the record indicates that the New York City Metropolitan Area (NYCMA) needs VOC emission reductions on the order of at least 33.8 percent from 1987 inventory levels to achieve the standard. The State reviewed approximately 25 measures suggested by EPA as reasonable in addition to RVP control to 9 psi and found they could together potentially achieve an 11.7 percent reduction from 1987 levels in the NYCMA. Enhancements to the State's vehicle inspection and maintenance (I/M) program could produce an additional 2.4 percent reduction. As indicated at proposal, while EPA's regulation of gasoline to 10.5 psi reduces the emission reduction attributable to the State regulation, it does not affect the bottom line, a shortfall will still exist. EPA's technical review of the data presented in the State submission and by the commenters affirms the conclusion that a shortfall will exist even with all reasonable State and Federal measures.

EPA continues to believe that the fact that the State RVP regulation might not by itself fill the shortfall and hence by itself achieve the standard does not mean the rule is not "necessary to achieve" the NAAQS. It is simple logic that "necessary" is not the same as "sufficient". EPA believes that the "necessary to achieve" standard must be interpreted to apply to measures which are needed to reduce ambient levels when no other measures that EPA or the State has found reasonable are available to achieve this reduction. Beyond such identified "reasonable" measures, EPA need look at other measures before RVP control, only if it has clear evidence that RVP control would have greater adverse impacts than those alternatives. EPA has no such evidence here. Therefore, EPA can defer to New York's apparent view that RVP control is the next less costly (or is itself a reasonable) measure. Thus, EPA concludes that New York's RVP regulations are "necessary" to achieve the NAAQS.

Summary of Public Comments and EPA's Responses

The major issues discussed in the comments are: (1) What constitutes a finding of "necessary to achieve" the standard under section 211(c)(4)(C); (2) whether there has been an adequate technical demonstration that controlling RVP to 9 psi is "necessary" (i.e., whether the threshold for exemption from preemption has been crossed); (3) the scope of EPA's discretion assuming a finding that State RVP controls are necessary to achieve the standard; (4) what effect the 9 RVP limit in New York will have on the cost and supply of gasoline in the State and the Northeast; (5) driveability and safety concerns; (6) whether there is an ozone problem in New York; (7) whether the State has an adequate enforcement program or sufficient resources to implement the State regulations; (8) whether the State provided "reasonable opportunity" for public comment; (9) what exemptions or waivers from the State regulations should be allowed; (10) the appropriate timing for making the State regulation effective; and (11) whether EPA should withdraw or repropose this action or reopen the public comment period in light of EPA's recent promulgation of Federal RVP regulations and other alleged deficiencies in EPA's proposed action. Each issue is explored in detail below.

1. What constitutes a finding of "necessary to achieve" the standard under section 211(c)(4)(C) of the Act?

a. Making the "Necessary" Finding Without a Demonstration of Attainment

Comments. One group of comments questioned EPA's ability to make a

finding that New York's RVP regulation is necessary to attain the ozone standard without going through the complete planning process involved in approving a state's response to EPA's finding that the current SIP is substantially inadequate to achieve the standard (the "SIP call"). Several comments stated that EPA cannot approve New York's RVP regulation as a SIP revision without finding that the SIP as a whole achieves attainment of the NAAQS for ozone. Related comments questioned EPA's ability to determine whether New York's RVP controls are necessary without a new updated inventory of VOC sources which EPA will require from the states with ozone nonattainment areas as part of their response to the SIP calls.

Response. Through its SIP calls, EPA has imposed on states like New York an obligation to revise their ozone SIPs and demonstrate attainment of the standard. The thrust of these comments is that EPA cannot make a finding of necessity without the state first having gone through the new planning process and developing a new demonstration of attainment. EPA does not interpret section 211(c)(4)(C) to require a complete demonstration of attainment in order to approve a measure which will contribute to attainment.

Forcing a state to demonstrate attainment before allowing it to adopt stricter fuel controls would yield perverse results. Areas with the worst ozone nonattainment problems, which have the most difficulty assembling a demonstration of attainment, would be disabled for perhaps several years from adopting clearly necessary, stricter than the national, RVP controls. Several commenters noted that New York so far has not been able to identify any combination of control measures which would bring the State into attainment. It is precisely in areas like New York, with an especially difficult nonattainment problem, where the expeditious implementation of new controls, and hence the finding of necessity under section 211(c)(4)(C), is most appropriate.

Beyond that, it is reasonable for EPA to use the best information it now has available to determine whether New York's RVP program will be necessary to achieve the standard without having to wait for New York to complete its planning response to the SIP call, including its updated inventory. As explained below, the VOC inventory and reduction figures New York submitted to EPA was based on reasonably reliable models EPA has used in the past. Such figures are always capable of refinement, but in the Agency's judgment the expenditure of time required to do so is not worth the marginally improved accuracy. *See Vermont Yankee Nuclear Power v. N.R.D.C.*, 435 U.S. 519, 544–555 (1978).

EPA has not yet set a date certain by which New York must attain the ozone standard. Congress may address the widespread nonattainment problem in the amendments to the Act now being considered. In the meantime EPA has also proposed its own policy for how to deal with SIP planning for nonattainment areas in the post-1987 period (52 FR 45104, November 24, 1987). The air quality analysis New York submitted made it clear that RVP control beyond the federal requirements will be necessary to any attainment plan, whether the attainment date that Congress or EPA selects is imminent or long-term. Moreover, there is widespread agreement among EPA and the States in the Northeast that major VOC reductions, probably exceeding the 33.8 percent estimated by EPA in this case, will be required to get close to attaining the ozone standard. Nothing in the air quality data from the summer of 1988, which have become available in quality-assured form since publication of the proposal, indicates that the reduction requirement projected by the New York analysis overstates the reduction necessary to achieve the standard. Beyond that, the history of ozone planning over the last decade makes it clear that reduction targets are seldom overestimated.

Furthermore, EPA's approval of this revision now is consistent with section 110(a)(2)(A) of the Act, which requires attainment "as expeditiously as practicable." Interpreting section 211(c)(4)(C) to require a complete attainment demonstration before EPA can approve (and a state can implement) a fuel control that the state has determined to be practicable and that would advance the attainment date would effectively put section 211(c)(4)(C) in conflict with section 110(a)(2)(A). It is doubtful that Congress intended EPA to choose an interpretation that would create such a conflict.

b. Upstate Nonattainment Areas

Comments. Several comments were received on the propriety of EPA's section 211(c)(4)(C) finding for upstate areas of New York which are in nonattainment, and EPA's finding that the application of the program statewide is necessary to achieve the ozone standard as expeditiously as practicable in all of the upstate and downstate nonattainment areas. One commenter stated that EPA has not issued a SIP call for the upstate areas pending analysis of the 1988 ozone data, therefore New York is not required to take action in the upstate areas. Another commenter suggested that it is impossible for EPA to evaluate the reductions claimed for the upstate areas since there is no inventory for this part of the State.

Response. The SIP call issued in May 1988 was based on air quality data through 1987 which indicated that the only upstate area in nonattainment was Jefferson County. During 1988, ozone violations indicating actual nonattainment were recorded in Erie, Niagara, Dutchess, Albany, Essex, Schenectady, Rensselaer, Saratoga, and Washington Counties. At the moment, EPA is quality-assuring this data. Once this process is complete, EPA anticipates that the State will be asked to revise its SIP accordingly to provide for mitigation strategies in these areas. It seems clear that the upstate areas are experiencing violations of the ozone standard, and thus must put in place such measures as are necessary to bring the areas into attainment of the standard. As EPA explained in its proposal, New York has indicated that no measures other than the RVP program could be implemented in the upstate areas rapidly enough to provide any emission reductions during the 1989 ozone season, and that available measures which would produce emission reductions of the magnitude of the RVP program could not be in place for several years. Moreover, the emissions reductions that the RVP program would achieve are so large that the program could very well produce attainment of the ozone standard during the 1989 ozone season in those areas. By this logic, and assuming, as New York has, that the RVP program is practicable, the program appears to be necessary to produce attainment in the upstate areas, "as expeditiously as practicable," as required by the Act. None of the comments submitted on this issue disputes these findings.

Beyond that, two of the comments supported EPA's proposed approval for the upstate areas in part because of the benefits that would result by reducing emissions transport to other downwind nonattainment areas. EPA is currently working with the Northeast States on a Regional Oxidant Modeling study on the Northeast transport (ROMNET) problem. As part of the study, the Agency hopes to quantify the extent to which transport from each State in the Northeast affects the air quality in the Northeast region. While this study is not yet complete, EPA and the Northeast States agree that transport is a special

problem in the Northeast, and that New York State is one of the key states involved. In fact, what is known generally about ozone formation suggests that emissions from upstate New York may contribute to ozone formation in western New England, an area that has experienced ozone standard violations. This suggests that controlling upstate New York emissions may well be necessary for timely attainment in parts of New England. Thus, the commenters' claims on transport tend to confirm the appropriateness of EPA's proposed finding that the New York RVP program is necessary for timely attainment of the ozone standard.

For these reasons, EPA concludes that the RVP program is necessary to provide for timely attainment. It is therefore appropriate for the Agency to make a section 211(c)(4)(C) finding for the upstate areas.

As to the validity of the reductions claimed for the upstate areas, it is true that the State has not yet been required to develop and submit emission inventories as part of the SIP for the upstate areas. However, it should be noted that both New York and EPA maintain statewide emission inventory databases (respectively entitled the Source Management System and the National Emissions Data System) which are adequate to evaluate the reductions claimed for the upstate areas.

Finally, EPA noted a proposal that New York had made the RVP program effective on a statewide basis in order to ensure compliance with the program in all of the upstate and downstate nonattainment areas. None of the comments submitted disputed the necessity of this program coverage. New York did grant, a waiver to the western half of the state based on supply considerations. This waiver is discussed in more detail in sections 9 and 11 below.

c. The Standard EPA Has Applied To Determine Whether Fuel Controls Are Necessary Compared With Other Controls

Comments. Several commenters maintained that EPA had not adequately analyzed whether there are other control strategies reasonably available which New York should implement before resorting to RVP controls inconsistent with the federal regulation. EPA will address these comments in section 2c below. Other comments concerned the standard that EPA should use to determine whether RVP controls are necessary compared to other controls.

Response. In the proposal for this action, EPA used the approach it first announced when approving the Maricopa County, Arizona SIP (53 FR 17413 (May 19, 1988); 53 FR 30228 (August 10, 1988)) to determine whether RVP controls beyond the federal program are necessary to attain the ozone standard in New York. Under that approach, if after accounting for the possible reductions from all other reasonable control measures, New York could demonstrate that RVP controls are still required to achieve the standard, then RVP controls are necessary within the meaning of section 211(c)(4)(C). For the reasons stated in the Arizona action and the New York proposal, EPA will not interpret section 211(c)(4)(C) to require a state to impose more drastic measures such as driving prohibitions or source shutdowns before it can adopt its own fuel control program.

New York has demonstrated to EPA that implementing all the control measures which EPA now believes to be reasonably available to New York for VOC control (including measures that the State has already adopted and is now beginning to implement) would not achieve compliance with the ozone standard. The roster of control measures New York examined corresponds to the list of controls EPA has identified for states to implement in response to the ozone SIP calls, and represents EPA's best judgment as to the controls which could now be reasonably implemented. See EPA's proposed post-1987 ozone policy (52 FR 45104, appendix C, November 24, 1987). After examining all controls EPA has determined to be reasonable, a state is free to make its own determination as to what control measures should next be employed.

One commenter maintained that EPA's method for determining what is necessary is too vague because it would allow EPA to approve state fuel controls "simply because alternative measures are more inconvenient, unpopular, or costly." As discussed in section 2c below, EPA examined reasonable alternative controls which New York could implement and determined they would not achieve enough reduction to achieve the standard. EPA also has determined that remaining controls such as gas rationing, driving reductions, and source shutdowns are so drastic that the State may resort to fuel controls first. This judgment concerning what is too drastic is a complicated policy determination requiring the Administrator to weigh precisely those factors which the commenter would exclude from his consideration—whether the remaining alternatives are costly or unpopular. In *Amoco Oil Co.* v. *Environmental Protection Agency,* 501 F.2d 722, 740–741 the court distinguished between the factual foundation which EPA must provide in its administrative decisions and policy judgments which are an integral part of the findings Congress requires the Administrator to make under the Act:

> Where by contrast, the regulations turn on choices of policy, on an assessment of risks, or on predictions dealing with matters on the frontiers of scientific knowledge, we will demand adequate reasons and explanations, but not 'findings' of the sort familiar from the world of adjudication.

Id. at 741. EPA's and New York's analysis of reasonably available controls is based on a factual record supported by the best analytical tools the agencies had available to them at the time. EPA's judgment that State fuel regulation is a less drastic course than gas rationing and other unpopular controls so far not implemented in any SIP is clearly a matter on the frontier of air pollution control planning, and therefore cannot (and need not) be supported by the same technical record as, for example, EPA's determination that New York needs at least a 33.8 percent reduction from its 1987 inventory to attain the standard.

2. Have New York and EPA made an adequate technical demonstration that controlling RVP to 9 psi is "necessary" to atain the NAAQS?

a. Adequacy of Emission Inventory

Comments. Three petroleum industry commenters argued that the emission inventory used in the technical demonstration is inadequate. They pointed out that EPA has already requested that New York prepare a new inventory as part of its response to the SIP call. Therefore it is argued that New York's reliance on the old inventory is inappropriate.

Response. As described in EPA's Technical Support Document, the emission inventory used by New York and reviewed by EPA is based on EPA's "Compilation of Air Pollutant Emission Factors", known by its document number "AP–42." This document and its updates are EPA's longstanding guidance for determining emissions for inventory purposes and has served as the basis for ozone SIP inventories since the mid-1970s. Mobile source emissions were estimated using the then current version of EPA's mobile source emissions model, MOBILE 3, consistent with standard EPA guidance. While EPA has called for many states, including New York, to update their inventories

for post-1987 SIP planning purposes, the Agency has continued to use existing inventories in evaluating current control proposals. EPA expects the new New York inventory, not due until late 1989, to show higher emissions than the current inventory since it is expected to include more sources and improved quality assurance. Thus, if the current inventory is lacking, it understates current emissions and errs such that the likely percentage reduction needed to attain the standard is also understated.

As stated in the NPR, EPA believes that if there is an error in quantifying the emission reductions resulting from control to 9 psi, those reductions are understated. If the newly released mobile source emission model, MOBILE4, which includes the effects of running losses, were used, one would expect the reduction in tons of VOCs to increase significantly. Furthermore, contrary to the commenters' belief, the estimated emission reduction is based on reductions achieved during only the four and one-half months each year the regulation is effective. This approach may understate the reduction since 9 psi fuel may be in the distribution system up to two additional months on each end of the regulatory season.

Also contrary to the commenters' claim, EPA's Technical Support Document (TSD) does contain an estimate of the emission reduction achieved by going from EPA's 10.5 psi limit to New York's 9 psi limit. EPA estimated a 1.8 percent reduction from the 1987 inventory. This estimate does account for nonlinearity in emissions with decreasing RVP limits.

b. Appropriateness of the Modeling Demonstration

Comments. While some commenters agreed that modeling was necessary to evaluate the air quality benefit of the RVP reduction, they objected to EPA's reliance on the Regional Oxidant Model (ROM). The commenters also raised concerns about the appropriate hydrocarbon to nitrogen-oxides (NO_x) ratios to be used in such modeling. A third modeling issue concerns New York's and EPA's inability to associate a quantified increment of improved air quality with the control of RVP to 9 psi.

Response. The claim that the ROM does not provide the spatial resolution needed for accurate prediction in individual urban areas loses sight of the fact that we are evaluating a statewide program. The Urban Airshed Model suggested by these commenters is appropriate for large urban areas but would have to be run over at least two different geographic domains to cover the entire State. Caught between the two available model scales, it is EPA's technical judgment that the ROM is an appropriate tool to use in evaluating future reductions needed for New York.

EPA understands the concern that past strategies have focused almost exclusively on controlling VOCs instead of NO_x. As indicated in EPA's proposed post-1987 ozone strategy, future control scenarios are likely to include NO_x. However, it is highly unlikely that NO_x control alone will suffice. The best technical information available to EPA at this time concerning the Northeast ozone problem points to the need for substantial VOC reductions and at least modest NO_x reductions in the future to attain the ozone standard.

The last modeling issue concerned New York's and EPA's inability to associate a quantified increment of improved air quality with the control of RVP to 9 psi. While such a modeling exercise would be ideal it is unlikely that one would have much confidence in the outcome of such a sensitivity test. The atmosphere's response to emission reductions of ozone precursors is highly nonlinear such that small increments of reduction may show little or no effect on their own. However, when the reductions from the State's many strategies are aggregated, the total impact becomes quantifiable. Thus, even though New York and EPA cannot pinpoint where the air quality will improve by what amount on what day, we are confident that there will be a net improvement in ozone levels if New York were to decrease VOC emissions by 1.8 percent.

c. Consideration of Other Alternatives

Comments. Commenters expressed concern that New York and EPA have failed to consider other significant alternative control measures that could lead to attainment, including Stage II vapor recovery systems, source categories that are listed in EPA's post-1987 strategy, more stringent motor vehicle standards, and a host of transportation control measures (TCMs).

Response. EPA believes that sufficient alternatives were considered. EPA and the State have considered the emission reduction potential of 23 different point and area source categories corresponding to those suggested by EPA in its proposed post-1987 ozone policy (52 FR 45104, Appendix C, November 24, 1987). Not surprisingly, some of the source categories are not relevant because there are no major sources in those categories in New York or because the State has already adopted controls for those categories. As noted in the proposal, most of the relevent categories have potential reductions that are very small and, when combined, total less than 1.5 percent of the 1987 inventory. Other strategies that the State committed to in its previous SIP but have yet fully implemented (including such extraordinary measures as architectural coatings, consumer/commercial solvents and auto refinishing) would produce emission reduction on the order of 10.2 percent, for a total reduction of 11.7 percent. This would still leave a shortfall of 22.1 percent.

Two commenters noted that the proposal did not account for the emissions reductions that are attributable to Stage II vapor recovery systems. While reductions due to Stage II were not mentioned in the NPR, the TSD did note that the reductions from RVP control (9,000 TPY) would be second only to Stage II controls (10,800 TPY). Since New York has already adopted and begun to implement Stage II controls, the shortfall discussed in the NPR was calculated above and beyond those reductions attributable to Stage II controls.

With respect to TCMs, the commenters failed to take account of the fact that the existing New York SIP (40 CFR 52.1670(c)(61)) contains provisions for the implementation of public transportation improvements in the NYCMA. It is true that New York has not implemented the types of TCMs suggested by EPA in its proposed post-1987 ozone strategy. However, based on EPA's experience with the implementation of these measures in other areas, we expect that New York would only achieve an additional two percent reduction by adopting similar strategies. New York would still have an estimated shortfall of approximately 20 percent.

While EPA recognizes that other TCMs may be needed in New York, the remainder are difficult to quantify, yield small reductions individually, and, as evidenced by the public reaction to the EPA-promulgated implementation plans containing such measures in the 1970's (see H.R. Rep. No. 95–294, 95 Cong. 1st Sess, reprinted in 4 Legislative History of the Clean Air Act Amendments of 1977, at 2748–55 (1978)), generally can be expected to have more significant adverse effects on the public as a whole than RVP controls would. To be sure, if there were sufficient evidence for EPA to conclude that the State's RVP controls would result in significantly more severe impacts than other measures that neither EPA nor the State has yet identified as "reasonable" for the State to implement, then it might well be appropriate for the Agency to

account for the emission reductions that those other measures would achieve before determining the shortfall against which to judge the RVP controls. The Agency does not believe, however, that the State's RVP control would produce significantly more severe effects than such alternatives (e.g., than a trip reduction ordinance of the type that Arizona found reasonable for application in Phoenix and Tucson).

In sum, New York and EPA have indeed examined a broad range of potential emission reduction strategies and have still identified a significant shortfall in the level of emission reductions likely to be needed to achieve the ozone standard. As discussed above, in light of this significant shortfall EPA may approve the RVP program as necessary to achieve the standard without first requiring New York to implement other measures that EPA has not yet found reasonable for implementation, such as more stringent state motor vehicle standards.

3. What is the scope of EPA's discretion assuming a finding that State RVP controls are necessary to achieve the standard?

a. Permissible Bases for EPA's Decision To Approve State RVP Controls

Comments. Several comments asserted that even where EPA has determined that State fuel controls are necessary to achieve the standard, EPA may nevertheless disapprove those controls if EPA determines that the economic or fuel supply impacts of the State's regulation are unreasonable. These commenters suggested that EPA may give significant consideration to costs because section 211(c)(4)(C) provides that the Administrator "may" approve a SIP revision imposing state fuel controls once he makes the finding of necessity. Conversely, other commenters maintained that EPA may not disapprove the New York SIP revision based on economic grounds, once EPA has made the finding of necessity.

Response. EPA believes that it must consider cost to some limited extent whenever the Administrator decides whether to make a finding under section 211(c)(4)(C) that a fuel measure is "necessary" for attainment. As discussed above, to determine whether state fuel controls are necessary, EPA must look first at whether other measures that it determines are reasonable (and, perhaps, other measures the state has adopted) will by themselves achieve timely attainment). Arguably, an alternative measure is "reasonable" only if its effects are less drastic than the effects of the fuel controls. Clearly the cost and supply impact of the state fuel controls will be a factor in any such judgment.

EPA does not interpret the use of "may" in section 211(c)(4)(C) to give the Administrator unfettered discretion to disapprove the SIP revision on economic grounds once he has made the finding that state fuel controls are necessary to achieve the standard. Section 211(c)(4)(C) must be read in the context of the preemption created in section 211(c)(4)(A), which prohibits states from adopting inconsistent fuel controls in their SIPs, or anywhere else, for air pollution control purposes. In the face of this prohibition, the sole effect of the "may" in section 211(c)(4)(C) is to authorize the Administrator to overcome a provision (section 211(c)(4)(A)) that would otherwise bar him from approving the SIP revision. The use of "may" in section 211(c)(4)(C) does not eliminate the obligation that section 110(a)(3)(A) places on the Administrator to approve the SIP revision, provided it meets the requirements of section 110(a)(2). *See Train* v. *Natural Resources Defense Council, Inc.*, 421 U.S. 60, 98 (1975). Section 110(a)(2) requires the Administrator to approve a SIP revision if, among other things, it may be necessary to insure attainment and maintenance of the standard. EPA may not consider the economic impact of a necessary SIP revision under section 110(a)(2); under that provision, it is for the state to determine what economic costs are appropriate to achieve the standards. *Union Electric Co.* v. *E.P.A.*, 427 U.S. 246, 256–258 (1976). Beyond that, it would be incongruous for Congress to give EPA more discretion to reject a SIP revision for reasons unrelated to the goal of achieving the standard as quickly as possible precisely where EPA has determined that a SIP revision is necessary to achieve the standard. Therefore, once EPA makes the finding that state fuel controls are necessary to achieve the standard, a finding which includes a determination that such fuel controls are more reasonable than other available measures, EPA may not reject a state's SIP proposal simply for economic reasons.

One commenter cited *Motor Vehicle Manufacturers Assocation* v. *E.P.A.*, 768 F.2d 385, 389–390 (DC Cir. 1985), for the proposition that the use of "may" under section 211 commits the decision to the discretion of the Administrator. In *MVMA* the court was examining EPA's decision to grant a waiver under section 211(f)(4) of the Act for the use of fuel additives not substantially similar to those in the fuel EPA uses to certify the emissions from automobiles. The court was not examining section 211(c)(4)(C), which allows EPA, upon making a particular finding not mentioned in section 211(f)(4), to act on a SIP revision submitted by a state after full hearing at the state level and subject to the requirements of sections 110(a)(2) and (3)(A).

b. Intent of Federal Preemption Under Section 211

Comments. Several comments insisted that EPA should disapprove New York's RVP controls because Congress intended to avoid a patchwork of different state fuel controls in favor of a uniformly regulated national market for fuels. These commenters expressed concern that the exception in section 211(c)(4)(C) to the rule of preemption under section 211(c)(4)(A) would eventually swallow the rule. Several comments urged EPA not to act inconsistently with its decision not to limit gasoline to 9 psi in 1989 in the federal RVP control program.

On the other hand, several comments urged EPA to support the regional approach to RVP control that the NESCAUM States are undertaking. One commenter pointed out that where Congress has not acted to address the ozone nonattainment problem, it is reasonable to let the States do all they can to attain.

Response. It is clear that section 211(c)(4)(A) indicates that Congress desired to maintain a nationally regulated market for fuels. It is equally clear that section 211(c)(4)(C) indicates Congress recognized that there will be states where the air quality problem is so severe that the interest in a nationally regulated market must bow to the need for additional state controls on fuel content. EPA has not been able to find any legislative history which illuminates with any detail beyond the language of the Act how EPA should strike this balance.

It is reasonable to infer that Congress was aware that the air quality needs of particular States might create varying fuel content requirements, and that Congress accepted that risk in favor of protecting the public health. Several commenters cited *Exxon Corp.* v. *City of New York*, 548 F.2d 1088 (2d Cir. 1977), as precedent that a uniformly regulated fuel market is the overriding purpose behind section 211(c)(4). In *Exxon* the court, however, was not faced with a claim for an exception to preemption under section 211(c)(4)(C), and specifically left it to EPA to determine

whether such an exception is appropriate:

> The Act sensibly provides for an exception from its comprehensive preemption of local regulation of motor vehicle fuels only when such regulation is a provision in a State implementation plan approved by the Administrator who has the competence to make the needed professional engineering and energy conservation decisions.

Id. at 1096. Once EPA has made a finding of necessity under section 211(c)(4)(C), it is reasonable for EPA to interpret the Act to place paramount importance on protecting public health and achieving the standard.

EPA believes that the oil industry's concern that the exception will swallow the rule is overstated. As described above, EPA will approve inconsistent state fuel controls only where the state can demonstrate that exhausting all other reasonable alternatives will not achieve the standard, taking costs into account in determining reasonableness. This demonstration is not a trivial hurdle, and it is highly unlikely that every state with an ozone nonattainment area could make such a showing. Furthermore, a State is unlikely to burden its citizens with the potentially higher cost of lower RVP fuel unless the air quality needs are compelling. Finally, regional initiatives such as NESCAUM's help avoid a wide variety among State controls. In this case, the New York RVP program is virtually identical to the RVP programs already approved for Massachussets, Rhode Island, and Connecticut, and thus, provides consistent supply requirements over a group of contiguous States.

EPA also believes that its decision not to impose a limit of 9 psi by 1989 in EPA's RVP control program does not preclude EPA from approving New York's SIP revision. When developing its federal RVP control program, EPA imposed controls across the nation, and had to determine the level of RVP control which supply sources for the entire continental United States could reasonably meet. Further, although EPA was able to make this determination as to particular regions within the country, EPA did not intend to account for the particular air quality needs of each state.

4. What effect will the 9 RVP limit in New York have on the cost and supply of gasoline?

Comments. Several commenters stated that if the 9 psi standard took effect in 1989 the distribution system would be strained and that there could be some significant supply dislocation and cost increases. Several other commenters were concerned about possible supply problems. Several stated that even if refiners had the capacity to produce 9 psi gasoline, there would be logistical problems requiring the need for additional storage tanks for the gasoline and excess butane. Other comments suggested that foreign imports at 9 psi might not be available. Most of the oil company commenters stated that there will be some need for capital improvements at refineries to meet the 9 psi standard. Several commenters stated that there will likely be a cost impact to the New York standard and other commenters stated that they were worried about the increased cost. One other comment stated that the estimates of increased cost do not reflect the extra cost increase that could accompany a significant supply disruption.

Proponents cited two studies as support for the position that supply is not a problem.

Response. The potential supply problems arise out of two factors. First, decreasing the volatility of gasoline requires increased refinery capacity. It is certain that implementation of 9 psi volatility in the NESCAUM States will create a refining capacity reduction in the amount of gasoline capable of being produced at each refinery. This is true of both domestic and foreign suppliers. Second, the problem may be further exacerbated by the expected increased demand for gasoline in the summer months.

Various studies have been conducted to determine how much refining capacity will be lost from implementation of 9 psi volatility in the NESCAUM states, how much demand for gasoline is likely to increase in the summer of 1989, and what effect these factors will have on gasoline supply capabilities. The two studies done for NESCAUM and the one done for EPA are inconclusive. There appear to be numerous factors which make precise prediction of these effects impossible. However, under the EPA study (Sobotka study), estimates indicate that the volatility standard may be feasible without serious supply problems.

The Sobotka study cites the Department of Energy (DOE) as predicting that demand for gasoline should increase only in the range of 1 to 1.5 percent this summer. This estimate is also supported by other studies including one reported at a National Petroleum Refiners Association conference. The study also estimates that approximately a five percent refining capacity shortfall will occur at domestic refineries because of the NESCAUM volatility regulations. The study estimates that with a 1.2 percent increase in demand for gasoline in the summer, U.S. refineries would be able to make up for a five percent domestic shortfall, and a ten percent import shortfall, without construction of new facilities or installation of additional equipment. Although various factors make it impossible to accurately predict the refining shortfall of imported gasoline, there is no strong evidence indicating that it will exceed ten percent. Thus, the Sobotka study suggests that it is likely that the resulting refinery capacity shortfalls from a 9 psi standard in 1989 should not result in supply shortfalls.

In the unlikely event of unforeseen supply disruptions, the State of New York has the authority to take immediate steps to provide needed waivers or exceptions to the program. In fact, the State has already exercised this authority by exempting several western counties from the 9 psi rule for 1989. It should be noted that the State based this decision solely on the potential for supply problems and not on any lack of air quality problems in these areas. The State has committed to carefully monitor the supply situation this year and take other appropriate actions, as may be necessary, to ensure that supply problems do not occur as a result of its State RVP control program. See also the response to section 9 later in this notice for more discussion of State waivers or exceptions.

5. What effect will 9 RVP gasoline have on driveability in cold weather and on vehicle safety?

Comments. Several commenters expressed concern that the 9 RVP fuel would cause hard starting, hesitation, and stalling in automobiles and farm equipment during the early spring and late fall. They stated that gasoline will have to enter the distribution system in March and will not be out until October in order to comply with the regulation. Other comments, including several from automobile manufacturers, indicated that there should be no adverse effect from the use of 9 RVP fuel.

Response. We believe that the nature of the gasoline distribution system makes it very unlikely that 9 RVP fuel will be available to consumers in March or early April, even if the blending-down process by that time has begun to reduce RVP. Continued availability of low-RVP fuel is even less likely by late October because the blending-up process will occur rapidly at the close of the control period. Nevertheless, the experience of California, which has required 9 RVP fuel for many years,

appears to demonstrate that widespread driveability or fuel safety problems will not occur in the Northeast. We know of no evidence of extensive problems in California, despite significant operation at cool temperatures and high elevations.

As further evidence of this conclusion, one can compare the true vapor pressure (TVP) experienced in fuel tanks at different times during the year. For example, when corrected for elevation, gasoline in Billings, Montana at its January 1988 average RVP of 13.6 psi and at the historic low January temperature of −30 degrees Fahrenheit would result in a true vapor pressure of 1.0 psi. Similarly, for New York, the analogous RVP and temperature of 10.0 psi RVP and −12 degrees F. would also result in a TVP of 1.0 psi. In contrast, 8.5 psi RVP fuel at an analogous New York temperature of 18 degrees F. would result in a TVP of 1.8 psi, 80 percent higher than the winter figure. We conclude from this that if low-volatility fuel were to reach consumers during very low temperature weather, any degradation in driveability would be no greater (and would likely be less) than that experienced currently during the winter.

Conversely, low volatility fuel should improve vehicle driveability in very hot weather by reducing the occurrence of such conditions as vapor lock and fuel foaming.

6. Is there really a severe ozone problem in New York or the Northeast?

Comments. A number of industry commenters, in urging EPA to disapprove the SIP revision, claimed that the air is really becoming cleaner and cleaner over time and that the ozone standard is being met more than 99% of the year. Environmental groups countered these claims with data from 1987 and 1988 which show a worsening of the ozone problem since 1986. They noted that 1988 was one of the worst ozone seasons on record across the Northeast.

Response. EPA is firmly convinced that there is a serious ozone problem in the Northeast. EPA's conviction was evidenced by last year's SIP calls to New York and most other Northeast states. This SIP call was based on 1985–1987 ozone monitoring data which ranked New York among the worst ozone nonattainment areas in the country. EPA's concern is further heightened by the 1988 ozone season. The ozone standard was exceeded more frequently, at more sites, and at higher levels in 1988 than in 1987.

7. Has New York demonstrated that it has an adequate enforcement program or adequate resources to implement the RVP regulation, as required by section 110 of the Act?

Comments. One commenter questioned whether New York has developed an adequate program for enforcement of the regulation.

Response. EPA believes that the State has developed an adequate enforcement program for its RVP regulation. The State has trained enough personnel (with the help of NESCAUM and the State of California) to allow four teams to perform field inspections. Given that New York will be testing only at the primary distribution level and will be relying to some extent on examination of distributor records, EPA believes that the State has adequate personnel to carry out the RVP program as required by section 110(a)(2)(F) of the Act. In addition, the State has indicated that it will eventually tie in RVP sampling with Stage I inspections that the State has been regularly performing for several years at terminals and on gasoline tank trucks. Finally, it should be noted that retail outlets, which are not subject to enforcement under the State's rule, will be subject to EPA's national enforcement program. If gasoline that does not comply with New York's 9 psi limit is found at retailers in the State by EPA, we will surely share such evidence with the State.

EPA notes that in the comparable arena of enforcement through Delayed Compliance Orders (DCOs), courts have held that EPA may not second guess the state's choice of enforcement mechanisms so long as the chosen system is a reasonable one. *See Bethlehem Steel Corp.* v. *U.S. E.P.A.*, 638 F.2d 994, 1005–1006 (7th Cir. 1980); appealed, *Bethlehem Steel* v. *Gorsuch*, 726 F.2d 356 (7th Cir. 1984), reh. den., en banc, vacated on reh., 732 F.2d 97 (7th Cir. 1984), withdrawn and appealed, 742 F.2nd 1028 (7th Cir. 1984).

Furthermore, even if the New York rule's enforcement scheme were inadequate to support a finding, ultimately, that the state's eventually complete ozone SIP update meets all of the requirements in section 110(a)(2), EPA could still approve the rule under section 110(a)(3). That is because, even with an inadequate enforcement program, the rule would still strengthen the pre-existing SIP and hence, under the rationale in *Michigan* v. *Thomas*, 805 F.2d 176, 186 (6th Cir. 1986), be approvable for that limited purpose.

8. Has New York satisfied the Act's public notice and hearing requirements?

Comments. Several commenters questioned whether the New York SIP revision was adopted after "reasonable notice and public hearing." While acknowledging that public hearings were held, they alleged that the decision to limit RVP to 9 psi was actually made by NESCAUM some time before public hearings on the New York RVP regulation, and that therefore any hearing nominally provided was substantively inadequate. On the other hand, NESCAUM commented that ozone pollution problems, especially in the Northeast, are clearly regional problems and must therefore be dealt with through consistent regulations.

Other commenters questioned whether notice and hearing was provided on the SIP revision or just a State regulation. They believe that it was unclear from the public notices and materials available before the hearing that the RVP rule was actually intended to be submitted as a revision to the SIP.

Response. As to the first claim, EPA's TSD provides the date that the public notice was published and contains an itemization of the dates the public hearings were held. Although there is no summary statement that the public participation requirements for hearing and notice were met, the record does speak to that effect.

EPA finds concerns that the public hearings were largely meaningless and thus not "reasonable" to be misplaced. EPA is not convinced that New York and the other NESCAUM States had predetermined the outcome of the hearings beforehand and without regard to the hearings held in August 1988.

EPA acknowledges that New York did initiate rulemaking on RVP control pursuant to an agreement with the other northeastern states. However, having initiated the rulemaking on that basis, the State then proceeded to promulgate the regulations through its full administrative process, giving adequate notice and opportunity for public hearing on the proposed regulations.

As a policy matter EPA agrees that the ozone problem in the Northeast is a problem of regional magnitude and has held several meetings with top EPA and State environmental officials in EPA Regions I, II, and III to determine what concerted efforts the States could take on their own to deal with issues of regional, but not necessarily national, scope. Therefore EPA believes that it is appropriate for the northeastern states to regulate ozone precursors in a consistent fashion. However, each state

must provide for adequate public participation in the promulgation of individual regulations, including assessing and responding to all submitted comments, as New York has done in connection with its RVP regulations. As discussed more fully below, EPA reviewed New York's public participation procedure and determined that the State provided adequate opportunity for public input in connection with development of the RVP rule.

The commenters argued specifically that New York's hearing procedure was not adequate to comply with section 110 of the Act or EPA's hearing regulations at 40 CFR section 51.102. The operative language in both the statute and the regulation is "reasonable notice and public hearing." The commenters asserted that New York had predetermined its final decision on RVP regulation and thus the hearing provided was not reasonable.

However, EPA interprets the language of both the statute and the implementing regulations as requiring the state to provide, first, reasonable notice of a public hearing, and second, a public hearing. EPA does not believe that the law requires the Agency to review the hearing record and determine whether the hearing provided was itself "reasonable."

EPA's interpretation of the hearing requirement is clearly reflected in the regulations at 40 CFR 51.102. The regulations go into substantial detail on the manner in which states must provide notice of a hearing in order for that notice to be considered reasonable. See 40 CFR 51.102(d); see also 40 CFR 51.102(g)(2). However, the regulations make absolutely no mention of specific requirements for conduct of public hearings. The state need only certify that it in fact held a public hearing, which New York clearly did, and need not provide any detailed information on the conduct of the hearing.

This is appropriate because the reasonableness of public notice can be assessed objectively by reviewing the amount and variety of notice methods used. Assessing the reasonableness of a hearing on the other hand would be a highly subjective determination done restrospectively that would unnecessarily infringe on the State's discretion in conducting its hearings. Of course, if EPA received concrete evidence that the hearing did not provide adequate opportunity for public participation, it could find that the hearing did not meet the intent of EPA's regulation. One commenter claimed that New York failed to provide prior public hearing on the waiver provisions of its RVP program, and thus that the hearing did not in fact provide adequate opportunity for public participation. It is true that the August 1988 hearing did not cover the waiver provisions. However, New York held a separate hearing on the waiver provisions in particular on March 2, 1989. This hearing provided the required opportunity for public participation on the RVP program as a whole, including the waiver provisions.

The commenters further claimed that a state must specifically identify a proposed regulation as a future SIP revision prior to scheduling a public hearing on the regulation. However, neither the statute nor EPA's regulations contain any such explicit requirement. The purpose of a public hearing is to receive public input on the substance of proposed regulations, not on whether the state may or may not submit the regulations as a SIP revision. For years EPA has approved SIP revisions with no analysis of whether the state had publicly announced it intent to eventually submit a proposed regulation as a SIP revision at the state public hearing stage.

Generally it should be totally irrelevant to public commenters whether a regulation with which they will be required to comply as a matter of state law might also become an aspect of federal law. At the time New York held its public hearing on the RVP rule, prior to federal preemption, commenters should similarly have had no concern as to whether the proposed State rule would eventually become federal law as well. Only where a state regulation would otherwise be preempted by existing federal law and therefore unenforceable would the public have a need to know that the state intended to seek federal approval of the regulation for purposes of preemption waiver in preparing comments at the state hearing level. This was not the case at the time of the State hearing on New York's RVP rule. Moreover, given EPA's then outstanding proposal to regulate RVP and thus preempt state RVP regulation, it should have been apparent to commenters at the time of the public hearing that New York would submit the rule as a SIP revision to insure enforceability in the event of EPA final RVP regulation and preemption.

9. Should waivers or exemptions from the State regulations be granted to suppliers who cannot provide 9 RVP gasoline, and for alcohol blends of gasoline?

Comments. Several commenters expressed concern over the State's issuance of a waiver for western New York for 1989 since it introduces uncertainties about whether the volatility regulations will be applied fairly and equitably to all gasoline suppliers. They indicated that the use of supplier-specific waiver provisions could diminish the calculated benefits of the rule by allowing higher RVP gasoline into the system, and financially disadvantage those companies which are able to comply. In addition, commenters noted that the SIP revision submitted to EPA by the State, and EPA's subsequent **Federal Register** notice, failed to consider the State's decision to exempt western New York.

With specific regard to alcohol fuel exemptions, one commenter noted that the inconsistency between New York's and EPA's volatility programs appears "counterproductive," because, for example, ethanol blending increases volatility and therefore evaporative emissions increase. The commenter noted that in EPA's Notice of Proposed Rulemaking for a national RVP regulation (52 FR 31293, August 19, 1987), EPA concluded that gasohol usage results in a greater contribution to ozone formation than the gasoline which it replaces.

The commenters concluded that if waivers or exemptions are to be used, they must apply to all suppliers and significant penalties should be attached. In addition, one commenter noted that EPA has to consider how it will respond to supplier-specific waiver requests; and EPA "is urged to adopt a policy on waivers which is consistent with its own RVP regulatory program."

Response. EPA is aware that New York has granted a waiver for the western portion of the State and also intends to grant waivers to individual suppliers, if necessary, to avoid serious supply dislocations during the initial stages of the RVP program. Although EPA did not focus on this aspect of the program in its NPR, it is safe to conclude that commenters were also aware of the State's actions and intentions since the issue was fully aired in the public comments. EPA is approving the New York RVP program as a whole, which includes the ability of the State to issue waivers as appropriate. EPA is approving the waiver already issued for western New York and is in essence pre-approving any additional waivers that New York might grant as part of the overall RVP program being approved into the New York SIP today. New York will not be required to submit each waiver to EPA as a SIP revision before it may take effect.

EPA is currently able to pre-approve any waivers that New York may grant because the RVP program is a

discretionary program that the State has submitted to generate additional emission reductions and move the State closer to attainment of the ozone NAAQS. EPA is not pre-approving waivers from a federally required program or a program to which EPA has already assigned specific emission reduction credits as part of an overall attainment demonstration. EPA could not pre-approve waivers in such situations because they would constitute SIP relaxations. Here, whatever emission reductions New York obtains from the RVP program, even after any waivers have been granted, will tighten the existing SIP and improve air quality.

EPA notes that its pre-approval of any waivers New York may grant under the RVP program differs dramatically from approval of a generic permitting program such as a new source review or bubble program. In those cases, EPA authorizes States to approve relaxations of otherwise applicable SIP requirements provided that the State follows SIP approved procedures calculated to insure that all such waivers are accounted for in the SIP attainment demonstration and are issued using replicable evaluation techniques. Here, since EPA is not currently relying on the New York RVP program for any defined emission reduction credit toward an approved attaintment demonstration, EPA need not now analyze the criteria by which New York will issue any waivers. New York is free to issue waivers on the basis of its own State criteria, consistent with any requirements of its State administrative procedure act.

Several commenters questioned the line New York drew in exempting the western half of the State, and argued that some inequities would result for suppliers doing business at the demarcation line. These are concerns to be addressed to the State since EPA is not at this time addressing the substance of New York's waiver criteria.

When New York does submit its completed post-1987 attainment demonstration, EPA will assign specific emission reduction credits to the RVP program, taking account of any supplier-specific waivers the State may have issued by that time. Once EPA has approved the New York post-1987 SIP, it will take whatever rulemaking action is necessary to ensure that any further waivers under the RVP program, which at that point would be considered SIP relaxations, would be submitted to EPA for approval as individual SIP revisions.

Finally, EPA notes that any suppliers who receive waivers from New York must still comply with the Federal RVP limit of 10.5 psi.

In its fuel volatility regulation, New York has included provisions which allow the Commissioner to grant an exception to suppliers of fuels which are composed of a blend of gasoline and simple alcohols upon showing that gasoline is not available that, when blended, would meet the 9 psi standard. With regard to this provision, it must be noted that: alcohol blends represent a small fraction of the State's fuel market; that such exemptions would help to avoid any impediments to the development of alternative fuels; and that these alcohol blends are not excluded from complying with the requirements for alcohol blends of gasoline set forth by EPA in its **Federal Register** Notice of March 22, 1989 (54 FR 11868) limiting the RVP of gasoline during the summer months to 10.5 psi (beginning 1989). The Federal rule requires that methanol blends meet the same RVP requirements of gasoline and that ethanol blends meet a RVP not more than 1 psi above the allowable RVP for gasoline. Thus there will be no loss in emission reductions relative to the Federal program, which is the only alternative to the New York program. EPA has no authority to disapprove the State's rule just because the additional "necessary" emission reductions that it would achieve are not as large as those that might be achieved through a rule tailored differently. Furthermore, EPA believes that concerns about alcohol blends in New York may be of little practical importance because field testing of gasoline by EPA throughout the summer of 1988 found virtually no alcohol in gasoline.

10. How soon after the date of final approval of the New York revisions should the RVP regulations be made effective?

Comments. A great deal of the comments received pertained to the timing of EPA's final action. Those favoring EPA approval of the SIP revision generally favored EPA acting quickly to take the regulations effective by their May 1 starting date or as close to that as possible. These commenters note that the Colonial Pipeline, which supplies 20 percent of the Northeast's gasoline, has been shipping 9 RVP fuel to the Northeast since March 1, 1989. They also pointed out that those suppliers who have made a good faith effort to comply with the May 1st date would be at a competitive disadvantage relative to those with cheaper, higher volatility gasoline if the date is extended.

Those opposing EPA approval of the SIP revision generally asked that if we did approve it we must provide the petroleum industry with realistic and sufficient leadtime to enable 9 psi gasoline to be distributed throughout the distribution system. These commenters cited EPA's allowing 70 and 100 days for the recently promulgated national regulations to become effective at the terminal and retail level respectively as precedent for such a decision. A third path, suggested by one commenter, would be for EPA to make its final approval conditional on the State's deferral of the compliance date for its regulation.

Response. The timing issue is one of the most difficult ones posed by this action. Since EPA has had control of the timing of the final federal RVP action, the decision on the previously granted Massachusetts, Rhode Island, Connecticut, and New Jersey RVP SIP revisions, and the decision on the New York RVP revision, it is important that we ensure that both the federal and state programs start with a maximum likelihood of success and a minimum possibility of supply disruption.

EPA must consider several issues in deciding when to make the rule effective. The first issue is when the industry was put on notice that it would have to supply 9 psi gasoline to New York. Since the New York rule was passed in 1988, the industry was on notice since then of the State's intention to control RVP to 9 psi. However, the New York rule was preempted on March 22, 1989 by the promulgation of the federal volatility requirements.

Another issue to consider is the lead-time that would be necessary to enable 9 psi gasoline to get through the distribution system. The record indicates that the industry thought that it would take from 60 to 70 days to achieve compliance at the terminals in New York. The record also indicates that the Colonial Pipeline, which supplies at least 20 percent of the gasoline in the Northeast, has been shipping 9 psi gasoline since March 1, 1989.

The final issue involves the air quality consequences of delaying the effective date. EPA should not delay action on a SIP revision in such a manner as would thwart the State's intent in requesting the SIP revision. New York's submittal of the RVP SIP revision in January was clearly aimed at getting its regulatory program in place for the 1989 ozone season. Thus, it is important to have the effective date as early as possible in order to maximize the air quality benefits of the program of 1989.

In deciding to make this action effective on June 30, 1989, EPA has attempted to balance these competing

interests. EPA believes the June 30 date will both minimize possible difficulties the industry might encounter with a shorter lead-time and provide citizens in the Northeast as much relief as is practical during most of the 1989 ozone season. Although some suppliers may have made a good faith effort to comply with the May 1 effective date specified in the New York proposal, they were under no obligation to do so once EPA preempted the New York requirement by promulgating federal RVP controls on March 22, 1989. The Agency cannot, therefore, select an earlier effective date for all suppliers based on the voluntary action of a few, especially considering that the time between the March 22 federal rulemaking and today's publication is critical to the refiner/supplier planning and implementation process regarding fuel delivery for the coming summer.

However, because refiners have already begun to prepare for the sale of 9 RVP fuel as a result of EPA's approval of the Massachusetts, Rhode Island, Connecticut, and New Jersey RVP SIPs and in light of the fact that these states share many links in the gasoline distribution network, the Agency does not believe that an additional 60 to 70 days lead-time is warranted. This starting date in New York, therefore, mirrors the starting date in Massachusetts, Rhode Island, Connecticut, and New Jersey.

11. Should EPA reopen the comment period or withdrawal and repropose this SIP revision in light of EPA's final action on the national RVP regulation, the court challenge to the rule and other alleged defects in the March proposal?

Comments. EPA received divergent comments on the appropriate process for and timing of a final action on New York's SIP revision. Several commenters argued that EPA should take final action as soon as possible. On the other hand, other commenters felt that because of numerous allegedly unresolved issues raised in their substantive comments, potential air quality implications of the waiver New York provided for the western portion of the State, and the pending American Petroleum Institute court challenge to the rule, EPA should at a minimum repropose action on the revision to deal with these issues before proceeding to final action.

Response. EPA concludes that given its interpretation of the relevant law and the seasonal nature of the New York revisions, the Agency should proceed expeditiously to final action based on the record currently before it. EPA is unpersuaded by the claim that circumstances have so changed since the proposed approval of the New York revisions that we should reopen the comment period or withdraw and repropose this action. EPA's NPR for the New York RVP program explicitly discussed EPA's final action on the national RVP program relevant to final action on the State program. EPA clearly presented the path which EPA proposed to follow and the conclusions which we proposed to reach in light of the final promulgation of federal RVP regulations. Furthermore, in the final **Federal Register** notice on the national RVP program EPA explicitly discussed consideration of different state RVP control programs.

In this case EPA concludes that it is not necessary to issue a reproposal prior to taking final action. EPA believes that it has adequately responded to all of the substantive comments raised by commenters in the substantive discussions presented above. Obviously, additional analysis on such technical issues could always be conducted. However, administrative agencies generally have the discretion to determine when issues have been aired sufficiently and to close the record and proceed to final action, consistent of course with the need to act in a reasoned, non-arbitrary fashion (*Vermont Yankee Nuclear Power* v. *N.R.D.C.*, 435 U.S. 519, 554–555 (1978)).

Commenters argued that the waiver granted by New York for the western portion of the State may have such significant air quality implications for the rest of the State that EPA should delay action while new air quality analyses are done to recalculate the emission reduction benefits of the RVP rule in the eastern portions of the State. However, New York's analyses were based on the effects of the RVP rule in each nonattainment area, such that application of the rule in only certain portions of the State will not affect the overall emission reductions to be achieved in any one area. EPA did indicate in its proposal that it believed New York had made the RVP rule effective on a statewide basis in order to ensure compliance in all of the relevant nonattainment areas in light of their scattered geographical distribution and the existing gasoline distribution system. New York in fact exempted the western portion of the State based upon supply problems particular to that region. New York believes that the separate distribution system that serves the eastern half of the State will have no problem supplying adequate quantities of 9 RVP fuel, and that application of the RVP rule throughout his area is necessary to ensure compliance. Given these facts EPA concludes that the waiver for the western half of the State does not require reproposal.

Further, EPA should not delay action on a SIP revision in such a manner that would thwart the State's intent in requesting the SIP revision. In this case, New York has submitted a seasonal requirement that since currently preempted must be approved in a timely fashion in order to effectuate the state's intent that the regulations provide emission reduction benefits in the upcoming summer ozone season. Therefore, EPA should make best efforts to act on the information available to it now to the extent that it is adequate or else the agency would thwart the State's intent with regard to the 1989 ozone season. Since EPA has concluded that the existing record is sufficient, EPA can proceed to final action at this time based on that record.

Finally, EPA finds no reason to delay its final action on this SIP revision due to the pending court challenge to the RVP program. The lawsuit is merely pending, and until such time, if any, as the court acts to overturn the program EPA believes it is appropriate to proceed with action on the program as with any SIP revision requested by a state.

Enforcement

EPA's proposal of the New York SIP revision indicated that there was a problem with the test method section. The regulation required that fuel sampling and testing shall be "by methods acceptable to the Commissioner." EPA stated that such methods must include the EPA recognized methods contained in EPA's national volatility rule. On April 27, 1989, EPA received comments from the New York State Department of Environmental Conservation which clarified the State's test method section. In these comments, the State identified the methods acceptable to the Commissioner as being identical to the EPA recognized methods and, in addition, committed to incorporating these specific methods into its SIP at a future date. EPA finds that its concerns related to the test methods were addressed sufficiently by the State and that the test methods section is approvable.

Final Action

EPA is approving this revision to the New York Ozone State Implementation Plan to control gasoline volatility, including any waivers New York may grant under the program. EPA has also made the finding that the New York SIP

revision meets the requirements of section 211(c)(4)(C) of the Act for an exception to federal preemption.

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

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 within 60 days of publication. This action may not be challenged later in proceedings to enforce its requirements [See section 307(b)(2)].

Effective Date

The Administrator has determined that there is good cause, within the meaning of 5 U.S.C. section 553(d)(3), to make this action effective less than 30 days after publication. The industry has been on notice since the Administrator approved the Massachusetts RVP SIP (54 FR 19173; May 3, 1989) that the Administrator was inclined to approve inconsistent state RVP rules to the extent necessary to provide for attainment. Making this action effective on the same date as the Massachusetts, Connecticut, Rhode Island and New Jersey RVP rules provides the industry with a uniform effective date for all of the state rules limiting RVP to 9.0 psi in the Northeast. In addition, postponing the effective date beyond June 30 would undermine the State's ability to achieve the reductions in 1989 summer ozone concentrations for which the RVP program was intended.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Ozone, and Incorporation by reference.

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

Authority: 42 U.S.C. 7401–7642.

EPA is today approving the New York SIP revision pertaining to its State gasoline volatility program.

Date: June 9, 1989.

William K. Reilly,

Administrator.

For the reasons set forth in the preamble, Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

Subpart HH—New York

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

Authority: 42 U.S.C. 7401–7642.

2. Section 52.1670 is amended by adding paragraph (c)(79) to read as follows:

§ 52.1670 Identification of plan.

* * * * *

(c) * * *

* * * * * *

(79) Revisions to the New York State Implementation Plan (SIP) for ozone submitted on January 31, 1989 and March 13, 1989 by the New York State Department of Environmental Conservation (NYSDEC) for its state gasoline volatility control program, including any waivers under the program that New York may grant. In 1989, the control period will begin on June 30.

(i) *Incorporation by reference:* Subpart 225–3 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York entitled "Fuel Composition and Use—Volatile Motor Fuels," adopted on December 5, 1988, and effective on January 4, 1989.

(ii) *Additional material:* April 27, 1989 letter from Thomas Jorling, NYSDEC, to William Muszynski, EPA Region II.

3. The table in § 52.1679 is amended by adding a new entry Subpart 225–3 in numerical order to read as follows:

§ 52.1679 EPA—approved New York State regulations.

New York State regulation	State effective date	Latest EPA approved date	Comments
* * * * * * *			
Subpart 225–3, "Fuel Composition and Use—Volatile Motor Fuels.".	1/4/89	FR date and citation of this document	Effective date 6/30/89.
* * * * * * *			

[FR Doc. 89–14396 Filed 6–20–89; 8:45 am]
BILLING CODE 6560–50–M

40 CFR Parts 60 and 61

[FRL–3603–8]

Standards of Performance for New Stationary Sources and National Emission Standards for Hazardous Air Pollutants; Delegation of Authority to the State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of delegation of authority.

SUMMARY: This notice announces an extension of previously-issued delegations of authority for the implementation and enforcement of the federal Standards of Performance for New Stationary Sources (commonly known as New Source Performance Standards or NSPS), 40 CFR Part 60, and the federal National Emission Standards for Hazardous Air Pollutants (NESHAP), 40 CFR Part 61. The action which involved EPA and the state of Iowa added two (2) NSPS and two (2) NESHAP categories to the delegations of authority. The state of Iowa also updated its previously-delegated NSPS categories to match current federal rules, incorporating any amendments or corrections published since original promulgation and slightly modifying the language contained in the state rules to match current federal regulations. The NSPS delegation now includes all categories except for grain elevators (Subpart DD) for which federal standards have been promulgated by the EPA through January 29, 1988. The NESHAP delegation now includes all categories promulgated through March 19, 1987, except for those covering radon (Subparts B and W), radionuclides (Subparts H, I, and K), and asbestos renovation and demolition (under Subpart M).

EFFECTIVE DATE: May 24, 1989.

ADDRESSES: All requests, reports, applications, submittals, and such other communications required to be submitted under 40 CFR Part 60 or Part 61, including notifications required to be submitted under Subpart A of the regulations, for affected facilities or activities in Iowa should be sent to Chief, Air Quality and Solid Waste Protection Bureau, Iowa Department of Natural Resources (IDNR), Henry A. Wallace State Office Building, 900 East Grand, Des Moines, Iowa 50319. A copy of all notices required by Subpart A also must be sent to Director, Air and Toxics

Division, U.S. EPA, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Whitmore, Chief, Air Compliance Section, Air Branch, U.S. EPA, Region VII, at the above address or by calling 913–236–2896 (FTS 757–2896).

SUPPLEMENTARY INFORMATION: Sections 111(c) and 112(d) of the Clean Air Act allow the Administrator of the EPA to delegate to any state government authority to implement and enforce the standards promulgated by the agency under 40 CFR Part 60 and Part 61, respectively. EPA retains concurrent authority to implement and enforce the delegated standards. On August 20, 1984, EPA and the state of Iowa entered into a delegation of authority agreement whereby Iowa automatically receives authority to implement and enforce federal NSPS and NESHAP standards upon the adoption of the standards by the state government. (See 50 FR 933.) Prior to August 20, 1984, EPA delegated to the state of Iowa authority to implement and enforce the standards for numerous categories in various delegation and extension of authority actions. The action described below does not affect these previous delegation or extension of authority actions.

On March 20, 1989, Iowa revised its rules to adopt, by reference, the standards for two (2) additional NSPS and two (2) additional NESHAP regulations promulgated by EPA. The adoption action and regulation changes became effective on May 24, 1989. The IDNR informed EPA of the adoption action in a letter dated April 25, 1989. EPA subsequently acknowledged the adoption and the corresponding delegation of authority in a letter to IDNR on May 10, 1989. The delegation occurred under the terms of the above-mentioned August 20, 1984, automatic delegation of authority agreement.

EPA hereby notifies interested individuals that, effective May 24, 1989, EPA delegates the authorization to implement and enforce the federally-established standards for the following additional or amended categories to the state of Iowa.

NSPS Adoptions

Subpart BBB—Rubber Tire Manufacturing Industry; and

Subpart TTT—Industrial Surface Coating; Plastic Parts for Business Machines.

NESHAP Adoptions

Subpart N—Inorganic Arsenic Emissions from Glass Manufacturing Plants; and

Subpart O—Inorganic Arsenic Emissions from Primary Copper Smelters.

Effective immediately, all reports, correspondence, and such other communications that are required to be submitted under the NSPS or NESHAP regulations for facilities or activities in Iowa affected by the amended delegations of authority should be sent to the Iowa Department of Natural Resources at the above address, except as noted below. A copy of each notification required to be submitted under Subpart A of 40 CFR Part 60 or 61 also must be sent to the Director, Air and Toxics Division, at the above address.

Each document and letter mentioned in this notice is available for public inspection at the EPA Region VII office.

This notice is issued under the authority of sections 111 and 112 of the Clean Air Act, as amended (42 U.S.C. 7411 and 7412).

Dated: May 26, 1989.

Morris Kay,

Regional Administrator.

[FR Doc. 89–14679 Filed 6–20–89; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 180

[PP 8E3619, 8E3645/R1028; FRL–3604–6]

Pesticide Tolerances for Iprodione

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule amends tolerances for residues of the fungicide iprodione, its isomer, and its metabolite in or on the raw agricultural commodities cherries (sweet), nectarines, peaches, and plums to allow residues of the pesticide in or on these commodities resulting from postharvest application. The amendments to the tolerances for iprodione were requested in petitions submitted by the Interregional Research Project No. 4 (IR–4).

EFFECTIVE DATE: June 21, 1989.

ADDRESS: Written objections, identified by the document control number [PP 8E3619, 8E3645/R1028], may be submitted to: Hearing Clerk (A–110), Environmental Protection Agency, Room 3708, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt Jamerson, Emergency Response and Minor Use Section (H7505C), Registration Division (TS–767C), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Office location and telephone number: Room 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)–557–2310.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the Federal Register of April 26, 1989 (54 FR 17966), in which it was announced that the Interregional Research Project No. 4 (IR–4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petitions 8E3619 and 8E3645 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR–4 Project, and the California Agricultural Experiment Stations.

The petitions requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose amendments to tolerances established for the combined residues of the fungicide iprodione [3-(3,5-dichlorophenyl)-*N*-(1-methylethyl)-2,4-dioxo-1-imidazolidinecarboxamide], its isomer [3-(1-methylethyl)-*N*-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide], and its metabolite [3-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide] in or on certain raw agricultural commodities. IR–4 requested that tolerances established for residues of iprodione in or on cherries (sweet), peaches (including nectarines), and plums be amended to allow residues resulting from postharvest application at the existing tolerance level of 20 parts per million (ppm), which is established for residues resulting from preharvest application of the fungicide to these commodities.

1. *PP 8E3619.* Petition submitted on behalf of the California Agricultural Experiment Station proposed amending the existing tolerance for residues of iprodione on sweet cherries at 20 parts per million (ppm) to allow residues resulting from postharvest use of the fungicide.

2. *PP 8E3645.* Petition submitted on behalf of the California Agricultural Experiment Station proposed amending the existing tolerance for residues of iprodione on peaches (including nectarines) and plums at 20 ppm to allow residues of the fungicide resulting from postharvest application of the herbicide.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and all other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerances will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 6, 1989.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR PART 180 is amended as follows:

PART 180—[AMENDED]

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

Authority: 21 U.S.C. 346a and 371.

2. Section 180.399(a) is amended by revising the entries for cherries (sweet), nectarines, peaches, and plums, to read as follows:

§ 180.399 Iprodione; tolerances for residues.

(a) * * *

Commodities	Parts per million
* * * * *	
Cherries (sweet) (pre- and postharvest)	20.0
* * * * *	
Nectarines (pre- and postharvest)	20.0
* * * * *	
Peaches (pre- and postharvest)	20.0
* * * * *	
Plums (pre- and postharvest)	20.0
* * * * *	

[FR Doc. 89–14684 Filed 6–20–89 8:45 am]
BILLING CODE 6560–50–M

40 CFR PART 180

[PP 9F3706/R1029; FRL–3604–5]

Pesticide Tolerances for 1-[[2-(2,4-Dichlorophenyl)-4-Propyl-1,3-Dioxolan-2-YL] Methyl]-1H-1,2,4-Triazole and its Metabolites

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This document establishes tolerances for residues of the fungicide 1-[[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl] methyl]-1*H*-1,2,4-triazole and its metabolites determined as 2,4-dichlorobenzoic acid, in or on certain raw agricultural commodities. This regulation, to establish the maximum possible level for residues of the fungicide in or on the commodities, was requested by Ciba-Geigy Corp.

EFFECTIVE DATE: June 7, 1989.

ADDRESS: Written objections, identified by the document control number [PP 9F3706/R1029], may be submitted to the: Hearing Clerk (A–110), Environmental Protection Agency, Hearing Clerk (A–110), Environmental Protection Agency, Room 3708, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Susan Lewis, Acting Product Manager (PM) 21, Registration Division (H-7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Office location and telephone number: Room 237, CM # 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-1900.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the Federal Register of February 22, 1989 (54 FR 7597), which announced that Ciba-Geigy Corporation, P.O. Box 18300, Greensboro, NC 27419, had submitted a pesticide petition (9F3706) to EPA proposing that 40 CFR 180.434 be amended by establishing tolerances for the fungicide 1-[[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]methyl]-1-*H*-1,2,4-triazole and its metabolites determined as 2,4-dichlorobenzoic acid and expressed as parent compound, in or on the commodities grass hay at 5.0 parts per million (ppm) and grass forage at 0.5 ppm. EPA issued a notice, published in the Federal Register of April 19, 1989 (54 FR 15802), which announced that the petition was subsequently amended by Ciba-Geigy Corp. by retaining the previously proposed tolerances for grass hay and grass forage while proposing to increase the established tolerance level for kidney and liver of cattle, goats, hogs, horses, and sheep to 2.0 ppm. EPA issued a notice, published in the Federal Register of March 15, 1989 (54 FR 10715), which announced that Ciba-Geigy amended the petition by proposing a tolerance for residues of the fungicide for the commodity grass seed screenings at 10.0 ppm.

The data submitted in the petition and other relevant material have been evaluated. The data considered include:

1. Plant and animal metabolism studies.

2. Residue data for crop and livestock commodities.

3. Two enforcement methodologies and a multiresidue method of analysis.

4. A rat oral lethal dose (LD_{50}) with an LD_{50} 1,517 milligrams/kilogram (mg/kg) of body weight.

5. A 90-day rat feeding study with a no-observed-effect level (NOEL) of 12 mg/kg/day.

6. A 90-day dog feeding study with a NOEL of 1.25 mg/kg/day.

7. A rabbit teratology study with no maternal toxicity or developmental toxicity up to and including 180 mg/kg (highest dose).

8. A rat teratology study with a maternal toxicity NOEL of 100 mg/kg/day and no developmental toxicity up to and including 300 mg/kg/day (highest dose).

9. A two-generation rat reproduction study with a reproductive NOEL of 125 mg/kg/day (highest dose) and a developmental NOEL of 25 mg/kg/day.

10. A 1-year dog feeding study with a NOEL of 1.25 mg/kg of body weight (bw)/day.

11. A 2-year rat chronic feeding/oncogenicity study with a NOEL of 5 mg/kg/day with no oncogenic potential under the conditions of the study up to and including approximately 250 mg/kg, the highest dose tested.

12. A 2-year mouse chronic feeding/oncogenicity study with a NOEL of 15 mg/kg/day and with a statistically

significant increase in combined adenomas and carcinomas of the liver in male mice at approximately 375 mg/kg, the highest dose tested.

13. Ames test with and without activation, negative.

14. A mouse dominant-lethal assay, negative.

15. Chinese hamster nucleus anomaly, negative.

16. Cell transformation assay, negative.

Data currently lacking are additional animal metabolism and field residue studies.

The Agency carried out a weight-of-the-evidence review of all relevant data and concluded that the fungicide is a Category C oncogen (possible human carcinogen with limited evidence of carcinogenicity in animals in the absence of human data). This conclusion was based on a determination that there was evidence of oncogenicity in only a single species and sex. There was a statistically significant increase in combined adenomas and carcinomas of the liver in male mice at the highest dose tested. The Agency concludes that propiconazole was negative for oncogenicity in the rat.

The Agency has evaluated dietary exposure to the fungicide residues for the commodities proposed and for the commodities which have established tolerances using data on anticipated residues. Available data indicate that approximately 25 to 35 percent of the total U.S. grass grown for seed acreage is treated with the fungicide. The livestock dietary burden was calculated using anticipated residues in feed items multiplied by the expected percent contribution to the diet and the maximum percent of the crop that is treated. This dietary burden was then compared with available data from feeding studies to determine anticipated residues in meat and milk. Using an upper bound oncogenic potency estimate of 0.079 $(mg/k\ g/day)^{-1}$ developed from a Weibull 82 model, the upper limit on dietary oncogenic risk is calculated to be in the range of 1 incidence in a million (10^{-6}) using anticipated residues.

Based on the NOEL of 1.25 mg/kg bw/day in the 1-year dog study and a hundredfold safety factor, the acceptable daily intake (ADI) has been set at 0.013 mg/kg bw/day for the U.S. population. The theoretical maximum residue contribution (TMRC) of 0.001073 mg/kg bw/day was calculated from existing tolerances. The current action will increase the TMRC by 0.000038 mg/kg bw/day. These tolerances and previously established tolerances utilize a total of 8 percent of the ADI. The TMRC assumes that residue levels are at the established tolerances and that 100% of the crop is treated.

There are no regulatory actions pending against the registration of the fungicide. The metabolism of the fungicide in plants and animals is adequately understood for purposes of the tolerances set forth below. Two analytical methods, including gas liquid chromatography equipped with an electron capture detector, are available for enforcement purposes. Method AG-454A for crops and AG-517 for livestock commodities both determine the parent compound per se and metabolites as 2,4-dichlorobenzoic acid expressed as parent compound. Because of the long lead time from establishing these tolerances to publication of the enforcement methodologies in the "Pesticide Analytical Manual Volume II," the analytical methodologies are being made available in the interim to anyone interested in pesticide enforcement when requested by mail from:

Calvin Furlow, Public Information Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 242, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202. (703)-557-4437.

The pesticide is useful for the purpose for which the tolerances are sought. Based on the information cited above, the Agency has determined that establishing the tolerances for residues of the pesticide in or on the listed commodities will protect the public health. Therefore, tolerances are established as set forth below. These tolerances will expire 2 years from the date of publication of the final rule. Available data are inadequate to completely characterize metabolism in ruminants and residue data are considered inadequate due to insufficient geographic and grass species representation. The tolerance levels were calculated to assure tolerances would not be exceeded and residue data is available for Oregon where the majority of grass for seed is grown. Based on the review of the animal metabolism and field residue studies, the Agency will determine whether the issuance of a permanent tolerance is appropriate.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising toleance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect

List of Subjects in 40 CFR Part 180

Administrative practice and procedures, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 7, 1989.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

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

Authority: 21 U.S.C. 346a and 371.

2. Section 180.434 is amended by adding and alphabetically inserting entries for grass, forage; grass, hay; and grass screenings; and by revising the entries for kidney and liver of cattle, goats, hogs, horses, and sheep, to read as follows:

§ 180.434 1-[[2-(2,4-Dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]methyl]-1H-1,2,4-triazol; tolerances for residues.

* * * * *

Commodities	Parts per million	Expiration date
* * * * *		
Cattle, kidney	2.0	[*Insert date 2 years from publication of final rule in* FEDERAL REGISTER]
Cattle, liver	2.0	Do.
* * * * *		

Commodities	Parts per million	Expiration date
Goats, kidney	2.0	[*Insert date 2 years from publication of final rule in* FEDERAL REGISTER]
Goats, liver	2.0	Do.
Grass, forage	0.5	Do.
Grass, hay	5.0	Do.
Grass, seed screenings.	10.0	Do.
Hogs, kidney	2.0	Do.
Hogs, liver	2.0	Do.
Horses, kidney	2.0	Do.
Horses, liver	2.0	Do.
* * *	* *	
Sheep, kidney	2.0	[*Insert date 2 years from publication of final rule in* FEDERAL REGISTER].
Sheep, liver	2.0	Do.

[FR Doc. 89-14683 Filed 6-20-89; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF ENERGY

48 CFR Part 952

Acquisition Regulations; Government Travel Discounts to Cost Reimbursement Type Contractors

AGENCY: Department of Energy (DOE).

ACTION: Final Rule; correction.

SUMMARY: On April 25, 1989, at 54 FR 17734, the Department of Energy (DOE) published in the **Federal Register** regulations amending the Department of Energy Acquisition Regulation (DEAR). These regulations implemented General Services Administration (GSA) Bulletin Federal Property Management Regulations (FPMR) A-95, Availability of Government Travel Discounts to Cost Reimbursement Type Contractors. In that document the contract clause title and date were inadvertently omitted in section 952.251-70. This document corrects that omission.

EFFECTIVE DATE: April 25, 1989.

FOR FURTHER INFORMATION CONTACT: Gwen Cowan, Business and Financial Policy Division (MA-422), Office of the Deputy Assistant Secretary for Procurement and Assistance Management, Washington, DC 20585, (202) 586-8159.

List of Subjects in 48 CFR Part 952

Government procurement.

Berton J. Roth,

Deputy Assistant Secretary for Procurement and Assistance Management.

PART 952—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

2. The authority citation for Part 952 continues to read as follows:

Authority: Section 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), and Section 644 of the Department of Energy Organization Act, Pub. L. 95-91 (42 U.S.C. 7254).

2. In section 952.251-70, the introductory paragraph to the section, the title and date of the clause, and the introductory paragraph to the clause are corrected to read as set forth below:

952.251-70 Contractor employee travel discounts.

As prescribed in Subpart 951.70, the following provision/clause will be included in all cost-reimbursable solicitations and resulting contracts, or contract modifications, as applicable.

Contractor Employee Travel Discounts (April 1989)

Consistent with contract-authorized travel requirements, contractor employees shall make use of the travel discounts offered to Federal travelers, through use of contracted airlines discount air fares, hotels and motels lodging rates and car rental companies, when use of such discounts would result in lower overall trip costs and the discounted services are reasonably available to contractor employees performing official Government contract business. Vendors providing these services may require that the contractor employee traveling on Government business be furnished with a letter of identification signed by the authorized contracting officer.

* * * * *

[FR Doc. 89-14589 Filed 6-20-89; 8:45 am]

BILLING CODE 6450-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1152

[Ex Parte No. 274 (Sub-No. 20)]

Rail Abandonments—Avoidability of Property Tax Expense Under the Unit Method of Assessment

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: The Commission instituted this rulemaking proceeding in a decision served September 15, 1988 (53 FR 36081, September 16, 1988), to reconsider the avoidability of property taxes in abandonment and subsidy/purchase proceedings. Upon consideration of the comments, we have decided to adopt final rules as set forth below.

This action was necessary because our existing rules did not accurately reflect the tax consequences of an abandonment occurring in a State that taxes real property on a non-*ad valorem* basis. The rules were confusing and incomplete and to the carrier's evidentiary presentation and the options available to protestants.

The rules we are adopting clarify and simplify the existing rules and allocate the burden of proof. The intended effect is to allow a more accurate determination of the avoidable costs of rail operations in connection with rail abandonment and subsidy/purchase proceedings.

EFFECTIVE DATE: The rules are effective July 21, 1989.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245, [TDD for hearing impaired; (202) 275-1721].

SUPPLEMENTARY INFORMATION: The final rules are set forth below. Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 275-1721.].

This action will not have a significant economic impact on a substantial number of small entities. Small carriers will be least affected because they typically operate within the fewest number of States. Small protestants will benefit from our realignment of the evidentiary burden.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects in 49 CFR Part 1152

Administrative practice and procedure; Railroads.

Authority: 5 U.S.C. 553 and 49 U.S.C. 10321, 10362, 10903, 10904, and 10905.

Decided: June 5, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips. Commissioner Andre concurred with a separate expression.

Commissioner Lamboley dissented in part with a separate expression.

Noreta R. McGee,

Secretary.

For the reasons set forth in the preamble, Title 49, Chapter X, Part 1152 of the Code of Federal Regulations is amended as follows:

PART 1152—ABANDONMENT AND DISCONTINUANCE OF RAIL LINES AND RAIL TRANSPORTATION UNDER 49 U.S.C. 10903

1. The authority citation for Part 1152 continues to read as follows:

Authority: 5 U.S.C. 553, 559 and 704; 11 U.S.C. 1170; 16 U.S.C. 1247(d); and 49 U.S.C. 10321, 10362, 10505, 10903, 10904, 10905, 10906, 11161, 11162 and 11163.

§ 1152.31 [Amended]

2. Section 1152.32(j)(1) is amended by removing the last sentence and revising the first sentence to read as follows:

(j) * * *

(i) The assigned costs under this subsection shall be the net systemwide property tax savings resulting from the abandonment, calculated as set out below, if the applicant-carrier intends subsequently to sell or otherwise dispose of the abandoned properties.

* * *

3. Section 1152.32(j) (2), (3) and (4) are revised to read as follows:

§ 1152.32 Calculation of avoidable costs.

(j) * * *

(2) In States where a true *ad valorem* tax is levied on real property (such a track, land, buildings, and other facilities), applicant must affirm that the *ad valorem* method applies and must substantiate the amount of property taxes levied against the property on the line segment.

(3) In States where the *ad valorem* method is not employed, applicant must describe the applicable property tax methodology if it is claiming the local property tax as an avoidable cost of operations. Additionally, it must substantiate with evidence and computations the actual Statewide tax savings attributable to the abandonment.

(4) Any property tax properly substantiated under paragraphs (f)(2) or (3) of this section shall be presumed to represent systemwide savings to the carrier. Protestants may rebut this presumption by presenting evidence: (i) That property taxes in those States where the carrier operates that are not involved in the abandonment will increase significantly because of reassessments attributable to the abandonment; or (ii) that a significantly higher property tax will be levied against a retained portion of the abandoned property. If applicant does not refute protestant's evidence, it may claim avoidable property taxes only if, and to the extent, it proves systemwide property tax savings.

* * * * *

[FR Doc. 89-14655 Filed 6-20-89; 8:45 am]

BILLING CODE 7035-01-M

Proposed Rules

Federal Register
Vol. 54, No. 118
Wednesday, June 21, 1989

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89-NM-69-AD]

Airworthiness Directives; Boeing of Canada, Ltd., de Havilland Division, Model DHC-8-100 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposed to adopt a new airworthiness directive (AD), applicable to certain de Havilland Model DHC-8-100 series airplanes, which would require, as an interim measure, the installation of a placard on the door of certain wardrobe assemblies limiting the use of the wardrobe as a coat rack only, and subsequent modification of the door latch. This proposal is prompted by a report of a wardrobe door which became unlatched and allowed the contents to shift into the path of the flight crew door, preventing it from being opened. This condition, if not corrected, could hinder the emergency evacuation of the airplane.

DATE: Comments must be received no later than August 7, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-69-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing of Canada, Ltd., de Havilland Division, Garrett Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the FAA, New England Region, New York Aircraft Certification Office, ANE-173; telephone (516) 791-6420. Mailing address: FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue Room 202, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Mr. C. Kallis, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of a proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-69-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

Transport Canada, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain de Havilland Model DHC-8-100 series airplanes. There has been one report where an airplane experienced the collapse of the right main landing gear while taxiing to takeoff. This caused the wardrobe door to become unlatched and snap open. An improperly stowed ice chest then shifted and blocked the flight crew door. Further investigation revealed that the waist-high wardrobe door does not always latch properly, especially if the closing procedure consists of a gentle push at the top only. This condition, if not corrected, could result in the hindrance of an emergency evacuation.

Boeing of Canada, Ltd., de Havilland Division, has issued Service Bulletin No. 8-25-35, Revision B, dated January 27, 1989, which describes procedures for modification of the wardrobe door latch and strikers. This modification consists of an additional "¼-turn" latch and top and bottom modified striker-plates. Transport Canada has issued Airworthiness Directive CF-88-24 addressing this subject.

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

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require, as an interim measure, installation of a placard to indicate restriction of the use of the wardrobe as a coat rack only, and subsequent modification of the door latch in accordance with the service bulletin previously described.

It is estimated that 42 airplanes of U.S. registry would be affected by this AD, that it would take approximately 8 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The required modification parts would be provided by the manufacturer at no cost to the operator. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $13,440.

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

For the reasons discussed above, I certify that this proposed regulation (1)

is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing of Canada, Ltd., de Havilland Division: Applies to Model DHC-8-100 series airplanes, Serial Numbers 3 through 106 inclusive, equipped with wardrobe assembly 82520145, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent the wardrobe door from becoming unlatched and allowing the shifting of contents into the path of the flight crew door, thereby hindering emergency evacuation, accomplish the following:

A. Within 15 days after the effective date of this AD, install a placard on the wardrobe door, stating the following: "THIS WARDROBE IS RESTRICTED FOR USE AS A COAT/GARMENT RACK."

B. Within 60 days after the effective date of this AD, modify the wardrobe door latch and strikers, in accordance with Boeing of Canada, Ltd., de Havilland Division, Service Bulletin No. 8-25-35, Revision "B," dated January 27, 1989. Once this modification is accomplished, the placard required by paragraph A., above, may be removed.

C. An alternate means of compliance which provides an acceptable level of safety may be used when approved by the Manager, New York Aircraft Certification Office, FAA, New England Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

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

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Boeing of Canada, Ltd., de Havilland Division, Garrett Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York.

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

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-14627 Filed 6-20-89; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 39

[Docket No 89-NM-83-AD]

Airworthiness Directives: Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to Boeing Model 727 series airplanes, which would require repetitive inspections and repair, if necessary, of the inboard trailing edge flaps inboard track. This proposal is prompted by reports of corrosion and/or cracking of the flap tracks. This condition, if not corrected, could lead to failure of the flap track and possible separation of the inboard trailing edge flap.

DATE: Comments must be received no later than August 8, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Dockets No. 89-NM-83AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Kathi N. Ishimaru, Airframe Branch, ANM-120S; telephone (206) 431-1525. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-83-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

There have been several incidents involving corrosion and/or cracking of the inboard trailing edge flaps inboard track on Model 727 airplanes. The reported incidents have been attributed to stress corrosion. These conditions if not corrected, could lead to failure of the flap track and possible separation of the affected inboard trailing edge flap.

The FAA has reviewed and approved Boeing Service Bulletin 727-57-0178, Revision 1, dated January 19, 1989, which describes procedures for inspection of the inboard trailing edge flaps inboard track for cracks and

corrostion, and specific repair procedures.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require repetitive inspection, and repair, if necessary, of the inboard trailing edge flaps inboard track in accordance with the service bulletin previously described. If cracking or corrosion exceeds certain limits, the flap track would be required to be replaced.

The FAA has determined that long term continued operational safety will be better assured by actual modification of the airframe to remove the source of the problem, rather than by repetitive inspections. Therefore, the FAA has issued additional rulemaking which proposes to require operators to accomplish the modification identified in paragraph D. of this Notice and, thus, terminate the repetitive insepction requirement. The proposal, contained in Docket 89-NM-60-AD (54 FR 22302; May 23, 1989), is a result of the recommendations of the Aging Aircraft Task Force, sponsored by the Air Transport Association (ATA) of America, the Aerospace Industries Association (AIA), and the FAA; it proposes the installlation of numerous terminating modifications related to a number of service bulletins applicable to Model 727 airplanes, to be accomplished within 4 years or 75,000 flight cycles, whichever occurs later.

There are approximately 1,695 Model 727 series airplanes of the affected design in the worldwide fleet. It is estimated that 1,172 airplanes of U.S. registry would be affected by this AD, that it would take approximately 29 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,359,520.

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

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

To prevent separation of an inboard trailing edge flap due to corrosion or cracking of the inboard track, accomplish the following:

A. For airplanes with flap tracks that have neither the repair nor the preventative modification installed, as specified in Boeing Service Bulletin 727-27-117, Revision 5, dated January 30, 1981, or earlier revisions, accomplish the following:

1. *Inspection*

a. Accomplish the following inspections prior to (1) or (2), below, whichever occurs later:

(1) prior to the accumulation of 7,000 flight cycles or 5 years since manufacture, whichever occurs first; or

(2) within the next 500 flight cycles or 6 months after the effective date of this AD, whichever occurs first.

b. Accomplish *either* of the following inspections:

(1) Perform a close visual inspection for cracks and corrosion of the inboard trailing edge flaps inboard track in the area where the flap tracks attach to the main landing gear beam. Repeat this inspection at intervals not to exceed 3,000 flight cylces or 18 months, whichever occurs first.

(2) Perform a visual and magnetic particle inspection for cracks and corrosion in the flap track, in accordance with Figure 1 of Boeing Service Bulletin 727-57-0178, Revision 1, dated January 19, 1989. Repeat these inspections at intervals not to exceed 9,000 flight cycles or 6 years, whichever occurs first.

2. *Repair*

a. If cracks or corrosion are detected as a result of the inspections required by paragraph A.1.b, above, and do not exceed the limits specified in Figures 1 or 3 of Boeing Service Bulletin 727-57-0178, Revision 1, dated January 19, 1989, prior to further flight, repair in accordance with the service bulletin. If the crack extends into the flap track web, inspect the crack using a borescope and conduct a close visûal inspection in accordance with paragraph A.1.b(1), above, at intervals not to exceed 2,000 flight cycles or one year, whichever occurs first. If crack growth occurs, repair in accordance with this paragraph or A.2.b., below.

b. If cracks or corrosion are detected which exceed the limits specified in Figures 1 or 3 of Boeing Service Bulletin 727-57-0178, Revision 1, dated January 19, 1989, prior to further flight, replace the falp track.

B. For airplanes with flap tracks which have the preventative modfification installed in accordance with Boeing Service Bulletin 727-57-117, Revision 5, dated January 30, 1981, or earlier revisions, accomplish the following:

1. *Inspection*

a. Accomplish the following inspections prior to (1) or (2), below, whichever occurs later:

(1) within the next 9,000 flight cycles or 6 years since modification, whichever occurs first; or

(2) within the next 500 flight cycles or 6 months after the effective date of this AD, whichever occurs first.

b. Accomplish *either* of the following inspections:

(1) Perform a close visual inspection for cracks and corrosion of the inboard trailing edge flaps inboard track in the area where the flap tracks attach to the main landing gear beam. Repeat this inspection at intervals not to exceed 3,000 flight cycles or 18 months, whichever occurs first.

(2) Perform a visual and magnetic particle inspection for cracks and corrosion in the flap track, in accordance with Figure 1 of Boeing Service Bulletin 727-57-0178, Revision 1, dated January 19, 1989. Repeat this inspection at intervals not to exceed 9,000 flight cycles or 6 years, whichever occurs first.

2. *Repair*

a. If cracks or corrosion are detected as a result of the inspections required by paragraphs B.1.b., above, and do not exceed the limits specified in Figures 1 or 3 of Boeing Service Bulletin 727-57-0178, Revision 1, dated January 19, 1989, prior to further flight, repair in accordance with the service bulletin. If the crack extends into the flap track web, inspect the crack using a borescope and conduct a close visual inspection in accordance with paragraph B.1.b(1), above, at intervals not to exceed 2,000 flight cycles or one year, whichever occurs first. If crack growth occurs, repair in accordance with this paragraph or B.2.b., below.

b. If cracks or corrosion are detected which exceed the limits specified in Figures 1 or 3 of Boeing Service Bulletin 727-57-0178, Revision

1, dated January 19, 1989, prior to further flight, replace the flap track.

C. For airplanes with flap tracks that have been repaired with the splice plate in accordance with Boeing Service Bulletin 727–57–117, Revision 5, dated January 30, 1981, or earlier revisions, accomplish the following:

1. *Inspection*

a. Accomplish the following prior to (1) or (2), below, whichever occurs later:

(1) within the next 9,000 flight cycles or 6 years since modification, whichever occurs first; or

(2) within the next 500 flight cycles or 6 months after the effective date of this AD, whichever occurs first.

b. Perform a visual and magnetic particle inspection for cracks and corrosion in the flap track, in accordance with Figure 1 of Boeing Service Bulletin 727–57–0178, Revision 1, dated January 19, 1989.

2. *Repair*

a. Remove the repaired parts installed in accordance with Boeing Service Bulletin 727–57–117, and repair, prior to further flight, in accordance with paragraph D.1. or D.2.a. of the Accomplishment Instructions of Boeing Service Bulletin 727–57–0178, Revision 1, dated January 19, 1989. If the crack extends into the flap track web, inspect the crack using a borescope and conduct a close visual inspection in accordance with paragraph B.1.b.(1), above, at intervals not to exceed 2,000 flight cycles or one year, whichever occurs first. If crack growth occurs, repair in accordance with this paragraph or C.2.b., below.

b. Replace the flap track prior to further flight if any of the following occur:

(1) The cracks exceed the limits specified in Figure 1 of Boeing Service Bulletin 727–57–0178, Revision 1, dated January 19, 1989.

(2) The crack length is within the short limits specified in Figure 1 of Boeing Service Bulletin 727–57–0178, Revision 1, dated January 19, 1989, and the crack runs toward the flap track integral rib.

(3) The crack length is between the short limits and the maximum limits specified in Figure 1 of Boeing Service Bulletin 727–57–0178, Revision 1, dated January 19, 1989.

(4) The corrosion exceeds the limits specified in Figure 3 of Boeing Service Bulletin 727–57–0178, Revision 1, dated January 19, 1989.

D. Modification in accordance with Figure 2 or repair in accordance with Figure 3 of Boeing Service Bulletin 727–57–0178, Revision 1, dated January 19, 1989, terminates the inspection requirements of this AD. Repair in accordance with Figures 4 or 5 of the service bulletin terminates the inspection requirements, if a crack does not extend into the flap track web.

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

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Seattle Aircraft Certification Office.

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

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

Issued in Seattle, Washington, on June 9, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–14624 Filed 6–20–89; 8:45 am]

BILLING CODE 4910–13–M

---

14 CFR Part 39

[Docket No. 89–NM–72–AD]

Airworthiness Directives; Boeing Model 767 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to supersede an existing airworthiness directive (AD), applicable to certain Boeing Model 767 airplanes, which currently requires inspection and/or replacement of certain check valves in the 8th stage bleed pneumatic system. This proposal is prompted by reports that operators are continuing to find cracks in check valves even though the valves have been modified in accordance with the existing AD. The proposed AD would require repetitive inspections on all Hamilton Standard check valves in the 8th stage bleed pneumatic system, and replacement, if necessary. Failure of the 8th stage bleed pneumatic system check valve allows high pressure air to enter the 8th stage of the engine under certain conditions, causing engine surge and compressor stall, leading to engine shudown. If pieces separate from the poppet, they may cause engine or bleed system damage.

DATE: Comments must be received no later than August 7, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 89–NM–72–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124; or from Hamilton Standard, Division of United Technologies Corporation, Bradley Field Road, Windsor Locks, Connecticut 06096. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

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

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to the Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89–NM–72–AD." The post card will be date/time stamped and returned to the commenter.

Discussion

On June 11, 1987, the FAA issued AD 87-12-07, Amendent 39-5646 (52 FR 23641; June 24, 1987), to require inspection, repair, and/or replacement of certain Hamilton Standard, part number 773856, 8th stage bleed pneumatic system check valves on Model 767 airplanes. That AD requires different inspections and replacement, depending on the valve manufacture date and dash number configuration. Terminating action for the repetitive inspection requirements is provided by replacing the check valves with valves rebuilt to certain specifications described in Hamilton Standard service bulletins or production equivalents.

Since issuance of that AD, several operators of Boeing Model 767 airplanes have reported that Hamilton Standard 8th stage bleed pneumatic system check valves, part number 773856, replaced or rebuilt, which have been installed to comply with AD 87-12-07 as terminating action, are continuing to exhibit premature poppet cracks and other failures. Failure of this check valve allows high pressure air to enter the 8th stage of the engine when the high stage valve opens during low cruise or idle power operation, causing engine surge and compressor stall, leading to engine shutdown. If pieces separate from the poppet, they may cause engine or bleed system damage.

It has been determined that there are still several conditions/failure modes for the part number 773856 check valves that need to be inspected on a repetitive basis. These include: (1) Welded-on identification plates, (2) poppet cracks, (3) poppet rim clearance, (4) poppet/shaft side play, (5) poppet/shaft retention if product improvement L3 has not been incorporated, and (6) swaged collar condition if product improvement L4 has not been incorporated. The FAA has reviewed and approved Hamilton Standard Service Bulletin 36-2078, dated March 1, 1989, which describes procedures for these inspections.

Since this condition may exist or develop on other airplanes of the same type design, an AD is proposed which would supersede AD 87-12-07 to require initial and repetitive inspection of all Hamilton Standard 8th stage bleed pneumatic system check valves, part number 773856 of any dash number series, installed on Boeing Model 767 airplanes in accordance with the service bulletin previously described. This action is considered to be interim action until an improved part, which will preclude the addressed unsafe condition, is designed and approved. At that time, the FAA may consider further rulemaking action to require its installation.

There are approximately 245 Model 767 series airplanes of the affected design in the worldwide fleet. It is estimated that 106 airplanes of U.S. registry would be affected by this AD. It is estimated that 157 Hamilton Standard 8th stage bleed pneumatic system check valves of the affected part number are in service. It is estimated that it would take approximately 7 manhours to perform the required inspection. The average labor cost is estimated to be $40 per manhour. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $43,960 per inspection cycle.

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—[AMENDED]

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

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

§ 39.31 [Amended]

2. Section 39.31 is amended by superseding AD 87-12-07, Amendment 39-5646 (52 FR 23641; June 24, 1987), with the following new airworthiness directive:

Boeing: Applies to Model 767 series airplanes, certificated in any category, equipped with Hamilton Standard 8th stage bleed pneumatic system check valve, part number 773856. Compliance is required as indicated, unless previously accomplished.

To preclude engine or pneumatic system damage caused by the failure of the pneumatic system 8th stage check valve, accomplish the following:

A. Within the next 500 hours time-in-service after the effective date of this AD, or prior to the accumulation of 1,200 hours time-in-service on the valve, whichever occurs later, and thereafter at intervals not to exceed 1,200 hours time-in-service, perform the inspections of the 8th stage bleed pneumatic system check valve, in accordance with Hamilton standard Service Bulletin 36-2078, dated March 1, 1989. Prior to further flight, repair or replace any check valves which do not pass all the required inspections.

B. Used check valves must be inspected and repaired, if necessary, in accordance with Hamilton Standard Service Bulletin 36-2078, dated March 1, 1989, prior to installation in any Model 767 series airplanes.

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

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Seattle Aircraft Certification Office.

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

All persons affected by this directive who have not already received copies of the service bulletins cited herein may obtain copies upon request from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124, or Hamilton Standard, Division of United Technologies Corporation, Bradley Field Road, Windsor Locks, Connecticut 06096. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

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

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-14625 Filed 6-20-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-NM-76-AD]

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to certain Boeing Model 767 airplanes, which would require initial and repetitive inspections of certain 8th stage bleed pneumatic system check valves, and repair or replacement of those valves, as necessary. This amendment is prompted by reports of premature wear and/or failure of these check valves when used on the Boeing Model 767 series airplanes. This condition, if not corrected, could result in engine shutdown, engine damage, and/or damage to the pneumatic systems.

DATE: Comments must be received no later than August 7, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-76-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

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

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administration before taking action on the proposed rule. The proposal contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenter wishing the FAA to acknowledge receipt of their comments submitted in response to the Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-76-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

Several operators of Boeing Model 767 airplanes have reported that the Allied-Signal 8th stage bleed pneumatic system check valve, part number 3202164-2 or -4, when used as an option in the 8th stage bleed air system, has exhibited premature fracture failure. Failure of the check valve allows high pressure air to enter the 8th stage of the engine when the high stage valve opens during low cruise or idle power operation, causing engine surge and compressor stall, leading to engine shutdown. If pieces separate from the poppet, they may cause engine or bleed air system damage.

The FAA has reviewed and approved Boeing Alert System Bulletin 767-36A0030, dated April 27, 1989, which describes inspection and replacement, if necessary, of the Allied Signal 8th stage check valves, part numbers 3202164-2 and -4.

Since this condition is likely to exist or develop on other airplanes of the same type design, an AD is proposed which would require initial and repetitive inspections of these check valves in accordance with the Boeing service bulletin previously described.

There are approximately 245 Model 767 series airplanes of the affected design in the worldwide fleet. It is estimated that 106 airplanes of U.S. registry would be affected by this AD. It is estimated that 49 Allied Signal 8th stage bleed pneumatic system check valves of the affected part number are in service. It is estimated that it would take approximately 7 manhours to perform the required inspection. The average labor cost is estimated to be $40 per manhour. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $13,720 per inspection cycle.

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for the action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend Part 39 of the Federal Aviation Regulations (14 CFR Part 39) as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to all Model 767 series airplanes, certificated in any category, equipped with Allied Signal 8th stage bleed system check valve, part number 3202164–2 or –4. Compliance is required as indicated, unless previously accomplished.

To preclude engine shutdown or damage, and/or pneumatic system damage, accomplish the following:

A. Within the next 250 hours time-in-service after the effective date of this AD, or prior to accumulating 600 hours total time-in-service on the valve, whichever occurs later, and thereafter at intervals not to exceed 600 hours, perform the inspections of the check valve in accordance with Boeing Alert System Bulletin 767–36A0030, dated April 27, 1989. Prior to further flight, repair or replace check valves which do not pass all required inspections.

B. Used check valves must be inspected and repaired, if necessary, in accordance with Boeing Alert Service Bulletin 767–36A0030 dated April 27, 1989, prior to installation in any Model 767 series airplane.

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

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Seattle Aircraft Certification Office.

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

All persons affected by this directive who have not already received copies of the service bulletins cited herein may obtain copies upon request from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

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

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–14626 Filed 6–20–89; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 89–NM–87–AD]

Airworthiness Directives; British Aerospace Model BAe 125–800A Series Airplanes, Equipped with Grumman Aerospace Corporation Engine Exhaust Duct Part No. C46P13100–3 or C46P13100–103 (Not Applicable to Airplanes Equipped With Dee Howard Thrust Reversers)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain British Aerospace Model BAe 125–800A series airplanes, which would require installation of a strengthened engine exhaust duct. This proposal is prompted by one report of the tail pipe collapsing inward due to compressor stall. This condition, if not corrected, could lead to loss of required engine power.

DATE: Comments must be received no later than August 7, 1989.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 89–NM–87–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from British Aerospace, PLC, Service Bulletin Librarian, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

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

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89–NM–87–AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The United Kingdom Civil Aviation Authority (CAA), in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on British Aerospace Model BAe 125–800A series airplanes. There has been one report of the engine exhaust duct (tail pipe) collapsing inward due to compressor stall. When compressor stall occurs, the air pressure inside the tail pipe decreases and the outside fan pressure can pulse up, resulting in the tail pipe collapsing. Part number C46P13100–3 and C46P13100–103 tail pipes, currently installed on some of the affected airplanes, were not designed to withstand these kinds of loads. This condition, if not corrected, could lead to loss of necessary engine power.

British Aerospace has issued Service Bulletin 71–40–3213A, Revision 2, dated April 12, 1989, which describes procedures for replacing existing engine exhaust ducts with new stronger exhaust ducts. The United Kingdom CAA has classified this service bulletin as mandatory.

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

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require installation of the new stronger engine exhaust ducts in accordance with the service bulletin previously described.

It is estimated that 38 airplanes of U.S. registry would be affected by this AD, that it would take approximately 20 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The required parts would be provided by the manufacturer at no cost to the operator. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $30,400.

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace: Applies to Model BAe 125-800A series airplanes equipped with Grumman Aerospace Corporation Engine Exhaust Duct Part No. C46P13100-3 or C46P13100-103 (not applicable to airplanes with Dee Howard thrust reversers) certificated in any category. Compliance is required within 60 days after the effective date of this AD, unless previously accomplished.

To prevent collapse of the engine exhaust duct, accomplish the following:

A. Replace the left and right engine exhaust ducts in accordance with BAe 125 Service Bulletin 71-40-3213A, Revision 2, dated April 12, 1989.

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

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, PLC, Service Bulletin Librarian, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

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

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-14628 Filed 6-20-89; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 39

[Docket No. 89-NM-79-AD]

Airworthiness Directives; McDonnell Douglas Model DC-10-30 and KC-10A (Military) Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC-10-30 series airplanes, which would require an inspection of the auxiliary hydraulic pump connector sockets to determine if the correct connector sockets are installed; if the incorrect sockets are present, they would be required to be replaced with those of the correct part number. This proposal is prompted by a report of auxiliary hydraulic pump connectors found to have incorrect sockets installed. This condition, if not corrected, could lead to sockets pulling out of the connector and shorting out of the auxiliary hydraulic pump circuit, which would result in the loss of the auxiliary hydraulic pump.

DATE: Comments must be received no later than July 27,1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-79-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Douglas Aircraft Company, P.O. Box 1771, Long Beach, California 90801. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Los Angeles Aircraft Certification Office.

FOR FURTHER INFORMATION CONTACT: Edward S. Chalpin, Aerospace Engineer, Systems and Equipment Branch, ANM-130L, FAA Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5335.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by

interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-87-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

One operator of McDonnell Douglas Model DC-10-30 series airplanes has reported five instances of auxiliary hydraulic pump connectors with incorrect sockets installed. The incorrect sockets could cause shorting of the terminal pins and the inability to control the pump. No failures of the pump have yet occurred. The FAA has been advised that, during production, the pump connectors were replaced; however, incorrect sockets were reinstalled. This condition, if not corrected, could result in the loss of the auxiliary pump and result in the inability to control the airplane.

The FAA has reviewed and approved McDonnell Douglas Service Bulletin A29-127, dated March 3, 1989, which describes procedures for inspection to determine if the correct auxiliary hydraulic pump connector sockets are installed, and replacement, if necessary.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require an inspection of the auxiliary hydraulic pump connector sockets, and replacement, if necessary, in accordance with the service bulletin previously described.

There are approximately 107 McDonnell Douglas Model DC-10-30 and KC-10A series airplanes of the affected design in the worldwide fleet. It is estimated that 48 airplanes of the U.S. registry would be affected by this AD, that it would take approximately 2.5 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $4,800.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the varous levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Applies to Model DC-10-30 series and KC-10A (Military) airplanes, as listed in Service Bulletin A29-127, dated March 3, 1989, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent the loss of the use of the auxiliary hydraulic pumps, accomplish the following:

A. Within 30 days after the effective date of this Airworthiness Directive (AD), inspect the auxiliary hydraulic pumps 1 and 2 to determine if the correct connector sockets are installed, in accordance with the Accomplishment Instructions of McDonnell Douglas Service Bulletin A29-127, dated March 3, 1989. Any sockets detected which have the incorrect part number must be replaced, prior to further flight, with P/N DC65-8S sockets, in accordance with the service bulletin.

B. Within 15 days after the inspection required by paragraph A., above, submit a report of findings, positive or negative, to the Los Angeles Aircraft Certification Office, Attention: ANM-181L, FAA, Northwest Mountain Region, 3229 East Spring Street, Long Beach, California 90806-2425.

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

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Douglas Aircraft Company, P.O. Box 1771, Long Beach, California 90801, Attn: Manager, Warranty 73-44 (DC-10 Service Bulletin A-29-127). These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

Issued in Seattle, Washington, on June 12, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-14629 Filed 6-20-89; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-26935; File No. S7-13-89]

Proprietary Trading Systems

AGENCY: Securities and Exchange Commission.

ACTION: Extension of comment period.

SUMMARY: The Securities and Exchange Commission is extending from June 19, 1989, to July 19, 1989, the date by which comments must be received on Securities Exchange Act Release No. 26708 (April 11, 1989), 54 FR 15429, concerning the regulation of proprietary securities trading systems. The Commission has received several requests from probable commentators that the comment period be extended to assist them in preparing complete and thorough responses to the questions raised in the release.

DATE: Comments should be received on or before July 19, 1989.

ADDRESS: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Mail Stop 6–9, Washington, DC 20549. Comment letters received should refer to file No. S7–13–89. All comment letters received will be made available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Gordon K. Fuller, Special Counsel, (202) 272–2414; or Eugene A. Lopez, Attorney, (202) 272–2828, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street NW., Mail Stop 5–1, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: In Securities Exchange Act Release No. 26708 (April 11, 1989), 54 FR 15429, the Commission published for public comment proposed Rule 15c2–10. The proposed rule would provide for Commission review of proprietary securities trading systems that are not operated as facilities of a registered national securities exchange or association and are not subject to Commission regulation as national securities exchanges or associations pursuant to section 6 or 15A of the Securities Exchange Act of 1934 ("Act"). Several potential commentators have indicated their need for additional time to prepare their comments. In order to receive the benefit of comments from the greatest number of interested persons, the Commission is extending the comment period on Securities Exchange Act Release No. 26708 from June 19, 1989 to July 19, 1989.

By the Commission.

Dated: June 15, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–14666 Filed 6–20–89; 8:45 am]

BILLING CODE 8010–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 8F3634/P478; FRL–3604–7]

Propionic Acid; Proposed Exemptions from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that exemptions from the requirement of a tolerance be established for residues of propionic acid in or on the following raw agricultural commodities: cottonseed, peanuts, rice grain, and soybeans. These exemptions are requested by Stop-Shock, Inc.

DATE: Comments, identified by the document control number [PP 8F3634/P478], must be received on or before July 6, 1989.

ADDRESS: By mail, submit written comments to: Public Docket and Freedom of Information Section, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to Room 246, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Room 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Susan T. Lewis, Acting Product Manager (PM) 21, Registration Division (H7505C), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Office location and telephone number: Room 227, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 557–1900.

SUPPLEMENTARY INFORMATION: Stop-Shock, Inc., of Dallas TX, has submitted pesticide petition (PP) 8F3634 to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(e)), propose that an exemption from the requirement of tolerance under § 180.1023 (40 CFR 180.1023) be established for residues of propionic acid in or on the following raw agricultural commodities: cottonseed, peanuts, rice grain, and soybeans.

Propionic acid is to be applied without dilution and immediately after harvest by use of low-pressure nozzles to achieve uniform coverage as the commodity passes by the spraying applicator. The purpose of the post-harvest application is to prevent fungal growth in and on the freshly harvested commodity.

According to the proposed dosage rate, the maximum residue of propionic acid in or on the proposed raw agricultural commodities, cottonseed, peanuts, rice grain, and soybeans, is estimated to be 300 ppm, which is far below the maximum 8,000 ppm residue level from existing post-harvest applications. The treated commodities are for use as animal feeds only.

Exemptions from the requirement of a tolerance for residues of propionic acid are currently established under 40 CFR 180.1023 in or on stored grains of barley, corn, oats, sorghum, and wheat with a maximum residue level of 8,000 ppm from post-harvest applications. Treated grains are for use as animal feed only.

Propionic acid occurs naturally as a compound in poultry and is an intermediate product of digestion. It is produced in large quantities in ruminants (1970, *J. Argic. Food Chem.*, 19:1204). In nonruminants, propionic acid is one of the metabolic products of the breakdown of several amino acids and is utilized in the fatty acid metabolism in the body. Propionic acid is a product of the fermentation process of wood pulp waste using bacteria (Wayman et. al., US Patent 3,067,107; 1967) and is a natural byproduct of alfalfa hay fermentation. The action of microorganisms on a variety of materials will yield propionic acid (Merck Index, 10th Ed., 1983, p. 1127). Propionic acid is also used in veterinary medicine as an antiketogenetic or glucogenci agent, for stimulation of rumen development in calves, as a topical antifungal agent in various dermatoses, and for treatement of dermatophytic infections. It is also used as a bee repellant. Propionic acid occurs naturally in swiss cheese at levels as high as 1.0 percent, and it is used as a synthetic flavor ingredient. Propionic acid derivatives are also used as drugs for humans, e.g. ibuprofen, fenprofen, flurbiprofen, ketoprofen, and naproxen. Ibuprofen is available over-the-counter in many forms.

Data submitted to the Agency on propionic acid indicate a Toxicity Category III for oral, dermal, and inhalation toxicity and primary eye irritation and a Toxicity Category IV for primary dermal irritation. Long-term feeding studies in the open literature found that propionic acid acted directly on the forestomach of rats in the region of the limiting ridge producing pronounced hyperplasia, hyperplastic ulcers, and papillomas when administered at high doses (Griem, *Bundesgesundheitsblatt*, 28, 11, 322–327, 1985; *Toxicology*, 38, 1, 103–117, 1986). No changes were observed in the

grandular stomach, and the human does not have a comparable region to the rat forestomach. Data from a preliminary report on a propionic acid 90-day study in dogs showed focal and diffused hyperplastic changes in the esophagus or exposed dogs. The results indicate that propionic acid can mechanically irritate esophageal tissue. Mutagenicity studies on propionic acid have not shown any mutagenic potential (Basler et. al., *Food Chem. Toxicol.*, 25(4), 287–290, 1987). The propionic acid derivatives such as ibuprofen have been shown to produce gastrointestinal (gastric, duodenal, and intestinal) erosions in experimental animals and are known to produce gastrointestinal side effects in humans (Goodman-Gilman, Pharmacological Basis of Therapeutics, Sixth Ed., 1980).

Extensive literature searches of open literature information data bases including TOXLINE, TOXLIT, TOXLIT65, MEDLINE, MEDLINE83, MEDLINE80, CANCERLIT, TOXNET (HSDB), RTECS(NIOSH) and TSCAINV have not indicated any special hazards relative to propionic acid.

In support of its request, the petitioner noted that propionic acid has been used on food crops for many years with no known toxicity problems. The U.S. Food and Drug Administration has granted a generally recognized as safe (GRAS) status to propionic acid as a chemical preservative, adjuvant to pesticide chemicals, and a food additive. These are referenced under 21 CFR 182.99, 184.1081, and 582.3081.

Sodium propionate (§ 180.1015) is also exempted from the requirement of a tolerance for residues when used as follows: (1) As a fungicide in the production of garlic and (2) for postharvest application as a preservative on salad greens and vegetables intended for consumption as salads.

Based on the above information considered by the Agency, the exemptions from the requirement of a tolerance for the residues of propionic acid in or on cottonseed, peanuts, rice grain, and soybeans would protect the public health. Therefore, it is proposed that the exemptions be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 15 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act. As provided for in the Administrative Procedure Act [5 U.S.C. 553(d)(3)], the comment period time is shortened to less than 30 days to allow for application to stored commodities harvested last season.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 8F3634/P478]. All written comments filed in response to this petition will be available in the Public Docket and Freedom of Information Section, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recording and recordkeeping requirements.

Dated: June 8, 1989.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR Part 180 be amended as follows:

PART 180—[AMENDED]

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

Authority: 21 U.S.C. 346a.

2. In § 180.1023, by revising the section to set forth the commodities in columnar fashion and by adding and alphabetically inserting the raw agricultural commodities cottonseed, peanuts, rice grain, and soybeans, to read as follows:

§ 180.1023 Propionic acid; exemption from the requirement of a tolerance.

Post-harvest application of propionic acid or a mixture of methylene bispropionate and oxy(bismethylene) bisproprionate when used as a fungicide is exempted from the requirement of a tolerance for residues in or on the following raw agricultural commodities:

Commodities

Alfalfa (Post-H)
Barley grain (Post-H)
Bermuda grass (Post-H)
Bluegrass (Post-H)
Brome grass (Post-H)
Clover (Post-H)
Corn grain (Post-H)
Cottonseed (Post-H)
Cowpea hay (Post-H)
Fescue (Post-H)
Lespedeza (Post-H)
Lupines (Post-H)
Oat grain (Post-H)
Orchard grass (Post-H)
Peanut hay (Post-H)
Peanuts (Post-H)
Peavine hay (Post-H)
Rice grain (Post-H)
Rye grass (Post-H)
Sorghum grain (Post-H)
Soybean hay (Post-H)
Soybeans (Post-H)
Sudan grass (Post-H)
Timothy (Post-H)
Vetch (Post-H)
Wheat grain (Post-H)

[FR Doc. 89–14686 Filed 6–20–89; 8:45 am]
BILLING CODE 6560–50–M

---

40 CFR Part 186

[FAP 6H5512/P489; FRL–3605–1]

Pesticide Tolerance for Diniconazole

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that a feed additive regulation be established to permit the combined residues of the fungicide diniconazole (E)-(R)-1-(2,4-dicholorophenyl)-4,4-dimethyl-2-(1H-1,2,4-triazolo-1-yl)pent-1-en-3-ol and related isomers (calculated as diniconazole) in or on feed items. This proposal to establish temporary maximum permissible levels for combined residues of diniconazole was requested by Valent USA Corp. (acting as agent to Chevron Chemical Co.) to permit marketing of feed commodities, foraging and feeding vines excluded, from experimental use of the fungicide on peanuts.

DATE: Comments, identified by the document control number [FAP 6H5512/P489], must be received on or before July 21, 1989.

ADDRESS: By mail, submit written comments to: Information Services Section, Program Management and Support Division (H–7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street, SW.,

Washington, DC 20460. In person, bring comments to: Room. 246, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (H-7505C), Attention: Product Manager (PM) 21, Environmental Protection Agency, Office of Pesticide Programs, 401, M Street, SW., Washington, DC 20460. In person, contact: Susan Lewis (Acting PM 21), Room 227, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. (703) 557-1900.

SUPPLEMENTARY INFORMATION: On November 10, 1988, Valent USA Corp. submitted a feed additive petition (FAP 6H5512) proposing to establish a feed additive regulation for residues of diniconazole and related isomers in or on peanut oil at 0.25 part per million (ppm) and soapstock at 0.25 ppm. These proposed feed additive regulations are being established to permit processing of peanuts which have been treated in connection with proposed EPA Experimental Permit No. 239-EUP-112.

The scientific data reported and other relevant material have been evaluated. The toxicological data considered in support of these regulations include:

1. A 90-day rat feeding study with a no-observed-effect-level (NOEL) of 10 ppm at 0.71 mg/kg/day and a lowest effect level (LEL) at 100 ppm.

2. A 90-day dog feeding study with a NOEL of 40 mg/kg/day and LEL of 200 mk/kg/day.

3. An Ames mutagenicity study was negative at 1 to 500 μg/plate with and without activation.

4. A sister chormatid exchange mutgagenicity study was negative.

5. A study in mammalian cells, *in vitro* cytogenetics in Chinese Hamster Ovary Cells (CHO), is negative for chormosomal aberrations.

The nature of the residue is adquately understood, and an adequate analytical method is available for enforcement purposes.

Based on the information considered, the Agency concludes that the pesticide can be safely used in the prescribed manner when such use is in accordance with the label and labeling accepted in connection with the experimental use permit issued pursuant to the Federal insecticide, fungicide, and Rodenticide Act (FIFRA) as amended (86 Stat. 973, 7 U.S.C. 136 et seq.), and the regulations are proposed as set forth below. This regulation will expire on May 5, 1991.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments should bear a notation indicating the document control number (FAP 6H5512/P489). Written comments filed in response to this petition will be available in the Information Services Section, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

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

Pursuant to the requirement of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new food and feed additive levels, or conditions for safe use of additives, or raising such food and feed additive levels do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subject in 40 CFR Part 186

Animal feeds, Pesticide and pests, Reporting and recordkeeping requirements.

Dated: June 8, 1989.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR Part 186 be amended as follows:

PART 186—[AMENDED]

1. The authority citation for Part 186 continues to read as follows:

Authority: 7 U.S.C. 135c(b)

2. By adding new § 186.2375, to read as follows:

§ 186.2375 Diniconazole.

A feed additive regulation is established to permit residues of the fungicide diniconazole ((E)-(R)-1-(2,4,dichlorophenyl)-4,4-dimethyl-2-(1H-1,2,4-triazol-1-yl)pent-1-en-3-ol) and related isomers in or on the following processed feeds when present therein as a result of application to peanuts in connection with an experimental use program which expires on May 5, 1991.

Feeds	Parts per million
Peanut oil	0.25
Soapstock	0.25

This regulation expires on May 5, 1990.

[FR Doc. 89-14685 Filed 6-20-89; 8:45 am]

BILLING CODE 6560-50-M

Notices

Federal Register
Vol. 54, No. 118
Wednesday, June 21, 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

Forms Under Review by Office of Management and Budget

June 16, 1989.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new propoals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 447–2118.

Extension

- Animal and Plant Health Inspection Service

Witchweed Mail Survey
None
Annually
Farms; 2,800 responses; 1,400 hours; not applicable under 3504(h)
Anita McGrady (301) 436–7774

- Forest Service

Special-Use Application and Report
FS–2700, SF–299
On occasion
Individuals or households; State or local governments; Farms; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; Small businesses or organizations; 4,500 responses; 18,000 hours; not applicable under 3504(h)
Ruben Williams (703) 235–2412

New Collection

- Food and Nutrition Service

Interim Rule: Special Supplemental Food Program for Women, Infants and Children (WIC): Implementation of Food-Cost-Cutting Systems
None
On occasion
Individuals or households; State or local governments; Business or other for-profit; 174 responses; 2,610 hours; not applicable under 3504(h)
Donna Hines (703) 756–3730

Donald E. Hulcher,

Acting Departmental Clearance Officer.

[FR Doc. 89–14667 Filed 6–20–89; 8:45 am]

BILLING CODE 3410–01–M

Agricultural Stablization and Conservation Service

Commodity Credit Corporation

1989–90 National Marketing Quota and Price Support Level for Burley Tobacco

AGENCY: Agricultural Stabilization and Conservation Service (ASCS) and Commodity Credit Corporation (CCC), United States Department of Agriculture (USDA).

ACTION: Notice of determination.

SUMMARY: The purpose of this notice is to affirm determinations made by the Secretary of Agriculture with respect to the 1989 crop of burley tobacco in accordance with the Agricultural Adjustment Act of 1938, as amended, and the Agricultural Act of 1949, as amended. In addition to other determinations, the Secretary of Agriculture determined the 1989 marketing quota for burley tobacco to be 587.6 million pounds and that the price support level for the 1989 crop would be $1.532 per pound.

This notice also affirms the proclamation made by the Secretary on February 1, 1989 that marketing quotas will be in effect for burley tobacco for three marketing years beginning October 1, 1989 and sets forth the results of the referendum held during the period February 27–March 2, 1989, in which producers of burley tobacco approved marketing quotas for the 1989–90, 1990–91, and 1991–92 marketing years.

EFFECTIVE DATE: February 1, 1989.

FOR FURTHER INFORMATION CONTACT: Robert L. Tarczy, Agricultural Economist, Commodity Analysis Division, ASCS, Room 3736-South Building, P.O. Box 2415, Washington, DC 20013, (202) 447–5187. The Final Regulatory Impact Analysis describing the options considered in developing this notice and the impact of implementing each option is available on request from Robert L. Tarczy.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512–1 and has been classified "not major." This action has been classified "not major" since implementation of these determinations will not result in: (1) An annual effect on the economy of $100 million or more, (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographical region, or (3) significant adverse effects on competition, employment investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program to which this notice applies are: Title—Commodity Loan and Purchases; Number 10.051, as set forth in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since neither the Agricultural Stabilization and Conservation Service (ASCS) nor the Commodity Credit Corporation (CCC) are required by 5 U.S.C. 553 or any provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice. This notice of determination is issued in accordance with the Agricultural Adjustment Act of 1938, as amended (the "1938 Act"), and the Agricultural Act of 1949, as amended (the "1949 Act"), in order to announce for the 1989 marketing year for burley tobacco the following:

1. The amount of domestic manufacturers' intentions;

2. The amount of the average exports for the 1986, 1987, and 1988 crop years;
3. The amount of the reserve stock level;
4. The amount of adjustment needed to maintain loan stocks at the reserve stock level;
5. The amount of the national marketing quota;
6. The national acreage reserve:
A. For establishing acreage allotments for new farms, and
B. For making corrections and adjusting inequities in old farms;
7. The national factor;
8. The price support level; and
9. The deficit reduction assessment.

Since the 1988–89 marketing year is the last of the three consecutive years for which marketing quotas previously proclaimed on a poundage basis will be in effect, section (319b) of the 1938 Act provides that the Secretary shall proclaim marketing quotas for burley tobacco on a poundage basis for the 1989–90, 1990–91, and 1991–92 marketing years.

The determinations set forth in this notice have been made on the basis of the latest available statistics of the Federal Government.

Marketing Quotas

Section 319 of the 1938 Act provides, in part, that the national marketing quota for a marketing year for burley tobacco is the quantity of such tobacco that is not more than 103 percent and not less than 97 percent of the total of: (1) The amount of burley tobacco that domestic manufacturers of cigarettes estimate they intend to purchase on U.S. auction markets or from producers, (2) the average quantity exported annually from the U.S. during the three marketing years immediately preceding the marketing year for which the determination is being made, and (3) the quantity, if any, necessary to adjust loan stocks to the reserve stock level. Section 319(a)(3)(B) further provides that, with respect to the 1986 through 1989 marketing years, any reduction in the national marketing quota being determined shall not exceed six pereent of the previous year's national marketing quota. The "reserve stock level" is defined in section 301(b)(14)(D) of the 1938 Act as the greater of 50 million pounds or 15 percent of the national marketing quota for burley tobacco for the marketing year immediately preceding the marketing year for which the level is being determined.

Section 320A of the 1938 Act provides that all domestic manufacturers of cigarettes with more than 1 percent of U.S. cigarette production and sales shall submit to the Secretary a statement of purchase intentions for the 1989 crop of burley by January 15, 1989. Six such manufacturers were required to submit such a statement for the 1989 crop and the total of their intended purchases for the 1989 crop was 427.0 million pounds.

The three-year average of exports is 160.6 million pounds. This is based on 1986 Census-reported exports of 165.3 million pounds, 1987 Census-reported exports of 156.5 million pounds, and USDA-projected 1988 exports of 160 million pounds.

In accordance with section 301(b)(14)(D) of the 1938 Act, the reserve stock level is the greater of 50 million pounds or 15 percent of the 1988 marketing quota for burley tobacco. The national marketing quota for the 1988 crop year was 473.4 million pounds (53 FR 18113). Accordingly, the reserve stock level for use in determining the 1989 marketing quota for burley tobacco is 71 million pounds.

As of January 25, 1989 the two loan associations had in their inventory 59 million pounds of 1985, 1986, and 1987 crop burley tobacco which remained unsold (net of deferred sales). In addition, an estimated 12 million pounds of the 1988 crop was expected to be pledged as collateral for price support loans. This amount is equal to the desired reserve stock level. Therefore, there will be no adjustment to the reserve stock level.

The total of the three marketing quota components for the 1989–90 marketing year is 587.6 million pounds. Section 319 of the 1938 Act further provides that the Secretary may increase or decrease the total by 3 percent. Since the total supply of burley tobacco is considered normal, the Secretary did not exercise this discretion authority. Accordingly, the national marketing quota for the marketing year beginning October 1, 1989 for burley tobacco is 587.6 million pounds.

In accordance with section 319(c) of the 1938 Act, the Secretary is authorized to establish a national reserve from the national acreage allotment in an amount equivalent to not more than 1 percent of the national acreage allotment for the purpose of making corrections in farm acreage allotments, adjusting for inequities, and for establishing allotments for new farms. The Secretary has determined that a national reserve for the 1989 crop of burley tobacco of 1,066,000 pounds is adequate for these purposes.

Price Support

Price support is required to be made available for each crop of a kind of tobacco for which quotas are in effect, or for which marketing quotas have not been disapproved by producers, at a level which is determined in accordance with a formula prescribed in section 106 of the 1949 Act. With respect to the 1989 crop of burley tobacco, the level of support is determined in accordance with sections 106 (d) and (f) of the 1949 Act.

Section 106(f)(4) of the 1949 Act provides that the level of support for the 1989 crop of burley tobacco shall be: (1) The level in cents per pound at which the 1988 crop of burley tobacco was supported, plus or minus, respectively, (2) an adjustment of not less than 65 percent nor more than 100 percent of the total, as determined by the Secretary after taking into consideration the supply of the kind of tobacco involved in relation to demand, of:

(A) 66.7 percent of the amount by which:

(I) The average price received by producers for burley tobacco on the United States auction markets, as determined by the Secretary, during the 5 marketing years immediately preceding the marketing year for which the determination is being made, excluding the year in which the average price was the lowest in such period, is greater or less than

(II) The average price received by producers for burley tobacco on the United States auction markets, as determined by the Secretary, during the 5 marketing years immediately preceding the marketing year prior to the marketing year for which the determination is being made, excluding the year in which the average price was the highest and the year in which the average price was the lowest in such period; and

(B) 33.3 percent of the change, expressed as a cost per pound of tobacco, in the index of prices paid by burley tobacco producers from January 1 to December 31 of the calendar year immediately preceding the year in which the determination is made.

For the purpose of calculating the market-price component of the support level, the 1949 Act provides that the average market price be reduced 3.9 cents per pound for the 1985 marketing year and 30 cents per pound for prior marketing years.

The difference between the two 5-year averages (the difference between (A)(I) and (A)(II)) is 0.7 cents per pound. The difference in the cost index from January 1 to December 31, 1988 is 8.2 cents per pound.

Applying these components to the price support formula (0.7 cents per pound, two-thirds weight; 8.2 cents per pound, one-third weight) results in a 3.2

cent increase in the level of price support from the previous year.

Section 106(f)(8) of the 1949 Act provides that the price support level for the 1989 crop of burley tobacco will be reduced by 1.4 percent from the level otherwise determined in accordance with section 106 or that in lieu of such a reduction, an assessment be established in an amount that will realize a reduction in outlays which would have resulted from such a reduction in the price support level. On February 1, 1989, the Secretary announced that an assessment of .34 cents per pound would be imposed with producers and purchases of burley tobacco each being responsible for one-half of this amount. Accordingly, the 1989 crop of burley tobacco will be supported at 153.2 cents per pound.

The level of support and the national marketing quota for the 1989 burley marketing year was announced on February 1, 1989 by the Secretary of Agriculture. This notice affirms these determinations.

Determinations 1989–90 Marketing Year

Accordingly, the following determinations have been made for burley tobacco for the marketing year beginning October 1, 1989:

Proclamation of National Marketing Quotas

Since the 1988–89 marketing year in the last of three consecutive marketing years for which marketing quotas previously proclaimed will be in effect for burley tobacco, a national marketing quota for such kind of tobacco for each of the three marketing years beginning October 1, 1989, October 1, 1990, and October 1, 1991 is hereby proclaimed.

(a) Marketing quotas shall be in effect for the 1989–90 marketing year for burley tobacco. In a referendum held during the period February 27–March 2, 1989, 97.8 percent of producers of burley tobacco voted in favor of marketing quotas.

The following is a summary, by State, of the results of the referendum:

State	Votes cast	Percentage favoring quotas
Alabama	4	100
Arkansas	5	100
Georgia	14	100
Indiana	4,227	96.48
Illinois	0	0
Kansas	20	80.00
Kentucky	87,492	97.65
Missouri	712	95.00
North Carolina	5,708	97.07
Ohio	6,135	96.85
South Carolina	0	0
Tennessee	32,847	96.30
Virginia	9,757	97.21
West Virginia	1,416	96.68
Totals	146,937	97.76

(b) *Domestic manufacturers' intentions.* Manufacturers' intentions to purchase for the 1989 year totaled 427.0 million pounds.

(c) *3-year average exports.* The 3-year average of exports is 160.6 million pounds, based on exports of 165.3 million pounds, 156.5 million pounds and 160 million pounds for the 1986, 1987, and 1988 crop years, respectively.

(d) *Reserve stock level.* The reserve stock is 71 million pounds, based on 15 percent of 1988 national marketing quota of 473.4 million pounds.

(e) *Adjustment for the reserve stock level.* The adjustment for the reserve stock level is 0.0 million pounds, based on a reserve stock level of 71 million pounds less anticipated loan stocks of 71 million pounds.

(f) *National marketing quota.* The national marketing quota is 587.6 million pounds.

(g) *National reserve.* The national reserve for making corrections and adjusting inequities in old farm acreage allotments and for establishing allotments for new farms has been determined to be 1,066,000 pounds.

(h) *National acreage factor.* The national factor is determined to be 1.24.

(i) *Price support level.* The level of support for the 1989 crop of burley tobacco is 153.2 cents per pound.

Authority: 7 U.S.C. 1301, 1313, 1314c, 1375, 1445 1421.

Signed at Washington, DC, on June 6, 1989.

Keith D. Bjerke,

Administrator, Agricultural Stabilization and Conservation Service and Executive Vice President, Commodity Credit Corporation.

[FR Doc. 89-14608 Filed 6-20-89; 8:45 am]

BILLING CODE 3410-05-M

Agricultural Stabilization and Conservation Service

Fire-Cured (Type 21), Fire-Cured (Types 22–23), Dark Air-Cured, Virginia Sun-Cured, and Cigar-Filler and Binder (Types 42, 43, 44, 53, 54 & 55) Tobaccos; 1989–90 Marketing Quotas and Acreage Allotments

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Notice of Determination of 1989–90 Marketing Quotas and Acreage Allotments.

SUMMARY: The purpose of this notice is to affirm determinations which were made by the Secretary of Agriculture on March 1, 1989, with respect to the 1989 crops of fire-cured (type 21), fire-cured (types 22–23), dark air-cured, Virginia sun-cured, and cigar-filler and binder tobaccos. In addition to other determinations, the Secretary declared national acreage allotments for the following kinds of tobaccos: Fire-cured (type 21), 4,838 acres; fire-cured (types 22–23), 14,319 acres; dark air-cured, 4,392 acres; Virginia sun-cured, 401 acres; and cigar-filler and binder (types 42–44 & 53–55), 11,095 acres.

This notice also affirms the proclamation made by the Secretary that marketing quotas will be in effect for Virginia sun-cured (type 37) tobacco for the three marketing years beginning October 1, 1989 and sets forth the results of the referendum held during the period March 27–30, 1989, in which producers of Virginia sun-cured tobacco approved marketing quotas for the 1989–90, 1990–91, and 1991–92 marketing years.

EFFECTIVE DATE: March 1, 1989.

FOR FURTHER INFORMATION CONTACT: Robert L. Tarczy, Agricultural Economist, Commodity Analysis Division, ASCS, Room 3736 South Building, P.O. Box 2415, Washington, DC 20013, (202) 447–6839. The Final Regulatory Impact Analysis describing the options considered in developing this notice and the impact of implementing each option is available on request from Robert L. Tarczy.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512–1 and has been classified "not major." This action has been classified "not major" since implementation of these determinations will not result in: (1) An annual effect on the economy of $100 million or more, (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographical regions, or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program to which this notice applies are: Title—Commodity Loans and Purchases; Number 10.051, as set forth in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not

applicable to this notice since the Agricultural Stabilization and Conservation Service (ASCS) nor Commodity Credit Corporation (CCC) are not required by 5 U.S.C. 553 or any provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

This program/activity is not subject to the provisions of the Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

The purpose of this notice is to affirm the determinations of the national marketing quotas for the 1989 crops of fire-cured (type 21), fire-cured (types 22–23), dark air-cured, sun-cured, and cigar-filler and binder (types 42–44 & 53–55) tobacco which were announced by the Secretary on March 1, 1989 and to set forth certain other determinations with respect to these kinds of tobacco. On March 1, 1989 the Secretary also announced that a referendum would be conducted by mail with respect to sun-cured tobacco.

During the period March 27–30, 1989, eligible sun-cured producers voted in a referendum to determine whether such producers disapprove marketing quotas for the 1989–90, 1990–91, and 1991–92 marketing years for this tobacco. Of the producers voting, 100.0 percent favored marketing quotas for sun-cured tobacco. Accordingly, a quota for this kind is in effect for the 1989–90 marketing year.

In accordance with section 312(a) of the Agricultural Adjustment Act of 1938, as amended (the "Act"), the Secretary of Agriculture is required to proclaim not later than March 1 of any marketing year with respect to any kind of tobacco, other than burley and flue-cured tobacco, a national marketing quota for any such kind of tobacco for each of the next 3 marketing years if such marketing year is the last year of three consecutive years for which marketing quotas previously proclaimed will be in effect. With respect to sun-cured tobacco, the 1988–89 marketing year is the last year of three such consecutive years. Accordingly, a marketing quota for sun-cured tobacco is proclaimed for each of the three marketing years beginning October 1, 1989, October 1, 1990, and October 1, 1991. Sections 312 and 313 of the Act also provide that the Secretary shall announce the reserve supply level and the total supply of fire-cured (type 21), fire-cured (types 22–23), dark air-cured, Virginia sun-cured, and cigar-filler and binder (types 42–44 & 53–55) tobaccos for the marketing year beginning October 1, 1988, and the amounts of the national marketing quotas, national acreage allotments, and national acreage factors for apportioning the national acreage allotments (less reserves) to old farms, and the amounts of the national reserves and parts thereof available for (a) new farms and (b) making corrections and adjusting inequities in old farm allotments for fire-cured (type 21), fire-cured (types 22–23), dark air-cured, Virginia sun-cured, cigar-filler and binder (types 42–44 & 53–55) tobaccos for the 1989–90 marketing year.

Section 312(b) of the Act provides, in part, that the amount of the national marketing quota for a kind of tobacco is the total quantity of that kind of tobacco which may be marketed which will make available during such marketing year a supply of such tobacco equal to the reserve supply level. Since producers of these kinds of tobacco generally produce less than their respective national acreage allotments, it has been determined that a larger quota would be necessary to make available production equal to the reserve supply level. The amount of the national marketing quota so announced may, not later than the following March 1, be increased by not more than 20 percent if the Secretary determines that such increase is necessary in order to meet market demands or to avoid undue restriction of marketings in adjusting the total supply to the reserve supply level.

Section 301(B)(14)(B) of the Act defines "reserve supply level" as the normal supply, plus 5 percent thereof, to insure a supply adequate to meet domestic consumption and export needs in years of drought, flood, or other adverse conditions, as well as in years of plenty. The "normal supply" is defined in section 301(b)(10)(B) of the Act as a normal year's domestic consumption and exports, plus 175 percent of a normal year's domestic use and 65 percent of a normal year's exports as an allowance for a normal year's carryover. A "normal year's domestic consumption" is defined in section 301(b)(11)(B) of the Act as the average quantity produced and consumed in the United States during the 10 marketing years immediately preceding the marketing year in which such consumption is determined, adjusted for current trends in such consumption.

A "normal year's exports" is defined in section 301(b)(12) of the Act as the average quantity produced in and exported from the United States during the 10 marketing years immediately preceding the marketing year in which such exports are determined, adjusted for current trends in such exports.

On January 24, 1989, a Notice of Proposed Determination was published (54 FR 3503) in which interested persons were requested to comment with respect to these issues.

Discussion of Comments

Thirty-six written responses were received in response to the Notice of Proposed Determination. Some of these comments addressed the establishment of quotas with respect to more than one kind of tobacco. A summary of these comments by kind of tobacco is as follows:

Fire-cured (type 21) tobacco: One comment was received. It recommended that the marketing quotas established for this kind of tobacco be increased 10 percent from the 1988 marketing year.

Virginia sun-cured (type 37) tobacco: Two comments were received. Both recommended that marketing quotas established for this kind of tobacco be established at the same level which was applicable for the 1988 marketing year.

Fire-cured (types 22–23) tobacco: Twenty-three comments were received. Recommendations ranged from no change in quota to 50 percent increase from the 1988 marketing quota.

Dark air-cured tobacco: Thirteen comments were received. These comments ranged from a recommendation of no change in the marketing quota to an increase of 50 percent from the 1988 marketing year.

Cigar-filler and binder (types 42–44 & 53–55) tobacco: Ten comments were received. These comments ranged from a 30 percent increase in quota to a 60 percent increase in quota from the 1988 marketing year.

Based upon a review of these comments and the latest available statistics of the Federal Government, the following determinations have been made.

Fired-Cured (Type 21) Tobacco

The yearly average quantity of fire-cured (type 21) tobacco produced in the United States which is estimated to have been consumed in the United States during the 10 marketing years preceding the 1988–89 marketing year was approximately 2.2 million pounds. The average annual quantity of fire-cured (type 21) tobacco produced in the United States and exported from the United States during the 10 marketing years preceding the 1988–89 marketing year was 2.8 million pounds (farm sales weight basis). Domestic use has trended downward while exports have fluctuated erratically. Accordingly, a normal year's domestic consumption has been determined to be 1.2 million

pounds and a normal year's exports have been determined to be 3.0 million pounds. Application of the formula prescribed by section 301(b)(14)(B) of the Act results in a reserve supply 1eve1 of 8.6 million pounds.

Manufacturers and dealers reported stocks of fire-cured (type 21) tobacco held on October 1, 1988, of 6.6 million pounds. The 1988 fire-cured (type 21) tobacco crop is estimated to be 3.0 million pounds. Therefore, the total supply of fire-cured (type 21) tobacco for the 1988–89 marketing year is 9.6 million pounds. During the 1988–89 marketing year, it is estimated that disappearance will total approximately 3.2 million pounds. By deducting this disappearance from the total supply, a carryover of 6.4 million pounds at the beginning of the 1989–90 marketing year is obtained.

The difference between the reserve supply level and the estimated carryover on October 1, 1989 is 2.2 million pounds. This represents the quantity of fire-cured (type 21) tobacco which may be marketed which will make available during such marketing year a supply equal to the reserve supply level.

During the past 5 years, less than half of the announced national marketing quota has been produced. Accordingly, it has been determined that a national marketing quota of 4.97 million pounds is necessary to make available production of 2.2 million pounds. In accordance with section 312(b) of the Act, it has been further determined that the 1989–90 national. marketing quota must be increased by 20 percent in order to avoid undue restriction of marketings. This results in a national marketing quota for the 1989–90 marketing year of 5.96 million pounds.

In accordance with section 313(g) of the Act, the 1989–90 national marketing quota divided by the 1984–88 5-year national average yield of 1,232 pounds per acre results in a 1989 national acreage allotment of 4,837.66 acres.

Pursuant to the provisions of section 313(g) of the Act, a national acreage factor of 1.0 is determined by dividing the national acreage allotment, less a national reserve of 15.0 acres, by the total of 1989 preliminary farm acreage allotments. The preliminary farm acreage allotments reflect the factors specified in section 313(g) of the Act for apportioning the national acreage allotment, less the national reserve, to old farms.

Fire-Cured (Types 22–23) Tobacco

The yearly average quantity of fire-cured (types 22–23) tobacco produced in the United States which is estimated to have been consumed in the United States during the 10 years preceding the 1988–89 marketing year was approximately 17.5 million pounds. The average annual quantity of fire-cured (types 22–23) tobacco produced in the United States and exported during the 10 marketing years preceding the 1988–89 marketing year was 18.9 million pounds (farm-sales weight basis). Domestic use and exports have trended upward lately. Accordingly, a normal year's domestic consumption has been determined to be 21.0 million pounds and a normal year's exports have been determined to be 20.7 million pounds. Application of the formula prescribed by section 301(b)(14)(B) of the Act results in a reserve supply level of 96.6 million pounds.

Manufacturers and dealers reported stocks of fire-cured (types 22–23) tobacco on October 1, 1988, of 82.2 million pounds. The 1988 fire-cured (types 22–23) crop is estimated to be 24.0 million pounds. Therefore, the total supply of fire-cured (types 22–23) tobacco for the marketing year beginning October 1, 1988, is 106.2 million pounds. During the 1988–89 marketing year, it is estimated that disappearance will total approximately 36.0 million pounds. By deducting this disappearance from the total supply, a carryover of 70.2 million pounds at the beginning of the 1989–90 marketing year is obtained.

The difference between the reserve supply level and the estimated carryover on October 1, 1989 is 26.4 million pounds. This represents the quantity of fire-cured (types 22–23) tobacco which may be marketed which will make available during the 1989–90 marketing year a supply equal to the reserve supply level. During the past 5 years, about 95 percent of the announced national marketing quota has been produced. Accordingly, it has been determined that a national marketing quota for the 1989–90 marketing year of 27.7 million pounds is necessary to make available production of 26.4 million pounds. In accordance with section 312(b) of the Act, it has been further determined that the 1989–90 national marketing quota must be increased by 10 percent in order to avoid undue restriction of marketings. This results in a national marketing quota for the 1989–90 marketing year of 30.5 million pounds.

In accordance with section 313(g) of the Act, the national marketing quota for the 1989–90 marketing year has been divided by the 1984–88, 5-year national average yield of 2,130 pounds per acre, to obtain a national acreage allotment of 14,319.25 acres, for the 1989–90 marketing year.

Pursuant to the provisions of section 313(g) of the Act, a national acreage factor of 1.2 is determined by dividing the national acreage allotment for the 1989–90 marketing year less a national reserve of 66 acres by the total of the 1989 preliminary farm acreage allotments. The preliminary farm acreage allotments reflect the factors specified in section 313(g) of the Act for apportioning the national acreage allotment, less the national reserve, to old farms.

Dark Air-Cured Tobacco

The yearly average quantity of dark air-cured tobacco produced in the United States which is estimated to have been consumed in the United States during the 10 years preceding the 1988–89 marketing year was approximately 12.5 million pounds. The average annual quantity produced domestically and exported during this period was 2.0 million pounds (farm-sales weight basis). Domestic use has trended upward while exports have been erratic. Accordingly, 13.1 million pounds have been used as a normal year's domestic consumption and 2.5 million pounds have been used as a normal year's exports. Application of the formula required by section 301(14)(B) of the Act results in a reserve supply level of 42.1 million pounds.

Manufacturers and dealers reported stocks of dark air-cured tobacco held on October 1, 1988, of 40.9 million pounds. The 1988 dark air-cured crop is estimated to be 7.7 million pounds. Therefore, the total supply for the market year beginning October 1, 1988, is 48.6 million pounds. During the 1988–89 marketing year, it is estimated that disappearance will total approximately 14.0 million pounds. By deducting this disappearance from the total supply, a carryover of 34.6 million pounds at the beginning of the 1989–90 marketing year is obtained.

The difference between the reserve supply level and the estimated carryover on October 1, 1989 is 7.5 million pounds. This represents the quantity of dark air-cured tobacco which may be marketed which will make available during such marketing year a supply equal to the reserve supply level. During the last 5 years, about 90 percent of the announced national marketing quota has been produced. Accordingly, it has been determined that a national marketing quota for the 1989–90 marketing year of 8.3 million pounds is necessary to make available production of 7.5 million pounds. In accordance with section 312(b) of the Act, it has been further determined that the 1989–90

marketing quota must be increased by 10 percent in order to avoid undue restriction of marketings. This results in a national marketing quota for the 1989–90 marketing year of 9.1 million pounds.

In accordance with section 313(g) of the Act, the 1989–90 national marketing quota, divided by the 1984–88, 5-year national average yield of 2,072 pounds per acre, results in a national acreage allotment of 4,391.89.

Pursuant to the provisions of section 313(g) of the Act, a national acreage factor of 1.1 is determined by dividing the national acreage allotment, less a national reserve of 20.0 aeres, by the total of the 1989 preliminary farm acreage allotments. The preliminary farm acreage allotments reflect the factors specified in section 313(g) for apportioning the national acreage allotment, less the national reserve, to old farms.

Virginia Sun-Cured Tobacco

The yearly average quantity of Virginia sun-cured tobacco produced in the United States which is estimated to have been consumed in the United States during the 10 marketing years preceding the 1988–89 marketing year was approximately 400 thousand pounds. The average annual quantity produced in the United States and exported during the same period was approximately 140 thousand pounds (farm-sales weight basis). Both domestic use and exports have shown a downward trend. Accordingly, a quantity of 202 thousand pounds has been determined to be a normal year's domestic consumption and a quantity of 134 thousand pounds has been determined to be a normal year's exports. Application of the formula prescribed by section 301(b)(14)(B) of the Act results in a reserve supply level of 816 thousand pounds.

Manufacturers and dealers reported stocks of Virginia sun-cured tobacco held on October 1, 1988 of 829 thousand pounds. The 1988 Virginia sun-cured tobacco crop is estimated to be 110 thousand pounds. Therefore, the total supply of Virginia sun-cured tobacco for the 1988–89 marketing year is 939 thousand pounds. During the 1988–89 marketing year, it is estimated that disappearance will total approximately 200 thousand pounds. By deducting this disappearanee from the total supply, a carryover of 739 thousand pounds at the beginning of the 1989–90 marketing year is obtained.

The difference between the reserve supply level and the estimated carryover on October 1, 1989 is 77 thousand pounds. This represents the quantity of Virginia sun-cured tobacco which may be marketed which will make available during such marketing year a supply equal to the reserve supply level. During the last 5 years, less than one-fifth of the announced national marketing quota has been produced. Accordingly, it has been determined that a national marketing quota of 404 thousand pounds is necessary to make available production of 77 thousand pounds. Increasing the quota by 20 percent in accordance with section 312(b) of the Act to 485 thousand pounds is necessary to avoid undue restriction of marketings. This results in a national marketing quota for the 1989–90 marketing year of 485 thousand pounds.

In accordance with section 313(g) of the Act, the 1989–90 national marketing quota divided by the 1984–88 5-year national average yield of 1,210 pounds per acre results in a 1989 national acreage allotment of 400.83 acres.

Pursuant to the provisions of section 313(g) of the Act, a national acreage factor of 1.0 is determined by dividing the national acreage allotment, less a national reserve of 2.4 acres, by the total of the 1989 preliminary farm acreage allotments. The preliminary farm acreage allotments reflect the factors specified in section 313(g) of the Act for apportioning the national acreage allotment, less the national reserve, to old farms.

Cigar-Filler and Binder (Types 42–44 & 53–55) Tobacco

The yearly average quantity of cigar-filler and binder (types 42–44 & 53–55) tobacco produced in the United States which is estimated to have been consumed in the United States during the 10 years preceding the 1988–89 marketing year was approximately 22.2 million pounds. The average annual quantity of cigar-filler and binder (types 42–44 & 53–55) tobacco produced in the United States and exported from the United States during the 10 marketing years preceding the 1988–89 marketing year was very small. Domestic use has trended downward and exports are small. Accordingly, a normal year's domestic consumption has been established at 15.7 million pounds while a normal year's exports has been established at .06 million pounds. Application of the formula prescribed by section 301(b)(14)(B) the Act results in a reserve supply level of 45.5 million pounds.

Manufacturers and dealers report stocks of cigar-filler and binder (types 42–44 & 53–55) tobacco held on October 1, 1988 of 41.9 million pounds. The 1988 cigar-filler and binder crop is estimated to be 5.8 million pounds. Therefore, the total supply of cigar-filler and binder (types 42 44 & 53 55) tobacco for the 1988–89 marketing year is 47.7 million pounds. During the 1988–89 marketing year, it is estimated that disappearance will total about 19.0 million pounds. By deducting this disappearance from the total supply, a carryover of 28.7 million pounds at the beginning of the 1989–90 marketing year is obtained.

The difference between the reserve supply level and the estimated carryover on October 1, 1989 is 16.8 million pounds. This represents the quantity of cigar-filler and binder tobacco which may be marketed which will make available during such marketing year a supply equal to the reserve supply level. It is expected that approximately 75 percent of the announced national marketing quota will be produced in the upcoming season. Accordingly, it has been determined that a 1989–90 national marketing quota of 22.4 million pounds is necessary to make available production of 16.8 million pounds. This results in a national marketing quota for the 1989–90 marketing year of 22.4 million pounds.

In accordance with section 313(g) of the Act, the 1989–90 national marketing quota of 22.4 million pounds divided by the 1984–88 5-year national average yield of 2,019 pounds per acre results in a 1989–90 national acreage allotment of 11,094.60 acres.

Pursuant to the provisions of section 313(g), a national acreage factor of 1.4 is determined by dividing the national acreage allotment, less a national reserve of 17 acres, by the total of the 1989 preliminary farm acreage allotments. The preliminary farm acreage allotments reflect the factors specified in section 313(g) for apportioning the national acreage allotment, less the national reserve, to old farms.

Accordingly, the following determinations announced by the Secretary of Agriculture on March 1, 1989 are affirmed:

Proclamations of National Marketing Quotas for Virginia Sun-Cured Tobacco

Since the 1988–89 marketing year is the last of 3 consecutive years for which marketing quotas previously proclaimed will be in effect for sun-cured tobacco, a national marketing quota for such kind of tobacco for each of the 3 marketing years beginning October 1, 1989, October 1, 1990, and October 1, 1991 is proclaimed.

Determinations for the 1989–91 Marketing Years of Fire-Cured (Type 21), Fire-Cured (Types 22–23), Dark Air-Cured, Virginia Sun-Cured, and Cigar-Filler and Binder (Types 42–44 and 53–55) Tobacco

Referendum Results

Marketing quotas shall be in effect for the 1989–90 marketing year for Virginia sun-cured tobacco. In a referendum held during the period March 27–30, 1989, 100.0 percent of producers of sun-cured tobacco voted in favor of marketing quotas.

The following is a summary, by State, of the results of each referendum:

	Total Votes	Yes Votes	No Votes	% Votes
Virginia	49	49	0	100.0

With respect to fire-cured (type 21) tobacco for the marketing year beginning October 1, 1989:

(a) *Reserve supply level.* The reserve supply level for fire-cured (type 21) tobacco is 8.6 million pounds.

(b) *Total supply.* The total supply of fire-cured (type 21) tobacco for the marketing year beginning October 1, 1988, is 9.6 million pounds.

(c) *Carryover.* The estimated carryover of fire-cured (type 21) tobacco for the marketing year beginning October 1, 1989, is 6.4 million pounds.

(d) National marketing quota. The 1989–90 national marketing quota for fire-cured (type 21) tobacco for the marketing year beginning October 1, 1989, is 5.96 million pounds.

(e) *National acreage allotment.* The national acreage allotment is 4,837.66 acres.

(f) *National acreage factor.* The national acreage factor for use in determining farm acreage allotments is 1.0.

(g) *National reserve.* The national acreage reserve is 15 acres of which 5 acres are made available for the 1989 new farms and 10 acres are made available for making corrections and adjusting inequities in old farm allotments.

With respect to fire-cured (types 22–23) tobacco for the marketing year beginning October 1, 1989:

(a) *Reserve supply level.* The reserve supply level for fire-cured (types 22–23) tobacco is 96.6 million pounds.

(b) *Total supply.* The total supply of fire-cured (types 22–23) tobacco for the marketing year beginning October 1, 1988, is 106.2 million pounds.

(c) *Carryover.* The estimated carryover of fire-cured (types 22–23) tobacco for the marketing year beginning October 1, 1989, is 70.2 million pounds.

(d) *National marketing quota.* The 1989–90 national marketing quota for fire-cured (types 22–23) tobacco for the marketing year beginning October 1, 1989, is 30.5 million pounds.

(e) *National acreage allotment.* The national acreage allotment is 14,319.25 acres.

(f) *National acreage factor.* The national acreage factor for use in determining farm acreage allotments for the 1989–90 marketing year is 1.2.

(g) *National reserve.* The national acreage reserve is 66 acres of which 10 acres are made available for 1989 new farms, and 56 acres are made available for making corrections and adjusting inequities in old farm allotments.

With respect to dark air-cured tobacco for the marketing year beginning October 1, 1989:

(a) *Reserve supply level.* The reserve supply level for dark air-cured tobacco is 42.1 million pounds.

(b) *Total supply.* The total supply of dark air-cured tobacco for the marketing year beginning October 1, 1988, is 48.6 million pounds.

(c) *Carryover.* The estimated carryover of dark air-cured tobacco for the marketing year beginning October 1, 1989, is 34.6 million pounds.

(d) *National marketing quota.* The 1989–90 national marketing quota for dark air-cured (types 35 & 36) tobacco for the marketing year beginning October 1, 1989, is 9.1 million pounds.

(e) *National acreage allotment.* The national acreage allotment is 4,391.89 acres.

(f) *National acreage factor.* The national acreage factor for use in determining farm acreage allotments for the 1989–90 marketing year is 1.1.

(g) *National reserve.* The national acreage reserve is 20 acres, of which 5.0 acres are made available for 1989 new farms and 15.0 acres are made available for making corrections and adjusting inequities in old farm allotments.

With respect to Virginia sun-cured tobacco for the marketing year beginning October 1, 1989:

(a) *Reserve supply level.* The reserve supply level for Virginia sun-cured tobacco is 816 thousand pounds.

(b) *Total supply.* The total supply of Virginia sun-cured tobacco for the marketing year beginning October 1, 1988 is 939 thousand pounds.

(c) *Carryover.* The estimated carryover of Virginia sun-cured tobacco for the marketing year beginning October 1, 1989, is 739 thousand pounds.

(d) *National marketing quota.* The national marketing quota for Virginia sun-cured (type 37) tobacco for the marketing year beginning October 1, 1989, is 485 thousand pounds.

(e) *National acreage allotment.* The national acreage allotment is 400.83 acres.

(f) *National acreage factor.* The national acreage factor for use in determining farm acreage allotments for the 1989–90 marketing year is 1.0.

(g) *National reserve.* The national acreage reserve is 2.4 acres, of which 1.0 acres are made available for 1989 new farms, and 1.4 acres are made available for making corrections and adjusting inequities in old farm allotments.

With respect to cigar-filler and binder (types 42–44 & 53–55) tobacco for the marketing year beginning October 1, 1989:

(a) *Reserve supply level.* The reserve supply level for cigar-filler and binder (types 42–44 & 53–55) tobacco is 45.5 million pounds.

(b) *Total supply.* The total supply of cigar-filler and binder (types 42–44 & 53–55) tobacco for the marketing year beginning October 1, 1988 is 47.7 million pounds.

(c) *Carryover.* The estimated carryover of cigar-filler and binder (types 42–44 & 53–55) tobacco for the marketing year beginning October 1, 1989 is 28.7 million pounds.

(d) *National marketing quota.* The amount of the national marketing quota for cigar-filler and binder (types 42–44, 53–55) tobacco for the marketing year beginning October 1, 1989, is 22.4 million pounds.

(e) *National acreage allotment.* The national acreage allotment is 11,094.60 acres.

(f) *National acreage factor.* The national acreage factor for use in determining farm acreage allotments for the 1989–90 marketing year is 1.4.

(g) *National reserve.* The national acreage reserve is 17.0 acres, of which 15.0 acres are made available for 1989 new farms, and 2.0 acres are made available for making corrections and adjusting inequities in old farm allotments.

Authority: 7 U.S.C. 1301, 1312, 1313, 1375.

Signed at Washington, DC on June 6, 1989.

Keith D. Bjerke,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 89–14609 Filed 6–20–89; 8:45 am]

BILLING CODE 3410–05–M

Agricultural Stabilization and Conservation Service 1989–90 National Marketing Quota for Cigar Filler, Maryland, and Cigar-Binder Tobaccos

AGENCY: Agricultural Stabilization and Conservation Service, United States Department of Agriculture (USDA).

ACTION: Notice of Determination of 1989–90 Marketing Quota.

SUMMARY: The purpose of this notice is to affirm determinations which were made by the Secretary of Agriculture on March 1, 1989, with respect to the 1989 crops of cigar-filler (type 41), Maryland, and cigar-binder tobaccos. In addition to other determinations, the Secretary declared national acreage allotments for the following kinds of tobacco: Cigar filler (type 41) 3,041 acres; Maryland, 12,813 acres; and cigar-binder (types 51–52), 0 acres.

This notice also affirms the proclamation made by the Secretary that marketing quotas will not be in effect for these kinds of tobacco for the three marketing years beginning October 1, 1989, and sets forth the results of the separate referenda held during the period March 27–30, 1989, in which producers of each of these kinds rejected marketing quotas for the 1989–90, 1990–91, and 1991–92 marketing years.

EFFECTIVE DATE: March 1, 1989.

FOR FURTHER INFORMATION CONTACT: Robert L. Tarczy, Agricultural Economist, Commodity Analysis Division, ASCS, Room 3736-South Building, P.O. Box 2415, Washington, DC 20013, (202) 447–8839.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation 1512–1 and has been classified as "not major." This action has been classified "not major" since implementation of these determinations will not result in: (1) an annual effect on the economy of $100 million or more, (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographical region, or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program to which this notice applies are: Title—Commodity Loan and Purchases; Number 10.051, as set forth in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since the Agricultural Stabilization and Conservation Service (ASCS) is not required by 5 U.S.C. 553 or any provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

Notice of Determinations

A Notice of Proposed Determinations was published on January 24, 1989 (54 FR 3502) in which comments were requested with respect to the amount of the national marketing quota for the 1989–90 marketing year for cigar-filler (type 41), Maryland, and cigar-binder (types 51 & 52) tobaccos; the conversion of the national marketing quota into national acreage allotments; the amount of the national acreage allotment to be reserved for new farms and for adjustments; and the dates of the marketing quota referenda. No comments were received on any of these kinds of tobacco.

On March 1, 1989, the Secretary of Agriculture determined and announced the following national marketing quotas for the 1989–90 marketing year: (1) Cigar-filler (type 41) tobacco, 5.9 million pounds; (2) Maryland tobacco, 17.9 million pounds; and (3) cigar-binder tobacco, 0 million pounds. During the period March 27–30, 1989 three separate referenda were held. For cigar-filler tobacco 3.6 percent of those voting favored quotas; for Maryland 24.4 percent favored quotas; and for cigar-binder 8.7 percent of those voting favored quotas. Since none of the referenda had the 66.7 percent majority necessary to approve marketing quotas, the following determinations made on March 1, 1989, for these kinds of tobacco will not be used in establishing marketing quotas for the 1989 marketing year. However, such determinations are set forth herein as a matter of public record.

Quota Determinations for the 1989–90 Marketing Year

For cigar-filler (type 41) tobacco for the marketing year October 1, 1989:

(a) *Reserve supply level.* The reserve supply level for cigar-filler (type 41) tobacco is 22.7 million pounds.

(b) *Total supply.* The total supply of cigar-filler (type 41) tobacco for the marketing year beginning October 1, 1988 is 36.8 million pounds.

(c) *Carryover.* The estimated carryover of cigar-filler (type 41) tobacco for the marketing year beginning October 1, 1989 is 16.8 million pounds.

(d) *National marketing quota.* The amount of cigar-filler (type 41) tobacco which will make available during the marketing year beginning October 1, 1989, a supply of cigar-filler (type 41) tobacco equal to the reserve supply level of such tobacco is 5.9 million pounds, and a national marketing quota of such amount is hereby announced.

(e) *National acreage allotment.* The national acreage allotment is 3,041.24.

(f) *National acreage factor.* The national acreage factor for use in determining farm acreage allotments for the 1989–90 marketing year is 1.0.

(g) *National reserve.* The national acreage reserve is 20.0 acres, of which 5.0 acres are made available for 1989 new farms, and 15.0 acres are made available for making corrections and adjusting inequities in old farm allotments.

For Maryland tobacco for the marketing year October 1, 1989:

(a) *Reserve supply level.* The reserve supply level for Maryland tobacco is 43.3 million pounds.

(b) *Total supply.* The total supply of Maryland tobacco is 55.4 million pounds.

(c) *Carryover.* The estimated carryover of Maryland tobacco for the marketing year beginning October 1, 1989 is 25.4 million pounds.

(d) *National marketing quota.* The amount of Maryland tobacco which will make available during the marketing year beginning October 1, 1989, a supply of Maryland tobacco equal to the reserve supply level of such tobacco is 17.9 million pounds and a national marketing quota of such amount is hereby announced.

(e) *National acreage allotment.* The national acreage allotment is 12,813.17.

(f) *National acreage factor.* The national acreage factor for use in determining farm acreage allotments for the 1989–90 marketing year is 1.0.

(g) *National reserve.* The national acreage reserve is 52.0 acres of which 10.0 acres are made available for 1989 new farms, and 42.0 acres are made available for making corrections and adjusting inequities in old farm allotments.

For Cigar Binder (Types 51 and 52) tobacco for the marketing year October 1, 1989:

(a) *Reserve supply level.* The reserve supply level for cigar-binder is 5.6 million pounds.

(b) *Total supply.* The total supply of cigar-binder tobacco is 7.8 million pounds.

(c) *Carryover.* The estimated carryover of cigar-binder tobacco for the marketing year beginning October 1, 1989 is 5.6 million pounds.

(d) *National marketing quota.* The amount of cigar-binder (types 51 and 52) tobacco which will make available during the marketing year beginning October 1, 1989, a supply of cigar-binder tobacco equal to the reserve supply level of such tobacco is 0.0 million pounds. Accordingly, a national marketing quota of 0.0 million pounds has been determined.

(e) *National acreage allotment.* The national acreage allotment is 0.0 acres.

(f) *National acreage factor.* The national acreage factor for use in determining farm acreage allotments for the 1989–90 marketing year is 0.0.

(g) *National reserve.* The national acreage reserve is 0.0 acres.

Authority: 7 U.S.C. 1301, 1311, 1313, 1375.

Signed in Washington, DC, on June 6, 1989.

Keith D. Bjerke,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 89–14610 Filed 6–20–89; 8:45 am]

BILLING CODE 3410–05–M

Forest Service

Swamp Ridge Timber Sale; Clearwater National Forest; Clearwater County, ID

ACTION: Notice of Intent To Prepare an Environmental Impact Statement.

SUMMARY: The Forest Service will analyze and diclose the environmental impacts of a proposal to harvest and regenerate timber, reconstruct existing roads and construct new roads in portions of Sugar, Swamp and Pollock drainages on the North Fork Ranger District. This proposal area was originally part of the RARE II Hoodoo Roadless Area (#1301). An environmental impact statement (EIS) will be prepared which will document the analysis. This EIS will tier to the Clearwater National Forest Land and Resource Management Plan FEIS of September, 1987, which provides overall guidance in achieving the desired future condition for the area. The primary purpose and goal for the proposed action is to help satisfy short-term demands for timber and maintain a continuous supply of timber in the future, while maintaining high quality wildlife and fishery objective.

Some preliminary scoping was initiated for this project in January 1988. The Forest Service is seeking information and comments from Federal, State, local agencies and other individuals or organizations who may now be interested in or affected by the proposed actions. This input will be used in preparing the Draft EIS (DEIS). This process will include:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Identification of additional reasonable alternatives.
5. Identification of potential environmental effects of the alternatives.
6. Determination of potential cooperating agencies.

The agency invites written comments and suggestions on the issues and management opportunities for the area being analyzed.

DATE: Comments concerning the scope of the analysis should be received by July 31, 1989 to receive timely consideration in the preparation of the Draft EIS.

ADDRESS: Send written comments to Arthur S. Bourassa, District Ranger, North Fork Ranger District, P.O. Box 2139, Orofino, ID 83544.

FOR FURTHER INFORMATION CONTACT: Dallas Emch, Swamp Ridge Interdisciplinary Team Leader, or Arthur S. Bourassa, District Ranger, North Fork Ranger District, Clearwater National Forest, P.O. Box 2139, Orofino ID 83544.

SUPPLEMENTARY INFORMATION: Management activities under consideration would occur in an area encompassing approximately 6500 acres, which includes 4200 acres of National Forest lands and 2300 acres of private ownership in the Sugar, Swamp and Pollock drainages on the North Fork Ranger District. These acres are within the original 247,647 acre Hoodoo Roadless area (#1301). This roadless area is often referred to as the "Great Burn" area due to the catastrophic fires which occurred in 1910 and 1934. Included in the area of analysis are all or portions of the following: sections 1, 2, 11, 12, 13, 23, 24, 25, 26 and 35, T. 40. N, R. 11. E and sections 5, 7, 8, 18, 19, 29 and 30, T. 40. N, R. 12. E, Boise Meridian.

The Land and Resource Management Plan for the Clearwater National Forest provides the overall guidance for management activities in the potentially affected area through its goals, objectives, standards, guidelines, and management area direction.

The areas of proposed harvest and reforestation for the Swamp Ridge project are within Management Areas E1, and C8S. Forest plan direction states that Management Area E1 consists of lands which are generally the most productive timber land in the Forest. The management goal is to provide optimium, sustained production of wood products in a cost effective manner as well as provide adequate protection of soil and water quality, manage viable elk populations, manage a range of fish habitat potential and manage a roaded natural setting for dispersed recreation.

Management Area C8S consists of lands of high value fishery streams, productive timber land, and key big-game summer range. The management goal is to maintain high quality wildlife and fishery objectives while producing timber from the productive forest land.

The analysis will consider a range of alternatives. One of these will be the "no-action" alternative in which all harvest and regeneration activities would not be implemented. Other alternatives will examine various levels and locations of harvest and regeneration to provide emphasis on differing mixes of timber and non-timber resource values.

The analysis will disclose the environmental effects of alternative ways of implementing the Forest Plan. The Forest Service will analyze and document the direct, indirect and cumulative environmental effects of the alternatives. In addition, the EIS will disclose the analysis of site specific mitigation measures and their effectiveness.

Public participation is especially important at several points of the analysis. People may visit with Forest Service officials at any time during the analysis and prior to the decision. However, two periods of time and identified for the receipt of comments on the analysis. The two public comments periods are during the scoping process (now through July 31, 1989) and during review of the Draft EIS in October 1989.

The U.S. Fish and Wildlife Service, Department of the Interior, will be informally consulted throughout the analysis. To meet the requirements of the Endangered Species Act, the U.S. Fish and Wildlife Service will review the EIS and Biological Assessment and, if necessary, render a format Biological Opinion of the effects on the Threatened and Endangered Species including the grizzly bear, and gray wolf.

The DEIS is expected to be filed with the Environmental Protection Agency (EPA) and available for public review by September 30, 1989. At that time, the EPA will publish a notice of availability of the DEIS in the **Federal Register.** After a 45-day public comment period, the comments received will be analyzed and considered by the Forest Service in the final environmental impact statement (FEIS). The FEIS is scheduled to be completed by December 1989. The Forest Service will respond in the FEIS to the comments received on the DEIS. The District Ranger who is the responsible official for the EIS will make a decision regarding this proposal considering the comments, responses, environmental consequences discussed in the FEIS and the applicable laws, regulations and policies. The decision and reasons for the decision will be documented in a Record of Decision.

Arthur S. Bourassa, District Ranger for the North Fork Ranger District, Clearwater National Forest, is the Responsible Official.

Date: June 9, 1989.

Arthur S. Bourassa,

District Ranger, North Fork Ranger District, Clearwater National Forest.

[FR Doc. 89–14649 Filed 6–20–89; 8:45 am]

BILLING CODE 3410–11–M

Proposed Lake Catamount Resort; Routt National Forest, Routt County, CO; Extension of the Public Comment Period

In response to a Special Use Permit Application received from the Lake Catamount Joint Venture, the U.S. Department of Agriculture, Forest Service, has prepared a Draft Environmental Impact Statement (DEIS) for a proposal to permit the development of a ski area on the Hahns Peak and Yampa Ranger Districts of the Routt National Forest.

The DEIS was issued for public comment on March 10, 1989. As noted in the DEIS, the comment period was to be concluded by June 8, 1989.

The comment period is being extended to July 17, 1989. The notice of availability of the DEIS for review was published in the **Federal Register** on June 2, 1989 by the Environmental Protection Agency. All comments received by July 17, 1989 will be included in the official record and considered in the development of the Final Environmental Impact Statement.

Jerry E. Schmidt, Forest Supervisor, Routt National Forest, is the responsible official. All written comments should be sent to Jerry E. Schmidt, Forest Supervisor, Routt National Forest, 29587 West U.S. 40, Steamboat Springs, CO 80487.

Requests for copies of any questions concerning the DEIS should be directed to Dave Hackett, Routt National Forest, 29587 West U.S. 40, Steamboat Springs, CO 80487. His telephone number is (303) 879–1722.

Date: June 8, 1989.

Jerry E. Schmidt,

Forest Supervisor, Routt National Forest.

[FR Doc. 89–14596 Filed 6–20–89; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census
Title: Request for Address Location Information
Form Number: D–1012
Agency Approval Number: :None
Type of Request: New Collection
Burden: 240 hours
Number of Respondents: 3,600
Avg Hours Per Response: 4 minutes
Needs and Uses: The form will be used to collect address location information for a sample of addresses from the 1990 Advance Post Office Check. The intent is to measure the return rate of letters and to determine how often addresses can be geocoded in the office. Results will be used in planning for the year 2000 Census.
Affected Public: Individuals or households
Frequency: One time only
Respondent's Obligation: Mandatory
OMB Desk Officer: Don Arbuckle, 395–7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room H6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: June 15, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89–14634 Filed 6–20–89; 8:45 am]

BILLING CODE 3510–07–M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agengy: Bureau of the Census
Title: Annual Survey of Government Employees
Form Number: E–1, E–2, E–3, E–4, E–6, E–7, E–9
Agency Approval Number: 0607–0452
Type of Request: Revision
Burden: 16,972 hours
Number of Respondents: 27,463
Avg Hours Per Response: 37 minutes
Needs and Uses: This survey provides data on government employment and payrolls by state, type of government and governmental functions. Results are used for other Federal statistical programs, such as computation of GNP, personal incomes, etc.; for determining Federal grant allocations; for legislative research; and for general statistical purposes.
Affected Public: State or local governments
Frequency: Annually
Respondent's Obligation: Voluntary
OMB Desk Officer: Don Arbuckle, 395–7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: June 15, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89–14635 Filed 6–20–89; 8:45 am]

BILLING CODE 3510–07–M

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

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

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

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

EFFECTIVE DATE: June 21, 1989.

FOR FURTHER INFORMATION CONTACT: Bernard T. Carreau or Richard W. Moreland, Office of Countervailing Compliance or Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377–2786/2104.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce ("the Department") has received timely requests, in accordance with 19 CFR 353.22 (a)(1), (a)(2), (a)(3), and 355.22(a)(1), for administrative reviews of various antidumping and countervailing duty orders and findings.

Initiation of Reviews

In accordance with 19 CFR 353.22(c) and 355.22(c), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intended to issue the final results of these reviews no later than May 31, 1990.

Antidumping duty proceedings and firms	Periods to be reviewed
Brazil:	
Iron Construction Castings (A-351-503)	
Cosigua	5/1/88–4/30/89
Brazil:	
Orange Juice (A-351-605)	5/1/88–4/30/89
Citrosuco Paulista, S.A.	
Cargill Citrus Ltda.	
Montecitrus Trading, S.A.	
Coopercitrus Industrial Frutesp, S.A.	
Frutropic, S.A.	
Citrovale, S.A.	
Branco Peres Citrus, S.A.	
Brazil:	
Tubeless Steel Disc Wheels (A-351-606)	5/1/88–4/30/89
Borlem, S.A.	
India:	
Carbon Steel Pipes and Tubes (A-533-502)	5/1/88–4/30/89
Tisco	
India:	
Iron Construction Castings (A-533-501)	5/1/88–4/30/89
R. B. Agarwalla	
Carnation Enterprises	
Crescent Foundary	
Govind Steel	
Kejriwal	
Overseas Iron Foundary	
Select Steels	
Super Castings	
Tirupati Int'l.	
Uma Iron & Steel and Commex Corp.	
Japan:	
Portable Electric Typewriters (A-588-087)	5/1/88–4/30/89
Brother	
Canon	
Matsushita	
Nakajima	
Sharp	
Silver	
PRC:	
Iron Construction Castings (A-570-502)	5/1/88–4/30/89
China National Metals and Minerals Import and Export Corporation, including the Beijing, Guangdong, Liaoning (Dalian), Jilin, and Anhui Branches	
China National Machinery Import and Export Corporation (Machimpex)	
China National Machinery and Equipment Import and Export Corporation (CMEC)	
China National Light Industrial Products Import and Export Corporation	
Turkey:	
Carbon Steel Pipes and Tubes (A-489-501)	5/1/88–4/30/89
Borusan	

Countervailing duty proceedings	Periods to be reviewed
Mexico	
Bricks (C-201-017)	1/1/88–12/31/88
Mexico:	
Ceramic Tile (C-201-003)	1/1/88–12/31/88
Sweden:	
Viscose Rayon Staple Fiber (C-401-056)	1/1/88–12/31/88

Interested parties must submit applications for administative protective orders in accordance with §§ 353.34(b) or 355.34(b) of the Commerce Regulations.

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

Joseph A. Spetrini.

Deputy Assistant Secretary for Compliance.

Date: June 15, 1989.

[FR Doc. 89–14605 Filed 6–20–89; 8:45 am]

BILLING CODE 3510–DS–M

New European Community Standards Development, Testing and Certification Procedures; Opportunity for Interested Parties to Comment

AGENCY: International Trade Administration, International Economic Policy, Commerce.

ACTION: Notice of hearing.

SUMMARY: This is to advise the public that the U.S. Government Working Group on European Community (EC) Standards, Testing and Certification Issues will be holding a public hearing to gather public comments, concerns and recommendations related to the EC's new approach on product standards and conformity assessment procedures. Interested persons are invited to present written and oral views regarding any issue which relates to this matter.

DATE: The hearing will be held at 9:30 a.m. on July 26, 1989.

FOR FURTHER INFORMATION CONTACT: Naomi Otterness or Mary Saunders, Office of European Community Affairs, Room 3036, International Economic Policy, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; (202) 377–5279 or (202) 377–5823.

SUPPLEMENTARY INFORMATION: The U.S. Working Group on EC Standards, Testing and Certification (part of the U.S. Government Interagency Task Force on the EC Internal Market) is holding a public hearing to solicit views relating to the development of new European standards, testing and certification procedures, their impact on U.S. business, and how the United States should respond.

At the request of the European Community, European standardization organization are developing industrial standards that correspond to EC-wide essential health and safety requirements stipulated by EC directives regulating certain product sectors. Areas subject to EC-wide regulations include: general machinery, agricultural machinery, appliances, certain automotive parts, construction products, cranes, hydraulic diggers, forklift trucks, lifting and loading equipment, electrical products, medical devices, toys, pressure vessels, non-automatic weighing instruments, appliances burning gaseous fuels, lawn mowers, earth moving and mobile machinery. In addition, there will be EC-wide requirements on chemicals, pharmaceuticals and other medicinal products, pesticides, fertilizers, emulsifiers, detergents, cosmetics,

processed foods, additives, preservatives and flavorings.

Existing national standards and regulations in the member countries for the products listed above would have to be replaced with the new European standards. For products that will not be subject to EC-wide regulations, the European Community is striving for a system of mutual recognition of existing national standards between the member countries.

The information and opinions obtained from the public hearing will be used to supplement the findings of the working group in determining the need for future U.S.-EC coordination on standards-related activities, establishing priorities for certain areas of greatest concern to the United States.

The hearing will be held at 9:30 a.m. on July 26, 1989, in Room 1412 at the Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Persons who wish to participate in the hearing must submit a written request to Charles Ludolph, Director, Office of European Community Affairs, Room 3036, Department of Commerce, Washington, DC, 20230, within 10 days of the publication of this notice. Requests should contain: (1) The person's name, address, telephone number, and affiliation; (2) the number of participants; (3) the reason for attending; and (4) a list of the points to be discussed. Oral presentations will be limited to those points raised in your written comments. Written comments from individuals unable to attend the hearing must be submitted to Charles Ludolph at the above address no later than July 26, 1989. Those persons wishing to appear at the hearing will be notified of the allocations for their presentations.

Richard L. Johnston,

Acting Assistant Secretary for International Economic Policy.

[FR Doc. 89-14606 Filed 6-20-89; 8:45 am]

BILLING CODE 3510-DA-M

Caribbean Basin Business Promotion Council; Open Meetings

July 14-15, 1989.

AGENCIES: International Trade Administration and the Office of the U.S. Trade Representative.

SUMMARY: The Caribbean Basin Business Promotion Council (Council) consists of 25 private sector members and nine U.S. Government representatives. The Council was established to advise the Secretary of Commerce on matters pertinent to implementation of the Caribbean Basin Initiative (CBI). The Council's advice is also forwarded to the interagency CBI Task Force.

In addition to the full Council meeting, there will be open meetings of the Council's 936, Education and Finance Subcommittees on the following day. The full Council will then reconvene to entertain reports from the Subcommittees.

Time and Place: The Caribbean Basin Business Promotion Council will meet on July 14 in Room 4830 of the U.S. Department of Commerce Building, 14th and Constitution Avenue, NW., Washington, DC from 9:00 a.m. to approximately 5:00 p.m.

The Council's 936, Education, and Finance Subcommittee meetings will be held on Saturday, July 15 from 9:00 a.m. to 11:00 a.m. at the U.S. Department of Commerce Building, 14th and Constitution Avenue, NW., Washington, DC. The full Council will reconvene on July 15 at 11:00 a.m. in Room 4830 to receive the reports of the subcommittees and to complete any unfinished business. The July 15 Subcommittee meeting schedules are as follows:

936 Subcommittee, Room 4830
Finance Subcommittee, Room 1413
Education Subcommittee, Room 1411

Please note that identification will be required to obtain entry into the building.

Proposed Agenda—Caribbean Basin Business Promotion Council

July 14

936 Subcommittee Report and Council's Tax Information Exchange Agreement policy statement;
Education Subcommittee report;
Council member country visit reports for Guyana, Grenada, Trinidad & Tobago, the Eastern Caribbean, Honduras, and El Salvador;
CBI Center Director report;
Update on OPIC activities; and
General discussion period for Council.

July 15

936 Subcommittee—Discussion of methods to promote the Caribbean Basin Development (936) program and progress review.

Financing Subcommittee—Examination of financial impediments to economic progress and discussion of financial mechanisms that may facilitate business development in the Caribbean Basin.

Education Subcommittee—Exploration of means to create and expand education opportunities for Caribbean Basin students.

Public Participation

All meetings will be open to public attendance and a period will be set aside for oral comments or questions from the public. Any member of the public may submit written comments concerning Subcommittee or Council affairs at any time before or after the meetings. Limited seating is available to the public.

FOR FURTHER INFORMATION CONTACT: Gordon Studebaker or Paul Bucher, Caribbean Basin Information Center, U.S. Department of Commerce, Main Commerce Building, Room 3203, Washington, DC 20230. Telephone (202) 377-0703. Copies of the minutes of the Council's meetings will also be available at the above office 30 days after the meetings.

Date: June 15, 1989.

Gordon Studebaker,

Director, CBI Center

[FR Doc. 89-14607 Filed 6-20-89; 8:45 am]

BILLING CODE 3510-FP-M

National Oceanic and Atmospheric Administration

Western Pacific Precious Corals

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

ACTION: Notice of issuance of two experimental fishing permits.

SUMMARY: The Regional Director of the Southeast Region of the National Marine Fisheries Service, acting for the Secretary of Commerce, has decided to issue two experimental fishing permits under the regulations implementing the Fishery Management Plan for the Precious Coral Fisheries of the Western Pacific Region (FMP). One permit will be issued to Maui Divers of Hawaii Ltd., which intends to harvest 50,000 kilograms (kg) of precious coral from the exclusive economic zone over a period of five years with a submersible vessel. The second permit will be issued to Aukai Fishing Company, Ltd., which intends to harvest 10,000 kg of precious coral over a two-year period with non-selective gear. Terms and conditions regulating the two fisheries have been transmitted to the permittees.

DATE: The permit for Maui Divers will be effective from January 1, 1990 through December 31, 1994. The permit for Aukai Fishing will be effective from June 1, 1989 through May 31, 1991.

FOR FURTHER INFORMATION CONTACT: Copies of the permits may be obtained from Doyle Gates, Pacific Islands Coordinator, 2570 Dole St., Room 106,

Honolulu, Hawaii, 96822–2396, 808–955–8831, or James Morgan, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731, 213–514–6667.

SUPPLEMENTARY INFORMATION: Two applications for experiemental fishing permits to harvest precious coral in the western Pacific have been received, reviewed, and approved. An application from Maui Divers, Ltd. proposed to harvest 50,000 kg of precious coral over a period of five years, primarily from the exploratory areas of the western Pacific, with an unmanned submersible vessel (53 FR 48285, November 30, 1988). The second application was received from Aukai Fishing Company, Ltd., proposing to harvest 10,000 kg of precious coral from the Hawaiian exploratory area over a period of two years with non-selective gear (54 FR 7462, February 21, 1989).

Both applications were reviewed by the Western Pacific Fishery Management Council (Council). The Council recommended to the Regional Director that the permits be granted with appropriate terms and conditions.

As a part of the NMFS' review of the applications under 50 CFR Part 680 of the rules implementing the FMP, an environmental assessment was prepared on the proposal from Maui Divers (54 FR 11029, March 16, 1989) and on the proposal from Aukai Fishing (54 FR 15538, April 18, 1989). Following the end of the public review period, terms and conditions were developed, attached to the permits, and forwarded to the applicants to ensure protection of coral resources and to obtain important biological data. Some of the conditions imposed on the two operations are:

1. Maui Divers, Ltd.

(a) A total of 50,000 kg for all coral species combined may be taken over the 5 year period of the permit.

(b) A colony of pink coral (*Corallium secundum*) may be harvested at its base only if the colony is 10 inches vertical height or greater.

(c) A colony of deep-sea pink coral (*Corallium sp*) may be harvested at its base only if the colony is 7 inches vertical height or greater.

(d) The permittee must submit a proposed plan of operations 30 days prior to departure.

(e) A record of all dives of the submersible vessel will be maintained and all video tapes will be made available to the Regional Director.

(f) The Regional Director may assign an observer to any and all trips of the harvesting vessel.

2. Aukai Fishing Company, Ltd.

(a) A total of 10,000 kg for all coral species combined may be taken over the 2 year period of the permit.

(b) The permittee must submit a proposed plan of operations 30 days prior to departure.

(c) The Regional Director may assign an observer to any and all trips of the harvesting vessel.

(d) Harvesting on coral beds on which harvesting has taken place by other permit holders is prohibited without permission of the Regional Director.

(Specific directions for collecting fisheries data and for notifying the Regional Director of the departure and arrival of harvesting vessels also are included in the permits.

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

Dated: June 15, 1989.

Richard H. Schaefer,

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

[FR Doc. 89–14620 Filed 6–20–89; 8:45 am]

BILLING CODE 3510–22–M

National Technical Information Service

Intent To Grant Exclusive Patent License

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Bristol-Myers Company, having a place of business in New York, NY, an exclusive license in the United States and certain foreign countries to practice the invention entitled "DNA Clone Encoding a Chimeric Toxin Composed of IL 6 and a Portion of Pseudomonas Exotoxin" U.S. Patent Application Serial Number 7–278,601. Prior to the grant of any license by NTIS, the patent rights in this invention will be assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments, and other materials relating to the proposed license must be submitted to Papan Devnani, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

A copy of the instant patent application may be purchased from the NTIS Sales Desk by telephoning (703) 487–4650 or by writing to the Order Department, NTIS, 5285 Port Royal Road, Springfield, VA 22161.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 89–14652 Filed 6–20–89; 8:45 am]

BILLING CODE 3510–04–M

DELAWARE RIVER BASIN COMMISSION

Commission Meeting; Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, June 28, 1989 beginning at 1:30 p.m. in Room 5160, Secretary's Conference Room, at the Department of the Interior Building, "C" Street entrance between 18th and 19th Streets, Washington, DC. The hearing will be part of the Commission's regular business meeting which is open to the public.

An informal pre-meeting conference among the Commissioners and staff will be open for public observation at about 11:00 a.m. in Room 7000, Conference Room A, of the Interior Building.

The subjects of the hearing will be as follows:

Applications for Approval of the Following Projects Pursuant to Article 10.3, Article II and/or Section 3.8 of the Compact:

1. Artesian Water Company, Inc. D–79–58 CP (Revised) RENEWAL. An application for the renewal of a ground water withdrawal project to supply up to 52 million gallons (mg)/30 days of water to the applicant's distribution system from Artisan's Village well field. Commission approval on May 23, 1984 was limited to five years and will expire unless renewed. The applicant requests that the total withdrawal from all wells and well fields remain limited to the quantities listed in Attachment "A Revised". The project is located in the City of Newark, New Castle County, Delaware.

2. Van Wingerden of Delaware, Inc. D–83–40 RENEWAL. An application for the renewal of a ground water withdrawal project to supply up to 25.5 mg/30 days of water to the applicant's agricultural irrigation system from Well Nos. 1 through 5. Commission approval on March 28, 1984 was limited to five years and will expire unless renewed. The applicant requests that the total withdrawal from all wells remain limited to 25.5 mg/30 days. The project

is located in New Castle County, Delaware.

3. Shieldalloy Metallurgical Corporation D–88–53. An application for approval of a ground water withdrawal project to supply up to 20.74 mg/30 days of water for the applicant's modified ground water decontamination system from new Well Nos. RW6S, RW6D and RIW2, and to increase the existing withdrawal limit of 1.5 mg/30 days from all wells to 20.74 mg/30 days. The recovery wells are located in the City of Vineland, Cumberland County, New Jersey and the applicant's manufacturing facility is in Newfield Borough, Gloucester County. The existing ion-exchange treatment system will be expanded to treat a design average flow of 480 gallons per minute (0.612 mgd). Initially, the supernatent and the pretreated process wastewater will be hauled to an undetermined publicly owned treatment works for final treatment. Currently, these treated waters are discharged to Hudson Branch which is tributary to Burnt Mill Branch in the Maurice River basin. Ultimately, the applicant plans to upgrade treatment, recover hexavalent chromium and reduce the need for off-site disposal of treated wastewaters.

4. Perkiomen Township Municipal Authority D–88–84 CP. An application for approval of a ground water withdrawal project to supply up to 1.950 mg/30 days of water to the Cranberry Development from new Well Nos. 2 and 3. The project is located in Perkiomen Township, Montgomery County, and is located in the Southeastern Pennsylvania Ground Water Protected Area. Well No. 2 is located 1000 feet southwest of the intersection of Wartman and Hagey Roads. Well No. 3 is located at the intersection of Wartman and Hagey Roads.

5. Borough of Collingswood D–89–3 CP. An application for approval of a ground water and surface water withdrawal project. The ground water withdrawal project is to supply water to the applicant's distribution system from existing wells. Total withdrawal from Well Nos. 2R, 3R, 4, 5, 6, 7 and 8 is not to exceed 155 mg/30 days. Due to restrictions imposed upon ground water withdrawal from the Potomac-Raritan-Magothy Aquifer, the applicant proposes to provide an alternate water source via an intake gallery on Newton Creek. The applicant is requesting an allocation of 44.6 mg/30 days from Newton Creek, but the total withdrawal from the combined ground water and surface water systems will not exceed 155 mg/30 days. The project is located in Collingswood Borough, Camden County, New Jersey.

6. Milford Township Water Authority D–89–29 CP. An application for approval of a ground water withdrawal project to supply up to 1.26 mg/30 days of water to the applicant's distribution system from existing Well No. 1. The project is located in Milford Township, Bucks County and is in the Southeastern Pennsylvania Ground Water Protected Area. Well No. 1 was previously owned by Community Health Services under Docket D–87–3 P.A.

7. Vacation Charters Ltd. D–89–31. A sewage treatment project to serve the Split Rock Westwood residential development located in Kidder Township, Carbon County, Pennsylvania. The proposed plant will be designed for tertiary treatment of 0.15 million gallons per day (mgd) average flow. An existing treatment facility, serving the development with a design capacity of 0.06 mgd (tertiary treatment), will remain operational until construction of the proposed plant is complete. The proposed plant will use the same discharge point as the existing plant, an unnamed tributary of Shingle Mill Run in the Tobyhanna Creek Watershed.

8. Borough of Allentown D–89–32 CP. An application for approval of a ground water withdrawal project to supply up to 9.0 mg/30 days of water to the applicant's distribution system from existing Well Nos. 1 and 2, and to limit the withdrawal from all wells to 9.0 mg/30 days. The project is located in Allentown Borough, Monmouth County, New Jersey.

Documents relating to these items may be examined at the Commission's offices. Prelimianry dockets are available in single copies upon request. Please contact George C. Elias concerning docket-related questions. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing.

Public Information Notice

Water Quality Program

The Commission is preparing its water quality program for the fiscal year ending September 30, 1990. Notice of this action is given in accordance with the requirements of the Federal Clean Water Act, as amended. The proposed program will involve a variety of activities in the areas of planning, surveillance, compliance monitoring, regional coordination, water quality standards, wasteload allocations and public participation. While the proposed program is not subject to public hearing by the Commission, it will be available for examination and review by interested individuals at the Commission's offices upon request beginning July 5, 1989. The public review and comment period will end July 24, 1989. Contact Seymour P. Gross for further information.

Susan M. Weisman,

Secretary.

June 13, 1989.

[FR Doc. 89–14653 Filed 6–20–89; 8:45 am]

BILLING CODE 6360–01–M

DEPARTMENT OF DEFENSE

Department of the Air Force; USAF Scientific Advisory Board; Meeting

June 2, 1989.

The USAF Scientific Advisory Board AD Hoc Committee on Conventional Munitions will meet on 11–12 Aug. 1989 at the Pentagon, Washington, DC.

The purpose of this meeting is to brief the results of a study on air-to-surface conventional munitions. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4648.

Patsy J. Conner,

Air Force Federal Register, Liaison Officer.

[FR Doc. 89–14650 Filed 6–20–89; 8:45 am]

BILLING CODE 3910–01–M

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB)

Dates of Meeting: 13–14 July 1989

Time: 0800–1700 hours each day

Place: The Pentagon, Washington, DC

Agenda: The Army Science Board Ad Hoc Subgroup on Ballistic Missile Defense (Follow-On) will meet for classified briefings and discussions reviewing matters that are an integral part of or related to the issue of the study effort; i.e., penetration aid development, midcourse discrimination, and BM/C3. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and title 5, U.S.C., Appendix 2, subsection 10(d).

The classified and unclassified matters and proprietary information to

be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039/7046.

Richard E. Entlich,

Colonel, GS, Executive Secretary.

[FR Doc. 89–14651 Filed 6–20–89; 8:45 am]

BILLING CODE 3710–08–M

Department of the Navy

Naval Research Advisory Committee; Closed Meeting

Notice was published June 7, 1989, at 54 FR 24380 that the Naval Research Advisory Committee Panel on Survivability of Navy Tactical Communications in a Hostile Environment will meet on June 21–22, 1989, at E Systems, MelPar Division, 7700 Arlington Blvd, Falls Church, Virginia. The meeting has been canceled. In accordance with 5 U.S.C. 552b(e)(2), the meeting cancellation is publicly announced at the earliest practical time.

Date: June 16, 1989.

Sandra M. Kay,

Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 89–14696 Filed 6–20–89; 8:45 am]

BILLING CODE 3810–AE–M

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Naval Research Advisory Committee Panel on Survivability of Navy Tactical Communications in a Hostile Environment will meet on July 13–14, 1989. The meeting will be held at the Center for Naval Analyses, 4401 Ford Avenue, Alexandria, Virginia. The meeting will commence at 9:00 a.m. and terminate at 4:00 p.m. on July 13 and 14, 1989. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to discuss issues related to the survivability of Navy tactical communications in a hostile environment. The agenda will consist of Executive Sessions which are devoted to writing a preliminary report of the panel's findings and recommendations. These discussions will contain classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive Order. The classified and non-classified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander L.W. Snyder, U.S. Navy, Office of Naval Research, 800 North Quincy Street, Arlington, VA 22217–5000, Telephone Number: (202) 696–4488.

Date: June 16, 1989.

Sandra M. Kay,

Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 89–14697 Filed 6–20–89; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER89–472–000 et al.]

Idaho Power Co. et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

June 15, 1989.

Take notice that the following filings have been made with the Commission:

1. Idaho Power Company

[Docket No. ER89–472–000]

Take notice that on June 2, 1989 Idaho Power Company (Idaho Power) tendered for filing copies of an Agreement for Interim Transmission Service between The Washington Water Power Company (Washington) and Idaho Power. Idaho Power states that the transmission service will be made available to Washington from February 1, 1989 through May 31, 1989.

Idaho Power requests that the Requirements of prior notice be waived and the effective date be made retroactive to February 1, 1989.

Comment date: June 27, 1989, in accordance with Standard Paragraph E at the end of this notice.

2. New York State Electric & Gas Corporation

[Docket No. ER88–488–000]

Take notice that on June 1, 1989, New York State Electric & Gas Corporation ("NYSEG") tendered for filing as an amended rate schedule a revised contract dated April 14, 1989 between NYSEG and the County of Erie, a municipal corporation of the State of New York, ("Erie County"). The contract is revised such as to permit delivery of amounts of preference Power as may be mutually agreed to by NYSEG and Erie County. All other terms of the initial contract remain unchanged and in effect. Service under this agreement shall commence on July 1, 1989.

NYSEG states that copies of this filing have been served by mail upon Erie County, the New York State Public Service Commission, the Municipal Electric Utilities Association of New York State, and the Power Authority of the State of New York, from whom Erie County is purchasing the hydroelectric power and energy to be sold by Erie County to its customers.

Comment date: June 27, 1989, in accordance with Standard Paragraph E at the end of this notice.

3. Citizens Power & Light Corporation

[Docket No. ER89–401–001]

Take notice that Citizens Power & Light Corporation (Citizens), on June 9, 1989, tendered for filing an amendment to its initial filing in this docket. Citizens requests a new effective date for Rate Schedule No. 1 of October 1, 1988. The revised effective date is necessary to account for certain transactions of Citizens that began on October 1, 1988.

Comment date: June 30, 1989, in accordance with Standard Paragraph E at the end of this notice.

4. Orange and Rockland Utilities, Inc.

[Docket No. ER89–486–000]

Take notice that on May 24, 1989, Orange and Rockland Utilities, Inc. ("Orange and Rockland") tendered for filing pursuant to the Federal Energy Regulatory Commission's order issued January 15, 1988 in Docket No. ER88–112–000, an executed Service Agreement between Orange and Rockland and Orange Development Corporation ("Orange Development").

Comment date: June 30, 1989, in accordance with Standard Paragraph E at the end of this notice.

5. The Kansas Power and Light Company

[Docket No. ER89–485–000]

Take notice that on May 26, 1989, The Kansas Power and Light Company (KPL) tendered for filing certain Rate Schedules under which KPL will transmit power and energy from the Jeffrey Energy Center, over its transmission facilities, to transmission interconnections with Kansas Gas and Electric Company, Centel Corporation-

Western Power Division, and Missouri Public Service Company.

Comment date: June 30, 1989, in accordance with Standard Paragraph end of this notice.

6. Alabama Power Company

[Docket No. ER89-487-000]

Take notice that on June 2, 1989, Alabama Power Company tendered for filing a Supplemental Contract between Alabama Power Company and the United States of America, Department of Energy, acting by and through the Southeastern Power Administration. The Supplemental Contract resolves certain interpretational disputes regarding the Contract between the parties dated January 29, 1985 and accepted for filing in Docket No. ER85-312-000.

Comment date: June 30, 1989, in accordance with Standard Paragraph E at the end of this notice.

7. Canal Electric Company

[Docket No. ER89-489-000]

Take notice that on June 8, 1989, Canal Electric Company ("Canal") tendered for filing a Power Contract (the "Power Contract") between itself, Cambridge Electric Light Company and Commonweatlh Electric Company and a Summer Power Capacity Acquisition Commitment (the "Commitment"). The Power Contract implements the terms of the Capacity Acquisition Agreement (FERC Rate Schedule No. 21) and the Commitment. Such Power Contract recognizes the purchase of demand and related energy by Canal from Connecticut Light and Power Company and United Illuminating Company over the time period April 1, 1989 to October 31, 1989 and the sale of such power to Cambridge Electric Light Company and Commonwealth Electric Company. Canal has requested that the Commission's notice requirements with respect to the Power Contract and the Commitment be waived pursuant to Section 35.11 of the Commission's regulations in Order to allow the tendered Power Contract to become effective as of April 1, 1989.

Comment date: June 30, 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 should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-14619 Filed 6-20-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP89-1573-000 et al.]

CNG Transmission Corporation et al.; Natural Gas Certificate Filings

June 14, 1989.

Take notice that the following filings have been made with the Commission:

1. CNG Transmission Corporation

[Docket No. CP89-1573-000]

Take notice that on June 5, 1989, CNG Transmission Corporation (CNG), 445 West Main Street, Clarksburg, West Virginia 26302, filed in Docket No. CP89-1573-000 a prior notice request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authorization to transport natural gas for various shippers under the certificate issued in Docket No. CP86-311-000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

CNG proposes to transport gas for the shippers on an interruptible basis from various receipt points on its system to various interconnections between CNG and certain local distribution companies and pipelines. CNG lists for each shipper the receipt and delivery points, the maximum daily, average daily, and annual volumes, as well as the docket number related to the 120-day transportation service initiated by CNG (see attached appendix).

Comment date: July 31, 1989, in accordance with Standard Paragraph G at the end of this notice.

APPENDIX

Docket No.	Shipper or customer	Commence date	Max. daily, Avg. daily, Est. annual	Receipt point	LDC
ST89-3639	Goetz Energy Corp	4/01/89	15,000 1,400 511,000	A	RG&E.
ST89-3638	Interstate Gas Marketing	4/20/89	1,000 1,000 365,000	D	Corning.
ST89-3636	O&R Energy Co.	4/26/89	15,000 1,075 392,375	D	EOG.
ST89-3637	O&R Energy Co.	4/26/89	15,000 275 100,375	D	PNG.
ST89-3635	Riley Natural Gas Company	4/26/89	1,000 1,000 365,000	B	HGI.
ST89-3641	Woodward Marketing	4/04/89	30,000 2,226 812,490	D	NIMO.
ST89-3642	TXG Marketing Co	3/24/89	100,000 25 9,125	A	Texas Gas.

Legend of LDC's or Delivery Points

HGI—Hope Gas, Inc.
NYSEG—New York State Electric Gas Corp.
RGE—Rochester Gas & Electric Corp.
EOG—East Ohio Gas Co.
PNG—Peoples Natural Gas Company
NIMO—Niagara Mohawk Power Corp.
NFG—National Fuel Gas Supply Corp.
Transco—Transcontinental Gas Pipeline Corporation
Corgas—Corgas Pipeline Company
North Penn—North Penn Gas Company
H&B—Hanley & Bird
Corning—Corning Natural Gas Corp.
Texas Gas—Texas Gas Transmission Corporation

Legend of Receipt Points

A—Various interconnects between Tennessee Gas Pipeline Company and CNG
B—Various receipt points in WV/PA/NY
C—Various interconnects between Texas Gas Transmission Corp. and CNG
D—Various interconnects between Texas Eastern Transmission Corp. and CNG

2. Natural Gas Pipeline Company of America

[Docket No. CP89-1569-000]

Take notice that on June 5, 1989, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP89-1569-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas on behalf of Phillips Petroleum Company (Phillips), a producer of natural gas, under Natural's blanket certificate issued in Docket No. CP86-582-000, 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.

Natural proposes to transport on an interruptible basis up to 50,000 MMBtu of natural gas on a peak day plus excess volumes pursuant to the overrun provisions of its Rate Schedule ITS, 12,000 MMBtu on an average day and 4,380,000 MMBtu on an annual basis for Phillips. It is stated that Natural would receive the gas for Phillips' account at existing receipt points in Louisiana, Texas, Offshore Texas, Oklahoma and New Mexico, and would deliver equivalent volumes at existing points on Natural's system in Texas, Offshore Texas and New Mexico. It is asserted that the transportation service would be affected using existing facilities and would require no construction of additional facilities. It is explained that the transportation service commenced April 1, 1989, under the automatic authorization provisions of Section 284.223 of the Commission's Regulations, as reported in Docket No. ST89-3782.

Comment date: July 31, 1989, in accordance with Standard Paragraph G at the end of this notice.

3. Panhandle Eastern Pipe Line Company

[Docket No. CP89-1512-000]

Take notice that on May 25, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-1512-000, a request, as supplemental on June 7, 1989, 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 Town of Vici Public Works Authority, Inc. Vici, Oklahoma (Vici), a shipper and local distribution company of natural gas, under Panhandle's blanket certificate issued in Docket No. CP89-585-000 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 Vici (Agreement), Panhandle would transport up to 410 dekatherms (dt) per day equivalent of natural gas on a firm basis for Vici. Panhandle further states that the Agreement provides for it to receive the natural gas from Ringwood in Major County, Oklahoma. Panhandle would then transport and redeliver the natural gas, less fuel used and unaccounted for line loss, to Vici in Dewey County, Okahoma. Panhandle also states that Vici may nominate quantities from interruptible points of receipt on Panhandle's system as long as the sum of the volumes nominated from such points and the volumes nominated from firm points of receipt shall not exceed the contract quantity of the transportation agreement for service under Rate Schedule PT.

Panhandle states that Vici has indicated that the estimated daily and estimated annual quantities would be 410 dt and 149,650 dt, respectively.

Panhandle states that it commenced the transportation of natural gas for Vici on April 1, 1989, as reported in Docket ST89-3167, for a 120 day period pursuant to § 284.223(a) of the Commission's Regulations (18 CFR 284.223(a)).

Comment date: July 31, 1989, in accordance with Standard Paragraph G at the end of this notice.

4. Panhandle Eastern Pipe Line Company

[Docket No. CP89-1448-000]

Take notice that on May 19, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-1448-000, a request, as supplemental on June 7, 1989, 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 Hermann, Missouri (Hermann), a shipper and local distribution company of natural gas, under Panhandle's blanket certificate issued in Docket No. CP89-585-000 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 Hermann (Agreement), it would transport up to 2,046 dekatherms (dt) per day equivalent of natural gas for Hermann. 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 and unaccounted-for line loss, to Hermann in Audrain County, Missouri. Panhandle also states that Hermann may nominate quantities from interruptible points of receipt on Panhandle's system as long as the sum of the volumes nominated from such points and the volumes nominated from firm points of receipt shall not exceed the contract quantity of the transportation agreement for service under Rate Schedule PT.

Panhandle states that Hermann has indicated that the estimated daily and estimated annual quantities would be 2,046 dt and 746,790 dt, respectively.

Panhandle states that it commenced the transportation of natural gas for Hermann on April 1, 1989, as reported in Docket ST89-3168, for a 120-day period pursuant to Section 284.223(a) of the Commission's Regulations (18 CFR 284.223(a)).

Comment date: July 31, 1989, in accordance with Standard Paragraph G at the end of this notice.

5. Williams Natural Gas Company

[Docket No. CP89-1526-000]

Take notice that on May 25, 1989, Williams Natural Gas Company (Williams) P.O. Box 3288, Tulsa,

Oklahoma 74101, filed in Docket No. CP89–1586–000, a request, as supplemented on June 7, 1989, pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to abandon 2.74 miles of 16-inch pipeline located in Sedgwick County, Kansas, under the authorization issued in Docket No. CP82–479–000 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.

It is stated that pursuant to an order issued in Docket No. G–493, 3 FPC 598 (1943), Williams installed the section of 16-inch pipeline it now seeks to abandon. Williams avers that it proposes to replace the 2.74 miles of pipeline in Sedgwick County with 1.72 miles of 4-inch and 6-inch pipeline. Williams alleges that the proposed replacement pipeline would be constructed under the automatic provision of § 157.208(a) of the Commission's regulations. Williams asserts that KPL Gas Service (KPL) is the only customer being served by the section of pipeline to be abandoned and has agreed to the abandonment. Service to KPL would continue through the pipeline to be constructed under the automatic procedure, therefore there would be no abandonment of service. The cost to reclaim the facilities is estimated to be $500,000, the salvage value is estimated to be $33,000, and the sales price is $50.

Williams indicates that over the years, gas usage in the Wichita, Kansas area, has changed and the 16-inch pipeline to be abandoned is considered oversized for the volume of gas currently moving through it. It is alleged that the new 4-inch and 6-inch replacement pipeline, installed under the automatic procedure, would adequately serve the current gas needs and allow for increased operating flexibility. Williams avers that this proposal is not prohibited by an existing tariff and it has sufficient capacity to accomplish the deliveries without detriment or disadvantage to its other customers.

Comment date: July 31, 1989, in accordance with Standard Paragraph G at the end of this notice.

6. Mississippi River Transmission Corporation

[Docket No. CP89–1524–000]

Take notice that on May 26, 1989, Mississippi River Transmission Corporation (MRT), 9900 Clayton Road, St. Louis, Missouri 63124, filed in Docket No. CP89–1524–000 an application pursuant to section 7(b) of the Natural Gas Act (NGA) for permission and approval to abandon sales service to Panhandle Eastern Pipe Line Company (Panhandle) under MRT's Rate Schedule X–20 to become effective November 1, 1989, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

MRT states that pursuant to orders issued April 18, 1980, 11 FERC ¶61,054, April 13, 1987, 39 FERC ¶62,053, it is currently obligated to sell to Panhandle up to 12.5 percent of the volumes Panhandle transports for MRT under Panhandle's Rate Schedule T–38. It is alleged that Panhandle has never exercised this option to purchase gas and has requested MRT to file for abandonment of the sales service.

The gas transported by Panhandle is MRT's offsystem production from the North Reydon Field area in Oklahoma. MRT states that this gas is transported to its system using the facilities of K N Energy, Inc., Panhandle, and Trunkline Gas Company (Trunkline). It is alleged that Panhandle and Trunkline have concurrently filed to abandon their certificate transportation services for MRT effective November 1, 1989,[1] and would instead perform transportation service for MRT of the North Reydon Field production under their PT-Firm Tariffs pursuant to their open-access blanket transportation certificates. It is alleged that there would be no adverse impact on Panhandle's system supply or on Panhandle's ability to meet its sales obligations to its customers as a result of the termination of the MRT's X–20 sales service. It is claimed there would be no abandonment of facilities as a result of the termination of the T–38, T–60, and X–20 services.

Comment date: July 5, 1989, in accordance with Standard Paragraph F at the end of this notice.

7. Colorado Interstate Gas Company

[Docket No. CP89–1554–000]

Take notice that on June 1, 1989, Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP89–1554–000 an application pursuant to sections 7(c) and 7(b) of the Natural Gas Act for a certificate of public convenience and necessity authorizing new storage services pursuant to two new rate schedules, Rate Schedules FS–1 (Firm Storage Service and IS–1 (Interruptible Storage Service) to be incorporated in a new CIG Original Volume No. 3 F.E.R.C. Gas Tariff, with pregranted abandonment, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

CIG states that the proposed Rate Schedule FS–1 provides for firm service with an injection period between May 1 and October 31 and a withdrawal period between October 1 and April 30 with the month of October available for injection and or withdrawal. CIG states that firm storage service will be provided to certain firm sales customers with the right of first refusal subject to CIG's sole determination of storage capacity availability when such customer converts or reduces purchase obligations with the maximum daily withdrawal volume equaling not more than 20 percent of the conversion and/or reduction volume. It is further stated that provided the customer with the right of first refusal does not desire any or part of the firm storage capacity that may be available, CIG would offer such capacity through a 15-day open season. CIG explains that should the nominations for such capacity exceed the available capacity, capacity would be allocated on a pro rata basis. It is stated that the injection volume, maximum daily withdrawal volume and maximum available capacity would be specified in the FS–1 service agreement. CIG states that any request to exceed maximum daily or annual volumes would be accepted on an interruptible basis.

CIG states that the charge for FS–1 service would consist of a storage capacity rate, reservation rate and rates for injection and withdrawal. In addition, it is stated that there would be a provision for overrun rates plus the F.E.R.C. annual charge adjustment. CIG states that there is a maximum and minimum rate with a provision for discounting.

CIG states that the Rate Schedule IS–1 provides for an interruptible storage service that CIG would make available if it has storage capacity available after providing for firm obligations. CIG maintains that the charge for IS–1 service would consist of a volume injection rate. It is also stated that there would be a provision for overrun rates plus the F.E.R.C. annual charge adjustment, CIG states that there is a maximum and minimum rate with a provision for discounting.

CIG states that transportation service, in conjunction with the proposed storage service, would be provided pursuant to specific transportation service agreements under CIG's open-access

[1] Panhandle and Trunkline filed in Docket No. CP89–1522–000 to abandon transportation provided by MRT pursuant to Panhandle's Rate Schedule T–38 and Trunkline's Rate Schedule T–60.

transportation rate schedules with storage service being a "stop in time" of the transportation service.

Comment date: July 5, 1989 in accordance with Standard Paragraph F at the end of the notice.

8. Panhandle Eastern Pipe Line Company

[Docket No. CP89-1464-000]

Take notice that on May 22, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-1464-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas for the Village of Edinburg (Edinburg), a shipper and local distributor of natural gas, under Panhandle's 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 which is on file with the Commission and open to public inspection.

Panhandle proposes to transport, on a firm basis, up to 766 dt equivalent of natural gas on a peak day for Edinburg, 176 dt equivalent on an average day and 64,240 dt equivalent on an annual basis. It is stated that the transportation service would be effected using existing facilities and would not require any construction of additional facilities. It is explained that Panhandle would receive the gas in the Counties of Custer and Dewey, Oklahoma and would deliver equivalent volumes of gas less fuel used and unaccounted for line loss to the Village of Edinburg in Christian County, Illinois. It is explained that the service commenced April 1, 1989, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89-3112.

Comment date: July 31, 1989, in accordance with Standard Paragraph G at the end of this notice.

9. Panhandle Eastern Pipe Line Company and Trunkline Gas Company

[Docket No. CP89-1522-000]

Take notice that on May 26, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77001, and Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP89-1522-000 a joint application pursuant to section 7(b) of the National Gas Act (NGA) for permission and approval to abandon two transportation and exchange agreements between Panhandle and Trunkline and Mississippi River Transmission Corporation (MRT), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that pursuant to a transportation and sales agreement, dated April 16, 1979, as amended June 18, 1986, filed in Docket No. CP79-376, and identified as Panhandle's Rate Schedules T-38 and T-60, Panhandle receives gas for MRT's account in Dewey County, Oklahoma and transports it to the point of interconnection with Trunkline for redelivery by Trunkline to MRT in Clay County, Illinois.

It is further stated that by transportation agreement dated October 12, 1978, filed in Docket No. CP79-98, and identified as Trunkline's Rate Schedules T-35 and T-54, Trunkline provides transportation service to move MRT's gas in and out of storage in ANR Storage Company's (ANR Storage) facilities in Kalkaska County, Michigan. It is alleged that during the period of April 1 to October 31, Trunkline reduces deliveries of gas to MRT in Clay County, Illinois and transports the gas to an interconnection with Panhandle. Panhandle then transports and redelivers the subject gas to ANR Pipe Line Company (ANRPL) in Defiance County, Ohio. For the period November 1 through April 30, Panhandle receives gas from ANR and Trunkline redelivers an equivalent volume of natural gas to MRT in Clay County, Illinois.

It is asserted that the transportation agreements were entered into to provide MRT with access to both field production in the North Reydon area of Roger Mills County, Oklahoma, which is distant from its system, and to storage capacity in the storage facilities of ANR Storage. MRT alleges that its North Reydon Field production has declined significantly and that MRT no longer has a present or future need for offsystem storage capacity in ANR Storage's facilities. It is claimed that Panhandle has a need for market area storage such as the type that can be provided by the ANR Storage facilities. Panhandle and MRT have reconstructed certain transportation and storage services. MRT has requested termination of transportation Rate Schedules T-35, T-38, T-54, and T-60 and has assigned its ANR Storage capacity to Panhandle.[1] It is claimed that simultaneously, MRT is executing new transportation agreements with both Panhandle and Trunkline for transportation services under Part 284 of the Commission's Regulations and the open access blanket transportation certificate programs of both Panhandle and Trunkline.

Trunkline and Panhandle request that the Commission issue an order effective November 1, 1989, authorizing abandonment of the transportation services provided to MRT pursuant to Commission order issued in CP79-376 and CP79-98 and Panhandle's Rate Schedules T-35 and T-38 and Trunkline's Rate Schedules T-54 and T-60. It is alleged that there would be no abandonment of facilities.

Comment date: July 5, 1989, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

10. ANR Pipeline Company

[Docket No. CP78-545-006]

Take notice that on May 26, 1989, ANR Pipeline Company (ANRPL), 500 Renaissance Center, Detroit, Michigan 48243, field in Docket No. CP78-545-006 a petition to amend the order issued July 23, 1979, in Docket No. CP78-545, 8 FERC ¶ 61,059, pursuant to section 7(c) of the Natural Gas Act so as to authorize ANRPL to assign to Panhandle Eastern Pipe Line Compay (Panhandle) storage-related transportation services performed under ANRPL's Rate Schedule X-94 for Mississippi River Transmission Corporation (MRT), effective April 1, 1990, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is alleged that ANRPL, pursuant to the July 23, 1979, order provides up to 6 Bcf per year of natural gas storage related transportation service for MRT (up to 3 Bcf in the summer months and up to 3 Bcf in the winter months). This service is rendered pursuant to the September 22, 1978, transportation agreement between ANRPL and MRT and contained in ANRPL's Rate Schedule X-84. It is alleged that ANRPL transports MRT's gas from an interconnect with the facilities of Panhandle in Defiance County, Ohio to an interconnect with the facilities of Michigan Consolidated Gas Company's Interstate Storage Division (Mich Con) in Washtenaw County, Michigan. Mich Con transports the gas from the

[1] It is alleged that related applications requesting authorization for the assignment of ANR Storage capacity and the assignment of storage-related transportation by ANRPL and Michigan Consolidated Gas Company (Mich Con) to Panhandle are being filed by ANR Storage in Docket No. CP78-432-009, ANRPL in Docket No. CP78-545-006, and Mich Con in CP89-1523-000. Additionally, MRT is filing in Docket No. CP89-1524-000 to abandon a transportation-related sale to Panhandle which was authorized in conjunction with Panhandle's rate schedule T-38 transportation to MRT.

Washtenaw County, Michigan interconnect to a point of interconnection with ANRPL's facilities in Mecosta County, Michigan. ANRPL then transports the gas to ANR Storage Company (ANR Storage) by causing Great Lakes Transmission Company (Great Lakes) to transport and redeliver the gas to ANR Storage at an interconnect between the facilities of Great Lakes and ANR Storage in Crawford County, Michigan. During the winter, the direction of flow is reversed as the gas is withdrawn from storage. It is stated that the September 22, 1978 transportation agreement provides for a fifteen-year primary term expiring April 1, 1995.

It is averred that ANRPL has agreed to the assignment of MRT's storage-related transportation service to Panhandle effective April 1, 1990. ANRPL states that it has agreed to the assignment from MRT to Panhandle of MRT's rights and obligations under ANRPL's Rate Schedule X-94. ANRPL seeks an amendment to the certificate issued July 23, 1979, in Docket No. CP78-545-000 to enable ANRPL to perform for Panhandle the storage-related transportation services currently performed for MRT, effective April 1, 1990.

Comment date: July 5, 1989, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

11. ANR Storage Company

[Docket No. CP78-432-009]

Take notice that on May 26, 1989, ANR Storage Company (ANR Storage), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP78-432-009 a petition to amend the order issued July 23, 1979, in Docket No. CP78-432-000, 8 FERC ¶61,059, pursuant to section 7(c) of the Natural Gas Act so as to authorize ANR Storage to provide to Panhandle Eastern Pipe Line Company (Panhandle) storage services performed under ANR Storage's Rate Schedule X-4 for Mississippi River Transmission Corporation (MRT), effective April 1, 1990, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is alleged that ANR Storage pursuant to the July 23, 1979, order provides up to 3 Bcf of natural gas storage capacity annually for MRT. The storage agreement entered into by ANR Storage and MRT provides for MRT to deliver prescribed volumes of natural gas to ANR Storage during the summer periods (April 1 through October 31) and for ANR Storage to make equivalent volumes of gas available for redelivery to MRT during the ensuing winter periods (November 1 through March 31). The storage service is rendered pursuant to a September 22, 1978 agreement between ANR Storage and MRT, which is contained in ANR Storage's tariff as Rate Schedule X-4.

ANR Storage asserts that it has agreed to the assignment from MRT to Panhandle of MRT's rights and obligations of storage capacity under ANR Storage's Rate Schedule X-4. ANR storage seeks an amendment to the certificate issued July 23, 1979, in Docket No. CP78-432-000 to enable ANR Storage to perform for Panhandle the storage service currently performed for MRT, to be made effective April 1, 1990.

Comment date: July 5, 1989, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

12. Panhandle Eastern Pipe Line Company

[Docket No. CP89-1493-000]

Take notice that on May 23, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251, filed in Docket No. CP89-1493-000 a request as supplemented June 7, 1989, pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under the 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 proposes to transport natural gas on a firm basis for the City of Waverly, Illinois (Waverly). Panhandle explains that service commenced April 1, 1989, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-3303. Panhandle explains that the peak day quantity would be 915 Dt., the average daily quantity would be 915 Dt., and that the annual quantity would be 333,975 dekatherms. Panhandle explains that it would receive natural gas for Waverly's account from Producers Gas Company in Beckham County, Oklahoma. Panhandle also states that Waverly may nominate quantities from interruptible receipt points on Panhandle's system as long as the sum of the volumes nominated from such interruptible points together with the sum of the quantities nominated from firm receipt points would not exceed the contract quantity of the transportation agreement for service under Rate Schedule PT. Panhandle states that it would redeliver the gas to Waverly in Morgan County, Illinois.

Comment date: July 31, 1989, in accordance with Standard Paragraph G at the end of this notice.

13. Panhandle Eastern Pipe Line Company

[Docket No. CP89-1467-000]

Take notice that on May 22, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-1467-000 a request, as supplemented June 2, 1989, pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide firm transportation service for Seiling Public Works Authority (Seiling), a shipper and local distribution company of natural gas, under Panhandle's 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 for public inspection.

Panhandle states that it would transport, on a firm basis, up to a maximum of 400 dt equivalent of natural gas per day for Seiling. Panhandle states that it would receive the gas from Ringwood in Major County, Oklahoma and redeliver the gas, less fuel and unaccounted for line loss to Seiling. Panhandle also states that Seiling may also receive nominated quantities of gas at interruptible receipt points which are listed in Exhibit A. It is further stated that the sum of the volumes nominated from such interruptible receipt points, together with the sum of the quantities nominated from firm points, shall not exceed the contract quantity under Rate Schedule PT. Panhandle indicates that the total volume of gas to be transported for Seiling on a peak day would be 400 dt; on an average day would be 400 dt; and on an annual basis would be 146,000 dt. Panhandle indicates it would perform the proposed transportation service for Seiling pursuant to a service agreement dated April 1, 1989 between Panhandle and Seiling.

Panhandle states that it commenced the transportation of natural gas for Seiling on April 1, 1989, at Docket No. ST89-3165-000 for a 120-day period pursuant to § 284.223(a)(1) of the Commission's Regulations. Panhandle indicates that it proposes no new facilities in order to provide this transportation service.

Comment date: July 31, 1989, in accordance with Standard Paragraph G at the end of this notice.

14. Northern Natural Gas Company, Division of Enron Corp.,

[Docket No. CP89–1576–000]

Take notice that on June 6, 1989, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP89–1576–000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authority to transport natural gas, on an interruptible basis, on behalf of Dyco Gas Marketing (Dyco), a marketer of natural gas, under Northern's blanket certificate issued in Docket No. CP86–435–000 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.

Northern states that it would transport natural gas on behalf of Dyco from points of receipt located in the states of Iowa, Kansas, Minnesota, Nebraska, New Mexico, Oklahoma and Texas. Northern further states that the points of delivery would be located in the states of Illinois, Iowa, Kansas, Michigan, Minnesota, Nebraska, New Mexico, Oklahoma, South Dakota, Texas and Wisconsin. Northern indicates that the peak day, average day and annual transportation volumes would be 200,000 MMBtu, 150,000 MMBtu and 73,000,000 MMBtu, respectively. Northern states that construction of facilities would not be required to provide the proposed service.

Northern states that it commenced the transportation of natural gas for Dyco on May 1, 1989, as reported in Docket No. ST89–3541 for a 120–day period pursuant to § 284.223(a) of the Commission's Regulations (18 CFR § 284.223(a)).

Comment date: July 31, 1989, in accordance with Standard Paragraph G at the end of this notice.

15. Northwest Pipeline Corporation

[Docket No. CP89–1579–000]

Take notice that on June 6, 1989, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89–1579–000 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 ARCO Oil & Gas Company, a Division of Atlantic Richfield Company (ARCO), a natural gas producer, under its blanket authorization 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 would perform the proposed interruptible transportation service for ARCO, pursuant to an interruptible transportation service agreement dated March 14, 1989, as amended March 14, 1989. The transportation agreement is effective for a period of thirty days and month to month thereafter until terminated by either party on thirty days written notice. Northwest proposes to transport no more than 100,000 MMBtu on a peak day; approximately 8,500 MMBtu on an average day; and on an annual basis approximately 3,000,000 MMBtu of natural gas for ARCO. Northwest proposes to transport the subject gas through its transmission system from wells located in La Plata County, Colorado and San Juan County, County, New Mexico, to the Ignacio Plant located in La Plata County, Colorado and to the La Jara interconnection with El Paso Natural Gas Company (El Paso) in Rio Arriba County, New Mexico and various well interconnects with El Paso in San Juan County, New Mexico.

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. Northwest commenced such self-implementing service on April 5, 1989, as reported in Docket No. ST89–3502–000.

Comment date: July 31, 1989, in accordance with Standard Paragraph G at the end of this notice.

16. Michigan Consolidated Gas Company, Interstate Storage Division

[Docket No. CP89–1523–000]

Take notice that on May 26, 1989, Michigan Consolidated Gas Company, Interstate Storage Division (Mich Con), 500 Griswold Street, Detroit, Michigan 48226, filed in Docket No. CP89–1523–000, an application pursuant to section 7(c) and (b) of the Natural Gas Act authority to amend its certificate of public convenience issued in Docket No. CP78–433–000 to effectuate the assignment from Mississippi River Corporation (MRT) to Panhandle Eastern Pipe Line Company (Panhandle) the transportation service it currently performs for MRT under Rate Schedule X–27, effective April 1, 1990, and for permission and approval to abandon service to MRT to effectuate the assignment of the X–27 service to Panhandle, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated the under the certificate issued in Docket No. CP78–433–000, 8 FERC ¶61,059 (1979) as amended at 9 FERC ¶61,030 (1979) and 15 FERC ¶62,367 (1981), Mich Con performs up to 6 Bcf of natural gas per year of storage-related transportation service for MRT, pusuant to Mich Con's Rate Schedule X–27. It is alleged that Mich Con is one of several transporting pipelines with which MRT entered into long term contract to move gas into and out of ANR Storage Company's (ANR Storage) facilities in Kalkaska County, Michigan. It is averred that ANR Storage, MRT and Panhandle have agreed to the assignment of MRT's storage capacity to Panhandle effective April 1, 1990, and that ANR Storage has filed an application for permission to assign MRT's storage capacity to Panhandle as of that date.[2] It is alleged that Mich Con has agreed to the assignment from MRT to Panhandle of MRT's rights and obligation under Mich Con's Rate Schedule X–27, and Mich Con accordingly seeks an amendment to the certificate issued in Docket No. CP78–433–000 and such abandonment authorization as may be deemed necessary to enable Mich Con to perform for Panhandle the transportation services previously performed for MRT, effective April 1, 1990. It is stated that there would be no abandonment of facilities.

Comment date: July 5, 1989, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

17. Colorado Interstate Gas Company

[Docket No. CP89–1553–000]

Take notice that on June 1, 1989, Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP89–1553–000 an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act for an order granting permission and approval to partially abandon and revise sales service and for a certifcate of public convenience and necessity authorizing a new agreement for the City of Colorado Springs (City), a jurisdictional sales customer, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

CIG states that the current certificate authority for CIG's natural gas sales to the City was certificated in Docket No.

[2] ANR Storage filed its applicaiton in Docket CP89–432–009.

CP85-381-000, *et al.* (32 FERC ¶ 61,481), pursuant to order issued September 30, 1985. CIG further states that the City purchases natural gas from CIG under CIG's FERC Gas Tariff, Original Volume No. 1, Rate Schedules G-1, PS-1 and EX-1 pursuant to a September 1, 1987, service agreement between CIG and the City as approved by the Commission on December 15, 1987. CIG indicates that the changes in sales volume proposed would be delivered to the City at existing interconnections between CIG and the City at existing interconnections between CIG and the City located in El Paso County, Colorado. CIG states these facilities have sufficient capacity to accommodate the requested volumes which remain unchanged from the current service agreement, however, these proposed volumes would not include both sales and transportation delivery obligations at these delivery points.

CIG states that it proposes to decrease the general daily entitlement (GDE) and total annual entitlement (TAE) for the City. CIG indicates that the City has requested that CIG decrease the GDE from 86,000 Mcf per day to 51,000 Mcf per day, decrease the daily peaking service entitlement from 46,432 Mcf to 46,000 Mcf and increase the annual peaking service entitlement from 787 MMcf to 1,500 MMcf. CIG states the result of these changes would be a decrease of the annual entitlement from 22,228 MMcf to 11,212 MMcf. CIG proposes a new agreement for a term ending September 30, 1996, to be effective October 1, 1989. CIG also proposes to revise the maximum daily volume obligation at delivery point locations to include maximum sales and transportation volumes.

Comment date: July 5, 1989 in accordance with Standard Paragraph F at the end of the notice.

18. Natural Gas Pipeline Company of America

[Docket No. CP89-1581-000]

Take notice that on June 7, 1989, Natural Gas Pipeline Company of America (Natural), 701 E. 22nd Street, P.O. Box 1208, Lombard, Illinois 60148, filed in Docket No. CP89-1581-000 an application pursuant to section 7(c) of the Natural Gas Act Part 157 of the Commission's Regulations for a certificate of public convenience and necessity authorizing the construction and operation of approximately 3,600 horsepower of compression and related facilities on Natural's Louisiana Line in Cameron Parish, Louisiana, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Natural states that as an open-access pipeline it has been experiencing difficulty meeting interruptible and firm transportation demands from the Gulf Coast area. Natural's Louisiana Line is operating at virtually maximum capacity and has been unable to fulfill requests of transportation customers both firm and interruptible over the past year. Natural proposes therefore, to construct and operate approximately 3,600 horsepower of compression at an estimated cost of 5.047 million dollars. This additional compression will increase the capacity of Natural's Louisiana Line east of Stingray Pipeline Company (Stingray) by approximately 219,000 Mcf of gas per day, it is stated.

Comment date: July 5, 1989, in accordance with Standard Paragraph F at the end of this notice.

19. United Gas Pipe Line Company

[Docket No. CP89-1547-000]

Take notice that on May 31, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-1547-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon certain facilities by sale to Pan American Gas Company (Pan American), all as more fully set forth in the application on file with the Commission and open to public inspection.

It is stated that United proposes to abandon in place approximately 8.07 miles of 20-inch pipeline, one 12-inch and one 16-inch orifice meter tube, a regulating station and appurtenances, such facilities known as the Oklahoma-Texas Line which extend from Beckham County, Oklahoma to Wheeler County, Texas. It is also stated that the pipeline proposed for abandonment, the Oklahoma-Texas Line, was originally installed in 1982 to comply with a gas purchase contract and a transportation agreement pursuant to Section 311 of the Natural Gas Policy Act of 1978, to connect Oklahoma Natural Gas Company to facilities owned by Red River Pipeline Company. It is explained that each contract was written with a term of two years, having commenced in 1984 and terminated in 1986. United states that subsequent to both contract terminations, the line has been used solely for interruptible Section 311 transportation.

It is stated that Pan American is acquiring the Oklahoma-Texas Line by Special Warranty Deed and Bill of Sale. It is further stated that Pan American's ownership of the line is contingent upon the issuance of an order as requested herein.

United states that the requested abandonment by sale to Pan American will result in lower system operating costs for United, benefiting both United and its customers. In addition, it is stated that since the abandonment involves facilities being left in place for use by Pan American, such abandonment of facilities by United will have no effect on the environment.

Comment date: July 5, 1989 in accordance with Standard Paragraph F at the end of the notice.

20. Panhandle Eastern Pipe Line Company

[Docket No. CP89-1534-000]

Take notice that on May 30, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-1534-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on a firm basis on behalf of the City of Monroe (Monroe) 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 it proposes to transport natural gas for Monroe from various points of receipt on its system in Oklahoma to the City of Monroe in Audrain County, Missouri.

Panhandle further states that the maximum daily, average daily and annual quantities that it would transport for Monroe would be 1,916 dt equivalent of natural gas, 1,916 dt equivalent of natural gas and 699,340 dt equivalent of natural gas, respectively.

Panhandle indicates that in a filing made with the Commission in Docket No. ST89-3396, it reported that transportation service for Monroe had begun on April 1, 1989 under the 120-day automatic authorization provisions of § 284.223(a).

Comment date: July 31, 1989, in accordance with Standard Paragraph G at the end of this notice.

21. Panhandle Eastern Pipe Line Company

[Docket No. CP89-1495-000

Take notice that on May 23, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-1495-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the

Natural Gas Act for authorization to transport natural gas on a firm basis on behalf of the City of Macon (Macon) 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 it proposes to transport natural gas for Macon from various points of receipt on its system in Oklahoma to the City of Macon in Randolph County, Missouri.

Panhandle further states that the maximum daily, average daily and annual quantities that it would transport for Macon would be 4,471 dt equivalent of natural gas, 4,471 dt equivalent of natural gas and 1,631,915 dt equivalent of natural gas, respectively.

Panhandle indicates that in a filing made with the Commission in Docket No. ST89–3114, it reported that transportation service for Macon had begun on April 1, 1989 under the 120-day automatic authorization provisions of § 284.223(a).

Comment date: July 31, 1989, in accordance with Standard Paragraph G at the end of this notice.

22. National Fuel Gas Supply Gas Corporation

[Docket No. CP89–1582–000

Take notice that on June 7, 1989, National Fuel Gas Supply Corporation (National Fuel), 10 Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP89–1582–000 an application for a blanket certificate of public convenience and necessity authorizing the transportation of natural gas pursuant to § 284.221 of the Commission's Regulations, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

National Fuel states that it would comply with the conditions set forth in paragraph (c) of § 284.221 of the Commission's Regulations.

National Fuel states that it proposes to establish a new Rate Schedule FT for firm transportation service and new Rate Schedule IT for interruptible transportation service. National Fuel indicates that it has included in its application *pro forma* tariff sheets providing for the two new transportation rate schedules as well as the operating conditions and scheduling of transportation services on a first come/first serve basis.

National Fuel proposes to establish for its Rate Schedule FT maximum and minimum reservation charges of $2.8984 per dt equivalent of natural gas and 0 cents per dt equivalent of natural gas, respectively; maximum and minimum winter requirement quantity charges of 1.09 and 0.03 cents per dt equivalent of natural gas, respectively; maximum and minimum commodity charges of 13.43 and 1.97 cents per dt equivalent of natural gas, respectively; and maximum and minimum authorized overrun charges of 28.37 and 2.14 cents per dt equivalent of natural gas, respectively. National Fuel proposes to establish for its Rate Schedule IT the same commodity and authorized overrun rates it proposes for its Rate Schedule IT.

National Fuel also proposes a Gas Inventory Charge (GIC) which will provide for a monthly charge based on an estimated GIC amount computed on National's forecast of producer take-or-pay costs and the GIC charges associated with its upstream pipeline suppliers. Each buyer's GIC charge shall be computed as a percentage of its inventory determinants times the monthly estimated GIC. National Fuel's customers will nominate their inventory determinants, but at a level not less than the average of each customer's three-day peak purchases for the three preceding years.

Comment date: June 26, 1989, in accordance with Standard Paragraph F 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 therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89–14614 Filed 6–20–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. QF88–165–001]

Multitrade Limited Partnership; Application for Commission Recertification of Qualifying Status of a Small Power Production Facility

June 15, 1989.

On June 6, 1989, Multitrade Limited Partnership (Applicant), c/o Multitrade Group, Inc., P.O. Box 717, Frith Drive, Martinsville Industrial Park, Ridgeway, Virginia 24148, 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 original application was filed on December 18, 1987, and granted on March 1, 1988, Multitrade Group, Inc., 42 FERC ¶62,184 (1988). The facility will be located near the Town of Hurt, in Pittsylvania County, Virginia. The recertification is requested due to an increase in the number of condensing turbine generators from one to two and an increase in the net electric power production capacity from 76 MW to 79.505 MW. In addition, the ownership

of the facility has been transferred to Multitrade Limited Partnership. In all other respects, the facility remains essentially the same as that set forth in the original application.

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. 89-14616 Filed 6-20-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ES89-26-000]

Northwestern Public Service Co.; Application

June 15, 1989.

Take notice that on June 13, 1989, Northwestern Public Service Company filed an application with the Federal Energy Regulatory Commission (the "Commission"), pursuant to section 204 of the Federal Power Act, seeking authority to issue unsecured short-term promissory notes and commercial paper, such notes and commercial paper not to exceed in the aggregate $25,000,000 face value at any one time outstanding and to mature not later than August 1, 1992.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before July 13, 1989. Protests will be considered by the Commission 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 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. 89-14167 Filed 6-20-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2150-002]

Puget Sound Power & Light Co.; Availability of Environmental Assessment

June 15, 1989.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy and Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower licensing has reviewed the application for relocation of spawning beach facility for the Baker River Project and has prepared an Environmental Assessment (EA) for the proposed amendment. The project is located on the north end of Baker Lake, in the Mt. Baker Ranger District, Washington state. In the EA, the Commission has analyzed the potential environmental impacts of the proposed relocation and has concluded that approval of the proposed project, with appropriate mitigative measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 1000, of the Commission's offices at 825 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 89-14618 Filed 6-20-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-60-001]

Southwest Gas Storage Co.; Proposed Changes in FERC Gas Tariff

June 15, 1989.

Take notice that Southwest Gas Storage Company (Southwest) on June 9, 1989, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Second Revised Sheet No. 4
Second Revised Sheet No. 16
Second Revised Sheet No. 17

The proposed effective date of these revised tariff sheets is June 1, 1989.

Southwest states that the above-referenced tariff sheets are being filed in compliance with the Commission's Order issued on May 26, 1989 directing Southwest to file reduced rates and charges to be effective June 1, 1989 as specified by the referenced Commission's Order.

Southwest states that copies of this filing have been served on Southwest's jurisdictional customer, the Commission's Staff, intervenors and the Presiding Judge designated in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before June 22, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-14615 Filed 6-20-89; 8:45 am]

BILLING CODE 6717-01-M

Morgantown Energy Technology Center; Grant; Financial Assistance Award to University of North Dakota

AGENCY: Morgantown Energy Technology Center, Department of Energy (DOE).

ACTION: Notice of acceptance of a non-competitive financial assistance application for grant award.

SUMMARY: Based upon a determination made pursuant to 10 CFR 600.7(b)(2) the DOE, Morgantown Energy Technology Center, gives notice of its plans to award a 12-month grant to the University of North Dakota, Energy and Mineral Research Center, Box 8213, University Station, Grand Forks, North Dakota 58202. The grantee is obtaining sponsors from approximately fifteen sources, which consist of utilities, industries and the Government. The DOE share of the project is $100,000. The pending award is based on an unsolicited application entitled "A CFBC Test Facility for Utility and Industrial Clients".

The objectives of the project are to design, construct, and operate a Circulating Fluidized-Bed Combustor (CFBC) pilot plant test facility and to provide participating sponsors with the opportunity to obtain needed design and operational information on how a CFBC

system can be expected to perform with selected coals. This test facility will have the ability to operate with a wide variety of coals which makes it applicable to utility and industrial customers in all areas of the country. The grantee will address reported problems associated with the technology and provide a comprehensive, reliable, and assessable data base that the private sector can use in evaluating the various CFBC options available.

Because of the high potential of CFBC to meet the future energy needs and the user's need of having independent sources of technology assessment, the potential for benefit of this work is very great. The public will benefit from using less expensive energy that can be produced through the technology advancement. This project also has the potential to increase usage of U.S. coals.

FOR FURTHER INFORMATION CONTACT: Laura E. Brandt, I-07, U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, West Virginia 26507-0880, Telephone: (304) 291-4079, Procurement Request No. 21-89MC26050.000.

Dated: May 17, 1989.

Louie L. Calaway,

Director, Acquisition and Assistance Division, Morgantown Energy Technology Center.

[FR Doc. 89-14590 Filed 6-20-89; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[AD-FRL-3605-4]

Correction of Assessment of Sodium Hydroxide as a Potentially Toxic Air Pollutant

AGENCY: Environmental Protection Agency (EPA).

ACTION: Correction notice for assessment of sodium hydroxide as a potentially toxic air pollutant.

SUMMARY: This notice corrects a statement in the Assessment of Sodium Hydroxide as a Potentially Toxic Air Pollutant published in the **Federal Register** (54 FR 1440). The assessment notice incorrectly stated that sodium hydroxide had been removed from the list of compounds subject to the reporting requirements of the Toxic Chemical Release Reporting, Community Right-to-Know rule under section 313 of Title III of the Superfund Amendments and Reauthorization Act (SARA) of 1986. The correct status of this rulemaking is that sodium hydroxide has been proposed for removal from the SARA list. All entities subject to reporting sodium hydroxide under the authority of the reporting rule referenced above must continue to report emissions of sodium hydroxide until such time as sodium hydroxide is formally removed from the list of chemicals subject to this rule.

FOR FURTHER INFORMATION CONTACT: Timothy J. Mohin, Pollutant Assessment Branch (MD-13), Emission Standards Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711 (Telephone: (919) 541-5349; FTS 629-5349).

Date: June 15, 1989.

Don R. Clay,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 89-14687 Filed 6-20-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3605-9]

Environmental Assessment and Finding of No Significant Impact for Research Project in Prince William Sound, AK

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of an Environmental Assessment and a Finding of No Significant Impact issued by the Office of Research and Development (ORD) for an experimental field study on the shorelines of Prince William Sound, Alaska. The purpose of the study is to determine if techniques for accelerating the hydrocarbon biodegradation rates of natural microbial communities (bioremediation) can be used to help in the clean-up of the Prince Willliam Sound oil spill. The project proposal was developed by ORD scientists based on the results of an international scientific workshop attended by leading scientists from universities, industry, and Federal agencies.

ADDRESSES: Copies of the Environmental Assessment and the Finding of No Significant Impact for this study may be obtained upon request from: Mr. Richard Valentinetti, U.S. Environmental Protection Agency, Office of Research and Development (RD-681), 401 M Street, SW., Washington, DC, 20460.

FOR FURTHER INFORMATION CONTACT: Additional information may be received from, and comments may be directed to Richard Valentinetti at the address given above; telephone 202/382-2611, (FTS) 382-2611.

Date: June 14, 1989.

Erich Bretthauer,

Acting Assistant Administrator for Research and Development.

[FR Doc. 89-14688 Filed 6-20-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3604-1]

Hazardous Waste Management; Report to Congress; Management of Hazardous Wastes From Educational Institutions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of report to Congress on management of hazardous wastes from educational institutions.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is today announcing the availability of the Report to Congress on the management of hazardous wastes from educational institutions. EPA prepared this report in response to section 221(f) of the Hazardous and Solid Waste Amendments of 1984 (HSWA) to the Resource Conservation and Recovery Act (RCRA). The report identifies the problems associated with managing hazardous wastes from educational institutions. It presents an analysis of the feasibility and availability of environmentally sound methods for the treatment, storage, and disposal of such hazardous wastes. The report also recommends possible means for educational institutions to improve hazardous waste management and identifies possible regulatory changes to alleviate management problems.

ADDRESSES: This report is available for viewing at all EPA libraries and in the EPA RCRA docket room, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, from 9:30 a.m. to 3:30 p.m., Monday thru Friday, except legal holidays; telephone: (202) 475-9327. The public may copy a maximum of 50 pages of material from any regulatory docket at no cost. Additional copies cost 20 cents per page. The document may be purchased from the National Technical Information Service (NTIS), U.S. Department of Commerce, Springfield, Virginia 22161, at (703) 487-4600: "Report to Congress: Management of Hazardous Wastes from Educational Institutions," EPA/530-SW-89-040, NTIS No: PB89-187629.

FOR FURTHER INFORMATION CONTACT: For general information and/or a copy of the Executive Summary (EPA/530-SW-89-040A), call the RCRA Hotline at

(800) 424–9346 or (202) 382–3000. For technical information on the report, contact Filomena Chau, Office of Solid Waste (OS–332), U.S. Environmental Protection Agency, 401 M Street SW., Washington DC 20460, (202) 382–4795.

SUPPLEMENTARY INFORMATION: Section 221(f) of HSWA requires that EPA, in consultation with the Secretary of Education, the States, and appropriate educational associations, provide a Report to Congress containing the findings of the "study of problems associated with the accumulation, storage, and disposal of hazardous wastes from educational institutions." The statute defines "educational institution" as including secondary schools and institutions of higher education. At the request of the U.S. Department of Education, the report is also directed toward hazardous waste from adult education programs and programs of education of less than two years' duration. The term "hazardous waste," as used in the report, means any hazardous waste listed or identified under 40 CFR Part 261. The report does not, however, address management of infectious waste from educational institutions.

The report identifies the problems associated with managing hazardous waste from educational institutions. It presents an analysis of the feasibility and availability of environmentally sound methods for the treatment, storage, and disposal of such hazardous wastes. The report does not recommend that any regulatory changes are necessary; rather, it recommends possible means for educational institutions to improve hazardous waste management and identifies possible regulatory changes to alleviate management problems.

The report is in one volume, divided into five chapters. The report is based on the published literature and a report produced by Tufts University, which included a series of studies of hazardous waste management in schools. Chapter 1 introduces the areas to be addressed. Chapter 2 presents a general discussion of the background of RCRA, the hazardous waste management program, and HSWA, which expanded the scope of RCRA. Following that is a discussion of the specific RCRA regulatory requirements pertaining to schools and of the other regulatory programs that apply to hazardous waste management in schools. Chapter 3 analyzes information on the types and quantities of wastes at schools, current management practices, and the schools' awareness of the hazardous waste regulations. The schools are divided into secondary schools and higher educational institutions and, for each, the report discusses the quantity, type, and level of awareness of hazardous wastes and methods for their treatment, storage, and disposal. Chapter 4 discusses the problems related to handling hazardous wastes at educational institutions and the feasibility and availability of environmentally sound methods for the treatment, storage, and disposal of hazardous wastes at schools. Chapter 5 identifies possibilities for improving hazardous waste management at schools. Possible solutions to these problems are divided into those to be carried out within schools, between schools, through guidance from State and Federal regulatory agencies, and by regulatory change.

This report also includes six appendices. Appendix A summarizes information on the institutions interviewed in the Tufts University case studies. Appendix B includes information on RCRA requirements for treatment, storage, and disposal facilities, which may be applicable to some larger schools. Appendix C presents an example of information on how schools can identify and, in some cases, minimize the quantities of wastes they generate. Appendix D contains addresses and telephone numbers of national hotlines, and regional and State offices, as additional sources of information. Appendix E presents a list of those organizations commenting on this report. Appendix F contains responses to questions on EPA's existing regulations.

Dated: May 30, 1989.

Robert L. Duprey,

Acting Assistant Administrator for Solid Waste and Emergency Response.

[FR Doc. 89–14584 Filed 6–19–89; 8:45 am]

BILLING CODE 6560–50–M

[OPP–50691; FRL–3604–4]

Receipt of Notification of Intent To Conduct Small-Scale Field Testing; Genetically Altered Microbial Pesticide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a notification from Montana State University of intent to conduct small-scale field testing of three isolates of *Sclerotinia sclerotiorum* (one wild type and two chemical and UV inducted deletion mutants).

ADDRESS: By mail, submit written comments to: Public Docket and Freedom of Information Section, Field Operations Division (H–7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

In person, bring comments to: Room 246, CM#2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment(s) concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked, will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for the inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Information on the proposed test and all written comments will be available for public inspection in Room 246 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Susan T. Lewis, Acting Product Manager (PM) 21, Registration Division (H–7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Office location and telephone number: Room 227, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703)–557–1900.

SUPPLEMENTARY INFORMATION: A notification of intent to conduct small-scale field testing pursuant to the EPA's "Statement of Policy; Microbial Products Subject to the Federal Insecticide, Fungicide, and Rodenticide Act and the Toxic Substances Control Act" of June 26, 1986 (51 FR 23313), has been received from the Montana State University. The purpose of the proposed testing is to evaluate the use of three isolates of *Sclerotinia sclerotiorum* as a mycoherbicide on turf grass against common broad leaf weeds. The proposed field tests would total fewer than 5 acres and would be located on two sites in Montana.

Following the review of the Montana State University application, EPA will decide whether or not an Experimental Use Permit is required.

Dated: June 7, 1989.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 89–14690 Filed 6–20–89; 8:45 am]

BILLING CODE 6560–01–M

[OPP-30300; FRL-3605-7]

E.I. du Pont de Nemours and Co., Inc.; Approval of Pesticide Product Registration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of an application submitted by E.I. du Pont de Nemours and Co., Inc. to register the pesticide product Dupont® Savey Miticide, containing an active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: By mail: George LaRocca, Product Manager (PM) 15, Registration Division (H7505C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Room 204, CM #2, Environmental Protection Agency, 1921 Jefferson Davis Hwy, Arlington, VA 22202, (703–557–2400).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of August 6, 1985 (50 FR 31771), which announced that E.I. du Pont de Nemours and Co. Inc., Agricultural Products Dept. Walker's Mill Bldg., Barley Mill Plaza, PO Box 80038, Wilmington, DE 19898, had submitted an application to register the pesticide product DuPont® Savey Miticide, (EPA File Symbol 352–UUE), containing the active ingredient *trans*-5-(4-chlorophenyl)-*N*-cyclohexyl-4-methyl-2-oxothiazolidine-3-carboxamide at 50 percent to be used on apples; an ingredient not include in any previously registered product.

An application for the identical pesticide product "DuPont® Savey Miticide" containing the same active ingredient was subsequently submitted by the Company to EPA for registration. The product was approved on April 13, 1989, for the control of mites on pears, and was assigned EPA Registration No. 352–531.

The Agency has considered all required data on the risks associated with the proposed use of *trans*-5-(4-chlorophenyl)-*N*-cyclohexyl-4-methyl-2-oxothiazolidine-3-carboxamide, and information on social, economic, and environmental benefits to be derived from use. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of *trans*-5-(4-chlorophenyl)-*N*-cyclohexyl-4-methyl-2-oxothiazolidine-3-carboxamide, when used in accordance with widespread and commonly recognized practice, will not generally cause unreasonable adverse effects on the environment.

More detailed information on this registration is contained in a Chemical Fact Sheet on *trans*-5-(4-chlorophenyl)-*N*-cyclohexyl-4-methyl-2-oxothiazolidine-3-carboxamide.

A copy of this fact sheet, which provides a summary description of the chemical, use patterns and formulations, science findings, and the Agency's regulatory position and rationale, may be obtained from Registration Division (H7505C), Environmental Protection Agency, Registration Support and Emergency Response Branch, 401 M Street, SW., Washington, DC 20460.

In accordance with section 3(c)(2) of the FIFRA, a copy of the approved label and the list of data references used to support registration are available for public inspection in the office of the Product Manager. The data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Program Management and Support Division (H7502C), Office of Pesticide Programs, Environmental Protection Agency, Room 236, CM #2, Arlington, VA 22202 (703–557–3262). Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A–101), 401 M Street, SW., Washington, DC 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

Authority: 7 U.S.C. 136.

Dated: June 5, 1989.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 89–14691 Filed 6–20–89; 8:45 am]

BILLING CODE 6560-50-M

[OPP-180812; FRL-3605-6]

Emergency Exemptions; Glyphosate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted specific exemptions for the control of various pests to the 27 States as listed below. Five crisis exemptions were initiated by various States, and one by the United States Department of Agriculture. A quarantine exemption was also granted to the United States Department of Agriculture. These exemptions, issue during the months of March and April, are subject to application and timing restrictions and reporting requirements designed to protect the environment to the maximum extent possible. EPA has denied exemption requests from seven States. Information on these restrictions is available from the contact persons in EPA listed below.

DATES: See each specific, crisis, and quarantine exemption for its effective date.

FOR FURTHER INFORMATION CONTACT: See each emergency exemption of the name of the contact person. The following information applies to all contact persons: By mail: Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Office location and telephone number: Room 716, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–1806).

SUPPLEMENTARY INFORMATION: EPA has granted specific exemptions to the:

1. California Department of Food and Agriculture for the use of glyphosate on dates to control Bermudagrass; March 29, 1989, to December 1, 1989. (Gene Asbury)

2. California Department of Food and Agriculture for the use of hexakis on sweet corn to control two-spotted spider mites; April 1, 1989, to February 28, 1990. (Gene Asbury)

3. California Department of Food and Agriculture for the use of avermectin B_1 on strawberries to control two-spotted spider mites; March 9, 1989, to March 8, 1990. A notice of receipt was published in the **Federal Register** of February 15, 1989 (54 FR 6957); no comments were received. The exemption was granted on the basis that there are no registered alternative pesticides which will provide adequate control of these pests on strawberries. A significant economic loss may result if an effective pesticide is not made available. Combined residues of avermectin B_1 and its delta 8,9 isomer are likely to exceed 0.02 ppm in or on strawberries as result of this use. This residue level can be toxicologically supported and will not pose a threat to the public health. The proposed use should not pose an unreasonable hazard to the environment or endangered species. The registrant is developing data with the intent of submitting a petition for tolerances in

connection with this use in the near future. (Libby Pemberton)

4. California Department of Food and Agriculture for the use of avermectin B_1 on pears to control mites; April 7, 1989, to September 15, 1989. (Libby Pemberton)

5. California Department of Food and Agriculture for the use of fosetyl-al (Aliette) on avocado trees to control avocado root rot (*Phytophthora cinnamomi*); April 27, 1989, to March 31, 1990. (Gene Asbury)

6. California Department of Food and Agriculture for the use of iprodione on sweet cherries (post harvest) to control fruit decay; April 13, 1989, to June 30, 1989. (Libby Pemberton)

7. Colorado Department of Agriculture for the use of chlorpyrifos on wheat to control the Russian wheat aphid; April 6, 1989, to December 15, 1989. (Robert Forrest)

8. Delaware Department of Agriculture for the use of cryolite on potatoes to control Colorado potato beetle; April 20, 1989 to October 31, 1989. (Libby Pemberton)

9. Delaware Department of Agriculture for the use of imazethapyr (Pursuit) on lima beans, snap beans, green peas, and blackeyed peas to control broadleaf weeds; March 3, 1989, to September 30, 1989. (Robert Forrest)

10. Delaware Department of Agriculture for the use of sethoxydim on green peas to control grasses; March 23, 1989, to August 1, 1989. (Jim Tompkins)

11. Florida Department of Agriculture and Consumer Services for the use of cyromazine on chrysanthemums (potmums, cut flowers, and stock plants) to control leafminers; March 3, 1989, to June 1, 1989. (Gene Asbury)

12. Florida Department of Agriculture and Consumer Services for the use of vinclozolin on blueberries to control grey mold; March 16, 1989, to July 1, 1989. Florida had initiated a crisis exemption for this use. (Libby Pemberton)

13. Idaho Department of Agriculture for the use of imazethapyr (Pursuit) on dry edible peas to control broadleaf weeds; March 3, 1989, to June 15, 1989. A notice of receipt was not published for Idaho in order to expedite processing. An identical request from Oregon Department of Agriculture was published in the **Federal Register** of February 6, 1989 (54 FR 5474). The Agency granted this request on the basis that imazethapyr is a replacement for dinoseb. The toxicology data base will support the proposed use. The proposed use is not expected to pose a hazard to the environment. (Jims Tompkins)

14. Idaho Department of Agriculture for the use of fluazifopbutyl on mint to control grassy weeds; April 18, 1989, to June 15, 1989. (Gene Asbury)

15. Idaho Department of Agriculture for the use of penimethalin on alfalfa grown for seed to control dodder; April 18, 1989 to April 30, 1989. (Jim Tompkins)

16. Illinois Department of Agriculture for the use of imazethapyr (Pursuit) on lima beans, snap beans, and green peas to control broadleaf weeds; March 2, 1989, to June 30, 1989. (Robert Forrest)

17. Illinois Department of Agriculture for the use of oxyfluorfen on horseradish to control weeds; April 21, 1989, to June 30, 1989. (Gene Asbury)

18. Maryland Department of Agriculture for the use of imazethapyr (Pursuit) on green peas, lima beans, and snap beans to control broadleaf weeds; March 1, 1989, to May 31, 1989. A notice of comments published in **Federal Register** of October 26, 1988 (53 FR 43269); and no comments were received. (Robert Forrest)

19. Massachusetts Department of Food and Agriculture for the use of metalaxyl on cranberries to control cranberry root rot (*Phytophthora cinnamomi*); April 27, 1989, to December 31, 1989. (Gene Asbury)

20. Minnesota Department of Agriculture for the use of tridiphane on sweet corn to control wild proso millet; April 13, 1989, to August 31, 1989. (Robert Forrest)

21. Mississippi Department of Agriculture for the use of imazethapyr (Pursuit) on southern peas to control weeds; March 25, 1989, to October 15, 1989. (Robert Forrest)

22. Missouri Department of Agriculture for the use of imazethapyr on southern peas to control broadleaf weeds (puncture vine); March 6, 1989, to July 15, 1989. (Robert Forrest)

23. Missouri Department of Agriculture for the use of metalaxyl on blueberries to control phytophthora root rot; March 1, 1989, to December 1, 1989. (Susan Stanton)

24. Montana Department of Agriculture for the use of terbufos on rape and mustard seeds to control flea beetles; April 15, 1989, to June 31, 1989. (Gene Asbury)

25. Nebraska Department of Agriculture for the use of chlorpyrifos on wheat to control Russian wheat aphid; April 6, 1989, to December 15, 1989. (Robert Forrest)

26. New Jersey Department of Environmental Protection for the use of fluazifop-butyl on parsley to control grassy weeds; March 30, 1989, to November 31, 1989. (Gene Asbury)

27. New Jersey Department of Environmental Protection for the use of cryolite on potatoes to control the Colorado potato beetle; April 20, 1989, to October 31, 1989. (Libby Pemberton)

28. New Jersey Department of Environmental Protection for the use of metalaxyl on cranberries to control *Phytophthora cinnamomi;* April 1, 1989, to December 31, 1989. (Gene Asbury)

29. New York Department of Environmental Conservation for the use of cryolite on potatoes to control the Colorado potato beetle; April 20, 1989, to October 31, 1989. (Libby Pemberton)

30. North Dakota Department of Agriculture for the use of terbufos on rape and mustard seed to control flea beetles; April 15, 1989, to June 31, 1989. (Gene Asbury)

31. Oklahoma Department of Agriculture for the use of chlorpyrifos on wheat to control Russian wheat aphid; March 3, 1989, to June 30, 1989. Oklahoma had initiated a crisis exemption for this use. (Robert Forrest)

32. Oklahoma Department of Agriculture for the use of imazethapyr (Pursuit) on southern peas to control puncture vine; April 20, 1989, to July 15, 1989. (Robert Forrest)

33. Oregon Department of Agriculture for the use of cyfluthrin on pears to control the pear psylla; March 13, 1989, to May 1, 1989. (Gene Asbury)

34. Oregon Department of Agriculture for the use of imazethapyr (Pursuit) on dry edible peas to control broadleaf weeds; March 3, 1989, to June 15, 1989. A notice of receipt was published in **Federal Register** of February 6, 1989 (54 FR 5674). The Agency granted this request on the basis that imazethapyr is a replacement for dinoseb. The toxicology data base will support the proposed use. The proposed use is not expected to pose a hazard to the environment. (Jim Tompkins)

35. Oregon Department of Agriculture for the use of pendimethalin on alfalfa grown for seed to control dodder; April 18, 1989, to April 30, 1989. (Jim Tompkins)

36. Oregon Department of Agriculture for the use of fenarimol on cherries to control powdery mildew; April 1, 1989, to August 30, 1989. (Gene Asbury)

37. Oregon Department of Agriculture for the use of avermectin B_1 on pears to control mites; April 7, 1989, to September 1, 1989. (Libby Pemberton)

38. Pennsylvania Department of Agriculture for the use of cryolite on potatoes to control the Colorado potato beetle; April 20, 1989, to October 31, 1989. (Libby Pemberton)

39. Rhode Island and Providence Plantations, Department of Environmental Management for the use of cryolite on potatoes to control the

Colorado potato beetle; April 20, 1989, to October 31, 1989. (Libby Pemberton)

40. South Carolina, Division of Regulatory and Public Services, Programs, College of Agricultural Sciences, Clemson University for the use of acephate on fresh market tomatoes to control stinkbugs; April 7, 1989, to December 1, 1989. (Libby Pemberton)

41. South Dakota Department of Agriculture for the use of fenoxaprop-ethyl on spring wheat to control foxtail and volunteer wild proso millet; April 27, 1989, to July 15, 1989. (Libby Pemberton)

42. Tennessee Department of Agriculture for the use of imazethapyr (Pursuit) on snap beans, lima beans, and southern peas to control broadleaf weeds; March 3, 1989, to August 15, 1989. (Robert Forrest)

43. Utah Department of Agriculture for the use of carbaryl on barley to control cereal leaf beetles; March 29, 1989, to July 15, 1989. (Gene Asbury)

44. Washington Department of Agriculture for the use of fluazifop-butyl on mint to control grassy weeds; April 18, 1989, to June 15, 1989. (Gene Asbury)

45. Washington Department of Agriculture for the use of avermectin B_1 on pears to control spider mites and pear psylla; April 1, 1989, to September 1, 1989. A notice of receipt was published in the **Federal Register** of March 1, 1989 (54 FR 8595); no comments were received. The exemption was granted on the basis that there are no registered alternative pesticides which will provide adequate control on these pests on pears. A significant economic loss may result if an effective pesticide is not made available. This loss may be as great as $14.72 million. The proposed use should not pose an unreasonable hazard to the environment or non-target species. Combined residues of avermectin B_1 and its delta 8,9 isomer are not likely to exceed 0.025 ppm in or on pears as a result of the proposed use. This residue level can be toxicogically supported and will not pose a threat to the public health. (Libby Pemberton)

46. Washington Department of Agriculture for the use of fenarimol on cherries to control powdery mildew; April 1, 1989, to August 30, 1989. (Gene Asbury)

47. Washington Department of Agriculture for the use of imazethapyr (Pursuit) on succulent and dry edible peas to control broadleaf weeds; March 20, 1989, to June 15, 1989. (Robert Forrest)

48. Washington Department of Agriculture for the use of sethoxydim on green peas to control grasses; March 23, 1989, to July 1, 1989. (Jim Tompkins)

49. Wisconsin Department of Agriculture, Trade, and Consumer Protection for the use of metalaxyl on American ginseng to control phytophthora root rot; March 6, 1989, to August 30, 1989. (Jim Tompkins)

50. Wisconsin Department of Agriculture, Trade, and Consumer Protection for the use of mancozeb on ginseng *Phytophthora* leaf blight and *Alternaria* leaf and stem blight; March 6, 1989, to August 31, 1989. A notice of receipt of public comment published in the **Federal Register** of February 6, 1989 (54 FR 5674); no comments were received. The exemption was granted on the basis that no alternative fungicide is available that is effective. Dietary and non-dietary risks are acceptable for limited use under section 18. The proposed use is not expected to pose a risk to non-target organisms or the environment. (Jim Tompkins)

51. Wisconsin Department of Agriculture, Trade, and Consumer Protection for the use of fluazifop-butyl on mint to control grassy weeds; March 13, 1989, to June 15, 1989. (Gene Asbury)

52. Wyoming Department of Agriculture for the use of chlorpyrifos on wheat to control Russian wheat aphid; April 6, 1989, to November 1, 1989. (Robert Forrest)

Crisis exemptions were initiated by the:

1. Colorado Department of Agriculture on April 4, 1989, for the use of fenvalerate on small grains to control cutworms. Since it was anticipated that this program would be needed for more than 15 days, Colorado has requested a specific exemption to continue it. This program will last until July 1, 1989. (Libby Pemberton)

2. Kansas State Board of Agriculture on April 6, 1989, for the use of fenvalerate on small grains to control army cutworms. This program has ended. (Libby Pemberton)

3. Montana Department of Agriculture for the use of fenvalerate on small grains to control cutworms. Since it was anticipated that this program would be needed for more than 15 days, Montana has requested a specific exemption to continue it. The need for this program is expected to last until July 1, 1989. (Libby Pemberton)

4. Washington Department of Agriculture for the use of methyl bromide on watermelons to control nematodes, fungi, and weeds. This program has ended. (Libby Pemberton)

5. Wyoming Department of Agriculture for the use of fenvalerate on wheat and barley to control army cutworms. Since it was anticipated that this program would be needed for more than 15 days, Wyoming has requested a specific exemption to continue it. The need for this program is expected to last until June 16, 1989. (Libby Pemberton)

6. United States Department of Agriculture for the use of methyl bromide on plantains and melons to control various plant pests. Since it was anticipated that this program would be needed for more than 15 days, USDA has requested a specific exemption to continue it. The need for this program is expected to last until April 17, 1992. (Libby Pemberton)

EPA has denied requests from the:

1. Florida Department of Agriculture and Consumer Services for the use of avermectin B_1 on strawberries to control spider mites. A notice published in the **Federal Register** of March 15, 1989 (54 FR 10713); no comments were received. The Agency has denied the request on the basis that available information does not substantiate that an urgent non-routine situation exists as defined in 40 CFR 166.3(d) or that a significant economic loss will occur without the use of avermectin. (Libby Pemberton)

2. The following States were denied an emergency exemption for the use of propachlor on dry bulb onions to control a variety of broadleaf weeds. The Agency has denied requests on the basis that registered pesticides are available for both preemergent and postemergent control of broadleaf weeds in onions and it cannot be concluded that a significant economic loss will result without the availability of propachlor.

a. Idaho Department of Agriculture.

b. Minnesota Department of Agriculture.

c. New York Department of Environmental Conservation.

d. Oregon Department of Agriculture.

e. Wisconsin Department of Agriculture, Trade, and Consumer Protection. (Gene Asbury)

3. Wisconsin Department of Agriculture, Trade, and Consumer Protection fo the use of oxyfluorfen on horseradish to control broadleaf weeds. A notice was published in the **Federal Register** of March 1, 1989 (54 FR 8594); no comments were received. The Agency denied the exemption because it was unable to conclude that an emergency condition exists or is likely to exist. (Gene Asbury)

EPA has granted a quarantine exemption to the United States Department of Agriculture for the use of methyl bromide on pineapples (imported) to control internal and external plant feeding pests not currently established in the United States; March 9, 1989, to December 21, 1991. USDA had initiated a crisis

exemption for this use. (Libby Pemberton)

Authority: 7 U.S.C. 136.

Dated: June 12, 1989.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 89-14692 Filed 6-20-89 8:45 am]

BILLING CODE 6560-50-M

[PP 6G3350/T579; FRL-3605-8]

Carbon Disulfide; Renewal of Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has renewed temporary tolerances for residues of the nematicide carbon disulfide in or on certain raw agricultural commodities.

DATES: These temporary tolerances expire November 15, 1989.

FOR FURTHER INFORMATION CONTACT: By mail: Susan Lewis, Acting Product Manager (PM) 21, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Office location and telephone number: Room 227, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 557-1900.

SUPPLEMENTARY INFORMATION: EPA issued a notice, which was published in the **Federal Register** of June 25, 1986 (51 FR 23151), stating that a temporary tolerance had been established for residues of the nematicide carbon disulfide in or on the raw agricultural commodities grapefruit, grapes, oranges, and potatoes at 0.1 part per million (ppm) resulting from soil applications of the menaticide sodium tetrathiocarbonate. These tolerances were renewed in response to pesticide petition (PP) 6G3350, submitted by Union Chemicals Division, Unocal, c/o Delta Management Group, 1414 Fenwick Lane, Silver Spring, MD 20910.

The company has requested a 1-year renewal of the temporary tolerance to permit the continued marketing of the above raw agricultural commodities when treated in accordance with the provisions of experimental use permit 612-EUP-1, which is being renewed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (Pub. L. 95-396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that a renewal of the temporary tolerances will protect the public health. Therefore, the temporary tolerances have been renewed on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active nematicide to be used must not exceed the quantity authorized by the experimental use permit.

2. Unocal Corporation must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance, and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire November 15, 1989. Residues not in excess of this amount remaining in or on the above raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Authority: 21 U.S.C. 346a(j).

Dated: June 8, 1989.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 89-14693 Filed 6-20-89; 8:45 am]

BILLING CODE 6560-50-M

[OPP-100065; FRL-3604-8]

Syracuse Research Corp.; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This is a notice to certain persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Syracuse Research Corporation (SRC) has been awarded two contracts to perform work for the EPA Office of Environmental Criteria and Assessment and will be provided access to certain information submitted to EPA under FIFRA and the FFDCA. Some of this information may have been claimed to be confidential business information (CBI) by submitters. This information will be transferred to SRC consistent with the requirements of 40 CFR 2.307(h)(3) and 2.308(i)(2), respectively. This transfer will enable SRC to fulfill the obligations of the contracts and this notice serves to notify affected persons.

DATES: Syracuse Research Corporation will be given access to this information no sooner than June 26, 1989.

FOR FURTHER INFORMATION CONTACT: By mail: Catherine S. Grimes, Program Management and Support Division (H7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 212, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 557-4460.

SUPPLEMENTARY INFORMATION: This notice is to amend the list of chemicals in the **Federal Register** notices of August 17, 1988 (53 FR 31101), for Contract No. 68-C8-0004 and January 13, 1988 (53 FR 794), for Contract No. 68-03-3521. The pesticide chemicals listed below are in addition to those mentioned in the above **Federal Registers.** Other chemicals may be included in SRC's work later in these contracts. Readers may contact the person named above in approximately 1 year to learn if chemicals other than those on this list will be involved in these contracts.

EPA Contract No. 68-03-3521 (evaluation of health & environmental effects including aquatic toxicity, and environmental fate studies).

Aramite
Bis(2-chloroethoxy)methane
Butylbenzyl phthalate
Chlorodibenzodioxine
Chlorodifluromethane
Chlorophenol 2-
Chlorophenyl phenyl ether 4-
Di-n-octyl phthalate
Endosulfan
Hydrogen sulfide
Mechlorethamine
Methylene-bis-(2-chloroaniline)4,4-

Mustard 665
Octane
Sulfuric acid
Trans-dichloropropane 1,3-
Trichloro-1,1,2-trifluoroethane-1,2,2-
Trinitrophenylmethylnitramine
Trinitrotoluene
Tritium

EPA Contract No. 68–C8–0004 (assessment of the nature and degree of hazard/risk posed by chemical pollutants).

1,3-Dichloropropene (Telone II)
Dicamba
ETU (ethylene thiourea)

The Office of Environmental Criteria and Assessment and the Office of Pesticide Programs have jointly determined that Contract Nos. 68–C8–0004 and 68–03–3521, involve work that is being conducted in connection with FIFRA, in that pesticide chemicals will be the subject of certain evaluations to be made under these contracts. These evaluations may be used in subsequent regulatory decisions under FIFRA.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and obtained under sections 408 and 409 of the FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(3) and 2.308(i)(2) the contracts with SRA, prohibit use of the information for any purpose other than purposes specified in the contracts; prohibit disclosure of the information in any form to a third party without prior written approval from the Agency or affected business; and require that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the FIFRA Information Security Manual. In addition, SRC has previously submitted for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. Records of information provided to this contractor will be maintained by the Project Officers for these contracts in the EPA Office of Environmental Criteria and Assessment. All information supplied to SRC by EPA for use in connection with these contracts will be returned to EPA when SRC has completed its work.

Dated: June 12, 1989.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 89–14689 Filed 6–20–89; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–140114; FRL–3605–3]

Access to Confidential Business Information by Technical Resources Incorporated

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, Technical Resources Incorporated (TRI) of Washington, DC for access to information which has been submitted to EPA under sections 5 and 8 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB–44, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: Under contract number 68–02–4289, TRI, 1100 6th St., SW., Washington, DC, will assist the Office of Toxic Substances' Economics and Technology Division in analyzing the properties and uses of new and existing chemicals under sections 5 and 8 of TSCA. TRI will generate information on selected chemicals through literature search reviews and other activities. All access to TSCA CBI under this contract will take place at EPA Headquarters and TRI's facilities. Upon completing review of the CBI materials, TRI will return all transferred materials to EPA.

In accordance with 40 CFR 2.306(j), EPA has determined that TRI will require access to CBI submitted to EPA under sections 5 and 8 of TSCA to perform successfully work specified under this contract. EPA is issuing this notice to inform all submitters of information under sections 5 and 8 of TSCA that EPA may provide TRI access to these materials on a need-to-know basis. Authorization for access by TRI to TSCA CBI, under contract 68–02–4289, at EPA Headquarters only, was previously announced in the **Federal Register** of September 27, 1988 (53 FR 187). Under contract number 68–02–4289, TRI personnel will require access to CBI data at their Washington, DC address listed above, in addition to their access authorization at EPA Headquarters.

Clearance for access to TSCA CBI under this contract is scheduled to expire on September 30, 1990.

TRI has been authorized for access to TSCA CBI at its facilities under the EPA "Contractor Requirements for the Control and Security of TSCA Confidential Business Information" security manual. EPA has approved the TRI security plan, has performed the required inspection of its facilities, and has found them to be in compliance with the requirements of the manual. TRI personnel will be required to sign non-disclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

Dated: June 13, 1989.

Linda A. Travers,

Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 89–14694 Filed 6–20–89; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–009648A–046
Title: Inter-American Freight Conference ("Conference")
Parties:
A. Bottacchi S.A.. de Navegacion C.F.I.e. I.
American Transport Lines, Inc.
A/S Ivarans Rederi
Companhia Maritima Nacional
Companhia de Navegacao Lloyd Brasileiro
Companhia de Navegacao Maritima Netumar
Empresa Lineas Maritimas Argentinas Sociedad Anonima (ELMA S/A)
Empresa de Navegacao Alianca S.A.
Frota Amazonica S.A.
Columbus Line
Van Nievelt Goudriaan & Co. B.V.
Reefer Express Lines PTY. Ltd.
Sea-Land Service, Inc.
Transportacion Maritima Mexicana

S.A.

Synopsis: The proposed modification would amend the Agreement to authorize sections of the Conference to enter into loyalty contracts in conformity with the antitrust laws and would also prohibit member lines from entering into or taking independent action on any service contract.

Agreement No.: 217–011245

Title: Euro-Gulf International, Inc./ Tecomar S.A., Space Charter Agreement

Parties: Euro-Gulf International, Inc. Tecomar S.A.

Synoposis: The proposed Agreement would authorize the parties to charter space on each other's vessels in the Agreement trade between ports in North Europe, and ports on the Atlantic and Gulf Coasts of Florida, and the United States Gulf Coast, and the Gulf Coast of Mexico, and between ports on the Atlantic and Gulf Coast of Florida, and the United States Gulf Coast, and ports on the Gulf Coast of Mexico.

By Order of the Federal Maritime Commission.

Dated: June 16, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89–14665 Filed 6–20–89; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

[Docket No. R–0669]

RIN 7100–AA76

Proposals to Modify the Payments System Risk Reduction Program; Book-Entry Securities Transfers

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Request for comment.

SUMMARY: The Board is requesting comment on a proposed policy to reduce the risks to the Federal Reserve arising from daylight overdrafts associated with transfers or book-entry securities on Fedwire. This policy is proposed in conjunction with the other requests for comments and policy statements regarding the Board's payments system risk reduction program, published elsewhere in today's **Federal Register**. The proposed policy would require depository institutions that frequently exceed their Fedwire caps by material amounts solely because of book-entry transfers to collateralize their total Fedwire overdrafts. The proposal sets guidelines regarding preferred types of collateral and identification of collateral and also establishes guidelines for the Reserve Banks to implement the policy.

DATES: Comments must be submitted on or before November 17, 1989.

ADDRESSES: Comments, which should refer to Docket No. R–0669, may be mailed to the Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551, Attention: Mr. William W. Wiles, Secretary; or may be delivered to Room B–2223 between 8:45 a.m. and 5:00 p.m. All comments received at the above address will be included in the public file and may be inspected at Room B–1122 between 8:45 a.m. and 5:15 p.m.

FOR FURTHER INFORMATION CONTACT: Edward C. Ettin, Deputy Director, Division of Research and Statistics (202/452–3368); Florence Young, Assistant Director, Division of Federal Reserve Bank Operations (202/452–3926); Oliver I. Ireland, Associate General Counsel (202/452–3625) or Stephanie Martin, Attorney (202/452–3198), Legal Division; for the hearing impaired *only*: Telecommunications Device for the Deaf, Earnestine Hill or Dorothea Thompson (202/452–3544).

SUPPLEMENTARY INFORMATION: This is one of three proposals regarding payments system risk that the Board is issuing for public comment today. The others concern pricing of overdrafts on the Federal Reserve's wire transfer system ("Fedwire") and related overdraft measurement and cap proposals (Docket No. R–0668) as well as the daylight overdraft policy for U.S. branches and agencies of foreign banks (Docket No. R–0670). The Board encourages all interested parties to comment on each of these proposals. The Board urges that in filing comments on these proposals, commenters prepare separate letters for each proposal, identifying the appropriate docket number on each. This procedure will facilitate the Board's processing and analysis of the comments on these proposals by ensuring that each comment is quickly brought to the attention of those responsible for analyzing each specific proposal. In addition, the Board encourages entities that plan to submit identical comments, such as affiliated institutions within a holding company, to consolidate their efforts; the Board will give equal consideration to one letter signed by a number of commenters as it would to numerous identical letters submitted by those commenters. Comments are due November 17, 1989, and the Board does not intend to extend the comment period beyond that date.

In addition to its requests for comment, the Board is also issuing today three risk-related policy statements regarding private delivery-against-payment systems (Docket No. R–0665), offshore clearing and netting systems (Docket No. R–0666), and rollovers and continuing contracts (Docket No. R–0667).

Background

The Board's current payments system risk reduction program establishes a maximum amount of intraday funds overdrafts that depository institutions are permitted to incur over both Fedwire and private large-dollar payments systems. The maximum, or cap, is a multiple of a depository institution's adjusted primary capital and is based on a self-evaluation of a depository institution's creditworthiness, credit policies, and operational controls. Since the initiation of the policy in 1986, the daylight overdrafts on Fedwire associated with book-entry transfers have been exempt from the cap limits, pending development of procedures to bring these extensions of credit by Reserve Banks within the ambit of the policy. (For additional background on the Board's payments system risk reduction program, see Docket No. R–0668, elsewhere in today's **Federal Register**.) For depository institutions that are major clearers of government securities, however, such caps would have to be sizeable to cover the overdrafts associated with the operations of an efficient market for U.S. government securities.[1] As described more fully below, the Board proposes changes to its payments system risk reduction program that will more fully secure the Reserve Banks, while continuing to provide flexibility to depository institutions engaged in clearing U.S. government securities.

Proposed policy regarding book-entry securities transfers. The Board is requesting comment on the following multi-faceted proposal to deal with book-entry overdrafts:

- To combine book-entry overdrafts with funds overdrafts to create a combined Fedwire overdraft within the existing cap structure;

[1] For foreign banks, caps that reflect their worldwide capital would allow overdrafts of a size that would be inappropriate given their U.S. assets subject to U.S. supervision and their U.S. funding capacity. (For the Board's proposals regarding foreign banks see Docket No. R–0670, elsewhere in today's Federal Register.) In the case of foreign banks, collateral has been looked to as the means to secure overdrafts above the cap level and has been considered in the past as a means of securing book-entry related overdrafts. In reviewing this policy, the Board has concluded that partial collateralization of Fedwire overdrafts is not desirable.

- To require depository institutions that frequently exceed their Fedwire cap by material amounts solely because of book-entry transfers to collateralize their total Fedwire exposure;
- To use discount window collateral not in use for that purpose held either by the Reserve Bank or the depository institution as the first preferred source of collateral and other assets held by the depository institution as the second preferred source of collateral; and
- To use as a final source of collateral, book-entry securities being transferred, in the interim marked on the depository institution's own books, and, in the long run, segregated and valued in real time on the books of the Reserve Bank.

As previously noted, the Board's current payments system risk reduction program exempts book-entry related daylight overdrafts from cross-system net debit caps. In making this decision, the Board realized that, for the vast majority of depository institutions, book-entry overdrafts are small in size and present limited risk to the Federal Reserve System. By far, the majority of book-entry overdrafts are concentrated in a few clearing banks which serve the major dealers and brokers in government securities. Restricting the overdrafts of these banks could impede the smooth functioning of the government securities market.

On two previous occasions the Board has issued for public comment proposals that would deal with the risks arising from book-entry overdrafts by requiring that such overdrafts be collateralized (50 FR 21132, May 22, 1985, and 51 FR 45046, December 16, 1986). On both occasions, commenters have agreed that the Federal Reserve should be protected by collateral but have argued that the means proposed to do so were too restrictive and rigid in nature. The previous proposals focused on the use of those book-entry securities in transit that give rise to the overdraft as collateral rather than on other possible types of collateral. Commenters argued that reliance on this collateral would burden book-entry processing with complex and costly control processes. As a result, a collateralization policy has not been adopted, though the underlying causes of book-entry overdrafts have been at least partially addressed by a limit on transaction size, increased secrutiny of dealer clearing practices, and issuance of guidelines for dealer clearance behavior.

These measures to control book-entry overdrafts have had some success, particularly as they relate to the value of overdrafts per dollar of securities transferred and to the size and timing of peak overdrafts at large clearing banks. Book-entry related overdrafts, however, still account for 60 percent of all Fedwire peak intraday overdrafts and have an average peak value of approximately $60 billion per day. Further, these overdrafts continue to be highly concentrated at a small number of depository institutions, primarily clearing banks located in New York City. The four largest clearing banks, while reducing their overdrafts for the reasons noted above, still account for about two-thirds of all book-entry related daylight overdrafts. The ten largest clearing banks account for approximately 80 percent of all such overdrafts. The government securities markets could be seriously disrupted if these institutions were significantly restricted in their ability to provide intraday credit to their customers. On the other hand, if one of these institutions were to experience a problem requiring overnight funding, the overdrafts involved could present considerable risk to its Reserve Bank. Thus, there continues to be a need to develop a program that will protect the Federal Reserve by collateralizing large book-entry overdrafts while at the same time recognizing the wide disparity among depository institutions incurring overdrafts and the types of business such overdrafts reflect.

In response to this need, the Board has developed a proposal that integrates book-entry overdrafts with funds overdrafts for measurement purposes and provides for flexible treatment of the relatively few institutions that incur very large overdrafts. This proposal has several aspects. First, it recognizes that book-entry overdrafts are similar to those created by funds transfers in that both expose the Federal Reserve to the risk of loss. Thus, there seems to be little reason to continue the policy of separating the two types of overdrafts and creating, at times, misleading the two types of overdrafts and creating, at times, misleading overdraft data for individual depository institutions. For the vast majority of depository institutions, combining book-entry and funds overdrafts under the current cap structure would have little effect. In the last quarter of 1988, only six depository institutions with assets over $1 billion and 41 with assets under $1 billion would have experienced increases in their cap utilization rates of more than 25 percent under such a program. Of those 47 depository institutions, only 15 would have exceeded their caps as a result of the inclusion of book-entry overdrafts. Five large depository institutions whose total overdrafts exceeded their caps because of their book-entry overdrafts are major clearing banks. The total Fedwire overdrafts of these depository institutions (all of which would be collateralized under the proposal, as discussed below) account for almost 40 percent of the aggregate Federal Reserve direct credit risks resulting from daylight overdrafts. The ten remaining banks that would exceed their cap due to book-entry overdrafts account for only 0.2 percent of total Fedwire overdrafts.

The Board believes that book-entry and funds overdrafts should be combined under the current cap program. The Board does not believe, however, that the few depository institutions severely affected should be required to reduce overdraft levels, as they would be if caps had been exceeded as a result of funds transfers. Rather, the Board proposes that these depository institutions be asked to collateralize the total exposure they create for Reserve Banks from funds and book-entry overdrafts. This collateralization policy will apply only to these depository institutions that frequently incur total Fedwire daylight overdrafts that, solely because of book-entry related overdrafts, are materially in excess of their Fedwire caps. All other depository institutions will be expected to manage their total overdrafts (funds and book-entry) within the existing cap system, with the exception of occasional, modest daylight overdrafts that are due solely to book-entry transfers.

A second aspect of the Board's proposal would provide that collateral cover the entire daylight overdraft of an affected depository institution, not just that created by book-entry overdrafts. This reflects the reality that, if Federal Reserve lending at the discount window is needed, the entire credit must be collateralized, not just that portion created by book-entry transfers or that amount in excess of the depository institution's cap.

The third aspect of the Board's proposal involves the type of collateral to be used to secure the overdraft. The Board believes that discount window and other pools of acceptable collateral, held either by the Reserve Bank or by the depository institution, should be relied upon, to the extent possible, to cover daylight overdrafts. Discount window collateral and portfolio pools of assets are more easily identified than the book-entry securities being transferred that are eligible for pledge to secure overdrafts. Such collateral would cover a large portion of many large depository institutions' overdrafts. Moreover, using existing discount

window collateral and asset pools as a primary source of collateral for overdrafts minimizes the need to rely on book-entry securities being transferred as collateral and would help to avoid potential conflicting claims on these securities. Some depository institutions may be able to pledge the securities being transferred by some customers, primarily brokers and dealers, to cover the depository institution's book-entry overdrafts, but depending on the availability of discount window collateral and asset pools this may not be necessary in all cases. Any security agreement between a Reserve Bank and a depository institution will exclude collateral that the institution is not authorized to pledge. Each depository institution subject to this collateralization requirement will be expected to work with its Reserve Bank to develop the mix of discount window collateral, other asset pools, and incoming book-entry securities to be used as collateral. The resulting program of collateralization will thus be customized to the depository institution so as to accommodate its business needs as well as to provide adequate protection to the Reserve Bank.

The final aspect of the Board's collateralization proposal concerns the manner in which rights to collateral in the form of book-entry securities being transferred will be conveyed to Reserve Banks. Ideally, such securities would be segregated in real-time on Reserve Banks' books, valued at market price less appropriate haircuts, and released from pledge to the Reserve Banks only as daylight overdrafts are extinguished. Such a process would involve extensive operational changes at both depository institutions and Reserve Banks, requiring a long lead time for development and implementation. Thus, the Board believes that using incoming book-entry securities as collateral should be accomplished in two phases, interim and long run. In the interim, those depository institutions that would find it necessary to repledge customer securities to Reserve Banks would mark the repledged collateral on their own books and not segregate the collateral at the Reserve Bank. Unfortunately, under this arrangement, a Reserve Bank could not assure on a real-time basis that the total collateral actually pledged, i.e., discount window collateral, other asset pools, and securities being transferred and marked on the depository institution's books, would be sufficient to cover the depository institution's overdraft. However, as an interim measure, the intraday pledge of book-entry securities, recorded on the books of the overdrafting depository institution, would reduce the unsecured credit risk now incurred by the Reserve Banks.

In the long run, intraday on-line valuation and segregation capabilities, similar to the services clearing banks now provide their customers, will be available as a result of the Reserve Banks' decision to design and develop a new book-entry operating system. This effort is expected to take threee to five years to implement and will require extensive changes by Reserve Banks, depository institutions, and the major government securities dealers. Concurrently, the Department of the Treasury is in the process of revising its regulations that govern the legal transfer of interests in U.S. government securities. The Reserve Banks will be working with all interested parties to assure that the future book-entry securities system not only provides the means of efficiently and prudently securing Fedwire book-entry daylight overdrafts, but also includes the capabilities, procedures, and protections that will serve the future needs of the clearing banks, the dealer community, and their customers.

The Board expects the Reserve Banks to implement the new book-entry securities program with considerable flexibility. Reserve Banks are to require any depository institution that frequently exceeds its Fedwire cap because of book-entry overdrafts to collateralize its entire overdraft. However, the specific application of the collateral requirement is to be worked out by the Reserve Bank and the depository institution on a case-by-case basis. Reserve Banks will determine the definition of "frequently and materially" on a flexible basis, and will work to perfect an interest in the types of collateral the depository institution can most easily provide. It would be expected that both the type and loan value of the collateral would be consistent with each Reserve Bank's discount window policies, even if the collateral used is not routinely taken for discount window purposes. Finally, if book-entry securites being transferred are needed as collateral, Reserve Banks will work with each depository institution to determine what internal processes are needed to ensure the best repledge of securities that can be effected.

To implement this proposal, Reserve Banks will:

- Work flexibly with each depository institution affected by the proposal;
- Accept only the type and loan value of collateral that would be broadly consistent with the Bank's discount window policies;
- Develop model agreements for pledging collateral held in the possession of Reserve Banks, held for discount window purposes by the depository institution, or repledged by the institution as a result of customer book-entry transfer business; and
- Develop a new book-entry system that will provide the means for segregation and valuation of book-entry securities being transferred on Reserve Bank books.

By order of the Board of Governors of the Federal Reserve System, June 15, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-14640 Filed 6-20-89; 8:45 am]

BILLING CODE 6210-01-M

[Docket No. R-0666]

RIN 7100-AA76

Interim Policy Statement on Offshore Netting and Clearing Arrangements

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Interim Policy Statement.

SUMMARY: The Board is issuing an interim policy statement to establish guiding principles for any offshore dollar clearing or settlement system settling directly or indirectly on Fedwire or CHIPS. The Board believes that adherence to the policy statement will result in a reduction in risk on large-dollar payments systems in the United States. This interim policy statement is issued in conjunction with the Board's requests for comments on proposals regarding its payments system risk reduction program and its policy statements regarding private delivery-against-payment systems and rollovers and continuing contracts, published elsewhere in today's Federal Register.

EFFECTIVE DATE: June 15, 1989.

FOR FURTHER INFORMATION CONTACT: Edward C. Ettin, Deputy Director, Division of Research and Statistics (202/452-3368) or Jeffrey C. Marquardt, Senior Economist, Division of International Finance (202-452-3697); for the hearing impaired only: Telecommunications Device for the Deaf, Earnestine Hill or Dorothea Thompson (202-452-3544).

SUPPLEMENTARY INFORMATION: The Board of Governors of the Federal Reserve System has issued the following policy statement concerning offshore netting and clearing arrangements. This policy statement is being issued in

conjunction with the Board's requests for comments on proposals regarding its payments system risk reduction program and its policy statements regarding private delivery-against-payment systems and rollovers and continuing contracts, published elsewhere in today's Federal Register.

Interim Policy Statement on Offshore Dollar Clearing and Netting Systems

For some time, the Board has been sensitive to the risks associated with the actual and potential development of netting and clearing arrangements for U.S. dollar payments located outside of the United States. In particular, the Board has been concerned that the steps being taken to reduce systemic risk in U.S. large-dollar payments systems may themselves induce the further development of "offshore" dollar payments systems. These offshore systems can settle through payments on the Federal Reserve's wire transfer system ("Fedwire") or the New York Clearing House's Clearing House Interbank Payments System ("CHIPS"), but may operate without adequate procedures for the management of risks and without any form of official oversight. However, the Board recognizes that the development of offshore clearing and netting arrangements raises issues of concern which go beyond the immediate question of payment risks in the U.S. banking system.

Banks in all countries have been experiencing strong incentives to reduce payment flows and credit exposures. As an apparent consequence, there are an increasing number of proposed or actual interbank netting arrangements which affect an offset or netting of amounts due between banks, arising not only from payment instructions but also from the settlement of foreign exchange and other financial contracts, on either a bilateral or multilateral basis. When located outside of the country of issue of the currency subject to the netting, these arrangements have the potential to alter significantly the structure of the international interbank clearing and settlement process.

In response to these developments, the Group of Experts on Payments Systems from the G–10 central banks, meeting at the Bank for International Settlements ("BIS") in Basle, Switzerland, studied a variety of payment and currency netting arrangements. The BIS Payments Experts' "Report on Netting Schemes" primarily addresses the allocation of credit and liquidity risk in various netting structures and draws general conclusions as to whether these risks are increased or decreased by the different "institutional forms" of netting. The Board believes that, in so doing, the Report of the Payments Experts provides a valuable starting point for the consideration of risk in the international payment process.

In addition, the Report notes that a number of broader monetary, financial, and supervisory policy implications are associated with the further development of netting arrangements for interbank markets. Netting systems for foreign currency payments and contracts have the potential to create changes in the financial character of affected interbank markets, as well as in the cross-border relationships between national banking systems. These changes, in turn, raise questions about the extent and quality of central banks' oversight and supervision of settlements in their respective currencies, including the allocation of supervisory responsibility among various central banks and national supervisory authorities.

On the basis of this preliminary work, the Governors of the G–10 central banks have determined that a further study of these broader issues be undertaken with a view toward establishing an international understanding of the monetary, financial, and supervisory issues raised by the development of offshore or cross-border netting arrangements. The Board welcomes the development of a cooperative study of netting and offshore payments issues by the G–10 central banks. The Board hopes that this work can provide the foundation for a consensus, among central banks and national supervisory authorities, on the nature and extent of supervision appropriate for netting arrangements as well as on the monetary and financial policy issues associated with netting.

At the same time, however, the Board recognizes that the technological, market, and regulatory incentives that are giving rise to the growth of these arrangements will continue to operate. The Board believes that it is important, therefore, to begin to address the potential policy concerns raised by the further development of offshore netting and clearing systems for U.S. dollar payments and the risks that these systems may create. This is particularly the case in light of the significant steps that have been and are being taken by the Federal Reserve and the U.S. banking industry to address payment risk issues. These include both the Board's ongoing payments system risk reduction program and the efforts of the New York Clearing House Association to improve CHIPS participants' awareness of payment risks, to control the level of daylight exposures within CHIPS, and now to adopt settlement finality procedures.

Offshore clearing of U.S. dollar payments, for subsequent net settlement in the United States, may create transaction and other efficiencies for participants in such offshore systems. If, however, the allocation of credit and liquidity risks associated with the netting and settlement is not clearly understood or defined, offshore dollar clearing arrangements may well obscure, or even increase, the level of systemic risk in U.S. large dollar payments systems as well as in the international dollar settlement process generally. The BIS Report notes that this shifting of risk "can be particularly troubling where the transaction cost efficiencies are enjoyed by banks located in one country, but the credit and liquidity risks associated with the settlement of payments resulting from that netting system may be experienced in the banking system of another country." This is precisely what can happen when U.S. dollar payments are netted in systems outside of the United States and subsequently settled through CHIPS or Fedwire.

Because of the potential for offshore dollar clearing systems both to shift risk to U.S. large-dollar payments systems and to be used to avoid the Board's domestic risk reduction policies, the Board believes that it is appropriate for it to provide preliminary guidance on the framework within which offshore dollar systems should operate. The Board recognizes that the question of the degree of oversight and supervision of offshore clearing and netting systems can only be fully addressed on a cooperative basis among central banks and national bank supervisory authorities. However, pending the conclusion of the study of netting by the G–10 central banks and the outcome of any further international consultations, the Board's approach to offshore dollar clearing and netting systems will be guided by the following general principles:

1. An offshore dollar clearing or netting system, which settles directly or indirectly through CHIPS or Fedwire, should at a minimum be subject to oversight or supervision, as a system, by a relevant central bank or supervisory authority.

2. The participants should be responsible for clearly identifying the operational, liquidity, and credit risks created within the system and for

assuring the prudent management of these risks.

3. The system should have arrangements in place which provide for the finality of settlement obligations and the practical means to assure the timely satisfaction of these obligations.

4. The direct or indirect settlement of the system's obligations through CHIPS or Fedwire should be conducted by an identified settlement agent, in the United States, so that satisfaction of the settlement obligations can be readily ascertained by the participants, the Federal Reserve, and other relevant central banks and supervisory authorities.

Consistent with the foregoing interim principles, the Federal Reserve is prepared to work with the central bank and/or supervisory authorities of the country in which an offshore dollar clearing or netting system is located, on a cooperative basis, to assure the continuing adequacy of the system's procedures for controlling risk.

The Board believes that these interim principles are consistent with the concerns identified by the BIS Payments Experts Group. The minimal conditions that they would impose on offshore clearing and netting systems are similar to the risk-reduction procedures that have been established for CHIPS. These principles should not be regarded as establishing a policy of either encouraging or discouraging the operation of offshore dollar payments systems. Rather, they represent an initial attempt by the Board to indicate the minimum structural features that the Board believes are appropriate for offshore dollar clearing arrangements. These principles also presume a cooperative international approach to the supervision of offshore clearing and netting arrangements.

By order of the Board of Governors of the Federal Reserve System, June 15, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 14637 Filed 6-20-89; 8:45 am]

BILLING CODE 6210-01-M

[Docket No. R-0668]

RIN 7100-AA76

Proposals To Modify the Payments System Risk Reduction Program; Pricing, Overdraft Measurement, and Caps

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Request for comment.

SUMMARY: The Board is requesting comment on proposed changes to its payments system risk reduction program. The proposals would provide for a fee of 25 basis points, phased in over three years, for average daily consolidated funds and book-entry Fedwire overdrafts in excess of a deductible of 10 percent of risk-based capital. To accommodate pricing and reduce the administrative burden to depository institutions, the Board is also proposing various changes to the procedures used for measuring daylight overdrafts and the current cap structure. These proposals are being issued in conjunction with the other requests for comment and policy statements regarding the payments system risk reduction program published elsewhere in today's Federal Register.

DATES: Comments must be submitted on or before November 17, 1989.

ADDRESSES: Comments, which should refer to Docket No. R-0668, may be mailed to the Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551, Attention: Mr. William W. Wiles, Secretary; or may be delivered to Room B-2223 between 8:45 a.m. and 5:00 p.m. All comments received at the above address will be included in the public file and may be inspected at Room B-1122 between 8:45 a.m. and 5:15 p.m.

FOR FURTHER INFORMATION CONTACT: Edward C. Ettin, Deputy Director, Division of Research and Statistics (202/452-3368); Bruce Summers, Associate Director (202/452-2231) or Florence Young, Assistant Director (202/452-3926), Division of Federal Reserve Bank Operations; Oliver I. Ireland, Associate General Counsel (202/452-3625) or Stephanie Martin, Attorney (202/452-3198), Legal Division; for the hearing impaired only: Telecommunications Device for the Deaf, Earnestine Hill or Dorothea Thompson (202/452-3544).

SUPPLEMENTARY INFORMATION: This is one of three proposals regarding payments system risk that the Board is issuing for public comment today. The others concern daylight overdrafts related to book-entry securities transfers (Docket No. R-0669) and the daylight overdraft policy for foreign banks with U.S. branches and agencies (Docket No. R-0670). The Board encourages all interested parties to comment on each of these proposals. The Board urges that, in filing comments on these proposals, commenters prepare separate letters for each proposal, identifying the appropriate docket number on each. This procedure will facilitate the Board's processing and analysis of the comments on these proposals by ensuring that each comment is quickly brought to the attention of those responsible for analyzing each specific proposal. In addition, the Board encourages entities that plan to submit identical comments, such as affiliated institutions within a holding company, to consolidate their efforts; the Board will give equal consideration to one letter signed by a number of commenters as it would to numerous identical letters submitted by those commenters. Comments are due November 17, 1989, and the Board does not intend to extend the comment period beyond that date.

In addition to its requests for comment, the Board is also issuing today three risk-related policy statements regarding private delivery-against-payment systems (Docket No. R-0665), offshore clearing and netting systems (Docket No. R-0666), and rollovers and continuing contracts (Docket No. R-0667).

Background

The Board has been concerned for some time about the risks associated with large-dollar payments systems. The Federal Reserve Banks would face direct risks of loss in the event that Fedwire users are unable to cover their intraday overdrafts by the end of the business day. Moreover, on a private large-dollar network that permits its participants to transmit payment messages throughout the day with settlement of net positions at the end of the day, the inability or unwillingness of a participant to settle its net debit position would expose the banking system to systemic risk. Systemic risk occurs when institutions unable to settle on private large-dollar payments networks cause their creditors on those networks, in turn, to be unable to settle their own commitments. As a result, serious repercussions could spread to other participants in the network, to other depository institutions not participating in the private network, and to the nonfinancial economy generally. In such circumstances, the Federal Reserve would bear an indirect risk if it sought to avoid or limit this systemic risk. Finally, on both private wire systems or Fedwire, depository institutions will face risk by permitting their customers, including other depository institutions, to make transfers against uncollected or insufficient balances in anticipation of their coverage before the end of the day.

In April 1985, the Board adopted a policy to reduce the risks that large-dollar payments systems, including Fedwire, present to the Federal Reserve, to the depository institutions using them, to the banking system, and to other sectors of the economy (50 FR 21120,

May 22, 1985). This policy, in effect, established a maximum amount of intraday funds overdrafts, or intraday credit extensions, that depository institutions and other entitites, such as Edge corporations and foreign banks with U.S. branches and agencies (hereafter "depository institutions") are permitted to incur over both Fedwire and private large-dollar payments systems. The maximum, or cap, is a multiple of a depository institution's adjusted primary capital and is based on the depository institution's self-evaluation of its own creditworthiness, credit policies, and operational controls. The guidelines for performing the self-evaluation were established by the Board, and the documentation supporting each depository institution's rating is reviewed by the institution's primary supervisory agency examiners. In July 1987, the Board adopted a number of modifications to its daylight overdraft policy, including a two-step, 25 percent reduction in the cross-system net debit caps, thus reducing the maximum daylight overdraft permitted to an individual depository institution (52 FR 29255, August 6, 1987).

The Board's policy was designed to be binding only on depository institutions with the largest overdrafts, and, even after the reduction of caps that was effective in 1988, the use of intraday credit by virtually all depository institutions remained generally unconstrained. Only a very small number of the depository institutions required to file a cap incur overdrafts that amount to as much as 80 percent of their caps. However, overdraft levels have remained relatively stable, and overdrafts as a percentage of the dollars transferred over Fedwire have declined. Moreover, management of individual depository institutions and the Board's Large Dollar Payments System Advisory Group have indicated that, as a result of the Board's policy, senior managers of depository institutuions have focused on intraday credit risks. Reportedly, they have taken steps to eliminate many of the payment practices that had presented risk to depository institutions, the Federal Reserve, and the banking and payments systems in general.

In 1987, the Board's Payments System Policy Committee requested two studies to assist in its consideration of future payments system risk reduction policies. The Board's Large Dollar Payments System Advisory Group was specifically asked to propose policy recommendations, and a Federal Reserve System staff task force was asked to review options but to make no policy recommendations. Both reports were published by the Board in August 1988.[1]

To test the impact of pricing, posting rules, and cap changes, the Board used data from a survey for the two weeks ending February 10, 1988. This survey provided detailed transactions data for all depository institutions. Cap multiples in force in 1989 were applied to survey cap categories. The normal data flow for monitoring daylight overdrafts is reported only for depository institutions incurring overdrafts under present daylight overdraft measurement procedures and includes only summary level information on transactions processed. During the comment period, the Reserve Banks will provide individual depository institutions with information on their own overdraft profiles under both the current and proposed posting procedures as well as information on any fees that would be assessed to that each depository institution can determine for itself how the proposals would affect its position.

After reviewing the Advisory Group's and the staff's reports as well as the survey data, the Board developed a series of proposals to reduce the aggregate level of payments system risk further. These proposals assume private sector systemic risk will be reduced by the implementation of settlement finality on the New York Clearing House's Clearing House Interbank Payments System ("CHIPS") network and that other sources of systemic risk will be controlled by policy statements regarding private-sector delivery-against-payment systems and offshore netting and clearing arrangements (see Docket Nos. R-0665 and R-0666, elsewhere in today's Federal Register). Against this background, the Board's proposals seek to shift a higher proportion of risk to the private sector, reducing the share of such risk borne by Reserve Banks. Presented in this docket are proposals to establish a program for pricing the daily average value of all Fedwire overdrafts in excess of a deductible, to facilitate pricing by revising the defintion and measurement of daylight overdrafts, to exempt from caps those depository institutions with relatively small overdrafts, and to exclude from the cross-system net debit cap net debits on CHIPS after settlement finality is adopted on CHIPS.

Other proposals issued for comment today would apply the existing cap structure to all overdrafts, including Fedwire book-entry overdrafts, and would require collateral for all Fedwire overdrafts for (1) any depository institution whose total Fedwire overdrafts frequently and materially exceed its Fedwire cap solely because of book-entry overdrafts and (2) any foreign bank with a U.S. agency or branch whose Fedwire overdrafts exceed its cap multiple times its U.S. capital equivalency. (See Docket Nos. R-0669 and R-0670, elsewhere in today's Federal Register.)

As indicated above, all of these proposals should be evaluated in the context of settlement finality on CHIPS and the adoption of systemic risk-reducing policies on private-sector delivery-against-payment systems for securities activity, netting arrangements, and offshore dollar clearing systems. Moreover, proposed revisions in the rules on finality for automated clearing house ("ACH") transactions processed by the Reserve Banks should also be considered (see the Board's request for comment on ACH finality, 54 FR 8822, March 2, 1989). Proposals regarding daylight overdraft pricing, posting, and caps are discussed in detail below.

Pricing Fedwire Overdrafts

The Board is requesting public comment on a change in its payments system risk reduction policy that would provide for a fee of 25 basis points, phased in over three years in increments of 10, 10, and 5 basis points, for average daily consolidated funds and book-entry Fedwire overdrafts in excess of a deductible of 10 percent of risk-based capital. Explicit fees or charges for Fedwire daylight credit are expected to create incentives for depository institutions to reduce Fedwire overdrafts, thereby reducing direct Federal Reserve risk and contributing to economic efficiency. The Board expects that payments system participants as a result of the market incentives established by the combination of Fedwire daylight overdraft pricing and settlement finality on CHIPS, will lower the level and more efficiently allocate the distribution of Fedwire and private sector intraday credit flows.[2]

[1] *A Strategic Plan for Managing Risk in the Payments System: Report of the Large Dollar Payments System Advisory Group to the Payments System Policy Committee of the Federal Reserve System* (Washington, 1988) and *Controlling Risk in the Payments System: Report of the Task Force on Controlling Payments System Risk to the Payments System Policy Committee of the Federal Reserve System* (Washington, 1988) are available from the Secretary of the Board at the address noted above or from the Daylight Overdraft Liaison Officer of each Federal Reserve Bank.

[2] The Board believes that settlement finality and other risk-constraining steps on existing and evolving U.S. and offshore clearing and settlement systems will partially offset pricing-induced shifts of payments away from Fedwire and will reduce overall systemic risk. See Docket Nos. R-0665 and R-0666 elsewhere in today's Federal Register.

Application of Pricing to Total Fedwire Overdrafts. The Board is proposing that pricing apply to book-entry related overdrafts as well as funds overdrafts. The Board is requesting comment in a separate docket on the inclusion of book-entry securities in the total measure of overdrafts (see Docket No. R–0669). As in the case of funds overdrafts, pricing book-depository institutions to reduce these overdrafts. Moreover, failing to price book-entry overdrafts while pricing funds overdrafts would create incentives to avoid charges for funds overdrafts through manipulation of book-entry transfers. For example, depository institutions in funds overdraft could deliver book-entry securities to another depository institution in order to receive a credit from the Federal Reserve to offset their priced funds overdrafts. If book-entry overdrafts were not priced, the receiver of the securities would incur a book-entry overdraft that is free (but, perhaps, requiring the posting of collateral with the Reserve Bank) and could charge the sender of the securities any rate below the Federal Reserve charge on funds overdrafts. The loan could be secured by the securities being transferred.

Pricing of book-entry overdrafts is unlikely to disrupt the U.S. government securities market, to constrain open market operations, or to increase the cost of Treasury financing. Each 10 basis points of overdraft charge amounts to only $2.70 per million per day, and, on average, each dollar of book-entry overdrafts is associated with six or seven dollars of transfers. The increase in the cost of the average transfer of less than $10 million is thus consideably smaller than the traditional minimum market bid-ask spread for Treasury securities, which is 1/64th of a percentage point or about $165 per million dollars transferred.

Average Overdrafts. The Board is proposing that pricing be applied to the average level of total Fedwire overdrafts. Overdrafts would be measured at equally-spaced intervals throughout the day, and the average overdraft would be the sum of all of the overdraft measurements divided by the number of intervals.[3] Average overdraft pricing more closely reflects the Federal Reserve credit actually used during the day by individual depository institutions. Average overdraft pricing is also likely to induce depository institutions to focus on managing their overdraft positions more or less continuously over the day rather than concentrating on only the time periods when overdrafts are at or close to their peak. Average overdraft pricing also permits more flexibility to the depository institution in managing overdraft levels, a particularly important advantage if book-entry related overdrafts are priced because the overdrafting depository institution will not be able to control when securities are delivered and when such overdrafts occur with the same precision as is possible with funds overdrafts.

The Board considered but decided against pricing peak rather than average overdrafts. Peak pricing would levy a fee on the Reserve Banks' maximum exposure and would also be consistent with the debit caps applied to peak overdrafts. Peak pricing, however, would be unlikely to provide incentives for depository institutions to reduce their overdraft levels once the peak has been reached, depending on the dynamics of other depository institutions' responses to pricing. In addition, if fees were assessed only for the peak overdraft, the duration of the Reserve Banks' exposure would not be considered.

The Board believes that average overdraft pricing is, on balance, superior to peak overdraft pricing and proposes that the Reserve Banks assess daily fees for average total intraday Fedwire overdrafts. Daily and two-week average debit caps would continue to apply to peak intraday values of such overdrafts in excess of $10 million and 20 percent of capital (as discussed below).

Deductible. The Board proposes that the amount of overdrafts subject to pricing be decreased by a deductible of 10 percent of risk-based capital. The deductible amount would be subtracted from the average intraday total Fedwire overdraft (funds and book-entry) each day to determine the amount of such overdrafts subject to pricing. An important purpose of the deductible would be to provide a certain amount of free Fedwire overdrafts to offset, partially or in full, those overdrafts incurred due to circumstances beyond the control of the depository institution. The deductible would provide some liquidity to the payments mechanism and would address the inevitable lack of synchronization of payments in a complex economy.

The deductible would also offset, in part, the Fedwire charge for overdrafts that may be beyond the control of the depository institution because of a computer problem at a Reserve Bank. The downtime associated with such problems can artificially affect the overdraft of a depository institution as payments cannot be sent or received. Reserve Bank operating problems affect the distribution of daylight overdrafts among institutions, benefitting some and harming others. A fixed deductible, as proposed, provided each day to address unpredictable downtime would likely overcompensate on some days and undercompensate on others. Depository institutions benefitting from a deductible on some days may have to absorb any downtime effects on other days for which a charge might be levied. The Board believes that, on average, depository institutions would not be unfairly charged and that Reserve Banks could make adjustments in exceptional circumstances. The Board proposes that Reserve Banks be permitted to adjust the amount of overdrafts subject to pricing for individual depository institutions on a *ad hoc* basis to deal with unusual circumstances, such as extended operational difficulties. In general, however, the Reserve Banks should assume that the deductible is sufficient to offset all but very lengthy operating outages at Reserve Banks and other unusual events.

The deductible would also offset some of the impact on individual depository institutions of the loss of opening-of-day non-wire net credits under the new posting rules (see discussion below). For example, a deductibe could offset the end-of-day Federal Reserve recognition of credits for checks and commerical ACH, the proceeds of which depository institutions may be required to make available to their customers at the opening of the business day according to the provisions of Regulation CC (12 CFR Part 229) or the guidelines of the National Automated Clearing House Association ("NACHA").

Regulation CC requires depository institutions to make the proceeds of certain categories of checks deposited by 2:00 p.m. available to their customers for withdrawal at the opening of business on the business day following the banking day of deposit. These "next-day availability" checks include Treasury checks, Postal money orders, checks drawn on Federal Reserve Banks and Federal Home Loan Banks, cashier's, teller's, and certified checks, and state and local government checks. Similarly, NACHA guidelines encourage depository institutions to make ACH

[3] Currently, overdraft values are measured at 15-minute intervals for both average and peak overdrafts. Federal Reserve staff is reviewing the feasibility of measuring overdrafts at shorter intervals (e.g., by second or minute) and whether the averaging period should be fixed (e.g., the "normal" hours over which Fedwire is open) or the actual period Fedwire is open at each Reserve Bank.

credit transactions available to consumers for withdrawal by opening of business on the settlement day.

Under the posting proposal, discussed below, depository institutions generally would not receive credit for overdraft measurement pruposes for "next-day availability" checks or for commercial ACH credit transactions by the time that the funds should be available to their customers for withdrawal under Regulation CC and NACHA guidelines. Consequently, these depository institutions may incur an overdraft. The Board believes that these types of overdrafts would be rare, in view of the fact that most of the withdrawals of the proceeds of "next-day availability" checks and commercial ACH credits are likely to be by check or by cash withdrawal. Check withdrawals would not affect a depository institution's intraday balance because the debits for the check presentments would be recognized after the close of Fedwire. Furthermore, cash withdrawls would not affect a depository institution's intraday reserve balance. The proposal would cause depository institutions to incur overdraft costs for these checks and ACH credits only if the proceeds were wired out on the settlement day. For most depository institutions, these overdraft costs would be covered by the deductible.

Another reason for a deductible is to exclude from pricing the large number of mainly smaller depository institutions that incur *de minimis* overdrafts. Among the over 5,000 depository institutions that incurred overdrafts on at least one day during the final quarter of 1988 (measured by the current posting rules), over 90 percent of total Fedwire (funds and book-entry) average overdrafts were incurred by the largest 50 overdrafters. The Board believes that the burden of imposing charges on the 4,500 to 5,000 depository institutions that present ony 1 or 2 percent of the risk exceeds the benefit of reducing this small amount of risk.

Depository institutions that choose to access Fedwire through multiple accounts would be required to allocate their deductible in the same proportion as the allocation of their caps. One administering Reserve Bank would still have overall risk management responsibility, even though each Reserve Bank would administer the charges for each overdrafting account.

The Board considered the impact of various deductibles (based on capital) during the test period. If there were no deductible, all 5,040 depository institutions incurring overdrafts in the test period would have been subject to pricing on their total average overdrafts, which amount to $37.3 billion. (During the same period, these depository institutions' daily peak overdrafts amounted to $120 billion.) A deductible of 10 percent would exempt 4,821 depository institutions from pricing, and only 219 would have been subject to pricing. These 219 depository institutions would have had $34.0 billion of average overdrafts but would have paid fees on only $25.5 billion of overdrafts, the difference being overdrafts at depository institutions subject to pricing that would be exempted by the deductible. The 4,821 totally exempt depository institutions would have incurred $3.3 billion of average overdrafts.

As the deductible rises, the number of depository institutions subject to pricing falls as do both the aggregate overdrafts at depository institutions subject to pricing and the amount of overdrafts actually priced. At a 20 percent deductible, for example, only 118 depository institutions would have been subject to pricing in the test period; these depository institutions would have accounted for almost 80 percent of all average overdrafts, but fees would have been assessed on only 50 percent of all average overdrafts.

The pricing deductible would be independent and separate from the test for exemption from filing for a cap (discussed below). The cap exemption deals with intraday peak values and determines which depository institutions would be exempt from filing for a Fedwire net debit cap. The pricing deductible determines the amount of daily average intraday overdrafts subject to fees (if any) by Reserve Banks. A depository institution could be subject to a cap and operate close to its cap level for part of the day and not be subject to fees, depending on its intraday overdraft pattern. Similarly, a depository institution could conceivably be exempt from filing for a cap, but be subject to pricing because it had overdrafts for most of the day above the 10-percent-of-capital pricing deductible, even though its peak overdraft remained below the 20 percent of capital exemption-from-filing-for-cap level.

The Board specifically requests comment on whether deductible schemes other than the one proposed would be appropriate. In addition, the Board requests comment on whether there are any additional actions that could be taken by Reserve Banks or depository institutions to alleviate the problems caused by overdrafts beyond the control of depository institutions. For example, would it be feasible to accelerate lthe posting time, for overdraft measurement purposes, of those "next-day availability" checks that bear unique routing numbers, such as Treasury, Federal Reserve Bank, and Federal Home Loan Bank checks and U.S. Postal Service money orders?

Size of Charge. The Board is proposing an initial Fedwire overdraft charge of 25 basis points (annual rate) to be phased-in over three years, with the effective initial date 12 to 18 months after the Board's final adoption of a program to price Fedwire overdrafts.[4] The Board intends to implement pricing three to six months after new procedures for measuring daylight overdrafts are effective (see below). In setting the level of the Federal Reserve charge for priced Fedwire overdrafts, the Board seeks a price that is high enough to induce risk-reducing changes by depository institutions and their customers. The price should not be so high, however, as to slow payments flows or drastically increase the public's cost of making payments.

According to data collected during the test period, a fee of 25 basis points for daily average Fedwire overdrafts in excess of a 10 percent of capital deductible, before any response on the part of depository institutions to reduce their overdrafts, would result in the 15 largest overdrafters paying almost 90 percent of the total charges. (Sixty percent of the fees would have been levied against the four largest book-entry securities clearing banks.) By the 100th largest overdrafter, the annual fee would be less than $3,000 and by the 150th it would be about $400.

The Fedwire overdraft price will be applied only on business days; the actual annual cost to a depository institution of an explicit price,is only a fraction of the annual percentage rate. The number of business days varies each year, but the fraction is approximately 251/365, or about 30 percent lower than an annual rate that levies fees for all calendar days. The actual rate each day is 1/365 of the annual rate fee. The Board requests comment on the level of the proposed fee as well as on the three-step phase-in schedule.

Defining Overdrafts and Application of Caps

Measuring Overdrafts

The Board's daylight overdraft pricing proposal would give funds an intraday value and, therefore, would require precision in measuring intraday

[4] The Federal Reserve will retain its current penalty for overnight overdrafts of 10 percent or the federal funds rate plus 2 percentage points, whichever is higher.

overdrafts. Such precision requires fixing the time at which all payment transactions by Reserve Banks are recognized to have occurred for daylight overdraft measurement purposes. The Board proposes that, for purposes of measuring daylight overdrafts, a depository institution's opening balance at the Reserve Bank be adjusted by (1) credits for U.S. Treasury and government agency book-entry securities interest payments; (2) credits for U.S. Treasury and government agency book-entry securities redemption proceeds; (3) credits for U.S. Treasury ACH recurring credit transactions; and (4) debits for new issues of U.S. Treasury book-entry securities. During the day, this adjusted opening balance would be adjusted for Fedwire funds and book-entry securities transactions as they occur. At 2:00 p.m. local time of the Reserve Bank, Treasury direct and special direct investment credits would be reflected. After the close of Fedwire, all non-wire and commercial ACH transactions would be included, regardless of whether the net of those transactions were a credit or A debit.[5] This overdraft measurement proposal would apply equally to all depository institutions with Reserve Bank accounts, including U.S. chartered banks, foreign banks with U.S. agencies and branches, thrifts, bankers' banks, limited purpose trust companies, nonbank banks, [6] and any other such entities.

The precise measurement of daylight overdrafts requires a set of rules to determine when during the day debits and credits to a depository institution's account at a Reserve Bank are determined to have occurred. "Posting" for the purpose of measuring daylight overdrafts is not necessarily synonymous with the time at which payments become final or the time at which the current rights to receive funds accrue, although finality of payment is one of the criteria the Board used to develop the daylight overdraft measurement rules. The actual timing of entering transactions on the Reserve Banks' books varies depending on operational procedures. Fedwire transactions, whether funds or book-entry transfers, are debited or credited as they are processed and are considered to be final payments when the receiver of funds is advised by the Reserve Bank of the credit. Rules governing non-wire payments transafers, however, generally are provisional for some period of time and refer to a particular "day" as the measuring unit of availability, without indicating the time during the day at which payment participants are either entitled to the use of the funds received or have been relieved of their payments obligation to the Federal Reserve.

Even if the Federal Reserve were not contemplating pricing Fedwire overdrafts, it would be desirable to clarify the time at which the debtor-creditor relationship between a depository institution and its Reserve Bank changes as the result of the recognition of a payment. Independent of overdraft pricing or cap policies in the United States, technology and the globalization of financial instruments and transactions are increasingly causing money, securities, and capital markets to operate on a 24-hour basis. In such an environment, trading in dollar instruments and dollar payments in one part of the world occurs while U.S. markets and Reserve Banks are closed and vice versa. In a 24-hour global market, depository institutions in the United States and abroad need to know more precisely the time of day that dollar payments are recognized to have occurred by the Federal Reserve. Even if such global developmetns were not in progress, a clarificaiton would permit depository institutions to ascertain their intraday rights and responsibilities vis-a-vis Reserve Banks and to evaluate their risks accordingly.

Under the current definition of daylight overdrafts, all non-ACH, non-wire transactions are netted at the end of the banking day; if the net is a crewdit, and if that net is a debit, the debit is deducted from the end-of-day position. The net of all ACH transactions is posted as if the transactions occurred at the opening of business, regardless of whether the net is a debit or a credit. This *ex post* measure thus allows a depository institution to use all of its non-wire net credits to offset any wire debits during the day, but postpones the need to cover non-wire, non-ACH net debits until the close of the day.

The current, transitional, system of posting debits and credits for daylight overdraft measurement purposes gives the benefit of the doubt to depository institutions. Two drawbacks of this system are that it creates intraday float in the measurement of daylight overdrafts in that depository institutions with net credits can use them before those with net debits are charged and many depository institutions are unable to monitor their overdraft levels effectively during the banking day. Because the Board's payments system risk reduction program is reaching maturity, the Board believes that the initial transaction posting procedures must be modified now.

In developing a proposal to establish the time at which non-wire transactions would be recognized for daylight overdraft measurement purposes (herein after referred to as "posting changes"), the Board was guided by a desire to eliminate intraday float and to keep the posting rules simple and easy to use. The Board believes that measurement procedures shoud not provide intraday float to payments system participants. Thus, the processing of a payment transaction should not result in a reduction of one depository institution's measured overdraft (or an increase in its credit balance) before another depository institution's overdraft is increased (or its credit balance reduced).

The principle of eliminating aggregate Federal Reserve intraday float is independent of the credit risk arising from the transactions. For example, there may be only minimal Federal Reserve risk resulting from granting early-in-the-day credit for checks collected through the Federal Reserve, even though the Reserve Banks do not charge paying institutions until late on the presentment day. However, by providing early-in-the-day credit to the collecting institution without an offsetting debit to the paying institution, the Federal Reserve would be permitting the collecting institution to use Federal Reserve credit without regard to that depository institution's cap, deductible, or any Reserve Bank fee. Furthermore, if explicit fees for overdrafts are adopted, and if the timing of debits and credits for each transaction were not nearly simultaneous at Reserve Banks, depository institutions would have an incentive to create float by writing each other checks to create free overdraft capacity. As intraday credit begins to have value, either through pricing or the evolution to 24-hour global markets, intraday Federal Reserve float becomes a taxpayer subsidy. Similar concerns were one reason that the Congress mandated, in Section 11A of the Federal Reserve Act, that Federal Reserve Banks should charge for float.

[5] Generally, credit for, and repayment of, discount window loans for healthy depository institutions would be included among the non-wire transactions posted for daylight overdraft measurement purposes at the end of the day. This treatment would assure that the discount window loans were not used to fund same-day daylight overdrafters and would make the discount rate a price for a 24-hour credit and, hence, more relevant for monetary policy purposes in conjunction with a 24-hour federal funds rate.

[6] The posting changes would not affect the overdraft restrictions for nonbank banks established by the Competitive Equality Banking Act of 1987.

In addition, the new daylight overdraft measure should be simple to understand and to use in controlling intraday overdrafts. If depository institutions are to be charged a fee for incurring a Fedwire overdraft, the procedures for measuring overdrafts should facilitate their ability to control their positions and determine their intraday balances accurately. Measures that would include transactions retroactively after the transaction day is complete do not meet this test.[7]

Treasury transactions. The proposed opening-of-day credits and debits for certain U.S. Treasury transactions reflect Treasury obligations and the mechanics of the book-entry system. Interest and redemption payments on the debt are due at the opening of business on the payment date. Similarly, institutions purchasing Treasury securities receive title to the securities at the opening of business on the settlement date and should pay for the securities upon receipt.

Treasury Department regulations for recurring ACH payments require depository institutions to make federal government direct deposit ACH payments available to consumers at the opening of business on the payment date, and the Board has provided for such credits to depository institutions in the proposal. Reserve Banks would modify their accounting systems to separate Treasury and commercial ACH credit transactions. Because the Treasury's account will be debited for ACH credit transactions at the same time that depository institutions will be credited for those transactions, this posting rule will not create intraday float. Treasury ACH payments can be distinguished from certain next-day availability checks, discussed above, which are also required by regulation to be made available for withdrawal by the opening of business. Unlike the Treasury ACH payments, posting the next-day availability check credits at the opening of the day would create intraday float because the checks will not have been presented to the paying institutions the opening of the day.

Under the Treasury's direct and special direct investment programs, excess balances are placed with designated depositories that pay interest on the deposits to the Treasury from the day of receipt until the day of withdrawal. Because depository institutions must pay interest from the transfer date, they should receive credit for the transafer early enough to be able to invest the funds that day without incurring an overdraft. Some depositories are advised of direct investments the day before the deposits are received, and others are advised on the day of deposit. While it might be feasible to grant credit for deposits known in advance at the opening of business, it is generally not possible to grant credit for same-day deposits until 2:00 p.m. local time. Because one posting time would be less complex and should not disadvantage depository institutions, the Board believes the credits for Treasury direct and special direct investments should be posted at 2:00 p.m. local time of the Reserve Bank. The repayment of these investments is effected by Treasury calls, and the Board proposes that debits for calls be posted after the close of Fedwire on the day of the Treasury call. To ensure that no intraday float is created, the Treasury's account would be debited or credited for book-entry, ACH, and direct investment transactions at the same time that depository institutions receive the corresponding debit and credit entries in their accounts.

Other Non-wire Transactions. For purposes of measuring daylight overdrafts, the Board proposes that all other non-wire and commercial ACH transactions be posted simultaneously, which eliminates the creation of intraday float, after the close of Fedwire. In addition to eliminating float, posting non-wire transactions at the end of the day would assure that the depository institutions on either side of a transaction would have complete information as to the amount and account to be debited or credited and that depository institutions would not incur daylight overdrafts subject to charges and caps that are due to debits that are only provisional and may not be binding if the institution fails.

The Board considered and rejected various other arguments for posting non-wire debits and credits earlier in the day. For example, although commercial ACH credit transactions are generally known in advance of settlement day and both the debit and credit for these transfers could be posted at the opening of business, the Board did not propose such a rule, in part because the opening-of-day debit might disadvantage originators that no longer obtain opening-of-day net credit for other non-ACH, non-wire transfers. Moreover, consumers typically withdraw cash or write checks on the proceeds of commercial ACH credit payments on settlement day, which, unlike funds transfers, would not affect a depository institution's intraday reserve balance. Thus, crediting receiving depository institutions at the close of Fedwire should not create significant costs.

Posting check transactions to the collecting and paying depository institutions' accounts after the close of Fedwire on the availability date is consistent with the elimination of intraday float and providing banks with information to enable them to manage their accounts. Although Reserve Banks present most checks to paying depository institutions in the morning, they present some checks as late as 2:00 p.m. for same-day payment. If an earlier posting time were established, paying depository institutions in the western time zones (Alaska, Hawaii, and the West Coast) might be debited before checks were presented to them and, therefore, before they were aware of the amount of the debit. Further, to avoid intraday float, if check debits and credits were to be recorded earlier than after the close of Fedwire, the time established must be a standard time nationwide. If the timing of the credits and debits were based on the local time of the Reserve Bank holding the depository institution's account, float would be created due to time zone differences. In addition, it is not operationally feasible to credit some checks, i.e., those that have been presented to paying depository institutions, earlier than other checks that are presented later in the day.

In addition, the Board believes it is important to establish a time at which a paying depository institution becomes obligated for a debit. Regulation J (12 CFR Part 210) requires a depository institution to pay for checks presented by a Reserve Bank by the close of the banking day on which the checks are presented. Debiting the paying depository institution for checks presented at an earlier time during the day might require a depository institution to pay for checks before they have been presented and before the depository institution has had an opportunity to verify the charge. Moreover, private sector collecting depository institutions are often not able to obtain same-day payment for checks presented to paying depository institutions without payment of a presentment fee; in some cases they are unable to do so even if presentment fees are offered. For these reasons, the Board does not believe that debiting institutions for checks presented earlier than the close of business would be an

[7] The Large Dollar Payments System Advisory Group noted that the inability of depository institutions to control their overdraft positions accurately would be inconsistent with a program of either binding caps or overdraft pricing.

equitable solution for either paying or collecting depository institutions.[8]

The new posting rules are intended to facilitate pricing of Fedwire overdrafts by allowing depository institutions to determine with certainty their account balance at the Reserve Bank at any time during the day. The Board does not anticipate that these posting rules will significantly increase the pricing burden on depositor institutions, particularly given the deductible equal to 10 percent of risk-based capital, which will provide some compensation for overdrafts directly caused by the new positing rules.

The Board recognizes that it is common practice for depository institutions to extend credit to creditworthy corporate customers by permitting them to use non-wire credits, such as check credits, on the availablility/settlement date to cover funds transfers during the day. In such cases, depository institutions have determined that their customers are sufficiently creditworthy to recover any funds should the non-wire transactions be returned or not paid. Under the proposal, most depository institutions will have the option to continue their current practices of providing credit to customers in anticipation of later cover or collection of final funds. A small number of depository institutions, however, may incur a cost in the form of a Federal Reserve fee on average overdrafts above a deductible amount for using intraday Federal Reserve credit to finance the transactions. As discussed above, given the 10 percent pricing deductible proposed by the Board, the incidence of that higher cost is likely to extend to very few depository institutions.

In view of the lack of finality of most non-wire payments and the goals to eliminate Federal Reserve float and to provide depository institutions with an accurate measurement of their overdraft position throughout the day, the Board requests comment on whether it would be desirable to post certain non-wire transactions, such as commercial ACH, local clearinghouse, or other transactions earlier in the day.

Application of Cap

The Board is proposing that the current cap system continue, with certain modifications that would exempt small depository institutions from the requirement to file for a cap and make the *de minimis cap* more useful for some larger institutions. In addition, the Board proposes that CHIPS net debits be excluded from the cross-system debit cap once settlement finality is implemented on CHIPS. These changes are intended to facilitate compliance with the Board's overall risk policy. In a related proposal issued for comment today (see Docket No. R–0669 elsewhere in today's **Federal Register**) the Board has proposed that book-entry overdrafts be included within the current debit caps. While the Board believes that pricing should reduce Fedwire overdrafts significantly, until more experience is gained, it would be premature to remove caps or the self-evaluation process for depository institutions.

Exemption of small overdrafters. The Board proposes that depository institutions that only very rarely incur daily total peak Fedwire (funds and book-entry) overdrafts in excess of the lesser of $10 million or 20 percent of their risk-based capital be excused from performing self-evaluations or filing board-of-director's resolutions with their Reserve Banks. This exemption would, however, be granted at the discretion of each Reserve Bank. Reserve Banks would be expected to take the necessary steps (e.g., coordination and consultation with supervisory personnel within the Reserve Bank and at other agencies) to limit their risk exposures to those depository institutions under financial duress or in any other way presenting unusual risk to the Reserve Banks. This risk-exposure control could include real-time monitoring and imposition of lower caps or zero caps. Depository institutions, of course, would continue to be free to file for a cap if they chose to do so and would be required to do so if they began to exceed the exemption limits.

Currently, a depository institution that incurs Fedwire funds overdrafts infrequently is only required to file an annual board-of-directors resolution with the Reserve Bank authorizing the depository institution to incur occasional Fedwire overdrafts up to $500,000 or 20 percent of capital, whichever is less (the *de minimis* cap). All other depository institutions wishing to incur Fedwire overdrafts must conduct an annual self-evaluation, based on Federal Reserve criteria, obtain their board's resolution of approval, and maintain supporting files for examiner review. These procedures have focused director and senior management attention on the risks of daylight credit exposure and the need to adopt prudential internal control procedures and policies. A number of observers within and outside the Federal Reserve System, however, have questioned the need to apply the policy to all overdrafters.

The Board does not believe it would be prudent to excuse depository institutions with a small absolute level of overdrafts from the limits of the overdraft policy if the overdrafts are large relative to the depository institution's capital. Similarly, from a Federal Reserve risk perspective, large overdrafts should not be excluded from the policy just because such overdrafts are a small portion of the depository institution's capital. Both the prudential and Reserve Bank risk concerns could be addressed by a dual test that considered both the size of the overdraft and its relationship to the capital position of the depository institution incurring the overdraft.

Of the 5,040 depository institutions that would have incurred an overdraft under the proposed posting procedure in the February 1988 test period, about 4,600 had overdrafts that were both less than $10 million and 20 percent of the depository institution's capital. These overdrafts were neither large relative to the depository institution's capital nor to the risk exposure of Reserve Banks. These 4,600 depository institutions accounted for only $1.7 billion of Fedwire overdrafts, less than 1.5 percent of the total.[9] This exemption greatly reduces the administrative burden of the Board's payments system risk reduction policy, with only marginal increases in potential direct Federal Reserve risk.

[8] In April 1988, the Board published for comment a same-day payment concept, which would enable private sector collecting depository institutions to receive payment for checks presented to paying depository institutions prior to 2:00 p.m. in same-day funds, without the imposition of presentment fees. Adoption of the concept would provide private collecting depository institutions with the same presentment abilities Reserve Banks currently have (53 FR 11911, April 11, 1988). Board staff is currently analyzing the comments received and reviewing alternatives suggested by several commenters. If a viable alternative is developed and proposed for public comment, it could incorporate payment options, chosen at the discretion of the paying depository institution, that would provide for payment to the collecting bank after the close of Fedwire on the day of presentment. Thus, paying depository institutions would not be obligated to pay for checks presented by private collecting depository institutions earlier in the day than they would be debited for checks presented by Reserve Banks. The Board could also propose a similar change to Regulation CC regarding the timing of payment by a depositary bank for returned checks.

[9] Indicative of the large number of very small overdrafters, the number of depository institutions does not change significantly as the $10 million overdraft threshold is increased to $25 million (4,635), or decreased to $5 million (4,544). Similarly, changing the capital ratio has modest impact at the same dollar level: at a $10 million overdraft level, a 10 percent overdraft-to-capital ratio would exempt 4,383 depository institutions and a 50 percent ratio would exempt 4,708 depository institutions.

De Minimis Cap. Under the current *de minimis* cap, a depository institution may incur overdrafts up to the lesser of 20 percent of adjusted primary capital (or "U.S. capital equivalency" for foreign banks' overdrafts on Fedwire) or $500,000, so long as the institution does not incur daylight overdrafts on a regular basis. The depository institution must file a board-of-directors' resolution with its Reserve Bank approving its use of a *de minimis* cap but need not engage in a full self-evaluation process. The Board is proposing a new *de minimis* cap category with no frequency or dollar-limit tests, but still requiring a board-of-directors' resolution to obtain the 20 percent of capital cap.

A small number of depository institutions would benefit if the existing *de minimis* cap were modified to remove the $500,000 limit and the frequency test, retaining only the 20 percent of capital constraint. This modified cap category would differ from the exempt category in two ways: (1) While retaining a 20 percent of capital constraint, it would have no $10 million limit, and, hence, would be of value only to larger depository institutions; and (2) it would, like the present *de minimis* cap, require board-of-director filing, but not a self-evaluation. The modified *de minimis* cap would be a useful transition grouping for larger depository institutions between the proposed exempt-from-cap-filing category and the lowest cap requiring self-evaluation and board-of-directors' resolutions.

Exclusion of CHIPS Net Debits. Provided that settlement finality is implemented on CHIPS, the Board proposes that the cross-system sender net debit cap be eliminated, with the current cap multiples applied only to total Fedwire overdrafts. Under current procedures, Fedwire caps are reduced by any net debit on CHIPS. When these procedures were adopted, they were intended to control not only the use of Federal Reserve intraday credit, but also to serve as a check on systemic risk. With reasonable means of assuring settlement finality, the system risk associated with the potential failure of a CHIPS participant to settle should be reduced significantly. Each participant would have an increased incentive to be cautious in setting bilateral net credit limits for other participants. Moreover, shifts of Fedwire payments to CHIPS to avoid Fedwire overdraft fees would be likely to result in expanded exchanges of payments among the few largest CHIPs participants. If this assumption is correct, net debit positions subject to cross-system caps should not change significantly as participants both receive and send more on CHIPS. Finally, elimination of the cross-system cap would be consistent with the policy statement on private book-entry systems that the Board issued today (see Docket No. R–0665, elsewhere in today's Federal Register), which does not impose the cross-system cap on those systems that adhere to the policy statement on risk control and settlement finality.

CHIPS serves almost 140 participating banks. Twenty-two of these participants are settling banks, i.e., at the end of the day, they settle the day's transactions on a net basis both for their own account and as correspondents for non-settling participants. Settlement is effected at the end of the day when Fedwire payments by those settling depository institutions in debit position are made to a settlement account at the New York Reserve Bank, followed by Fedwire transfers from the settlement account to all settling depository institutions in net credit position.

The payments volume on CHIPS, more than three-quarters of which is associated with foreign exchange and Eurodollar transfers, is somewhat larger than Fedwire funds transfers (about $700 versus about $660 billion per day in the fourth quarter of 1988). However, the average aggregate peak intraday net debit position on CHIPS is smaller than Fedwire funds daylight overdrafts (about $45 billion per day versus $60 to $65 billion per day). Although less than Fedwire, the net daylight credit exposure on CHIPS still represents a potential major systemic risk should a CHIPS participant be unable to settle its net debit position.

To reduce the systemic risk on CHIPS, the Board in recent years has encouraged the NYCH to adopt risk-reducing measures. Thus, in 1984, the NYCH implemented a system of network bilateral credit limits, and in 1985 established CHIPS-specific sender net debit caps. The former requires each participant to make an assessment of the creditworthiness of its counterparty, and the latter establishes a limit on the total exposure any one bank can create on CHIPS.

Despite these steps, if a participant is unable to settle its debit position at the end of the day, the CHIPS rules provide that payments to and from that participant be "backed out" of the settlement and new net positions calculated for the remaining participants; the calculation of the new net positions could continue until settlement is achieved. Despite this potential for revised settlement, participants permit most of their customers to use credits for CHIPS payments during settlement day, while reserving the right to charge back such credits if the transferring bank does not settle its CHIPS position. Simulations of the impact of a CHIPS participant's inability to settle suggest that such failures to settle could drastically change the net position of other participants, inducing a series of failures to settle by them. Thus, the current CHIPS rules and the practices of participants could lead to the systemic failure of depository institutions and/or pressure on the Federal Reserve to provide liquidity assistance while losses and solvency problems are determined.

The Federal Reserve has encouraged the NYCH to adopt settlement finality for CHIPS. Settlement finality would assure that CHIPS payments will be settled each day, even if one large, or several smaller, participants are unable to settle. Thus, liquidity pressures will be dealt with immediately, while allocation of losses can be resolved at a later time. In response to these concerns, the NYCH has developed a plan to implement settlement finality in late 1990 or early 1991 based on the netting of payments and a formula for sharing the risk of the remaining uncovered net debits.

Settlement finality on CHIPS does not eliminate private direct credit risk. Under the NYCH plan, specified CHIPS participants must cover the net debit of the failed participant, but that share is of a size unlikely to cause the failure of any one of them. Although the NYCH plan would provide for settlement finality on the day of a participant's failure to settle, there is some uncertainty as to whether the calculated multilateral net positions are legally binding obligations. The Federal Reserve is encouraging the NYCH to explore means of assuring that certainty, but even with uncertainty, the proposed CHIPS settlement finality will produce a substantial reduction of systemic risk.

In addition, because of the added settlement obligation aspects of the NYCH plan for settlement finality on CHIPS, CHIPS bilateral credit limits may be reduced and some small participants can be expected to withdraw from CHIPS. The number of transactions and the dollar volume of payments on CHIPS is likely to decline only moderately after settlement finality, as long as those depository institutions leaving CHIPS can find correspondents willing to conduct business for them. In fact, volume could increase with shifts from Fedwire if Fedwire overdrafts are priced.

The exclusion of CHIPS net debits from caps would benefit the 35 CHIPS participants that have large net debits on that system. Elimination of the cross-system cap would increase their ability to conduct Fedwire activity within their cap. The CHIPS activity of the remaining 105 participants does not generally result in a high cross-system cap utilization rate, and thus elimination of the cross-system cap would not affect these institutions.

The approximately 50 foreign banks that incur net debits on CHIPS would be virtually unaffected by the elimination of cross-system caps. Currently, foreign banks are allowed to incur Fedwire overdrafts up to the amount of their Fedwire cap (based on U.S. capital equivalency), regardless of CHIPS debits. Foreign banks cross-system debit caps are based on world-wide capital, and they are permitted to incur Fedwire overdrafts above their Fedwire caps (up to their cross-system caps) by posting collateral for the amount of such overdrafts in excess of their Fedwire caps. Under the proposed revisions to the foreign bank overdraft policy, however, foreign banks exceeding their Fedwire cap woudl have to collateralize the entire amount of their Fedwire overdraft, not just the amount over their Fedwire cap. Under the proposal, foreign banks could have Fedwire overdrafts up to the amount of their cap multiplied by their world-wide capital if all of those overdrafts were collateralized. (See Docket No. R–0670, elsewhere in today's Federal Register.)

Capital

The Board proposes, for the purpose of determining caps, that all domestic depository institutions use the same definition of "capital" that bank supervisors will require U.S. commercial banks to use for meeting their risk-based capital requirements. Depository institutions that choose to access Fedwire through multiple accounts would continue to be required to allocate their capital for debit cap purposes to each Reserve Bank at which they incur overdrafts; one administering Reserve Bank would still have overall risk-management responsibilities.

If CHIPS overdrafts are excluded from caps, foreign banks would be relieved of reportiing worldwide capital for the purpose of computing their cross-system debit cap. Under the proposal, the only foreign bank overdrafts subject to cap would be Fedwire overdrafts based on U.S. capital equivalency. If, however, the foreign bank overdraft policy is changed as discussed above, foreign banks would be required to report their wordwide capital if they wished to incur collateralized Fedwire overdrafts, which would be limited to their cap multiplied by their world-wide capital. In that case, those foreign banks whose home countries participated in the Basle Accord might, in the name of reduced burden, be given the option of reporting either their lower (but easier to report) world-wide equity capital for cap purposes or their capital in accordance with the Basle Accord as applied by home country supervisors.

The "capital" concept that has been used in the payments system risk reduction policy to determine the maximum permissible overdrafts (the cap multiple times capital) is primary capital less certain intangible assets. This "adjusted" primary capital concept for commercial banks is refined for other types of depository institutions to be consistent with the bank concept, given any special institutional characteristics of these depository institutions.[10]

In the past year, the U.S. bank supervisory agencies have adopted new risk-based capital requirements consistent with the Basle Accord. (See 54 FR 4186, January 27, 1989.) The new requirements will be phased in from 1990 through 1992. For consistency, it would be desirable if the capital base used for the Board's daylight overdraft policy were the same as that used for certain other supervisory purposes, such as the computation of risk-based capital.

The new international risk-based capital standard divides capital into two tiers. Tier I is composed of "pure equity" less goodwill.[11] Tier I alone would be smaller than adjusted primary capital for all depository institutions. Tier II (which cannot exceed Tier I) is composed of certain forms of hybrid capital, preferred stock, subordinated debt (up to 50 percent of Tier I capital), and loan loss reserves (up to 1.25 percent of risk-weighted assets).[12] For most banks, the sum of the two tiers exceeds their adjusted primary capital, as the inclusion of subordinated debt and hybrid capital in Tier II exceeds the reduction due to the limited inclusion of loan reserves now fully included in primary capital. The ratio of estimated risk-based capital to adjusted primary capital at the 286 U.S. chartered banks that, in the February 1988 test period, had overdrafts of sufficient size to require filing for a cap suggests, on average, that risk-based capital for U.S. banks incurring overdrafts subject to cap would be about 15 to 25 percent higher than adjusted primary capital, increasing maximum permissible overdrafts by that amount.

The Administration's proposal to address the thrift problem and to modify the regulatory structure of the thrift industry would apply bank capital standards to thrift institutions, other than credit unions, by 1991. In the test period, only 13 thrifts (excluding credit unions) incurred overdrafts above the exemption level. As might be expected, some of these entities would face larger increases in capital requirements than banks. About half of them, however, would have no increase in capital for overdraft purposes because most of the regulatory accounting adjustments are already eliminated from adjusted primary capital for thrifts.[13] In the aggregate, the 60 thrifts (including credit unions) with Fedwire overdrafts in excess of the exemption level incurred only about $300 million of overdrafts in the February 1988 test period, about 0.2 percent of total Fedwire overdrafts.

[10] "Primary" capital for commercial banks is common stock, perpetual preferred stock, surplus, undivided profits, contingency and other capital reserves, cumulative foreign currency transaction adjustments, qualifying mandatory convertible instruments, allowance for possible loans and lease loses (exclusive of any allocated transfer risk reserves), and minority interest in equity accounts of consolidated subsidiaries. Intangible assets are subtracted from this total to obtain "adjusted" primary capital. (Equity capital of Edge corporation subsidiaries is also subtracted from the parent's capital if the parent permits the subsidiary to incur its own overdrafts).

For savings and loan associations and federal savings banks, "primary" capital is composed of perpetual preferred stock, permanent reserves or guaranty stock, contributed capital, qualifying mutual capital certificates, net worth certificates, income capital certificates, retained earnings, and all general valuation allowances. From this total are deducted deferred net losses on loans and other assets sold, goodwill, and other intangible assets to obtain "adjusted" primary capital. Mutual savings banks' capital measures are similar.

[11] Common Stock, surplus, undivided profits, capital reserves, cumulative foreign currency translation adjustments, and the minority interest in consolidated subsidiaries. While goodwill is deducted, in general, mortgage servicing rights and other identifiable intangible assets are not.

[12] More specifically, hybrid capital is the sum of net equity contract notes and equity commitment notes; preferred stock must be noncumulative perpetual preferred, subordinated debt is the sum of limited life preferred and subordinated notes and debentures, and loan loss reserves must be general provisions and not for specific assets.

[13] Deferred net losses on loans and assets sold and goodwill are deducted from both current and proposed capital; risk-based capital would generally permit the inclusion of mortgage servicing rights and other intangibles (existing goodwill is grandfathered through 1992, and then excluded), while all forms of intangibles are now excluded from adjusted primary capital; net worth and income capital certificates are included in adjusted primary capital but would be excluded from the new capital standard; FSLIC and FDIC notes could serve to raise capital under both standards.

Impact of Proposal on Cap Utilization

According to the data collected during the February 1988 survey, under the current posting procedure, excluding book-entry overdrafts and with no exemptions or exclusions, 3,414 depository institutions with $92.7 billion of intraday peak overdrafts subject to cap would be covered by the current daylight overdraft policy. If book-entry overdrafts were added to the amount subject to cap assuming the current overdraft measurement methodology and no exemptions of small overdrafters or exclusions of CHIPS net debits, the number of overdrafters would have risen by only 100 or so depository institutions, but the amount of overdrafts subject to cap could have increased by over $40 billion to $133.6 billion. The proposed modification of posting procedures would have raised the total number of depository institutions with overdrafts by almost 1,600 depository institutions to 5,097,[14] and would have raised the aggregate level of overdrafts an additional $17 billion to $150.8 billion. This latter increase in overdrafts and overdrafters reflects the shift of non-wire net credits from opening-of-day to close-of-day posting for about 2,700 depository institutions that had such credits in the test period. It is this shift in posting that accounts for the large increase in the number of overdrafters. However, the inclusion of book-entry overdrafts accounts for two-thirds of the dollar increase in overdrafts.

If CHIPS net debits were removed from overdraft calculations and then smaller overdrafters were excused from filing for the Fedwire cap, the number of depository institutions that would have had to file for either a *de minimis* or other cap in the test period would fall to less than 450. However, the total Fedwire overdrafts at depository institutions subject to caps would have fallen only from $120.2 billion to $118.4 billion. Thus, with the small overdrafter exemption and the CHIPS exclusion, most depository institutions would not be directly affected by the change in the posting rules, and the amount of Fedwire overdrafts subject to the policy would be reduced by only a small amount.

One hundred forty-three depository institutions would have exceeded their cap during the test period under the proposed rules. Most of the overdrafts above cap are at a small number of depository institutions that exceed their caps because of book-entry overdrafts. In fact, the four major book-entry clearers accounted for virtually all of the overdrafts in excess of cap. As discussed in Docket No. R–0669, the Board is proposing that such depository institutions be permitted to exceed their cap, provided they post collateral. Thus, the cap per se is not a constraint for these depository institutions.

Most of the remaining overdrafts at depository institutions that would have exceeded their cap in the test period where at six large banks that would have exceeded their caps due to the proposed posting change. About one-half of the overdrafts at these six banks, and an even larger amount at other depository institutions (including some of the major book-entry clearers) was related to the settlement for maturing commercial paper.[15] The Depository Trust Company ("DTC") is expanding its existing same-day settlement system to include book-entry processing for commercial paper. Both the proposed posting procedures and pricing for overdrafts should accelerate this effort. The DTC book-entry system will virtually eliminate Fedwire overdrafts associated with commercial paper issuance, transfers, and redemption, removing a substantial part of the overdrafts above cap associated with the posting proposal.

During the test period, a significant part of the remaining overdrafts above cap, as well as those at a small number of other depository institutions with high cap utilization rates, were at correspondent banks that had only modest overdrafts under the current posting procedure. These depository institutions now benefit from opening-of-day posting of net credits for checks they collect on their own behalf and for respondents through the Federal Reserve and/or through local clearinghouses that settle on the books of the Reserve Banks. These credits would be recognized at the end of the day under the proposal.

Eighty-seven depository institutions incurred a modest level of overdrafts that exceeded their proposed 20-percent-of-capital *de minimis* caps because of the new posting rules. Some of these depository institutions could file for non-*de minimis* caps and operate with the new posting procedures.

Bankers' banks cannot avoid the impact of the posting proposal by filing for a cap. Bankers' banks are exempt from reserve requirements and, hence, do not have access to the discount window. Depository institutions without such access may not incur Fedwire overdrafts because they may, in some circumstances, have no other way to cover a daylight overdraft at the end of the day. Some bankers' banks may choose to become member banks in order to gain access to the discount window and thus avoid a restriction on the size of deposit a member bank may place with the bankers' bank.[16] However, Congress intended that discount window access be available only to a depository institution that is subject to reserves.[17] A bankers' bank eligible to become a member may have access to the discount window upon approval provided it agrees to maintain reserves. Nine bankers' banks have done so. Because the Board has ruled that credit unions may not become member banks, this access to the discounty window is not available to corporate credit unions.[18] Thus, bankers' banks organized as credit unions may not incur daylight overdrafts on Fedwire so long as they qualify as bankers' banks. They would have access, and would be subject to reserve requirements, if they fail to qualify as bankers' banks. For example, it may be possible for credit unions organized as bankers' banks to amend their charter so as to become depository institutions eligible for Federal Reseve credit. The Board requests comment on the effect of the risk proposals on bankers' banks and possible solutions to any problems.

During the test period, 43 bankers' banks, virtually all of which were corporate credit unions, incurred overdrafts under the proposal, mainly as the result of the loss of opening-of-day net credits for non-wire transactions.

[14] During the test period, about 2,100 depository institutions incurred overdrafts under the posting proposal that would not have done so under the current policy, but over 400 would have ceased overdrafting under the proposal because their current opening-of-day ACH debits and/or late afternoon non-wire net debits would not be posted until after the close of Fedwire.

[15] Maturing commercial paper is presented to paying agent depository institutions by custodian or collecting depository institutions. New York Clearing House members settle such paper, net, as part of the New York Clearing House net settlement on the books of the Federal Reserve Bank of New York. Those depository institutions in a net credit position on the net settlement now receive that credit at the opening of the day. Under the proposal, this credit would be received after the close of business. In addition, issuing agent depository institutions often provide the issuers with proceeds of new issues before investors have transferred funds to the issuing agent depository institution.

[16] Section 19(e) of the Federal Reserve Act provides that nomember bank shall keep on deposit with any depository institution without access to the discount window under section 10(b) of that Act a sum in excess of 10 percent of the member bank's capital and surplus.

[17] Colloguy of Congressmen St. Germain and Wirth, 126 Cong. Rec. H2291 (March 27, 1980).

[18] See letter from Secretary of the Board to Federal Reserve Bank of Minneapolis, S–540, August 6, 1942.

While none incurred an overdraft as high as $50 million, the total overdrafts of such depository institutions were $200 million. Only three of the depository institutions could have met the exemption proposal if they were eligible for it. Relative to capital, their overdrafts under the proposed measuring procedure would in virtually all cases not permit them to operate within any cap constraint, if they were permitted to have a cap. Bankers' banks would thus, under the proposal, have to hold larger balances, reduce their federal funds sales, or take similar actions to reduce their wire payments relative to their wire inflows and balances.

In view of the proposal's impact on the overdraft level of various types of institutions, the Board requests comment on alternative approaches to the treatment of Fedwire overdrafts over cap. For example, should some level of overdrafts in excess of cap continue to be permitted in extraoridinary cases at the discretion of the Fedeal Reserve Bank? Further, some overdrafts are readily secured and generally self-liquidating. For example, under the terms of Section 4–208 of the Uniform Commercial Code, depository institutions handling a check for collection may have a security interest in the check until payment is received. Overdrafts in excess of cap incurred in anticipation of check credits would be paid routinely when the credit is posted. Should such readily secured, self-liquidating overdrafts, or other secured overdrafts, in excess of cap be permitted? Who should bear the cost of maintaining collateral if collateralized overdrafts in excess of cap were permitted? Would permitting collateralized ovedrafts in excess of cap increase risks to other creditors of overdrafting depository institutions?

Federal Reserve Operational Modifications for Pricing

Federal Reserve operating outages could affect intraday liquidily in the banking system and thereby contribute to measured overdrafts at individual depository institutions. Therefore Fedwire's operating reliability is critical to the success of the payments system risk reduction program. To assure greater Fedwire reliability, the Federal Reserve Banks are improving overall Fedwire processing performance and developing and implementing disaster recovery capabilites for Fedwire operations.

Fedwire's reliability is high and has been improving steadily. The time Fedwire was unavailable during business hours, decreased sharply in 1988. Funds transfer downtime decreased by almost 50 percent and securities transfer downtime decreased by approximately 40 percent from the 1987 levels. In 1988, the funds transfer and securities transfer systems achieved 99.59 percent and 99.41 percent availability, respectively.

Hardware and software systems that will reduce the likelihood of Fedwire outages and facilitate more rapid recovery from operations problems are being implemented to improve reliability further. In addition, the Federal Reserve is strengthening its disaster recovery capabilities to minimize the likelihood of a prolonged service disruption. The New York Reserve Bank has demonstrated, in disaster recovery simulations at its dedicated contingency site, the ability to recover Fedwire operations, reconcile funds and securities transfers, and resume processing of new transfers within four hours of a disaster. The Chicago and San Francisco Reserve Banks also currently have, or are in the process of establishing, dedicated backup sites for Fedwire processing. The remaining Reserve Banks share a disaster recovery site located in Culpeper, Virginia.

Federal Reserve pricing for daylight overdrafts will require that reliable information be made available to depository institutions by their Reserve Banks regarding the depository institutions' payment activity affecting their reserve or clearing accounts during the day. The Reserve Banks have developed an Account Balance Monitoring System ("ABMS"), which will enable depository institutions to obtain their current account balance during the day. The ABMS will reflect the depository institution's opening balance, funds and securities transfers as they occur, and selected non-wire transactions that would be posted to the monitor periodically during the day consistent with this proposal. While some institutions may rely on ABMS exclusively, other institutions may use it in conjunction with their own internal monitoring systems. ABMS will be available to depository institutions before any pricing scheme in implemented.

Proposed Implementation Schedule

The Board proposes that the new payments system risk reduction policy be implemented in a series of staggered effective dates. As indicated on Docket No. R–0669, Fedwire debit caps would be applied to total Fedwire overdrafts (funds and book-entry), with collateral required for total Fedwire overdrafts exceeding the Fedwire cap because of book-entry securities transfers, in the second quarter of 1990. As indicated in Docket No. R–0670, the effective date for requiring collateral of all Fedwire overdrafts of foreign banks with Fedwire overdrafts exceeding their cap based on U.S. capital equivalency would also be in the second quarter of 1990.

The Board proposes that the use of risk-based capital to compute debit caps as well as the other cap and daylight overdraft measurement proposals become effective in late 1990 or early 1991. CHIPS settlement finality is also expected to occur within this time frame, and thus CHIPS net debits would be excluded from the cross-system net debit cap in late 1990 or early 1991.

Approximately three months after adoption of the overdraft measurement changes, Reserve Banks would begin sending mock bills to depository institutions as if pricing were being applied. The Board proposes that, by mid-1991, Reserve Banks would begin assessing the first 10 basis points of the 25 basis point charge. The second 10 basis points would be applied in mid-1992 and the final 5 basis points in mid-1993. The Board reserves the right to accelerate or extend the phase-in period, depending on market responses. The Board also reserves the right to terminate the phase-in at a lower price than 25 basis points or to continue the phase-in to a higher price, depending on market responses.

By order of the Board of Governors of the Federal Reserve System, June 15, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89–14636 Filed 6–20–89; 8:45 am]

BILLING CODE 6210–01–M

[Docket No. R–0665]

RIN 7100–AA76

Policy Statement on Private Delivery-Against-Payment Systems

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Policy statement.

SUMMARY: The Board is issuing a policy statement establishing guiding principles for reducing risk on delivery-against-payment systems that settle on a net same-day basis over the Federal Reserve's wire transfer system. The Board believes that adherence to the policy statement will reduce systemic risk for both the Federal Reserve and system participants. This policy statement is issued in conjunction with the Board's requests for comments on proposals regarding its payments system risk reduction program and its policy

statements regarding offshore clearing systems and rollovers and continuing contracts, published elsewhere in today's Federal Register.

EFFECTIVE DATE: June 15, 1989.

FOR FURTHER INFORMATION CONTACT: Edward C. Ettin, Deputy Director, Division of Research and Statistics (202–452–3368); Oliver I. Ireland, Associate General Counsel (202–452–3625) or Stephanie Martin, Attorney (202–452–3198), Legal Division; for the hearing impaired *only:* Telecommunications Device for the Deaf, Earnestine Hill or Dorothea Thompson (202–452–3544).

SUPPLEMENTARY INFORMATION: The Board is concerned about the systemic risk associated with private large-dollar payments and clearing systems. The potential systemic risk caused by the failure of a private system participant to settle its obligations can be far broader than the direct credit risk exposure to the Federal Reserve if a depository institution were unable to settle its net debit position on the Federal Reserve's wire transfer system ("Fedwire"). The receiver of a Fedwire payment is insulated from any losses associated with the failure of the sender because the receiver of the transfer receives good funds from the Federal Reserve upon receipt of advice of the credit; the Federal Reserve absorbs the direct credit risk that otherwise would be borne by counterparties to Fedwire payments.[1] Thus, the repercussions of the failure of an overdrafting sender on Fedwire to settle its obligations end with the loss to the Federal Reserve; no systemic losses are incurred by direct or indirect creditors of the Federal Reserve. In contrast, the creditor of participants on private networks are subject to systemic risk. This risk occurs because the direct counterparties of a failing participant may bear losses that in turn may affect their ability to meet their own settlement and other obligations. Additional indirect credit relationships may exist among participants in a network or in interbank credit relationships outside of payments networks. These indirect credit relationships and their attendant credit risks increase systemic risks associated with the failure of a participant to settle on a private network.

[1] The private sector still faces credit losses outside of the payments system associated with a failing depository institution. Such indirect private-sector risks increase when the Reserve Banks reduce their direct credit risk by taking collateral to cover their daylight credit extensions. Failure of a sender would then cause no losses for Reserve Banks even though the receiver obtains full payment; other creditors of the failed depository institution, however, have fewer assets against which to make a claim.

The Board is issuing a policy statement to address intraday credit risks arising out of the delivery of securities against payment through systems other than Fedwire. The Board believes that private book-entry systems have the potential to (1) Reduce operating risk by supplanting separate physical delivery and wire payment for definitive instruments; (2) lower operational costs by setting net positions rather than each underlying transaction, which also reduces the volume of funds necessary for settlement; and (3) reduce credit exposures by reducing the volume of intraday credit extensions. In addition, such systems lend themselves to techniques that permit participants to establish credit discipline amoung themselves. With the proper safeguards, such as collateral, debit caps, bilateral credit limits, pre-arranged loss-allocation formulas, and legally binding netting and close-out arrangements (e.g., novation), these systems can also be risk-reducing. In addition, such risk-reducing safeguards would serve to focus the attention of system participants on their own risk exposure.

The Board's policy statement establishes general guidelines to ensure that settlement occurs in a timely fashion and that participants do not face excessive intraday risk. Guidelines are established in four areas: (1) Liquidity safeguards for ensuring settlement, (2) provisions for reversals, (3) credit safeguards, such as collateral and netting features, and (4) open settlement accounting. The rules and procedures of those delivery-against-payment systems that use the Federal Reserve's net settlement services would be subject to prior and ongoing review on a case-by-case basis by the Federal Reserve in accordance with the Board's policy statement.

Policy Statement On Private Delivery-Against-Payment Systems

Private delivery-against-payment securities systems that settle on a net, same-day basis entail credit and liquidity risks for their participants and for the payments system in general. This policy statement provides guidance on payment risk management for those delivery-against-payment systems that settle their end-of-day obligations directly or indirectly over Fedwire.

The policy specifically addresses intraday credit risks arising out of the delivery of securities against payment through systems other than the Federal Reserve's wire transfer system ("Fedwire"). These systems meet the criteria listed in the Board's definition of a large-dollar payments system, but generally will not be subject to the specific measures adopted as part of the Board's risk reduction program, such as cross-system debit caps, provided that these systems conform to the requirements of this policy statement.

The Board believes that these systems should include risk-controlling features if they are to rely on Fedwire for ultimate settlement. The need for such risk controls is becoming increasingly important in view of these systems' potential for growth and high volume and the possible future course of the Federal Reserve's payments system risk reduction program, e.g., pricing intraday Fedwire funds and book-entry overdrafts. The Board is, therefore, establishing the following general policy framework for the treatment of the payment risk in private-sector delivery-against-payment systems under its risk reduction program.

Delivery-against-payment securities systems, as described below, are expected to adopt appropriate liquidity and credit safeguards in order to ensure that settlement occurs in a timely fashion and that the participants do not face excessive intraday risks. In view of the continuing evolution of these systems, the Board has decided to establish general guidelines rather than to specify the exact form such safeguards should take. Reversals or "unwinds" of funds and securities transfers, however, are not considered appropriate liquidity control measures.

The policy addresses four issues: (1) Liquidity safeguards for ensuring settlement; (2) provisions for reversals; (3) credit safeguards, such as collateral and netting features; and (4) open settlement accounting. These components, and the scope and regulatory implications of this policy, are described below.

Scope of the Policy. This policy statement is specifically targeted at large-scale private delivery-against-payment securities systems that settle their obligations on a net, same-day basis over Fedwire, either directly or indirectly. These systems settle securities transactions for their participants by tranferring securities and the accompanying payments obligations on the books of a clearing corporation or a depository institution operating the system and arrange for final settlement of the funds positions on a net basis at the end of the processing day. Settlement on a "net basis" means that the funds obligations are netted among all participants, so that a participant can settle obligations to or from many counterparties by making a

single transfer to or from the system. "Same day" settlement means that the appropriate funds and securities transfers are settled on the day that a delivery-against-payment request is entered into the system. "Large-scale" systems are those systems that routinely process a significant number of individual transfers larger than $50,000 or that would permit any one participant to be exposed to a net debit position at the time of settlement in excess of its capital.

This policy applies to systems that function primarily as a means of transferring securities and funds between participants. If a firm or bank is providing clearing services to a customer, and these services focus primarily on the bilateral relation between the clearer and the customer, the firm or bank would not be viewed as a system under this policy. Moreover, at least initially, a system that is an integral component of a full service ban, such that obligations that settle on an item-by-item basis are the direct obligations of the bank, will not be subject to this policy because of the existing supervisory oversight of a bank's liquidity and credit resources.

This policy applies to systems in the United States that transfer debt and equity securities, including those not eligible for Fedwire. The policy does not apply to systems dealing with other financial instruments, such as futures and options.

This policy is directed at limiting the risks arising out of the intraday credit generated in private delivery-against-payment systems. The policy does not address other potential sources of risk in these systems, such as inadequate management or facilities. The Board expects that these systems will be subject to regulatory oversight because they are typically clearing agencies subject to supervision by the Securities and Exchange Commission, or because they are limited purpose trust companies subject to state or federal banking supervision, or both. These supervisors have broad responsibility for ensuring the safety and integrity of these systems.

Liquidity Safeguards. Because they give rise to intraday credit, private delivery-against-payment systems rely on payments by participants with net obligations to the system ("net debtor" participants) in order to make settlement payments to participants with net obligations due from the system ("net creditor" participants). In the absence of appropriate safeguards, failure by a single participant with a net debit position may delay all settlement transfers by the system. The result of a system's failure to settle in a timely manner will be that participants do not receive the transfers of funds and securities that they expected and that they may need to conclude transactions outside the system. Because settlement typically occurs at the end of the day, the system and net creditor participants will have relatively little time to react to any failure that may occur.

This policy seeks to ensure that these private systems settle in a timely manner, so that participants can rely on the funds or securities obtained as a result of transfers through the system. The importance of ensuring reliable transfers is due in part to the fact that these systems generally allow participants to re-transfer funds credits or securities acquired during the day. If, for example, a participant sold securities early in the day and later used his funds credits to purchase other securities, then a failure in the settlement of the earlier transaction could result in a failure of the settlement of the later transaction.

The Board believes that private systems should protect timely settlement by adopting safeguards that are commensurate with the risk of settlement failure. The Board recognizes that a private system relying on intraday credit will not be able to guarantee timely settlement of funds and securities transfers under all conceivable circumstances and, therefore, that such a system cannot make an absolute guarantee of settlement finality. At a minimum, however, a system must have sufficient safeguards so that it will be able to settle on time if any one of its major participants defaults. In addition, the Board strongly encourages systems to adopt settlement safeguards beyond this required minimum.

Liquidity arrangements that will enable a system to make end-of-day settlement payments are crucial settlement safeguards. Liquidity safeguards adopted by private delivery-against-payment systems should include provisions that give the system access to sources of readily available funding that will support timely settlement in case a participant is unable to settle its obligation. Funding sources could, for example, include prearranged lines of credit or a pool of funds contributed by the participants. The system should limit, on an intraday basis, the size of potential net debit positions to ensure that these liquidity sources will be adequate.

Because settlement risks and structure may vary in different systems, the Board does not consider it appropriate to specify the exact structure of acceptable safeguards. One example of an appropriate liquidity safeguard may be a cap on the net debit funds position that may be incurred by an individual participant, which is tied to the liquidity resources available to the system and/or to the participant. If such a cap is used, it may be appropriate for it to be administered in a flexible manner, with due regard for liquidity and credit risks and for the efficient operation of the system.

Generally, net debits incurred by a depository institution within the system will not be applied to cross-system net debit caps established under the risk reduction program, which are applicable to Fedwire or CHIPS, nor will net credits on these systems be available as offsets.

Reversals. Currently, certain systems permit reversals of transfers of funds and securities to facilitate settlement if a participant defaults. By reversing transactions, the systems try to reduce the obligations of the defaulting participant. However, settlement with reversals will not ease the liquidity problems caused by a default; reversals will simply transfer a liquidity shortfall from the defaulter to another participant and will do so at the end of the day, when it may be difficult to arrange for alternate sources of liquidity. The return of securities, with the resulting reversal of a funds credit, may cause the participant receiving the returned securities to default on its obligations. Thus, settlement using reversals will not achieve this policy's objective, because participants will not be able to rely on transfers of funds and securities if transfers may be reversed.

Because the Board does not view reversals as a satisfactory liquidity safeguard, the systems covered by this policy should not use reversals as a substitute for liquidity arrangements, such as those discussed above, in order to ensure timely settlement.

Credit Safeguards. As stated above, these systems effectively allow participants to use intraday credit when receiving securities. All participants may be affected by one participant's failure to repay this credit if the system's liquidity arrangements permit settlement. The Board, therefore, believes that these systems should adopt clear loss-allocation rules and should minimize credit risks incurred through the system. Methods of reducing credit risk may vary in different systems. Appropriate methods include requiring contributions by all participants to a fund that may be used in the event of a default or requiring the pledging of a sufficient volume of market-to-market collateral. The loss

allocation schedule should not increase risks to the system. In particular, the system should calculate the loss resulting from a default on the basis of the net obligations of the defaulter rather than on the basis of the underlying gross obligations between the defaulter and its counterparties. Thus, the Board would find a loss allocation scheme to be unacceptable if it reversed all transactions between the defaulter and other participants.

It is worth noting that this policy statement, including the restriction on reversals, is not intended to prevent a system from allocating credit losses to the counterparty of a defaulter based on the business dealings between the counterparty and the defaulter. It may be appropriate and prudent for a system to have rules which would require participants who have dealt with the defaulter to be responsible, after settlement, for the related loss. These arrangements could well include returning securities to the counterparty to help absorb the loss.

Open Settlement Accounting. As the systems described in this policy grow in size and volume, the timely and orderly completion of end-of-day settlements take on an increased importance for the settlement of other large-dollar payments systems. As a general matter, the Board believes that it will be easier for market participants and supervisors to monitor and protect against settlement risks if current information is readily available. Participants in a delivery-against-payment system should therefore have up-to-date information on their net position and on the settlement progress of the system, and appropriate market supervisors should have ready access to current intraday information on both the system's settlement and participants' positions. For those systems wishing to use Fedwire payments as a means of settlement, the Board encourages the use of Federal Reserve Bank net settlement services rather than individual wire payments that cannot be distinguished from all other Fedwire payments. This policy is in no way intended to broaden access to Federal Reserve services; neither Fedwire nor net settlement services will be available, as a general matter, to non-member nondepository institutions.

By order of the Board of Governors of the Federal Reserve System, June 15, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-14638 Filed 6-20-89; 8:45 am]

BILLING CODE 6210-01-M

[Docket No. R-0667]

RIN 7100-AA76

Policy Statement on Rollovers and Continuing Contracts To Reduce Daylight Overdrafts

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Policy statement.

SUMMARY: The Board is issuing a policy statement encouraging the prudential use of rollovers and continuing contracts to reduce daylight overdrafts on Fedwire. The Board believes that the use of such arrangements is consistent with its overall payments system risk reduction program. This policy statement is being issued in conjunction with the Board's requests for comments on proposals regarding its payments system risk reduction program and its policy statements regarding private delivery-against-payment systems and offshore clearing systems, published elsewhere in today's **Federal Register**.

EFFECTIVE DATE: June 15, 1989.

FOR FURTHER INFORMATION CONTACT: Edward C. Ettin, Deputy Director, Division of Research and Statistics (202/452-3368) or Oliver I. Ireland, Associate General Counsel, Legal Division (202/452-3625); for the hearing impaired *only*: Telecommunications Device for the Deaf, Earnestine Hill or Dorothea Thompson (202/452-3544).

SUPPLEMENTARY INFORMATION: The Board of Governors of the Federal Reserve System has issued the following policy statement concerning rollovers and continuing contracts to reduce daylight overdrafts. This policy statement is being issued in conjunction with the Board's requests for comments on proposals regarding its payments system risk reduction program and its policy statements regarding private delivery-against-payment systems and offshore clearing systems, published elsewhere in today's **Federal Register**.

Policy Statement on Rollovers and Continuing Contracts To Reduce Daylight Overdrafts

The Board of Governors of the Federal Reserve System believes that the use of market innovations, such as federal funds or Eurodollar rollovers or continuing contracts, to reduce daylight overdrafts on the Federal Reserve's wire transfer system ("Fedwire") and the New York Clearing House's Clearing House Interbank Payments System ("CHIPS") is consistent with the Board's policy concerning daylight overdrafts. The Board urges market participants to consider using such innovations for these and other financial instruments where feasible. In doing so, participants should be mindful that implementing changes of this type may involve incremental costs, at least transitionally, and modified risk positions. Accordingly, participants should evaluate these factors and take them into account when selecting and negotiating with counterparties.

Many overnight interbank federal funds and other similar purchases and sales are negotiated in the morning with the funds being sent over Fedwire in the afternoon. Typically the previous day's overnight borrowings are returned to the seller in the early morning, thus leaving a midday time gap of three or more hours between the morning repayment and the receipt of that same day's new borrowing. Often these transactions are between the same two banks for the same amount. This funding time gap can contribute to daylight overdrafts of the borrowing institution and create risk to Reserve Banks.

Rollovers are interbank overnight transactions where the principal does not change and is not returned the next day to the seller but, instead, is rolled over for the next overnight period. The overnight interest rate is negotiated daily between buyer and seller. The maturity is one business day, or no maturity is specified, and the arangement may be cancelled at any time by either party. The Board understands that national bank lending limits would not apply to federal funds transactions that have a maturity of one business day or no stated maturity and require no advance notice for termination. Because the rollover procedure eliminates the daily movement of principal on Fedwire and the corresponding time gap that could otherwise exist between repayment of the previous day's borrowings and receipt of new reborrowing, daylight overdrafts are reduced.

Continuing contracts are similar to rollovers. With a rollover, the size of each day's sale is the same. With a continuing contract, the size of each day's sale can vary, and only the difference in principal from the previous day's borrowing is moved over Fedwire or CHIPS. Such arrangements reduce the size of the daily movement of principal on Fedwire and CHIPS and also eliminate the time gap that could otherwise exist between repayment of the previous day's borrowings and receipt of new reborrowing, thereby reducing Fedwire daylight overdrafts or net debits on CHIPS. When the same maturity conditions apply to a continuing contract as apply to a

rollover (one business day or unspecified maturity and cancellation at any time by either party) national bank lending limits do not apply.

An industry task force that evaluated alternatives for reducing the level of daylight overdrafts absorbed by the federal funds and Eurodollar markets sought to devise improved settlement practices, e.g., rollovers and continuing contracts, that sustain the present rate negotiation mechanism. Each participant should satisfy itself that it has the flexibility to negotiate amounts, rates, and maturity options before using these practices for federal funds, Eurodollars, or other financial instruments. Either of these practices, rollovers or continuing contracts, can reduce daylight overdrafts or intraday net debits, and their prudential use by the banking industry is consistent with the Federal Reserve's policy of reducing intraday exposures on Fedwire and CHIPS. When borrowing banks reduce their daylight overdrafts by use of these practices, some extra operational costs and risks may be incurred by either party compared to current arrangements in the overnight market. For example, sellers of federal funds and other instruments may have to develop alternative audit trail procedures and may accept some addition risk of repayment since funds would not be returned each day before they would be relent. In addition, buyers of federal funds and other instruments may experience some extra initial operating costs to set up rollover arrangements between themselves and lending banks and may have to pay a higher rate to induce lenders to commit their funds for a longer time. However, these costs and risks, if any, should be reflected in the rate or rate spread received and paid. On balance, however, it is unclear whether rates on interbank funds transferred daily over Fedwire and CHIPS will fall relative to rates paid for rollovers, continuing contracts, or term funds, or whether the reverse will occur. The Board believes that it is important that the negotiation of terms relative to the use of these arrangements be left to the free operation of the private market.

The Board also supports efforts to encourage timely return of overnight federal funds and other borrowings and encourages operational improvements that would consistently allow timely receipt of funds purchased soon after a seller negotiates a sale. Similar arrangements and industry standards were suggested for federal funds by the American Bankers Association in July 1986.

By order of the Board of Governors of the Federal Reserve System, June 15, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-14639 Filed 6-20-89; 8:45 am]

BILLING CODE 6210-01-M

[Docket No. R-0670]

RIN 7100-AA76

Proposals To Modify the Payments System Risk Reduction Program; U.S. Agencies and Branches of Foreign Banks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Request for comment.

SUMMARY: The Board is requesting comment on a proposed risk reduction policy that would require collateralization of all Fedwire overdrafts (funds and book-entry) of foreign banks operating through U.S. agencies and branches if such overdrafts exceed the banks' Fedwire cap. This policy is proposed in conjunction with the other requests for comment and policy statements regarding the Board's payments system risk reduction program, published elsewhere in today's Federal Register.

DATES: Comments must be submitted on or before November 17, 1989.

ADDRESSES: Comments, which should refer to Docket No. R-0670, may be mailed to the Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551, Attention: Mr. William W. Wiles, Secretary; or may be delivered to Room B-2223 between 8:45 a.m. and 5:00 p.m. All comments received at the above address will be included in the public file and may be inspected at Room B-1122 between 8:45 a.m. and 5:15 p.m.

FOR FURTHER INFORMATION CONTACT: Edward C. Ettin, Deputy Director, Division of Research and Statistics (202/452-3368), Jeffrey C. Marquardt, Senior Economist, Division of International Finance (202/452-3697); for the hearing impaired *only*: Telecommunications Device for the Deaf, Earnestine Hill or Dorothea Thompson (202/452-3544).

SUPPLEMENTARY INFORMATION: This is one of three proposals regarding payments system risk reduction that the Board is issuing for public comment today. The others concern pricing of overdrafts on the Federal Reserve's wire transfer system ("Fedwire") and related overdraft measurement and caps proposals (Docket No. R-0668), as well as the inclusion of book-entry securities transfers in the measurement of Fedwire overdrafts (Docket No. R-0669). The Board encourages all interested parties to comment on each of these proposals. The Board urges that in filing comments on these proposals, commenters prepare separate letters for each proposal, identifying the appropriate docket number on each. This procedure will facilitate the Board's processing and analysis of the comments on these proposals by ensuring that each comment is quickly brought to the attention of those responsible for analyzing each specific proposal. In addition, the Board encourages entities that plan to submit identical comments, such as affiliated institutions within a holding company, to consolidate their efforts; the Board will give equal consideration to one letter signed by a number of commenters as it would to numerous identical letters submitted by those commenters. Comments are due November 17, 1989, and the Board does not intend to extend the comment period beyond that date.

In addition to its requests for comment, the Board is also issuing today three risk-related policy statements regarding private delivery-against-payment systems (Docket No. R-0665), offshore clearing and netting systems (Docket No. R-0666), and rollovers and continuing contracts (Docket No. R-0667).

In April 1985, the Board of Governors adopted a policy to reduce risk on large-dollar payments systems. This policy, which was implemented in March 1986, established a maximum amount of intraday funds overdrafts that depository institutions are permitted to incur over both Fedwire and private large-dollar payments systems. The maximum, or cap, is a multiple of a depository institution's adjusted primary capital and is based on a self-evaluation of a depository institution's creditworthiness, credit policies, and operational controls. In July 1987, the Board adopted a number of modifications to the daylight overdraft policy, including a two-step, 25 percent reduction in the cross-system net debit caps, thus reducing the maximum daylight overdrafts permitted to individual depository institutions.[1]

The Board has applied its daylight overdraft policy to foreign banks as well as domestic institutions in a manner consistent with the policy of "national treatment," i.e., applying similar rules to foreign entities operating within the United States as are applied to domestic institutions. In this regard, U.S.

[1] These reductions became effective in January and May 1988. See 52 FR 29255 (August 6, 1987).

subsidiary banks owned by foreign banks are treated identically to all other U.S. banks under the program. The policy for branches and agencies of foreign banks, however, of necessity, takes into account certain differences between these entities and domestically-chartered institutions, including the following: (1) Most of a foreign bank's assets and liabilities are located and controlled outside of the United States and only the operations of the U.S. branches and agencies are subject to supervisory review by U.S. authorities, and (2) for many foreign banks, the volume of dollar payments that would flow through their U.S. branch network is substantial relative to the level of their assets in the United States and their local dollar funding capacity. As such, there may be practical limits on the ability of branches and agencies of foreign banks to raise funds in the market, either through unsecured borrowings or by providing collateral in an acceptable form, to meet liquidity needs in the event of credit or operational problems.

In this initial policy, the Board based the cross-system cap (for Fedwire and CHIPS [2] combined) for branches of foreign banks on their world-wide capital, but based the Fedwire cap (for Fedwire funds overdrafts) on a surrogate for capital in the U.S. ("U.S. capital equivalency" [3]), which is significantly smaller than world-wide capital. Foreign banks with U.S. branches and agencies are permitted to incur Fedwire overdrafts above their Fedwire caps (up to the cross-system cap) by posting collateral for the amount of such overdrafts in excess of their Fedwire caps.

A few foreign banks operating through U.S. branches and agencies have indicated that Fedwire caps are too binding for their dollar payments business, that their Fedwire caps do not recognize their world-wide strength, and that their U.S. operations do not involve the kind of assets to permit the posting of collateral for larger Fedwire overdrafts. In the summer of 1987, the Board reconsidered its policy in light of these concerns and determined that the policy should not be changed. This decision was based in part on the fact that U.S. branches and agencies of foreign banks were generally operating well within their Fedwire caps and seemed to be able to obtain large volumes of private intraday credit on CHIPS.

Foreign bank representatives have noted that the Basle Accord capital standards should meet or alleviate the Board's concerns about the capital positions and supervision of foreign banks with U.S. branches and agencies. In early 1989, the Institute of International Bankers renewed its request that the Board permit world-wide capital to be used as the base for determining Fedwire caps for foreign banks operating in the U.S. through branches and agencies.

There continues to be little evidence, however, that foreign banks are seriously constrained in their access to U.S. payments systems, despite rapid growth in their overdrafts. Since the Board's policy was initiated, both Fedwire funds and CHIPS daily average peak overdrafts of U.S. branches and agencies of foreign banks have risen more rapidly than have those of U.S.-chartered entities. In the fourth quarter of 1988, 64 branches or agencies of foreign banks incurred $6.4 billion of Fedwire funds overdrafts, and 96 incurred $31.0 billion of CHIPS net debits. Very few of these entities use their Fedwire cap intensively, however the few who do exceed their Fedwire cap under the proposed policy would have to collateralize the total amount of their Fedwire overdraft.

The Board does not believe that the current daylight overdraft policy is causing a hardship for foreign banks. Moreover, given the lack of U.S. asset base and potential limits on dollar funding capacity that would apply to some foreign banks, the current policy appears to be sound. Including book-entry overdrafts under the cap policy (see Docket No. R–0669) would have virtually no impact on the Fedwire cap utilization of foreign banks operating through U.S. branches and agencies. However, the proposed collateral policy for book-entry overdrafters requires that collateral be posted by U.S.-chartered depository institutions for all Fedwire overdrafts if the Fedwire cap is exceeded because of book-entry overdrafts. A parallel policy for those U.S. branches and agencies of foreign banks that exceed their Fedwire cap based on U.S. capital equivalency would provide that collateral be posted equal to the total Fedwire overdrafts, not just the amount in excess of the cap. The current policy that permits U.S. branches and agencies of foreign banks to incur uncollateralized Fedwire overdrafts up to their Fedwire cap based on U.S. capital equivalency would not be changed. Under the proposal, foreign banks could have Fedwire overdrafts up to the amount of their cap multiplied by their world-wide capital if all of those overdrafts were collateralized.

At the current time, such a policy change would have virtually no impact on foreign banks, which use CHIPS much more than Fedwire and have relatively low Fedwire cap utilization rates. Such a change would also serve as better protection for Reserve Banks if large exposures do occur.

Accordingly, the Board is soliciting public comment on a proposal that would extend the collateral requirements to all Fedwire overdrafts (funds and book-entry) of foreign banks operating through U.S. branches and agencies if such overdrafts exceed their Fedwire cap. The Board also requests comment on the proposed general overdraft policy (see Docket No. R–0668) as it applies to these entities.[4] Specifically, the Board is requesting comment on the relative burdens and benefits of the proposed collateral policy versus maintaining the current policy (but including book-entry overdrafts in the total Fedwire overdrafts subject to cap).

The Board is also requesting comment on alternative definitions of U.S. capital equivalency, particularly in light of the recent international accord on the definition of bank capital. Commenters are asked to suggest alternative definitions that would provide a reasonable balance between the practical U.S. asset and dollar liquidity limits of foriegn banks and the interests of foreign banks in more flexible access to Fedwire.

By order of the Board of Governors of the Federal Reserve System, June 15, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89–14641 Filed 6–20–89; 8:45 am]

BILLING CODE 6210–01–M

[2] "CHIPS" is the Clearing House Interbank Payments System, operated by the New York Clearing House.

[3] U.S. capital equivalency is defined as the greater of (1) the sum of the amount of capital (but not surplus) that would be required of a national bank being organized at each branch or agency location or (2) the sum of 5 percent of the total liabilities of each branch or agency, including acceptances, but excluding (a) accrued expenses and (b) amounts due and other liabilities to offices, branches, and subsidiaries of the foreign bank.

[4] Edge corporations would continue, as now, to be required to post collateral for all their Fedwire overdrafts. No change in policy is being proposed for these entities.

Caisse Nationale de Credit Agricole S.A. Paris, France; Proposal To Offer Investment Advice and Securities Brokerage Services on a Combined Basis to Institutional Customers and To Engage in Other Securities and Investment Advisory Activities

Caisse Nationale de Credit Agricole S.A., Paris, France ("Applicant"), has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (the "Act") (12 U.S.C. 1843(c)(8)) and 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)), for permission to engage *de novo* through its wholly owned subsidiary, Bertrand Michel Securities, Inc., New York, New York ("Company"), in offering combined investment advice and securities brokerage services to institutional customers. Applicant also proposes that Company engage in investment advisory activities and securities brokerage activities on a separate basis pursuant to §§ 225.25(b)(4) and 225.25(b)(15) of the Board's Regulation Y, respectively (12 CFR 225.25(b)(4) and (b)(15)). Company would conduct the proposed activities throughout the United States and abroad.

Section 4(c)(8) of the Act provides that a bank holding company may, with prior Board approval, engage directly or indirectly in any activities "which the Board after due notice and opportunity for hearing has determined [by order of regulation]—to be so closely related to banking or managing or controlling banks as to be a proper incident thereto." The Board has previously found the provision of combined investment advisory and securities brokerage services to institutional customers to be closely related and a proper incident to banking, subject to certain commitments. *See, e.g., Bankers Trust New York Company*, 74 Federal Reserve Bulletin 695 (1988).

A particular activity may be found to meet the "closely related to banking" test if it is demonstrated that banks have generally provided the proposed activity; that banks generally provide services that are operationally or functionally so similar to the proposed activity so as to equip them particularly well to provide the proposed activity; or that banks generally provide services that are so integrally related to the proposed activity as to require their provision in a specialized form. *National Courier Ass'n.* v. *Board of Governors*, 516 F.2d 1229, 1237 (DC Cir. 1975). In addition, the Board may consider any other basis that may demonstrate that the activity has a reasonable or close relationship to banking or managing or controlling banks. Board Statement Regarding Regulation Y, 49 Federal Register 806 (1984).

In determining whether an activity meets the second, or proper incident to banking, test of section 4(c)(8), the Board must consider whether the performance of the activity by an affiliate of a holding company "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 views or requests for a hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than July 10, 1989. Any request for a hearing must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by 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, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors of the Federal Reserve Bank of Chicago.

Board of Governors of the Federal Reserve System, June 15, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-14642 Filed 6-20-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Statement of Organization, Functions, and Delegations of Authority

Part A of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services is amended. Part A. Office of the Secretary, Chapter AP, Office of Public Affairs was last published at 51 FR 41158, November 13, 1986. This amendment in the Office of Public Affairs changes the titles of the Deputy Assistant Secretaries and moves one division from one Deputy Assistant Secretary to the other. The changes are as follows:

1. Chapter AP, Section AP.10 Organization is revised as follows:

The Office of the Assistant Secretary for Public Affairs, headed by the Assistant Secretary for Public Affairs, who reports to the Secretary, consists of the following organizations:

The Office of the Assistant Secretary for Public Affairs; The Office of the Deputy Assistant Secretary for Public Affairs (Policy and Communications)
FOIA/Privacy Act Division
Communications Services Division

The Office of the Deputy Assistant Secretary for Public Affairs (Media)
News Division
Speech and Editorial Division

2. Section AP.20 Functions, Paragraph "B. Office of the Principal Deputy Assistant Secretary for Public Affairs" is deleted and replaced with the following:

B. Office of the Deputy Assistant Secretary for Public Affairs (Policy and Communications).

Is responsible for policies and activities related to the Department's communications services, public affairs policy analysis, and oversight of Freedom of Information and Privacy Act Division and the Communications Services Division.

Provides advice and assistance on all public affairs matters, in consultation with the Assistant Secretary for Public Affairs. Provides management or coordination to high priority media campaigns and information programs in the Department.

Acts as liaison to private sector organizations, to the Operating and Staff Divisions, to the public affairs units in the HHS Operating Divisions and Regions, and to other Federal agencies, including OMB and the Office of Public Liaison at the White House.

Initiates, designs and effects outreach programs for all organizations, associations and individuals concerned with the broad range of policies, programs, and issues of the Department.

3. Section AP.20 Functions, delete paragraph "B.2 Speech and Editorial Division," in its entirety and renumber paragraph B.3 as B.2.

4. Section AP.20 Functions, Paragraph "C. Office of the Deputy Assistant Secretary for News" is deleted and replaced by the following:

C. Office of the Deputy Assistant Secretary for Public Affairs (Media)."

Is responsible for policies and activities related to the Department's speech and editorial services and to providing the public with information about the Department's policies and programs through the news media.

Provides advice and assistance on all public affairs matters, in consultation with the Assistant Secretary for Public Affairs. Provides management or

coordination to high priority media campaigns and information programs in the Department.

Is responsible for management oversight of the Speech and Editorial Division and the Press Office.

Conducts an active communications program with the public on behalf of the Department through the media and other avenues of communication in order to further public understanding of its policies, programs and issues.

Coordinates press activities with the White House Press Office and other government departmental press operations.

Oversees the departmental message center, preparing Presidential and secretarial messages for deserving individuals and organizations.

Serves as a writing resource for the Secretary, a source of news clippings from major newspapers, a filing source for Secretarial materials, and a resource for public affairs preparation and planning.

5. Section AP.20 Functions, insert new paragraph C.2 after C.1 as follows:

C.2. Speech and Editorial Division

Serves as the principal resource within the Department for reviewing and editing written materials reflecting the views of the Secretary, Under Secretary and Chief of Staff.

Prepares speeches, statements, articles, and related material for the Secretary, Under Secretary, Chief of Staff and other top Departmental officials.

Researches and prepares Op Ed pieces, features, articles, and stories for the media.

Reviews all regulations and other policy memoranda, and advises the Deputy Assistant Secretary for Public Affairs of appropriate response.

Date: June 13, 1989.

Louis W. Sullivan,

Secretary.

[FR Doc. 89-14663 Filed 6-20-89; 8:45 am]

BILLING CODE 4110-60-M

Food and Drug Administration

[Docket No. 88N-0394]

Generic Animal Drug and Patent Term Restoration Act; Second Policy Letter and Draft Implementation Document; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a second policy letter, dated June 7, 1989, on the implementation of the Generic Animal Drug and Patent Term Restoration Act. The letter introduces a draft document entitled, "Generic Animal Drug and Patent Term Restoration Act—Implementation," which describes procedures proposed to be used by the Center for Veterinary Medicine (CVM) in implementing the new law. The agency is soliciting comments on the draft document.

DATES: Comments may be submitted at any time.

ADDRESSES: Submit written requests for single copies of the second policy letter and draft document "Generic Animal Drug and Patent Term Restoration Act—Implementation" to the Industry Information Staff (HFV-12), Center for Veterinary Medicine, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send two self-addressed adhesive labels to assist the staff in processing your requests. Submit written comments on the letter and draft document to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. Requests and comments should be identified with the docket number found in brackets in the heading of this document. The letter and draft document are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Richard B. Talbot, Center for Veterinary Medicine (HFV-100), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4313.

SUPPLEMENTARY INFORMATION: On November 16, 1988, the President signed into law the Generic Aminal Drug and Patent Term Restoration Act (the new law) (Pub. L. 100-670, 102 Stat. 3971). The new law amends the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 et seq.) by extending the generic approval system to copies of new animal drugs that were approved after October 1962, and provides patent extension for certain animal drugs.

In the **Federal Register** of December 15, 1988 (53 FR 50460), FDA published a notice of availability of a policy letter, dated November 23, 1988, implementing certain aspects of the new law. The letter discusses the list of approved drugs that FDA must publish, patent certifications that generic applicants must make, the patent information that pioneer sponsors must submit, and the exclusivity claims pioneer sponsors may make.

FDA is now making available a second policy letter, dated June 7, 1989, which introduces a draft document entitled, "Generic Animal Drug and Patent Term Restoration Act—Implementation." This document addresses administrative procedurs CVM will use in processing abbreviated new animal drug applications (ANADA's), pre-ANADA submissions (i.e., suitability petitions, requests for waiver of in vivo testing, and protocols for bioequivalence studies), and the content of an ANADA. The document also includes a draft of CVM's manufacturing requirements for ANADA's, a draft Bioequivalence Guideline, and draft procedures for Environmental Review of Generic Animal Drugs. The agency anticipates that changes in this draft document will occur. When and if changes are made, the revised document will be placed on display in the Dockets Management Branch (address above) and a notice of availability will be published in the **Federal Register.**

Interested persons may, at any time, submit to the Dockets Management Branch written comments regarding this letter and draft document. Two copies of any comments should be submitted, except that individuals may submit one copy.

Dated: June 15, 1989.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-14645 Filed 6-20-89; 8:45 am]

BILLING CODE 4160-01-M

Advisory Committee Meeting; Cancellation

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is canceling the meeting of the Gastroenterology-Urology Devices Panel scheduled for June 23, 1989. The meeting was announced by notice in the **Federal Register** of May 19, 1989 (54 FR 21669).

FOR FURTHER INFORMATION CONTACT: Ruth W. Hubbard, Center for Devices and Radiological Health (HFZ-420), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7750.

Dated: June 15, 1989.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-14646 Filed 6-20-89; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of August 1989.

Name: Departments Review Committee.

Date and Time: August 14–15, 1989, 8:30 a.m.

Place: Conference Room I and J, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Open on August 14, 8:30 a.m.–9:30 a.m.

Closed for Remainder of Meeting.

Purpose: The Departments Review Committee shall review applications that (1) either assist in meeting the cost of planning, developing and operating; or participating in approved predoctoral training programs in the field of family medicine; and (2) assist in meeting the costs of projects to establish, maintain, or improve academic administrative units (which may be departments, division, or other units) to provide clinical instruction in family medicine.

Agenda: The open portion of the meeting will cover welcome and opening remarks, financial management and legislative implementation updates, and overview of the review process. The meeting will be closed to the public on August 14, at 9:30 a.m. for the remainder of the meeting for the review of grant applications. The closing is in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C. Code, and the Determination by the Acting Administrator, Health Resources and Services Administration, pursuant to Pub. L. 92–463.

Anyone requiring information regarding the subject Council should contact Mrs. Sherry Whipple, Executive Secretary, Departments Review Commitee, Room 4C–18, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–6874.

Agenda Items are subject to change as priorities dictate.

Date: June 13, 1989.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 89–14591 Filed 6–20–89; 8:45 am]

BILLING CODE 4160–15–M

Office of Human Development Services

Agency Information Collection Under OMB Review

AGENCY: Office of Human Development Services, HHS.

ACTION: Notice.

Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), the Office of Human Development Services (OHDS) has submitted to the Office of Management and Budget (OMB) a request for an information collection approval for a Study of Short Term Foster Care.

ADDRESSES: Copies of the information collection request may be obtained from Larry Guerrero, OHDS Reports Clearance Officer, by calling (202) 245–6275.

Written comments and questions regarding the requested approval for information collection should be sent directly to Justin Kopca, OMB Desk Officer for OHDS, OMB Reports Management Branch, New Executive Office Building, Room 3208, 725 17th Street, NW., Washington, DC 20503, (202) 395–7316.

Information on Document

Title: Study of Short Term Foster Care.

OMB No.: N/A.

Description: Approximately 74,000 children left foster care in less than 90 days in 1985. This study will examine why children enter and leave care quickly to determine reasons and costs of placement, effects of placement and cost-effective alternatives.

Annual Number of Respondents: 786

Annual Frequency: 1

Average Burden Hours Per Response: 1.28

Total Branch Hours: 1,008

Dated: June 15, 1989.

Mary Sheila Gall,

Assistant Secretary for Human Development Services.

[FR Doc. 89–14664 Filed 6–20–89; 8:45 am]

BILLING CODE 4130–01–M

Agency Information Collection Under OMB Review

AGENCY: Office of Human Development Services, HHS.

ACTION: Notice.

Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), the Office of Human Development Services (OHDS) has submitted to the Office of Management and Budget (OMB) a request for an information collection approval for Supplemental Form to the Financial Status Report (SF–269), Title III of the Older Americans Act, Grants for State and Community Programs on Aging.

ADDRESSES: Copies of the information collection request may be obtained from Larry Guerrero, OHDS Reports Clearance Officer, by calling (202) 245–6275.

Written comments and questions regarding the requests approval for information collection should be sent directly to Justin Kopca, OMB Desk Officer for OHDS, OMB Reports Management Branch, New Executive Office Building, Room 3208, 725 17th Street, NW., Washington, DC 20503, (202) 395–7316.

Information on Document

Title: Supplemental Form to the Financial Status Report (SF–269), Title III of the Older Americans Act, Grants for State and Community Programs on Aging.

OMB No.: N/A.

Description: The information will be used by the Administration on Aging to effectively monitor the use of Title III program funds to the State Agencies on Aging.

Annual Number of Respondents: 59

Annual Frequency: 4

Average Burden Hours Per Response: 0.5

Total Burden Hours: 118

Dated: June 14, 1989.

Mary Sheila Gall,

Assistant Secretary for Human Development Services.

[FR Doc. 89–14597 Filed 6–20–89; 8:45 am]

BILLING CODE 4130–01–M

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

An amendment is hereby given to the notice of the Board of Scientific Counselors, Division of Cancer Biology and Diagnosis, meeting to be held June 21–22, 1989, which was published in the **Federal Register** (54 FR 20929) on May 15, 1989. The meeting will now be held at the Bethesda Hyatt Hotel, One Bethesda Metro Center, Bethesda, Maryland 20814 in the Embassy Room on June 21, and on June 22 in the Cartier/Tiffany Room. The open portion

of the meeting, originally scheduled for Conference Room 2 at the National Institutes of Health, has been changed due to electrical problems.

In accordance with the provisions set forth in sec. 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92-463, the meeting will be closed to the public on June 21 from 8 p.m. to approximately 10 p.m. for the review, discussion and evaluation of individual programs and projects conducted by the Division of Cancer Biology and Diagnosis. These programs, projects, and discussions could reveal personal information concerning individuals associated with the programs and projects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dated: June 19, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-14854 Filed 6-20-89; 8:45 am]

BILLING CODE 4140-01-M

Social Security Administration

Social Security Disability Program Demonstration Project

SUMMARY: The Commissioner of Social Security announces the following demonstration project to be conducted under the authority of Pub. L. 96-265, section 505(a), as amended by Pub. L. 99-272, section 12101. The project, which will develop and test a special intervention model to help Social Security disability insurance (SSDI) beneficiaries with multiple sclerosis (MS) to return to and remain in competitive employment, will be funded under this section of the law. Section 222(a) of the Social Security Act (the Act) will be waived to conduct this project, permitting direct referral of SSDI beneficiaries from the Social Security Administration (SSA) or the State agencies that make disability determinations for SSA, to the organization. Additionally, the requirements in section 223(a) of the Act will be waived to the extent necessary to provide a lengthened extended period of eligibility (EPE) (an additional 10 years), and the requirements in section 226(b) will be waived to the extent necessary to provide 10 additional years of Medicare eligibility to disabled MS beneficiaries. In order to include in the demonstration project persons entitled to child's insurance benefits or window(er)'s insurance benefits based on disability, the pertinent EPE provisions of the Act applicable to those classes of benefits will be waived, i.e., section 202(d)(1)(G)(i) for child's insurance benefits, section 202(e)(1)(II) for window's insurance benefits, and section 202(f)(1)(II) for windower's insurance benefits. We are publishing this notice to comply with 20 CFR 404.1599, which requires publication of a notice in the Federal Register before starting certain demonstration projects.

FOR FURTHER INFORMATION CONTACT: Malcolm H. Morrison, Social Security Administration, Office of Disability, 2223 Annex, 6401 Security Boulevard, Baltimore, Maryland 21235 Phone (301) 965-0091

Background Information: The Social Security Disability Amendments of 1980, Pub. L. 96-265, section 505(a), as amended by Pub. L. 99-272, section 12101, directs the Secretary of Health and Human Services to develop and carry out experiments and demonstration projects designed to: (1) encourage disabled beneficiaries to return to work, and (2) accrue trust fund savings or otherwise promote the objectives or facilitate the administration of title II of the Act. Section 505 of Pub. L. 96-265, as amended by Pub. L. 99-272, section 12101, also authorizes the Secretary to waive compliance with the benefit requirements of titles II and XVIII of the Act as necessary to conduct these experiments and demonstration projects. This includes the authority to waive section 222(a) which requires SSA to refer disability beneficiaries directly to State vocational rehabilitation (VR) agencies, to waive sections 223(a), 202(d)(1)(g)(i), 202(e)(1)(II), and 202(f)(1)(II) which provide for an EPE for reinstatement of disability benefits without new application, and to waive requirements in section 226(b) which provides continued Medicare eligibility based on entitlement to disability benefits.

Overall Objectives: SSA wishes to assist SSDI beneficiaries in returning to competitive employment. SSA's focus is on significantly improved integration and use of VR and other employment program resources providing for more employment opportunities, better mechanisms for identifying and referring candidates for rehabilitation and other employment services, more effective incentives for rehabilitation and employment, increases access to employment service systems and networks, and more effective and efficient employment intervention for beneficiaries.

Description of Demonstration with The Development Team, Inc.: Arlington, Virginia; "Multiple Sclerosis Intervention Model;" Projected duration: 24 months. The project will develop and implement an effective return to work intervention model for SSDI beneficiaries with MS using an additional work incentive and a special set of employment services. The project will provide to 100 SSDI beneficiaries with MS an additional 10 years to the EPA (work incentive) to provide a lengthened period in which benefits can be reinstated without the need for new application—when beneficiaries are unable to work. Medicare eligibility will also be extended for 10 years. The project will be piloted in Chicago and then implemented in additional sites. Beneficiaries will be enrolled in the project through the use of an outreach program and SSA referrals. Participants will be provided information on and receive the work incentive. Job placement will be provided through Projects with Industry.

Statutory Provisions to be Waived: Section 222(a) of the Act is being waived for the purpose of conducting this demonstration project. Section 222(a) requires that SSA refer disabled persons to State VR agencies. This waiver authorizes SSA to refer SSDI beneficiaries to the funded organization. Section 223(a) of the Act provides for a 36-month EPE for SSDI beneficiaries who complete a trial work period and continue to have a disabling impairment. This provision is being waived for the purpose of adding an additional 10 years to the current 36-month EPE for beneficiaries participating in the demonstration project. In order to include in the demonstration project persons entitled to child's insurance benefits or window(er)'s insurance benefits based on disability, the pertinent EPE provisions of the Act applicable to those classes of benefits will be waived, i.e., section 202(d)(1)(G)(i) for child's insurance benefits, section 202(e)(1)(ii) for widow's insurance benefits, and section 202(f)(1)(II) for widower's insurance benefits. In general, section 226(b) of the Act provides for a continued period of Medicare eligibility for SSDI beneficiaries which roughly corresponds to the EPE. The requirements in section 226(b) are being waived insofar as necessary to provide 10 additional years of continued Medicare eligibility.

Authority: Section 505(a) of the Social Security Disability Amendments of 1980, Pub. L. 96-265, as amended by P.L. 99-272, section 12101.

Dated: April 18, 1989.

Dorcas R. Hardy,

Commissioner of Social Security.

[FR Doc. 89-14670 Filed 6-20-89; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-89-2007; FR-2592]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535d.

Date: June 14, 1989.

David S. Cristy,

Deputy Director, Information Policy and Management Division.

Proposal: Public Housing Drug Elimination Program FR-2592

Office: Public and Indian Housing

Description of the Need for the Information and its Proposed Use: This information collection is required to implement the Public Housing Drug Elimination Act of 1988. The Act authorizes HUD to make grants to Public Housing Agencies (PHA's) and Indian Housing Authorities (IHA's) for use in eliminating drug-related crime in public housing projects.

Form Number: None

Respondents: State or Local Governments and Non-Profit Institutions

Frequency of Submission: One-Time and Annually

Reporting Burden:

	No. of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Application	500		1		30		15,000
Plan	500		1		24		12,000
Annual reports	100		1		24		2,400
Comments	5,000		1		1		5,000

Total Estimated Burden Hours: 34,400

Status: New

Contact: Wayne Hunter, HUD, (202) 755-6713
John Allison, OMB, (202) 395-6880.

Date: June 14, 1989.

[FR Doc. 89-14699 Filed 6-20-89; 8:45 am]

BILLING CODE 4210-01-M

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337-TA-293]

Certain Crystalline Cefadroxil Monohydrate; Commission Decision To Vacate a Part of Determination on Temporary Relief

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to vacate the part of the presiding administrative law judge's (ALJ's) initial determination (ID) on temporary relief that discusses the issue of complainant's bond. The Commission has neither modified nor vacated the remainder of the ID.

ADDRESS: Copies of the non-confidential version of the ID and all other non-confidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-252-1000.

FOR FURTHER INFORMATION CONTACT: Tim Yaworski, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-252-1096. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

SUPPLEMENTARY INFORMATION: On February 1, 1989, Bristol-Myers Company (Bristol) filed a complaint and a motion for temporary relief with the Commission alleging violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation and sale of certain crystalline cefadroxil monohydrate (CCM), a prescription antibiotic medicine. Bristol alleged direct and induced infringement by respondents of Bristol's U.S. Letters Patent 4,504,657 (the '657 patent) which claims the product CCM.

Pursuant to Commission interim rule § 210.24(e)(8) (53 FR 33061 (Aug. 29, 1988)), the Commission provisionally accepted Bristol's motion for temporary relief at the Commission meeting on March 8, 1989. The Commission also

instituted an investigation of Bristol's complaint. A notice of investigation was published in the **Federal Register** on March 15, 1989. 54 FR 10740. The notice named the following respondents: (1) Instituo Biochimico Italiano Industria Giovanni Lorenzini S.p.A. of Milan, Italy; (2) Kalipharma Inc. of Elizabeth, New Jersey; (3) Purepac, an unicorporated division of Kalipharma; (4) Biocraft Laboratories of Elmwood Park, New Jersey; (5) Institut Biochimique, S.A. of Massagno, Switzerland; (6) Gema S.A. of Barcelona, Spain.

The ALJ held an evidentiary hearing from April 24 through April 29, 1989. All respondents actively participated in the hearing. Although Commission interim rule § 210.24(e)(18)(ii) (53 Fed Reg 49133) (Dec. 6, 1989)), invites parties to file written submissions on the issues of remedy, the public interest, respondents' bond by the 60th day after institution, in this case by May 15, 1989, the Commission received no submissions on those issues from any party.[1] The Commission expects that, in the future, the parties to investigations in which temporary relief is requested will file written summissions in accordance with Commission interim rule § 210.24(e)(18)(ii).

On May 24, 1989, the ALJ issued her ID denying Bristol's motion for temporary relief. On June 1, 1989, all of the parties filed written comments concerning the ID as provided for by interim rule 210.24(e)(17)(iii). Responses to the comments were filed on June 5, 1989. No government agency comments were filed.

This action is taken under authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and § 210.24(e)(17)(ii) of the Commission's interim rules (53 FR 49133) (Dec. 6, 1988).

By order of the Commission.

Kenneth R. Mason.

Secretary.

Issued: June 13, 1989.

[FR Doc. 89-14676 Filed 6-20-89; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-300]

Certain Doxorubicin and Preparations Containing Same; Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337 and provisional acceptance of motion for temporary relief.

SUMMARY: Notice is hereby given that a complaint and a motion for temporary relief were filed with the U.S. International Trade Commission on May 12, 1989, and that a supplement to the complaint was filed on June 5, 1989 under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Erbamont, Inc, Soundview Plaza, 1266 Main Street, Stamford, Connecticut 06902.

The complaint, as amended, alleges violations of subsection (a)(1)(B)(ii) of section 337 in the importation into the United States, the same for importation, or the sale within the United States after importation of certain doxorubicin and preparations containing the same alleged to be made abroad by a process covered by claims 1 or 2 of U.S. Letters Patent 3,803,124, and that an industry in the United States exists or is in the process of being established as required by subsection (a) (2) and (3) of section 337. The complainant requests that the Commission institute an investigation and, after a full investigation, issue a permanent exclusion order and permanent cease and desist orders.

The motion for temporary relief requests that the Commission issue a temporary exclusion order and temporary cease and desist orders prohibiting the importation into the United States, the sale for importation, or the sale within the United States after importation of certain doxorubicin and preparations containing the same alleged to be made abroad by a process covered by claims 1 or 2 of U.S. Letter Patent 3,803,124, pending the entry of permanent relief.

ADDRESSES: The complaint, the supplement to the complaint, and the motion for temporary relief, except for any confidential information contained therein, are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202-252-1802. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

FOR FURTHER INFORMATION CONTACT: George C. Summerfield, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202-252-1582.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in § 210.12 of the Commission's Interim Rules of Practice and Procedure, 53 FR 33034, 33057 (Aug. 29, 1988). The authority for provisional acceptance of the motion for temporary relief is contained in § 210.24(e)(8) of the Commission's Interim Rules of Practice and Procedure, 53 FR 33034, 33061 (Aug. 29, 1988).

Scope of Investigation: Having considered the complaint, as amended, and the motion for temporary relief, the U.S. International Trade Commission, on June 12, 1989, *ordered that*

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B)(ii) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain doxorubicin and preparations containing the same made abroad by a process covered by claims 1 or 2 of U.S. Letters Patent 3,803,124, and whether an industry exists or is in the process of being established in the United States as required by subsection (a) (2) and (3) of section 337.

(2) Pursuant to Rule 210.24(e)(8) of the Commission's Interim Rules of Practice and Procedure, 53 FR 33034, 33061 (Aug. 29, 1988), the motion for temporary relief under subsection (e) of section 337 of the Tariff Act of 1930 be provisionally accepted and referred to an Administrative Law Judge for an Initial Determination pursuant to Interim Rule § 210.24(e)(17).

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—

Erbamont, Inc., Soundview Plaza, 1266 Main Street, Stamford, Connecticut 06902.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint and motion for temporary relief are to be served:

Meiji Seika Kaisha, Ltd., 2-4-16, Kyobashi, Chuo-Ku, Tokyo, 104, Japan.

Bristol-Myers Company, 345 Park Avenue, New York, New York 10154.

Cetus Corporation, 1400 53rd Street, Emeryville, California 94608.

Cetus Generic Corporation, 1400 53rd Street, Emeryville, California 94608.

Ben Venue Laboratories, Inc., 270 Northfield Road, Bedford, Ohio 44146.

Cetus-Ben Venue Therapeutics, 1400 53rd Street, Emeryville, California 94608.

Sicor-Societa Italiana Corticostriodi S.p.A., Via Senato 19, Milan, Italy.

---

[1] Complainant Bristol included a section on respondents' bond in its comments concerning the ID which were filed on June 1, 1989. However, Bristol did not request leave for late filing of its comments on respondents' bond and so those comments were not properly before the Commission.

Alco Chemicals, Ltd., 223 Regent Street, London, England W1R 7D8.

(c) George C. Summefield, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Room 401F, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(4) For the investigation and temporary relief proceedings so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint, the supplement, the motion for temporary relief and the notice of investigation must be submitted by the named respondents in accordance with §§ 210.21 and 210.24 of the Commission's Interim Rules of Practice and Procedure, 53 FR 33034, 33059–33063 (Aug. 29, 1988) and 53 FR 49118, 49129–49133 (Dec. 6, 1988). Pursuant to §§ 201.16(d), 210.21(a), and 210.24(e)(9) of the Commission's Rules (19 CFR 201.16(d), 53 FR 33034, 33059 (Aug. 29, 1988) and 53 FR 49118, 49130–49131 (Dec. 6, 1988)), such responses will be considered by the Commission if received not later than ten (10) days after the date of service by the Commission of the complaint, the supplement, and the motion for temporary relief and the notice of investigation. Extensions of time for submitting responses to the complaint, the supplement, the motion for temporary relief and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint, in the motion for temporary relief and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint, the motion for temporary relief and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint, motion for temporary relief and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

By order of the Commission.

Issued: June 12, 1989.

Kenneth R. Mason,

Secretary.

[FR Doc. 89–14675 Filed 6–20–89; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–286]

Certain Track Lighting System Components, Including Plugboxes; Commission Decision To Extend the Deadline by Which the Commission Must Determine Whether To Review an Initial Determination

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to extend the deadline by which the Commission must determine whether to review the initial determination (ID) issued by the presiding administrative law judge (ALJ) finding no violation of section 337 in the above-referenced investigation. The deadline is extended by eleven (11) days, i.e., until June 30, 1989.

ADDRESSES: Copies of the nonconfidential version of the ID, and all other nonconfidential documents filed in connection with this investigation are available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–252–1000.

FOR FURTHER INFORMATION CONTACT: George Thompson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone 202–252–1090.

Hearing-impaired individuals are advised that information about this matter can be obtained by contacting the Comission's TDD terminal, 202–252–1810.

SUPPLEMENTARY INFORMATION: On May 4, 1989, the presiding ALJ issued her final ID finding no violation of section 337 in this investigation. Pursuant to interim rule § 210.54(b)(1) (53 FR. 33071, Aug. 29, 1988), the Commission has determined to extend by eleven (11) days, i.e., until June 30, 1989, the deadline for determining whether to review the ID.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and § 210.54 of the Commission's Interim Rules of Practice and Procedure (53 FR. 33071, Aug. 29, 1988).

By order of the Commission.

Kenneth R. Mason,

Secretary

Issued: June 19, 1989.

[FR Doc. 89–14824 Filed 6–20–89; 8:45 am]

BILLING CODE 7020–02–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree

In accordance with the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that on June 8, 1989, a proposed consent decree in *United States* v. *Al-Cam Enterprises, Inc. and Family Affair Repair Shop, Inc.*, Civ. No. 86–2716 (RWS) was lodged with the United States District Court for the Southern District of New York. This consent decree settles a lawsuit filed against Al-Cam Enterprises, Inc. in 1986, and in which Family Affair Repair Shop, Inc. was joined as a defendant through an amended complaint filed simultaneously with the consent decree. The lawsuit, alleging violations under Section 301 of the Clean Water Act, 33 U.S.C. 1311, and Section 13 of the Rivers and Harbors Act, 33 U.S.C. 407, sought injunctive relief and civil penalties of up to $10,000 per day of illegal discharge. The 1986 complaint alleged, among other things, that Al-Cam Enterprises discharged and deposited pollutants into the Quassaic Creek, and onto its banks. The amended complaint alleges that both Al-Cam Enterprises and Family Affair Repair Shop discharged and deposited in such manner.

The consent decree requires Family Affair Repair Shop to pay a civil penalty of $8,000 for past violations of the Act, to obtain all Federal, State or local permits required for its business, and to refrain from further violations of either Act. The decree contains stipulated penalties for any further violations by Family Affair of either Act or failure to obtain such permits. By stipulation filed simultaneously with the decree, the parties agree that the Government's claims against Al-Cam Enterprises, Inc. may be dismissed.

The Department of Justice will receive comments relating to the proposed consent decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, 10th and Pennsylvania Avenue NW., Washington, DC 20530. All comments should refer to *United States* v. *Al-Cam Enterprises, Inc. and Family Affair Repair Shop, Inc.*, DOJ Ref. No. 90–5–1–1–2578.

The proposed consent decree may be examined at the following offices of the United States Attorney and the Environmental Protection Agency ("EPA"):

United States Attorney's Office

Contact: Nancy Milburn, Esq., Assistant United States Attorney, Southern District of New York, One St. Andrews Plaza, New York, New York 10007, (212) 791–0914.

EPA Region II

Contact: William Tucker, Esq., Office of Regional Counsel, U.S. Environmental Protection Agency, Region II, 26 Federal Plaza, New York, New York 10278, (212) 264–3268.

Copies of the proposed consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, Room 1515, 10th and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy of the decree, please enclose a check for copying costs in the amount of $1.20 payable to the Treasurer of the United States.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89–14654 Filed 6–20–89; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–22–453]

Lorbrook Corp.; Hudson, New York; Negative Determination, Regarding Application for Reconsideration

By an application dated May 16, 1989, the Hudson Valley Area Joint Board of the Amalgamated Clothing and Textive Workers of America (ACTWA) requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on March 31, 1989 and published in the **Federal Register** on April 25, 1989 (54 FR 17837).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances;

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The ACTWU claims that Lorbrook's major customer curtailed its vinyl business with Lorbrook because of increased imports of automobiles with vinyl seatcovers. It is also claimed that two of Lorbrook's major customers increased their vinyl business with foreign companies.

Investigation findings show that the Lorbrook workers produce four products—vinyl rooftops and seatbacks, white felt, marine headlinging and polypropylene carpeting. The findings also show that decreases in production and sales occurred only in two products—rooftops and carpeting during the period applicable to the petition.

The Department's denial was based on the fact that production and sales of white felt and marine headlining increased in 1987 compared to 1986 and 1988 compared to 1987 and the fact that the "contributed importantly" test was not met for the workers producing vinyl rooftops, seatbacks and carpeting. The Department's survey of Lorbrook's major customers shows that those with decreased purchases from Lorbrook in 1987 and 1988 did not import vinyl rooftops, seatbacks and carpeting.

Further, under the Trade Act of 1974, only increased imports of articles like or directly competitive with the articles produced by the workers' firm or appropriate subdivision can be considered. Vinyl rooftops and seatbacks are not like or directly competitive with automobiles. This issue was addressed in *United Shoe Workers of American, AFL–CIO* v. *Bedell,* 506 F2d 174, (D.C. Cir. 1974). The court held that imported finished women's shoes were not like or directly competitive with shoe components—shoe counters. Similarly, vinyl rooftops and seatbacks incorporated in the finished article (automobiles) cannot be considered like or directly competitive with automobiles.

The two customers mentioned in the union's letter purchased only marine headlining, a product in which Lorbrook experienced increased sales and production during the period applicable to the petition. Lastly, profit margins are not criteria for certification under the Trade Act.

Conclusion

After review of the application and investigation findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 9th day of June 1989.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 89–14574 Filed 6–19–89; 8:45 am]

BILLING CODE 4510–30–M

Trade Adjustment Assistance for Workers; Financial Process for the Revised Trade Adjustment Assistance for Workers Program

AGENCY: Employment and Training Administration.

ACTION: Notice of change 1 to general administration letter No. 4–89.

SUMMARY: The Department of Labor publishes this notice and Change 1 to General Administration Letter (GAL) No. 4–89, to inform States and cooperating State agencies of the publication of additional financial policies and procedures for the revised Trade Adjustment Assistance Program, except Trade Readjustment Allowances, and of the 30-day period for commenting on these additional policies and procedures.

FOR FURTHER INFORMATION CONTACT: Jim Guiliano, Employment and Training Administration, Office of the Comptroller, Room C–5317, 200 Constitution Ave. NW., Washington, DC 20210, (202) 535–8767; this not a toll free telephone number. Comments may be made within 30 days of the date of publication of this notice. Comments may be sent or delivered to the above address.

SUPPLEMENTAL INFORMATION: On August 23, 1988 the President signed into law the "Omnibus Trade and Competitiveness Act of 1988." Part 3—Trade Adjustment Assistance, of Subtitle D of Title I of the Act concerns trade adjustment assistance for workers and firms.

The Department of Labor has issued operating instructions to the States and State agencies concerning trade adjustment assistance for workers. General Administration Letter (GAL) Nos. 7–88, Change 1 and 2 to 7–88, and 4–89, Training and Employment Information Notice (TEIN) Nos. 6–88, Change 1 to 6–88, and 17–88 and a proposed rule amending the regulations at 20 CFR Part 617 have been published in the **Federal Register.**

The purpose of Change 1 to GAL No. 4–89 published with this notice is to transmit additional national financial policies and procedures with which

these trade adjustment assistance activities will be administered. The policies and procedures set forth in this Change 1 supersede the policies and procedures in GAL No. 4–89 to the extent that the prior policies and procedures are not consistent with those in this Change 1.

For this reason, Change 1 to GAL No. 4–89 is published below, together with Change 1 to Training and Employment Information Notice No. 17–88.

Signed at Washington, DC, on June 15, 1989.

Roberts T. Jones,

Assistant Secretary of Labor.

BILLING CODE 4510-30-M

U.S. Department of Labor Employment and Training Administration Washington, D.C. 20210	CLASSIFICATION TAA
	CORRESPONDENCE SYMBOL TSCS
	DATE June 15, 1989

DIRECTIVE : GENERAL ADMINISTRATION LETTER NO. 4-89, CHANGE 1

TO : ALL STATE EMPLOYMENT SECURITY AGENCIES

FROM : DONALD J. KULICK
Administrator
Office of Regional Management

SUBJECT : Financial Process for the Revised Trade Adjustment Assistance (TAA) Program

1. Purpose. To clarify ETA policy on TAA administrative costs, explain the recently-financed TAA Coordinator positions and to outline the process for assessing State needs for additional TAA administrative funds.

2. References. Training and Information Notice No. 17-88 and General Administration Letter No. 4-89, dated January 9, 1989, and 54 FR 11580-11586, dated March 21 1989.

3. Background. The recent revisions to the TAA program, required by the Omnibus Trade and Competitiveness Act of 1988, provide for a new emphasis on TAA training. The 1988 amendments made training an entitlement and participation in training a requirement in order to receive trade readjustment allowances (TRA), unless waived. Remedial education was added as approvable training under Section 236 of the Act and States are not only allowed but strongly encouraged to obtain free training and to combine TAA funds with those from other Federal, State or private sources. Use of non-ETA funds for training along with delivery of training from non-TAA sources should necessarily be the result of the development and/or strengthening of existing linkages with Wagner-Peyser, JTPA Title III/EDWAA or other sources.

At training sessions on the 1988 amendments held earlier this year, DOL indicated that it would consider changes to its method of distributing administrative funds if experience warranted. On the basis of this experience ETA has recognized that recent legislative changes may warrant a review of the adequacy of existing resources and possible need for additional administrative funds.

RESCISSIONS	EXPIRATION DATE September 30, 1990

DISTRIBUTION

4. Policy and Procedures. (Note: The policies and procedures set forth in this Change 1 supersede the policies and procedures in GAL No. 4-89 to the extent that the prior policies and procedures are not consistent with those in this Change 1.)

In response to the administrative changes referenced above, the following measures are being taken.

a. Clarification of TAA Administrative Cost Charging. To ensure full and proper use of all funds available for TAA administrative activities, a clarification of administrative activity costs and their chargeable fund sources is provided below.

1) Costs Charged to JTPA, Wagner-Peyser and Other Program Funds. The costs of the basic employment services of initial intake, testing, counseling, assessment and placement should be charged to the Employment Service Allotment-to-States, Job Training Partnership Act allotments or other available funds. Section 235 of the Trade Act indicates that these services should be "...provided for under any other Federal law... through agreements with the States". The FY 1989 DOL Appropriation Act, which provides the resources available for Trade Act programs, does not authorize either State UI Contingency or Trade Act training funds to be used for these costs.

2) Costs Charged to UI Contingency. The costs of the TAA Training Coordinator position, processing TRA claims (initial, continued, non-monetary, appeals and support), TRA benefit payment control, notification to workers of TAA benefits eligibility, and newspaper notices should be financed with UI Contingency funds. These types of services are referenced in Sections 225, 231-234, 243 and 244 of the Trade Act.

3) Costs Charged to Training, Job Search and Relocation Allowances Administration. The costs of developing training plans, contracts and agreements, referral to training, application for and payment administration of Job Search and Relocation allowances, the administration and control of TAA training and allowance payments, and the issuing, reviewing and revoking of training waivers should be charged to the TAA administration funds. These services are referenced in Sections 231 and 236-238 of the Trade Act.

4) Costs Charged to JTPA Title III/EDWAA. The costs of administration and training JTPA-eligible TAA claimants enrolled in JTPA training should be

charged to JTPA Title III/EDWAA.

b. TAA Coordinator. Each State has received additional FY 1989 UI Contingency funds to support a TAA Coordinator position. This position is being provided to strengthen each State's overall administration of TAA training and other adjustment services, to improve program coordination with Employment Service (ES), Unemployment Insurance (UI) and JTPA Title III/EDWAA programs, to ensure the ability to maintain a basic TAA administrative capability and to help defray costs of additional services provided to TAA eligibles.

c. Supplemental Budget Request (SBR) for Additional Administrative Funds. In addition to the UI Contingency-funded Coordinator position described above, additional administrative funds may be made available to States where individual circumstances warrant. While the 15% limit on administrative expenditures is being retained, DOL may provide up to an additional 5% in administrative funds in those instances where need can be completely documented. An FY 1989 supplemental request for an additional $34.6 million of TAA funds is now pending before Congress. The availability of additional TAA administrative funds is contingent upon enactment of this supplemental appropriation and State need documented through the procedures listed below.

Admin. SBRs for TAA program funds issued in FY 1989 or in future quarterly advance or supplemental funding procedures may be submitted. Should sufficient funds be available to permit quarterly advances, administrative funds equal to 15% of the program funds will be routinely provided, as previously announced in GAL 4-89. If additional administrative funds are required, Admin. SBRs may be submitted for up to an additional 5%. Supplemental fund requests submitted for additional program funding (with 15% administrative funds issued simultaneously) may be accompanied by Admin. SBRs for up to an additional 5% in administrative funds. If approved, TAA administrative funding will equal up to 20% of the program funds issued.

Admin. SBRs for up to an additional 5% in administrative funds will be considered for the funding of administrative shortfall of FY 1989 TAA financed activity based upon the exhaustion of all of the 15% TAA administrative funds received with 1989 program funds. These Admin. SBRs should include information which documents that: 1) all FY 1989 TAA administrative funds are being properly expended and assigned per the cost charging criteria stated above, 2) the TAA Coordinator position and inter-program linkages have

been developed and utilized to the fullest extent possible, and 3) if spending continues at the present rate, all FY 1989 TAA administrative funds received will be expended before the end of the year.

For all Admin. SBRs, the draft "Supplemental Budget Request (SBR) for Additional Administrative Funds", attached to this General Administration Letter must be completed to document the need for additional TAA administrative funds and should be prepared with the most current information available. (OMB approval of this draft Admin. SBR form is expected by September 1, 1989.) Decisions to fund these Admin. SBRs will be made to the extent that funds are available, based on the ETA Regional Office's recommendations and based on documented need for additional funds in the Admin. SBR. Documentation of need should be contained in "Part III - Narrative and Other Information", questions number 4 and 6, in the attached Admin. SBR, and should include an explanation, with supporting documentation, of the following items:

o that administrative costs have been appropriately charged as defined above,

o that the TAA Coordinator position and inter-program linkages have been fully developed and utilized and,

o that, even though compliance with the preceeding two requirements is affirmed, the level of the revised TAA program still necessitates additional financing in order to properly administer the required activities.

5. State Action. All Admin. SBRs should be submitted to the appropriate Regional Office: 1) as soon as possible following the receipt of funds from the related quarterly advance, 2) along with the related supplemental requests for TAA program funds, and 3) as soon as possible in the case of Admin. SBRs requesting FY 1989 administrative shortfall funding.

Also, States should ensure that the designated TAA program operating agency is promptly informed of the policy guidance contained in this Change 1 to General Administration Letter No. 4-89.

6. Inquiries. State questions should be directed to the appropriate Regional Office.

7. Attachment.
Draft "Supplemental Budget Request (SBR) for Additional Administrative Funds" (to be transmitted under separate cover)

U.S. Department of Labor Employment and Training Administration Washington, D.C. 20210	CLASSIFICATION TAA
	CORRESPONDENCE SYMBOL TSCS
	DATE June 15, 1989

TRAINING AND EMPLOYMENT INFORMATION NOTICE NO. 17-88, Change 1

TO : ALL STATE JTPA LIAISONS
STATE WAGNER-PEYSER ADMINISTERING AGENCIES
WORKER ADJUSTMENT LIAISONS

FROM : ROBERTS T. JONES
Assistant Secretary of Labor

SUBJECT : Financial Policy for the Revised Trade Adjustment Assistance (TAA) Program

1. Purpose. To announce Change 1 to General Administration Letter No. 4-89, which clarifies ETA policy on TAA administrative costs, explains the recently-financed TAA Coordinator positions and outlines the process for assessing State needs for additional TAA administrative funds.

2. Reference. Training and Information Notice No. 17-88 and General Administration Letter No. 4-89, dated January 9, 1989, and 54 FR 11580-11586, dated March 21, 1989.

3. Background. As a result of the Omnibus Trade and Competitiveness Act (OTCA) of 1988 amending the Trade Act and the issuance of other regulatory changes, several revisions to the financial operation of the TAA program were required. Now that the revised program has operated for a number of months, States have accumulated experience on the resultant changes in administrative workload. In many cases, those changes require administrative policy and resources in addition to those which were initially provided.

The measures taken to provide needed relief for these workload changes are contained in the attached Change 1 to General Administration Letter No. 4-89.

4. Action. The attached information should be provided to appropriate staff as soon as possible.

5. Inquiries. Inquiries should be directed to the appropriate Regional Office.

6. Attachment. Change 1 to General Administration Letter No. 4-89.

RESCISSIONS	EXPIRATION DATE Continuing

DISTRIBUTION

[FR Doc. 89-14672 Filed 6-20-89; 8:45 am]
BILLING CODE 4510-30-C

NUCLEAR REGULATORY COMMISSION

Special Committee To Review the Severe Accident Risks Report

In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App., and after consultation with the Administrator, General Services Administration, the Nuclear Regulatory Commission has determined that the establishment of the Special Committee (NRC) to Review the Severe Accident Risks Report is necessary and in the public interest in order to obtain expert advice and recommendations concerning the adequacy of NUREG–1150, "Severe Accident Risks: An Assessment for Five U.S. Nuclear Power Plants."

The purpose of the Committee is to provide the NRC with a technical peer review of the adequacy of the methods, insights, analyses and conclusions set forth in the April 1989 draft of NUREG–1150 including answers to particular questions posed by the Commission. It is anticipated that the revised draft NUREG–1150 report will be available to the public in late-June 1989.

The NUREG–1150 report presents the NRC's assessment of severe accident risks for five typical U.S. nuclear power plants, considering individual plants designs, operating practices and a state-of-the-art understanding of severe accident phenomenology. The NUREG–1150 report will serve as a major source of information to support the further development of NRC policies and regulations related to severe accidents applicable to the more than 100 operating nuclear reactors in the United States. The Committee will provide its conclusions and recommendations in a written consensus report.

The Special Committee will be composed of the following individuals:

Dr. H.J.C. Kouts, Chairman, Brookhaven National Laboratory
Dr. George Apostolakis, University of California, Los Angeles
Dr. E.H. Adolf Birkhofer, Society for Reactor Safety (GRS), Federal Republic of Germany
Dr. Lars Hoegberg, Swedish Nuclear Power Inspectorate (SKI)
Dr. William Kastenberg, University of California, Los Angeles
Dr. Leo LeSage, Argonne National Laboratory
Dr. Norman Rasmussen, Massachusetts Institute of Technology
Dr. John Taylor, Electric Power Research Institute
Dr. Harry Teague, United Kingdom Atomic Energy Authority

These individuals represent a broad cross section of technical expertise in the areas of severe reactor accident analysis, probabilistic risk assessment, and have familiarity with current national and international severe accident research and regulatory programs.

Date: June 16, 1989.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 89–14701 Filed 6–20–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–348–CivP and 50–364–CivP; ASLBP No. 89–591–01–Civp]

Alabama Power Co.; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Comission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and §§ 2.105, 2.700, 3.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding.

Alabama Power Company

Joseph M. Farley Nuclear Plant, Units 1 and 2 Facility Operating License Nos. NPF–2 and NPF–8 E. A. 88–113

This Board is being designated pursuant to request of the Licensee for and enforcement hearing regarding an Order issued by the Deputy Executive Director for Nuclear Reactor Regulation, Regional Operations, and Research, dated March 28, 1989, entitled "Order Imposing Civil Monetary Penalty."

The Board is comprised of the following administrative judges:

Administrative Judge John H. Frye, III, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Administrative Judge James H. Carpenter, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Administrative Judge Walter H. Jordan, Atomic Safety and Licensing Board Panel, 881 W. Outer Drive, Oak Ridge, Tennessee 37830.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

Issued at Bethesda, Maryland, this 14th day of June 1989.

[FR Doc. 89–14702 Filed 6–20–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–416]

System Energy Resources, Inc., et al; Denial of Amendment to Facilty Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied a request by System Energy Resources, Inc. (the licensee) for an amendment to Facility Operating License No. NPR–29, issued to the licensee for operation of the Grand Gulf Nuclear Station, Unit 1, located in Claiborne County, Mississippi. Notice of Consideration of Issuance of this amendment was published in the **Federal Register** on September 8, 1988 (53 FR 37886).

The purpose of the licensee's amendment request was to revise the Technical Specifications (TS) to allow the fuel transfer gate to be in place during refueling when the reactor cavity is flooded and either the Emergency Core Cooling System (ECCS) or the suppression pool is inoperable.

The NRC staff has concluded that the licensee's request cannot be granted. The licensee was notified of the Commission's denial of the proposed change by letter dated June 13, 1989.

By July 21, 1989, the licensee may demand a hearing with respect to the denial described above. Any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC, 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date.

A copy of any petitions should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Nicholas S. Reynolds, Esquire, Bishop, Lieberman, Cook, Purcell and Reynolds, 1200 17th Street, Washington, DC 20036, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendment dated August 31, 1988, and (2) the Commission's letter to the licensee dated June 13, 1989. These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the Hinds Junior College, McLendon Library, Raymond, Mississippi 39154. A

copy of Item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC, 20555, Attention: Document Control Desk.

Dated at Rockville, Maryland, this 13th day of June, 1989.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Director, Project Directorate II-1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89-14674 Filed 6-20-89; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-26925; File No. SR-CBOE-89-09]

Self-Regulatory Organizations; Proposed Rule Change by Chicago Board Options Exchange, Inc., Relating to Margin Requirements

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on May 22, 1989 the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") 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

Margin Requirements

Rule 12.4 The Exchange has established and filed with the Securities and Exchange Commission margin monitoring procedures which are uniform with all other options self-regulatory organizations. The Exchange may increase or decrease option margin requirements through a rule filing made pursuant to Section 19(b)(3)(A) of the Act, provided the margin changes are within the parameters established by such procedures. The Exchange's Office of the Chairman, or its designee, shall have authority for determining changes to options margin levels in accordance with the parameters. Any modifications to the Exchange's margin monitoring procedures shall be filed with the Securities and Exchange Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and 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 and is set forth in sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

This proposed rule change authorizes the Exchange to change options margin requirements pursuant to a rule filing under Section 19(b)(3)(A) of the Act, provided such changes are based upon uniform margin monitoring procedures filed with the Securities and Exchange Commission by the options self-regulatory organizations. The montoring procedures are designed to ensure that prudent margin levels are maintained and to provide the options self-regulatory organizations the ability to modify margin on a timely basis using a consistent methodology. The procedures primarily rely upon statistical analysis conducted on a quarterly basis. Specifically, this analysis involves the computation of frequency distributions for seven (7) business day percentage price movements of the underlying instruments for the most recent five and one half month period to determine the degree of coverage the current margin levels provided. This is an established methodology for determining the adequacy of options margin levels. In addition, margin levels are monitored daily through the calculations of implied volatilities for all underlying securities and broad-based indicies. Attached is a more detailed description of the methodology for determining margin adequacy.

The Exchange believes that the proposed rule change is consistent with the provisions of the Securities Exchange Act of 1934 and, in particular, Section 6(b) thereof, in that the rule change is designed to protect investors and the public interest by setting options margin levels that will provide a reasonable amount of financial protection to the securities industry and not permit the excessive use of credit for the purchase or carrying of securities.

(B) Self-Regulatory Organization's Statement on Burden on Competition

This proposed rule change will not impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and published its reasons for so finding or (ii) as to which the self-regulatory organization consents, the commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission 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 the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted on or before July 12, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 13, 1989.

Jonathan G. Katz,

Secretary.

Quarterly Review of Option Margin Levels

1. Following each three-month period as specified below frequency distributions shall be calculated based upon seven (7) business day interval percentage price changes for all of the stocks underlying listed options (defined as issued and guaranteed by the Options Clearing Corporation), and for each index underlying listed index options, for every trading day during the previous five and one-half (5½) month period. All reviews shall be conducted on a quarterly basis, encompassing a five and one-half (5½) month time period, beginning the first (1st) business day of the review period and ending with the tenth (10th) business day of the sixth (6th) month. For example, distributions would be calculated for the period of September 1, 1988 through February 14, 1989, and then again for the period of December 1, 1988 through May 14, 1989 and so on.

2. Cumulative distributions of percentage price changes shall be calculated for the option stocks combined and the broad market indices. In addition, the volatilities of the individual stocks shall be determined for the review period, and the stocks ranked by volatility from lowest to highest. The cumulative distribution of seven (7) business days, percent price changes for option stocks shall also be determined for the 25% of those stocks having the highest volatilities.

3. The degree of coverage based upon the existing option margin levels shall be determined for each of the groups listed above.

4. Margin levels shall be monitored daily through calculations of implied volatilities for each broad-based index and equity security that underlie listed options. An applicable margin percentage is then calculated based upon a twenty (20) day moving average, with the most recent days having the greater weight (see Appendix A).

5. For stock options, a margin increase shall be considered warranted when the current margin add-on provides a level of coverage of less than 92.5% of all observations *or* less than an 87.5% level of coverage for stocks in the highest volatility quartile during the five and one-half (5½) month review period.

A margin decrease shall be considered warranted when the current margin add-on provides a level of coverage in excess of 97.5% for all observations *and* over a 92.5% coverage level for stocks in the highest volatility quartile during the five and one-half (5½) month review period.

6. For index options, a margin increase shall be considered warranted when the current margin add-on provides a level of coverage of less than 92.5% of all observations during the five and one-half (5½) month review period.

A margin decrease shall be considered warranted where the current margin add-on provides a level of coverage in excess of 97.5% for all observations during the five and one-half (5½) month review period.

7. Margin changes shall be made uniformly for a product group (i.e., stock options *and* industry index options; broad-based index options). Margin changes shall be made in 1% increments, with no change being less than 2%. Margin changes shall not be made ordinarily in two (2) consecutive quarters and shall not exceed 5% in any one quarter.

8. Margin changes shall be filed pursuant to section 19(b)(3)(A) of the 1934 Act through a rule filing, which shall be made no later than five (5) business days subsequent to the close of the relevant review period. Margin changes shall become effective the business day immediately following the next month's expiration. Margin changes effected pursuant to a 19(b)(3)(A) rule filing shall not result in margin levels lower than 5% and 10% for index and equity options, respectively.

9. In determining whether to effect a margin change, in addition to the frequency distribution results, other relevant matters shall be considered such as current market conditions, member firm views and margin levels implied from options premiums where the results differ from the historical frequency distributions by two percent (2%) or more.

[FR Doc. 89-14601 Filed 6-20-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26923; File No. SR-MSE-89-3]

Self-Regulatory Organizations; Midwest Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Reduced Transaction Fees for Odd-lot Orders

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), and Rule 19b-4 thereunder, 17 CFR 240.19b-4, notice is hereby given that on June 6, 1989, the Midwest Stock Exchange, Inc. ("Midwest" or "Exchange") submitted to the Securities and Exchange Commission ("Commission" or "SEC") 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.

(Additions italicized; deletions bracketed)

Item Charge	
[Round lot] Shares/ trade	Rate
1-99	$.20 (per trade)
100 [0] —500	*$.20*[.0c] (per *100* shares)
501-over	*$1.00* (per trade)

In addition, order entering member firms will receive a trade volume credit of *a)* 15.0c per round lot trade for trades executed on the floor above 3000 trades per month and *b) 20.0c per odd lot trade for trades executed on the floor above 1000 trades per month (no charge).*

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 governing 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 new odd lot fees schedule that took effect on June 1, 1989 is designed as an incentive for customers to do a greater volume of odd lot trading on the Midwest.

The revised fee schedule 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 the Midwest's members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Midwest does not believe that

any burdens will be placed on competition as a result of the proposed rule change.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Midwest has neither solicited nor received any comments on the proposed rule change.

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)(A) of the Act and subparagraph (e) of Rule 19b–4 under the Act. 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 Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filings 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 on or before July 12, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 13, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–14602 Filed 6–20–89; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Incorporated

June 13, 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:

Advanced Micro Devices Inc.
Dept. Conv. Exch. Pfd Stock, No Par Value (File No. 7–4629)
Armco Inc.
$4.50 Cum. Conv. Pfd Stock, $1 Par Value (File No. 7–4630)
Copperweld Corp.
$2.48 Red. Cum. Conv. Pfd Stock, $1 Par Value (File No. 7–4631)
Environmental Systems Co.
$1.75 Cum. Conv. Exch. Pfd Stock, $1 Par Value (File No. 7–4632)
First City Bancorp of Texas
$5.50 Cum. Conv. B Pfd Stock, $.01 Par Value (File No. 7–4633)
First Fidelity Bancorp.
$2.15 Cum. Conv. B Pfd Stock, $1 Par Value (File No. 7–4634)
Integrated Resources, Inc.
$4.25 Cum. Conv. Pfd Stock, $1 Par Value (File No. 7–4635)
ITT Corp.
$5.00 Cum. Conv. Series O Pfd Stock, No Par Value (File No. 7–4636)
LTV Corp.
$5.25 Cum. Conv. Pfd Stock, $50 Par Value (File No. 7–4637)
Leisure & Technology Inc.
$2.25 Cum. Conv. Exch. Pfd Stock $.01 Par Value (File No. 7–4638)
National Semiconductor Corp.
$4.00 Cum. Conv. Exch. Dep. Pfd Stock (File No. 7–4639)
Quanex Corp.
Dep. Cum. Conv. Exch. Pfd Stock, No Par Value (File No. 7–4640)
Orion Capital Corp.
$2.125 Cum. Conv. Exch. Pfd Stock, $1 Par Value (File No. 7–4641)
Orion Capital Corp.
$1.90 Cum. Conv. Exch. Pfd Stock, $1 Par Value (File No. 7–4642)
Paine Webber Group Inc.
$1.375 Cum. Conv. Exch. Pfd Stock, $20 Par Value (File No. 7–4643)
Rymer Company
$1.175 Cum. Conv. Exch. Pfd Stock, $10 Par Value (File No. 7–4644)
Sea Containers LTD
$4.125 Cum. Conv. Pfd Stock, $.01 Par Value (File No. 7–4645)
Talley Industries, Inc.
$1.00 Conv. Pfd B Stock, $1 Par Value (File No. 7–4646)
Todd Shipyards Corporation
$3.08 Conv. Exch. A Pfd Stock, $1 Par Value (File No. 7–4647)
Crown Central Petroleum
$1.92 Cum. Conv. A Pfd Stock, No Par Value (File No. 7–4648)
Energy Service
$1.50 Cum. Conv. Exch. Pfd Stock, No Par Value (File No. 7–4649)
Hasbro, Inc.
8% Cum. Conv. Pfd Stock, $2.50 Par Value (File No. 7–4650)
I.C.H. Corp.
$1.75 Cum. Conv. Exch. Pfd Stock, No Par Value (File No. 7–4651)
Smith (A.O.) Corp.
$2.125 Cum. Conv. Exch. Pfd Stock, $1 Par Value (File No. 7–4652)

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 July 5, 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. 89–14599 Filed 6–20–89; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–26921; File No. SR–NYSE–89–10]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by New York Stock Exchange, Inc., To Modify the Exchange's Procedures for Handling and Executing Market-On-Close Orders

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 2, 1989, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission

("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. 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 proposed rule change modifies the Exchange's procedures for handling and executing market-on-close ("MOC") orders to provide (i) that such an order is to be executed in its entirety at the closing price on the Exchange and, if not so executed, is to be cancelled; and (ii) for the entry and execution of matched MOC orders.

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 and is set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Purpose—The purpose of the proposed rule change is to amend the Exchange's rules[1] to provide MOC orders with the closing price whenever practicable and to allow for the execution of matched MOC orders entered by the same firm. In addition, the Exchange is requesting an exemption from the short sale rule, Rule 10a–1 under the Act, for a MOC sell order when the order is entered with an off-setting MOC order and is part of a program trading strategy.

Changes to MOC Orders

Member firms have requested the Exchange to amend the MOC order execution process to assure that MOC orders will receive the closing price in a stock. They indicate that such pricing is necessary to facilitate program trading strategies such as "portfolio rebalancing" (where the firm buys from and sells to its customer certain securities to adjust the customer's portfolio so that it continues to mirror a particular index) and "Exchanges for Physicals" ("EFPs") (where a firm accommodates a customer who wishes to convert a futures position into a stock position by swapping futures for stocks).

Relatedly, member firms also have requested the Exchange to amend the MOC order execution procedures to provide for the execution of matched MOC buy and sell orders. The firms indicate that such an execution is necessary to meet regulatory requirements governing EFPs. The Exchange currently provides such a procedure only on "Expiration Fridays." [2] (These special procedures, which apply on the last business day prior to the expiration of options and futures contracts, will continue to apply on those days.)

This proposed rule change will modify the MOC order procedures to meet these needs of the member firms.[3] As proposed by the Exchange, MOC orders will be executed in full at the closing price or will be cancelled. The Exchange anticipates that the only time orders will be cancelled will be when an execution at the closing price is not possible, such as when trading has halted in the security, or when there are special conditions to the order (such as "buy-minus" or "sell-plus") that cannot be met. Furthermore, this proposed rule change will provide for the execution of matched MOC buy and sell orders entered by the same firm. Such matched orders will also be exempt from any other applicable Exchange limitations (such as the Expiration Friday deadlines for order entry.) [4]

Short Sale Rule

The application of the short sale rule to MOC buy and sell orders entered as pairs can result in partial executions of program trades. Because the Exchange does not believe that the execution of a MOC order to sell short offers the opportunity for price manipulation when the order is both entered and executed against an offsetting MOC buy order and is part of a program trading strategy, the Exchange believes that a limited exemption from the short sale rule for these orders is appropriate.

Pursuant to Rule 10a–1 and Exchange Rule 440B, a short sale on the Exchange may not be effected at a price either (1) below the last reported price or (2) at the last reported price unless that price is higher than the last reported different price. These limitations are intended to prevent a market participant who is short stock from leading or driving down the market price of the stock for the purpose of profiting later by "covering" the short position at a lower price. For a number of reasons, matched MOC orders entered to effect a program trading strategy inherently do not present the opportunity for this type of price manipulation.

As an initial matter, by limiting the exemption to the entry of two-sided orders, the exchange will preclude any opportunity to establish, or increase, a sell order imblance that would create downward pressure on the market. Indeed, paired MOC orders will not participate directly in the auction, but instead will be priced at the closing price established by order flow unrelated to the paired MOC orders.

Furthermore, by definition, the price given to the paired MOC orders will be the closing price on the Exchange. Thus, the print of the final sale can not have any effect on subsequent Exchange trading that day.

In addition to the inherent inability to manipulate prices by entering paired MOC orders, the Exchange is proposing to further circumscribe any manipulation potential by limiting the short sale exemption to only paired MOC orders relating to "program trading," as that term is used in NYSE Rule 80A.[5] Pursuant to this limitation, paired MOC orders must be part of a market strategy involving at least 15 stocks or be part of an index arbitrage strategy (which usually involves many more stocks) to be eligible for the short sale exemption. In such a situation, it is extremely unlikely that a seller would be attempting to depress the price of any single stock.

Because there is no potential for market manipulation or depressing the market price for a security in the circumstances described above, the Exchange requests the Commission to exempt from Rule 10a–1 a MOC order to

[1] The NYSE proposes to amend Rules 13, 116, and 123.

[2] *See* NYSE Rule 116.40.

[3] Currently, NYSE Rule 13 defines an "at the close" order as a "market order which is to be executed at or as near to the close as practicable." Similarly, NYSE Rule 123.43 currently provides that "[t]he acceptance of an 'at the close' order by a broker does not make him responsible for an execution at the closing price."

[4] *See, e.g.*, Securities Exchange Act Release No. 26406 (December 29, 1988), 54 FR 343 (approving File No. SR–NYSE–88–37).

[5] For the purposes of NYSE Rule 80A, "program trading" means either (A) index arbitrage or (B) any trading strategy involving the related purchase or sale of a "basket" or group of 15 or more stocks having a total market value of $1 million or more. Program trading includes the purchases or sales of stocks that are part of a coordinated trading strategy, even if the purchases or sales are neither entered or executed contemporaneously, nor part of a trading strategy involving options or futures contracts on an index stock group, or options on any such futures contracts, or otherwise relating to a stock market index.

sell short that is entered by a member firm where (i) the member firm has also entered an MOC order to buy the same amount of the stock, and (ii) both MOC orders are part of a program trading strategy by the member firm, and the orders are identified as such.[6]

Basis—The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) of the Act that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

This proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments regarding this proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve 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. The 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 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 persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-89-10 and should be submitted on or before July 12, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 13, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-14604 Filed 6-20-89; 8:45 am]

BILLING CODE 8010-01-M

[6] If the Commission believes that an exemption is not the appropriate procedural mechanism to grant regulatory relief from these restrictions, the Exchange requests, in the alternative, that Commission staff issue a no-action letter concerning the applicability of Rule 10a-1 in these circumstances.

[Release NO. 34-26922; File No. SR-PHLX-89-30]

Self-Regulatory Organizations; Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Persons To Serve as Trustees of the Stock Exchange Fund

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 26, 1989, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. 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 Phlx, pursuant to Rule 19b-4, hereby proposes to amend its By-Law Article IX, Section 9-1 to permit a partner, officer, director or persons employed by or associated with a member or member organization to serve, if appointed, as a Trustee of the Stock Exchange Fund. The text of the proposed by-law amendment appears below (new language *underscored):*

Article IX

Trustees of Stock Exchange Fund

Trustees of Stock Exchange Fund—How Appointed

Section 9-1. There shall be no less than six nor more than eight trustees of the Stock Exchange Fund, composed of the Chairman of the Board of Governors, two Vice-Chairmen of the Board of Governors, and up to five members *and/or partners, officers, directors or persons employed by or associated with any member or member organization* of the Corporation. Each of the member *and/or member affiliated* trustees shall be appointed by the Board of Governors to serve for three years or until his successor is appointed.

No further changes.

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 By-Law Amendment is to permit a partner, officer, director or persons employed by or associated with a member or member organization to serve, if appointed, as a Trustee of the Stock Exchange Fund. The expanded eligibility will allow the Chairman to recommend and the Board to appoint persons who are not members but possess significant investment advisory expertise to the position of Trustee. This By-Law Amendment will allow the Exchange to maximize the utilization and contribution of persons associated with members and member organizations for the benefit of the entire Exchange community.

The proposed rule change is consistent with section 6(b)(3) of the Exchange Act in that it promotes "fair representation of its members in the * * * administration of its affairs * * *"

B. Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any burden on competiton.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Two written comments respecting the proposed By-Law Amendment were directed to the Office of the Secretary and presented to the Board of Governors for their consideration at their regular meeting held May 17, 1989.

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 or such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the safe-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 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 on or before July 12, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 13, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-14603 Filed 6-20-89; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Incorporated

June 13, 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:

Repsol, S.A.
American Depository Shares (File No. 7-4610)
R.O.C. Taiwan Fund
Shares of Beneficial Interest, $0.01 Par Value (File No. 7-4611)
Fischbach Corp.
Common Stock, $1 Par Value (File No. 7-4612)
Kemper Strategic Municipal Income Trust
Common Shares of Beneficial Interest (File No. 7-4613)
Putnam High Yield Municipal Trust
Shares of Beneficial Interest (File No. 7-4614)
Van Kampen Merritt Limited Term High Income Trust
Common Shares of Beneficial Interest, $0.01 Par Value (File No. 7-4615)
Kemper Corp.
Common Stock, $5 Par Value (File No. 7-4616)
United States Cellular Corp.
Common Stock, $1 Par Value (File No. 7-4617)
Belo (A.H.) Corporation
Class A Common Stock, $1.67 Par Value (File No. 7-4618)
Carolco Pictures Inc.
Common Stock, $0.01 Par Value (File No. 7-4619)
Data-Design Laboratories, Inc.
Common Stock, $0.33⅓ Par Value (File No. 7-4620)
Esterline Corporation
Common Stock, $0.20 Par Value (File No. 7-4621)
Farah Incomporated
Common Stock, $4 Par Value (File No. 7-4622)
Green Tree Acceptance, Inc.
Common Stock, $0.01 Par Value (File No. 7-4623)
Hills Department Stores, Inc.
Common Stock, $0.01 Par Value (File No. 7-4624)
Cabletron Systems, Inc.
Common Stock, $0.1 Par Value (File No. 7-4625)
A.L. Laboratories, Inc.
Class A Common Stock, $0.20 Par Value (File No. 7-4626)
Plum Creek Timber Co., L.P.
Depository Units (File No. 7-4627)
Science Management Corp.
Common Stock, $0.10 Par Value (File No. 7-4628)

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 July 5, 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. 89-14600 Filed 6-20-89; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area No. 2354; Amendment No. 3]

Louisiana (And Contiguous Counties in the States of Texas, Arkansas & Mississippi); Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with the Notice of Amendment to the President's declaration, dated June 8, 1989, to include the parishes of Acadia, East Feliciana, Franklin, Grant, LaSalle, Madison, St. Landry, and Vermillion, in the State of Louisiana, as a result of damages from severe storms and flooding which occurred May 4 through May 27, 1989.

In addition, applications for economic injury from small businesses located in the contiguous parishes of Avoyelles, East Baton Rouge, Iberia, Lafayette,

Pointe Coupee, St. Helena, St. Martin, Tensas, and West Feliciana, in the State of Louisiana, and the counties of Amite, Issaquena, Warren, and Wilkinson, in the State of Mississippi, may be filed until the specified date at the previously designated location.

The number assigned to the State of Mississippi for economic injury is 677500.

Any counties contiguous to the above-named primary counties and not listed herein have previously been named as contiguous or primary counties for the same occurrence.

All other information remains the same; i.e., the termination date for filing applications for physical damage is the close of business on July 18, 1989, and for economic injury until the close of business on February 20, 1990.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Date: June 13, 1989.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 89-14613 Filed 6-20-89; 8:45 am]

BILLING CODE 8025-01-M

[License No. 06/06-0209]

Rust Capital, Ltd.; Application for Conflict of Interest Transaction

Notice is hereby given that Rust Capital, Ltd., 114 West 7th Street, Austin, Texas 78701, a Federal Licensee under the Small Business Investment Act of 1958, as amended (the Act), has filed an application with the Small Business Administration (SBA) pursuant to § 107.903(b)(1) of the Regulations governing small business investment companies (13 CFR 107.903(b)(1) (1989)) for an exemption from the provisions of the cited Regulations.

Rust proposes to invest $45,000 in CIMPOINT, 1807 W. Braker Lane, Suite S, Austin, Texas 78758.

The proposed financing is brought within the purview of § 107.903(b)(1) of the Regulations because Rust Ventures, L.P., an associate of Rust Capital, Ltd., owns 15% of CIMPOINT.

Notice is hereby given that any interested person may, not later than fifteen (15) days from the date of publication of this Notice, submit written comments on the proposed transaction to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L. Street, NW., Washington, DC 20416.

A copy of this Notice will be published in a newspaper of general circulation in Austin, Texas.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

Dated: June 15, 1989.

[FR Doc. 89-19611 Filed 6-20-89; 8:45 am]

BILLING CODE 8025-01-M

[Application No. 09/09-5382]

South Bay Capital Corp.; Application for a Small Business Investment Company License

An application for a license to operate as a small business investment company under the provisions of the Small Business Investment Act of 1958, as amended, (15 U.S.C. 661. *et. seq.*) (the Act) has been filed by South Bay Capital Corporation (the Applicant), 18039 Crenshaw Blvd., Torrence, CA 90504 with the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (1989).

The officers, directors, and stockholders of the Applicant are as follows:

Name and address	Title	Percent of capital stock
Charles C. Chiang, 20610 Victor St., Torrence, CA 90503.	President, and chairman (full-time responsible manager).	5
Sun-Ju Hung, 21720 Madrona Ave., Torrence, CA 90503.	Vice president and director.	5
James S. Wu, 106 N. Bel Aire Dr., Burbank, CA 91504.	Vice president and director.	5
David Li, 440 Towne Ave., Los Angeles, CA 90013.	Chief financial officer and director.	5
Ho-Yuan Liu, 2045 Palma Dr., Rowland Hts., CA 91748.	Secretary	4
Toshi Chen, 2113 S. Vermont Ave., Torrence, CA 90502.	Director	3
Ying Min Cheng, 289 W. Buffington St., Upland, CA 91786.	Director	5
John C. Wang, 5610 Azure Wy., Long Beach, CA 90803.	Director	

There are twelve other stockholders each of whom own less than 10% of the outstanding capital stock.

The Applicant, a California Corporation, will begin operations wtih $1,000,000 of paid-in capital and paid-in surplus. The Applicant will conduct its activities primarily in the State of California but will consider investments in businesses in other areas of the United States.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the company under their management, including adequate profitability and financial soundness, in accordance with the Act and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed Applicant. Any such communications should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" St., N.W., Washington, DC 20416.

A copy of this notice shall be published in a newspaper of general circulation in the Torrence, CA area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

Dated: June 15, 1989.

[FR Doc. 89-14612 Filed 6-20-89; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: June 15, 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.

Comptroller of the Currency

OMB Number: 1557-0155.

Form Number: None.

Type of Review: Extension.

Title: Limitations on Payment of Dividends.

Description: This regulation prescribes limitations on the payment of dividends by national banks in relation to the bank's capital and earnings position and requires approval from the Comptroller of the Currency for dividend payments in excess of statutory limitations.

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 115.

Estimated Burden Hours Per Respondent: 1 hour.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 115 hours.

Clearance Officer: John Ference (202) 447–1177, Comptroller of the Currency, 5th Floor, L'Enfant Plaza, Washington, DC 20219.

OMB Reviewer: Gary Waxman (202) 395–7340, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 89–14643 Filed 6–20–89; 8:45 am]

BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review

Date: June 15, 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.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512–0220.

Form Number: ATF F 5170.4.

Type of Review: Extension.

Title: Application for Importers and/or Wholesaler's Basic Permit Under Federal Alcohol Administration Act.

Description: Form 5170.4 is completed by persons intending to engage in the business of importing and/or wholesaling alcoholic beverages. The information provided allows ATF to identify the applicant and the location of the business and to determine whether the applicant qualifies for a basic permit under the Federal Alcohol Administration Act.

Estimated Number of Respondents: 1,300.

Estimated Burden Hours Per Response: 3 hours.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 3,900 hours.

OMB Number: 1512–0398.

Form Number: ATF F 2093 (5200.3) and ATF F 2098 (5200.16).

Type of Review: Extension.

Title: Application for Permit Under 26 U.S.C. Chapter 52—Manufacturer of Tobacco Products or Proprietor of Export Warehouse and Application for Amended Permit Under 26 U.S.C. 5712—Manufacturer of Tobacco Products or Proprietor of Export Warehouse.

Description: These forms are used by tobacco industry members to obtain and amend permits necessary to engage in business as a Manufacturer of Tobacco Products or Proprietor of Export Warehouse.

Estimated Number of Respondents: 336.

Estimated Burden Hours Per Response: 1 hour 30 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 504 hours.

Clearance Officer: Robert Masarsky, (202) 566–7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 89–14644 Filed 6–20–89; 8:45 am]

BILLING CODE 4810–25–M

UNITED STATES SENTENCING COMMISSION

Public Access to Sentencing Commission Documents and Data

AGENCY: United States Sentencing Commission.

ACTION: Notice of proposed policy regarding public access to Sentencing Commission documents and data; interim adoption of policy.

SUMMARY: Pursuant to its authority under section 995(a) of Title 28, United States Code, the Sentencing Commission adopts as an interim policy and proposes for public comment the policy on public access to Sentencing Commission documents and data set forth below. The Commission invites comment on this proposal.

DATE: Comments should be received by the Commission no later than September 1, 1989.

ADDRESS: Comments should be sent to: United States Sentencing Commission, 1331 Pennsylvania Avenue, NW., Suite 1400, Washington, DC 20004, Attention: Public Access Comment.

FOR FURTHER INFORMATION CONTACT: Paul K. Martin, Communications Director for the Commission, telephone: (202) 662–8800.

SUPPLEMENTARY INFORMATION: Section 995(a)(1) of Title 28 authorizes the U.S. Sentencing Commission, an independent agency in the Judicial branch of government, to establish general policies and promulgate rules and regulations for the Commission as necessary to carry out the purposes of the Sentencing Reform Act of 1984.

Providing public access to non-confidential sentencing information is consistent both with the letter and spirit of the Sentencing Reform Act of 1984. The Act also envisions the Commission serving as a clearinghouse for information on Federal sentencing practices.

The Commission seeks to carry out its Congressional mandate in a manner that provides the most efficient use of government resources and is consistent with its agreement with the Administrative Office of the U.S. Courts regarding the confidentiality of certain documents pertaining to imposition of sentence in individual cases. To this end the commission proposes that Commission publications and other reports will be made available to the public through the Government Printing Office or other administratively efficient means. Statistical information contained in published and/or commission approved reports will be available upon request. Photocopies of documents exceeding five pages will be provided at fifteen (15) cents per page.

Access to Commission data in the form of comprehensive datasets will be provided through public use tapes provided to the Inter-university Consortium for Political and Social Research at the University of Michigan. Source documents in the Commission's possession, including presentence reports, plea agreements, and judgment and sentence orders, will not be made available to the public. Approved Commission minutes will be available for public inspection. Photocopies of the minutes will be available at a cost of fifteen (15) cents per page. The

Commission's library is open to the public. Selected books and other documents may be borrowed and others may be photocopied at the user's expense.

The Commission has authority to enter into cooperative agreements with private individuals, firms, and organizations. Under certain circumstances the Commission may enter into cooperative agreements with private researchers to undertake an analysis of sentencing data. All confidentiality requirements pertaining to Commission staff shall apply to any party who enters into a cooperative agreement with the Commission. Proposals for such agreements shall be considered by the Commission on the basis of the nature of sponsorship, the purpose of the research, and the administrative burden it will impose.

Proposals will be reviewed by a group including the Commission's Staff Director (or his representative), the General Counsel (or his representative), and the Director of Monitoring. The group will forward its recommendation to the Commission after assessing the feasibility and appropriateness of the proposal. The Staff Director shall ensure consultation with representatives of the Administrative Office of the U.S. Courts with respect to the proposed cooperative agreement as it relates to confidentiality of sentencing data.

Authority: 28 U.S.C. 995(a)(1), Sentencing Reform Act of 1984 (Pub. L. 98–473, October 12, 1984).

William W. Wilkins, Jr.,

Chairman.

Public Access to Sentencing Commission Documents and Data

I. Introduction: General Purpose and Authorities

Providing public access to non-confidential sentencing information is consistent both with the letter and the spirit of the Sentencing Reform Act of 1984. Among the Commission's duties under the Act is to "establish sentencing policies and practices for the Federal criminal justice system that reflect, to the extent practicable, advancement in knowledge of human behavior as it relates to the criminal justice process." 28 U.S.C. 991(b)(1)(C). As part of that mandate, Congress envisioned that the Commission would "serv[e] as a clearinghouse and information center for the collection, preparation, and dissemination of information on Federal sentencing practices." 28 U.S.C. 995(a)(12)(A).

Consistent with its clearinghouse function, the Commission is required to provide certain information to the public regarding sentencing in the federal system. Thus, the Commission is resonsible for: (a) Collecting systematically the data obtained from studies, research, and the empirical experience of public and private agencies concerning the sentencing process (28 U.S.C. 995 (a)(13)); (b) publishing data concerning the sentencing process (28 U.S.C. 995(a)(14)); (c) collecting systematically and disseminating information concerning sentences actually imposed, and the relationship of such sentences to the statutory purposes of sentencing set forth in section 3553(a) of title 18, United States Code (28 U.D.C. 995(a)(15)); (d) collecting systematically and disseminating information regarding effectiveness of sentences imposed (28 U.S.C 995(a)(16)); and, (e) maintaining and making available for public inspection a record of the final vote of each member on any action taken by it (28 U.S.C. 995(e)).

The U.S. Sentencing Commission seeks to carry out its Congressional mandates in a manner that provides for the most efficient use of government resources and is consistent with its agreement with the Administrative Office of the U.S. Courts regarding the confidentiality of certain documents.

II. Public Access to Commission Publications and Other Reports

Publications. Official Commission publications are available to the public through the Government Printing Office or other administratively efficient means. Copies of all such documents are available in the Commission library for public review.

Other Reports. Requests for statistical information regarding federal sentencing practices will be limited to published and/or Commission approved reports. The reports produced from monitoring data collected by the Commission will ba available on an updated-monthly basis and photocopies of such reports may be requested from the Commission. Photocopied documents exceeding five pages are available at a cost of fifteen (15) cents per page.

III. Public Access to Commission Data

Comprehensive Datasets. The Commission will create a comprehensive dataset on federal sentencing practices under the Sentencing Guidelines that will be made available for public use through the Inter-university Consortium for Political and Social Research. The dataset, with information that specifically identifies an individual deleted, will be updated periodically. To ensure against the dissemination of confidential information, those receiving information from the consortium will be required to sign confidentiality agreements.

Source documents. Source documents, in general, will not be available to the public. Much of the information contained within individual files is of a confidential nature and is protected by an agreement entered into by the Commission with the Administrative Office of the U.S. Courts.

IV. Public Access to Commission Minutes and Library Services

Commisson Mintues. Approved minutes of Commission meetings are available for public inspection. Appointments to view the minutes must be coordinated through the Communications Director. Photocopies of minutes are also available at a cost of fifteen (15) cents per page.

Library Services. The public is afforded full access to the library and the documents contained therein. Selected books and other documents are available on a lend basis and other materials are available for photocopying. The expense of photocopying rests with the user.

V. Special Research Projects

Authority and Purpose. Under 28 U.S.C. 995(a) (6)–(7), the Commission has authority to enter into "cooperative agreements [] and other transactions * * * with any person, firm, association, corporation, educational institution, or nonprofit organization" and to "accept and employ * * * voluntary and uncompensated services." From time to time the Commission may enter into cooperative agreements with private researchers to undertake an analysis of sentencing data. The purpose of such agreements would be to further the Commission's duty to "establish sentencing policies and practices for the Federal criminal justice system that reflect, to the extent practicable, advancement in knowledge of human behavior as it relates to the criminal justice process." 28 U.S.C. 991(b)(1)(C).

Criteria and Requirements. Cooperative agreements, when entered into, will involve formal arrangements with outside persons or organizations. All requirements with respect to preserving the confidentiality of information that are applicable to the Commission and its staff will apply equally to any party who enters into a cooperative agreement with the Commission. Proposals for cooperative agreements will be considered by the Commission in light of the following criteria:

—Whether the proposed research is sponsored by a recognized academic institution, non-profit research organization, or government entity;
—The purpose of the research and extent to which the proposed project would advance the knowledge of human behavior as it relates to the criminal justice process; and
—The amount of data that is being requested and the administrative burden involved in providing such data.

Special Project Coordination and Feasibility. Proposals for special projects will be reviewed by the Staff Director (or his representative), the General Counsel (or his representative), and the Director of Monitoring of the Sentencing Commission, who shall report to the Commission on the feasibility and appropriateness of the proposal. The Staff Director shall ensure that a representative of the General Counsel's Office and of the Probation Division of the Administrative Office of the U.S. Courts are consulted with respect to the proposed cooperative agreement as it may relate to the Commission's obligations involving confidentiality of sentencing data.

Explanation

Section I.

This section sets forth the statutory authorities under which the Commission adopted a policy on public access.

Section II.

Publications. This section refers to official Commission publications such as the Guidelines Manual, the Supplementary Report on the Initial Sentencing Guidelines and Policy Statements, and the Annual Report that are currently available from the Government Printing Office (GPO). As new reports are produced and approved by the Commission for dissemination, they too will be made available through the GPO or other administratively efficient means. It is anticipated that the computer software developed to assist in application of the Sentencing Guidelines (ASSYST) will be made available to the general public through the National Technical Information Service.

Other Reports. This section provides that materials other than official publications will only be made available to the public upon specific approval by the Commission.

Section III.

Comprehensive Datasets. This section provides that comprehensive datasets of sentencing information will be made available through the Inter-university Consortium for Political and Social Research. Making information available to the public in that manner is consistent with the policies of other federal agencies conducting or administering research related to sentencing and other criminal justice issues. The dataset will contain complete information on cases sentenced under the guidelines with individual identifiers deleted.

Source Documents. This section states that source documents will not be made available to the public. The Commission takes this position relative to source documents for two reasons. First, in June of 1988 the Commission entered into an agreement with the Administrative Office of the U.S. Courts concerning the appropriate treatment of confidential sentencing data.[1]

This agreement places several limitations on the Commission in terms of the data collected by representatives of the U.S. Courts and provided by the Commission:

—It permits the use of confidential information "only in connection with" the Commission's "statutory duties;"
—It requires that "[n]o information that will identify an individual defendant or other person identified in the sentencing information" be released outside of the Commission without the express permission of the court for which the information was prepared and that public Commission reports or summaries containing sentencing information be free of confidential identifying information; and
—It requires the Commission to maintain administrative and physical security over the information and limits internal distribution of confidential sentencing information to Commissioners and Commission personnel with a "need for the information."

It is imperative that the Commission operate both by the letter and the spirit of the agreement with the Administrative Office. The cooperation of the Administrative Office in the collection of the data is essential to the Commission's ability to carry out its statutory mandate to "collect systematically and disseminate information regarding effectiveness of sentences imposed."

The second reason that the Commission is unable to make source documents available to the public relates to the physical and financial burden that such a policy would place on the Commission. In order to protect the confidentiality of information, photocopies of every non-confidential document would be required. Each photocopy would require inspection and removal of individual identifying information. Separate storage would be required for the desensitized documents in order to remove the potential of accidental availability of confidential documents or documents that contained individual identifiers. The Commission simply does not have the resources to provide such a service, particularly given that all information available from such source documents would be available through the dataset provided to ICPSR.

Section IV

Commission Minutes. Section 995(e) of title 28, United States Code, requires that a record of votes of each member of the Commission to be made available to the public. This policy is proposed in furtherance of that statutory requirement.

Library Services. The Commission is assembling a library that will contain books, academic journals and articles, government reports and documents, reports of varied studies on federal sentencing, and bibliographic materials on selected topics related to federal sentencing. As part of its clearinghouse function it is proposed that library materials be made available to the public for review on Commission premises, duplication at the users' expense, or, with respect to some materials, on a lend basis.

Section V

This section provides a formal structure under which the Commission may share information with outside researchers for mutually beneficial purposes. The Commission possesses the authority under statute to enter into "cooperative agreements" with private individuals and organizations and to accept voluntary, uncompensated services. This section anticipates situations where the Commission may wish to cooperate with outside research organizations in the interests of furthering "the advancement in knowledge of human behavior as it relates to the criminal justice process." 28 U.S.C. 991(b)(1)(C). It provides that such cooperative agreements be formal and that all requirements concerning the confidentiality of information be observed. Criteria for accepting a proposed project are provided. Further, a staff committee is required to access proposals for feasibility and appropriateness. It is also required that

[1] Letter from L. Ralph Mecham, Director, Administrative Office of the U.S. Courts, to Honorable William W. Wilkins, Jr., Chairman, U.S. Sentencing Commission, June 22, 1988.

certain offices within the Administrative Office of the United States Courts be consulted with respect to any questions concerning the Commission's obligations involving the confidentiality of sentencing data as they may relate to a proposed cooperative agreement.

[FR Doc. 89-14585 Filed 6-20-89; 8:45 am]
BILLING CODE 2210-40-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301-73]

Initiation of Section 302 Investigation and Request for Public Comment; Certain Import Restrictions in Brazil

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of initiation of investigation under section 302 of the Trade Act of 1974, as amended; request for written comments.

SUMMARY: The United States Trade Representative (USTR) has initiated an investigation under section 302 of the Trade Act of 1974, as amended ("the Trade Act") with respect to certain import restrictions maintained by the Government of Brazil. USTR invites written comments on the matter being investigated.

DATES: This investigation was initiated on June 16, 1989. Written comments from interested persons are due July 18, 1989.

ADDRESS: Comments should be addressed to the Chairwoman, Section 301 Committee, Office of the United States Trade Representative, Room 223, 600 17th St., NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Jon Huenemann, Director, Brazil and Southern Cone Affairs, (202) 395-5190, or Jane Bradley, Associate General Counsel, USTR, (202) 395-3432.

SUPPLEMENTARY INFORMATION: Under section 310 of the Trade Act of 1974, as amended (19 U.S.C. 2420), the USTR must identify as "priority practices" foreign trade barriers the elimination of which is likely to increase U.S. exports, either directly or through establishing a beneficial precedent. Accordingly, on May 26, 1989, the USTR identified as a "priority practice" certain quantitative import restrictions maintained by the Government of Brazil (54 FR 24438). Brazil maintains an import prohibition list which covers approximately 1,000 items, barring U.S. exports of agricultural items and manufactured goods, including meat, dairy products, plastics, chemicals, textiles, leather products, electronic items, motor vehicles, and furniture. Brazil also uses its licensing regime to implement company-specific and sectoral import quotas, which impede many important U.S. export items, including office machine parts, internal combustion engine parts, and electrical machinery. The lack of transparency of Brazil's licensing system creates uncertainty for U.S. exporters to Brazil and inhibits market access.

Investigation

Section 319(b) of the Trade Act requires the USTR to initiate an investigation, pursuant to section 302(b)(1)(A) of the Trade Act, of this "priority practice", in order to determine whether it is actionable under section 301 of the Trade Act.

Public Comment

The public is invited to comment on the policies and practices of the Government of Brazil that are the subject of this investigation, including (1) whether Brazil's import restrictions referred to above are actionable under section 301, including comments on whether they are inconsistent with a trade agreement; and (2) the amount of the burden or restriction on U.S. commerce caused by the Brazilian restrictions on particular U.S. products.

Interested persons must submit 20 copies of their written comments, in English, by 5:00 p.m. on July 18, 1989, to the Chairwoman of the Section 301 Committee at the address listed above. All submissions must be filed in accordance with 15 CFR part 2006.8, and will be placed in a file (Docket 301-73) open to public inspection pursuant to 15 CFR 2006.12 (except confidential business information exempt from public inspection in accordance with 15 CFR 2006.15).

A. Jane Bradley,
Chairwoman, Section 301 Committee.

[FR Doc. 89-14720 Filed 6-20-89; 8:45 am]
BILLING CODE 3190-01-M

[Docket No. 301-76]

Initiation of Section 302 Investigation and Request for Public Comment: Insurance Market Barriers Maintained by the Government of India

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of initiation of investigation under section 302 of the Trade Act of 1974, as amended; request for written comments.

SUMMARY: The United States Trade Representative (USTR) has initiated an investigation under section 302 of the Trade Act of 1974, as amended ("the Trade Act") with respect to barriers to foreign insurance providers imposed by the Government of India. USTR invites written comments on the matter being investigated.

DATES: This investigation was initiated on June 16, 1989. Written comments from interested persons are due July 18, 1989.

ADDRESS: Comments should be addressed to the Chairwoman, Section 301 Committee, Office of the United States Trade Representative, Room 223, 600 17th Street NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Peter Collins, Director for Southeast Asian and Indian Affairs, (202) 395-6813, or Jane Bradley, Associate General Counsel, USTR, 395-3432.

SUPPLEMENTARY INFORMATION: Under section 310 of the Trade Act of 1974, as amended (19 U.S.C. 2420), the USTR must identify as "priority practices" foreign trade barriers the elimination of through establishing a beneficial precendent. Accordingly, on May 26, 1989, the USTR identified as a "priority practice" the barriers maintained by the Government of India with respect to sales of insurance in India by foreign insurance companies. Private insurance companies are not permitted to sell insurance in India. The state-owned General Insurance Company of India and its four subsidiaries have a monopoly on sales of general insurance, and the state-owned Life Insurance Corporation of India has a monopoly on the sale of life insurance in India.

Investigation

Section 310(b) of the Trade Act requires the USTR to initiate an investigation, pursuant to section 302(b)(1)(A) of the Trade Act, of this "priority practice", in order to determine whether it is actionable under section 301 of the Trade Act.

Public Comment

The public is invited to comment on the policies and practices of the Government of India that are the subject of this investigation, including (1) whether India's insurance market barriers are actionable under section 301; and (2) the amount of the burden or restriction on U.S. commerce caused by these policies and practices.

Interested persons must submit 20 copies of their written comments, in English, by 5:00 p.m. on July 18, 1989, to the Chairwoman of the Section 301 Committee at the address listed above. All submissions must be filed in accordance with 15 CFR part 2006.8, and will be placed in a file (Docket 301–78) open to public inspection pursuant to 15 CFR 2006.12 (except confidential business information exempt from public inspection in accordance with 15 CFR 2006.15).

A. Jane Bradley,

Chairwoman, Section 301 Committee.

[FR Doc. 89–14725 Filed 6–20–89; 8:45 am]

BILLING CODE 3190–01–M

[Docket No. 301–77]

Initiation of Section 302 Investigation and Request for Public Comment; Trade-Related Investment Measures Maintained by the Government of India

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of intitiation of investigation under section 302 of the Trade Act of 1974, as amended; request for written comments

SUMMARY: The United States Trade Representative (USTR) has initiated an investigation under section 302 of the Trade Act of 1974, as amended ("the Trade Act") with respect to trade-restricting measures imposed by the Government of India on foreign investors. USTR invites written comments on the matter being investigated.

DATES: This investigation was initiated on June 16, 1989. Written comments from interested persons are due July 18, 1989.

ADDRESS: Comments should be addressed to the Chairwoman, Section 301 Committee, Office of the United States Trade Representative, Room 223, 600 17th St., NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Peter Collins, Director for Southeast Asian and Indian Affairs, (202) 395–6813, or Jane Bradley, Associate General Counsel, USTR, 395–3432.

SUPPLEMENTARY INFORMATION: Under section 310 of the Trade Act of 1974, as amended (19 U.S.C. 2420), the USTR must identify as "priority practices" foreign trade barriers the elimination of which is likely to increase U.S. exports, either directly or through establishing a beneficial precedent. Accordingly, on May 26, 1989, the USTR identified as a "priority practice" the trade-restricting measures imposed by the Government of India upon foreign investors. (54 FR 24438). Government approval is required for all new or expanded foreign investment in India. Approval is conditioned upon a number of criteria, including limits on foreign equity participation. Where approval is granted, the Indian Government often requires investors is granted, the Indian Government often requires investors to use locally-produced foods in the items they produce in India, rather than allowing them to import the best quality and most cost-effective products. Some investors are also required to meet export targets. These and other requirements affect foreign investors, and result in significant trade distortions.

Investigation

Section 310(b) of the Trade Act requires the USTR to initiate an investigation, pursuant to section 302(b)(1)(A) of the Trade Act, of this "priority practice", in order to determine whether it is actionable under section 301 of the Trade Act.

Public Comment:

The public is invited to comment on the policies and practices of the Government of India that are the subject of this investigation, including (1) whether India's performance requirements and other trade-related investment measures are actionable under section 301; and (2) the amount of the burden or restriction on U.S. commerce caused by these policies and practices.

Interested persons must submit 20 copies of their written comments, in English, by 5:00 p.m. on July 18, 1989, to the Chairwoman of the section 301 Committee at the address listed above. All submissions must be filed in accordance with 15 CFR 2006.8, and will be placed in a file (Docket 301–77) open to public inspection pursuant to 15 CFR 2006.12 (except confidential business information exempt from public inspection in accordance with 15 CFR 2006.15).

A. Jane Bradley,

Chairwoman, Section 301 Committee.

[FR Doc. 89–14724 Filed 6–20–89; 8:45 am]

BILLING CODE 3190–01–M

[Docket No. 301–74]

Initiation of Section 302 Investigation and Request for Public Comment; Ban on Government Procurement of Foreign Satellites by the Government of Japan

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of initiation of investigation under section 302 of the Trade Act of 1974, as amended; request for written comments.

SUMMARY: The United States Trade Representative (USTR) has initiated an investigation under section 302 of the Trade Act of 1974, as amended ("the Trade Act") with respect to the Government of Japan's ban on government procurement of foreign satellites. USTR invites written comments on the matter being investigated.

DATES: This investigation was initiated on June 16, 1989. Written comments by interested persons are due July 18, 1989.

ADDRESS: Comments should be addressed to the Chairwoman, Section 301 Committee, Office of the United States Trade Representative, Room 223, 600 17th Street, NW.; Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Glen Fukushima, Deputy Assistant U.S. Trade Representative for Japan and China, (202) 395–5070, or Holly Hammonds, Associate General Counsel, USTR, (202) 395–7305.

SUPPLEMENTARY INFORMATION: Under section 210 of the Trade Act of 1974, as amended (19 U.S.C. 2420), the USTR must identify as "priority practices" foreign trade barriers the elimination of which is likely to increase U.S. exports, either directly or through establishing a beneficial precedent. Accordingly, on May 26, 1989, the USTR identified as a "priority practice" the ban on government procurement of foreign satellites maintained by the Government of Japan (54 FR 24438). As part of a "long range vision on space development" Japan prohibits the procurement of foreign satellites by government entities if such a purchase interferes with "indigenous development objectives." Japan's policy of promoting indigenous production capability by prohibiting government procurement of foreign satellites applies to the entire range of satellites (broadcast, communications, earth resource, weather). The United States has long

been the world leader in satellite production, and is thus denied significant market opportunities by this policy.

Investigation

Section 310(b) of the Trade Act requires the USTR to initiate an investigation, pursuant to section 302(b)(1)(A) of the Trade Act, of this "priority practice", in order to determine whether it is actionable under section 301 of the Trade Act.

Public Comment

The public is invited to comment on the policies and practices of the government of Japan that are the subject of this investigation, including (1) whether Japan's ban on government procurement of foreign satellites is actionable under section 301; and (2) the amount of the burden or restriction on U.S. commerce caused by these policies and practices.

Interested persons must submit 20 copies of their written comments, in English, by 5:00 p.m. on July 18, 1989, to the Chairwoman of the Section 301 Committee at the address listed above. All submissions must be filed in accordance with 15 CFR part 2006.8, and will be placed in a file (Docket 301–74) open to public inspection pursuant to 15 CFR 2006.12 (except confidential business information exempt from public inspection in accordance with 15 CFR 2006.15).

A. Jane Bradley,

Chairwoman, Section 301 Committee.

[FR Doc. 89–14721 Filed 6–20–89; 8:45 am]

BILLING CODE 3170–01–M

[Docket No. 301–75]

Initiation of Section 302 Investigation and Request for Public Comment; Exclusionary Government Procurement of Supercomputers by the Government of Japan

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of initiation of investigation under section 302 of the Trade Act of 1974, as amended; request for written comments.

SUMMARY: The United States Trade Representative (USTR) has initiated an investigation under section 302 of the Trade Act of 1974, as amended ("the Trade Act") with respect to the Government of Japan's government procurement practices with respect to supercomputers. USTR invites written comments on the matter being investigated.

DATES: This investigation was initiated on June 16, 1989. Written comments from interested persons are due July 18, 1989.

ADDRESS: Comments should be addressed to the Members of the Section 301 Committee, Office of the United States Trade Representative, Room 223, 600 17th Street, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Joseph Massey, Assistant U.S. Trade Representative for Japan and China, (202) 395–3900, or Douglas Newkirk, Assistant U.S. Trade Representative for GATT Affairs, (202) 395–6843.

SUPPLEMENTARY INFORMATION: Under section 310 of the Trade Act of 1974, as amended (19 U.S.C. 2420), the USTR must identify as "priority practices" foreign trade barriers the elimination of which is likely to increase U.S. exports, either directly or through establishing a beneficial precedent. Accordingly, on May 26, 1989, the USTR identified as a "priority practice" the Government of Japan's exclusionary practices with respect to the government procurement of supercomputers (54 FR 24438). The United States supercomputer industry has been effectively denied access to the Japanese public sector market despite a 1987 agreement with Japan on supercomputers. The Government of Japan has engaged in a variety of practices affecting the procurement process which result in the purchase of supercomputers from indigenous producers. For example, U.S. supercomputer suppliers find themselves excluded from serious consideration in Japanese Government procurements due to technical specifications favoring incumbent Japanese suppliers. U.S. firms are further disadvantaged by extraordinarily low Japanese Government supercomputer budgets which require massive discounts of up to 80 percent off list price.

Investigation

Section 310(b) of the Trade Act requires the USTR to intitiate an investigation, pursuant to section 302(b)(1)(A) of the Trade Act, of this "priority practice", in order to determine whether it is actionable under section 310 of the Trade Act.

Public Comment

The public is invited to comment on the policies and practices of the Government of Japan that are the subject of this investigation, including (1) whether Japan's government procurement practices with respect to supercomputers are actionable under section 301; and (2) the amount of the burden or restriction on U.S. commerce caused by these policies and practices.

Interested persons must submit 20 copies of their written comments, in English, by 5:00 p.m. on July 18, 1989, to the Chairwoman of the Section 301 Committee at the address listed above. All submissions must be filed in accordance with 15 CFR 2006.8, and will be placed in a file (Docket 301–75) open to public inspection pursuant to 15 CFR 2006.12 (except confidential business information exempt from public inspection in accordance with 15 CFR 2006.15).

A. Jane Bradley,

Chairwoman, Section 301 Committee.

[FR Doc. 89–14722 Filed 6–20–89; 8:45 am]

BILLING CODE 3190–01–M

[Docket No. 301–76]

Initiation of Section 302 Investigation and Request for Public Comment; Japanese Retrictions Affecting Imports of Forest Products

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of initiation of investigation under section 302 of the Trade Act of 1974, as amended; request for written comments.

SUMMARY: The United States Trade Representative (USTR) has initiated an investigation under section 302 of the Trade Act of 1974, as amended ("the Trade Act") with respect to the Government of Japan's policies and practices that restrict imports of forest products. USTR invites written comments on the matter being investigated.

DATES: This investigation was initiated on June 16, 1989. Written comments from interested persons are due July 18, 1989.

ADDRESS: Comments should be addressed to the Chairwoman, Section 301 Committee, Office of the United States Trade Representative, Room 223, 600 17th Street, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: John Melle, Office of the Assistant U.S. Trade Representative for Industry, (202) 395–6971, or Timothy Reif, Assistant General Counsel, USTR, (202) 395–6800.

SUPPLEMENTARY INFORMATION: Under section 310 of the Trade Act of 1974, as amended (19 U.S.C. 2420), the USTR must identify as "priority practices" foreign trade barriers the elimination of which is likely to increase U.S. exports, either directly or through establishing a beneficial precedent. Accordingly, on May 26, 1989, the USTR identified as a

"priority practice" the Government of Japan's policies and practices, including technical standards favoring Japanese producers, that restrict imports of forest products in Japan. (54 FR 24438). These practices include wood grading requirements as well as a variety of testing standards which impede U.S. exports.

Investigation

Section 310(b) of the Trade Act requires the USTR to intitiate an investigation, pursuant to section 302(b)(1)(A) of the Trade Act, of this "priority practice", in order to determine whether it is actionable under section 310 of the Trade Act.

Public Comment

The public is invited to comment on the policies and practices of the Government of Japan that are the subject of this investigation, including (1) whether Japan's technical standards or other non-tariff measures affecting imports of forest products are actionable under section 301, including comments on whether they are inconsistent with a trade agreement; and (2) the amount of the burden or restriction on U.S. commerce caused by these policies and practices.

Interested persons must submit 20 copies of their written comments, in English, by 5:00 p.m. on July 18, 1989, to the Chairwoman of the Section 301 Committee at the address listed above. All submissions must be filed in accordance with 15 CFR 2006.8, and will be placed in a file (Docket 301–76) open to public inspection pursuant to 15 CFR 2006.12 (except confidential business information exempt from public inspection in accordance with 15 CFR 2006.15).

A. Jane Bradley,

Chairwoman, Section 301 Committee.

[FR Doc. 89–14723 Filed 6–20–89; 8:45 am]

BILLING CODE 3190–01–M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 118
Wednesday, June 21, 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 DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:12 p.m. on Thursday, June 15, 1989, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider (1) matters relating to the possible failure of an insured bank; and (2) matters relating to assistance agreements pursuant to section 13(c) of the Federal Deposit Insurance Act.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Dated: June 16, 1989.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 89-14750 Filed 6-16-89; 5:08 pm]

BILLING CODE 6714-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, June 26, 1989.

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. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE 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: June 16, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-14743 Filed 6-16-89; 4:25 pm]

BILLING CODE 6210-01-M

U.S. NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE (NCLIS)

White House Conference Advisory Committee

PREVIOUSLY ANNOUNCED TIME AND DATE: 10:00 a.m.–4:40 p.m., June 21, 1989.

CHANGES IN THE MEETING: The meeting has been cancelled.

FOR FURTHER INFORMATION CONTACT: John W.A. Parsons, NCLIS Staff, 1111 18th Street NW., Suite 310, Washington, DC 20036, (1-202) 254-3100.

Dated: June 19, 1989.

John W.A. Parsons.

[FR Doc. 89-14805 Filed 6-19-89; 11:17 am]

BILLING CODE 7527-01-M

SECURITIES AND EXCHANGE COMMISSION

Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meeting during the week of June 12, 1989.

A closed meeting will be held on Wednesday, June 14, 1989, at 12:00 Noon.

The Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A), and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Grundfest, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matters of the closed meeting scheduled for Wednesday, June 14, 1989, at 12:00 Noon, will be:

Settlement of injunctive action.
Litigation matter.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: John Kincaid at (202) 272-2467.

Jonathan G. Katz,

Secretary.

June 14, 1989.

[FR Doc. 89-14828 Filed 6-19-89; 12:56 pm]

BILLING CODE 8010-01-M

federal register

Wednesday
June 21, 1989

Part II

Environmental Protection Agency

40 CFR Part 303

Citizen Awards for Information on Criminal Violations Under Superfund; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 303

[FR 3541-3]

Citizen Awards for Information on Criminal Violations Under Superfund

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) today publishes on a final basis a regulation in response to the requirements established by section 109(c) of the Superfund Amendments and Reauthorization Act (SARA) (Pub. L. 99-499). Codified as CERCLA section 109(d), it authorizes the President to pay an award of up to $10,000 to any individual for information leading to the successful prosecution of any person for a criminal violation of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended. That Section also requires the President to prescribe, by regulation, criteria for such an award. By Executive Order No. 12580, the President, on January 23, 1987, delegated to the Administrator of EPA the authority to promulgate the regulation, and thereafter to carry out the section 109(d) award program. Today's notice sets forth who is eligible to file a claim for an award and who within EPA shall make the determination of eligibility for such an award, details procedures and requirements for filing a claim, and establishes the criteria for payment of an award. This notice also provides an assurance of confidentiality to those who provide such information on a confidential basis.

EFFECTIVE DATE: This final rule becomes effective June 21, 1989.

FOR FURTHER INFORMATION CONTACT: John Dugdale, Attorney-Adviser, Office of Criminal Enforcement Counsel (LE-134X), United States Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Phone: (202) 475-9669.

ADDRESS: The public docket for this final rule is located in Room NE-114, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays. Appointments to examine these docket materials may be made in advance by calling (202) 475-9660.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

The Deputy Assistant Administrator for Criminal Enforcement is authorized to exercise his discretion in paying up to $10,000 for information leading to the arrest and successful prosecution of any person for a criminal violation of CERCLA, as amended.

The environmental and public health dangers associated with the illegal disposal of hazardous materials have emerged as a matter of national interest and concern. In order to provide an incentive for individuals to come forward with information concerning such illegal practices, Congress has authorized EPA to establish a program to reward citizens for providing information useful in prosecuting those involved in illegal hazardous waste activity.

Because many informants are only available and reliable when they are given appropriate and efficacious assurances that their identity will be protected from disclosure, the security of assured confidentiality is necessary to protect their employment status or some other legitimate privacy interests. The award provision provides both the security of confidentiality and the incentive of a cash award for an informant to come forward with pertinent information on the criminal violations of CERCLA.

Both the initial determination of a claimant's eligibility for an award and the subsequent determination of any amount to be awarded to a claimant are matters vested by statute in the exclusive discretion of the Agency. These determinations entail subjective considerations relating to the sound administration of justice and to cooperation with EPA investigators and Department of Justice prosecutors. Providing information to the Agency by any private citizen does not create any obligation to pay compensation for such voluntary assistance. Law enforcement officials are not deemed to be "private citizens" as contemplated by this award program. Law enforcement official means any employee of the Federal government who takes part in, or is responsible for, the enforcement of Federal statutes and regulations governing the handling of hazardous substances or wastes.

Inasmuch as these decisions are made pursuant to the Deputy Assistant Administrator's discretionary grant authority under CERCLA section 109(d), they constitute final administrative action on any properly filed award claim. This award authority is properly deemed to constitute the making of a discretionary public grant. Because this rule relates to public grants, benefits, or contracts, it is exempt from all requirements of Section 553 of the Administrative Procedures Act including notice and opportunity for comment and delayed effective date.

EPA believes the program will lead to increased enforcement activity with greater deterrent impact. This program will also help the Agency attain its mandated goals of a cleaner environment and the earlier intervention of remedial resources, which will result in cost savings, enhanced public health protection and more expeditiously conducted cleanups. To expedite this process, EPA issued an interim-final rule in the Federal Register on May 5, 1988 (53 FR 16086), in which the Agency requested comments over a 120-day period that closed on September 2, 1988, and which became effective on the date of publication. Today's final rule is identical to the interim-final rule.

II. Response to Comments

The Agency received only two comments. One commenter protested that this rule constitutes imprudent governmental action and should be withdrawn because it encourages secret witnesses to make unfounded charges and, by granting the protection of confidentiality, the rule denies the falsely accused a cause of action for damages against its unknown detractor.

This commenter's policy concerns are deemed unpersuasive and unfounded. In particular, the Agency's trained investigators are fully qualified to discern early on, and reject, unsubstantiated allegations of wrongdoing, so that innocent persons or companies are not subjected to unwarranted government investigations or enforcement actions. Furthermore, in response to the commenter's overall policy concerns, the Agency notes that there are numerous other Federal agencies which provide awards on a similar basis in furtherance of specific statutory authority (*e.g.:* 18 U.S.C. 3056(c)(1)(D) (information concerning laws enforced by the Secret Service); 18 U.S.C. 1751(g) (information concerning Presidential assassination); 14 U.S.C. 643 (information concerning interference with aids to navigation); 50 U.S.C. 47a (information concerning nuclear material); 21 U.S.C. 886(a) (information concerning drugs and narcotics); 39 U.S.C. 404(a)(8) (information concerning postal laws); 18 U.S.C. 3059(a)(1) (information concerning violation of U.S. criminal law); 26 U.S.C. 7623

(information concerning internal revenue laws); 22 U.S.C. 2708(a) (information concerning acts of terrorism outside the United States); 18 U.S.C. 3071 (information concerning acts of terrorism within the United States); 10 U.S.C. 7209 (information concerning missing naval property); 16 U.S.C. 1540(d) (information concerning endangered species); 16 U.S.C. 3375(d) (information concerning fish and wildlife); and 16 U.S.C. 668(a) (information concerning the killing of bald eagles)). In deciding to establish such award programs in order to encourage submission of information which facilitates discovery of violations of Federal laws, Congress has determined that encouraging increased compliance with those laws outweighs policy concerns such as those raised by the commentor (*e.g.*, possibility of unfounded charges).

The Agency has determined that, as a practical matter, the provision of confidentiality is essential in order to provide private citizens with the incentive and reassurance needed to allow EPA to effectively carry out the award program. In line with expressed Congressional intent in CERCLA section 109(d) to institute a program which authorizes awards in appropriate circumstances to address criminal violations of the statute, the Agency will promulgate this final rule.

Another commenter raised the possibility of a disgruntled employee intentionally sabotaging equipment to cause a spill to go unreported or intentionally destroying required records, for which acts a responsible corporate official may be charged due to information provided by the employee-saboteur. The commenter recommended amending § 303.20(a) to include in the persons excluded from eligibility consideration those who were "involved" or "charged" in the case giving rise to an award claim to reduce the likelihood of sabotage by removing an employee saboteur from possible eligibility for an award.

The Agency agrees generally with the commenter's basic assertion that a criminal offender should not profit from his/her criminal conduct. Currently, § 303.20(a) specifically excludes such persons from eligibility for an award.

There may be situations, however, where it might be appropriate to grant an award to someone who is in some way connected with—but not actually convicted for—the underlying violation for which information is submitted. Thus, a person's responsibility or fault may be so minor, unwitting or unintentional as to be greatly outweighed by the fact that the information provided by the person is crucial to a successful prosecution of a truly significant violation, so that a small award might be justified. The Agency considers the scenario suggested by the commenter—a saboteur releasing a reportable quantity of hazardous substance, then providing information to the Agency if the person in charge fails to give proper notification—to be highly unlikely due to the potential for criminal liability for the saboteur for his actions under other environmental statutes such as the Clean Water Act and RCRA.

In any event, the Agency believes that such situations, while extremely rare, are most appropriately analyzed not in the context of eligibility, but rather in the context of § 303.30(d), dealing with "Criteria for Payment of Award." For example, that section of the rule expressly provides that "concealment of a person criminally culpable" and "existence of an organized criminal conspiracy"—including involvement of the informant—are both appropriate reasons for the Deputy Assistant Administrator in the exercise of his discretion to decide not to grant an award. As such, a person's actions and possible culpability would be weighed with the other factors set forth in § 303.30(d) of the rule in determining whether to make an award, as well as in setting an amount should one be made.

III. Summary of Regulatory Analyses

A. Executive Order No. 12291

Proposed regulations must be classified as major or non-major to satisfy the rulemaking protocol established by Executive Order No. 12291. According to Executive Order No. 12291, major rules are those that are likely to result in:

(1) An annual cost to the economy of $100 million or more; or

(2) A major increase in costs or prices for consumers or individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This final regulation provides an entirely voluntary procedure by which individuals who learn of potential criminal violations of the provisions of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, may disclose their information to EPA and apply for an award of up to $10,000. Because this final rulemaking imposes no new burdens of any nature upon any regulated entity and creates no additional regulatory entities, and since the maximum award is limited to $10,000, no formal Regulatory Impact Analysis is necessary. This final rule was submitted to the Office of Management and Budget (OMB) for its review as required by Executive Order No. 12291.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires that a Regulatory Flexibility Analysis be performed for all rules that are likely to have "significant economic impact on a substantial number of small entities." Because this rulemaking applies only to individuals who choose to volunteer information to the Agency regarding the criminal violations of CERCLA, it should have no effect upon any other organizations, entities, or businesses, either large or small. Therefore, EPA certifies that this proposed regulation will not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1986 requires approval from the Office of Management and Budget (OMB) for information requests. Because the Act exempts from OMB clearance federal criminal matters or actions, and because this final rulemaking is related to federal criminal enforcement under CERCLA, the Paperwork Reduction Act requirements do not apply.

List of Subjects in 40 CFR Part 303

Law enforcement, Intergovernmental relations, Superfund, Crime, Awards, National Response Center notification of release, Destruction of records required to be retained.

William K. Reilly,

Administrator.

Date: June 12, 1989.

For the reasons set forth in the preamble, Part 303, Title 40 of the Code of Federal Regulations is revised to read as follows:

PART 303—CITIZEN AWARDS FOR INFORMATION ON CRIMINAL VIOLATIONS UNDER SUPERFUND

Subpart A—General

Sec.

Subpart B—Eligibility to File a Claim for Award and Determination of Eligibility and Amount of Award

Subpart C—Criteria for Payment of Award

Authority: 42 U.S.C. 9609(d), Executive Order No. 12580.

Subpart A—General

§ 303.10 Purpose.

This regulation implements the "citizen award" authority granted by Congress to the President in the 1986 Amendments to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), section 109(d). As authorized in the Superfund Amendments and Reauthorization Act of 1986 (SARA) section 109(c) and Executive Order No. 12580 (issued by the President on January 23, 1987), the Environmental Protection Agency is empowered to pay up to $10,000.00 from the Superfund to any individual who provides information leading to the arrest and conviction of any person for a violation subject to a criminal penalty under CERCLA as amended.

§ 303.11 Definitions.

(a) Arrest. Restraint of an arrestee's liberty or the equivalent through the service of judicial process compelling such a person to respond to a criminal accusation.

(b) Conviction. A judgment of guilt entered in U.S. District Court, upon a verdict rendered by the court or petit jury or by a plea of guilty, including a plea of *nolo contendere*.

(c) Individual. A natural person, not a corporation or other legal entity nor an association of persons.

§ 303.12 Criminal violations covered by this award authority.

(a) Failure to Give Required Notice of a Release of a Reportable Quantity of a Hazardous Substance, 42 U.S.C. 9603(a);

(b) Destruction or Concealment of Records Required under CERCLA to have been Retained, 42 U.S.C. 9603(d).

Subpart B—Eligibility to File a Claim for Award and Determination of Eligibility and Amount of Award

§ 303.20 Eligibility to file a claim for award.

(a) Any individual, except law enforcement officers and persons convicted in the case giving rise to the award claim and any persons identified in § 303.20(b) shall be eligible to file a claim for an award as provided for in § 303.33 of this subpart.

(b) No person who was an employee of or contractor for the United States Environmental Protection Agency at the time he or she came into possession of the information disclosed to other Agency officials (or is so employed at the time of disclosure), which information constitutes in whole or part the basis for an award claim, shall be eligible to file a claim for an award.

(c) To be eligible for an award, the informant must disclose the identity of person(s) [or other pertinent information that leads to the expeditious disclosure of the identity of said person(s)] criminally culpable for the violations set forth in § 303.12 of Subpart A. Disclosure of such pertinent information must be made to an employee, agent or representative of the United States Environmental Protection Agency.

§ 303.21 Determination of eligibility and amount of award.

The Agency's determinations as to eligibility and award amount shall constitute final Agency action as to either amount or eligibility. These determinations, consistent with the need to preserve from disclosure the identity of confidential informants (as noted in § 303.31) as well as to preserve from disclosure methods of Agency investigation, shall not be subject to administrative challenge by any person not making a claim to that award.

Note: It is the Environmental Protection Agency's view that such determinations also would not be subject to judicial challenge by such person.

Subpart C—Criteria for Payment of Award

§ 303.30 Criteria for payment of award.

Upon the filing of an eligible claim in accordance with the procedures as set forth in § 303.33, the Agency's Assistant Administrator for Enforcement and Compliance Monitoring, or his Deputy for Criminal Enforcement, in making the decision to grant an award, and if so, in what amount, shall consider all relevant criteria, giving such weight and importance to each separate criterion as appears warranted in his judgment alone. Relevant criteria include one or more of the following:

(a) Whether the claimant's information constituted the initial, unsolicited notice to the Government of the violation;

(b) Whether the Government would readily have obtained knowledge of the violation in a timely manner absent claimant's information;

(c) Importance of the case, egregiousness of the violation, potential for or existence of environmental harm;

(d) Concealment of a person criminally culpable or existence of an organized criminal conspiracy to conceal the offense(s) committed by the named defendant(s);

(e) Willingness of the claimant to assist the Government's prosecution of the offense(s), which assistance includes providing further information and grand jury testimony, participating in trial preparation, and trial testimony if consistent with the limits on claimant identity disclosure as set forth in § 303.31.

(f) Value of the claimant's assistance in comparison to that given by all other sources of information and evidence which led to arrest and conviction.

§ 303.31 Assurance of claimant confidentiality.

No person, except as authorized by the Agency's Office of Enforcement and Compliance Monitoring to have this knowledge, shall be given access to the identity of, or information that would lead to the identity of, a claimant who has requested anonymity prior to disclosing information to the Agency.

§ 303.32 Pre-payment offers.

Prior to the actual payment of an award, no employee of the United States Government, including any person purporting to act on behalf of the United States Environmental Protection Agency, is authorized by these regulations to make any promise, offer, or representation with respect to the Agency's grant of an award in exchange for information.

§ 303.33 Filing a claim.

(a) Any individual seeking an award under this regulation is required to file a claim for such an award with the Deputy Assistant Administrator for Criminal Enforcement not later than 45 days after the conviction of the person(s) involved in the prosecution in which the information was provided.

(b) The claim submission must provide, at a minimum, a summary of the information provided, the date the information was provided, and the name and title of the person to whom the information was provided.

(c) All claim submissions must be submitted to the Office of Criminal Enforcement Counsel (LE-134X), United States Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The claim envelope should also specify whether the information was submitted under a request for anonymity and whether such request is still in effect. All such externally identified claims shall be handled in accordance with the Agency procedures for maintaining informant confidentiality, as referenced in § 303.31 of this subpart.

[FR Doc. 89-14461 Filed 6-20-89; 8:45 am]
BILLING CODE 6560-50-M

federal register

Wednesday
June 21, 1989

Part III

Department of Housing and Urban Development

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

Availability of Funding Under the Fair Housing Assistance Program; Non-Competitive Solicitation; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

[Docket No. N-89-1988; FR-2654]

Availability of Funding Under The Fair Housing Assistance Program; Non-Competitive Solicitation

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of funding availability.

SUMMARY: HUD is soliciting applications from eligible State and local fair housing agencies for funding under the redesigned Fair Housing Assistance Program. Applications are solicited for Capacity Building and Incentive Funding only. Contributions agencies which are eligible only for complaint processing and training support need not submit an application. Agencies must meet the specific eligibility criteria set out in this announcement as well as the criteria in 24 CFR Part 111 in order to qualify for consideration under this program.

FOR FURTHER INFORMATION CONTACT: Maxine B. Cunningham, Director, Federal, State and Local Programs Division, Office of Fair Housing and Equal Opportunity, Room 5212, 451 Seventh Street, SW., Washington, DC 20410-2000. Telephone: (202) 755-0455 (V and TDD). (This is not a toll-free number.) Application kits are available to eligible State and local fair housing agencies upon written or telephone request. To ensure a prompt response, it is suggested that requests for application kits be made by telephone.

DATE: An application for funding under this notice must be submitted between June 21, 1989, and August 7, 1989. (No application received after the closing date will be considered unless it qualifies for a late application exception, as specified in the Application Kit.)

SUPPLEMENTARY INFORMATION: This announcement of solicitation of applications for capacity building and incentive funding under the Fair Housing Assistance Program (FHAP) is issued in accordance with 24 CFR Part 111. Interested agencies are urged to review 24 CFR Parts 111 and 115 and the information in this announcement to determine their eligibility to apply. (An agency is not eligible for capacity building and incentive funding at the same time.)

The FHAP has been redesigned to replace the administrative funding system of competitive and noncompetitive funding with a single noncompetitive funding approach. On May 9, 1989, HUD published a final rule (54 FR 20094) implementing the redesigned FHAP. This new comprehensive approach gives recipients an increased ability to plan a long-term program that is more suitable to their fair housing enforcement needs and gives HUD the ability to improve administration of the FHAP. The purpose of the funding program is to provide support for capacity building, complaint processing, training, technical assistance, data and information systems, and other fair housing projects. The intent of the program is to build a coordinated intergovernmental effort to further fair housing, and to encourage States and localities to assume a greater share of the responsibility for administering their fair housing laws.

Background

The Fair Housing Act (42 U.S.C. 3601-20) prohibits discrimination in the sale or rental of housing, in residential real-estate-related transactions, in the provision of brokerage services, and in other housing practices. Discrimination is prohibited on the basis of race, color, religion, sex, familial status, handicap, or national origin. Section 810(f) provides that, whenever a complaint alleges a discriminatory housing practice within the jurisdiction of a State or local public agency and the agency has been certified (for the referral of complaints of discriminatory housing practices), the Secretary shall refer such complaint to the certified agency before taking any action with respect to such complaint. Section 817 provides, among other things, that the Secretary may utilize the services of responsible State and local agencies in the enforcement of the Fair Housing laws, and "may reimburse such agencies and their employees for services rendered to assist him in carrying out" the Fair Housing Act. The FHAP was authorized by Congress to provide HUD with the resources to enhance the fair housing capabilities of State and local civil rights agencies.

FHAP Funding Requirements in This Announcement

I. Eligibility

To be eligible to apply for funds under the FHAP, an agency first must meet the criteria prescribed in 24 CFR 111.107. Specifically:

(a) The agency must be certified as a substantially equivalent agency under the standards set forth at 24 CFR Part 115, or the agency must have entered into a written agreement for interim referral or other utilization of services, as set forth at 24 CFR 115.11;

(b) The agency must have executed a written Memorandum of Understanding with the Department which, at a minimum, describes the working relationship to be in force between the agency and the Department. An agreement for interim referral of complaints in accordance with 24 CFR 115.11 may constitute such a Memorandum of Understanding;

(c) The agency must demonstrate to HUD that the agency has acceptable procedures for cooperating with other FHAP-funded agencies having concurrent jurisdiction;

(d) The agency must not unilaterally reduce the level of financial resources currently committed to fair housing complaint processing. Budget and staff reductions occasioned by legislative action outside the control of the agency will not, alone, result in a determination of ineligibility. However, HUD will take such actions into consideration in assessing the ongoing viability of an agency's fair housing program; and

(e) The agency must participate in training sponsored by HUD and designed in consultation with HUD staff and agency representatives to provide uniform skills and technical knowledge.

II. Additional Criteria for Incentive Funding

In addition to the criteria set forth in Section I above, an applicant for incentive funds must meet three additional criteria to qualify for funding under this solicitation:

(a) The agency must have processed a minimum number of dual-filed complaints in its best twelve consecutive months during the period April 1, 1987 through September 30, 1988. The minimum number for States is 20 and the minimum number for localities is 15. To be considered a processed complaint, a complaint must be cognizable under the Federal Fair Housing Act and accepted by the Regional Office as meeting the processing requirements under the Cooperative Agreement in effect during that time period;

(b) The agency must have engaged in comprehensive and thorough investigative activities relative to complaints dual-filed with HUD, as determined by HUD based on its most recent annual evaluation under 24 CFR Part 115 and through monitoring of FHAP Cooperative Agreements in effect during the period April 1, 1987 through September 30, 1988; and

(c) The agency must demonstrate (as certified by the head of the agency) that

during the agency's most recently concluded fiscal year, a minimum of 20 percent of the funds spent by the agency for fair housing activities was from non-Federal sources.

III. Eligible Activities

The primary purpose of Capacity Building and Incentive Funds is to support activities that produce increased awareness of fair housing rights and remedies. All activities proposed for funding must address, or have ultimate relevance to, matters affecting fair housing which are cognizable under the Fair Housing Act (42 U.S.C. 3601–3620). These activities include, but are not limited to, the following:

A. Activities designed to develop and implement outreach efforts to heighten public awareness of all forms of housing discrimination prohibited under the Fair Housing Act and to increase public awareness of fair housing rights and responsibilities.

B. Activities designed to create, modify, or improve local, regional, or national information systems concerned with fair housing matters.

C. Activities designed to improve an agency's capability to ensure fair housing through new or redirected approaches to the agency's internal structure or compliance techniques.

D. Activities to develop and conduct a testing or auditing program for specific protected classes or special market areas for fair housing enforcement or litigation.

E. Activities designed to identify new or subtle practices of housing discrimination and to implement programs to eliminate such practices.

F. Activities designed to address violence and intimidation affecting equal housing opportunity. These activities may include education, technical assistance, or the development of programs for prevention and response.

G. Activities designed to coordinate fair housing enforcement efforts of governmental enforcement agencies with various community resources which have an impact on the prevention or elimination of discriminatory housing practices.

H. Technical assistance activities to enable agencies to work with private fair housing groups, educational institutions, the real estate industry, and other private and governmental entities to eliminate or prevent housing discrimination.

I. Activities to provide services to aggrieved individuals, consistent with rights and remedies under applicable Federal, State, and local laws prohibiting discrimination in housing.

J. Affirmative marketing activities to inform persons of housing opportunities with respect to government-assisted housing and the private housing market.

K. Activities designed to improve investigations of systemic discrimination for further processing by State and local agencies, HUD, or the Department of Justice.

L. Fair housing training for enforcement agency staff.

M. Activities designed to create, modify, or improve an agency's complaint information and monitoring capacity, to make its system compatible with HUD's for internal monitoring of fair housing complaint activity.

IV. General Provisions Governing Applications for Assistance

Each application for Capacity Building or Incentive Funds must include:

A. A description of the applicant agency's proposed activities and objectives.

B. A schedule for completion and estimated cost of each proposed activity.

C. For all capacity building applicants, information to justify the amount of funds requested, including the need for activities proposed and the number of fair housing complaints processed during the previous fiscal year.

D. For all applicants for incentive funds, data from the agency's most recently concluded fiscal year showing the amount of funds spent on the applicant's fair housing program and the amount spent from non-Federal sources.

V. Certification

The applicant must certify that:

A. The submission of the application is authorized under State or local law (as applicable), and the applicant possesses the legal authority to carry out the activities proposed in the application.

B. The agency will adhere to a written agreement (Memorandum of Understanding or Interim Agreement) governing all fair housing referral activity and complaint processing between the agency and the appropriate HUD Regional Office.

C. An applicant for incentive funds must also certify, on the basis of the supporting documentation submitted, that 20 percent of the funds spent by the agency for fair housing activities in the agency's most recently concluded fiscal year was from non-Federal sources.

VI. Methods of Distribution

A. Scope: Applications are solicited for capacity building and incentive funding as described at 24 CFR 111.105. A total of $3.8 million is available under this Announcement.

B. Categories of Funding:

1. Capacity Building: Under 24 CFR 111.105(a), HUD will give $30,000, during the first two years of participation in the FHAP, to all capacity building agencies which submit an acceptable application. The application must demonstrate, in HUD's determination, that the agency has (or will receive) a sufficient volume of complaint activity to justify HUD's provision of funds for complaint processing activities. The application must state the objectives and activities to be carried out by the applicant, which must include participation in HUD-sponsored training, complaint monitoring and reporting systems (CMRS), case processing, and any other fair housing activities proposed by the applicant. (See Section III for types of eligible activities.) Agencies having current requisite CMRS capability, as described in the application kit, may meet the CMRS requirement by describing their capability.

2. Funding of Contributions Agencies. Agencies which have received two years of awards for Capacity Building are eligible to receive training funds, complaint processing funds and, for those agencies meeting the additional criteria specified in Section II above, incentive funds.

a. Training: All agencies eligible for their third-or-later year of non-competitive support (contributions agencies) will receive $3,000 to support participation of no fewer than 3 persons in HUD-sponsored or HUD-approved fair housing training. These funds are intended to support attendance at HUD-sponsored training at national and regional training sites. These monies may also be used to support additional in-house training by agencies for agency-specific problems, and for training of staff unable to attend national or regional training, subject to the approval of the HUD Government Technical Representative.

b. Complaint processing funds: Contributions agencies will receive support for complaint processing based solely on the number of dual-filed housing discrimination complaints actually processed by them during their best twelve consecutive months during the period beginning May 1, 1987 and ending September 30, 1988. (See 24 CFR 111.105(b)) (A dual-filed complaint is a complaint which has been docketed at both HUD and the agency.) The unit reimbursement level will be $650 per complaint.

c. Incentive funds: A contributions agency that meets the additional criteria for incentive funds set forth in Section III above may apply for incentive funds, describing those projects that would benefit its jurisdiction. The amount of funds awarded to an agency will be based on the population of the jurisdiction served by the agency, and on the projects proposed and the cost of implementing those projects. HUD will use 1988 U.S. census estimates to determine a jurisdiction's population. Population figures for counties will exclude population figures for substantially equivalent cities within those counties. The maximum amount of funds based on population ranges is as follows:

Population range	Maximum amount
Fewer than 1,500,000	$10,000
1,500,000 to 4,999,999	$15,000
5,000,000 and above	$20,000

C. Applications: To receive capacity building or incentive funding, applicants must submit all information required in the FHAP Application Kit. Agencies eligible for third-or-later-year funding for training and complaint processing activities will be sent a Cooperative Agreement. The Agreement will include the allotment for training and case processing support. With respect to agencies eligible for incentive funds, the amount approved also will be included in the Agreement. (Approved by the Office of Management and Budget under OMB control number 2529–0005.)

VII. Application Review, Notification and Award Procedures

A. Review: Applications for capacity building and incentive funding will be reviewed upon receipt for completeness and conformity with 24 CFR Part 111. With respect to any application for funding in which the responsible HUD Regional Office has found deficiencies, the Regional Office will notify the applicant in writing of the deficiencies found. The applicant must, within 20 days from receipt of the notification from the Regional Office, correct the deficiency or supply the additional information that the Regional Office requests. HUD may consider an applicant's failure to respond appropriately within the 20-day period as an abandonment of the application.

B. Appeal: If the applicant is notified by the Regional Office that, notwithstanding its attempt to correct the deficiency or supply the requested information, the applicant has failed to do so in the determination of the Regional Office, the applicant may appeal this determination to the Assistant Secretary for Fair Housing and Equal Opportunity.

C. Notification: An application for funding will be considered approved as of the date of HUD's written offer to the applicant to enter into a cooperative agreement.

D. Negotiations: After submission of the application, but before the award, HUD may require that applicants participate in negotiations and submit application revisions resulting from those negotiations. (HUD expects to make awards within four weeks after negotiations are successfully completed.)

E. Type of Funding Instrument: Applicants will be funded under fixed-price Cooperative Agreements.

The collection of information requirements contained in section VI of this Notice were submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980 and have been approved and assigned OMB control number 2529–0005.

The Catalog of Federal Domestic Assistance program number is 14.401.

Authority: Fair Housing Act (42 U.S.C. 3601–20); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: June 13, 1989.

Thomas D. Casey,

General Deputy Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 89–14595 Filed 6–20–89; 8:45 am]

BILLING CODE 4210–28–M

federal register

Wednesday
June 21, 1989

Part IV

Department of Education

Office of Educational Research and Improvement

Library Programs; Applications for New Awards for Fiscal Year 1990; Notice

DEPARTMENT OF EDUCATION

Office of Educational Research and Improvement

Library Programs; Applications for New Awards for New Awards for Fiscal Year 1990

AGENCY: Department of Education.

ACTION: Notice inviting applications for new awards for fiscal year 1990

SUMMARY: The Secretary invites applications for new awards for fiscal year 1990 and announces closing dates for the transmittal of applications under the Library Services to Indian Tribes and Hawaiian Natives Program—Basic Grants, Library Career Training Program, Strengthening Research Library Resources Program, Library Literacy Program, College Library Technology and Cooperation Grants Program, Library Research and Demonstration Program, and Library Services to Indian Tribes and Hawaiian Natives Program—Special Projects Grants.

Organization of Notice. This notice contains two sections. Section I includes a chart listing closing dates in chronological order, and other pertinent information about programs covered by this notice. Section II consists of the individual application announcements for each program.

SUPPLEMENTARY INFORMATION: All programs announced in this notice, with the exception of the Library Services to Indian Tribes and Hawaiian Natives Program, including both Basic Grants and Special Projects Grants, are subject to the requirements of Executive Order 12372, Intergovernmental Review of Federal Programs. Information regarding applicable procedures under this order will be included in the application packages.

Any institution of higher education that wishes to apply for funds under one of the programs authorized by Title II of the Higher Education Act (HEA) (20 U.S.C. 1021 *et seq.*) must be an eligible institution under the terms of 20 U.S.C. 1201(a). If you wish to apply to the Department of Education for a determination of institutional eligibility, you may contact: Mr. Harry Cooley, U.S. Department of Education, Office of Postsecondary Education, DCMAS, Division of Eligibility and Certification, 400 Maryland Avenue, SW., Washington, DC 20202, (202) 732–3465.

DATES: The closing dates for transmitting applications under this notice are listed in Section I of this notice.

ADDRESSES: The addresses for obtaining applications for, or further information about, individual programs or competitions are in the respective announcements for those programs contained in Section II of this notice.

SECTION I.—PROGRAMS AND CLOSING DATES FOR LIBRARY PROGRAMS

Title of Program and CFDA Number	Applications available	Deadline for transmittal of applications	Deadline for intergovernmental review	Tentative award date	Estimated available funds	Estimated range of awards	Estimated size of awards	Estimated number awards	Project period in months
Library Services to Indian Tribes and Hawaiian Natives Program—Basic Grants (84.163A).	8/15/89	9/29/89	11/28/89	1/15/90	* $1,212,175	NA	$3,700	175	12
Library Career Training Program—Fellowship Awards (84.036).	8/18/89	10/10/89	12/10/89	2/9/90	277,600	$10,800–64,000	14,800	20	12
Library Career Training Program—Institute Awards (84.036).	8/18/89	10/10/89	12/10/89	2/9/90	122,187	25,000–125,000	43,000	1–5	12
Strengthening Research Library Resources Program (84.091).	8/7/89	10/31/89	1/5/90	6/1/90	5,675,000	40,000–500,000	145,000	39	12
Library Literacy Program (84.167)	9/8/89	11/9/89	1/9/90	5/25/90	4,730,000	1,000–25,000	23,000	200	12
College Library Technology and Cooperation Grants Program (84.197).	11/1/89	1/12/90	3/12/90	8/10/90	3,651,000	15,000–225,000	Type A—$30,000 B—125,000 C—25,000 D—100,000	A—20 B—15 C—5 D—10	12–36
Library Research and Demonstration Program (84.039).	11/15/89	2/1/90	4/1/90	6/1/90	309,000	50,000–100,000	70,000	3–5	12
Library Services to Indian Tribes and Hawaiian Natives Program—Special Projects Grants (84.163B).	2/14/90	3/30/90	5/29/90	8/3/90	1,240,000	20,000–165,000	67,000	17	12

Note: The Department is not bound by any estimates in this notice. Moreover, the Administration has proposed new legislation, the Library Services Improvement Act, which would, if enacted, replace the Library Services and Construction Act (including Titles IV and VI) and Title II of the Higher Education Act. These figures reflect fiscal year 1989 appropriation amounts for LSCA Titles IV and VI and HEA Title II. Thus, these estimated amounts are subject to change.

* Of this amount, approximately half will go to Indian tribes and half to Hawaiian Natives.

Section II—Application Notices

CFDA No. 84.163A—Library Services to Indian Tribes and Hawaiian Natives Program—Basic Grants (Library Services and Construction Act, Title IV).

Purpose: Provides basic grants to eligible Indian tribes and to eligible Hawaiian native organizations to establish or improve public library services for Indian tribes and Hawaiian natives.

Applicable Regulations: (a) The Basic Grants to Indian Tribes and Hawaiian Natives Program Regulations in 34 CFR Part 771; and (b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75, 77, 79, 80, 81, and 85.

For Applications or Information Contact: Frank A. Stevens, Director, or Beth Fine, Program Officer, Library Development Staff, Office of Library Programs, U.S. Department of Education, 555 New Jersey Avenue, NW., Room 404, Washington, D.C. 20208–5571. Telephone: (202) 357–6319 or 357–6323, respectively.

Program Authority: 20 U.S.C. 351 *et seq.*

CFDA No. 84–036—Library Career Training Program—Fellowships and Institutes (Higher Education Act, Title II, Part B).

Purpose: Provides grants to train persons in librarianship through fellowships, institutes, and traineeships and to establish, develop, and expand programs of library and information science.

Applicable Regulations: (a) The Library Career Training Program Regulations in 34 CFR Part 776; and (b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, and 85.

Priorities: In accordance with § 776.5 of the program regulations, each year the Secretary may select one or more of the program's six established priorities and allocate funds to each selected priority. These priorities apply to both fellowships and institutes. For fiscal year 1990, the Secretary is particularly interested in applications that meet the following invitational priorities:

(a) To train or retrain library personnel in areas of library specialization where there are currently shortages, such as children's services, science reference, yound adult services, school media, and cataloging;

(b) To train or retrain library personnel in new techniques of information acquisition, transfer, and communication technology;

(c) To increase excellence in library education by encouraging study in librianship and related fields at the doctoral level; and

(d) To train or retrain library personnel to serve the information needs of the elderly, the illiterate, the disadvantaged, or residents of rural America.

However, under 34 CFR 75.105(c)(1), an application that meets one or more of these invitational priorities does not receive competitive or absolute preference over other applications.

For the purposes of this competition, the Secretary plans to allocate up to 30% of the available funds for institutes, if a sufficient number of institute applications merit funding. The remaining funds will be allocated for fellowships.

For Applications or Information Contact: Frank A. Stevens, Director, or Yvonne B. Carter, Program Officer, Library Development Staff, Office of Library Programs, U.S. Department of Education, 555 New Jersey Avenue, NW., Room 404, Washington, DC 20208–5571. Telephone: (202) 357–6319 or 357–6320, respectively.

Program Authority: 20 U.S.C. 1021 *et seq.*

CFDA No. 84–091—Strengthening Research Library Resources Program (Higher Education Act, Title II, Part C).

Purpose: Provides grants to the Nation's major research libraries to maintain and strenghthen their collections and make their holdings available to other libraries whose users have need for research materials.

Applicable Regulations: (a) The Strengthening Research Library Resources Program Regulations in 34 CFR Part 778; and (b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, and 85.

For Applications or Information Contact: Frank A. Stevens, Director, or Louise Sutherland, Program Officer, Library Development Staff, Office of Library Programs, U.S. Department of Education, 555 New Jersey Avenue, NW., Room 404, Washington, DC 20208–5571. Telephone: (202) 357–6319 or 357–6322, respectively.

Program Authority: 20 U.S.C. 1021 *et seq.*

CFDA No. 84.167—Library Literacy Program (Library Services and Construction Act, Title VI).

Purpose: Provides grants to State and local public libraries to support literacy projects. Grants may not exceed $25,000.

Applicable Regulations: (a) The Library Literacy Program Regulations in 34 CFR Part 769; and (b) the Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 75, 77, 79, 80, 81, and 85.

For Applications or Information Contact: Frank A. Stevens, Director, Carol Cameron or Barbara Humes, Program Officers, Library Development Staff, Office of Library Programs, U.S. Department of Education, 555 New Jersey Avenue, NW., Room 404, Washington, DC 20208–5571. Telephone: (202) 357–6319, 357–6321, or 357–6376, respectively.

Program Authority: 20 U.S.C. 351 *et seq.*

CFDA No. 84.197—College Library Technology and Cooperation Grants Program (Higher Education Act, Title II, Part D).

Purpose: To encourage resource-sharing projects among the libraries of institutions of higher education through the use of technology and networking, to improve the library and information services provided to them by public and nonprofit private organizations, and to conduct research or demonstration projects to meet special needs in using technology to enhance library and information sciences.

Applicable Regulations: (a) The College Library Technology and Cooperation Grants Program Regulations in 34 CFR Part 779; and (b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 76, 77, 79, 80, and 85.

For Applications or Information Contact: Frank A. Stevens, Director, or Linda Loeb, Program Officer, Library Development Staff, Office of Library Programs, U.S. Department of Education, 555 New Jersey Avenue, NW., Room 404, Washington, DC 20208–5571. Telephone (202) 357–6319 or 357–6902, respectively.

Program Authority: 20 U.S.C. 1021 *et seq.*

CFDA No. 84.039—Library Research and Demonstration Program (Higher Education Act, Title II, Part B).

Purpose: Provides grants to institutions of higher education and other public or private agencies, institutions, and organizations for research and demonstration programs related to the improvement of libraries, training in librarianship, and the dissemination of information derived from such projects.

Applicable Regulations: (a) The Library Research and Demonstration Program Regulations in 34 CFR Part 777; and (b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, and 85.

Priorities: For fiscal year 1990, the Secretary particularly invites applications that meet one or more of the following priorities:

(a) *Economics of Libraries and Library Funding.* To support one or more research projects to study:

- Factors influencing the funding of libraries;
- The contribution of library services to larger public goals (such as economic development, education, environmental protection);
- Cost benefit/effectiveness models; and
- Existing examples of innovative approaches to library funding.

(b) *Access to Information.* To support one or more projects for identifying:

- The potential effects of new methods of information transfer on user access to information; and
- The extent to which format affects access to and use of information.

(c) *Information Needs/Users.* To support one or more research projects to determine:

- What the needs of library users will be in 10–15 years;
- Which information needs of the community are met by public, academic, and school libraries;

• How people learn about the existence of information and its availability; and

• What shapes user's perceptions of their own library/information needs and whether these perceptions can be influenced.

(d) *Libraries and Education (The Library's Role in Education).* To support one or more research projects addressing the educational, cultural, and intellectual role of the library in relation to other educational institutions in a community of which it is a part.

These priorities were developed in consultation with researchers, practitioners, civic and business leaders, policymakers, and professional associations, all of whom participated in a series of meetings sponsored by the Department to identify "Issues in Library Research—Proposals for the Nineties."

However, under 34 CFR 75.105(c)(1), an application that meets these invitational priorities does not receive competitive or absolute preference over other applications.

For Applications or Information Contact: Frank A. Stevens, Director, or Yvonne B. Carter, Program Officer, Library Development Staff, Office of Library Programs, U.S. Department of Education, 555 New Jersey Avenue, NW., Room 404, Washington, DC 20208–5571. Telephone (202) 357–6319 or 357–6320, respectively.

Program Authority: 20 U.S.C. 1021 *et seq.*

CFDA No. 84.163B—Library Services to Indian Tribes and Hawaiian Natives Program—Special Projects Grants (Library Services and Construction Act, Title IV).

Purpose: With funds remaining after Basic Grants are awarded, the program makes awards to eligible Indian tribes and to eligible Hawaiian native organizations to establish or improve public library services for Indians and Hawaiian natives.

Applicable Regulations: (a) The Special Projects Grants to Indian Tribes and Hawaiian Natives Program Regulations in 34 CFR part 772; and (b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 75, 77, 79, 80, 81, and 85.

For Applications or Information Contact: Frank A. Stevens, Director, or Beth Fine, Program Officer, Library Development Staff, Office of Library Programs, U.S. Department of Education, 555 New Jersey Avenue, NW., Room 404, Washington, DC 20208–5571. Telephone (202) 357–6319 or 357–6323, respectively.

Program Authority: 20 U.S.C. 351 *et seq.*

Dated: June 15, 1989.

Bruno V. Manno,

Acting Assistant Secretary for Education Research and Improvement.

[FR Doc. 89–14598 Filed 6–20–89; 8:45 am]

BILLING CODE 4000–01–M

federal register

Wednesday
June 21, 1989

Part V

Department of Housing and Urban Development

Office of the Secretary

24 CFR Parts 50 and 961

Public Housing Drug Elimination Program; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 50 and 961

[Docket No. R-89-1442; FR-2592]

RIN 2577-AA76

Public Housing Drug Elimination Program

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement the Public Housing Drug Elimination Act of 1988, which was enacted as Chapter 2 of Subtitle C of Title V of the Anti-Drug Abuse Act of 1988 (Pub. L. 100-690, approved November 18, 1988). The program would authorize HUD to make grants to public housing agencies (PHAs) and Indian Housing Authorities (IHAs) for use in eliminating drug-related crime in public housing projects. To receive funding under this program, PHAs and IHAs would be required to develop a plan for addressing drug-related crime, and to indicate how assisted activities would further the plan. Grant funds may be used for a number of activities designed to eliminate drug-related crime, including: (1) Employment of security personnel and investigators; (2) reimbursement of local law enforcement agencies for the cost of providing additional security and protective services; (3) physical improvements designed to enhance security in public housing projects; (4) support of public housing tenant patrols acting in cooperation with local law enforcement agencies; (5) innovative programs to reduce drug use in and around public housing projects; and (6) funding of Resident Management Corporations (RMCs) and Resident Councils (RCs) to develop security and drug abuse prevention programs involving site residents. Funds have not yet been appropriated by Congress for the grants under this program. When funds are appropriated, the Department will publish in the Federal Register a separate Notice of Fund Availability (NOFA) to inform PHAs and IHAs of application submission instructions. Grant applications should not be submitted until the NOFA is published.

DATE: Comments must be received by August 21, 1989.

ADDRESS: Interested persons are invited to submit comments on the proposed rule to the Office of the General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

As a convenience to commenters, the Rules Docket Clerk will accept brief public comments transmitted by facsimile ("FAX") machine. The telephone number of the FAX receiver is (202) 755-2575. Only public comments of six or fewer total pages will be accepted via FAX transmittal. This limitation is necessary to assure reasonable access to the equipment. Comments sent by FAX in excess of six pages will not be accepted. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Rules Docket Clerk ((202) 755-7084). Comments should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying during regular business hours (weekdays 7:30 a.m. to 5:30 p.m.) at the above address. (Neither of the telephone numbers listed in this paragraph is toll-free.)

FOR FURTHER INFORMATION CONTACT: Nancy Chisholm, Director, Office of Policy, Office of Public and Indian Housing, Room 4118, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 755-6713. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The information collection requirements contained in this proposed rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980. Public reporting burden for the collection of information requirements contained in this rule are estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided under the Preamble heading, *Other Matters*. Send comments regarding this burden estimate, or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street, SW., Room 10276, Washington, DC 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

I. Background

Congress authorized the Public Housing Drug Elimination Pilot Program under Chapter 2, Subtitle C, Title V of the Anti-Drug Abuse Act of 1988 (Pub. L. 100-690, approved November 19, 1988) ("the Act"). The program authorizes HUD to make grants to public housing agencies (PHAs) and Indian Housing Authorities (IHAs) to eliminate drug-related crime in selected public housing projects.

At the present time, no funding has been appropriated for this program. In the event that funding for the program becomes available before final regulations can be issued, the Department will publish a separate Notice of Fund Availability (NOFA) to allocate these funds. No applications under this program may be submitted until a NOFA is published.

II. Implementation of the Program

The program provides grant funds to PHAs and IHAs for a number of eligible activities designed to reduce the incidence of drug-related crime in public housing projects.

A. *Entities eligible to participate.* In general, a PHA or IHA may undertake any of the eligible activities under Part 961 or it may contract with a qualified third party, including Resident Management Corporations (RMCs) and Resident Councils (RCs).

An RMC or RC under this part must comply with the requirements of 24 CFR Part 964 (as amended on September 7, 1988, see 53 FR 34676). In the case of an IHA, the RMC or RC must meet the requirements of § 961.5. However, to facilitate the ability of PHAs to combat drug-related criminal activity in their projects, RCs as well as RMCs will be permitted to undertake any of the management functions specified in Part 961 (including any of the eligible activities at § 961.10) notwithstanding the otherwise applicable requirements of 24 CFR Part 964.

B. *Eligible activities.* Grant amounts may only be used for the following activities:

1. *Security personnel.* Security personnel may be employed under Part 961 to patrol public housing projects and to carry out security functions. While "drug-related crime" is defined by statute to mean, "the illegal manufacture, sale, distribution, use, or possession with intent to manufacture, sell, distribute, or use, of a controlled substance", HUD anticipates that there may be instances in which a security officer may be called upon to deal with a crime that is not "drug-related", as defined in the Act. Security personnel employed with assistance under Part 961 may respond to crimes that are not drug-related if they become aware of the

crimes in the course of carrying out their drug-related crime duties.

2. *Additional security and protective services.* Grant funds may be used to reimburse local law enforcement agencies for the cost of providing additional security and protective services for public housing projects under this program. The Department construes "additional" to mean that Federal grant funds may not be used to supplant existing funding levels for security services to a project. Consequently, the security and protective services under this provision must be either:

(i) A service that no local law enforcement agency (or agencies) provided for public housing projects administered by the grantee immediately before the applicable Notice of Fund Availability under Part 961 was published in the **Federal Register**; or

(ii) A quantifiable increase in the level of an ongoing service above that which the local law enforcement agency (or agencies) provided for public housing projects administered by the grantee immediately before the applicable Notice of Fund Availability was published in the **Federal Register**.

An example of a service that might be encompassed under this provision is the reimbursement of local law enforcement agencies for extra patrols of a project.

Services to be provided with grant funds should be over and above those for which the local government is already contractually obligated under its Cooperation Agreement with the PHA. This requirement stems from the locality's obligation under the Cooperation Agreement to furnish to the PHA public services and facilities that are comparable to those provided at no cost or at a comparable cost to the general community. The execution of this Cooperation Agreement between the governing body and the PHA constitutes a condition for initial approval for project development and the Federal assistance commitments under the Annual Contributions Contract. (*See* 24 CFR 941.201(c) and the definition of "Cooperation Agreement" under 24 CFR 941.103.)

Consequently, applications for grants under this program must address the issue of whether the local governing body is meeting its obligations under the Cooperation Agreement, particularly as to law enforcement. While due consideration will be given to special circumstances, the Department will assess this factor in determining whether a locality supports the PHA's anti-drug related crime efforts. (See § 961.25(b)(4).)

3. *Physical improvements designed to enhance security.* The program authorizes the use of grant funds for physical improvements specifically designed to enhance security in public housing projects. These improvements might include (but are not limited to) the installation of lighting systems, bolts, or locks inside, or on the grounds of, selected projects, or the reconfiguration of common areas to discourage drug-related crime. Such improvements may not involve the demolition of any public housing units. A PHA may not use grant funds under this part for any physical improvements that would result in the displacement of persons.

It should be noted that under section 12 of the United States Housing Act of 1937, the employment of certain workers in connection with physical improvements relating to the development of a public housing project, or the employment of certain workers in connection with carrying out non-routine maintenance in a project, requires the PHA to pay certain prevailing wage rates. Section 961.40(a) of the proposed rule should be consulted for further guidance on these requirements.

4. *Employment of investigators.* Under Part 961, a PHA may employ individuals to investigate drug-related crime on or about the real property comprising the public housing project and to provide evidence relating to such crimes in any administrative or judicial proceedings.

5. *Public housing tenant patrols.* A PHA may use grant funds under Part 961 to provide training, communications equipment, and other related equipment (including uniforms), for use by voluntary public housing tenant patrols acting in cooperation with officials of local law enforcement agencies.

6. *Innovative programs to reduce the use of drugs.* Section 5124(6) of the Act provides for the use of grant funds for "innovative programs" to reduce the use of drugs in and around public housing projects. The Department would construe the term "innovative" to mean that the program uses a new or creative approach to accomplish this statutory objective. In addition to law enforcement activities, a PHA, RMC or RC may use grant funds under this section to develop and operate, or to contract for services to provide, innovative drug education and treatment, counseling, referral, and outreach efforts. Grant funds may also be used for innovative strategies to prevent drug-related crime, including recreational, vocational, educational and other constructive alternatives for youth.

7. *Resident Management Corporations and Resident Councils.* Grant funds may be provided by a grantee under Part 961 to RMCs and RCs to develop security and drug abuse prevention programs involving site residents. These programs may include (but are not limited to) the development of law enforcement strategies, drug education and treatment, counseling, referral, leadership training, security patrols, and outreach efforts.

IHAs that seek funding for this category of eligible activities must have in place an RMC or RC that meets the requirements specified at § 961.5 (see definitions of "Resident Management Corporation" and "Resident Council"). An RMC or RC established under this provision is cognizable only for purposes of funding under Part 961. Furthermore, the requirements established under this rule will be superseded by the final Indian tenant participation guidelines that HUD intends to publish.

III. Requirement of a Plan

As a condition of funding, section 5125(a) of the Act requires PHAs and IHAs to submit a grant application to HUD that includes a plan addressing the problem of drug-related crime on the premises of projects proposed for assistance under Part 961. (See § 961.15.)

While this plan is not intended to be an exhaustive document, it must address each of the following elements: (1) An assessment of the nature and extent of the problem of drug-related crime, and the problems associated with drug-related crime; (2) the current activities being undertaken by the PHA or IHA, the State or local government, and RMCs and RCs to address the drug-related crime problem; and (3) a realistic strategy for responding to the problem of drug-related crime.

It should be noted that while the Act refers to "drug-related crime" under the plan provision at section 5125(a), and simply to "crime" under the selection criteria at section 5125(b) (1), (2) and (4), the Department believes that Congress intended to limit the scope of the program to drug-related crime. As a result, the proposed rule generally reflects this interpretation.

One exception is that the plan asks for an assessment not only of the problem of drug-related crime, but also of the problems associated with drug-related crime. Such "associated" problems might include homicides, muggings, burglaries, and incidents of vandalism resulting from drug-related crime in the projects. The Department believes that this information is vital to

obtaining an accurate assessment of the drug-related crime problem in the projects proposed for assistance under this part.

IV. Rating Factors

To qualify for a grant under Part 961, PHAs and IHAs must submit an application that meets the requirements of § 961.20 (including the plan under § 961.15). Applications will be evaluated on the basis of the selective rating criteria at § 961.25(b). These criteria include: (1) The extent of the drug-related crime problem in the applicant's targeted projects; (2) the quality of the plan under § 961.15 (for PHA applicants, this criterion will also include an evaluation of the extent of RMC or RC involvement in the development of the grant application, and the extent to which an RMC or RC will have substantial management responsibilities under the PHA's plan); (3) the applicant's capability to carry out its plan; and (4) the extent to which the local government and local community support the applicant's anti-drug-related crime activities.

With respect to the third rating criterion, HUD will determine an applicant's capability to carry out its plan on the basis of several factors, including its administrative capability to manage its projects. Administrative capability will be determined in accordance with the requirements of the Annual Contributions Contract executed between HUD and the PHA or IHA, and the relevant program regulations (see 24 CFR Parts 905 and 941).

The second rating criterion assesses the quality of the applicant's plan based upon the extent to which the information provided by the applicant is accurate and complete, and the plan strategy is realistic and attainable. For PHA applicants, the Department will provide additional points under this criterion (see § 961.25(b)(2)(B)) based upon the extent of RMC or RC involvement in the development of the grant application, and the extent to which an RMC or RC will assume substantial management responsibilities under the PHA's plan. Since IHAs are not covered by the Department's existing tenant participation and management regulations (24 CFR Part 964), this additional criterion will not be applied to IHAs.

Until HUD issues final guidance on Indian tenant participation, the selection process under Part 961 will be as follows:

PHAs that submit grant applications under Part 961 would be evaluated on the four rating criteria of § 961.25(b), with each rating factor assigned up to a maximum of 25 points. A PHA applicant could obtain up to an additional 15 points under § 961.25(b)(2)(B) based upon the extent of RMC or RC involvement in the development of the grant application, and the extent to which an RMC or RC will assume substantial management responsibilities under the PHA's plan. Applicants would then be ranked based upon their total selective rating score.

IHAs would be evaluated on the four rating criteria of § 961.25(b), with each rating factor assigned up to a maximum of 25 points. However, an IHA would not be rated on the RMC/RC participation element under § 961.25(b)(2)(B). IHA applicants would be separately ranked based upon their total selective rating scores.

Grant awards would be made to the highest-ranked applicants, but under § 961.25(c) HUD may use its discretion to ensure an equitable distribution of grant funds among both pools of highest-ranking PHA and IHA applicants. In exercising its discretion under this section, HUD shall take into account the overall ratio of PHAs to IHAs; the ratio of fundable applicants submitted by PHAs and IHAs; and the extent of available grant funds under Part 961.

The Department may also exercise its discretion under § 961.25(d) to substitute one or more highly rated applications if the highest-ranked applications under the selection criteria do not ensure equitable geographical distribution, or distribution among PHAs and IHAs of varying sizes.

V. Encouragement of Resident Management Corporations and Resident Councils

While this program is intended to provide grants to PHAs and IHAs, the Department strongly encourages the participation of RMCs and RCs in the effort to combat drug-related crime. Specifically, § 961.25(b)(2)(B) of the proposed rule provides maximum rating points to a PHA that establishes that its grant application, including its plan, was prepared in cooperation with its RMC or RC, and that an RMC or RC will have substantial program management responsibilities under the PHA's plan.

The participation of RMCs and RCs is especially critical in implementing certain aspects of the program, including development of the security and drug abuse prevention programs under § 961.10(g), and implementation of the voluntary tenant patrols under § 961.10(e).

VI. Environmental Review

This rule proposes to amend 24 CFR Part 50 by adding a new categorical exclusion for grants under Part 961 from review under the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321). This exclusion would not eliminate review under related environmental authorities, such as the National Historic Preservation Act of 1966. The exclusion is premised on the fact that drug elimination grants typically would not involve a potential for significant impact to the physical environment. To the extent that grant funds are used for physical improvements to enhance security under § 961.10(c), that section provides that the improvements may not involve the demolition of any dwelling units in a project.

As a condition of grant approval, HUD will perform an environmental review under § 961.25(e) of this rule to the extent required under NEPA and applicable related authorities at 24 CFR Part 50.

Other Matters

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50 implementing section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the Office of the Rules Docket Clerk, 451 Seventh Street SW., Room 10276, Washington, DC 20410.

This rule does not constitute a "major rule" as that term is defined in Section 1(b) of the Executive Order on Federal Regulations issued on February 17, 1989. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have 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.

Under 5 U.S.C. 605(b), (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule would provide grants to PHAs and IHAs to eliminate drug-related crime in selected lower income housing projects. In certain instances, the PHA can provide grant funds under the program to nonprofit Resident Management

Corporations and Resident Councils for certain eligible program activities. Although small entities could participate in the program, the rule would not have a significant economic impact on them.

Family Impact. The General Counsel, as the Designated Official for Executive Order 12606, *the Family*, has determined that the provisions of this rule have the potential for significant impact on family formation, maintenance and general well-being within the meaning of the Order. The proposed rule would implement a program that would encourage PHAs and IHAs to develop a plan for addressing the problem of drug-related crime, and to make available grants to help PHAs and IHAs to carry out this plan. As such, the program is intended to improve the quality of life of public housing project residents by reducing the incidence of drug-related crime and should have a strong positive effect on family formation, maintenance and general well-being for PHAs and IHAs selected for funding. Further review under the Order is not necessary, however, since the rule essentially tracks the authorizing legislation and involves little exercise of HUD discretion.

Federalism Impact. The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the provisions of this rule have "federalism implications" within the meaning of the Order. The rule would implement a program that would encourage PHAs and IHAs to develop a plan for addressing the problem of drug-related crime, and to make available grants to PHAs and IHAs to help them carry out their plans. As such, the program would help PHAs and IHAs combat serious drug-related crime problems in their projects, thereby strengthening their role as instrumentalities of the States. Further review under the Order is unnecessary, however, since the rule generally tracks the statute and involves little implementing discretion. The rule's most significant exercise of discretion involves the establishment of selection preferences based upon the extent of RMC or RC involvement in the development of the grant application, and the extent to which RMCs and RCs have substantial management responsibilities under the plan. The involvement of these resident organizations should greatly increase the success of the anti-drug-related crime efforts and, therefore, should have positive effects on the PHAs.

This proposed rule was listed as Sequence No. 1020 in the Department's Semiannual Agenda of Regulations published on April 24, 1989 (54 FR 16708, 16714) under Executive Order 12291 and the Regulatory Flexibility Act.

The Public Housing Drug Elimination Program is not listed in the Catalog of Federal Domestic Assistance.

The collection of information requirements contained in this proposed rule have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. Certain sections of this rule have been determined by the Department to contain collection of information requirements. Information on these requirements is provided as follows:

TABULATION OF ANNUAL REPORTING BURDEN—PROPOSED RULE—PUBLIC HOUSING DRUG ELIMINATION PROGRAM

Description of information collection	Section of 24 CFR affected	Number of respondents	Number of responses per respondents	Total annual responses	Hours per response	Total hours
Plan for addressing drug-related crime problem(s) includes assessment, current activities, strategy	961.15	500	1	500	24	12,000
Request for tenant comments on plan and application	961.18	5,000	1	5,000	1	5,000
Application requirements: SF-424, certifications, copies of tenant comments	961.20	500	1	500	30	15,000
Periodic reports on fund expenditures, data tracking drug-related crime	961.35	100	1	[1] 100	24	2,400
Total annual burden						34,400

[1] 3-year period.

List of Subjects

24 CFR Part 50

Environmental assessments, Environmental impact statements, Environmental policies and review procedures.

24 CFR Part 961

Grant programs: Housing and community development; low and moderate income housing; drugs.

Accordingly, the Department proposes to amend 24 CFR Part 50, and to add a new 24 CFR Part 961, to read as follows:

PART 50—PROTECTION AND ENHANCEMENT OF ENVIROMENTAL QUALITY

1. The authority citation for 24 CFR Part 50 would be revised to read as follows:

Authority: Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. Section 50.20 would be amended by adding a new paragraph (p) to read as follows:

§ 50.20 Categorical exclusions

* * * * *

(p) Grants under the Public Housing Drug Elimination Program (Pub. L. 100-690, 24 CFR Part 961).

3. A new Part 961 would be added to Title 24 of the Code of Federal Regulations, to read as follows:

PART 961—PUBLIC HOUSING DRUG ELIMINATION PROGRAM

Subpart A—General

Subpart B—Eligible Activities

Subpart C—Application and Selection

Subpart D—Grant Administration

Authority: Sec. 5127, Public Housing Drug Elimination Act of 1988 (Chapter 2, Subtitle C, Title V, Anti-Drug Abuse Act of 1988 (Pub. L. 100-690, approved November 18, 1988)); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart A—General

§ 961.1 Purpose.

This part establishes the Public Housing Drug Elimination program. The

purposes of the program are to: (a) Encourage public housing agencies (PHAs) and Indian Housing Authorities (IHAs) to develop a plan for addressing the problem of drug-related crime on the premises of the public and Indian housing projects proposed for funding under this part; and (b) Make available Federal grants to help PHAs and IHAs carry out their plans.

§ 961.3 Resident Management Corporations and Resident Councils.

(a) The elimination of drug-related crime in public housing projects requires the active involvement and commitment of public housing residents and their organizations. To facilitate the ability of PHAs to combat drug-related criminal activity in their projects, Resident Councils (RCs) and Resident Management Corporations (RMCs) will be permitted to undertake management functions specified in this part, notwithstanding the otherwise applicable requirements of 24 CFR Part 964. The Department encourages PHAs to make Resident Management Corporations (RMCs) and Resident Councils (RCs) full partners in this effort. Areas in which this partnership can be particularly significant include (but are not limited to) the planning and execution of strategies and activities to eliminate drug-related crime in public housing projects, the funding of RMCs/RCs to carry out voluntary tenant patrols (§ 961.10(e)), and to develop security and drug-abuse prevention programs involving site residents (§ 961.10(g)). RMCs and RCs can also carry out eligible activities under § 961.10 on the grantee's behalf. To emphasize the importance that the Department attaches to full RMC/RC participation in activities assisted under this part, § 961.18 requires applicants to: (1) Give these organizations (as well as the residents of the targeted projects) a reasonable opportunity to comment on the application; and (2) Give serious consideration to these comments in developing the application.

(b) In addition, points will be awarded in the application selection process to PHA's (as provided by § 961.25(b)(2)(B)) based upon the extent of RMC or RC involvement in the development of the grant application, and the extent to which an RMC or RC will have substantial program management responsibilities under the PHA's plan. (This rating criterion will not be applied to IHA applicants, since IHAs are not covered by the Department's existing tentant participation and management regulations (24 CFR Part 964) and, hence, would be competitively disadvantaged. Until HUD promulgates final regulations on Indian tenant participation, applicants under this part will be selected in accordance with the requirements of § 961.25(a)).

§ 961.5 Definitions.

Applicant means a PHA or IHA that applies for a grant under this part.

Chief executive officer (CED) of a State or a unit of general local government means the elected official or the legally designated official, or his or her designee, who has the primary responsibility for the conduct of the entity's governmental affairs. Examples of the chief executive officer of a unit of general local government are: the elected mayor of a municipality; the elected county executive of a county; the chairperson of a county commission or board in a county that has no elected county executive; or the official designated pursuant to law by the governing body of the unit of general local government. The chief executive officer of an Indian tribe is the tribal governing official.

Controlled substance means a drug or other substance or immediate precursor included in schedule I, II, III, IV, or V of section 102 of the Controlled Substances Act (21 U.S.C. 802). The term does not include distilled spirits, wine, malt beverages or tobacco as those terms are defined in Subtitle E of the Internal Revenue Code of 1954.

Drug-Related crime means the illegal manufacture, sale, distribution, use, or possession with intent to manufacture, sell, distribute, or use, of a controlled substance.

Governmental jurisdiction means the unit of general local government, State, or Indian tribe in which the public housing project administered by the applicant is located.

Grantee means an applicant that executes a grant agreement with HUD under this part.

Hud or *Department* means the United States Department of Housing and Urban Development.

Indian means any person recognized as being an Indian or Alaska Native by an Indian tribe, the Federal Government, or any State.

Indian Housing Authority (IHA) means any entity that:

(a) Is authorized to engage in or assist in the development or operation of lower income housing for Indians; and

(b) Is established either by exercise of the power of self-government of an Indian tribe independent of State law, or by operation of State law providing specifically for housing authorities for Indians, including regional housing authorities in the State of Alaska.

Indian tribe means any tribe, band, pueblo, group, community, or nation of Indians or Alaska Natives.

Local law enforcement agency means a police department, sheriff's office, or other entity of the governmental jurisdiction that has law enforcement responsibilities for the community at large, including the public housing projects administered by the applicant. More than one law enforcement agency may have these responsibilities for the jurisdiction that includes the applicant's projects.

Public housing agency (PHA) means any State, county, municipality or other governmental entity or public body (or agency or instrumentality thereof) that is authorized to engage in or assist in the development or operation of housing for lower income families.

Public housing project or *project* means lower income housing and all necessary appurtenances developed, acquired, or assisted by a PHA or an IHA under the United States Housing Act of 1937 (other than under section 8). A project encompasses those buildings identified in the Annual Contributions Contract (ACC) that is executed between HUD and the PHA or IHA.

Resident Council (RC) means (a) An incorporated or unincorporated nonprofit organization or association that meets each of the following requirements:

(1) It must be representative of the tenants it purports to represent.

(2) It may represent tenants in more than one project or in all of the projects of a PHA, but it must fairly represent tenants from each project that it represents.

(3) It must adopt written procedures providing for the election of specific officers on a regular basis (but at least once every three years).

(4) It must have a democratically elected governing board. The voting membership of the board must consist of tenants of the project or projects that the tenant organization or resident council represents.

(b) For purposes of this part only, a Resident Council for an Indian Housing Authority means an incorporated or unincorporated nonprofit organization or association that meets the requirements of paragraph (a) (i) (1), (2), and (4) of this definition. In addition, the organization must ensure compliance with each of the following requirements:

(1) Tenants and the IHA must identify appropriate roles and responsibilities for creating and sustaining constructive tenant participation. Tenants should have the primary responsibility for determining their goals, organizational

structure, and method of operating. An IHA should be willing to consider any reasonable request by tenants or tenant organizations to participate in management.

(2) A tenant organization may request that it be recognized as the official organization representing the tenants in meetings with the IHA or with other entities. An IHA should grant formal recognition of the tenant organization if it meets the requirements for such an organization under this part.

(3) At a minimum, the IHA and tenant organization should put in writing their understanding concerning the elements of their relationship.

Resident Management Corporation (RMC) means (a) the entity that proposes to enter into, or that enters into, a management contract with a PHA under 24 CFR part 964. The corporation must have each of the following characteristics:

(1) It must be a nonprofit organization that is incorporated under the laws of the State or Indian tribe in which it is located.

(2) It may be established by more than one tenant organization or resident council, so long as each such organization or council: (i) Approves the establishment of the corporation and (ii) has representation on the Board of Directors of the corporation.

(3) It must have an elected Board of Directors.

(4) Its by-laws must require the Board of Directors to include representatives of each tenant organization or resident council involved in establishing the corporation.

(5) Its voting members must be tenants of the project or projects it manages.

(6) It must be approved by the resident council. If there is no council, a majority of the households of the project must approve the establishment of such an organization to determine the feasibility of establishing a corporation to manage the project.

(7) It may serve as both the resident management corporation and the resident council, so long as the corporation meets the requirements of Part 964 for a resident council.

(b) For purposes of this part only, a Resident Management Corporation for an Indian Housing Authority means the entity that proposes to enter into, or that enters into, a management contract with an IHA under this part, and that otherwise meets the requirements of paragraphs (a)(1), (a)(2)(i), (a)(6) and (a)(7) of this definition. Under paragraph (a)(7) of this definition a Resident Management Corporation may serve as both the RMC and the RC so long as the corporation meets the requirements of this part.

State means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the territories and possessions of the United State, and the Trust Territory of the Pacific Islands.

Unit of general local government means any city, county, town, township, parish, village, or other general purpose political subdivision of a State.

Subpart B—Eligible Activities

§ 961.10 Eligible activities.

Activities assisted under this part must be directed toward the elimination of drug-related crime in public housing projects, and may include only one or more of the following:

(a) *Security personnel.* Employment of security personnel in public housing projects.

(b) *Additional security and protective services.* Reimbursement of local law enforcement agencies for the cost of providing additional security and protective services for public housing projects. The security and protective services provided must be either:

(1) A service that no local law enforcement agency (or agencies) provided for public housing projects administered by the grantee immediately before the applicable Notice of Fund Availability under this part was published in the **Federal Register**; or

(2) A quantifiable increase in the level of an ongoing service above that which the local law enforcement agency (or agencies) provided for public housing projects administered by the grantee immediately before the applicable Notice of Fund Availability was published in the **Federal Register.**

(c) *Physical improvements.* Physical improvements in public housing projects that are specifically designed to enhance security. These improvements may include (but are not limited to) the installation of lighting systems, bolts, or locks, or the reconfiguration of common areas to discourage drug-related crime. Such improvements may not involve the demolition of any units in a project. A PHA may not use grant funds under this part for any physical improvements that would result in the displacement of persons.

(d) *Employment of investigators.* Employment of one or more individuals to:

(1) Investigate drug-related crime on or about the real property comprising any public housing project; and

(2) Provide evidence relating to any such crime in any administrative or judicial proceedings.

(e) *Tenant patrols.* The provision of training, communications equipment, and other related equipment (including uniforms), for use by voluntary public housing tenant patrols acting in cooperation with officials of local law enforcement agencies.

(f) *Innovative programs.* Innovative programs to reduce the use of drugs in and around public housing projects. A program will be considered "innovative" under this paragraph if it uses a new or creative approach to reducing the use of drugs in and around public housing projects. Activities that may be funded under this paragraph include (but are not limited to) innovative law enforcement, drug education, drug treatment, counseling, referral, outreach efforts, and programs to prevent drug-related crime involving recreational, vocational, and educational activities and other constructive alternatives for youth.

(g) *RMCs and RCs.* Funding of RMCs and RCs to develop security and drug abuse prevention programs involving site residents. Such programs may include (but are not limited to) law enforcement activities, drug education, drug treatment, counseling, referral, and outreach efforts.

Subpart C—Application and Selection

§ 961.15 Plan.

(a) *Requirement of plan.* Each application for a grant under this part must include a plan for addressing the problem of drug-related crime on the premises of the public housing projects proposed for funding under this part.

(b) *Plan content.* The plan referred to in paragraph (a) of this section must contain the following elements:

(1) *Assessment of problem.* The best available objective data on the nature and extent of the problem of drug-related crime, and the problems associated with drug-related crime, in the projects administered by the applicant that are proposed for funding under this part. These data should generally be derived from crime statistics from Federal, State, or local law enforcement agencies. If such data are not available at the project or precinct level, the applicant may use other reliable, objective data including (but not limited to) those derived from its records or those of RMCs or RCs. The data should be reported both in real numbers, and as a percentage of the tenants in each project (*e.g.*, 20 arrests

for distribution of heroin in a project with 100 residents reflects a 20% occurrence rate). The data should cover the past one-year period and, to the extent feasible, should indicate whether these data reflect a percentage increase or decrease in drug-related crime over the past several years.

(2) *Current activities to address problem.* A narrative discussion of the activities currently being undertaken, and a listing of the resources being provided, by the applicant, governmental entities, RMCs and RCs to address the problem of drug-related crime in the projects proposed for assistance under this part.

(3) *Strategy for addressing problem.* A narrative discussion of the applicant's strategy for addressing the problem of drug-related crime in each of the projects proposed for assistance under this Part 961. The discussion must offer a realistic approach for dealing with the applicant's drug-related crime problem, taking into account the nature and extent of the problem, and the funding and other resources that reasonably may be expected to be available to combat the problem. At a minimum, the discussion must include the following information for each of the projects proposed for assistance under this part:

(i) A description of each component of the applicant's strategy, including activities to be undertaken with funding under this part, and how these components interrelate. The applicant should indicate how such activities will complement, and be coordinated with, current services.

(ii) The anticipated cost of each component of the strategy, and the financial and other resources (including funding under this part) that may reasonably be expected to be available to carry out each component;

(iii) A timeframe for beginning and completing each component of the strategy;

(iv) An estimate of the results that each component of the strategy, as well as the overall strategy, is expected to achieve for each year that the strategy is in effect and upon its completion.

(v) The role of RMCs, RCs and any other entities (*e.g.*, local and State governments and community organizations) in planning and carrying out the strategy. The applicant should also indicate the name of the RMC or RC that will develop any security and drug abuse prevention programs involving site residents under § 961.10(c).

(vi) If grant amounts under this part are to be used for physical improvements under § 961.10(c), a statement as to how these improvements will be coordinated with the applicant's modernization program under 24 CFR Part 968;

(vii) If grant amounts under this part are to be used for innovative programs to reduce the use of drugs in and around public housing projects under § 961.10(f), a statement by the applicant as to the nature of the program and how the program represents a new or creative approach to achieving this purpose.

§ 961.18 Resident participation.

The applicant must provide the residents of projects proposed for funding under this part, as well as any RMCs or RCs that represent those tenants (including any PHA-wide RMC or RC), with a reasonable opportunity to comment on its application under § 961.20 (including its plan under § 961.15). The applicant must give these comments careful consideration in developing its plan and application.

§ 961.20 Application requirements.

(a) *Application contents.* To qualify for a grant under this part, an applicant must submit an application to HUD that contains the following:

(1) Standard Grant Application Form SF–424;

(2) The plan referred to in § 961.15;

(3) Copies of any tenant comments submitted to the PHA under § 961.18;

(4) A certification by the applicant that:

(i) Grant amounts under this part will not substitute for activities currently being undertaken to address the problem of drug-related crime in the project(s) proposed for assistance; and

(ii) Any additional security and protective services to be assisted under § 961.10(b) meet the requirements of that section;

(5) If grant amounts under this part are to be used to establish voluntary tenant patrols under § 960.10(e), a certification by the applicant that the local law enforcement agency and the tenant patrols have entered, or will enter into, such agreements as are needed to ensure cooperation;

(6) A certification from the chief executive officer (or an official designated by the chief executive officer) of the Indian tribe, unit of general local government (or, for areas outside a unit of general local government, the State) in which the applicant is located that, to the best of its knowledge:

(i) The applicant's assessments of the drug-related crime problem, and the problems associated with drug-related crime, in the projects proposed for assistance under this part (as required by § 961.15(b)(1)), are based on the best available objective data, and are complete and accurate;

(ii) The applicant's descriptions of the current activities being undertaken to address the problem of drug-related crime in its projects (as required by § 961.15(b)(2)) are complete and accurate; and

(iii) The information provided by the applicant regarding its strategy under § 961.15(b)(3) is accurate and complete, and the strategy is realistic and attainable, given the nature and extent of the applicant's drug-related crime problem, the resources that the applicant expects to be available to address the problem, and the applicant's proposed timeframe for accomplishing the strategy;

(7) A certification form the chief executive officer (or an official designated by the CEO), that: (i) Grant amounts under this part will not substitute for activities currently being undertaken by the jurisdiction to address the problem of drug-related crime in projects proposed for assistance under this part; and (ii) any additional security and protective services to be assisted under § 961.10(b) meet the requirements of that section.

(8) A certification from the chief executive officer(s) (or an official designated by the CEO(s)) of the relevant governmental jurisdiction that it will take the actions described in the applicant's strategy under § 961.15(b)(3);

(9) A statement from the chief executive officer (or an official designated by the CEO) as to whether the relevant governmental jurisdiction is meeting its obligations under the Cooperation Agreement with the PHA, particularly with regard to law enforcement. If the jurisdiction is not meeting its obligations under this Agreement, it should identify any special circumstances relating to its failure to do so.

(10) If applicable, a certification from the chief of the local law enforcement agency that the agency has, or will, enter into such agreements as are needed to ensure cooperation with the voluntary tenant patrol under § 961.10(e);

(11) If applicable, a certification by the RMC or RC for a project proposed for funding under this part that the plan under § 961.15 was jointly prepared with the applicant, and a description of the activities it will implement under this part;

(12) A certification that the grantee will maintain a drug-free workplace in

accordance with the requirements of the Drug-Free Workplace Act of 1988 (54 FR 4946, published January 31, 1989, effective March 18, 1989).

(b) *Notice of Fund Availability.* HUD will publish Notices of Fund Availability (NOFAs) in the Federal Register as appropriate to inform the public of the availability of grant amounts under this part. The Notices will provide specific guidance with respect to the grant process, including the timeframes for the submission and review of applications and the award of grant funds, the limits (if any) on maximum grant amounts, and the anticipated grant term.

§ 961.25 Application selection.

(a) *Ranking.* (1) Each application submitted by a PHA or IHA under this part that meets the application requirements under § 961.20(a) (including those specified in NOFAs under § 961.20(b)) will be evaluated in accordance with the selective rating criteria under paragraph (b) of this section.

(2) (i) Applications submitted by PHAs will be evaluated on the basis of the four rating criteria under paragraph (b) of this section, with each rating criterion assigned up to a maximum of 25 points. In addition, a PHA applicant may obtain up to an additional 15 points § 961.25(b)(2)(B) based upon the extent of RMC or RC involvement in the development of the grant application (including the plan under § 961.15), and the extent to which an RMC or RC will assume substantial management responsibilities under the PHA's plan. These applications will be ranked based upon their total rating score.

(ii) Applications submitted by IHAs will be evaluated on the basis of the four rating criteria under paragraph (b) of this section, with each rating criterion assigned up to a maximum of 25 points. IHAs will not be rated on the RMC/RC element under § 961.25(b)(2)(B). These applications will then be separately ranked based upon their total selective rating scores.

(3) Grant awards will be made to the highest-ranked applicants, except that HUD may exercise its discretion under paragraph (c) of this section, to ensure an equitable distribution of grant funds among both pools of highest-ranked PHA and IHA applicants. In exercising its discretion under this section, HUD shall take into account the overall ratio of PHAs to IHAs; the ratio of fundable applications submitted by PHAs and IHAs; and the extent of available grant funds under this part.

(4) HUD may substitute one or more highly ranked applications under paragraph (d) of this section, in order to obtain an equitable geographical distribution of grant funds, and distribution among PHAs and IHAs of varying sizes.

(5) Failure to address a required rating criterion under paragraph (b) of this section will result in an applicant's receiving *no* points for that element.

(b) *Selective rating criteria.* The selective rating criteria are:

(1) The extent of the problem of drug-related crime in the applicant's projects. (Maximum points: 25).

(2) (i) The quality of the plan under § 961.15, based upon the extent to which the information provided by the applicant under that section is accurate and complete; and the extent to which the applicant's strategy under that section is realistic and attainable, given (among other things) the nature and extent of the applicant's drug-related crime problem, and the funding and other resources that may reasonably be expected to be available to address the problem. (Maximum points: 25).

(ii) Applications submitted by PHAs will also be evaluated based upon the extent of RMC or RC involvement in the development of the grant application, and the extent to which an RMC or RC will assume substantial program management responsibilities under the PHA's plan. (Maximum points: 15).

(3) The applicant's capability to carry out its plan under § 961.15, as reflected by its ability to obtain funding or other commitments of support for each aspect of the plan; its administrative capability to manage its projects; and its degree of commitment to addressing the problem of drug-related crime. (Maximum points: 25).

(4) The extent to which the governmental jurisdiction, local law enforcement agencies, and the local community support the applicant's activities to eliminate drug-related crime. HUD may consider as evidence of such support whether the relevant governmental jurisdiction has met its obligations under the Cooperation Agreement with the applicant. (Maximum points: 25).

(c) *PHA/IHA distribution.* HUD may exercise its discretion under this paragraph to ensure an equitable distribution of grant funds among the highest-ranked applications submitted by PHAs and IHAs. In exercising its discretion under this paragraph, HUD shall take into account the overall ratio of PHAs to IHAs; the ratio of fundable applications submitted by PHAs to IHAs; and the extent of available grant funds under this part.

(d) *Geographical distribution.* HUD may substitute one or more highly ranked applications if the top rated applications under the selection criteria do not ensure equitable geographical distribution among urban and rural areas, and among PHAs to IHAs of varying sizes.

(e) *Environmental review.* Prior to an award of grant funds under this part, HUD will perform an environmental review to the extent required under the provisions of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321), applicable related authorities at 24 CFR Part 50.4, and HUD's implementing regulations at 24 CFR Part 50, including § 50.20(p).

Subpart D—Grant Administration

§ 961.30 Grant administration.

(a) *General.* The duty to use grant funds to eliminate drug-related crime in public housing projects in accordance with the requirements of this part will be incorporated in a grant agreement executed by HUD and the grantee.

(b) *Applicability of OMB Circulars.* The policies, guidelines, and requirements of 24 CFR Part 85 apply to the acceptance and use of assistance by grantees under this part; and OMB Circular Nos. A–110 and A–122 apply to the acceptance and use of assistance by private nonprofit organizations;

(c) *Obligation of grant funds.* Grantees may use grant amounts under this part over the period of time specified in the grant agreement. It is not required that the grantee obligate its funds within a particular fiscal year.

§ 961.35 Periodic reports.

Grantees must provide HUD with periodic reports that include the obligation and expenditure of grant funds for the eligible activities at § 961.10; the progress made by the grantee both in implementing the plan under § 961.15 (taking into account both assistance under this part and funds from other sources); and data tracking the incidence of drug-related crime in the projects assisted under this part since the date of execution of the grant agreement between HUD and the grantee.

§ 961.40 Other Federal requirements.

Use of grant funds under this part requires compliance with the following additional Federal requirements:

(a) *Labor standards.* Where grant funds are used to undertake physical improvements to increase security under § 961.10, the following labor standards apply:

(1) The PHA and its contractors and subcontractors must pay the following prevailing wage rates, and must comply

with all related rules, regulations and requirements:

(i) For laborers and mechanics employed in the development of the project, the wage rate determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a *et seq.*) to be prevailing in the locality with respect to such trades;

(ii) For architects, technical engineers, draftsmen and technicians employed in the development of the project, the HUD-determined prevailing wage rate; or

(iii) For laborers and mechanics employed in carrying out non-routine maintenance in the project, the HUD-determined prevailing wage rate. As used in this subsection, nonroutine maintenance means work items that ordinarily would be performed on a regular basis in the course of upkeep of a property, but have become substantial in scope because they have been put off, and that involve expenditures that otherwise materially distort the level trend of maintenance expenses. Non-routine maintenance may include replacement of equipment and materials rendered unsatisfactory because of normal wear and tear by items of substantially the same kind. Work that constitutes reconstruction, a substantial improvement in the quality or kind of original equipment and materials, or remodeling that alters the nature or type of housing units is not nonroutine maintenance.

(2) The employment of laborers and mechanics is subject to the provisions of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333).

(b) *Nondiscrimination and equal opportunity.* The following nondiscrimination and equal opportunity requirements:

(1) The requirements of Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3600–20 (Fair Housing Act) and implementing regulations issued at Subchapter A of Title 24 of the Code of Federal Regulations, as amended by 54 FR 3232 (published January 23, 1989); Executive Order 11063 (Equal Opportunity in Housing) and implementing regulations at 24 CFR Part 107; and Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–4) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR Part 1;

(2) The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–07) and implementing regulations at 24 CFR Part 146, and the prohibitions against discrimination against handicapped individuals under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR Part 8;

(3) The requirements of Executive Order 11246 (Equal Employment Opportunity) and the regulations issued under the Order at 41 CFR Chapter 60;

(4) The requirements of section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u (Employment Opportunities for Lower Income Persons in Connection with Assisted Projects); and

(5) The requirements of Executive Orders 11625, 12432, and 12138. Consistent with HUD's responsibilities under these Orders, recipients must make efforts to encourage the use of minority and women's business enterprises in connection with funded activities.

(c) *Use of debarred, suspended or ineligible contractors.* The provisions of 24 CFR Part 24 relating to the employment, engagement of services, awarding of contracts, or funding of any contractors or subcontractors during any period of debarment, suspension, or placement in ineligibility status.

(d) *Flood insurance.* Grants will not be awarded for proposed projects that involve acquisition, construction, reconstruction, repair or improvement of a building or mobile home located in an area that has been identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards unless: (1)(i) The community in which the area is situated is participating in the National Flood Insurance Program in accordance with 44 CFR Parts 59–79; or (ii) less than a year has passed since FEMA notification to the community regarding such hazards; and (2) flood insurance on the structure is obtained in accordance with section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001).

(e) *Lead-based paint.* The provisions of section 302 of the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4821–4846, and implementing regulations at 24 CFR Part 965, Subpart H (51 FR 27789–27791, August 1, 1986). This section is promulgated pursuant to the authority granted in 24 CFR 35.24(b)(4) and supersedes, with respect to all housing to which it applies, the requirements (not including definitions) prescribed by Subpart C of 24 CFR Part 35.

(1) *Applicability.* The provisions of this section shall apply to all projects constructed or substantially rehabilitated before January 1, 1978, and for which assistance under this part is being used for physical improvements to enhance security under § 961.10(c).

(2) *Definitions.* For purposes of paragraph (f) of this section, the term "applicable surfaces" means all intact and nonintact interior and exterior painted surfaces of a residential structure.

(3) *Exceptions.* The following activities are not covered by this section: (i) Installation of security devices; (ii) other similar types of single-purpose programs that do not involve physical repairs or remodeling of applicable surfaces of residential structures; or (iii) any non-single purpose rehabilitation that does not involve applicable surfaces and that does not exceed $3,000 per unit.

(f) *Conflicts of Interest.* In addition to the conflict of interest requirements in 24 CFR Part 85, no person:

(1) Who is an employee, agent, consultant, officer, or elected or appointed official of the grantee, that receives assistance under the program and who exercises or has exercised any functions or responsibilities with respect to assisted activities; or

(2) Who is in a position to participate in a decisionmaking process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from the activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for him or herself or for those with whom he or she has family or business ties, during his or her tenure, or for one year thereafter.

(g) *Intergovernmental review.* The requirements of Executive Order 12372 and the regulations issued under the order at 24 CFR Part 52, to the extent provided by Federal Register notice in accordance with 24 CFR 52.3.

(h) *Indian preference.* The provisions of section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) apply to IHAs. These provisions require to the greatest extent feasible that preference and opportunities for training and employment be given to Indians and that preference in the award of subcontracts and subgrants be given to Indian Organizations and Indian Owned Economic Enterprises.

Dated: June 14, 1989.

Jack Kemp,

Secretary.

[FR Doc. 89–14594 Filed 6–20–89; 8:45 am]

BILLING CODE 4210–32–M

Federal Register

Wednesday
June 21, 1989

Part VI

Department of Housing and Urban Development

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 511

Rental Rehabilitation Grants; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 511

[Docket No. R-89-1441; FR-2558]

RIN 2506-AA88

Rental Rehabilitation Grants

AGENCY: Office of Community Planning and Development, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule will implement sections 150(b) and 150(f) of the Housing and Community Development Act of 1987 (the 1987 Act). Section 150(b) amends the United States Housing Act of 1937 (the 1937 Act) to include as eligible projects, properties that will be privately owned upon completion of rehabilitation. Section 150(f) was intended to clarify when non-profit corporations are considered eligible to own rental rehabilitation grant-assisted projects. With respect to section 150(b), the proposed rule amends 24 CFR Part 511 to add provisions requiring grantees to submit schedules for project construction and for transfer to private ownership to the HUD Field Office for review and approval prior to drawing down construction funds for publicly-owned projects. Also, the rule sets deadlines after which grantees will be required to reimburse their grant accounts if projects are not completed and transferred to private ownership on or before the specified dates. With respect to section 150(f), the rule clarifies HUD's criteria for when a non-profit corporation is considered privately controlled and hence eligible to own rental rehabilitation grant-assisted projects.

DATE: Comment due date: August 21, 1989.

ADDRESS: Interested persons are invited to submit comments regarding this rule of the Office of General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, Washington, DC 20410-0500. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying during regular business hours (7:30 a.m. to 5:30 p.m. weekdays) at the above address.

As a convenience to commenters, the Rules Docket Clerk will accept public comments transmitted by facsimile ("FAX") machine. The telephone number of the FAX receiver is (202) 755-2575. (This is not a toll-free number.) Only public comments of six or fewer *total* pages will be accepted via the FAX transmittal. This limitation is necessary in order to assure reasonable access to the equipment. Comments sent by FAX in excess of six pages will not be accepted. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Rules Docket Clerk, (202) 755-7084.

FOR FURTHER INFORMATION CONTACT: Mary Kolesar, Rehabilitation Management Division, Room 7174, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410-7000, telephone (202) 755-5970. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Information Collection

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980. Public reporting burdens for the collection of information requirements contained in this rule are estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided under the preamble heading, "Other Matters".

Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden (including the identifying docket number and title), to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street SW., Room 10276, Washington, DC 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC, Attention: Desk Officer for HUD.

Background

Sections 150(b) and 150(f) were enacted by Congress in response to specific cases in which questions of eligibility arose in the Rental Rehabilitation Program. As more fully explained below, section 150(b) originated from the need to dispose of "in rem" properties in New York City, and section 150(f) from a case in which a non-profit corporation in Seattle, Washington wished to receive RRP funds.

Sections 150(b) and 150(f) both purport to modify HUD's interpretation of section 17(a)(1)(A) of the 1937 Act, which authorizes RRP grants "to help support the rehabilitation of *privately-owned* of real property * * *" (emphasis added). Section 17(a)(1)(A) effectively prohibits the Federal Government, States, units of general local government, and other public bodies and instrumentalities from owning projects assisted with Rental Rehabilitation Program funds. By logical extension, HUD has also viewed other instrumentalities which are owned or controlled by a public body, even though they are organized under a State's general business corporation, partnership, or non-profit corporation law, as similarly barred from owning rental rehabilitation projects on the ground that the public body should not be able to accomplish indirectly through another form of organization what it cannot do directly. HUD views the "privately-owned real property" requirement not as a mere technicality, but as an important substantive requirement designed to target the Rental Rehabilitation Program to a particular need perceived as underserved by other programs—the need to provide workable incentives to private owners to rehabilitate their rental properties, in order to expand the supply of standard private housing available to lower-income families.

Although § 511.1 of the existing RRP regulations (24 CFR Part 511) repeats the language of section 17(a)(1)(A), the privately-owned real property requirement was not explicitly stated in Subpart B of Part 511, which contains the "Program Eligibility Requirements", as originally drafted. This proposed rule will correct this technical oversight by adding a new paragraph (1) to § 551.10(c) to make it clear that RRP grants are limited to rehabilitating projects which are in private ownership when the commitment of funds is made or projects which are publicly owned but will be transferred to private ownership within a period approved by HUD, based on a schedule submitted by the grantee. At § 551.10(c)(4), consistent with the period stated in section 15(c)(2)(G) and legal opinions interpreting current law and regulations, the proposed rule also adds language specifically requiring that the owner enter into a legally enforceable agreement to keep the property under private ownership and devoted to "primarily residential rental use" for at least ten years, beginning on the date on which the rehabilitation is completed or the project is transferred to private

ownership (whichever is later), unless a hardship exception is granted by the grantee or the property is sold to another private owner who agrees to carry out the remainder of the ten year obligation.

As further background on the enactment of section 150(b), in New York City a substantial inventory existed of properties acquired by the City for delinquent taxes and assessments. These so-called "in rem" properties were in need of rehabilitation and were occupied by low-income tenants. The City wanted to rehabilitate the properties first itself, and then transfer the titles to private ownership (particularly tenant-owned cooperatives) upon completion of the rehabilitation. In a November, 1984 HUD opinion, the City of New York was granted permission to rehabilitate these in rem properties using Community Development Block Grant funds. The CDBG funds were subject to later reimbursement with RRP funds when the properties were transferred to private ownership, provided that the work had been performed in accordance with all RRP requirements and the project then met all RRP requirements. HUD is aware that New York City has experienced substantial difficulties in achieving the timely completion and transfer of these projects. In particular, there is a relatively high risk of failure to complete the rehabilitation or the transfer to private ownership for properties in the condition of those that are usually the subject of in rem tax deliquent acquisitions in New York. However, by enacting section 150(b), Congress clearly intended to permit RRP funds to be disbursed for rehabilitation while a property is publicly owned, subject to later transfer to private ownership.

In HUD's view, if a grantee desires to expend RRP funds for rehabilitation that is eligible only upon a contingent event occurring, that is, a transfer of the property to private ownership, the grantee must be willing to assure that this contingent event will indeed occur and to assume any risk that it might not. Therefore, if a project is not completed or the transfer of title does not occur within a reasonable period of time, as defined in § 511.10(c)(1)(ii), the proposed regulation expressly provides that the grantee must repay to its grant account in the C/MI System the amount disbursed for the rehabilitation of the property. The time allowed to complete the rehabilitation and transfer of the project to private ownership will be determined by a schedule that is reviewed and approved by the appropriate HUD Field Office.

HUD believes that the maximum permissible rehabilitation period should not be greater than two years from the date of the commitment of funds in the C/MI System, and the period allowed for the transfer of property to private ownership should not be greater than 60 days from the date of the final draw of RRP funds. The entire process of construction and transfer may not exceed two years and 60 days from the date of commitment of the RRP funds in the C/MI System. Furthermore, both the construction and transfer must occur within the time period allowed under 24 CFR 511.33(c). The HUD Field Office, of course, would have discretion not to approve the maximum two years and 60 days rehabilitation and transfer schedule, if it determines that the maximum schedule is not warranted under the standards in § 511.10(c)(i)(A) of the proposed rule.

The appropriate HUD Field Office will periodically review project progress against the approved schedule. Failure by the grantee to stay within the construction/transfer schedule would be grounds for HUD to place the grantee on suspension of further new project set-ups in the C/MI System pending submission of a revised schedule for the problem projects to assure their timely completion. The suspension imposed by HUD could cover all new projects of the grantee, or only some classes of projects, at HUD's discretion. A 60 day period will be allowed for the grantee to submit and receive approval of an acceptable revised schedule; failure to do so will result in cancellation of the projects which are behind schedule, and the grantee will be required to repay to HUD the amount disbursed for the project. Similar project cancellation and repayment requirements will also be in effect for failure to complete the rehabilitation and transfer the project to private ownership within the period specified in the original or revised schedule. HUD may also suspend the grantee from further C/MI set-ups and disbursements on all committed projects, or some classes of projects, until payment is received. Finally, if payment is still not received, HUD may proceed to deobligate all of the grantees' uncommitted rental rehabilitation grant amounts and will thereafter treat the grant amount that has not been repaid as a claim under 24 CFR 511.82(c)(4).

Finally, a technical amendment to the definition of "commitment to a specific local project" in § 511.2 is necessary to accommodate projects undertaken under the new publicly owned projects authority in § 511.10(c)(1)(ii). These projects do not have a private owner for the grantee to enter into a legally binding agreement with, as required by the current definition. The revised definition uses HUD approval of the rehabilitation and transfer schedule under § 511.10(c)(1)(ii) as the "commitment" for publicly-owned projects.

The existing New York in rem projects will be dealt with under the current regulations in 24 CFR Part 511. The proposed rule will affect projects committed in the Cash and Management Information System (C/MI) or on after the effective date of the rule with uncommitted Rental Rehabilitation Program funds from any fiscal year. Because HUD has determined that section 150(b) requires publication as a proposed rule for public comment, before final implementation, comments are solicited on whether projects that are currently committed in the Cash and Management Information (C/MI) System should also be subject to the proposed rule and what changes would be needed in the proposed rule if this were done.

One additional change is proposed in Part 511 which is related to the changes made to implement section 150(b) of the 1987 Act, although not required thereby. Under the special procedure developed for New York City to use CDBB funds to rehabilitate publicly-owned projects, subject to later reimbursement with RRP funds when the projects were transferred to private ownership, HUD permitted the projects in question to be set-up in the C/MI System before rehabilitation began, although no "commitment to a specific local project" then existed in the usual sense, and even though no RRP funds could be drawn down until the projects were finally sold to private owners at a later date. This made it possible for New York to avoid deobligation of funds under § 511.33(c) based on noncommitment in accordance with the progress schedule mandated by § 570.20(b)(9). It also served to identify the projects in question as rental rehabilitation projects for purposes of monitoring compliance with applicable program requirements. However, this approach led in practice to extraordinarily long periods without any drawdowns on allegedly committed projects, difficulty in monitoring project progress, and possible improper protection of grant funds from deobligation based on lack of progress by the City.

Since section 150(b), as implemented by the proposed rule, permits RRP fund to be drawn down to pay for

rehabilitation immediately if a rehabilitation/transfer schedule is approved by HUD, as described in the proposed rule, there is no longer a need for the special early commitment and set-up authority granted to New York City. However, the issue of when otherwise eligible costs which are incurred prior to set-up of a new project in the C/MI System may be recognized as part of the project cost for RRP purposes, has been of interest to other grantees and project owners. HUD's proposal to clarify that issue is set forth in proposed new paragraph (3) of § 511.10(g) in the proposed rule. The proposal is generally consistent with OMB Circular A–87, which permits Federal agencies to recognize so-called "preagreement costs" if the agency chooses to do so.

Proposed new § 511.10(g)(3) will permit grantees to include in project cost rehabilitation costs that are incurred prior to project set-up or commitment in the C/MI System if the grantee and owner so agreed in writing before the rehabilitation was undertaken, the rehabilitation was done after the Appropriation Act which made available the grant funds in question was enacted, and the costs otherwise meet all applicable program requirements. For other eligible costs (i.e., so-called "soft costs"), the grantee would have the additional option of recognizing the costs, which include such things as architectural and professional expenses, which are often incurred on a speculative basis before rehabilitation, when the grantee and owner enter into the final project commitment.

HUD believes that the clarifications in § 511.10(g)(3) will allow grantees to permit owners, when necessary and desirable, to incur precommitment costs and to begin rehabilitation in anticipation of the availability of grant funds, or before the full negotiation and execution of a project agreement, if they are willing to take the risk of possible nonfunding. At the same time, the proposal gives the grantee discretion as to the extent it wishes to recognize such percommitment costs, and it makes clear that any such costs, to be included in project costs under Part 511, must meet all other program requirements, including applicable Federal requirements under § 511.11. In particular, HUD approval of the grantee's certification of completion of environmental responsibilities, where required, must occur prior to execution of the written agreement to include the precommitment costs. Moreover, beginning rehabilitation early is not a permissible means of avoiding Davis-Bacon wage requirements. If a grantee authorizes an owner to begin rehabilitation before setting up the project in the C/MI System, the grantee should specifically advise the owner of Davis-Bacon applicability and immediately request a wage determination.

HUD also recognizes that, in limited cases, a project could be largely completed before the actual commitment of RRP funds is made. However, it is still up to the grantee to determine that there is a need for the RRP assistance, and the need for a prior agreement with respect to most precommitment costs protects against both grantees and owner abuse. Also, if grantees delay too long in making their final commitments, their funds may become subject to deobligation under § 511.33(c).

Section 150(f) of the 1987 Act was enacted specifically to benefit "Public Development Corporations" in Seattle, Washington. In 1985, a locally-chartered organization with some characteristics of both a public and private organization sought RRP assistance from the City, and HUD questioned the entity's eligibility to receive the funds. HUD did not take the position that all non-profit organizations were ineligible to receive RRP assistance; it only said that since this particular organization was described in a "public corporation" in the local ordinance authorizing its creation, it should be treated as a public body for RRP purposes. The Seattle organization appealed to Congress for a legislative amendment, and the Housing and Community Development Act of 1987 at section 150(f) eventually declared certain non-profit organizations eligible for RRP assistance. It is clear from the legislative history that section 150(f) was intended principally to benefit the Seattle non-profit organization. HUD believes that Congress did not intend that the provision have broader effect, although broader statutory language was used. See Report 100–21 of the Senate Committee on Banking, Housing and Urban Affairs, issued March 24, 1987, at page 16. The Senate Committee's bill on this point was identical to section 150(f) as later enacted.

In any event, after the 1985 case was considered, HUD's own criteria for determining the public or private character of a local entity had evolved. On the facts that existed in 1985, current policy would have found the Seattle corporation eligible independent of section 150(f), because in fact a majority of its directors were private individuals not bound to act on behalf of the grantee or any other public body. HUD's current criteria for determining that a nonprofit corporation is "privately controlled", and hence eligible for RRP assistance, are set forth in the proposed rule at § 511.10(c)(2).

With respect to the possibility of a different interpretation of section 150(f), HUD does not believe that Congress intended to eliminate the private control test for all non-profit corporations, since doing so would effectively eliminate the private ownership requirement for projects assisted under the Rental Rehabilitation Program. If the private control test were eliminated, all any grantee or other public body would need to do to effectively select and operate its own projects would be to form a corporation which it controlled and have the corporation apply for RRP assistance; HUD does not believe such a substantive and critical element of the design and philosophy of the Rental Rehabilitation Program as the private ownership requirement would have been impaired by Congress without more explicit legislative language.

On the other hand, HUD does not believe that the criteria used in section 150(f) to describe a non-profit organization, i.e.: "neighborhood-based" and "primary purpose is the provision and improvement of housing," were really meant to limit the type of organization that is eligible to own property assisted with RRP funds. Applying these tests literally would exclude larger scale, or multi-purpose, non-profit organizations that would otherwise be eligible under HUD's current interpretation of section 17, such as Neighborhood Housing Services or ACORN. Therefore, based on the legislative history and the foregoing considerations, HUD believes that section 150(f) was intended merely to change the result in the Seattle case, which HUD has in fact done independently of section 150(f). The amendments in § 511.10(c)(2) of the proposed rule, however, are necesary to clarify HUD's policy on private ownership or control of projects rehabilitated with rental rehabilitation funds.

Other Matters

The collection of information requirements contained in this rule have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980.

Section 511.10(c)(2) of this proposed rule has been determined by the Department to contain collection of information requirements. Information

on these requirements is provided as follows:

Description of information collection, grantees who wish to engage in the rehabilitation of publicly-owned property will be required to submit to the appropriate HUD Field Office a schedule of the anticipated time it will take to complete the rehabilitation and transfer the property to private ownership. HUD expects that this schedule is already being done by grantees and that this requirement will not create any additional burden. The HUD Field Office will approve the schedule and use it to monitor construction progress; *number of respondents,* HUD believes this proposed rule will apply to only one grantee, New York City; *number of responses per respondent,* 40; *total annual responses,* 40; *hours per response,* 8; *total hours,* 320

A finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50 which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours (7:30 a.m. to 5:30 p.m. weekdays) in the Office of General Counsel, Rules Docket Clerk, at the above address.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291. Analysis of the rule indicates that it would not: (1) have an annual effect on the economy of $100 million or more; (2) cause major increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have 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.

In accordance with the provisions of 5 U.S.C. 605(b), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities, because statutorily eligible grantees and State recipient are relatively larger cities, urban counties, or States.

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism,* has determined that the policies proposed in this proposed rule would not have Federalism implications when implemented and, thus, are not subject to review under the Order. The proposed rule carries out the statutory amendments concerning the eligibility of publicly owned projects that will be privately owned upon completion of the rehabilitation and of non-profit organizations to own rental rehabilitation grant assisted projects.

The General Counsel, as the Designated Official under Executive Order 12606, *The Family,* has determined that this rule does not have potential significant impact on family formation, maintenance, and general well-being, and, thus is not subject to review under the Order.

This rule was listed as item 985 in the Department's Semiannual Agenda of Regulations published on April 24, 1989 (54 FR 16708, 16733).

List of Subjects in 24 CFR Part 511

Administrative practice and procedure, Grant programs-Housing and community development, Low and moderate income housing, Rental rehabilitation grants, Reporting and recordkeeping requirements.

Accordingly, 24 CFR Part 511 is proposed to be amended as follows:

PART 511—RENTAL REHABILITATION GRANT PROGRAM

1. The authority citation for Part 511 would continue to read as follows:

Authority: Sec. 17, U.S. Housing Act of 1937 (42 U.S.C. 1437o); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. In § 511.2, the definition of "commit to a specific local project" would be revised to read as follows:

§ 511.2 Definitions.

* * * * *

"Commit to a specific local project", or "commitment", means: (i) With respect to a project which is privately owned when the commitment is made, a legally binding agreement between a grantee (or in the case of a State distributing rental rehabilitation grant amounts to units of local government, a State recipient) and the private owner under which the grantee or State recipient agrees to provide rental rehabilitation grant amounts to the owner for an identifiable rehabilitation project that can reasonably be expected to start construction within 90 days of the agreement and in which the owner agrees to start construction within that period; or

(ii) with respect to a publicly owned project, refers to HUD approval of a schedule for rehabilitation of the project and its transfer to private ownership pursuant to § 511.10(c)(1)(ii).

* * * * *

3. In § 511.10, paragraph (c) would be revised to read as follows:

§ 511.10 Program requirements.

* * * * *

(c) *Eligible and ineligible projects—* (1) *Privately owned real property.* (i) Rental rehabilitation grant amounts shall only be used to rehabilitate projects which are in private ownership at the time the commitment to a specific local project, as defined in § 511.2, is made and which are expected to remain in private ownership as required by § 511.10(c)(4), or projects for which a schedule for rehabilitation and transfer to private ownership has been approved, and remains approved, by HUD under § 511.10(c)(1)(ii).

(ii) Rental rehabilitation grant amounts may be used to assist publicly-owned projects under the following conditions:

(A) Prior to setting up the project in the C/MI System, authorized by § 511.74, the grantee shall submit a schedule to the appropriate HUD Field Office for its review and approval. The schedule shall specify the period needed to complete the rehabilitation as well as the period needed to transfer the project to private ownership. The construction/transfer schedule shall be reasonable and realistic given the size of the project, the complexity of the rehabilitation, the expected type of private owner, and other relevant factors. However, under no circumstances shall the construction phase of the schedule exceed two years and the transfer phase exceed 60 days, or the time remaining for expenditure of the rental rehabilitation grant amounts proposed to be used for the project, whichever is shorter. The Field Office shall approve or disapprove the schedule within 30 days after receipt.

(B) After the HUD Field Office approves the construction/transfer schedule under the standards in paragraph (c)(1)(ii)(A) of this section, grantee may set up the project in the RRP C/MI System authorized by § 511.74 and may draw down grant amounts for eligible costs in accordance with normal C/MI disbursement requirements.

(C) The Field Office shall periodically review project progress against the approved schedule.

(D) If the HUD Field Office determines that a project subject to a schedule approved under this subsection is not making acceptable progress or the grantee has failed to follow the actions outlined in the schedule, the Field Office, at its discretion, may suspend the grantee's authority to set up some or

all new projects in the C/MI System until an acceptable revised schedule is submitted and approved. Under no circumstances shall a revised schedule exceed the overall limit of two years and 60 days from the date of commitment in the C/MI System. If the grantee does not submit an acceptable revised schedule within 60 days after the suspension, HUD may cancel the project in the C/MI System. The grantee shall then be required to repay its C/MI grant account an amount equal to the rental rehabilitation amounts disbursed for the project. Any suspension against setting up new projects in the C/MI System shall terminate when the Field Office approves the revised schedule, when the grantee repays the amount described in the preceding sentence, or when the suspension is otherwise terminated by the HUD Field Office, at its discretion.

(E) If the grantee fails to complete construction or transfer ownership of the property within the period agreed in the approved schedule, whether original or revised, the grantee shall repay to its grant account in the C/MI System all rental rehabilitation grant amounts drawn down with respect to the project. If payment is not received within 60 days after the last day permitted for transfer of the property under the approved plan, then HUD may suspend the grantee's authority to set up any not previously suspended classes of projects in the C/MI System, as well as the grantees' authority to draw down funds under the C/MI System for some or all existing committed projects. If payment is still not received, HUD may proceed to deobligate up to the full amount of the grantees remaining undisbursed rental rehabilitation grant amounts, whether or not such grant amounts otherwise are available for deobligation under § 511.33(c). The suspension of drawndown authority in this paragraph shall terminate when the grantee repays its grant account as required by this paragraph, or the HUD Field Office lifts the suspension at its discretion, whichever is later.

(F) After the grantee has repaid the grant amounts to its grant account as provided in § 511.10(c)(1)(ii) (D) or (E), the grant amounts may be committed by the grantee for new projects, or deobligated by HUD under § 511.33 or § 511.82 to the same extent as any other grant amounts subject to this part. In addition, the grant amounts drawn down for the canceled projects and not repaid after the dates specified in paragraphs (c)(1)(ii) (D) and (E) of this section shall thereafter be treated as a Federal claim against the grantee subject to collection as described in § 511.82(c)(4). HUD may also condition future rental rehabilitation grants, or disapprove said grants, under § 511.21(c) or § 511.82(c) as a result of the grantee's poor performance with respect to projects under this § 511.10(c)(1)(ii).

(G) Both the projects' rehabilitation and its transfer to private ownership must occur within the time period allowed under 24 CFR 511.33(c).

(2) *Private, non-profit organizations.* Projects owned by non-profit organizations that are privately controlled are eligible to receive rental rehabilitation grant amounts under the same terms and conditions as any other private project owner under this part. For purposes of this requirement, non-profit organizations must have governing bodies which are controlled 51 percent or more by private individuals who are acting in a private capacity. For purposes of this provision, an individual is deemed to be acting in a private capacity if he or she is not legally bound to act on behalf of a public body (including the grantee), and is not being paid by a public body (including the grantee) while performing functions in connection with the non-profit organization.

(3) *Primarily residential rental use.* Rental rehabilitation grants shall only be used to rehabilitate projects to be used for "primarily residential rental" uses, as defined in this paragraph and paragraph (c)(4) of this section. For purposes of this part, a project is used for primarily residential rental purposes if at least 51 percent of the rentable floor space of the project is used for residential rental purposes after rehabilitation, except that in the case of a two-unit building, at least 50 percent of the rentable floor space after rehabilitation must be used for residential rental purposes. "Primarily residential rental" use also includes cooperative or mutual housing that has a resale structure that enables the cooperative to maintain rents affordable to lower income families.

(4) *Continued private, primarily residential rental use.* All projects must remain in private ownership and in primarily residential, rental use for a period of ten years after completion of the rehabilitation (or their transfer to private ownership for projects subject to paragraph (c)(1)(ii) of this section), unless the project is sold to another private owner who agrees to continue to manage the property in accordance with Rental Rehabilitation Program requirements for the remainder of the ten-year period, or a hardship exception is approved by the grantee for reasons that occur after completion of the rehabilitation. Each grantee shall execute an agreement with the owner to this effect on or before the date when rental rehabilitation grant amounts are committed to the project. The grantee shall ensure that the agreement is legally enforceable and that it contains remedies adequate to enforce its provisions. A remedy will be deemed adequate for purposes of this paragraph if it requires the entire amount of the rental rehabilitation grant assistance for the project to be a secondary lien secured by the property, repayable by the owner or any subsequent transferee upon a prohibited sale or use in an amount equal to the entire amount of such assistance, less 10 percent for each full year after completion of the project up to the time the prohibited sale or use occurs, except in the case of projects of 25 units or more, for which the entire grant amount shall be repaid if the project is sold or used in violation of this section during the ten year period. Such lien may not be subordinate to a lien in favor of the grantee, State recipient or any person with whom the owner has business or family ties, except as may be necessary to secure federally tax exempt financing for the project.

(5) *Substandard conditions.* Before rehabilitation, a project must have one or more substandard conditions. For purposes of this paragraph, substandard conditions are those housing conditions that do not meet applicable State or local housing codes or do not meet the Section 8 Housing Quality Standards for Existing Housing contained in 24 CFR 882.109. After rehabilitation, the project must meet the local rehabilitation standards required by § 511.10(f).

(6) *Ineligible projects.* Projects assisted, or for which a commitment for assistance has been entered into, under the United States Housing Act of 1937 (except projects assisted under the Rental Rehabilitation Program or the Section 8 Existing Housing Program under 24 CFR Part 882, Subparts A and B, or the Housing Voucher Program under 24 CFR Part 887), or projects assisted under section 221(d)(3) or 236 of the National Housing Act, or section 202 of the Housing Act of 1959, or section 312 of the Housing Act of 1964, are not eligible to receive rental rehabilitation grant amounts under this part.

* * * * *

§ 511.10 [Amended]

4. In § 511.10, a new paragraph (g)(3) would be added to read as follows:

* * * * *

(g) *Eligible rehabilitation costs.* * * *

(3)(i) Rehabilitation eligible under § 511.10(g)(1) is limited to work done

after the commitment to the project (as defined in § 511.2) is made and the project is set up in the C/MI System under § 511.74, except to the extent that such costs also meet all of the following conditions:

(A) Prior to undertaking the precommitment rehabilitation, the owner and grantee agreed in writing to include identified precommitment rehabilitation costs in project cost, if and when the project was approved for assistance under this part;

(B) The precommitment costs were incurred by the owner after the date of the Appropriate Act which made available the grant amounts for the project in question;

(C) The precommitment costs meet all other requirements of this part, including compliance with the authorities cited in § 511.11, where applicable. In particular, HUD approval of the grantee's certification of completion of environmental responsibilities, when required, most occur prior to execution of the written agreement to include the costs.

(ii) Other project-related costs eligible under § 511.10(g)(2) are also limited to those costs incurred after the commitment to the project is made by the grantee and the project is set up in the C/MI System under § 511.74, except to the extent such costs also meet both of the following conditions:

(A) The grantee and the owner agreed in writing before the costs were incurred that such costs could be included in project cost if and when the project was approved for assistance under this part, or the grantee specifically agrees in writing to include such costs in project cost on or before the date the project is set-up on the C/MI System under § 511.74.

(B) The costs also meet the conditions stated in § 511.10(g)(3)(i) (B) and (C).

* * * * *

Dated: May 30, 1989.

Audrey E. Scott,

General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 89-14698 Filed 6-20-89; 8:45 am]

BILLING CODE 4210-29-M

federal register

Wednesday
June 21, 1989

Part VII

Office of Personnel Management

5 CFR Parts 430 and 432

Reduction in Grade and Removal Based on Unacceptable Performance; Final Regulations

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 430 and 432

RIN 3206-AB21

Reduction in Grade and Removal Based on Unacceptable Performance

AGENCY: Office of Personnel Management.

ACTION: Final regulations.

SUMMARY: The Office of Personnel Management is issuing final Part 432 regulations governing reduction in grade and removal based on unacceptable performance (as well as conforming final revisions to two provisions of Part 430) in an effort to improve employee and agency understanding of the authorities, procedures and rights provided by the Civil Service Reform Act of 1978. With respect to reductions in grade and removals based on unacceptable performance, these regulations clarify pertinent terminology and definitions, set forth substantive procedural requirements, and specify agency authorities and obligations as well as employee rights and responsibilities. These regulations are being issued together with a Federal Personnel Manual Bulletin which provides detailed policy guidance on reductions in grade and removals based on unacceptable performance.

EFFECTIVE DATE: July 21, 1989.

FOR FURTHER INFORMATION CONTACT: Timothy M. Dirks or Mary Giallorenzi, (202) 653-8551.

SUPPLEMENTARY INFORMATION: On October 4, 1988, OPM published (at 53 FR 38954) reproposed regulations on reduction in grade and removal based on unacceptable performance. OPM received comments from 11 agencies and 3 labor unions. Following is a discussion of the comments received and OPM's response to these comments. The final regulations following the comment and response material.

1. Section 430.404 Definitions

Comment on definition of "Rating of record": One agency commented that it concurred with the proposed revision to the definition of "rating of record," which eliminates the requirement to assign an "unacceptable" rating before initiating an opportunity to improve for employees covered by the Performance Management and Recognition System (PMRS), but only with a related change made to 5 CFR 540.108(a). The suggested change would provide that if an employee covered by PMRS cannot be rated at the end of the appraisal period because he or she is serving under an opportunity to improve, he or she may not be granted a merit increase. The agency believes that to grant such an increase during an opportunity to improve would be inconsistent with the philosophy of pay-for-performance, and would undermine the agency's case for a performance-based action if the employee appeals to a third party.

Response: The revision to the definition of "rating of record," which eliminate the requirement to assign a rating of record when giving an employee a written notification of unacceptable performance, applies to those situations where the written notification occurs during the appraisal cycle. At the end of each appraisal cycle, a rating of record is required for PMRS employees in accordance with 5 CFR 430.406(a). Thus, if a PMRS employee is serving under an opportunity to improve at the end of the rating cycle, the agency is obligated to give a rating of record (unless the agency's performance appraisal system provides for extending the rating period under these circumstances). In most cases the rating of record given when an employee is undergoing an opportunity to improve would be "unacceptable." However, the agency may determine that, after viewing the employee's performance for the overall rating period, a higher rating is warranted under certain circumstances.

By adopting the agency's suggestion, OPM regulations would, in essence, require agencies to determine that an employee's performance would be "unacceptable" under the circumstances described. OPM believes that such a requirement might, in some cases, deter agencies from notifying and assisting employees in improving unacceptable performance at the earliest possible. time when there is the greatest chance for improvement. Moreover, OPM believes that agencies are in the best position to determine, on a case-by-case basis, how to rate the employee's overall performance for pay-for-performance purposes. For these reasons, OPM has not adopted the agency's proposal to make a change in Part 540.

2. Section 430.405 Agency Performance Appraisal Systems

Comment on paragraph (j)(3): One agency commented that the current wording of the provision which requires that a reassignment, reduction in grade or removal be initiated if an employee's performance is unacceptable after an opportunity to improve is inconsistent with OPM's position, as stated in the supplementary information of the reproposed regulations, that there are other alternatives available to an agency under these circumstances. The agency recommended that OPM change the word "must" to "may" in order to allow agencies to consider other alternatives.

Response: OPM agrees with the agency and believes that the language in the reproposed regulation is more restrictive than required by law. While agencies in the great majority of cases should reassign, reduce in grade or remove an employee whose performance is unacceptable at the conclusion of an opportunity to improve, OPM recognizes that legal authority exists which permits agencies to legitimately consider alternatives other than reassignment, reduction in grade or removal. Therefore, OPM has changed the regulation to reflect that an agency may reassign, reduce in grade or remove an employee if his or her performance is unacceptable at the conclusion of an opportunity to improve.

3. Section 432.103(b) Actions Excluded

Comment on Reassignments: A union suggested that this section list as an exclusion a lateral reassignment based on unacceptable performance to help clarify that reassignments are not covered by this part and to indicate that agencies have the choice of reassigning as well as reducing in grade or removing all employees who continue to perform unacceptably. An agency asked that OPM consider listing as an exclusion the reassignment into a supervisory position of an employee who subsequently fails the supervisory probationary period required under 5 U.S.C. 3321.

Response: OPM agrees with the union's position that the procedures of this part apply only to reductions in grade and removals based on unacceptable performance and that agencies do not have to reduce in grade or remove all employees who perform unacceptably. However, OPM believes that the title of the regulation, "Reductions in Grade and Removal Based on Unacceptable Performance," coupled with its sole focus on reductions in grade and removal actions, make clear that reassignment based on unacceptable performance are not included in the actions covered by this part. With respect to the agency's suggestion, OPM notes that this section already lists as an exclusion actions to demote supervisory employees from their positions based on their failure to complete satisfactorily the probationary period required under section 3321. In any event, lateral reassignments which place employees into supervisory

positions, even if the employee fails to perform satisfactorily as a supervisor, are not reductions in grade or removals covered by this part. For these reasons, there is no need to change this section.

Comment on Involuntary Retirement: One agency pointed out that the reproposed regulation dropped the earlier proposed regulatory provision, paragraph (15) of § 432.102(b), which specifically excluded involuntary retirement because of disability under Part 831, and did not discuss a reason for not incorporating it in the current proposed regulations.

Respose: OPM notes that the omission was, as the agency surmised, accidential, and OPM is incorporating the paragraph in the final regulation.

Comment on Minimally Acceptable Performance/Non-Critical Elements: One agency recommended that actions based on minimally acceptable performance and on unacceptable performance of a noncritical element should be listed under the exclusions of actions despite OPM's earlier explanation for deleting these proposed exclusions.

Response: In its earlier explanation for deleting these actions, OPM pointed out that listing them as exclusions under Part 432 could imply that such actions might be possible under another regulatory authority. OPM explained that since this was not its intent, and that since such actions were clearly outside the domain of Part 432, it was removing them from the list of exclusions. OPM continues to believe that 5 U.S.C. 4301(3), along with the definition in § 432.103, make it clear that only actions based on unacceptable performance of one or more critical elements are covered under Part 432. Therefore, OPM does not agree that reinserting these actions as exclusions is necessary and, as stated in its earlier response, could lead to misunderstandings.

Comment on paragraph (b)(1): An agency recommended that § 432.102(b)(1) reflect that these regulations do not apply to the reduction in grade of a supervisor who is serving a supervisory probation except when the action is based on a critical element not related to supervisory responsibilities.

Response: 5 U.S.C. 3321(b), 5 CFR 315.907(a) and 315.909(b) make it clear that only reductions in grade based on unacceptable performance related to supervisory performance are excluded from Part 432 coverage. If an agency takes action against a probationary supervisor for unacceptable performance in a critical element which is unrelated to supervisory or managerial performance, the agency would use Part 432 procedures. Therefore, OPM is changing the regulation to clarify that only reductions in grade based on unsatisfactory supervisory or managerial performance are excluded from coverage.

Comment on paragraph (b)(3): One agency found this paragraph, which excludes actions against employees in the competitive service who have not completed 1 year of current continuous service, to be unclear. The agency recommended that the language be changed to: "an employee in the competitive service serving in an appointment that requires no probationary or trial period (i.e., temporary appointments pending establishment of a register (TAPER), status quo, or special tenure appointments) who has not completed 1 year of current continuous service in the same or similar position under other than a temporary appointment limited to 1 year or less."

Response: OPM agrees that the language recommended by the agency will help clarify employee coverage under Part 432 and has adopted the suggestion, except for the parenthetical language, which it believes is more appropriately discussed in FPM guidance.

Comment on paragraph (b)(11): One agency recommended listing as a new exclusion "a removal or reduction in grade made in accordance with the failure to comply with an enforceable settlement agreement." The agency believes that such an action is not necessarily covered by the exclusion of "voluntary actions" under § 432.102(b)(11) since the settlement may be alleged to be involuntary.

Response: OPM notes that under case law developed by MSPB and the courts, a settlement agreement is only enforceable if it is knowingly and voluntarily established. Thus, the exclusion the agency proposed is covered in fact by the exclusion of voluntary actions. If the employee believes the settlement agreement is not voluntary, he or she may challenge its validity or implementation before an appropriate third party. For these reasons OPM has not adopted the agency's suggestion.

Comment on paragraph (b)(13): A union recommended that OPM refrain from incorporating MSPB's holding in *Phipps* v. *Department of Health and Human Services* (that returns from temporary promotions are not covered under Part 432 even if the promotion has been extended for more than 2 years) since the union believes that this case law is not widely accepted and "deviates from the conventional wisdom."

Response: OPM believes that the Board's holding in *Phipps* is an accurate statement of the law. Further, OPM has earlier pointed out in its comments on both the reproposed regulations and on final published Part 752 regulations, that the MSPB has adopted the *Phipps* holding in subsequent decisions. Therefore, OPM cannot agree that the holding in *Phipps* are not now well-established.

4. Section 432.102(f)—Employees Excluded

Comment on categories of employes excluded: A union noted that OPM listed 12 categories of employees excluded that are not referenced in law or the current Code of Federal Regulations. It believes that OPM has expanded the categories of employees excluded from Part 432 coverage to cover more employees than are excluded by statute or current regulation.

Response: Contrary to the union's comment, all of the employee exclusions are listed in the law (5 U.S.C. 4301(2)) or current regulations (5 CFR Parts 430 and 432). OPM has merely incorporated them into one section in order to assist agencies and employees who use the regulations.

Comment on paragraph (f)(2): An agency recommended inclusion under Part 432 of employees who have not completed 1 year of current continuous employment but who have previously completed a probationary period.

Response: Employees meeting this description are individuals who previously served under appointments requiring a probationary period (career and career-conditional) but who now are serving under appointments not requiring one, such as TAPER and similar non-status appointees. Under current policy, to be accorded Part 432 coverage while serving under one of these appointments, an employee must have completed 1 year of current continuous service in the same or similar non-temporary positions regardless of their past employment. This policy is consistent with Civil Service Rule 1.3(e) which provides that tenure is governed by the type of appointment under which the employee is currently serving "without regard to whether he has competitive status or whether his appointment is to a competitive position or an excepted position." For this reason, the agency's suggestion was not adopted.

5. Section 432.103 Definitions

Comments on definition of "Acceptable performance": Four agencies asked that OPM further review and clarify the definition of "acceptable performance." The agencies noted that the definition requires only that employees meet "established standards" and fails to indicate what level of performance described by an employee's standards must be met in order to achieve acceptable performance.

Response: OPM agrees that the definition given in the reproposed regulations does not sufficiently clarify what level of performance is required to achieve acceptable performance. Accordingly, OPM is revising the definition to clarify that "acceptable performance," for the purpose of this part, means performance that meets an employee's performance requirement(s) or standard(s) at the level of performance above "unacceptable" in the critical element(s) at issue. Since each agency has the flexibility to develop performance appraisal systems to meet their particular needs, the acceptable level of performance may vary from one agency to another. For example, in agencies which have a performance appraisal system that provides for rating an employee's performance on individual performance elements at one of five levels, acceptable performance would be between the "fully successful" and "unacceptable" levels (e.g., performance which is "minimally satisfactory"). In agencies which have a performance appraisal system that provides for rating an employee's performance on an individual performance element at one of three levels, acceptable performance would be "fully successful" performance because there is no defined level of performance provided for between the "unacceptable" and "fully successful" levels in such a system. In revising the definition of acceptable performance, OPM has taken into account agencies' different performance appraisal systems and has attempted to clarify that, for the purpose of this part, acceptable performance is properly determined in reference to the level of performance at which individual performance elements may be rated.

Comments on definition of "Current continuous employment": A union stated that it disagrees with OPM's proposed definition of "current continuous employment" as defined in both the earlier and current reproposed regulations. It suggested that OPM not define this term, or else define it to conform to the Board's decision in *Roden* v. *Tennessee Valley Authority*, 25 M.S.P.R. 363 (1984). Along these lines, the union suggested defining current continuous employment as "the period of service which effectively enters the agency into a continuing employment contract with the employee, that, despite brief periods of breaks in service, lasts 1 year or more." An agency recommended adding language to make it clear that the definition applies only to appointments that require no probationary or trial period, for example, TAPER, status quo or special tenure appointments.

Response: The definition of "current continuous employment" suggested by the union is based on the union's interpretation of MSPB's decision in *Roden*. However, the Board's holding in *Roden*, which characterized a series of temporary limited appointments for excepted service employees as a "continuing employment contract" and allowed brief breaks in service (as opposed to allowing no break) in computing current continuous service, was based, in large part, on OPM's earlier FPM guidance which was in effect at the time of the *Roden* decision. This guidance was superseded by 5 CFR 752.402(b) which became effective on July 11, 1988. The regulation makes clear that OPM's policy governing the computation of current continuous employment allows for no break in Federal civilian employment. Since the definition suggested by the union for Part 432 is not consistent with established policy, OPM has not adopted the suggestion. Regarding the agency's comment that OPM should make it clear that the definition applies only to appointments that require no probationary or trial period, OPM notes that this is true only for competitive service appointments. Since the definition also applies to excepted service appointments, the agency's recommended change would not be a complete illustration of the appointments and positions covered by the definition. For this reason, OPM has not adopted the agency's suggestion to change the definition of current continuous employment.

Comment on definition of "Similar positions": An agency recommended defining "similar positions" as that term is currently defined in FPM chapter 752, i.e., positions which would fall in the same competitive level for purposes of a reduction in force under Part 351. The agency believes that if this recommendation were carried out, it would clarify that positions in the competitive service are not similar to positions in the excepted service and that various positions in different competitive levels would not be similar.

Response: OPM notes that its definition of "similar positions" in the reproposed regulations is the same as the definition in the recently published final Part 752 regulations. This definition, which focuses on the similarity of duties and qualifications for the positions in question, was developed after extensive opportunity for comment and consultation. The new definition in the Part 752 regulation superseded the language in FPM *chapter* 752. (OPM plans to issue a revised FPM chapter 752 in the near future to reflect all the changes in Part 752.) Contrary to the agency's understanding, OPM proposed to define "similar positions" so that positions in the excepted service meet the same test as those in the competitive service which require no probationary or trial period. For these reasons, OPM has not changed the definition of "similar positions" in these final regulations.

6. Section 432.104 Addressing Unacceptable Performance

Comments on notification of unacceptable performance: Two agencies commented that the current wording of the provision regarding notification of unacceptable performance could be construed incorrectly to mean that the agency is not required to notify the employee of unacceptable performance and inform the employee of the standards for retention. They recommended that OPM change the word "may" to "shall" in order to indicate that these steps are required. One union recommended that the notification should be at the earliest possible date after the supervisor becomes aware of the employee's work deficiencies and provide for assisting, counseling, and guidance to aid the employee in bringing his or her performance up to an acceptable level.

Response: OPM agrees with the agencies' comments and has adopted their suggestion to change the word "*may*" to "*shall*" in the final regulation in order to reflect OPM's intent that notifying the employee of the critical element(s) for which performance is unacceptable and informing the employee of the performance requirements or standard(s) that must be attained to demonstrate acceptable performance are steps that should be carried out as part of the notification process. Regarding the union's comment, OPM agrees that the notice of unacceptable performance should take place at the earliest possible time, although this is not a requirement.

However, OPM believes that the language in the proposed regulations, i.e., "At any time during the performance appraisal cycle that an employee's performance becomes unacceptable * * *" already allows for notification of unacceptable performance at an early point and that agencies are in the best position, on a case-by-case basis, to know when the employee should be put on notice of unacceptable performance. Therefore, OPM does not believe that the regulations should be changed. Regarding the union's comment that agencies should provide for assistance and guidance to employees in improving performance, OPM agrees with the union and requires in § 432.104 of the regulation that agencies offer assistance as a part of the employee's opportunity to demonstrate acceptable performance.

Comments on notification requirements for PMRS employees: One agency commented that it favored OPM's clarification that the notification of unacceptable performance for PMRS employees need not be an official "rating of record." A second agency suggested that the sentence regarding PMRS employees being provided written notice of the employee's unacceptable rating should be deleted and a corresponding change should be made to the definition in § 432.103(i) since OPM is removing the requirement for a "rating of record" if a PMRS employee's performance becomes unacceptable during the appraisal cycle. A third agency recommended that § 432.104 state that the agency "shall provide written notice of the employee's unacceptable *performance*" instead of "shall provide written notice of the employee's unacceptable *rating*."

Response: As stated in the supplementary information of the reproposed regulations, OPM believes that PMRS employees are entitled, under 5 U.S.C. 4302a(b)(6) to written notification of unacceptable performance on one or more critical elements, although the written notification need not be in the form of a "rating of record." The supplementary information further noted that as a conforming amendment, the requirement for a "rating of record" at times other than at the end of a rating cycle is being deleted from the Part 430 regulations. The provision to give a PMRS employee a written notice of the employee's unacceptable rating has remained in § 432.104 in order to make it clear that the notification of unacceptable performance must be in writing if it involves a PMRS employee and that it should be a determination made in reference to the employee's performance on individual critical element(s) (rather than a summary performance rating). Further, the definition section (432.103(i)) also explains that the meaning of the term "written notice of unacceptable rating," in the context of this part, consists of an agency's written notification (which need not be in the form of a performance rating) to an employee that his or her performance is unacceptable in one or more critical elements. Therefore, OPM believes that no change is necessary to the provision in the regulations regarding PMRS employees' entitlement to written notification of unacceptable performance.

Comment on Reassignments: One union commented that the proposed Part 432 regulations should include reassignments as an alternative to removal and reduction-in-grade actions based on unacceptable performance as provided in 5 U.S.C. 4302(b)(6). It suggested that § 432.104 include reassignment as one of the actions the agency may take if an employee's performance does not improve.

Response: OPM agrees with the union that reassignments are an alternative to removal and reduction in grade actions based on unacceptable performance. Other management actions are also possible when an employee's performance is determined to be unacceptable. However, consistent with 5 U.S.C. 4303, Part 432 deals only with removals and reductions in grade based on unacceptable performance. (Reassignments, as part of the performance management and appraisal process, are covered by Part 430. (See 5 CFR 430.204 and 430.405.)) Therefore, OPM has not adopted the recommendation.

Comment on assistance: One union commented that § 432.104 does not convey the idea that the employee's opportunity to improve is a time for the employer and employee to work together in an effort to assist the employee in performing up to his or her potential, but rather appears to be merely a step an agency must follow prior to initiating an unacceptable performance action. It also suggested that this section include specific examples of assistance, such as counseling and regular feedback, required of the employer.

Response: OPM agrees that the employee's opportunity to demonstrate acceptable performance is not merely a procedural step the agency must follow in route to initiating a removal or reduction-in-grade action. In this regard, the final regulations require agencies to give employees a "reasonable opportunity" to demonstrate acceptable performance prior to making a determination on whether to propose a reduction-in-grade or removal action. A requirement for agencies to offer employees assistance in improving their unacceptable performance is also included in regulation as a part of the opportunity to improve. In addition, the FPM guidance that is being issued concurrently with these regulations includes specific examples of assistance agencies should consider offering to employees to help them improve their unacceptable performance. For these reasons, OPM believes that the regulations and accompanying guidance satisfy the union's concerns.

Comments on length of the opportunity to improve: One union and one agency recommended that the regulations state a minimum length of time to be given to employees to demonstrate acceptable performance. The union stated that a minimum of 60 days is required but that the opportunity to improve time frame may be longer than 60 days. The agency urged that the concept of a time-bound opportunity to improve be put into the regulations since the agency believes that the governing statute requires the opportunity to be time-driven.

Response: OPM has not adopted the suggested changes for two reasons. First, applicable law does not require that time periods be set for the employee's opportunity to improve. 5 U.S.C. 4302(b)(6) merely requires an agency to afford an employee "an opportunity to demonstrate acceptable performance." Obviously, such an "opportunity" takes place over the course of time. But nowhere does the statute require or imply that OPM fix minimum or maximum time limits for a predetermined "opportunity period" that would apply rigidly to all covered employees in all job categories. In addition, experience has shown that not all opportunities to improve can easily be geared to predetermined time limits.

Second, OPM has determined that an efficient and effective Government would best be served by allowing agencies to tailor the opportunity to improve in such a way that the employee who is performing in an unacceptable manner will be given a reasonable change to meet the requirements of his or her position. Individual managers, and not OPM, are in the best position to understand the mission and requirements of their units and to exercise judgment in determining how to structure the employee's opportunity to improve.

Accordingly, although agencies remain free to establish minimum or maximum time frames, OPM will not require through regulation that an employee's opportunity to improve be a predetermined length of time or that agencies establish specific time frames in structuring an employee's opportunity to improve.

Comments on requirement that PMRS employees demonstrate performance at the "fully successful" level: Three agencies commented on the provision requiring PMRS employees to be provided a reasonable opportunity to demonstrate performance at the "fully successful" level or higher. One agency commented that under this requirement an opportunity to improve for an employee who improved his or her performance only to the minimally acceptable level could go on indefinitely. Another agency recommended that the regulations clarify that only PMRS employees who perform unacceptably may be required to demonstrate performance at the fully successful level. The third agency recommended that OPM spell out its intent to retain a PMRS employee in an opportunity to improve status until performance improves to level 3 or reverts to level 1 in a manner similar to the way it did in the Supplementary Information section of the reproposed regulations.

Response: The statute at 5 U.S.C. 4302a(b)(6) requires PMRS employees who perform unacceptably, and who are given an opportunity to improve, to demonstrate performance at the fully successful level or higher. Therefore, if a PMRS employee who has been given an opportunity, improves only to level 2 (minimally satisfactory), but not level 3 (fully successful), he or she has not fulfilled the statutory requirement to demonstrate performance at the successful level. As explained in the reproposed regulation, OPM sees no alternative course of action than continuing such an employee in an opportunity to improve status until such time as his or her performance improves to level 3 (fully successful) or reverts to level 1 (unacceptable). Thus, in terms of reduction in grade or removal under this part, if a PMRS employee's performance continues at or reverts to level 1 (unacceptable), once the employee has been given an opportunity to improve, the agency may propose a reduction-in-grade or removal action.

Comment on consideration of performance on all elements: One agency recommended that the regulations permit an employee to be advised at the start of an "opportunity period" of the requirements for acceptable performance for all his or her critical elements (regardless of whether the employee was performing unacceptably in all elements) and allow removal or reduction-in-grade action to be proposed if performance under any critical element is unacceptable at the end of the "opportunity period." In making its recommendation the agency stated that it seeks to resolve the problem of the employee who improves in the one critical element for which he or she was given an opportunity to improve only to fall down to an unacceptable level in another area. The agency does not believe that Congressional intent would be served by allowing a continuing series of element-by-element based "opportunity periods."

Response: OPM believes that the intent of the law in the area of taking performance-based actions under 5 U.S.C. Chapter 43 was to ensure that an employee is put on notice of his or her performance deficiencies in specific critical elements and given a chance to correct them prior to the agency making a decision on whether to remove, reduce in grade or take other action. In determining whether action is appropriate, the overall structure of the law, OPM's current regulations implementing the law, and applicable case law in this area focus on an employee's performance on individual critical elements. For example, the language of 5 U.S.C. 4320(b)(6) referring to removing or reducing in grade an employee who "continues to have unacceptable performance, but only after an apportunity to demonstrate acceptable performance * * *" strongly implies than the opportunity to improve is to be provided for the areas of performance which an employee is performing unacceptably (as opposed to all performance areas). 5 U.S.C. 4302(b)(5), which requires that agency performance appraisal systems provide for assisting employees in improving unacceptable performance, likewise implies that such assistance be given in areas of performance which the employee is performing unacceptably. Further, 5 U.S.C. 4303(b)(1)(A) (i) and (ii) require that a proposed action must be based on specific instances of unacceptable performance, with each instance being related to an individual critical element. The current regulation at 5 CFR 432.203(b), in effect since 1981, requires that an agency "* * * identify for the employee the critical element(s) for which performance is unacceptable and give the employee a reasonable time to demonstrate acceptable performance * * *." The merit system principle at 5 U.S.C. 2301(b)(6) requiring that "* * * inadequate performance should be corrected, and employees should be separated who cannot or will not improve their performance to meet required standards" also suggests that an employee be given a chance to correct inadequate performance in specific areas. While OPM sympathizes with the concerns of the agency, it believes that a reasonable interpretation of the laws governing the taking of performance-based actions precludes adoption of the agency's suggested change.

7. Section 432.105 Proposing and Taking Action Based on Unacceptable Performance

Comments on proposing action based on unacceptable performance following an employee's opportunity to improve: Two unions and five agencies commented on the provisions allowing agencies to propose a reduction-in-grade or removal action, subject to the 1-year limitation in 5 U.S.C. 4303(c)(2)(A), if an employee's performance again becomes unacceptable on the critical element(s) at issue after having been given an opportunity to demonstrate acceptable performance. One union believes that the reproposed regulation would allow an employee to be removed for failure to meet a critical element which is broadly written following an opportunity to improve even though the circumstances were totally different. It also claims that the applicable statute and case law entitle an employee to an opportunity to improve every time his or her performance falls to an unacceptable level (even after having been given a prior opportunity to improve). Another union claims that an employee whose performance improves to an acceptable level during an opportunity to improve has satisfied the requirement to demonstrate acceptable performance and, under 5 U.S.C. 4302(b)(6), cannot be reduced in grade or removed when the employee's acceptable performance does not continue. Two agencies endorsed the regulation as proposed. Three other agencies, while supporting the concept of requiring an employee to sustain improve performance, stated that the regulation as proposed was not clear on how long an employee could be required to sustain acceptable performance after having been given an opportunity to improve. These agencies contended that, read literally, the regulations could allow an agency to require an employee to sustain acceptable performance following an opportunity to improve for an indefinite

period of time. One of these agencies suggested that the regulations state that an employee should be expected to sustain acceptable performance for a reasonable time, depending on the circumstances. Another agency suggested that OPM consider a time limit of some sort. The other agency suggested that, in the interest of equity, the employee should be required to sustain acceptable performance for 1 year commencing with the beginning of the employee's opportunity to improve.

Response: OPM has clarified that agencies may propose a reduction-in-grade or removal action when an employee resumes unacceptable performance after having been given an opportunity to improve, to address the problem of employees who improve their unacceptable performance only during a formal opportunity to demonstrate acceptable performance but who cannot or will not maintain that improved level of performance afterwards. This occurs, for example, when an employee improves his or her level of performance to an acceptable level, but does so only when threatened with removal or reduction in grade, or when an employee makes a good faith effort to improve, but can do so only for the period of time covered by the opportunity to improve by working extra hours or working only on the tasks assigned under the critical element(s) at issue. In other cases, an employee may be able to perform while being given specific assistance, but cannot independently perform acceptably on his or her own afterwards. Instead of requiring that employees be provided additional opportunities to improve in situations such as these (which necessarily means providing more time and assistance associated with additional opportunities to demonstrate acceptable performance),OPM is clarifying that agencies have the authority under 5 U.S.C. Chapter 43 to propose a reduction-in-grade or removal action when an employee performs unacceptably after having been given a reasonable opportunity to improve.

Congress, in creating the removal and reduction in grade provisions of chapter 43, sought to give agencies clear authority and make it easier to take actions against employees who continue to perform unacceptably after being given an opportunity to improve. This notion is reflected in the legislative history of the CSRA and the language of 5 U.S.C. 4302(b)(6). In line with this authority, OPM has concluded that implicit in the requirement that an agency provide an employee who is performing unacceptably with a reasonable opportunity to improve, is the corresponding responsibility of the employee to maintain any improved performance which results from the opportunity. An agency has a right to expect acceptable performance once it has identified the employee's performance deficiencies, informed the employee of the performance requirements or standards that must be attained in order to demonstrate acceptable performance in his or her position, and provided the employee with a reasonable opportunity to improve (which includes assistance in improving unacceptable performance). In this regard, OPM's regulation, developed consistent with congressional intent and action, clarifies that employees may be subject to removal or reduction in grade if acceptable performance demonstrated during the opportunity to improve is only short-term or temporary.

Regarding the agencies' comments that the reproposed regulations, read literally, could allow an agency to require an employee to sustain acceptable performance for an indefinite period of time without affording an additional opportunity to improve, OPM recognizes that the language in the reproposed regulations referring to a 1-year limit could be interpreted in such a way. This was not OPM's intent. Therefore, OPM is revising the regulation to clarify that an agency's proposed reduction in grade or removal action may be based on instances of unacceptable performance which occur within 1 year prior to the date of the proposed action and that action may be proposed if the employee's performance in one or more of the critical element(s) at issue is unacceptable during or following the employee's opportunity to improve. However, OPM, in exercising its regulatory discretion, has determined that if an employee had performed acceptably for 1 year from the beginning of an opportunity to demonstrate acceptable performance (in the critical element(s) for which he or she was afforded an opportunity to demonstrate acceptable performance), and the employee's performance again becomes unacceptable, the employee shall be afforded an additional opportunity to improve before the agency may determine whether to propose a Part 432 action. OPM believes that this change, which sets reasonable limits on requiring employees to improve unacceptable performance, is consistent with congressional intent and strikes a balance between the needs of agencies for an efficient and effective work force and the rights of employees to a reasonable chance to demonstrate they can overcome serious performance deficiencies.

Comment on advance notice and final written decision: An agency recommends that OPM delete the words "the instances of" and "those instances of" unacceptable performance from the subparagraphs relating to the advance notice and final written decision. While the agency notes that the law (5 U.S.C. 4303(b)(1)(A)(i)) uses the words "specific instances of unacceptable performance," the agency believes that these subsections interpret the legal language unnecessarily to require that specific examples of unacceptable performance be stated in the proposal and decision notices.

Response: OPM believes that the purpose of the legal requirement for agencies to specify the instances of unacceptable performance on which the action is based is to inform employees with sufficient specificity about the charges on which the action is based so that they may respond fully to those charges, both before an agency's final decision is made and afterwards if the employee chooses to appeal. Therefore, OPM has not deleted the language in these subsections as suggested by the agency.

Comment on representation: A union requested that OPM provide clarification on the issue of representation. It noted that this section of the regulation provides for employees to select their own representative but that agencies can disallow as an employee's representative an individual whose activities would cause a conflict of interest or whose release from his or her position for representation purposes would give rise to unreasonable costs or preclude the completion of priority assignments. The union stated that employees covered by a collective bargaining agreement are entitled to union representation and suggested that the regulation state that agencies do not have the authority to "disallow" such employees from participating as representatives.

Response: The provision of the regulations which permits an agency to disallow an employee's representative under limited circumstances has been in effect since 1979. OPM is aware of no problems with the administration of this provision and believes that there is good justification for circumscribing an employee's latitude in choosing a representative in certain limited situations. Further, OPM expects that agencies will continue to deny an employee's choice of representative only in the very limited circumstances

provided for in the regulation. This provision is not aimed at denying union representation of employees covered by collective bargaining agreements. The regulation is intended to provide agencies with the authority, in very limited circumstances, and in accordance with any applicable negotiated agreement, to disallow as an employee's representative an individual whose absence from the workplace would create serious disruption, be very costly, or raise a significant conflict of interest.

Comments on consideration of medical conditions: One agency stated its belief that the language in the reproposed regulation which allows employees to present pertinent medical information during the notice period before the agency decision, might be interpreted as relieving employees of any responsibility to raise medical issues earlier in the process if they wish the agency to consider it. It noted that, in practice, employees whose performance may be affected by a medical condition have ample opportunity to raise the condition before the notice period, and have it considered by the agency well before it has to decide whether to propose action. Further, it noted that the current regulation provides that if the employee wants the agency to consider a medical condition in connection with a performance deficiency, the employee should, whenever possible, raise the issue when the agency offers him or her an opportunity to improve. The agency also pointed out that the early identification of medical conditions also allows employees to be informed of disability retirement options before the notice of proposal. The agency stated that failure to require early submission of medical evidence and to inform the employee of disability retirement options would delay further what is already a long and cumbersome process. Another agency expressed concern that the reproposed regulation seems to require the agency to inform the employee in the notice of proposed action of the employee's right to raise a medical issue, thus shifting the burden from the employee to the agency to raise medical issues in connection with the employee's unacceptable performance. A third agency recommended that OPM change the language in this section from requiring that an agency "*shall be aware of* the affirmative obligations of 29 CFR 1613.704" to "*shall consider* the affirmative obligations of 29 CFR 1613.704."

Response: Although the reproposed regulation did not intend that employees wait until the notice period to raise medical issues, OPM agrees that the reproposed regulation could be interpreted in this manner. Accordingly, OPM has clarified its position along the lines of the requirements in the current Part 432 (and included in the initial proposed regulations) that employees should, whenever possible, raise medical issues (and supply appropriate medical documentation) at the time they are notified by the agency of unacceptable performance or at the latest, as part of the employee's response to a proposed reduction in grade or removal action. In addition, the regulation does not require agencies to inform the employee in a notice of proposed action of a right to raise a medical issue. OPM hopes the revisions to the regulation will clarify that employees who believe that medical issues may be contributing to their unacceptable performance have the responsibility to raise the issues at the earliest possible time.

Regarding the agency's recommendation to change the language from "shall be aware of the affirmative obligations of 29 CFR 1613.704" to "shall consider * * *," OPM notes that the affirmative obligations of 29 CFR 1613.704 require that an agency make reasonable accommodation to the known physical or mental limitations of a qualified handicapped employee unless the agency can demonstrate that the accommodation would impose an undue hardship on the operation of its program. Agencies need to be aware of these obligations so that they can consider whether reasonable accommodation is appropriate under the circumstances of the case. Thus, OPM continues to believe that the term "aware" is appropriate in the context of the regulation and has not adopted the agency's suggested change. (Note that this language is identical to the language in the current Part 432 as well as the current Part 752.)

8. Section 432.106 Appeal and Grievance Rights

Comment on appeal rights: An agency requested that OPM clarify appeal rights with regard to the coverage of those employees who were in the competitive service at the time their positions were first listed under Schedule A, B, or C and still occupy those positions.

Response: Employees who were in the competitive service at the time their positions were first listed under Schedule A, B, or C and still occupy those positions remain in the competitive service in accordance with 5 CFR 212.401(b). Since these employees are in the competitive service, they have appeal rights in accordance with 5 U.S.C. 4303(e).

Comments on grievance rights: Three unions and one agency commented on the regulation's exclusion of nonpreference eligible excepted service employees challenging removal or reduction-in-grade actions under negotiated grievance procedures. The commenters claim that 5 U.S.C. 7121 provides for negotiated grievance procedures to cover a broad variety of disputes with limited exceptions and that no specific restriction is stated for nonpreference eligible employees in the excepted service. One union stated that what may be appealed to the MSPB does not restrict what is grievable. Two unions stated that the FLRA, and not OPM, has the authority to determine what is grievable or not grievable. The unions cited *National Treasury Employees Union and Department of Health and Human Services, Region V, Chicago, Illinois,* 25 FLRA 94, in which the FLRA held that grievance rights can be negotiated to cover nonpreference excepted service employees, as support for their position.

Response: As stated in the reproposed regulations, OPM believes that it is helpful to the users of the regulations to set forth in one place the specific categories of employees who have appeal and grievance rights for challenging removal and reduction in grade actions taken under this part. In the Civil Service Reform Act, Congress enacted a comprehensive remedial plan which specified the rights of certain categories of employees to challenge certain personnel actions taken against them. The plan does not provide nonpreference eligibles in the excepted service the right to challenge adverse and performance-based actions. The reproposed regulations reflected the remedial framework set forth in the Civil Service Reform Act and thereby did not provide an appeal or grievance right for nonpreference eligibles in the excepted service. OPM's position reflected the United States Supreme Court's decision in the *United States* v. *Fausto,* 108 S.Ct. 668 (1988), which emphasized in particular the exclusivity of the remedies that the CSRA provides for employees in the excepted service. Specifically, in emphasizing the preferred position of competitive service employees over excepted service employees, the Supreme Court concluded that "[i]n the context of the entire statutory scheme, we think it [CSRA] displays a clear congressional intent to deny the excluded employees the protections of Chapter 75—including judicial review—for personnel actions

covered by that chapter." 108 S.Ct. at 673.

Although OPM is aware that the FLRA, in *National Treasury Employees Union and Department of Health and Human Services, Region V, Chicago, Illinois*, 25 FLRA 94, held that grievance rights can be negotiated to cover non-preference excepted service employees, this FLRA decision was reversed by the United States Court of Appeals for the Seventh Circuit in *FLRA* v. *HHS*, 858 F.2d 1278 (7th Cir. 1988). In reversing the FLRA decision, the Seventh Circuit relied heavily on the Supreme Court's decision in *U.S.* v. *Fausto*. The Seventh Circuit stated that the Supreme Court's reasoning in *Fausto* applies to the right to appeal an adverse action to an arbitrator even though that right comes under a different portion of the CSRA. The court stated that "arbitration * * * entails the same type of after-the-fact review * * * of an agency's decision as do the statutory appeals procedures. It simply substitutes an arbitrator for MSPB review." The Seventh Circuit concluded that the rights and remedies available to a nonpreference eligible excepted service employee when an agency takes an adverse action are "a maximum" and therefore are not conditions of employment subject to collective bargaining under 5 U.S.C. Chapter 71.

In addition, a decision of the U.S. Court of Appeals for the District of Columbia Circuit, *Department of the Treasury* v. *FLRA*, No. 88-1159 (D.C. Cir. May 2, 1989), also reversed the FLRA and ruled that nonpreference eligible employees in the excepted service have no right to arbitral review of Chapter 43 actions. The D.C. Circuit, as did the Seventh Circuit in *FLRA* v. *HHS* (discussed above), relied heavily on the Supreme Court's decision in *Fausto* to find that giving grievance/arbitration rights to nonpreference eligibles in the excepted service would be inconsistent with congressional intent in the CSRA to provide an "integrated scheme" for adjudicating employee appeals, and would run the risk of inverting the preference granted to competitive service employees and veterans. The court explained that arbitral review of cases involving nonpreference eligibles would not be subject to the substantive law requirements which bind MSPB and arbitrators ruling on parallel appeals by competitive service employees and veterans and would not be subject to Federal Circuit review.

Accordingly, OPM's reproposed regulation accurately reflect the uniform holdings of the courts which have addressed the issue of which categories of employees, against whom actions based on misconduct or unacceptable performance have been taken, are entitled to appeal and grievance rights under law. Therefore, the language in the final regulation is consistent with that in the reproposed regulation regarding grievance rights of bargaining unit employees who have been reduced in grade or removed under this part.

E.O. 12291, Federal Regulation

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

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it applies only to Federal employees.

List of Subjects

5 CFR Part 430

Administrative practice and procedure, Government employees, Reporting requirements.

5 CFR Part 432

Administrative practice and procedure, Government employees.

U.S. Office of Personnel Management.

Constance Horner,

Director.

Accordingly, OPM amends 5 CFR Parts 430 and 432 as follows:

PART 430—PERFORMANCE MANAGEMENT

1. The authority citation for Part 430 continues to read as follows:

Authority: 5 U.S.C. chapters 43, 45, 53, and 54.

2. In § 430.404, the definition of "Rating of record" is revised to read as follows:

§ 430.404 Definitions.

* * * * *

"Rating of record" means the summary rating, under 5 U.S.C. 4302a, required at the time specified in the performance management plan or at such other times as the plan specifies for special circumstances.

* * * * *

3. In § 430.405, paragraph (j)(3) is revised to read as follows:

§ 430.405 Agency performance appraisal systems.

* * * * *

(j) * * *

(3) If, at the conclusion of the opportunity to improve referred to in paragraph (j)(1) of this section, the employee's performance is "Unacceptable," the agency may reassign, reduce in grade, or remove the employee as provided by 5 U.S.C. 4302a(b)(6) and 4303(a).

* * * * *

4. Part 432 is revised to read as follows:

PART 432—REDUCTION IN GRADE AND REMOVAL BASED ON UNACCEPTABLE PERFORMANCE

Sec.

Authority: 5 U.S.C. 4305.

§ 432.101 Statutory authority.

This part applies to reduction in grade and removal of employees based solely on unacceptable performance. 5 U.S.C. 4305 authorizes the Office of Personnel Management to prescribe regulations to carry out the purposes of Title 5, Chapter 43, including 5 U.S.C. 4303, which covers agency actions to reduce in grade or remove employees for unacceptable performance. (The provisions of 5 U.S.C. 7501 *et. seq.*, may also be used to reduce in grade or remove employees. See Part 752 of this chapter.)

§ 432.102 Coverage.

(a) *Actions covered.* This part covers reduction in grade and removal of an employee based solely on unacceptable performance.

(b) *Actions excluded.* This part does not apply to:

(1) The reduction in grade of a supervisor or manager who has not completed the probationary period under 5 U.S.C. 3321(a)(2) if such a reduction is based on supervisory or managerial performance and the reduction is to the grade held immediately before becoming a supervisor or manager in accordance with 5 U.S.C. 3321(b);

(2) The reduction in grade or removal of an employee in the competitive service who is serving a probationary or trial period under an initial appointment;

(3) The reduction in grade or removal of an employee in the competitive service serving in an appointment that requires no probationary or trial period who has not completed 1 year of current continuous employment in the same or similar position under other than a

temporary appointment limited to 1 year or less;

(4) The reduction in grade or removal of an employee in the excepted service who has not completed 1 year of current continuous employment in the same or similar positions;

(5) An action imposed by the Merit Systems Protection Board under the authority of 5 U.S.C. 1206;

(6) An action taken under 5 U.S.C. 7521 against an administrative law judge;

(7) An action taken under 5 U.S.C. 7532 in the interest of national security;

(8) An action taken under a provision of statute, other than one codified in title 5 of the U.S. Code, which excepts the action from the provisions of title 5 of the U.S. Code;

(9) A removal from the Senior Executive Service to a civil service position outside the Senior Executive Service under Part 359 of this chapter;

(10) A reduction-in-force governed by Part 351 of this chapter;

(11) A voluntary action by the employee;

(12) A performance-based action taken under Part 752 of this chapter;

(13) An action that terminates a temporary or term promotion and returns the employee to the position from which temporarily promoted, or to a different position of equivalent grade and pay if the agency informed the employee that it was to be of limited duration;

(14) A termination in accordance with terms specified as conditions of employment at the time the appointment was made; and

(15) An involuntary retirement because of disability under Part 831 of this chapter.

(c) *Agencies covered.* This part applies to:

(1) The executive departments listed at 5 U.S.C. 101;

(2) The military departments listed at 5 U.S.C. 102;

(3) Independent establishments in the executive branch as described at 5 U.S.C. 104, except for a Government corporation;

(4) The Administrative Office of the U.S. Courts; and

(5) The Government Printing Office.

(d) *Agencies excluded.* This part does not apply to:

(1) A Government corporation;

(2) The Central Intelligence Agency;

(3) The Defense Intelligence Agency;

(4) The National Security Agency;

(5) Any executive agency or unit thereof which is designated by the President and the principal function of which is the conduct of foreign intelligence or counterintelligence activities;

(6) The General Accounting Office;

(7) The U.S. Postal Service; and

(8) The Postal Rate Commission.

(e) *Employees covered.* This part applies to individuals employed in or under a covered agency as specified at § 432.102(c) except as listed in § 432.102(f).

(f) *Employees excluded.* This part does not apply to:

(1) An employee in the competitive service who is serving a probationary or trial period under an initial appointment;

(2) An employee in the competitive service serving in an appointment that requires no probationary or trial period, who has not completed 1 year of current continuous employment in the same or similar positions under other than a temporary appointment limited to 1 year or less;

(3) An employee in the excepted service who has not completed 1 year of current continuous employment in the same or similar positions;

(4) An employee outside the United States who is paid in accordance with local native prevailing wage rates for the area in which employed;

(5) An individual in the Foreign Service of the United States;

(6) A physician, dentist, nurse, or other employee in the Department of Medicine and Surgery, Department of Veterans Affairs, whose pay is fixed under Chapter 73 of title 38, U.S. Code, except persons appointed under 38 U.S.C. 4104(3);

(7) An administrative law judge appointed under 5 U.S.C. 3105;

(8) An individual in the Senior Executive Service;

(9) An individual appointed by the President;

(10) An employee occupying a position in Schedule C as authorized under Part 213 of this chapter;

(11) A reemployed annuitant;

(12) A National Guard technican;

(13) An individual occupying a position in the excepted service for which employment is not reasonably expected to exceed 120 calendar days in a consecutive 12 month period;

(14) An individual occupying a position filled by Noncareer Executive Assignment under Part 305 of this chapter; and

(15) A manager or supervisor returned to his or her previously held grade pursuant to 5 U.S.C. 3321 (a)(2) and (b).

§ 432.103 Definitions.

For the purpose of this part—

(a) *"Acceptable performance"* means performance that meets an employee's performance requirement(s) or standard(s) at the level of performance above "unacceptable" in the critical element(s) at issue.

(b) *"Critical element"* means a component of a position consisting of one or more duties and responsibilities that contributes toward accomplishing organizational goals and objectives and that is of such importance that unacceptable performance on the element would result in unacceptable performance in the position.

(c) *"Current continuous employment"* means a period of employment or service immediately preceding an action under this part in the same or similar positions without a break in Federal civilian employment of a workday.

(d) *"Opportunity to demonstrate acceptable performance"* means a reasonable chance for the employee whose performance has been determined to be unacceptable in one or more critical elements to demonstrate acceptable performance in the critical element(s) at issue.

(e) *"Reduction in grade"* means the involuntary assignment of an employee to a position at a lower classification or job grading level.

(f) *"Removal"* means the involuntary separation of an employee from employment with an agency.

(g) *"Similar positions"* mean positions in which the duties performed are similar in nature and character and require substantially the same or similar qualifications, so that the imcumbents could be interchanged without significant training or undue interruption to the work.

(h) *"Unacceptable performance"* means performance of an employee that fails to meet established performance standards in one or more critical elements of such employee's position.

(i) *"Written notice of unacceptable rating"* means an agency's written notification to an employee that his or her performance is unacceptable in one or more critical elements.

§ 432.104 Addressing unacceptable performance.

At any time during the performance appraisal cycle that an employee's performance becomes unacceptable in one or more critical elements, the agency shall notify the employee of the critical element(s) for which performance is unacceptable and inform the employee of the performance requirement(s) or standard(s) that must be attained in order to demonstrate acceptable performance in his or her position. The agency may also inform the employee that unless his or her performance in the critical element(s)

improves to and is sustained at an acceptable level, the employee may be reduced in grade or removed. (If the employee is covered under the Performance Management and Recognition System, the agency shall provide written notice of the employee's unacceptable rating as required by 5 U.S.C. 4302a(b)(6).) For each critical element in which the employee's performance is unacceptable, the agency shall afford the employee a reasonable opportunity to demonstrate acceptable performance, commensurate with the duties and responsibilities of the employee's position. (If the employee is covered under the Performance Management and Recognition System, the employee shall be provided a reasonable opportunity to demonstrate performance at the "fully successful" level or higher as required by 5 U.S.C. 4302a(b)(6).) As part of the employee's opportunity to demonstrate acceptable performance, the agency shall offer assistance to the employee in improving unacceptable performance.

§ 432.105 Proposing and taking action based on unacceptable performance.

(a) *Proposing action based on unacceptable performance.* (1) Once an employee has been afforded a reasonable opportunity to demonstrate acceptable performance pursuant to § 432.104, an agency may propose a reduction-in-grade or removal action if the employee's performance during or following the opportunity to demonstrate acceptable performance is unacceptable in 1 or more of the critical elements for which the employee was afforded an opportunity to demonstrate acceptable performance.

(2) If an employee has performed acceptably for 1 year from the beginning of an opportunity to demonstrate acceptable performance (in the critical element(s) for which the employee was afforded an opportunity to demonstrate acceptable performance), and the employee's performance again becomes unacceptable, the agency shall afford the employee an additional opportunity to demonstrate acceptable performance before determining whether to propose a reduction in grade or removal under this part.

(3) A proposed action may be based on instances of unacceptable performance which occur within a 1 year period ending on the date of the notice of proposed action.

(4) An employee whose reduction in grade or removal is proposed under this part is entitled to:

(i) *Advance notice.* (A) The agency shall afford the employee a 30 day advance notice of the proposed action that identifies both the specific instances of unacceptable performance by the employee on which the proposed action is based and the critical element(s) of the employee's position involved in each instance of unacceptable performance.

(B) An agency may extend this advance notice period for a period not to exceed 30 days under regulations prescribed by the head of the agency. An agency may extend this notice period further without prior OPM approval for the following reasons:

(*1*) To obtain and/or evaluate medical information when the employee has raised a medical issue in the answer to a proposed reduction in grade or removal;

(*2*) To arrange for the employee's travel to make an oral reply to an appropriate agency official, or the travel of an agency official to hear the employee's oral reply;

(*3*) To consider the employee's answer if an extention to the period for an answer has been granted (e.g., because of the employee's illness or incapacitation);

(*4*) To consider reasonable accommodation of a handicapping condition;

(*5*) If agency procedures so require, to consider positions to which the employee might be reassigned or reduced in grade; or

(*6*) To comply with a stay ordered by a member of the Merit Systems Protection Board under 5 U.S.C. 1208(b).

(C) If an agency believes that an extension of the advance notice period is necessary for another reason, it may request prior approval for such extension from the Chief, Employee Relations Division, Office of Employee and Labor Relations, Personnel Systems and Oversight Group, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415.

(ii) *Opportunity to answer.* The agency shall afford the employee a reasonable time to answer the agency's notice of proposed action orally and in writing.

(iii) *Representation.* The agency shall allow the employee to be represented by an attorney or other representative. An agency may disallow as an employee's representative an individual whose activities as a representative would cause a conflict of interest or position or an employee whose release from his or her official position would give rise to unreasonable costs to the Government or whose priority work assignment precludes his or her release from official duties.

(iv) *Consideration of medical conditions.* The agency shall allow an employee who wishes to raise a medical condition which may have contributed to his or her unacceptable performance to furnish medical documentation (as defined in § 339.102 of this chapter of the condition for the agency's consideration. Whenever possible, the employee shall supply this documentation following the agency's notification of unacceptable performance under § 432.104. If the employee offers such documentation after the agency has proposed a reduction in grade or removal, he or she shall supply this information in accordance with § 432.105(a)(4)(ii). In considering documentation submitted in connection with the employee's claim of a medical condition, the agency may require or offer a medical examination in accordance with the criteria and procedures of Part 339 of this chapter, and shall be aware of the affirmative obligations of 29 CFR 1613.704. If the employee who raises a medical condition has the requisite years of service under the Civil Service Retirement System or the Federal Employees Retirement System, the agency shall provide information concerning application for disability retirement. As provided at § 831.501(d) of this chapter, an employee's application for disability retirement shall not preclude or delay any other appropriate agency decision or personnel action.

(b) *Final written decision.* The agency shall make its final decision within 30 days after expiration of the advance notice period. Unless proposed by the head of the agency, such written decision shall be concurred in by an employee who is in a higher position than the person who proposed the action. In arriving at its decision, the agency shall consider any answer of the employee and/or his or her representative furnished in response to the agency's proposal. A decision to reduce in grade or remove an employee for unacceptable performance may be based only on those instances of unacceptable performance that occurred during the 1 year period ending on the date of issuance of the advance notice of proposed action under § 432.105(a)(4)(i). The agency shall issue written notice of its decision to the employee at or before the time the action will be effective. Such notice shall specify the instances of unacceptable performance by the employee on which the action is based and shall inform the employee of any applicable appeal and grievance rights.

§ 432.106 Appeal and grievance rights.

(a) *Appeal rights.* An employee covered under § 432.102(e) who has been removed or reduced in grade under this part may appeal to the Merit Systems Protection Board if the employee is:

(1) In the competitive service and has completed a probationary or trial period;

(2) In the competitive service serving in an appointment which is not subject to a probationary or trial period, and has completed 1 year of current continuous employment in the same or similar position under other than a temporary appointment limited to 1 year or less; or

(3) A preference eligible in the excepted service who has completed 1 year of current continuous employment in the same or similar position(s).

(b) *Grievance rights.* (1) A bargaining unit employee covered under § 432.102(e) who has been removed or reduced in grade under this part may file a grievance under an applicable negotiated grievance procedure if the removal or reduction in grade action falls within its coverage (*i.g.*, is not excluded by the parties to the collective bargaining agreement) and the employee is:

(i) In the competitive service and has completed a probationary or trial period.

(ii) In the competitive service serving in an appointment which is not subject to a probationary or trial period, and has completed 1 year of current continuous employment in the same or similar position under other than a temporary appointment limited to 1 year or less; or

(iii) A preference eligible in the excepted service who has completed 1 year of current continuous employment in the same or similar position(s).

(2) 5 U.S.C. 7114(a)(5) and 7121(b)(3), and the terms of an applicable collective bargaining agreement govern representation for employees in an exclusive bargaining unit who grieve a matter under this section through the negotiated grievance process.

(c) *Election of forum.* As provided at 5 U.S.C. 7121(e)(1), a bargaining unit employee who by law may file an appeal or a grievance, and who has exercised his or her option to appeal an action taken under this part to the Merit Systems Protection Board, may not also file a grievance on the matter under a negotiated grievance procedure. Likewise, a bargaining unit employee who has exercised his or her option to grieve an action taken under this part may not also file an appeal on the matter with the Merit Systems Protection Board.

§ 432.107 Agency records.

(a) *When the action is effected.* The agency shall preserve all relevant documentation concerning a reduction in grade or removal which is based on unacceptable performance and make it available for review by the affected employee or his or her representative. At a minimum, the agency's records shall consist of a copy of the notice of proposed action, the answer of the employee when it is in writing, a summary thereof when the employee makes an oral reply, the written notice of decision and the reasons therefor, and any supporting material including documentation regarding the opportunity afforded the employee to demonstrate acceptable performance.

(b) *When the action is not effected.* As provided at 5 U.S.C. 4303(d), if, because of performance improvement by the employee during the notice period, the employee is not reduced in grade or removed, and the employee's performance continues to be acceptable for 1 year from the date of the advance written notice provided in accordance with § 432.105(a)(4)(i), any entry or other notation of the unacceptable performance for which the action was proposed shall be removed from any agency record relating to the employee.

[FR Doc. 89–14662 Filed 6–20–89; 8:45 am]

BILLING CODE 6325–01–M

Reader Aids

Federal Register

Vol. 54, No. 118

Wednesday, June 21, 1989

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-5237

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Data base and machine readable specifications	523-3408
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, JUNE

23449-23630.....1
23631-23948.....2
23949-24130.....5
24131-24312.....6
24313-24540.....7
24541-24660.....8
24661-24884.....9
24885-25092.....12
25093-25222.....13
25223-25436.....14
25437-25560.....15
25561-25708.....16
25709-25836.....19
25837-26016.....20
26017-26182.....21

CFR PARTS AFFECTED DURING JUNE

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
5988.....24885
5989.....25434
5990.....25701
5991.....25837
5992.....26015

Administrative Orders:
Memorandums:
June 9, 1989.....25561

4 CFR

27.....24131
28.....24131
31.....25437

5 CFR

294.....25093
410.....23631
430.....26172
432.....26172
550.....25223
737.....25563
1203.....23632

Proposed Rules:
294.....25120
591.....23664

7 CFR

2.....23949
27.....23449
28.....23449
29.....24661
51.....23454
250.....25564
271.....24149, 24518
272.....23950, 24149, 24510, 24518, 24664
273.....24149, 24510, 24518, 24664, 25547
274.....24518
275.....23950
277.....24518
301.....24313, 25438
354.....25224
400.....24318
403.....24319
810.....24156
907.....24320
908.....24320
910.....23951, 24666, 25564
915.....24322
917.....24667
918.....24887
949.....23634
953.....24541
982.....24326, 24542
989.....24669
998.....25439
1135.....23456
1139.....25442
1210.....24543
1421.....25444
1427.....25444
1434.....25444

Proposed Rules:
51.....25281
293c.....23629
319.....23989
709.....25718
810.....24176, 25806
905.....24558, 25283
921.....24561
922.....24561
923.....24561
924.....24561
928.....25283
946.....24562
948.....24564
958.....24564
1076.....25726
1139.....25466, 25727
1403.....25718
1404.....25718
1408.....25718
1942.....25588
1980.....24177

8 CFR

Proposed Rules:
103.....25215
245.....25125
286.....24714

9 CFR

78.....25225, 25227
92.....23952
97.....25228, 25229
145.....23953
147.....23953

Proposed Rules:
318.....25728
327.....24181
381.....24181

10 CFR

2.....23740, 24468
26.....24468
140.....24157
170.....25658
600.....23958

11 CFR

Proposed Rules:
100.....24351
110.....24351

12 CFR

21.....25839
226.....24670
522.....26017
563.....25098
563c.....23457
571.....23457

Proposed Rules:
310.....25126
563.....25127
708.....25547

13 CFR

108.....24700
122.....23960

Proposed Rule:
122.....25128

14 CFR

21.....24702
25.....24702
39.....23643, 24161-24164, 25230-25235, 25445, 25709-25710, 26019, 26021-26024
71.....23644, 23645, 24165, 24704, 24705, 25100-25105, 25446
75.....25105
91.....24882, 25680
97.....24328, 25711
121.....23864
125.....23864
127.....23864
129.....23864-25451
135.....23864

Proposed Rules:
Ch. I.....24186, 24354
39.....23670, 24187, 24188 24354, 25284-25289, 26047, 26048, 26050, 26052-26054
43.....24304
71.....23671, 24190, 24356, 24714, 25129-25130 25728-27530, 25806
75.....24190

15 CFR

773.....24888
775.....24888
778.....23471
799.....24166, 24889

16 CFR

13.....24550, 25106, 25843, 25846

Proposed Rules:
13.....24566
414.....24191

17 CFR

240.....23963
142.....25233
200.....24329
202.....24329
203.....24329

Proposed Rules:
229.....25936
230.....25936
239.....25936
240.....25936, 26055
249.....25936

18 CFR

4.....23756
16.....23756
154.....25107, 25235
157.....25107
260.....25107
271.....24167
284.....25107
385.....25107
388.....25107

19 CFR

134.....24168
355.....25658

20 CFR

325.....24551
344.....25846

Proposed Rules:
200.....24193
222.....24196
262.....24193
320.....25877
335.....24357
340.....25877

21 CFR

Ch I.....24890
172.....23646, 23647
175.....24553
178.....23739, 24789
436.....25849
510.....24900, 25447, 25565
514.....25447
520.....25114
524.....25565
529.....23472
556.....25114
558.....24789, 24901, 25115
606.....24706
864.....25042
866.....25042
868.....25042
870.....25042
876.....25042
880.....25042
882.....25042
884.....25042
890.....25042

Proposed Rules:
109.....23485
163.....24908
606.....24296
610.....24296
801.....25076
866.....25053
868.....25053

22 CFR

151.....24554

23 CFR

625.....25116
658.....23976
659.....25565

Proposed Rules:
Ch. I.....23489
630.....24715
655.....23990, 24908

24 CFR

111.....25712
200.....24822, 25712
206.....24822
235.....24707
570.....25712
590.....23932
812.....25960
813.....25960
885.....25960
905.....25712
912.....25960
913.....25960
960.....25712

Proposed Rules:
50.....26154
511.....26164
961.....26154

25 CFR

200.....24789

26 CFR

301.....23563
602.....23563

Proposed Rules:
1.....25878, 25879
602.....25878

27 CFR

Proposed Rule:
179.....23490

28 CFR

Proposed Rule:
74.....25291

29 CFR

70.....25204
1902.....24333
1903.....24333
1908.....24333
1910.....24333
1915.....24333
1917.....24333
1918.....24333
1926.....23824, 24333
2610.....25447
2676.....25448

Proposed Rules:
1401.....25879
1425.....25467
1910.....23991, 24080, 25731
1926.....25731

30 CFR

750.....24789
906.....24169

Proposed Rules:
104.....25881
925.....25732
931.....24912, 25589-25591
938.....23491

31 CFR

Proposed Rules:
17.....24203

32 CFR

199.....24708, 25240
289.....23472

33 CFR

100.....23473, 23474, 24709, 24710, 24901, 24902 25849, 25850
117.....24555
151.....24078
165.....23648, 24171

Proposed Rules:
100.....25131
117.....24717
126.....24718
154.....24718
156.....24718
166.....23493
167.....23493

34 CFR

654.....26006
668.....24114
682.....24114
785.....24648
786.....24648
787.....24648

Proposed Rule:
682.....24128

35 CFR

Proposed Rules:
133.....23493
135.....23493

36 CFR

7.....23648

Proposed Rule:
13.....24852

37 CFR

10.....26025
301.....24172

38 CFR

1.....26027
2.....26027
3.....26027
17.....25449
36.....24556

Proposed Rules:
3.....24212
21.....25733
36.....25469

39 CFR

Proposed Rules:
111.....25476
3001.....25132

40 CFR

22.....24112
52.....23475, 23477, 23479, 23978, 23980, 24334, 25258, 25449-25456, 25572-25582, 26030
60.....25458, 26041
61.....26041
62.....24903
65.....25258
67.....25258
122.....23868
123.....23868
130.....23868
148.....25416
180.....26042, 26043
228.....23481
259.....24310
303.....26142
372.....25850
704.....25259
799.....25713

Proposed Rules:
51.....24213
52.....23495, 23672, 23998, 24913, 25592
60.....24792
82.....23495
180.....26056
186.....26057
261.....25302
795.....24360
799.....23739, 24360

41 CFR

Ch. 301.....23563
Ch. 302.....23563

42 CFR

Proposed Rules:
36.....24654
57.....24002
64a.....25479
110.....24005

43 CFR

2800.....25851
2810.....25851
2880.....25851
9230.....25851
9260.....25851

Public Land Orders:
6730.....25855

44 CFR

64.....23982, 25117
67.....25259

Proposed Rules:
80.....25308
83.....25308
334.....24570

45 CFR

402.....23983
670.....24710

Proposed Rule:
1633.....23563

46 CFR

Proposed Rule:
10.....25881
15.....25881
295.....24914

47 CFR

1.....24905
2.....25459
21.....24905, 25459
22.....23661, 24905
73.....23483, 23984-23986, 25274, 25714-25715 25856
74.....24905
76.....25715, 25856
94.....24905
97.....25857

Proposed Rules:
Ch. I.....23496
68.....24721
73.....23676, 24005, 25481-25484, 25743-25744
76.....24722
90.....24723
94.....24006

48 CFR

1.....25060
5.....25060
19.....25060
27.....25060
45.....25060
52.....25060
247.....24711
252.....24711
301.....24341
302.....24341
303.....24341
304.....24341
305.....24341
306.....24341
307.....24341
309.....24341
314.....24341
315.....24341
316.....24341
317.....24341
319.....24341
322.....24341
324.....24341
330.....24341
333.....24341
335.....24341
352.....24341
828.....24172
829.....24172
952.....26045

Proposed Rules:
7.....25214
15.....25206
30.....25686
32.....25206
42.....25211
52.....23861, 25206, 25214, 25686
217.....24248
219.....24248
232.....24248, 24789
242.....24248
252.....24248

49 CFR

24.....24711
107.....24982
171.....24982, 25808
172.....24982
173.....24982
175.....25808
176.....24982
177.....24982
178.....24982
180.....24982
192.....24173, 25716
571.....23986, 24344, 24557, 25275, 25460
1152.....26045

Proposed Rules:
192.....24361
350.....25484
390.....25484
1002.....24915
1003.....24364
1054.....24918
1160.....24364
1162.....24364
1168.....24364
1171.....24919

50 CFR

204.....23663
611.....25279
645.....23663
661.....24175, 24288, 24906, 25462, 25586, 25876
672.....23662, 24712, 25464, 25717
675.....25279

Proposed Rules:
17.....25744
20.....24290
229.....25832
285.....25593
642.....24920, 25593

LIST OF PUBLIC LAWS

Last List June 14, 1989

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

S. 767/Pub. L. 101-37

Business Opportunity Development Reform Act Technical Corrections Act (June 15, 1989; 103 Stat. 70; 8 pages) Price: $1.00

Public Laws

are now available for the 101st Congress, 1st Session, 1989

Pamphlet prints of public laws, often referred to as slip laws, are the initial publication of Federal laws upon enactment and are printed as soon as possible after approval by the President. Legislative history references appear on each law. Subscription service includes all public laws, issued irregularly upon enactment, for the 101st Congress, 1st Session, 1989.

(Individual laws also may be purchased from the Superintendent of Documents, Washington, DC 20402-9328. Prices vary. See Reader Aids Section of the Federal Register for announcements of newly enacted laws and prices).

Superintendent of Documents Subscriptions Order Form

Order Processing Code:
***6216**

Charge your order. It's easy!

☐ **YES,** please send me _____ subscriptions to **PUBLIC LAWS** for the 101st Congress, 1st Session, 1989 for $107 per subscription.

1. The total cost of my order is $_____ . All prices include regular domestic postage and handling and are subject to change. International customers please add 25%.

Please Type or Print

2. _____
(Company or personal name)

_____
(Additional address/attention line)

_____
(Street address)

_____
(City, State, ZIP Code)

(_____) _____
(Daytime phone including area code)

3. **Please choose method of payment:**
☐ Check payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐-☐
☐ VISA or MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

_____
(Credit card expiration date)

Thank you for your order!

_____
(Signature)

1/89

4. **Mail To:** Superintendent of Documents, Government Printing Office, Washington, D.C. 20402-9371