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Presidential Documents

Title 3—

The President

Proclamation 6015 of September 5, 1989

National Check-Up Week, 1989

By the President of the United States of America

A Proclamation

Many of the leading causes of death and disability in the United States are diseases that could be treated effectively—if detected early. That is why periodic medical examinations are important for all Americans.

Heart disease, which claims the lives of more than 500,000 Americans each year and represents the leading cause of death in our country, can be reduced in severity or even prevented through such measures as the control of high blood pressure and the maintenance of a healthy diet. In fact, improved treatment for high blood pressure has reduced the frequency of strokes in the United States to one-half the rate recorded during the early 1970's. The first step in identifying and treating such a health risk as high blood pressure is often a routine medical check-up.

Similarly, medical science has shown that the early detection of some forms of cancer—long before symptoms develop—can save lives. For example, deaths in this country from cancer of the cervix have fallen dramatically since 1950, due, in part, to routine screening tests performed by doctors. The prognosis for victims of other forms of cancer, such as breast cancer, can also be improved when the disease is detected early through periodic medical check-ups.

In addition to the early detection of illness, regular medical check-ups play an important role in disease prevention. For example, highly effective vaccines administered to young children have led to the virtual elimination of certain childhood diseases, such as polio, that were common afflictions only one generation ago.

In recent years, it has become increasingly clear that many diseases and other health problems can be prevented simply through changes in personal behavior. Refraining from smoking, improving one's diet, safe sexual practices, and avoidance of drug and alcohol abuse are some of the many measures that can help reduce one's risk of illness and injury. The medical check-up provides an important opportunity for the doctor and patient to discuss these behaviors. It is an ideal setting for the physician to assess the individual risk profile of each patient and to provide him or her with useful health care information. It also allows the physician and patient to work together in developing an effective health care regimen that can be applied at home and at work, long after the visit is over. Periodic check-ups strengthen the doctor-patient relationship and allow physicians to monitor carefully their patients' health.

To recognize the importance of periodic medical check-ups, the Congress, by Senate Joint Resolution 95, has designated the week beginning September 10, 1989, as "National Check-Up Week," and has authorized and requested the President to issue a proclamation in observance of this occasion.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the week of September 10, 1989, as "National Check-Up Week." I call upon the people of the United States to observe this week with appropriate programs, ceremonies, and activities.

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

George Bush

[FR Doc. 89-21307
Filed 9-6-89; 2:36 pm]
Billing code 3195-01-M

Rules and Regulations

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 59

[Docket No. PY-89-004]

Office of Management and Budget Information Collection Control Numbers; Miscellaneous Corrections

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule revises the mandatory regulations for the inspection of eggs and egg products. Its primary purpose is to update the information collection requirements and the control numbers assigned by the Office of Management and Budget (OMB). In addition, this amendment also corrects a typographical error.

EFFECTIVE DATE: September 8, 1989.

FOR FURTHER INFORMATION CONTACT: Janice L. Lockard, Chief, Standardization Branch, Poultry Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 3944, South Building, P.O. Box 96456, Washington, DC 20090-6456 (202/447-3506).

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Agency has determined that this amendment is merely administrative and is not subject to the requirements of Executive Order 12291. It involves only the identification of information collection requirements and display of OMB control numbers pursuant to 5 CFR part 1320 and the correction of a typographical error.

Administrative Procedure Act

Because of its technical non-substantive nature, this amendment is not subject to the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553) nor do the provisions of section 553(d) of that Act apply. Therefore, the Department finds that notice and opportunity for comment are unnecessary and that, upon good cause, this amendment should be effective on the date of publication of this rule in the Federal Register.

Regulatory Flexibility Act

For these same reasons, an analysis or certification under the Regulatory Flexibility Act is not required.

Paperwork Reduction Act

This rulemaking does not require an additional collection of information from the public under the Paperwork Reduction Act of 1980.

Background

The Paperwork Reduction Act of 1980 was designed both "to minimize the Federal paperwork burden for individuals, small businesses, State and local governments, and other persons" and "to maximize the usefulness of information collected by the Federal government." On March 31, 1983, OMB issued a final rule, 5 CFR part 1320, implementing the provisions of the Paperwork Reduction Act of 1980.

Among other provisions, the rule requires the display of OMB control numbers assigned to information collection requirements contained in Agency rules. The control numbers provide a simple and effective way for the public to tell whether a paperwork burden an agency seeks to impose has been cleared as required.

Each information collection requirement in the regulations is reviewed and evaluated periodically. In addition, every 3 years the Agency submits such requirements to OMB for review and extension of approval. Current OMB approval of the information collection requirements would have expired March 31, 1989. Prior to that, the Agency submitted a revised clearance docket to OMB. A notice of the OMB review was published February 2, 1989 (54 FR 5255), and, subsequently, the clearance docket for 7 CFR part 59 was approved by OMB. Therefore, § 59.18 of 7 CFR part 59 is updated by adding section numbers not previously displayed to the list of sections with information collection requirements and deleting one section number inadvertently displayed as containing an information collection requirement.

During a previous redesignation of some of the paragraphs in § 59.5, the wrong letter designation was inadvertently referred to in one of the paragraphs. Therefore, § 59.5(b)(4) of 7 CFR part 59 is updated by correcting the designation in the text from (a)(2), (3), or (4), to (b)(2), (3), or (4).

The Agency has determined that this amendment is not substantive. It merely provides a convenient and current listing of the information collection requirements and OMB control numbers in accordance with 5 CFR part 1320 and corrects a typographical error.

List of Subjects in 7 CFR Part 59

Egg products, Mandatory inspection service, Shell eggs.

For reasons set out in the preamble and under authority contained in the Egg Products Inspection Act (21 U.S.C. 1031-1056), title 7, part 59 of the Code of Federal Regulations, is amended as follows:

PART 59—INSPECTION OF EGGS AND EGG PRODUCTS

1. The authority citation for Part 59 continues to read as follows:

Authority: Secs. 2-28 of the Egg Products Inspection Act (84 Stat. 1620-1635; 21 U.S.C. 1031-1056).

2. Section 59.5 is amended by revising paragraph (b)(4) of the term "Adulterated" to read as follows:

§ 59.5 Terms defined.

* * * * *

Adulterated * * *

(4) If it bears or contains any color additive which is unsafe within the meaning of section 706 of the Federal Food, Drug, and Cosmetic Act: Provided, that an article which is not otherwise deemed adulterated under paragraph (b)(2), (3), or (4) of this definition shall nevertheless be deemed adulterated if use of the pesticide chemical, food additive, or color additive, in or on such article, is prohibited by regulations of the Secretary in official plants;

* * * * *

3. Section 59.18 is amended by revising paragraph (b) to read as follows:

§ 59.18 OMB control numbers assigned pursuant to the Paperwork Reduction Act

* * * * *

(b) *Display.*

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§ 59.544(d)	0581-0113
§ 59.552(a)(3)	0581-0113
§ 59.552(b)(1)(i)	0581-0113
§ 59.552(b)(2)	0581-0113
§ 59.570(c)	0581-0113
§ 59.575(b)(3)	0581-0113
§ 59.575(d)	0581-0113
§ 59.580(c)	0581-0113
§ 59.600	0581-0113
§ 59.610(a)	0581-0113
§ 59.620	0581-0113
§ 59.640(b)(1)	0581-0113
§ 59.680(a)	0581-0113
§ 59.690	0581-0113
§ 59.720(a)(2)	0581-0113
§ 59.720(a)(3)	0581-0113
§ 59.720(a)(4)	0581-0113
§ 59.720(c)	0581-0113
§ 59.760	0581-0113
§ 59.800	0581-0113
§ 59.840	0581-0113
§ 59.905(a)	0581-0113
§ 59.915(a)	0581-0113
§ 59.915(b)	0581-0113
§ 59.920	0581-0113
§ 59.930(f)	0581-0113
§ 59.950(a)	0581-0113
§ 59.960	0581-0113
§ 59.965	0581-0113

Done at Washington, DC, on August 30, 1989.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 89-21110 Filed 9-7-89; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 905

[Docket No. AO-85-A9; FV-88-102]

Oranges, Grapefruit, Tangerines and Tangelos Grown in Florida; Order Amending the Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the Federal marketing agreement and order for Florida citrus. The amendments: (1) Classify Canada and Mexico as export markets rather than domestic markets as they are now; (2) define the Interior District and the Indian River District in the marketing order; (3) authorize changing eligibility requirements for grower members on the Citrus Administrative Committee; (4) authorize the committee to borrow money to fund committee operations in emergency situations; and (5) provide for the conduct of periodic referenda on continuance of the order every six years. These changes are intended to improve the administration and functioning of the marketing agreement and order.

EFFECTIVE DATE: September 8, 1989.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456; telephone: 202-475-3918, or John R. Toth, Officer-in-Charge, Southeast Marketing Field Office, Florida Citrus Building, 500 3rd Street, NW., P.O. Box 2276, Winter Haven, Florida 33883-2276, telephone: 813-299-4770.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing issued January 7, 1988, and published in the **Federal Register** (53 FR 898, January 14, 1988); Recommended Decision issued February 3, 1989, and published in the **Federal Register** (54 FR 6136, February 8, 1989); and Secretary's Decision and Referendum Order issued on June 1, 1989, and published in the **Federal Register** (54 FR 24558, June 8, 1989).

This administrative action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and therefore is excluded from the requirements of Executive Order 12291.

Preliminary Statement

This final rule was formulated on the record of a public hearing held at Lakeland, Florida on February 17, 1988, to consider the proposed further amendment of Marketing Agreement and Order No. 905 (7 CFR part 905) regulating the handling of oranges, grapefruits, tangerines and tangelos grown in Florida, hereinafter referred to collectively as the order. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), hereinafter referred to as the Act, and the applicable rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders (7 CFR part 900).

The Notice of Hearing contained several amendment proposals submitted by the Citrus Administrative Committee (committee), which locally administers the order. The notice also included a proposal by the Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture (Department), to make any necessary conforming changes.

Upon the basis of evidence introduced at the hearing and the record thereof, the Administrator of the Agricultural Marketing Service (AMS), on February 3, 1989, filed with the Hearing Clerk, U.S. Department of Agriculture, a recommended decision containing a notice of the opportunity to file written exceptions thereto by March 10, 1989. Five exceptions were filed and were discussed and ruled upon in the Secretary's decision.

The Secretary's decision was issued on June 1, 1989, directing that a referendum be conducted during the period June 26 through July 10, 1989, among growers of Florida oranges, grapefruits, tangerines and tangelos to determine whether they favored the proposed amendments to the order. This final order includes these amendments,

all of which received the requisite approval of two-thirds by number of the growers who voted in the referendum or growers representing two-thirds of the volume of citrus fruit voted in the referendum. These amendments: (1) Classify Canada and Mexico as export markets rather than domestic markets as they are now; (2) define the Interior District and the Indian River District in the marketing order; (3) authorize changes in eligibility requirements for grower members on the committee; (4) authorize the committee to borrow money to fund committee operations in emergency situations; and (5) provide for the conduct of periodic referenda on continuance of the order every six years. The Department made necessary conforming changes in the order. The marketing agreement was signed by handlers who, during the representative period, handled not less than 50 percent of the volume of citrus fruit covered by the marketing order.

Small Business Considerations

Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities. As stated in the Notice of Hearing, interested persons were invited to present evidence at the hearing on the probable impact of the regulatory and informational requirements of the amendment proposals on small businesses for the purposes of the RFA. In that regard, such evidence was considered in arriving at the findings and conclusions contained in the Recommended Decision and in the Secretary's Decision. Those findings and conclusions are incorporated herein.

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

Small agricultural growers have been defined by the Small Business Administration (13 CFR 121.2) as those having average gross annual revenues for the last three years of less than $500,000. Small agricultural service firms, which include shippers under the marketing agreement and order, are defined as those with gross annual revenues of less than $3,500,000.

There are about 100 shippers subject to regulation under the order for oranges, grapefruits, tangerines, and tangelos grown in Florida. A minority of these shippers may be classified as small entities. In addition, there are about 13,000 orange, grapefruit, tangerine and tangelo growers in Florida. The majority of these growers may be classified as small entities.

The amendments to the marketing order include classifying Canada and Mexico as export markets rather than domestic markets as currently provided. Such a change is expected to result in expanded Florida citrus sales by permitting shipment of the grades and sizes of fruit more consistent with the demand and preferences of the consumers in those markets, thereby benefitting Florida citrus growers and shippers. This change will not adversely affect small entities.

The amendment to make the Interior District synonymous with Regulation Area I and the Indian River District synonymous with Regulation Area II will facilitate the marketing of citrus through the use of commonly used terms, thus benefitting growers and shippers. This change will not adversely affect small entities.

The amendment, which authorizes the committee with the approval of the Secretary, to change eligibility requirements for grower members and grower alternate members to serve on the committee, provides a means to increase the number of qualified growers who could serve on the committee. This change has no adverse affect on small entities.

The amendment to permit the committee to borrow money in emergency situations provides the committee with additional flexibility in financing committee operations during such emergency situations, and thereby will benefit growers and shippers who operate under the order. There will be no adverse effect on small entities due to the change.

The amendment to require a continuance referendum every six years provides growers the opportunity to periodically vote on whether the order should be continued. This change does not adversely affect small entities.

All of the amendments set forth in this document are designed to enhance the administration, operation and functioning of the order and should result in an overall positive economic impact on small businesses.

The amendments to the order have no significant impact on the recordkeeping and reporting burdens of the affected industry. Moreover, the amendments (including referenda every six years) do not change the reporting and recordkeeping requirements under the Paperwork Reduction Act of 1980, which have been previously approved by the Office of Management and Budget (OMB) (Approval No. 0581-0094).

Order Amending The Order, As Amended, Regulating The Handling Of Oranges, Grapefruit, Tangerines, And Tangelos Grown In Florida

Findings and Determinations

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) Findings Upon the Basis of the Hearing Record

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900), a public hearing was held upon proposed further amendment of the marketing agreement, as amended, and Order No. 905, as amended (7 CFR part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida.

Upon the Basis of the Record it is Found That

(1) The order, as amended, and as hereby further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The order, as amended, and as hereby further amended, regulates the handling of fresh oranges, grapefruit, tangerines, and tangelos grown in the production area in the same manner as, and is applicable only to persons in the respective classes of commercial and industrial activity specified in the marketing agreement and order upon which hearings have been held;

(3) The order, as amended, and as hereby further amended, is limited in its application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to

subdivisions of the production area would not effectively carry out the declared policy of the Act;

(4) The order, as amended, and as hereby further amended, prescribes, so far as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the difference in the production and marketing of fresh oranges, grapefruit, tangerines, and tangelos grown in the production area; and

(5) All handling of fresh oranges, grapefruit, tangerines, and tangelos grown in the production area defined in the order is in the current of interstate of foreign commerce or directly burdens, obstructs, or affects such commerce.

(b) Additional Findings

It is necessary and in the public interest to make this final order amending the order effective on the date of publication in the **Federal Register.** Any delay beyond that date would interfere with the effective functioning and administration of the order. This final order authorizes changes in the functioning of the order, which need to be made effective as soon as possible. The specified effective date is necessary to meet this objective. This final order classifies Canada and Mexico as export markets for the purpose of issuing handling regulations under the order for citrus fruit. The 1989–90 Florida citrus shipping season begins in early September and this final order should be in effect as soon as possible, so that the handling regulations effective under the order can be changed to reflect the applicable amendatory changes.

In view of the foregoing, it is found and determined that good cause exists for making this amendatory order effective upon publication in the **Federal Register**, and that it would be contrary to the public interest to delay the effective date of this order for 30 days after publication in the **Federal Register** (Sec. 553(d), Administrative Procedure Act, 5 U.S.C. 551–559).

(c) Determinations

It is hereby determined that:

(1) The "Marketing Agreement, As Further Amended, Regulating The Handling Of Oranges, Grapefruit, Tangerines, And Tangelos Grown In Florida" upon which the aforesaid public hearing was held has been signed by shippers (excluding cooperative associations of growers who are not engaged in processing, distributing, or shipping covered by the said order, as amended, and as hereby further amended) who, during the period May 1, 1988, through April 30, 1989, handled not less than 50 percent of the volume of such oranges, grapefruit, tangerines, and tangelos covered by the said order, as amended, and as hereby further amended; and

(2) The issuance of this amendatory order, amending the aforesaid order, as amended, is favored or approved by at least two-thirds of the growers who participated in a referendum on the question of its approval and who, during the period May 1, 1988, through April 30, 1989, (which has been deemed to be a representative period), have been engaged within the in the production area in the State of Florida in the production of oranges, grapefruit, tangerines, and tangelos for market, such growers having also produced for market at least two-thirds of the volume of such commodity represented in the referendum.

Order Relative to Handling

It is therefore ordered, That, on and after the effective date hereof, the handling of oranges, grapefruit, tangerines, and tangelos produced in the production area in the State of Florida shall be in conformity to and in compliance with the terms and conditions of the said order, as hereby amended, as follows:

The provisions of the proposed marketing agreement and order, amending the order, contained in the Recommended Decision issued by the Administrator on February 3, 1989, and published in the **Federal Register** (54 FR 6136, February 8, 1989); and Secretary's Decision and Referendum Order issued on June 1, 1989, and published in the **Federal Register** (54 FR 24558, June 8, 1989) shall be and are the terms and provisions of this order, amending the order, and are set forth in full herein.

List of Subjects in 7 CFR Part 905

Florida, Grapefruit, Marketing agreements and orders, Oranges, Tangelos, Tangerines.

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

1. The authority citation for 7 CFR part 905 continues to read as follows:

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

Note: These sections will appear in the annual Code of Federal Regulations.

2. Section 905.9 is revised, and § 905.52 is amended by revising paragraphs (a)(3), (a)(4), (a)(5), and (d) to read as follows:

§ 905.9 Handle or ship.

Handle or ship means:

(a) To sell, consign, deliver, or transport fruit, or in any other way to place fruit in the current of commerce between the production area and any point outside thereof in the 48 contiguous States and the District of Columbia of the United States; and

(b) To export fruit from any point in the 48 contiguous States and the District of Columbia of the United States to any destination.

§ 905.52 Issuance of regulations.

(a) * * *

(3) Limit the shipment of the total quantity of any variety by prohibiting the shipment thereof: Provided, that no such prohibition shall apply to exports or be effective during any fiscal period with respect to any variety other than for one period not exceeding five days during the week in which Thanksgiving Day occurs, and for not more than two periods not exceeding a total of 14 days during the period December 20 to January 20, both dates inclusive.

(4) Provide that exports of any variety shall be limited to grades and sizes different from the grade and size limitations applicable to shipments of such variety in the 48 contiguous States and the District of Columbia of the United States, and specify condition requirements for such variety; and

(5) Fix the size, capacity, weight, dimensions, marking, or pack of the container or containers which may be used in the shipment of fruit for export: Provided, that such regulation shall not authorize the use of any container which is prohibited for use for fruit under the provisions of Chapter 601 of the Florida Statutes and regulations effective thereunder.

* * * * *

(d) Whenever any variety is regulated pursuant to paragraph (a)(3) of this section, no such regulation shall be deemed to limit the right of any person to sell, contract to sell, or export such variety but no handler shall otherwise ship any fruit of such variety which was prepared for market during the effective period of such regulation.

3. Section 905.15 is revised and § 905.16 is amended by revising the introductory text to read as follows:

§ 905.15 Regulation Area I.

Regulation Area I is defined as the "Interior District", and shall include all that part of the production area not included in Regulation Area II.

§ 905.16 Regulation Area II.

Regulation Area II is defined as the "Indian River District", and shall

include that part of the State of Florida particularly described as follows:

* * * * *

4. Section 905.19 is revised to read as follows:

§ 905.19 Establishment and membership.

(a) There is hereby established a Citrus Administrative Committee consisting of at least eight but not more than nine grower members, and eight shipper members. Grower members shall be persons who are not shippers or employees of shippers: Provided, that the committee, with the approval of the Secretary, may establish alternative qualifications for such grower members. Shipper members shall be shippers or employees of shippers. The committee may be increased by one non-industry member nominated by the committee and selected by the Secretary. The committee, with approval of the Secretary, shall prescribe qualifications, term of office, and the procedure for nominating the non-industry member.

(b) Each member shall have an alternate who shall have the same qualifications as the member for whom this person is an alternate.

5. Section 905.41 is amended by adding a new paragraph (c) to read as follows:

§ 905.41 Assessments.

* * * * *

(c) In the case of an extreme emergency, the committee may borrow money on a short term basis to provide funds for the administration of this part. Any such borrowed money shall only be used to meet the committee's current financial obligations, and the committee shall repay all such borrowed money by the end of the next fiscal period from assessment income.

6. Section 905.83 is amended by redesignating paragraph (c) as paragraph (d) and adding a new paragraph (c) to read as follows:

§ 905.83 Termination.

* * * * *

(c) The Secretary shall conduct a referendum six years after the effective date of this paragraph and every sixth year thereafter to ascertain whether continuance of this part is favored by producers. The Secretary may terminate the provisions of this part at the end of any fiscal period in which the Secretary has found that continuance of this part is not favored by producers who during a representative period, determined by the Secretary, have been engaged in the production for market of the fruit in the production area. Such termination shall be announced on or before July 31 of the fiscal period.

* * * * *

Dated: September 1, 1989.

Jo Ann R. Smith,

Assistant Secretary, Marketing and Inspection Service.

[FR Doc. 89-21113 Filed 9-7-89; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 922

[Docket No. FV-89-05SFR]

Apricots Grown in Designated Counties in Washington; Temporary Suspension of the Minimum Grade Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department is adopting without modification as a final rule an interim final rule which suspended, for the 1989 season only, the minimum grade requirement (Washington No. 1) for fresh shipments of apricots grown in Washington. That action was designed to enable handlers to ship more fruit in fresh market channels, taking into consideration the abnormal growing conditions experienced by the Washington apricot industry this season. That action was also designed to improve returns to producers.

EFFECTIVE DATE: September 8, 1989.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456; telephone: (202) 475-3918.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Marketing Order No. 922, both as amended (7 CFR part 922), regulating the handling of apricots grown in designated counties in Washington. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C 601-674), hereinafter referred to as the Act.

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

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

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

There are about 62 apricot handlers subject to regulation under the Washington apricot marketing order. In addition, there are about 190 apricot producers in Washington. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. A majority of these handlers and producers may be classified as small entities.

The Washington Apricot Marketing Committee (committee), which locally administers this marketing order, met on May 24, 1989, and unanimously recommended suspending the minimum grade requirement (Washington No. 1) for fresh shipments of apricots grown in Washington. The committee reported that the 1989 season apricot crop was severely damaged by a freeze last winter and later by hail storms. The committee estimated that only 1,100 tons of apricots would be shipped fresh during the 1989 season, even with the grade requirements suspended as requested. This amount is less than 25 percent of last season's fresh shipments of 4,405 tons. Only an estimated 700 tons of apricots would grade Washington No. 1 this season, since much of the fruit is misshapen and scarred from the hail.

The committee meets prior to and during each season to review the handling requirements for Washington apricots, which are in effect on a continuous basis. Committee meetings are open to the public, and interested persons may express their views at these meetings. The U.S. Department of Agriculture (Department) reviews committee recommendations and information submitted by the committee and other available information and determines whether modification, suspension, or termination of the handling requirements would tend to effectuate the declared policy of the Act.

An interim final rule amending paragraph (a)(1) of § 922.321 (7 CFR 922.321) was issued June 19, 1989, and

published in the **Federal Register** (54 FR 26185, June 22, 1989). The interim final rule temporarily suspended the minimum grade requirement (Washington No. 1) for fresh shipments of apricots for the 1989 season only. That rule provided that interested persons could file written comments through July 24, 1989. No comments were received.

The suspension enables handlers to ship a larger portion of their crop to the fresh market this season, taking into account the abnormal growing and crop conditions. This is increasing fresh shipments to meet consumer needs and improve returns to producers.

The grade requirement of Washington No. 1 will resume on April 1, 1990, for the 1990 and future seasons, based upon the grade and quality characteristics of Washington apricots during normal growing and shipping seasons.

The color and minimum size requirements for all varieties of apricots and the maturity requirements for the Moorpark variety specified in § 922.321 were not changed by the interim final rule. That section provided that, with the exception of exempt shipments, all apricots shipped must be reasonably uniform in color and be at least 1⅝ inches in diameter, except for the Blenheim, Blenril, and Tilton varieties which must be at least 1¼ inches in diameter. That section provides that the Moorpark variety in open containers must be generally well matured.

The Department's view is that the impact of the suspension upon producers and handlers is beneficial because it enables handlers to ship fresh apricots consistent with 1989 season growing conditions.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the information and recommendations submitted by the committee, and other available information, it is found that this finalization of the interim final rule, as published in the **Federal Register** (54 FR 26185, June 22, 1989), will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action maintains suspended grade requirements for Washington apricots; (2) Washington apricot handlers are aware of the suspension, which was unanimously recommended by the committee at a public meeting; (3) shipment of the 1989 season Washington apricot crop is currently underway; (4) the interim final rule provided a 30-day comment period, and no comments were received; and (5) no useful purpose would be served by delaying the effective date until 30 days after publication.

List of Subjects in 7 CFR Part 922

Apricots, Marketing agreements and orders, Washington.

For the reasons set forth in the preamble, 7 CFR part 922 is amended as follows:

PART 922—APRICOTS GROWN IN DESIGNATED COUNTIES IN WASHINGTON

The authority citation for 7 CFR Part 922 continues to read as follows:

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

2. Accordingly, the interim final rule amending the provisions of § 922.321, which was published in the **Federal Register** (54 FR 26185, June 22, 1989), is adopted as a final rule without change.

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

Dated: September 1, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–21111 Filed 9–7–89; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 929

[FV-89-077 FR]

Expenses and Assessment Rate for Cranberries Grown in Massachusetts, et al.

AGENCY: Agricultural Marketing Service.

ACTION: Final Rule.

SUMMARY: This final rule authorizes expenditures and establishes an assessment rate under Marketing Order No. 929 for the 1989–90 fiscal year established under the cranberry marketing order. This action is needed for the Cranberry Marketing Committee (Committee), the agency responsible for the local administration of the order, to incur operating expenses during the 1989–90 fiscal year and to collect funds during that year to pay those expenses. This would facilitate program operations. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATE: September 1, 1989, through August 31, 1990.

FOR FURTHER INFORMATION CONTACT: Jacquelyn R. Schlatter, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456; telephone: (202) 447–5120.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 929 (7 CFR part 929), regulating the handling of cranberries grown in Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

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

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

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

There are approximately 30 handlers of cranberries grown in Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York, and approximately 950 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administation (13 CFR 121.2) as those having average gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of cranberry handlers and producers may be classified as small entities.

The cranberry marketing order requires that an assessment rate for a particular fiscal year shall apply to all assessable cranberries handled from the beginning of such year. An annual budget of expenses is prepared by the Committee and submitted to the Department for approval. The members of the Committee are handlers and producers of cranberries. They are familiar with the Committee's needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate appropriate budgets.

The assessment rate recommended by the Committee is derived by dividing anticipated expenses by expected shipments of cranberries. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the Committee's expected expenses. The recommended budget and rate of assessment are usually acted upon by the Committee before a season starts, and expenses are incurred on a continuous basis. Therefore, the budget and assessment rate approval must be expedited so that the Committee will have funds to pay its expenses for the 1989–90 fiscal year which begins on September 1, 1989.

The Committee conducted a mail vote and recommended 1989–90 marketing order expenditures of $172,602 and an assessment rate of $0.037 per 100-pound barrel of cranberries shipped. In comparison, 1988–89 marketing year budgeted expenditures were $198,000, and the assessment rate was $0.055 per 100-pound barrel of cranberries shipped. Assessment income for 1989–90 is estimated at $148,555 based on a crop of 4,015,000 barrels of cranberries. Interest income expected to be received is estimated at $4,047, bringing total income to $152,602. Adequate reserve funds are available to meet the expected deficit in assessment income.

While this final action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

This action adds a new § 929.230 and is based on Committee recommendations and other information. A proposed rule was published in the August 2, 1989, issue of the **Federal Register** (54 FR 31844). Comments on the proposed rule were invited from interested persons until August 14, 1989. No comments were received.

After consideration of the information and recommendations submitted by the Committee and other available information, it is found that this final rule will tend to effectuate the declared policy of the Act.

This budget and assessment rate should be expedited because the Committee needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis. In addition, handlers are aware of this action. Therefore, it is found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553).

List of Subjects in 7 CFR Part 929

Connecticut, Cranberries, Long Island in the State of New York, Marketing agreements and orders, Massachusetts, Michigan, Minnesota, New Jersey, Oregon, Rhode Island, Washington, and Wisconsin.

For the reasons set forth in the preamble, 7 CFR part 929 is revised as follows:

PART 929—CRANBERRIES GROWN IN MASSACHUSETTS, RHODE ISLAND, CONNECTICUT, NEW JERSEY, WISCONSIN, MICHIGAN, MINNESOTA, OREGON, WASHINGTON, AND LONG ISLAND IN THE STATE OF NEW YORK

1. The authority citation for 7 CFR Part 929 continues to read as follows:

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

2. Section 929.230 is added to read as follows:

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

§ 929.230 Expenses and assessment rate.

Expenses of $172,602 by the Cranberry Marketing Committee are authorized, and an assessment rate of $0.037 per 100 pound barrel of assessable cranberries is established for the fiscal year ending August 31, 1990. Unexpended funds may be carried over as a reserve.

Dated: September 1, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–21114 Filed 9–7–89; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 998

[Docket No. FV–89–040]

Marketing Agreement 146 Regulating the Quality of Domestically Produced Peanuts; Relaxation of Outgoing Quality Regulations and Changes in the Terms and Conditions of Indemnification for 1989 Crop Peanuts

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department is adopting as a final rule the provisions of an interim final rule which changed the terms and conditions of indemnification and relaxed outgoing quality regulations for 1989 crop peanuts regulated under Marketing Agreement No. 146. Two changes were made in the outgoing quality regulations in effect last season. The screen sizes applicable to whole kernels in lots of split peanuts were changed to those in effect for 1987 crop peanuts and the tolerances for sound whole kernels and split and broken kernels falling through specified screens in lots of No. 2 Virginia peanuts were increased. These changes were intended to lessen the loss of sound edible splits and whole kernels and reduce handler milling costs. No adverse impact on product quality is expected as a result of these relaxations. In addition to these changes, the printed outgoing quality regulations for the numerous types and grade categories of shelled peanuts were changed from a narrative to a tabular format to make the requirements easier to read and understand. With regard to the change in the terms and conditions of indemnification, the cut-off date for weekly price calculations used to determine indemnification values was changed to make the cut-off date for calculations consistent with the deadline for filing indemnification claims.

EFFECTIVE DATE: September 8, 1989.

FOR FURTHER INFORMATION CONTACT: Patrick Packnett, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone 202–475–3862.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement 146 (7 CFR part 998; 53 FR 20291, June 3, 1988), regulating the quality of domestically produced peanuts, hereinafter referred to as the agreement. This agreement is effective under the Agricultural Marketing

Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

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

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

There are approximately 67 handlers of peanuts subject to regulation under the agreement and there are about 46,950 peanut growers in the 16 States covered under the agreement. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. Some of the handlers signatory to the agreement are small entities, and a majority of the growers may be classified as small entities.

There are three major peanut production areas in the United States: (1) Virginia-Carolina, (2) Southeast, and (3) Southwest, covered under the agreement. These areas encompass the 16 States covered under the agreement. The Virginia-Carolina area (primarily Virginia and North Carolina) usually produces about 18 percent of the total U.S. crop. The Southeast area (primarily Georgia, Florida and Alabama) usually produces about two-thirds of the crop. The Southwest area (primarily Texas, Oklahoma, and New Mexico) produces about 15 percent of the crop. Based upon the most current information, U.S. peanut production in 1988 totalled 3.98 billion pounds, a 10 percent increase from 1987, and 8 percent more than in 1986. The 1988 crop value is $1.07 billion, and the 1987 crop is valued at $1.02 billion.

The objective of the agreement is to insure that only wholesome peanuts enter edible market channels. Since aflatoxin was found in peanuts in the mid-1960's, the domestic peanut industry has sought to minimize aflatoxin contamination in peanuts and peanut products.

The agreement plays a very important role in the industry's quality control efforts. It has been in place since 1965 with over 90 percent of U.S. shellers (handlers) participating. The participating shellers handle about 95 percent of the crop. Requirements established pursuant to the agreement require farmers' stock peanuts with visible *Aspergillus Flavus* mold (the principal producer of aflatoxin) to be diverted to non-edible uses. Each lot of shelled peanuts for edible use must be officially sampled and chemically tested for aflatoxin by the U.S. Department of Agriculture (Department) or in laboratories approved by the Peanut Administrative Committee (committee). The committee works with the Department in administering the marketing agreement program. The sampling and chemical analysis inspection programs are administered by the Department. Having complied with these requirements, provision is made for indemnification of sheller losses if the committee or the Food and Drug Administration (FDA) deems the peanuts unsuitable for consumption because of aflatoxin. All indemnification and administration costs are paid by assessments levied on shellers signatory to the agreement.

The incoming quality regulations specify the quality of farmers' stock peanuts which handlers may purchase from producers. Handlers are required to purchase only good quality, wholesome peanuts for edible products. The outgoing quality regulations require shellers to mill peanuts to meet certain quality specifications and have them inspected before such peanuts can be sold to edible outlets. Foreign material and damaged and immature peanuts are removed in the milling operation. Each lot of shelled peanuts also must be sampled and the samples chemically analyzed for aflatoxin. If the chemical assay shows the lot to be positive as to aflatoxin, the lot is not allowed to go to edible channels. Lower quality peanuts are crushed for oil and meal. The end result is that only good quality peanuts end up in human consumption outlets.

The committee unanimously recommended changes in the outgoing quality regulations and terms and conditions of indemnification for 1989 crop peanuts at its March 28–29, 1989, meeting. An interim final rule was issued on June 9, 1989, adopting the committee's recommendations. That rule was published in the **Federal Register** on June 15, 1989 (54 FR 25439), and a minor correction was published on June 28, 1989 (54 FR 27271). Interested persons were invited to submit written comments through July 17, 1989. One comment was received from the Southeastern Peanut Association in support of the changes.

In paragraph (a) of § 998.200 *Outgoing quality regulation*, the screen sizes used in determining fall-through of whole kernels in lots of split peanuts were changed to those in effect for 1987 crop peanuts. This change relaxed the minimum size requirements for whole kernels in lots of split peanuts. Paragraph (a) was also changed to increase the fall-through tolerances for No. 2 Virginia type peanuts. Under the agreement, the term "fall-through" means sound split and broken kernels and whole kernels which pass through specified sizes of screens. These changes make more peanuts available for edible outlets.

Lots of split peanuts of the Runner type and the Spanish and Valencia types cannot contain more than four percent whole kernels. Lots of split peanuts of the Virginia type cannot contain more than ten percent whole kernels. Prior to issuance of the interim final rule, paragraph (a) specified slotted screen openings used in determining fall-through of whole kernels of $^{16}/_{64} \times {}^{3}/_{4}$ inch for Runner type peanuts, $^{15}/_{64} \times {}^{3}/_{4}$ inch for Spanish and Valencia type peanuts and $^{15}/_{64} \times 1$ inch for Virginia type peanuts. Those screen sizes, which are larger than those used in prior years, were implemented in 1988 to remove small whole kernels from edible channels. Smaller kernels tend to be immature, less flavorful and have a higher incidence of aflatoxin contamination. The increased size requirements also were applicable to lots of split peanuts and No. 2 Virginia peanuts. No. 2 Virginia type peanuts are a mixture of whole and split kernels and generally are marketed with 20 percent or 30 percent whole kernels. However, during 1988 crop operations, handlers experienced difficulties in milling lots of split peanuts to meet outgoing grade specifications. In milling this grade category of peanuts in 1988 to meet the minimum fall-through requirements, handlers experienced substantial edible product loss and higher than usual milling costs. Such losses occurred when attempting to remove the lower quality small whole kernels (which fall through the larger screens implemented in 1988) from lots of splits. Handlers of No. 2 Virginia type peanuts also experienced milling losses due to excessive fall-through caused by the new screen sizes.

In recognition of the unforeseen problems in the processing lots of split peanuts, the committee unanimously recommended that the slotted screen sizes applicable to whole kernels in lots of splits be changed to those in effect for

1987 crop peanuts. The new slotted screen sizes applicable only to lots of splits are as follows: Runner type—14/64 × 3/4 inch; Virginia type—14/64 × 1 inch; and Spanish and Valencia type—13/64 × 3/4 inch.

Because No. 2 Virginia peanuts are generally marketed with 20 or 30 percent whole kernels, the committee determined that a change in the screen sizes to that being made for lots of Virginia split peanuts would not correct the problem of excessive milling losses. Instead, it recommended that the tolerances for fall through of sound split and broken kernels and sound whole kernels in No. 2 Virginia type peanuts be increased from 3.00 percent to 6.00 percent. These tolerances are similar to those prescribed for U.S. No. 2 Virginia grade peanuts in the U.S. Standards for Grades of Shelled Virginia Type Peanuts (7 CFR 2851.2750–2851.2763).

These changes in the outgoing quality regulations are intended to lessen the loss of sound edible whole kernels and splits and to reduce handler milling costs. The relaxations are not expected to have an adverse impact on the quality of peanuts entering edible channels because the volume of peanuts that will be affected by the change is minimal. These changes do not increase the likelihood of aflatoxin contamination in lots of split peanuts because of the relatively low number of small whole kernels in these lots. Further, with regard to the increased tolerances in No. 2 Virginia type peanuts, the climate in the area where production of these peanuts is prevalent is not conducive to the growth of *Aspergillus flavus* mold. Thus, there is no increased risk of aflatoxin contamination with allowing more fall-through in No. 2 Virginia type peanuts. In view of this, these changes should be continued in effect.

In addition to these changes, in the regulations the outgoing quality requirements for the numerous types and grade categories of shelled peanuts were changed from a narrative to a tabular format to make the requirements easier to read and understand. With the exception of the two changes mentioned above, which have been incorporated, the tables specify the same requirements that were in effect for 1988 crop peanuts.

The committee also recommended that paragraph (u) of the terms and conditions of indemnification (§ 998.300) be changed to extend the cutoff date for making weekly price calculations used to determine indemnification values. These weekly calculations involve averaging the domestic market price of each category of indemnifiable peanuts during the most recent four week period. The cut-off date was extended from May 31 to November 1, the deadline for filing indemnification claims. Making the cut-off date for calculations consistent with the deadline for filing indemnification claims will ensure that indemnification values at the time claims are filed or settled do not exceed the market value of the peanuts for which indemnification is requested. This has been a committee goal since the inception of the agreement in 1965.

The incoming quality regulations applicable to 1989 crop peanuts were not changed from those in effect for 1988 crop peanuts. No changes were deemed necessary. In recognition of this, the heading of § 998.100 was changed from "Incoming quality regulation—1988 crop peanuts" to "Incoming quality regulation—1989 crop peanuts".

Based on available information, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant information presented, the committee's recommendation, and other information, it is found that the interim rule, as published in the **Federal Register** (54 FR 25439) on June 15, 1989, and corrected (54 FR 27271) on June 28, 1989, should be made a final rule and will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action adopts relaxed outgoing quality requirements currently being applied under an interim rule and leaves in effect terms and conditions of indemnification which conform with current industry practice; (2) peanut handlers are aware of the relaxations, which were recommended by the committee at public meetings and they are prepared to continue complying with the changed requirements; (3) the interim final rule provided a 30 day comment period; (4) no useful purpose would be served by delaying the effective date until 30 days after publication.

List of Subjects in 7 CFR Part 998

Marketing agreement, Peanuts.

For the reasons set forth in the preamble, 7 CFR part 998 is amended as follows:

Note: These sections will be published in the Code of Federal Regulations.

PART 998—MARKETING AGREEMENT REGULATING THE QUALITY OF DOMESTICALLY PRODUCED PEANUTS

1. The authority citation for 7 CFR part 998 (53 FR 20291, June 3, 1988) continues to read as follows:

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

2. Accordingly, the interim final rule amending the provisions of 7 CFR part 998, published in the **Federal Register** on June 15, 1989, (54 FR 25441), and corrected on June 28, 1989, (54 FR 27271), is adopted as a final rule.

Dated: September 1, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–21112 Filed 9–7–89; 8:45 am]

BILLING CODE 3410-02-M

FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Regulation Y; Docket No. R-0614]

RIN: 7100-AA89

Bank Holding Companies and Change in Bank Control; Acquisition and Operation of Savings Associations by Bank Holding Companies

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: In light of changed economic and regulatory circumstances, and pursuant to discretionary authority granted under the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (Pub. L. No. 101–73), the Board is amending Regulation Y to reflect its determination that the acquisition and operation of savings associations by bank holding companies is, as a general matter, so closely related to banking as to be a proper incident thereto for purposes of section 4(c)(8) of the Bank Holding Company Act ("BHC Act") (12 USC 1843(c)(8)). The Board's determination is subject to the condition that the savings association engage only in activities that bank holding companies are otherwise permitted to conduct under section 4 of the BHC Act. Specific proposals by bank holding companies to acquire savings associations would require prior Board approval under section 4(c)(8) of the Act.

EFFECTIVE DATE: October 10, 1989.

FOR FURTHER INFORMATION CONTACT: Scott G. Alvarez, Assistant General Counsel (202/452-3583), Michael J. O'Rourke, Senior Attorney (202/452-3288), Thomas M. Corsi, Attorney (202/452-3275), Legal Division; Molly S. Wassom, Manager (202/452-2305), or Beverly Smith, Senior Financial Analyst (202/452-2965), Board of Governors of the Federal Reserve System, Washington, D.C. 20551. For the hearing impaired *only*, Telecommunications Services for the Deaf, Earnestine Hill or Dorothea Thompson, (202/452-3544).

SUPPLEMENTARY INFORMATION:

1. Background

Under the BHC Act, a savings association is expressly excluded from the definition of "bank" and is treated as a nonbank company. Its acquisition by a bank holding company is therefore governed by the nonbanking provisions of section 4(c)(8) of the Act. Section 4(c)(8) permits bank holding companies to acquire a nonbank company if it is engaged only in activities the Board has determined to be "so closely related to banking . . . as to be a proper incident thereto." In order to meet the standards of section 4(c)(8), the Board must make two findings. First, the Board must find that the activity is closely related to banking. Second, the Board must find that the proposed activity is a proper incident to banking, that is, that the expected public benefits outweigh the potential adverse effects associated with the proposed activity.[1]

In 1977, in *D.H. Baldwin & Company* ("*Baldwin*"), the Board determined that the operation of a savings association by a bank holding company is closely related to banking, but, as a general matter, is not a proper incident to banking.[2] The Board stated at that time that the public benefits associated with the affiliation of a bank and a thrift were not sufficient to outweigh the adverse effects of such an affiliation. In particular, the Board expressed concern regarding:

(1) The conflicting regulatory framework created by Congress for thrifts and banks;

(2) The possibility that cross-industry acquisitions would undermine the perceived rivalry between the two industries; and

(3) The perception that such acquisitions would undermine the interstate banking restrictions of the Douglas Amendment to the BHC Act.

In view of these adverse considerations, the Board declined to add the operation of a savings association to the Regulation Y list of permissible activities, stating that "the judgment to permit [the affiliation of a bank and a savings association] on a broad scale should be left to Congress." [3]

In 1982, Congress passed the Garn-St Germain Act, which authorized the acquisition by bank holding companies of failed or failing savings associations under the BHC Act. Since 1982, the Board has approved a number of such acquisitions.[4]

On September 21, 1987, in light of the significant changes in the financial services industry since the *Baldwin* decision, the Board invited public comment on whether it should add to the list of permissible activities in Regulation Y the acquisition and operation of savings associations in general regardless of their financial condition.[5] The Board also requested comment on what terms or conditions, if any, should be imposed in connection with such acquisitions. The Board refrained from acting on this rulemaking pending completion of Congressional consideration of banking and thrift reform legislation.

On August 9, 1989, Congress enacted the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (the "FIRREA"). Section 601 of that Act amends the Bank Holding Company Act specifically to authorize the Board to permit a bank holding company to acquire any savings association under section 4(c)(8) of the BHC Act.[6] The legislative history of FIRREA indicates that, in enacting this specific authorization, Congress intended to authorize the Board to permit acquisitions of healthy as well as failed or failing thrifts.

2. Public comments

The Board received 214 public comments in response to its request for comments regarding this proposal. Over 70 percent of these comments favored allowing bank holding companies to acquire any savings association, including non-troubled savings associations.

Commenters in favor of the proposal argued that a number of circumstances have changed since 1977 that justify revision of the Board of its decision in *Baldwin* that the adverse effects of the acquisition of a thrift by a bank holding company outweigh the public benefits. In particular, these commenters stated that thrift subsidiaries could derive numerous strengths from parent bank holding companies, such as: access to bank holding company management; increased sources of capital; the ability to offer more services and branches; and better protection for depositors. Some of these commenters also argued that once a bank holding company is able to become familiar with the operation of a thrift by acquiring a healthy one, it would be more likely to acquire a failing institution.

Virtually all of the commenters who favored allowing bank holding companies to acquire healthy thrifts opposed limiting the acquired thrifts' powers to those permissible for bank holding companies. These commenters contended that limiting acquired thrifts' powers would reduce their attractiveness as acquisition targets and would unnecessarily interject the Board into thrift regulation.

Other commenters favored limiting the activities of savings associations acquired by bank holding companies to those permissible for bank holding companies in order to prevent bank holding companies from circumventing the activities restrictions of the BHC Act through the acquisition of savings associations. These commenters also contended that allowing bank holding companies to engage in otherwise impermissible activities through a savings association could compromise the financial integrity of the holding companies.

Commenters who opposed allowing bank holding companies to acquire

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[1] Section 4(c)(8) provides that in determining whether a particular activity is a proper incident to banking, the Board shall consider: whether its performance 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. 12 U.S.C. 1843(c)(8).

[2] 63 Federal Reserve Bulletin 280 (1977).

[3] 63 Federal Reserve Bulletin 280, 284 (1977).

[4] *See, e.g., Barnett Banks, Inc. (First Federal Savings and Loan Association of Columbus)*, 75 Federal Reserve Bulletin 80 (1989); *Citicorp (National Permanent Bank, FSB)*, 72 Federal Reserve Bulletin 724 (1986); *Citicorp (Fidelity Federal Savings & Loan Association)*, 68 Federal Reserve Bulletin 656 (1982).

[5] 52 FR 36,041 (1987).

[6] Pub. L. No. 101-73, section 601, 103 Stat. 183, 408 (1989). This section amends section 4 of the BHC to state that, "Beginning on the date of the enactment of [FIRREA], the Board may approve an application by any bank holding company under subsection (c)(8) to acquire any savings association in accordance with the requirements and limitations of this section." FIRREA defines "savings association" to include: any federally-chartered savings and loan association or savings bank; any building and loan, savings and loan, or homestead association, or cooperative bank which is a member of the Savings Association Insurance Fund; and any savings bank or cooperative bank that has been certified by the Director of the Office of Thrift Supervision as having met the requirements of the Qualified Thrift Lender test. *Id.* at section 320.

healthy thrift institutions contended that the acquisition of thrifts continues to raise the concerns expressed by the Board in *Baldwin*, as well as safety and soundness concerns for bank holding companies. These commenters argued that bank holding companies would be able to circumvent the interstate banking prohibitions of the Douglas Amendment as well as state branching laws through the acquisition of savings associations. A number of commenters also argued that permitting savings associations to be acquired by bank holding companies would lead to a de-emphasis of housing finance by these savings associations, undue concentration of the financial services industry by bank holding companies, and unfair competition. Many commenters argued that the decision as to whether bank holding companies should be able to acquire healthy thrifts should be left to Congress.

3. Acquisition of savings associations as a general matter

A. FIRREA

As noted, section 601 of FIRREA amends section 4 of the BHC Act specifically to authorize the Board to approve applications by bank holding companies to acquire any savings association. The legislative history of FIRREA suggests that Congress expected the Board to exercise this authority and did not intend the Board to restrict its approval to proposals involving the acquisition of failed or failing savings associations, as the Board has in the past.

For example, FIRREA as originally adopted by the Senate contained provisions that would have limited for two years the Board's authority to authorize the acquisition of thrifts only to those that were under-capitalized. This provision was not adopted in the final legislation in favor of a general and immediate authorization to permit the acquisition of any savings association.

FIRREA requires the Board to apply the standards of section 4(c)(8) of the BHC Act to proposals by bank holding companies to acquire savings associations. The Board has already determined in *Baldwin* that the ownership and operation of a savings association is closely related to banking for purposes of section 4(c)(8) of the Act.[7]

B. Proper Incident to Banking

With respect to the proper incident to banking test, there have been a number of significant changes in the regulatory framework governing banks and thrifts since the *Baldwin* decision, including the expansion of the powers of thrifts and the emergence of interstate banking. As the Board suggested in its request for public comment, and for the reasons discussed below, these developments have diminished the concerns about the affiliation of banks and savings associations noted by the Board in *Baldwin*. Ther authorization in FIRREA to permit affiliation of banks and healthy thrifts indicates Congressional support for this view.

Interstate Banking

A major concern expressed by the Board in *Baldwin* was that the acquisition of thrifts by bank holding companies might undermine the interstate banking restrictions of the Douglas Amendment. Since the Board's decision in *Baldwin*, however, Congress has specifically excluded savings associations from the definition of "bank" in the BHC Act, and, as a result, from the restrictions on interstate banking contained in the Douglas Amendment.[8] Thus, the BHC Act contains no express provision limiting holding company acquisitions of thrifts to those states in which the holding company may own a bank.

In FIRREA, Congress focused again on the acquisition of savings associations by bank holding companies, and, in authorizing such acquisitions, did not impose any geographic limitations. In addition, nothing in the legislative history of this provision indicates that Congress intended the Board to impose geographic restrictions on these acquisitions. On the contrary, the only geographic restriction imposed by FIRREA on affiliations of savings associations and banks applies in the event the savings association seeks to merge or convert into a bank. In that situation only, the transaction must be consistent with the Douglas Amendment.[9]

Concern regarding the erosion of interstate banking restrictions has also been reduced by the significant increase in state initiatives permitting interstate banking. In this regard, twenty-two states already authorize bank acquisitions on a nationwide basis, and an additional eight states will permit nationwide entry by January 1, 1991. In addition, a total of forty-six states and the District of Columbia have enacted some type of interstate banking statutes,[10] with most of these statutes being enacted during the past 5 years.

In seeking public comment regarding this proposal, the Board asked for comment on an option to permit the acquisition of savings associations by bank holding companies only in those states where the holding company could operate a bank. For the reasons explained above, the Board has not adopted this option.

Institutional Rivalry

The Board's concern that authorizing the acquisition of savings associations by bank holding companies would undermine the institutional rivalry between banks and thrifts has also been reduced. Since 1977, the statutory interest-rate has also been reduced. Since 1977, the statutory interest-rate differential on deposits taken by savings associations have been expanded to include deposit-taking and commercial lending powers previously reserved for commercial banks. These actions have reduced the institutional differences between savings associations and banks.

To the extent that Congress was concerned about preserving this institutional distinction, it has done so by requiring savings associations to continue to meet a statutory qualified thrift lender ("QTL") test. Under this test, the thrift is required to devote a substantial amount of its resources to activities related to the provision of residential housing credit. These statutory provisions are applicable to savings associations regardless of whether or not the savings association is acquired by a bank holding company, and would not appear to be undermined by the affiliation of a savings association with a bank.

Regulatory Conflict

The Board's experience with the acquisition of failed and failing thrifts by bank holding companies also indicates that the potential for conflicts arising from the different regulatory framework for banks and savings associations does not present

[7] In reaching this conclusion, the Board noted that banks and savings associations are both financial intermediaries whose liability structures are dominated by deposits and whose asset structures are dominated by loans. The Board also noted that the trend toward convergence of the powers authorized for banks and savings associations, particularly in the areas of commercial and consumer lending, and deposit-taking. *See American Fletcher Corporation*, 60 Federal Reserve Bulletin 868, 869 (1974); *Baldwin*, 63 Federal Reserve Bulletin 280, 281 (1977).

[8] *See* 12 U.S.C. § 1842(d); and 12 U.S.C. §§ 1841(c) and (i).

[9] Pub. L. No. 101-73, § 206, 103 Stat. 183 (1989).

[10] To date, only Iowa, Kansas, Montana, and North Dakota have not authorized any form of interstate banking (other than for existing grandfathered institutions). Hawaii provides for the acquisition of failing institutions in that state by any out-of-state organization.

insurmountable problems for bank holding companies. In this regard, various provisions of FIRREA further take account of, and reduce, this potential regulatory overlap.[11]

Conclusion

For the foregoing reasons, and in light of the changed circumstances in the financial services industry since the *Baldwin* decision, the Board finds that the operation of a savings association by a bank holding company would not result in adverse effects that would, as a general matter, require prohibiting their affiliation under the proper incident to banking standard of section 4(c)(8) of the BHC Act. On this basis and in view of the Board's earlier finding that the ownership, control and operation of a savings association by a bank holding company is closely related to banking, the Board has determined to amend Regulation Y to add this activity to the Board's list of permissible nonbanking activities for bank holding companies. As required by the BHC Act and the Board's regulations, each specific proposal by a bank holding company to acquire a savings association would require prior review by the Board to determine whether the particular acquisition would result in public benefits that outweigh adverse effects.

4. Conditions on the Operation of Savings Associations by Bank Holding Companies

In its notice of rulemaking, the Board requested comments regarding what, if any, conditions or restrictions should be imposed if affiliations of banks and savings associations were to be allowed as a general matter. In its previous decisions involving the acquisition of failed and failing thrifts, the Board had imposed a number of conditions, including a requirement that the savings association continue to operate primarily as a residential housing lender, not change its name to one suggesting it is a bank, not convert to a bank without prior approval, limit its activities to those permissible for bank holding companies, and establish new branches only at locations permissible for national banks in that state. The Board also required that the savings association not be operated in tandem with any holding company affiliate and limited transactions between the savings association and its bank affiliates (the so-called "tandem operations conditions"). These conditions were imposed in order to address concerns that the acquisition by a bank holding company of a savings association might potentially result in unfair competition, conflicts of interest, or other adverse effects.

For the reasons discussed below, the Board has not adopted these conditions as part of the amendment to Regulation Y except for the requirement that the savings association conform its activities to those permissible for a bank holding company under section 4(c)(8) of the BHC Act.

Activities of savings associations

The Board has required bank holding companies that acquire failed or failing savings associations to conform their activities to those permissible under section 4(c)(8) of the BHC Act.[12] A number of commenters have urged the Board to remove this condition and to consider that a savings association is engaged in a cluster of activities, all of which should be authorized when the bank holding company acquires the savings association.

In its prior thrift decisions, the Board noted that the nonbanking provisions of the BHC Act require that all nonbank subsidiaries of a bank holding company engage only in activities that are permissible under the provisions of section 4 of the BHC Act. The Board stated that an activity that is otherwise impermissible for a bank holding company is not rendered permissible simply because that activity is performed by a direct or an indirect nonbanking subsidiary of a holding company.[13]

The legislative history of FIRREA indicates that this is the correct interpretation of the BHC Act and should be continued. For example, the Senate Report states that the section of FIRREA authorizing the acquisition of savings associations by bank holding companies "does not authorize a thrift institution acquired by a bank holding company to engage in any activity that would otherwise be impermissible under section 4(c)(8)." [14] Similarly, the Conference Report states that "all nonbanking restrictions and other criteria under [Section 4] will continue to apply [to thrifts acquired by bank holding companies]." [15] For these reasons, the Board continues to believe that bank holding companies that acquire savings associations must conform the activities of the savings association to those permissible for bank holding companies under the provisions of section 4 of the BHC Act, including the provisions of section 4(c)(8) of the Act.

The Board has also required that the savings association continue to have as its primary purpose the provision of residential housing credit. FIRREA has modified the provisions of current law to require all savings associations to devote at least 70 percent of their assets to housing related financing and consumer lending activities. A savings association that fails to meet these so-called Qualified Thrift Lender requirements must, within certain periods, become a bank or conform its operations to those of a bank. Any company that owns such a savings association must conform to the requirements of the BHC Act, including the Douglas Amendment. In light of these statutory requirements, the Board has not adopted a condition to its regulation requiring savings associations acquired by bank holding companies to operate with the primary purpose of providing housing related credit.

Restrictions on Tandem Operations

FIRREA specifically provides that, in approving acquisitions of savings associations, the Board shall not impose any restrictions on transactions between the savings association and its bank holding company affiliates except as required under sections 23A and 23B of the Federal Reserve Act or any other applicable law.[16] The legislative history of FIRREA indicates that this provision was directed specifically at the tandem limitations in the Board's prior decisions.

On August 21, 1989, in accordance with the new statute, the Board removed the tandem conditions as they applied to bank holding companies that currently own savings associations.

Consistent with the provisions of FIRREA and its legislative history, and in light of the continued applicability of sections 23A and 23B and the anti-tying provisions of the BHC Act, the Board has determined not to include the tandem operations conditions in the regulation.[17]

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[11] *See, e.g.*, Pub. L. No. 101-73, 103 Stat. 183 § 301 (1989). (This section exempts bank holding companies that acquire savings associations from certain requirements contained in the Savings and Loan Holding Company Act).

[12] The Board has generally granted a two-year period for thrifts to conform their activities.

[13] *Central Pacific Corporation*, 68 Federal Reserve Bulletin 382 (1982).

[14] S. Rep. No. 19, 101st Cong., 1st Sess. 44 (1989).

[15] H.R. Conf. Rep. No. 209, 101st Cong., 1st Sess. 627 (1989).

[16] *See also* H.R. Conf. Rep. No. 209, 101st Cong., 1st Sess. 427 (1989).

[17] Previous Board orders have included a requirement that a savings association acquired by a bank holding company not convert its charter to a bank charter without the Board's prior approval.

Continued

Restrictions on Branching

In approving thrift acquisition under the Garn-St Germain Act, the Board provided, in accordance with the Act, that the thrift could establish new branches only at locations at which a national bank located in the same state was permitted to establish branches.[18] Section 217 of FIRREA amends the Garn-St Germain Act to provide that a failed or failing savings association acquired by a bank holding company may, so long as it remains a savings association, establish and operate new branches in its home state to the same extent as any other savings association that maintains its home office in that state.[19]

In FIRREA's general authorization for bank/thrift affiliations, Congress did not restrict the branching authority of savings associations acquired by bank holding companies so long as the association meets the QTL test.[20] Moreover, the legislative history of this provision does not indicate any intent by Congress that the Board limit the branching rights of acquired thrifts.

In light of this, the Board has not adopted in the regulation the branching limit contained in its previous orders. Accordingly, savings associations acquired by bank holding companies will be permitted to branch to the extent permitted other savings associations located in the same home state.[21] This approach permits both troubled and healthy savings associations acquired by bank holding companies the same branching rights.

Use of "bank" in Acquired Thrift's Name

The Board's previous orders authorizing bank holding companies to acquire savings associations prohibited the savings association from changing its name to include the term "bank." This condition was intended to prevent public confusion regarding the association's status as a nonbank thrift institution.[22] While the provisions of FIRREA do not address this issue, the legislative history of that Act suggests that savings associations acquired by bank holding companies should be permitted to use the term "bank" in their name so long as the name is not misleading to the public.[23] In this regard, the regulations applicable to federally chartered savings associations permit these institutions to use the term "bank" in their name under certain conditions, and provided that the name does not misrepresent the nature of the institution or the services that it offers.[24]

In view of these existing regulatory requirements, and the Congressional direction that the Board eliminate the restrictions on tandem operations between banks and their affiliate thrifts, the Board has not included in the regulation a specific condition governing the use of the word "bank" in the name of savings associations acquired by bank holding companies.

Definition of Savings Association

The Board is also amending the definition of savings association in Regulation Y to conform to certain technical changes to that definition made by FIRREA. FIRREA amended the BHC Act to list specifically the types of institutions that would qualify as savings associations. Prior to FIRREA, the BHC Act referred to the definition of that term in the Home Owners Loan Act.

Final Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96-354; 5 U.S.C. 601 *et seq.*), the Board of Governors of the Federal Reserve System certifies that the amendment will not have a significant economic impact on a substantial number of small entities that would be subject to the regulation.

This amendment will permit bank holding companies to acquire and operate healthy savings associations—an activity bank holding companies are not now permitted to conduct. The amendment does not impose more burdensome requirements on bank holding companies than are currently applicable, and these provisions provide no barrier to meaningful participation by small bank holding companies in the activity.

The Board notes that there are not a significant number of small bank holding companies engaged in the operation of savings associations at this time. As noted, bank holding companies have not previously been permitted to acquire healthy savings associations; the amendment will expand the powers of bank holding companies by authorizing bank holding companies to acquire healthy, in addition to failing, savings associations.

List of Subjects in 12 CFR Part 225

Banks, Banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, and Securities.

For the reasons set out in this notice, and pursuant to the Board's authority under section 5(b) of the Bank Holding Company Act of 1956 (12 U.S.C. 1844), the Board amends 12 CFR part 225 as follows:

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL

1. The authority citation for part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1843(c)(8), 1844(b), 3106, 3108, 3907, and 3909.

2. In § 225.25 new paragraph (b)(9) is added to read as follows:

§ 225.25 List of Permissible nonbanking activities.

* * * * *

(b) * * *

(9) *Operating savings association.* Owning, controlling or operating a savings association, if the savings association engages only in deposit taking activities and lending and other activities that are permissible for bank holding companies under this subpart C.

3. In section 225.2, redesignate paragraphs (l) through (n) as paragraphs (m) through (o) respectively, and add the following as new paragraph (l):

This requirement is a restatement of existing law, which would require the bank holding company to seek authority under section 3 of the BHC Act and comply with the interstate banking provisions of the Douglas Amendment before converting its savings association to a bank. Under the provisions of FIRREA, bank holding companies that seek to merge an existing savings association subsidiary into a bank subsidiary must also seek Board approval and comply with the requirements of the Douglas Amendment. Pub. L. No. 101-73, § 206, 103 Stat. 183 (1989). Because this condition restates existing law, the Board has not included this requirement as an express condition in the regulation.

[18] 12 U.S.C. § 1730a(m)(5).

[19] Pub. L. No. 101-73, § 217, 103 Stat. 183 (1989). Troubled savings associations acquired by bank holding companies in a state in which the bank holding company does not own a bank lose the ability to retain, operate, and establish branches beyond locations at which a national bank may branch if the savings association fails to meet certain asset tests contained in the Internal Revenue Code. This asset test is substantially the same as the current Qualified Thrift Lender test.

[20] Under FIRREA, any savings association that fails to meet the Qualified Thrift Lender test must, among other things, limit its branching to locations at which a national bank located in that state may branch so long as it remains a savings association.

[21] The provisions of FIRREA do not contain a restriction on establishing or operating remote service units. Accordingly, this condition of previous Board orders has not been adopted.

[22] *See, eg., Barnett Banks, Inc.*, 75 Federal Reserve Bulletin 83 (1988), in which the Board determined that the applicant could call the thrift Barnett Savings Bank, but not Barnett Bank, F.S.B.

[23] *See* 135 Cong. Rec. H2571 (daily ed. June 14, 1989) (statement of Rep. Barnard).

[24] *See* 12 CFR 543.1.

§ 225.2 Definitions.

* * * * *

(l) "Savings association" means:

(1) any Federal savings association or Federal savings bank;

(2) any building and loan association, savings and loan association, homestead association, or cooperative bank if such association or cooperative bank is a member of the Savings Association Insurance Fund; and

(3) any savings bank or cooperative which is deemed by the Director of the Office of Thrift Supervision to be a savings association under section 10(1) of the Home Owners Loan Act.

* * * * *

§ 225.126 [Amended]

4. In § 225.126, paragraph (h) is removed.

By order of the Board of Governors of the Federal Reserve System, September 1, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-21122 Filed 9-7-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89-NM-77-AD; Amdt. 39-6317]

Airworthiness Directives; Airbus Industrie Model A310 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Airbus Industrie Model A310 series airplanes, which requires modification of the emergency exits' opening mechanism. This amendment is prompted by reports of the accumulation of moisture in the area of the locking mechanism and subsequent ice buildup. This condition, if not corrected, could prevent the exit of passengers in an emergency situation.

EFFECTIVE DATE: October 13, 1989.

ADDRESSES: The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. 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. Greg Holt, Standardization Branch, ANM-113; telephone 431-1918. 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 Airbus Industrie Model A310 series airplanes, which requires modification of the emergency exits' opening mechanism, was published in the **Federal Register** on June 2, 1989 (54 FR 23670).

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

The commenter supported the rule, but requested that the compliance time be changed from 100 hours time-in-service to 9 months, due to the lack of parts availability. The FAA concurs in part with the commenter. The FAA has confirmed that, contrary to prior information received, certain parts required for a portion of the modification, specifically the special replacement sealing rings for the hinge rods, will not be available for installation within the proposed compliance time. The final rule has been revised to extend the compliance time to 9 months for installation of the replacement rings. The FAA has determined that accomplishment of this portion of the modification at nine months will not adversely affect safety. However, the other portions of the modification, namely drilling drain holes in guide fittings, drilling drain holes in spring units, and applying silicone grease to all modified parts, are required to be accomplished within 100 hours time-in-service, 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 with the change noted above. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the rule.

It is estimated that 18 airplanes of U.S. registry will be affected by this AD, that it will take approximately 47 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Required parts are estimated to be $841 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $48,978.

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 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:

Airbus Industrie: Applies to Model A310 series airplanes, as listed in Airbus Industrie Service Bulletin A310-52-2017, Revision 2, dated December 22, 1987, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent frozen condensation from blocking the emergency exit doors' operating mechanism, accomplish the following:

A. Within 100 hours time-in-service after the effective date of this AD, modify the emergency exit doors' opening mechanism, in accordance with paragraphs C.(1), C.(2), and C.(3) of Airbus Industrie Service Bulletin A310-52-2017, Revision 2, dated December 22, 1987.

B. Within 9 months after the effective date of this AD, replace all sealing rings on the hinge rods, in accordance with paragraph C.(4) of Airbus Industrie Service Bulletin

A310-52-2017, Revision 2, dated December 22, 1987.

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

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who 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 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 Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective October 13, 1989.

Issued in Seattle, Washington, on August 29, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-21135 Filed 9-7-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 93

[Docket No. 25758; Amdt. No. 93-57]

High Density Traffic Airports Slot Allocation and Transfer Methods

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule; correction.

SUMMARY: This action corrects editorial errors which appeared in a final rule, published on August 22, 1989 (54 FR 34904), amending the High Density Traffic Airports Rule and slot allocation and transfer regulations.

FOR FURTHER INFORMATION CONTACT: David L. Bennett at (202) 267-3491.

SUPPLEMENTARY INFORMATION: On August 22, 1989, the Department of Transportation published a final rule which made several technical amendments to Subparts K and S of Part 93 of the Federal Aviation Regulations (14 CFR Part 93); High Density Traffic Airports Slot Allocation and Transfer Methods; Docket No. 25758 (54 FR 34904).

The amendment number, given as No. 93-56, should be changed to No. 93-57.

Editorial errors in the regulatory text of Amendment No. 93-57, page 34906, third column, are corrected by making the following changes:

§ 93.123 [Corrected]

1. In the fourth line of the first full sentence under § 93.123(c)(1), remove "and § 93.127".

2. In the third and fourth lines of the first sentence under § 93.123(c)(2), remove "and § 93.124".

§ 93.213 [Corrected]

3. In the third line under § 93.213(a)(3), and in the second line under § 93.213(a)(4), change "fourth" to "last".

Issued in Washington, DC, on September 5, 1989.

Donald P. Byrne,

Acting Assistant Chief Counsel, Regulations and Enforcement Division.

[FR Doc. 89-21138 Filed 9-7-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 154, 157, 260, 284, 385 and 388

[Docket No. RM87-17-000]

Natural Gas Data Collection System; Availability of PC Print Software and Corrected Record Formats for Rate, Tariff, and Certificate Filings

Issued August 31, 1989.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of Availability of Print Software and Corrected Record Formats for Rate, Tariff, and Certificate Filings.

SUMMARY: Software to print rate, tariff and certificate filings required to be filed on electronic medium in accordance with Order Nos. 493 (53 FR 15025 (Apr. 27, 1988)), 493-A (53 FR 30027 (Aug. 10, 1988)), 493-B (53 FR 49652 (Dec. 9, 1988)) and 493-C (54 FR 21197 (May 17, 1989)) is now available on diskette. This notice also identifies corrections and revisions to the record formats for rate, tariff and certificate filings. The print software may be ordered on the enclosed Print Software Order Form.

DATE: The print software and the revised record formats are available on August 31, 1989.

ADDRESS: Requests for copies of the various print software packages should be directed to: Reference and Information Center, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Room 2200, Washington, DC 20426, (202) 357-8118.

FOR FURTHER INFORMATION CONTACT: Brooks Carter (for General Information & Tariffs) (202)357-8666, Bob Czarick (for Certificates) (202)357-8995, Craig Hill (for Rates) (202)357-8822, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Room 6100, Washington, DC 20426.

SUPPLEMENTARY INFORMATION: The PC software to produce a hardcopy printout of rate, tariff and certificate filings, when filed in accordance with updated record formats, is now available on diskette. The record formats for rate filings were issued on May 10, 1989; the record formats for tariff and certificate filings were issued on June 8, 1989. Staff has corrected certain errors in these formats and has made certain other minor revisions to correct anomalies or to clarify the filing instructions. The latest corrections and revisions to the record formats for rate, tariff and certificate filings are described in Appendices A, B, and C respectively. Complete copies of record formats, for rates, tariffs and certificates, as revised by this notice, are available on a separate diskette.

The programming language used for the print software is ANSI 1974 Standard COBOL. The diskettes contain files which can be run on an IBM-compatible PC with at least 640K RAM and DOS 3.0 (or later version). The PC print software is available in separate packages for rates, tariffs and certificates. Each print software package consists of 3.5" (1.44MB) or 5.25" (1.2MB) double-sided, high density diskettes containing a user's guide and hard copy executable code. The tariff and certificate print software packages also contain a test data file and COBOL source code. Persons interested in the COBOL source code for the PC version of the rates print software should contact Craig Hill at (202) 357-8822 for additional information. Mainframe versions of the print software for rates, tariffs, and certificates are scheduled for release in early October.

The PC print software has been initially tested by staff. If software problems occur, the Commission staff encourages users to provide written comments as to the exact nature of the problem and submit them to Bob Czarick, Office of Pipeline and Producer

Regulation, Room 6106, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC.

This notice is available through the Commission Issuance Posting System (CIPS), an electronic bulletin board service that provides access to formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed on a 24-hour basis using a personal computer with a modem by dialing (202) 357–8997. To access CIPS, set your communications software to use 300, 1200 or 2400 baud, full duplex, no parity, eight data bits and one stop bit. The text of the notice will be available on CIPS for 30 days from the date of issuance.

In addition to publishing the text of this notice in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this notice and the revised record formats during normal business hours in the Reference and Information Center (Room 2200) at the Commission's headquarters, 825 North Capitol Street, NE., Washington, DC 20426.

The PC hard copy software packages are available from the Commission's Reference and Information Center through its photocopy contractor, LaDorn Systems Corporation, also located in Room 2200, 825 North Capitol Street, NE., Washington, DC 20426. Persons requesting the PC software packages should fill out the enclosed Print Software Order Form. The software is available without charge. However, the Commission's copy contractor has copy fees for both diskettes and hardcopy.

Lois D. Cashell,

Secretary.

Print Software Order Form

(please print or type)

Use this form to order copies of the print software packages relating to rates, tariffs, and certificate filings (Notice of Availability issued August 31, 1989).

Send to: LaDorn Systems Corporation, 825 North Capitol Street, NE., Room 2200, Washington, DC 20426 (202) 898–1151.

Ordered By: _____

Company: _____

Address: _____

Phone Number: (____) _____

Type of Diskette: —— 3.5" (1.44MB): $6.00/diskette

(specify) —— 5.25" (1.2MB): $5.00/diskette

Package	Description	Copy fee
—Package A	Executable PC Print Software: Rates. 10 Diskettes × fee/diskette.	
—Package B	Executable PC Print Software: Tariffs. 1 Diskette × fee/diskette.	
—Package C	Executable PC Print Software: Certificates. 2 Diskettes × fee/diskette.	
—Package D	Complete Set of Corrected Record Formats for Rates, Tariffs and Certificates (ASCII). 1 Diskette × fee/diskette.	
Total Copy Fee.		

Make check payable to LaDorn Systems Corporation. Receipt of payment is required before shipment.

Information Available on Diskettes

PC Print Software: Rates

Diskette 1: *User's Guide, File name=R–USERPC. ASC Driver and Subdriver files

Diskette 2: PC Executable Files for Statements A–D

Diskette 3: PC Executable Files for Statement E

Diskette 4: PC Executable Files for Statement F

Diskette 5: PC Executable Files for Statement G, Part 1

Diskette 6: PC Executable Files for Statement G, Part 2

PC Executable Files for Statement H, Part 1

Diskette 7: PC Executable Files for Statement H, Part 2

PC Executable Files for Statement I

Diskette 8: PC Executable Files for Statements L and M

Diskette 9: PC Executable Files for Statement N, Part 1

Diskette 10: PC Executable Files for Statement N, Part 2

PC Print Software: Tariffs

Diskette 1: *Notice of Availability of PC Print Software for Rates, Tariffs and Certificates

*User's Guide, File Name=T–USERPC.ASC PC Executable Print Software for Tariffs Test Data, File name=TARIFF.DAT Source Code for PC Print Software for Tariffs

PC Print Software: Certificates

Diskette 1: *User's Guide, File name=C–USERPC.ASC PC Executable Print Software for Certificates Test Data, File names: FILE1, FILE2, FILE3

Diskette 2: Source Code for PC Print Software for Certificates

Record Formats:

Diskette 1: *Corrected Record Formats for Rates, Tariffs and Certificates (August 31, 1989)

Note: An '*' indicates that the item is available in hardcopy from LaDorn Corp. An abbreviated version of the record formats, containing only those sections or records that have been revised, is also available in hardcopy.

Appendix A—Corrections/Revisions to Rate Filing Record Formats

General Instructions

All filings by anyone to the Federal Energy Regulatory Commission, whether by mail or in person, are to be submitted to the Secretary, through the Dockets Branch, in Room 3110, 825 North Capitol Street, NE., Washington, DC 20426. Courtesy copies of filings to be delivered to other Commission offices must be left with staff in the Dockets Branch for delivery. Courtesy copies will be enclosed in an outer envelope addressed to Room 3110 with the individual's name and address on an inner envelope. Courtesy copes will be delivered to Commission staff addresses throughout the business day.

The following revisions correct errors in the final rate filing record formats dated May 10, 1989:

1. RA16: Statement F(2), Rate of Return and Cost of Capital

The number of character positions for Items 241, 242 and 243 is increased from five to six to agree with the specified format of f(6,2). Character positions for Items 243 and 244 are revised accordingly.

2. RA17: Statement F(3), Debt Capital-Individual Instruments

The format for Item 259, Net Proceeds Per Unit, is revised from f(10,2) to f(14,2). Character positions for Item 259 and subsequent are revised accordingly.

3. RA18: Statement F(3)–1, Debt Capital-Total Debt

The number of positions for Item 274 is increased from 12 to 14. Revise character positions for Item 274 and subsequent.

The number of positions for Item 280 is decreased from 14 to 6 and the entry is now a percent instead of a dollar amount. Comment column is revised to: "(%); format, f(6,2); {[(item 277)–(item 279)] ÷ (item 276)} * 100"

4. RA19: Statement F(3)(g), Amortization of Gain/Loss on Reacquired Debt and Reacquired Preferred Stock—Part 1

The comment for Item 287, Historical Amortization Factor [Future Amortization Factor] is revised to: "format, f(7, 6); when item 282 is "1" or "3", enter the quotient 1 / { [yy of item 285) — (yy of item 286)] * 12 + [mm of item 285] − 1} * 12; when item 282 is "2" or "4", enter the quotient 1 / { [yy of item 285) — (yy of item 286) — 1 −] * 12 + [(mm of item 285) — (mm of item 286) + 12] } * 12

5. RA21: Statement F(4), Preferred Stock Capital

The number of positions for Item 307 is increased from 6 to 14 and the format is now f(14,2). Revise subsequent character positions accordingly.

Item 319, Weighted Average Cost of Money-Total Only, is deleted.

Old Item Numbers 320 and 321 are renumbered 319 (Optional Gain on Reacquired Preferred for Total) and 320 (Optional Adjusted Annual Cost of all Preferred Capital), respectively. The comment for Item 320 is revised to: "amount, ($); (item 317) — (item 319)"

A new Item 321, Optional Adjusted Percent Cost of all Preferred Capital, in added in positions 210–215. The Comment column contains: "(%); format, f(6,2); (item 320) / (item 316) * 100.

6. RA22: Statement F(5) / F(5)–3(a), Common Stock Capital

The number of positions for Item 330, Title, is reduced to 35.

The format for Items 339, 340, 342, 343, 344 and 345 is revised from f(7,2) to f(12,2). Character positions for Items 330–347 are adjusted accordingly.

7. RA23: Schedule F(5)–1, Stock Dividends, Splits, Etc.

The format for Items 360 through 363 is revised from f(7,2) to f(14,2). Character positions are adjusted.

8. RA24: Schedule F(5)–2/3(b), Stock Information

The format for Items 372 through 374 is revised from f(7,2) to f(14,2). The format for Item 376 is revised from f(8,2) to f(14,2). Character positions are adjusted.

9. RA25: Schedule F(5)–4/5, Earnings Per Share/Interest Coverage

The format for Item 382 is revised from f(7,2) to f(14,2) and character positions are revised.

10. RA26: Schedule F(6) Statement of Cash Flows—Part 1

The word "Less" is deleted from the names of Items 406 and 407. A (−) sign is added after the names of Items 410 through 413 and Item 415. The (−) sign after Item 414 is deleted.

11. RA27: Schedule F(6), Statement of Cash Flows—Part 2

A (−) sign is added after the names of Items 419, 421, 424 and 431.

The (−) sign is deleted from the names of Items 420, 422, 425, 427 and 437.

12. RA28: Schedule F(6), Statement of Cash Flows—Part 3

A (−) sign is added after the name of Item 446.

13. RA30: Statement G, Gas Operating Revenues and Sales Volumes Field Sales, Non-Jurisdictional Sales and Other Sales

The note below the title is deleted.

The codes for Item 481, Total Indicator, are revised. Instead of the codes in Exhibit C, use the following codes for Item 481:

code = 0, customer data
code = 1, month data
code = 2, juris./non-juris. total
code = 3, period total
code = 4, grand total for jurisdictional
code = 5, grand total for non-jurisdictional

14. RA30: Statement G, Gas Operating Revenues and Sales Volumes Transportation of Gas for Others

The codes for Item 511, Total, are expanded as follows:

code = 0, customer data
code = 1, month data
code = 2, period total
code = 3, grand total

15. RA34: Statement G, Gas Operating Revenues and Sales Volumes Products Extracted

The character positions for the Footnote ID are revised to 149–152 and the Filler (Tape Only) begins in 153.

16. RA40: Statement H(1), Operation and Maintenance Expenses

The codes for Item 617, Type of Balance, are revised as follows:

code = 1, individual item
code = 2, total operation
code = 3, total maintenance
code = 4, total oper. and maint.
code = 5, sub-function total
code = 6, project total
code = 7, function total
code = 8, grand total

17. RA47: Schedule H(1)–2, Purchased Gas Costs—Part 6

Comments text for Item 762 is properly aligned.

18. RA49: Schedule H(2)–1, Reconciliation of Depreciable Plant

The correct positions for Items 800 and 801 are 81–92 and 93–112, respectively.

19. RA50: Statement H(3), Income Taxes

In the comments for Item 819, code = 20, delete the words "at rate specified in item 833".

In the comments column for Item 833, delete the words following "19".

20. RA51: Schedule H(3)–6, Accumulated Deferred Income Taxes

The character positions for Item 840 are revised to 52–63; Footnote ID is now in 64–67 and 68–255 are blank filled (tape only).

21. RA78, RA79 and RA80: Statement M, Parts 1–3

In Items 1311, 1331 and 1354 (Year Reported), "change from" is deleted from the comments for code=2.

22. RB05: Schedule N–4, Rate of Return and Cost of Capital

(Changes are the same as for RA16)

23. RB06: Schedule N–5, Operation and Maintenance

(Changes are the same as for RA40)

24. RB08: Schedule N–7, Income Taxes

(Changes are the same as for RA50)

25. Exhibit A: Magnetic Tape Procedures

The correct prefix for the file name is "RF", not "RA". The example at the end of Exhibit A is incorrect.

Appendix B—Corrections/Revisions to Tariff Filing Record Formats

The General Instruction for submitting filings to FERC is revised as indicated in Appendix A.

The following revisions correct errors in the final tariff filing record formats dated June 8, 1989:

1. Tariff sheet pagination guidelines

A new Exhibit C is added to the tariff sheet record formats and contains voluntary guidelines for numbering tariff sheets. These are staff guidelines only and do not constitute revisions to the regulations in § 154.33(d)(2). The guidelines follow this section.

The previous Exhibit C, Hard Copy Formats for Tariff Sheets, is now Exhibit D.

2. TF03: Tariff Sheet Header Record Number 1

Informal comments and the pagination guidelines for inserted tariff sheets (No. 6 on the guidelines), there is now a

possibility that "Sheet Number" may exceed six characters. Sheet Number will be increased to eight positions (char. pos. 5–12) and the subsequent position locations in TF03 are increased by 2.

3. TF04: Tariff Sheet Header Record Number 2

This record is revised to include two items which are needed for FERC processing of tariff sheets which supersede a range of tariff sheets. The new items indicate the first and last superseded sheet numbers. "Superseded Sheet Number" is revised to "Superseded Sheet ID. Refer to General Instruction 8 in the tariff record formats for an example of a tariff sheet superseding a range of sheets. In that example, the items in TF04 have the following values:

First Superseded Sheet No.: 10

Last Superseded Sheet No.: 39

Superseded Sheet ID: Sheet Nos. 10 through 39

The text of the tariff sheet will include a list of the specific sheets that are superseded.

Appendix C—Corrections/Revisions to Certificate Filing Record Formats

Introduction

After the release of the Certificate Formats on June 8, 1989, several typographical errors were brought to our attention. Staff also had several informal discussions with pipeline company personnel regarding anomalies in the formats, the instructions, and the exhibits. Revised pages issued with this notice reflect these discussions and specific indications of changes, and clarifications to the certificate formats detailed below. Finally, Staff has performed exhaustive tests on the print software being issued today with this notice. Several modifications to the instructions and notations on the formats have been made in this regard.

General Information

I. Purpose

The words "and Subpart H" are added after Subpart G.

III. What to Submit

The word "Selected" is added to the title, "Items not required on Electronic Media." This indicates that the Commission has the flexibility to capture other sections of the regulations under these subparts or other subparts of the regulations with respect to certificated activities on electronic media.

V. Where to Submit

"Room 3110" is added to the address of the Commission. Since this is also the address for hand deliveries, that address is deleted.

General Instructions

1(B): The first sentence in the second paragraph is modified to indicate that the Regulation Codes as found in Exhibit C do not have to be inserted into FILE3 (the write or composition file) in sequential order.

1(C): This paragraph and the table are modified to indicate a new maximum number of print specifications for FILE3 as follows:

Page orientation	Maximum line length (Char.)			Max. lines per page
	10 cpi	12 cpi	15 cpi	6 lpi
Vertical (Portrait)	70	84	105	54
Horizontal (Landscape)	100	120	150	42

These modifications of line length in characters per inch (cpi) will fix the margins for both portrait and landscape orientations. For portrait orientation (vertical), there will be a one inch (1") margin at the top, on the left (binding edge), and the bottom, and a one-half inch (½") margin on the right. For landscape orientation, there will be a one inch (1") margin at the top (binding edge) and a one-half inch (½") margin on the left, right, and bottom of the page.

13. Pipeline Facility/Segment Number:

The words, "within a project or projects," are deleted. This will clarify the intent that facility/segments in Exhibit K must be numbered in the following manner so as to coincide with the segment number in Schedule/Record CA/03, the Environmental Report (Part B—Environmental Factors). The following example has been added to this instruction:

For example, Exhibit K project numbers and facility/segment numbers must use the following convention:

Project Number 01; Facility/Segment Number 01, 02, 03, 04:

Project Number 02; Facility/Segment Number 05, 06, 07:

Project Number 03; Facility/Segment Number 08, 09, 10: and so on.

25. Joint Applications:

This instruction is completely revised to read as follows:

Each company in a joint application will file its own structured data (FILE1), accompanying footnotes (FILE2), and a driver file (FILE3) to produce the applicant's hard copy submission. Each company's Schedule/Record CA/01 must contain a footnote explaining, in detail, the joint nature of the application and must cross-reference the other joint applicants and their respective file names. Also, the submittal letter with the application should identify the joint applicants and file names to avoid confusion when submitting the proper filing fee for such an application.

Schedule/Records

CA/01: General Information

Item No. 3: The comment section is revised to read as follows: Year, Month, and Day the application is filed (yymmdd)

Item No. 10e:

The comment section is revised to include "See NOTE 1A" and a new NOTE 1A is added to Record CA/01:

Note 1A: For applications which contain new facilities and proposed abandonments, Item 10e should indicate a net amount of capacity. Indicate in a footnote what the gross amounts of capacity are for the new facilities and the abandoned capacity.

Character Positions: Starting with Item No. 10e, the character positions have been corrected.

CA/10: Exhibit K, Cost Factors & Total Costs

Character Positions: The character positions for the Footnote ID have been corrected to 196–199 and the Filler has been revised to positions 200–255.

Exhibits

Exhibit C: Certificate Applications: Filing Requirements

Regulation Code 121: Structured Data Records entry is corrected to "CA/09–CA/10".

Regulation Code 403: Regulation Section and Exhibit/Information to be reported column entries are corrected to "284.224, Certain Transportation, Sales, and Assignments by Local Distribution Companies."

Regulation Code 600 (New): This is a new code for SUBPART H, Section 284.244, Application Requirements for Interstate Pipelines.

Exhibit H: Hard Copy Formats for Certificate Applications

Printout of Customer/Shipper and Services, Schedule 1: The third line in the first note is corrected to indicate Items [11], [16], [17], and [18].

Printout of Exh. K—Summary of Project Estimates: The words "New" and "Abandonment" have been added to the "Total" line, respectively, for both reports.

Printout of Exh. K—Detail of Est. Facilities Costs: The note to this report has been modified to label pipe diameter and wall thickness. Also Item

113, code = 4 has been paired with Item 113, code = 3.

[FR Doc. 89-21084 Filed 9-7-89; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 81

[Docket Nos. 76N-0366 and 87N-0182]

Listing of Color Additives Subject to Certification; D&C Red No. 36

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is removing D&C Red No. 36 from the regulations (21 CFR 81.1(b) and 81.27(d)) that provide for the provisional listing of color additives. This removal corrects an inadvertent error that continued to include D&C Red No. 36 in these regulations after the confirmed effective date for the permanent listing of D&C Red No. 36 for general use in drugs and cosmetics, except for use in the area of the eye.

EFFECTIVE DATE: September 8, 1989.

FOR FURTHER INFORMATION CONTACT: Gerad L. McCowin, Center for Food and Safety and Applied Nutrition (HFF-330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5676.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 2, 1988 (53 FR 29024), FDA published a final rule permanently listing D&C Red No. 36 for general use in drugs and cosmetics, except for use in the area of the eye. Among other things, the rule amended the tables of 21 CFR 81.1(b) and 81.27(d) by removing the entries for "D&C Red No. 36" from these regulations that provisionally listed the color additive. Provisional listing of D&C Red No. 36 was no longer necessary once the agency issued final regulations that permanently listed the color additive for the same uses for which the color additive was provisionally listed. The final rule was to be effective on September 2, 1988.

On October 28, 1988 (53 FR 43682), FDA published a final rule confirming the effective date of September 2, 1988, for the permanent listing of D&C Red No. 36; however, the agency stayed until December 27, 1988, one provision in the permanent listing regulations to which an objection had been made. Because of this stay, the agency also postponed the closing date of the provisional listing for D&C Red No. 36 until December 27, 1988. This postponement permitted the continued use of the color additive pending resolution of the one provision in the permanent listing to which an objection has been filed.

On December 27, 1988 (53 FR 52129), FDA terminated the stay of the one provision noted in the October 28, 1988, final rule (53 FR 43682) and amended the regulation for the permanent listing of D&C Red No. 36 to modify a limitation on use in ingested drugs. The effective date of the amended final rule was January 27, 1989, which provided time for interested persons to submit objections to the amendment. In the same issue of the **Federal Register**, FDA published a final rule (53 FR 52130) that postponed the closing date for the provisional listing of D&C Red No. 36 until February 27, 1989, so that FDA could respond to any objection received regarding the amended final rule permanently listing D&C Red No. 36.

On March 6, 1989 (54 FR 9200), the agency published a final rule announcing that no objections to the amended final rule had been submitted and confirming the effective date of January 27, 1989, for the amended final rule permanently listing D&C Red No. 36 for general use in drugs and cosmetics, except in the area of the eye. Inadvertently, FDA neglected to remove the entries from the regulations (tables in 21 CFR 81.1(b) and 81.27(d)) that provided for the provisional listing of D&C Red No. 36 until February 27, 1989. Although the passage of this date terminated the provisional listing of D&C Red No. 36, the agency's policy has been to remove references to color additives in the provisionally listed regulations when the color additives are either permanently listed or when petitions for such permanent listing are denied.

Therefore, FDA concludes that 21 CFR 81.1(b) and 81.27(d) should be amended to remove the entry for D&C Red No. 36 from each table. This action does not affect the permanent listing of this color additive for general drug and cosmetic use.

FDA further concludes that it is unnecessary to provide an opportunity for the filing of objections to this action because this rule is editorial in nature, and because the transitional provisions of the color additve amendments provide for the issuance of a final rule without providing an opportunity for objection.

List of Subjects in 21 CFR Part 81

Color additives, Cosmetics, Drugs.

Therefore, under the Transitional Provisions of the Color Additive Amendments of 1960 to the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR Part 81 is amended as follows:

PART 81—GENERAL SPECIFICATIONS AND GENERAL RESTRICTIONS FOR PROVISIONAL COLOR ADDITIVES FOR USE IN FOODS, DRUGS, AND COSMETICS

1. The authority citation for 21 CFR Part 81 continues to read as follows:

Authority: Secs. 701, 706, 52 Stat. 1055-1056 as amended, 74 Stat. 399-407 as amended (21 U.S.C. 371, 376); Title II, Pub. L. 86-618; sec. 203, 74 Stat. 404-407 (21 U.S.C. 376, note); 21 CFR 5.10.

§ 81.1 [Amended]

2. Section 81.1 *Provisional lists of color additives* is amended in the table of paragraph (b) by removing the entry for "D&C Red No. 36".

§ 81.27 [Amended]

3. Section 81.27 *Conditions of provisional listing* is amended in the table in the introductory text of paragraph (d) by removing the entry for "D&C Red No. 36".

Dated: August 30, 1989.

Ronald G. Chesemore,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-21068 Filed 9-7-89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF STATE

22 CFR Part 136

[Public Notice 1128; 108,889]

Personal Property Disposition at Posts Abroad

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: This action promulgates the final rule setting forth regulations governing disposition of personal property abroad by certain United States Government employees and contractors, and members of their families. As required by section 303(a) of the State Department's Basic Authorities Act (22 U.S.C. 4343(a)), the purpose of these regulations is to ensure that employees and members of their families do not personally profit from transactions with persons not entitled to exemptions from import restrictions, duties, or taxes.

EFFECTIVE DATE: August 21, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. James Marable, Office of the Comptroller, Department of State, telephone 703-875-8918.

SUPPLEMENTARY INFORMATION: On June 20, 1988, the State Department published interim regulations (53 FR 23188) on Personal Property Disposition at Posts Abroad. The comment period ended on August 20, 1988. Comments were received from Foreign Service posts abroad, USG employees who serve abroad, an employee organization (American Foreign Service Association or "AFSA"), and several USG agencies whose employees are affected. Most of the comments received were critical of parts of the legislation, asked for clarification, or concerned tax implications. Only one minor change has been made to the interim regulations based on comments received. Comments are summarized below.

Section 136.4(g) of the interim regulations stipulated that for the purposes of computing profits on property dispositions, proceeds received and costs incurred in a foreign currency shall be valued in US dollars at the time of receipt or payment. Use of these procedures was questioned by commenters. The section has been amended to provide that such conversion is only required when the purchase and sale occur in two different currencies. Profit on transactions involving goods both purchased and sold in the local currency will be calculated in the local currency rather than converting each part of the transaction to dollars before computing profit, as is required in all other transactions.

A number of comments were received which criticized the interim rule and the legislation as being unduly restrictive, or inequitable for USG employees. No regulatory relief could be provided along those lines, however, since the interim rule tracked the statute closely. The regulations already provide flexibility for chiefs of mission where the statute allows it.

For instance, it was asked if the rule could be changed to include interest or extraordinary maintenance expense in the calculation of the base price of an item. This could not be accomplished since base price (basis) and profit are defined in the statute. Similarly, the regulations cannot provide for averaging losses and profits on vehicle sales, as requested, since the law contains no such provision. Nor can they accommodate a request from AFSA and others to permit employees to retain any proceeds from the sale of personal property up to the fair replacement cost of the item sold.

The statute excludes from the definition of profit amounts contributed as charitable contributions. Commenters complained that since the IRS considers such receipts as realizable income, employees will be subject to taxes on all or part of money given to charity which they were required by the statute not to keep. The statute did not address the tax liabilities of employees, however, and does not allow retention of any profits, even to pay taxes on a capital gain, although this was suggested by several organizations and individuals.

E.O. 12991, Federal Regulations

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

Regulatory Flexibility Act

These rules will not have a significant impact on a substantial number of small entities because they will affect only Federal employees and agencies.

Paperwork Reduction Act

These regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

List of Subjects in 22 CFR Part 136

Government employees, Foreign relations.

Accordingly, new part 136 is added to title 22, Code of Federal Regulations, as follows:

PART 136—PERSONAL PROPERTY DISPOSITION AT POSTS ABROAD

Sec.

136.1 Purpose.
136.2 Authority.
136.3 Definitions.
136.4 Restrictions on dispositions of personal property.
136.5 Chief of mission policies, rules or procedures.
136.6 Contractors.

Authority: 22 U.S.C. 4341.

§ 136.1 Purpose.

The primary purpose of these regulations is to ensure that employees and members of their families do not profit personally from sales or other transactions with persons who are not themselves entitled to exemption from import restrictions, duties, or taxes.

§ 136.2 Authority.

Section 303(a) of the State Department Basic Authorities Act of 1956 authorizes the Secretary of State to issue regulations to carry out the purposes of Title III of that Act.

§ 136.3 Definitions.

(a) *Basis* of an item shall include the initial price paid (or retail value at the time of acquisition if acquired by gift), inland and overseas transportation costs (if not reimbursed by the United States Government), shipping insurance, taxes, customs fees, duties or other charges, and capital improvements, but shall not include insurance on an item while in use or storage, maintenance, repair or related costs, or financing charges.

(b) *Charitable contribution* means a contribution or gift as defined in section 170(c) of the Internal Revenue Code, or other similar contribution or gift to a bona fide charitable foreign entity as determined pursuant to policies, rules or procedures issued by the chief of mission pursuant to § 136.5(b).

(c) *Chief of mission* has the meaning given such term by section 102(e) of the Foreign Service Act of 1980 (22 U.S.C. 2902(3).

(d) *Contractor* means: (1) An individual employed by personal services contract pursuant to section 2(c) of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2669(c)), pursuant to section 636(a)(3) of the Foreign Assistance Act of 1961 (22 U.S.C. 2396(a)(3)), or pursuant to any other similar authority including, in the case of an organization performing services under such authority, an individual involved in the performance of such service; and (2) any other individual or firm that enjoys exemptions from import limitations, customs duties or taxes on personal property from a foreign country in connection with performance of a contract for goods or services when such contract is with the United States Government or an agency or instrumentality thereof or when such contract is directly financed by grant assistance from the United States Government or an agency or instrumentality thereof and the individual or firm is a party to the contract, a subcontractor, or an employee of a contractor or subcontractor.

(e) *Employee* means an individual who is under the jurisdiction of a chief of mission to a foreign country as provided under section 207 of the Foreign Service Act of 1980. (22 U.S.C. 3927) and who is—

(1) An employee as defined by section 2105 of title 5, United States Code;

(2) An officer or employee of the United States Postal Service or of the Postal Rate Commission;

(3) A member of a uniformed service who is not under the command of an area military commander, or

(4) An expert or consultant as authorized pursuant to section 3109 of title 5, United States Code, with the United States or any agency, department, or establishment thereof; but is not a national or permanent resident of the foreign country in which employed.

(f) *Family member* means any member of the family of an employee who is entitled to exemption from import limitation, customs duties, or taxes which would otherwise apply by virtue of his or her status as a dependent or member of the household of the employee.

(g) *Foreign country* means any country or territory, excluding the United States, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, American Samoa, Guam, the Virgin Islands, and other territories and possessions of the United States.

(h) Except as otherwise provided by a chief of mission in policies, rules or procedures issued pursuant to § 136.5(b), an item shall be deemed of "minimal value" if its acquisition cost in U.S. dollars (or retail value if received as a gift) is within the limit determined by the Administrator of General Services for "minimal value" of foreign gifts under 5 U.S.C. 7342, currently $180. For purposes of determining "minimal value," all constitutent parts of components of an audio or visual system, automobile, boat, computer system, or other integrated machine, system or item of equipment must be valued as a single item even if acquired separately, except that spare or superseded parts (e.g., an old set of tires that has been replaced on vehicle) may be valued as separate items.

(i) *Personal property* means any item of personal property, including automobiles, computers, boats, audio and video equipment and any other items acquired for personal use, except that items properly determined to be of "minimal value" shall not be subject to limitations on disposition except for purposes of § 136.4(d) or as prescribed in policies, rules or procedures issued by a chief of mission.

(j) *Profit* means any proceeds (including cash and other valuable consideration but not including amounts of such proceeds given as charitable contributions) for the sale, disposition or assignment of personal property in excess of the basis for such property.

§ 136.4 Restrictions on dispositions of personal property.

(a) An employee or family member shall not sell, assign or otherwise dispose of personal property within a foreign country except with the prior written approval of the chief of mission or designee, except where the category of dispositions has been authorized to be undertaken without prior written approval in policies, rules or procedures issued by the chief of mission (cf. § 136.5(b)(1)).

(b) An employee or family member shall not retain any profit from the sale, assignment or other disposition within a foreign country of personal property that was imported into or purchased in that foreign country and that, by virtue of the official status of the employee, was exempt from import restrictions, customs duties, or taxes which would otherwise apply, when such sale, assignment or other disposition is made to persons not entitled to exemptions from import restrictions, duties, or taxes. An employee or family member shall not profit from an indirect disposition to persons not entitled to such exemptions, such as sale through a third country diplomat acting as a middleman, where the employee or family member knows or should know that the property is being acquired by the third party for resale to persons not entitled to exemptions, except that this restriction shall not apply to sales of personal property to official agencies of the foreign country in accordance with the laws or regulations of that country.

(c) Profits obtained from dispositions of personal property by an employee or family member that cannot be retained under paragraph (b) of this section including any interest earned by the employee or family member on such profits, shall be disposed of within 90 days of receipt by contribution or gift as defined in section 170(c) of the Internal Revenue Code or by other similar contribution or gift to a bona fide charitable foreign entity as designated by the chief of mission pursuant to § 136.5(b)(11) of this part.

(d) Except as authorized in advance by the chief of mission on a case-by-case basis, no employee or family member shall sell, assign or otherwise dispose of personal property within a foreign country that was not acquired for bona fide personal use. There shall be a presumption that property that is new, unused or held by the employer or family member in unusual or commercial quantities was not acquired for bona fide personal use. For purposes of this subsection, there is no exemption for items of minimal value § 136.3(h)).

(e) No employee or family member shall import, sell, assign or otherwise dispose of personal property within a foreign country in a manner that violates the law or regulations of that country or governing international law.

(f) Violations of the restrictions or requirements of paragraphs (a) through (e) of this section shall be grounds for disciplinary actions against the employee in accordance with the employing agency's procedures and regulations. Employees shall be responsible for ensuring compliance with these regulations by family members.

(g) For purposes of computing profits on personal property dispositions subject to these regulations, where acquisition and disposition of the property were transacted in different currencies, proceeds received and costs incurred in a foreign currency shall be valued in United States dollars at the time of receipt or payment at the rate of exchange that was in effect for reverse accommodation exchanges at U.S. missions at the time of such receipt or payment. Where property was acquired and sold in the same currency, no conversion is required.

§ 136.5 Chief of mission policies, rules or procedures.

(a) Each chief of mission shall establish a procedure under which employees may request approval for the sale of personal property and for conversion of proceeds of such sale from local currency into U.S. dollars, if applicable. This procedure may be modified to meet local conditions, but must produce a documentary record to be held by the post of the following:

(1) The employee's signed request for permission to sell personal property, and, if applicable, to convert local currency proceeds to U.S. dollars;

(2) A description of each item of personal property having more than minimal value, and the cost basis and actual sales price for each item;

(3) All profits received and whether profit is retainable;

(4) Donation to charities or other authorized recipients of non-retainable profits;

(5) Approvals to sell and, if applicable, to exchange proceeds, with any restrictions or refusals of the employee's request noted, signed by the chief of mission or designee; and

(6) For privately owned vehicle transactions, data on purchaser and statement that customs requirements have been met and title has been transferred or arranged with an agent identified on document.

(b) In order to ensure that due account is taken of local conditions, including applicable laws, markets, exchange rate factors, and accommodation exchange

facilities, the chief of mission to each foreign country is authorized to establish policies, rules, and procedures governing the disposition of personal property by employees and family members in that country under the chief of mission's jurisdiction. Policies, rules and procedures issued by the chief of mission shall be consistent with the general restrictions set forth in § 136.4 and may include at least the following:

(1) Identification of categories of dispositions (e.g., sales of minimal value items) that may be made without prior written approval;

(2) Identification of categories of individuals or entities to whom sales of personal property can be made without restrictions on profits (e.g., other employees, third country diplomats), individuals or entities to whom sales can be made but profits not retained, and individuals or entities to whom sales may not be made;

(3) Requirements to report the total estimated and actual proceeds for all minimal value items, even if such items are otherwise exempted from limitations on profits of sale;

(4) Categories of items of personal property excluded from restrictions on disposition because generally exempt from taxation and import duties under local law;

(5) More restrictive definition of "minimal value" (see § 136.3(h) of this part);

(6) Limitations on manner of disposition (e.g., restrictions on advertising or yard sales);

(7) Limitations on total proceeds that may be generated by dispositions of personal property, including limitations on proceeds from disposition of "minimal value" items;

(8) Limitations on total profits that may be generated by dispositions of personal property, including limitations on profits from dispositions of "minimal value" items;

(9) Limitations on total proceeds from dispositions of personal property that may be converted into dollars by reverse accommodation exchange;

(10) Limitations on the timing and number of reverse accommodation exchanges permitted for proceeds of dispositions of personal property (e.g., only in last six months of tour and no more than two exchange conversions);

(11) Designation of bona fide charitable foreign entities to whom an employee or family member may donate profits that cannot be retained under these regulations.

(12) Designation of post officials authorized to approve on behalf of chief of mission employee requests for permission to sell personal property and requests to convert local currency proceeds of sale to U.S. dollars by reverse accommodation exchange.

(c) All policies, rules, and procedures that are issued by the chief of mission pursuant to paragraphs (a) and (b) of this section shall be announced by notice circulated to all affected mission employees and copies of all such policies, rules and procedures shall be made readily accessible to all affected employees and family members.

(d) Violations of restrictions or requirements established by a chief of mission in policies, rules, or procedures issued by a chief of mission pursuant to paragraphs (a) and (b) of this section shall be grounds for disciplinary actions against the employee in accordance with the employing agency's procedures and regulations. Employees shall ensure compliance by family members with policies, rules or procedures issued by the chief of mission.

§ 136.6 Contractors.

To the extent that contractors enjoy importation or tax privileges in a foreign country because of their contractual relationship to the United States Government, contracting agencies shall include provisions in their contracts that require the contractors to observe the requirements of these regulations and all policies, rules, and procedures issued by the chief of mission in that foreign country.

Lawrence S. Eagleburger,

Acting Secretary of State.

[FR Doc. 89-21157 Filed 9-7-89; 8:45 am]

BILLING CODE 4710-15-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8260]

RIN 1545-AJ92

Income Tax; Limitation on Taxpayer's Basis or Inventory Cost in Property Imported From Related Persons

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final Income Tax Regulations relating to the limitation on taxpayer's basis or inventory cost in property imported from a related person. This limitation is contained in section 1059A of the Internal Revenue Code of 1986 and was enacted by the Tax Reform Act of 1986. These regulations provide the public with the guidance needed to comply with section 1059A.

DATES: The regulations are effective with respect to imported property if the entry documentation required to be filed to obtain the release of the property from the custody of the United States Customs Service was filed after March 18, 1986, except that the regulations will not apply to property imported into the United States in an open transaction as described in § 1.1059A(c)(9), provided the entry documentation is filed prior to September 3, 1987.

FOR FURTHER INFORMATION CONTACT: W. Edward Williams of the Office of the Associate Chief Counsel (International) within the Office of Chief Counsel, Internal Revenue Service, Room 3319, 950 L'Enfant Plaza, Washington, DC 20024, Attention: CC:INTL:1 (INTL-960-86). Telephone 202-287-4851 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under section 1059A of the Internal Revenue Code of 1986, as added by section 1248 of the Tax Reform Act of 1986. These regulations are issued under the authority contained in section 7805 of the Internal Revenue Code of 1986 (68A Stat. 917, 26 U.S.C. 7805).

On September 3, 1987, the **Federal Register** published proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 1059A of the Internal Revenue Code of 1986 (52 FR 33427) [INTL-960-86, 1987-43 I.R.B. 36].

Section 1059A provides that a U.S. taxpayer that imports property into the U.S. in a transaction (directly or indirectly) from a person or persons related to the taxpayer, within the meaning of section 482 of the Code, may not claim, for purposes of computing the basis or inventory cost of the property, a greater cost than the amount of the cost taken into account for customs valuation purposes. However, because the rules for determining the value of imported property for customs purposes differ in some respects from the rules for determining cost basis or inventory cost for income tax purposes, certain adjustments to the customs value are required to determine the limitation to cost basis or inventory cost for income tax purposes. Congress was aware of the need for these adjustments, and the legislative history of section 1059A contemplates that the Internal Revenue Service will provide rules for making

necessary adjustments to the customs value. These regulations provide rules for adjusting the value utilized for customs value so that the customs value, as adjusted, will be the limitation under section 1059A for purposes of computing the basis or inventory cost of property imported by a U.S. taxpayer from a related person. These regulations have no applicability to the customs regulations issued under Title 19 of the Code of Federal Regulations and have no relevance in interpreting those regulations.

Numerous written comments were received with respect to the proposed regulations. The significant points raised by the comments and the changes made to the proposed amendments are discussed in the remainder of the preamble. After consideration of the comments regarding the proposed amendments, the amendments are adopted as modified by this Treasury decision.

Discussion of Major Comments and Revised Amendments

Section 1.1059A-1

In response to comments, paragraph (c)(6) has been clarified to state that the section 1059A limitation may be applied by the importer at any point in time after importation. Thus, a taxpayer is not required to compute an inventory amount which includes all capital expenses under section 471 prior to the application of section 1059A. The section 1059A limitation may be applied at any point after importation as long as costs that are taken into account for income tax valuation are also included in the comparative customs valuation.

In addition, paragraph (c)(1) has been revised to state that property subject only to the harbor maintenance tax imposed by 26 U.S.C. 4461 and property subject to both the user fee under 19 U.S.C. 58(c) and the harbor maintenance tax is not subject to the section 1059A limitation.

A suggestion was made that paragraph (c)(2) be revised to permit an adjustment to the section 1059A limitation for the value of assists when the importer does not allocate the value of assists to individual items but rather reports the total value of the assists for customs purposes on a periodic basis and includes the total value of the assists in the dutiable value of one item. The Internal Revenue Service was advised by the Customs Service that the periodic reporting of the value of assists is permitted under the circumstances described in 19 CFR 152.103(e). Therefore, paragraph (c)(2) has been revised to permit adjustments to customs values where the value of assists has been reported on a periodic basis in accordance with 19 CFR 152.103(e).

Paragraph (c)(9) has been revised to eliminate the requirement that a taxpayer may average customs values only in cases involving open transactions in which there has been a good faith overvaluation of one article and a good faith undervaluation of a second article. We were advised by the Customs Service that it does not recognize the concept of "good faith under- and overvaluation of merchandise" and that in cases where the transaction value depends on subsequent resale price, for example, an alternative or constructive method of valuation will be used. A corresponding revision was made in the example in paragraph (c)(9).

Special Analyses

It has been determined that these regulations are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

It has also been determined that these regulations are not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis is therefore not required.

Drafting Information

The principal author of these final regulations is W. Edward Williams of the Office of Associate Chief Counsel (International), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and the Treasury Department participated in developing these regulations, both on matters of substance and style.

List of Subjects in 26 CFR 1.1001-1 Through 1.1102-3

Income taxes, Gain and loss, Basis, Nontaxable exchanges.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—[AMENDED]

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

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

Par. 2. The following new § 1.1059A-1 is added to read as follows:

§ 1.1059A-1 Limitation on taxpayer's basis or inventory cost in property imported from related persons.

(a) *General rule.* In the case of property imported into the United States in a transaction (directly or indirectly) by a controlled taxpayer from another member of a controlled group of taxpayers, except for the adjustments permitted by paragraph (c) (2) of this section, the amount of any costs taken into account in computing the basis or inventory cost of the property by the purchasing U.S. taxpayer and which costs are also taken into account in computing the valuation of the property for customs purposes may not, for purposes of the basis or inventory cost, be greater than the amount of the costs used in computing the customs value. For purposes of this section, the terms "controlled taxpayer" and "group of controlled taxpayers" shall have the meaning set forth in § 1.482-1(a).

(b) *Definitions*—(1) *Import.* For purposes of section 1059A and this section only, the term "import" means the filing of the entry documentation required by the U.S. Customs Service to secure the release of imported merchandise from custody of the U.S. Customs Service.

(2) *Indirectly.* For purposes of this section, "indirectly" refers to a transaction between a controlled taxpayer and another member of the controlled group whereby property is imported through a person acting as an agent of, or otherwise on behalf of, either or both related persons, or as a middleman or conduit for transfer of the property between a controlled taxpayer and another member of the controlled group. In the case of the importation of property indirectly, an adjustment shall be permitted under paragraph (c)(2) of this section for a commission or markup paid to the person acting as agent, middleman, or conduit, only to the extent that the commission or markup: is otherwise properly included in cost basis or inventory cost; was actually incurred by the taxpayer and not remitted, directly or indirectly, to the taxpayer or related party; and there is a substantial business reason for the use of a middleman, agent, or conduit.

(c) *Customs value*—(1) *Definition.* For purposes of this section only, the term "customs value" means the value required to be taken into account for purposes of determining the amount of any customs duties or any other duties which may be imposed on the importation of any property. Where an item or a portion of an item is not subject to any customs duty or is subject to a free rate of duty, such item or

portion of such item shall not be subject to the provisions of section 1059A or this section. Thus, for example, the portion of an item that is an American good returned and not subject to duty (items 806.20 and 806.30, Tariff Schedules of the United States, 19 U.S.C. 1202); imports on which no duty is imposed that are valued by customs for statistical purposes only; and items subject to a zero rate of duty (19 U.S.C. 1202, General Headnote 3) are not subject to section 1059A or this section. Also, items subject only to the user fee under 19 U.S.C. 58(c), or the harbor maintenance tax imposed by 26 U.S.C. 4461, or only to both, are not subject to section 1059A or this section. This section imposes no limitation on a claimed basis or inventory cost in property which is less than the value used to compute the customs duty with respect to the same property. Section 1059A and this section have no application to imported property not subject to any customs duty based on value, including property subject only to a per item duty or a duty based on volume, because there is no customs value, within the meaning of this paragraph, with respect to such property.

(2) *Adjustments to customs value.* To the extent not otherwise included in customs value, a taxpayer, for purposes of determining the limitation on claimed basis or inventory cost of property under this section, may increase the customs value of imported property by the amounts incurred by it and properly included in inventory cost for—

(i) Freight charges,

(ii) Insurance charges,

(iii) The construction, erection, assembly, or technical assistance provided with respect to, the property after its importation into the United States, and

(iv) Any other amounts which are not taken into account in determining the customs value, which are not properly includible in customs value, and which are appropriately included in the cost basis or inventory cost for income tax purposes. See § 1.471–11 and section 263A.

Appropriate adjustments may also be made to customs values when the taxpayer has not allocated the value of assists to individual articles but rather has reported the value of assists on a periodic basis in accordance with 19 CFR 152.103(e). When 19 CFR 152.103(e) has been utilized for customs purposes, the taxpayer may adjust his customs values by allocating the value of the assists to all imported articles to which the assists relate. To the extent that an amount attributable to an adjustment permitted by this section is paid by a controlled taxpayer to another member of the group of controlled taxpayers, an adjustment is permitted under this section only to the extent that the amount incurred represents an arm's length charge within the meaning of § 1.482–1(d)(3).

(3) *Offsets to adjustments.* To the extent that a customs value is adjusted under paragraph (c)(2) of this section for purposes of calculating the limitation on claimed cost basis or inventory cost under this section, the amount of the adjustments must be offset (reduced) by amounts that properly reduce the cost basis of inventory and that are not taken into account in determining customs value, such as rebates and other reductions in the price actually incurred, effected between the purchaser and related seller after the date of importation of the property.

(4) *Application of section 1059A to property having dutiable and nondutiable portions.* When an item of imported property is subject to a duty upon the full value of the imported article, less the cost or value of American goods returned, and the taxpayer claims a basis or inventory cost greater than the customs value reported for the item, the claimed tax basis or inventory cost in the dutiable portion of the item is limited under section 1059A and this section to the customs value of the dutiable portion under paragraph (c)(1). The claimed tax basis or inventory cost in the nondutiable portion of the item is determined by multiplying the customs value of the nondutiable portion by a fraction the numerator of which is the amount by which the claimed basis or inventory cost of the item exceeds the customs value of the item and the denominator of which is the customs value of the item and adding this amount to the customs value of the nondutiable portion of the item. The claimed tax basis or inventory cost in the dutiable portion is determined by multiplying the customs value of the dutiable portion by a fraction the numerator of which is the amount by which the claimed basis or inventory cost of the item exceeds the customs value of the item and the denominator of which is the customs value of the item and adding this amount to the customs value of the dutiable portion of the item. However, the taxpayer may not claim a tax basis or inventory cost in the dutiable portion greater than the customs value of this portion of the item.

(5) *Allocation of adjustments to property having dutiable and nondutiable portions.* When an item of imported property is subject to a duty upon the full value of the imported article, less the cost or value of American goods returned, and the taxpayer establishes that the customs value may be increased by adjustments permitted under paragraph (c)(2) of this section for purposes of the section 1059A limitation, the taxpayer's basis or inventory cost of the dutiable portion of the item is determined by multiplying the customs value of the dutiable portion times the percentage that the adjustments represent of the total customs value of the item and adding this amount to the customs value of the dutiable portion of the item. The taxpayer's basis or inventory cost of the nondutiable portion of the item is determined in the same manner. The amount so determined for the dutiable portion of the item is the section 1059A limitation for this portion of the item.

(6) *Alternative method of demonstrating compliance.* In lieu of calculating all adjustments and offsets to adjustments to customs value for an item of property pursuant to paragraph (c) (2) and (3) of this section, a taxpayer may demonstrate compliance with this section and section 1059A by comparing costs taken into account in computing basis or inventory costs of the property and the costs taken into account in computing customs value at any time after importation, provided that in any such comparison the same costs are included both in basis or inventory costs and in customs value. If, on the basis of such comparison, the basis or inventory cost is equal to or less than the customs value, the taxpayer shall be deemed to have met the requirements of this section and section 1059A.

(7) *Relationship of section 1059A to section 482.* Neither this section nor section 1059A limits in any way the authority of the Commissioner to increase or decrease the claimed basis or inventory cost under section 482 or any other appropriate provision of law. Neither does this section or section 1059A permit a taxpayer to adjust upward its cost basis or inventory cost for property appropriately determined under section 482 because such basis or inventory cost is less than the customs value with respect to such property.

(8) *Illustrations.* The application of this section may be illustrated by the following examples:

Example (1). Corporation X, a United States taxpayer, and Y Corporation are members of a group of controlled corporations. X pays $2,000 to Y for merchandise imported into the United States and an additional $150 for ocean freight and insurance. The customs value of the shipment

is determined to be the amount actually paid by X ($2,000) and does not include the charges for ocean freight and insurance. For purposes of computing the limitation on its inventory cost for the merchandise under section 1059A and this section, X is permitted, under paragraph (c)(2) of this section, to increase the customs value ($2,000) by amounts it paid for ocean freight and insurance charges ($150). Thus, the inventory cost claimed by X in the merchandise may not exceed $2,150.

Example (2). Assume the same facts as in Example (1) except that, subsequent to the date of importation of the merchandise, Y grants to X a rebate of $200 of the purchase price. At the time of sale, the rebate was contingent upon the volume of merchandise ultimately bought by X from Y. The value of the merchandise, for customs purposes, is not decreased by the rebate paid to X by Y. Therefore, the customs value, for customs purposes, of the merchandise remains the same ($2,000). For purposes of computing its inventory cost, X was permitted, under paragraph (c)(2) of this section, to increase the customs value for purposes of section 1059A of $2,000 by the amounts it paid for ocean freight and insurance charges ($150). However, under paragraph (c)(3) of this section, X is required to reduce the amount of the customs value by the lesser of the amount of the rebate or the amount of any positive adjustments to the original customs value. The inventory price claimed by X may not exceed $2,000 ($2,000 customs value, plus $150 transportation adjustment, less $150 offsetting rebate adjustment). While X's limitation under section 1059A is $2,000, X may not claim a basis or inventory cost in the merchandise in excess of $1,950. *See* I.R.C. section 1012; and section 1.471–2.

Example (3). Corporation X, a United States taxpayer, and Y Corporation are members of a group of controlled corporations. X pays $10,000 to Y for merchandise imported into the United States. The merchandise is composed, in part, of American goods returned. The customs value of the merchandise, on which a customs duty is imposed, is determined to be $8,000 ($10,000, the amount declared by X, less $2,000, the value of the American goods returned). For income tax purposes, X claims a cost basis in the merchandise of $11,000. None of the adjustments permitted by paragraph (c)(2) of this section is applicable. The portion of the merchandise constituting American goods returned represented 20 percent of the total customs value of the merchandise. Since the cost basis claimed by X for income tax purposes represents a 10 percent increase over the customs valuation (before reduction for American goods returned), the claimed tax basis in the dutiable content is considered to be $8,800 and in the portion constituting American goods returned is $2,200. Since a customs duty was imposed only on the dutiable content of the merchandise, the limitation in section 1059A and this section is applicable only to the claimed tax basis in this portion of the merchandise. Accordingly, under paragraph (a) of this section, X is limited to a cost basis of $10,200 in the merchandise. This amount represents a cost basis of $8,000 in the dutiable content and of $2,200 in the portion of the merchandise constituting American goods returned.

Example (4). Assume the same facts as in Example (3) except that X establishes that it is entitled to increase its customs value by $1,000 in adjustments permitted by paragraph (c)(2) of this section. Since the adjustments to customs value that X is entitled to under paragraph (c)(2) of this section are 10 percent of the customs value, for purposes of determining the limitation under section 1059A and this section, both the dutiable content and the portion of the merchandise constituting American goods returned shall be increased to an amount 10 percent greater than the respective values determined for customs purposes, or $8,800 for the dutiable content and $2,200 for the portion of the merchandise constituting American goods returned. Accordingly, under paragraph (a) of this section, X is limited to a cost basis of $11,000 in the merchandise.

Example (5). Corporation X, a United States taxpayer, and Y Corporation are members of a group of controlled corporations. X pays $10,000 to Y for merchandise imported into the United States. The customs value of the merchandise, on which a customs duty is imposed, is determined to be $10,000. Subsequent to the date of importation of the merchandise, Y grants to X a rebate of $1,000 of the purchase price. The value of the merchandise, for customs purposes, is not decreased by the rebate paid to X by Y. Notwithstanding the fact that X correctly reported and paid customs duty on a value of $10,000 and that its limitation on basis or inventory cost under this section is $10,000, X may not claim a basis or inventory cost in the merchandise in excess of $9,000. *See* I.R.C. section 1012; and section 1.471–2.

Example (6). Corporation X, a United States taxpayer, and Y Corporation are members of a group of controlled corporations. X pays $5,000 to Y for merchandise imported into the United States. The merchandise is not subject to a customs duty or is subject to a free rate of duty and is valued by customs solely for statistical purposes. Accordingly, pursuant to paragraph (c)(1) of this section, the merchandise is not subject to the provisions of section 1059A or this section.

Example (7). Assume the same facts as in Example 6, except that the merchandise is subject to a customs duty based on value and that the customs value (taking into account no costs other than the value of the goods) is determined to be $5,000. Assume further that the $5,000 payment is only for the value of the goods, no other cost is reflected in that payment, and only the $5,000 payment to Y is reflected in X's inventory cost or basis prior to inclusion of any other amounts properly included in inventory or cost basis. Pursuant to paragraph (c)(6) of this section, X, by demonstrating these facts is deemed to meet the requirements of this section and section 1059A.

Example (8). Corporation X, a United States taxpayer, and Y Corporation are members of a group of controlled corporations. X pays $9 to Y for merchandise imported into the United States and an additional $1 for ocean freight. The customs value of the article does not include the $1 paid for ocean freight. Furthermore, for customs purposes the value is calculated pursuant to computed value and is determined to be $8. For purposes of computing the limitation on its inventory cost for the article under section 1059A and this section, X is permitted, under paragraph (c)(2) of this section, to increase the customs value ($8) by the amount it paid for ocean freight ($1). Thus, the inventory cost claimed by X in the article may not exceed $9.

(9) *Averaged customs values.* In cases of transactions in which (i) an appropriate transfer price is properly determined for tax purposes by reference to events occurring after importation, (ii) the value for customs purposes of one article is higher and of a second article is lower than the actual transaction values, (iii) the relevant articles have been appraised on the basis of a value estimated at the time of importation in accordance with customs regulations, and (iv) the entries have been liquidated upon importation, the section 1059A limitation on the undervalued article may be increased up to the amount of actual transaction value by the amount of the duty overpaid on the overvalued article times a fraction the numerator of which is "1" and the denominator of which is the rate of duty on the undervalued article. This paragraph (c)(9) applies exclusively to cases of property imported in transactions that are open for tax purposes in which the actual transaction value cannot be determined and the entry has been liquidated for customs purposes on the basis of a value estimated at the time of importation in accordance with customs regulations; in these cases, the property is appropriately valued for tax purposes by reference to a formula, in existence at the time of importation, based on subsequent events and valued for customs purposes by a different formula. This paragraph (c)(9) does not apply where customs value is correctly determined for purposes of liquidating the entry and where the customs value is subsequently adjusted for tax purposes, for example by a rebate, under paragraph (c)(2) of this section. The application of paragraph (c)(9) may be illustrated by the following example:

Example. Corporation X, a United States taxpayer, and Y Corporation are members of a group of controlled corporations. X purchases Articles A and B from Y on consignment and imports the Articles into the United States. The purchase price paid by X will be determined as a percentage of the sale prices that X realizes. Rather than deferring liquidation, customs liquidates the entry on the basis of estimated values and

the customs duties are paid by X. Ultimately, it is determined that Article A was undervalued and Article B was overvalued by X for customs purposes. The section 1059A limitation for Article A is computed as follows:

	Article A	Article B
Finally-determined customs value	$9	$9
Transaction value	$10	$5
Duty rate	10%	5%
Customs duty paid	$.90	$.45
Duty overpaid or (underpaid)	($.10)	$.20

The section 1059A limitation on Article A may be increased by the amount of the duty over-paid on Article B, $.20, times 1/.10, up to the amount of the transaction value. Therefore, the section 1059A limitation on Article A is $9.00 plus $1.00, or a total of $10.00. The section 1059A limitation on Article B is reduced (but never below transaction value) by $2.00 to $7.00.

(d) *Finality of customs value and of other determinations of the U.S. Customs Service.* For purposes of section 1059A and this section, a taxpayer is bound by the finally-determined customs value and by every final determination made by the U.S. Customs Service, including, but not limited to, dutiable value, the value attributable to the cost or value of products of the United States, and classification of the product for purposes of imposing any duty. The customs value is considered to be finally determined, and all U.S. Customs Service determinations are considered final, when liquidation of the entry becomes final. For this purpose, the term "liquidation" means the ascertainment of the customs duties occurring on the entry of the property, and liquidation of the entry is considered to become final after 90 days following notice of liquidation to the importer, unless a protest is filed. If the importer files a protest, the customs value will be considered finally determined and all other U.S. Customs Service determinations will be considered final either when a decision by the Customs Service on the protest is not contested after expiration of the period allowed to contest the decision or when a judgment of the Court of International Trade becomes final. For purposes of this section, any adjustments to the customs value resulting from a petition under 19 U.S.C. section 1516 (requests by interested parties unrelated to the importer for redetermination of the appraised value, classification, or the rate of duty imposed on imported merchandise) or reliquidation under 19 U.S.C. section 1521 (reliquidation by the Customs Service upon a finding that fraud was involved in the original liquidation) will not be taken into account. However, reliquidation under 19 U.S.C. section 1501 (voluntary reliquidation by the Customs Service within 90 days of the original liquidation to correct errors in appraisement, classification, or any element entering into a liquidation or reliquidation) or reliquidation under 19 U.S.C. section 1520(c)(1) (to correct a clerical error, mistake of fact, or other inadvertance within one year of a liquidation or reliquidation) will be taken into account in the same manner as, and take the place of, the original liquidation in determining customs value.

(e) *Drawbacks.* For purposes of this section, a drawback, that is, a refund or remission (in whole or in part) of a customs duty because of a particular use made (or to be made) of the property on which the duty was assessed or collected, shall not affect the determination of the customs value of the property.

(f) *Effective date.* Property imported by a taxpayer is subject to section 1059A and this section if the entry documentation required to be filed to obtain the release of the property from the custody of the United States Customs Service was filed after March 18, 1986. Section 1059A and this section will not apply to imported property where (1) the entry documentation is filed prior to September 3, 1987; and (2) the importation was liquidated under the circumstances described in paragraph (c)(9) of this section.

Lawrence B. Gibbs,
Commissioner of Internal Revenue.

Approved: June 26, 1989.

Kenneth W. Gideon,
Assistant Secretary of the Treasury.

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BILLING CODE 4830-01-M

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26 CFR Parts 1 and 602

[T.D. 8261]

RIN 1545-AJ54

Treatment of Dual Consolidated Losses

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to the definition of "dual consolidated losses" for purposes of determining whether the net operating loss of a domestic corporation is available to reduce the taxable income of any other member of its affiliated group. The regulations are necessary to provide guidance to domestic corporations which are subject to an income tax of a foreign country and to other members of such corporations' affiliated group, as well as to officers and employees of the Internal Revenue Service.

EFFECTIVE DATES: The regulations are effective September 8, 1989, with respect to taxable years beginning after December 31, 1986.

FOR FURTHER INFORMATION CONTACT: David I. Bower of the Office of the Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:CORP:T:R (INTL-961-86) (202 566-6645, not a toll-free call)).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collections of information contained in these regulations have been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under control number 1545-1083. The estimated annual burden per respondent varies from ½ to 1 hour, depending on individual circumstances, with an estimated average of .75 hour.

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

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

Background

This document contains temporary Income Tax Regulations (26 CFR part 1) under section 1503(d) of the Internal Revenue Code of 1986, which was added

to the Code by section 1249 of the Tax Reform Act of 1986 (Pub. L. 99–514).

Need for Temporary Regulations

Section 1503(d) of the Internal Revenue Code is effective for taxable years beginning after December 31, 1986. There is a need for immediate guidance as to the manner in which the requirements of the statute will be administered and as to those circumstances under which relief from the statute is provided.

Prior Law

A corporation that is created or organized in the United States or under the laws of the United States or any state is a "U.S. corporation." U.S. corporations are sometimes referred to as U.S. resident corporations. The United States taxes every U.S. corporation on its worldwide income and allows it to deduct losses wherever incurred. The United States allows U.S. corporations to file consolidated returns with other U.S. corporations that are commonly owned. When two or more U.S. corporations file a consolidated return, losses that one corporation incurs generally may reduce or eliminate tax on income that another corporation earns.

Some countries use criteria other than place of incorporation to determine whether corporations are residents for tax purposes. In particular, some countries treat corporations as residents for tax purposes if they are managed or controlled there. If one of these countries determines a corporation to be its resident, that country typically taxes it on its worldwide income and allows it to deduct losses wherever incurred. In some cases, the foreign country allows losses of a resident corporation to reduce or eliminate tax on income of other commonly owned resident corporations.

For tax purposes a corporation may be at the same time a U.S. resident for U.S. purposes and a resident of another country for its purposes if the other country uses a standard other than place of incorporation to determine residency. Such corporations are sometimes referred to as "dual resident corporations." A dual resident corporation is taxable in both countries on its worldwide income (or it could deduct its worldwide losses in both countries). In addition, if the foreign country has provisions that, like the U.S. consolidated return provisions, permit commonly controlled resident corporations to combine their income and losses, such dual resident corporations may be able, in effect, to use any losses generated twice offsetting the income of affiliates resident in the United States (but not abroad) and again offsetting the income of affiliates resident only in the other country.

Corporate groups attempted to isolate expenses in a dual resident corporation so that, viewed in isolation, the dual resident corporation was operating at a loss for tax purposes. This isolation of expenses allowed, in effect, the consolidation of the loss of the dual resident corporation with two profitable corporations, one in the United States and one in the foreign country. The profitable corporations, however, reported their income to only one country.

Statutory Provisions

Section 1249 of the Tax Reform Act of 1986 added subsection (d) to section 1503 of the Internal Revenue Code. Section 1503(d), as added by the 1986 Act, provides that if a domestic corporation is subject to a foreign country's tax on worldwide income, or on a residence basis as opposed to a source basis, any net operating loss it incurs cannot reduce the taxable income of any other member of a U.S. affiliated group for that or any other taxable year. Where a corporation is subject to foreign tax on its worldwide income or, otherwise on a residence basis, then, for U.S. tax purposes, its losses will be available to offset income of that corporation in other years, but not income of another U.S. corporation. Regulatory authority is provided to exempt a U.S. corporation from this rule to the extent that its losses do not offset the income of foreign corporations for foreign tax purposes. The provision applies to losses of dual resident corporations whether or not any of the income of any foreign corporation that the dual resident corporation's loss may reduce in the foreign country is or will be subject to U.S. tax. Loss carryovers incurred in years beginning prior to 1987 by a dual resident corporation are available to offset income that another member of the affiliated group earns in years beginning after 1986. Conversely, loss carrybacks incurred in years beginning after 1986 by a dual resident corporation are not available to offset income of affiliates earned prior to 1987.

Explanation of Regulations

Section 1.1503–2T(a) outlines the rules describing those net operating losses of domestic corporations that are not available to reduce the income of any other affiliate, so-called "dual consolidated losses." The net operating loss of a domestic corporation which is either subject to an income tax of a foreign country on its income without regard to whether such income is from sources in or outside of such foreign country, or is subject to an income tax of a foreign country on a residence basis, is a "dual consolidated loss" and will not be available to reduce the income of any other affiliate. This treatment generally applies regardless of whether the losses offset income of another corporation under the income tax laws of the foreign country and regardless of whether any income that the loss may reduce in the foreign country is subject to tax in the United States. Further, provisions are included to make clear that a dual consolidated loss, if acquired by or transferred to an affiliate in a section 381 transaction, cannot offset income of the affiliate.

Paragraph (b) defines the terms "domestic corporation," "dual consolidated loss," "dual resident corporation," "separate unit," and "subject to tax."

Paragraph (c) provides exceptions from the general rule of paragraph (a). Paragraph (c)(1) provides an exception from paragraph (a) if at no time after December 31, 1986, is there another person, corporation, or entity that is permitted, under the income tax laws of the foreign country, to use the losses, expenses, or deductions of the dual resident corporation, and the income tax laws of the foreign country do not allow the losses, expenses, or deductions of the dual resident corporation to be carried over or back to be used, by another person, corporation, or entity. Paragraph (c)(2) provides an exception from paragraph (a) where there is an elective agreement in place between the United States and the foreign country to take the loss in only one country. (There are no such agreements in force at the time of the publication of these regulations.) In other situations, an exception is available only if the dual resident corporation files an agreement to file amended returns as set forth in paragraph (c)(3) or if there is a restructuring as described in paragraph (c)(4).

Paragraph (c)(3)(i) provides an exception from the rule of paragraph (a) if at no time after December 31, 1986 is there another person, corporation, or entity that is permitted, under the income tax laws of the foreign country, to use the losses, expenses, or deductions of the dual resident corporation, but the foreign income tax law provides for a carryover or back of the losses, expenses, or deductions. Paragraph (c)(3)(i) provides that a dual consolidated loss may be used for U.S. tax purposes if the losses, expenses, or

deductions of the dual resident corporation cannot currently be used under foreign laws by another person, corporation, or entity, and the U.S. group filing a consolidated return or, if there is no group, the dual resident corporation, files an agreement described in paragraph (c)(3) (ii) and (iii) to amend its return if the losses, expenses, or deductions of the dual resident corporation are subsequently used or are able to be used under foreign law. If, under the income tax laws of the foreign country, the losses, expenses, or deductions of the dual resident corporation are subsequently used or are able to be used to offset the income of another person, corporation, or entity, the dual consolidated loss will be reported on an amended return for the taxable year in which the dual consolidated loss arose and for each of the taxable years in which the tax liability is increased as a result of the application of the limitation on the use of the dual consolidated loss.

Paragraph (c)(4) provides a special transition rule that provides an exception from the rule of paragraph (a) for dual consolidated losses even though there may have been other persons, corporations, or entities which, under the income tax laws of the foreign country, could have used the losses, expenses, or deductions of the dual resident corporation to offset income. The exception of paragraph (c)(4) is allowed only if, on or before December 31, 1989, a restructuring of the corporate structure in the foreign country is completed so that at all times from the date of such restructuring to the close of the taxable year in which the dual consolidated loss arises, there is no other person, corporation, or entity which, under the income tax laws of the foreign country, could use the losses, expenses, or deductions of the dual resident corporation to offset income. The exception of paragraph (c)(4) is applicable only to dual consolidated losses arising after the restructuring takes place. Further, if the foreign income tax law provides for a carryover or back of the losses, expenses, or deductions of the dual resident corporation, then the affiliated group filing a consolidated return or, if there is no affiliated group filing a consolidated return, the dual resident corporation, must file an agreement as described in paragraphs (c)(3) (ii) and (iii), to amend its return (or returns) if the losses, expenses, or deductions are subsequently used or are able to be used to offset the income of another person, corporation, or entity under foreign law.

The Service is aware that there may be a number of dual resident corporations that were unable to utilize their losses to benefit their affiliates in the foreign country for reasons other than the enactment by the foreign country of mirror legislation prohibiting the use of such losses. If such taxpayers restructured their operations after the effective date of section 1503(d) to eliminate the dual resident status of an affiliated corporation or to terminate its ability to consolidate with foreign affiliates, then these regulations allow the U.S. consolidation of only those losses incurred after the restructuring. The Service invites comments from such taxpayers as to the reasons for their inability to utilize losses in the foreign country and the delay in restructuring in response to section 1503(d), so that a determination can be made as to whether additional transition relief would be appropriate. For example, if the Service determines that additional transition relief is justified, a closing agreement that provides safeguards to protect the government's interests will be considered.

Paragraph (d) sets forth special rules for separate units of a domestic corporation. Paragraph (d)(1) provides that if a domestic corporation holds an interest in an entity that is not taxed as an association for U.S. tax purposes, but is subject to tax in a foreign jurisdiction as a corporation on a residence or worldwide basis, then the interest held by the domestic corporation will be treated for purposes of section 1503(d) as if it were a dual resident corporation and a wholly-owned domestic subsidiary of a domestic corporation.

Paragraph (d)(2) provides that if a separate unit of a domestic corporation, other than a separate unit described in paragraph (d)(1), is permitted to use its losses, expenses, or deductions to offset the income of other persons, corporations, or entities, either in the taxable year in which a dual consolidated loss arises, or in past or future years by means of a carryover or carryback provision, then such separate unit will be treated as if it were a dual resident corporation and a wholly-owned domestic subsidiary of a domestic corporation.

Paragraph (d)(3) provides an exception from the rule in paragraph (d)(2) for any taxable year in which a certification is filed which provides that no portion of the separate unit's losses, expenses, or deductions as identified in paragraph (d)(2) has been or will be used to offset the income of any other person, corporation, or entity under the income tax laws of the foreign country. Paragraph (d)(4) provides that if the losses, expenses, or deductions of a separate unit subject to the certification requirement of paragraph (d)(3) are used by any means to offset the income of any other persons, corporation, or entity under the income tax laws of a foreign county, then such losses, expenses, or deductions shall be recaptured and reported as income. Paragraph (d)(4) also provides that in the event recapture occurs, an interest charge on the additional amount of tax owed shall be imposed.

Paragraph (d)(5) clarifies that a separate unit is treated as a separate entity for purposes of determining whether the losses of one entity are permitted under the income tax laws of a foreign country to offset the income of another entity. Accordingly, if a domestic corporation owns two separate units in a foreign country which permits the two units to combine their income and losses on a single income tax return and the two separate units actually so combine, then they will each be treated as a dual resident corporation for purposes of this section. The use of the loss of one separate unit to offset the income of the other separate unit under the foreign income tax laws will preclude a deduction of the separate unit's loss for U.S. tax purposes. However, an exception is provided in paragraph (d)(5)(ii) which treats as one single unit any two or more separate units of a domestic corporation if the units are not units described in paragraph (d)(1) and are located in the same foreign country.

Paragraph (e) provides a special rule which denies the use of a dual consolidated loss to offset the income produced by, or gain recognized from, the disposition or exchange of assets transferred to or acquired by a dual resident corporation or a corporation that has ceased to be a dual resident corporation.

Paragraph (f) provides a special rule for accounting for dual consolidated losses of dual resident corporations that are members of affiliated groups filing consolidated returns and of dual resident corporations that are separate units of a domestic corporation.

Special Analyses

It has been determined that these temporary rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to

these regulations, and, therfore, a final Regulatory Flexibility Analysis is not required.

Drafting Information

The principal author of these regulations is Riea M. Lainoff of the Office of Chief Counsel within the Office of Associate Chief Counsel (International), Internal Revenue Service. Other personnel from offices of the Internal Revenue Service and Treasury Department participated in developing the regulations.

Lists of Subjects

26 CFR 1.1501–1 through 1.1564–1

Income taxes, Controlled group of corporations, Consolidated returns.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

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

Income Tax Regulations

PART 1—[AMENDED]

Paragraph 1. The authority for part 1 is amended by adding this following citation:

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

Section 1.1503–2T also issued under 26 U.S.C. 1503(d). * * *

Par. 2. New § 1.1503–2T is added to read as follows:

§ 1.1503–2T Dual consolidated loss (temporary regulations).

(a) *In general.* This section applies for purposes of determining whether and to what extent the net operating loss of a dual resident corporation incurred in tax years beginning after December 31, 1986, shall be allowed to reduce the taxable income of any other member of the affiliated group. Except as provided in paragraph (c) of this section, any dual consolidated loss of a domestic corporation incurred in taxable years beginning after December 31, 1986, cannot reduce the taxable income of any affiliate of such domestic corporation for that or any other taxable year, regardless of whether those losses offset income of another corporation under the income tax laws of the foreign country and regardless of whether any of the income of any corporation that the loss may reduce in the foreign country is, has been, or will be subject to tax in the United States. This rule shall also apply to preclude the use of a dual consolidated loss to offset any income of an affiliate (whether or not an election to file a consolidated return has been made) by means of a transaction subject to section 381 of the Code. For purposes of the preceding sentence, an "affiliate" means any member of the affiliated group as determined under section 1504(a) without regard to the exceptions contained in section 1504(b) (other than section 1504(b)(3)) relating to includible corporations. Further, this rule shall also apply to preclude the use of a dual consolidated loss of a separate unit by a domestic corporation upon or as a result of the termination, liquidation, or sale of the separate unit. The following example illustrates the application of this paragraph (a).

Example. P, a domestic corporation, owns all of the outstanding stock of DRC, a domestic corporation. DRC is managed and controlled in Country W, a country which determines the tax residence of corporations according to place of management and control. Therefore, the income of DRC is subject to tax in both the United States and in Country W. There are currently no other corporations in Country W which could use the losses of DRC to offset income under the income tax laws of Country W. P no longer wishes to operate DRC as a separate corporation. Therefore DRC will be liquidated into P under section 332 of the Code. Normally, P, under section 381, would succeed to and take into account DRC's net operating loss carryovers. However, this paragraph (a) prohibits the net operating loss of DRC from reducing P's income (including income of P generated by assets previously held by DRC) for U.S. tax purposes. Therefore, DRC's net operating loss carryovers will not be available to offset P's income unless one of the exceptions described in paragraph (c) of this section applies.

(b) *Definitions.* The following definitions apply for purposes of this section.

(1) *Domestic corporation.* For purposes of this section, the term "domestic corporation" has the meaning assigned to it by sections 7701 (a)(3) and (a)(4) and shall also include any corporation treated as a domestic corporation by the Internal Revenue Code, including, but not limited to, section 269B and section 1504(d). Subject to the rules of paragraph (d) of this section, any separate unit (as defined in paragraph (b)(4) of this section) of a domestic corporation will be treated as a separate domestic corporation (and as a dual resident corporation) for purposes of this section. The following example illustrates the application of this paragraph (b)(1).

Example. A is a domestic corporation with a branch operation in Country X. A is owned by FP, a Country X corporation. Country X allows the Country X branch income and losses of A to be used to offset FP's losses or income. Under paragraph (d) of this section, the branch operations of A in Country X will be treated as a separate domestic corporation and as a dual resident corporation for purposes of this section. See paragraph (d) of this section for the treatment of any dual consolidated loss of the branch operations of A.

(2) *Dual consolidated loss.* The term "dual consolidated loss" means the net operating loss (as defined in section 172(c) and the regulations thereunder) of a domestic corporation incurred in a year in which the corporation is a dual resident corporation. The fact that a particular item taken into account in computing such net operating loss deduction is not taken into account in computing income subject to income tax in a foreign country shall not cause such item to be excluded from the calculation of the dual consolidated loss. A dual consolidated loss shall arise even though no other person, corporation, or entity is permitted, under the income tax laws of the foreign country, to use by any means the losses, expenses or deductions of the dual resident corporation to offset income. A dual consolidated loss shall not include—

(i) The net operating loss incurred during that portion of the taxable year prior to the date on which the domestic corporation becomes a dual resident corporation or subsequent to the date on which the domestic corporation ceases to be a dual resident corporation. For purposes of determining the amount of the net operating loss incurred in that portion of the taxable year prior to the date on which the domestic corporation becomes a dual resident corporation or subsequent to the date on which the domestic corporation ceases to be a dual resident corporation, in no event shall more than a pro rata portion of the net operating loss commensurate with the portion of the taxable year during which the domestic corporation was not a dual resident corporation be allocated to that portion of the taxable year in which the domestic corporation was not a dual resident corporation; or

(ii) Losses incurred in taxable years beginning on or before December 31, 1986.

(3) *Dual resident corporation.* For purposes of this section, a domestic corporation shall be a dual resident corporation if the worldwide income of such corporation is subject to the income tax of a foreign country, or such corporation is subject to the income tax of a foreign country on a residence basis (and not on a source basis).

(4) *Separate unit.* Solely for purposes of this section, the term "separate unit" shall mean any of the following:

(i) A foreign branch as defined in § 1.367 (a)-6T(g);

(ii) A partnership interest; or

(iii) A trust interest.

(5) *Subject to tax.* For purposes of determining whether a domestic corporation is subject to the income tax of a foreign country on its income, the fact that the corporation has no actual tax liability to the foreign country for a particular taxable year shall not be taken into consideration.

(c) *Exceptions*—(1) *No ability to use dual consolidated loss under foreign law*—(i) *In general.* Paragraph (a) of this section shall not apply to a dual consolidated loss if—

(A) At no time after December 31, 1986, has there been any other person, corporation, or entity which, under the income tax laws of the foreign country, is permitted to use by any means the losses, expenses, or deductions of the dual resident corporation to offset income; and

(B) Under the income tax laws of the foreign country, the losses, expenses, or deductions of the dual resident corporation incurred in taxable years beginning after December 31, 1986, cannot be carried over or back to be used, by any means, to offset the income of any other person, corporation, or entity in other years.

(ii) *Limitations.* For purposes of paragraph (c)(1)(i) of this section, none of the following circumstances shall constitute a satisfaction of paragraph (c)(1)(i)(A) of this section—

(A) The failure to make use of an election (including, but not limited to, the ability to surrender losses, expenses or deductions) that would enable another person, corporation, or entity to use the losses, expenses, or deductions of the dual resident corporation to offset income under the income tax laws of the foreign country;

(B) The fact that the income tax laws of the foreign country deny the use of losses, expenses, or deductions of its corporate residents that are also residents for tax purposes of another country to offset income of another person, corporation, or entity;

(C) The fact that the other person, corporation, or entity does not have sufficient income to benefit from an offset permitted under the income tax laws of the foreign country for a particular taxable year; or

(D) The fact that the dual resident corporation has no losses, expenses, or deductions during a particular taxable year.

(iii) *Examples.* The following examples illustrate this paragraph (c)(1).

Example (1). DRC, a domestic corporation, is also subject to tax in Country Y on its worldwide income. DRC has been filing a consolidated return for U.S. income tax purposes with DP, its domestic parent. DRC has also been able to use its losses to offset income of its affiliates in Country Y by using Country Y's form of consolidation. In order to prevent companies like DRC from taking losses against income of affiliates under Country Y law and then again using the losses of DRC to offset income of affiliates for U.S. tax purposes. Country Y law prevents a company which is also subject to tax on its worldwide income in another country, or is subject to tax on a residence basis in another country, from using the Country Y form of consolidation. DRC is a dual resident corporation as defined in paragraph (b)(3) of this section. DRC's losses are dual consolidated losses as defined in paragraph (b)(2) of this section which under paragraph (a) of this section may not be used to offset income of any other U.S. affiliate of DRC. The Country Y statute does not cause the exception provided by this paragraph (c)(1) to apply.

Example (2). P, a domestic corporation, owns DRC, a domestic corporation which is also subject to the income tax laws of Country Z on a residence basis, and FS, a Country Z corporation. Under Country Z laws, income or losses of DRC may not be consolidated with income or losses of P or FS. There is, however, a provision under Country Z's law by which DRC's unused losses could be carried forward, acquired, and used by FS if DRC is merged into FS. DRC's dual consolidated loss does not qualify for the exception from application of paragraph (a) provided by this paragraph (c)(1) because of the loss carryforward provisions under Country Z's income tax laws. However, DRC may qualify for an exemption from paragraph (a) of this section under the provisions of paragraph (c)(3) of this section.

Example (3). DRC is a dual resident corporation subject to tax on a residence basis in foreign country Y. Under the income tax laws of Y, DRC could elect to use its losses to offset the income of foreign entity FE on a Country Y consolidated income tax return for the taxable year ending December 31, 1987. Regardless of whether such election is made, DRC fails to satisfy the requirement of paragraph (c)(1)(i)(A) of this section.

Example (4). The same facts apply as in *Example* (3), except that Country Y changes its income tax law, effective as of January 1, 1987, to prevent the consolidation of losses by dual resident corporations. Under paragraph (c)(1)(ii)(B) of this section, the fact that this Country Y legislation prevents DRC from using its losses to offset the income of FE is disregarded and DRC fails to satisfy the requirement of paragraph (c)(1)(i)(A) of this section.

Example (5). The same facts apply as in *Example* (4), except that FE has no taxable income in taxable years 1987 through 1989. Moreover, DRC is profitable throughout this period and consequently has no losses which it could share with FE. Under paragraphs (c)(1)(ii) (C) and (D) of this section, the fact that FE would not receive a tax benefit from consolidation with DRC on a Country Y return is disregarded and DRC fails to satisfy the requirement of paragraph (c)(1)(i)(A) of this section. Because DRC does not have a net operating loss during 1987 through 1989, section 1503(d) does not affect the consolidation of DRC on a U.S. return for these years. However, DRC's failure to satisfy paragraph (c)(1)(i)(A) of this section at all times after December 31, 1986 will make it ineligible for the exception described in paragraph (c)(1) of this section with respect to any future taxable year in which it incurs a net operating loss.

Example (6). The same facts apply as in *Example* (5). In 1990, FE is transferred and is no longer eligible for consolidation on a Country Y return. There are no other entities with which DRC could consolidate under the income tax laws of Y. Nevertheless, since FE and DRC could have consolidated on a Country Y return during the period after December 31, 1986 and before the transfer of FE, DRC fails to satisfy the requirement of paragraph (c)(1)(i)(A) of this section in 1990 and in all future taxable years.

(2) *Elective agreement in place between United States and the foreign country.* Paragraph (a) of this section shall not apply to a dual consolidated loss to the extent such loss is subject to an election by the dual resident corporation to deduct the loss in the United States pursuant to an agreement entered into between the United States and the foreign country which puts into place an elective procedure through which losses would offset income in only one country.

(3) *Agreement to amend returns upon later use of losses, expenses, or deductions of a dual resident corporation*—(i) *In general.* Notwithstanding that, under the income tax laws of the foreign country, the losses, expenses, or deductions of the dual resident corporation can be carried over or back to offset, by some means, the income of any other person, corporation, or entity in other taxable years, paragraph (a) of this section shall not apply to a dual consolidated loss of that dual resident corporation if the requirements described in this paragraph (c)(3)(i) are satisfied.

(A) At no time after December 31, 1986, has there been any other person, corporation, or entity which, under the income tax laws of the foreign country, is permitted to use by any means the losses, expenses, or deductions of the dual resident corporation to offset income. For purposes of the preceding sentence, none of the circumstances described in paragraphs (c)(1)(ii) (A) through (D) of this section shall constitute a satisfaction of this paragraph (c)(3)(i)(A).

(B) The affiliated group or, if there is no affiliated group filing a consolidated return, the dual resident corporation which incurs the loss, files with its U.S.

tax return for the taxable year in which the dual consolidated loss arises a binding agreement described in paragraphs (c)(3) (ii) and (iii) of this section. The agreement must be filed under this paragraph (c)(3) even if the only effect of the dual consolidated loss is to increase a net operating loss for U.S. tax purposes.

(ii) *Description of agreement.* Except as otherwise provided in paragraph (c)(3)(viii) of this section, the agreement described in this paragraph (c)(3)(ii) must be attached to, and filed by the due date (including extensions) of, the tax return of the affiliated group or dual resident corporation for the taxable year in which the dual consolidated loss arises. The agreement must be signed under penalties of perjury by the person who signs the tax return of the group or dual resident corporation. The agreement must include the following items, in paragraphs labeled to correspond with the subdivisions set forth below:

(A) The name, address, identifying number, and place and date of incorporation of the dual resident corporation and the country or countries which tax the dual resident corporation on a residence basis or which tax the worldwide income of the dual resident corporation;

(B) A statement that the document submitted constitutes the agreement of the affiliated group or dual resident corporation in accordance with the requirements of § 1.1503–2T(c)(3);

(C) A statement of the amount of the dual consolidated loss to be covered by the agreement and the year in which it arose;

(D) The agreement of the group or dual resident corporation to amend returns, as described in paragraph (c)(3)(iii) of this section;

(E) A waiver of the period of limitations, as described in paragraph (c)(3)(iv) of this section; and

(F) An agreement to file with the tax returns of the group or dual resident corporation for each of the fifteen years following the year the dual consolidated loss arose a waiver of the period of limitation, as described in paragrapah (c)(3)(iv) of this section, and a certification as described in paragraph (c)(3)(v) of this section.

(iii) *Terms of agreement.* The affiliated group or dual resident corporation must agree that if there is a "triggering event" described in this paragraph (c)(3)(iii), then, the affiliated group filing a consolidated return, or if there is no affiliated group filing a consolidated return, the dual resident corporation, shall, within 90 days after the date of occurrence of the triggering event, file an amended U.S. income tax return for the taxable year in which the dual consolidated loss arose reporting the dual consolidated loss on the amended return as a loss to which paragraph (a) of this section applies. An amended U.S. income tax return must also be filed for any other taxable year in which the tax liability increases as a result of such applications of paragraph (a) of this section. In addition, upon examination, the group or dual resident corporation must provide to the District Director a schedule of the amended carryforward and carryback losses and credits for each of the group's or dual resident corporation's taxable years for which no amended return is required to be filed pursuant to this paragraph (c)(3)(iii). For purposes of section 6601, the last date prescribed for payment of the additional amount of tax shown on an amended return filed pursuant to this paragraph (c)(3)(iii) shall be the same date as the date prescribed for the payment of tax for the taxable year with respect to which the amended return is filed. Any of the following events shall constitute a "triggering event" for purposes of this section—

(A) There is a failure for any taxable year to file the annual waiver or certification described in paragraphs (c)(3)(iv) and (v) of this section.

(B) Prior to the close of the fifteenth taxable year following the taxable year in which the dual consolidated loss arose, any of the following events—

(*1*) There is a failure to satisfy both the requirement of paragraph (c)(3)(i)(A) of this section and the requirements of paragraph (c)(4) of this section;

(*2*) Where the agreement is made by an affiliated group filing a consolidated return, the dual resident corporation (or its successor-in-interest) ceases to be a member of the affiliated group;

(*3*) Where the agreement is made by a dual resident corporation that is not a member of an affiliated group filing a consolidated return, the dual resident corporation is no longer in existence; or

(*4*) Where the dual resident corporation is a separate unit of a domestic corporation, the domestic corporation sells or transfers the dual resident corporation.

(iv) *Waiver of period of limitation.* The affiliated group or the dual resident corporation (or the successor-in-interest of such group or dual resident corporation) must file, with the agreement to amend returns and with the tax return for each of the fifteen taxable years following the taxable year in which the dual consolidated loss arose, a waiver of the limitation on assessment of any tax resulting from the amendment of any return as described in paragraph (c)(3)(iii) of this section. The waiver shall extend the period for assessment of such tax to a date not earlier than three years after the return is filed for the fifteenth taxable year following the taxable year in which the dual consolidated loss arose. The waiver shall also contain such other terms with respect to assessment as may be considered by the Commissioner to be necessary to insure the assessment and collection of the correct tax liability for each year for which the waiver is required. The waiver must be signed by a person authorized to sign the agreement described in paragraph (c)(3)(ii) of this section. A failure, at any time, to comply with the requirements of this paragraph (c)(3) or with the terms of any agreement filed pursuant to this paragraph (c)(3) shall extend the period of assessment of such tax until three years after the date on which the Internal Revenue Service receives actual notice of the use of or of the ability to use the losses, expenses, or deductions of the dual resident corporation to offset the income of another person, corporation, or entity under the income tax laws of the foreign country.

(v) *Annual certification.* The affiliated group or the dual resident corporation (or the successor-in-interest of such group or dual resident corporation) must file with its income tax return for each of the fifteen taxable years following the taxable year in which the dual consolidated loss arose a certification that the losses, expenses, or deductions of the dual resident corporation were not used or permitted to be used to offset the income of another person, corporation, or entity under the income tax laws of a foreign country. The annual certification pursuant to this paragraph (c)(3)(v) must be signed under penalties of perjury by a person authorized to sign the agreement described in paragraph (c)(3)(ii) of this section. The certification must identify the dual consolidated loss with respect to which it is given by setting forth the taxpayer's year in which the loss arose and the amount of such loss and must warrant that arrangements have been made to insure that the group or dual resident corporation will be informed of any subsequent use of or ability to use the losses, expenses, or deductions of the dual resident corporation to offset the income of another person, corporation, or entity under the income tax laws of the foreign country. If dual consolidated losses of more than one taxable year are subject to the rules of this paragraph (c)(3), the certifications for those years may be combined in a single document, but each dual

consolidated loss must be separately identified.

(vi) *Special rules for a succeeding group or a successor-in-interest*—(A) *Ceasing to be a member of the affiliated group.* For purposes of this paragraph (c)(3), and except as otherwise provided in this paragraph (c)(3)(vi), a dual resident corporation shall be deemed to have ceased to be a member of the affiliated group that filed the agreement described in paragraph (c)(3)(ii) of this section if it is no longer a member of that group, as defined in § 1.1502–1(b), or if the group ceases to exist because the common parent is no longer in existence or is no longer a common parent or the group no longer files on the basis of a consolidated return. However, the obligation to file an amended return pursuant to the agreement described in paragraph (c)(3)(ii) of this section shall not apply and the dual resident corporation shall not be deemed to have ceased to be a member of the group for purposes of this paragraph (c)(3) where the dual resident corporation ceases to be a member of the group solely by reason of an acquisition of its assets by a member of the group in a transaction to which section 381(a) applies provided the successor-in-interest of the dual resident corporation continues to be a member of the group.

(B) *Special rules for a succeeding group.* The obligation to file an amended return pursuant to the agreement described in paragraph (c)(3)(ii) of this section shall not apply where the dual resident corporation becomes a member of a succeeding group as a result of an acquisition described in § 1.1502–13(f)(2)(i) (*a*) or (*b*) (relating generally to the acquisition of assets of, by, or from a member of the affiliated group in a tax-free reorganization) and the succeeding group attaches to, and files with, its timely filed (including extensions) tax return for the taxable year in which the acquisition takes place a binding agreement—

(*1*) Which sets forth the same terms as are described in paragraph (c)(3)(ii) of this section,

(*2*) In which the group agrees to be bound by the terms of the agreement previously filed by the terminating group, and

(*3*) In which the group agrees to all the terms set forth in paragraph (c)(3)(iii) of this section.

The agreement must be signed under penalties of perjury by the person who signs the tax return of the succeeding group.

(C) *Special rules for a successor-in-interest.* In the case of a dual resident corporation that was not a member of an affiliated group filing a consolidated return in the taxable year in which the dual consolidated loss arose and that filed an agreement described in paragraph (c)(3)(ii) of this section, the assets of which are acquired in a transaction described in section 381(a), such corporation shall not be required to file an amended return pursuant to paragraph (c)(3)(iii)(B)(*3*) of this section provided its successor-in-interest attaches a binding agreement to its timely filed (including extensions) tax return for the taxable year in which the acquisition takes place. The agreement must be signed under penalties of perjury by the person who signs the tax return of the successor-in-interest. The agreement must:

(*1*) Set forth the same terms as are described in paragraph (c)(3)(ii) of this section,

(*2*) State the agreement of the successor-in-interest to be bound by the terms of the agreement previously filed by the dual resident corporation, and

(*3*) State the agreement of the successor-in-interest to all the terms set forth in paragraph (c)(3)(iii) of this section.

(vii) *Definitions.* For purposes of this section—

(A) The terms "succeeding group" and "terminating group" shall have the same meaning as in § 1.1502.13(f)(2)(i); and

(B) The term "successor-in-interest" shall mean an acquiring corporation that succeeds to the tax attributes of an acquired corporation under the provisions of section 381 by reason of a transaction described in section 381(a).

(viii) *Transition rules.* An affiliated group or a dual resident corporation (or a succeeding group or a successor-in-interest of a dual resident corporation) that meets the eligibility requirements described in paragraph (c)(3)(ix) of this section will be permitted to apply the transition rules in this paragraph (c)(3)(viii) for taxable years ending before December 31, 1989.

(A) The agreement in satisfaction of paragraph (c)(3) (ii) or (vi) of this section may be attached to the timely filed (including extensions) tax return of the affiliated group or of the dual resident corporation (or the succeeding group or the successor-in-interest of such dual resident corporation) for the first taxable year which ends on or after December 31, 1989. The agreement required for each of the taxable years ending before December 31, 1989 and for the first taxable year ending on or after December 31, 1989 may be combined on a single document.

(B) The requirement of paragraphs (c)(3)(iv) and (c)(3)(v) of this section regarding the filing of an annual waiver of the period of limitation and certification shall be satisfied for the taxable years ending before December 31, 1989, and no failure to file shall be deemed to have occurred with respect to such taxable years for purposes of paragraph (c)(3)(iii)(A) of this section if the waivers and certifications required under paragraphs (c)(3)(iv) and (c)(3)(v) of this section are filed with the tax return for the first taxable year ending on or after December 31, 1989.

(ix) *Eligibility for transition rules.* The rules in paragraph (c)(3)(viii) of this section shall apply only if, as of the date of the agreement in satisfaction of paragraph (c)(3) (ii) or (vi) of this section and filed pursuant to paragraph (c)(3)(viii) of this section, none of the triggering events described in paragraph (c)(3)(iii)(B) of this section has occurred.

(4) *No ability to use dual consolidated loss under foreign law after restructuring*—(i) *In general.* Notwithstanding that a dual resident corporation fails to satisfy either paragraph (c)(1)(i)(A) or (c)(3)(i)(A) of this section, paragraph (a) of this section shall not apply to any dual consolidated loss (or portion of a dual consolidated loss) described in paragraph (c)(4)(iii) of this section provided the requirements of either paragraph (c)(1)(i)(B) or (c)(3)(i)(B) of this section are satisfied and a restructuring that meets the requirements of paragraph (c)(4)(ii) of this section has been completed.

(ii) *Qualified restructuring.* A restructuring meets the requirements of this paragraph (c)(4)(ii) if it is completed on or before December 31, 1989, in the foreign country so that at all times from the date of such restructuring to the close of the taxable year in which the dual consolidated loss arises, there is no other person, corporation, or entity which, under the income tax laws of the foreign country, is permitted to use by any means the losses, expenses, or deductions of the dual resident corporation to offset income. For purposes of the preceding sentence, none of the circumstances described in paragraphs (c)(1)(ii) (A) through (D) of this section shall constitute a satisfaction of this paragraph (c)(4)(ii).

(iii) *Qualified losses.* Losses to which paragraph (c)(4)(i) of this section applies are the dual consolidated losses of a dual resident corporation that arise in a taxable year beginning after the restructuring described in paragraph (c)(4)(ii) of this section (or the portion of any dual consolidated loss that arises during that portion of the taxable year following the restructuring described in paragraph (c)(4)(ii) of this section). For purposes of determining the amount of

the dual consolidated loss which arises in that portion of the taxable year following the restructuring, in no event shall more than a pro rata portion of the dual consolidated loss commensurate with the portion of the taxable year beginning with the date of completion of the restructuring and ending on the last day of that same taxable year be allocated to that portion of the taxable year following the restructuring.

(d) *Special rule for separate units*—(1) *Separate units characterized as corporations under foreign law.* If a separate unit of a domestic corporation consists of an interest in an entity (including a foreign branch) that for U.S. tax purposes is not taxable as an association, but the entity is subject to income tax in a foreign jurisdiction as a corporation either on its worldwide income or on a residence basis (and not on a source basis), then for purposes of this section such separate unit of the domestic corporation will be treated as if it were a dual resident corporation and a wholly-owned domestic subsidiary of the domestic corporation. For purposes of paragraphs (c) (3) and (4) of this section, any agreement, waiver and certification required to be filed with respect to such dual resident corporation shall be filed with the federal income tax return of the domestic corporation owning the separate unit or by the affiliated group with which the domestic corporation files a consolidated return.

(2) *Other separate units.* Except as provided in paragraph (d)(3) of this section, if a separate unit of a domestic corporation (other than a separate unit described in paragraph (d)(1) of this section) is permitted under the income tax laws of a foreign country—

(i) To use its losses, expenses, or deductions to offset the income of any other person, corporation, or entity in the taxable year in which the dual consolidated loss arises; or

(ii) To carry over or back its losses, expenses, or deductions so that they may offset the income of any other person, corporation, or entity in other years, then such separate unit will be treated for purposes of this section as if it were a dual resident corporation and a wholly-owned domestic subsidiary of the domestic corporation. For purposes of the preceding sentence, none of the circumstances described in paragraphs (c)(1)(ii) (A) through (D) of this section shall preclude a separate unit from being treated as a dual resident corporation and a separate domestic corporation under this paragraph (d)(2). This paragraph (d)(2) applies regardless of whether the domestic corporation is a member of an affiliated group, and, if it is, regardless of whether the group files a consolidated return.

(3) *Certification.* Paragraph (d)(2) of this section shall not apply with respect to any taxable year for which the domestic corporation owning the separate unit (or the affiliated group of which the domestic corporation is a member) files a certification as described in this paragraph (d)(3). The certification must be attached to, and filed by the due date (including extensions) of, the federal income tax return of the domestic corporation owning the separate unit (or the affiliated group with which the domestic corporation files a consolidated return) for the taxable year to which it applies. With respect to returns filed without an attached certification for taxable years ending before December 31, 1989, the certification in satisfaction of this paragraph (d)(3) may be attached to the return for the first taxable year ending on or after December 31, 1989. The certification must be signed under penalties of perjury by the person who signs the return. The certification must include the following items, in paragraphs labeled to correspond with the subdivisions set forth below:

(i) A statement that the document submitted constitutes the certification required under the provisions of § 1.1503–2T(d)(3);

(ii) Identification of the separate unit, including the name under which it conducts business and its principal activity;

(iii) Identification of the total losses, expenses, and deductions incurred by the separate unit and included on the tax return for the taxable year;

(iv) Certification that no portion of the separate unit's losses, expenses or deductions identified above has been or will be used to offset the income of any other person, corporation, or entity under the income tax laws of the foreign country; and

(v) An agreement to comply with the recapture and interest charge requirements of paragraph (d)(4) of this section.

If the domestic corporation has more than one separate unit, the certification described above may be made on a single document, but the total losses, expenses, and deductions must be separately identified for each separate unit to which the certification applies.

(4) *Recapture upon subsequent use.* If in any taxable year any portion of the losses, expenses, or deductions of a separate unit which were the subject of a certification filed under paragraph (d)(3) of this section are used by any means to offset the income of any other person, corporation, or entity under the income tax laws of a foreign country, then the total amount of the dual consolidated loss shall be recaptured and reported as income on the tax return of the domestic corporation (or the affiliated group with which the domestic corporation files a consolidated return) for the taxable year that includes the last day of the taxable year for foreign tax purposes during which such use occurred. In addition, the domestic corporation owning the separate unit (or the affiliated group with which the domestic files a consolidated return) shall pay an interest charge on the amount of additional tax owed as a result of the recapture described in the preceding sentence. Such interest shall be determined under the rules of section 6601(a) as if the additional amount of tax had accrued and been due and owing for the taxable year in which the losses, expenses, or deductions giving rise to the recapture gave rise to a tax benefit for U.S. income tax purposes. For purposes of this paragraph (d)(4), a tax benefit will be considered to have arisen in a taxable year in which a loss that would have been considered a dual consolidated loss if paragraph (d)(3) of this section had not applied has reduced the U.S. income tax liability of the domestic corporation or of the affiliated group with which it files a consolidated return.

(5) *Treatment of separate units as separate entities*—(i) *In general.* A separate unit of a domestic corporation will be treated as a separate entity for purposes of determining under this section whether losses of one entity are permitted under the income tax laws of the foreign country to offset the income of another entity.

(ii) *Exception for separate units in same country.* If two or more separate units (not described in paragraph (d)(1) of this section) located in the same foreign country are owned by a single domestic corporation and the income and losses of such units are consolidated on an income tax return in that foreign country, then the separate units will be treated as one separate unit for purposes of paragraph (d)(2) of this section.

(6) *Examples.* The following examples illustrate this paragraph (d).

Example (1). X, a member of a U.S. affiliated group, has a foreign branch (as defined in § 1.367(a)–6T(g)) in Country Y. Under the Country Y income tax laws, the branch will be taxed as a permanent establishment and its income and losses may be used (on an elective basis) in the Country Y form of consolidation to offset the income

of Z, an affiliate of X, under Country Y law. The branch of X incurs a net operating loss during the taxable year ending December 31, 1987. The foreign branch of X will be treated as a separate domestic corporation and a dual resident corporation under paragraph (d)(2) of this section, and its net operating loss will constitute a dual consolidated loss. Consequently, under paragraph (a) of this section, the branch's net operating loss may not be used to offset the income of any other U.S. affiliate or any income of X other than income derived from the branch operations. However, the branch will not be treated as a dual resident corporation if X (or the affiliated group of which X is a member) files a certification for the taxable year as described in paragraph (d)(3) of this section that its net operating loss was not in fact used by Z (or any other entity) to offset income under the Country Y income tax laws, and that such loss will be recaptured if it is so used in the future.

Example (2). X is classified as a partnership for U.S. tax purposes under Code section 7701 and applicable regulations. A, B and C are the sole partners of X. A and B are domestic corporations and C is a resident of foreign country Y. Under Country Y's law, X is classified as a corporation and its income and losses may be used in the Country Y form of consolidation to offset the income of the companies that are affiliates of X. X generates net operating losses. The partnership interests held by A and B are each treated as separate domestic corporations and dual resident corporations under paragraph (d)(1) of this section. A's and B's pro rata share of the losses of X are dual consolidated losses as defined in paragraph (b)(2) of this section. Under paragraph (a) of this section, the losses of X may not be used to offset the income of any other U.S. affiliate. A's pro rata share of losses of X may be used by A only to offset A's pro rata share of income of X. However, paragraph (a) of this section shall not apply to A's pro rata share of losses of X if A meets one of the exceptions described in paragraph (c) of this section. The same principles apply to limit the use of losses allocated to B.

Example (3). Domestic corporation W owns two unincorporated business operations in Country Y. The two businesses, A and B, constitute separate foreign branches (as defined in § 1.367(a)–6T(g)). Under the tax laws of Country Y, A is treated as a separate corporation and taxed on a residence basis. Thus, A is a separate unit described in paragraph (d)(1) of this section. B is not a separate unit described in paragraph (d)(1) of this section. W is a calendar year taxpayer for both United States and Country Y purposes. During the calendar year ending December 31, 1987, A operated at a loss and B was profitable. Country Y allows both of W's branches to report their combined operations on a single income tax return. Thus, the losses incurred by A may be used on the 1987 Country Y return to offset the income of B. A will be treated as a dual resident corporation under paragraph (d)(1) of this section. Because A is a separate unit described in paragraph (d)(1) of this section, paragraph (d)(5)(i) of this section treats A and B as separate entities for purposes of determining whether the losses, expenses, or deductions of A may be used to offset the income of another person, corporation, or entity and the exception in paragraph (d)(5)(ii) of this section does not apply. Since the loss incurred by A may be used to offset B's income under foreign tax laws, W will not qualify for the exceptions described in paragraph (c) of this section. Accordingly, W will report the income from B on its 1987 U.S. tax return, but will not be allowed to use the losses from A to offset that income or the income from any source other than from the operations of A.

(e) *Special rule for use of dual consolidated loss to offset tainted income*—(1) *In general.* The dual consolidated loss of any dual resident corporation that ceases to be a dual resident corporation shall not be used to offset income of such corporation to the extent that such income is tainted income as defined in paragraph (e)(2) of this section.

(2) *Tainted income defined.* Tainted income is any income derived from tainted assets (as defined in paragraph (e)(3) of this section), during the period beginning on the date of the transfer or acquisition of tainted assets and ending at the close of the fifteenth taxable year following the taxable year in which the dual resident corporation ceased to be a dual resident corporation.

(3) *Tainted assets defined.* Tainted assets are any assets transferred to or acquired by a dual resident corporation in a non-recognition transaction (as defined in section 7701(a)(45)) at any time during the three taxable years immediately preceding the taxable year in which such dual resident corporation ceased to be a dual resident corporation or at any time during the 15 taxable years immediately following the taxable year in which a dual resident corporation ceased to be a dual resident corporation. Tainted assets shall not include assets that were transferred to or acquired by such dual resident corporation on or before December 31, 1986.

(4) *Exception.* For assets transferred to or acquired by a dual resident corporation prior to the time it ceased to be a dual resident corporation, if it can be shown that, for the year in which assets were transferred to or acquired by such corporation, the corporation did not incur a dual consolidated loss (or carry forward a dual consolidated loss to such year) and that there was a valid business reason for the transfer or acquisition of such assets, the income derived from such assets shall not be subject to the limitation described in paragraph (e)(1) of this section.

(f) *Special rules for accounting for dual consolidated losses*—(1) *Determination of amount of dual consolidated loss*—(i) *Dual resident corporation that is a member of an affiliated group.* For purposes of determining whether a dual resident corporation that is a member of an affiliated group filing a consolidated return has a dual consolidated loss for the taxable year, the dual resident corporation shall compute its taxable income (or loss) in accordance with the provisions of § 1.1502–12 (relating to computation of separate taxable income of a member of an affiliated group filing a consolidated return), determined by taking into account the adjustments provided in § 1.1502–79(a)(3), that is:

(A) The portion of the consolidated dividends received deduction, the consolidated charitable contributions deductions, and the consolidated section 247 deduction, attributable to such member;

(B) Such member's capital gain net income (determined without regard to any net capital loss carryover attributable to such member);

(C) Such member's net capital loss and section 1231 net loss, reduced by the portion of the consolidated net capital loss attributable to such member (as determined under paragraph (b)(2) of § 1.1502–79); and

(D) The portion of any consolidated net capital loss carryover attributable to such member which is absorbed in the taxable year.

For purposes of this paragraph (f), any income, gain, or loss of a dual resident corporation shall not be deferred or eliminated under § 1.1502–13 (b)(2) or (c), or 1.1502–14. Further, sections 267 and 163(e)(3) shall not apply.

(ii) *Dual resident corporation that is a separate unit of a domestic corporation.* For purposes of determining whether a dual resident corporation that is a separate unit of a domestic corporation has a dual consolidated loss for the taxable year, the dual resident corporation shall compute its taxable income (or loss) as if it were a separate domestic corporation and a dual resident corporation, using only those items of income, expenses, and deductions which are otherwise attributable to such separate unit.

(2) *Effect of dual consolidated loss.* For any taxable year in which a dual resident corporation has a dual consolidated loss to which paragraph (a) of this section applies, the following rules shall apply.

(i) If the dual resident corporation is a member of an affiliated group filing a consolidated return, then such affiliated group shall compute its taxable income without regard to the items of income, loss, or deduction of the dual resident

corporation for the taxable year. The amount of taxable loss of the dual resident corporation for the taxable year shall be the amount of dual consolidated loss determined under paragraph (f)(1)(i) of this section. Such loss may be carried over or back for use in other taxable years as a net operating loss deduction by the dual resident corporation to the extent permitted under section 172. However, such loss shall be treated as a loss incurred by the dual resident corporation in a separate return limitation year, and, including in the case of a dual resident corporation that is a common parent, shall be subject to all of the limitations of § 1.1502–21(c)(2) (relating to limitations on net operating loss carryovers and carrybacks from separate return limitation years).

(ii) If the dual resident corporation is a separate unit of a domestic corporation, then such domestic corporation and the affiliated group with which it may file a consolidated return shall compute taxable income for the taxable year without regard to the items of income, loss, or deductions of the dual resident corporation for the current year. Further, the loss of the dual resident corporation (the separate unit of the domestic corporation) shall be treated as a loss incurred by a separate corporation and its use shall be subject to all of the limitations of § 1.1502–21(c)(2) (relating to limitations on net operating loss carryovers and carrybacks from separate return limitation years), as if such dual resident corporation were filing a consolidated return with the domestic corporation or with the affiliated group with which the domestic corporation files a consolidated return.

(3) *Basis adjustments for dual consolidated losses.* When a dual resident corporation is a member of an affiliated group filing a consolidated return, each member owning stock in the dual resident corporation shall adjust the basis of the stock in the manner described in subparagraphs (i) and (ii) of this paragraph (f)(3).

(i) *Positive adjustment.* Adjustments shall be made in accordance with the principles of § 1.1502–32(b)(1), except that there shall be no positive adjustment under § 1.1502–32(b)(1)(ii) for any amount of the dual consolidated loss which is not absorbed. There shall be no positive adjustment for any amount included in income upon the use of a dual consolidated loss in a foreign country under § 1.1503–2T(c)(3).

(ii) *Negative adjustments.* Adjustments shall be made in accordance with the principles of § 1.1502–32(b)(2), except that there shall be no negative adjustments under § 1.1502–32(b)(2)(ii) for the amount of the dual consolidated loss.

(4) *Examples.* The following examples illustrate this paragraph (f).

Example (1). (i) P, S1, S2, and T are domestic corporations. P owns all of the stock of S1 and S2. S2 owns all of the stock of T. T is a dual resident corporation. None of the exceptions described in paragraph (c) apply with respect to T. P, S1, S2, and T have filed and continue to file a consolidated federal income tax return. X, Y, and Bank are corporations which are not members of the affiliated group of which P is the common parent.

(ii) At the beginning of 1989, P had a basis in S2 of $1000. S2 had a basis in T of $500.

(iii) In 1989, T had an interest expense of $100 on a loan from Bank. T sold a noncapital item *u* in which it had a basis of $10 to S1 for $50. T sold noncapital item *v* in which it had a basis of $200 to S1 for $100. The sale of *u* and *v* are deferred intercompany transactions described in § 1.1502–13(a)(2). S1 had separate taxable income calculated in accordance with § 1.1502–12 of $200. In addition, S1 sold item *w* in which it had a basis of $50 to T for $100. The sale of item *w* is a deferred intercompany transaction described in § 1.1502–13(a)(2). P and S2 had no items of income, loss, or deduction for 1989.

(iv) For purposes of determining whether T has a dual consolidated loss in 1989 and the amount of such dual consolidated loss, T's taxable income (loss) is calculated under paragraph (f)(1) as follows:

($100)	interest expense to Bank
($100)	sale of item *v* to S1
$40	sale of item *u* to S1
($160)	

T therefore has a dual consolidated loss of $160 for 1989.

(v) Because T has a dual consolidated loss for the year, the consolidated taxable income of the P affiliated group is calculated without regard to the items of income, loss, or deduction of T. However, T is still a member of the P affiliated group. Therefore, the consolidated taxable income of the P group is $200 (attributable solely to the income of S1). The $50 gain recognized by S1 upon the sale of item *w* to T is deferred pursuant to § 1.1502–13(c)(1).

(vi) S2 may not make the positive adjustment provided for in § 1.1502–32(b)(1)(ii) to its basis in T for the dual consolidated loss incurred by T. However, S2 must make the negative adjustment provided for in § 1.1502–32(b)(2)(i) for the amount of its allocable part of the deficit in earnings and profits of T for the taxable year. Thus, as provided in § 1.1502–32(e)(1), S2 shall make a net negative adjustment to its basis in T of $160 and S2's basis in T is now $340. As provided in § 1.1502–33(b)(4)(ii)(a), S2's earnings and profits for 1989 must reflect S2's decrease in its basis in T stock for the taxable year. Since S2 has no other earnings and profits for the taxable year, S2 has a deficit in earnings and profits of $160 for the taxable year. As provided in § 1.1502–32(b)(2)(i), P must make a negative adjustment for the amount of its allocable part of the deficit in earnings and profits of S2 for the taxable year. Thus, P must make a net negative adjustment to its basis in S2 of $160 and P's basis in S2 is now $840.

Example (2). (i) The facts are the same as in *Example (1)*, except that in 1990, S1 sold items *u* and *v* to X for no gain or loss. T incurred an interest expense of $100 on a loan from Bank. T also sold item *q* in which it had a basis of $50 to S1 for $100. T also sold item *r* in which it had a basis of $100 to Y for $300. P and S2 had no items of income, loss, or deduction for 1990.

(ii) For purposes of determining whether T has a dual consolidated loss in 1990 and the amount of such dual consolidated loss, T's taxable income (loss) is:

($100)	interest expense to Bank
$50	sale of item *q* to S1
$200	sale of item *r* to Y
$150	

T therefore has no dual consolidated loss for 1990.

(iii) Since T does not have a dual consolidated loss for the taxable year, the group's consolidated taxable income is calculated in accordance with the general rule of § 1.1502–11 and not in accordance with the rule of § 1.1503–2T(f)(2). T has separate taxable income calculated in accordance with § 1.1502–12 of $100. On the disposition of items *u* and *v* outside the P affiliated group, no gain or loss is restored to income to T in accordance with § 1.1502–13(f)(1)(i) because the gain or loss on these items was not deferred, pursuant to § 1.1503–2T(f)(3). The $50 gain on the sale of item *q* from T to S1 is an intercompany transaction on which the gain or loss recognized is deferred pursuant to § 1.1502–13(c)(1). The consolidated taxable income of the P affiliated group computed without regard to the consolidated net operating loss deduction is $100.

(iv) As provided by § 1.1502–21(c)(2) of the regulations, the amount of the dual consolidated loss arising in 1989 which may be absorbed by the P affiliated group in 1990 is $100; that is, the consolidated taxable income computed without regard to the consolidated net operating loss deduction minus such consolidated taxable income recomputed by excluding the items of income and deduction of T. Section 1.1502–21(c) allows $100 of the dual consolidated loss to be included in the consolidated net operating loss deduction for 1990. The consolidated taxable income of the P group for 1990 is $0.

(v) S2 must make the positive adjustment provided for in § 1.1502–32(b)(1)(i) to its basis in T for the amount of its allocable part of the undistributed earnings and profits of T for the taxable year. S2 can not make the negative adjustment provided for in § 1.1502–32(b)(2)(ii) for the dual consolidated loss of T incurred in 1989 and absorbed in 1990. Thus, as provided in § 1.1502–32(e)(2), S2 shall make a net positive adjustment to its basis in T of $100 and S2's basis in T is now $440. As provided in § 1.1502–33(b)(4)(ii)(a), S2's earnings and profits for 1989 must reflect S2's increase in its basis in T stock for the taxable year. Since S2 has no other earnings and profits for the taxable year, S2 has earnings and profits of $100 for the taxable year. As provided in § 1.1502–32(b)(1)(i), P must make a positive adjustment for the amount of its allocable part of the undistributed earnings and profits of S2 for the taxable year. Thus, P

must make a net positive adjustment to its basis in S2 of $100 and P's basis in S2 is now $940.

OMB Control Number Under the Paperwork Reduction Act

PART 602—[AMENDED]

Par. 3. The authority for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 4. Section 602.101(c) is amended by inserting in the appropriate place in the table "§ 1503–2T * * * 1545–1083."

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

Approved: July 26, 1989.

Kenneth W. Gideon,

Assistant Secretary of the Treasury.

[FR Doc. 89–21072 Filed 9–7–89; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Judge Advocate General of the Navy has determined that USS ABRAHAM LINCOLN (CVN 72) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special functions as a naval aircraft carrier. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: August 31, 1989.

FOR FURTHER INFORMATION CONTACT: Captain P.C. Turner, JAGC, U.S. Navy Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332–2400. Telephone number: (202) 325–9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Judge Advocate General of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS ABRAHAM LINCOLN (CVN 72) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS: Rule 21(a), pertaining to the location of the masthead lights over the fore and aft centerline of the ship; Annex 1, section 2(g), pertaining to the distance of the sidelights above the hull; and Annex I, section 3(a), pertaining to the location of the forward masthead light in the forward quarter of the ship, without interfering with its special functions as a naval ship. The Judge Advocate General of the Navy has also certified that the aforementioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR part 706 is amended as follows:

1. The authority citation for 32 CFR part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

2. Table 2 of § 706.2 is amended by adding the following ship:

Vessel and number	Masthead lights, distance to stbd of keel in meters; Rule 21(a)	Forward anchor light, distance below flight dk in meters; § 2(k), Annex I	Forward anchor light, number of; Rule 30(a)(i)	AFT anchor light, distance below flight dk in meters; Rule 21(e), Rule 30(a)(ii)	AFT anchor light, number of; Rule 30(a)(ii)	Side lights, distance below flight dk in meters; § 2(g), Annex I	Side lights, distance forward of forward masthead light in meters; § 3(b), Annex I	Side lights, distance inboard of ship's sides in meters; § 3(b), Annex I
U.S.S. ABRAHAM LINCOLN—CVN–72	30.0					0.6		

3. Table Five of § 706.2 is amended by adding the following ship:

Vessel and number	Forward masthead light less than the required height above hull. Annex I, sec. 2(a)(i)	Aft masthead light less than 4.5 meters above forward masthead light. Annex I, sec. 2)(a)(ii)	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Vertical separation of masthead lights used when towing less than required by Annex I, sec. 2(a)(i)	Aft masthead lights not visible over forward light 1,000 meters ahead of ship in all normal degrees of trim. Annex I, sec. 2(b)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. Annex I, sec. (3)(a)	Percentage horizontal separation attained.
U.S.S. ABRAHAM LINCOLN—CVN-72						X		

Date: August 31, 1989.

Approved:

E. D. Stumbaugh,

Rear Admiral, JAGC, U.S. Navy Judge Advocate General.

Date: September 5, 1989.

[FR Doc. 89-21179 Filed 9-7-89; 8:45 am]

BILLING CODE 3810-01-M

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Judge Advocate General of the Navy has determined that USS TOPEKA (SSN 754) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special functions as a naval submarine. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: September 1, 1989.

FOR FURTHER INFORMATION CONTACT: Captain P.C. Turner, JAGC, U.S. Navy Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400. Telephone number: (202) 325-9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR part 706. This amendment provides notice that the Judge Advocate General of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS TOPEKA (SSN-754) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS: Rule 21(c), pertaining to the arc of visibility of the sternlight; Annex I, section 2(a)(i), pertaining to the height of the masthead light; Annex I, section 2(k), pertaining to the height and relative positions of the anchor lights; and Annex I, section 3(b), pertaining to the location of the sidelights. Full compliance with the above-mentioned 72 COLREGS provisions would interfere with the special functions and purposes of the vessel. The Judge Advocate General of the Navy has also certified that the aforementioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Notice is also provided to the effect that USS TOPEKA (SSN-754) is a member of the SSN-688 class of vessels for which certain exemptions, pursuant to 72 COLREGS, Rule 38, have been previously authorized by the Secretary of the Navy. The exemptions pertaining to that class, found in the existing tables of section 706.3, are equally applicable to USS TOPEKA (SSN-754).

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine Safety, Navigation (Water), and Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR part 706 is amended as follows:

1. The authority citation for 32 CFR part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

2. Table one of § 706.2 is amended by adding the following vessel:

Vessel and number	Distance in meters of forward masthead light below minimum required height. § 2(a)(i), Annex I
U.S.S. TOPEKA—SSN-754	3.5

3. Table three of § 706.2 is amended by adding the following vessel:

Vessel and number	Masthead lights, arc of visibility; Rule 21(a)	Side lights, arc of visibility; Rule 21(b)	Stern light, arc of visibility; Rule 21(c)	Side lights, distance inboard of ship's sides in meters; § 3(b), Annex I	Stern light distance forward of stern in meters; Rule 21(c)	Forward anchor light, height above hull in meters; § 2(k), Annex I	Anchor lights, relationship of aft light to forward light in meters; § 2(k), Annex I
U.S.S. TOPEKA—SSN-754			206°	4.2	6.2	3.5	1.7 below

Dated: September 1, 1989.

Approved:

E. D. Stumbaugh,

Rear Admiral, JAGC, U.S. Navy.

Date: September 5, 1989.

[FR Doc. 89-21180 Filed 9-7-89; 8:45 am]

BILLING CODE 3810-01-M

PANAMA CANAL COMMISSION

35 CFR Parts 101, 113, 121, and 123

RIN 3207-AA18; 3207-AA19; and 3207-AA20

Arriving and Departing Vessels: Various Communication, Documentation; Dangerous Cargoes; Inspection and Registration of Vessels; Radio Communication

AGENCY: Panama Canal Commission.

ACTION: Final rule.

SUMMARY: This rule changes parts of title 35, Code of Federal Regulations concerning arriving and departing vessels, specifically those provisions relating to documentation, dangerous cargoes, inspection and registration of vessels, and radio communication. The rule changes reflect a recent reorganization in the Commission's Marine Bureau which has resulted in changes of the titles of responsible officials. The rule will clarify responsibility for reporting dangerous cargoes, as well as allow for greater consistency in the area of marine inspection.

EFFECTIVE DATE: October 10, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Rhode, Jr., Assistant to the Chairman and Secretary, Panama Canal Commission, (202) 634-6441, or Captain William Y. Clark II, USCG, Special Assistant to the Marine Director, telephone in Balboa Heights, Republic of Panama, 011-507-52-4243.

SUPPLEMENTARY INFORMATION: On June 27, 1989, a notice of proposed rulemaking was published in the **Federal Register** (54 27030). Comments were invited from the public until July 27, 1989. No comments were received. Since the adoption of International Maritime Organization's rules concerning dangerous or hazardous cargoes in June, 1985, considerable information has been gathered concerning the specifics necessary to the proper reporting of these cargoes and the need to be consistent throughout the regulations. The amendments are mainly procedural. The intent is to clarify information for Canal users.

Further, the rule revises the requirement for vessels carrying nuclear materials to provide proof of financial responsibility to establish that such vessels must have adequate provision for indemnity and loss comparable in general scope to the protection afforded under the United States Atomic Energy Act or consistent with international practice and standards. Vessels will also be required to furnish the Commission with the results of radiation survey reports prior to transiting.

Additionally, the Commission's Marine Bureau has been reorganized. The titles of heads of certain units have changed and are published for the benefit of our customers. For example, the inspection of floating equipment is now under the direction of the U.S. Coast Guard Liaison Officer, who is also the Special Assistant to the Marine Director for Marine Safety. He heads a Marine Safety Unit consisting of four members, two of whom are floating equipment inspectors. The main purpose served by the changes to part 121, "Inspection and Registration of Vessels", is to properly reflect the present area of responsibility and to include references pertinent to U.S. Coast Guard Marine Inspection Regulations contained in 46 CFR.

Economic Assessment and Certification

The Panama Canal Commission has determined that these changes do not constitute major rules within the meaning of Executive Order 12291 dated February 17, 1981 (47 FR 13193), inasmuch as these changes, will not have an effect on the economy of $100 million or more per year. These changes will not result in a major increase in cost or prices for consumers, individual industries, local government agencies or geographic regions.

Further, the agency has determined that implementation of the rules will have no adverse impact 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. Finally, the Commission has determined that these rules are not subject to the requirements of sections 603 and 604 of Title 5, United States Code, in that their promulgation will not have a significant impact on a substantial number of small entities.

List of Subjects

35 CFR Part 101

Arriving and departing vessels: Documentation requirements.

35 CFR Part 113

Dangerous cargo transportation.

35 CFR Part 121

Inspection and registration of vessels.

35 CFR Part 123

Radio communication.

For the reasons set out in the preamble, title 35, chapter I, subchapter C of the Code of Federal Regulations is amended as follows.

PART 101—ARRIVING AND DEPARTING VESSELS: VARIOUS COMMUNICATION, DOCUMENTATION, SANITATION AND ADMEASUREMENT REQUIREMENTS

1. The authority citation for Part 101 continues to read as follows:

Authority: 22 U.S.C. 3811, E.O. 12215, 45 FR 36043, 44 U.S.C. 3501.

2. Section 101.10 is amended by revising paragraphs (a)(3), (e) and (f) to read as follows:

§ 101.10 Same; list.

(a) *Documents for Commission Boarding Officer.* * * *

* * * * *

(3) Crew List (Panama Canal Form 1509)—1 Copy

* * * * *

(e) *Dangerous cargo manifest.* The dangerous cargo manifest for vessels carrying packaged dangerous goods, as defined in § 113.2(m) of this title, shall show the correct technical name, United Nations number, International Maritime Organization class and division, storage location, and quantity for each packaged dangerous good carried as cargo.

(f) *Loading plan.* The loading plan for vessels carrying dangerous cargo in bulk, as defined in § 113.2(f) of this title, shall show the location of cargo tanks or holds and the correct technical name, United Nations number, International Maritime Organization class and division, and quantity of dangerous cargo carried in each cargo tank or hold.

* * * * *

PART 113—DANGEROUS CARGOES

3. The authority citation for part 113 continues to read as follows:

Authority: Issued under authority vested in the President by 22 U.S.C. 3811, E.O. 12215, 45 FR 36043.

4. Section 113.3 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 113.3 Classifications.

(a) Dangerous cargo shall be classified in accordance with the IMO class and division. Whenever there is a doubt as to the explosive or dangerous nature of

any commodity, or in case of conflict as to its classification, determination of the nature and classification of such cargoes shall be made by the Marine Safety Advisor or his designee. Dangerous cargoes shall be divided into the following classes:

* * * * *

5. Section 113.4 is amended by revising paragraph (a) to read as follows:

§ 113.4 Safety and alarm systems.

(a) All dangerous cargo alarms, safety devices, and the vessel's firefighting systems shall be tested 24 hours prior to arrival in Canal waters by any vessel carrying dangerous cargoes. An entry shall be made in the ship's log stating that such tests were conducted and the systems found in proper working order or, if not in proper order, a detailed listing of discrepancies shall be included.

* * * * *

6. Section 113.5 is revised to read as follows:

§ 113.5 Inspections.

The Canal Operations Captain or the Marine Safety Advisor or their designees may inspect vessels carrying dangerous cargoes to ensure that such vessels are in compliance with the requirements of this part.

Subpart B—Vessels Carrying Dangerous Cargoes in Bulk

7. Section 113.21 is revised to read as follows:

§ 113.21 Application.

This subpart applies to vessels carrying dangerous liquefied gases, liquids and solids in bulk, or tankers in ballast condition which are not gas free. It does not apply to vessels carrying combustible liquids in bulk as prescribed in § 113.3(b), subpart A, of this part.

8. Section 113.22 is revised to read as follows:

§ 113.22 Advance notice.

Vessels subject to this subpart shall provide not less than 48 hours advance notice to Canal authorities by radio of the information required by the "GOLF" item in the prearrival radio message prescribed in § 123.4(a) of this subchapter.

(Approved by the Office of Management and Budget under control number 3207-0001).

9. Section 113.26 is amended by revising paragraph (a) to read as follows:

§ 113.26 Transit requirements.

(a) To better ensure the safe passage of vessels subject to this subpart, operating restrictions beyond those applicable to other vessels may be imposed by the Canal Operations Captain or his designee.

* * * * *

10. Section 113.29 is amended by revising paragraphs (b) and (c) to read as follows:

§ 113.29 Prohibited cargoes.

* * * * *

(b) Bulk dangerous cargoes not listed in the Bulk Chemical Code, Gas Carrier Codes, or Solid Bulk Code are prohibited in Canal waters unless advance approval is given by the Marine Safety Advisor or his designee to carry such cargoes.

(c) Bulk chemical and liquefied gas carriers are prohibited from carrying in Canal waters dangerous cargoes that are not listed on their Certificate of Fitness or Certificate of Compliance, unless 30 days advance notice is given by the vessel and the Marine Safety Advisor or his designee approves the carriage of such cargoes in Canal waters.

(Approved by the Office of Management and Budget under control number 3207-0001.)

Subpart C—Vessels Carrying Dangerous Packaged Goods

11. Section 113.42 is revised to read as follows:

§ 113.42 Advance notice.

Vessels subject to this subpart shall provide not less than 48 hours advance notice to Canal authorities by radio of the information required in the "HOTEL" item of the radio message prescribed in § 123.4 of this subchapter, except that vessels carrying explosives shall provide the information required in the "GOLF" item of the message.

(Approved by the Office of Management and Budget under control number 3207-0001)

12. Section 113.43 is amended by revising paragraph (c) to read as follows:

§ 113.43 Anchoring requirements.

* * * * *

(c) Vessels carrying explosives or especially reactive or large amounts of dangerous materials as determined by the Canal Operations Captain, or his designee, may be instructed to anchor in one of the explosive anchorage areas described in § 101.8(a) (2), (3) and (c)(2) of this subchapter.

13. Section 113.45 is revised to read as follows:

§ 113.45 Transit requirements.

Normal operating restrictions will generally apply unless such vessels are carrying more than five tons of explosives or carrying especially more reactive or large amounts of dangerous goods as determined by the Marine Safety Advisor or his designee, in which case additional operating restrictions may be imposed.

14. Section 113.49 is amended by revising paragraphs (b) and (c) to read as follows:

§ 113.49 Class 1, Explosives.

* * * * *

(b) Explosive cargo may be loaded and discharged only at the Mindi Dock. Explosive anchorages prescribed in § 101.8 (a) (2), (3) and (c)(2), respectively, may be used upon approval of the Marine Safety Advisor, or his designee.

(c) The Marine Safety Advisor or his designee, upon application, may permit the discharge of explosives, whether intended for civilian or military use, at Commission docks and other locations within Canal waters in an emergency or when the character or packing of the explosives permits their safe discharge there.

15. Section 113.50 is amended by revising paragraphs (c), (d), and (e) to read as follows:

§ 113.50 Class 7, Radioactive substances.

* * * * *

(c) For the purpose of approval of shipments and prior notification of radioactive substances under the IMDG Code, Panama Canal waters will be considered a country en route. Notification shall be given to Canal authorities 30 days in advance of the arrival of the vessel in Canal waters for all fissionable materials, in order that approval may be given by the Marine Safety Advisor, or his designee, to transit such cargoes.

(d) Vessels carrying nuclear materials shall be required to provide current proof of financial responsibility and adequate provision for indemnity covering public liability and loss to the United States or any agency thereof, comparable in general scope to the protection afforded under section 170 of the United States Atomic Energy Act of 1954, as amended, 68 Stat. 919, 71 Stat. 576, or consistent with international practice and standards as set forth by the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal. Vessels shall also be required to furnish the Commission with the results of cargo radiation survey reports in

accordance with the standards in IMO class 7.

(e) For the following radioactive substances, not less than 48-hour advance information required under § 123.4 shall be provided, indicating the specifics required by the IMDG Code:

(1) Low Specific Activity Substances or Low Level Solid Radioactive Substances as specified in Class 7 schedules 5, 6, and 7 of the IMDG Code.

(2) Radioactive Substances carried in limited quantities as specified in Class 7 schedules 1, 2, 3, and 4 of the IMDG Code.

(Approved by the Office of Management and Budget under control number 3207–0001)

PART 121—INSPECTION AND REGISTRATION OF VESSELS

16. The authority citation for part 121 continues to read as follows:

Authority: 22 U.S.C. 3811, E.O. 12215, 45 FR 36043, and 44 U.S.C. 3501.

Subpart A—General Provisions

17. Section 121.2 is revised to read as follows:

§ 121.2 Definitions.

As used in this part, the following terms have the meanings indicated:

(a) *Vessel* means any vessel as defined in § 111.3 other than a motorboat as defined in this section.

(b) *Motorboat* means any vessel not more than 20 meters (65 feet) in length propelled by machinery except tugboats and towboats. The word "motorboat" includes a boat temporarily or permanently equipped with a detachable motor. Motorboats are classed as follows:

Class A—Any motorboat less than 7 meters (23 feet) in length.

Class B—Any motorboat 7 meters (23 feet) or over and less than 12 meters (40 feet) in length.

Class C—Any motorboat 12 meters (40 feet) or over and less than 20 meters (65 feet) in length.

Class D—Any cayuco or piragua not more than 20 meters (65 feet) in length equipped with an outboard motor or motors operating in Madden or Gatun Lakes.

§ 121.3 [Removed]

18. Section 121.3 is removed.

Subpart B—Inspection

Vessels

19. Section 121.41 is amended by revising paragraphs (a) and (c) to read as follows:

§ 121.41 Certificates of inspection.

(a) Certificates of inspection shall be issued for a period of 1 year to passenger vessels, vessels equipped with boilers, and vessels whose hull or machinery is, in the judgment of the Marine Safety Unit, in such condition as to require inspection annually.

* * * * *

(c) Application shall be made by the owner or other responsible person for inspection and issuance of a new certificate of inspection prior to expiration of the certificate.

20. Section 121.42 is revised to read as follows:

§ 121.42 Distribution of certificates.

Two copies of the certificate of inspection shall be retained on file by the Marine Safety Unit. The original and one copy shall be given to the master or owner of the vessel named therein.

21. Section 121.45 is revised to read as follows:

§ 121.45 Drawings of new vessels to be furnished to the Marine Safety Unit.

The owner or other responsible person, when applying for the first inspection to a new vessel, shall furnish the Marine Safety Unit the following drawings and prints for review prior to construction: Midship section, inboard profile, outboard profile, arrangement of decks and hatch details, capacity of double bottoms and fuel compartments, hull penetrations and shell connections, machinery installation, piping systems, lifesaving equipment, fire fighting equipment, electrical, general alarm, radio, and emergency light circuits, and such other drawings or prints as show the general construction of the vessel, including dimensions, spacing of frames, disposition of hull plates, construction of transverse and longitudinal bulkheads, and location of same.

(Approved by the Office of Management and Budget under control number 3207–0001)

22. Section 121.47 is amended by revising paragraph (c) to read as follows:

§ 121.47 Inspection of hulls.

* * * * *

(c) The outboard shaft or shafts on every ocean or coastwise vessel shall be drawn for examination at least once every 3 years: Provided, that when it is shown that a vessel has had a long period of lay-up the Marine Safety Unit may grant an extension equal to the time the vessel has been out of commission, but in no case shall the extension exceed 1 year.

* * * * *

23. Section 121.58 is revised to read as follows:

§ 121.58 Safety valves.

(a) At the annual inspection of each boiler, the marine safety inspector shall check the setting of each boiler safety valve and make any adjustments that may be necessary to keep the boiler within the maximum allowable pressure. After adjusting the boiler safety valves, the marine safety inspector shall seal each safety valve separately with the official seal of the Marine Safety Unit.

(b) Each chief engineer, upon taking charge of the power plant of a vessel, shall examine all safety valves and if any seals are broken, or there is any evidence that valves have been tampered with, he shall report same in writing to the Marine Safety Unit. If at any time it is necessary to break the seal on a safety valve for any purpose, the chief engineer shall advise the Marine Safety Unit in writing, giving the reason for breaking the seal and requesting the valve be examined, adjusted, and resealed.

24. Section 121.63 is amended by revising the section heading to read as follows:

§ 121.63 Guards in dangerous places.

25. Section 121.65 is revised to read as follows:

§ 121.65 Notice to the Marine Safety Unit of vessel on dock; alterations.

(a) Whenever any vessel under the supervision of the Marine Safety Unit is placed upon the dock for repairs it shall be the duty of the owner or responsible official to report same to the Marine Safety Unit so that a thorough inspection may be made to determine what is necessary to make such vessel seaworthy. No repairs or alterations affecting the safety of the vessel, either in regard to hull or machinery, shall be made without the knowledge and authority of the Marine Safety Unit. Notice of such repairs and alterations is necessary even if such work does not require the vessel to be placed in a drydock.

(b) When a repair or alteration ordered by the Marine Safety Unit has been completed the same shall be reported to the Marine Safety Unit in writing by the owner or responsible official.

26. Section 121.66 is revised to read as follows:

§ 121.66 Whistles.

Every inspected vessel under the supervision of the Marine Safety Unit shall be provided with an efficient whistle suitable for sounding the necessary whistle signals. Means shall be provided to operate the whistle from

a position adjacent to the main steering station and from the remote steering station where such steering station is fitted. Details of the whistle operating devices shall meet the requirements of 46 CFR chapter I, subchapter J (Electrical Engineering).

27. Section 121.67 is revised to read as follows:

§ 121.67 Fog bells.

Inspected vessels 12 meters in length or greater, under the supervision of the Marine Safety Unit, shall be provided with an efficient fog bell. The bell, of corrosion resistant material, shall produce a clear tone at a sound pressure level of not less than 110 decibels at a distance of 1 meter. The diameter of the mouth of the bell shall not be less than 300mm for vessels of 20 meters or more in length, and shall be not less than 200mm for vessels of 12 meters to 20 meters in length. The mass of the striker shall not be less than 3 percent of the mass of the bell.

28. Section 121.69 is revised to read as follows:

§ 121.69 Proceeding to another port for repairs.

The Marine Safety Unit may issue a permit to proceed to another port for repairs, if in its judgment this can be done with safety. Such a permit shall state the conditions upon which it is granted.

29. Section 121.70 is revised to read as follows:

§ 121.70 Marking of draft on vessel.

All vessels 20 gross tons and over, under supervision of the Marine Safety Unit, shall have the draft of the vessel plainly and legibly marked upon the stem and upon the stern post or rudder post or at such other place at the stern of the vessel as may be necessary for easy observance. The draft shall be taken from the bottom of the lowest part of the keel to the surface of the water, the bottom of the mark to indicate the draft in feet. Sufficient marks shall be used to cover all working and loading conditions of the vessel. If any part of the hull or permanent equipment extends below the lowest part of the keel, the master or other responsible person shall produce evidence from which the vessel's maximum immersion may be determined.

30. Section 121.71 is revised to read as follows:

§ 121.71 Emergency lighting system.

Provision shall be made on passenger vessels, tug boats and dredges for an electric system of lighting, sufficient for all requirements of safety, throughout the vessel. There shall be a self-contained electric source capable of supplying power when necessary. Emergency lights shall be tested at least once each week. The date of the tests required by this section shall be noted in the vessel's logbook.

31. Section 121.72 is revised to read as follows:

§ 121.72 Repairs to firefighting and lifesaving apparatus.

No extensive repairs or alterations, except in an emergency, shall be made to lifesaving or firefighting equipment without prior notice to the Marine Safety Unit.

32. Section 121.74 is revised to read as follows:

§ 121.74 Repairs on boilers and unfired pressure vessels.

(a) Before undertaking repairs to a boiler or unfired pressure vessel, the engineer in charge of such vessel shall report the condition necessitating repairs and the nature of the proposed repairs to the Marine Safety Unit in writing.

(b) When damage occurs to boilers or pressure vessels through an accident that tends to render the further use of such boilers or pressure vessels unsafe until repairs are made, the engineer in charge thereof shall promptly report the facts of the accident and the proposed repairs to the Marine Safety Unit in writing.

(c) In cases requiring a written report under this section, repairs shall not commence until the Marine Safety Unit's Inspector has approved the proposed plan of repairs.

33. Section 121.76 is revised to read as follows:

§ 121.76 Inclining test.

When the Marine Safety Unit has any reason to question the stability of any vessel under its supervision, it shall require the owners of the vessel to make inclining tests on such vessels, under the general supervision of the Marine Safety Unit.

34. Section 121.79 is revised to read as follows:

§ 121.79 Carrying of excess steam.

When it is known or comes to the knowledge of the Marine Safety Unit that any steam vessel is or has been carrying an excess of steam beyond that which is allowed by her certificate of inspection, the Marine Safety Unit shall require the owner of said vessel to place on the boiler a lockup safety valve, that will prevent the carrying of an excess of steam, which shall be under the control of the Marine Safety Unit.

35. Section 121.85 is revised to read as follows:

§ 121.85 Sanitation.

The master and chief engineer of any vessel under supervision of the Marine Safety Unit shall see that the vessel and the passenger and crew quarters are kept in a sanitary condition.

36. Section 121.87 is revised to read as follows:

§ 121.87 Examination of boilers and machinery by engineer.

When an engineer assumes charge of the boilers and machinery of a vessel he shall examine the same immediately and thoroughly, and if he finds any part thereof in bad condition, he shall immediately report the fact to the master or employer and to the Marine Safety Unit, which shall thereupon investigate the matter to determine whether the former engineer has been negligent in his duties.

37. Section 121.88 is revised to read as follows:

§ 121.88 Fusible plug report.

The chief engineer of a steam vessel subject to this part shall report promptly to the Marine Safety Unit every renewal of every fusible plug in a boiler or boilers of a steam vessel upon which he is in charge as chief engineer.

38. Section 121.89 is amended by revising paragraphs (a), (a)(1), and (b) to read as follows:

§ 121.89 Boiler steam hours.

(a) Boilers on floating equipment of the Panama Canal Commission which are inspected by the Marine Safety Unit may not be operated under steam for more than the following prescribed number of hours between boiler washout periods:

(1) Boilers which are operated under an approved system of boiler feed water conditioning and with respect to which copies of reports of boiler water conditioning are filed with the Marine Safety Unit: 2,880 hours.

* * * * *

(b) The chief engineer of the vessel shall report all washouts to the Marine Safety Unit on Form 1588–4 when the washout is completed and steam raised in a boiler. The original of this report shall be forwarded to the Marine Safety Unit and a copy to his master or employer.

39. Section 121.90 is revised to read as follows:

§ 121.90 Annual report of floating equipment on hand.

The accountable officials of the Panama Canal Commission shall furnish the Marine Safety Unit with an annual report of all vessels and floating craft on hand by January 1st of each year. This report shall show:

(a) The accountable official.

(b) The responsible official.

(c) The location of vessel or craft.

(d) The number or name of vessel or craft.

(e) The description of vessel or craft.

40. Section 121.92 is revised to read as follows:

§ 121.92 Lifesaving apparatus.

Unless otherwise provided by this part, lifesaving apparatus for vessels subject to this part shall be in accordance with the requirements of the general rules and regulations for vessel inspection of the United States Coast Guard, or with the requirements of the International Convention for the Safety of Life at Sea.

41. Section 121.99 is amended by adding paragraph (c) to read as follows:

§ 121.99 Fire axes.

* * * * *

(c) The vessel's name shall be marked on each ax handle.

42. Section 121.102 is revised to read as follows:

§ 121.102 Portable fire extinguishers.

All vessels subject to this section shall be provided with good and efficient U.S. Coast Guard approved marine portable fire extinguishers. The number and type required shall be determined by the Marine Safety Unit.

43. Section 121.107 is amended by revising paragraphs (a), (b), and (c) and adding paragraph (d) to read as follows:

§ 121.107 Non-self-propelled vessels; equipment.

* * * * *

(a) *Dredges, floating cranes, and drill boats:*

4 Life rings (2 luminous), U.S. Coast Guard approved.

1 Life preserver for each person on board, U.S. Coast Guard approved.

1 Fire pump. Outlets from fire mains to be so arranged that one 50–foot length of hose can reach any part of the vessel.

6 Portable fire extinguishers.

4 Fire axes.

1 Anchor and anchor chain as approved by the Marine Safety Unit.

Lights and day marks as required by § 111.27 (Rule 27, 72 COLREGS).

(b) *Floating pile drivers:*

2 Life rings (1 luminous), U.S. Coast Guard approved.

1 Life preserver for each person on board, U.S. Coast Guard approved.

2 Fire axes.

2 Portable fire extinguishers.

1 Anchor and anchor chain as approved by the Marine Safety Unit.

Lights and day marks as required by § 111.27 (Rule 27, 72 COLREGS).

(c) *Barges, lighters and scows:*

1 Life ring, U.S. Coast Guard approved.

1 Suitable anchor with cable.

1 Life preserver for each person on board, U.S. Coast Guard approved.

Lights as required by part 111 of this chapter and Rule 24 (72 COLREGS).

1 Stern light, white, and so fixed as to show the light 67.5 degrees from right aft on each side, an arc of 135 degrees, visibility of 3 miles.

1 Each sidelight, green starboard and red port, showing an unbroken light over an arc of the horizon of 112.5 degrees and so fixed as to show the light from right ahead to 22.5 degrees abaft the beam on its respective side, visibility of 3 miles.

1 Diamond black shape (on tows exceeding 200 meters) for daylight display where best seen.

(d) *Inconspicuous, partly submerged vessels or objects, or combination of such vessels or objects being towed, shall exhibit:*

(1) White, 32–point, 3–mile lights, one at or near the forward end and one at or near the after end, if less than 25 meters in breadth, except that dracones need not exhibit a light at or near the forward end;

(2) In vessels 25 meters or more in breadth, two additional all-round white lights at or near the extremities of its breadth;

(3) In vessels more than 100 meters in length, additional all-round white lights between the lights prescribed in paragraphs (d) (1) and (2) of this section so that the distance between the lights shall not exceed 100 meters;

(4) A diamond shape at or near the aftermost extremity of the last vessel or object being towed; and, if the length of the tow exceeds 200 meters, an additional diamond shape where it can best be seen and located as far forward as is practicable.

44. Section 121.108 is revised to read as follow:

§ 121.108 Complement of officers and crew.

A certificate of inspection will not be granted to a vessel unless it has in service and on board such complement of officers and crew as may, in the judgment of the Marine Safety Unit, be necessary for safe navigation.

45. Section 121.131 is revised to read as follows:

§ 121.131 Equipment on Motorboats.

(a) Motorboats less than 7 meters (23') in length shall carry the following equipment:

2 Oars or paddles.

1 Whistle.

1 Bailer.

20 Meters (65') of manila line, not less than 15mm (⅝") diameter, or synthetic line of comparable strength.

2 Fire extinguishers, either 1¼ gallon foam, 4-lb. CO–2, or 2-lb. dry chemical, when engine is inboard, or one such extinguisher, if fixed system installed in engine space or if the engine is outboard. Extinguishers to be U.S. Coast Guard approved.

1 Combination light showing red to port and green to starboard or individual red and green side lights, visibility of one mile.

1 Stern light or all-round white light, visibility of two miles.

1 Anchor and suitable cable, 40 meters (130').

1 Red flag.

1 Life preserver for each person carried, U.S. Coast Guard approved.

1 Copy of the "Motorboat Operator's Handbook".

(b) Motorboats 7 meters (23') or over and less than 12 meters (40') in length shall carry the following equipment:

1 Life ring buoy of not less than 600mm (24") outside diameter, U.S. Coast Guard approved.

1 Whistle, power-operated, audible at least one mile.

1 Bailer.

20 Meters (65') of manila line, not less than 18mm (¾") diameter, or synthetic line of comparable strength.

3 Fire extinguishers, 2 of which shall be 2½ gallon foam, 15-lb. CO–2, or 10-lb. dry chemical. The third extinguisher shall be 1¼ gallon foam, 4-lb. CO–2, or 2-lb. dry chemical. This third extinguisher is not required if a fixed system is installed in the engine space. Extinguishers to be U.S. Coast Guard approved.

1 Boat hook.

1 Combination light showing red to port and green to starboard, or individual red and green side lights, visibility one mile.

1 Stern light or all-round white light, visibility of two miles.

1 Anchor and suitable cable, 40 meters (130').

1 Red flag.

1 Red lantern.

1 Life preserver for each person carried, U.S. Coast Guard approved.

1 Copy of the "Motorboat Operator's Handbook".

(c) Motorboats 12 meters (40') or over and not more than 20 meters (65') in length shall carry the following equipment:

2 Life ring buoys not less than 600mm (24") in outside diameter, U.S. Coast Guard approved.

1 Approved fog horn.

1 Whistle, power-operated, audible at least one mile.

1 Bailer.

25 Meters (82') of manila line, not less than 21mm (⅞") diameter, or synthetic line of comparable strength.

4 Fire extinguishers, 3 of which shall be 2½ gallon foam, 15-lb. CO-2, or 10-lb. dry chemical. The fourth extinguisher may be 1¼ gallon foam, 4-lb. CO-2, or 2-lb. dry chemical. This fourth extinguisher is not required if a fixed system is installed in engine space. Extinguishers to be U.S. Coast Guard approved.

2 Boat hooks.

1 Masthead light, white, 225 degrees, fixed to show the light from right ahead to 22.5 degrees abaft the beam on either side, minimum 2.5 meters above the gunwale, visibility three miles.

1 Combination light showing red to port and green to starboard or individual red and green sidelights, visibility two miles.

1 Stern light, white, 135 degrees, placed as nearly as practicable at the stern, and so fixed to show the light 67.5 degrees from right aft on each side, visibility two miles.

2 Emergency lights, red and all-round in a vertical line where they can best be seen, visibility two miles (daylight: two black balls) used when restricted in ability to maneuver.

1 Red lantern.

1 Red flag.

1 Anchor with 40 meters (130') suitable cable.

1 Fog bell.

1 Life preserver for each person carried, U.S. Coast Guard approved.

1 Copy of the "Motorboat Operator's Handbook".

(1) Pilot vessels only:

2 Lights at or near the masthead, one all-round white upper and one all-round red lower not less than one meter apart, visibility two miles.

(2) For those vessels engaged in towing and pushing:

2 Masthead lights in a vertical line. When the length of the tow, measured from the stern of the towing vessel to the after end of the tow, exceeds 200 meters, three such lights in a vertical line (daylight: a black diamond shape where it can best be seen).

(d) Cayucos or piraguas less than 20 meters (65 feet) in length and equipped with an outboard motor or motors and operating in Madden and Gatun Lakes shall carry the following equipment:

2 Oars or paddles.

1 Whistle.

1 Bailer.

20 Meters (65') of manila line, not less than 21mm (⅞") diameter, or synthetic line of comparable strength.

1 Flashlight.

1 Red flag.

1 Life preserver for each person carried, U.S. Coast Guard approved.

1 Copy of the "Motorboat Operator's Handbook".

(e) Life preservers, ring buoys and fire extinguishers required by this section shall be U.S. Coast Guard approved and shall be permanently marked with the name of the motorboat on which they are carried.

Subpart C—Registration and Numbering

46. Section 121.171 is revised to read as follows:

§ 121.171 Registration and numbering of motorboats.

All motorboats shall be registered, certificated, and assigned numbers by the Marine Safety Unit.

47. Section 121.173 is revised to read as follows:

§ 121.173 Registration and numbering of vessels under 20 meters (65') in length not propelled by machinery.

Vessels not more than 20 meters (65') in length and not propelled in whole or in part by machinery shall be registered and numbered by the Marine Safety Unit.

PART 123—RADIO COMMUNICATION

48. The authority citation for part 123 continues to read as follows:

Authority: Issued under authority of the President by 22 U.S.C. 3811, E.O. 12215, 45 FR 36043.

49. Section 123.3 is amended by revising paragraph (c) to read as follows:

§ 123.3 Radiotelephones required.

* * * * *

(c) A vessel of a type described in paragraph (a) of this section, which has notified the Traffic Management Division that it is ready to transit or otherwise navigate in Panama Canal waters and requires a Panama Canal pilot, shall, until a pilot boards the vessel, maintain a continuous watch on Channel 12. Channel 12 will be used for notification to vessels of their transit time and for advisory harbor control communication in Limon Bay.

* * * * *

50. Section 123.4 is amended by revising its heading, paragraph (a), and items GOLF and HOTEL thereunder to read as follows:

§ 123.4 Advance notification required by radio from vessels approaching the Canal.

(a) Vessels approaching the Panama Canal shall communicate by radio to the Traffic Management Division not less than 48 hours in advance of arrival at the Canal (or earlier if radio communication is practicable at an earlier time), the information required by this section unless this information has been previously communicated to the Canal authorities by other means. Symbols of the phonetic alphabet shall be used to identify each item and the word "NEGAT" shall be used after the items that can be answered "no", "none", or "not applicable". The following items of information shall be provided.

* * * * *

GOLF—If the vessel is carrying any explosives or bulk dangerous cargoes, as classified in § 113.3, state the technical name, quantity (in long tons), United Nations number, the International Maritime Organization class and division (include compatibility group for explosives only), and the stowage for each dangerous cargo carried. If the vessel is a tanker in ballast condition and not gas free, state the technical name, United Nations number and the International Maritime Organization class and division of the previously carried cargo. Tankers reporting "GOLF:NEGAT" shall, in addition, state the technical names of non-dangerous cargoes carried.

HOTEL—If the vessel is carrying any packaged dangerous goods, as specified in § 113.3, other than explosives, state the International Maritime Organization class and division and the total quantity (in long tons) within each class.

* * * * *

Dated: August 9, 1989.

D.P. McAuliffe,

Administrator, Panama Canal Commission.

[FR Doc. 89-21075 Filed 9-7-89; 8:45 am]

BILLING CODE 3640-04-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900-AD29

Vocational Rehabilitation Panel

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is changing the rules under which the cases of seriously disabled veterans are referred to the Vocational Rehabilitation Panel (VRP). Under the new procedure VA staff members may refer cases to the Panel on a voluntary basis. The requirement that certain cases be referred to the VRP is eliminated. This change should enable VA staff to focus their attention on cases in which their professional judgment indicates that consideration by the VRP is necessary.

EFFECTIVE DATE: October 10, 1989.

FOR FURTHER INFORMATION CONTACT: Morris Triestman, Rehabilitation Consultant, Policy and Program Development, Vocational Rehabilitation and Education Service, Veterans

Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 (202) 233-2886.

SUPPLEMENTARY INFORMATION: On March 6, 1989, VA published proposed regulations to place the use of the Vocational Rehabilitation Panel on a discretionary basis. Interested persons were given 30 days in which to submit comments, objections, or suggestions. Since no comments, objections, or suggestions were received these rules are adopted as final with the addition of technical amendments to bring the nomenclature in the proposed rule into conformance with Public Law 100-527 which created the Department of Veterans Affairs (see 54 FR 10476).

Thse regulatory amendments will better acquaint eligible veterans, vocational training and rehabilitation facilities, and the public at large with the way these provisions will be implemented.

These regulatory amendments do not meet the criteria for major rules as contained in Executive Order 12291, Federal Regulation. The changes will not have a $100 million annual effect on the economy, will not cause a major increase in costs or prices, and will not have any other significant adverse effects on the economy.

The Secretary of Veterans Affairs certifies that these regulatory amendments will not, if promulgated, 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. Pursuant to 5 U.S.C. 605(b), these final regulatory amendments concern only the internal Department procedures for reviewing the eligibility and participation of individual veterans under this program.

The Catalog of Federal Domestic Assistance number is 64.116.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs, Loan programs, Reporting requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: August 10, 1989.

Edward J. Derwinski,

Secretary.

PART 21—[AMENDED]

38 CFR part 21, Vocational Rehabilitation and Education, is amended as follows:

§ 21.52 [Amended]

1. In § 21.52 paragraph (e)(3) is removed.

2. In § 21.53, paragraph (f) is redesignated as paragraph (g), paragraph (e)(2) is revised and new paragraph (f) is added to read as follows:

§ 21.53 Reasonable feasibility of achieving a vocational goal.

* * * * *

(e) *Criteria for reasonable feasibility not met.*

* * * * *

(2) A finding that achievement of a vocational goal is infeasible without a period of extended evaluation requires compelling evidence which establishes infeasibility beyond any reasonable doubt.

(Authority: 38 U.S.C. 1504(a)(1), 1506(b))

(f) *Independent living services.* The counseling psychologist shall determine the current reasonable feasibility of a program of independent living services in each case in which a vocational rehabilitation program is not found reasonably feasible. The concurrence of the Vocational Rehabilitation and Counseling (VR&C) Officer is required in any case in which the counseling psychologist does not approve a program of independent living services.

(Authority: 38 U.S.C. 1500)

* * * * *

3. In § 21.57 paragraph (c) is revised to read as follows:

§ 21.57 Extended evaluation.

* * * * *

(c) *Determination.* (1) The determination of the reasonable feasibility of a veteran achieving a vocational goal will be made at the earliest time possible during an extended evaluation, but not later than the end of the period of evaluation, of an extension of that period. Any reasonable doubt as to feasibility will be resolved in the veteran's favor;

(2) When it is reasonably feasible for the veteran to achieve a vocational goal, an individualized written rehabilitation plan (IWRP) will be developed as indicated in § 21.84 of this part.

(Authority: 38 U.S.C. 1506(b))

* * * * *

4. Section 21.62 is revised to read as follows:

§ 21.62 Duties of the Vocational Rehabilitation Panel.

(a) *Consultation requested.* The panel shall provide technical and consultative services when requested by professional staff of the Vocational Rehabilitation and Counseling (VR&C) Division to:

(1) Assist staff members in planning and carrying out a rehabilitation plan for seriously disabled veterans and their dependents; and

(2) Consider other cases of individuals eligible for, or being provided assistance under chapter 31 and other programs of education and training administered by the Department of Veterans Affairs.

(Authority: 38 U.S.C. 1504(a))

(b) *Independent living services.* The Panel has a key responsibility to assure that seriously disabled service-connected veterans who need independent living services to increase their independence in daily living are provided necessary services. In carrying out this responsibility the Panel shall review all cases which come before it to assure that the proposed program of vocational rehabilitation or independent living services includes those services necessary to enable the veteran to achieve the goals of the program.

(Authority: 38 U.S.C. 1500)

(c) *Dependents.* The specific duties of the Panel with respect to dependents are more fully described §§ 21.3300, 21.3301, 21.3304, 21.4105, and 21.4276 of this part.

(Authority: 38 U.S.C. 1736, 1740, 1741, 1742, 1743)

5. In § 21.74 paragraph (c)(2) is revised to read as follows:

§ 21.74 Extended evaluation.

* * * * *

(c) * * *

(2) An additional period of extended evaluation of up to 6 months may be approved by the counseling psychologist, if there is reasonable certainty that the feasibility of achieving a vocational goal can be determined during the additional period. The counseling psychologist will obtain the concurrence of the Vocational Rehabilitation and Counseling Officer before approving the extension of a period of extended evaluation.

* * * * *

6. In § 21.76 paragraph (b) is revised to read as follows:

§ 21.76 Independent living.

* * * * *

(b) *Period of independent living services.* The duration of an independent living services program may not exceed 24 months unless the counseling psychologist finds that an additional period of up to 6 months would enable the veteran to substantially increase his or her level of independence in daily living. The concurrence of the Vocational

Counseling and Rehabilitation Officer in this finding is required.

(Authority: 38 U.S.C. 1505(d))

[FR Doc. 89-21119 Filed 9-7-89; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW-FRL-3642-7]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Denial

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is finalizing its decision to deny a petition submitted by Rock Island Refining Corporation (Rock Island), Indianapolis, Indiana, to exclude certain solid wastes generated at its facility from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. This action responds to a delisting petition submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 268, 124, 270, and 271 of title 40 of the Code of Federal Regulations, and under 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists.

EFFECTIVE DATE: September 8, 1989.

ADDRESS: The public docket for this final rule is located at the U.S. Environmental Protection Agency, 401 M Street SW. (Room M2427), Washington, DC 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call (202) 475-9327 for appointments. The reference number for this docket is "F-89-RIDF-FFFFF". The public may copy material from any regulatory docket at a cost of $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline, toll free at (800) 424-9346, or at (202) 382-3000. For technical information concerning this notice, contact Terry Grist, Office of Solid Waste (OS-343), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-4782 .

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

Under 40 CFR 260.20 and 260.22, facilities may petition the Agency to remove their wastes from hazardous waste control by excluding them from the lists of hazardous wastes contained at 40 CFR 261.31 and 261.32. Petitioners must provide sufficient information to EPA to allow the Agency to determine (1) that the waste to be excluded is not hazardous based upon the criteria for which it was listed, and (2) that no other hazardous constituents are present in the waste at levels of regulatory concern.

B. History of the Rulemaking

Rock Island petitioned the Agency for an exclusion of its filter press cake generated from the processing and fractionation of crude oil. After evaluating the petition, EPA proposed, on June 14, 1989, to deny Rock Island's petition to exclude its waste from the lists of hazardous waste under 40 CFR 261.31 and 261.32 (see 54 FR 25302).

This rulemaking finalizes the proposed decision to deny Rock Island's petition.

II. Disposition of Delisting Petition

Rock Island Refining Corporation, Indianapolis, Indiana

1. Proposed Exclusion

Rock Island petitioned the Agency to exclude its filter press cake generated from the treatment of the following sludges: EPA Hazardous Waste No. K049—"Slop oil emulsion solids from the petroleum refining industry;" EPA Hazardous Waste No. K050—"Heat exchanger bundle cleaning sludge from the petroleum refining industry;" and EPA Hazardous Waste No. K051—"API separator sludge from the petroleum refining industry". Rock Island petitioned to exclude its waste based on the claim that the waste does not meet the criteria of the listing.

To support its claim that both the non-listed and listed constitutents of concern are not present in the filter press cake above levels of concern, Rock Island submitted (1) descriptions of its waste treatment processes, including schematic diagrams; (2) total constituent data for the EP toxic metals, nickel, antimony, and beryllium; (3) EP leachate analysis results for the EP toxic metals for representative waste samples; (4) OWEP analysis results for the EP toxic metals, nickel, antimony, and beryllium for a single sample; (5) oil and grease data for a single sample; (6) total constituent data for volatile and semivolatile organic compounds for a single sample; and (7) results from characteristics testing for ignitability, corrosivity, and reactivity.

The Agency evaluated the information and analytical data provided by Rock Island in support of its petition and the spot-check sampling visit analysis data collected as part of the EPA spot-check program, and determined that the hazardous constituents found in the petitioned waste could pose a threat to human health and the environment. Specifically, the Agency used its vertical and horizontal spread (VHS) model to predict the potential mobility of the hazardous constituents found in the petitioned waste. Based on this evaluation, the Agency determined that Rock Island failed to substantiate its claim that the hazardous constituents of concern will not leach and migrate at concentrations above the health-based levels used in delisting decision-making. See 54 FR 25302, June 14, 1989, for a more detailed explanation of why EPA proposed to deny Rock Island's petition.

2. Agency Response to Public Comments

The Agency did not receive any public comments regarding its decision to deny Rock Island's petition for the filter press cake.

3. Final Agency Decision

For the reasons stated in the proposal, the Agency believes that Rock Island's filter press cake should not be excluded from hazardous waste control. The Agency, therefore, is denying a final exclusion to the Rock Island Refining Corporation, located in Indianapolis, Indiana, for its filter press cake described in its petition as EPA Hazardous Waste Nos. K049, K050, and K051.

III. Effective Date

This rule is effective immediately. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here because this rule does not change the existing requirements for persons generating hazardous wastes. This facility has been obligated to manage its waste as hazardous before and during the Agency's review of its petition (except for the period during which the temporary exclusion was in effect). See 54 FR 25303, June 14, 1989 for a discussion of the temporary exclusion previously granted to Rock Island. Because a six-month deadline is not necessary to achieve the purpose of section 3010, EPA believes that this denial should be effective immediately. These reasons also provide a basis for making this rule effective immediately

under the Administrative Procedures Act, pursuant to 5 U.S.C. 553(d).

IV. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. The denial of this petition does not impose an economic burden on this facility because prior to submission, during the initial review of the petition, and again after November 8, 1986 (when its temporary exclusion ceased to be in effect), this facility should have handled its wate as hazardous. See 54 FR 25303, June 14, 1989. The denial of the petition means that the petitioner is to continue managing its waste as hazardous in the manner in which it has been doing, economically and otherwise. There is no additional economic impact, therefore, due to today's rule. This rule is not a major regulation, therefore, no Regulatory Impact Analysis is required.

V. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator or delegated representative may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment does not have a significant adverse economic impact on small entities. The facility included in this notice may be considered a small entity, however, this rule only affects one facility in one industrial segment. The overall impact, therefore, on small entities is small. Accordingly, I hereby certify that this regulation does not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VI. Paperwork Reduction Act

Information collection and recordkeeping requirements associated with this final rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511, 44 U.S.C. 3501 *et. seq.*) and have been assigned OMB Control Number 2050–0053.

List of Subjects in 40 CFR Part 261

Hazardous materials, Waste treatment and disposal, Recycling.

Authority: Sec. 3001 RCRA, 42 U.S.C. 6921.

Dated: August 23, 1989.

Jonathan Z. Cannon,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 89–21166 Filed 9–7–89; 8:45 am]

BILLING CODE 6560–50–M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

48 CFR Parts 702, 734, and 752

[AIDAR Notice 89–5]

Miscellaneous Amendments to Acquisition Regulations

AGENCY: Agency for International Development, IDCA.

ACTION: Final rule.

SUMMARY: The AID Acquisition Regulation (AIDAR) is being amended to remove the order of succession for the Procurement Executive, establish a new threshold for major systems acquisitions, correct a reference and combine two similar contract clauses into a single clause.

EFFECTIVE DATE: September 8, 1989.

FOR FURTHER INFORMATION CONTACT: M/SER/PPE, Mr. James M. Kelly, Room 1600I, SA–14, Agency for International Development, Washington, DC 20523. Telephone (703) 875–1534.

SUPPLEMENTARY INFORMATION: AID considers the order of succession for the Procurement Executive unnecessary for inclusion in the AIDAR; it is basically an internal matter, not affecting the public. In the absence of the Procurement Executive, any communication addressed to him will automatically be referred to the person designated by him as acting Procurement Executive.

The dollar threshold for major systems acquisition was considered unrealistically low. Given the nature of AID acquisitions, dollar value is likely to be the primary consideration in whether or not an acquisition is a major system. AID is setting the threshold at $75 million initial year estimate or $200 million life of contract estimate.

The remaining changes are editorial—correction of a reference and combination of two versions of a contract clause into a single version with no substantive changes.

The changes being made by this Notice are not considered significant rules subject to FAR 1.301 or subpart 1.5. This Notice is exempted from the requirements of Executive Order 12291 by OMB Circular 85–7. This Notice will not have an impact on a substantial number of small entities, nor does it establish any information collection as contemplated by the Regulatory Flexibility Act and Paperwork Reduction Act.

List of Subjects in 48 CFR Parts 702, 734, and 752

Government procurement.

For the reasons set out in the Preamble, Chapter 7 of Title 48 of the Code of Federal Regulations is amended as follows:

1. The authority citations in Parts 702, 734, and 752 continue to read as follows:

Authority: Sec. 621, Pub. L. 87–195, 75 Stat. 445 (22 U.S.C. 2381), as amended; E.O. 12163, Sept. 29, 1979; 44 FR 56673, 3 CFR 1979 Comp., p. 435.

PART 702—DEFINITIONS

Subpart 702.170—Definitions

702.170–13 [Amended]

2. Section 702.170–13, Procurement Executive, is amended by removing paragraph (d).

PART 734—MAJOR SYSTEM ACQUISITION

3. Section 734.003, is revised as follows:

734.003 Responsibilities.

AID follows the policies and procedures in OMB Circular A–109 and FAR Part 34 regarding major systems acquisitions. In order to be considered a major system an AID procurement must have an estimated value of $75 million during the first year of the contract or a $200 million life of contract estimated value.

PART 752—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 752.70—Texts of AID Contract Clauses

752.7026 [Amended]

4. Paragraph (a), *Alternate 70*, of section 752.7026, Reports, is amended by removing the reference to "*Alternate 72*" appearing in the introductory paragraph, replacing it with "*Alternate 71*".

5. Section 752.7031, Leave and Holidays, is amended by removing paragraph (c), *Alternate 72*, and

paragraph (d), *Alternate 73*. In place of these a new paragraph (c), *Alternate 72* is added as follows:

752.7031 Leave and holidays.

* * * * *

(c) *Alternate 72*. For use in addition to either *Alternate 70* or *71*, as appropriate, for any AID cost reimbursement contract involving performance overseas.

Leave and Holidays—Overseas (Aug 1989)

(a) *Vacation leave*. (1) The Contractor may grant to its employees working overseas under this contract, vacations of reasonable duration in accordance with the Contractor's practice for its employees, but in no event shall such vacation leave be earned at a rate exceeding twenty-six (26) work days per annum. Vacation leave is provided under this contract primarily for purposes of affording necessary rest and recreation to regular employees during their tour of duty in the Cooperating Country. The Contractor's Chief of Party, the employee and the Cooperating Country institution associated with this project shall develop vacation leave schedules early in the employee's tour of duty taking into consideration project requirements, employee preference and other factors.

(2) Leave taken during the concluding weeks of an employee's tour shall be included in the established leave schedule and be limited to that amount of leave which can be earned during a twelve-month period unless approved in accordance with paragraph (a)(3) of this clause.

(3) Vacation leave earned but not taken by the end of the employee's tour pursuant to paragraphs (a) (1) and (2) of this clause will be forfeited, unless the requirements of the project precluded the employee from taking such leave and the Contracting Officer, with the endorsement of the Mission, approves one of the following as an alternative:

(i) Taking, during the concluding weeks of the employee's tour, leave not permitted under (a)(2) of this section, or

(ii) Lump-sum payment for leave not taken provided such leave does not exceed the number of days which can be earned by the employee during a twelve-month period.

(b) *Sick Leave*. Sick leave is earned by regular and short-term employees in accordance with the Contractor's usual practice but not to exceed 13 work days per annum or 4 hours every 2 weeks. Additional sick leave after use of accrued vacation leave may be advanced in accordance with Contractor's usual practice, if in the judgment of the Contractor's Chief of Party it is determined that such additional leave is in the best interest of the project. In no event shall such additional leave exceed 30 days. The Contractor agrees to reimburse AID for leave used in excess of the amount earned during the employee's assignment under this contract. Sick leave earned and unused at the end of a regular tour of duty may be carried over to an immediately succeeding tour of duty under this contract. The taking of authorized home leave shall not constitute a break in service for the purpose of sick leave carryover. Contractor employees will not be compensated for unused sick leave at the completion of their duties under this contract.

(c) *Home leave*. (1) Home leave is leave earned for service abroad for use only in the United States, in the Commonwealth of Puerto Rico, or in the possessions of the United States.

(2) A regular employee who is a U.S. citizen or resident and has served at least 2 years overseas, as defined in paragraph (c)(4) of this clause, under this contract and has not taken more than 30 workdays leave (vacation, sick, or leave without pay) in the United States, may be granted home leave of not more than 15 calendar days for each such year of service overseas: *Provided*, that such regular employees agree to return overseas upon completion of home leave under an additional 2-year appointment, or for such shorter period of not less than 1 year of overseas service under the contract as the Mission Director may approve in advance. Home leave must be taken in the United States, the Commonwealth of Puerto Rico, or the possessions of the United States and any days spent elsewhere will be charged to vacation leave or leave without pay.

(3) Notwithstanding the requirement in paragraph (c)(2), of this clause, that the Contractor's regular employee must have served 2 years overseas under this contract to be eligible for home leave, Contractor may grant advance home leave to such regular employee subject to all of the following conditions:

(i) Granting of advance home leave would in each case serve to advance the attainment of the objectives of this contract;

(ii) The regular employee shall have served a minimum of 18 months in the Cooperating Country on his/her current tour of duty under this contract; and

(iii) The regular employee shall have agreed to return to the Cooperating Country to serve out the remainder of his/her current tour of duty and an additional 2-year appointment under this contract, or such other additional appointment of not less than 1 year of overseas service as the Mission Director may approve.

(4) The period of service overseas required under paragraph (c)(2) or paragraph (c)(3) of this clause, shall include the actual days in orientation in the United States (less language training) and the actual days overseas beginning on the date of departure from the United States port of embarkation on international travel and continuing, inclusive of authorized delays en route, to the date of arrival at the United States port of debarkation from international travel. Allowable vacation and sick leave taken while overseas, but not leave without pay, shall be included in the required period of service overseas. An amount equal to the number of days vacation and sick leave taken in the United States, the Commonwealth of Puerto Rico, or the possessions of the United States will be added to the required period of service overseas.

(5) Salary during travel to and from the United States for home leave will be limited to the time required for travel by the most expeditious air route. The Contractor will be responsible for reimbursing AID for salary payments made during home leave, if in spite of the undertaking of the new appointment, the regular employee, except for reasons beyond his/her control as determined by the Contracting Officer, does not return overseas and complete the additional required service. Unused home leave is not reimbursable under this contract.

(6) To the extent deemed necessary by the Contractor, regular employees in the United States on home leave may be authorized to spend not more than 5 days in work status for consultation at home office/campus or at AID/Washington before returning to their post of duty. Consultation at locations other than AID/Washington or home office/campus, as well as any time in excess of 5 days spent for consultation, must be approved by the Mission Director or the Contracting Officer.

(7) Except as provided in the schedule or approved by the Mission Director or the Contracting Officer, home leave is not authorized for TCN or CCN employees.

(d) *Holidays*. Holidays for Contractor employees serving overseas should take into consideration local practices and shall be established in collaboration with the Mission Director.

(e) *Military leave*. Military leave of not more than 15 calendar days in any calendar year may be granted in accordance with the Contractor's usual practice to each regular employee whose appointment is not limited to 1 year or less and who is a reservist of the United States Armed Forces, provided that such military leave has been approved in advance by the cognizant Mission Director or Assistant Administrator. A copy of any such approval shall be provided to the Contracting Officer.

Dated: August 29, 1989.

John F. Owens,

Procurement Executive.

[FR Doc. 89-21143 Filed 9-8-89; 8:45 am]

BILLING CODE 6116-01-M

Proposed Rules

Federal Register
Vol. 54, No. 173
Friday, September 8, 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 AGRICULTURE

Agricultural Marketing Service

7 CFR Part 911

[Docket No. FV-89-074PR]

Limes Grown in Florida; Proposed Relaxation of the Container Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule proposes relaxing the container requirements currently in effect for Florida grown limes, by authorizing Florida lime handlers to use another container to ship fresh Florida limes to market. Container requirements ensure the packing of fruit in suitable containers for shipment to market, so that it arrives in the marketplace in good condition. This is in the interest of growers, handlers, and consumers.

DATES: Comments must be received by October 10, 1989.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456. Three copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours. The written comments should reference the docket number and the date and page number of this issue of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456, telephone (202) 475-3918.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Agreement and Marketing Order No. 911, both as amended (7 CFR part 911), regulating the handling of limes grown in Florida. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

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

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed action on small entities.

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

There are about 26 lime handlers subject to regulation under the marketing order for limes grown in Florida. In addition, there are about 230 lime growers in Florida. Small agricultural growers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and agricultural services firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of the handlers and growers may be classified as small entities.

Section 911.329 (7 CFR 911.329) specifies continuous container requirements for shipments of fresh limes grown in Florida. These requirements authorize Florida lime handlers to use specific containers for shipping fresh limes to market, and they have been in effect on a continuous basis for several seasons. The container requirements make sure the limes are packed in suitable containers for shipment to market, so that they arrive in the marketplace in good condition. Florida lime growers and handlers have found such requirements beneficial in the successful marketing of their limes.

The proposed action would add a new paragraph (a)(2)(x) to § 911.329, authorizing handlers to use another container to ship fresh limes to market. This container has inside dimensions of 12⅜ by 8¾ by 5⅞ inches, and it must contain not less than 10 pounds of limes. This proposed rule also would revise the title of § 911.329, for purposes of clarity.

The Florida Lime Administrative Committee (committee) recommended that this container be authorized. The committee recently conducted a research project on this container to determine if it would palletize efficiently when transported by truck. The research results indicate that the container ships well on pallets.

The committee works with the Department in administering the marketing agreement and order. The committee meets prior to and during each season to consider recommendations for modification, suspension, or termination of the regulatory requirements for Florida limes. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department reviews committee recommendations and information submitted by the committee and other available information, and determines whether modification, suspension, or termination of the regulatory requirements would tend to effectuate the declared policy of the Act.

Some Florida lime shipments are exempt from container requirements. Handlers may make gift shipments in individually addressed containers of up to 20 pounds of limes each. Also, limes utilized in commercial processing are not covered by the container requirements.

The proposed action reflects the committee's and the Department's appraisal of the need to relax the container requirements applicable to shipment of fresh Florida limes. The Department's view is that the proposed relaxation would benefit lime handlers. The application of container requirements over the past several years has helped keep the limes in good condition during shipment to market. Although compliance with container requirements affects costs to handlers, these costs would be significantly offset when compared to the benefits resulting to growers, handlers, consumers, and the trade from the fruit being in better

condition upon arrival in the marketplace.

Based on the above, the Administrator of the AMS has determined that this proposed action would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 911

Florida, Limes, Marketing agreements and orders.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 911 be amended as follows:

PART 911—LIMES GROWN IN FLORIDA

1. The authority citation for 7 CFR part 911 continues to read as follows:

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

2. Section 911.329 is amended by revising the section title, and by adding a new paragraph (a)(2)(x) to read as follows:

§ 911.329 Florida lime container regulation.

(a)(1) * * *

(2) * * *

(x) Containers with inside dimensions of 12⅜ by 8¾ by 5⅞ inches: Provided, that such containers shall contain not less than 10 pounds net weight of limes.

* * * * *

Dated: September 1, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–21115 Filed 9–7–89; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 971

[Docket No. FV–89–076]

Lettuce Grown in Lower Rio Grande Valley in South Texas; Proposed Amendment to Continuing Handling Regulation to Authorize a New Container

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize the use of bulk bin containers for shipping South Texas lettuce to shredders under the container regulations of Marketing Order 971. Allowing handlers to ship lettuce in bulk bin containers to shredders should improve the improve returns to producers and handlers of South Texas lettuce.

DATES: Comments must be received by October 10, 1989.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456. Three copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours. All comments should reference the docket number and the date and page number of this issue of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone (202) 447–5331.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Agreement No. 144 and Marketing Order No. 971 (7 CFR part 971), both as amended, regulating the handling of lettuce grown in the Lower Rio Grande Valley in South Texas. The marketing agreement and order are authorized by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

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

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposal on small entities.

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

There are approximately 10 handlers of South Texas lettuce subject to regulation under the marketing order, and approximately 20 producers in the production area. The Small Business Administration (13 CFR 121.1) has defined small agricultural producers as those having annual gross revenue for the last three years of less than $500,000, and small agricultural service firms are defined as those who gross annual receipts are less than $3,500,000. The majority of handlers and producers of South Texas lettuce may be classified as small entities.

As of July 6, 1989, estimated South Texas lettuce acreage planted was 2,434 acres compared to 1,629 acres in 1988. Total shipments of South Texas lettuce during the 1988–89 season were approximately 921,000 50-pound cartons. This represented nearly a 25 percent increase over the estimated 738,000 cartons shipped in the 1987–88 season. The majority of the crop was shipped to the fresh markets, with only a small volume (less than 1%) utilized by processors.

The handling requirements for South Texas lettuce are specified in § 971.322 (51 FR 2, January 2, 1986, 54 FR 8182, February 27, 1989). The current requirements for South Texas lettuce specify the inside dimensions of the five cartons that may be used to pack lettuce and the number of heads of lettuce that may be packed in each of those containers. Additionally, inspection is required and packaging lettuce on any Sunday or on Christmas Day is prohibited.

This proposed rule would add the dimensions for bulk bin containers for lettuce shipments to shredders to the list of containers presently permitted under the handling regulation. No pack specifications would be included which stipulate the number of heads of lettuce which may be shipped in a bulk bin. This change was unanimously recommended by the South Texas Lettuce Commission (committee), the agency responsible for local administration of the marketing order, at its June 21, 1989, meeting.

Handlers of South Texas lettuce has been using the bulk bin container on a test basis for lettuce shipments to shredders, in accordance with § 971.322(a)(5) of the handling regulation. Last year, the committee authorized the limited use of 1,000 bulk bins for such purpose. These containers have approximate inside dimensions of 46 inches (length) x 38 inches (width) x 36 inches (height). The committee has recommended authorizing bulk bin containers meeting these approximate dimensions. The bulk bin container has found general trade acceptance, and the South Texas lettuce industry believes that these shipments are no longer experimental but an integral part of their marketing efforts. Furthermore, the use of such containers for shipping lettuce to shredders could expand their lettuce market and reduce packing costs. The recommended bulk bin container is of a proper size to be palletized.

Last season, in accordance with § 971.322(e) handlers were required to

file for experimental container exemptions by applying for a Certificate of Privilege before making lettuce shipments in bulk bin containers to shredders. Handlers also were required to provide reports as requested by the committee. The committee believes that permitting handlers to use the bulk bin containers for lettuce shipments to shredders and eliminating the need to file for experimental container exemptions and related reports would encourage the industry to increase such shipments to shredders. Accordingly, this action also would reduce the information collection and recordkeeping requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35). These requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581-0085.

Bulk bin containers are typically less expensive to use in packing lettuce than the cartons that are currently authorized for fresh market shipments. The committee believes that authorizing these bulk bin containers would assist the industry in expanding the market for shredded lettuce by reducing costs. Thus, it is proposed that the bulk bin containers would be authorized for handlers making lettuce shipments to shredders only. In addition, the handling regulation would be amended to specify that the pack requirement would be applicable to bulk bin container shipments of lettuce destined to shredders.

There is a sizable market for shredded lettuce, and allowing handlers to use bulk bin containers for such shipments would provide that market segment with the supply of lettuce it desires. This action is expected to have a positive effect on lettuce shipments which would be beneficial to producers and handlers.

Based on the above, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

A 30-day comment period is provided to allow interested persons sufficient time to respond to this proposal. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 971

Marketing agreements and orders, Lettuce, South Texas.

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 971 be amended as follows:

PART 971—LETTUCE GROWN IN LOWER RIO GRANDE VALLEY IN SOUTH TEXAS

1. The authority citation for 7 CFR part 971 continues to read as follows:

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

2. Section 971.322 is amended by redesignating paragraph (a)(6) as (a)(7) and adding new paragraphs (a)(6) and (b)(4) to read as follows:

§ 971.322 Handling regulation.

* * * * *

(a) * * *

(6) Bulk bin containers with inside dimensions of approximately 46 inches x 38 inches x 36 inches to be used for lettuce shipments to shredders only.

* * * * *

(b) * * *

(4) No pack requirements shall apply to bulk bin containers for lettuce shipments to shredders.

* * * * *

Dated: September 1, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89-21116 Filed 9-7-89; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89-NM-160-AD]

Airworthiness Directives; Boeing Model 757 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 Boeing Model 757 series airplanes, which would require the installation of flexible deflectors at the left- and right-hand control quadrant assemblies. This proposal is prompted by reports of jamming of the aileron control system as a result of a loose object falling into the associated mechanisms. This condition, if not corrected, could reduce the ability of the pilot to control the airplane due to rotation of the control wheel in one direction only.

DATES: Comments must be received no later than October 30, 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-160-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 Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Rodriguez, Airframe Branch, ANM-120S; telephone (206) 431-1928. 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-160-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

An operator of a Boeing Model 757 has reported that, while the airplane was on the ground, jamming of the aileron control system was experienced.

This occurrence was the result of a loose object that became lodged in the control quadrant assembly. This condition, if not corrected, could reduce the ability of the pilot to control the airplane.

The FAA has reviewed and approved Boeing Service Bulletin 757-27-0072, Revision 1, dated June 29, 1989, which describes procedures for installation of flexible deflectors at left- and right-hand quadrant assemblies to prevent entry of loose objects.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require the installation of flexible deflectors in accordance with the service bulletin previously described.

There are approximately 110 Model 757 series airplanes of the affected design in the worldwide fleet. It is estimated that 69 airplanes of U.S. registry would be affected by this AD, that it would take approximately 16 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Required parts are estimated at $246 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $61,134.

The regulations proposed herein would not have substantial direct effects on the States, on the relationships 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 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, as listed in Boeing Service Bulletin 757-27-0072, Revision 1, dated June 29, 1989, certificated in any category. Compliance required within the next 12 months, after the effective date of this AD, unless previously accomplished.

To reduce the possibility of aileron control system jamming due to loose objects being lodged in the control quadrant assembly, accomplish the following:

A. Install flexible deflectors in accordance with Boeing Service Bulletin 757-27-0072, Revision 1, dated June 29, 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, 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.

Issued in Seattle, Washington, on August 29, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-21139 Filed 9-7-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 89-ASW-35]

Proposed Establishment of Control Zone; Lake Charles Chennault Industrial Airpark, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a part-time control zone at Lake Charles Chennault Industrial Airpark, LA. This proposed action is necessary because Chennault Industrial Airpark meets the criteria for the establishment of a control zone by the fact that there is a part-time nonfederal airport traffic control tower (ATCT) at the Chennault Industrial Airpark and a federally certificated weather observer who is qualified to take hourly and special weather observations at the Chennault Industrial Airpark during the times the control zone is in effect. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the standard instrument approach procedures (SIAP) serving the Chennault Industrial Airpark. The establishment of a control zone would allow the Chennault Industrial Airpark to be used as an alternate airport under instrument flight rules (IFR) weather conditions. The proposed control zone would exclude the area that overlies the Lake Charles, LA, Control Zone.

DATES: Comments must be received on or before October 31, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Docket No. 89-ASW-35, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530; telephone: (817) 624-5561.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire.

Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89-ASW-35." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, 4400 Blue Mound Road, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Manager, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.171 of the Federal Aviation Regulations (14 CFR part 71) to establishing a part-time control zone at Lake Chares Chennault Industrial Airpark, LA. This proposed action is necessary because Chennault Industrial Airpark meets the criteria for the establishment of a control zone by the fact that there is a part-time nonfederal ATCT at the Chennault Industrial Airpark and there is a federally certificated weather observer who is qualified to take hourly and special weather observations at the Chennault Industrial Airpark during the times the control zone is in effect. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the SIAP's serving the Chennault Industrial Airpark. The establishment of a control zone would allow the Chennault Industrial Airpark to be used as an alternate airport under IFR weather conditions. The proposed control zone would exclude the area that overlies the Lake Charles, LA, Control Zone. Section 71.171 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

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

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

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Lake Charles Chennault Industrial Airpark, LA [New]

Within a 5-mile radius of the Chennault Industrial Airpark (latitude 30°12'45"N., longitude 93°08'36"W.), excluding the area that overlies the Lake Charles, LA, Control Zone. This control zone is effective during the specific dates and times established in advance by a notice to airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

Issued in Fort Worth, TX on August 23, 1989.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 89-21137 Filed 9-7-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 174, 175, 176, and 177

[Docket No. 89N-0138]

Packaging Materials for Use Under High Temperature Conditions in Microwave Ovens

AGENCY: Food and Drug Administration.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is considering publishing a proposal that would amend the indirect food additive regulations by establishing maximum temperatures of use for certain food-packaging materials. Should FDA decide to follow this course, the maximum temperatures of use for the materials in the proposal would be based, at least in part, upon use and safety information that is submitted in response to this advance notice of proposed rulemaking (ANPR). This ANPR identifies the data and information needed by FDA to develop a proposal.

DATE: Comments by November 7, 1989.

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

FOR FURTHER INFORMATION CONTACT: Edward J. Machuga, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION:

I. Background

A. Microwave Cooking

The mechanics of heating food in microwave ovens differ from the mechanics of heating food in conventional ovens. In conventional ovens, the temperature of the oven walls and the air within the oven is raised to a cooking level, and this heat energy is transferred directly to the food or its

container. The heat energy heats, browns, and crisps the food from the outside. Under normal operating conditions, microwave ovens heat the food by producing electromagnetic radiation that is absorbed by molecules, especially water and fat molecules, within the food. Absorption of microwave energy causes increased vibration of the molecules, resulting in heating of the food from the inside. This method of heating eliminates the possibility of browning and crisping the outside surface of the food.

B. Microwave Heat Susceptor Packaging

In general, dishes or packaging designed for use in microwave ovens are transparent to microwaves and play no part in heating the food. However, a new type of food-packaging material, referred to as "microwave heat susceptor packaging," has been developed that is itself an important factor in the heating of the food. This new packaging usually contains, as the food-contact surface, a metallized plastic film (i.e., the heat susceptor). The heat susceptor may be bound to a paperboard layer by means of adhesives, or a paper layer may be applied over the metallized film. In the latter case, the paper serves as the food-contact layer.

The heat susceptor absorbs the electromagnetic radiation in the microwave oven and, as a result, reaches a very high temperature, usually greater than 400 °F. The energy thus produced in the heat susceptor heats, browns, and crisps the food.

FDA did not envision the use of food-packaging materials at temperatures above 300 °F at the time that it adopted many of the regulations that list the food additive components of these packaging materials. As a result, petitions submitted in support of the use of the food additives regulated for use in these packaging materials do not contain adequate data to enable FDA to evaluate the safety of the use of these materials at high temperatures. Although microwave heat susceptor packaging may be manufactured with components that comply with various food additive regulations, such as 21 CFR 175.105, 175.300, 176.170, 177.1390, and 177.1630, FDA has not evaluated the safety of these food-packaging materials at temperatures above 300 °F.

The agency is concerned that the use of these materials at high temperatures may result in the heat susceptor packaging components (adhesives, polymers, paper, and paperboard) migrating into food at levels far in excess of those that the agency anticipated when it regulated the additives. In addition, the agency is concerned that the high temperatures produced in these packages may generate a number of degradation products whose safety needs to be assessed.

On September 22, 1988, FDA held a public meeting in Washington, DC, to notify manufacturers and users of food packaging of the agency's concerns regarding microwave food packaging that uses heat susceptors to brown or crisp food. The agency stated that while it was not aware of any hazards associated with the current uses of heat susceptor packaging, data were necessary to evaluate the safety of this high temperature use of food-packaging materials (Ref. 1). FDA also outlined the general types of data that it needs to do that evaluation. In addition, the Executive Vice President for Scientific Affairs of the National Food Processors Association presented a statement on microwave heat susceptor packaging (Ref. 2).

II. FDA Laboratory Studies

To assess the possible increased migration of heat susceptor packaging components to food, FDA has conducted preliminary laboratory studies on a number of microwavable packages that utilize heat susceptors of various designs. The results of these preliminary studies were presented at the September 22, 1988, public meeting and are summarized below:

1. Temperature measurements indicate that parts of the package reach temperatures in excess of 500 °F.

2. All of the packages used in the tests showed varying degrees of breakdown of the metallized polyethylene terephthalate (PET) film, including cracking and even melting of the film in some cases. When breakdown occurs, a functional barrier no longer exists between the food and the nonfood-contact layers of the package, allowing components of the nonfood-contact layers (adhesive and paperboard components) or their degradation products to migrate into the food.

3. In many instances, the paper and paperboard components of the heat susceptor packaging were blackened upon exposure to these high temperatures.

4. FDA's preliminary studies on the extraction of nonvolatile components followed only the migration of certain marker chemicals. These extraction studies, using corn oil as the food simulating solvent, were carried out to determine the level of migration of PET oligomers. Nearly all (95 percent) of a specific PET oligomer, the cyclic PET trimer, present in the unheated PET film migrated out of "pizza type" heat susceptor packaging into the corn oil when microwave cooking times of 3 minutes were used. Identification of other possible nonvolatile migrants from heat susceptor packaging was not carried out because this work would involve the development of many additional test protocols.

5. To determine whether volatile components of heat susceptor packages could also migrate into food, heat susceptors, formed into trays, were extracted with corn oil using a microwave cooking time of 3 minutes. The extracts were analyzed by headspace gas chromatography and found to contain detectable amounts of volatile chemicals, primarily from adhesives used in the package and from the paper substrate. These results indicate that a considerable number of volatile components of heat susceptor packaging will migrate to food under microwave heating conditions.

Further reports of these studies (Ref. 3), and copies of the experimental protocols used in FDA's preliminary laboratory studies of heat susceptor packages (Ref. 4), are available from the contact person listed above and are on file at the Dockets Management Branch (address above).

III. Regulatory Concerns

Based on the data from these studies, FDA has three primary concerns with respect to the use of heat susceptor packaging in microwave cooking. The first concern is that this use will greatly increase the levels of nonvolatile components of packaging materials that migrate into food. As indicated above, nearly all of the cyclic PET trimer migrated into corn oil from the tested heat susceptor packages in 3 minutes of microwave cooking time. This level of migration is 6 to 10 times higher than the level that FDA considered in evaluating uses of PET in contact with food. Moreover, when it evaluated those uses, FDA expected that the temperature of the food would not significantly exceed 250 °F.

A second FDA concern is that the high temperatures produced with microwave heat susceptor packaging and the cracking of the PET food-contact layer will allow adhesive components of the package, as well as degradation products of these adhesive components, to migrate directly into food. FDA laboratory studies confirm the migration of volatile components of the nonfood-contact layers into food-simulating solvents under conditions that simulate actual use. The adhesive components

regulated in 21 CFR 175.105 are for applications in which a functional barrier exists between the adhesive components and the food and thus in which there is minimal migration. Consequently, available toxicology data may not be sufficient to establish the safety of the increased migration of the adhesive components of heat susceptor packages.

In addition, the high temperatures (greater than 400 °F) ionvolved in microwave cooking may cause significant decomposition of the adhesives, and the unregulated degradation products of this decomposition may also migrate into food. FDA is concerned about the safety of these unregulated degradation products.

A third FDA concern is that these high temperatures may cause increased migration of the paperboard components that are regulated in 21 CFR part 176. There is also the possibility that temperatures associated with the use of heat susceptor packages will cause significant breakdown of the paperboard components. The component chemicals and their breakdown products would be expected to migrate to the food at relatively high levels because of the high temperatures and the cracks that develop in the PET food-contact layer.

IV. Data Requirements for Heat Susceptor Packaging Materials

Based on findings from its preliminary examination of heat susceptor packages used at temperatures in excess of 400 °F, FDA believes that it may be necessary to amend existing food additive regulations to include temperature limitations and, in some cases, end test specifications to ensure that heat susceptor packaging will be safe under actual conditions of use. If FDA determines that they are necessary, the agency will establish upper temperature limits based on data submitted in response to this request and on currently available toxicological studies on the food additives involved and their possible degradation products. If no new data are submitted, existing petition data, which define the conditions under which the materials were tested, will provide the basis for any upper temperature limits.

Listed below are the types of data that FDA considers necessary for its review of whether to establish temperature limits in its regulations and of the safety at high temperatures of materials used in heat susceptor packaging:

1. Information on the chemical composition and construction of these packages.

2. Information on the temperature levels reached by various components of the package under actual conditions of use in microwave ovens.

3. Migration data obtained under maximum time/temperature conditions of use.

4. Identity of breakdown products under maximum time/temperature conditions of use.

5. Available toxicological safety data for component chemicals and breakdown products.

6. Current and anticipated use information (e.g., types of food contacted, cooking/heating times, and temperatures).

These data should be submitted to the Division of Food and Color Additives (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, as a letter, as a food additive master file, or as part of a food additive petition. These data should be submitted to FDA no later than December 7, 1989, to ensure that all relevant data for specific heat susceptor components are considered before the agency determines whether revision of the applicable regulations is necessary. General comments on this ANPR should be sent to the Dockets Management Branch (address above).

FDA is also requesting general comments and suggestions regarding the format of regulation changes for uses above 300 °F, should FDA determine that such changes are necessary. An approach currently being considered by FDA is to modify 21 CFR part 174 by adding a regulation to prohibit high temperature use except where specifically authorized in the food additive regulations. It may also be necessary to modify certain regulations, such as those governing uses of paper, polymers, and adhesives that do not limit high temperature uses. To ensure that it fully considers the effect of any decision it makes, FDA is requesting that all food additives that are currently used at temperatures above 300 °F be identified to it. In addition, anyone wishing to submit comments concerning the economic impact that might result from such changes is encouraged to do so.

V. Environmental Impact

FDA is required to consider the potential environmental effects of the action to be proposed. Therefore, FDA requests comments on the potential environmental consequences of implementing the policy discussed in this notice.

VI. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Memorandum of Conference, "Microwave Heat Susceptor Packaging Meeting," September 22, 1988, Washington, DC.

2. "Microwave Heat Susceptor Packaging," Dennis Heldman, National Food Processors Association, September 22, 1988, Washington, DC.

3. Preliminary Results of FDA's "Laboratory Studies of Susceptor Packaging," Henry Hollifield, September 22, 1988, Washington, DC.

4. Experimental protocols used in FDA's preliminary laboratory studies of heat susceptor packaging.

Interested persons may, on or before November 7, 1989, submit to the Dockets Management Branch (address above) written comments regarding this advance notice. Trade secret and commercial confidential information should be submitted to the contact person identified above. Trade secret and commercial confidential information will be protected from public disclosure in accordance with 21 CFR part 20. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 29, 1989.

Ronald G. Chesemore,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-21130 Filed 9-7-89; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 211

[Docket No. 88N-0320]

Current Good Manufacturing Practice in Manufacture, Processing, Packing, or Holding; Proposed Revision of Certain Labeling Controls; Extension of Comment Period

AGENCY: Food and Drug Administration.

ACTION: Extension of comment period.

SUMMARY: The Food and Drug Administration is extending to October 20, 1989, the comment period for the proposed rule, published June 23, 1989 (54 FR 26394), to amend the current good manufacturing practice (CGMP)

regulations for human and veterinary drug products to revise certain labeling control provisions. The changes are intended to reduce the frequency of drug product mislabeling. FDA is taking this action in response to a request for an extension of the comment period.

DATE: Comments by October 20, 1989.

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

FOR FURTHER INFORMATION CONTACT: Robert J. Meyer, Center for Drug Evaluation and Research (HFD-362), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8046.

SUPPLEMENTARY INFORMATION: In the Federal Register of June 23, 1989 (54 FR 26394), FDA issued a proposed rule to modify specific sections of the packaging and labeling control subpart of the CGMP regulations. The proposal specifies conditions for the use of gang-printed or cut labeling, exempts from CGMP labeling reconciliation requirements manufacturers that employ 100-percent drug product label inspection systems, and requires manufacturers to identify filled drug product containers that are not immediately labeled. The proposed amendments are based upon findings of a recent agency study of drug product recalls which identified label mixups as the leading cause of recall incidents involving mislabeled products. The proposed rule is intended to encourage desirable labeling operations and to contribute measurably to preventing drug product mislabeling. The proposal gave interested persons an opportunity to submit written comments by August 22, 1989.

In response to the proposal, the Compressed Gas Association (CGA) has requested a 60-day extension of the comment period. CGA expressed their need for additional time to consult their membership and to gather information to adequately respond to the proposal. CGA states that the requested extension of the comment period will permit them to prepare and submit detailed comments to the proposal.

FDA has carefully considered the request. The agency has determined that additional time for the preparation and submission of meaningful information and data is in the public interest. Accordingly, the comment period for submissions by any interested person is extended to October 20, 1989.

Interested persons may, on or before October 20, 1989, submit written comments regarding this proposal to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 1, 1989.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-21198 Filed 9-7-89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 650

[FHWA Docket No. 84-12, Notice No. 2]

RIN 2125-AB05

Erosion and Sediment Control on Highway Construction Projects

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: The FHWA is withdrawing a notice of proposed rulemaking (NPRM) which proposed to revise an existing regulation by adopting sections 208.01 and 208.03 of a document entitled "Guide Specifications for Highway Projects," by the American Association of State Highway and Transportation Officials (AASHTO). The existing regulation, to minimize erosion and sediment damage in the course of highway construction, will remain in effect without change. This determination has been made based on a further review as well as on comments submitted to the public docket.

DATE: This withdrawal is effective on September 8, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Philip Thompson, Office of Engineering, Bridge Division (202) 366-4611, or Mr. Michael Laska, Office of the Chief Counsel (202) 366-1383, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: The policies and procedures for controlling erosion and sediment on highway construction projects are set forth in 23 CFR part 650, subpart B. The regulations require that Federal-aid highways shall be located, designed, constructed and operated according to standards that will minimize erosion and sediment damage to the highway and adjacent properties and abate pollution of surface and ground water resources pursuant to 23 U.S.C. 109 (g), (h) and 33 U.S.C. 1323. The FHWA conducted a review of the existing regulations to determine the effectiveness of current procedures in minimizing soil erosion from highway construction. The FHWA considered adopting the AASHTO Specifications for managing and enforcing erosion and sediment control activities on Federal-aid projects.

On January 18, 1985 the FHWA published an NPRM (50 FR 2694) requesting comments on the proposed revision to the regulation on sediment control on highway construction. The NPRM proposed that the AASHTO Specifications be included as an appendix to 23 CFR part 650, subpart B. Section 650.207 of the existing regulation would be revised to require inclusion of appropriate erosion and sediment control measures in a project's plans, specifications and estimates; and to include the reference to §§ 208.01 and 208.03 of the AASHTO Specifications with the requirement that policies and procedures of agencies subject to this regulation must meet or exceed the AASHTO Specifications. The comment period (Docket No. 84-12) closed March 19, 1985.

In response to the ANPRM, 21 comments were received. Eight comments supported the change, 9 supported some changes and opposed others, and 4 opposed the change. Upon further review and after carefully considering the public comments, the FHWA has determined that the existing regulation, 23 CFR part 650, subpart B provides adequate guidelines and regulation to assure that highways are located, designed, constructed and operated according to standards that will minimize erosion and sediment damage to the highway and adjacent properties and abate pollution of surface and groundwater resources. In addition to the comments, this determination was also based on findings of our continuing review of State Highway Agency activities over the last five years. These reviews indicate that temporary and permanent erosion control measures are being incorporated into project plans. Therefore, the FHWA is withdrawing the NPRM.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory

Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

(Catalog of Federal Domestic Assistance Programs Number 20.205, Highway Planning and Construction).

(23 U.S.C. 109 (g) and (h); and 315; 33 U.S.C. 1323; and 49 CFR 1.48(b)).

List of Subjects in 23 CFR Part 650

Grant programs—Transportation, Highway and Roads, Water pollution control.

Issued on August 31, 1989.

Thomas D. Larson,

Federal Highway Administration.

[FR Doc. 89-21078 Filed 9-7-89; 8:45 am]

BILLING CODE 4910-22-M

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23 CFR Part 658

[FHWA Docket No. 89-22]

RIN 2125-AC38

Truck Size and Weight; Saddlemount Combinations

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: In response to a petition from the National Automobile Transporters Association (NATA) and its member companies dated September 7, 1988, the FHWA proposes to amend 23 CFR 658.5 and 658.13 to regulate the overall length of driveway saddlemount combinations and driveway saddlemount with fullmount combinations. The proposed changes would increase the overall length limit from 65 to 75 feet and clarify that both saddlemount and saddlemount with fullmount automobile transporters are specialized equipment.

DATE: Comments on this docket must be received on or before December 7, 1989.

ADDRESS: Submit written, signed comments to FHWA Docket No. 89-22, Room 4232, HCC-10, Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Commenters may, in addition to submitting "hard copies" of their comments, submit a floppy disk (either 1.2Mb or 36Kb density) in a format that is compatible with either word processing programs Word Perfect or WordStar. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., e.t., Monday through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Max Pieper, Office of Motor Carrier Information Management and Analysis, (202-366-4029) or Mr. Charles Medalen, Office of the Chief Counsel, (202-366-1354), Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 8:30 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: On January 29, 1988, the FHWA published a final rule in the **Federal Register** (53 FR 2593) amending 23 CFR 658.13(d). It provided in part as follows:

> (iii) Drive-away saddlemount with fullmount vehicle transporter combinations are considered to be specialized equipment. No State shall impose an overall length limit of less than 65 feet on saddlemount with fullmount combinations. (Triple saddlemount combinations shall be allowed when conforming to the 65-foot length limit and the applicable safety regulations at 49 CFR 393.71.)

In saddlemount combinations one or more truck tractors or trucks are connected to and towed by a truck or truck tractor. The connection is made by placing the front axle of the towed vehicle onto the frame of the towing vehicle and connecting it by a mechanism known as a saddle. The saddle functions like a fifth wheel kingpin connection. When two vehicles are towed in this manner the combination is referred to as a double saddlemount. Three towed vehicles comprise a triple saddlemount. When a smaller vehicle is mounted completely on the frame of the first or last vehicle in a saddlemount combination, it is known as a fullmount.

There were 27 responses to the notice of proposed rulemaking (NPRM) to allow saddlemount with fullmount vehicle transporter combinations within a 65-foot overall limit (FHWA Docket No. 84-18, 50 FR 48431, November 25, 1985). Of these, 19 from industry and one from a State Department of Transportation (DOT) favored a 75-foot overall minimum length limit. Comments from 7 State DOT's either favored a 65-foot or shorter overall length limit. The NPRM discussed several issues relative to the saddlemount combinations, i.e., the number of articulation points, the additional braking requirements of 49 CFR 393.71, and the low accident rate of the drive-away automobile transporter fleet. After carefully considering all the comments, the FHWA adopted a 65-foot minimum overall length limit as a safe and equitable balance.

Petition

In a letter dated September 7, 1988, NATA and its member companies petitioned the FHWA to amend 23 CFR 658.13(d)(iii) to increase the overall length limit for saddlemount combinations from 65 to 75 feet. This is because truck manufacturers have been building longer wheelbase power units since enactment of the Surface Transportation Assistance Act of 1982 (STAA), Pub. L. 97-424, 96 Stat. 2097, which prohibits overall length limits for certain vehicle combinations on the National Network (NN). In addition, many are being manufactured with wind deflectors installed on top or incorporated into the shape of the cab. Due to these increases in length and height, it is often impossible to transport three saddlemount vehicles within the 65-foot overall saddlemount length limit. Although NATA expects that more States will permit 75-foot saddlemount combinations in the future, only 10 do so at present. This means that as the length and height of trucks and truck tractors increase, fewer can be transported in saddlemount combinations, which actually decreases productivity in this industry, contrary to the intent of the STAA. Thus NATA believes that positive action by the Federal Government to restore productivity is appropriate, provided it can be achieved with the same degree of highway safety that attends the movement of other vehicle combinations of a similar size.

In October, 1984, NATA contracted with the Western Highway Institute (WHI) to conduct a comprehensive study and evaluation of saddlemount combinations. As support for its petition, NATA submitted a copy of WHI's report issued September, 1985, entitled "Saddlemount Combination Tests." A copy is available for review in the FHWA Docket Room.

Discussion

The Western Highway Institute (WHI) tested a 60-foot long double saddlemount and 65, 70 and 75-foot long triple saddlemount combinations for offtracking (expressed as swept width) and stopping distances (for service and emergency brakes). Swept width is the sum of the offtrack and the effective width of the vehicle and indicates how much total roadway width is needed to accommodate a vehicle in a given turning movement.

As part of its study, the Western Highway Institute contracted with the University of Michigan Transportation Research Institute (UMTRI) to examine, by computer simulation, the braking

efficiency, roll stability and rearward amplification of saddlemount combinations. The simulations tested the saddlemount combinations indicated. The results of these five tests are presented in Tables 1 through 5, which include other truck combinations or safety standards for comparison.

TABLE 1—OFFTRACKING

[Swept Width in Feet]

	73/75-foot triple saddlemount	60-foot double saddlemount	63/65-foot triple saddlemount	Twin 28-foot trailers	48-foot semi-trailer
60-foot radius	20.2	15.4	16.4	21.1	30.6
100-foot radius	14.0	11.7	12.0	14.9	19.0
165-foot radius	10.9	9.9	9.8	12.3	14.6

TABLE 2—STOPPING DISTANCES 96 [(IN FEET]

	73/75-foot triple saddle-mount	60-foot double saddle-mount	MVSS 121 standard
Service brakes:			
20 mph	32.1	34.3	35
30 mph	68.0	66.9	75
40 mph	105.6	115.2	131
50 mph	190.2	158.9	203
55 mph	231.8	213.2	246
Emergency brakes (20 mph):			
Primary	44.8	.....	[1] 90
Secondary	52.7	.....	[1] 90
Spring brakes	.....	45.6	[1] 90

[1] 49 CFR 393.52 standard.

TABLE 3—BRAKING EFFICIENCY

[Ratio (in Percent) of Deceleration Capacity to Tire/Road Friction Level]

	73/75-foot triple saddle-mount	60-foot double saddle-mount	63/65-foot triple saddle-mount	48-foot semi-trailer
Light braking, 0.1 g [1]:				
All axles braked	60	66	61	[2] 62 [3] 96
Last axle unbraked	63	64	64	.....
Heavy braking, 0.4g:				
All axles braked	51	58	52	[2] 59 [3] 88
Last axle unbraked	58	59	59	.....

[1] A "g" is equal to the acceleration of a body caused by the force of gravity.
[2] Empty.
[3] Loaded.

Braking efficiency is a measure of the maximum braking level which can be sustained without wheel lockup and loss of vehicle control. Ideally, if the nondimensional friction level of a surface is 0.4, a vehicle would be able to attain a deceleration level of 0.4 g's for a braking efficiency value of 100 percent.

To explain the difference between light and heavy braking, the UMTRI report is quoted. "Light and heavy braking levels are distinguished in recognition of the fact that the light braking applied when operating, for example, on long downgrades and very slippery surfaces, generally involves a significantly different braking efficiency level than applies to heavy braking. Further, the 0.4 selection for the "heavy" braking level reflects the rather low braking capabilities which are generally seen with heavy-duty commercial vehicles."

TABLE 4—ROLLOVER THRESHOLD

[in g's]

73/75-foot triple saddle-mount	65-foot double saddle-mount	63/65-foot triple saddlemount	48-foot semitrailer
0.542	0.547	0.543	[1] 0.24–0.40 [2] .70

[1] Loaded.
[2] Empty.

Rollover threshold is the amount of lateral acceleration, in g's, that a turning vehicle will tolerate before rolling over.

TABLE 5—REARWARD AMPLIFICATION AT 55 MPH

73/75-foot triple saddle-mount	60-foot double saddle-mount	63/65-foot triple saddlemount	Twin 28-foot trailers
1.95	1.53	2.13	2.55 (1.9) (1.44)

Rearward amplification is an expression of the "crack-the-whip" effect on the rearmost unit compared to the towing unit in a tight turn. A value of 1.0 indicates that no exaggeration in the rear unit response is occurring, while a higher number indicates a greater response. In the report for WHI, UMTRI recorded the response to a quick lane-change maneuver as 2.55 for a twin 28-foot trailer combination. The 1.9 value for the twin-trailer combination was interpolated from Figure 3.1.2.e in a July 1986 report, "The Influence of Weight and Dimensions on the Stability and Control Of Heavy Trucks in Canada—Part 1" prepared for the Canroad Transportation Research Corporation (CTRC). This figure is based on work by UMTRI for the CTRC sponsored study. In its December, 1988 report for FHWA, "Safety Implications of Various Truck Configurations," UMTRI reported a response to a continuous weaving maneuver of 1.44 for the same combination.

The variances in these numbers for rearward amplification are attributed to different parameters in the two studies. These are (1) Sudden motion as opposed to the continuous motion present in normal operations, (2) tire loads and stiffness, and (3) the hitching mechanism. Based on a review of the information set forth in the tables above it appears that the 73/75-foot saddlemount does not provide any greater safety risks than the other vehicles and, in fact, may be safer under many conditions.

The FHWA proposes to increase the overall length limit for saddlemount combinations with up to three trailing units plus one fullmount from 65 to 75 feet. This action results in probable improved safety performance as the longer combination tracks better in a quick steering maneuver than does one 65 feet long.

Request for Comments

The FHWA solicits comments from all interested persons regarding the following matters:

1. The methods and vehicle combinations use and results obtained in the Western Highway Institute and University of Michigan Transportation Research Institute tests and other studies regarding the following vehicle characteristics:

a. Offtracking,
b. Braking,
c. Braking efficiency,
d. Rollover, and
e. Rearward amplification.

2. Any other information regarding the performance of saddlemount combinations.

3. The productivity of saddlemount combinations and the need to extend the overall Federal length limit on saddlemount combinations from 65 to 75 feet.

4. The extent to which increasing by regulation the overall length limit of saddlemount combinations from 65 to 75 feet affects, alters or impacts upon State

authority to regulate vehicles operating on State highways.

5. Any other information regarding safety concerns related to extending the overall length from 65 to 75 feet.

Regulatory Impact

The FHWA has considered the impact of this notice and has determined that it is not a major rulemaking action within the meaning of E.O. 12291 and not a significant rulemaking under the regulatory policies and procedures of the DOT. These determinations by the agency are based on the nature of the rulemaking. The FHWA has determined that this rulemaking technically amends the June 5, 1984, final rule (FHWA Docket 83-14, 49 FR 23302), clarifying and further defining certain issues contained therein. The impacts of the provisions addressed in this rulemaking do not differ in substance from those fully considered in the original impact statement accompanying the June 5 final rule. Automobile transporters make up a small segment of the total medium to heavy truck population (approximately 13,000 vehicles out of the total medium to heavy truck population of over 2 million.) Although saddlemount units constitute an even smaller percentage, productivity gains could be considerable for this minor constituency. NATA estimates that these gains could amount to as much as $6 to $7 million per year. Safety considerations have been addressed earlier in this preamble. The Regulatory Impact Analysis prepared for the June 5 rulemaking is available for inspection in the FHWA Public Docket Room 4232 in the Headquarters Office, 400 Seventh Street, SW., Washington, DC 20590.

Executive Order 12612 of October 26, 1987, "Federalism," requires that the effect of Federal Regulations on the States must be weighed. Any regulatory preemption of State law must be restricted to the minimum level necessary to achieve the objective of the statute under which the regulation is promulgated. In this case, the FHWA previously authorized saddlemount combinations with a 65-foot overall length limit in a final rule published in the Federal Register on January 29, 1988. As the FHWA already has a regulation on the minimum overall length for saddlemount combinations that the States must allow on the National Nework for trucks, this action does not preempt State authority in a new area. Furthermore, this action is consistent with the intent of the STAA to increase the productivity of the industry, without adversely affecting safety.

Under the criteria of the Regulatory Flexibility Act, FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities. (Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program).

List of Subjects in 23 CFR Part 658

Grants programs—transportation, Highways and roads, Motor carrier—size and weight.

Issued on August 30, 1989.

Thomas D. Larson,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA proposes to amend 23 CFR part 658 as follows:

PART 658—TRUCK SIZE AND WEIGHT: ROUTE DESIGNATION—LENGTH, WIDTH AND WEIGHT LIMITATIONS

1. The authority citation for 23 CFR part 658 continues to read as follows:

Authority: Secs. 133, 411, 412, 413, and 416 of Pub. L. 97-424, 96 Stat. 2097 (23 U.S.C. 127; 49 U.S.C. app. 2311, 2312, and 2316), as amended by Pub. L. 98-17, 97 Stat. 59, and Pub. L. 98-554, 98 Stat. 2829; 23 U.S.C. 315; and 49 CFR 1.48.

2. Section 658.5 is amended by adding paragraphs (r) and (s), as follows:

§ 658.5 Definitions

* * * * *

(r) *Saddlemount.* A saddlemount is a vehicle combination in which one or more trucks or truck tractors are connected to and towed by a single truck tractor. The connection is made by placing the front axle of the towed vehicle onto the frame of the towing vehicle and connecting it by a mechanism known as a saddle which functions like a fifth wheel kingpin connection. When two vehicles are towed in this manner the combination is referred to as a double saddlemount. When three vehicles are towed in this manner, the combination is called a triple saddlemount.

(s) *Fullmount.* A fullmount is a smaller vehicle mounted completely on the frame of either the first or last vehicle in a saddlemount combination.

3. Section 658.13(d)(1)(iii) is revised to read as follows:

§ 658.13 Length

* * * * *

(d)(1) * * *

(iii) Drive-away saddlemount vehicle transporter combinations and driveway saddlemount with fullmount vehicle transporter combinations are considered to be specialized equipment. No State shall impose an overall length limit of less than 75 feet on such combinations. (Saddlemount combinations are subject to all applicable safety regulations including those at 49 CFR 393.71)

* * * * *

[FR Doc. 89-21079 Filed 9-7-89; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part I

[INTL-399-88]

RIN 1545-AM16

Treatment of Dual Consolidated Losses

AGENCY: Internal Revenue Service, Treasury.

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

SUMMARY: This document provides proposed Income Tax Regulations relating to the definition of "dual consolidated losses" for purposes of determining whether the net operating loss of a domestic corporation is available to reduce the taxable income of any other member of its affiliated group. In the Rules and Regulations portion of this issue of the Federal Register, the Internal Revenue Service is issuing temporary income tax regulations relating to the definition of a dual consolidated loss for purposes of determining whether the net operating loss of a domestic corporation is available to reduce the taxable income of any other member of its affiliated group. The text of the temporary regulations also serves as the comment document for this notice of proposed rulemaking.

DATES: The regulations under § 1.1503-2T are proposed to be effective as final regulations 30 days after publication of final regulations in the Federal Register with respect to taxable years beginning after December 31, 1988. Written comments and requests for a public hearing must be delivered or mailed by November 7, 1989.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:CORP:T:R (INTL-0399-88), Room 4429, Washington, DC 20224.

FOR FURTHER INFORMATION: David I. Bower of the Office of the Associate

Chief Counsel (International) within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224, attention: CC:CORP:T:R (INTL-0399-88) (202 566-6645 not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to Office of Management and Budget, Paperwork Reduction Project (1545-1083), Washington, DC 20503, with copies to the Internal Revenue Service Attention: IRS Report Clearance Officer T:FP, Washington, DC 20224.

The collection of information in this regulation is in § 1.1503-2T (c)(3)(i)(B), (c)(3)(iv), (c)(3)(v), (c)(4)(i), and (c)(4)(iii). This information is required by the Internal Revenue Service to provide an exception from a general rule that dual consolidated losses are not available to reduce the income of any other domestic affiliate, and to prevent dual resident corporations that are members of affiliated groups filing consolidated returns from using the dual consolidated loss to offset income of other members of their affiliated groups. The likely respondents are businesses or other for profit institutions.

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

Estimated reporting burden: 300 hours.

Estimated average annual burden per respondent: .75 hour.

Estimated number of respondents: 400.

Estimated annual frequency of responses: Agreement and waiver—yearly.

Background

The temporary regulations published in the Rules and Regulations portion of this issue of the **Federal Register** add new § 1.1503-2T to Part I of Title 26 of the Code of Federal Regulations. These regulations implement section 1503(d) which was added by section 1249 of the Tax Reform Act of 1986 (Pub. L. 99-514). The preamble to the temporary regulations explains these additions to the income tax regulations.

Special Analyses

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

Comments and Requests for Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably a signed original and eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request by any person who submits written comments on the proposed rules. Notice of the time and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Riea M. Lainoff of the Office of the Associate Chief Counsel (International) within the Office of Chief Counsel, Internal Revenue Service. Other personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations.

Lists of Subjects in 26 CFR 1.1501-1 through 1.1564-1

Income taxes, Controlled group of corporations, Consolidated returns.

The temporary regulations, FR Doc. (T.D. 8261) published in the Rules and Regulations portion of this issue of the **Federal Register** are hereby also proposed as final regulations under Title 26, Parts 1 and 602, of the Code of Federal Regulations.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

[FR Doc. 89-21073 Filed 9-7-89; 8:45 am]

BILLING CODE 4830-01-M

Notices

Federal Register
Vol. 54, No. 173
Friday, September 8, 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.

ACTION

Drug Alliance; Fund Availability Demonstration Grants

ACTION: Notice of Availability of Funds.

ACTION, the federal domestic volunteer agency, announces the anticipated availability of funds during fiscal year 1990 for Drug Alliance grants under the Special Volunteer Programs authorized by the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93-113, Title 1, part C; 42 U.S.C. 4992).

ACTION, historically a principal source of volunteer leadership in America, has been mandated by the President and Congress to respond to the crisis of illegal drug use by fostering innovative prevention programs that capitalize on volunteer resources on the local level. Volunteers of all ages and from every segment of the community can make vital contributions to drug prevention and awareness programs, and ACTION intends to support programs which encourage and sustain the spirit of voluntarism as a weapon in America's fight against drugs.

The best strategy to combat illegal drug use is to prevent it from starting. Effective prevention requires the involvement of every segment of the community, recognizing that no single approach will work in every locale. Comprehensive approaches assure that clear, consistent "no use" messages are delivered and reinforced by a variety of community resources. Reinforced by the provisions of the Omnibus Drug Abuse Act of 1988, there is growing recognition of the importance of involving youth in illicit drug use prevention activities after school and on weekends when schools are not in session and school-related prevention information and support is unavailable.

There is increasing attention being paid to the value and importance of providing youth the opportunity to participate in structured volunteer programs. As well as the obvious benefits to the community, there is increasing acceptance of the notion of "immunization"—that voluntary service may in fact reduce the risk of drug involvement among participating youth by reinforcing good work habits, helping enhance self-esteem, establishing a sense of belonging within the community, and providing positive role models.

While research on this "immunizing" effect is underway, it is clear that voluntary service can be of significant value to the community and to the participating youth. Accordingly, ACTION is very interested in efforts to combine voluntary service with drug prevention activity to maximize the likelihood of stopping illicit drug use before it begins. There is particular need for such programming in many inner city and rural low-income communities. The needs in such communities that may be met through voluntary service are often great and the youth who live in these areas are generally considered at extremely high risk for drug involvement.

Local community and youth serving organizations are in a unique leadership position to involve youth in meaningful structured volunteer programs that focus on illicit drug use prevention.

America's youth, who are often confronted by peer pressure and other encouragement to use illegal drugs, constitute the most important target for anti-drug programming. Drug-free youth also constitute a tremendous resource for a community's drug prevention educational effort. There is a critical need to develop programs which enable local communities to tap this resource. This announcement solicits innovative proposals in response to that need.

A. Eligible Strategy

Local community and youth serving organizations are encouraged to submit proposals to implement the following strategy by: (a) Expanding an existing program, or (b) developing a new program.

Strategy. The ideal program will provide structured non-stipended volunteer opportunities that focus on illicit drug prevention education activity appropriate for these youth program participants. It will involve parents, use non-stipended volunteers in its operation, and target youth at high risk of becoming involved in the use of illegal drugs, especially youth from low-income communities, in both inner city neighborhoods and rural settings, single parent or broken homes, and children of substance abusers.

The program must include a specific curriculum which conveys the harmful consequences of illicit drug use and teaches refusal skills, and may include group presentations, workshops, rallies, leadership training, peer counseling and theatrical or musical performances that involve the presentation of accurate anti-drug information. This should be structured with a specific number of hours of illicit drug use prevention education provided on a regular schedule for program participants. The involvement of other drug prevention educational resources from the community is encouraged.

B. Eligible Applicants

Only applications from private non-profit incorporated organizations and public agencies will be considered. Such organizations may include, but are not limited to, local coalitions or councils dedicated to the prevention of illegal drug use, volunteer groups, religious organizations, local government agencies, fraternities, sororities and youth service organizations.

Any applicant that does not adhere to a strict policy of the non-use of illicit drugs will not be eligible for consideration. Furthermore, an application will be ineligible if it refers to philosophy, proposed activities, training or educational materials that advocate the tolerance of the initial or responsible use of any illicit drug, or the illicit use of any legal drug. This issue must be addressed in the application.

C. Available Funds and Scope of the Grant

The amount of a grant may not be smaller than $20,000 nor larger than $35,000, and requires a 50% non-Federal match.

Applicants should specifiy the sources and nature of in-kind and other non-federal contributions. These contributions must be deemed allowable costs in accordance with ACTION requirements and be supported by a detailed budget narrative listing the source of that support and the formula used to compute those costs.

Publication of this announcement does not obligate ACTION to award any specific number of grants or to obligate any specific amount of money for these grants. Projects funded under this announcement may receive funds for a grant period not to exceed 12 months. They will not be eligible for renewal funding.

D. General Criteria for Grant Review and Selection

Grant applications will be reviewed and evaluated based on the criteria outlined below, as appropriate, as well as conformance to the instructions included in the application. Grant applicants with a demonstrated competence in conducting youth volunteer programs will be given preference.

1. Ability and plans to develop or expand an illicit drug use prevention program for high-risk youth that provides illicit drug use prevention education.

2. Ability and plans to involve at risk youth and parents in the development and implementation of the prevention program.

3. Ability and plans to recruit, train, utilize and retain non-stipended volunteers.

4. Plans to continue the illicit drug use prevention education beyond the end of the ACTION grant period or to incorporate the activities into future youth programs, without additional funding from ACTION.

5. Ability and plans to work with other local prevention networks and coalitions to implement the program.

6. Carefully formulated schedule for achieving objectives, including continuation of the project, and feasibility of methods for meeting those objectives.

7. Detailed description of methods to be used in evaluating the impact of the program on the drug abuse problem in the community.

E. The Associate Director of Domestic and Anti-Poverty Operations May Use Additional Factors in Choosing Among Applicants Who Meet the Minimum Criteria Specified Above, Such As

1. Geographic distribution;

2. Applicants accessibility to alternate resources, both technical and financial;

3. Allocation of Program Demonstration/Drug Alliance resources in relation to other ACTION funds;

F. Application Review Process

Applications submitted under this announcement will be reviewed and evaluated by their respective ACTION State and Regional Offices and ACTION's Program Demonstration and Development Division. ACTION's Associate Director for Domestic and Anti-Poverty Operations will make the final selection. ACTION reserves the right to ask for evidence of any claims of past performance or future capability.

G. Application Submission and Deadline

One signed original and two copies of all completed applications must be submitted to the appropriate ACTION State Office no later than 5:00 p.m. local standard time on November 1, 1989. Only those applications that include a-g listed below, and h–j (if required), and are received at the appropriate ACTION State Office by 5:00 p.m. local standard time on this date will be eligible. Incomplete applications will not be considered for funding.

All grant applications must consist of:

a. Application for Federal Assistance (ACTION Form A–1036) with narrative budget justification and a narrative of project goals and objectives, and assurances.

b. Signed and dated: Certification Regarding Drug-Free Workplace Requirements.

c. Signed and dated: Certification Regarding Debarment, Suspension, and Other Responsibility Matters Primary Covered Transactions.

d. Current resume of the candidate for the position of project director, if available, or the current resume of the director of the applicant agency or project.

e. Organization chart of the applicant organization showing how the project is related to the organization and how participating affiliates are related to the organization.

f. List of the current board of directors showing their names, addresses and organizational and professional affiliations.

g. Three letters of support attesting to the applicant's ability to meet the criteria contained in Section D.

h. CPA certification of accounting capability.

i. Articles of Incorporation.

j. Proof of non-profit status or an application for non-profit status, which should be made through documentation.

Items h, i and j above are not required for public agencies of state and local government.

To receive an application kit, please contact the appropriate ACTION State Program Office. Following is an address list of ACTION Regional Offices, along with the addresses and telephone numbers of the ACTION State Program Office under their jurisdiction.

Region I

Mr. John F. Torian, ACTION Regional Director, 10 Causeway Street, Rm. 473, Boston, MA 02222–1039, (617) 565–7000

Mr. Romero A. Cherry, ACTION State Program Director, Abraham Ribicoff Federal Bldg., 450 Main Street, Rm. 524, Hartford, CT 06103–3002, (203) 240–3237

Mr. Thomas E. Endres, ACTION State Program Director, Federal Bldg., Room 305, 76 Pearl Street, Portland, ME 04101–4188, (207) 780–3414

Mr. Malcolm Coles, ACTION State Program Director, 10 Causeway Street, Room 473, Boston, MA 02222–1039, (617) 565–7018

Mr. Peter Bender, ACTION State Program Director, Federal Post Office & Courthouse, 55 Pleasant Street, Room 316, Concord, NH 03301–3939, (603) 225–1450

Mr. Vincent Marzullo, ACTION State Program Director, John O. Pastore Federal Bldg., Room 232, Two Exchange Terrace, Providence, RI 02903–1758, (401) 528–5424

Region II

Mr. Herbert W. Stupp, ACTION Regional Director, 6 World Trade Center, Room 758, New York, NY 10048–0206, (212) 466–3481

Mr. Stanley Gorland, ACTION State Program Director, 402 East State Street, Room 422, Trenton, NJ 08608–1507, (609) 989–2243

Mr. Bernard A. Conte, ACTION State Program Director, 6 World Trade Center, Room 758, New York, NY 10048–0206, (212) 466–4471

Mr. Ruben Nazario, ACTION State Program Director, Federico DeGetau Federal Ofc Bldg., Carlos Chardon Avenue, Suite G49–3543, Hato Rey, PR 00917–2241, (809) 766–5314

Region III

Ms. Margaret Davison Matisko, ACTION Regional Director, U.S. Customs House, 2nd and Chestnut Street, Room 108, Philadelphia, PA 19106–2912, (215) 597–9972

Ms. Betsy Irvin Wells, ACTION State Program Director, Federal Building, Room 372–D, 600 Martin Luther King Jr. Place, Louisville, KY 40202–2230, (502) 582–6384

Mr. Paul Schrader, ACTION State Program Director, Leveque Tower, Room 304A, 50 W. Broad Street, Columbus, OH 43215–2888, (614) 469–7441

Mr. Donald G. Lenz, Acting, ACTION State Program Director, U.S. Customs House, Room 108, 2nd and Chestnut Streets, Philadelphia, PA 19106–2998, (215) 597–3543

Mr. Lindsay B. Scott, (Virginia and the District of Columbia), ACTION State Program Director, 400 North 8th Street, Room 1119, P.O. Box 10066, Richmond, VA 23240-1832, (804) 771-2197

Mr. Jerry E. Yates, ACTION State Program Director, Federal Bldg., Box 257, 31 Hopkins Plaza, Room 1125, Baltimore, MD 21201-2814, (301) 962-4443

Ms. Jean Taylor-Brown, ACTION State Program Director, 603 Morris Street—2nd Floor, Charleston, WV 25301-1409, (304) 347-5246

Region IV

Ms. Evelyn Morrison, Acting, ACTION Regional Director, 101 Marietta Street, N.W.—Suite 1003, Atlanta, GA 30323-2301, (404) 331-2859

Mr. John D. Timmons, ACTION State Program Director, Beacon Ridge Tower, Room 770, 600 Beacon Parkway West, Birmingham, AL 35203-3109, (205) 731-1908

Mr. Henry Jibaja, ACTION State Program Director, 930 Woodcock Road—Suite 221, Orlando, FL 32803-3750, (407) 648-6117

Mr. David A. Dammann, ACTION State Program Director, 75 Piedmont Avenue, N.E., Suite 412, Atlanta, GA 30303-2587, (404) 331-4646

Mr. Alfred E. Johnson, ACTION State Program Director, 265 Cumberland Bend Drive, Nashville, TN 37228-1890, (615) 736-5561

Mr. Robert L. Winston, ACTION State Program Director, Federal Bldg, P.O. Century Station, 300 Fayetteville Street Mall, Room 131, Raleigh, N.C. 27601-1739, (919) 856-4731

Mr. Arthur E. Brown, III, ACTION State Program Director, Federal Bldg. Room 1005-A, 100 West Capital Street, Jackson, MS 39269-1092, (601) 965-5664

Mr. Jerome J. Davis, ACTION State Program Director, Federal Building, Room 872, 1835 Assembly Street, Columbia, S.C. 29201-2430, (803) 765-5771

Region V

Cynthia Rudmann, Acting, ACTION Regional Director, 10 West Jackson Blvd.—6th Floor, Chicago, IL 60604-3964, (312) 353-5107

Mr. James E. Braxton, ACTION State Program Director, 10 West Jackson Blvd.—6th Floor, Chicago, IL 60604-3964, (312) 353-3622

Mr. Thomas L. Haskett, ACTION State Program Director, 46 East Ohio Street—Room 457, Indianapolis, IN 46204-1922, (317) 226-6724

Mr. Joel H. Weinstein, ACTION State Program Director, Federal Building, Room 722, 210 Walnut St., Des Moines, IA 50309-2195, (515) 284-4816

Mr. Stanley M. Stewart, ACTION State Program Director, Federal Bldg., Room 658, 231 West Lafayette Blvd., Detroit, MI 48226-2799, (313) 226-7848

Mr. Peter A. Marks, ACTION State Program Director, Old Federal Bldg.—Room 126, 212 Third Avenue South, Minneapolis, MN 55401-2596, (612) 334-4083

Mr. Michael P. Murphy, ACTION State Program Director, Federal Building, 517 East Wisconsin Avenue, Rm. 601, Milwaukee, WI 53202-4507, (414) 291-1118

Region VI

Ms. Paulette E. Standefer, ACTION Regional Director, 1100 Commerce Street, Room 6B11, Dallas, TX 75242-0696, (214) 767-9494

Mr. John J. McDonald, ACTION State Program Director, Federal Office Bldg., 911 Walnut, Room 1701, Kansas City, MO 64106-2009, (816) 426-5256

Mr. Jerry G. Thompson, ACTION State Program Director, 611 East Sixth Street, Suite 107, Austin, TX 78701-3747, (512) 482-5671

Mr. Robert J. Torvestad, ACTION State Program Director, Federal Bldg., Room 2506, 700 West Capitol Street, Little Rock, AR 72201-3291, (501) 378-5234

Mr. James M. Byrnes, ACTION State Program Director, Federal Bldg., Room 248, 444 SE. Quincy, Topeka, KS 66603-3501, (913) 295-2540

Mr. Willard L. Labrie, ACTION State Program Director, 626 Main Street, Suite 102, Baton Rouge, LA 70801-1910, (504) 389-0471

Mr. Ernesto Ramos, ACTION State Program Director, Federal Bldg., Cathedral Place, Room 129, Sante Fe, NM 87501-2026, (505) 988-6577

Mr. Zeke Rodriquez, ACTION State Program Director, 200 NW. 5th Street, Room 912, Oklahoma City, OK 73102-6093, (405) 231-5201

Region VIII

Ms. Joyce Emerson, ACTION Regional Director, Executive Tower Bldg., 1405 Curtis Street, Suite 2930, Denver, CO 80202-2349, (303) 844-1070

Mr. Ben Knopp, ACTION State Program Director, Columbine Bldg., Room 301, 1845 Sherman Street, Denver, CO 80203-1167, (303) 866-1070

Mr. Ben Knopp, ACTION State Program Director, Federal Bldg., Room 8036, 2120 Capitol Avenue, Cheyenne, WY 82001-3649, (307) 772-2385

Mr. Joe R. Lovelady, ACTION State Program Director, Federal Office Bldg., Drawer 10051, 301 South Park—Room 192, Helena, MT 59626-0101, (406) 449-5404

Ms. Anne C. Johnson, ACTION State Program Director, Federal Bldg., Room 293, 100 Centennial Mall North, Lincoln, NE 68508-3896, (402) 437-5493

Mr. John C. Pohlman, ACTION State Program Director, Federal Bldg., Room 213, 225 S. Pierre Street, Pierre, SD 57501-2452, (605) 224-5996

Mr. Gary S. O'Neal, ACTION State Program Director, U.S. Post Office & Courthouse, 350 South Main Street, Room 484, Salt Lake City, UT 84101-2198, (801) 524-5411

Region IX

Ms. Teresa Keeshan, ACTION Regional Director, 211 Main Street, Room 530, San Francisco, CA 94105-1914, (415) 974-0673

Mr. Ricardo Gerakos, ACTION State Program Director, Federal Bldg. Room 14218, 11000 Wilshire Blvd., Los Angeles, CA 90024-3671, (213) 209-7421

Mr. Michael J. Gale, ACTION State Program Director, Federal Bldg., #6326, P.O. Box 50024, 300 Ala Moana Blvd., Honolulu, HI 96850-0001, (808) 541-2832

Mr. Steven P. Gordon, ACTION State Program Director, 4600 Kietzke Lane, Suite E-141, Reno, NV 89502-5033, (702) 784-5314

Mr. Jess A. Sixkiller, ACTION State Program Director, 522 North Central, Room 205-A, Phoenix, AZ 85004-2190, (602) 261-4825

Region X

Mr. John Keller, ACTION Regional Director, Suite 3039, Federal Office Bldg., 909 First Avenue, Seattle, WA 98174-1103, (206) 442-4520

Mr. Stephen Neal Stivers, ACTION State Program Director, Federal Bldg., Room 647, 511 N. W. Broadway, Portland, OR 97209-3416, (503) 326-2261

Mr. Jack R. Nunn, ACTION State Program Director, Alaska State Office, Suite 3039, Federal Office Bldg., 909 First Street Avenue, Seattle, WA 98174-1103, (206) 442-1558

Mr. Wilford E. Overgaard, ACTION State Program Director, The Alaska Center, Suite 340, 1020 Main Street, Boise, ID 83702-5745, (208) 334-1707

Mr. John A. Miller, ACTION State Program Director, Suite 3039 Federal Office Bldg., 909 First Avenue, Seattle, WA 98174-1103, (206) 442-4975.

Signed at Washington, DC this 1st day of September 1989.

Jane A. Kenny,

Acting Director.

[FR Doc. 89-21076 Filed 9-7-89; 8:45 am]

BILLING CODE 6050-28-M

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

September 1, 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 proposals, 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 number of responses; (7) An estimate or the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of P.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.

Reinstatement

• Food and Nutrition Service.
Food Stamp Mail Issuance Report.
FNS–259.
Quarterly.
State or local governments: 10,060 response; 3,139 hours; not applicable under 3504(h).
David Walters (703)756–3385.

Revision

• Foreign Agricultural Service.
FAS/Cooperator Market Development Program.
Monthly; Annually.
State or local governments: Non-profit institutions; 2,795 responses; 80,958 hours; not applicable under 3504(h).
Richard E. Passig (202)447–4327.

• Foreign Agricultural Service.
Targeted Export Assistance (TEA) Program.
On occasion; Annually.
State or local governments; Businesses or other for-profit; Non-profit institutions; 965 responses; 78,147 hours; not applicable under 3504(h).
Richard E. Passig (202) 447–4327.

Extension

• National Agricultural Statistics Service.
Honey Survey.
None.
Annually.
Farms; 7,300 responses; 1,217 hours; not applicable under 3504(h).
Larry Gambrell (202) 447–7737.

• Forest Service.
Grazing Permit Administration Forms, 36 CFR 222, Subpart A and C, FS–2200–1, –2. –12, –13, –15, –16, –17, R–1–2230–5, R–2–2200–6, R–3–2200 and R–8–2200–23.
On occasion.
Farms; 4,950 responses; 1,455 hours; not applicable under 3504(h).
Don Nelson (703) 235–8142.

• Forest Service.
Forest Industries Data Collection System.
None.
Annually.
Businesses or other for-profit; 2,246 responses; 1,740 hours; not applicable under 3504(h).
John B. Tansey (704) 257–4359.

• Agricultural Stabilization and Conservation Service.
7 CFR Part 702 Colorado River Basin Salinity Control Program Regulations CRSC–1, CRSC–2, CRSC–3.
On occasion.
Farms; 248 responses; 85 hours; not applicable under 3504(h).
Paul Shanks (202) 475–5924.

New Collection

• Forest Service.
Recreation Fee Permit Envelope.
FS–2300–26.
On occasion.
Individuals or households; 2,000,000 reponses; 60,000 hours; not applicable under 3504(h).
Bob Cron (202) 382–9408.

Larry K. Roberson,
Acting Departmental Clearance Officer.

[FR Doc. 89–21177 Filed 9–7–89; 8:45 am]

BILLING CODE 3410–01–M

Office of the Secretary

Review of Need for United States Sugar Import Controls

AGENCY: Office of the Secretary, USDA.

ACTION: Notice.

SUMMARY: This notice announces the determination of the Secretary of Agriculture that continued operation of Additional U.S. Note 2 and paragraphs (b), (c), (d), and (e) of Additional U.S. Note 3 to Chapter 17 of the Harmonized Tariff Schedule of the United States (HTS) with respect to tariff rates and quotas applicable to the importation of sugar into the United States, is necessary to provide due consideration to the interests in the United States sugar market of domestic producers and materially affected contracting parties to the General Agreement on Tariffs and Trade (GATT).

FOR FURTHER INFORMATION CONTACT: John Nuttall, Foreign Agriculture Service, Department of Agriculture, Washington, DC 20250, Telephone: (202) 447–2916.

SUPPLEMENTARY INFORMATION: In accordance with paragraph (f) of Additional U.S. Note 3 to Chapter 17 of the Harmonized Tariff Schedule of the United States (HTSUS), the Secretary of Agriculture has consulted with the U.S. Trade Representative, the Department of State, and other concerned agencies as to whether the operation of Additional U.S. Notes 2 and 3 to Chapter 17 of the HTSUS would give due consideration to the interests in the United States sugar market of domestic producers and materially affected contracting parties to the GATT. An analysis of various elements pertinent to the operation of Additional U.S. Notes 2 and 3 to Chapter 17 of the HTSUS is set forth below.

A. Current World and U.S. Sugar Market Situation

World sugar consumption for 1988/89 is expected to exceed production for the fourth straight year. As a result, world ending stocks have been gradually declining, leading to a recovery in world sugar prices. World production in 1988/89 is estimated at 105.5 million metric tons, raw value, while consumption is estimated at 107.4 million metric tons, raw value, and ending stocks are projected to decline by about 350,000 metric tons, raw value. However, in comparison to 1984/85, ending stocks for 1988/89 are expected to decline by 8.5 million metric tons.

Since the middle of June, 1989 the world sugar price (f.o.b.s., Caribbean, No. 11 spot contract as published by the New York Coffee, Sugar & Cocoa Exchange) has settled into the 13 to 14 cent-per-pound range. It is difficult to predict the direction of prices in the coming year; futures contracts for 1990 are currently trading in the 12 to 13 cent-per-pound range and have recently been moving up and down from and within that range.

U.S. centrifugal sugar production for 1988/89 is estimated at about 6.3 million metric tons, raw value (6.9 million short tons, raw value), and domestic utilization is expected to be about 7.5 million metric tons, raw value (8.3 million short tons, raw value). During

the period January 1, 1989 through August 13, 1989, 749,857 metric tons, raw value of sugar were charged against the quotas for the 39 countries which have quota allocations totalling, 1,123,440 metric tons, raw value. The domestic price of raw cane sugar (c.i.f., duty and fee paid, No. 14 nearby futures contract, as quoted by the New York Coffee, Sugar & Cocoa Exchange) has exceeded 23 cents per pound, raw value, every day since June 16, 1989.

B. Outlook for World and U.S. Sugar Market

It is difficult to accurately predict future trends in world centrifugal sugar production and consumption. However, both consumption and production during 1988/90 are expected to be above their levels for 1988/89, and to be somewhat more in balance than in 1988/89. These trends provide no precise indication as to the direction of prices and their impact on expected production and consumption trends.

As already indicated, current world future prices for contracts due to mature in 1990 have settled into the 12 to 13 cent-per-pound range. Current domestic futures prices for contracts also due to mature in 1990 have stabilized in the 22 to 23 cent-per-pound range, about 10 cents per pound above world futures contracts for this period.

C. GATT Council Decision on U.S. Sugar Import Restrictions

On June 22, 1989, the GATT Council adopted the report of the panel which examined US. restrictions on imports of sugar and which concluded that the quotas maintained under Additional U.S. Note 3 to Chapter 17 are inconsistent with the General Agreement. The Council requested the United States of either terminate the restrictions or bring them into conformity with the General Agreement.

Following the Council's action, the U.S. Department of Agriculture established a Taskforce to develop options for implementing U.S. law with respect to imports of sugar in a manner consistent with our GATT obligations. The Taskforce and other appropriate Government agencies are now formulating and evaluating these options.

In the interim and since no clear alternative has been decided upon by the date that this notice must be published, continuation of the operation of Additional U.S Note 2 and paragraphs (b), (c), (d), and (e) of Additional U.S. Note 3 to Chapter 17 of the HTSUS gives due consideration to the interests in the U.S. sugar market of domestic producers and materially affected contracting parties to the GATT.

Determination

After have consulted with the U.S. Trade Representative, the Department of State, and other concerned agencies in accordance with paragraph (f) of Additional U.S. Note 3 to Chapter 17 of the HTSUS, I have determined that the continued operation of Additional U.S. Note 2 and paragraphs (b), (c), (d) and (e) of Additional U.S. Note 3 to Chapter 17 of the HTSUS gives due consideration to the interests in the U.S. sugar market of domestic producers and materially affected contracting parties to the GATT, and that the operation of paragraph (g) of Additional U.S. Note 3, which would allow entry of sugar into the United States of not to exceed 6.90 million short tons, would not give due consideration to such interests.

Signed at Washington, DC on September 1, 1989.

Clayton Yeutter,

Secretary of Agriculture.

[FR Doc. 89-21108 Filed 9-5-89; 10:53 am]

BILLING CODE 3410-10-M

Forest Service

Sierra and Sequoia National Forests, CA; Intent To Prepare an Environmental Impact Statement

In the matter of Comprehensive Management Plan Middle Fork of the Kings, South Fork of the Kings, and Kings Wild and Scenic Rivers: Kings River Special Management Area Sierra and Sequoia National Forests Fresno County, California; Intent to Prepare an Environmental Impact Statement and Implementation Plan.

As required by the Wild and Scenic Rivers Act of 1968, as amended, the Department of Agriculture, Forest Service, will prepare an Environmental Impact Statement to determine future management practices for the Middle Fork of the Kings, South Forks of the Kings, and the Kings Wild and Scenic Rivers (W&SR) (totaling 26 miles), and the Kings River Special Management Area (approximately 49,000 acres), located on the Sierra and Sequoia National Forests. For that portion of the Middle Fork Kings and South Fork Kings W&SR that flows through the Sequoia National Park (totaling 55.5 miles), the Department of Interior, Park Service, will determine management practices at the time the Park's General Development Plan is updated.

In 1987, Congress created the Kings River Special Management Area (KRSMA) and designated a segment of the Kings River as a wild and scenic river. The Special Management Area was established to provide for public outdoor recreation use and enjoyment and to protect the areas' naturals, archaeological, and scenic resources, and to provide for appropriate fish and wildlife management.

The legislation also gives direction to the Forest Service to publish a management plan for the KRSMA within three years after the enactment of the act. The plan shall provide for enhancing wildlife carrying capacity, permitting grazing, developing hiking trails, and it will also include a plan for a trail from Garlic Creek to Little Tehipite Valley. The construction of any dam or diversion must have specific authority from the Congress. The plan will be tiered to the Sequoia Land and Resource Management Plan and the Sierra Draft Land and Resource Management Plan.

A range of alternatives will be considered. These alternatives will analyze various management practices and policies and their effects on resources, recreation and other current uses, and the protection of the W&SR's "Outstandingly Remarkable Values" as identified in the Sequoia National Forest Land and Resource Management Plan for the South Fork and the Kings River (2/25/88); the Environmental Assessment for the Boundaries and Classification of the Middle Fork, South Fork and The Kings Wild and Scenic Rivers (3/24/89); and the Sierra National Forest Draft Land and Resource Management plan for the Middle Fork Kings River and Kings River (9/12/89).

Federal, State, and local agencies, and individuals or organizations who may be interested in or affected by the decisions are invited to participate in the scoping process. 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 previous environmental review.
4. Determination of potential cooperating agencies and assignment of responsibilities.

Public comments have been, and will continue to be, solicited in a variety of ways including requests for written comments, information mailings, and public meetings.

Paul F. Barker, Regional Forester, Pacific Southwest Region, San Francisco, California, is the responsible official.

The draft Environmental Impact Statement is expected to be filed with the Environmental Protection Agency (EPA) and be available for a 90 day

public review period by April 1990. At that time EPA will publish a notice of availability of the draft EIS in the **Federal Register**. It is very important that those interested in the management of the Middle Fork of the Kings, South Forks of the Kings, and the Kings Wild and Scenic River (W&SR) and the Kings River Special Management Area, participate at that time. To be most helpful, comments on the draft EIS should be specific as possible and may address adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions, Vermont Yankee Nuclear Power Corp. v NRDC, 435 U.S. 519, 553 (1978), and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final EIS, Wisconsin Heritages, Inc. v Harris, 490 F Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final.

After the comment period ends on the DEIS, comments will be analyzed and considered by the Forest Service in preparing the final environmental impact statement (FEIS). The FEIS is scheduled to be completed by November 1990. In the final EIS, the Forest Service is required to respond to comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, environmental consequences discussed in the EIS and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in a Record of Decision. That decision will be subject to appeal.

Written comments and suggestions concerning the analysis should be sent to Jim Boynton, Forest Supervisor, Sierra National Forest, 1130 "O" Street, Fresno, CA 93721.

Questions about the proposed action and Environmental Impact Statement and Plan should be directed to Wallace McCray, Project Leader, at the above address, phone (209) 487-5155.

Robert L. Rice,

Acting Deputy Regional Forester.

August 31, 1989.

[FR Doc. 89-21140 Filed 9-7-89; 8:45 am]

BILLING CODE 3410-11-M

Soil Conservation Service

Finding of No Significant Impact for Middle Fork of Salt River Watershed, Macon, Monroe, Randolph and Shelby Counties, Missouri

Introduction

The Middle Fork of Salt River Watershed is a federally assisted action authorized for planning under Public Law 83-566, the Watershed Protection and Flood Prevention Act. An environmental assessment was undertaken in conjunction with the development of the watershed plan. This assessment was conducted in consultation with local, state, and federal agencies as well as with interested organizations and individuals. Data developed during the assessment are available for public review at the following location: U.S. Department of Agriculture, Soil Convservation Service, 555 Vandiver Drive, Columbia, Missouri 65202.

Recommended Action

The proposed plan consists of 123 small single-purpose floodwater retarding dams (permanent pool areas range from 4 to 10 acres) with grade stabilization benefits, an accelerated land treatment program to adequately protect 1,300 acres of cropland for erosion control and a forest plan to manage 6,000 acres of forest land for increased productivity of wood products and enhancement of wildlife habitat.

Effect of Recommended Plan

The proposed project will have a major beneficial effect on the watershed problems of floodwater damage, soil erosion, and lack of forest management. The 123 small dams will eliminate flooding on 2,600 acres and reduce flooding on 21,000 acres of the 100-year floodplain, and provide grade stabilization benefits. Total flood damages will be reduced by 30 percent. Erosion will be reduced significantly on 1,300 acres of cropland that will be adequately protected with the plan. Management will be implemented on 6,000 acres of forest land resulting in increased productivity and enhanced wildlife habitat. Over all habitat units will increase by 650 for the five species evaluated (pheasant, bobwhite quail, white-tailed deer, eastern wild turkey, and cottontail rabbit).

Upland, stream channel and floodplain sediment deposition will all decrease significantly with the proposed project. Sediment leaving the watershed outlet (Mark Twain Lake) will decrease by over 12 percent or 55,000 tons annually.

Prime farmland will be increased by 1,700 acres due to a change in classification when 2-year flooding is reduced.

The proposed project will increase wetlands by 150 acres. There will be 145 acres of Type 1 wetlands converted to dams, spillways and water but 295 acres of wetland will develop in the littoral zones of the pools.

Installation of the proposed plan is expected to improve the quality of water in the Middle Fork of Salt River. The 123 small reservoirs will reduce sediment, nutrient and pesticide delivery via the trapping action of the dams. The dams will also have a beneficial impact on water quality parameters affecting aquatic life.

There are no threatened or endangered species in the watershed that will be affected by the project.

A complete cultural resources survey will be made prior to project installation, but no significant resources are expected to be adversely affected.

The proposed project will maintain present stream habitat.

There are no wilderness areas in the watershed.

No significant adverse environmental impacts will result from installation of the proposed project.

Alternatives

Various levels of land treatment measures were combined with different dam combinations to arrive at alternative plans. The recommended plan was selected by watershed Sponsors as the plan that would best accomplish the study goals.

Consultation—Public Participation

Scoping of the project was initiated at a public meeting held in Macon, Missouri on September 12, 1984. Public as well as federal, state and local agencies concerns were recognized. Several resource conservation and development concerns were acknowledged.

Public meetings, field tours and neighborhood meetings were held throughout the planning process to obtain input, discuss project alternatives, and inform the general

public and federal and state agencies about the project.

Specific consultation was conducted with the U.S. Fish and Wildlife Service concerning threatened and endangered species, with the State Historical Preservation Officer concerning archeological and historic resources, and with the Missouri Department of Conservation and U.S. Fish and Wildlife Service biologists concerning project effects on wildlife habitat.

Agency consultation and public participation to date has shown no unresolved conflicts with the implementation of the selected plan.

Conclusion

The Environmental Assessment summarized above indicates that this federal action will not cause significant local, regional, or national impacts on the environment. Therefore, based on the above findings I have determined that an environmental impact statement for the Middle Fork of Salt River Watershed Plan is not required.

Dated: August 17, 1989.

Russell C. Mills,

State Conservationist.

[FR Doc. 89-21141 Filed 9-7-89; 8:45 am]

BILLING CODE 3410-16-M

Bullskin and Long Marsh Runs Critical Area Treatment and Land Drainage RC&D Measure Plan, West Virginia

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Bullskin and Long Marsh Runs Critical Area Treatment RC&D Measure, Eastern Panhandle Soil Conservation District, Jefferson County, West Virginia.

FOR FURTHER INFORMATION CONTACT: Rollin N. Swank, State Conservationist, Soil Conservation Service, 75 High Street, Morgantown, West Virginia 26505, telephone 304-291-4151.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Rollin N. Swank, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The purpose of the measure is critical area treatment and land drainage. The measure is designed to stabilize critically eroding streambank areas along Bullskin and Long Marsh runs through the installation of livestock exclusion fencing, alternative water facilities and seeding of filter strips adjacent to cropland areas.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Rollin N. Swank, State Conservationist.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

"(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)"

Dated: July 31, 1989.

Rollin N. Swank,

State Conservationist.

[FR Doc. 89-21183 Filed 9-7-89; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

Office of the Under Secretary for Economic Affairs

Technical Details of National Trade Data Bank: Open Meetings

AGENCY: Office of the Under Secretary for Economic Affairs, Commerce.

ACTION: Notice of meetings.

SUMMARY: Two meetings will be held on certain technical aspects of the National Trade Data Bank (NTDB).

DATES: September 27, 1989 and September 29, 1989, 10:00 a.m.

ADDRESS: Room 1414 HCH Bldg. on September 27, 1989 and Room 4830 HCH Bldg. on September 29, 1989.

FOR FURTHER INFORMATION CONTACT: John E. Cremeans, 377-1405.

SUPPLEMENTARY INFORMATION: Pursuant to Section 5404, of Part I of Subtitle E, of Title V of the Omnibus Trade and Competitiveness Act of 1988 (15 U.S.C. 4901-4913), the Commerce Department will hold meetings on certain technical aspects of the design of the NTDB. The September 27, 1989 meeting will concern technical details and specifications of the magnetic tape and telecommunication transmission for the "standard" and "premium" services as described in **Federal Register** notice, Docket No. 90517-9117, Vol. 54, No. 159, p. 34204, August 18, 1989. The September 29, 1989 meeting will cover record layouts, indexes, and search concepts for the Compact Disk-Read Only Memory (CD-ROM) to be issued under the standard service. The meetings are intended for technical experts on these two aspects of the NTDB.

Dated: August 31, 1989.

Mark W. Plant,

Deputy Under Secretary for Economic Affairs.

[FR Doc. 89-21067 Filed 9-7-89; 8:45 am]

BILLING CODE 3510-EA-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of a Request for Bilateral Textile Consultations With the Government of India on Certain Man-Made Fiber Textile Products

September 5, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: September 12, 1989.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343-6494. For information on embargoes and quota re-openings, call (202) 377-3715. For information on categories on which consultations have been requested, call (202) 377-3740.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On July 31, 1989, under the terms of the current bilateral textile agreement between the Governments of the United States and India, the Government of the United States requested consultations

with the Government of India with respect to imports in Categories 647/648 (man-made fiber trousers, breeches and shorts).

The purpose of this notice is to advise that, pending agreement on a mutually satisfactory solution concerning these categries, the Government of the United States has decided to control imports during the ninety-day consultation period which began on July 31, 1989 and extends through October 28, 1989.

If no solution is agreed upon in consultations between the two governments, CITA, pursuant to the agreement, may establish a prorated specific limit of 150,625 dozen for Categories 647/648 for the period July 31, 1989 through December 31, 1989.

A summary market statement concerning Categories 647/648 follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Categories 647/648 under the agreement with India, or on any other aspect thereof, or to comment on domestic production or availability of products included in Categories 647/648, is invited to submit 10 copies of such comments or information to Auggie D. Tantillo, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room H3100, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning these categories. Should such a solution be reached in consultations with the Government of India, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988).

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

India—Market Statement

Man-Made Fiber Trousers, Slacks and Shorts (Category 647/648)

July 1989.

Summary and Conclusions.

U.S. imports of man-made fiber trousers, slacks and shorts (Category 647/648) from India reached 309,113 dozen during the year ending April 1989, a 67 percent increase over the 184,799 dozen imported a year earlier. Imports of man-made fiber trousers, slacks and shorts from India for the first four months of 1989 were 173,498 dozen, two and a half times the 69,794 dozen imported during the same period in 1988.

The sharp and substantial increase in Category 647/648 imports from India is disrupting the U.S. market for man-made fiber trousers, slacks and shorts.

U.S. Production and Market Share

U.S. production of man-made fiber trousers, slacks and shorts (Category 647/648) remained relatively flat from 1982 to 1986, averaging 40,901,000 dozen per year. U.S. production has been declining since 1986. Production fell to 32,599,000 dozen in 1988, 12 percent below the 1987 level and 20 percent below the 1982–86 average level. The domestic manufacturers share of the U.S. market dropped 15 percentage points in just six years, falling from 76 percent in 1982 to 61 percent in 1988.

U.S. Imports and Import Penetration

U.S. imports of man-made fiber trousers, slacks and shorts (Category 647/648) increased 58 percent from 13,163,000 dozen in 1982 to 20,766,000 in 1988. Imports during the year ending April 1989 reached 22,119,000 dozen, 15 percent above the 19,227,000 dozen imported during the same period a year earlier. Imports are up 19 percent in the first four months of 1989 over the same period in 1988. The ratio of imports to domestic production doubled during the past six years, rising from 32 percent in 1982 to 64 percent in 1988.

Duty-Paid Value and U.S. Producers' Price

Approximately 81 percent of Category 647/648 imports from India during the first four months of 1989 entered under HTSUSA numbers 6204.69.2510—women's woven man-made fiber trousers; 6204.69.2540—women's woven man-made fiber shorts. These trousers and shorts entered, the U.S. at landed duty-paid values below U.S. producers' prices for comparable garments.

Committee for the Implementation of Textile Agreements

September 5, 1989.

Commissioner of Customs
Department of the Treasury
Washington, D.C. 20229

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further amended on July 31, 1986; pursuant to the Bilateral Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement of February 6, 1987, as amended, between the Governments of the United States and India; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on September 12, 1989, entry into the United States for consumption and withdrawal from warehouse for consumption of man-made fiber textile products in Categories 647/648, produced or manufactured in India and exported during the ninety-day period which began on July 31, 1989 and extends through October 28, 1989, in excess of 108,182 dozen.

Textile products in Categories 647 and 648 which have been exported to the United States on and after January 1, 1989 shall remain subject to the Group II limit established for the period January 1, 1989 through December 31, 1989.

Textile products in Categories 647 and 648 which have been exported to the United States prior to July 31, 1989 shall not be subject to the ninety-day limit established in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-21127 Filed 9-7-89; 8:45 am]

BILLING CODE 3510-DR-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List; 1989 Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Addition to Procurement List.

SUMMARY: This action adds to Procurement List 1989 a commodity to be produced by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: October 10, 1989.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: On March 24, 1989, the Committee for Purchase from the Blind and Other Severely Handicapped published notice (54 FR 12261) of proposed addition to Procurement List 1989, which was published on November 15, 1988 (53 FR 46018).

After consideration of the material presented to it concerning capability of qualified workshops to produce the commodity at a fair market price and impact of the addition on the current or most recent contractors, the Committee has determined that the commodity listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.6.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on any contractors for the commodity listed.

c. The action will result in authorizing small entities to produce the commodity procured by the Government.

Accordingly, the following commodity is hereby added to Procurement List 1989:

Handkerchief, Man's
8440-01-288-2178

Beverly L. Milkman,
Executive Director.

[FR Doc. 89-21189 Filed 9-7-89; 8:45 am]

BILLING CODE 6820-33-M

Procurement List; 1989 Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received proposals to add to Procurement List 1989 services to be provided by workshops for the blind or other severely handicapped.

Comments Must Be Received on or Before: October 10, 1989.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following services to Procurement List 1989, which was published on November 15, 1988 (53 FR 46018):

Grounds Maintenance, Camp Bonneville, Camp Bonneville, Washington
Janitorial/Custodial, Naval Air Facility, El Centro, California
Janitorial/Custodial, U.S. Army Reserve Center, 2100 Quaker Point Road, Quakertown, Pennsylvania
Mailroom Operation, U.S. Corps of Engineers, Estes Kefauver Building, U.S. Courthouse Annex and Adjacent Buildings, Nashville, Tennessee
Operation of Postal Service Center, Dover Air Force Base, Delaware
Package Reclamation, Ogden Air Logistics Center, Hill Air Force Base, Utah.

Beverly L. Milkman,
Executive Director.

[FR Doc. 89-21190 Filed 9-7-89; 8:45 am]

BILLING CODE 6820-33-M

COMMODITY FUTURES TRADING COMMISSION

Amex Commodities Corporation Proposed Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures contract.

SUMMARY: The Amex Commodities Corporation ("ACC") has applied for designation as a contract market in futures on two-year U.S. Treasury notes. The Director of the Division of Economic Analysis ("Division") of the Commisson, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposal for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments must be received on or before October 10, 1989.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Reference should be made to the ACC's two-year U.S. Treasury note futures contract.

FOR FURTHER INFORMATION CONTACT: Stephen Sherrod, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, (202) 254-7227.

SUPPLEMENTARY INFORMATION: Copies of the terms and conditions of the proposed futures contract will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254-6314.

Other materials submitted by the ACC in support of the application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at

the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or argument on the terms and condition of the proposed futures contract, or with respect to other materials submitted by the ACC in support of the application, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, by the specified date.

Issued in Washington, DC, on August 31, 1989.

Steven Manaster,

Director, Division of Economic Analysis.

[FR Doc. 89-21064 Filed 9-7-89; 8:45 am]

BILLING CODE 6351-01-M

Chicago Mercantile Exchange Proposed Option Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity option contracts.

SUMMARY: The Chicago Mercantile Exchange ("CME" or "Exchange") has applied for designation as a contract market in (1) options on Japanese yen Euro-rate differential ("DIFF") futures, (2) options on British pound sterling DIFF futures and (3) options on West German deutsche market DIFF futures. For each of the proposed futures option contracts, the applications also contain petitions for exemptions from the volume requirement for the underlying futures contract specified in the Commission's rules. The Director of the Division of Economic Analysis ("Division") of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments must be received on or before October 10, 1989.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the CME Japanese yen DIFF option, the CME pound sterling DIFF option or the CME deutsche mark DIFF option.

FOR FURTHER INFORMATION CONTACT: Stephen Sherrod, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, (202) 254-7227.

SUPPLEMENTARY INFORMATION: In addition to requesting comment on the terms and conditions of the proposed option contracts, the Division also is requesting comment on the merits of petitions filed by the CME pursuant to § 33.11 of the Commission's rules. The petitions request exemptive relief from the trading volume tests set forth in the Commission's rules. In that regard, § 33.4(a)(5)(iii) of the Commission's rules requires, as a condition of designation for proposed options on futures contracts, that the exchange demonstrate that:

> * * * the volume of trading in all contract months for futures delivery of the commodity for which the option designation is sought has averaged at least 3,000 contracts per week on such board of trade for the 12 months preceding the date of application for option contract market designation, or alternatively, that such futures contract market, based on its trading history, substantially meets this total volume requirement in less than the 12 months preceding the date of application. * * *

The Division notes that the CME DIFF futures contracts which will underlie the proposed option contracts have only been trading since July 6, 1989. The futures trading volume requirement for each of the proposed option contracts has not been met.

As discussed in more detail in previous **Federal Register** notices [see, for example, 52 FR 41755, October 30, 1987], the Commission has stated that it believes that, at the minimum, a petition for exemption from the trading volume tests may be granted only if the underlying cash market for the commodity exhibits a high level of liquidity. Cash market liquidity would be evidenced by extensive and frequent trading activity, a large number of participants in the market, and tight bid/ask spreads. Further, the terms of the futures contract should ensure the opportunity for arbitrage and close alignment between the cash and futures market. In combination, the liquidity of the underlying cash market and the opportunities for arbitrage are major factors in determining the extent to which a less liquid futures contract could be disrupted by the exercise of options and the alternatives available to those exercising the options. In addition, to enable position holders to evaluate accurately the value of their option positions in the absence of active trading in the underlying futures contract, the Commission stated its belief that there should exist an accurate and widely available price series which would be representative of values of the commodity underlying the future.[1]

In requesting comment on the CME's proposed options on DIFF futures, the Division is seeking specific comment on whether it should grant the CME's requests for exemptions from the requirements of § 33.4(a)(5)(iii) for the proposed contracts. Commenters are requested to consider the issues noted above. Also, commenters are requested to address whether, if the petitions were granted, additional surveillance activities and expiration reviews, particularly at the outset of trading, should be implemented by the CME for the proposed contracts.

Copies of the terms and conditions of the proposed contracts will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254-6314.

Other materials submitted by the CME in support of the applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or argument on the terms and condition of the proposed option contracts, or with respect to other materials submitted by the CME in support of the applications, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW.,

[1] The Division notes that in those cases where the underlying futures contract fails to develop a sufficient level of trading volume, the option on the futures contract would become subject to the delisting criteria set forth in § 5.4 of the Commission's rules. Specifically, if the volume in the underlying futures contract market falls below an average weekly volume of 1,000 contracts for all months listed for the six-month period following designation of the option contract, no new option contract months may be listed until the volume in the underlying futures contract rises above an average of 2,000 contracts per week for all trading months listed for a period of three consecutive months.

Washington, DC 20581, by the specified date.

Issued in Washington, DC, on August 31, 1989.

Steven Manaster,

Director, Division of Economic Analysis.

[FR Doc. 89-21065 Filed 9-7-89; 8:45 am]

BILLING CODE 6351-01-M

Chicago Mercantile Exchange; Proposed Amendments Relating to the Live Cattle and Live Hog Futures and Option Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed contract market rule changes.

SUMMARY: The Chicago Mercantile Exchange ("CME" or "Exchange") has submitted a proposal to amend a number of the terms and conditions of the Exchange's live cattle and live hog futures and option contracts relating to termination of trading in live cattle and live hog futures and options, delivery days for live cattle and live hog futures, tendering of delivery certificates for live cattle futures, and position limits for live cattle and live hog futures.

In accordance with Section 5a(12) of the Commodity Exchange Act and acting pursuant to the authority delegated by Commission Regulation 140.96, the Director of the Division of Economic Analysis ("Division") of the Commodity Futures Trading Commission ("Commission") has determined, on behalf of the Commission, that these proposals are of major economic significance. On behalf of the Commission, the Division is requesting comment on these proposals.

DATE: Comments must be received on or before October 10, 1989.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Reference should be made to the amendments to the CME live cattle and live hog futures and option contracts.

FOR FURTHER INFORMATION CONTRACT: Fred Linse, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581 (202) 254-7303.

SUPPLEMENTARY INFORMATION: The Exchange submitted proposed amendments to the live cattle and live hog futures and option contracts that would:

(1) Move the last option trading day to the first Friday of the underlying futures delivery month. Under current contract specifications, the last option trading day is the last Friday that is more than three business days prior to the first business day of the contract month. As a result, option expiration currently occurs from approximately one to two weeks prior to the delivery month for the underlying futures contract.

(2) The first day futures delivery notices may be tendered will become the first business day after an option contract terminates trading. Currently, the live cattle futures contract specifies that delivery notices (certificates) may be tendered commencing with the third business day prior to the first business day of the expiring contract month. The live hog futures contract provides that delivery notices may be tendered beginning on the business day preceding the first business day of the expiring month. The first business day of an expiring contract month currently is the first delivery day of such months. Under the proposed amendments, the first delivery day of an expiring contract month for live cattle and live hog futures would be four business days and two business days, respectively, after the first Friday of that month.

(3) The last futures trading day will be moved to the business day that immediately precedes the last five business days of the contract month, so long as there are at least four delivery days following futures expiration for live cattle and at least three delivery days following futures expiration for live hogs. Currently, trading in the live cattle and live hog futures contracts ends on the 20th calendar day of the delivery month. If the 20th calendar day of the delivery month is not a business day, then trading ends on the business day preceding that day. As a result, under the proposed amendments, there will be a reduction of between zero and four days in the number of delivery days after the last trading day for both live cattle and live hogs.

(4) For live cattle futures, a certificate of delivery tendered on or after the last futures trading day will be changed from a three-day certificate to a one-day certificate. This change will allow two additional days on which delivery notices may be tendered before the end of the contract month. The proposed amendments do not contain provisions for the retender, reclaim or the issuance of demand notices for such one-day certificates of delivery.

(5) The time when the futures spot month speculative position limits of 300 contracts become effective will be moved to the close of business on the first business day after the revised option expiration date (see Item 1 above). Currently, the spot month speculative limits for the live cattle and hog futures contracts become effective at the close of business on the business day preceding the first business day of the delivery month. As amended, the contracts would allow one business day for anyone exercising an option or being exercised against on the option expiration day to liquidate any resulting futures positions over and above the spot-month speculative limits for the live cattle and live hog futures.

The CME indicates that the proposal to move the last option trading day to the first Friday of the contract month will improve the hedging effectiveness and basis predictability of both live cattle options and live hog options by causing option expiration to occur closer to the time of price convergence between the cash market and the underlying futures. The Exchange notes that the changes would benefit hog and cattle producers by allowing them to maintain option hedges through the release of the "USDA Hogs and Pigs" reports and the USDA "Cattle on Feed" reports.

Concerning the proposed amendments to the tender of certificate provision (Item 2), the CME indicates that this change would prevent the delivery process from starting before option trading ends, protecting option users who want to maintain their option positions through expiratin but do not want to participate in the futures delivery process. The Exchange notes that, under the proposed amendments, the option user would not automatically be forced into the futures delivery process and can easily avoid participating in futures delivery without negatively affecting other marketing objectives. Moreover, the proposed change would enable anyone exercising an option (or being exercised against) on or near the expiration date to more easily participate in the delivery process, if that is their objective, by reducing the time between option expiration and the start of the futures delivery period.

Regarding the last trading day proposal for live cattle and live hog futures, the Exchange states that by causing the last trading day to occur later in the month, there will be a reduction of between zero and four days in the number of delivery days after the last trading day for both live cattle and live hogs. The CME submits that this change will still allow sufficient time to settle all deliveries by the end of the contract month.

Changing the last trading day for futures also will partially offset the loss in delivery days before the last trading

day that results from changing the first tender day for delivery notices in expiring contract months (see Item 2 above). In this respect, the CME notes that the proposed changes to the first tender day and the last trading day for the live cattle and hog futures contracts will generally reduce the number of delivery days prior to the last trading day. These reductions range from zero to eight delivery days for live cattle and from zero to five delivery days for live hogs. The CME notes, however, that in all cases the total number of delivery days available in a delivery month will decline, with between four and eight fewer delivery days available during live cattle futures delivery months and between one and five fewer delivery days available during a live hog futures delivery month.

The time when the spot month speculative position limits become effective will continue to occur after the options expire. This would allow one business day for anyone exercising an option (or being exercised against) on the expiration day to liquidate any resulting futures positions over and above the spot month speculative limit.

The Exchange proposes to make the proposed amendments effective upon receipt of Commission approval. The CME intends to apply the proposed amendments only to newly listed contract months.

The Commission is seeking comment on the proposed amendments noted above. In particular, the Commission is requesting comment on the impact, if any, upon deliverable supplies for the live cattle and live hog futures contracts as a consequence of the reduced number of delivery days provided for under the CME's proposals. In addition, the Commission also is requesting comment regarding any potential effect on the proposed reduction in the number of delivery days would have on the ability to process deliveries at the delivery points.

Copies of the proposed amendments will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of the amended terms and conditions can be obtained through the Office of Secretariat by mail at the above address or by phone at (202) 254-6314.

The material submitted by the Exchange in support of the proposed amendments may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)). Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8

Any person interested in submitting written data, views or arguments on the proposed amendments should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, by the specified date.

Issued in Washington, DC, on August 31, 1989.

Steven Manaster,

Director, Division of Economic Analysis.

[FR Doc. 89-21066 Filed 9-7-89; 8:45 am]

BILLING CODE 6351-01-M

CONSUMER PRODUCT SAFETY COMMISSION

Notification of Request for Extension of Approval of Information Collection Requirements—Children's Sleepwear Flammability Standards

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In accordance with provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), the Consumer Product Safety Commission has submitted to the Office of Management and Budget a request for extension of approval through August 31, 1992, of information collection requirements in the flammability standards for children's sleepwear and enforcement rules, codified at 16 CFR parts 1615 and 1616. These standards and enforcement rules are applicable to children's sleepwear garments in sizes 0 through 14, and fabrics used in the production of such garments. The standards and enforcement rules require manufacturers and importers of children's sleepwear garments and fabrics to perform periodic testing of representative samples to assure that children's sleepwear items meet the performance requirements of the standards. The enforcement rules also require manufacturers and importers to compile and maintain records of the testing required by the standards, and to make those records available to Commission investigators upon request.

Additional Details About the Request for Extension of Approval of Information Collection Requirements

Agency address: Consumer Product Safety Commission, Washington, DC 20207.

Title of information collection: Standard for the Flammability of Children's Sleepwear: Sizes 0 Through 6X (16 CFR Part 1615); and Standard for the Flammability of Children's Sleepwear: Sizes 7 Through 14 (16 CFR Part 1616).

Type of request: Extension of approval.

Frequency of collection: Varies depending upon the number of styles of items produced or imported and by number of items of each style manufactured or produced each year.

General description of respondents: Manufacturers and importers of children's sleepwear garments and fabrics used for production of children's sleepwear.

Estimated number of respondents: 200.

Estimated average number of hours per respondent: 437.5 per year.

Estimated number of hours for all respondents: 87,500 per year.

Comments: Comments on this request for extension of approval of information collection requirements should be addressed to Pamela Barr, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; telephone: (202) 395-7340. Copies of the request for extension of information collection requirements are available from Francine Shacter, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 492-6416.

This is not a proposal to which 44 U.S.C. 3504(h) is applicable.

Dated: September 5, 1989.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 89-21181 Filed 9-7-89; 8:45 am]

BILLING CODE 6335-01-M

Notification of Request for Extension of Approval of Information Collection Requirements— Mattress Flammability Standard

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In accordance with provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), the Consumer Product Safety Commission has submitted to the Office of Management and Budget a request for extension of approval through August 31, 1992, of information collection requirements in the flammability

standard for mattresses and mattress pads (16 CFR Part 1632). The standard is intended to reduce unreasonable risks of burn injuries and deaths from fires associated with mattresses and mattress pads. The standard prescribes a test to assure that a mattress or mattress pad will resist ignition from a smoldering cigarette. The standard requires manufacturers to perform prototype tests of each combination of materials and construction methods used to produce mattresses or mattress pads with acceptable results. Sale or distribution of mattresses or mattress pads without successful completion of the testing required by the standard violates section 3 of the Flammable Fabrics Act (15 U.S.C. 1192). An enforcement rule implementing the standard requires manufacturers to maintain records of testing performed in accordance with the standard and other information about the mattresses or mattress pads which they produce.

Additional Details About the Request for Extension of Approval of Information Collection Requirements

Agency address: Consumer Product Safety Commission, Washington, DC 20207.

Title of information collection: Standard for the Flammability of Mattresses and Mattress Pads (FF 4–74, Amended); 16 CFR part 1632.

Type of request: Extension of approval.

Frequency of collection: Varies depending upon the number of individual combinations of materials and methods of construction used to produce mattresses or mattress pads.

General description of respondents: Manufacturers and importers of mattresses and mattress pads.

Estimated number of respondents: 800.

Estimated average number of hours per respondent: 26 per year.

Estimated number of hours for all respondents: 2,080 per year.

Comments: Comments on this request for extension of approval of information collection requirements should be addressed to Pamela Barr, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; telephone: (202) 395–7340. Copies of the request for extension of information collection requirements are available from Francine Shacter, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 492–6416.

This is not a proposal to which 44 U.S.C. 3504(h) is applicable.

Dated: September 5, 1989.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 89–21182 Filed 9–7–89; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF DEFENSE

Department of the Army

Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. Law 92–463), announcement is made of the following Committee Meeting:

Name of the committee: Army Science Board (ASB)

Dates of meeting: 11–12 October 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. Some of the session will be a continuation of the BM/C3 studies as well as briefings from industry. 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.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 89–21184 Filed 9–7–89; 8:45 am]

BILLING CODE 3710-8-M

Defense Contract Audit Agency

Privacy Act of 1974; New Record System Notice

AGENCY: Defense Contract Audit Agency (DCAA), Department of Defense (DoD).

ACTION: Notice of a new system of records for public comment.

SUMMARY: The Defense Contract Audit Agency of the Department of Defense proposes to add a new system of records to its inventory of record systems subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a). The record system notice for the new system is set forth below.

DATE: The proposed action will be effective without further notice on October 10, 1989, unless comments are received which would result in a contrary determination.

ADDRESS: Send any comments to Mr. Dave Henshall, ATTN: CMR, Defense Contract Audit Agency, Cameron Station, Alexandria, VA 22304–6178.

FOR FURTHER INFORMATION CONTACT: Mr. Dave Henshall, telephone: (202) 274–4400.

SUPPLEMENTARY INFORMATION: The Defense Contract Audit Agency systems of records notices subject to the Privacy Act of 1974, as amended, (5 U.S.C. 552a), have been published in the **Federal Register** as follows:

50 FR 22884, May 29, 1985 (DoD Compilation, changes follow)
51 FR 18017, May 16, 1986

A new system report, as required by 5 U.S.C. 552a(r) of the Privacy Act was submitted on August 29, 1989, to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget (OMB), pursuant to paragraph 4b of Appendix I of OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records about Individuals", dated December 12, 1985 (50 FR 52730, December 24, 1985).

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

September 1, 1989.

RDCAA 211.11

SYSTEM NAME:

DCAA Drug-Free Federal Workplace Records.

SYSTEM LOCATION:

Primary location: Headquarters, Defense Contract Audit Agency, Personnel and Security Division, Building 4, Room 4B319, Cameron Station, Alexandria, VA 22304–6178.

Decentralized locations: DCAA regional offices; and offices of contractors who perform functions such as collection of urine specimens, laboratory analysis, and medical review of confirmed positive laboratory findings. The addresses for these locations may be obtained from the system manager.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DCAA Federal employees and individuals who have applied to DCAA for employment.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records relating to program implementation; administration (selection, notification, testing of individuals in testing designated positions, and employee assistance); inter-service/agency support agreements (specimen collection, laboratory testing, and medical review services); training requirements; and policy guidance.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7301; Pub. L. 100–71; and Executive Orders 12564, "Drug-Free Federal Workplace" and 9397.

PURPOSE(S):

The system is used to maintain Drug Program Coordinator records relating to the selection, notification and testing of DCAA Federal employees, and applicants for Federal employment, for use of illegal drugs.

The records are also used by the employee's Medical Review Official; the administrator of any Employee Assistance Program in which the employee is receiving counseling or treatment or is otherwise participating; and supervisory or management officials within the employee's agency having authority to take adverse personnel action against such employee.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

In order to comply with the provisions of 5 U.S.C. § 7301, the DCAA "Blanket Routine Uses" do not apply to this system of records.

To a court of competent jurisdiction where required by the United States Government to defend against any challenge against any adverse personnel action.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are maintained in file folders. Records are also maintained in automated data systems and electronically secured files.

RETRIEVABILITY:

Records are retrieved by organizational levels, name of employee and/or applicant, Social Security Number, office symbol, occupational series and grade levels, or any other combination of these identifiers.

SAFEGUARDS:

Paper records are stored in locked file cabinets, and secured working environments. Automated records are protected by restricted access procedures. Access to records is strictly limited to authorized officials with a bona fide need for the records.

RETENTION AND DISPOSAL:

Records are retained for two years and then destroyed by shredding, burning, or erasure in the case of magnetic media.

SYSTEM MANAGER(S) AND ADDRESS:

Drug Program Coordinator, Personnel and Security Division, Headquarters, Defense Contract Audit Agency, Cameron Station, Alexandria, VA 22304–6178.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Drug Program Coordinator, Personnel and Security Division, Headquarters, Defense Contract Audit Agency, Cameron Station, Alexandria, VA 22304–6178. Individuals must furnish the following information for records to be located and identified: Name; Date of birth; Social Security Number; Identification number (if known); Approximate date of record; and Geographic area in which consideration was requested.

RECORD ACCESS PROCEDURE:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Drug Program Coordinator, Personnel and Security Division, Headquarters, Defense Contract Audit Agency, Cameron Station, Alexandria, VA 22304–6178. Individuals must furnish the following information for records to be located and identified: Name; Date of birth; Social Security Number; Identification number (if known); Approximate date of record; and Geographic area in which consideration was requested.

CONTESTING RECORD PROCEDURE:

The Defense Contract Audit Agency rules for accessing records, for contesting contents, and appealing initial determinations by the individual concerned are published in DCAA Instruction Number 5410.10, "DCAA Privacy Act Program"; 32 CFR Part 290a; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Records are obtained from the individual to whom the record pertains, Agency employees involved in the selection and notification of individuals to be tested, laboratories that test urine specimens for the presence of illegal drugs, and supervisors, managers and other agency officials.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 89–21172 Filed 9–7–89; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF EDUCATION

Office of Special Education Programs

[CFDA No. 84.029B]

Application for New Awards Under the Training Personnel for the Education of the Handicapped; Correction

AGENCY: Department of Education.

ACTION: Correction notice.

SUMMARY: This notice corrects an error made in the application notice published in the **Federal Register** on July 21, 1989 (54 FR 30649). The deadline for transmittal of applications is corrected to read November 13, 1989. The deadline for Intergovernmental Review is corrected to read January 12, 1990.

FOR FURTHER INFORMATION CONTACT: Angele Thomas, Division of Personnel Preparation, Office of Special Education Programs, 400 Maryland Avenue, SW., (Switzer Building, Room 3517–M.S. 2313), Washington, DC 20202. Telephone (202) 732–1100.

Authority: 20 U.S.C. 1431.

Dated: September 1, 1989.

Michael E. Vader,

Acting Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 89–21107 Filed 9–7–89; 8:45 am]

BILLING CODE 4000–01–M

Office of Special Education and Rehabilitative Services

[CFDA Nos. 84.133A, 84.133E, and 84.133N]

National Institute on Disability and Rehabilitation Research Invitation for Applications for New Awards Under Certain Programs for Fiscal Year 1990 and Amendment of Notice

Purpose of Program: A consolidated application package (CAP) for several programs sponsored by the National Institute on Disability and Rehabilitation Research (NIDRR) was published in the **Federal Register** at 54 FR 27570 on June 29, 1989. The CAP announced closing dates and other information for priorities that were published in the **Federal Register** on April 25, 1989 at 54 FR 17896. The

purpose of this notice is to add two additional competitions and to extend the project period for the Special Projects for Spinal Cord Injury. Because satisfactory applications were not received in fiscal year 1989 for the proposed Rehabilitation Engineering Center in Personal Licensed Transportation Systems for Disabled Persons and the Research and Demonstration project on Vocational Aspects of Low Back Pain Rehabilitation, and because there is a continuing need for research into these problems, NIDRR is requesting applications in these areas for fiscal year 1990. The project period for the Special Projects for Spinal Cord Injury is increased to 60 months. Applicants should use the application forms included in the CAP and refer to the notice of final funding priorities.

AMENDMENTS TO PROGRAM APPLICATION NOTICES FOR FISCAL YEAR

CFDA No.	Program Title	Funding Priority	Deadline for Transmittal of Applications	Estimated No. of Awards	Estimated Average Size of Award (Per Year)	Project Period (Months)
84.133A	Research and Demonstration	Vocational Aspects of Low Back Pain Rehabilitation.	12-18-89	1	$175,000	36
84.133E	Rehabilitation Engineering Centers	Personal Licensed Transportation For Disabled Persons.	12-08-89	1	500,000	60
84.133N	Spinal Cord Injury Model Demonstration	Does Not Apply	4-02-90	13	384,000	60

Note: The Department of Education is not bound by any estimates in this notice, except as otherwise provided by statute.

For Further Information Contact: Peer Review Unit, National Institute on Disability and Rehabilitation Research, (202) 732-1141.

Authority: 29 U.S.C. 760-762.

Dated: August 31, 1989.

Michael E. Vader,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 89-21104 Filed 9-7-89; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Delegation of Reporting Function

AGENCY: Department of Energy.

ACTION: Notice.

SUMMARY: Notice is hereby given that the President has delegated to the Secretary of Energy the authority to transmit to the Congress energy targets and reports regarding such energy targets, as required by section 301 of Public Law 96-294, (42 U.S.C. 7361). This delegation of authority does not affect normal inter-agency review and concurrence procedures.

FOR FURTHER INFORMATION CONTACT: George A. Doumani, Director, Office of Technology Policy (PE-10), Office of Policy, Planning and Analysis, U.S. Department of Energy, Washington, DC 20585; telephone (202) 586-5388, (FTS) 896-5388.

SUPPLEMENTARY INFORMATION: Title III of Public Law 96-294, Energy Targets, requires that in February of every odd-numbered year the President shall transmit to Congress "* * * energy targets for net imports, domestic production, and end-use consumption of energy for the calendar years 1985, 1990, 1995, and 2000." Title III also requires that in February of every even-numbered year "the President shall transmit to the Congress reports regarding the energy targets transmitted during the preceding year." On May 25, 1989, the President delegated to the Secretary of Energy the authority to transmit to the Congress energy targets and the reports regarding the energy targets, and required that the memorandum delegating this authority be published in the **Federal Register**. Therefore the text of the Memorandum from the President to the Secretary of Energy is set forth below.

Issued in Washington, DC, on July 18, 1989.

Linda G. Stuntz,

Deputy Under Secretary, Policy, Planning and Analysis.

[FR Doc. 89-21191 Filed 9-7-89; 8:45 am]

BILLING CODE 6450-01-M

Office of Energy Research

High Energy Physics Advisory Panel; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: High Energy Physics Advisory Panel (HEPAP).

Date and time: Thursday, October 5, 1989, 8:30 a.m.-5:00 p.m.; Friday, October 6, 1989, 8:30 a.m.-3:00 p.m.

Place: Omni Melrose Hotel, 3015 Oak Lawn Avenue, Dallas, Texas 75219.

Contact: Dr. Enloe T. Ritter, Executive Secretary, High Energy Physics Advisory Panel, U.S. Department of Energy, ER-221, GTN, Washington, DC 20545, Telephone: (301) 353-4829.

Purpose of panel: To provide advice and guidance on a continuing basis with respect to the high energy physics research program.

Tentative agenda:

Thursday, October 5, 1989 and Friday, October 6, 1989

—Discussion of National Science Foundation Elementary Particle Physics Programs
—Discussion of Department of Energy High Energy Physics Programs
—Discussion of Department of Energy Superconducting Super Collider (SSC) Programs
—Update on Stanford Linear Collider
—Report on LEP (Large Electron Positron) collider
—Discussion of the concept of regional detector centers
—Overview of SSC Laboratory Programs
—Reports on and discussions of topics of general interest in high energy physics
—Public Comment

Public participation: The meeting is open to the public. The Chairperson of the Panel is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to make oral statements pertaining to agenda items should contact the Executive Secretary at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Minutes: Available for public review and copying at the Public Reading Room, Room 1E-190, Forrestal Building,

1000 Independence Avenue, SW., Washington, DC between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on September 5, 1989.

J. Robert Franklin,

Deputy Advisory Committee, Management Officer.

[FR Doc. 89-21192 Filed 9-7-89; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. QF89-318-000]

NeKoosa Papers Inc.; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

August 30, 1989.

On August 17, 1989, NeKoosa Papers Inc. (Applicant), of 100 Wisconsin River Drive, Port Edwards, Wisconsin 54469 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Ashdown, Arkansas. The facility will consist of two (2) recovery boilers and two (2) steam turbine generators. The electric power production capacity will be 65 megawatts. The primary energy source will be black liquor. The facility will use natural gas for start-ups and shut-downs, however, such fossil fuel usage will not exceed 1.6% of the total fuel input during any calendar year period.

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. 89-21096 Filed 9-7-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 10691-000 Alabama]

Pea River Associates, Inc.; Availability of Environmental Assessment

September 1, 1989.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for exemption from licensing for the proposed Elba Hydroelectric Project located on the Pea River in Coffee County, near Elba, Alabama, and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the proposed project, with appropriate 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. 89-21080 Filed 9-7-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL89-45-000]

City of Hamilton, Ohio v. Cincinnati Gas & Electric Co.; Filing

August 30, 1989.

Take notice that on August 21, 1989, the City of Hamilton, Ohio (Hamilton) filed an "Emergency Complaint," pursuant to Section 306 of the Federal Power Act (FPA), 16 U.S.C. 825e, and 18 CFR 385.206, against Cincinnati Gas & Electric Company (CG&E) seeking expedited Commission consideration of alleged violations of the FPA, 16 U.S.C. 824d, and the Commission's implementing regulations, 18 CFR part 35.

Hamilton alleges that by letter dated August 9 and received on August 15, 1989, CG&E has stated that CG&E is unilaterally altering scheduling practices for jurisdictional transmission service. Hamilton contends that CG&E's letter unilaterally changing scheduling practices violates Sections 205(c) and 205(d) of the FPA. Hamilton further alleges that absent an immediate Commission order requiring CG&E to cease and desist such changes, Hamilton will, beginning on September 1, 1989, experience severe disruption of its municipal electric system's operations and serious financial impacts for its system and its ratepayers.

Hamilton states that it has executed same or next day service of its Complaint on CG&E and other interested parties.

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, 385.214). The answer to this Complaint, as well as any motions to intervene, or protests should be filed on or before thirty days from publication of this notice in the **Federal Register**. 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. 89-21081 Filed 9-7-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP89-219-000 and TM90-1-37-000]

Northwest Pipeline Corp.; Change in FERC Gas Tariff

August 31, 1989.

Take notice that on August 24, 1989, Northwest Pipeline Corporation (Northwest) tendered for filing and acceptance the following tariff sheets:

First Revised Volume No. 1

Fifty-Fourth Revised Sheet No. 10
Thirthieth Revised Sheet No. 10-A
Second Revised Sheet No. 12
Third Revised Sheet No. 12

Original Volume No. 1-A

Nineteenth Revised Sheet No. 201

Original Volume No. 2

Tenth Revised Sheet No. 2.3

Northwest states that the purpose of this filing is to update its Commodity

SSP Charge and Fixed Monthly SSP Charge, effective October 1, 1989, to: (1) reflect interest applicable to July, August and September 1989, (2) the amortization of principal and interest for the months of April, May and June 1989, and (3) to reflect the inclusion of additional SSP Costs that have been incurred since Northwest's last quarterly filing. The proposed revised Commodity SSP Charge is 3.62¢ per MMBtu. Northwest states that Second Revised Sheet No. 12 was filed to revise the Fixed Monthly SSP charge factors, effective April 1, 1989, to reflect some minor sales volume adjustments that apply to calendar years 1983 and 1984. Northwest also states that this filing supplements its Order No. 5000 take-or-pay buyout/buydown cost recovery filing in Docket No. RP89-137 by reflecting two additional supplies settlements.

Northwest states that a copy of this filing has been sent to all parties of record in Docket No. RP89-137 and to all jurisdictional customers and affected State regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 8, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-21082 Filed 9-7-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM89-4-13-000]

Texas Gas Transmission Corp.; Tariff Filing

August 31, 1989.

Take notice that on Augsut 25, 1989, Texas Gas Transmission Corporation (Texas Gas) tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Substitute Second Revised Sheet No. 14D
Substitute Second Revised Sheet No. 14E
Substitute Second Revised Sheet No. 14F
Substitute Second Revised Sheet No. 14G

Texas Gas states that this filing is made to reflect the modification of Tennessee Gas Pipeline Company's revised take-or-pay demand surcharge during the six-month amortization period July 1 through December 31, 1989 to Texas Gas' downstream customers. The modification was reflected in Tennessee's finding made July 14, 1989, which reduced the take-or-pay cost by one-half of the amount of foregone revenue associated with transportation discounts or $8,719,000. The filing complies with a June 30, 1989 Letter Order in this docket which allows Texas Gas to track any modifications which the Commission may approve. Texas Gas Reserves the right to revise the filing as necessary to reflect any modifications made by the Commission or as required by any appellate court. The proposed effective date of the tariff sheets listed above is August 1, 1989.

Copies of this filing have been served upon Texas Gas' jurisdictional and nonjurisdictional sales customers and interested state commissions.

Any person desiring to be heard to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426, in accordance with Rules 2.11 and 2.14 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 September 8, 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. 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. 89-21083 Filed 9-7-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-1-78-000]

Overthrust Pipeline Co.; Tariff Filing

August 31, 1989.

Take notice that on August 29, 1989, Overthrust Pipeline Company (Overthrust), pursuant to 18 CFR 154.38 (d)(6) and Part 382, tendered for filing and acceptance Seventh Revised Sheet No. 6 to its FERC Gas Tariff, Original Volume No. 1.

Overthrust states that this filing implements the annual charge unit rate of $0.0017 per Mcf in each of its transportation rate schedules. Overthrust requests an effective date of October 1, 1989, for the tendered tariff sheets.

Overthrust also states that copies of the filing were served upon Overthrust's jurisdictional customers and interested state public service commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 11, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-21095 Filed 9-7-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-13-51-000]

Great Lakes Gas Transmission Co.; Proposed Changes in FERC Gas Tariff Purchased Gas Adjustment Clause Provisions

August 30, 1989

Take notice that Great Lakes Gas Transmission Company ("Great Lakes") on August 24, 1989 tendered for filing Second Substitute Twenty-Third Revised Sheet Nos. 57(i) and 57(ii), Third Substitute Tenth Revised Sheet No. 57(v) and Substitute Twenty-Fourth Revised Sheet Nos. 57(i) and 57(ii) to its FERC Gas Tariff, First Revised Volume No. 1.

Second Substitute Twenty-Third Revised Sheet Nos. 57(i) and 57(ii) and Third Substitute Tenth Revised Sheet No. 57(v) reflected revised current PGA rates for the months of August, September and October, 1989. The tariff sheets were filed as an Out of Cycle PGA to reflect the latest estimated gas cost as provided to Great Lakes by its sole supplier of natural gas, TransCanada PipeLines Limited ("TransCanada"). These pricing arrangements were the result of contract renegotiation between each of Great Lakes' resale customers and the supplier.

Substitute Twenty-Fourth Revised Sheet Nos. 57(i) and 57(ii) were filed to

reflect the elimination of Michigan Gas Company as a sales customer under Rate Schedule S-1 and the implementation of a transportation service for Michigan Gas Company under a new Rate Schedule T-18. Initial tariff sheets reflecting Rate Schedule T-18 were filed by Great Lakes on August 8, 1989, to be effective September 1, 1989.

Great Lakes requested waiver of the notice requirements of the provisions of § 154.309 of the Commission's Regulations and any other necessary waivers so as to permit the above tariff sheets to become effective as requested in order to implement the gas pricing agreements between Great Lakes' resale customers and TransCanada on a timely basis.

Any person desiring to be heard or to protest said filing should file a Motion to Intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before September 8, 1989.

Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-21085 Filed 9-7-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-1-26-000]

Natural Gas Pipeline Company of America; Proposed Changes in FERC Gas Tariff

August 30, 1989

Take notice that on August 28, 1989, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff sheets to be effective October 1, 1989.

Natural states that the purpose of the filing is to implement the Annual Charges Adjustment (ACA) charge necesary for Natural to recover from its customers annual charges assessed it by the Commission pusuant to Part 382 of the Commission's Regulations. The rate authorizing by the Commission to be effective October 1, 1989, is .17¢ per Mcf. Under Natural's billing basis of 14.65 psia at 1000 Btu, this rate converts to .16¢ per Mcf.

Natural requested waiver of the Commission's Regulations to the extent necessary to permit the tariff sheets to become effective on October 1, 1989.

Any person desiring to be heard or to to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before September 8, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-21086 Filed 9-7-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-1-41-000]

Paiute Pipeline Co.; Change in Annual Charge Adjustment

August 30, 1989

Take notice that on August 25, 1989, Paiute Pipeline Company (Paiute) tendered for filing Tenth Revised Sheet No. 10 applicable to its FERC Gas Tariff, Original Volume No. 1 and Sixth Revised Sheet No. 10 applicable to its FERC Gas Tariff, Original Volume No. 1-A. Paiute states that the purpose of said filing is to revise its annual charge adjustment surcharge in order to recover the Commission's annual charges for the 1989 fiscal year.

Paiute has requested that the Commission accept its tariff sheet to become effective October 1, 1989.

Paiute states that copies of this filing have been mailed to the Nevada Public Service Commission, the California Public Utilities Commission, Southwest Gas Corporation, Sierra Pacific Power Company, and CP National Corporation.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 8, 1989. Protests will be considered by the Commssion 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. 89-21087 Filed 9-7-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-1-49-000]

Williston Basin, Interstate Pipeline Co.; Annual Charge Adjustment Filing

August 31, 1989.

Williston Basin Interstate Pipeline Company (Williston Basin), on August 29, 1989, submitted for filing as part of its FERC Gas Tariff the following tariff sheets:

First Revised Volume No. 1: Eighteenth Revised Sheet No. 10
Original Volume No. 1-A: Fourteenth Revised Sheet No. 11, Seventeenth Revised Sheet No. 12
Original Volume No. 1-B: Seventh Revised Sheet No. 10, Seventh Revised Sheet No. 11
Original Volume No. 2: Twentieth Revised Sheet No. 10, Twelfth Revised Sheet No. 11B

The proposed effective date of the tariff sheets is October 1, 1989.

Williston Basin states that the instant filing reflects a revision to the Federal Energy Regulatory Commission's Annual Charge Adjustment (ACA) amount pursuant to the Commission's Statement of Annual Charges (18 CFR part 382) and Williston Basin's FERC Gas Tariff (First Revised Volume No. 1, Section 30; Oroginal Volume No. 1-A, Section 27 and Original Volume No. 1-B, Section 25). The filing incorporates an ACA surcharge of 0.170 cents per Mcf (0.159 cents per dkt on the Williston Basin system), a reduction of .01 cents per Mcf from the current amount, as authorized by the Commission.

Any person desiring to be heard or to protest said tariff application 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 the Commission's Rules 211 and 214. All such petitions or protests should be filed on or before September 11, 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 to the proceeding or to participate as a party in any hearing therein must file a petition to intervene. Copies of the filing

are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-21088 Filed 9-7-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-1-67-000]

Canyon Creek Compression Co.; Proposed Change in FERC Gas Tariff

August 30, 1989

Take notice that on August 28, 1989, Canyon Creek Compression Company (Canyon) tendered for filing Tenth Revised Sheet No. 4 (Original Volume No. 1) and First Revised Sheet No. 5 (Original Volume No. 1A) to be a part of its FERC Gas Tariff to be effective October 1, 1989.

Canyon states that the purpose of the filing is to implement the Annual Charges Adjustment (ACA) charge necessary for Canyon to recover from its customers annual charges assessed it by the Commission pursuant to Part 382 of the Commission's Regulations. The rate authorized by the Commission to be effective October 1, 1989 is .17¢ per Mcf.

Canyon requested waiver of the Commission's Regulations to the extent necessary to permit the tariff sheets to become effective October 1, 1989.

Canyon states that a copy of the filing is being mailed to Canyon's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before September 8, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-21089 Filed 9-7-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-1-63-000]

Carnegie Natural Gas Co; Proposed Changes in FERC Gas Tariff

August 30, 1989

Take notice that Carnegie Natural Gas Company ("Carnegie") on August 28, 1989, tendered for filing the following revised tariff sheets in its FERC Gas Tariff, First Revised Volume No. 1:

Fifth Revised Sheet No. 15
Seventeenth Revised Sheet No. 47
Third Revised Sheet No. 47a
Seventeenth Revised Sheet No. 48

The proposed effective date is October 1, 1989.

Carnegie states that it is amending its sales and transportation rate schedules to reflect its Commission-authorized Annual Charge Adjustment ("ACA") unit charge of $.0017. Carnegie states that this filing is submitted in compliance with § 154.38(d)(6)(iii) of the Commission's Regulations and Section 24 of the General Terms and Conditions of Carnegie's FERC Gas Tariff, First Revised Volume No. 1.

Carnegie states that copies of the filing were served upon Carnegie's jurisdictional customers and interested state regulatory commissions.

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, NW., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 8, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-21090 Filed 8-7-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-1-55-000]

Questar Pipeline Co.; Tariff Filing

August 31, 1989.

Take notice that on August 29, 1989, Questar Pipeline Company (Questar Pipeline), pursuant to 18 CFR 154.38(d)(6) and Part 382, tendered for filing and acceptance the following tariff sheets to its FERC Gas Tariff:

First Revised Volume No. 1
  Twenty-Fourth Revised Sheet No. 12
  Fifth Revised Sheet No. 12-A
Original Volume No. 1-A
  Tenth Revised Sheet No. 5
Original Volume No. 3
  Thirteenth Revised Sheet No. 8

Questar Pipeline states that this filing implements the annual charge unit rate of $0.0017 per Mcf in each of its transportation and sales rate schedules. Questar Pipeline requests an effective date of October 1, 1989, for the tendered tariff sheets.

Questar Pipeline also states that copies of the filing were served upon Questar Pipeline's jurisdictional customers and interested state public service commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 11, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-21091 Filed 9-7-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-1-64-000]

Pacific Interstate Offshore Co.; Change in Rate

August 31, 1989.

Take notice that on August 29, 1989, Pacific Interstate Offshore Company ("PIOC") submitting for filing, to be a part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheet:

Original Volume No. 1

Tenth Revised Sheet No. 4

PIOC states the purpose of this filing is to set forth the applicable Annual Charge Adjustment (ACA) surcharge of .17 cents per mcf in its Rate Schedule G-10 as provided for by Order No. 472. PIOC requests an effective date of October 1, 1988.

PIOC states that a copy of this filing has been served on PIOC's sole customer, Southern California Gas Company and the Public Utilities Commission of the State of California.

Any persons desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825

North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 11, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-21092 Filed 9-7-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-1-69-000]

Stingray Pipeline Co.; Proposed Changes in FERC Gas Tariff

August 30, 1989.

Take notice that on August 28, 1989, Stingray Pipeline Company (Stingray) tendered for filing Second Revised Sixteenth Revised Sheet No. 4 to be a part of its FERC Gas Tariff, Original Volume No. 1 to be effective October 1, 1989.

Stingray states that the purpose of the filing is to implement the Annual Charges Adjustment (ACA) charge necessary for Stingray to recover from its customers annual charges assessed it by the Commission pursuant to the Part 382 of the Commission's Regulations. The rate authorized by the Commission to be effective October 1, 1989 is .17¢ per Mcf. Under Stingray's billing basis of 14.73 psia per Dekatherm, this rate converts to .16¢ per Dekatherm.

Stingray requested waiver of the Commission's Regulations to the extent necessary to permit the tariff sheet to become effective on October 1, 1989.

Stringray states that a copy of the filing is being mailed to Stingray's jurisdictional customers and interested state regulatory agenices.

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 N.E., Washington, DC 20426, in accordance with § 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before September 8, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-21093 Filed 9-7-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-1-68-000]

Trailblazer Pipeline Co.; Proposed Change in FERC Gas Tariff

August 30, 1989.

Take notice that on August 28, 1989, Trailblazer Pipeline Company (Trailblazer) tendered for filing Seventh Revised Sheet No. 4 to be a part of its FERC Gas Tariff, Original Volume No. 1 to be effective October 1, 1989.

Trailblazer states that the purpose of the filing is to implement the Annual Charges Adjustment (ACA) charge necessary for Trailblazer to recover from its customers annual charges assessed it by the Commission pursuant to the Part 382 of the Commission's Regulations. The rate authorized by the Commission to be effective October 1, 1989 is .17¢ per Mcf.

Trailblazer requested waiver of the Commission's Regulations to the extent necessary to permit the tariff sheet to become effective on October 1, 1989.

Trailblazer states that a copy of the filing is being mailed to Trailblazer's jurisdictional customers and interested state regulatory agenices.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with § 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before September 8, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-21094 Filed 9-7-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL89-46-000]

Safe Harbor Water Power Corp.; Order To Show Cause

Issued August 31, 1989.

Before Commissioners: Martha O. Hesse, Chairman; Charles G. Stalon, Charles A. Trabandt, Elizabeth Anne Moler and Jerry J. Langdon.

Safe Harbor Water Power Corporation (Safe Harbor) owns a 230 MW generating unit and sells the output to its owners, Pennsylvania Power & Light Company and Baltimore Gas & Electric Company. The unit power agreement contains a formula rate. In a settlement agreement approved by the Commission in Docket No. EL88-2-000,[1] a provision providing for annual examination of the over-all return was added to the formula rate.

Under the terms of that provision, in August of each year, interested parties may request that the Commission institute, or the Commission may itself institute, an investigation of the over-all return component of the formula rate. Also, under the terms of that provision, if the Commission proceeds on its own motion, the Commission must publish an order to show cause and give Safe Harbor and any other affected party the opportunity to respond. If the Commission decides to set the over-all return for investigation and hearing, the settlement agreement provides that the only issue to be addressed will be the level of the over-all return appropriate for Safe Harbor, that the burden of going forward will be on the party advocating a lower return, and that, if the return is ultimately determined to be unjust and unreasonable, refunds will be due dating back to the date of the Commission order setting the matter for investigation and hearing.

Safe Harbor currently uses a 10.6% over-all return in its formula rate. Our preliminary analysis indicates that this return may be excessive and may be unjust and unreasonable. We will therefore order Safe Harbor to show cause why the Commission should not set Safe Harbor's over-all return for investigation and hearing.

Any person desiring to be heard should file a protest or motion to intervene 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 (1988). All such protests or

[1] Safe Harbor Water Power Corporation, 42 FERC ¶ 61,219 (1988).

motions should be filed on or before September 21, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

The Commission orders:

(A) Safe Harbor is hereby ordered to show cause why the Commission should not set Safe Harbor's over-all return for investigation and hearing.

(B) Safe Harbor shall file its response to the order to show cause on or before September 21, 1989.

(C) The Secretary shall promptly publish a copy of this order in the **Federal Register.**

By the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 89-21097 Filed 9-7-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL89-47-000]

Commonwealth Edison Company of Indiana, Inc.; Order To Show Cause

Issued August 31, 1989.

Before Commissioners: Martha O. Hesse, Chairman; Charles G. Stalon, Charles A. Trabandt, Elizabeth Anne Moler and Jerry J. Langdon.

Commonwealth Edison Company of Indiana, Inc. (CECI) owns a 600 MW generating unit and sells the output to its parent, Commonwealth Edison Company. The unit power agreement contains a formula rate. In a settlement agreement approved by the Commission in Docket No. ER88-531-000,[1] a provision providing for annual examination of the common equity return was added to the formula rate.

Under the terms of that provision, in August of each year, interested parties may request that the Commission institute, or the Commission may itself institute, an examination of the common equity return component of the formula rate. Also, under the terms of that provision, if the Commission proceeds on its own motion, the Commission must publish an order to show cause and give CECI and any other affected party the opportunity to respond. If the Commission decides to set the common equity return for investigation and hearing, the settlement agreement provides that the only issue to be addressed will be the level of the common equity return, that the burden of going forward will be on the party advocating a lower common equity return, and that, if the return is ultimately determined to be unjust and unreasonable, refunds will be due dating back to the date of the Commission order setting the matter for investigation and hearing.

CECI currently uses a common equity return of 13.91% in its formula rate. Our preliminary analysis indicates that this return may be excessive and may be unjust and unreasonable. We will therefore order CECI to show cause why the Commission should not set CECI's common equity return for investigation and hearing.

Any person desiring to be heard should file a protest or motion to intervene 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 (1988). All such protests or motions should be filed on or before September 21, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

The Commission orders:

(A) CECI is hereby ordered to show cause why the Commission should not set CECI's common equity return for investigation and hearing.

(B) CECI shall file its response to the order to show cause on or before September 21, 1989.

(C) The Secretary shall promptly publish a copy of this order in the **Federal Register.**

By the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 89-21098 Filed 9-7-89; 8:45 am]

BILLING CODE 6717-01-M

[1] Commonwealth Edison Company of Indiana, Inc., 44 FERC ¶ 61,446 (1988).

Office of Hearings and Appeals

Cases Filed During the Week of May 12 Through May 19, 1989

During the Week of May 12 through May 19, 1989, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: August 30, 1989.

Richard W. Dugan,

Acting Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of May 2 through May 19, 1989]

Date	Name and location of applicant	Case no.	Type of submission
5/15/89	Terrol Energy, Inc., Boulder, Colorado	KEE-0177	Exception to the reporting requirements.
If granted: Terrol Energy, Inc. would not be required to file the 1988 Energy Reserve Estimates.			
5/17/89	Benedetta Enterprises, Inc., Ronkonkoma, New York	KFA-0288	Appeal of an information request denial.
If granted: The May 9, 1989 Freedom of Information Request Denial issued by the Chicago Operations Office would be rescinded and Benedetta Enterprises, Inc. would receive access to information relating to a solicitation for proposals for the operation of an on-site service station.			
5/19/89	John R. Penley, New York City, New York	KFA-0289	Appeal of an information request denial.
If granted: The March 21, 1989 Freedom of Information Request Denial issued by the Savannah River Operations would be rescinded and John R. Penley would receive a waiver of search and duplication fees with respect to copies of all records pertaining to and/or captioned with his name, or the names of two environmental organizations.			

REFUND APPLICATIONS RECEIVED

[Week of May 12 to May 19, 1989]

Date received	Name of refund proceeding/name of refund applicant	Case number
1/19/88	Brenham Quick Mart	RF300-10819
5/12/89 thru 5/19/89	Crude oil refund, applications received	FR272-75481 thru RF272-75488
5/12/89 thru 5/19/89	Atlantic Richfield refund, applications received	RF304-9285 thru RF304-9298
5/12/89 thru 5/19/89	Exxon Oil refund, applications received	RF307-9953 thru RF307-9957
5/12/89 thru 5/19/89	Shell Oil refund, applications received	RF315-5815 thru RF315-5913
5/15/89	Mike M. Hafey	RF313-150
5/15/89	Plainfield Crown	RF313-151
5/15/89	Morris Crown	RF313-152
5/15/89	Clancy's Spur #1343	RF309-1349
5/15/89	John Whites Gulf	RF300-10184
5/16/89	Fritzen-Halcyon Lijn, Inc.	RF300-10816
5/16/89	Lloyd R. Crais Oil Inc.	RF309-1350
5/17/89	Wald Oil Company, et al	RF300-10815
5/18/89	Earl's Gulf Service Station	RF300-10817
5/19/89	Utica Square Gulf	RF300-10818
5/19/89	Ed's Farmingdale S.S., Inc.	RF313-153
5/19/89	Hopkins Spur Service	RF309-1351

[FR Doc. 89-21193 Filed 9-7-89; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3643-2]

Environmental Impact Statements; Availability

Responsible Agency

Office of Federal Activities, General Information (202) 382-5076 or (202) 382-5073. Availability of Environmental Impact Statements Filed August 28, 1989 Through September 1, 1989 Pursuant to 40 CFR 1506.9.

EIS No. 890244, Draft, EPA, NY, NJ, New York Bight Ocean Woodburning Disposal Site Designation for wood removed from the waters and shorelines of the New York/New Jersey Harbor Complex and its Environs, Offshore NY and NJ, Due: October 23, 1989, Contact: Robert Hargrove (212) 264-1840.

EIS No. 890245, Final, AFS, NM, Cemetery Tract Land Exchange for Westgate Tract or Trail Canyon Tract or Both Tracts, Implementation, Santa Fe National Forest, Los Alamos and Sandoval Counties, NM, Due: October 10, 1989, Contact: Maynard T. Rost (505) 988-6940.

EIS No. 890246, DSuppl, SCS, PA, WV, Wheeling Creek Watershed Project, Reevaluation and Additional Flood Protection Measure, Funding and Implementation, Ohio and Marshall Cos, WV and Greene and Washington Cos, PA, Due: October 23, 1989, Contact: Rollin N. Swank (304) 291-4151.

Amended Notices

EIS No. 890068, Final, COE, FL, Miami Harbor Channel Navigation Improvements, Implementation, Dade County, FL, Due: May 8, 1989, Contact: Gerald Atmar (904) 791-2615.

Published FR 4-7-89—Officially Withdrawn by Preparing Agency.

Dated: September 5, 1989.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 89-21196 Filed 9-7-89; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3643-3]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared August 21, 1989 through August 25, 1989 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities AT (202) 382-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 7, 1989 (54 FR 15007).

DRAFT EISs

ERP No. D-AFS-G65049-00, Rating EC2, Ozark/Ouachita Mountains Vegetation Management Plan, Implementation, Ouachita, Ozark and St. Francis National Forests, AR and McCurtain and LeFlore Counties, OK.

Summary: EPA supports selection of the preferred alternative over the current management alternative. EPA's recommendations regarding herbicide use and prescribed burning to prevent adverse impacts to surface and groundwater quality should be incorporated in the final EIS.

ERP No. D-DOE-A07030-00, Rating EC2, Clean Coal Technology Program, Continuation.

Summary: EPA had several recommendations for improvement of the EIS and expressed concerns about air emissions and waste generation by the program.

ERP No. D-UAF-B24004-MA, Rating EC2, OTIS Air National Guard Base Wastewater Treatment Facility, Continuing Operation, Barnstable County, MA.

Summary: EPA has no objection to the Air National Guard's preferred action to pump treated effluent to new effluent infiltration basins located in the Cape

Cod Canal area. However, EPA requests that the WWTP ability's to achieve future state and federal discharge limitations and comply with water quality guidelines be evaluated.

Final EISs

ERP No. F-AFS-L65123-ID, Wing Creek-Twentymile Timber Sale and Road Construction, Geographic Display Area Management Plan, Implementation, Nezperce National Forest Land and Resource Management Plan, Elk City and Clearwater Ranger Districts, Idaho County, ID.

Summary: EPA has no objections to the proposed action as described. No formal comments were sent to the agency.

ERP No. F-AFS-L65130-AK, Big Islands Management Area Analysis, Implementation and Special Use Permit, Chugach National Forest Land and Resource Management Plan, Hawkins, Hinchinbrook, Montague, Green, Little Green and Wooded Islands and The Needle, Prince William Sound, AK.

Summary: EPA has no objections to the proposed project as described. No formal comments were sent to the agency.

ERP No. F-AFS-L82008-00, Pacific Northwest Region Western Spruce Budworm Management Plan, Implementation, WA and OR.

Summary: EPA has no objections to the project as described in the final EIS. No formal review comments were submitted to the agency on this project.

ERP No. F-FHW-L40115-OR, North Marine Drive Improvement, I-5 to Rivergate Industrial District, Funding and Section 10/404 Permits, Multnomah County, OR.

Summary: EPA has no objections to the proposed action as described. No formal comments were sent to the agency.

Dated: September 5, 1989.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 89-21197 Filed 9-7-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL-36418-8]

Transfer of Data to Contractors

AGENCY: Environmental Protection Agency.

ACTION: Notice of transfer of confidential data and request for comments.

SUMMARY: The Environmental Protection Agency (EPA) intends to release confidential data collected under Section 308 of the Clean Water Act to one EPA contractor for the purpose of assisting EPA in developing regulations under the Resource Conservation and Recovery Act (RCRA).

DATE: The transfer to the Contractor of the described confidential business information will occur no sooner than September 18, 1989.

ADDRESSES: Comments may be sent to the Docket Clerk, Industrial Technology Division, Office of Water (WH-552), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Comments should be identified as "Transfer of Confidential Data."

FOR FURTHER INFORMATION CONTACT: For technical information regarding the Office of Water databases subject to this notice, contact Ernst P. Hall, Industrial Technology Division, Office of Water (WH-552), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, telephone 202-382-7126. For technical information regarding data uses under RCRA, contact Robert W. Hall, Office of Solid Waste (OS-323), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, telephone 202-475-8814.

SUPPLEMENTARY INFORMATION:

1. Transfer of Data

On October 12, 1980, Congress enacted the Solid Waste Disposal Act Amendments of 1980, which added Section 3001(b)(3)(A)(ii) (the Bevill Amendment) to RCRA. This section temporarily prohibits EPA from regulating "solid waste from the extraction, beneficiation, and processing of ores and minerals, including phosphate rock and overburden from the mining of uranium ore" as hazardous waste under subtitle C of RCRA, pending EPA's completion of certain studies of these wastes.

Under EPA contract No. 68-01-7290, ICF Incorporated is assisting the Special Wastes Branch, Office of Solid Waste, in developing a hazard criterion. EPA will use this criterion to identify the "special wastes" that will be temporarily exempt under the Bevill Amendment.

To facilitate implementation of this criterion, the EPA Office of Water will transfer to an EPA Office of Solid Waste contractor, ICF Incorporated (Fairfax, Va.), certain information that has been submitted to the EPA under Section 308 of the Clean Water Act (the Federal Water Pollution Control Act (FWPCA) Amendments of 1972, as amended (33 U.S.C. 1251 et seq.)). The information to be transferred has been collected to support the promulgation of effluent limitations guidelines and standards for certain industry categories. Some of the information gathered under FWPCA may be subject to claims of business confidentiality.

The information to be transferred to ICF Incorporated was collected by several contractors, including the Cyrus N. Rice Division of NUS, the Radian Corporation, and Jacobs Engineering Group, Inc. who were assisting the Industrial Technology Division of the Office of Water by collecting facility-level data from a large number of ore and mineral processing industries. These data included process descriptions, waste stream volume and descriptions, waste constituent data, through-put rates, and other related information from the ferrous and non-ferrous metals, ferroalloys, coal gasification, elemental phosphorus, hydrofluoric acid, lightweight aggregate, phosphoric acid and soda ash industries. EPA used these data to develop effluent limitations guidelines and standards for several major industries, such as iron and steel manufacturing, non-ferrous metals manufacturing, and inorganic chemicals manufacturing.

The information transferred will concern all industries potentially affected by the Bevill Amendment.

Dated: August 25, 1989.

Rebecca W. Hanmer,

Acting Assistant Administrator for Water.

[FR Doc. 89-21169 Filed 9-7-89; 8:45 am]

BILLING CODE 6560-50-M

[OW-FRL-3642-2]

National Combined Sewer Overflow Control Strategy Document Availability

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of a document which describes EPA's National Combined Sewer Overflow Control Strategy.

DATE: Copies of this document will be available from EPA Office of Water for a period of 90 calendar days, beginning September XX, 1989.

ADDRESSES: Copies of this document can be obtained by writing to Ms. Angie McLean, Permits Division, EN-336, U.S. EPA Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 or by telephoning her at (202) 475-9543.

FOR FURTHER INFORMATION CONTACT: William A. Collins, Jr., telephone: (202) 475-9517.

National Combined Sewer Overflow Control Strategy

Introduction

Combined sewer overflows (CSOs) are flows from a combined sewer in excess of the interceptor or regulator capacity that are discharged into a receiving water without going to a publicly owned treatment works (POTW). CSOs occur prior to reaching the headworks of a treatment facility and are distinguished from bypasses which are "intentional diversions of waste streams from any portion of a treatment facility" (40 CFR 122.41(m)).[1]

Most major municipal areas in the United States are served by a combination of sanitary sewers, separate storm sewers, and combined sanitary and storm sewers. The Agency has estimated that there are between 15,000 and 20,000 CSO discharge points currently in operation. Sanitary sewer systems must adhere to the strict design and operational standards established to protect the integrity of the sanitary sewer system and wastewater treatment facilities. Discharges from separate sanitary sewer systems with less than secondary treatment are prohibited. The regulation of discharges from separate storm sewer systems is addressed in section 402(p) of the Clean Water Act (CWA). EPA is proposing regulations implementing section 402(p) which include requirements to develop system-wide municipal storm water management programs to reduce pollutants from municipal separate storm sewers. The following strategy is designed to control effluents from combined systems which are not regulated under the sanitary system standards nor as discharges from separate storm sewer regulations.

This CSO permitting strategy is designed to complement the control programs for sanitary sewers and separate storm sewers. This strategy establishes a uniform, nationally-consistent approach to developing and issuing NPDES permits for CSOs. CSOs have been shown to have severe adverse impacts on water quality, aquatic biota, and human health under certain conditions. Therefore, permits for CSOs are to be developed expeditiously to minimize these potential impacts by establishing technology-based and water quality-based requirements.

The objectives of this strategy are threefold:

(1) To ensure that if CSO discharges occur, they are only as a result of wet weather,

(2) To bring all wet weather CSO discharge points into compliance with the technology-based requirements of the CWA and applicable State water quality standards, and

(3) To minimize water quality, aquatic biota, and human health impacts from wet weather overflows.

Statement of Strategy

CSOs are point sources subject to NPDES permit requirements including both technology-based and water quality-based requirements of the CWA. CSOs are not subject to secondary treatment regulations applicable to publicly owned treatment works (*Montgomery Environmental Coalition* vs. *Costle*, 646 F. 2d 568 (D.C. Cir. 1980)).

Technology-based permit limits should be established for best practicable control technology currently available (BPT), best conventional pollutant control technology (BCT), and best available technology economically achievable (BAT) based on best professional judgement (BPJ) when permitting CSOs. The CWA of 1977 mandates compliance with BPT on or before July 1, 1977. The Water Quality Act Amendments of 1987 (WQA) mandates compliance with BCT/BAT on or before March 31, 1989.

Section 301(b)(1)(C) of the CWA mandates compliance with water quality standards by July 1, 1977. In addition it is likely that at least some CSO discharges will be point source discharges to waters listed under section 304(1) of the CWA and subject to the control requirements of that Section.

All CSO discharges must be brought into compliance with technology-based requirements and State water quality-based requirements. The Agency expects that this can be achieved using a combination of CSO control measures.

Applicability of Strategy

This strategy applies to all CSOs. Flows in combined sewers can be classified into two categories: wet weather flow and dry weather flow. Wet weather flow is a combination of sanitary flow, industrial flow, infiltration from groundwater, and stormwater flow, including snow melt. Dry weather flow is the flow in a combined sewer that results from domestic sewage, groundwater infiltration and industrial wastes with no contribution from stormwater runoff or stormwater induced infiltration.

This strategy applies to EPA and approved NPDES States. EPA Headquarters will oversee the implementation of the strategy to ensure actions taken by the Regions and States are consistent with the national strategy and that the Agency as a whole is making progress towards meeting the statutory requirements and achieving the water quality objectives of the CWA.

This strategy does not apply to bypasses. Bypasses are "intentional diversions of waste streams from any portion of a treatment facility." The treatment facility begins at the headworks where equalization of the waste streams takes place. Bypasses are regulated under 40 CFR 122.41(m). Bypasses from any portion of the treatment facility are prohibited unless the criteria in 40 CFR 122.41(m)(4) are satisfied. These criteria are (1) bypasses are unavoidable to prevent loss of life, personal injury, or severe property damage; (2) there are no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime; and (3) the permittee submitted notices as required under 40 CFR 122.41(m)(3).

Implementation

Communities are responsible for developing and implementing system-wide combined sewer management plans. State-wide permitting strategies will be developed by the States or Regions to ensure implementation and consistency with this CSO strategy. Permitting strategies should be developed no later than January 15, 1990 and Regions should approve State strategies no later than March 31, 1990. A discussion of different elements that may be addressed in the strategies is provided below.

1. Identification

CSO point sources currently discharging without a permit are unlawful and must be permitted or eliminated. The Regions and States must identify the communities with combined sewer systems and each particular CSO discharge point within these communities. The permitting strategy should place each CSO discharge point into one of three categories: (1) Not permitted; (2) permitted in conjunction with POTW; and (3) permitted separately from POTW. The status of compliance with technology-based and water quality-based permit

[1] Flows to the treatment works (POTW), including dry weather and wet weather flows, are subject to secondary treatment regulations, water quality standards, and the National Municipal Policy. Dry weather discharges from CSOs, which are also subject to this strategy, are illegal and must be expeditiously eliminated. Regions and approved States should use appropriate enforcement actions to eliminate such activities and assure compliance.

requirements should be provided for each CSO discharge. An ongoing commitment of evaluating and maintaining CSO location and permit discharge status records should be adopted by every community.

2. Priorities

The Regions and States are expected to set priorities in permitting and controlling the unpermitted and insufficiently permitted discharges. In addition to the requirements identified above, the permitting strategy should describe the Regional or State completed and planned actions and timing to bring the discharges into compliance. Permitting and control priorities should be established based upon a system-wide evaluation of known or suspected impacts from CSOs using estimates of flows, frequencies, durations, and pollutant loadings to rank POTW collection systems for permitting.

One of the most important considerations for establishing priorities is whether the CSO discharges to marine or estuarine waters. Other factors to be considered in the priority setting effort are the nature of CSO control measures and the use designation of streams and the estimated increases in beneficial uses resulting from these measures, receiving waters listed under section 304(1) of the Water Quality Act of 1987, other water program efforts such as the Great Lakes program and pretreatment program evaluations.

3. Permit Issuance

A single, system-wide permit should be issued whenever possible for all discharges, including overflows, from a combined sewer system operated by a single authority. The permit should identify separately, as specifically as possible, the location of each overflow in the system (i.e., longitude, latitude, street address, and a map).

Different parts of a single combined sewer system are in some cases owned and/or operated by more than one authority. Permits issued to such authorities should require joint preparation and implementation of the requirements of this strategy and specifically define the responsibilities and duties of each owner and operator. The POTW is responsible for planning and coordinating a system-wide approach. The individual owners and/or operators are responsible for their own discharges and must cooperate with the POTW. When a CSO is permitted separately from the POTW, the POTW's NPDES permit should cross-reference this for informational purposes.

4. Compliance Schedules

Compliance dates for water-quality and technology-based limitations are governed by the statutory deadlines in section 301 of the CWA. CSOs that discharge toxic pollutants into water bodies listed under paragraph (B) of section 304(1) of the CWA are additionally regulated under section 304(1). All CSOs that are subject to section 304(1) must achieve applicable water quality standards by the statutory deadlines in that Section (see Final Guidance for Implementation of Requirements Under section 304(1) of the CSW as Amended, March 1988 and forthcoming regulations). To the extent technology and water quality-based limitations cannot be met by the applicable dates, the permit should contain the statutory dates and public notice should be given simultaneously with an administrative enforcement order or other appropriate enforcement actions requiring compliance within the shortest reasonable time. Effluent limitations based upon newly developed water quality standards or new interpretations of existing water quality standards, however, may be covered by compliance schedules in the NPDES permit. This strategy is not to be considered a new development or new interpretation of water quality standards.

5. Minimum Technology-Based Limitations

All permits for CSO discharges should require the following technology-based limitations as a minimum BCT/BAT, established on a BPJ basis: (1) Proper operation and regular maintenance programs for the sewer system and combined sewer overflow points; (2) maximum use of the collection system for storage; (3) review and modification of pretreatment programs to assure CSO impacts are minimized; (4) maximization of flow to the POTW for treatment; (5) prohibition of dry weather overflows; and (6) control of solid and floatable materials in CSO discharges. Control measures, as mentioned below, may also be required on a case-by-case basis to address the particular circumstances of each combined sewer system and overflow point. All BPJ permits must consider the factors set forth at 40 CFR 125.3(d).

6. Additional CSO Control Measures

Cost is always a consideration when establishing technology-based limits in NPDES permits (40 CFR 125.3). However, the CWA under section 301(b)(1)(C) also requires any additional permit limits that may be necessary to protect State water quality standards. In the event additional control measures are necessary, the permittee should choose the most cost effective control measures which will insure compliance with water quality standards. For example, CSO control programs should be designed to incorporate best management practices and other low cost operational methods and only incorporate more expensive control measures if necessary to meet water quality standards.

Additional control measures that should be considered to bring all wet weather CSOs into compliance with technology-based and applicable State water quality standards include improved operation and maintenance, best management practices, system-wide storm water management programs, supplemental pretreatment program modifications, sewer ordinances, local limits program modifications, identification and elimination of illegal discharges, monitoring requirements, pollutant specific limitations, compliance schedules, flow minimization and hydraulic improvements, direct treatment of overflows, sewer rehabilitation, in-line and off-line storage, reduction of tidewater intrusion, construction of CSO controls within the sewer system or at the CSO discharge point, sewer separation, and new or modified wastewater treatment facilities.

7. Monitoring

Monitoring requirements for wet weather CSOs will vary based on the unique circumstances of each combined sewer system and overflow point. Cost effective monitoring requirements should be developed to serve three purposes: (1) To characterize CSO discharges, including their frequency, duration, and pollutant loadings; (2) to evaluate the water quality impacts of these discharges; and (3) to determine compliance with CSO permit requirements.

Discharge monitoring and/or modeling, wasteload allocations that address rainfall-related hydrological conditions, and often stream surveys are necessary to measure the extent to which CSO discharges are causing violations of technology-based limitations or water quality standards, and to design corrective programs. These monitoring/modeling requirements should be included in the initial CSO permits with reopener clauses to adjust permit limits as warranted.

Compliance monitoring requirements should also be included in CSO permits. These monitoring requirements should include collecting and reporting data on CSO events and insuring that no dry weather overflows occur. Monitoring may also include inspections or reports aimed at assuring that required facility improvements have been made and/or that best management practices and other operation and maintenance requirements are being effectively implemented. Permits should require development and implementation of a monitoring plan or program to assure data needs are met. In-stream monitoring is expected to be conducted after improvements are made to assure water quality standards are met.

8. Water Quality Standards Modification

Section 301(b)(1)(C) of the CWA mandates compliance with water quality standards. Permits must be written to ensure CSO discharges do not cause violations of water quality standards. The applicability of water quality standards should not be waived under any circumstances. In limited cases, it may be appropriate to adjust some water quality standards to address the impact of pollutants in wet weather flows more adequately. In these cases, this strategy encourages monitoring, modeling, or wasteload allocation procedures to better quantify influences and formulate control strategies to address rainfall-related hydrological conditions.

EPA sets forth the criteria for modifying State water quality standards at 40 CFR 131.10(g). In general, States may remove a designated use which is not an existing use as defined in 40 CFR 131.3, or establish subcategories of a use if the State can demonstrate that attaining the designated use is not feasible because of one of the six enumerated criteria listed at 40 CFR 131.10(g) including that controls more stringent than those required by sections 301(b) and 306 of the Act would result in substantial and widespread economic and social impact. States may not remove designated uses if they are existing uses, as defined in 40 CFR 131.3, unless a use requiring more stringent criteria is added; or if such uses will be attained by implementing effluent limits required under sections 301(b) and 306 of the Act and by implementing cost effective and reasonable best management practices for nonpoint source control. Additionally, prior to removing any uses or establishing subcategories of use, the State must provide notice and an opportunity for public hearing under 40 CFR 131.20(b). Changes in designated uses or the establishment of subcategories of uses must be made on a site-specific basis in accordance with the procedures specified in 40 CFR 131.10(j).

In instances where current State water quality standards waive or relax compliance with those standards during wet weather, these wet weather provisions should be revised during the next triennial review to ensure appropriate water quality standards coverage during wet weather events.

9. Funding

CSOs which cause adverse impacts on water quality and human health should be considered for funding. CSO corrections are fundable under both the Construction Grants and State Revolving Fund programs, although significant limitations apply.

Construction grants may be awarded for CSOs under the following CWA provisions: section 201(g)(1) Governor's 20 percent discretionary fund; section 201(n)(1) funding from State's regular allotment for CSOs that are a major State priority and meet the water quality criteria in regulation (40 CFR 35.2024); and section 201(n)(2) special national fund, from a reserve of 1 percent of construction grants appropriated in FY 89 and FY 90, for marine CSOs that meet the water quality criteria in the regulation.

Before a State Revolving Fund (SRF) may use the capitalization grant, State match, or repayments of first round loans from the grants for CSOs, the State must meet the first use requirements, i.e., its National Municipal Policy list of projects must all be in compliance, on an enforceable schedule, have an enforcement action filed, or have a funding commitment. Once the first use requirement is met, the SRF may make loans or provide other assistance for CSOs with 20 percent of its grant amount (or with other grant dollars for CSOs under section 201(n)(1)) and with all of its matching or other funds in excess of the grant amount. Before the first use requirement is met, the SRF may fund CSOs with State funds in excess of the matching, bond proceeds in excess of the grant and match, and repayments of loans made with non-grant funds. For further information regarding SRF funding, see *Initial Guidance for SRFs*, January 1988.

10. Permit Application Forms

CSOs that are permitted in conjunction with a POTW should be identified in the permit application form submitted to the permitting authority. POTWs must submit a Form A (EPA Form 7550-22) 180 days prior to discharge or permit expiration. CSOs that are permitted separately from a POTW, should submit a NPDES Form 2C (EPA Form 3510-2C) to the permitting authority 180 days prior to permit expiration. For new CSOs, NPDES Form 2D (EPA Form 3510-2D) should be submitted 180 days prior to discharge.

Dated: August 10, 1989.

Rebecca W. Hanmer,

Acting Assistant Administrator for Water.

[FR Doc. 89-21168 Filed 9-7-89; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59274C; FRL-3642-9]

Certain Chemicals Approval of a Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated this application as TME-89-23. The test marketing conditions are described below.

EFFECTIVE DATE: September 1, 1989.

FOR FURTHER INFORMATION CONTACT: Andrea Pfahles-Hutchens, New Chemicals Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M St. SW., Washington, DC 20460, (202) 382-2255.

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury.

EPA hereby approves TME-89-23. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for

the time period and restrictions specified below, will not present any unreasonable risk of injury to health or the environment. Production volume, use, and the number of customers must not exceed that specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

The following additional restrictions apply to TME-89-23. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME. In addition, the applicant shall maintain the following records until 5 years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. Records of the quantity of the TME substance produced and the date of manufacture.

2. Records of dates of the shipments to each customer and the quantities supplied in each shipment.

3. Copies of the bill of lading that accompanies each shipment of the TME substance.

T-89-23

Date of Receipt: July 26, 1989.

Notice of Receipt: August 18, 1989 (54 FR 34231).

Applicant: Confidential.

Chemical: (G) Organoaluminum compound.

Use: (G) Contained destructive use.

Production Volume: Confidential.

Number of Customers: Confidential.

Test Marketing Period: Confidential.

Risk Assessment: EPA identified no significant environmental concerns for or releases of the test market substance. EPA did identify health concerns for corrosivity to eyes, skin, and the respiratory tract; however, exposure will be prevented through the required use of protective equipment. Therefore, the test market activities will not present any unreasonable risk of injury to health or the environment.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information that comes to its attention which casts significant doubt on its finding that the test marketing activities will not present an unreasonable risk of injury to health or the environment.

Dated: September 1, 1989.

John W. Melone,

Director, Chemical Control Division, Office of Toxic Substances.

[FR Doc. 89-21163 Filed 9-7-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3642-6]

Proposed Administrative Penalty Assessment and Opportunity to Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed administrative penalty assessment and opportunity to comment.

SUMMARY: EPA is providing notice of a proposed administrative penalty assessment for an alleged violation(s) of the Clean Water Act. EPA is also providing notice of opportunity to comment on the proposed assessment.

Under 33 U.S.C. 1319(g), EPA is authorized to issue orders assessing administrative civil penalties for various violations of the Act. EPA may issue such orders after the commencement of either a Class I or Class II administrative penalty proceeding. EPA provides public notice of the proposed assessments pursuant to 33 U.S.C. Section 1319(g)(4)(a).

Class II proceedings are conducted under EPA's "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits." The procedures through which the public may submit written comment on a proposed Class II order or participate in a Class II proceeding, and the procedures by which a respondent may request a hearing, are set forth in the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits." The deadline for submitting public comment on a proposed Class II order is thirty days after issuance of public notice.

On the date identified below, EPA commenced the following Class II proceeding for the assessment of penalties:

In the Matter of the Guam Department of Public Works, Ordot Landfill, Ordot, Guam; EPA Docket No. IX-FY89-39; filed on August 30, 1989, Regional Hearing Clerk, U.S. EPA, Region 9, 215 Fremont Street, San Francisco, CA 94105, (415)974-8600; proposed penalty of $86,500 for discharging (leachate) without a permit as detected during Guam Environmental Protection Agency inspections.

FOR FURTHER INFORMATION CONTACT: Persons wishing to receive a copy of EPA's "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits", review the complaint or other documents filed in this proceeding, comment upon a proposed assessment, or otherwise participate in the proceeding should contact the Regional Hearing clerk indentified above. Unless otherwise noted, the administrative record for each of the proceedings is located in the EPA Regional Office identified above, and the file will be open for public inspection during normal business hours. All information submitted by the respondent is available as part of the administrative record, subject to provisions of law restricting public disclosure of confidential information. In order to provide opportunity for public comment, EPA will issue no final order assessing a penalty in these proceedings prior to October 30, 1989.

Dated: August 25, 1989.

Keith Takata,

Acting Director, Water Management Division.

[FR Doc. 89-21165 Filed 9-7-89; 8:45am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-828-DR]

Amendment to Notice of a Major Disaster Declaration; Texas

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas (FEMA-828-DR), dated May 19, 1989, and related determinations.

DATED: August 31, 1989.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: The notice of a major disaster for the State of Texas, dated May 19, 1989, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 19, 1989: Donley County for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Robert G. Chappell,

Acting Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 89-21171 Filed 9-7-89; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1000 L Street, NW., Room 10220. 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 § 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.: 224-200059-001

Title: Port of Oakland Terminal Use Agreement

Parties: Port of Oakland (Port), Canadian Transport Company, Ltd. (CTC)

Synopsis: The Agreement amends the basic agreement (Agreement No. 224-200059) whereby the Port assigns certain facilities in the Port's Charles P. Howard Terminal to CTC. It acknowledges that the occasional discharge of Star Shipping A/S (Star) container cargo at the therein assigned premises, pursuant to Agreement No. 224-200261 between the Port and Star, will not be included in Agreement No. 224-200059 with respect to provisions covering payment of modified tariff rates. It also provides that CTC's vessels loading or discharging Star's containers at Star's assigned premises at the Port's Seventh Street Marine Terminal shall be subject to the modified dockage rates set forth in Agreement No. 224-200059.

Agreement No.: 224-2000117-002

Title: Port Authority of New York and New Jersey Terminal Agreement

Parties: Port Authority of New York and New Jersey Atlantic Container Line BV (ACL)

Synopsis: The Agreement provides for certain adjustments to the lease language relating to terminal improvements to be performed by ACL.

By Order of the Federal Maritime Commission.

Dated: September 5, 1989.

[FR Doc. 89-21120 Filed 9-7-89; 8:45 am]

BILLING CODE 6730-01-M

Issuance of Certificate (Casualty); Trans World Cruises, Inc.

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of Section 2, Public Law 89-777 (80 Stat. 1356, 1357) and Federal Maritime Commission General Order 20, as amended (46 CFR 540):

Trans World Cruises, Inc./Arcalia Shipping Company, c/o Freehill, Hogan & Mahar, 80 Pine Street, New York, New York 10005-1759.

Vessel: VASCO DA GAMA.

Dated: September 1, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89-21099 Filed 9-7-89; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies; Albert P. Qualls, Jr. et al.

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 22, 1989.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Albert P. Qualls, Jr.*, Fort Walton Beach, Florida; to acquire 68.05 percent of the voting shares of American National Financial Corporation, Panama City, Florida, for a total of 76.39 percent, and thereby indirectly acquire American National Bank, Panama City, Florida.

2. *James E. Dutmers, Jr.*, Traverse City, Michigan; to acquire 12.29 percent of the voting shares of Empire Banc Corporation, Traverse City, Michigan, and thereby indirectly acquire Empire National Bank of Traverse City, Traverse City, Michigan.

B. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Dominic P. Riggio and Ninfa Riggio*, Du Quoin, Illinois; to acquire an additional 2.52 percent of the voting shares of Du Quoin Bancorp, Inc., Du Quoin, Illinois, and thereby indirectly acquire Du Quoin National Bank, Du Quoin, Illinois.

Board of Governors of the Federal Reserve System, September 1, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-21123 Filed 9-7-89; 8:45 am]

BILLING CODE 6210-01-M

United Bank Corporation of New York, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 27, 1989.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *United Bank Corporation of New York*, Downsville, New York: to acquire 100 percent of the voting shares of The First National Bank of Lisbon, Lisbon, New York.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Chicago Corporation*, Chicago, Illinois, and American National Corporation, Chicago, Illinois; to acquire 100 percent of the voting shares of Citizens Holding Corporation, Genoa City, Wisconsin, and thereby indirectly acquire Citizens State Bank, Genoa City, Wisconsin.

C. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *First Bank Corp.*, Fort Smith, Arkansas; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of Fort Smith, Fort Smith, Arkansas.

D. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Parkway Financial, Inc.*, Overland Park, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of Parkway Bank, in organization, Overland Park, Kansas.

E. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Tomball Capital Corporation*, Wilmington, Delaware; to become a bank holding company by acquiring 100 percent of the voting shares of Tomball National Bank, Tomball, Texas.

2. *Tomball National Bancshares, Inc.*, Tomball, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Tomball National Bank, Tomball, Texas.

Board of Governors of the Federal Reserve System, September 1, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-21124 Filed 9-7-89; 8:45 am]

BILLING CODE 6210-01-M

Salin Banchsares of North Central Indiana, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 27, 1989.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Salin Bancshares of North Central Indiana, Inc.*, Indianapolis, Indiana; to acquire Skyline Village, an Indiana Limited Partnership, Corunna, Indiana, and thereby engage in promoting community welfare by the construction and operation of low income housing in Markle, Indiana, pursuant to section 225.25(b)(6) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 1, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-21125 Filed 9-7-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Family Support Administration

Forms submitted to the Office of Management and Budget for Clearance:

The Family Support Administration (FSA) will publish on Fridays information collection packages submitted to the Office of Management and Budget (OMB) for clearance, in compliance with the Paperwork Reduction Act (44 U.S.C., Chapter 35). Since the last scheduled publication for August 25, 1989, the following package was submitted to OMB:

(For a copy of the package below, call the FSA Reports Clearance Officer on 202 252-5598.)

(0970-0018) Quarterly Work Incentive Demonstration Program Report. The information prescribed in the information collection requirements is used by the Secretary, Department of Health and Human Services to compare the effectiveness of the WIN demonstrations to the former WIN programs in the 24 states that elected to participate in this option. This collection is a renewal.

Number of Respondents: 24, *Frequency of Response:* 4, *Total Annual Responses:* 96, *Average per Response:* 15 hours, *Estimated Annual Burden:* 1440 hours.

OMB Desk Clearance Officer: Justin Kopca.

Written comments and recommendations for the proposed information collections should be sent directly to the OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3201, 725 17th Street, NW., Washington, DC 20503.

Dated: August 28, 1989.

Sylvia E. Vela,

Acting Associate Administrator, Office of Management and Information Systems, FSA.

[FR Doc. 89-20918 Filed 9-7-89; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

[Docket No. 89N-0330]

Levamisole Hydrochloride for Use in Goats; Data; Availability

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of safety, effectiveness, and

environmental data to be used in support of a new animal drug application (NADA) or supplemental NADA for the use of levamisole hydrochloride in goats. The data, contained in Public Master File (PMF) 5117, were compiled under Interregional Research Project No. 4 (IR-4), a national agricultural program for obtaining clearances for use of agricultural products for minor or special uses.

ADDRESSES: Submit NADA's to Document Control Section (HFV-16), Center for Veterinary Medicine, Food and Drug Administration, Rm. 6B-45, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Dianne T. McRae, Center for Veterinary Medicine (HFV-135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4913.

SUPPLEMENTARY INFORMATION: Levamisole hydrochloride drench for use in goats is a new animal drug use under section 201(w) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(w)). As a new animal drug, levamisole hydrochloride is subject to section 512 of the act (21 U.S.C. 360b) requiring that its uses in goats be subject to an approved NADA or supplemental NADA. Goats are a minor species under 21 CFR 514.1(d). The IR-4 Project, Northeastern Region, New York State College of Veterinary Medicine, Cornell University, Ithaca, NY 14853-6401, has provided data and information to demonstrate safety and effectiveness to the target animal for use of levamisole hydrochloride drench in goats for treatment and control of stomach worms (*Haemonchus contortus* and *Trichostrongylus axei*) and intestinal worms (*T. colubriformis*). The PMF contains data from one adequate and well-controlled effectiveness study in goats and tissue residue data from a study in goats. IR-4 has also provided an environmental assessment of the proposed use.

The data and information are contained in PMF 5117. Sponsors of NADA's or supplemental NADA's may reference without further authorization the PMF to support approval of an application filed under 21 CFR 514.1(d). An NADA or supplemental NADA should include, in addition to a reference to the PMF, drug labeling and other information needed for approval, such as data concerning human food safety; data supporting extrapolation from major species to fulfill effectiveness requirements; manufacturing methods; facilities and controls; and information addressing the potential environmental impacts of the manufacturing process. Persons desiring more information concerning the PMF or requirements for approval of an NADA may contact Dianne T. McRae (address above).

In accordance with the freedom of information provisions of Part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information in this PMF submitted to support approval of an application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

Dated: August 31, 1989.

Richard H. Teske,

Deputy Director, Center for Veterinary Medicine.

[FR Doc. 89-21069 Filed 9-7-89; 8:45 am]

BILLING CODE 4160-01-M

Temporary Deferment of Activities Relating to Medical Device Submissions

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the Office of Device Evaluation (ODE), Center for Devices and Radiological Health (CDRH) has completed the move from its former Silver Spring, MD location to Rockville, MD. FDA is announcing that during the period required for the move, June 26, 1989, through July 13, 1989 (18 calendar days), the agency, while continuing to accept mail, did not officially receive premarket notifications, premarket approval applications, or investigational device exemption applications, and did not continue its review of such pending submissions. The statutory review periods on pending submissions were suspended during this 18-day period needed for the relocation of ODE. The new address for submissions to ODE is set forth below.

ADDRESS: The new address for submissions to ODE is: Center for Devices and Radiological Health, Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850-4302.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4874.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 16, 1989 (54 FR 25705), FDA announced its intention to defer activities related to certain medical device submissions for about 10 days during ODE's move from Silver Spring, MD to Rockville, MD. FDA also announced that it would provide information on the exact period during which the activities were temporarily deferred, and provide the new address for submissions. The agency deferred its actions on new and existing submissions (as listed in the June notice) during the period June 26, 1989, through July 13, 1989 (18 calendar days). The new address for device submissions is provided above under the heading "**ADDRESSES**".

Dated: September 1, 1989.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-21131 Filed 9-7-89; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 89D-0342]

Diagnostic Ultrasound Medical Devices; Fetal Doppler Ultrasound; Availability

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the Fetal Doppler Ultrasound Draft Guide and the summary minutes of two Obstetrics-Gynecology Devices Panel (the Panel) meetings at which the guide was discussed.

DATES: Comments by November 7, 1989.

ADDRESSES: Submit written requests for single copies of the guide and the summary minutes of the Panel meetings to the Division of Small Manufacturers Assistance, Center for Devices and Radiological Health (HFZ-220), 5600 Fishers Lane, Rockville, MD 20857. Send two self-addressed adhesive labels to assist that office in processing your requests. Submit written comments on the guide and the summary minutes of the Panel meetings to the Dockets Management Branch (HFA-305), Food and Drug Administration, Room 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 guide and summary minutes of the Panel meetings and received comments 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: Lillian Yin, Center for Devices and

Radiological Health (HFZ-470), Food and Drug Administration, 1390 Piccard Drive, Rockville, MD 20850, (301) 427-1180.

SUPPLEMENTARY INFORMATION: For almost 10 years, clinical investigators have been studying various ways of using diagnostic Doppler ultrasound instrumentation to evaluate the developing fetus. During this period, FDA considered such devices to be investigational and issued a letter to this effect on March 7, 1986. Because of its concern about the use of high output Doppler ultrasound transducers for fetal applications, FDA issued a January 30, 1987, letter to the industry containing guidance about transducer labeling. Although FDA withdrew its guidance (October 30, 1987) in the face of strong opposition to such labeling, it continued to seek regulatory means of ensuring that Doppler ultrasound devices, with their potential for higher energy delivered to the fetus, would be used as safely as possible. Over the past 3 years, FDA has been working with the diagnostic ultrasound industry, the relevant medical communities, and academia to develop a regulatory policy to allow commercial marketing of fetal Doppler ultrasound instrumentation that is safe and effective.

On June 3 and 4, 1988, FDA participated in a workshop cosponsored by the American Institute of Ultrasound in Medicine (AIUM) and the National Electrical Manufacturers Association (NEMA) to address the educational needs associated with fetal Doppler ultrasound. Following that, FDA convened the Panel on August 29, 1988, to identify obstetric applications of Doppler ultrasound with proven effectiveness and the information needed to demonstrate the effectiveness of a given instrument. After reviewing and discussing the clinical studies described in the published literature (as well as the AIUM draft statement on ultrasound bioeffects), the Panel concluded that fetal Doppler ultrasound could be indicated for two instances: (1) Detection of fetal cardiac structural anomalies and (2) detection of intrauterine growth retardation. The Panel emphasized that, for both endorsed indications, the instrumentation must be used adjunctively together with other diagnostic techniques and only for high risk pregnancies. The Panel also noted the significant importance of adequate clinical training.

Following the August meeting, FDA drafted a guide outlining the information needed on a given instrument for each of the two designated indications for use, together with rationale to employ 510(k) premarket notification as the regulatory pathway for placing such devices on the market. In particular, FDA proposed to allow manufacturers to introduce instrumentation with specialized user-system feedback features that would enhance user awareness of acoustic output. FDA also outlined the types of preclinical and clinical testing that would need to be conducted. After collaborative sessions with AIUM and NEMA, FDA presented these proposals to the Panel on January 19, 1989, in an open public forum, for comment and deliberation. The Panel unanimously agreed with FDA's proposals, but emphasized its concern that fetal Doppler ultrasound for low risk (assymptomatic) populations remains investigational subject to premarket approval provisions.

FDA now seeks to make the above information available for comment to a wider audience by publishing this notice of availability of the draft guide and summary minutes of the Panel meetings where the development of these policies was discussed in detail.

Dated: September 1, 1989.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-21199 Filed 9-7-89; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Final Funding Categories, Final Review Criteria and Funding Preference for Training Grants for Acquired Immunodeficiency Syndrome (AIDS) Regional Education and Training Centers Program

The Health Resources and Services Administration announces the final funding categories, review criteria and funding preference which will be used in making grant awards for the (AIDS) Regional Education and Training Centers Program (ETCs) for Fiscal Year 1989, as authorized by Section 301 of the Public Health Service Act, as amended.

The (AIDS) Regional Education Training Centers will provide training for health care personnel in the care of people with Acquired Immunodeficiency Syndrome AIDS and other conditions related to infection with the Human Immunodeficiency Virus (HIV). The goal of the training is to prepare community primary care providers, including health care workers in Federal health facilities, health professional trainees, and faculty, to be able to counsel, diagnose, and manage such patients and to prepare selected trainees to act as instructors in their local areas. The centers will operate in collaboration with health professions schools, community hospitals, health departments, and other organizations involved in the provision of care to people with HIV related conditions.

Program Objectives

The purpose of the training grant program is to support the development of AIDS Regional Education and Training Centers (ETCs) for the health provider community. The program objectives for each center are to: (1) Provide multidisciplinary education and training to primary care providers, health professional trainees, and faculty on prevention and treatment of HIV infection and its implications, with particular emphasis on ambulatory care settings; (2) provide guidance in the development of a multidisciplinary approach to the management of HIV infection; (3) select and provide additional training to certain participants to qualify them for extending the training to others in their community; (4) develop multidisciplinary curricula for care of the HIV infected, including culturally relevant materials; (5) provide updates of new and timely information about HIV infection to primary and secondary health care providers; (6) serve as the support system for area health professionals through regional hotlines, clearinghouses, and referral activities, and (7) provide information on the availability of clinical trial opportunities in order to assist patients to gain access to such trials.

All public and nonprofit private entities are eligible to apply for new grants. Eligible entities may include, but are not limited to, schools in academic health science centers; professional associations; consortia of health care and community organizations, e.g., Area Health Education Centers (AHECS); public or nonprofit private hospitals; and health departments which could develop AIDS education and training programs for health care providers.

Proposed funding categories, review criteria and a proposed funding preference were published in the **Federal Register** of June 22, 1989, (54 FR 26256), for public comment. No comments were received during the 30-day comment period.

Therefore, the funding categories, review criteria and funding preference as proposed will be retained as follows:

Final Funding Categories

Funds have been appropriated for these purposes by Pub. L. 100–436. Approximately $3.3 million is available in Fiscal Year (FY) 1989 for competitive grants.

1. Applications (new or supplemental) will be accepted for the expansion of existing ETCs and/or the development of additional ETCs. For the purpose of this announcement, high incidence is defined as more than 400 new AIDS cases from February 6, 1988 to February 6, 1989 as indicated in the Centers for Disease Control *AIDS Weekly Surveillance Report* dated February 6, 1989. Approximately $1.1 million is available for this purpose to support an estimated 2 new ETC centers.

2. Supplemental applications from established ETCs will be accepted to enhance efforts to train workers in federally funded comprehensive health care services projects and develop and introduce AIDS curricula in health professions schools. Approximately $2.0 million will be awarded for these activities ($1.3 million for training and $700,000 for curriculum development). These funds are being made available only to existing ETCs because their expertise and community experience make it more efficient for prompt initiation of both of these activities. In addition, providing supplemental funding for the ETCs ongoing activities is the most expedient and cost effective mechanism to achieve the maximum results with the funds available.

3. Supplemental applications from established ETCs will be accepted to conduct specialized training of health professionals regarding alcohol and other drug abuse, with an emphasis on the effects of alcohol and other drug abuse on the prevention and management of the HIV epidemic. In the conduct of this training, the provider should utilize previously developed health professions training materials dealing with the abuse of alcohol and other drugs and HIV infection. Approximately $275,000 is available for this effort which is to provide funding for 2–3 substantive, coordinated activities. Funds for this effort are made available only to the existing ETCs because of their experience in training primary care providers in the management of HIV patients. They have an established training process which can quickly reach primary care health professionals. In addition, utilization of existing ETCs for this purpose avoids needless and inefficient duplication of effort.

Final Review Criteria

Applications for new training grants will be reviewed and rated according to the applicant's ability to meet the following review criteria:

1. The degree to which the project plan adequately provides for meeting the project specifications;

2. The potential effectiveness of the project in carrying out the purposes of the grant program;

3. The capability of the applicant to conduct the proposed activities in a cost efficient manner;

4. The soundness of the fiscal plan for assuring effective utilization of grant funds; and

5. The potential of the project to continue on a self-sustaining basis after the period of grant support.

Final Funding Preference

A funding preference will be accorded an applicant proposing a center in a State where no federally funded ETC program office exists.

This program is listed at 13.145 in the *Federal Catalog of Domestic Assistance* and is not subject to the provisions of Executive Order 12372, Intergovernmental review of Federal Programs (as implemented through 45 CFR Part 100).

Dated: September 1, 1989.

John H. Kelso,

Acting Administrator.

[FR Doc. 89–21129 Filed 9–7–89; 8:45am]

BILLING CODE 4160–15–M

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following requests have been submitted to OMB since the list was last published on Friday, August 25, 1989.

(Call PHS Reports Clearance Officer on 202–245–2100 for copies of package)

1. 1990 Client Sample Survey of Outpatient Programs—NEW—This voluntary data collection will provide the National Institute of Mental Health, the States, and the mental health field with statistics on the sociodemographic, clinical, and service characteristics of clients in outpatient programs of specialty mental health organizations. A scientific sample will be selected of the client admissions and clients under care in these programs. *Respondents:* State or local governments, businesses or other for-profit, Federal agencies or employees, non-profit institutions, small businesses or organizations; *Number of Respondents:* 730; *Number of Responses per Respondent:* 2.5; *Average Burden per Response:* 7.6153 hours; *Estimated Annual Burden:* 13,898 hours.

2. Alcoholism/Substance Abuse and Mental Health Tribal Provider Checklist—NEW—The Alcoholism/Substance Abuse and Mental Health Services program checklists will collect information from Tribal program staff under contract to the Indian Health Service (IHS), on the interaction between these two groups of health care workers in serving clients. Information collected will be used to plan joint training programs. The same information will be obtained concurrently from IHS employees who are counselors in these IHS programs. *Respondents:* Individuals; *Number of Respondents:* 590; *Number of Responses per Respondent:* 1; *Average Burden per Response:* 0.33 hours; *Estimated Annual Burden:* 195 hours.

3. *Hearing Aid Devices:* Professional and Patient Labeling and Conditions for Sale (21 CFR 801.420 and 801.421)—0910–0171—The regulation requires that data useful in selecting, fitting and checking the performance of a hearing aid will be provided in a user brochure. Data is used by the physicians, audiologists, and dispensers to evaluate the appropriateness of a hearing aid for the user. Respondents: Businesses or other for-profit, small businesses or organizations.

	No. of respondents	No. of hours per response	No. of responses per respondent
Reporting	83	25	1
Recordkeeping	12,000	3	1
Estimated annual burden	38,0735		

4. National Surveillance of Dialysis-Associated Hepatitis—0920–0033—This annual survey of hemodialysis facilities is conducted to determine the incidence and trend of hemodialysis-associated diseases so that appropriate control measures can be devised. *Respondents:* Businesses or other for-profit; *Number of Respondents:* 1,800; *Number of Responses per Respondent:* 1; *Average Burden per Response:* .583 hours; *Estimated Annual Burden:* 1,050 hours.

5. *Export of Medical Devices:* Foreign Letters of Approval—NEW—U.S. Manufacturers wishing to export medical devices to a foreign country must obtain a letter of approval from the government of the receiving country for any device not approved for sale in the U.S. Review of the letter by Food and Drug Administration staff assures that the foreign government has no objection. *Respondents:* Businesses or other for-profit; small businesses or organizations; *Number of Respondents:* 400; *Number of Responses per Respondent:* 1; *Average Burden per Response:* 2.5 hours; *Estimated Annual Burden:* 1,000 hours.

6. Piedmont Health Survey of the Elderly—0925-0267—This is a request for approval of the third telephone interview with study participants. This prospective epidemiologic study is comparing and contrasting the influence of physiological, behavioral, social and environmental forces on mortality, morbidity and health services utilization of the elderly in five North Carolina counties. *Respondents:* Individuals or households; *Number of Respondents:* 2,441; *Number of Responses per Respondent:* 1; *Average Burden per Response:* 193 hours; *Estimated Annual Burden:* 471 hours.

7. Bureau Common Reporting Requirements (BCRR)—0915-0004—BCRR forms are used to collect performance information from health centers receiving grant or personnel support from the community health center, migrant health, national health service corps or Title X family planning programs to assure that resources are being used effectively in providing health care to underserved populations. *Respondents:* Non-profit institutions; *Number of Respondents:* 900; *Number of Responses per Respondent:* 2; *Average Burden per Response:* 23 hours; *Estimated Annual Burden:* 4,190 hours.

OMB Desk Officer: Shannah Koss-McCallum.

Written comments and recommendations for the proposed information collections should be sent directly to the OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

Dated: September 1, 1989.

James M. Friedman,

Acting Deputy Assistant Secretary for Health (Planning and Evaluation).

[FR Doc. 89-21074 Filed 9-7-89; 8:45 am]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N-89-1917; FR-2606]

Underutilized and Unutilized Federal Buildings and Real Property Determined by HUD To Be Suitable for Use for Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized and underutilized Federal property determined by HUD to be suitable for possible use for facilities to assist the homeless.

EFFECTIVE DATE: September 8, 1989.

ADDRESS: For further information, contact Morris Bourne, Director, Transitional Housing Development Staff, Room 9140, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 755-9075; TDD number for the hearing- and speech-impaired (202) 426-0015. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans' Administration*, No. 88-2503-OG (D.D.C.), HUD is publishing this Notice to identify Federal buildings and real property that HUD has determined are suitable for use for facilities to assist the homeless. The properties were identified from information provided to HUD by Federal landlording agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or suplus Federal property.

The Order requires HUD to take certain steps to implement section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), which sets out a process by which unutilized or underutilized Federal properties may be made available to the homeless. Under section 501(a), HUD is to collect information from Federal landholding agencies about such properties and then to determine, under criteria developed in consultation with the Department of Health and Human Services (HHS) and the Administrator of General Services (GSA), which of those properties are suitable for facilities to assist the homeless. The Order requires HUD to publish, on a weekly basis, a Notice in the **Federal Register** identifying the properties determined as suitable.

The properties identified in this Notice may ultimately be available for use by the homeless, but they are first subject to review by the landholding agencies pursuant to the court's Memorandum of December 14, 1988 and section 501(b) of the McKinney Act. Section 501(b) requires HUD to notify each Federal agency with respect to any property of such agency that has been identified as suitable. Within 30 days from receipt of such notice from HUD, the agency must transmit to HUD: (1) Its intention to declare the property excess to the agency's need or to make the property available on an interim basis for use as facilities to assist the homeless; or (2) a statement of the reasons that the property cannot be declared excess or made available on an interim basis for use as facilities to assist the homeless.

First, if the landholding agency decides that the property cannot be declared excess or made available to the homeless for use on an interim basis the property will no longer be available.

Second, if the landholding agency declares the property excess to the agency's need, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law and the December 12, 1988 Order and December 14, 1988 Memorandum, subject to screening for other Federal use.

Finally, in lieu of declaring any particular property as excess, the landholding agency may decide to make the property available to the homeless for use on an interim basis.

Homeless assistance providers interested in any property identified as suitable in this Notice should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, Room 17A-10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443-2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit such written expressions of interest within 30 days from the date of this Notice. For complete details concerning the timing and processing of applications, the reader is encouraged to refer to HUD's **Federal Register** Notice on June 23, 1989

(54 FR 26421), as corrected on July 3, 1989 (54 FR 27975).

For more informaiton regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: U.S. Army: (Military Facilities) HQ–DA, Attn: DAEN–ZCI–P–Robert Conte; Room 1E671 Pentagon, Washington, DC 20360–2600 (202) 693–4583; (Corps of Engineers civil works projects) Bob Swieconek, HQ–US Army Corps of Engineers, Attn: Cere–MN, 20 Massachusetts Avenue NW., Washington, DC 20415–1000 (202) 272–1750; GSA: James Folliard, Federal Property Resources Services, GSA, 18th and F Streets NW, Washington, DC 20405 (202) 535–7067; U.S. Navy: Andrea Wohfeld, Code 20 YAW, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332 (202) 325–7342. (These are not toll-free numbers.)

Dated: August 31, 1989.

James E. Schoenberger,

General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

Suitable Land—By State

Number of properties ()

Alabama

Fort Rucker (1),
Cairns Army Airfield,
Fort Rucker, AL.
Agency: Army.
Location: Property 63002T.

Comment: 720 sf trailer in restricted area; poor condition.

Kansas

Portion, Kanopolis Lake (1),
Elsworth County, KS.
Agency: GSA.
Location: Property 7–D–KS–499–C.

Comment: Parcel is 10.6 acres. Between ⅓ and ½ is suitable.

Suitable Buildings

Alabama

Fort Rucker (1),
Lowe Army Heliport,
Fort Rucker, AL.
Agency: Army.
Location: Property S4005T.

Comment: 800 sf trailer in partially restricted area; poor condition.

Arizona

Building KI–2000, Health Clinic (1),
Navaho Reservation,
Kaibeto, AZ.
Agency: GSA.

Comment: Use restricted to Navaho Indians (to be transferred to the Dept. of Interior).

Public Health Service Indian Hospital (1),
Fort Apache Reservation,
Whiteriver, AZ.
Agency: GSA.

Comment: 7 metal trailers on reservation; restricted to use of Indian tribe.

Georgia

Fort Benning Military Reservation (13),
Fort Benning, GA.
Agency: Army.
Location: Property 5267, 5268, 5269, 5270, 5271, 5272, 5273, 5274, 5275, 5276, 5277, 5278, 5279.

Comment: 13 trainee barracks, 4248 sf each; poor condition; no public transportation.

Fort Benning Military Reservation (1),
Fort Benning, GA.
Agency: Army.
Location: Property 5266.

Comment: Detachment dayroom, 1400 sf; no public transportation.

Fort Benning Military Reservation (1),
Fort Benning, GA.
Agency: Army.
Location: Property 278.

Comment: Very small storage building, 376 sf.

Fort Benning Military Reservation (1),
Fort Benning, GA.
Agency: Army.
Location: Property 275.

Comment: Large storehouse, 4055 st.

Fort Benning Military Reservation (1),
Fort Benning, GA.
Agency: Army.
Location: Property 276.

Comment: Small storage building, 438 sf.

Fort Benning Military Reservation (1),
Fort Benning, GA.
Agency: Army.
Location: Property 4954.

Comment: Custody facility, 3776 sf; estimated cost to modify for occupancy: $70,000.

Fort Benning Military Reservation (1),
Fort Benning, GA.
Agency: Army.
Location: Property 4092.

Comment: Small storage building, 336 sf.

Nebraska

VA Medical Center (20),
600 South 70th Street,
Lincoln, NE.
Agency: GSA.
Location: Building 20; 3420 sf.

Comment: Building interior has been severely vandalized. Eligible as historic site.

New York

Stewart Army Subpost (1), 1210 Brenning Road, New Windsor, NY. Agency: Army. Location: Property 1942.

Comment: One building, 25,690 sf.

Unsuitable land

California

Waterline—Keswick Dam Road (1), Redding, CA. Agency: GSA. Location: Property 9–B–CA–1302.

Comment: Property is a waterpipe; government does not own land.

New York

Naval Reserve Center (4), 112 House Avenue, Freeport NY. Agency: Navy. Location: Property 42, 718 SF; 40, 990 SF.

Comment: Contamination; partially buried oil tanks; all buildings contain extensive friable asbestos.

Unsuitable Buildings

Hawaii

Portion, South Point Air Force Station (6), Naalehu, HA. Agency: GSA. Location: Approximately 70 miles SW of Hilo and 85 miles SE of Kona.

Comment: Abandoned fuel tank which may be leaking; exposed friable asbestos.

Idaho

Sawtooth National Recreation Area (14), Ketchum, ID. Agency: GSA. Location: Property 9–A–ID–506D.

Comment: Remote area; no existing means to provide power water, sewage, heating systems.

North Carolina

Building 1–3358 (1), Fort Bragg, NC. Agency: Army.

Comment: Building unsafe due to termite infestation.

New York

Naval Reserve Center (4), 112 House Avenue, Freeport, NY. Agency: Navy. Location: 42, 718sf; 40, 990sf.

Comment: Contamination; within 2000 ft from flammable or explosive material; partially buried tank; all buildings contain extensive friable asbestos.

Utah

Tooele Army Depot (262), Tooele, UT. Agency: Army. Location: Various buildings.

Comment: Secured facility with no alternative public access.

Tooele Army Depot, North Area (3), Tooele, UT. Agency: Army. Location: Property 130, 105, 132.

Comment: Friable asbestos.

Virginia

Fort Lee (2), Shop Road, Fort Lee, VA. Agency: Army. Location: Property 6005, 6011.

Comment: Very serious deterioration of roof and floors; buildings must be removed from site.

Fort Lee (3), Byrd Avenue, Fort Lee, VA. Agency: Army. Location: Property 4100, 4101, 4103.

Comment: Serious deterioration of roof and floors; major cannibalization of useful parts.

West Virginia

Former Naval & Marine Reserve Center (1), 13th and Ohio River, Wheeling, WV. Agency: Navy.

Comment: Building only, land leased from city; serious friable asbestos.

[FR Doc. 89-21203 Filed 9-7-89; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Application for Permit

The public is invited to comment on the following application for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR part 18).

Applicant: U.S. Fish and Wildlife Service, File No. PRT 690038, Alaska Office of Fish and Wildlife Research, 1011 E. Tudor Road, Anchorage, Alaska 99503

Type of Permit: Scientific Research

Name and number of Animals: Polar bear (*Ursus maritimus*); up to 200 per year

Summary of Activity to be Authorized: The applicant proposes to amend his current marine mammal permit PRT 690038 to include testing of the Bio-Electrical Impedance (BIA) as a means of measuring the fat and fat-free body mass of polar bears that are already authorized to be taken under the permit

Source of Marine Mammals for Display: Alaska

Period of Activity: Through 1990

Concurrent with the publication of this notice in the **Federal Register**, the Office of Management Authority is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Written data or comments, requests for copies of the complete application, or requests for a public hearing on this application should be submitted to the Director, Office of Management Authority (OMA), P.O. Box 3507, Washington, DC 22203-3507, within 30 days of the publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such hearing is at the discretion of the Director.

Documents submitted in connections with the above application(s) are available for review during normal business hours (7:45 am to 4:15 pm) at 4401 Fairfax Drive, Room 430, Washington, DC.

Dated: September 1, 1989.

R.K. Robinson,

Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 89-21070 Filed 9-7-89; 8:45 am]

BILLING CODE: 4310-55-M

Bureau of Land Management

[MT-060-09-4410-12]

Closure of Public Lands; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Emergency area closure of public land.

SUMMARY: Notice is hereby given that effective immediately all public lands in the Sweet Grass Hills, northwest of Chester, Montana are closed to all motorized vehicle uses, except those authorized by a permit. The closed lands are described as follows:

West Butte of the Sweet Grass Hills.

T. 37., R. 1 E., PMM.
- Section 13: Lots 4, 5 SE¼SW¼, SW¼SE¼
- Section 14: Lots 4, 5 W½NE¼, E½SE¼, Sw¼SW¼
- Section 15: SE¼SE¼
- Section 24: Lots 1-4, W½E½, NE¼NW¼, E½NW¼, SW¼SW¼
- Section 25: Lots 1-3, 5, 6, 8-10, SW¼NE¼, S½NW¼, NE¼NW¼, NW¼SE¼
- Section 26: SE¼NE¼

T. 37 N., 2 E., PMM.
- Section 19: Lot 4
- Section 20: NW¼NE¼, NE¼NW¼
- Section 30: Lots 1-4, S½NE¼, SE¼NW¼, E½SW¼, SE¼
- Section 31: Lots 1-3, NE¼, E½NW¼, NE¼SW¼, N½SE¼

East Butte of the Sweet Grass Hills.

T. 36 N., R. 4 E., PMM.
- Section 13: NW¼NE¼, W½
- Section 24: Lots 1-4, N½NE¼, SW¼NE¼, NE¼NW¼
- Section 25: Lots 1, 2, 4, 6, E½NE¼
- Section 36: Lots 1-3, 5

T. 36 N., 5 E., PMM.
- Section 6: SE¼NE¼, E½SE¼
- Section 7: E½
- Section 8: W½SW¼
- Section 17: W½W½
- Section 18: N½NE¼
- Section 19: Lots 2-9, Patent 20510, Patent 20511, SE¼SW¼
- Section 20: Lots 1-5, Patent 20511, W½NE¼, SE¼NE¼, NW¼, NW¼SE¼
- Section 29: Lots 1-5, 8-10, SW¼NW¼, N½SW¼, SW¼SW¼
- Section 30: Lots 1-4, S½NE¼, E½W½, SE¼
- Section 31: Lot 1, E½NE¼, NW¼NE¼, NE¼NW¼
- Section 32: Lot 1-3, E½NE¼, SW¼NE¼

Middle Butte of the Sweet Grass Hills

T. 36 N., R. 3 E., PMM.
- Section 29: SW¼NE½, S½NW¼, SW¼, W½SE¼, NE¼SE¼
- Section 30: SE¼SE¼
- Section 31: NE¼NE¼
- Section 32: NE¼NE¼, N½NW¼

Authority for this closure is 43 CFR 8341.2. The closure will remain in effect until further notice.

FOR FURTHER INFORMATION CONTACT: Doug Burger, Great Falls Resource Area Manager, P.O. Box 2865, Great Falls, MT 59403.

Wayne Zinne,

District Manager.

[FR Doc. 89-21144 Filed 9-7-89; 8:45 am]

BILLING CODE 4310-DN-M

Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior, Susanville District Grazing Advisory Board, Susanville, California.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the Susanville District Grazing Advisory Board, created under the Secretary of the Interior's discretionary authority on May 14, 1986, will meet on September 28, 1989.

The September 28 meeting will begin at 10:00 a.m. at the Surprise Resource Area Office, Bureau of Land Management, 602 Cressler Street, Cedarville, California.

Subjects to be covered during the meeting will be a discussion about FY 1990 proposed range improvement projects, proposed helicopter gathering of wild horses and burros for FY 1990, a report of the progress of R.C. Roberts trailing permit, expenditure of Section 10 funds, a report on FY 1989 progress, and

a discussion of other items as appropriate.

The meeting is open to the public. Interested persons may make oral statements to the Board between 3:00 p.m. to 4:30 p.m. on September 28, 1989 or file a written statement for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 705 Hall Street, Susanville, California 96130 by September 25, 1989. Depending on the number of persons wishing to make oral statements, a per person time limit may be established.

Summary minutes of the Board meeting will be maintained in the District Office, and will be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

Herrick E. Hanks,

District Manager.

[FR Doc. 89-21167 Filed 9-7-89 8:45 am]

BILLING CODE 4310-40-M

[NM-030-09-4333-02]

Las Cruces District Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: The meeting will be held at the conference room of the A. B. Cox Visitor Center in the Organ Mountains east of Las Cruces, New Mexico. The purpose of the meeting is to elect a new Chairman, and to review general programs that are currently in progress in the Las Cruces District.

The agenda is:

1. 10:00 a.m.: Opening remarks, election of chairman
2. 10:15 a.m.: General program overview
3. 11:00 a.m.: Organ Mountains Festival review
4. 11:15 a.m.: National Conservation Area discussion
5. 11:30 a.m.: Lunch
6. 1:00 p.m.: Public Comment Period
7. 1:15 p.m.: Resource Management Plan Discussion—a. Socorro Resource Area; b. Mimbres Resource Area; c. McGregor Range
8. 2:15 p.m.: Boots and Saddles Tour Legislation
9. 2:30 p.m.: Recreation 2000
10. 3:00 p.m.: Adjourn

DATE: Meeting will be held on Wednesday, October 4, 1989.

FOR FURTHER INFORMATION CONTACT: H. James Fox, District Manager, Las Cruces District, Bureau of Land Management, 1800 Marquess, Las Cruces, NM 88005 or at (505) 525-8228.

Dated: September 1, 1989.

H. James Fox,

District Manager.

[FR Doc. 89-21145 Filed 9-7-89; 8:45 am]

BILLING CODE 4310-FB-M

[CA-010-09-4212-13, CA 25864]

Realty Action—Acquisition of Private Lands by Exchange in Mariposa County, California

AGENCY: Bureau of Land Management, Interior.

SUMMARY: The following described private lands are being considered for acquisition by the United States by way of a land exchange under sec. 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716):

Offered Private Land:

Mariposa County, California

T. 3 S., R. 18 E., MDM
Sec. 25: NE¼SE¼, E½SW¼
Sec. 35: SE¼NE¼, W½NE¼, NW¼SE¼
Sec. 36: N½NW¼
T. 4 S., R. 18 E., MDM
Sec. 2: lots 6 through 11, inclusive
Sec. 10: lots 18 and 19
Aggregating 600 acres, more or less.

The proponent is the Trust for Public Land, 116 New Montgomery Street, San Francisco, California 94105.

This notice deals exclusively with the offered private lands listed above. This is because the Federal lands were previously published for exchange to the proponent and the 45 day public comment period has been completed. The publication of this notice is for the purpose of soliciting comments on the offered private lands as listed above and does not reopen the comment period for the selected Federal lands previously published. The selected Federal lands were previously published in the **Federal Register** as follows: Vol. 54, No. 2, Jan. 4, 1989, pg. 194 (CA 23982); Vol. 54, No. 21, Feb. 2, 1989, pg., 5282 (CA 23982 amendment); Vol. 53, No. 42, March 3, 1988, pg. 6878 (CA 21707).

The purpose for acquiring the offered private land is to improve the Bureau's management capabilities on the Merced River. The United States would be acquiring river-front properties that are adjacent to several thousand acres of public land. This exchange is particularly significant because the land to be acquired by the U.S. is located on a section of the Merced River that is a designated part of the National Wild and Scenic River System. This action involves the transfer of both the surface and mineral estate for all parcels to be exchanged.

DATE: Comments concerning the offered private lands listed in this notice may be submitted to the District Manager on or before October 23, 1989. Any comments need to specify which parcel is being referred to.

ADDRESS: Comments should be sent to the District Manager, c/o the Area Manager, Folsom Resource Area, 63 Natoma Street, Folsom, California 95630.

FOR FURTHER INFORMATION CONTACT: Mike Kelley at (916) 985-4474 or at the address listed above.

Date: September 1, 1989.

D. K. Swickard,

Area Manager.

[FR Doc. 89-21146 Filed 9-7-89; 8:45 am]

BILLING CODE 4310-JB-M

Realty Action—Direct Sale of Public Lands in Lane County, Oregon

[OR-45323; OR-090-09-4212-14: GP9-325]

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action—direct sale of public lands in Lane County, Oregon.

The following land is suitable for direct sale under section 203 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713, at no less than the appraised fair market value. The land will not be offered for sale until at least 60 days after publication of this notice:

Willamette Meridian, Oregon

T. 21 S., R. 2 W.,
Sec. 7: Lot 2
Containing 0.26 acre

The above described land is hereby segregated from appropriation under the public land laws, including the mining laws, but not from sale under the above cited statute, for 270 days or until title transfer is completed or the segregation is terminated by publication in the **Federal Register**, whichever occurs first.

This land is difficult and uneconomic to manage as part of the public lands and is not suitable for management by another Federal agency. No significant resource values will be affected by this disposal. The sale is consistent with BLM's planning for the land involved and the public interest will be served by the sale.

Purchasers must be U.S. citizens, 18 years of age or older, a state or state instrumentality authorized to hold

property, or a corporation authorized to own real estate in the state in which the land is located.

The land is being offered to Donovan R. and Donna D. Holbrook using the direct sale procedures authorized under 43 CFR 2711.3-3. Direct sale is appropriate since the land has been inadvertently occupied by part of the Holbrook' house and yard for many years and direct sale will resolve the unauthorized use while preserving the Holbrook's equity in the improvements.

The terms, conditions, and reservations applicable to the sale are as follows:

1. A right-of-way for ditches and canals will be reserved to the United States under 43 U.S.C. 945.

2. All materials in the land will be reserved to the United States in accordance with section 209 of the Federal Land Policy and Management Act of 1976.

3. Patent will be issued subject to all valid existing rights and reservations of record.

4. The sale will be subject to:

a. Such rights for public road purposes as Lane County, Oregon, or its successors in interest may have pursuant to a road right-of-way R.S. 2477 (43 U.S.C. 932).

Detailed information concerning the sale, including the reservations, sale procedures and conditions, and planning and environmental documents, is available at the Eugene District Office, P.O. Box 10226, 1255 Pearl Street, Eugene, Oregon 97440.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Bureau of Land Management, at the above address. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: September 1, 1989.

Ronald L. Kaufman,

District Manager.

[FR Doc. 89-21147 Filed 9-7-89; 8:45 am]

BILLING CODE 4310-33-M

[OR-090-09-4212-13; GP3-324; OROR 45339]

Realty Action—Exchange; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action—exchange of public lands in Lane County, Oregon.

SUMMARY: The following described public land is being considered for transfer out of Federal ownership by exchange under section 206 of the Federal Land Policy and Management Act of 1986 (43 U.S.C. 1716):

Willamette Meridian, Oregon

T. 15 S., R. 6 W.
Sec. 35: NE¼NE¼
Containing 40.00 acres in Lane County.

In exchange for these lands, the United States will acquire the following described lands from Rosboro Lumber Company:

Willamette Meridian, Oregon

T. 17 S., R. 3 E.
Sec. 3: Lot 4
Sec. 9: Lot 5
Sec. 11: Lot 3
Containing 80.37 acres in Lane County.

The purpose of the exchange is to bring into public ownership three parcels of land on the McKenzie River with important public values. The public land to be exchanged in an isolated parcel without legal access. The private lands being offered have important scenic quality, recreation, wildlife habitat and timber values. These lands will be managed to preserve existing scenic qualities and, where compatible, for multiple use. The public interest will be well served by making this exchange. The final determination on disposal will await completion of an environmental assessment.

The value of the lands to be exchanged is approximately equal and adjustments in the volume of timber on the lands to be exchanged will be made in order to bring the values as close as possible upon completion of the final appraisal of the lands. Full equalization of values will be achieved by payment to the United States of funds in an amount not to exceed 25 percent of the total value of the public land to be transferred. All mineral rights are expected to be transferred with the surface with the exception of oil and gas rights on the federal tract.

The exchange will be subject to:

1. All valid existing rights, including any right-of-way, easement, permit or lease of record.

2. A reservation to the United States of a right-of-way for ditches and canals constructed by authority of the United States under the Act of August 30, 1890 (43 U.S.C. 945).

Publication of this notice in the **Federal Register** segregates the public land, described above, from apropriation under the public land laws, including the mining laws, but not from exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976. The segregative effect of this notice will terminate upon issuance of patent or in two years, whichever occurs first.

DATE: For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Eugene District Manager at the address shown below. Any objections will be reviewed by the Oregon State Director, Bureau of Land Management, who may sustain, vacate, or modify this reality action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

ADDRESSES: Detailed information concerning this exchange is available for review at the Eugene District Office, P.O. Box 10226 (1255 Pearl Street), Eugene, Oregon 97440.

FOR FURTHER INFORMATION CONTACT: Ronald Wold, Eugene District Office, at (503) 683-6403.

Date of Issue: August 30, 1989.

Ronald L. Kaufman,

District Manager.

[FR Doc. 89-21148 Filed 9-7-89; 8:45 am]

BILLING CODE 4310-33-M

[NM-040-4410-08]

Kansas Resource Management Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability: proposed issues and planning criteria.

SUMMARY: The Bureau of Land Management (BLM), Tulsa District, Oklahoma Resource Area (ORA), has completed the public scoping process for the Resource Management Plan (RMP) and Environmental Impact Statement (EIS) for BLM managed Federal lands and minerals throughout the State of Kansas. The result of this scoping effort, the Issue and Criteria document, proposes oil and gas leasing as the only issue to be addressed and analyzed within the Kansas RMP/EIS.

AVAILABILITY: The Issue and Criteria document has been sent to all persons on the Kansas RMP/EIS mailing list. Additional copies of the Issue and Criteria document are available upon request from the ORA manager at the address below.

DATE: Comments relating to the Issue and Criteria document will be accepted until November 6, 1989.

ADDRESS: Comments on the RMP issues and criteria or requests to be included on the mailing list sould be sent to: Paul W. Tanner, Area Manager, Oklahoma Resource Area, 200 NW Fifth Street, Room 548, Oklahoma City, OK 73102.

FOR FURTHER INFORMATION CONTACT: Paul W. Tanner, Area Manager, or Brian Mills, RMP Team Leader, Oklahoma Resource Area, (405) 231-5491.

SUPPLEMENTARY INFORMATION: The planning area for the Kansas RMP includes all BLM managed Federal surface and mineral estate within Kansas. The Federal mineral estate encompasses over 744,000 acres of both split estate minerals (Fed. minerals under private or State surface) and minerals under other Federal surface management agencies lands. Not included, are Federal minerals under the U.S. Forest Service managed Cimarron National Grassland. Planning on the USFS lands will be accomplished by the Pike and San Isabel National Forest.

The public has been invited to participate in this land use planning effort, beginning with the identification of issues and planning criteria. BLM held a series of public scoping meetings at which time oral comments and suggestions were accepted.

Public notice for coal and other resource information and indications of interest and needs pursuant to 43 CFR 3420.1-2, for inclusion in the Kansas RMP, was solicited through both the **Federal Register** and News Releases. Coal companies, state and local governments, and the general public were encouraged to submit information to the BLM to assist in the determinations of coal development potential and possible conflicts with other resources.

The lack of interest in developing the Federal coal resource has resulted in the elimination of coal considerations as a potential planning issue. The issue to be addressed by the Kansas RMP will be Federal Oil and Gas Leasing and Development. This issue will include:

1. Determining which areas will be open for leasing and development subject to standard lease terms and conditions.

2. Determining which areas will be open for leasing and development subject to minor constraints such as seasonal restrictions, (wildlife, recreation, etc.).

3. Determining which areas will be open for leasing and development subject to major constraints such as No-Surface Occupancy (NSO) stipulations on areas larger than 40 acres in size or more than ¼ mile in width.

4. Determining which areas will be closed to leasing.

5. Determining which of the previous listed categories existing leases will be subject to upon lease termination.

The proposed planning criteria includes:

1. All proposed actions must comply with laws, executive orders and regulations.

2. For each proposed action, the resource outputs must be reasonable and achievable with available technology.

3. All proposed actions must recommend resource allocations which are in accordance with the principles of multiple-use and sustained yield.

4. All proposed actions must evaluate and consider long term benefits to the public in relation to short term benefits.

5. All proposed actions must provide for the orderly development of leasable minerals while containing environmental impacts to a minimum.

The planning issue and proposed planning criteria are presented for public comment and are subject to change based upon such public comment.

Comments should be received by November 6, 1989. The planning team will seek public involvement throughout the planning process.

Complete records of all phases of the planning process will be available for public review at the Oklahoma Resource Area Office at the address above. Draft and final RMP/EIS documents will be available upon request.

Dated: August 31, 1989.

Larry L. Woodard,

State Director.

[FR Doc. 89-21126 Filed 9-7-89; 8:45 am]

BILLING CODE 4310-FB-M

[ID-943-09-4214-11; IDI-05384]

Proposed Continuation of Withdrawal; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Forest Service, Department of Agriculture, proposes that a 149.15 acre withdrawal for eight recreation and two administrative sites continue for an additional 30 years. The land is being used for recreation and administrative site purposes. These lands will remain closed to surface entry and mining, but have been and would remain open to mineral leasing.

EFFECTIVE DATE: Comments should be received, on or before September 7, 1989.

FOR FURTHER INFORMATION CONTACT: Larry R. Lievsay, Idaho State Office, BLM, 3380 Americana Terrace, Boise, Idaho 83706, 208-344-1735.

The U.S. Forest Service proposes that the existing land withdrawal made by Public Land Order No. 1376 be continued for a period of 30 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, insofar as it affects the following described land:

Boise Meridian

Phillips Creek Recreation Area
T. 15 N. R. 14 E. (unsurveyed)
Sec. 27, metes and bounds description within SE¼SW¼.
Josephus Lake Recreation Area
T. 14 N., R. 11 E. (unsurveyed)
Sec. 17, metes and bounds description within N½N½NE¼SE¼ and S½S½SE¼NE¼.
Seafoam Administrative Site
T. 14 N., R. 11 E. (unsurveyed)
Sec. 13, metes and bounds description within SW¼SW¼;
Sec. 14, metes and bounds description within N½NW¼.
Wildhorse Recreation Area
T. 6 N., R. 20 E. (unsurveyed)
Sec. 29, metes and bounds description within NE¼.
Flat Rock Recreation Site
T. 11 N., R. 15 E. (unsurveyed)
Sec. 8, metes and bounds description within SE¼SE¼.
Blind Creek Recreation Site
T. 11 N., R. 15 E. (unsurveyed)
Sec. 17, metes and bounds description within NW¼SW¼.
Beaver Creek Recreation Area
T. 13 N., R. 11 E. (unsurveyed)
Sec. 35, metes and bounds description within S½.
Mill Creek Recreation Site
T. 13 N., R. 17 E. (unsurveyed)
Sec. 10, metes and bounds description within NE¼NE¼.
Indian Springs Administrative Site
T. 15 N., R. 13 E.
Sec. 2, metes and bounds description within NW¼NE¼.

The areas described aggregate 149.15 acres in Custerand Lemhi Counties.

The withdrawal is essential for protection of substantial capital improvements on the recreation and administrative sites. The withdrawal closed the described land to surface entry and mining but not to mineral leasing.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Idaho State Director at the above address.

The authorized officer of the Bureau of Land Management will undertake

such investigations as necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued; and if so, for how long. The final determination of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Dated: August 30, 1989.

William E. Ireland,

Chief, Realty Operations Section.

[FR Doc. 89-21149 Filed 9-7-89; 8:45 am]

BILLING CODE 4310-GG-M

[AZ-050-06-4333-11]

Arizona: Long-Term Visitor Permit Program for 1989-1990 and Subsequent Use Seasons; Revision to Existing Supplementary Rules; Yuma District, Arizona, and California Desert District, California

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Changes to the Long-Term Visitor Permit Program for the 1989-1990 and subsequent use seasons, and revisions to and establishment of supplementary rules in the Yuma District, Arizona, and the California Desert District, California.

SUMMARY: The BLM's Yuma District and California Desert District announce revisions to the "Long-Term Visitor Program" for the 1989-1990 and subsequent use seasons. The program, which was instituted in 1983, establishes an annual long-term use season from September 15 to April 15. During this time, visitors who wish to camp on public lands in one location for extended periods must stay in designated Long-Term Visitor Areas (LTVAs) and purchase a $25 LTVA permit. Beginning with the 1989-1990 use season, the following modificaitons are being made to the Long-Term Visitor Program:

1. The La Posa LTVA may no longer be occupied without an LTVA or a guest permit during the period of operation of the annual Quartzite Pow Wow.

2. In addition to rules of conduct set forth in Title 43 of the Code of Federal Regulations (CFR), Part 8365.1-6, the following changes to the LTVA supplementary rules established September 15, 1988, apply to designated LTVAs.

a. Stipulation 7 shall be reworded to read as follows: "7. Unoccupied Camping Units. Camping sites or dwelling unit(s) must not be left unoccupied within any LTVA for periods of greater than 5 days unless approved in advance by the authorized officer."

b. Stipulation 12 shall be reworded to read as follows: "12. Self-Contained Vehicles. In Pilot Knob, Dunes Vista, Midland, Tamarisk, and Hot Springs LTVAs, camping is restricted to self-contained camping units only. The La Posa LTVA is restricted to self-contained camping units except within 500 feet of a BLM vault toilet. The Imperial Dam LTVA is also restricted to self-contained units except in the South Mesa area. Self-contained units must have a permanently affixed wastewater holding tank of 10 gallon minimum capacity."

c. Stipulation 13 shall be divided into two stipulations. The reference to speed limits will remain stipulation 13 and read as follows: "The speed limit in LTVAs is 15 MPH, or as otherwise posted." The reference to off-highway vehicle use shall be made a separate stipulation, to read as follows: "14. Off-Highway Vehicle Use. Motorized vehicle free play is prohibited. Motorized vehicles should be used in LTVAs only for access to and from campsites."

d. Stipulation 15 shall be reworded to read as follows: "15. Pets. Pets must be kept on a leash at all times. Keep an eye on your pets. Unwatched pets may fall prey to coyotes or other desert predators. Pet owners are responsible for cleanup and sanitary disposal of pet waste."

e. Stipulation 18 shall be reworded to read as follows: "18. Quiet hours. Quiet hours are from 10 p.m. to 6 a.m. in accordance with applicable State time zone standards."

All other stipulations as established on September 15, 1988, shall remain the same.

EFFECTIVE DATE: September 15, 1989.

FOR FURTHER INFORMATION CONTACT: Don Applegate, Outdoor Recreation Planner, Yuma District, 3150 Winsor Avenue, Yuma, Arizona 85365, 602-726-6300; or David Mensing, Outdoor Recreation Planner, California Desert District, 1695 Spruce Street, Riverside, California 92507, 714-351-6402.

SUPPLEMENTARY INFORMATION: The purpose of the Long-Term Visitor Program is to provide areas for long-term winter camping use. The sites designated as LTVAs are, in most cases, the traditional use areas of long-term visitors. Designated sites were selected using criteria developed during the land management planning process, and environmental assessments were completed for each site location.

The program was established to safely and properly accommodate the increasing demand for long-term winter visitation and to provide natural resource protection through improved management of this use. The designation of LTVAs assures that specific locations are available for long-term use year after year and that inappropriate areas are not used for extended periods.

Visitors may camp without an LTVA permit outside of LTVAs, on public lands not otherwise posted or closed to camping, for up to 14 days in any 28-day period. The Mule Mountain LTVA is also open to short-term camping without an LTVA permit for a period not to exceed 14 days.

Authority for the designation of LTVAs is contained in 43 CFR 8372.0-3 and 0-5(g). Authority for the establishment of a Long-Term Visitor Permit Program is contained in 43 CFR 8372.1, and for the payment of fees is contained in 36 CFR part 71.

The authority for establishing supplementary rules is contained in CFR Title 43, Chapter II, 8365.1-6. The LTVA supplementary rules have been developed to meet the goals of individual resource management plans. These rules will be available in each local office having jurisdiction over the lands, sites, or facilities affected and posted near and/or within the lands, sites, or facilities affected. Violations of supplementary rules are punished by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months.

Maps showing the location of all LTVAs are available at both the California Desert District and Yuma District Offices.

Ed Hastey,

State Director, California.

D. Dean Bibles,

State Director, Arizona.

[FR Doc. 89-21186 Filed 9-7-89; 8:45 am]

BILLING CODE 4333-12-M

[CA-010-09-4212-13: CA 19806 GP9-018]

Realty Action; Correction To Exchange of Public Lands in San Benito County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction of notice of realty action, exchange of public and private lands (CA 19806).

SUMMARY: This document corrects the Notice of Realty Action (CA 19806) published in Vol. 53, pages 8807-8808,

March 17, 1988. The above referenced notice should have included the following described land:

Mt. Diablo Meridian, California

T. 15 S., R. 9 E.
Section 10, E½SE¼
Containing 80.00 acres.

SUPPLEMENTAL INFORMATION: The above described land was inadvertently omitted from the land description in the above notice which is hereby corrected to include it. The parcel is contiguous with the rest of the land to be exchanged to the Bureau of Land Management.

For a period of 45 days from publication of this notice in the **Federal Register**, interested parties may submit comments to the Area Manager, Hollister Resource Area Office, P.O. Box 365, Hollister, CA 95024-0365.

FOR FURTHER INFORMATION CONTACT: Steve Addington, Hollister Resource Area Office (408) 637-8183, or at the above address.

Dated: September 1, 1989.

Robert E. Beehler,

Area Manager.

[FR Doc. 89-21185 Filed 9-7-89; 8:45 am]

BILLING CODE 4310-JB-M

Minerals Management Service

Development Operations Coordination Document; Kerr-McGee Corp.

AGENCY: Minerals Management Service.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Kerr-McGee Corporation has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 4832, Block 108, Main Pass Area, offshore Louisiana and Mississippi. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Hopedale, Louisiana.

DATE: The subject DOCD was deemed submitted on August 28, 1989. Comments must be received within 15 days of the publication date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Warren Williamson; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2874.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: August 30, 1989.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 89-21150 Filed 9-7-89; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Kerr-McGee Corp.

AGENCY: Minerals Management Service.

ACTION: Notice of the receipt of a proposed Development Operations Coordination document (DOCD).

SUMMARY: Notice is hereby given that Kerr-McGee Corporation has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 5479, Block 28, Eugene Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Morgan City, Louisiana.

DATE: The subject DOCD was deemed submitted on August 28, 1989. Comments must be received within 15 days of the publication date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: August 30, 1989.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 89-21151 Filed 9-7-89; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document

AGENCY: Minerals Management Service.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Kerr-McGee Corporation has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 7804, Block 107, Main Pass Area, offshore Louisiana and Mississippi. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Hopedale, Louisiana.

DATE: The subject DOCD was deemed submitted on August 30, 1989. Comments must be received within 15 days of the publication date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595).

Those practices and procedures are set out in revised § 250.34 of title 30 of the CFR.

Dated: August 30, 1989.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 89-21152 Filed 9-7-89; 8:45 am]

BILLING CODE 4310-MR-M

INTERSTATE COMMERCE COMMISSION

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

a.1. Parent corporation and address of principal office: K mart Corporation, 3100 West Big Beaver Road, Troy, Michigan 48084.

2. Wholly-owned subsidiaries which will participate in the operations and their states of incorporation: Builders Square, Inc., Delaware; Huck Fixture Company, Illinois; K mart Apparel Corp., New York; Pay Less Drug Stores Northwest, Inc., Maryland; Walden Book Co., Inc., New York.

b.1. Parent corporation: Quality Trailer Products Corporation, 633 N.W. Parkway, Azle, TX 76020.

2. Wholly owned subsidiaries and State of Incorporation (I) DDR Machine Corporation, Texas; (II) Mt. Pleasant Trailer Products, Inc., Texas; (III) Trailer Products of Ocala, Texas.

Noreta R. McGee,

Secretary.

[FR Doc. 89-21188 Filed 9-7-89; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31528]

Commonwealth Railway Incorporated—Lease, Operation, and Acquisition Exemption—Rail Lines in Portsmouth, Chesapeake, and Suffolk, VA

Commonwealth Railway Incorporated (CRI) has filed a notice of exemption: (1) To acquire and operate Norfolk and Western Railway Company's (NW) 3.92-mile line of railroad between milepost F-0.08 at West Norfolk in the City of Portsmouth, VA, and milepost F-4.0 at Churchland in the City of Chesapeake, VA; and (2) to lease and operate (with an option to purchase) NW's 12.5-mile line of railroad between milepost F-4.0 at Churchland. The transaction is expected to be consummated immediately after the effective date of this exemption.

And comments must be filed with the Commission and served on Kelvin J. Dowd, Slover & Loftus, 1224 Seventeenth Street, NW., Washington, DC 20036.

Applicant must preserve intact all sites and structures more than 50 years old until compliance with the requirements of section 106 of the National Historic Preservation Act, 16 U.S.C. 470, is achieved. *See Class Exemption—Acq. & Oper. of R. Lines Under 49 U.S.C. 10901*, 4 I.C.C.2d 305 (1988).[1]

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: August 31, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-20987 Filed 9-7-89; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Order Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent order in

[1] CRI certifies that it has identified to the State Historic Preservation Officer all sites and structures 50 years old and older that will be transferred as a result of this transaction.

United States v. *Acton Corporation, et al.*, Civil Action No. 89-3652 has been lodged with the United States District Court for the District of New Jersey on August 25, 1989. The proposed consent order concerns cleanup of a hazardous waste site known as the Lone Pine Landfill Site, which is located in Freehold Township, Monmouth County, New Jersey. The proposed consent order requires defendants to perform a cleanup at the Site, and pay certain United States Environmental Protection Agency costs.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent order. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Acton Corporation, et al.*, D.J. Ref. 90-11-2-294.

The proposed consent order may be examined at the office of the United States Attorney, 502 Federal Building, 970 Broad Street, Newark, New Jersey 07102, and the Region II Office of the Environmental Protection Agency, 26 Federal Plaza, New York, New York 10278. Copies of the consent order may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, Washington, DC 20530. A copy of the proposed consent order may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $24.10 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Myles E. Flint,

Acting Assistant Attorney General, Land Land Natural Resources Division.

[FR Doc. 89-21153 Filed 9-7-89; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3504, Washington, DC 20210.

New General Wage Determinations Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume State and page number(s).

Volume I

New Jersey:
NJ89-7 (Sept. 8, 1989). p. 678a, pp. 678b-678f.

Volume II

Missouri:
M089-7 (Sept. 8, 1989). p. 683, p. 684.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

District of Columbia:
DC89-1 (Jan. 6, 1989).. p. 77, pp. 82-84.
Delaware:
DE89-2 (Jan. 6, 1989).. p. 93, pp. 94-96.
Maryland:
MD89-1 (Jan. 6, 1989). p. 411, 412.
Maryland:
MD89-15 (Jan. 6, 1989). p. 449, p. 450.
New Jersey:
NJ89-2 (Jan. 6, 1989)... p. 613, pp. 617-620.
NJ89-3 (Jan. 6, 1989)... p. 633, p. 635.
NJ89-7 (Jan. 6, 1989)... p. 678a, pp. 678b-678f.
New York:
NY89-2 (Jan. 6, 1989).. p. 683, pp. 685,690.
NY89-6 (Jan. 6, 1989).. p. 727, p. 730.
NY89-13 (Jan. 6, 1989). p. 799, p. 801.

NY89-18 (Jan. 6, 1989).	p. 827, pp. 828-829.
Pennsylvania:	
PA89-1 (Jan. 6, 1989)..	p. 837, pp. 838,840.
PA89-6 (Jan. 6, 1989)..	p. 893, pp. 894-895.
PA89-11 (Jan. 6, 1989).	p. 937, p. 938.
PA89-12 (Jan. 6, 1989).	p. 941, pp. 942-943.
PA89-14 (Jan. 6, 1989).	p. 947, pp. 949-950.
PA89-16 (Jan. 6, 1989).	p. 961, p. 962.
PA89-19 (Jan. 6, 1989).	p. 977, pp. 978-980.
PA89-21 (Jan. 6, 1989).	p. 989, pp. 990-991.
PA89-23 (Jan. 6, 1989).	p. 1005, pp. 1005-1008.
Virginia:	
VA89-50 (Jan. 6, 1989).	p. 1188ccc, p. 1188ddd.
VA89-51 (Jan. 6, 1989).	p. 1188eee, p. 1188fff.

Volume II

Arkansas:	
AR89-1 (Jan. 6, 1989)..	p. 3, p. 4.
Missouri:	
MO89-7 (Jan. 6, 1989)..	p. 683, p. 684.
MO89-12 (Jan. 6, 1989).	p. 713, p. 714.
Ohio:	
OH89-2 (Jan. 6, 1989).	p. 787, p. 788.
OH89-29 (Jan. 6, 1989).	p. 869, pp. 869,871.
Wisconsin:	
WI89-4 (Jan. 6, 1989)..	p. 1149, p. 1150.

Volume III

Alaska:	
AK89-1 (Jan. 6, 1989).	p. 1, pp. 2-3.
Colorado:	
CO89-4 (Jan. 6, 1989)...	p. 123, p. 124.
Hawaii	
HI89-1 (Jan. 6, 1989)...	p. 135, p. 136.
North Dakota:	
ND89-2 (Jan. 6, 1989).	p. 229, pp. 230-231.
ND89-3 (Jan. 6, 1989).	p. 235, p. 236.
ND89-5 (Jan. 6, 1989).	p. 240a, p. 240b.
South Dakota:	
SD89-2 (Jan. 6, 1989)..	p. 333, p. 334.
Utah:	
UT89-1 (Jan. 6, 1989)..	p. 341, pp. 342-343,345.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 1st day of September, 1989.

Robert V. Setera,

Acting Director, Division of Wage Determinations.

[FR Doc. 89-21132 Filed 9-7-89; 8:45am]

BILLING CODE 4510-27-M

Employment and Training Administration

[TA-W-22,897]

Levolor-Lorentzen, Inc., Weirton, WV; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on June 30, 1989 applicable to all workers of Levolor-Lorentzen, Inc., Weirton, West Virginia.

Based on new information from the company, a few workers including truck drivers were separated from Levolor-Lorentzen, Inc., in Weirton, West Virginia a few weeks prior to the impact date. The notice, therefore, is amended by changing the impact date to April 17, 1988.

The amended notice applicable to TA-W-22,897 is hereby issued as follows:

All workers of Levolor-Lorentzen, Incorporated, Weirton, West Virginia engaged in the production of venetian blinds and who became totally or partially separated from employment on or after April 17, 1988 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 30th day of August 1989.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 89-21175 Filed 9-7-89; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-21,912 et al.]

Noble Drilling Corp./Temple Drilling Co.; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In the matter of TA-W-21,912 Noble Drilling Corporation, New Orleans, Louisiana, TA-W-21,913 Noble Drilling Corporation, Williston, North Dakota, TA-W-21,913A Noble Drilling Corporation, All Locations in Montana and TA-W-21,912A Temple Drilling Company, Houston, Texas, TA-W-21,912B Temple Drilling Company, Broussard, LA.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued Certifications of Eligibility to Apply for Worker Adjustment Assistance on January 31, 1989 applicable to all workers of Noble Drilling Corporation, New Orleans, Louisiana and Williston, North Dakota. The certifications were amended on March 10, 1989 to include workers at a predecessor-in-interest firm (Temple Drilling Company) in Houston, Texas and Broussard, Louisiana. The amended notice was published in the **Federal Register** on March 27, 1989 (54 FR 12508).

New information from the company shows worker separations in November 1985 in the State of Montana. The Noble Drilling Company operated rigs in the Williston Basin in 1985 which encompasses Western North Dakota and Eastern Montana. Workers were moved back and forth across the state lines and several were laid off in Montana.

The notice, therefore, is amended by including coverage under TA-W-21,913 for workers of Noble Drilling Company in Montana.

The intent of the certifications is to cover all workers of Noble Drilling Corporation, New Orleans, Louisiana, Williston, North Dakota and all locations in Montana and its Predecessor-in-interest firm, Temple Drilling Company, Houston, Texas and Broussard, Louisiana. The amended notice applicable to TA-W-21,912 and TA-W-21,913 is hereby issued as follows:

All workers of Noble Drilling Corporation, New Orleans, Louisiana, Williston, North Dakota and all locations in Montana and its

predecessor-in-interest firm, Temple Drilling Company, Houston, Texas and Broussard, Louisiana who became totally or partially separated from employment on or after October 1, 1965 and before June 30, 1987 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 30th day of August 1989.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 89-21176 Filed 9-7-89; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-89-125-C]

Consolidation Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Consolidation Coal Company, Consol Plaza, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.1105 (housing of underground transformer stations, battery-charging stations, substations, compressor stations, shops, and permanent pumps) to its Blacksville No. 1 Mine (I.D. No. 46-01867) located in Monongalia County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that air currents used to ventilate structures or areas enclosing electrical installations be coursed directly into the return.

2. The mine has two underground pump installations which are not able to be ventilated effectively to a return airway. The mine also has three other pump locations that will not be able to be ventilated to a return airway when nearby workings are sealed. The pumps remove water which is accumulating along the mainline haulage.

3. In the area of the pump installations, the roof and ribs have deteriorated over a period of time because of the hooving bottom. This, in turn, has caused the stoppings to crush out. If ventilating tubing were installed to the nearest return entry, it would be ineffective due to the extreme distance.

4. As an alternate method, petitioner proposes that—

(a) The pump installations would be housed in a fireproof structure, equipped with automatically closing fire doors activated by thermal devices with an activation temperature not greater than 165 °Fahrenheit. Such fire doors would be designed to enclose all associated electric components in a reasonably airtight enclosure in case of a fire or excessive temperature;

(b) An audible and visual signal, activated by the heat sensors, would be located so that it can be seen or heard by a responsible person;

(c) The electric equipment would be protected with thermal devices, or equivalent, designed and installed to interrupt all power circuits supplying electric equipment within the fireproof structure;

(d) A suitable automatic fire suppression system would be installed and maintained in the fireproof structure;

(e) Firefighting equipment would be provided on the outside of the fireproof structure on the intake side; and

(f) The area enclosing the structure would be examined daily for hazardous conditions. A record of the examinations would be kept in a book on the surface.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 10, 1989. Copies of the petition are available for inspection at that address.

Dated: August 30, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-21173 Filed 9-7-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-89-124-C]

Webster County Coal Corp.; Petition for Modification of Application of Mandatory Safety Standard

Webster County Coal Corporation, P.O. Box 45, Henderson, Kentucky 42420 has filed a petition to modify the application of 30 CFR 75.1103-4(a) (automatic fire sensor and warning device systems; installation; minimum requirements) to its Retiki Mine (I.D. No. 25-00672) located in Henderson County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. On July 1, 1988, petitioner was granted a modification of 30 CFR 75.1103-4(a) to install an early warning fire detection system and to monitor the air with a carbon monoxide detection system in all belt entries utilized as intake aircourses (docket No. M-87-276-C).

2. This petition concerns paragraphs 1(b), 1(c), 3, and 5 of MSHA's Decision and Order.

3. Paragraph 1(b) of the Decision and Order requires that the carbon monoxide monitoring devices be located so that the air is monitored at each belt drive and tailpiece and at intervals not to exceed 2,000 feet along each conveyor belt entry, except as provided in 1(c) or unless the District Manager requires additional carbon monoxide monitors. A monitoring device is required at the tailpiece or not more than 50 feet outby (force ventilation) and 50 feet inby (outby exhaust ventilation) the tailpiece on the same split of air.

Petitioner requests that outby the tailpiece be changed to outby the temporary stopping (across the belt).

4. Paragraph 1(c) of the Decision and Order requires only one sensor at a belt drive under certain conditions and that it be installed not more than 50 feet outby (force ventilation) 50 feet inby the drive, belt take-up and tailpiece on the same split of air.

Petitioner requests to add the words or the belt drive discharges at an angle onto the conveyor belt system with the header within 50 feet of the tailpiece and to change the last sentence to read, It shall be installed not more than 100 feet inby (if the airflow is inby) or outby (if the airflow is outby) the drive, belt take-up and tailpiece on the same split of air.

5. Paragraph 3 of the Decision and Order requires the low-level carbon monoxide monitoring devices be capable of providing both visual and audible alarm signals.

Petitioner requests that at 10 ppm above the established ambient level, all persons shall be withdrawn to a safe area outby the working places be changed to the approved firefighting plan shall be implemented and appropriate action shall be taken to determine the cause of actuation.

6. Paragraph 5 of the Decision and Order requires in part that the sensor located at or near the section loading point activate the fire alarm signals and give a warning signal on the working section that can be seen if carbon monoxide reaches 10 ppm above the established ambient level and can be heard at 15 ppm above the ambient.

Petitioner requests that the warning be seen or heard if carbon monoxide reaches 10 ppm above the established ambient level.

7. Petitioner states that the proposed amendment to the Decision and Order granting the petition modifying the application of 30 CFR 75.1103-4(a) will improve the paragraphs addressed, and will provide no less than the same measure of protection for the miners.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 10, 1989. Copies of the petition are available for inspection at that address.

Dated: August 28, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-21174 Filed 9-7-89; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (89-62)]

Government-owned Inventions; Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are owned by the U.S. Government and are available for domestic, and possibly foreign, licensing.

Copies of patent applications cited are available from the National Technical Information Service, Springfield, VA 22161. Requests for copies of patent applications must include the patent application serial number. Claims are deleted from the patent applications sold to avoid premature disclosure.

DATE: Date published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: National Aeronautics and Space Administration, Harry Lupuloff, Director of Patent Licensing, Code GP, Washington, DC 20546, Telephone (202) 453-2430, FAX (202) 755-2371.

Patent Application 07/350,813: Digital Carrier Demodulator Employing Components Working Beyond Normal Limits; filed May 12, 1989.

Patent Application 07/357,757: A Torsoinal Suspension System for Testing Space Structures; filed May 26, 1989.

Patent Application 07/357,759: Network of Dedicated Processors for Finding Lowest Cost Map Path; filed May 26, 1989.

Patent Application 07/357,938: A Combined Air and Water Pollution Control System; filed May 26, 1989.

Patent Application 07/358,027: Apparatus and Method for Characterizing the Transmission Efficiency of a Mass Spectrometer; filed May 26, 1989.

Patent Application 07/358,028: Turbomachinery Shaft Insert; filed May 26, 1989.

Patent Application 07/359,459: Method and Circuit for Shaping Laser Output Pulses; filed May 31, 1989.

Patent Application 07/359,460: Method and Circuit for Controlling the Evolution Time Interval of a Laser Output Pulse; filed May 31, 1989.

Patent Application 07/359,801: Fiber Optic Frequency Transfer Link; filed May 31, 1989.

Patent Application 07/361,200: Spacecraft Component Heater Control System; filed June 5, 1989.

Patent Application 07/361,479: O-Ring Gasket Test System; filed June 5, 1989.

Patent Application 07/361,531: Reversal Electron Attachment Ionizer for Detection of Trace Species; filed June 5, 1989.

Patent Application 07/363,815: Laterally Stacked Schottky Diodes for Infrared Sensor Applications; filed June 9, 1989.

Patent Application 07/364,743: Turbomachinery Rotor Support with Damping; filed May 26, 1989.

Patent Application 07/366,957: Predictive Aging of Polymers; filed June 16, 1989.

Patent Application 07/369,403: Field Induced Gap Infrared Detector; filed June 21, 1989.

Patent Application 07/376,487: Controlled Method of Reducing Electrophoretic Mobility of Particles Cells and the Like; filed July 7, 1989.

Patent Application 07/386,175: Hollow Fiber Clinostat; filed July 28, 1989.

Edward A. Frankle,

General Counsel.

[FR Doc. 89-21128 Filed 9-7-89; 8:45am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Ad Hoc Challenge III Review Committee; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice is hereby given that a meeting of the Ad Hoc Challenge III Review Committee to the National Council on the Arts will be held on October 23, 1989, from 9:00 a.m.-5:30 p.m. in Room M07 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: August 30, 1989.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89-21154 Filed 9-7-89; 8:45 am]

BILLING CODE 7537-01-M

Design Arts Advisory Panel; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice is hereby given that a meeting of the Design Arts Advisory Panel (Design Advancement/Organizations; Grants to State & Regional Arts Agencies; and Distinguished Designer Fellowships Sections) to the National Council on the Arts will be held on September 26, 1989, from 9:00 a.m.-6:00 p.m. and on September 27-28, 1989, from 9:00 a.m.-7:00 p.m. and on September 29, 1989, from 9:00 a.m.-1:00 p.m. in Room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on September 29, 1989,

from 11:30 a.m.–1:00 p.m. The topic for discussion will be policy issues.

The remaining portions of this meeting on September 26, 1989, from 9:00 a.m.–6:00 p.m. and on September 27–28, 1989, from 9:00 a.m.–7:00 p.m. and on September 29, 1989, from 9:00 a.m.–11:30 a.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

Dated: August 30, 1989.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89-21155 Filed 9-7-89; 8:45 am]

BILLING CODE 7537-01-M

Visual Arts Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice is hereby given that a meeting of the Visual Arts Advisory Panel (Overview Section) to the National Council on the Arts will be held on September 25-26, 1989, from 9:00 a.m.–5:30 p.m. in Room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. The topic for discussion will be guidelines, the Five-Year Plan, and policy issues.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: August 30, 1989.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89-21156 Filed 9-7-89; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Astronomical Sciences Subcommittee on Optical/Infrared Astronomy; Notice of Meeting

In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Astronomical Sciences Subcommittee on Optical/Infrared Astronomy.

Date & Time: September 26 and 27, 1989 9:00 a.m.–5:00 p.m.

Place: National Science Foundation September 26 Room 536, September 27 Room 1243.

Type of Meeting: September 26 and 27, 1989 Open.

Contact Person: Dr. G. Wayne van Citters, Jr., Program Director, Astronomical Instrumentation and Development, Division of Astronomical Sciences, Room 618, National Science Foundation, Washington, DC 20550 (202/357-9793).

Minutes: May be obtained from the contact person at the above address.

Purpose of Committee: To provide advice and recommendations concerning research programs, proposals, and projects in NSF-funded astronomy with the objective of achieving the highest quality forefront research for the funds allocated. To provide advice and recommendations concerning short-range and long-range plans in astronomy, including a recommendation of relative priorities.

Agenda: September 26 and 27.

Preparation of report on topics discussed at the Subcommittee meeting held on August 28 and 29, 1989.

M. Rebecca Winkler,

Committee Management Officer.

September 5, 1989.

[FR Doc. 89-21121 Filed 9-7-89; 8:45 am]

BILLING CODE 7555-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

Public Hearing in Sioux City, IA; Aviation Accident

In connection with the investigation of the United Airlines flight 232 crash at Sioux City, Iowa, July 19, 1989, the National Transportation Safety Board will convene a public hearing at 9:00 a.m. (local time), on Tuesday, October 31, at the Convention Center in Sioux City, Iowa. For more information contact Ted Lopatkiewicz, Office of Government and Public Affairs, National Transportation Safety Board, 800 Independence Avenue SW., Washington, DC 20594, telephone (202) 382-6605.

Dated: September 1, 1989.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 89-21118 Filed 9-7-89; 8:45 am]

BILLING CODE 7533-01-M

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Notice of Meeting Change

Due to a typing error, a meeting of the Nuclear Waste Technical Review Board was announced (August 30, 1989 FR 35957) to be held on September 23, 1989. The correct date of the meeting is September 13, 1989.

Further information can be obtained from William W. Coons, Executive Director, Nuclear Waste Technical Review Board, 1111 18th Street, NW, Washington, DC 20036, (202) 254-4792.

William W. Coons,

Executive Director, Nuclear Waste Technical Review Board.

September 5, 1989.

[FR Doc. 89-21241 Filed 9-7-89; 8:45 am]

BILLING CODE 6820-AM-M

OFFICE OF PERSONNEL MANAGEMENT

Request for Approval of RI 25-2 Application for Minimum Annuity Submitted to OMB for Clearance

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980, (title 44, U.S. Code, chapter 35) this notice announces a request to extend the use of RI 25-2 (Application for Minimum Annuity). OPM currently uses RI 25-2 to determine if an annuitant qualifies for the minimum annuity, repealed under section 305 of Public Law 99-251 (Federal Employees Benefits Improvement Act of 1986). Annuitants who were entitled to the minimum annuity prior to the repeal date of February 27, 1986 continue to receive the minimum annuity in accordance with Section 305.

Approximately 50 Civil Service annuitants complete the form, which requires approximately 15 minutes, for a total public burden of 13 hours. For copies of this proposal, call Larry Dambrose (632-0199) or Grace Butler (632-0259).

DATE: Comments on this proposal should be received within 10 working days from the date of this publication.

ADDRESSES: Send or deliver comments to—

C. Ronald Trueworthy, Agency Clearance Officer, U.S. Office of Personnel Management, 1900 E Street, NW., Room 6410, Washington, DC 20415,

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 3235, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mary Beth Smith-Toomey, 202-632-5472.

U.S. Office of Personnel Management

Constance Newman,

Director.

[FR Doc. 89-21187 Filed 9-7-89; 8:45 am]

BILLING CODE 6325-01-M

PROSPECTIVE PAYMENT ASSESSMENT COMMISSION

Meeting

Notice is hereby given of the meetings of the Prospective Payment Assessment Commission on Monday and Tuesday, September 18 and 19, 1989 at the Madison Hotel, 15th & M Streets, NW., Washington, DC.

The Subcommittee on Diagnostic and Therapeutic Practices will be meeting in Executive Chambers 1 and 2, second floor, at 9 o'clock a.m. September 18, 1989. The Subcommittee on Hospital Productivity and Cost-Effectiveness will convene its meeting at 9 o'clock a.m. in Mt. Vernon Salon B and C, second floor, on September 18, 1989.

The Full Commission will convene at 1:30 o'clock p.m. on September 18, 1989 with a Technical Advisory Panel on Outpatient Classification Systems in Mt. Vernon Salon B and C, second floor.

The Full Commission will convene again on September 19, 1989 at 9:00 o'clock a.m. in Mt. Vernon Salon B and C, second floor.

All meeting are open to the public.

Donald A. Young, MD,

Executive Director.

[FR Doc. 89-20898 Filed 9-7-89; 8:45 am]

BILLING CODE 6820-BW-M

EXECUTIVE OFFICE OF THE PRESIDENT

Office of Science and Technology Policy

National Advisory Committee on Semiconductors (NACS)

The purpose of the National Advisory Committee on Semiconductors, is to devise and promulgate a national semiconductor strategy, including research and development. The implementation of this strategy will assure the continued leadership of the United States in semiconductor technology. The Committee will meet on September 11-12, 1989, at Science Applications International Corporation, 1555 Wilson Blvd., 7th Floor, Rosslyn, Virginia 8:00 a.m. The proposed agenda is:

(1) Briefing of the Committee on its organization and administration.

(2) Briefing of the Committee by OSTP personnel and personnel of other agencies on proposed, ongoing, and completed studies regarding semiconductors.

(3) Discussion of composition of panels to conduct studies.

A portion of the September 11-12 sessions will be closed to the public.

The briefing on some of the current activities of OSTP necessarily will involve discussion of material that is formally classified in the interest of national defense or for foreign policy reasons. This is also true for a portion of the briefing on panel studies. As well, a portion of both of these briefings will require discussion of internal personnel procedures of the Executive Office of the President and information which, if prematurely disclosed, would significantly frustrate the implementation of decisions made requiring agency action. These portions of the meeting will be closed to the public pursuant to 5 U.S.C. 552 b.(c) (1), (2), and (9)(B).

A portion of the discussion of panel composition will necessitate the disclosure of information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Accordingly, this portion of the meeting will also be closed to the public, pursuant to 5 U.S.C. 552 b.(c)(6).

Because of the security in the New Executive Office Building, persons wishing to attend the open portion of the meeting should contact Hazel Houston, at (703) 556-7130, prior to 3:00 p.m. on September 8, 1989. Mrs. Houston is also available to provide specific information regarding time, place and agenda for the open session.

Dated: August 25, 1989.

Barbara J. Diering,

Special Assistant, Office of Science and Technology Policy.

[FR Doc. 89-21206 Filed 9-6-89; 9:34 am]

BILLING CODE 3170-01-M

SECURITIES AND EXCHANGE COMMISSION

[34-27198; File No. SR-DTC-89-15]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Depository Trust Company Relating to Expanding Participation in the International Institutional Delivery System

August 30, 1989.

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 August 10, 1989, The Depository Trust Company filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Depository Trust Company ("DTC") is filing herewith a proposed rule change providing for expansion of the DTC's International Institutional Delivery System (IID) system to include participation and input of data by foreign entities.

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 for the proposed rule change is to provide for greater participation in DTC's IID system. The proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to DTC since the proposed rule change will increase efficiency in processing international securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

DTC has not solicited or received comments on its 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 (1) 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 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 Room, 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 SR-DTC-89-15 and should be submitted by September 29, 1989.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 89-21101 Filed 9-7-89; 8:45 am]

BILLING CODE 8010-01-M

[34-27199; File No. NSCC-89-13]

Self-Regulatory Organizations; Filing of Proposed Rule Change by National Securities Clearing Corporation Relating to the Automated Settlement of Mutual Fund Dividends

August 30, 1989.

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 August 14, 1989, NSCC filed with the Securities and Exchange Commission that proposed rule change as described in Items I, II, and II below, which Items have been prepared by NSCC. The Commission is publishing this notice to solicit comment 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 consists of a modification of the Networking aspect of the Fund/SERV Service Rule to provide for the automated settlement of mutual fund dividend payments.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC 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. NSCC 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

(1) The purpose of the proposed rule filing is to provide for the automated settlement of mutual fund dividend payments between Fund Members and Members who participate in NSCC's Networking Service.[1]

Currently, through Networking, dividend information is passed between the Fund Member (or Mutual Fund Processor) and the Member. Payment of these dividend amounts occurs directly between the Fund Members and the NSCC Member and not through Networking. The proposed rule change will enable the Fund Member to make one payment to NSCC for such dividend amounts due and NSCC will include such amounts with the Members' other settlement obligations. The proposed rule change will require Fund Members to submit, along with the information currently transmitted, valid payable date for the dividends. A valid payable date will be defined as a date on which banks in New York are open for business. (This will permit settlement of these amounts to occur on the days that other monies settle through NSCC.).

Based on the data received from the Fund Member, NSCC will issue a Dividend Report to the Fund Member and Member. This report will indicate dividend amounts which must be paid by

[1] "Networking," a service provided by NSCC on a fee basis, permits automated transmission of mutual fund data. *See* Securities Exchange Act Release No. 26376 (December 20, 1988), 53 FR 52544.

the Fund Member the day the Dividend Report is issued and the dividend amount which must be paid by the Fund Member the following day. The Dividend Report will also indicate any corrections made by the Fund Member to previously reported items.

On the Dividend Payable Date, the Fund Member will be required to pay NSCC the amount of the dividends indicated on the Dividend Report. This payment will be separate from the Fund Member's other settlement obligations, and must be made in Federal Funds. On the Dividend Payable Date, Members will be credited with the amount indicated on the Dividend Report. This amount will be netted with Members' other settlement obligations, and settlement will be made in accordance with current procedures.

Since NSCC will be paid by the Fund Member on Dividend Payable Date in Federal Funds but will make payments to Members in next day funds, NSCC will credit the Members pro rata for interest earned on NSCC's investment of the dividend amounts received in Federal Funds.

The payment of dividends to Members, similar to other Fund/SERV payments, will not be a guaranteed service. If NSCC were to credit a Member with a dividend amount and not receive the corresponding payment from the Fund Member, the credit will be subject to reversal. While NSCC has a lien on such payments to Members pursuant to the provisions of Rule 18, NSCC has agreed that is a Member becomes insolvent before settlement occurs, NSCC will segregate this payment and NSCC will relinquish its lien to the extent that it has demonstrated to NSCC that the payment was for the benefit of a customer of the Member. However, if the Member becomes insolvent after settlement has occurred, and the dividend payments have already been netted with the Member's other settlement obligations, NSCC will not segregate this payment and will use it to offset the Member's payment obligations to NSCC.

(2) The proposed rule change facilitates the prompt and accurate clearance and settlement of securities transactions by providing for the settlement, on an automated basis of dividend payments between mutual funds and brokerage firms. The rule change, therefore, is consistent with the requirements of the 1934 Act and the rules and regulations thereunder applicable to NSCC.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule will have an impact or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments have been solicited or received. NSCC will notify the Commission of any written comments 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 reason 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 approved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making writtten 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 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 provisions of 5. U.S.C. 522, 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 mumber in the caption above (SR–NSCC–89–13) and should be submitted by September 29, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirely E. Hollis,

Assistant Secretary.

[FR Doc. 89–21102 Filed 9–7–89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35–24946]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

August 31, 1989.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their view in writing by September 25, 1989 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Ocean State Power II, et al. (70–7630)

Ocean State Power ("OSP"), One Bowdoin Square, Boston, Massachusetts 02114, a general partnership and subsidiary of EUA Ocean State Corporation ("EUA–OS"), Washington Highway, Lincoln, Rhode Island 02865, and Narragansett Energy Resources Company ("NERC"), 280 Melrose Street, Providence, Rhode Island 02901, and their respective indirect parent companies, Eastern Utilities Associates ("EUA"), One Liberty Square, Boston, Massachusetts 02107 and New England Electric System ("NEES"), 25 Research Drive, Westborough, Massachusetts 01582; Ocean State Power II ("OSP II"),

One Bowdoin Square, Boston, Massachusetts 02114, a proposed subsidiary of EUA–OS and NERC, and their respective indirect parent companies EUA and NEES; EUA Service Corporation ("EUA Service"), 750 West Center Street, West Bridgewater, Massachusetts 02379, and New England Power Service Company ("NEP Service"), 25 Research Drive, Westborough, Massachusetts 01582, subsidiaries of EUA and NEES, respectively; Blackstone Valley Electric Company ("Blackstone"), Washington Highway, Lincoln, RI 02865, a subsidiary of EUA; TransCanada PipeLines Company ("TC"), 54 Commerce Court West, Toronto, Ontario M5L 1C2, Canada, and its indirect subsidiary TCPL Power Ltd. ("TCPL"), 123 Dyer Street, Providence, Rhode Island 02903 an affiliate of OSP and proposed affiliate of OSP II, have filed a joint application-declaration pursuant to sections 6(a), 7, 9(a)(1), 9(a)(2), 10, 12(b), 12(d), 12(f), 13(b) and 13(e) of the Act and Rules 43, 44, 45, 50(a)(5), 90, 91 and 95 thereunder.

By prior order, the Commission (i) approved the acquisition by EUA–OS and NERC of 25% and 20% equity interests, respectively, in OSP and (ii) autorized EUA and NEES to fund their respective subsidiaries' obligations to contribute to the capital of OSP under the OSP Partnership Agreement (HCAR No 24727, October 13, 1988) ("Order"). EUA–OS and NERC now propose to acquire 25% and 20% percent equity interests, respectively, in OSP II, and EUA and NEES propose to provide their respective subsidiaries the capital funding to be contributed to the capital of OSP II and to guarantee proportionately their subsidiaries' performance under the OSP II Partnership Agreement. Such funding will be in the form of purchases of common stock, capital contributions, loans, and/or advances provided that the aggregate amount of all investments, including investments already approved by the Commission in the Order in amounts of $30 million and $25 million for EUA and NEES, respectively, shall not exceed $60 million and $50 million, respectively. EUA Service and NEP Service propose to provide certain incidental services for OSP II at cost in accordance with the Commission's rules.

OSP II, in connection with its plans to construct, own and operate the second unit ("Second Unit") of a combined cycle electric generating facility ("Project") to be located in Burrillville, Rhode Island, proposes to raise one hundred percent of its construction financing for the Second Unit through non-recourse loans from a syndicate of financial institutions under an approximately $225 million general construction-loan credit facility ("Credit Facility"). Irving Trust Company will be the lead agent ("Irving") to the Credit Facility. The Credit Facility will have a seven-year term, comprised of a construction loan facility with a term of approximately two to four years that will convert to a term-loan facility upon the Second Unit's achieving commercial operation. The term-loan facility is intended to provide OSP II flexibility with regard to the timing of arranging long-term, fixed-rate permanent financing with new lenders, which will be subject to further Commission approval.

The Credit Facility will be secured by a lien on all of the physical assets of the Second Unit and by an assignment to the lenders of (i) all of OSP II's rights and interests in connection with the Second Unit under the contracts necessary for the construction and operation of the Second Unit and specified insurance, (ii) all of the partners' interests in OSP II, (iii) proportional guarantees to the partnership by the parents of the performance of the partners' obligations (herein, EUA's and NEES' guarantees of EUA–OS and NERC obligations, respectively), under the Equity Contribution Agreements, and (iv) the Equity Contribution Agreements themselves. The lenders will have the sole benefit of all of the Second Unit security.

Under the construction-loan facility, OSP II may obtain fixed-rate, 30-day advances, by exercising a competitive bid option, or if the option is not exercised, or for those amounts not covered by accepted bids, OSP II will pay its choice of the London Interbank Offered Rate ("LIBOR"), plus ½% per annum, Irving's Certificate of Deposit ("CD") rate, plus ⅝% per annum or Irving's Prime Rate, plus ⅛% per annum. These rates will increase by ⅛% per annum each time drawings occur after one of two defined reference dates. The term-loan facility employs the same base rates with margins ranging from ⅜% to ¾% on the LIBOR and CD options. Fifty percent of the outstanding amounts under the construction-loan facility will be amortized when the Second Unit goes into commercial operation, and the remainder will convert to loans under the term-loan facility. The assumed effective cost of money under the Credit Facility will be 10.241%.

Initially, OSP intended to develop and own both units of the Project. In order to provide separate collateral for the financing of the Second Unit, however, the investors in OSP decided to form a separate partnership for the development and ownership of the Second Unit. The investors in both partnerships and their respective ownership interests, will be the same although certain investors intend to form distinct, special purpose subsidiaries to hold their interests in OSP II. In connection with this arrangement, OSP purposes to transfer to OSP II all of its interests in the Second Unit, and they, along with Blackstone, will amend and restate the Interconnection Agreement.

When the First Unit commences commercial operation, OSP will be an electric utility company within the meaning of section 2(a)(3) of the Act. Pursuant to the terms of the OSP Partnership Agreement, TCPL, and indirectly its parent company TC, will then hold a 9.9 percent voting interest within the meaning of section 2(a)(11). As part of the formation of OSP II, which will own and develop the Second Unit of the Project, TCPL and indirectly TC propose to acquire a 9.9 percent voting interest in, and therefore become an affiliate of, a second electric utility company. TCPL's rights and obligations in OSP II will be governed by the OSP II Partnership Agreement.

In order to avoid obtaining zoning approvals for the operation of a generating facility on the site, OSP proposes to reconvey to Blackstone approximately four acres of the site for the Project which OSP had previously acquired from Blackstone. OSP will, however, retain an easement across such property for access to the site.

OSP II seeks an exception from the Commission's competitive bidding requirements of rules 50(b) and (c) pursuant to Rule 50(a)(5).

The Columbia Gas System, Inc. (70–7672)

The Columbia Gas System, Inc. ("Columbia"), 20 Montchanin Road, Wilmington, Delaware 19807, a registered holding company, has filed an application-declaration pursuant to sections 6(a), 7, 9(a), 10, and 12(b) of the Act and Rules 45 and 50(a)(5) thereunder.

Under the existing Employees' Thrift Plan of Columbia Gas System ("Thrift Plan"), employees of Columbia system companies ("Participants") may deposit up to 16% of their salary in four available investment options, including Fund B ("Fund B"), which provides for investment in Columbia's common

stock. Contributions by Participants are matched by the Columbia system company employing the Participant for up to 6% of a Participant's salary. Columbia's matching contributions are deposited only in Fund B. Columbia currently meets its matching obligations by transferring cash to the trustee of the Thrift Plan, which cash is used to purchase Columbia's common stock. Cash dividends paid on shares of Columbia common stock held in Fund B are reinvested in additional shares of Columbia common stock.

Columbia now proposes to meet its anticipated obligation to match Participants' contributions for 15 years and to provide for the reinvestment of cash dividends paid on shares held in Fund B by allocating shares of Columbia's common stock, in lieu of cash. Such shares will be purchased and held by a proposed Leveraged Employee Stock Ownership Plan ("LESOP"). The LESOP will finance the acquisition of Columbia's common stock through the issuance of debt, through December 31, 1990, in a principal amount not to exceed $200 million in the form of publicly issued medium-term notes ("Notes"), maturing in up to 15 years. Columbia anticipates that the interest rate on the debt will be 9.5% to 10.0%. The Notes would be issued under an indenture, which will contain a proposed subordinated guaranty by Columbia. The proceeds of the LESOP borrowings will be used to purchase existing shares of Columbia common stock on the open market and up to 2.5 million shares of authorized but unissued shares of Columbia common stock, which Columbia proposes to issue and sell to the LESOP at the prevailing market price. At current market prices, $200 million would purchase approximately 4.3 million shares, or 9.4%, of Columbia's total common stock outstanding.

The LESOP's debt principal and interest would be repaid from cash dividends paid on shares of Columbia's common stock held in Fund B. To the extent that such cash dividends are insufficient to service the LESOP's debt, Columbia would make periodic contributions to the LESOP in an amount which, together with the cash dividends, would be sufficient to meet the LESOP's debt principal and interest payments.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 89-21103 Filed 9-7-89; 8:45am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

Advisory Committee on International Investment; Meeting

The Department of State will hold a meeting of the Advisory Committee on International Investment on October 5, 1989 from 9:00 a.m. to 12 noon. The meeting will be held in Room 1315 (the Loy Henderson Conference Room) at the Department of State, 2201 "C" Street, NW., Washington, DC 20520.

The agenda and approximate times topics will be discussed are as follows:

9:00—Review of agenda and introduction of first speaker by Professor Isaiah Frank of the Johns Hopkins School of Advanced International Studies.

9:05—Welcoming remarks by Assistant Secretary of State for Economic and Business Affairs Eugene J. McAllister. Assistant Secretary McAllister will provide a brief overview of U.S. Government initiatives in support of the economic reform process in Poland and Hungary. Members will be invited to comment on these initiatives and to express their views as to what reforms will be required in Poland and Hungary to induce U.S. firms to increase trade and investment activity in these countries.

10:15—Coffee.

10:30—Commentary on the current status of the strengthened National Treatment Instrument initiative in the OECD, the bilateral investment treaty (BIT) program, and of TRIMs in the GATT by William B. Milam, Deputy Assistant Secretary of State for International Finance and Development and by the Director of the Office of Investment Affairs at the Department of State. Remarks to be followed by questions and comments by committee members.

11:00—Presentation on Inward Investment. Followed by comments and questions by members of the committee.

12:00—Meeting concludes.

Access to the Department of State is controlled. Therefore, members of the public wishing to attend the meeting must notify the Office of Investment Affairs at (202) 647-1128 to arrange admittance. Please use the "C" Street entrance.

Dated: August 28, 1989.

Robert C. Reis, Jr.,

Executive Secretary.

[FR Doc. 89-21158 Filed 9-7-89; 8:45 am]

BILLING CODE 4710-07-M

Advisory Committee to United States Section International North Pacific Fisheries Commission; Partially Closed Meeting

The Advisory Committee to the United States Section, International North Pacific Fisheries Commission, will meet on September 28, 1989, at the Sheraton Anchorage Hotel, Anchorage, Alaska, at 7:00 p.m. This session will discuss the Protocol to the International Convention for the High Seas Fisheries of the North Pacific Ocean, surveillance of foreign fishing fleets, the progress of fisheries research, the Alaska salmon fisheries, and fishery developments as they affect the International North Pacific Fisheries Commission. The session will be open to the public.

The Advisory Committee will also meet at 2:00 p.m. on September 29, 1989. These sessions will not be open to the public inasmuch as the discussion will involve classified matters pertaining to the United States' negotiating position to be taken at the 35th Annual Meeting of the International North Pacific Fisheries Commission to be held in Seattle, WA, November 7-10, 1989. Pursuant to section 4(c) of the North Pacific Fisheries Act of 1954, as amended, 16 U.S.C. 1023(c) which provides that the "advisory committee * * * shall be granted opportunity to examine and to be heard on all proposed programs of study and investigation, reports, and recommendations of the United States Section", the members of the Advisory Committee will examine various options for the negotiating position at the Special Meeting, and these considerations must necessarily involve review of classified matters. Accordingly, the determination has been made to close this session pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App. I, Section 10(d) and 5 U.S.C. 552b(c)(1) and (c)(9).

Requests for further information on the meeting should be directed to Mr. Jeffrey A. Miotke, Pacific Fisheries Officer, OES/OFA Room 5806, U.S. Department of State, Washington, DC 20520. Mr. Miotke can be reached by telephone on (202) 647-2009.

Dated: August 25, 1989.

Edward E. Wolfe,

Deputy Assistant Secretary, Oceans and Fisheries Affairs.

[FR Doc. 89-21159 Filed 9-7-89; 8:45am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Radio Technical Commission for Aeronautics (RTCA) Special Committee 159—Minimum Aviation System Performance Standard for GPS; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I), notice is hereby given for the thirteenth meeting of RTCA Special Committee 159 on Minimum Aviation System Performance Standard for GPS to be held October 16–18, 1989, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005, commencing at 1:30 p.m.

The agenda for this meeting is as follows: (1) Chairman's remarks; (2) approval of the minutes of meeting held June 15–16, RTCA Paper No. 272–89/SC159–210; (3) reports of Working Group activities on integrity implementation, operations, and test requirements; (4) review of EUROCAE and other comments; (5) integration of integrity Requirements into Committee Report; (6) Working Groups meet in separate sessions; (7) assignment of tasks; (8) other business; and (9) date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements to obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682–0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on August 29, 1989.

Geoffrey R. McIntyre

Designated Officer

[FR Doc. 89–21136 Filed 9–7–89; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Denver and Adams Counties, Colorado

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Denver and Adams Counties, Colorado.

FOR FURTHER INFORMATION CONTACT: Leon Witman, Division Administrator, Federal Highway Administration, 555 Zang Street, Room 250, Lakewood, Colorado 80228, Telephone (303) 969–6730.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the State of Colorado, State Department of Highways, will prepare an environmental impact statement (EIS) on a proposal to improve Interstate 25 in Denver and Adams Counties, Colorado. The proposed improvement would involve the widening of existing I–25 between the interchanges with I–70 and I–76 for a distance of about 2.6 miles.

Improvements to the corridor are considered necessary to provide for the existing and projected traffic demand. Also, included in this proposal is the reconstruction of the I–25 interchange with 58th Avenue in Adams County and the closure of the I–25 interchange with 49th Avenue in Denver County. Alternatives under consideration include (1) taking no action; (2) widening the existing four-through lane highway to five-through lane highway each direction plus auxiliary lanes; (3) replacement access for the I–25 interchange with 49th Avenue; and (4) widening the existing 58th Avenue from four to seven lanes.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have an interest in this proposal. Public meetings will be held in the I–25 corridor late 1989/early 1990. In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing. No formal scoping meeting is planned at this time.

To ensure that the full range of issues related to this proposed action is addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on August 28, 1989.

Leon J. Witman,

Division Administrator, Lakewood.

[FR Doc. 89–21160 Filed 9–7–89; 8:45am]

BILLING CODE 4910–22–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: August 31, 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, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0192.

Form Number: 4970.

Type of Review: Extension.

Title: Tax on Accumulation Distribution of Trusts.

Description: Form 4970 is used by a beneficiary of a domestic or foreign trust to compute the tax adjustment attributable to an accumulation distribution. The form is used to verify whether the correct tax has been paid on the accumulation distribution.

Respondents: Individuals or households.

Estimated Number of Respondents/Recordkeepers: 33,000.

Estimated Burden Hours Per Response/Recordkeeping:

Recordkeeping	40 min.
Learning about the law or the form.	16 min.
Preparing the form	50 min.
Copying, assembling, and sending the form to IRS.	20 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 109,230 hours.

OMB Number: 1545–0219.

Form Number: 5884.

Type of Review: Revision.

Title: Jobs Credit.

Description: Internal Revenue Code section 38(b)(2) allows a credit against income tax to employers hiring

individuals from certain targeted groups (such as welfare recipients, etc.). The employer uses Form 5884 to figure this jobs credit. IRS uses the information on the form to verify that the correct amount of credit was claimed.

Respondents: Farms, Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents/ Recordkeepers: 85,000.

Estimated Burden Hours Per Response/Recordkeeping:

Recordkeeping	4 hr, 4 min.
Learning about the law or the form.	2 hr, 20 min.
Preparing the form	7 hr, 10 min.
Copying, assembling, and sending the form to IRS.	1 hr, 20 min.

Frequency of Response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 434,350 hours.

OMB Number: 1545–0895.

Form Number: 3800.

Type of Review: Revision.

Title: General Business Credit.

Description: Internal Revenue Code section 38 permits taxpayers to reduce their income tax liability by the amount of their general business credit, which is an aggregation of their investment credit, jobs credit, alcohol fuel credit, research credit, low-income housing credit, and employee stock ownership (ESOP) credit. Form 3800 is used to figure the correct credit.

Respondents: Farms, Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents/ Recordkeepers: 200,000.

Estimated Burden Hours Per Response/Recordkeeping:

Recordkeeping	10 hr, 31 min.
Learning about the law or the form.	35 min.
Copying, assembling, and sending the form to IRS.	48 min.

Frequency of Response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 2,382,000 hours.

OMB Number: 1545–1020.

Form Number: 1041–T.

Type of Review: Extension.

Title: Transmittal of Estimated Taxes Credited to Beneficiaries.

Description: This form was developed to implement the provisions of Internal Revenue Code section 643(g) which allows a trustee of a trust to elect to assign any overpayment of estimated tax to a beneficiary(ies). This form serves as a transmittal so that Service Center personnel can determine the correct amounts that are to be credited to the beneficiaries.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 1,000.

Estimated Burden Hours Per Response/Recordkeeping:

Recordkeeping	7 min.
Learning about the law or the form.	5 min.
Preparing the form	5 min.
Copying, assembling, and sending the form to IRS.	10 min.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 970 hours.

Clearance Officer: Garrick Shear, (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 89–21100 Filed 9–7–89; 8:45 am]

BILLING CODE 4810-25-M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 173
Friday, September 8, 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).

U.S. COMMISSION ON CIVIL RIGHTS

September 5, 1989.

PLACE: 1121 Vermont Avenue, NW, Room 516, Washington, DC 20425.

DATE AND TIME: Friday, September 15, 1989, 9:00 a.m.–5:00 p.m.

STATUS OF MEETING: Portion open to the public and portion closed.

MATTERS TO BE CONSIDERED:

I. Approval of Agenda
II. Approval of Minutes of July Meeting
III. Announcements
Bigotry and Violence in North Carolina
IV. Briefing on Administration of Justice in Non-Violent Protest

11:00 a.m. Recess

12:30 p.m. Reconvene

V. Executive Session
VI. Draft Report on Economic Status of Black Women: An Exploratory Investigation
VII. Draft Statement on Intimidation and Violence, Racial and Religious Bigotry in America
VIII. SAC Reports and Recharters
Implementation in California of the Immigration Reform and Control Act: A Preliminary Review
Police Community Relations in Miami
Bigotry and Violence in Georgia
Bigotry and Violence in Minnesota
Hawaii and Ohio SAC Recharters
IX. Commission Subcommittee Reports
X. Staff Director's Report
A. FOIA Regulations
B. 504 Regulations
C. California Advisory Committee Request
XI. Future Agenda Items

PERSON TO CONTACT FOR FURTHER INFORMATION: Barbara Brooks, Press and Communications Division, (202) 376–8312.

Melvin L. Jenkins,
Acting Staff Director.

[FR Doc. 89–21236 Filed 9–5–89; 5:05 pm]

BILLING CODE 6335-01-M

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 the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Tuesday, September 12, 1989, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Memorandum and resolution re: (1) Notice of establishment of the Investigative Files and Records System of Records pursuant to the Privacy Act of 1974, which system of records consists of files and records compiled by the Corporation's Office of Inspector General on Corporation employees or other persons involved with the Corporation's programs or operations who have been under investigation for fraud and abuse with respect to the Corporation's programs or operations; and (2) final amendment to Part 310 of the Corporation's rules and regulations, entitled "Privacy Act Regulations," which amendment exempts from certain provisions of the Corporation's regulations implementing the Privacy Act of 1974 the Corporation's Investigative Files and Records System of Records.

Memorandum and resolution re: Final amendments to Part 309 of the Corporation's rules and regulations, entitled "Disclosure of Information," in order to conform the regulation to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, which amendments substitute the term "depository institution" each place the term "bank" appears, with certain exceptions.

Memorandum and resolution re: Final amendments to Part 311 of the Corporation's rules and regulations, entitled "Rules Governing Public Observation of Meetings of the Corporation's Board of Directors," in order to conform the regulation to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, which amendments: (1) Reflect that the number of directors necessary to constitute a quorum has been changed from two to three; (2) substitute the term "depository institution" each place the term "bank" appears; and (3) revise the examples of action which may be taken by the Board in closed meetings to include matters relating to conservatorships and various applications made by savings associations which require Corporation approval.

Memorandum and resolution reconstituting the membership of the Committee on Liquidations, Loans and Purchases of Assets.

Memorandum regarding the extension and modification of certain contracts.

Reports of actions approved by the standing committees of the Corporation and by officers of the Corporation pursuant to authority delegated by the Board of Directors.

Discussion Agenda:

Memorandum and resolution re: Statement of Policy entitled "Bank Merger Transactions," which redefines and clarifies product and geographic markets and the standards to be applied in assessing both the competitive effects and prudential concerns involved in proposed bank merger transactions.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–3813.

Dated: September 5, 1989.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,
Executive Secretary.

[FR Doc. 89–21237 Filed 9–5–89; 5:06 pm]

BILLING CODE 6714-01-M

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 2:30 p.m. on Tuesday, September 12, 1989, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b (c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" ((5 U.S.C. 552b (c)(6), (c)(8), and (c)(9)(A)(ii)).

Note: Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda:

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2) and (c)(6)).

Matters relating to the possible closing of certain insured banks:

Names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550–17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–3813.

Dated: September 5, 1989.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 89–21238 Filed 9–5–89; 5:06 pm]

BILLING CODE 6714-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday 13, 1989.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Requests for modification of the revenue and affiliate underwriting limits on bank holding company subsidiaries consistent with section 20 of the Glass-Steagall Act.
2. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: September 6, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89–21250 Filed 9–6–89; 10:52 am]

BILLING CODE 6210-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: Approximately 10:30 a.m., Wednesday, September 13, 1989, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Federal Reserve Bank and Branch director appointments. (This item was originally announced for a closed meeting on August 24, 1989.)
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. 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: September 6, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89–21251 Filed 9–6–89; 10:52 a.m.]

BILLING CODE 6210-01-M

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Meeting

TIME AND DATE: 9:00 a.m., Thursday, September 14, 1989.

PLACE: Sheraton Portsmouth Hotel & Conference Center, 250 Market Street, Portsmouth, New Hampshire 03801, 603–431–2300.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Minutes.
2. Economic Commentary.
3. Central Liquidity Facility Report and Review of CLF Lending Rate.
4. Central Liquidity Facility's Reserving Policy.
5. Central Liquidity Facility's Agent Commitment Fee.
6. Insurance Fund Report.
7. Proposed Rule: Section 701.13 and Part 741, Supervisory Committee Audits, NCUA Rules and Regulations.
8. Appeal of Denial of FOM Amendment by East Idaho FCU, Idaho Falls, ID.
9. Appeal of Denial of FOM Amendment by Moore West FCU, San Leandro, CA.
10. Legislative Update.

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (202) 682–9600

Becky Baker,

Secretary of the Board.

[FR Doc. 89–21294 Filed 9–6–89; 2:37 pm]

BILLING CODE 7535-01-M

Corrections

Federal Register
Vol. 54, No. 173
Friday, September 8, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

International Trade Administration

U.S. DOE, Argonne National Laboratory; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

Correction

In notice document 89-19514 beginning on page 34538 in the issue of Monday, August 21, 1989, make the following correction:

On page 34539, in the first column, nine lines from the bottom of the page, "advice" should read "advise".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

International Trade Administration

Carleton College; Applications for Duty-Free Entry of Scientific Instruments

Correction

In notice document 89-19517 beginning on page 34539 in the issue of Monday, August 21, 1989, make the following corrections:

1. On page 34540, in the first column, in the 15th line from the bottom of the page, "Model JEM-200 FX/SEG" should read "Model JEM-2000 FX/SEG" and in the 14th line from the bottom of the page "Jeol, Japan" should read "JEOL, Japan".

2. On the same page, in the second column, in the 17th line "samples" was misspelled.

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 9E3747 and FAP 9H5580/P486;FRL-3630-3]

Pesticide Tolerances for Cyfluthrin

Correction

In proposed rule document 89-19225 beginning on page 33718 in the issue of Wednesday, August 16, 1989, make the following correction:

§ 180.436 [Correctly Designated]

On page 33719, in the third column, the first section heading, "§ 180.435 Cyfluthrin, tolerances for residues" should read "§ 180.436 Cyfluthrin, tolerances for residues".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-59872; FRL-3626-4]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

Correction

In notice document 89-18833 beginning on page 33071 in the issue of Friday, August 11, 1989, make the following corrections:

1. On page 33072, in the first column, under **DATES**, the 4th line should read, "Y 89-152, 89-153, August 2, 1989."

2. On the same page, in the same column, **Y 89-142** should read **Y 89-149**.

BILLING CODE 1505-01-D

DEPARTMENT OF INTERIOR

Bureau of Land Management

[CA-940-09-4212-13; CACA 19645]

California; Realty Action; Exchange of Public and Private Lands in Fresno, Monterey, and San Benito Counties and Order Providing for Opening of Public Land

Correction

In notice document 89-18381 beginning on page 32396 in the issue of Monday, August 7, 1989, make the following correction:

On page 32396, in the third column, under **Mount Diablo Meridian, California**, in the paragraph under "T. 18S., R. 12E.", in the first line, "Secs. 29 and 20," should read "Secs. 19 and 20.",

BILLING CODE 1505-01-D

federal register

Friday
September 8, 1989

Part II

Department of Education

Kuhry Bequest Program; Notices

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

The Kuhry Bequest Program

AGENCY: Department of Education.

ACTION: Notice of applicability of regulations.

SUMMARY: The Secretary is applying the Rehabilitation Short-Term Training regulations in 34 CFR part 390 to the Kuhry Bequest Program with two changes. One change is new selection criteria for this program. The other change is the addition of educational services to the types of authorized projects. The Secretary takes this action to establish appropriate procedures for the implementation of this program.

EFFECTIVE DATE: The provisions in this notice take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these provisions, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Eileen F. Lehman, Office of Developmental Programs, Rehabilitation Services Administration, U.S. Department of Education, 400 Maryland Avenue, SW. (Mary E. Switzer Building, Room 3318), Washington, DC 20202–2649. Telephone: (202) 732–4281.

SUPPLEMENTARY INFORMATION: The Secretary is the recipient of a bequest of $614,780 to provide for the care and welfare of people who are blind. These funds will be used to provide grants (referred to in this notice as the Kuhry Bequest Program, named after the bequestor) for short-term training of professionals related to the care and welfare of people who are blind.

The Secretary will apply the Rehabilitation Short-Term Training regulations in 34 CFR part 390 to the Kuhry Bequest Program with certain changes. These regulations have been selected because the general requirements (subpart A) of the Short-Term Training program and the Kuhry Bequest Program are similar. Subpart B and subpart E, which specify the kinds of projects authorized under the program and the conditions to be met by a grantee, have been demonstrated to be sound. Because the Kuhry Bequest Program, under the terms of the bequest, is only for the care and welfare of those who are blind, the selection criteria in subpart D are not wholly appropriate. The selection criteria to be applied adhere to the terms of the bequest, are clearer, and are presented in an order that should benefit applicants in the preparation of applications in terms of ease and coherence.

On February 23, 1989 the Secretary published a notice of proposed applicability of regulations for the Kuhry Bequest Program in the **Federal Register** (54 FR 7922).

A change since the publication of the notice is the expansion of the areas in which short-term training may be provided. Types of projects that are authorized for training now include training in areas relating to the delivery of educational services in addition to rehabilitation services. As a result of public comment, the selection criterion relating to the extent to which persons who are familiar with blindness are involved in the project is amended to include support of regional or national organizations.

Analysis of Comments and Changes

In response to the Secretary's invitation in the notice, two parties submitted comments. An analysis of the comments and of the changes in the notice of applicability of regulations since publication of the proposed notice follows.

What Types of Projects Are Authorized Under This Program?

Comment: The Secretary received one comment concerned with the limitation of the short-term training to rehabilitation professionals because individuals working in settings such as nursing homes, hospitals, educational facilities, or social services agencies also provide services related to the care and welfare of the blind.

Discussion: The Secretary recognizes the need for training a broad array of professionals to provide for the care and welfare of the blind. This need is particularly evident in the provision of transition services to adolescents who are in an educational setting. The Secretary believes that personnel, such as those who provide services in nursing homes, hospitals, and social services agencies are already covered under § 390.10 of the regulations.

Changes: In section 390.10 of the regulations, in addition to the delivery of vocational, medical, social, and psychological rehabilitation services, the Secretary has included educational services.

Quality of Key Personnel

Comment: One commenter requested that the applicant be able to demonstrate a record of competence, expertise and the ability to leverage resources in national and regional training projects in the field of blindness.

Discussion: While the Secretary recognizes the relevance of the comment to applications that may be national or regional in scope, the regulations do not require applications to be national or regional in scope. Past experience has indicated that the impact of most short-term training projects is most strongly felt in the locality. It follows that the recommended expertise would not be necessary for all training projects.

Changes: None

Extent to Which Persons Who Are Familiar With Blindness Are Involved in the Project

Comment: One commenter asked that the criterion by which the Secretary reviews each application to determine the extent to which it demonstrates the support of community organizations with an interest in providing services for persons who are blind be changed to a demonstration of support from national or regional organizations knowledgeable about needs for short-term training in this area.

This commenter also urged that the number of points allotted to this criterion be increased from 10 to 25.

Discussion: The Department recognizes that national and regional groups would have valuable input regarding the need for services. However, applicants are not required to develop applications that are regional or national in scope. To increase the points available under this criterion would distort the balance of the selection factors.

Changes: The Department has amended section (e)(2) of the selection criteria to include national and regional organizations knowledgeable about the need for short-term training to further the care and welfare of persons who are blind.

Other Factors the Secretary Considers in Reviewing an Application

Comment: One commenter urged that a special priority be established to set aside funds for programs in the Pacific Basin.

Discussion: While the Secretary is authorized to consider geographical distribution of projects in making awards under this program, to give priority to the needs of one particular geographical area would not be appropriate under the terms of the bequest.

Changes: None

The Secretary will apply the regulations for Rehabilitation Short-

Term Training in 34 CFR part 390 to this competition with the exception of changes to the selection criteria in § 390.30 and to the types of projects to be funded in § 390.10. The Secretary will apply the following selection criteria:

Selection Criteria

(a) Evidence of need (15 points).

(1) The Secretary reviews each application to determine that the need for the training project has been adequately justified.

(2) The Secretary reviews each application to determine that the need for the training project has been established and validated in terms of its potential impact on the service delivery system.

(b) Plan of operation (25 points).

(1) The Secretary reviews each application to determine the quality of the plan of operation for the project.

(2) The Secretary reviews each application to determine the extent to which the application shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective;

(v) A clear description of how the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition.

(c) Nature and scope of training program content (15 points).

(1) The Secretary reviews each application to determine that the application demonstrates the adequacy and scope of the proposed training program content.

(2) The Secretary reviews each application to determine that—

(i) The educational objectives are clearly defined, measurable and achievable;

(ii) The proposed course content and methodology to develop and implement the training can be expected to achieve the stated educational objectives; and

(iii) The program and teaching methods provide for an integration of theory and practice relevant to the educational objectives of the program.

(d) Quality of key personnel (15 points).

(1) The Secretary reviews each application to determine the quality of key personnel proposed for the project, including—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (d)(1) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(2) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(e) Extent to which persons who are familiar with blindness are involved in the project (10 points).

(1) The Secretary determines the extent to which the application shows:

(i) Persons who are familiar with blindness are involved in the planning and development of the project;

(ii) Persons who are familiar with blindness participate in the implementation or conduct of the project as directors, trainers, advisors, or consultants; and

(iii) Plans for recruiting persons who are familiar with blindness to participate in the project as trainees.

(2) The Secretary reviews each application to determine the extent to which it demonstrates the support of community, regional, or national organizations with an interest in providing services for persons who are blind.

(f) Adequacy of resources (5 points). The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(g) Evaluation plan (5 points).

(1) The Secretary reviews each application to determine the quality of the evaluation plan for the project.

(2) The Secretary determines that the methods of evaluation are appropriate for the project and, to the extent possible, are objective, and produce data that are quantifiable.

(h) Budget and cost effectiveness (10 points).

(1) The Secretary reviews each application to determine that the project has an adequate budget and is cost effective.

(2) The Secretary determines that—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(Approved by the Office of Management and Budget under Control Number 1820-0018.)

Types of Projects

In addition to the delivery of services as listed in § 390.10, the Kuhry Bequest Program will also fund short-term training projects that provide short-term training and technical instruction in areas of special significance to the delivery of educational services.

(Authority: 20 U.S.C. 3481)

(Catalog of Federal Domestic Assistance No. 84.999, the Kuhry Bequest Program)

Dated: August 29, 1989.

Lauro F. Cavazos,

Secretary of Education.

[FR Doc. 89-21105 Filed 9-7-89; 8:45 am]

BILLING CODE 4000-01-M

[CFDA No.: 84.999]

Kuhry Bequest Program; Invitation for Applications for New Awards for Fiscal Year 1990

Purpose of Program: The Secretary is the recipient of a bequest of $614,780 that provides for the care and general welfare of the people of this country who are blind. These funds will be used to provide grants for projects that provide short-term training related to the care and welfare of people who are blind. The Secretary invites applications for programs that train people in the application and use of rehabilitation technology for persons who are blind. The Secretary also invites applications for projects that propose to use innovative methods of training adolescents and young adults who are blind to improve their vocational and social functioning.

Deadline for Transmittal of Applications: November 17, 1989.

Applications Available: September 11, 1989.

Available Funds: $614,780.

Estimated Range of Awards: $25,000–$100,000.

Estimated Average Size of Awards: $55,000.

Estimated Number of Awards: 6–25.

NOTE: The Department is not bound by any estimates in this notice.

Project Period: Up to 12 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in

34 CFR parts 74, 75, 77, 80, 81, and 85; and (b) The regulations governing the Rehabilitation Short-Term Training Program in 34 CFR part 390, except that educational services are added to the types of authorized projects and revised selection criteria will be used, as described in the notice of applicability of regulations as published in this issue of the **Federal Register**.

The Education Department General Administrative Regulations in 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities) do not apply because these funds are from a private bequest and are not funds appropriated for Federal financial assistance.

For Applications or Information Contact: Eileen Lehman, Rehabilitation Services Administration, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3318, Switzer Building, Washington, DC 20202-2649. Telephone: (202) 732-4281.

Program Authority: 20 U.S.C. 3481

Dated: September 1, 1989.

Robert R. Davila

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 89-21106 Filed 9-7-89; 8:45 am]

BILLING CODE 4000-01-M

federal register

Friday
September 8, 1989

Part III

Department of Housing and Urban Development

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 570

Community Development Block Grants-Fair Housing Requirements; Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 570

[Docket No. R-89-1450; FR-2658]

RIN: CPD-5-89

Community Development Block Grants—Fair Housing Requirements

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Final Rule.

SUMMARY: The Fair Housing Amendments Act of 1988 (Pub. L. 100-430, approved September 13, 1988) became effective on March 12, 1989. This Act expanded the coverage of the Fair Housing Act (42 U.S.C. 3601-20) to prohibit discriminatory housing practices based on handicap and familial status. This final rule makes technical changes to HUD's Community Development Block Grant (CDBG) regulations at 24 CFR Part 570 to reflect the amendments.

DATE: Effective date: October 11, 1989.

FOR FURTHER INFORMATION CONTACT: Laurence Pearl, Director, Office of Program Standards and Evaluation, Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410-5000, (202) 755-5288. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The Fair Housing Amendments Act of 1988 (Pub. L. 100-430, approved September 13, 1988) expanded the coverage of the Fair Housing Act (42 U.S.C. 3601-20) to prohibit discriminatory housing practices based on two new protected classes (handicap and familial status). Classes protected before the amendments included race, color, religion, sex or national origin. The amendments became effective on March 12, 1989. Following notice and public comment, final regulations implementing the amendments to the Fair Housing Act were published on January 23, 1989 (54 FR 3231).

On September 6, 1988 (53 FR 34415), the Department published a final rule amending substantial portions of its regulations governing the Community Development Block Grant Program (CDBG Program) (24 CFR part 570). The final rule included revisions addressing the Fair Housing Act and requirements for affirmatively furthering fair housing in the CDBG program. That final rule stated that technical amendments to the CDBG regulations reflecting the expanded coverage of the Fair Housing Act would be made following the issuance of final regulations implementing the substantive provisions of that Act. Today's final rule makes these promised revisions.

The following sections have been revised to reflect the expanded coverage under the Fair Housing Act: (1) Section 570.206, which governs program administration costs for fair housing activities; (2) § 570.601(b), which contains a description of the coverage of the Fair Housing Act; and (3) § 570.904, which addresses the fair housing review criteria. Statutory citations have been revised in § 570.303, which governs grantee certification requirements.

HUD has determined that notice and prior public comment on this rule is unnecessary and that good cause exists for making this rule effective as soon as possible after publication. The substantive changes made by the recent amendments to the Fair Housing Act were fully addressed in another rule that was subject to public notice and comment. Since the changes made in today's final rule are technical corrections, further notice and public comment is not required.

Findings and certifications

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environment Policy Act of 1969. 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 the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street SW., Washington, DC 20410-0500.

The rule does not constitute a "major rule" as that term is defined in section 1(d) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An 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.

In accordance with 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 does not affect the amount of funds provided in the CDBG program. Rather the rule modifies and updates program administrative and procedural requirements to comport with recently enacted legislation.

The General Counsel, as the Designated Official under Executive Order No. 12606—The Family, has determined that the rule will not have a significant impact on family formation, maintenance, or well-being. The rule merely makes technical changes to administrative and procedural CDBG requirements to comport with recently enacted legislation. The impact on the family of rules implementing the legislation was fully addressed in a final rule issued January 23, 1989 (54 FR 3232, 3282).

The General Counsel, as the Designated Official under section 6(a) of Executive Order No. 12611—Federalism, has determined that the final rule does not involve the preemption of State law by Federal statute or regulation and does not have Federalism implications. The rule makes only minor changes to administrative and procedural rules to reflect recent statutory changes. Federalism issues related to the implementation of the substantive amendments to the Fair Housing Act were discussed in the final rule issued January 23, 1989 (54 FR 3232, 3282).

The rule was not listed on the Department's Semiannual Agenda of Regulations published April 24, 1989 (54 FR 16708) under Executive Order No. 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program numbers are:

14.218 Community Development Block Grant—Entitlement
14.219 Community Development Block Grant—Small Cities
14.221 Urban Development Action Grant
14.225 Secretary's Discretionary Fund/ Territories Program
14.227 Secretary's Discretionary Fund/ Community Development Technical Assistance Grants
14.232 Secretary's Discretionary Fund/ Special Projects

List of Subjects for 24 CFR Part 570

Community development block grants, Grant programs: housing and community development, Loan programs: housing and community development, Low- and moderate-income housing, New communities, Pockets of poverty, Small cities.

For the reasons set forth in the Preamble, Title 24 of the Code of Federal Regulations is amended as follows:

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

1. The authority citation for Part 570 continues to read as follows:

Authority: Title I, Housing and Community Development Act of 1974 (42 U.S.C. 5301–5320); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d).

2. Section 570.206(c) is revised to read as follows:

§ 570.206 Program administration costs.

* * * * *

(c) *Fair housing activities.* Provision of fair housing services designed to further the fair housing objectives of the Fair Housing Act (42 U.S.C. 3601–20) by making all persons, without regard to race, color, religion, sex, national origin, familial status or handicap, aware of the range of housing opportunities available to them; other fair housing enforcement, education, and outreach activities; and other activities designed to further the housing objective of avoiding undue concentrations of assisted persons in areas containing a high proportion of low and moderate income persons.

* * * * *

3. Section 570.303(d)(2) is revised to read as follows:

§ 570.303 Certifications.

* * * * *

(d) * * *

(2) The Fair Housing Act (42 U.S.C. 3601–20).

* * * * *

4. Section 570.601(b) is revised to read as follows:

§ 570.601 Public Law 88–352 and Public Law 90–284; affirmatively furthering fair housing; Executive Order 11063.

* * * * *

(b) "Public Law 90–284" refers to the Fair Housing Act (42 U.S.C. 3601–20), which states that it is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States and prohibits any person from discriminating in the sale or rental of housing, the financing of housing, or the provision of brokerage services, including otherwise making unavailable or denying a dwelling to any person, because of race, color, religion, sex, national origin, handicap or familial status. The Fair Housing Act further requires the Secretary to administer the programs and activities relating to housing and urban development in a manner affirmatively to further the policies of the Fair Housing Act. In accordance with this statutory direction, the Secretary requires that grantees administer all programs and activities related to housing and community development in a manner to affirmatively further the policies of the Fair Housing Act; furthermore, section 104(b)(2) of the Act requires that each grantee receiving funds under section 106 of the Act (entitlement or small cities grantees) certify to the satisfaction of the Secretary that it will affirmatively further fair housing.

* * * * *

5. In 570.904, the first sentence of paragraph (c) and paragraph (c)(1) introductory text are revised to read as follows:

§ 570.904 Equal Opportunity and Fair Housing Review criteria.

* * * * *

(c) *Fair housing review criteria.* Section 570.601(b) sets forth the general requirements for the Fair Housing Act (42 U.S.C. 3601–20) and the grantee's certification that it will affirmatively further fair housing. * * *

(1) The recipient has conducted an analysis to determine the impediments to fair housing choice in its housing and community development program and activities. The term "fair housing choice" means the ability of persons regardless of race, color, religion, sex, handicap, familial status or national origin, of similar income levels to have available to them the same housing choices. This analysis shall include a review for impediments to fair housing choice in the following areas:

* * * * *

Dated: August 22, 1989.

Audrey E. Scott,

General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 89–21178 Filed 9–7–89; 8:45 am]

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Friday
September 8, 1989

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Parts 25 and 121

Miscellaneous Changes to Emergency Evacuation Demonstration Procedures, Exit Handle Illumination Requirements, and Public Address Systems; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 25 and 121

[Docket No. 26003; Notice No. 89-23]

RIN 2120-AC45

Miscellaneous Changes to Emergency Evacuation Demonstration Procedures, Exit Handle Illumination Requirements, and Public Address Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to modify the procedures for conducting an emergency evacuation demonstration by requiring that the flightcrew take no active role in the demonstration and by changing the age/sex distribution requirement for demonstration participants. This notice also proposes to standardize the illumination requirements for the handles of the various types of passenger emergency exits. In addition, it is proposed to add a requirement that would prevent the inadvertent disabling of the public address system because of an unstowed microphone. These proposals resulted from the public technical conference on Emergency Evacuation of Transport Airplanes held in Seattle, Washington, September 3–6, 1985, and are intended to enhance the provisions of transport category airplanes for egress of occupants under emergency conditions.

DATE: Comments must be received on or before January 8, 1990.

ADDRESS: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-204), Docket No. 26003, 800 Independence Avenue SW., Washington, DC 20591, or delivered in duplicate to FAA Rules Docket, Room 915-G, 800 Independence Avenue SW., Washington, DC 20591. Comments delivered must be marked: Docket No. 26003. Comments may be examined in Room 915-G weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. In addition, the FAA is maintaining an information docket of comments in the Office of the Regional Counsel (ANM-7), FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. Comments in the information docket may be examined in the Office of the Regional Counsel weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Franklin Tiangsing, Regulations Branch (ANM-114), Transport Airplane Directorate, Aircraft Certification Service, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168; telephone (206) 431-2121.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, or economic impact that might result from adopting the proposals contained in this notice are invited. Substantive comments should be accompanied by cost estimates. Commenters should identify the regulatory docket or notice number and submit comments, in duplicate, to the Rules Docket address specified above. All comments received on or before the closing date for comments will be considered by the Administrator before taking action on this proposed rulemaking. The proposals contained in this notice may be changed in light of comments received. All comments will be available in the Rules Docket, both before and after the closing date for comments, for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 26003." The postcard will be date/time stamped and returned to the commenter.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-230, 800 Independence Avenue SW., Washington, DC 20591; or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future rulemaking documents should also request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

Background

On September 3, 1985, the FAA held a public technical conference in Seattle, Washington, to solicit and review information from the public on a variety of topics related to the emergency evacuation of transport category airplanes. As a result of the conference, three working groups were formed to discuss current safety regulations and to recommend changes. These groups, which were Design and Certification, Operations and Training, and Maintenance and Reliability, were comprised of individuals representing various aviation related organizations. The proposals in this notice are the result of certain recommendations made by the Design and Certification Working Group.

Section 25.803(c) of the Federal Aviation Regulations (FAR) defines the requirements for conducting an emergency evacuation demonstration for the type certification of transport category airplanes. Similar requirements for U.S. air carrier operators are defined in § 121.291 of the FAR and Appendix D of part 121. Section 121.291 requires, in part, that each holder must conduct an emergency evacuation demonstration in accordance with Appendix D of part 121 for each type and model of airplane to be used in passenger-carrying operations, unless compliance has been shown with § 25.803 in effect on December 1, 1978 (Amendment 25-46) during type certification, or with § 121.291(a) in effect on October 24, 1967 (Amendment 121-30). Appendix D of part 121, in turn, contains demonstration criteria which are similar to those of § 25.803. Section 25.803(c)(19) of part 25, and Appendix D, paragraph (a)(19), of part 121 currently require the applicant's approved emergency evacuation training program procedures to be fully utilized during the demonstration. Most operators' procedures call for one or more of the flight crewmembers to enter the cabin and assist in an evacuation. To the extent that they are available for such assistance, it is appropriate that they do so in an evacuation under actual emergency conditions. It cannot be assured, however, that the flight crewmembers will always be available to provide such assistance on a timely basis. They may have to perform other duties which would delay their entry into the cabin. Such duties may, for example, include engine shutdown or communications with persons on the ground. If the evacuation is initiated by a flight attendant, the flightcrew may not be immediately aware of the evacuation. Furthermore, they may not

be available to assist in the cabin because they are incapacitated or have already evacuated through one of the cockpit emergency exits. In this regard, some operators' procedures call for one of the flightcrew to leave the airplane immediately and assist on the ground.

Because it cannot be assured that the flightcrew would always be available to assist in an evacuation under actual emergency conditions, the working group recommended that the demonstration should be conducted without their assistance in the cabin. With the proposed change, the demonstration would more accurately reflect conditions that are likely to be encountered during an actual evacuation.

As proposed, the flightcrew could participate in the coordination of the demonstration by determining when the airplane is properly prepared for the demonstration, relaying information to ground personnel, or initiating the demonstration. When the demonstration starts, the flightcrew would have to be in their assigned seats. They should then leave the airplane through one of the exits close to the flight deck, after simulating the time required to complete the emergency checklist. After the flightcrew has reached the ground, they would be permitted to assist evacuees.

Section 121.291(a) would be amended to specify that any demonstration conducted on or after the effective date of the amendment would have to be conducted without the active participation of the flightcrews, regardless of whether the demonstration is conducted under the provisions of that part or during type certification under the provisions of § 25.803. This would not, however, preclude an analysis made after that date which is based on the results of earlier demonstrations.

Since the role of the flightcrew in the demonstration would be minimal, there would be no need for them to be members of a regularly scheduled line crew. Section 25.803(c)(7) of part 25, and Appendix D, paragraph (12), of part 121, would therefore be revised accordingly. Additionally, the word "or" in § 25.803(c)(7)(i) would be changed to "and" in order to clarify that the requirement is for a joint part 25 and part 121 certification effort.

Section 25.803(c), as well as Appendix D to part 121, currently specifies, in part, that the emergency evacuation demonstration must be conducted using a representative load of persons in normal health. Of this load, at least 30 percent must be female and at least 5 percent must be over 60 years of age with a proportionate number of females (i.e., 30 percent of 5 percent, or 1.5 percent of the total load must be female and over 60). In addition, at least 5 percent, but not more than 10 percent, must be children under 12 years of age.

The use of elderly persons in conducting emergency evacuation demonstrations, as currently specified, subjects those persons to a high risk of suffering injuries, such as broken bones, etc. Furthermore, it is an unnecessary risk since compensating factors can be applied to provide the same test results. Although there is less risk of injury to children, the use of minors in conducting emergency evacuation demonstrations actually violates prevailing child labor laws in many states. Because of these unnecessary risks, the FAA has permitted emergency evaucation demonstrations to be conducted with other mixtures of age and sex under the equivalent safety provisions of § 21.21(b)(1).

In view of these unnecessary risks, the Design and Certification Working Group recommended that the FAA re-evaluate the mixture of sex and age used for emergency evacuation demonstrations. In responding to the recommendations, the FAA first reviewed three sources of data to determine the average mixture of passengers being flown in air carrier operations: (1) The "Demographic Characteristics of Airline Passengers (1984)," *The Airliner Cabin Environment: Air Quality and Safety*, National Academy Press; (2) an age distribution survey of trans-Atlantic passengers conducted in the United Kingdom by the Civil Aviation Authority (CAA); and (3) a cursory age/sex distribution survey of airline passengers conducted by the Air Transport Association (ATA).

A review of the age distribution data from the "Demographic Characteristics of Airline Passengers" shows that the percentage of passengers over 50 years of age is 27. The data from the CAA survey shows that the percentage of such passengers is 33. From an average of these data, it is assumed that the percentage of passengers over 50 years of age is 30.

The ATA data shows that the percentage of passengers under 12 years of age is 3. By rounding to the nearest 5 percent, it is assumed that the percentage of passengers under 12 years of age is 5.

The "Demographic Characteristics of Airline Passengers" data show that 46 percent of all passengers are female. The ATA data show that 38 percent of the passengers over 60 years of age are female (that is 5 percent of the total number of passengers) and 36 percent of the passengers, ages 12 to 59, are female (30 percent of the total).

In addition to reviewing data concerning the average mixture of passengers being flown in air carrier operations, the FAA also reviewed test data concerning the relative evacuation capability of different mixtures of age and sex.

The FAA Civil Aeromedical Institute (CAMI) conducted a series of test to compare the relative evacuation rate of four different seating configurations adjacent to a Type III emergency exit (as defined in § 25.807). From those tests, the relative evacuation rates of different mixtures of age and sex were developed. In addition, the Aerospace Industries Association of America (AIA) presented data to the working group concerning the relative evacuation capability of different mixtures of age and sex. The CAMI and AIA data indicate that two age groups, participants under 50 years of age and those over 50, will adequately represent the average passenger age distribution if the percentage of passengers under 12 years of age is added to the older age group. The 5 percent assumed to be under 12 years were therefore added to the 30 percent assumed to be over 50 years to produce 35 percent.

The relative evacuation rate data from those two reports were compared with the average mixture of passengers being flown in air carrier service to produce the mixture of age and sex proposed for use in the emergency evacuation. As proposed, at least 35 percent of the participants must be over 50 years of age, at least 40 percent must be female, and at least 15 percent must be female and over 50 years of age. The 15 percent that must be female and over 50 years of age is part of the 40 percent of the participants who must be female. Based on analyses of the data discussed above, the FAA has determined that the results of evacuation demonstrations using the proposed mixture of age and sex would be comparable to results of such demonstrations under the current rules. While the proposed change would not preclude the use of persons under 12 years of age or over 60 years, it would eliminate the requirement to unnecessarily expose them to the risk of suffering injuries.

Copies of relevant portions of the documents cited above have been placed in the docket.

It is also proposed to allow the use of an alternate mixture of sex and age, provided it would produce equivalent results. Producing equivalent results would mean that it would have to produce the same evacuation rates as

the age/sex distribution specified in the regulation, or the 90-second time limit would have to be adjusted accordingly. Typically, the applicant would have to conduct comparative tests in order to show that the alternate age/sex distribution would produce equivalent results.

Although not a direct result of the working group recommendations, this notice proposes to clarify the wording in § 25.803(c)(3) and paragraph (a)(3) of Appendix D to part 121 to specify that stands and ramps may be used in emergency evacuation demonstrations at overwing exits only when off-wing descent devices are not installed on the airplane. This has been the practice since the inception of the rule, and the rewording will prevent any future uncertainty over the requirement. These changes would also require corresponding conforming changes to § 25.803(c)(18) and paragraph (a)(18) of Appendix D.

As a further conforming change, § 121.291(a) would be revised to extend the exceptions of those subparagraphs to include emergency evacuation demonstrations conducted in accordance with any later amendments to that section or § 25.803(a).

This notice also proposes to revise § 25.811 to standardize the requirements for illumination of passenger emergency exit operating handles. This section currently specifies that each operating handle of Type I and Type A passenger emergency exits must be self-illuminated, or it must be conspicuously located and well-illuminated by a separate light source. Section 25.811 does not provide this option for Type III exits. The operating handle of a Type III passenger emergency exit must be self-illuminated. Although § 25.811 does not extend this option to Type III exits, the FAA has accepted such exits with handles which are conspicuously located and well-illuminated by a separate light source, under the equivalent level of safety provisions of § 21.21(b)(1). Further, § 25.811 does not provide criteria for illumination of the operating handles of Type II and Type IV passenger emergency exits. As proposed, this section would specify the same alternative methods of illumination for the operating handles of all passenger emergency exits, regardless of the type.

The emergency lighting required by § 25.812 may provide sufficient illumination of the operating handles of Type II and Type IV passenger emergency exits in many airplanes; however, as noted above, § 25.811 does not currently provide criteria for illumination of the operating handles of such exits. Because no criteria are contained in § 25.811, there may be transport category airplanes in current air carrier, air taxi or commercial service which have no illumination or insufficient illumination of those handles. Although no retrofit requirement is proposed in this notice, the FAA is considering future rulemaking to amend parts 121 and 135 to require air carrier, air taxi and commercial operators to provide sufficient illumination of the operating handles of Type II and Type IV exits. The FAA specifically invites comments concerning the models and numbers of transport category airplanes in such service with Type II or Type IV exits, the adequacy of any existing illumination of operating handles in those airplanes, the cost of providing sufficient illumination of those handles on a retrofit basis, and whether the cost of modifying airplanes in service would be commensurate with any increase in safety that would result.

Covers are sometimes provided for the operating handles of passenger exits. Section 25.811 currently requires the instructions for the removal of such covers from Type III exits to be self-illuminated; however, the FAA has allowed the option of locating the instructions conspicuously and providing sufficient illumination by a separate source of light in lieu of self-illumination. Although the need for such illumination is of equal importance, § 25.811 does not currently specify any means to illuminate the instructions for removal of the operating handle cover from any other type of passenger emergency exit. Section 25.811 would therefore be amended to specify that the instructions for removing such covers from any type exit must either be self-illuminated or conspicuously located and well-illuminated by a separate source of light.

Part 25 does not require the installation of a public address system for type certification. Section 25.1411 does, however, contain certain accessibility standards that are applicable if a public address system is installed. The FAA proposed in Notice 86–5 (51 FR 19140; May 27, 1986) to adopt a new § 25.1423 which would, in part, require a power source which is independent of engine operation and auxiliary power unit operation, the forward motion of the airplane, and all normal means used by the flightcrew for power source disconnection. Since the time Notice 86–5 was developed, the Design and Certification Working Group identified a need for additional standards concerning the public address system.

Under certain circumstances, the public address system can be rendered inoperative inadvertently. During a recent incident in which there was an emergency evacuation due to a large fuel spill from one wing, the escape slides were deployed into the fuel. The flight attendants at the back of the cabin could not be notified of this potentially hazardous situation because the cockpit microphone was not returned to the stowed position after use and was thereby rendered inoperative. As recommended, a new regulation is proposed which would require the public address system to be designed so that it will not be rendered inoperative when any microphone is not in the stowed position. Since this requirement is a system design standard rather than an accessibility requirement as currently found in § 25.1411(a)(2), the new requirement would be placed in a new § 25.1423 entitled, "Public address system." The proposed new requirement would be in addition to any standards which may result from Notice 86–5. Additionally, the design standards found in § 121.318 would be added to the new § 25.1423 so that all the design requirements for the public address system will be found in one location in part 25. The addition of the requirements in part 121 to § 25.1423 is merely an editorial change and does not impact the regulatory evaluation of this NPRM.

As proposed in this notice, the requirement to have a public address system that will not be rendered inoperative when any microphone is not in the stowed position would apply only to future transport category airplanes for which an application for type certificate is made after the effective date of the change. Although no retrofit requirement is proposed in this notice, the FAA is considering future rulemaking to amend parts 121 and 135 to require air carrier, air taxi or commercial operators of transport category airplanes already in service to have public address systems which meet this new standard. The FAA specifically invites comments as to whether the cost of modifying such airplanes would be commensurate with the increase in safety that would result.

Regulatory Evaluation

Cost-Benefit Analysis

The regulatory evaluation analyzes the costs and benefits of a Notice of Proposed Rulemaking to amend parts 25 (Airworthiness Standards for Transport Category Airplanes) and 121 (Certification and Operations for Domestic, Flag, Supplemental Air Carriers, and Commercial Operators of

Transport Category Airplanes) of the FAR. This notice proposes to modify the procedures for conducting an emergency evacuation demonstration by requiring that the flightcrew take no active role in the demonstration and by changing the age/sex distribution requirement for demonstration participants. This notice also proposes to extend the illumination requirement for the operating handles of Type I and Type A exits currently in the regulations to include the operating handles of Type II and Type IV exits and to change the handle illumination requirement for Type III exits to correspond to the requirements for the operating handles of Type I and Type A exits. In addition, the notice proposes to add a requirement to prevent the public address system from becoming inoperative due to a microphone not being stowed. An example of a means of compliance would be to install a "push-to-talk" switch on each microphone.

This notice is a result of findings of the recent public Emergency Evacuation Task Force and is intended to improve the chances of passengers safely escaping an airplane during an emergency evacuation.

Costs

The FAA estimates the total incremental cost of compliance that would accrue from implementation of the proposed rule to be less than $74,000 (discounted present value, 10 years, 10 percent, 1986 dollars).

According to information available to the FAA, only one of the proposed amendments to part 25 would result in additional cost to manufacturers of transport category airplanes produced under new type certificates. In addition, none of the proposed amendments to part 121 are expected to adversely impact air carrier operators.

Each of the proposed amendments is evaluated below for probable cost impact:

1. Proposed Amendments

a. *Regularly Scheduled Line Crew.* This proposed amendment would require that flight crewmembers need not be members of a regularly scheduled line crew, provided they have knowledge of the airplane. In other words, such flight crewmembers need not be line pilots. This amendment is not expected to impose any additional cost on aircraft manufacturers because it represents nothing more than a minor procedural change.

b. *Age/Sex Distribution of Passengers used in an Emergency Evacuation Demonstration.* This proposed amendment would require that the age/sex distribution of persons who participate in manufacturers' emergency evacuation demonstrations must consist of at least 40 percent female, at least 35 percent must be over 50 years of age, and at least 15 percent must be female and over 50 years of age. This requirement is not expected to impose additional costs to manufacturers, because any costs generated from the age/sex distribution change would be offset by the savings accrued from the elimination from such demonstrations of the requirement that includes the participation of persons under 18 and over 60 years of age. The other part of this amendment would allow an alternate passenger load to be used if it can be shown that either the alternate passenger load will produce an equivalent evacuation rate, or the 90-second time limit is adjusted to produce a demonstration that will provide an equivalent evacuation capability to that provided by a demonstration used for the representative passenger load. This feature would not impose any additional cost to manufacturers because it only represents an option to the 90-second evacuation time limit. Moreover, it is reasonable to assume that a manufacturer would not choose to use an alternate passenger load if it were not deemed to be in the manufacturer's best interest.

c. *Emergency Evacuation Demonstrations by Flight Attendants without Flightcrew.* This proposed amendment would require that emergency evacuation demonstrations be conducted by flight attendants without reliance on the flightcrew. This requirement would not impose an additional cost to manufacturers because it represents nothing more than a minor procedural change. This change would allow the flightcrew to perform other duties, such as engine shutdown and communication with persons on the ground.

d. *Passenger Emergency Exit Handle.* This amendment would require that all passenger emergency exit operating handles and the instructions for removal of covers from those handles that are covered must be: (1) Self-illuminated, or (2) conspicuously located and well-illuminated. This amendment would impose little, if any, additional cost impact on manufacturers, because illumination of the operating handles of three of five types of exits is already required under the current regulations. For instance, the current regulations require that the operating handles of Type I and Type A passenger emergency exits must be self-illuminated or conspicuously located and well-illuminated by another source. In addition, the handles of Type III exits must be self-illuminated under the current regulations; however, the regulations do not include the option for the handle to be conspicuously located and well-illuminated by another source. The FAA has made findings of equivalent safety under the provisions of § 21.21(b)(2) for the handles of Type III exits, wherein the handle is conspicuously located and well-illuminated. Thus, for the aforementioned reasons, the optional means of lighting the handles of Type III exits would not impose additional costs on manufacturers, because they are already in compliance. This practice is expected to continue.

The current regulations do not provide criteria for the illumination of the operating handles of Type II and Type IV exits. This proposal would standardize the illumination of the operating handles of all passenger emergency exits to only two methods (self-illuminated, or conspicuously located and well illuminated by another source), regardless of the type of exit involved. Neither of these two exit types currently is required to have handles which meet the provisions of the proposed amendment. Nevertheless, the proposed amendment would not impose any significant additional cost on manufacturers. This is primarily because transport category airplanes seldom have such exits. For the few airplanes which will have Type II or IV exits, the emergency lighting currently required by § 25.812 would provide sufficient lighting for the exit handles or would provide the electrical circuitry with which additional lighting could easily be provided.

e. *Public Address System.* This amendment would require that the public address system incorporate a feature, such as a push-to-talk switch, so that the system would be capable of operating regardless of the position of any microphone. Based on the informed judgment of FAA personnel, this item is expected to cost under $400 per airplane. While some FAA personnel projected lower cost estimates, the higher cost figure was chosen to represent a worst-case scenario. From a cost impact standpoint, this worst-case cost estimate is expected to be negligible relative to the minimum cost of more than $20 million required to manufacture each of the transport category airplanes expected to come into the U.S. service, under new type certificates, in the early to middle 1990's.

f. *Appendix D to Part 121.* The proposed amendments to this part would impose the same requirements on air carrier operators as those proposed

as § 25.803(c) (7) and (8) for aircraft manufacturers. They would also establish the effective date of the amendments as the date on which the new standards became effective for such operators. These proposed amendments are not expected to impose additional costs to air carrier operators for those reasons given previously for aircraft manufacturers.

Benefits

The proposed rule is expected to generate benefits in the form of enhanced safety. Such safety would take the form of reduced likelihood of serious injuries and fatalities. Such injuries and fatalities would be incurred primarily during survivable post-crash ground fire emergency evacuations from air carrier airplanes and would be due largely to ineffective public address systems and inadequate illumination near or at some passenger emergency exit handles.

Estimation of these benefits, in monetary terms, is extremely difficult, since there has not been a documented aviation accident in which either serious injuries or fatalities have been shown to have resulted due to those deficiencies noted previously. There was, however, a potentially catastrophic emergency evacuation in 1984 from a Boeing 747 airplane at Honolulu, Hawaii. During that incident, the escape slides were deployed into a large pool of spilled fuel. This presented a potential hazard due to the possibility of fire. The public address system was inoperative because one cockpit microphone was not returned to the stowed position; therefore, the flight attendants at the back of the cabin could not be notified of the fuel leakage.

As a result of that incident, the aforementioned safety deficiencies in emergency evacuation equipment and procedures, and aviation accident information contained in a report published by the National Transportation Safety Board, the FAA believes there is an increased probability, over the next 10 years, of a survivable post-crash ground fire accident which could result in injuries or fatalities. This evaluation employs benefits for total cumulative airplane-years of exposure, based on the number of newly type certificated transport category airplanes projected to come into U.S. service between 1987 and 1996. An airplane-year of exposure refers to one airplane operating for 1 year at typical utilization rates for transport category airplanes. As a result of uncertainty related to whether or not an aviation accident would occur and result in casualties that could be prevented by the provisions of the proposed rule, this evaluation employs a range of potential benefits. The lower end of the range represents the prevention of four serious injuries and the upper end represents the prevention of a fatality. In monetary terms, this equates with a potential range of total benefits between $216,000 and $1,000,000 (1986 dollars), based on FAA's estimated monetary value of $54,000 for a serious aviation injury and a $1 million minimally accepted statistical value of life used by economists for the purpose of analysis. Subsequently, these benefits were distributed over the 10-year evaluation period based on total airplane-years of exposure in each year, discounted using present value factors, and summed over the 10-year period (1987–96). This procedure results in estimates of one-time total discounted present value benefits ranging from $92,000 to $425,000. In view of the expected total cost of $74,000 and benefits of $92,000 to $425,000, the FAA believes the proposed rule is cost-beneficial.

The Regulatory Evaluation that has been placed in the docket contains additional information related to the costs and benefits that are expected to accrue from the implementation of the proposed rule.

Regulatory Flexibility Determination

Under the criteria of the Regulatory Flexibility Act of 1980, the FAA has determined that the proposed rule would not have a significant economic impact on a substantial number of small entities.

Since this Act applies to U.S. entities, only U.S. manufacturers and air carrier operators of transport category airplanes would be potentially impacted. In the United States, there are only two manufacturers that presently specialize in commercial transport category airplanes: (1) The Boeing Company, and (2) the McDonnell Douglas Corporation. In addition, there are many manufacturers that produce transport category airplanes for general aviation (GA) use, such as business jets. Some of these GA manufacturers include, for example, Gates Learjet and Cessna Aircraft.

The FAA size threshold for a small entity for U.S. airplane manufacturers is 75 employees, i.e., any U.S. airplane manufacturer with more than 75 employees is considered not to be a small entity. None of the transport category airplane manufacturers are considered to be small entities because each manufacturer is believed to have more than 75 employees. Thus no significant economic impact would be incurred by U.S. manufacturers of commercial transport category airplanes.

In terms of small entities, none of those airplane operators under Part 121 would incur significant economic impact from implementation of the proposed rule. This assessment is based on the belief that the proposed rule would not have any cost impact on such operators for those reasons given previously for airplane manufacturers in the cost section.

International Trade Impact Assessment

The proposed rule is not expected to have an adverse impact on the trade opportunities of U.S. manufacturers of transport category airplanes doing business abroad nor on foreign airplane manufacturers doing business in the United States. Since the certification rules are applicable to both foreign and domestic manufacturers that sell in the United States, there would be no competitive trade advantage to either.

Federalism Implications

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 these proposed regulations would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

For the reasons given earlier in the preamble, the FAA has determined that this is not a major regulation as defined in Executive Order 12291. As this notice concerns a matter on which there is significant public interest, the FAA has determined that this action is significant as defined in Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). In addition, the FAA certifies under the criteria of the Regulatory Flexibility Act that this regulation, at promulgation, will not have a significant economic impact on a substantial number of small entities.

List of Subjects

14 CFR Part 25

Air Transportation, Aircraft, Aviation safety, Safety.

14 CFR Part 121

Air carriers, Air transportation, Aircraft, Airplanes, Airworthiness

directives and standards, Aviation safety, Common carriers, Crashworthiness, Emergency evacuation, Safety, Transportation.

The Proposed Amendments

Accordingly, the FAA proposes to amend Parts 25 and 121 of the Federal Aviation Regulations (FAR), 14 CFR parts 25 and 121, as follows:

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

1. The authority citation for Part 25 continues to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1424, 1425, 1428, 1429, 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 49 CFR 1.47(a).

2. By amending § 25.803 by revising paragraphs (c)(3), (c)(7)(i), (c)(8) (i), (ii), and (iii), (c)(18), and (c)(19), and by adding a new paragraph (c)(8)(vi) to read as follows:

§ 25.803 Emergency evacuation.

* * * * *

(c) * * *

(3) Unless the airplane is equipped with an off-wing descent means, stands or ramps may be used for descent from the wing to the ground. Safety equipment such as mats or inverted life rafts may be placed on the floor or ground to protect participants. No other equipment that is not part of the emergency evacuation equipment of the airplane may be used to aid the participants in reaching the ground.

* * * * *

(7) * * *

(i) For compliance with this section and § 121.291 of this chapter, a member of a regularly scheduled line crew, except that flight crewmembers need not be members of a regularly scheduled line crew provided they have knowledge of the airplane; or

(ii) * * *

(8) * * *

(i) At least 40 percent of the passenger load must be female.

(ii) At least 35 percent of the passenger load must be over 50 years of age.

(iii) At least 15 percent of the passenger load must be female and over 50 years of age.

(iv) * * *

(v) * * *

(vi) An alternate passenger load may be used provided it can be shown to provide an evacuation rate equivalent to that provided by the passenger load specified above or the time limit is appropriately reduced from 90 seconds to compensate for any differences.

* * * * *

(18) Except as provided in paragraph (c)(3) of this section, all evacuees must leave the airplane by a means provided as part of the airplane's equipment.

(19) The applicant's approved procedures must be fully utilized, except the flightcrew must take no active role inside the cabin during the demonstration.

* * * * *

§ 25.811 [Amended]

3. By amending § 25.811 by removing paragraph (e)(3) and marking it [RESERVED] and by revising paragraph (e)(2) introductory text to read as follows:

§ 25.811 Emergency exit marking.

* * * * *

(e) * * *

(1) * * *

(2) Each passenger emergency exit operating handle and the cover removal instructions, if the operating handle is covered, must—

(i) * * *

(ii) * * *

(3) [Reserved]

* * * * *

4. By adding a new § 25.1423 to read as follows:

§ 25.1423 Public address system.

A public address system required by this chapter must—

(a) Be capable of operation within 10 seconds by a flight attendant at those stations in the passenger compartment from which its use is accessible;

(b) Be audible at all passenger seats, lavatories, and flight attendant seats and work stations;

(c) Be designed so that no unused, unstowed microphone will render the system inoperative; and

(d) Be capable of functioning independently of any required crewmember interphone system.

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

5. The authority citation for Part 121 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1356, 1357, 1401, 1421 through 1430, 1472, 1485, and 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 49 CFR 1.47(a).

6. By amending § 121.291 by revising paragraph (a) to read as follows:

§ 121.291 Demonstration of emergency evacuation procedures.

(a) Except as provided in subparagraph (1) of this paragraph, each certificate holder must conduct an actual demonstration of emergency evacuation procedures in accordance with paragraph (a) of Appendix D to this part to show that each type and model of airplane with a seating capacity of more than 44 passengers to be used in its passenger-carrying operations allows the evacuation of the full capacity, including crewmembers, in 90 seconds or less.

(1) An actual demonstration need not be conducted if that airplane type and model has been shown to be in compliance with this paragraph in effect on or after October 24, 1967, or, if during type certification, with § 25.803 of this chapter in effect on or after December 1, 1978.

(2) Any actual demonstration conducted after [insert the effective date of this amendment] must be in accordance with paragraph (a) of Appendix D to this part in effect on or after that date or with § 25.803 in effect on or after that date.

* * * * *

7. By amending Appendix D to Part 121 by revising paragraphs (a)(3), (a)(7), (a)(12), (a)(18), and (a)(19) to read as follows:

Appendix D—Criteria for Demonstration of Emergency Evacuation Procedures Under § 121.291

(a) * * *

(3) Unless the airplane is equipped with an off-wing descent means, stands or ramps may be used for descent from the wing to the ground. Safety equipment such as mats or inverted life rafts may be placed on the floor or ground to protect participants. No other equipment that is not part of the emergency evacuation equipment of the airplanes may be used to aid the participants in reaching the ground.

* * * * *

(7) A representative passenger load of persons in normal health must be used. At least 40 percent of the passenger load must be females. At least 35 percent of the passenger load must be over 50 years of age. At least 15 percent of the passenger load must be female and over 50 years of age. Three life-size dolls, not included as part of the total passenger load, must be carried by passengers to simulate live infants 2 years old or younger. Crewmembers, mechanics, and training personnel, who maintain or operate the airplane in the normal course of their duties, may not be used as passengers.

* * * * *

(12) Each crewmember must be a member of a regularly scheduled line crew, except that flight crewmembers need not be members of a regularly scheduled line crew, provided they have knowledge of the

airplane. Each crewmember must be seated in the seat the crewmember is normally assigned for takeoff, and must remain in that seat until the signal for commencement of the demonstration is received.

* * * * *

(18) Except as provided in paragraph (a)(3) of this appendix, all evacuees must leave the airplane be a means provided as part of the airplane's equipment.

* * * * *

(19) The certificate holder's approved procedures and all of the emergency equipment that is normally available, including slides, ropes, lights, and megaphones, must be fully utilized during the demonstration, except that the flightcrew must take no active role inside the cabin during the demonstration.

* * * * *

Issued in Washington, DC, on August 31, 1989.

M.C. Beard,

Director, Aircraft Certification Service.

[FR Doc. 89-21134 Filed 9-7-89; 8:45 am]

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federal register

Friday
September 8, 1989

Part V

Department of Health and Human Services

Health Care Financing Administration

42 CFR Parts 410, 424, 466 and 473

Medicare Program; Coverage of Home Intravenous Drug Therapy Services; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 410, 424, 466 and 473

[BPD-615-P]

RIN 0938-AD89

Medicare Program; Coverage of Home Interavenous Drug Therapy Services

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: These proposed regulations would expand coverage under Medicare part B to include coverage of home intravenous (IV) drug therapy services as authorized by section 203 of the Medicare Catastrophic Coverage Act of 1988. They include requirements for certification and for review and approval of the need for the covered services by a peer review organization, and they place limits on acceptance of and payments for certain patient referrals for covered home IV drug therapy services as specified in the statute. Home IV drug therapy services are covered by Medicare beginning January 1, 1990.

DATE: To assure consideration, comments must be mailed or delivered to the appropriate address, as provided below, and must be received by 5:00 p.m. on November 7, 1989.

ADDRESSES: Mail comments to the following address:

Health Care Financing Administration, Department of Health and Human Services, Attention: BERC-615-P, P.O. Box 26676, Baltimore, maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Ave. SW., Washington, DC, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

Please address a copy of comments on information collection requirements to: Allison Herron, Office of Information and Regulatory Affairs, Room 3002 New Executive Office Building, Washington, DC 20503.

Due to staffing and resource limitations, we cannot accept facsimile (FAX) copies of comments.

In commenting, please refer to file code BERC-615-P. Comments received timely will be available for public inspection as they are received, beginning approximately three weeks after publication of this document, in Room 309-G of the Department's offices at 200 Independence Ave. SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202-245-7890).

FOR FURTHER INFORMATION CONTACT: Nancy Anne Null (for coverage issues), (301) 966-4654; Patricia Booth (for PRO review), (301) 966-6860.

SUPPLEMENTARY INFORMATION:

Background

The Medicare program was established by Congress in 1965 with the enactment of title XVIII of the Social Security Act (the Act). The program provides payment for certain medical services and supplies for persons 65 years of age or over, disabled persons, and persons with end-state renal disease.

Medicare consists of essentially two complementary insurance programs, the Hospital Insurance program (known as part A) and the Supplementary Medical Insurance program (known as part B).

Under section 1832 of the Act, part B covers a wide range of medical services and supplies such as those furnished by physicians or others in connection with physicians' services, outpatient hospital services, outpatient physical and occupational therapy services, and home health services. Physicians' services covered under part B include visits by patients to physicians' offices and visits by physicians to patients in their homes, in hospitals, and in other health care institutions. Part B also currently covers certain drugs and biologicals that cannot be self-administered, diagnostic x-ray and laboratory tests, purchase or rental of durable medical equipment (DME), ambulance services, prosthetic devices, and certain medical supplies. Our regulations concerning coverage of these services are found at 42 CFR part 410.

Many individuals with conditions such as osteomyelitis or servere pain require intravenous (IV) medication on an ongoing basis, because, for example, the patient is unable to take the medicine in some other form or the medicine would not be as effective if administered differently. Many patients require hospitalization for the initiation and, frequently, the duration of IV drug therapy. There is, however, an increasing number whose care (in whole or in part) can be managed at home. Many of these patients are anxious to be at home, rather than spending additional time in the hospital. Home IV drug therapy is also less expensive than IV drug therpy furnished in an inpatient setting.

Few services furnished in conjunction with home IV drug therapy to Medicare beneficiaries are currently covered by Medicare and those few are covered in a piecemeal fashion. Some of the services, such as the insertion of the IV needle by a registered nurse, might be covered as a home health benefit, if the patient is homebound and meets all other requirements necessary for coverage of home health services (see 42 CFR 409.42).

Legislation

On July 1, 1988, the Medicare Catastrophic Coverage Act (MCCA) of 1988 (Pub. L. 100-360) was enacted. Section 203 of MCCA revised sections 1832(a)(2)(A) and 1834 of the Act and added section 1861(jj) to the Act to cover home IV drug therapy services as a separate benefit when furnished by qualified home IV drug therapy providers (referred to hereinafter as "home IV providers"). Coverage becomes effective for services furnished on or after January 1, 1990. New section 1861(jj) of the Act defines the services to be covered and who may provide them. New section 1834(d) discusses payment for the services, describes limits on acceptance of and payments for certain physician referrals, and authorizes sanctions for violations of the referral limitations. Section 203 of Public Law 100-360 also provides for studies and reports, certification of home IV drug therapy providers, sanctions for noncompliance, physicians' certification of the need for home IV services, review and approval of the services by a utilization and quality control peer review organization (PRO), and the use of regional intermediaries to administer the provision.

The scope of this proposed rule is limited to coverage of the home IV services, limitations on and acceptance of payments for certain patient referrals, PRO review and approval, and physician certification of the need for services. We are preparing separate Federal Register documents to address payment issues (that is, the fee schedule for home IV services and payment for the IV drugs), coverage of home IV drugs, and qualifications of providers. Following is a description of the statutory provisions of Public Law 100-360 relevant to this proposed regulation.

A. Coverage of Services

As described in the new section 1861(jj) (1) and (2) of the Act, covered home IV drug therapy services are the items and services furnished to an individual who is under the care of a physician, in a place of residence used

as the individual's home, by a qualified home IV provider, as defined in section 1861(jj)(3) of the Act, or by others under arrangements made with the provider and under a plan established and reviewed by a physician. Covered items and services include nursing, pharmacy and related services (including medical supplies, IV fluids, delivery, and equipment) as are necessary to conduct safely and effectively an intravenously administered drug regimen through use of a covered home IV drug as defined in section 1861(t)(4) of the Act.

B. PRO Review

Section 1835(a)(2)(G)(v) of the Act requires that services initiated before January 1, 1993 must be reviewed and approved by a PRO. For services to be initiated in the home following an inpatient stay, the PRO review and approval must occur before the home services begin. The PRO must complete the review within one working day of its receipt of the request for the review.

For services first initiated on an outpatient basis, the PRO review and approval must occur within one working day of the date the services start (other than in exceptional circumstances).

New section 1154(a)(16) of the Act, as added by Public Law 100-360, requires the Secretary to establish criteria for the PRO to use in conducting reviews under section 1154(a) of the Act concerning the appropriateness of home IV drug therapy services.

C. Physician Certification Requirements

New section 1835(a)(2)(G) of the Act requires that, in order for home IV drug therapy services to be covered under Medicare, a physician certify that:

- The individual needs (or needed) the services for the administration of a covered home IV drug;
- A physician has established a plan for furnishing the services and reviews it periodically;
- The services are (or were) furnished while the individual is (or was) under the care of a physician;
- The services are or were furnished in a place of residence used as the individual's home; and
- The services, if initiated before January 1, 1993, have been reviewed and approved by a PRO within specified timeframes.

D. Limitations on Acceptance of and Payment for Certain Referrals

New section 1834(d)(3) sets forth several provisions governing referrals of patients to home IV providers by physicians.

1. General

Under section 1834(d)(3) of the Act, we may not pay for services furnished by a home IV provider to an individual if his or her referring physician, or an immediate family member of the referring physician, has an ownership interest in the provider or receives compensation from the provider.

"Referring physician" as defined in section 1834(d)(3)(D) of the Act means, with respect to a beneficiary receiving home IV drug therapy services, the physician who prescribed the covered home IV drug for which the covered services are provided or who established the plan of care for such services.

2. Exceptions

Exceptions to the above prohibitions apply in the following cases:

- Under section 1834(d)(3)(B)(i) of the Act, although a physician or immediate family member has an ownership interest in the provider, we may pay for the services if (a) the ownership interest is the ownership of stock traded over a publicly regulated exchange and was purchased on terms generally available to the public; or (b) the provider is a sole home IV drug therapy provider (as defined by the Secretary) in a rural area.
- Although the physician receives compensation from the provider, we may, under section 1834(d)(3)(B)(ii) of the Act, pay for the provider's services if the compensation is reasonably related to items or services actually provided by the physician and does not vary in proportion to the number of referrals made by the referring physician. This exception does not apply to compensation to a physician for direct patient care services furnished by that physician.
- If the referring physician's (or immediate family member's) only ownership or financial relationship with the home IV provider is as an uncompensated officer or director of the provider, the limitation on referrals does not apply, as stated in section 1834(d)(3)(B)(iii) of the Act.
- Finally, under section 1834(d)(3)(B)(iv) of the Act, we are authorized to establish in regulations additional exceptions for ownership or compensation arrangements that do not pose a substantial risk of program abuse.

3. Sanctions for Violations of the Limitations on Acceptance of Certain Referrals.

- As set forth under section 1834(d)(3)(C)(i) of the Act, we will not pay for home IV drug therapy services provided in violation of the limitations on acceptance of physician referrals described above.
- Section 1834(d)(3)(C)(ii) of the Act provides that any person (including a home IV provider or physician) who presents or causes to be presented a claim for an item or service that the person knows or should know is for an item or service for which payment may not be made under section 1834(d)(3)(A) of the Act will be subject to a civil monetary penalty of not more than $15,000 for each item or service. (As provided in new section 1834(d)(3)(C)(ii) of the Act, the provisions concerning civil money penalties in section 1128A of the Act will be applied to such a violation (except that the first sentence of section 1128A(a), which refers to fraudulent claims, and all of subsection 1128A(b), which refers to improper inducements) in the same manner that they apply to a penalty or proceeding under section 1128A(a) of the Act.)

Proposed Revisions to the Regulations

To implement the provisions of section 203 of Pub. L. 100-360, we would establish a new subpart F in 42 CFR part 410, amend part 424 by adding a new § 424.28, and add a new subpart E in part 466. In many cases, our regulations would parallel the statute. Below we discuss the areas that would require interpretation or expansion.

A. General

In § 410.201, Basic Rule, we would state the gist of the subpart; i.e., that Medicare part B pays for home IV drug therapy services when they are furnished by a "qualified provider" (or by others under arrangements with that provider) to a patient under the care of a physician in a place of residence used as the individual's home and under a plan of care established and periodically reviewed by the individual's referring physician. (A "qualified provider" is one that meets certain conditions of participation discussed below.)

B. Definitions

1. We would state in new § 410.203, Definitions, that a "place of residence used as an individual's home" is a place in which the beneficiary normally resides and is not an institution or facility defined in section 1861(e)(1), section 1819(a), or section 1919(a) of the Act.

Section 1861(e)(1) of the Act defines a hospital as an institution "primarily engaged in providing . . . diagnostic services and therapeutic services for medical diagnosis, treatment, and care of injured, disabled, or sick persons or . . . rehabilitation services for the rehabilitation of injured, disabled, or sick persons." Section 1819(a) of the Act

defines a skilled nursing facility (SNF) for purposes of qualifying to participate in Medicate. Section 1919(a) of the Act defines a nursing facility for purposes of qualifying to participate in Medicaid.

Congress used the phrase "in a place of residence used as the individual's home" (section 1861(jj)(1)(A) of the Act). Section 1861(t)(4)(A) explicitly requires the Secretary to determine whether various drugs can "generally be administered safely and effectively in a home setting." (See also H.R. Rep. No. 661, 100th Cong., 2d Sess. 186 (1988). This would be a meaningless charge if a home setting included nursing facilities. Nursing facilities that qualify to participate in Medicare or Medicaid are already required to identity each resident's need for drug therapy (§ 483.20(b)(2)(xiii)), develop a plan to meet those needs (§ 483.20(d)), provide all necessary care (§ 483.25), including drug therapy (§ 483.25)), and obtain and provide routine and emergency drugs to meet resident needs (§ 483.60). For facilities that meet these requirements, the Secretary is assured that *all* drugs provided to residents can be safely and effectively administered in that setting. It does not appear that Congress intended this to be considered "a home setting."

Furthermore, explicit evidence of this view is contained in the conference report discussion of requirements for PRO review. PROs are required to assure that beneficiaries are discharged from hospitals to home IV therapy only if "the patient (or a family member) is able to carry out the home care regimen properly." (See the H.R. Rep. No. 661, 100th Cong. 2d Sess. 203 (1988.). In a nursing facility the regimen would be carried out by facility personnel. Only in a private residence would the focus be on the patient or a *family member*.

We considered an alternative option of recognizing nursing facilities as "homes" for those beneficiaries who live in those facilities rather than in private residences. We recognize that there are some people for whom the facility is in fact and in law a residence and who have no other home. Therefore, denial of coverage for home IV services and drugs for patients who reside in such facilities would mean that the patient would either have to pay for such therapy out-of-pocket or have another payor, such as Medicaid, pay on his behalf. Such a patient might seek to enter a hospital to receive Medicare coverage for such therapy. Under this alternate line of reasoning, the patient (either on his own or with assistance from facility staff who act as *de facto* "family members") would be entitled to home IV coverage whether his home is a house, apartment, or nursing facility. (Under current regulations, such facilities must provide or obtain the necessary care and services to meet the patients' needs). Furthermore, it might be inconsistent with the coverage of all other "outpatient" prescription drugs to exclude just "home" intravenous drugs, and not all drugs, from coverage in such facilities. (Under this alternative, the facility would not be considered a home for a person receiving Medicare part A SNF care because, in the case of a Medicare-covered SNF stay, IV drug therapy would be covered under part A and, more generally, a facility is rarely if ever a permanent residence for a Medicare SNF patient). We request specific comment on both alternatives, as well as suggestions for other approaches to resolving the dilemmas posed by the special case of residents of nursing facilities that are not paid under part A of Medicare.

2. We propose to define in § 410.203 the term "referring physician" as the physician who prescribed the covered home IV drug for which the services are to be provided or who established the plan of care for the services (or both). This follows the definition of the "referring physician" found in section 1834(d)(3)(D) of the Act. We would also require that the referring physician implement the plan of care by continual involvement in the individual's course of therapy through an ongoing assessment of the patient's care. In conjunction with this monitoring, we would also expect the referring physician to update the plan of care as necessary, but at least every 30 days. We believe that in order for high quality care to take place, the referring physician must be intimately involved with the patient's continuity of care beginning with its initiation through the course of the IV drug therapy. The role of the referring physician is therefore paramount in insuring continuity of high quality care. This fundamental point underlies our requirement that the referring physician establish and review the plan of care, as well as perform the certification and recertification functions.

There may be exceptional circumstances where there is more than one "referring physician" for purposes of this benefit. For example, a beneficiary may enter an out-of-State medical center and while in that institution (e.g., hospital) begin a course of IV therapy. After discharge from the hospital, the individual returns to his or her home State to continue the therapy. In this case, "a referring physician" at the medical center may have prescribed the covered home IV drug, established the plan of care, or both. A "referring physician" in the home State will assume responsibility for the plan of care from that point forward. He or she will assume responsibility for ongoing patient assessments, coordination with the home IV provider nurse or pharmacist (or both), modification to the plan, the review and signing of the plan, and the certification and recertification procedures. We therefore expect the "referring physician," except in circumstances similar to that cited, to be the same individual for purposes of plan of care establishment and review, and certification and recertification requirements.

3. "Home intravenous drug therapy services" or "home IV services" would be defined in § 410.203 as the nursing, pharmacy, and related services (including medical supplies, training, IV fluids except when they are a covered home IV drug, equipment, and delivery of any necessary items and services) that are necessary to conduct safely and effectively an intravenously administered drug regimen through use of a covered home IV drug. The items and services would be furnished to an individual who is under the care of a physician, in a place of residence used as the individual's home, by a qualified home IV provider or by others under arrangements (e.g., under a contract between the IV provider and other entities), and under a plan established and periodically reviewed by the referring physician.

We emphasize the term "intravenously administered"; we would not cover, under the home IV drug therapy services benefit, the services associated with the administration of a covered IV drug by some other access such as arterial, subcutaneous, intramuscular, or intrathecal modes of administration. The statute, in providing the definition of covered services and items, includes those that "are necessary to conduct safely and effectively intravenously administered drug regimen * * *."

4. We are also proposing to define in § 410.203 "home intravenous drug therapy provider" or "home IV provider" as an entity that has been approved as meeting the conditions of participation in part 485, subpart C and has a provider agreement with HCFA. The conditions are being proposed in another **Federal Register** document.

C. Covered Home IV Drug Therapy Services

For purposes of home IV drug therapy, nursing and pharmacy services are

those services that are necessary to conduct safely and effectively an intravenously administered drug regimen through use of a covered home IV drug. The home IV provider would have to provide the following related services as part of the therapy when they are necessary for the safe and effective administration of a covered home IV drug:

- Medical supplies;
- Training of the patient or his or her caregiver in the technique of IV drug therapy;
- Intravenous fluids except for those that meet the definition of a covered home IV drug under section 1861(t)(4) of the Act;
- Equipment, such as IV poles and infusion pumps; and
- Delivery of medical items and supplies.

We consider training of the patient or caregiver crucial to the initiation of IV drug therapy and want to clarify that outpatient training would be included in Medicare payment for a home IV drug therapy services. Before an individual or a caregiver can administer IV drugs, it is critical that he or she be adequately trained in all aspects of the IV drug therapy. We fully expect a hospital to perform the training when a course of IV drug therapy begins in that setting. (The proposed rule addressing conditions of participation for home IV providers describes training requirements.)

Except when IV fluids are used as a drug of choice to treat medical problems caused by dehydration or to hydrate patients before and after the administration of another drug to avoid medical problems that could arise from administration of that drug, we propose to cover these fluids as a supply under the home IV drug therapy services benefit. In other words, when IV fluids are administered by themselves for hydration purposes, we would consider them to be a drug, but when they are used as diluents for other drugs or for any other purpose we would consider them to be supplies and would pay for them under the fee schedule authorized under the new section 1834(d)(2) of the Act. Accordingly, if an IV fluid is used for hydration therapy, we would determine payment for it under the payment methodology for covered outpatient prescription drugs set forth in the new section 1834(c)(3) of the Act, as added by section 202(b)(4) of Public Law 100-360. (As noted earlier, under section 1861(t)(4)(B) of the Act, we addressed the list of drugs to be covered as home IV drugs in a separate rulemaking. That list includes a category of hydration therapy drugs that we propose to classify as "covered home IV drugs".)

The home IV drug therapy services benefit is a new benefit that represents an expansion of Medicare part B services. Under proposed § 410.205(c), only a participating home IV provider can furnish and bill for "covered home IV drug therapy services" as such. In addition, if the home IV provider does not furnish the covered home IV drugs, either directly or under arrangement, we would not pay for any home IV drug therapy services it provides.

We also want to emphasize that under new section 1834(c)(1)(A)(ii) of the Act, as added by section 202(a) of Public Law 100-360, when a beneficiary continues a course of IV therapy in his or her home after the therapy was initiated during an inpatient hospital stay, he or she does not have to pay a deductible on the home IV drugs dispensed in conjunction with that therapy. However, this exception to the deductible requirement does not apply if the services are not furnished by or under arrangements with a home IV drug therapy provider.

We have identified certain policy issues arising out of the interaction between the home IV services benefit and the home health care benefit. If a beneficiary is receiving home IV drug therapy, that fact could serve to meet the home health care criterion for skilled nursing care so that the beneficiary may receive both covered home IV drug therapy services and home health care services concurrently, assuming that the other qualifying criteria for home health care are met. However, in this situation, HHAs, assuming that they are not also certified as home IV providers, would not be able to bill for any covered services related to the home IV drug therapy. In other words, HHA services, such as home health aide services, could be furnished and billed by the HHA as covered home health services but not as home IV drug therapy services. Similarly, HHAs could not bill for skilled nursing services unless such services are necessary outside of those furnished in connection with administration of the home IV drugs. If an HHA is also certified as a home IV provider, it could furnish both covered home health services and covered home IV drug therapy services. However, we would require that the entity bill separately for the two benefits, using one provider number for home health services and another for home IV services. We are aware that this situation could result in program abuse such as double billing for services. For that reason, we will consider initiating contractor review of claims for beneficiaries receiving both home health services and home IV therapy services.

We note that, under the proposed conditions of participation for home IV providers, we would require that home IV providers ensure that prospective home IV patients or their caregivers are adequately trained to handle home IV drug therapy safely and effectively; that is, that the patient or caregiver would be capable of administering the medication while taking whatever safety precautions are necessary.

Furthermore, under the conditions of participation, we would require that any nursing service necessary to the administration of the home IV benefit must be furnished by the home IV provider or by others under arrangement with the home IV provider. Accordingly, Medicare home health services would not be necessary to supplement home IV services in connection with that aspect of the beneficiary's care. However, there is a potential issue concerning whether home health aides are qualified under the laws of the various States to provide assistance for home IV patients as caregivers in connection with the administration of the home IV drug. Therefore, we are requesting comments on whether State medical practice acts will permit someone other than a physician, a physician's assistant, or a registered nurse to hang an IV container and administer prescription drugs intravenously and, if so, under what circumstances and what supervision requirements.

We are further requesting comments on who should be responsible for coordination of care when the home IV beneficiary is also receiving home health care benefits under the Medicare program. Home IV therapy care for a beneficiary qualifying for the benefit, including appropriate nursing care, must be furnished by the home IV provider; however, a variety of other concurrent health care needs may be met by an HHA, which could supply non-IV related skilled nursing care and other home health care. We believe that there must be a mechanism to assure that the patient's needs are evaluated across provider lines and that care planning by all involved providers is coordinated.

D. Limitation on Acceptance of and Payments for Certain Referrals

In § 410.207 we would implement the provision in section 1834(d)(3) of the Act concerning limitation on acceptance of certain patient referrals. If the referring physician or his or her immediate family member has an ownership interest in or receives compensation from the home IV provider, services furnished to persons referred by that physician would not be covered (except in limited

circumstances) and the Office of Inspector General (OIG) could impose civil money penalties.

We propose to define "immediate family member" as a "spouse, natural or adopted child, natural or adopted parent, natural or adopted or adoptive sibling, stepparent, stepchild, stepsibling, grandparent, grandchild, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, or daughter-in-law." We believe that by including natural, adopted, and step relatives, as well as those related by marriage to a physician, we have encompassed the range of relatives who would be in a sufficiently close relationship to the referring physician to influence the pattern of his referrals if they had an ownership interest in or received compensation from the provider.

We want to note and emphasize several points concerning the limitation on acceptance of and payments for certain referrals, as described in section 1834(d)(3) of the Act.

First, regulations to implement this provision would be in addition to the proposed anti-kickback regulations published by the Office of Inspector General (OIG) on January 23, 1989 (54 FR 3088). The proposed regulations of the OIG (to be codified at 42 CFR 1001.952) describe various payment practices that, although potentially capable of inducing referrals of business under Medicare, would not be considered kickbacks for purposes of criminal prosecution or program exclusion because the standards in the regulations would make the potential for abuse sufficiently negligible. These practices are referred to as "safe harbors". The difference between the OIG regulations and ours is that our proposed regulations are for purposes of clarifying when Medicare payment may not be made for prohibited practices. Both of these proposed regulations would be applied independently and providers and physicians would need to examine ownership, compensation, and practice arrangements within the scope and objectives of each.

Second, we note that there may be some providers of home IV therapy who are now compensating a referring physician for patient care, or paying a fee for each referral made to them, or both. If these providers become qualified home IV providers under our conditions of participation and continue to operate in this manner, they would not qualify for the exception in section 1834(d)(3)(B)(ii) of the Act for any Medicare patient referred by a compensated physician. We base this interpretation upon sections 1834(d)(3)(A) and 1834(d)(3)(C) of the Act. Section 1834(d)(3)(A) of the Act indicates that a home IV provider may not provide services to an individual under Medicare part B if that individual's referring physician or immediate family member has an ownership interest in the provider or receives compensation from the provider. Section 1834(d)(3)(C) provides that no payment may be made under Medicare part B for home IV drug therapy services that are provided in violation of the ownership and compensation limitations.

Third, for purposes of the prohibition on compensation from the provider to the referring physician as provided for in section 1834(d)(3)(A)(ii) of the Act, we consider compensation and financial arrangements to span a variety of activities. They could encompass almost any type of remuneration. In addition, section 1834(d)(3) of the Act does not specify the period of time covered by the prohibition on compensation. We would take the approach that it covers the period of time during which a violation would occur or did occur. Even though it did not initially appear as if there were a violation of the prohibition, we would consider that the violation includes the period of time before the bonuses were paid. Since the bonuses (i.e., compensation) were of varying amounts, we would assume that an explicit or (more likely) implicit agreement existed between the provider and the referring physicians that the bonuses would vary in proportion to the number of referrals made.

Finally, we note that neither Public Law 100–360 nor existing authorities provide any protection for the beneficiary if it is found that the home IV provider and referring physician have violated either the ownership or compensation prohibitions under section 1834(d)(3) of the Act. Section 1834(d)(3)(C) provides only that no payment will be made for the services provided in violation of the aforementioned arrangements. Under section 1879 of the Act (limitation on liability of beneficiary when Medicare claims are disallowed), the beneficiary is not liable for payments relating to certain specified noncovered items and services, but this section does not apply to limitation of or payment for certain referrals. We emphasize that we expect home IV drug providers and referring physicians to be organized and to operate in accordance with the law and that we will monitor compliance with this provision very closely.

• Broad Exceptions

In addition, broad exceptions apply to both the limitations on ownership and compensation under sections 1834(d)(3)(B) (iii) and (iv) of the Act.

If the referring physician has only an ownership or financial relationship with the provider as an uncompensated officer or director of the provider, section 1834(d)(3) of the Act would not preclude us from paying for the services.

If the Secretary has determined that certain ownership or compensation arrangements do not pose a substantial risk of program abuse, section 1834(d)(3) would not preclude us from paying for the services.

Under this provision, we would rely, in part, upon OIG expertise by adapting for our purposes four of the "safe harbors" from the OIG proposed regulations to which we referred earlier. We believe these "safe harbors" are applicable to the prohibitions and limitations on provider ownership and compensation for puposes of precluding Medicare payment under section 1834(d)(3)(C) of the Act. By meeting the required criteria, these "safe harbors" could constitute beneficial commercial arrangements that are *bona fide* and that would permit referring physicians to engage freely in business practices and arrangements that encourage competition, innovation and economy, yet do not pose a risk of program abuse. With these four "safe harbors", we propose to allow reasonable ties between providers and referring physicians that we foresee as in no way purposely inducing the referral of Medicare beneficiaries from the physicians to the providers.

The four proposed "safe harbors" that we are adapting from the January 23, 1989 OIG proposed rule to be codified in 42 CFR 1001.952(b), Space rental; § 1001.952(c), Equipment rental; § 1001.952(d), Personal services and management contracts; and § 1001.952(i), Employees. As set forth in our proposed regulations in section § 410.207(e), those safe harbors would implement the Secretary's authority under section 1834(d)(3)(B)(iv) of the Act to allow physician-home IV provider relationships that do not pose substantial risk of program abuse.

Certain principles underlie the requirements that each of these new exceptions must meet in order to qualify as "safe harbors". First, any payments must be consistent with fair market value in an arms-length transaction. These payments apply to space rental, equipment rental, personal services, or managements contracts. Any

agreements or arrangements must be *bona fide*, in writing, signed by the parties involved, and specific as to what rental, services or items are involved. They must also establish a time period that, where relevant, is for not less than one year. In the case of equipment rental, if the equipment is used periodically, the schedule must be set in advance. Finally, some of the "safe harbors" directly provide that charges or payments will not be linked to the volume of Medicare referrals.

We will, of course, reconsider these "safe harbors" based upon the comments we receive. In addition, if substantial changes are made to the exceptions, as they are described in the January 23, 1989 proposed rule of the OIG, when the OIG issues final rules, we will consider the changes and any necessary revisions that may be needed in our rules as a result.

• Ownership

With respect to ownership, we would not allow the referring physician or an immediate family any ownership interest in the home IV provider except for the situations permitted in section 1834(d)(3)(B)(i) (I) and (II) of the Act. In the Conference Report accompanying Public Law 100–360, the conferees expressed their concern about a growing prevalence of ownership in health care providers and other arrangements the result of which is to bind the financial interests of referring physicians with those of the providers. The conferees saw these alliances resulting in overutilization, less independent judgment, and, in general, program abuse. (H.R. Rep. No. 661, 100th Cong., 2d Sess. 203 (1988).)

We recognize, however, that this restriction may pose problems for some existing organizational arrangements in which adverse consequences such as those discussed by the conferees do not occur. We are specifically seeking comments on whether it is possible to address these situations within the parameters of the statutory language.

The following exceptions to ownership interest in the home IV provider by the referring physician or an immediate family member apply:

If the ownership interest is the ownership of stock that is traded over a publicly regulated exchange and was purchased on terms generally available to the public, section 1834(d)(3)(B)(ii)(I) of the Act permits coverage of services furnished by a provider to a patient referred by the physician with ownership interest.

Under section 1834(d)(3)(B)(i)(II) of the Act, we may pay for services if the provider in which a referring physician has an ownership interest is a sole IV drug therapy provider in a rural area.

We propose to define "sole home IV drug therapy provider" in § 410.207(a)(2). We note that the language in this new section would be similar to that found in § 405.1633(f), Procedures for classification as a sole community HHA, and § 405.1633(g), Basis for classification as a sole community HHA. We believe that it would be reasonable to base our proposed definition of sole community home IV provider on the HHA experience. This is so because, of all Medicare providers, HHAs will be the most similar to the new home IV providers in terms of the scope of their activities. Under our definition, a home IV provider would have to submit to its intermediary a request for classification as a sole home IV drug therapy provider showing that it meets the requirements as discussed below. The intermediary would review the request and send it, with its recommendations, to HCFA. HCFA would review the request and the intermediary's recommendation and forward its approval or disapproval to the intermediary. An approved classification as a sole home IV drug provider would remain in effect without any need for reapproval unless a change occurs in the circumstances under which the classification was approved.

Under the proposed requirements, HCFA would approve a provider's classification as a sole home IV provider in a rural area only if the home IV provider designates a particular rural area, shows that no other home IV provider furnishes services within that area and shows there are no physicians (other than those with an ownership interest in the home IV provider) available to perform the certification and recertification and plan of care functions.

In addition, we propose to use the definition of rural area found in section 1861(aa)(2) of the Act. Under that definition, a rural area is one that is not an urbanized area (defined by the Bureau of the Census as an area with less than 2,500 people) and that is designated by the Secretary either as—

—An area with a shortage of personal health services under section 1302(7) of the Public Health Service Act; or

—A health manpower shortage area described in section 332(a)(1)(A) of that Act because of its shortage of primary medical care manpower.

We believe that this definition for "rural area" takes into account the fact that a major characteristic of most rural areas is a shortage of health manpower or personal health services. In addition, we would prefer, for purposes of clarity and uniformity, to use a definition that is commonly accepted throughout government; that is, that of the Bureau of Census.

• Compensation

With respect to compensation, section 1834(d)(3)(B)(ii) of the Act states that if the compensation is reasonably related to items or services actually provided by the physician and does not vary in proportion to the number of referrals made by the referring physician, the payment limitation would not apply; however, this exception would not apply to compensation provided for direct patient care services.

In other words, to qualify for the exception, the compensation could not be unreasonable for the items and services provided, and it could not deviate (e.g., rise) when compared to the number of referrals made. However, this exception under section 1834(d)(3)(B)(ii) of the Act would not apply to compensation paid by the home IV provider to the referring physician for direct patient care services. We expect the physician to bill Medicare (or the beneficiary) for such services in these circumstances. A home IV provider may retain and pay a physician a flat fee under a *bona fide* arrangement for consultative services under which the fee does not vary in accordance with the number of referrals the physician makes to the home IV provider and does not involve direct patient care. In this case, there is no prohibition against payment under section 1834(d)(3) of the Act since the compensation is set and direct patient care is not involved.

If, on the other hand, a physician provides direct patient care services to an individual, the home IV provider would not be able to pay the physician for these services. The physician would have to bill Medicare (or the beneficiary) for the services. "Direct patient care services" would be "any services covered under Medicare Part B for which a physician would bill and receive reimbursement from Medicare."

D. Physician Certification of Need for Services.

In new § 424.28, we would implement that portion of the statute that requires certification of the beneficiary's home IV drug therapy services. As required by new section 1835(a)(2)(G) of the Act, we would require the referring physician to certify that:

• The services were or are required because the individual needed or needs the services for administration of a covered home IV drug;

• A plan for furnishing the services has been established and is reviewed periodically by the referring physician;

• The services are or were furnished while the individual is or was under the care of a physician;

• The services are or were furnished in a place of residence used as the individual's home; and

• The services, if initiated before January 1, 1993, have been reviewed and approved by a PRO in accordance with §§ 466.201 through 466.224.

We would also require that recertification take place at least every 30 days to match the requirements in proposed 42 CFR 485.120 (contained in the separate proposed rule on home IV provider conditions of participation) that the referring physician review the patient's progress in attaining the objectives of the plan of care at least every 30 days. We believe 30 days would be a suitable period for recertification, as the physician would concurrently be reviewing the plan of care. Similarly, we propose that, because of the similar timing of the review of the plan of care with the period for recertification (that is, at least every 30 days), the referring physician should also perform recertification as well as the initial certification. In addition, he or she, because of active participation in the patient's course of therapy, would be the most appropriate and accountable individual to perform these functions.

E. Prior PRO Approval.

Background

The Peer Review Improvement Act of 1982 (Title I, Subtitle C of the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97-248)) amended Part B of Title XI of the Act to establish the Utilization and Quality Control Peer Review Organization (PRO) program. The 1982 legislation authorized PROs to review services provided or proposed to be provided to Medicare beneficiaries. PRO responsibilities generally have included review of health care services provided under Medicare (Title XVIII of the Act) for the purpose of determining whether the services were reasonable and medically necessary, were furnished at the appropriate level of care, and were of a quality that meets professionally recognized standards of care. In addition, PROs monitor and validate a sample of diagnostic and procedural information supplied by hospitals to fiscal intermediaries to establish prospective payment amounts to hospitals.

To carry out their responsibilities, PROs acquire information from the medical records of patients and from other records maintained by health care facilities, practitioners, intermediaries, and carriers. In addition, PROs generate information as a result of their reviews regarding the quality and utilization of health care services. PROs use this information to develop statistical profiles (that is, practice patterns) to allow them, for example, to focus review efforts better and to assess the quality of care being furnished. PROs transmit their determinations to intermediaries and carriers responsible for making Medicare payments under the Act.

Current PRO Prior Authorization Requirements

Currently, HCFA requires 100 percent PRO approval of 10 surgical procedures. This review is, where possible, to be performed on a preadmission or preprocedure basis. If the review cannot be performed on a preadmission or preprocedure basis (e.g., the surgery is an emergency), the PRO performs the review retrospectively. The PRO also conducts retrospective sampling of prior approved cases to assure that the quality of care met professionally recognized standards of care and to validate the accuracy of the information provided during the prior authorization process.

In addition, PROs who have identified specific utilization or quality problems require prior approval before the identified service is furnished (e.g., admissions for medical management of back problems).

Section 9353 of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99-509) amended section 1154 of the Act to require the review of services provided by health maintenance organizations (HMO) and competitive medical plans (CMP), which have contracts under section 1876 of the Act on a risk-basis with HCFA. However, notwithstanding our authority to include risk-based HMOs/CMPs within the scope of this regulation, we are not pursuing this inclusion at this time. Section 1835(a)(2)(G) of the Act cross-refers to section 1154(a)(16) as the basis for the PRO review of home IV drug therapy services. Section 1154(a)(16), in turn, refers to section 1154(a)(1) concerning the scope or nature of review that PROs are to perform with respect to this service. The statutory basis for the PRO review of risk-based HMOs lies not in section 1154(a)(1), however, but in section 1154(a)(4)(B). While this subsection would *allow* us to include these entities within the type of peer review that we expect to be performing with respect to all other health care providers, it does not require that this be the case. Rather, in our view, it permits the Secretary to set priorities for PROs in terms of selecting among all possible HMO quality issues those that require the greatest attention. While we reserve for future consideration whether home IV drug therapy performed under the auspices of risk-based HMOs/CMPs ought to be included within the scope of PRO review, we are not including it now because of what we perceive to be competing concerns in other areas. Moreover, because risk-based HMOs/CMPs already have the clear incentive to prevent unnecessary utilization of covered health care services, it would be largely duplicative and therefore wasteful to have PROs use their limited resources to make the same determinations.

In the discussion below, we describe a proposed new subpart E of 42 CFR part 466 that would implement the review of home IV drug therapy services.

1. Scope of PRO Review. The legislation states that coverage for home IV drug therapy services begins January 1, 1990 and that all payment for such services initiated before January 1, 1993 must be approved by the PRO. The Conference Report states that after 1992 (i.e., beginning January 1, 1993) "the Secretary could require PROs to conduct some focused reviews and could require prior approval in appropriate circumstances." (H.R. Rep. No. 661, 100th Cong., 1st Sess. 204 (1988)) We, therefore, have proposed that the regulations regarding PRO approval of home IV drug therapy services are effective for services beginning January 1, 1990. After the initiation of the review and before January 1, 1993, we would determine what types and amounts of review to continue.

The main thrust of the review required in this proposed rule is the assurance of quality care while a secondary concern is proper utilization. We would require the PRO to determine that the intravenous route of administration is appropriate and that the proposed home IV drug therapy services meet professionally recognized standards of care. The PRO would also determine whether the home IV drug therapy services are reasonable, appropriate, and necessary for the treatment of the illness or injury or to improve the functioning of a malformed body member.

When a physician proposes to discharge a hospital inpatient and continue administration of a drug or drugs approved to be administered at home, the PRO, while the patient is still hospitalized, would have to review and approve for payment the services

required to administer the drug(s). In the case of a hospitalized beneficiary whose physician believes he or she should receive home IV drug therapy, the physician or health care facility would have to contact the PRO and request review during normal business hours on normal working days (e.g., 9 a.m. to 5 p.m., Monday through Friday).

The PRO also would periodically review home IV drug therapy services when, for example, the patient continues to receive IV drug therapy over time or where the administration of a particular drug requires close monitoring of bodily functions (e.g., kidney functioning).

If a practitioner or health care facility violates its statutory obligations (e.g., exhibits a pattern of not correctly monitoring the patient's bodily functions while on a particular drug or a combination of drugs), the PRO would have to carry out the responsibilities specified in subpart C of 42 CFR part 1004 regarding the imposition of sanctions.

2. PRO Notification of New Services That Need Prior Approval. We propose that each PRO be required to give timely notification to health care facilities and physicians in its State about the new services for which PRO review must be sought. This notification would have to include:

- The date upon which and the manner by which (e.g., telephone) the PRO plans to begin review of home IV drug therapy services;
- The information to be furnished to the PRO;
- A statement about need for expediency in responding to PRO questions;
- At no charge, a copy of the criteria and quality screening guidelines to be used in the review process;
- A description of types of validation and quality review to be performed on a sample of cases; and
- A statement about the financial liability for charges found to be not medically necessary and a statement that no claim will be paid without PRO approval before submission of the claim.

3. Responsibilities of Physicians and Health Care Facilities. We propose to require both physicians and health care facilities to meet the provisions of § 466.78, which describes their responsibilities in cooperating with PRO review. The proposed regulations also describe responsibilities specific to implementation of the provision of home IV drug therapy services.

a. Physicians. The referring physician would have the overall responsibility for correctly ordering (e.g., in the plan of care) the home IV drug therapy services and monitoring the patient while he/she receives the services (e.g., ordering and analyzing diagnostic studies and appropriately modifying the drug when necessary).

In addition, the physician would be required to seek (or allow the health care facility to do so) PRO approval of the proposed home IV drug therapy services. Some prior approval might be handled by telephone, such as in the case of non-hospitalized patients. In other cases (e.g., hospitalized patients), the review might consist of reviewing the inpatient clinical records. In either case, the physician would have to cooperate and either supply information orally or in writing (including supplying physician's office records when necessary).

b. Health Care Facilities. As used throughout this subpart, the term "health care facility" is used as defined at § 466.1. That is, all types of health care providers and HMOs/CMPs are included in the definition. We have decided to use that terminology rather than list each type of provider every time it is applicable.

For example, if an intravenous drug is being proposed to be administered at home immediately following a hospital stay, the hospital, home IV drug therapy provider or physician would seek the PRO prior approval. Conversely, if the IV drug was started outside of an inpatient hospital stay and was going to be administered to the beneficiary in his or her residence, the physician, home IV therapy provider, hospital emergency room, hospital clinic, skilled nursing facility (about to discharge the patient), cost-based HMO/CMP, or home health agency (seeing the patient for other reasons) might contact the PRO for review. Thus, for ease of reading, we have used the term "health care facility" rather than list all types of providers and cost-based HMOs/CMPs each time.

If the physician does not seek PRO approval, then the health care facilities (as defined above) would have the same responsibilities outlined above for physicians. However, even when the physician seeks the PRO approval, health care facilities (e.g., hospital, home IV therapy provider) would have the responsibility to supply the needed records (including the plan of care) to the PRO. To solidify these types of arrangements, the affected health care facilities would have to develop a memorandum of understanding with the PRO or, in the case of the hospital, modify an existing one.

c. Sanctions. If a health care facility or a physician does not comply with PRO review requirements, the PRO may determine that the requirements of 42 CFR part 1004, subpart C, have not been met. If the PRO makes such a determination, it would recommend to the OIG that the provider or physician (or both) be sanctioned for failure to meet the statutory obligations.

4. PRO Designation. The PRO "area" designation is the State or Territory (e.g., Virgin Islands). There currently are 54 PRO areas: 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, and American Samoa/Guam and the Commonwealth of the Northern Mariana Islands.

In implementing this provision, we had to decide which PRO to propose to perform the required review. For example, if a beneficiary lives in one State, is hospitalized in that State by a physician who practices in that State, and receives home IV drug therapy services from a home IV therapy provider in that State, assignment of review responsibility presents no problem; i.e., the PRO in that State would do the review. As beneficiaries cross State lines to receive hospital care or if IV therapy providers are located in a State different from the one in which the beneficiary resides or is hospitalized, the PRO designation becomes more problematic.

In analyzing the various options we believe that assignment of review responsibilities could be based on several choices; i.e., we can choose the PRO in the State in which the:

- Beneficiary resides,
- Physician's office is located,
- Hospital is located, or
- Home IV therapy provider is located.

After careful consideration, we have decided that for continuation of inpatient hospital services, the PRO conducting the prior authorization review would be the PRO for the State in which the hospital is located. This is because the hospital already has an agreement with the PRO and is familiar with PRO's review process. Since we believe the majority of home IV drug therapy services will be a continuation of hospital services, the requirement for PRO prior approval would be an easy transition.

For review of continuations of previously approved home therapy services, for approval of services started on an outpatient basis, and for retrospective reviews, we believe that the location of the home IV therapy provider should be the locus for PRO designation. Thus, we would require that, for these reviews, the PRO conducting the review would be the one in the State in which the home IV therapy provider is located.

5. PRO Review Process. When performing review of home IV drug therapy services (proposed to be provided or already provided), the PRO first would have to determine that the patient does not or did not require hospitalization for the provision of the home drug therapy. That is, the PRO would be required to determine that the patient's condition is or was stable enough that discharge from the hospital would not jeopardize his or her health or safety or (for outpatient initiation) that the patient's condition is such that inpatient hospitalization is not warranted. In addition, the PRO would have to be assured that:

• The patient or caregiver meets the selection criteria outlined in the conditions of participation proposed in a new § 485.115 (to be found in a separate **Federal Register** document);

• The patient or caregiver has been or will be sufficiently trained as to how to administer the drugs safely and effectively in the home and has independently administered or will independently administer intravenously at least one dose of the drug under supervision;

• The plan of care executed by the referring physician has enough information to support the coverage of home IV drug therapy services;

• The drug is being used for one of the stated indications listed in our **Federal Register** notice of covered IV drugs. See 54 FR for our proposed listed covered drugs.

• The drug is medically indicated for the treatment of the patient's condition;

• The dosage is correct (e.g., adjusted for body weight and height);

• Appropriate diagnostic studies (e.g., culture and sensitivities, kidney function tests) have been performed and will be performed as appropriate while the patient is receiving the therapy;

• Other appropriate periodic monitoring has been and will be performed;

• The drug is not contraindicated (e.g., based upon abnormal laboratory findings, drug interactions);

• The home IV drug therapy services meet professionally recognized standards of care, as well as Medicare standards; and

• The route of administration is appropriate. When deciding that the route of administration is appropriate, the PRO would carefully review to determine if another route of administration would be effective (e.g., oral, subcutaneous, etc.) If the PRO makes a determination that another route would be effective, the PRO would deny payment.) An example might be: a physician seeking prior approval for the administration of intravenous Aminophylline.)

We propose that when performing review, the PRO would use review coordinators to screen cases for PRO physician reviews. The review coordinators would use criteria or guidelines, developed by HCFA or the PRO (or both), which would be distributed to the affected health care facilities (e.g., hospitals, home IV therapy providers) and physician organizations in the State.

The legislation states that the Secretary shall establish criteria to be used by the PRO in conducting reviews. The major portion of the PRO's criteria would be the list of drugs and their indications for use (as outlined in a separate **Federal Register** document) about which the PRO has no latitude. In addition, any other criteria (e.g., intervals for review, severity of signs and symptoms necessitating administration of IV drugs) would be distributed as outlined above.

As currently drafted, the key provisions in the guidelines include:

• Criteria requiring intense scrutinization of certain drugs proposed to be administered intravenously in the home to determine that the intravenous route of administration was the only effective way to administer the drug. An example of this criterion would be the administration of Cimetidine intravenously in the home when the patient is not concurrently receiving total parenteral nutrition.

• Criteria relevant to obtaining specific laboratory tests while the patient is on a specific drug. An example of this would be when the patient is receiving an Aminoglycoside, a drug that has a known potential for kidney toxicity. In instances where the patient is receiving the drug, the patient's kidney function would need to be closely monitored; that is, at least twice a week.

These criteria would be used to trigger physician review. After the guidelines/criteria are made final, they will be available from HCFA or the PRO. We specifically invite comments on criteria that should be used when performing review of the necessity and appropriateness of home IV drug therapy.

As with the current PRO review process, the review coordinator could approve the case and issue an approval number if the criteria or screening guidelines are not failed. If, however, the cases does not meet the criteria or guidelines, the case would be referred to a PRO physician for review. If the PRO physician approves the case, a PRO approval number would be issued. If the PRO physician questions the case, the physician who prescribed the home IV drug therapy and the health care facility would immediately be given an opportunity to discuss the case. The prescribing physician can discuss the case with a PRO physician and the health care facility could discuss the case with a PRO representative. If, however, the health care facility designates a physician representative, that physician would also be able to discuss the case with a PRO physician.

Even though the opportunity to discuss would be of limited duration because of the review timeframes dictated by legislation, this process would allow the physician, health care facility, or both, to present information to support coverage of services. Thus, since criteria or guidelines would be used to screen cases, the criteria would be distributed by the PRO to affected health care facilities and medical societies in the State.

6. Timing of Review. In order for payment to be made for home IV drug therapy services, a PRO would have to fulfill the requirements below:

a. Prior Review of Home IV Drug Therapy Proposed as a Continuation of Inpatient Hospital Therapy.

• We would require the PRO to conduct its review and, when appropriate, authorize for payment any home IV drug therapy services before the patient is discharged from the hospital.

• The PRO would have to complete its review within one working day of receipt of all the information needed to complete its review. The one working day does not include the time involved in giving the health care facility and physician an opportunity to discuss the case. (Absent additional information, the PRO would make its determination based upon the information in its possession.)

• If a denial is proposed or a potential quality problem is identified, the prescribing physician and the health care facility would be given an opportunity to discuss the case. The PRO would be required to attempt to contact either the requesting entity (e.g., referring physician) or the other involved entity (e.g., health care facility) to discuss the case. For potential quality problems, the PRO will follow the timeframes set forth in its contract with HCFA.

b. Initial Review of Drugs Started on an Outpatient Basis. For nonhospitalized patients that a physician believes should receive home IV drug therapy services, the PRO would have completed its review within one

working day of initiation of the home IV drug therapy services.

For clarity, we have added a definition of "outpatient basis". As used in the subpart, "outpatient basis" means any setting other than an inpatient hospital setting.

Thus, section 1835(a)(2)(G) of the Act permits the PRO to have until the end of the working day following the initiation of home IV drug therapy by which to complete its review function. Assuming that the referring physician or health care provider provides prompt notice to the PRO of the start of the IV drug therapy (that is, notice that is either simultaneous with or precedes the initiation of the service), there should be no difficulty for the PRO in finishing its review tasks by the statutory deadline.

However, we believe that the PRO is entitled to have a reasonable length of time, within the constraints of the statute, to perform its review and, therefore, are requiring that PROs be allowed to have at least eight hours from the time they are notified to finalize their decision. Most of the time, we would expect PROs to complete their tasks well within this timeframe since we anticipate that physicians or providers will make the kind of prompt notification that will assure a timely PRO response. However, to the extent that a PRO does not receive timely notification (because of the practitioner's or provider's failure to provide such) and the delay of the PRO's final decision goes beyond the general statutory deadline, we would consider this to be the kind of "exceptional" circumstance" authorized by the statute that would permit the PRO to have the necessary time within which to make the kind of informed judgment necessary in these cases.

While this is the only "exceptional circumstance" that we are able to identify at this time, we are specifically seeking public comments about what other such circumstances, if any, we should consider.

c. Subsequent Reviews of Continued Home IV Drug Therapy. We propose that when the PRO approves the IV drug therapy, it would issue an approval number and instruct the requesting entity to request PRO approval again when the drug is administered beyond a certain date or number of days. The date or number of days would be based, for example, upon such things as:

- Duration of treatment thus far,
- Specific drug(s) being used, and
- Specific condition(s) being treated.

When home IV drug therapy services are to be continued past the date or days approved by the PRO, we would require the physician or health care facility to seek PRO approval as discussed previously. The request for this review could be no less than three working days before the expiration of the PRO approval and would have to be in accordance with instructions issued by the PRO.

d. Prior Review of Change in Drug Therapy. When a physician proposes to make a change in the drug therapy, the physician or health care facility would have to seek PRO approval. The PRO review process would be the same as for first approvals of drugs started on an outpatient basis.

Since we have a responsibility to assure that the IV drug therapy is safe and effective, we are proposing this policy. We do not believe that, at this time, we can define those changes that might be minor enough to not warrant PRO review. Therefore, we specifically invite comments about other approaches to changes either in drugs or dosages of drugs once home IV drug therapy has been approved. In the event that the final regulation continues this proposed policy, we would carefully monitor the situation and would consider modifying the policy if program experience shows that such a modification is warranted.

7. Notification Procedures. We propose that when the PRO has made its determination, it would notify, by telephone, the prescribing physician and health care facility of its determination. If the PRO denies the home IV drug therapy services, it would issue, within one working day of the date of the determination, a notice (in accordance with the requirements of § 466.94(c)) to the beneficiary, the prescribing physician, the health care facility, and the fiscal intermediary.

Any notification regarding possible or confirmed quality problems would be performed by the PRO in accordance with contractual requirements and the PRO confidentiality rules in 42 CFR part 476.

8. Retrospective Reviews. Periodically, in addition to the reviews for prior approval and the periodic concurrent reviews, we would require the PRO to conduct retrospective reviews of some cases.

First, the PRO would perform a review on a random sample of cases to be assured that the home IV drug therapy services meet professionally recognized standards of care. In addition, the PRO would have to be assured that all of the conditions in § 466.214 (concerning the safe and effective administration of home IV drug therapy) are met.

The PRO also would, on a retrospective prepayment basis, review any claims for home IV drug therapy services for which PRO review was required but never completed and make a determination in accordance with § 466.214. Since the fiscal intermediary will not pay a claim without a PRO authorization number, the physician or health care facility would have to seek PRO review. Should the claim inadvertently get paid, the PRO would identify and review the case and make a determination on a postpayment basis.

In addition, the PRO would periodically conduct a validation review of a sample of cases where approval was granted upon information given over the telephone. The purpose of this review would be to validate the accuracy of the information given verbally. For these sampled cases, the PRO would also ascertain that all of the conditions of § 466.214 are met.

9. Liability and Corrective Actions. No payment would be made if the PRO has not approved the services for payment. If a PRO does not complete its review timely because of a PRO administrative error, it would still have to complete the review and issue an approval number or a notice denying the services.

When the PRO denies home IV drug therapy services, financial liability would be determined by rules set forth in § 405.330, Payments for certain nonreimbursable expenses, and § 405.336, Criteria for determining that a provider, practitioner, or supplier knew that services were excluded from coverage as custodial care or as not reasonable and necessary.

When the review is not completed timely because the physician, health care facility, or both, did not comply with the requirements (e.g., failed to make the request on a timely basis), the PRO would take whatever corrective actions are necessary. The corrective action, ultimately, could be a sanction action.

We also propose that the PRO may take other types of corrective actions. For example, if information given over the telephone by a physician or health care facility is found to be misleading, dubious, or inaccurate, the PRO could require certain physicians or health care facilities to submit all information in writing.

The ultimate purpose of corrective action would be to ensure that future cases are submitted to the PRO for review on a timely basis with accurate information.

10. Appeals. Reconsiderations and appeals of PRO denials are available under 42 CFR part 473. We would revise that part so that a denial by the PRO for home IV drug therapy services are subject to an expedited reconsideration

(§ 473.18) and so that a reconsideration for these services follows the time requirements in § 473.32(a)(1)(ii) for hospitalized patients and for discharged patients.

Regulatory Impact Statement and Flexibility Analysis

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any proposed rule that meets one of the E.O. criteria for a "major rule"; that is, that would be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- 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.

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a proposed rule would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all PROs are treated as small entities. In addition, we believe that a majority of home IV providers, once certified, will also qualify as small entities under the RFA.

Additionally, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a proposed rule may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 50 beds located outside of a Metropolitan Statistical Area.

This rule would implement section 203 of Public Law 100-360 that provides, effective January 1, 1990, Part B coverage for home IV drug therapy services including nursing services, pharmacy services, and related items and services necessary for the safe and effective administration of home IV drugs. We anticipate that Medicare coverage of home IV drug therapy services would provide approximately $810 million in benefits over the next five fiscal years, beginning in FY 1990. This amount reflects only expected benefit outlays for home IV therapy services and does not reflect any effects these new benefits may have on program spending for inpatient hospital care. The following table shows the amount of anticipated incurred home IV benefits by fiscal year for the next 5 fiscal years:

Projected Incurred Benefits As a Result of Medicare Coverage of Home IV Drug Therapy Services

[in millions]*

FY 1990	FY 1991	FY 1992	FY 1993	FY 1994
$100	$140	$260	$190	$220

*Rounded to the nearest ten million.

On the basis of projected incurred benefits, this proposed rule would be considered a major rule under the E.O. 12291 cost criterion. However, we believe that any effects of these provisions on the economy and public would primarily be the result of the statute and not this proposed rule. This is because we have proposed to implement the statute exercising administrative discretion in certain respects. For example, we propose to clarify the meaning of the statute by defining "home" and "referring physician". However, only the following two areas are of such significance that major effects would result: describing covered nursing services, covered pharmacy services, and covered related services and supplies; and establishing criteria to be used by PROs in conducting reviews with respect to the appropriateness of home intravenous drug therapy services. As discussed below, we do not believe these provisions would result in effects that meet either E.O. 12291 or Regulatory Flexibility Act criteria.

In this document, we are given discretion in proposing what constitutes the covered services that would have to be furnished by a home IV drug therapy provider. Although section 1861(jj)(2) of the Act covers nursing, pharmacy, and related services, it does not define services in detail. It, however, does require that these services "* * * are such as are necessary to conduct safely and effectively an intravenously administered drug regimen * * *." In describing these services, we have consulted with staff from established entities that furnish home IV drug therapy services, drug companies, and other concerned individuals to obtain advice and recommendations. In addition, we studied both the Standards for the Accreditation of Home Care issued by the Joint Commission on Accreditation of Health Care Organizations and the Intravenous Nurses Standards of Practice issued by the Intravenous Nurses Society. We have based our proposed list of services on these organization's standards, as well as on current practice for home IV drug therapy services. Therefore, we believe that our description of covered services essentially conforms with existing industry practices and, therefore, would result in only negligible effects on home IV drug therapy service providers.

We also are given administrative discretion in determining the review criteria that PROs would use in evaluating home IV drug therapy services. We believe that the effect on PROs of the criteria that we are proposing would be negligible since the review criteria are similar to those currently used for PRO review of other services. Funding for this additional review work would be provided to PROs through a modification in their current contracts.

As discussed above, we are using administrative discretion in two important areas. We believe our application of administrative discretion in these two areas would result in negligible effects. Moreover, any additional effects accruing to this proposed rule would be the result of the statute and not the proposed rule. Therefore, we do not believe this proposed rule meets E.O. 12291 criteria and an initial regulatory impact analysis is not required. Also, we have determined, and the Secretary certifies, that this proposed rule would not have a significant economic impact on a substantial number of small entities and would not have a significant economic impact on the operations of a substantial number of small rural hospitals.

Paperwork Burden

Sections 424.28, 466.206, 466.208, 466.214, 466.216, 466.218, and 466.220 of this proposed rule contain information collection requirements that are subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1980. The referring physician must establish a plan of care and certify (and recertify as necessary) that the services meet certain requirements (§ 424.28). In addition, the physician and health care facility would have to supply the PRO with needed information (§§ 466.208, 466.214, 466.218, and 466.220). The public reporting burden for the information collections in § 424.28 is estimated to be 730.3 hours annually shared among approximately 20,000 physicians.

A notice will be published in the **Federal Register** when approval for the burden is obtained. Organizations and

individuals desiring to submit comments regarding the burden estimate or any other aspect of this collection of information, including reducing this burden, should send comments to the agency officials specified in the "ADDRESS" section of this preamble.

Response To Comments

Because of the large number of items of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date and time specified in the "Date" section of this preamble, and, if we proceed with a final rule, we will respond to the comments in the preamble of that rule.

List of Subjects

42 CFR Part 410

Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Rural areas, X-rays, requirements.

42 CFR Part 424

Assignment of benefits, Physician certification, Claims for payment, Emergency services, Plan of treatment.

42 CFR Part 466

Grant programs-health, Health care, health facilities, Health professions, Peer Review Organizations (PRO).

42 CFR Part 473

Administrative practice and procedure, Health care, Health professions, Peer Review Organizations (PRO), Reporting and recording requirements.

For the reasons set out in the preamble, 42 CFR chapter IV would be amended as set forth below:

PART 410—SUPPLEMENTARY MEDICAL INSURANCE (SMI) BENEFITS

A. 42 CFR part 410 is amended as set forth below:

1. In the table of contents for part 410, a new subpart F is added and the authority citation is revised to read as follows:

PART 410—SUPPLEMENTARY MEDICAL INSURANCE (SMI) BENEFITS

* * * * *

Subpart F—Coverage of Home Intravenous Drug Therapy Services

410.201 Basic rule.
410.203 Definitions.
410.205 Home IV drug therapy services.
410.207 Payment limitations concerning certain patient referrals.

Authority: Secs. 1102, 1832, 1833, 1834, 1835, 1861 (r), (s), (t), (cc), and (jj), 1871, and 1881 of the Social Security Act (42 U.S.C. 1302, 1395k, 1395l, 1395m, 1395n, 1395x(r), (s), (t), (cc), and (jj), 1395hh, and 1395rr).

2. Section 410.3, the introductory language to paragraph (a) is repeated and paragraph (a)(2) is revised to read as follows:

§ 410.3 Scope of benefits.

(a) *Covered services.* The SMI program helps pay for the following:

(1) * * *

(2) Services furnished by ambulatory surgical centers (ASCs), home health agencies (HHAs), home intravenous drug therapy providers (or home IV providers), and comprehensive outpatient rehabilitation facilities (CORFs).

* * * * *

3. A new subpart F is added to read as follows:

Subpart F—Coverage of Home Intravenous Drug Therapy Services

§ 410.201 Basic rule.

Under sections 1834(d) and 1861(jj), Medicare part B pays for home intravenous drug therapy services furnished by a qualified home intravenous drug therapy provider (see part 485, subpart C of this chapter) or by others under arrangements made by the qualified home IV drug therapy provider with them, to a patient who is under the care of a physician, in a place of residence used as the beneficiary's home and under a plan of care established and periodically reviewed by the beneficiary's referring physician.

§ 410.203 Definitions.

For purposes of this subpart—

Home intravenous drug therapy provider or "home IV provider" means an entity that provides home IV drug therapy services, has been certified as meeting the conditions of participation of part 485, subpart C of this chapter, and has a provider agreement with HCFA.

Home intravenous drug therapy services or "home IV services" means nursing, pharmacy and related services (including medical supplies, equipment, intravenous fluids only when used as diluents for covered home IV drugs, and delivery services) necessary to conduct an intravenously administered regimen safely and effectively in conjunction with the use of a covered home intravenous drug. These services are furnished to an individual who is under the care of a physician, in a place of residence used as the individual's home, by a qualified home IV provider (or by others under arrangements), and under a plan established and periodically reviewed by the referring physician.

IV stands for intravenous.

Place of residence used as the individual's home is a place in which the beneficiary normally resides and is not an institution or facility that is defined in section 1861(e)(1), 1819(a) or 1919(a) of the Act.

Referring physician means the physician who prescribed the covered home intravenous drug for which the services are to be provided or who established the plan of care for the services or both.

§ 410.205 Home IV drug therapy services.

(a) *Individual services.* Particular services included in the term "home intravenous drug therapy services" that are covered under this subpart are limited to the nursing services and pharmacy services described in §§ 485.135 and 485.140, respectively, of this chapter and related services described in paragraph (b) of this section that are necessary for the safe and effective administration of a covered home IV drug. Separate payment may not be made for any of these services furnished to a patient receiving covered home intravenous drug therapy services.

(b) *Related services and supplies.* The home IV provider must furnish the following if they are necessary for the safe and effective administration of a covered home IV drug—

(1) Medical supplies;

(2) Intravenous fluids for use as diluents for covered home IV drug;

(3) Training of the patient or his or her caregiver in the techniques of IV drug therapy;

(4) Equipment, such as IV poles and infusion pumps; and

(5) Delivery of medical items and supplies.

(c) *Prohibited payment.* Payment may not be made to a home IV provider for covered home IV drug therapy services unless the home IV provider furnishes the covered home IV drug either directly or under arrangements.

§ 410.207 Payment limitations concerning certain patient referrals.

(a) *Ownership and compensation rules.* Payment may not be made to a home IV therapy provider for the home IV drug therapy services furnished to a beneficiary if that beneficiary's referring physician or an immediate member of the referring physician's family has an ownership interest in the provider or receives compensation from the provider unless an exception under

paragraph (b) through (e) of this section applies. For purposes of this paragraph, an immediate member of the family includes the physician's spouse; natural and adoptive parents, natural and adopted children; natural, adopted and adoptive siblings; stepparents, stepchildren and stepsiblings; fathers-in-law, mothers-in-law, brothers-in-law, sisters-in-law, sons-in-law, and daughters-in-law; and grandparents and grandchildren.

(b) *Exception applying to limitation on ownership.* (1) Payments may be made if the ownership interest is the ownership of stock in the home IV provider that is traded over a publicly regulated exchange and purchased on terms generally available to the public;

(2) Payment may be made if the provider is the sole home IV drug therapy provider in a rural area.

(3) For purposes of paragraph (b)(2) of this section, a rural area is one that is not an urbanized area (as defined by the Bureau of the Census) and that is designated by the Secretary either—

(i) As an area with a shortage of personal health services under section 1302(7) of the Public Health Service Act, or

(ii) As a health manpower shortage area described in section 332(a)(1)(A) of the Act because of its shortage of primary medical care manpower.

(4) For purposes of paragraph (b)(2) of this section, a sole home IV drug therapy provider in a rural area is one that is approved as such by HCFA after the provider—

(i) Designates a particular area;

(ii) Shows that no other home IV provider furnishes services within that area;

(iii) Shows that there are no physicians without an ownership interest in the provider available to perform certification and recertification and to write plans of care.

(c) *Exception applying to limitation on compensation.* Payment may be made under this section if the compensation is reasonably related to items or services actually provided by the physician and does not vary in proportion to the number of referrals made by the referring physician. This exception does not apply if the compensation is for direct patient care services.

(d) *Exception applying to uncompensated officer or director.* Payment may be made if the referring physician's or immediate family member's ownership or financial relationship with the provider is as an uncompensated officer or director of the provider.

(e) *Exceptions applying to instances in which there is no substantial risk of program abuse.* Payment may be made under this part in those cases in which the Secretary has specifically determined that the nature of the ownership or compensation does not pose a substantial risk of program abuse involving the following:

(1) *Space rental.* For purposes of this paragraph, the term "fair market value" means the value of the rental property for general commercial purpose (not taking account of its intended use), but it is not adjusted to reflect the additional value the prospective lessee or lessor would attribute to the property as a result of its proximity or convenience to the lessor where the lessor is a potential source of patient referrals to the lessee. As used in section 1834(d) of the Act, neither "ownership" nor "compensation" includes payments made by a lessee to a lessor for the use of premises, as long as—

(i) The lease agreement is set out in writing and signed by the parties;

(ii) The lease specifies the premises covered by the lease;

(iii) If the lease is intended to provide the lessee with access to the premises for periodic intervals of time, rather than on a full-time basis for the term of the lease, the lease specifies exactly the schedule of such intervals, their precise length, their periodicity, and the exact rent for such intervals;

(iv) The term of the lease is for not less than one year; and

(v) The rental charge is consistent with fair market value in arms-length transactions and is not determined in a manner that takes into account the volume or value of any referrals of business between the parties for whom the services would be paid by Medicare or Medicaid.

(2) *Equipment rental.* For purposes of this paragraph, the term "fair market value" means the value of the equipment when obtained from a manufacturer or professional distributor, but it is not adjusted to reflect the additional value the prospective lessee or lessor would attribute to the equipment as a result of its proximity or convenience to the lessor where the lessor is a potential source of patient referrals to the lessee. As used in section 1834(d) of the Act, neither "ownership" nor "compensation" includes payments made by a lessee of equipment to the owner ("lessor") of the equipment for the use of the equipment, as long as—

(i) The lease agreement is set out in writing and signed by the parties;

(ii) The lease specifies the equipment covered by the lease;

(iii) If the lease is intended to provide the lessee with use of the equipment for periodic intervals of time rather than on a full-time basis for the term of the lease, the lease specifies exactly the schedule of such intervals, their precise length, their periodicity, and the exact rent for such intervals;

(iv) The term of the lease is for not less than one year; and

(v) The rental charge is consistent with fair market value in arms-length transactions and is not determined in a manner that takes into account the volume or value of any referrals of business between the parties reimbursed under Medicare.

(3) *Personal services and management contracts.* For purposes of this paragraph, an agent of a principal is any person, other than a bona fide employee, who has an agreement to perform services for, or on behalf of, the principal. As used in section 1834(d) of the Act, neither "ownership" nor "compensation" includes payments made by a principal to an agent as compensation for the services of the agent, as long as—

(i) The agency agreement is set out in writing and signed by the parties;

(ii) The agency agreement specifies the services to be provided by the agent;

(iii) If the agency agreement is intended to provide for the services of the agent on a periodic, sporadic or part-time basis, rather than on a full-time basis for the term of the agreement, the agreement specifies exactly the schedule of such intervals, their precise length, their periodicity, and the exact charge for such intervals;

(iv) The term of the agreement is for not less than one year; and

(v) The aggregate compensation paid to the agent over the term of the agreement is set in advance, is consistent with fair market value in arms-length transactions and is not determined in manner that takes into account the volume or value of any referrals of business between the parties that is reimbursed under Medicare or any State health care program.

(4) *Employees.* As used in section 1834(d) of the Act, neither "ownership" nor "compensation" includes any amount paid by an employer to an employee who has a bona fide employment relationship with the employer, for employment in the provision of covered items or services. For purposes of this paragraph (f)(4), the term "employee" has the same meaning as it does for purposes of 42 U.S.C. 410(j)(2), part of the statutory definition of "employee" in the Federal Insurance Contributions Act; that is, the common law employment test.

B. 42 CFR part 424, subpart B is amended as set forth below:

1. The table of contents for part 424 subpart B, is amended by adding § 424.28 and the authority citation is revised as follows:

PART 424—CONDITIONS FOR MEDICARE PAYMENT

* * * * *

Subpart B—Physician Certification and Plan of Treatment Requirements

* * * * *

424.28 Requirements for home IV drug therapy services.

* * * * *

Authority: Secs. 216(j), 1102, 1814, 1815(c), 1832, 1835, 1842(b), 1861, 1866(d), 1870 (e) and (f), 1871 and 1872 of the Social Security Act (42 U.S.C. 416(j), 1302, 1395f, 1395g, 1395k, 1395n, 1395u(b), 1395x, 1395cc(d), 1395gg (e) and (f), 1395hh and 1395ii).

2. A new § 424.28 is added to read as follows:

§ 424.28 Requirements for home IV drug therapy services.

Medicare Part B pays for home intravenous drug therapy services only if the referring physician certifies, and recertifies as required under paragraph (b) of this section, that the requirements described in paragraphs (a)(1) through (a)(5) of this section are being met.

(a) *Certification: Content.* The referring physician must certify, or recertify if applicable, that—

(1) The home intravenous drug therapy services are or were required because the individual needs or needed the services for the administration of a covered home intravenous drug;

(2) A plan for furnishing the services has been established by the referring physician and is reviewed periodically by that physician;

(3) The services are or were furnished while the individual is or was under the care of a physician;

(4) The services are furnished in a place of residence used as the patient's home; and

(5) For services initiated before January 1, 1993, a PRO has approved the services in accordance with part 466, Subpart E, of this chapter.

(b) *Recertification*—The referring physician must recertify that the requirements in paragraph (a) of this section are still met at least every 30 days.

(c) *Plan of care requirements.*—(1) *Establishment.* The referring physician must establish and sign the plan of care and consult as necessary with the home IV provider nurse or pharmacist before the home IV therapy begins in accordance with §§ 485.135 and 485.140 of this chapter.

(2) *Content.* The plan of care must contain at least the information required in § 485.120 of this chapter.

(3) *Review.* The physician must review and sign the plan of care at least every 30 days.

C. 42 CFR Part 466 is amended as set forth below:

1. The table of contents for part 466 is amended by adding a new subpart E, and revising the authority citation to read as follows:

PART 466—UTILIZATION AND QUALITY CONTROL REVIEW

* * * * *

Subpart E—PRO Review of Home IV Drug Therapy Services

466.201 Statutory basis and applicability.
466.202 Effective dates.
466.203 Definitions.
466.204 Scope of PRO review.
466.206 Notification of PRO review procedures.
466.208 Responsibilities of physicians and health care facilities.
466.210 Lack of cooperation by a health care facility or physician.
466.212 PRO designation.
466.214 PRO approval.
466.216 Timing of review.
466.218 Notification.
466.220 Retrospective reviews.
466.222 Liability and sanctions for unreviewed cases.
466.224 Reconsiderations and appeals.

Authority: Secs. 1102, 1154, 1835, and 1871 of the Social Security Act (42 U.S.C. 1302, 1320c—3, 1395r and 1395hh).

2. A new Subpart E is added to read as follows:

Subpart E—PRO Review of Home IV Drug Therapy Services

§ 466.201 Statutory basis and applicability.

(a) *Statutory basis.* Sections 1154(a)(16) and 1835(a)(2)(G) of the Act require PROs to review all home intravenous (IV) drug therapy services before these services begin; or, in the case of services first initiated on an outpatient basis, within one working day (other than in exceptional circumstances) of the date of the initiation of the services.

(b) *Applicability.* The regulations in this subpart apply to reviews, conducted by a PRO and its subcontractors, of home IV drug therapy services furnished, or proposed to be furnished, to all Medicare beneficiaries other than those beneficiaries enrolled in HMOs or CMPs that contract with HCFA on a risk-basis as described in Subpart C of 42 CFR part 417.

§ 466.202 Effective dates.

All home IV drug therapy services intended to be furnished to Medicare beneficaries on or after January 1, 1990 are subject to the PRO review requirements of this subpart.

§ 466.203 Definitions.

As used in this subpart—

Outpatient basis means the patient receives services other than as an inpatient of a hospital.

§ 466.204 Scope of PRO review.

(a) *General rule.* After a PRO receives a request for review of home IV drug therapy services from either the referring physician or the health care facility, the PRO must determine (in accordance with the terms of its contract) whether the home IV drug therapy is reasonable, appropriate, and necessary for the treatment of the illness or injury. This review includes a determination that the intravenous route of administration is the correct route of administration and that the home IV drug therapy services meet professionally recognized standards of care.

(b) *Coordination of sanction activities.* In implementing review of home IV drug therapy services, PROs must carry out the responsibilities specified in Subpart C, Part 1004, Chapter V of this title, regarding imposition of sanctions on health care facilities and practitioners who violate their statutory obligations under Section 1156 of the Act. For example, a PRO is to refer to the HHS Office of Inspector General a case involving a physician who exhibits a pattern of not correctly monitoring, by appropriate laboratory tests, the administration of a drug.

§ 466.206 Notification of PRO review procedures.

(a) *Criteria.* The PRO must distribute, at no charge, the criteria/quality screening guidelines to be used in screening cases, at a minimum, to all affected health care facilities and medical societies in the State.

(b) *Information required.* Each PRO must give timely written notification to health care facilities and physicians in its State the following information:

(1) *Date.* The date upon which the PRO plans to begin review of home IV drug therapy services.

(2) *Manner.* The manner in which the referring physician or health care facility is to seek PRO review.

(3) *Required information.* The information to be furnished to the PRO by the physician and/or health care

facility and the need for expediency in responding to PRO questions.

(4) *Validation and quality review.* The validation and quality review that the PRO may conduct on a sample of the cases after the services are furnished in the home.

(5) *Financial liability.* A general statement about financial liability for charges related to home IV drug therapy services that are found to be not reasonable or medically necessary and a statement that no claims will be paid without PRO approval.

§ 466.208 Responsibilities of physicians and health care facilities.

(a) *Physicians.* The referring physician must cooperate (in addition to the requirements in § 466.78) in the conduct of PRO review as follows:

(1) The physician must, in accordance with PRO-issued procedures, either seek PRO prior authorization for the drug he or she proposes to have administered intravenously at home or assist in providing necessary information in support of a health care facility that seeks PRO approval.

(2) The physician must furnish relevant medical records, upon request, to the PRO for any of the reviews described in this subpart.

(b) *Health care facilities.* (1) In addition to the general requirements for health care facilities set forth in § 466.78, the health care facility must cooperate in the conduct of PRO review (in accordance with the regulations in this part and PRO-issued procedures) by obtaining the authorization number provided by the PRO—

(i) Before beginning the administration of an IV drug in the patient's home, except, in cases where the drug is to be started on an outpatient basis on a weekend (i.e., a non-workday), the authorization must be obtained the first working day thereafter; and

(ii) In certain cases, before continuation of home IV drug therapy that the PRO has previously approved as described in § 466.216 (c) and (d).

(2) Health care facilities must maintain a written agreement with the appropriate PRO.

(3) The health care facility must in accordance with PRO-issued procedures, either seek PRO approval of the IV drug therapy services proposed to be administered at home or assist in providing necessary information in support of a referring physician that seeks PRO approval.

(4) The health care facility must transfer relevant medical records (including the plan of care described in § 424.28(c)), upon request, to the PRO for any of the reviews described in this subpart.

§ 466.210 Lack of cooperation by a health care facility or physician.

If a health care facility or physician fails to comply with the requirements for review set forth in this subpart, the PRO may determine that the health care facility or physician has failed to comply with the requirements of Subpart C, Part 1004, Chapter V of this title concerning failure by providers or practitioners to meet statutory obligations under section 1156 of the Act and may report the matter to the Office of Inspector General.

§ 466.212 PRO designation.

(a) When home IV drug therapy is proposed for a currently hospitalized inpatient, the referring physician or health care facility must contact, for prior authorization, the PRO with whom the hospital has an agreement.

(b) When home IV drug therapy is proposed for a patient who has had the drug started on an outpatient basis, the physician or health care facility must contact, for authorization, the PRO for the State in which the home IV drug therapy provider is located.

(c) For all other reviews, the PRO for the State in which the home IV drug therapy provider is located will conduct the review.

§ 466.214 PRO approval.

(a) Before approving the home IV drug therapy services, the PRO must be assured—

(1) That the patient's condition is such that inpatient hospitalization is not justified either—

(i) As a continuation of an existing hospitalization; or

(ii) As a medically necessary and appropriate admission;

(2) Orally, in writing, or from documentation (or any combination of these three), that the patient meets the selection criteria outlined in § 485.115 of this subpart;

(3) That the patient or caregiver has been or will be sufficiently trained as to how to administer the drugs safely and effectively in the home; and

(4) That the patient or caregiver has or will independently administer(ed) intravenously at least one dose of the drug under supervision.

(b) The PRO must determine that:

(1) The plan of care, executed by the referring physician, has enough information to support the coverage of home IV drug therapy services;

(2) The drug is being used for one of the stated indications listed in a **Federal Register** notice issued by the Secretary;

(3) The drug is medically indicated for the treatment of the patient's condition;

(4) The dosage is correct (e.g., adjusted for height and body weight);

(5) Appropriate diagnostic studies (e.g., culture and sensitivities, kidney function tests) have been performed and will be performed as appropriate while the patient is receiving the therapy;

(6) Other appropriate periodic monitoring has been and will be performed;

(7) The drug is not contraindicated (e.g., based upon abnormal laboratory findings, or drug interactions); and

(8) The home IV drug therapy services meet professionally recognized standards of care.

(c) The PRO must also determine that the intravenous route of administration is the only route of administration that will be effective.

(d) In performing review, the PRO uses review coordinators to compare the facts about the individual case to the criteria/screening guidelines developed by HCFA, the PRO, or both.

(1) If the case meets the criteria/guidelines, the review coordinator issues a PRO approval number.

(2) If the case does not meet the criteria/guidelines, the review coordinator refers the case to a PRO physician.

(3) The PRO physician review either approves the case (using a PRO approval number) or questions the case.

(4) If the case is questioned by the PRO physician, the physician who prescribed the home IV drug therapy and the health care facility are immediately given an opportunity to discuss the case.

(i) The PRO atempts to contact either the referring physician or health care facility.

(ii) The referring physician may discuss the case with a PRO physician.

(iii) The health care facility may discuss the case with a PRO representative. If, however, the health care facility designates a physician representative, that physician may also discuss the case with a PRO physician.

(iv) For potential quality problems, the PRO follows the timeframes outlined in its contract with HCFA.

§ 466.216 Timing of review.

(a) *Prior review of continuation of inpatient hospital therapy.* (1) The PRO is required, for all IV drug therapy continued at home after a hospital stay, to authorize such use before hospital discharge.

(2) The review must be requested by the referring physician or the health care

facility in accordance with PRO-issued instructions.

(3) The PRO will follow the review process outlined in § 466.214(c).

(4) The PRO must complete the review within one working day of receipt of a request for review.

(i) The date of the request for review is considered to be the date upon which the PRO receives all of the information it needs to complete the review.

(ii) In this timeframe, the PRO must give the health care facility and referring physician an opportunity to discuss the case as described in § 466.214.

(iii) Failure of the health care facility and referring physician to discuss the case within the time allowed is not a basis that will prevent the PRO from making its determination based upon the information in its possession.

(b) *Initial review of IV drugs started on an outpatient basis.* In the case of a patient whose IV drug therapy services are initiated on an outpatient basis, the referring physician or health care facility will request PRO approval no later than the first working day on which the home IV drug therapy services are prescribed.

(1) The PRO has eight working hours in which to complete its review after receipt of a request for review from the referring physician or health care facility.

(2) The date the PRO receives the request for review is the date on which the PRO receives all the information it needs to complete the review.

(3) PRO review follows a request from the referring physician or health care facility that is made in accordance with PRO-issued instructions.

(4) The PRO will follow the review process outlined in § 466.214(c).

(5) The PRO must complete its review within one working day of initiation of the home IV drug services.

(i) This timeframe includes the time the PRO must give the health care facility and physician to discuss the case as described in § 466.214.

(ii) If the health care facility and physician do not take advantage of the opportunity to discuss the review within the time allowed the PRO may make its determination based upon the information in its possession.

(c) *Subsequent reviews for continuation of drugs.* In accordance with the PRO's prior approval, when drugs are to be continued for a period of time beyond the date or number of days approved by the PRO, the PRO will periodically review to determine that coverage of the home IV drug therapy services continues to be appropriate in accordance with the requirements set forth in § 466.214 (a) and (b) of this subpart.

(1) If home IV drug therapy is planned to continue for a time past the date the PRO has indicated, the physician or health care facility must request PRO review no less than three working days before the expiration of the current PRO approval.

(2) The PRO follows the process outlined in § 466.214(c).

(3) The PRO must complete subsequent reviews within three working days of the request.

(i) In this timeframe, the PRO must give the health care facility, if applicable, and physician an opportunity to discuss the case as described in § 466.214.

(ii) If the health care facility and physician do not take advantage of the opportunity to discuss within the time allowed, the PRO may make its determination based upon the information in its possession.

(d) *Prior review of change in drug.* When the referring physician proposes a change to the IV drug therapy, the referring physician or the health care facility will request PRO approval of the revision in therapy within one working day of initiation of the change.

(1) The referring physician or health care facility must request PRO review in accordance with PRO-issued instructions.

(2) The PRO will follow the review process outlined in § 466.214(c).

(3) The PRO will complete its review within three working days of the request.

(i) In this timeframe, the PRO must afford the health care facility and referring physician an opportunity to discuss the case as described in § 466.214.

(ii) If the health care facility and referring physician do not take advantage of the opportunity to discuss the case within the time allowed, the PRO will make its determination based upon the information in its possession.

(e) *Retrospective reviews.* For retrospective reviews, the PRO must adhere to the timing of review requirements found in its contract with HCFA.

§ 466.218 Notification.

(a) The PRO must, within the timeframes given in § 466.216, provide notification if its determination as follows:

(1) The PRO notifies the health care facility and referring physician by telephone as to whether it has determined that—

(i) Services are reasonable, appropriate, and medically necessary. The PRO issues an approval number and informs the health care facility, if applicable, and referring physician of the date by which review and subsequent approval must be requested for continuation of the IV drug therapy;

(ii) Services are not reasonable, appropriate, or medically necessary;

(iii) Services are medically necessary but neither the patient nor caregiver meets the selection criteria; or

(iv) The patient should receive the services in another setting.

(2) If the PRO does not authorize the services because they are not reasonable, appropriate and medically necessary in the home setting, within one working day of the determination it must, in accordance with the requirements of § 466.94(c), notify in writing:

(i) The beneficiary;

(ii) The referring physician;

(iii) The health care facility, and

(iv) The fiscal intermediary.

(b) If the PRO determines that the services do not meet professionally recognized standards of care, the PRO will notify the referring physician and health care facility in accordance with the quality intervention plan in the PRO's contract.

§ 466.220 Retrospective reviews.

(a) *Random sampling.* The PRO must periodically review a sample of cases to determine that the home IV therapy services meet professionally recognized standards of care and that the conditions in § 466.214 are met.

(b) *Retrospective review of unapproved cases.* On a retrospective, prepayment (and on an exception basis, postpayment) basis, the PRO reviews (upon the request of the physician or health care facility) any claims for home IV drug therapy services for which PRO review was required but never completed and makes a determination in accordance with § 466.214.

(c) *Validation reviews.* The PRO in the State where the home IV drug therapy provider is located must conduct a validation review of a sample of cases in which approval for home IV drug therapy services under this subpart was granted by telephone after the PRO considered medical information by telephone but did not review actual medical records.

(1) The PRO must be assured that information provided to the PRO was accurate and that the home IV drug therapy services met professionally recognized standards of care.

(2) If inaccurate information was given to the PRO, the PRO must deny payment for the services if they are

found to be noncovered based upon the correct information.

(3) As a result of this review, the PRO may decide that future medical information must be submitted in writing.

§ 466.222 Liability and sanctions for unreviewed cases.

(a) *Payment contingent upon approval.* No payment will be paid for any claim where the PRO has not approved the services for payment.

(b) *Failure of PRO to complete review.* If, because of a PRO administrative error, the review is not completed within the timeframes outlined in § 466.216, the PRO still must complete the review and issue an approval number or a notice denying the services.

(c) *Financial liability.* Financial liability is determined in accordance with provisions of sections 1842(1) and 1879 of the Act and §§ 405.330 through 405.336 of this chapter.

(d) *Corrective action.* (1) If the review is not completed timely, whether or not the PRO determines that the home IV drug therapy is appropriate and the physician or health care facility (or both) are the cause of the problem (including failure to make the request on a timely basis), the PRO must take whatever corrective actions are necessary to ensure that future cases are reported to the PRO for review within the outlined timeframes.

(2) If the information given over the telephone is found to be inaccurate or misleading, the PRO may take appropriate corrective actions.

§ 466.224 Reconsiderations and appeals.

Reconsiderations and appeals are available under part 473 of this chapter for all PRO initial denial determinations.

PART 473—RECONSIDERATIONS AND APPEALS.

D. 42 CFR Part 473 is amended as set forth below:

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

Authority: Secs. 1102, 1154, 1155, 1835, 1866, 1871, and 1879 of the Social Security Act (42 U.S.C. 1302, 1320c–3, 1320c–4, 1395r, 1395cc, 1395hh, and 1395pp).

2. Paragraph (c) of § 473.18 is revised to read as follows:

§ 473.18 Location for submitting requests for reconsideration.

* * * * *

(c) *Expedited reconsideration.* A request for an expedited reconsideration must be submitted directly to the PRO if the denial is a result of—

(1) Preadmission/preprocedure review; or

(2) Review of home intravenous drug therapy services before the initiation of or during the period in which the beneficiary is still receiving the services.

3. Paragraphs (a)(1) and (a)(3) of § 473.32 are revised to read as follows:

§ 473.32 Time limits for issuance of the reconsidered determination.

(a) *Beneficiaries.* If a beneficiary files a timely request for reconsideration of an initial denial determination, the PRO must complete its reconsidered determination and send written notice to the beneficiary within the following time limits—

(1) Within three working days after the PRO receives the request for reconsideration if—

(i) The beneficiary is still an inpatient in a hospital for the stay in question when the PRO receives the request for reconsideration; or

(ii) The initial determination relates to institutional services for which admission to the institution is sought, the initial determination was made before the patient was admitted to the institution; and a request was submitted timely for an expedited reconsideration; or

(iii) The initial determination relates to home intravenous drug therapy services for which approval was denied and a request was submitted timely for an expedited reconsideration.

(3) Within 30 working days after the PRO receives the request for reconsideration if—

(i) The initial determination concerns ambulatory or noninstitutional services;

(ii) The beneficiary is no longer an inpatient in a hospital or SNF for the stay in question or no longer receives home intravenous drug therapy services for which the PRO issued a denial determination; or

(iii) The beneficiary does not submit a request for expedited reconsideration timely.

(Catalog of Federal Domestic Assistance Programs No. 13.774, Medicare—Supplementary Medical Insurance)

Dated: July 12, 1989.

Louis B. Hays,

Acting Administrator, Health Care Financing Administration.

Approved: August 19, 1989.

Louis W. Sullivan, M.D.,

Secretary.

[FR Doc. 89–21239 Filed 9–7–89; 8:45 am]

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federal register

Friday
September 8, 1989

Part VI

The President

Proclamation 6016—Uncle Sam Day, 1989

Federal Register
Vol. 54, No. 173
Friday, September 8, 1989

Presidential Documents

Title 3—

The President

Proclamation 6016 of September 5, 1989

Uncle Sam Day, 1989

By the President of the United States of America

A Proclamation

The tall, white-haired figure of Uncle Sam—his stern, sagacious face graced by a flowing beard, and his distinguished top hat adorned by stars and stripes—is a beloved symbol of the United States. Recognized around the world, the striking visage of Uncle Sam recalls the pride and strength of the American people, as well as the freedom we enjoy.

One of the most familiar renditions of Uncle Sam is found on the James Montgomery Flagg recruitment poster used during World War I and World War II. With its now-famous headline, "Uncle Sam Wants You," this poster urged men and women to help defend our way of life by enlisting in the Armed Forces. Today, the figure of Uncle Sam continues to remind us of the great risks and personal sacrifices endured by generations of Americans in the quest for liberty.

In 1961, the Congress recognized Samuel Wilson of Troy, New York, as the progenitor of this celebrated American symbol. Hardworking and self-reliant, Samuel Wilson was a man of unwavering integrity. He was also an important source of food for the Army during the War of 1812. The marking "U.S." stamped on casks of meat that his packinghouse prepared for American troops represented "Uncle Sam" to many soldiers and eventually the name was associated with the U.S. Government itself.

During Samuel Wilson's lifetime, which spanned the exciting years of 1766 to 1854, Americans won our country's independence; formed a system of self-government under our great Constitution; explored and settled the frontier; and raised the hopes of freedom-loving peoples around the world. Because the character derived from his nickname embodies the proud and industrious spirit of the American people, it is fitting that we pause to remember "Uncle Sam" Wilson and his place in our Nation's history.

To honor Samuel Wilson on the anniversary of his birth and the occasion of the bicentennial of the City of Troy, New York, the Congress, by Public Law 100–645, has designated September 13, 1989, as "Uncle Sam Day" and has authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim September 13, 1989, as Uncle Sam Day and call upon the people of the United States to observe this day with appropriate ceremonies and activities.

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

George Bush

[FR Doc. 89-21365
Filed 9-7-89; 9:22 am]
Billing code 3195-01-M

federal register

Friday
September 8, 1989

Part VII

Department of Transportation

National Highway Traffic Safety Administration

49 CFR Part 531

Passenger Automobile Average Fuel Economy Standards; Proposed Decision To Grant Exemption

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 531

[Docket No. LVM 86-02; Notice 1]

Passenger Automobile Average Fuel Economy Standards; Proposed Decision To Grant Exemption

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Proposed decision to grant exemption from average fuel economy standards and to establish an alternative standard.

SUMMARY: This proposal is being issued in response to a petition filed by Rolls-Royce Motors, Ltd. (Rolls-Royce) requesting that it be exempted from the generally applicable average fuel economy standard of 27.5 miles per gallon (mpg) for model year (MY) 1990 and 1991 passenger automobiles, and that a lower alternative standard be established for it. This notice proposes that the requested exemption be granted and that alternative standards of 12.7 mpg for MY 1990 and 12.7 mpg for MY 1991 be established for Rolls-Royce.

DATE: Comments on this proposal must be received on or before September 28, 1989.

ADDRESS: Comments on this proposal must refer to Docket No. LVM 86-02; Notice 1 and should be submitted to: Docket Section, NHTSA, Room 5109, 400 Seventh Street SW., Washington, DC 20590. Docket hours are from 8:00 a.m. to 4:00 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Orron Kee, Office of Market Incentives, NHTSA, 400 Seventh Street SW., Washington, DC 20590. Mr. Kee's telephone number is (202) 366-0846.

SUPPLEMENTARY INFORMATION:

Background

Section 502(c) of the Motor Vehicle Information and Cost Savings Act, as amended (the Act), provides that a low volume manufacturer of passenger automobiles may be exempted from the generally applicable average fuel economy standards for passenger automobiles if those standards are more stringent than the maximum feasible average fuel economy for that manufacturer and if the NHTSA establishes an alternative standard for the manufacturer at its maximum feasible level. Under the Act, a low volume manufacturer is one that manufactures (worldwide) fewer than 10,000 passenger automobiles in the model year for which the exemption is sought (the affected model year) and that manufactured fewer than 10,000 passenger automobiles in the second model year before the affected model year. In determining maximum feasible average fuel economy, the agency is required by section 502(e) of the Act to consider:

(1) Technological feasibility;

(2) Economic practicability;

(3) The effect of other Federal motor vehicle standards on fuel economy; and

(4) The need of the Nation to conserve energy.

Selection of the Type of Alternative Standard

The Act permits NHTSA to establish alternative average fuel economy standards applicable to exempted low volume manufacturers in one of three ways: (1) a separate standard may be established for each exempted manufacturer; (2) classes, based on design, size, price, or other factors, may be established for the automobiles of exempted manufacturers, with a separate average fuel economy standard applicable to each class; or (3) a single standard may be established for all exempted manufacturers.

On October 27, 1987, Rolls-Royce petitioned NHTSA for an exemption from the generally applicable fuel economy standards for MYs 1990–1991. A previous petition dated September 19, 1984, submitted for MYs 1987–1989 and requesting 11.2 mpg, was granted. In the current petition, Rolls-Royce states that its maximum feasible fuel economy for MY 1990–1991 fleets has increased to 12.7 mpg for each year. For MYs 1990 and 1991, NHTSA believes it is appropriate to establish a separate standard for Rolls-Royce. The analysis of the petitions submitted by other low volume manufacturers for MYs 1990 and 1991 have not yet been completed, so the agency cannot use the second or third approaches described above.

Background Information on Rolls-Royce

Rolls-Royce is a small company that concentrates wholly on the production of high quality prestige cars. Its annual production rate is 2,000–3,000 automobiles, 1,200–1,500 of which are sold in the U.S. market. The corporate philosophy is that concentrating on this limited range and volume is the only way to maintain its reputation for producing a car that it says is widely perceived as the best in the world.

Rolls-Royce states that it is making every effort to achieve the lowest possible fuel consumption consistent with meeting emission, safety, and other standards while maintaining customer expectations of its product. In the 10-year period from 1978, when Federal fuel economy standards were introduced, Rolls-Royce has achieved a fuel economy improvement of approximately 14% by optimizing and tuning its powertrain while leaving basic features of the vehicles unchanged. In view of its position of producing only luxury vehicles, and its long model runs (as much as fifteen years between major changes), the company states that significant fuel economy improvements cannot be made in the short term. Rolls-Royce further states that it has had difficulty increasing the fuel economy of vehicles specifically targeted for the U.S. market due to stringent emission standards.

In the longer term, technical innovation and weight saving should result in worthwhile improvements. A change in the basic concept of its cars to reduce size or downgrade the specifications would not be acceptable to its customers. The company has, on the other hand, been conscious of the need for weight saving for many years, and, since the introduction of the Silver Shadow, has made many parts of aluminum. These include the engine block and cylinder heads, transmission and axle castings, doors, hood and deck lid.

Areas specifically addressed by the Rolls-Royce petition to improve its fuel economy include mix shift, weight reduction, engine improvements, and drive train and transmission improvements.

Methodology Used to Project Maximum Feasible Average Fuel Economy Level for Rolls-Royce

Baseline Fuel Economy

To project the level of fuel economy which could be achieved by Rolls-Royce in MYs 1990 and 1991, the agency considered whether there were technical or other improvements that would be feasible for these Rolls-Royce vehicles, whether or not the company actually plans to incorporate such improvements in those vehicles. The agency reviewed the technological feasibility of any changes and their economic practicability.

NHTSA interprets "technological feasibility" as meaning that technology which would be available to Rolls-Royce for use on its 1990 and 1991 model year automobiles, and which would improve the fuel economy of those automobiles. The areas examined for technologically feasible improvements were weight reduction, aerodynamic improvements, engine improvements,

drive line improvements, and reduced rolling resistance.

"Economic practicability" is interpreted as meaning the financial capability of the manufacturer to improve its average fuel economy by incorporating technologically feasible changes to its 1990 and 1991 model year automobiles and the effects of any shift in the mix of vehicles sold that may result from changes in market demand.

Throughout this analysis, NHTSA has considered only those improvements which would be compatible with the basic design concepts of Rolls-Royce automobiles. NHTSA assumes that Rolls-Royce will continue to produce a five-passenger luxury car. Hence, design changes that would make the cars unsuitable for five adult passengers and luggage or would remove items traditionally offered on luxury cars, such as air conditioning, automatic transmission, power steering, and power windows, were not examined. Such changes to the basic design could be economically impracticable since they might well significantly reduce the demand for these automobiles, thereby reducing sales and causing significant economic injury to the low volume manufacturer.

Mix Shift

Rolls-Royce has little opportunity for improving fuel economy by changing the model mix since it makes only one basic model in various configurations, all with similarly low fuel economy. Both corporate financial limitations and the unique market sector served by Rolls-Royce preclude significant changes to the basic concept of a Rolls-Royce car. For MYs 1990 and 1991, Rolls-Royce cars will fall into four car lines, under the Rolls-Royce and Bentley name plates. All cars except the Silver Spur Limousine model are in the 5,500-pound inertia weight class. The Silver Spur Limousine is in the 6000-pound inertia weight class and has slightly lower fuel economy than the other car lines. The differences in fuel economy values among the different models are small and the model mix is essentially fixed by the market demand. Variations in sales percentages among the models have negligible effect on CAFE.

Weight Reduction

As stated previously, Rolls-Royce has used aluminum for many of its components for some time. An in-house program has been conducted by the company to evaluate the effect of further weight reduction by removing items from the vehicle with no changes to engine or transmission. Dynamometer tests indicated that emissions as well as fuel economy improvements would result from reduced weight, but the tests were conducted simply by removing components from the vehicle. An 11% reduction in weight resulted in a 4% improvement in fuel economy. To achieve an equal or greater weight reduction through design changes would require complete redesign and retooling, which is not practicable. In its petition for MYs 1987–89, the company stated that it was investigating the practicalities of producing a lighter more fuel-efficient model. It has since abandoned this project in view of the current trend toward larger luxury cars with higher performance. In a 1988 telephone conversation with NHTSA personnel, a company spokesman stated that market analysis and dealer-supplied information lead to the conclusion that Rolls-Royce could not maintain its image by producing a smaller, lighter and more economical version under current market demands and pressures.

Engine Improvements

The current petition from Rolls-Royce restates past efforts to improve fuel economy in addressing engine improvements. Past developmental activities include test and evaluation of various technologies applied to the Rolls-Royce engine. These included the Texaco Controlled Combustion system, the Honda Compound Vortex Controlled Combustion system, diesel engines, cylinder disablement, increased engine displacement, the May "Fireball" Combustion Chamber, and overall engine downsizing in conjunction with all new features including bodyshell, transmission, and suspension. Each of these approaches was discarded in turn as failing to provide a feasible option for simultaneously meeting fuel economy and emissions requirements, and the expectations of the company's customers.

The one technique which does show a high likelihood of improvement is the programmed electronic ignition advance system. This has shown a possible 10% improvement in fuel economy due to the ability to accurately shape the ignition cycle. This system will be introduced on some models for MY 1989, and all models in MY 1990, and accounts for most of the projected CAFE improvement for MYs 1990–1991. A slight contribution is also realized from reduced axle ratios which can be used in conjunction with electronic engine controls without exceeding emissions standards.

Transmission and Drive Train Improvements

Rolls-Royce uses the General Motors THM 400 three-speed automatic transmission with torque converter and hypoid rear axle on all models. In the past, the company has considered a four-speed version of this transmission but found it unsuitable for the torque and power characteristics of the engine. Rolls-Royce is now exploring the development of a new four-speed version of a GM 400 series transmission. Rolls-Royce is currently entering the test and evaluation stage with this improvement, which will not be fully deployed until after MY 1991. The rear axle ratio has also been reduced as stated above.

Effect of Other Motor Vehicle Standards

The Rolls-Royce petition cites exhaust emission standards as having the greatest effect on fuel economy, and for this reason the company considers the fuel economy program to be an integral part of its emission control program. It states that, historically, emission standards have placed a severe strain on its limited technical resources; and only with the introduction of new emission control techniques such as oxidation and three-way catalysts has the trend to higher fuel consumption been reversed.

Of the Federal safety regulations it believes have an adverse effect on fuel economy, Rolls Royce considers the most significant ones to be 49 CFR part 581 (energy absorbing bumpers), Federal Motor vehicle safety standard (FMVSS) 214 (side intrusion beams in doors), and FMVSS 208 (passive restraints). The effect of these is to increase vehicle weight notwithstanding other efforts to reduce weight, including application of other materials.

The Need of the Nation to Conserve Energy. The agency recognizes there is a need to conserve energy, to promote energy security, and to improve balance of payments. However, as stated above, NHTSA has tentatively determined that it is not technologically feasible or economically practicable for Rolls-Royce to achieve an average fuel economy in the 1990 and 1991 model years above 12.7 mpg. Granting an exemption to Rolls-Royce and setting an alternative standard at that level will result in only a negligible increase in fuel consumption and will not affect the need of the Naton to conserve energy.

For illustrative purposes only, an estimate of the additional fuel consumed by operating the 1990–1991 fleets of Rolls-Royce vehicles at the company's

projected CAFE of 12.7 mpg (compared to a hypothetical 27.5 mpg fleet) over 100,000 miles is 288,900 bbls. of fuel. This averages about 66 bbls. of fuel per day over the 12 year period that these cars will be an active part of the fleet. This is insignificant compared to the daily fuel used by the entire motor vehicle fleet which amounted to some 4.6 million bbls. per day for passenger cars in the U.S. in 1987.

Proposed Alternative Standard

This agency has tentatively concluded that it would not be technologically feasible and economically practicable for Rolls-Royce to improve the fuel economy of its model year 1990 and 1991 automobiles above an average of 12.7 mpg, that compliance with other Federal automobile standards will not adversely affect achievable fuel economy, and that the national effort to conserve energy will not be affected by granting the requested exemption and establishing an alternative standard. Consequently, this notice proposes to conclude that the maximum feasible average fuel economy for Rolls-Royce in the 1990 and 1991 model years is 12.7. Therefore, the agency proposes to exempt Rolls-Royce from the generally applicable standard of 27.5 mpg and to establish an alternative standard for Rolls-Royce of 12.7 mpg for model years 1990 and 1991.

List of Subjects in 49 CFR Part 531

Energy conservation, gasoline, imports, motor vehicles.

In consideration of the foregoing, it is proposed that 49 CFR Part 531 be amended as follows:

PART 531—[AMENDED]

1. The authority citation for Part 531 would continue to read as follows:

Authority: 15 U.S.C. 2002, delegation of authority at 49 CFR 1.50.

2. In § 531.15, the introductory text of pargraph (b) is republished and paragraph (b)(2) is revised to read as follows:

§ 531.5 Fuel economy standards.

* * * * *

(b) The following manufacturers shall comply with the standards indicated below for the specified model years:

* * * * *

(2)(b) Rolls-Royce Motors. Inc.

Model year	Average fuel economy standard (miles per gallon)
1978	10.7
1979	10.8
1980	11.1
1981	10.7
1982	10.6
1983	9.9
1984	10.0
1985	10.0
1986	11.0
1987	11.2
1988	11.2
1989	11.2
1990	12.7
1991	12.7

* * * * *

NHTSA has analyzed this proposal and determined that neither Executive Order 12291 nor the Department of Transportation regulatory policies and procedures apply, because the proposal would not establish a "rule," which term is defined as "an agency statement of general applicability and future effect." The proposed exemption is not generally applicable, since it would apply only to Rolls-Royce Motors, Inc., as discussed in this notice. If the Executive Order and the Departmental policies and procedures were applicable, the agency would have determined that this proposed action is neither major nor significant. The principal impact of this proposal is that the exempted company would not have been required to pay civil penalties if its maximum feasible average fuel economy were achieved, and purchasers of those vehicles would not have had to bear the burden of those civil penalties in the form of higher prices. Since this proposal sets an alternative standard at the level determined to be Rolls-Royce's maximum feasible level for model years 1990 and 1991, no fuel would be saved by establishing a higher alternative standard. The impacts for the public at large will be minimal.

The agency has also considered the environmental implications of this proposal in accordance with the National Environmental Policy Act and determined that this proposal, if adopted, will not significantly affect the human environment. Regardless of the fuel economy of the exempted vehicles, they must pass the emissions standards which measure the amount of emissions per mile traveled. Thus, the quality of the air is not affected by the proposed exemptions and alternative standards. Further, since the exempted passenger automobiles cannot achieve better fuel economy than is proposed herein, granting these proposed exemptions would not affect the amount of fuel available.

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing data indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the

envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

(Sec. 9, Pub. L. 89-670, 80 Stat. 981 (49 U.S.C. 1657); Sec. 301, Pub. L. 94-163, 89 Stat. 901 (15 U.S.C. 2002); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on September 5, 1989.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 89-21309 Filed 9-8-89; 10:40 am]

BILLING CODE 4910-59-M

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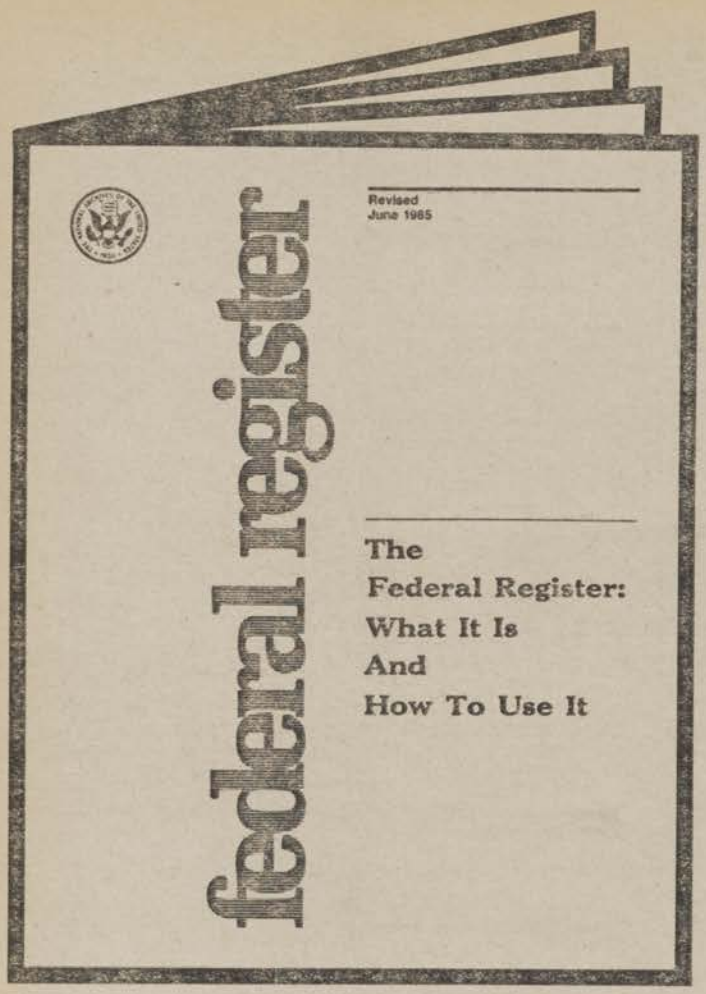

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