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Friday
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Friday
November 24, 1989

Briefings on How To Use the Federal Register
For information on briefings in San Francisco, CA, Seattle, WA, and Washington, DC, see announcement on the inside cover of this issue.

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THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register.

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

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

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

SAN FRANCISCO, CA

WHEN: November 29; at 9:00 a.m.
WHERE: Room 15138,
450 Golden Gate Avenue,
San Francisco, CA.
RESERVATIONS: Call Mary Walters at the San Francisco Federal Information Center,
415–556–6600.

SEATTLE, WA

WHEN: November 30; at 1:00 p.m.
WHERE: South Auditorium, 4th Floor,
915 2nd Avenue,
Seattle, WA.
RESERVATIONS: Call Carmen Meler or Peggy Groff at the Portland Federal Information Center on the following numbers:
Seattle: 206–442–0570,
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Portland: 503–326–2222.

WASHINGTON, DC

WHEN: December 7, at 9:00 a.m.
WHERE: Office of the Federal Register,
First Floor Conference Room,
1100 L Street NW., Washington, DC.
RESERVATIONS: 202–523–5240.

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Presidential Documents

Title 3—

The President

Proclamation 6074 of November 20, 1989

National Military Families Recognition Day, 1989

By the President of the United States of America

A Proclamation

Our Nation's military families embody the strength, loyalty, and love of country that have enabled the American people to build and defend this great Nation. While all families face certain challenges, the families of those who serve in the United States Armed Forces face unique hardships—and they do so with courage and resolve.

In the Armed Forces, frequent moves are a fact of life. Some military families move to installations far from home and loved ones in order to accompany their military members on assignment. Duty may take them not only across the country, but also around the world. These moves often require the sacrifice of promising careers or personal ties to a community, or both. For children, they often bring fears about making new friends and attending new schools.

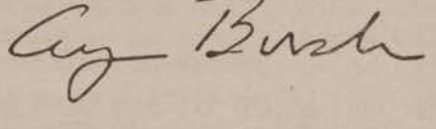
Wherever they reside, military families live with the knowledge that active service has its risks. Military personnel are frequently required to be absent from home on duty—sometimes their families do not know where they are or what their mission is. And America's service men and women are always prepared to put themselves in harm's way for the sake of our national security. Few Americans are more aware of that fact than our military families.

In spite of such hardships, America's military families are independent, persevering, and patriotic. As informal ambassadors abroad, they bring great honor to the United States. Through the love and support they give their military members, they help keep our Armed Forces strong and proud. Today, we salute them and express our gratitude for the many sacrifices they make.

To this end, the Congress, by Senate Joint Resolution 215, has designated November 20, 1989, as "National Military Families Recognition Day" and has authorized and requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim November 20, 1989, as National Military Families Recognition Day. I urge all Americans to observe this day with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twentieth day of November, 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.



[FR Doc. 89-27739
Filed 11-21-89; 2:28 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 6075 of November 21, 1989

National Family Week, 1989 and 1990

By the President of the United States of America

A Proclamation

As individuals, we find in our families a sense of identity, purpose, and security. As a Nation, we find in our families the vision and strength we need to remain a truly free and just society.

A family is more than a group of individuals related by blood, marriage, or adoption—a family is a community of persons united by their love and their commitment to one another. It is through family life that our Nation's most cherished values and traditions are passed from one generation to the next. Through our experience as members of a family, we learn important lessons about love and faith, duty and fidelity, personal responsibility and concern for others. Because those lessons are conveyed to the community at large, and because the family gives us a model of human relationships after which all other social institutions are fashioned, the strength and integrity of the family are vital to our well-being as a Nation.

Over the years, the family has withstood every assault upon it. It has endured in societies where rulers have sought to subject individuals to the collectivism of the state, and it has survived more subtle attempts to distort or belittle its value as an institution. As one expert on public policy and the family has so eloquently expressed it, "It is as if the family, as the fundamental reality of human society, is the small but stubborn rock that breaks the ideologues' plow of abstractions about human nature."

While the family is the most resilient and enduring of all human institutions, it needs protection and encouragement. Today, our Nation is confronted by problems that are, in large part, consequences of the breakdown of the traditional family. Drug abuse, child abuse, domestic violence, illegitimacy, teen pregnancy, and poverty cost the United States billions of dollars each year in social programs alone. But the waste in dollars pales before the most tragic loss—the waste of human spirit and potential.

As a Nation, we must remain committed to policies and programs that recognize and reinforce the family as the primary source of love and support that every individual needs. We must ensure that our families enjoy the benefits of economic opportunity and political representation, and we must recognize that parents have primary authority in the education of their children. American families need and deserve a cultural and legal framework that encourages and supports stable marriages and family life.

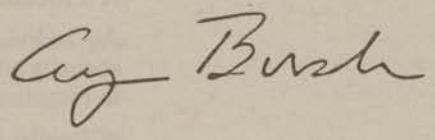
In the inimitable shelter of home and family, we learn how to give and receive love. There we discover the inestimable worth and unalienable rights God has granted each of us; and there we discover the responsibilities we have toward others. Thus, the integrity of the family is essential to our ability to remain a strong and stable Nation. During National Family Week, we renew our determination to strengthen and support the American family. Our children's future, and the future of the United States, depend on it.

The Congress, by Senate Joint Resolution 117 (Public Law 101–111), has designated the week of November 19 through November 25, 1989, and the week of November 18 through November 24, 1990, as "National Family Week"

and has authorized and requested the President to issue a proclamation in observance of these weeks.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the weeks of November 19, 1989, and November 18, 1990, as National Family Week. I invite the Governors of the several States, the chief officials of local governments, and the people of the United States to observe this week with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-first day of November, 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.



[FR Doc. 89-27740
Filed 11-21-89; 2:29 pm]
Billing code 3195-01-M

Presidential Documents

Presidential Determination No. 90–4 of November 8, 1989

Certification Pursuant to Title II of the Dire Emergency Supplemental Appropriations and Transfers, Urgent Supplementals, and Correcting Enrollment Errors Act of 1989 (Public Law 101–45)

Memorandum for the Secretary of State

Pursuant to Title II of the Dire Emergency Supplemental Appropriations and Transfers, Urgent Supplementals, and Correcting Enrollment Errors Act of 1989, Public Law 101–45, and for the reasons stated in the justification for this Determination, I hereby determine that:

(1) each of the signatories to the Agreement Among the People's Republic of Angola, the Republic of Cuba, and the Republic of South Africa, signed at the United Nations on December 22, 1988, is in compliance with its obligations under the Agreement;

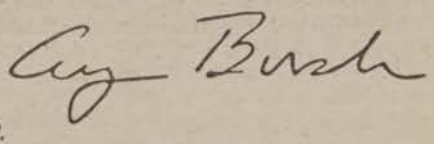
(2) the Government of Cuba has complied with its obligations under Article 1 of the Agreement Between the Governments of the People's Republic of Angola and the Republic of Cuba for the Termination of the International Mission of the Cuban Military Contingent, signed at the United Nations on December 22, 1988 (relating to the calendar for redeployment and withdrawal of Cuban troops), specifically with respect to its obligations as of August 1, 1989;

(3) the Cubans have not engaged in any offensive military actions against UNITA, including the use of chemical warfare,

(4) the United Nations and its affiliated agencies have terminated all funding and other support, in conformity with the United Nations impartiality package, to the South West Africa People's Organization (SWAPO); and

(5) the United Nations Angola Verification Mission is demonstrating diligence, impartiality, and professionalism in verifying the departure of Cuban troops and the recording of any troop rotations.

You are directed to inform the appropriate committees of the Congress of this Determination and the obligation of funds under this authority and to provide them with copies of the justification explaining the basis for this Determination. You are further directed to publish this Determination in the **Federal Register**



THE WHITE HOUSE,
Washington, November 8, 1989.

[FR Doc. 89–27781
Filed 11–21–89; 4:42 pm]
Billing code 3195–01–M

Rules and Regulations

Federal Register
Vol. 54, No. 225
Friday, November 24, 1989

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 89-202]

Mediterranean Fruit Fly; Addition to the Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: We are amending the Mediterranean fruit fly regulations by adding an additional portion of Los Angeles County in California to the list of quarantined areas. This action is necessary on an emergency basis to prevent the spread of the Mediterranean fruit fly into noninfested areas of the United States.

DATES: Interim rule effective November 17, 1989. Consideration will be given only to comments received on or before January 23, 1990.

ADDRESSES: To help ensure that your comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 89-202. Comments received may be inspected at USDA, Room 1141, South Building, 14th and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Milton C. Holmes, Senior Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, USDA, Room 642, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8247.

SUPPLEMENTARY INFORMATION:

Background

The Mediterranean fruit fly, *Ceratitis capitata* (Wiedemann), is one of the world's most destructive pests of numerous fruits and vegetables, especially citrus fruits. The Mediterranean fruit fly (Medfly) can cause serious economic losses. Heavy infestations can cause complete loss of crops, and losses of 25 to 50 percent are not uncommon. The short life cycle of this pest permits the rapid development of serious outbreaks.

A document effective August 23, 1989, and published in the **Federal Register** on August 29, 1989 (54 FR 35629-35635, Docket Number 89-146), established the Mediterranean fruit fly regulations and quarantined an area in Los Angeles County, California (7 CFR 301.78 *et seq.*; referred to below as the regulations). In an interim rule effective September 14, 1989, and published in the **Federal Register** on September 20, 1989 (54 FR 38643-38645, Docket Number 89-169), we amended the regulations by adding a portion of Santa Clara County, California, to the list of quarantined areas. Also, in an interim rule effective October 11, 1989, and published in the **Federal Register** on October 17, 1989 (54 FR 42478-42480, Docket Number 89-182), we amended the regulations by adding an additional portion of Los Angeles County and a portion of San Bernardino County in California to the list of quarantined areas. These areas remain infested with Mediterranean fruit fly.

The regulations impose restrictions on the interstate movement of regulated articles from quarantined areas in order to prevent the spread of the Mediterranean fruit fly to noninfested areas.

Recent trapping surveys by inspectors of California State and county agencies and by inspectors of the Animal and Plant Health Inspection Service, a unit within the U.S. Department of Agriculture, reveal that additional infestations of Medfly have been discovered in Los Angeles County, California.

Specifically, inspectors collected four adult Mediterranean fruit flies in Los Angeles County, near Sylmar, California, during the period of October 25, 1989, to November 5, 1989.

The regulations in § 301.78-3 provide that the Administrator of the Animal and Plant Health Inspection Service shall list as a quarantined area each State, or each portion of a State, in which the Mediterranean fruit fly has been found by an inspector, in which the Administrator has reason to believe the Mediterranean fruit fly is present, or that the Administrator considers necessary to regulate because of its inseparability for quarantine enforcement purposes from localities in which the Mediterranean fruit fly has been found.

In accordance with these criteria, we are designating as a quarantined area the following area in Los Angeles County, California:

Los Angeles County

That portion of the county in the Sylmar area bounded by a line drawn as follows: Beginning at the intersection of Balboa Boulevard and Foothill Boulevard; then easterly and southerly along Foothill Boulevard to its intersection with Maclay Avenue; then southwesterly along this avenue to its intersection with Interstate Highway 5; then northwesterly along this highway to its intersection with San Fernando Mission Boulevard; then southwesterly along this boulevard to its intersection with Woodley Avenue; then northwesterly along this avenue to its intersection with Balboa Boulevard; then northeasterly along this avenue to the point of the beginning.

There does not appear to be any reason to designate other additional quarantined areas in California other than the areas specified above. California has adopted and is enforcing regulations imposing restrictions on the intrastate movement of the regulated articles that are equivalent to those imposed on the interstate movement of regulated articles under this subpart.

Emergency Action

James W. Glosser, Administrator of the Animal and Plant Health Inspection Service, has determined that an emergency situation exists, which warrants publication of this interim rule without prior opportunity for public comment. Because the Mediterranean fruit fly could be spread to noninfested areas of the United States, it is necessary to act immediately to prevent its spread.

Since prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest under these conditions, there is good cause under 5

U.S.C. 553 to make it effective upon signature. We will consider comments received within 60 days of publication of this interim rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**, including a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets

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

This regulation affects the interstate movement of regulated articles from portions of Los Angeles County, California. Approximately 61 entities will be affected by this rule. All would be considered small entities. They include 37 groceries, 14 nurseries, 1 swap meet, 1 community garden, 3 vegetable/farm gardens, 3 citrus groves, and 2 olive groves. These entities comprise less than 1 percent of the total of similar enterprises operating in the State of California. Most of the sales for these entities are local intrastate and would not be affected by this regulation. Further, the conditions in the Mediterranean fruit fly regulations and treatments in the Plant Protection and Quarantine Treatment Manual, incorporated by reference in the regulations, allow interstate movement of most articles without significant added costs.

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

Paperwork Reduction Act

The regulations in this subpart contain no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

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

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation, Mediterranean fruit fly, Incorporation by reference.

Accordingly, 7 CFR part 301 is amended to read as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for 7 CFR part 301 continues to read as follows:

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

3. In § 301.78–3(c), the designation of the quarantined area is amended by adding the following immediately before the description for San Bernardino County:

§ 301.78–3. Quarantined areas.

* * * * *

(c) * * *

California

Los Angeles County

* * * * *

That portion of the county in the Sylmar area bounded by a line drawn as follows: Beginning at the intersection of Balboa Boulevard and Foothill Boulevard; then easterly and southerly along Foothill Boulevard to its intersection with Maclay Avenue; then southwesterly along this avenue to its intersection with Interstate Highway 5; then northwesterly along this highway to its intersection with San Fernando Mission Boulevard; then southwesterly along this boulevard to its intersection with Woodley Avenue; then northwesterly along this avenue to its intersection with Balboa Boulevard; then northeasterly along this avenue to the point of the beginning.

* * * * *

Done in Washington, DC, this 17 day of November 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89–27602 Filed 11–22–89; 8:45 am]

BILLING CODE 3410–34–M

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV–89–105FR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Handling Requirement Changes

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule reduces the minimum size requirements for domestic and import shipments of pink seedless grapefruit, and increases the minimum size requirements for export shipments of early and midseason oranges, navel oranges, Valencia and similar late maturing oranges, tangelos, temple oranges, and Robinson tangerines. This action is based on an analysis of the 1989–90 season Florida citrus crop and current and prospective market conditions.

DATES: The grapefruit minimum size reduction becomes effective November 17, 1989. The orange, tangerine, and tangelo minimum size increase becomes effective November 24, 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. 905, both as amended (7 CFR part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida. 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 100 Florida citrus handlers subject to regulation under the marketing order covering oranges, grapefruit, tangerines, and tangelos grown in Florida. In addition, there are about 13,000 producers of these citrus fruits in Florida, and about 26 importers who import grapefruit into the United States. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. A minority of these handlers and a majority of the producers and importers may be classified as small entities.

A proposed rule regarding changing the minimum size requirements for fresh Florida citrus was issued on November 1, 1989, and published in the **Federal Register** (54 FR 46621, November 6, 1989). That rule provided that interested persons could file written comments through November 16, 1989. No comments were received. The Citrus Administrative Committee (committee), which administers the program locally, met September 19, 1989, and recommended these actions.

Section 905.306 (7 CFR 905.306) of the rules and regulations specifies minimum grade and size requirements for most varieties of Florida oranges, grapefruit, tangerines, and tangelos for both the domestic and export markets. The requirements for the domestic markets are specified in that section in Table I of paragraph (a) and for export markets in Table II of paragraph (b). The domestic markets were redefined as the 48 contiguous States and the District of Columbia of the United States and export markets as any destination other than the 48 contiguous States and the District of Columbia of the United States by an amendment to the marketing order (54 FR 37290, September 8, 1989), which revised §§ 905.9 and 905.52. Section 905.306 was subsequently amended by an interim final rule, published in the **Federal Register** (54 FR 46596, November 6, 1989) concurrently with the proposed rule, which reflected those changes to the order.

This final rule reduces the minimum size requirements for domestic shipments of pink seedless grapefruit to 3 5/16 inches in diameter from 3 6/16 inches in diameter. The committee reports that this season's grapefruit crop is maturing earlier, that the fruit is smaller than normal, and that a multiple bloom will require spot picking during most of the season. The committee recommended this action due to these current crop conditions, since it will permit domestic shipments of smaller fruit early in the season. The size reductions for domestic and import shipments of pink seedless grapefruit are being made effective upon signature of the final rule rather than upon publication in the **Federal Register**, as specified in the proposed rule. The size reductions need to made effective as soon as possible to be of maximum benefit to the industry.

This final rule also increases the minimum size requirements for export shipments of early and midseason oranges, navel oranges, Valencia and similar late maturing oranges, tangelos, and temple oranges to 2 6/16 inches in diameter from 2 5/16 inches, and Robinson tangerines to 2 5/16 inches in diameter from 2 4/16 inches. Canada is a major export market for Florida oranges, tangerines, and tangelos and shipments of these fruits to that market have historically been limited to the larger sizes consistent with market requirements. The September 8 amendment designated Canada as an export market rather than a domestic market. The increased size requirements for export shipments of oranges, tangerines, and tangelos are the same as those applicable to shipments to Canada prior to the amendment.

The committee meets prior to and during each season to review the handling requirements, effective on a continuous basis, for each regulated citrus fruit. 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.

Some Florida citrus fruit shipments are exempt from the handling requirements effective under the marketing order. Handlers may ship up to 15 standard packed cartons (12 bushels) of fruit per day under a minimum quantity exemption provision. Also, handlers may ship up to two standard packed cartons of fruit per day in gift packages which are individually addressed and not for resale, under the current exemption provisions. Fruit shipped for animal feed is also exempt under specific conditions. In addition, fruit shipped to commercial processors for conversion into canned or frozen products or into a beverage base are not subject to the handling requirements.

Section 8e of the Act (7 U.S.C. 608e–1) provides that whenever specified commodities, including oranges and grapefruit, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodities. Section 8e also provides that whenever two or more marketing orders regulate the same commodity produced in different areas of the United States, the Secretary shall determine which area the imported commodity is in most direct competition with and apply the regulations for that area to the imported commodity.

Grapefruit import requirements are specified in § 944.106 (7 CFR part 944), and are effective under section 8e of the Act. That section requires that grapefruit imported into the United States must meet the same minimum grade and size requirements as those specified for the various varieties of Florida grapefruit in Table I of paragraph (a) in § 905.306. Since this action reduces minimum size requirements for domestically produced Florida pink seedless grapefruit, the reduced size requirements also apply to imported pink seedless grapefruit. An exemption provision in the grapefruit import regulation permits persons to import up to 10 standard packed ⅘-bushel cartons exempt from the import requirements.

Orange import requirements are specified in § 944.312 (7 CFR part 944), and are effective under § 8e of the Act. That section requires that oranges imported into the United States must meet the same minimum grade and size requirements as those established in § 906.365 for Texas oranges under M.O. 906 (7 CFR part 906). Accordingly, the findings and determinations for imported oranges contained in part 944 are not changed by this action and no changes to these provisions of part 944 would be necessary. Thus, orange import requirements continue to be based upon the Texas orange requirements under M.O. 906.

This action reflects the committee's and the Department's appraisal of the need to make these size requirement changes. The Department's view is that this action will have a beneficial impact on producers and handlers since it will allow Florida citrus handlers to ship those sizes of fruit needed to meet buyer requirements consistent with this season's crop and market 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 action 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) Florida citrus handlers are aware of this action which was recommended by the committee at a public meeting and they will need no additional time to comply with the requirements; (2) shipment of the 1989–90 season Florida citrus crop is currently underway; (3) this action reduces size requirements currently in effect for Florida and imported grapefruit, and handlers and importers should be given an opportunity to take advantage of such reduced requirements as soon as possible; (4) this action needs to become effective as soon as possible to be of maximum benefit to the Florida citrus industry and allow the handlers to take advantage of an anticipated strong holiday market; and (5) the proposed rule provided a 30-day comment period, and no comments were received.

List of Subjects in 7 CFR Part 905

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

For the reasons set forth in the preamble, 7 CFR part 905 is amended as follows:

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.

2. The provisions of § 905.306 are amended to read as follows:

[Note: This action will be published in the Code of Federal Regulations].

A. In paragraph (a), Table I, the entry for pink seedless grapefruit is revised to read as set forth below.

B. In paragraph (b), Table II, the entries for all varieties of oranges, for Robinson tangerines, and for tangelos are revised to read as follows:

§ 905.306 Orange, Grapefruit, Tangerine, and Tangelo Regulation 6.

(a) * * *

Table I

Variety (1)	Regulation period (2)	Minimum grade (3)	Minimum (diameter inches) (4)
* * *	* * *	* * *	
Grapefruit (Seedless, pink)	11/17/89–10/21/90	Improved No. 2 (External), U.S. No. 1 (Internal)	3 3/16
	On and after 10/22/90	Improved No. 2 (External), U.S. No. 1 (Internal)	3 3/16
* * *	* * *	* * *	

(b) * * *

Table II

Variety (1)	Regulation period (2)	Minimum grade (3)	Minimum (diameter inches) (4)
Oranges (Early and Midseason)	On and after 11/24/89	U.S. No. 1	2 9/16
Navel	On and after 11/24/89	U.S. No.1 Golden	2 9/16
Valencia and other late type	On and after 11/24/89	U.S. No.1	2 9/16
Temple	On and after 11/24/89	U.S. No.1	2 9/16
* * *	* * *	* * *	
Tangerines (Robinson)	On and after 11/24/89	U.S. No.1	2–1/16
* * *	* * *	* * *	
Tangelos (Tangelos)	On and after 11/24/89	U.S. No. 1	2 9/16

Dated: November 17, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89-27533 Filed 11-22-89; 8:45 am]

BILLING CODE 3410-02-W

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 103, 212, 214, and 274a

[INS NO. 1138-89]

RIN 1115-AB05

Nonimmigrant Classes Pursuant to the United States-Canada Free-Trade Agreement

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule implements provisions of the United States-Canada Free-Trade Agreement (FTA) which entered into force on January 1, 1989. It established procedures for temporary entry of Canadian citizen business persons into the United States and facilate temporary entry on a reciprocal basis between the United States and Canada, while recognizing the continued need to ensure border security, and to protect indigenous labor and permanent employment in both countries.

EFFECTIVE DATE: November 24, 1989.

FOR FURTHER INFORMATION CONTACT: Edward H. Skerrett, Senior Immigration Examiner, Immigration & Naturalization Service, 425 Eye Street NW., Washington, DC 20536, Telephone (202) 633-3946.

SUPPLEMENTARY INFORMATION: On January 3, 1989, at 54 FR 12, the Immigration and Naturalization Service published an interim rule with request for comments from interested parties by February 2, 1989.

The Service received nine comments from attorneys, and from professional and business associations. All of the comments were reviewed and considered in writing this final rule. The discussion which follows groups the comments into major subject areas where comments were made, provides the Service position on the issues, and indicates any revisions made based on the comments.

Visitors for Business—8 CFR 214.2(b)(4)

In drawing up the regulation pertaining to the admission of Canadian citizen visitors for business pursuant to the FTA, the Service incorporated Schedule 1 to Annex 1502.1 of the agreement into the regulation. The schedule was then enhanced by occasional parenthetical annotations to provide for clarity and consistent interpretation. However, two commenters noted instances where the annotations needed further clarification or where new annotations were needed for conformity with existing Service policy.

The commenters observed that the parenthetical annotation pertaining to tourism personnel needed further clarifying information to comply with historic Service policy in this area. There was some concern that the annotation was more limiting than current policy.

The Service has recognized the necessity for expansion of the parenthetical statement, and has expanded it in the final regulation. The regulation now states the circumstances under which a tour may begin in the United States, and acknowledges that an operator may enter the United States with an empty conveyance and that a tour guide may enter and join the conveyance.

One of the commenters also observed that the parenthetical annotation relating to transportation operators needed further clarification. That annotation has now been rewritten to indicate that intermediate deliveries in the United States of commodities or passengers loaded in Canada are permissible and that intermediate loading of commodities and passengers in the United States for delivery in Canada is permissible. However, the final regulation also reflects that this provision does not allow for purely domestic service where Canadian citizen operators would be in direct competition with United States operators.

Additionally, although not as a result of written comment, the Service has clarified through annotation what the negotiators and the immigration officials of both countries mean by the term "harvester owner" under the "Growth, Manufacture and Production" section of Schedule 1. The parenthetical annotation in the final rule indicates that this term is limited to the harvesting of agricultural crops.

One commenter noted that the references to professionals otherwise classifiable under section 101(a)(15)(H)(i) of the Immigration and Nationality Act (Act) and computer specialists indicated that there shall be no salary or other remuneration from a United States source, but did not state that an expense allowance or other reimbursement for incidental expenses were permissible. These latter distinctions are currently found not only in the Service's Operations Instructions but also in the Department of State's Foreign Affairs Manual.

The language employed in the regulation regarding professionals otherwise classifiable as H-1s and computer specialists was taken, without annotation, from the language of the FTA. The final regulation contains parenthetical language in both instances to provide for an expense allowance or other reimbursement for incidental expenses.

One commenter posed the question as to whether Canadian citizen supervisors could come to the United States, under the B-1 classification, as trainers, while continuing to be paid by their foreign employers. The commenter wondered whether these individuals would fall into the category of management and supervisory personnel engaging in commercial transactions for an enterprise located in Canada. He further posited whether Canadian citizen trainers could be admitted as B-1s under similar circumstances.

The term "commercial transactions" will be clarified in the Service s Operations Instructions relating to the regulation. In short, it does not include training. Without specifically listing trainers under this provision, there are provisions whereby trainers may enter the United States under the B-1 classification. Two examples would be under the after-sales service provision or under the general service provision, specifically professionals otherwise classifiable as H-1s. The specific inclusion of trainers in Schedule 1 or Schedule 2 would be a topic to be considered within the consultative process called for by the agreement.

This commenter also sees no reason for distinction between professionals otherwise classifiable as H-1s and computer specialists similarly classifiable. These two provisions come specifically from the FTA and can only be changed or consolidated through the consultative process. The regulation, therefore, will not tamper with these provisions.

Intracompany Transferees—8 CFR 214.2(1)(17)

The FTA does not require any changes in the regulations in order to implement the intracompany transferee

provisions of Annex 1502.1. The interim regulation, therefore, contained nothing new which would change the basic requirements of a petition and supporting documentation. Allowing port-of-entry adjudication of petitions (Form I–129L) and certificates of eligibility (Form I–129S) is simply an improvement of entry procedures for Canadian citizens and follows the long-standing Canadian procedure of making such determinations at the border.

One commenter felt that determination of eligibility for individuals under blanket petitions should be made at ports of entry for all visa-exempt aliens, not just Canadian citizens. The Service will not extend this privilege. The procedure of accepting Form I–129S at ports was established in the spirit of the FTA. The provisions and privileges of chapter 15 of the agreement are open only to citizens of Canada, and this regulation will not extend them further.

In this same vein, the commenter argued that non-Canadian citizen spouses and unmarried minor children of Canadian citizen L–1s who require nonimmigrant L–2 visas should be visa-exempt. This will also not be done, since to do so would extend the privileges of the FTA to those beyond its scope. In such cases, the Service would advise advance filing of an I–129L or I–129S with a Regional Service Center with subsequent application for L–2 visas at the appropriate United States consulate abroad.

Another commenter noted that the regulations are silent on situations where a petition or certificate of eligibility is presented at a port of entry and the petition or certificate is not approvable. The commenter suggested that the petition or certificate be returned to the applicant for admission for direct submission to a Regional Service Center.

The Service will amend the interim regulation on this matter. In a case where necessary supporting documentation is missing or the petition or certificate of eligibility is otherwise deficient, the petition or certificate will be returned to the applicant for admission in order to obtain additional documentation from the petitioner or to overcome the deficiency.

On the other hand, if the case is clearly deniable, the port of the entry will forward the petition or certificate to the appropriate Regional Service Center (RSC) for a final decision. In a case such as this, the appropriate RSC would be the RSC of the same Service region as the port. In doubtful cases, petitioners or their authorized representatives would be well advised to submit petitions or certificates of eligibility in advance to the appropriate Regional Service Center.

Finally, one commenter observed that the regulation should state more specifically whether Canadian citizen intracompany transferees are still subject to the five-year limitation for such nonimmigrants. This commenter also felt that the regulation should be more specific in stating that petitions for intracompany transferees may still be filed in advance with Regional Service Centers.

As already noted, the FTA itself does not require any regulatory changes regarding intracompany transferees. Nothing in the agreement or the regulation removes or will remove the five-year limitation for Canadian citizen intracompany transferees (unless of course, they fall under any of the existing exceptions).

Regarding advance filing at Regional Service Centers, the Service feels that the interim regulation was quite clear in stating that advance filing in accordance with extant regulations is not precluded.

Canadian Citizens Seeking Temporary Entry To Engage in Activities at a Professional Level—8 CFR 214.6

On the new nonimmigrant classification (TC) for Canadian citizens seeking temporary entry to engage in business activities at a professional level, one commenter felt that, in its prefatory remarks to the interim rule, the Service was arbitrary and inconsistent in stating that TC classification does not imply that such a person would otherwise qualify as a professional under sections 101(a)(15(H)(i) or 203(a)(3) of the Act.

In answer, the Service notes that the majority of the occupations in Schedule 2 might well be deemed professions under sections 101(a)(15)(H)(i) or 203(a)(3); however, certain occupations have been included in Schedule 2 of the agreement which clearly would not fit as professions under either classification. Furthermore, in the legislative history of the FTA, the bill report of the Senate's Committee on the Judiciary states categorically that "the definition and treatment of business persons engaged in business activities at a professional level . . . are considered to have no bearing upon any other nonimmigrant or immigrant category, including INA (Immigration and Nationality Act) sections 101(a)(15)(H)(1) [sic] and 203(a)(3)."

The same commenter maintains that a reading of chapter 15 of the FTA and the interim regulations supports a contention that an applicant for TC classification need not have an offer of employment with a specific employer in the United States. The commenter noted that the words in the interim regulation that the supporting documentation for TC classification "may be in the form of a letter from the prospective employer(s) in the United States" reinforces this contention. The commenter further maintains that requiring a specific employer is inconsistent with the FTA, was not intended by Congress, and is not in similar Canadian provisions.

The Service answers that the intention throughout the negotiations on Chapter 15 of the FTA was that citizens of either the United States or Canada going to the other country to engage in business activities at a professional level would be going pursuant to prearranged offers of employment. The wording in the agreement, perhaps, could be clearer, but the Service contends that the words "to engage" imply prearrangement of employment, not the seeking of employment. Certainly, there are legitimate situations where a visitor to the United States might explore business or employment opportunities, but such activities would be inappropriate as the sole purpose of entry under the TC classification. This view is shared by the Service's Canadian counterparts and is reflected in Canadian field instructions. It is more clearly stated in this final regulation.

This commenter also feels that questionable TC cases should be referred for resolution to the District Director having jurisdiction over the port of entry. The Service's position is that the TC procedure is an application for admission to the United States. Existing law and regulation are adequate procedurally with regard to admission procedures. There is no need for special review procedures for the TC classification.

Three commenters objected to the requirements in Schedule 2 to Annex 1502. 1 that a journalist possess a baccalaureate and three years' experience for classification as a business person coming to engage in business activities at a professional level. This requirement is reflected in the regulation; however, since it is in the agreement, it can only be changed through the consultative procedure of Article 1503 of chapter 15 of the FTA. The objection has been noted and will be discussed in consultation.

Two commenters noted that certain occupations or professions of interest to them were not included in Schedule 2. Of specific interest were occupational therapists, physical therapists, pharmacists, and respiratory care practitioners. Adding these and other professions or occupations to Schedule 2

will be discussed during the annual consultation between immigration officials of both countries.

Another commenter felt that the regulations should clearly indicate that, if a prospective TC nonimmigrant can also qualify for H–1 classification, the prospective employer has the option of filing a petition for H–1 classification at a Regional Service Center. The FTA did not close H–1 classification to Canadian citizens. Certainly, the option remains for filing a petition for H–1 classification. The Service feels that specific reference in the regulation to this alternative is unnecessary.

This commenter also felt that the regulation should clarify under what circumstances a Canadian citizen in TC classification can transfer from one affiliated company to another without filing an application for extension with an accompanying letter from the new or additional employer. Transfers where an application for extension would not be required are covered in the final regulation. Such transfers are permitted only to branches or other offices of the same employer, not to separately incorporated subsidiaries or affiliates.

Another commenter felt that the regulation implied that the source of remuneration for a TC nonimmigrant could be from a foreign or a United States source. As previously noted, the intention of the negotiators of Chapter 15 was that the person coming to engage in business activities at a professional level would be coming to prearranged employment in the other country. The implication is, therefore, that for a TC Canadian citizen coming to the United States the source of remuneration would be in the United States. If the source of remuneration were from outside the United States, the proper nonimmigrant classification would usually be B–1. Of course, the Service has often encountered cases where the source of remuneration is cloudy or where "indirect remuneration" is involved (i.e., where services are performed in the United States, and remuneration is sent to a foreign country). In doubtful cases of this type, TC might be a more appropriate classification.

Miscellaneous

One commenter felt that requiring visitor visas of non-Canadian citizen spouses and unmarried minor children (unless otherwise exempt) of TC nonimmigrants was excessive and not in the spirit of facilitation. As previously noted, the privileges of the FTA are available only to Canadian citizens. The regulation reflects this restriction.

This commenter also felt that the regulation should specify that B–2 spouses and unmarried minor children of TC nonimmigrants may receive more than one extension of temporary stay. The final regulation reflects that more than one extension is possible.

This commenter also stated that the regulation should outline the mechanism for implementation of the consultative process prescribed in Article 1503 of chapter 15.

The Service and Employment/Immigration Canada are actively in the process of establishing the consultative procedure. Consequently, the Service is not in a position, at this time, to publish the procedure in regulation.

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

The information collection requirements contained in this document have been approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act and are cited under 8 CFR 299.5.

These regulations will recognize the exemption granted qualifying Canadian citizens from the ordinary documentary requirements for nonimmigrant admission. The 30 day notice requirement, therefore, is not necessary, and the regulations will take effect upon publication in the **Federal Register**. 5 U.S.C. section 553(d)(1).

List of Subjects

8 CFR Part 103

Administrative practice and procedure, Fees, Reporting and recordkeeping requirements.

8 CFR Part 212

Administrative practice and procedures, aliens.

8 CFR Part 214

Administrative practice and procedures, aliens, employment, reporting and recordkeeping requirements.

8 CFR Part 274a

Administrative practice and procedure, aliens.

The interim rule published at 54 FR 12–16 on January 3, 1989, amending parts 103, 212, 214, and 274a, is adopted as final with the following changes:

PART 214—NONIMMIGRANT CLASSES

1. The authority citation for Part 214 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1184, 1186a, 8 CFR Part 2.

2. In § 214.2, paragraphs (b)(1), (b)(4), and (l)(17) are revised to read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(b) *Visitors*—(1) *General.* Any B–1 visitor for business or B–2 visitor for pleasure may be admitted for not more than one year and may be granted extensions of temporary stay in increments of not more than six months each, except that alien members of a religious denomination coming temporarily and solely to do missionary work in behalf of a religious denomination may be granted extensions of not more than one year each, provided that such work does not involve the selling of articles or the solicitation or acceptance of donations. The B–2 spouse or unmarried minor child of a Canadian citizen admitted under section 214(e) of the Act in accordance with the United States-Canada Free-Trade Agreement may be admitted for a period not to exceed one year and may be granted extensions of temporary stay in increments of not more than one year, providing the principal alien is maintaining status. Those B–1 and B–2 visitors admitted pursuant to the waiver provided at § 212.1(e) of this chapter may be admitted to and stay on Guam for a period not to exceed fifteen days and are not eligible for extension of stay.

* * * * *

(4) *Admission of aliens pursuant to the United States-Canada Free-Trade Agreement (FTA).* A citizen of Canada seeking temporary entry for purposes set forth in paragraph (b)(4)(i) of this section, who otherwise meets existing requirements under section 101(a)(15)(B) of the Act, including but not limited to requirements regarding the source of remuneration, shall be admitted upon presentation of proof of Canadian citizenship, a description of the purpose of entry, and evidence demonstrating that he or she is engaged in one of the occupations or professions set forth in paragraph (b)(4)(i) of this section. Existing requirements are those requirements which were in effect at the time of entry into force of the FTA. Additionally, nothing shall preclude the admission of a citizen of Canada who

meets the requirements of paragraph (b)(4)(ii) of this section.

(i) Occupations and professions set forth in Schedule 1 to Annex 1502.1 of the FTA.

(A) *Research and design.* Technical, scientific, and statistical researchers conducting independent research for an enterprise located in Canada.

(B) *Growth, manufacture and production.* (1) Harvester owner supervising a harvesting crew admitted under applicable law. (Applies only to harvesting of agricultural crops: grain, fiber, fruit, and vegetables.)

(2) Purchasing and production management personnel conducting commercial transactions for an enterprise located in Canada.

(C) *Marketing.* (1) Market researchers and analysts conducting independent research or analysis, or research or analysis for an enterprise located in Canada.

(2) Trade fair and promotional personnel attending a trade convention.

(D) *Sales. (1)* Sales representatives and agents taking orders or negotiating contracts for goods or services but not delivering goods or providing services.

(2) Buyers purchasing for an enterprise located in Canada.

(E) *Distribution. (1)* Transportation operators delivering to the United States or loading and transporting back to Canada, with no intermediate loading or delivery within the United States. (These operators may make intermediate deliveries in the United States if all commodities or passengers to be delivered were loaded in Canada. Furthermore, they may load from intermediate locations in the United States if all commodities or passengers to be loaded will be delivered in Canada. Purely domestic service or solicitation, in competition with United States operators, is not permitted.)

(2) Customs brokers performing brokerage duties associated with the export of goods from the United States to or through Canada.

(F) *After-sales service.* Installers, repair and maintenance personnel, and supervisors, possessing specialized knowledge essential to the seller's contractual obligation, performing services or training workers to perform such services, pursuant to a warranty or other service contract incidental to the sale of commercial or industrial equipment or machinery, including computer software, purchased from an enterprise located outside the United States, during the life of the warranty or service agreement. (For the purposes of this provision, the commercial or industrial equipment or machinery, including computer software, must have been manufactured outside the United States.)

(G) *General service. (1)* Professionals who are otherwise classifiable under section 101(a)(15(H)(i) of the Immigration and Nationality Act, but receiving no salary or other remuneration from a United States source (other than an expense allowance or other reimbursement for expenses incidental to the temporary stay).

(2) Management and supervisory personnel engaging in commercial transactions for an enterprise located in Canada.

(3) Computer specialists who are otherwise classifiable under section 101(a)(15)(H)(i) of the Immigration and Nationality Act, but receiving no salary or remuneration from a United States source (other than an expense allowance or other reimbursement for expenses incidental to the temporary stay).

(4) Financial services personnel (insurers, bankers or investment brokers) engaging in commercial transactions for an enterprise located in Canada.

(5) Public relations and advertising personnel consulting with business associates, or attending or participating in conventions.

(6) Tourism personnel (tour and travel agents, tour guides or tour operators) attending or participating in conventions or conducting a tour that has begun in Canada. (The tour may begin in the United States; but must terminate in foreign territory, and a significant portion of the tour must be conducted in foreign territory. In such a case, an operator may enter the United States with an empty conveyance, and a tour guide may enter on his/her own and join the conveyance.)

(7) Translators or interpreters performing services as employees of an enterprise located in Canada.

(ii) *Occupations and professions not listed in Schedule 1 to Annex 1502.1 of the FTA.* Nothing in this paragraph shall preclude a business person engaged in an occupation or profession other than those listed in Schedule 1 to Annex 1502.1 of the FTA from temporary entry under section 101(a)(15)(B) of the Act, if such person otherwise meets the existing requirements for admission as prescribed by the Attorney General.

* * * * *

(l) * * *

(17) *Filing of individual petitions and certifications under blanket petitions for citizens of Canada under the United States-Canada Free-Trade Agreement (FTA)*—(i) *Individual petitions.* Except as provided in paragraph (1)(2)(ii) of this section (filing of blanket petitions), a United States or foreign employer seeking to classify a citizen of Canada as an intracompany transferee may file an individual petition to duplicate on Form I–129L in conjunction with the application for admission of the citizen of Canada. Such filing must be made with an immigration officer at a Class A port of entry, a United States airport handling international traffic, or at a United States airport handling international traffic or at a United States pre-clearance/pre-flight station. The petitioning employer need not appear, but Form I–129L must bear the authorized signature of the petitioner.

(ii) *Certification of eligibility for intracompany transferree under the blanket petition.* An immigration officer at a location identified in paragraph (1)(17)(i) of this section may determine eligibility of individual citizens of Canada seeking L classification under approved blanket petitions. At these locations, such citizens of Canada shall present the original and two copies of Form I–129S, Intracompany Transferee Certificate of Eligibility, prepared by the approved organization, as well as three copies of Form I–171C (or Form I–797), Notice of Approval of Nonimmigrant Visa Petition.

(iii) Nothing in this section shall preclude or discourage the advance filing of petitions and certificates of eligibility in accordance with paragraph (l)(2) of this section.

(iv) *Deficient or deniable petitions or certificates of eligibility.* If a petition or certificate of eligibility submitted concurrently with an application for admission is lacking necessary supporting documentation or is otherwise deficient, the inspecting immigration officer shall return it to the applicant for admission in order to obtain the necessary documentation from the petitioner or for the deficiency to be overcome. The fee to file the petition will be remitted at such time as the documentary or other deficiency is overcome. If the petition or certificate of eligibility is clearly deniable, the immigration officer will accept the petition (with fee) and the petitioner shall be notified on Form I–292 of the denial, the reasons for denial, and the right of appeal. If a formal denial order cannot be issued by the port of entry, the petition with a recommendation for denial shall be forwarded to the appropriate Regional Service Center (RSC) for final action. For the purposes of this provision, the appropriate RSC will be the one within the same Service

region as the location where the application for admission is made.

(v) *Spouse and dependent minor children accompanying or following to join.* (A) The Canadian citizen spouse and Canadian citizen unmarried minor children of a Canadian citizen admitted under this paragraph shall be entitled to the same nonimmigrant classification and same length of stay as the principal alien.

They shall not be required to present visas, and they shall be admitted under the classification symbol L–2.

(B) A non-Canadian citizen spouse or non-Canadian citizen unmarried minor child shall be entitled to the same nonimmigrant classification and the same length of stay as the principal, but shall be required to present a visa upon application for admission as an L–2 unless otherwise exempt under § 212.1 of this chapter.

(C) The spouse and dependent minor children shall not accept employment in the United States unless otherwise authorized under the Act.

* * * * *

3. Section 214.6 is revised to read as follows:

§ 214.6 Canadian citizens seeking temporary entry to engage in business activities at a professional level.

(a) *General.* Under section 214(e) of the Act, a citizen of Canada who seeks temporary entry as a business person to engage in business activities at a professional level may be admitted to the United States in accordance with the United States-Canada Free-Trade Agreement (FTA).

(b) *Definitions.* (1) The term "Business person," as defined in the FTA, means a citizen of Canada who is engaged in the trade of goods or services or in investment activities.

(2) The term "Business activities at a professional level" means those undertakings which require that, for successful completion, the individual has at least a baccalaureate degree or appropriate credentials demonstrating status as a professional.

(3) The term "Temporary entry," as used in the FTA, means entry without the intent to establish permanent residence.

(c) *Application for admission.* A citizen of Canada seeking admission under this section shall make application for admission with an immigration officer at a United States Class A port of entry, at a United States airport handling international traffic, or at a United States pre-clearance/pre-flight station. No prior petition, labor certification, or prior approval shall be required.

(d) *Evidence.* A visa shall not be required of a Canadian citizen seeking admission as a nonimmigrant under section 214(e) of the Act. Upon application for admission at a United States port of entry, an applicant under this section shall present the following:

(1) *Proof of Canadian citizenship.* Unless traveling from outside the Western Hemisphere, no passport shall be required; however, an applicant for admission must establish Canadian citizenship.

(2) *Documentation demonstrating engagement in business activities at a professional level and demonstrating professional qualifications*—(i) *General.* The applicant must present documentation sufficient to satisfy the immigration officer at the time of application for admission, that the applicant is seeking entry to the United States to engage in business activities for a United States employer(s) at a professional level, and that the applicant meets the criteria to perform at such a professional level. This documentation may be in the form of a letter from the prospective employer(s) in the United States or from the foreign employer and may be required to be supported by licenses, diplomas, degrees, certificates, or membership in professional organizations. This documentation shall fully affirm:

(A) The business activity to be engaged in;

(B) The purpose of entry;

(C) The anticipated length of stay;

(D) The educational qualifications or appropriate credentials which demonstrate that the Canadian citizen has professional level status;

(E) That the Canadian citizen complies with all applicable state laws and/or licensing requirements for the business activity to be engaged in; and

(F) The arrangements for remuneration for services to be rendered.

(ii) *Schedule 2 to Annex 1502.1 of the FTA.* Pursuant to the FTA, an applicant seeking admission under this section shall demonstrate business activity at a professional level in one of the professions or occupations set forth in Schedule 2 to Annex 1502. Unless otherwise specified below, a baccalaureate degree is the minimum requirement for the following professions as listed in Schedule 2:

Schedule 2 (Annotated)

—Accountant
—Engineer
—Scientist
  —Biologist
  —Biochemist
  —Physicist
  —Geneticist
  —Zoologist
  —Entomologist
  —Geophysicist
  —Epidemiologist
  —Pharmacologist
  —Animal scientist
  —Agriculturist (agronomist)
  —Dairy scientist
  —Poultry scientist
—Soil scientist
—Research assistant (working in a post-secondary educational institution)
—Medical/allied professional
  —Physician (teaching and/or research only)—M.D., provincial license, or state license
  —Dentist—D.D.S., provincial license, or state license
  —Registered nurse—provincial license, or state license
  —Veterinarian—D.V.M., provincial license, or state license
  —Medical technologist
  —Clinical lab technologist
—Architect
—Lawyer—member of bar in province or state, L.L.B., or J.D.
—Teacher
  —College
  —University
  —Seminary
—Economist
—Social worker
—Vocational counselor
—Mathematician
—Hotel manager—baccalaureate degree and three years experience in hotel management
—Librarian—Master's degree in Library Science
—Animal breeder
—Plant breeder
—Horticulturist
—Sylviculturist (forestry specialist)
—Range manager (range conservationist)
—Forester
—Journalist—baccalaureate degree and three years' experience in journalism
—Nutritionist
—Dietician
—Technical publications writer
—Computer systems analyst
—Psychologist
—Scientific technician/technologist
  —Must work in direct support of professionals in the following disciplines: chemistry, geology, geophysics, meteorology, physics, astronomy, agricultural sciences, biology, or forestry
  —Must possess theoretical knowledge of the discipline
  —Must solve practical problems in the discipline
  —Must apply principles of the discipline to basic or applied research
—Disaster relief insurance claims adjuster—baccalaureate degree or three years' experience in the field of claims adjustment
—Management consultant—baccalaureate degree or five years' experience in consulting or related field

(e) *Procedures for admission.* A Canadian citizen who qualifies for admission under this section shall be

provided confirming documentation (Service Form I–94), and shall be admitted under the classification symbol TC for a period not to exceed one year. Form I–94 shall bear the legend "multiple entry." The fee prescribed under § 103.7 of this chapter shall be remitted upon admission to the United States pursuant to the terms and conditions of the FTA. Upon remittance of the prescribed fee, the Canadian citizen applicant shall be provided a Service receipt (Form G–211, Form G–711, or Form I–797).

(f) *Readmission.* A Canadian citizen in this classification may be readmitted to the United States for the remainder of the period authorized on Form I–94, without presentation of the letter or supporting documentation described in paragraph (d)(2) of this section, and without remittance of the prescribed fee, provided that the original intended business activities and employer(s) have not changed. An alien who seeks readmission to the United States under this section to continue in business activities at a professional level who is no longer in possession of a valid, unexpired Form I–94 and whose period of initial admission has not lapsed, shall present alternate evidence entitling the alien to readmission as TC. This alternate evidence may be in the form of a Service fee receipt for admission as TC or a previously issued admission stamp as TC in a passport, and a confirming letter from the United States employer(s).

(g) *Extension of stay.* A Canadian citizen admitted under this section may apply for an extension of stay on Form I–539, as provided in § 214.1(c) of this chapter. Extensions of stay may be granted in increments of one year. The application shall be accompanied by a letter(s) from the United States employer(s) confirming the continued need for the Canadian citizen's services and stating the length of additional time needed.

(h) *Request for change or addition of United States employer(s).* A Canadian citizen admitted under this paragraph who seeks to change or add a United States employer during the period of admission shall file an application for extension of stay on Form I–539. The application shall be accompanied by a letter from the new employer describing the services to be performed, the time needed to render such services, and the terms of remuneration for services. Employment with a different or with an additional employer is not authorized prior to Service approval of the request for extension of stay. No action shall be required on the part of a Canadian citizen who is transferred to another location by the United States employer to perform the same services. Such an acceptable transfer would be to a branch or office of the employer, not to a separately incorporated subsidiary or affiliate. In the latter cases, an application for extension of stay with a new employment letter is required.

(i) *Spouse and unmarried minor children accompanying or following to join.* (1) The terms and conditions set forth under § 214.2(b)(1) of this chapter shall apply to the admission and the extension of temporary stay of the spouse or unmarried minor child of a Canadian citizen admitted under this section.

(2) The spouse or unmarried minor child shall be required to present a valid, unexpired nonimmigrant visa or a valid, unexpired Canadian border crossing identification card unless otherwise exempt under § 212.1 of this chapter.

(3) The spouse and dependent minor children shall be issued confirming documentation (Form I–94). Form I–94 shall bear the legend "multiple entry." There shall be no fee required for admission of the spouse and dependent minor children.

(4) The spouse and dependent minor children shall not accept employment in the United States unless otherwise authorized under the Act.

Dated: November 17, 1989.

Gene McNary,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 89–27536 Filed 11–24–89; 8:45 am]

BILLING CODE 4410–10–M

FEDERAL ELECTION COMMISSION

11 CFR Parts 100, 102, 110, 114, and 9034

[Notice 1989–19]

Affiliated Committees, Transfers, Prohibited Contributions; Annual Contribution Limitations and Earmarked Contributions

AGENCY: Federal Election Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: On August 17, 1989 (54 FR 34098), the Commission published the text of revised regulations governing affiliated committees, transfers, contributions in the name of another, annual contribution limits and earmarked contributions. 11 CFR 110.3, 110.4, 110.5, and 110.6. These regulations implement the contribution limitations and prohibitions established by 2 U.S.C. 441a, 441e, 441f and 441g, provisions of the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. 431 *et seq.* In addition, the Commission published several conforming amendments to 11 CFR 100.5, 102.2, 110.1, 110.8, 114.5, 114.8, and 9034.4. The Commission announces that these rules are effective as of November 24, 1989.

EFFECTIVE DATE: November 24, 1989.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street NW., Washington, DC 20463, (202) 376–5690 or toll free (800) 424–9530.

SUPPLEMENTARY INFORMATION: Section 438(d) of title 2, United States Code, and 26 U.S.C. 9039(c), require that any rule or regulation prescribed by the Commission to implement title 2 or title 26 of the United States Code be transmitted to the Speaker of the House of Representatives and the President of the Senate thirty legislative days before final promulgation. The revisions to 11 CFR 110.3, 110.4, 110.5, and 110.6 and the conforming amendments to 11 CFR 100.5(g), 102.2(b), 110.1(f), 110.8(d), 114.5(g), 114.8(g), and 9034.4(d) were transmitted to Congress on August 14, 1989. The thirty legislative day period for rules implementing title 2 of the Act is calculated separately from the thirty legislative day period for title 26 rules. For the title 2 regulations, thirty legislative days expired in the Senate on October 17, 1989, and in the House of Representatives on October 23, 1989. For the title 26 regulations thirty legislative days expired on October 25, 1989.

Announcement of Effective Date

11 CFR 100.5(g), 102.2(b), 110.1(f), 110.3, 110.4, 110.5, 110.6, 110.8(d),114.5(g), 114.8(g), and 9034.4(d) as published at 54 FR 34098 are effective as of November 24, 1989.

Dated: November 17, 1989.

Danny L. McDonald,

Chairman, Federal Election Commission.

[FR Doc. 89–27509 Filed 11–22–89; 8:45 am]

BILLING CODE 6715–01–M

11 CFR Part 110

[Notice 1989–18]

Contributions and Expenditures; Prohibited Contributions

AGENCY: Federal Election Commission.

ACTION: Final rule; transmittal of regulations to Congress.

SUMMARY: The Commission has revised its regulations at 11 CFR 110.4(a), which

prohibit foreign nationals from making contributions and other persons from accepting such contributions in connection with any election for local, State or Federal public office. The revisions to section 110.4(a) add corresponding references to expenditures, and clarify that foreign nationals may not participate in certain election-related activities. These regulations are based on the prohibitions set forth in section 441e of the Federal Election Campaign Act of 1971, as amended ("the Act" or "FECA"), 2 U.S.C. 431 *et seq.* Further information on these revisions is provided in the supplementary information which follows.

DATES: Further action, including the announcement of an effective date, will be taken after these regulations have been before Congress for 30 legislative days pursuant to 2 U.S.C. 438(d).

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street NW., Washington, DC 20463, (202) 376–5690 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Commission is publishing today the final text of revisions to its regulations at 11 CFR 110.4, which concern election-related activity undertaken by foreign nationals. On June 7, 1989 the Commission issued a Notice of Proposed Rulemaking (NPRM) in which it sought comments on proposed revisions to these regulations (54 FR 24351). No written comments were received in response to the Notice.

The NPRM also sought comment on possible revisions to other unrelated provisions of the Commission's regulations which exempt certain unreimbursed payments for transportation and subsistence costs from the definitions of "contribution" and "expenditure" (11 CFR 100.7(b)(8) and 100.8(b)(9)). After further consideration, the Commission has decided not to amend those provisions at this time.

Section 438(d) of title 2, United States Code requires that any rules or regulations prescribed by the Commission to carry out the provisions of title 2 of the United States Code be transmitted to the Speaker of the House of Representatives and the President of the Senate 30 legislative days before they are finally promulgated. These regulations were transmitted to Congress on November 17, 1989.

Explanation and Justification

The Commission is revising 11 CFR 110.4(a) concerning foreign nationals in two respects. First, an explicit prohibition on expenditures by foreign nationals is being added, which parallels the current prohibition on contributions by such persons. Second, new language is being added to clarify that foreign nationals may not participate in the election-related activities of others, including decisions regarding contributions or expenditures by political committees, corporations, labor organizations or other persons.

Section 414e of the FECA prohibits foreign nationals, directly or through another person, from making contributions in connection with any election for political office or in connection with any primary election, convention or caucus held to select candidates for any political office. 2 U.S.C. 441e. While the Act does not explicitly refer to expenditures by foreign nationals, FECA generally prohibits expenditures when it prohibits contributions by a specific category or persons, thereby ensuring that the persons cannot accomplish indirectly what they are prohibited from doing directly. *See, e.g.,* 2 U.S.C 441b. To foreclose the indirect violation of Section 441e and implement the general intent of the statute, the Commission is now revising 11 CFR 110.4(a)(1) to explicitly prohibit expenditures by as well as contributions from foreign nationals. The new language covers independent expenditures by foreign nationals as well as other kinds of expenditures.

The revisions also add new paragraph (a)(3) to prohibit foreign nationals from participating in election-related decisions by corporations, labor organizations, political committees or other persons, including decisions concerning contributions and expenditures. Accordingly, former paragraph (a)(3) has been renumbered as paragraph (a)(4).

The prohibition on contributions by foreign nationals has its origin in legislation that predates the FECA, the 1966 amendments to the Foreign Agents Registration Act (80 Stat. 248). In 1976 Congress incorporated into the FECA the foreign nationals provision, previously codified at 18 U.S.C. 613. The only change that Congress made was to replace the earlier statute's criminal penalties with new criminal and civil penalty and enforcement provisions.

Nothing in Section 441e's legislative history suggests that Congress intended to deviate from the FECA's general pattern of treating contributions and expenditures in parallel fashion. *See* S. Rep. No. 94–677, 94th Cong., 2d Sess. 1, 11 (1976). *Cf.* H.R. Rep. No. 96–422, 96th Cong., 1st Sess. 11 (1979) ("Since all of these provisions are specific exemptions to the definition of contribution, exemptions from the expenditure definition are not necessary.") Further, under the 1976 amendments to the FECA "contribution" and "expenditure" are interrelated terms. For example, an expenditure made by a person in cooperation, consultation, or concert with a candidate or a candidate's committee is an in-kind contribution (2 U.S.C. 441a(a)(7)(B)). Also, a political committee receiving an in-kind contribution reports the amount as both a contribution and an expenditure pursuant to 11 CFR 104.13(a)(2). In general, a political committee reports the contributions that it makes to candidates as expenditures. *See* 11 CFR 100.8(a)(1) and 104.3(b).

The Commission faced an analogous situation in 1977 when it promulgated regulations to implement Section 441c(a) of the Act, which prohibits contributions by Government contractors. *See* Explanation and Justification of 11 CFR 115.2, found in "Communications from the Chairman," H.R. Doc. No. 95–44, 95th Cong., 1st Sess. 121 (January 12, 1977). An explicit prohibition on expenditures was included in those regulations.

Prior to this rulemaking, the Commission has not directly addressed the legality of expenditures by foreign nationals. For example, several advisory opinions concerning corporations owned by foreign principals have relied upon representations by the requesters that no foreign national would participate in the separate segregated funds' decisions regarding contributions or expenditures. Cf. Advisory Opinions 1980–100 and 1982–10. Thus, although the Commission has never directly ruled on the propriety of expenditures by foreign nationals or other election-related activity undertaken by foreign nationals directly or through a political committee, the Commission has consistently assumed that the statutory prohibition governing foreign nationals extends to these areas. The Commission has now decided to revise 11 CFR 110.4(a) to state expressly that foreign nationals are prohibited from making such expenditures and from undertaking these types of election-related activities.

List of Subjects in 11 CFR Part 110

Aliens, Political committees and parties.

For the reasons set out in the

preamble, subchapter A, chapter I, title 11 of the Code of Federal Regulations is amended as follows:

PART 110—CONTRIBUTION AND EXPENDITURE LIMITATIONS AND PROHIBITIONS

1. The authority citation for part 110 continues to read as follows:

Authority: 2 U.S.C. 431(8), 431(9), 432(c)(2), 437d(a)(8), 438(a)(8), 441a, 441b, 441d, 441e, 441f, 441g, 441h and 441i.

2. Section 110.4 is amended by revising paragraph (a) to read as follows:

§ 110.4 Prohibited contributions (2 U.S.C. 441e, 441f, 441g, 432(c)(2)).

(a) *Contributions or expenditures by foreign nationals.* (1) A foreign national shall not directly or through any other person make a contribution or an expenditure, or expressly or impliedly promise to make a contribution or an expenditure, in connection with a convention, a caucus, or a primary, general, special, or runoff election in connection with any local, State, or Federal public office.

(2) No person shall solicit, accept, or receive a contribution as set out above from a foreign national.

A foreign national shall not direct, dictate, control, or directly or indirectly participate in the decision-making process of any person, such as a corporation, labor organization, or political committee, with regard to such person's Federal or nonfederal election-related activities, such as decisions concerning the making of contributions or expenditures in connection with elections for any local, State, or Federal office or decisions concerning the administration of a political committee.

(4) For purposes of this section, "foreign national" means—

(i) A foreign principal, as defined in 22 U.S.C. 611(b); or

(ii) An individual who is not a citizen of the United States and who is not lawfully admitted for permanent residence, as defined in 8 U.S.C. 1101(a)(20);

(iii) Except that "foreign national" shall not include any individual who is a citizen of the United States.

* * * * *

Dated: November 17, 1989.

Danny L. McDonald,

Chairman, Federal Election Commission.

[FR Doc. 89-27510 Filed 11-22-89; 8:45 am]

BILLING CODE 6715-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89-ASW-33; Amdt 39-6401]

Airworthiness Directives; Sikorsky Aircraft Model S-58 Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires inspection and verification as to whether or not an engine compartment fire extinguishing system is installed on certain Sikorsky Aircraft Model S-58 series helicopters. If this system is found not to be installed, the AD imposes interim operating limits until one is installed. The AD is needed to conform these aircraft to their approved type design configuration and thereby to prevent or reduce the hazards of an in-flight fire which could result in the loss of the helicopter.

EFFECTIVE DATES: December 26, 1989.

Comments must be received on or before January 8, 1990.

Compliance: As indicated in the body of the AD.

ADDRESSES: Comments on the amendment may be mailed in duplicate to: Regional Rules Docket, Office of the Assistant Chief Counsel, FAA, 4400 Blue Mound Road, Fort Worth, Texas 76193-0007, or delivered in duplicate to Room 158, Building 3B, at the above address.

Comments delivered must be marked: Docket No. 89-ANS-33. Comments may be inspected at the above location in Room 158 of Building 3B, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Terry Fahr, Boston Aircraft Certification Office, ANE-153, Systems and Propulsion Branch, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; telephone (617) 273-7103.

SUPPLEMENTARY INFORMATION: The FAA has found that several Sikorsky Aircraft Model S-58 helicopters, certificated in categories other than restricted and equipped with a reciprocating engine, do not have the required engine compartment fire extinguishing system. Evidence shows that these helicopters, which were convered to a standard Model S-58 from a military model, did not have an approved fire extinguishing system installed as required by the Model S-58 series type design data. An engine fire extinguishing system is required by the applicable certification basis which is Civil Air Regulation (CAR) part 6. Amendment 6-4, § 6.488, states in part: "On all rotorcraft having engines or more than 1,500 cu. in. displacement, fire extinguisher systems shall be provided to serve all engine compartments and engine induction systems." The lack of a fire extinguishing system prevents extinguishing an in-flight engine compartment fire which could cause the loss of the helicopter.

Since this condition is likely to exist on other helicopters of the same type design, an AD is being issued which requires, within 1 year, the installation of an approved engine compartment fire extinguisher system on Sikorsky S-58 series helicopters with reciprocating engines installed. In the interim, new operating limitations are imposed until an approved system is installed. In addition, the AD imposes a limitation that allows only passengers who are essential to utility type operations. In conjunction with the AD operating limitations, the 1-year period is allowed for installation due to the helicopter service history, which includes only one reported engine compartment fire in a civil version of this helicopter.

The FAA has been advised that Model S-58 extinguishing systems and parts are not presently available but could be available within 1 year. This information is provided by California Helicopters, which is the sole U.S. licensee for S-58 helicopters. In light of all of these circumstances, the FAA has determined that an operable fire detection system, in conjunction with new interim operating limitations, will provide adequate safety until approved extinguishing systems can become available and are installed. This is further based on the fact that Model S-58 helicopters with reciprocating engines are generally used for utility operations, such as forest fire fighting and external cargo hauling, and not for passenger operations.

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

Request for Comments

Although this action is a final rule which involves requirements affecting immediate flight safety and, thus, was not preceded by notice and public procedure, comments are invited. Interested persons are invited to

comment on this 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 will be considered by the FAA. This rule may be subsequently amended in light of comments received. Comments that provide a factual basis supporting the views and suggestions presented would be particularly helpful in evaluating the effectiveness of the AD and determining whether additional rulemaking is needed.

Comments are specifically invited on the overall regulatory, economic, and energy aspects that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Regional Rules Docket, Office of the Assistant Chief Counsel, FAA, Room 158, Building 3B, 4400 Blue Mound Road, Fort Worth, Texas, for examination by interest persons. A report summarizing each FAA-public contact, concerned with the substance of this AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this amendment must submit a self-addressed, stamped postcard on which the following statement is made: Comments to Docket No. 89–ASW–33. The postcard will be date/time stamped and returned to the commenter.

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 Federal Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If it is detemined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Regional Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, and Aviation safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [AMENDED]

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

Sikorsky Aircraft: Applies to Model S–58 series helicopters equipped with reciprocating engines, certificated in any category except restricted. (Docket 89–ASW–33.)

Compliance is required within the next 10 hours' time in service after the effective date of this AD, unless already accomplished.

To prevent or reduce the hazards of an in-flight fire which could result in loss of the helicopter, accomplish the following:

(a) Inspect the helicopter for the installation of an approved engine compartment fire extinguishing system.

(b) If an approved engine fire extinguishing system is installed, no further action is necessary.

(c) If an approved engine fire extinguishing system is not installed, accomplish the following:

(1) Prior to further flight, install a placard, decal, or markings, in full view of and legible to the pilot in daylight which states "Engine Fire Extinguishing System Not Installed."

(2) Prior to further flight, revise the helicopter's FAA-Approved Rotorcraft Flight Manual (RFM) Operating Limitations Section by attaching or placing in front of the RFM a durable card or paper which contains the following additional limitations:

(i) "No passengers allowed, except required crew and passengers necessary to accomplish a work program when carried on the flights to and from the work site."

(ii) "Prior to the first flight of the day, test and determine that the fire detector system is properly functioning in accordance with the normal procedure section of the RFM."

Note: An engine fire detector system is part of the approved type design and is required by the certification basis. Installation and proper operation are necessary for a determination of airworthiness in accordance with FAR § 91.29.

(3) Prior to November 30, 1990, install an approved engine compartment fire extinguishing system in accordance with technical data approved by the Administrator. When the fire extinguishing system has been installed, the placard, etc., required by paragraph (c)(1) and the RFM limitations required by paragraph (c)(2) may be removed.

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

(e) An alternate method of compliance or adjustment of the compliance times, which provides an equivalent level of safety, may be used if approved by the Manager, Boston Aircraft Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, 12 New England Executive Park, Burlington, Massachusetts 01803.

Note: An operator's request should be forwarded through an FAA Maintenance Inspector, who may add comments and then send it to the Manager, Boston Aircraft Certification Office.

This amendment becomes effective on December 26, 1989.

Issued in Fort Worth, Texas, on November 14, 1989.

James D. Erickson,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 27547 Filed 11–22–89; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 88–ASW–24; Amdt. 39–6400]

Airworthiness Directives; McDonnell Douglas Helicopter Company (MDHC) Model 369D, E, F, and FF Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment amends an existing airworthiness directive (AD) which requires certain inspections and the removal of damaged parts, as necessary, of the tail rotor transmission/tail boom extension mounting studs on all McDonnell Douglas Helicopter Company (MDHC) Model 369D, E, F, and FF helicopters. This amendment alleviates an unnecessary check and record-keeping requirement on the pilot and updates reference information.

EFFECTIVE DATES: December 26, 1989.

Compliance: As indicated in the body of the AD, unless already accomplished.

ADDRESSES: The applicable service information notices may be obtained from MDHC Technical Publications, Building 543/D214, McDonnell Douglas Helicopter Company, 5000 E. McDowell Road, Mesa, Arizona 85205–9797;

telephone (602) 891–6484, or may be examined in the Regional Rules Docket.

FOR FURTHER INFORMATION CONTACT: Mr. Sol Davis, Aerospace Engineer, Airframe Branch, ANM–123L, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 E. Spring Street, Long Beach, California 90806–2425; telephone (213) 988–5233.

SUPPLEMENTARY INFORMATION: A proposal to amend AD 88–17–09, Amendment 39–5964 (53 FR 30023; August 10, 1988), was published in the **Federal Register** on July 31, 1989 (54 FR 31532).

This AD currently requires a preflight check of the tail rotor transmission installation for security in accordance with MDHC Service Information Notices on MDHC Model 369D, E, F, and FF helicopters. After issuing Amendment 39–5964, the FAA determined that: (1) Performing the preflight check of the tail rotor transmission installation and recording the entry as required by § 43.9 prior to each flight, has placed an unnecessary burden on the pilot; (2) properly torqued studs are highly unlikely to loosen significantly in such short periods of time; and (3) less frequent checks are warranted without affecting the level of safety. Therefore, the FAA is amending Amendment 39–5964 by reducing the frequency of the checks to intervals of 25 hours' time in service on MDHC Model 369D, E, F, FF helicopters.

It was also proposed to update the address given in the incorporation by reference paragraph. The incorporation by reference of MDHC Service Information Notice (SIN) DN–151/EN–39/FN–28, dated October 10, 1987, was previously approved by the Director of the Federal Register as of August 10, 1988 (53 FR 30023).

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received. Accordingly, the proposal is adopted without change.

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

The FAA has determined that this regulation is relieving in nature and imposes no additional burden on any person. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) 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.

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 § 39.13 of part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by amending Amendment 39–5964 (53 FR 30023; August 10, 1988), AD 88–17–09, by revising paragraphs (a)(2) and (b)(2); and by revising the address of MDHC in the incorporation by reference paragraph that follows paragraph (d).

McDonnell Douglas Helicopter Company (MDHC) (Hughes Helicopters, Inc.): Applies to Model 369D, E, F, and FF helicopters, certificated in any category, which have tail rotor transmission/tail boom extension mounting studs, Part Number (P/N) MS51992A303–13 or –14, installed.

(Docket No. 88–ASW–24)

Compliance is required as indicated, unless already accomplished.

* * * * *

(a) * * *

(2) Within the next 25 hours' time in service after the effective date of this amended AD, and at intervals not to exceed 25 hours' time in service from the last check, conduct a check for security in accordance with MDHC SIN DN–151/EN–39/FN–28, Part II, paragraph a, dated October 10, 1987. The checks required by this paragraph may be performed by the pilot and must be recorded in accordance with FAR § 43.9.

* * * * *

(b) * * *

(2) Within the next 25 hours' time in service after the effective date of this amended AD, and at intervals not to exceed 25 hours' time in service from the last check, conduct a check of the tail boom extension installation for security in accordance with MDHC SIN DN–151/EN–39/FN–28, Part II, paragraph a, dated October 10, 1987. The checks required by this paragraph may be performed by the pilot and must be recorded in accordance with FAR § 43.9.

* * * * *

These inspection and check procedures shall be done in accordance with MDHC Mandatory SIN DN–151/EN–39/FN–28, dated October 10, 1987. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from MDHC Technical Publications, Building 543/D214, McDonnell Douglas Helicopter Company, 5000 E. McDowell Road, Mesa, Arizona 85205–9797, telephone (602) 891–6484. A copy may also be inspected at the Office of the Assistant Chief Counsel, Federal Aviation Administration, 4400 Blue Mound Road, Room 158, Building 3B, Fort Worth, Texas, or at the Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, DC.

This amendment becomes effective December 26, 1989.

This amendment amends Amendment 39–5964 (53 FR 30023; August 10, 1988), AD 88–17–09.

Issued in Fort Worth, Texas, on November 14, 1989.

James D. Erickson,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 89–27548 Filed 11–22–89; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 87–ASW–17; Amendment 39–6399]

Airworthiness Directives; Bell Helicopter Textron, Inc., Model 222 Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the **Federal Register** and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of certain BHTI Model 222 helicopters by individual letters. The AD requires inspection and replacement (if necessary) of the main rotor spline plate, drive hub, and associated nuts and washers. The AD was necessary to prevent helicopters from flying with cracked drive hub studs which could fail and result in loss of flight control.

EFFECTIVE DATES: December 22, 1989, as to all persons except those persons to

whom it was made immediately effective by Priority Letter AD's 87–09–02, issued April 24, 1987, and 87–09–02R1, issued April 28, 1987, which contained this amendment.

Compliance: As indicated in the body of the AD.

ADDRESSES: Applicable AD related material may be examined at the Regional Rules Docket, Office of the Assistant Chief Counsel, FAA, 4400 Blue Mound Road, room 158, Bldg. 3B, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Gary B. Roach, Rotorcraft Directorate, Rotorcraft Certification Office, ASW–170, FAA, Southwest Region, Forth Worth, Texas 76193–0170, telephone (817) 624–5179.

SUPPLEMENTARY INFORMATION: On April 24, 1987, Priority Letter AD 87–09–02 was issued and made effective immediately as to all known U.S. owners and operators of certain BHTI Model 222 helicopters. The AD required inspection and replacement (if necessary) of the main rotor spline plate, drive hub, and associated nuts and washers. The AD was subsequently amended by Priority Letter AD 87–09–02R1, issue date April 28, 1987, which reduced the nut torque specification from 100 inch-pounds to 50 inch-pounds. The AD was prompted by a report of failure of the lower six studs of the main rotor swashplate drive hub. AD action was necessary to prevent helicopters from flying with cracked drive hub studs which could fail. This failure would result in loss of flight control and subsequent loss of the helicopter.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to public interest, and good cause existed to make the AD effective immediately by individual letters issued April 24, 1987, and April 28, 1987, to all known U.S. owners and operators of certain BHTI Model 222 helicopters. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of part 39 of the Federal Aviation Regulations to make it effective as to all persons.

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

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Regional Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, and Safety.

Adoption of the Amendment

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

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

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

§ 39.13 [Amended]

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

Bell Helicopter Textron, Inc. (BHTI): Applies to all BHTI Model 222 helicopters, certificated in any category, with drive hub assembly, part number (P/N) 222–010–417–009, installed.

Compliance with paragraphs (a) and (b) is required immediately upon receipt of this AD, unless already accomplished.

To prevent possible failure of the drive hub studs which could result in loss of flight control and subsequent loss of the helicopter, accomplish the following:

(a) Remove nuts and washers from the studs which attach spline plate, P/N 222–310–418–105/–107, to the drive hub assembly, P/N 222–010–417–009.

(b) Visually inspect washers, P/N AN960–416, and mating surface on the spline plate, P/N 222–310–418–105/–107, for any signs of fretting, cracking, or wear.

(1) If any fretting or wear is found, replace spline plate, P/N 222–310–418–105/–107, and drive hub assembly, P/N 222–010–417–009.

(2) If no fretting or wear is found, install new nuts, P/N MS21042L4, and washers, P/N AN960–416, and torque nuts to 100 inch-pounds plus friction (tare) torque.

(c) After completing the requirements of paragraphs (a) and (b) and at intervals not to exceed 50 hours' time in service thereafter; apply 50 inch-pounds of torque to the spline plate, P/N 222–310–418–105/–107, retaining nuts.

(1) If the nuts do not move, the nut torque is sufficient.

(2) If one or more nuts move prior to reaching 50 inch-pounds, replace spline plate, P/N 222–310–418–105/–107, and drive hub assembly, P/N 222–010–417–009. (Maintenance manual 222–MM–1, section 65–20–00, paragraphs 65–33 and 65–35 applies to this.)

(d) An alternate method of compliance or adjustment of the compliance time, which provides an equivalent level of safety, may be used when approved by the Manager, Rotorcraft Certification Office, Rotorcraft Directorate, Aircraft Certification Service, FAA, Southwest Region, Forth Worth, Texas.

(e) In accordance with FAR §§ 21 197 and 21 199, flight is permitted to a base where inspections required by this AD may be accomplished.

This amendment becomes effective December 22, 1989, as to all persons except those persons to whom it was made immediately effective by Priority Letter AD's 87–09–02, issued April 24, 1987, and 87–09–02R1, issued April 28, 1987, which contained this amendment.

Issued in Fort Worth, Texas, on November 13, 1989.

James D. Erickson,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 89–27546 Filed 11–22–89; 8:45 am]

BILLING CODE 4910–13–M

Federal Aviation Adminstration

14 CFR Part 71

[Airspace Docket No. 89–ANE–01]

Amendment to Control Zone, Lebanon, NH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This Amendment changes the description of the Lebanon New Hampshire Control Zone so as to provide protected airspace for instrument flight rules aircraft executing a new Instrument Flight Rules (IFR) Standard Instrument Approach Procedure (SIAP) to Runway 18 at Lebanon Municipal Airport, Lebanon, New Hampshire.

EFFECTIVE DATE: 0901 u.t.c., December 26, 1989.

FOR FURTHER INFORMATION CONTACT: Charles M. Taylor, Systems Management Branch, ANE–530, Federal

Aviation Administration, Burlington, MA 01803; Telephone: (617) 270–2428.

SUPPLEMENTARY INFORMATION:

History

On July 17, 1989, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the description of the Lebanon, New Hampshire Control Zone (54 FR 29907) so as to provide protected airspace for Instrument Flight Rules (IFR) aircraft executing a new Instrument Landing System (ILS) Standard Instrument Approach Procedure (SIAP) to Runway 18 at Lebanon, Municipal Airport, Lebanon, New Hampshire. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. This amendment is the same as that proposed in the Notice. Section 71.171 of part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6E dated January 3, 1989.

The Rule

This amendment of part 71 of the Federal Aviation Regulations (14 CFR part 71) changes the description of the Lebanon, New Hampshire Control Zone so as to provide protected airspace for Instrument Flight Rule aircraft executing a new Instrument Landing System (ILS) Standard Instrument Approach Procedure (SIAP) to Runway 18 at the Lebanon Municipal Airport, Lebanon, New Hampshire.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this 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) 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 will not have a significant economic impact on a substantial number of small business entities under the Criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

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

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

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Lebanon, NH [Revised]

Within a 5-mile radius of the center, (Latitude 43 37'35"N, Longitude 72 18'17"W.), of the Lebanon Municipal Airport, Lebanon, NH; within 4 miles each side of the DV OM 351 (True) bearing extending from the 5 miles radius zone to 9.5 miles northeast of the DV OM. Within 3 miles each side of the Hanover HDB 231 and 051 bearings, estending from the 5-mile radius zone 8.5 miles northeast of the NDB; within 2 miles either side of the centerline of Runway 18 extended 5.5 miles from the end of the runway; within 2 miles either side of the White River NDB 060 bearing extending from the 5 mile radius zone to 7.5 miles from the end of Runway 07.

Issued in Burlington, Massachusetts on November 15, 1989.

James I. Lucas,

Manager, Air Traffic Division.

[FR Doc 89–27549 Filed 11–22–89; 8:45 am]

BILLING CODE 4910–13–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1214

Space Transportation System

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: NASA is amending 14 CFR part 1214 by revising subpart 1214.3, "Payload Specialists for Space Transportation System (STS) Missions." This revision redefines the title of the subpart and the payload specialist responsibilities, and sets forth NASA's policy on and process for the determination of need, selection, and utilization of payload specialists and additional mission specialists to be assigned to a Space Transportation System (STS) flight in addition to the standard NASA flight crew. The effect of this amendment is to restrict STS flight opportunities for other than professional NASA astronauts to only those situations where the presence of such personnel clearly contributes to the operational and scientific objectives of the particular mission and flight.

EFFECTIVE DATE: November 24, 1989.

ADDRESS: Director, Transportation Services, Code MC, NASA Headquarters, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Robert L. Tucker, 202/453–2347.

SUPPLEMENTARY INFORMATION: On March 10, 1978, NASA published its final rule, 14 CFR part 1214 subpart 1214.3, "Payload Specialists for NASA or NASA-Related Payloads," in the **Federal Register** (43 FR 9790). This amendment revises that regulation by redefining "payload specialist," and NASA's policy and procedures for selection and utilization of payload and other mission specialists on a Space Transportation System (STS) mission. This does not apply to the standard NASA STS flight crew, nor will it govern the crews of the Space Station Freedom, the composition and selection of which will be the subject of a separate regulation.

The notice and public procedures of 5 U.S.C. 553 were not followed since the policy and procedures are determined to be exempt under 5 U.S.C. 553(a)(2) as a "a matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts."

This regulation does not constitute a major rule for the purpose of Executive Order 12291; and it is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, since it will not exert a significant economic impact on a substantial number of small business entities.

List of Subjects in 14 CFR Part 1214

Government employees, Government procurement, Security measures, Space Transportation System, Payload specialist, Mission, Mission specialist, NASA-related payload.

For reasons set forth in the Preamble, 14 CFR part 1214 is amended as follows:

PART 14—[AMENDED]

1. The authority citation for 14 CFR part 1214 continues to read as follows:

Authority: Sec. 203, Pub. L. 85–568, 72 Stat. 429, as amended (42 U.S.C. 2473); sec. 201(b), Pub. L. 87–624, 76 Stat. 421 (47 U.S.C. 721(b)), unless otherwise noted.

2. Subpart 1214.3 is revised to read as follows:

Subpart 1214.3—Payload Specialists for Space Transportation System (STS) Missions

Sec.

1214.300 Scope.
1213.301 Definitions.
1214.302 Background.
1214.303 Policy.
1214.304 Process.
1214.305 Payload specialist responsibilities.
1214.306 Payload specialist relationship with sponsoring institutions.

Subpart 1214.3—Payload Specialists for Space Transportation System (STS) Missions

§ 1214.300 Scope.

(a) This revision of subpart 1214.3 redefines the title of payload specialist and sets forth NASA's policy on and process for the determination of need, selection, and utilization of payload specialists and additional mission specialists to be assigned to a Space Transportation System (STS) flight in addition to the standard NASA flight crew.

(b) This subpart does not apply to the selection of crew for the Space Station Freedom. It is recognized that the Space Station has unique requirements regarding its crew and that a separate, specifically tailored policy will need to be developed in the future.

§ 1214.301 Definitions.

(a) *Payload specialists.* Individuals other than NASA astronauts (commanders, pilots, and mission specialists), whose presence is required on board the Space Shuttle to perform specialized functions with respect to operation of one or more payloads or other essential mission activities.

(b) *NASA or NASA-related payload.* A specific complement of instruments, space equipment, and support hardware, developed by a NASA Program Office or by another party with which NASA has a shared interest, and carried into space to accomplish a mission or discrete activity in space.

(c) *Mission.* The performance of a coherent set of investigations or operations in space to achieve program goals. A single mission might require more than one flight or more than one mission might be accomplished on a single flight.

(d) *Mission manager.* The official responsible for the implementation of the payload portion of an STS flight(s).

(e) *Mission specialist.* A career NASA astronaut trained and skilled in the operation of STS systems related to payload operations and thoroughly familiar with the operational requirements and objectives of the payloads with which the mission specialist will fly. The mission specialist, when designated for a flight, will participate in the planning of the mission and will be responsible for the coordination of overall payload/STS interaction. The mission specialist will direct the allocation of STS and crew resources to the accomplishment of the combined payload objectives during the payload operations phase of the flight in accordance with the approved flight plan.

(f) *Investigator Working Group (IWG).* A group composed of the Principal Investigators, or their representatives, whose primary purpose is facilitating or coordinating the development and execution of the operational plans of an approved NASA program or reporting the progress thereof.

(g) *Payload sponsor.* For NASA and NASA-related payloads the payload sponsor is the Associate Administrator of the sponsoring Program Office whose responsibilities are most closely related to the particular scientific or engineering discipline associated with a payload. For all other payloads, the payload sponsor is identified by the Associate Administrator who contracts with the agency or organization, whether foreign or domestic, private-sector or governmental, to fly a payload on the STS.

(h) *Unique requirements.* The need for a highly specialized or unusual technical or professional background or the need for instrument operations requiring a highly specialized or unusual background that is not likely to be found in the group of mission specialists or cannot be attained in a reasonable training period.

§ 1214.302 Background.

(a) The Space Transportation System (STS) has been developed to expand the Nation's capabilities to utilize the unique environment of space. It provides opportunity for individuals other than career astronauts to participate as onboard members of the flight crew under specified conditions. The purpose of such participation by these individuals is to ensure the achievement of the payload or mission-related objectives.

(b) The STS will provide these additional crew members with a habitable working environment and support services in such a way as to require a minimum of dedicated space flight training, allowing them to concentrate their efforts on the accomplishment of their scientific, technical, or mission objectives.

§ 1214.303 Policy.

(a) *General.* (1) The Challenger accident marked a major change in the U.S. outlook and policies with respect to the flight of other than NASA astronauts. NASA and interested external parties, domestic and international, must re-examine previous understandings, expectations, and commitments regarding flight opportunities in light of the new policies now being enunciated.

(2) NASA policies and their implementation recognize that:

(i) Every flight of the Shuttle involves risks;

(ii) Flight opportunities will now generally be limited to professional NASA astronauts and payload specialists essential for mission requirements; and

(iii) Top priority must be given to:

(A) Establishing, proving, and maintaining the reliability and safety of the Shuttle system;

(B) Timely and efficient reduction of the backlog of high priority scientific and national security missions; and maximum utilization of the Shuttle capacity for primary and secondary payloads that require transportation to or from orbit by the Space Shuttle.

(3) All Shuttle flights will be planned with a minimum NASA crew of five astronauts (commander, pilot, and three mission specialists). When payload or other mission requirements define a need and operational constraints permit, the crew size can be increased to a maximum of seven. Any such additional crew members must be identified at least 12 months before flight and be available for crew integration at 6 months.

(4) NASA policy and terminology are revised to recognize two categories of persons other than NASA astronauts, each of which requires separate policy treatment. They are:

(i) "Payload specialists," redefined to refer to persons other than NASA astronauts (commanders, pilots, and mission specialists), whose presence is required onboard the Space Shuttle to perform specialized functions with respect to operation of one or more payloads or other essential mission activities.

(ii) "Space flight participants," defined to refer to persons whose presence onboard the Space Shuttle is *not* required for operation of payloads or for other essential mission activities, but is determined by the Administrator of NASA to contribute to other approved NASA objectives or to be in the national interest.

(b) *Payload specialists.* Payload specialists may be added to Shuttle crews when more than the minimum crew size of five is needed and unique requirements are involved. In the case of foreign-sponsored missions and payloads, the need and requirements for payload specialists will be negotiated and mutually agreed between the foreign sponsors and NASA. The selection process for additional crew members to meet approved requirements will first give consideration to qualified NASA mission specialists. When payload specialists are required, they will be nominated by the appropriate NASA, foreign, or other designated payload sponsor. In the case of NASA or NASA-related payloads, the nominations will be based on the recommendations of the appropriate Investigator Working Group (IWG).

(c) *Space flight participants.* NASA remains committed to the long-term goal of providing space flight opportunities for persons outside the professional categories of NASA astronauts and payload specialists when this contributes to approved NASA objectives or is determined to be in the national interest. However, NASA is devoting its attention to proving the Shuttle system's capablity for safe, reliable operation and to reducing the backlog of high priority missions. Accordingly, flight opportunities for space flight participants are not available at this time. NASA will assess Shuttle operations and mission and payload requirements on an annual basis to determine when it can begin to allocate and assign space flight opportunities for future space flight participants, consistent with safety and mission considerations. When NASA determines that a flight opportunity is available for a space flight participant, first priority will be given to a "teacher in space," in fulfillment of space education plans.

§ 1214.304 Process.

(a) Determining the need for additional crew members. The payload sponsor will be responsible for recommending the number of addition crew members and for establishing the technical or scientific need, the selection criteria, uniqueness of qualifications, the proposed training, and other requirements for the additional crew members. The payload sponsor's requirements for additional crew members, their qualifications, and the proposed duration for training will be reviewed with and concurred in by the Associate Administrator for Space Flight.

(b) Selection of additional crew members for NASA and NASA-related payloads. After the requirement for additional crew members has been established, the IWG will be tasked by the payload sponsor to commence the selection process. The IWG review process will include the participation of a senior astronaut from the Flight Crew Operations Directorate at the Johnson Space Center who will provide operational and applicant suitability criteria.

(1) Prior to the payload sponsor's recommendation for additional crew members and at his/her direction, the IWG will have studied the requirements of the selected investigations, the number, qualifications, training requirements and other requirements of payload specialists, and backups necessary to support the payload objectives, and made recommendations to the payload sponsor.

(2) Members of the mission specialist cadre will be considered first. The payload mission manager, on behalf of the IWG, will convey the selection criteria for the proposed additional crew members to the Chief, Astronaut Office. The IWG, the mission manager, and the Astronaut Office will coordinate the review of the proposed candidates and the mission manager will forward recommendations to the payload sponsor. Recommendations from the payload sponsor will be submitted to the Associate Administrator for Space Flight for approval.

(3) If mission specialists meeting the requirements cannot be provided because of the uniqueness of requirements or impracticability of the resultant training obligation, or if backup payload specialists are required, the IWG may then solicit candidate payload specialists from outside the career astronaut corps. The solicitation will require, as a minimum, that a summary of professional qualifications be submitted to the IWG. In addition, a medical history, and the results of the physical examination described in paragraph (b)(3)(iii) of this section will be required. The IWG will be responsible for:

(i) Establishing professional and operational criteria for payload specialists for specific payloads. The criteria will include willingness on the part of the candidate to accept the applicable provisions of § 1214.306 and satisfactory completion of a background investigation conducted to NASA's standards, as determined by the Director, NASA Security Office.

(ii) Evaluating all candidates using the criteria established.

(iii) Determining which candidate payload specialists, who meet the NASA Class III Space Flight Medical Selection Standards, are deemed best professionally qualified. (The preselection phases of the medical examination will be conducted at Johnson Space Center by certified examiners approved by the Director, Life Sciences Division, NASA Headquarters).

(iv) Submitting its recommendations for payload specialists through the mission manager to the payload sponsor who in turn will determine final recommendations which will be reviewed with and concurred in by the Associate Administrator for Space Flight.

(4) The payload sponsor and the Associate Administrator for Space Flight will advise the Administrator of the payload specialist selections.

(c) Selection of additional crew members for foreign payloads. The need and requirements for payload specialists will be negotiated and mutually agreed to between the foreign sponsor and NASA. This negotiating process will include the participation of a senior astronaut from the Flight Crew Operations Directorate at the Johnson Space Center who will provide operational and applicant suitability criteria. After agreement is reached, the payload sponsor will initiate the selection process. Subject to the negotiated agreement, subsequent steps in the process will be similar to those described in § 1214.304(b) modified as follows:

(1) The IWG functions will be performed by a selection committee or other procedure designated by the payload sponsor.

(2) The payload sponsor will designate an individual to perform the mission manager functions.

(3) The committee or procedure in paragraph (c)(1) of this section and the person named in paragraph (c)(2) of this section will be established during the negotiations between the foreign sponsor and NASA, consistent with the specific circumstances.

(4) The payload sponsor will also be responsible for submission to NASA by an appropriate authority of written assurance that an inquiry has been made into the recommended payload specialist's background and suitability on the basis of standards similar to those applied to NASA payload specialist candidates and a statement by the selected candidate asserting a willingness to accept the applicable provisions of § 1214.306. These written assurances must be received and

accepted by NASA before selection and before any NASA training can begin.

(d) Selection of additional crew members for other payloads. After the request for additional crew members is approved, the payload sponsor will commence the selection process. The payload sponsor review process will include the participation of a senior astronaut from the Flight Crew Operations Directorate at the Johnson Space Center who will provide operational and applicant suitability criteria.

(1) The payload sponsor will first consider members of the mission specialist cadre. A representative of the payload sponsor selection committee will convey the selection criteria for the proposed payload specialists to the Chief, Astronaut Office, and coordinate on the recommendations for mission specialists to satisfy the requirements. The recommendations will be submitted to the Associate Administrator for Space Flight for approval who will then advise the Administrator of the selections.

(2) If mission specialists meeting the requirements cannot be provided because of the uniqueness of qualifications or impracticability of the resultant training obligation, the payload sponsor selection committee, with concurrence from the payload sponsor and the Associate Administrator for Space Flight, may then consider other candidate payload specialists. The payload sponsor will be responsible for:

(i) Establishing professional and operational criteria for payload specialists for specific payloads. The criteria will include willingness on the part of the candidate to accept the applicable provisions of § 1214.306 and satisfactory completion of a background investigation conducted to NASA's standards, as determined by the Director, NASA Security Office.

(ii) Evaluating all candidates using the criteria established.

(iii) Determining which candidate payload specialists, who meet the NASA Class III Space Flight Medical Selection Standards, are deemed best professionally qualified. (The preselection phases of the medical examination will be conducted at the Johnson Space Center by certified examiners approved by the Director, Life Sciences Division, NASA Headquarters).

(iv) Submitting its recommendations for payload specialist selection to the Associate Administrator for Space Flight for approval.

(e) Preflight activities for additional crew members. Mission specialists serving as additional crew for the payload, once selected, will be primarily responsible to the mission manager who, together with the IWG (or comparable body designated by the payload sponsor) and the Director, Flight Crew Operations, will determine the integrated training and work schedules as appropriate to the areas of responsibilities outlined in the following paragraphs.

(1) The IWG for NASA and NASA-related payloads or the Payload Sponsor for all other payloads is responsible for defining the training necessary for payload elements within its cognizance. The mission manager is responsible for the total integrated payload training and will assist the IWG as necessary in carrying out the defined training activities.

(2) The Director, Flight Crew Operations, is responsible for establishing the training requirements for payload specialists on Orbiter, Spacelab, and STS-provided payload support systems as appropriate. In order to enhance the crew integration process, the additional crew members (payload specialists and additional mission specialists) will be based at the Johnson Space Center 6 months prior to flight, unless otherwise agreed between the payload sponsor and the Director, Flight Crew Operations, Johnson Space Center.

(3) The payload specialists must be certified for flight by the Director, Flight Crew Operations, upon satisfactory completion of all required training and demonstrated performance of assigned tasks. Certification of the payload specialist's readiness for flight will be made to the payload mission manager and will include an assessment by the crew commander of the payload specialist's suitability for space flight.

(4) The mission manager is responsible for verifying to the payload sponsor that all crew members are properly trained for in-flight payload operations.

(i) The medical program for payload specialists will be continued during the preflight period in accordance with the NASA Class III Space Flight Medical Selection Standards.

(ii) If, during the preflight period, the number of additional crew members is reduced to fewer than that agreed to, or an additional crew member does not meet the certification requirements, the necessary reprocessing may be initiated to provide replacements consistent with the above described selection process and the STS training requirements.

(f) Designation of primary and backup payload specialists (when required). At an appropriate time designated by the mission manager (not later than 9 months prior to flight), the IWG for NASA and NASA-related payloads or payload sponsor for all other payloads will recommend which payload specialists should be designated as prime and which as backup. However, in cases where mission specialists have been selected for the payload specialist position(s), they will be considered as primary at the time of selection. The recommendations will be forwarded by the mission manager to the Program Office which will review the recommendations and forward them to the Associate Administrator for Space Flight for concurrence. The payload sponsor and the Associate Administrator for Space Flight will advise the Administrator of the selections.

(g) Effective date. The described selection process will apply to all STS missions for which selections have not been approved prior to December 31, 1988.

§ 1214.305 Payload specialist responsibilities.

(a) Relationship with flight crew. The crew commander has overall responsibility for crew integration and the safe and successful conduct of the mission. With respect to crew and vehicle safety, the commander has ultimate responsibility and authority for all assigned crew duties. The payload specialist is responsible to the authority of the commander and operates in compliance with mission rules and Payload Operation Control Center directives. Payload specialists are expected to operate as an integral part of the crew and will participate in crew activities as specified by the crew commander.

(b) Operation of payload elements. The payload specialist will be responsible for the operation of the assigned payload elements. Onboard decisions concerning assigned payload operations will be made by the payload specialist. A payload specialist may be designated to resolve conflicts between the payload elements and approve such deviation from the flight plan as may arise from equipment failures or STS factors. In the instance of STS factors, the mission specialist will present the available options for the payload-related decisions by the payload specialist.

(c) Operation of STS equipment. The payload specialist will be responsible for knowing how to operate certain Obiter systems, such as hatches, food, and hygiene systems, and for proficiency in those normal and emergency procedures which are

required for safe crew operations, including emergency egress and bail out. The responsibility for on-orbit management of Orbiter systems and attached payload support systems and for extravehicular activity and payload manipulation with the Remote Manipulator System will rest with the NASA flight crew. The NASA flight crew will operate Orbiter systems and standard payload support systems, such as Spacelab and Internal Upper Stage systems. With approval of the commander, payload specialists may operate payload support systems which have an extensive interface with the payload.

§ 1214.306 Payload specialist relationship with sponsoring institutions.

Specialists who are not U.S. Government employees must enter into a contractual or other arrangement establishing an obligatory relationship with an institution participating in the payload as designated by the payload sponsor prior to selection and before entering into training at a NASA installation or NASA-designated location. Payload specialists who are not otherwise U.S. Government employees will not become U.S. Government employees by virtue of being selected as a payload specialist. Except as specified in the following paragraphs of this section, NASA will not enter into any direct contractual or other arrangement with individual payload specialists. Any exception must be approved by the NASA Administrator.

(a) Payload specialists who are not citizens of the United States will be required to enter into an agreement with NASA in which they agree to accept and be governed by specified standards of conduct. Any such agreement will be signed on behalf of NASA by the NASA General Counsel or designee.

(b) Payload specialists who are citizens of the United States and who are not employees of the U.S. Government, will be required to enter into an agreement with NASA in which they agree to accept and be governed by specified standards of conduct. Any such agreement will be signed on behalf of NASA by the NASA General Counsel or designee.

(c) Payload specialists who are employed by a branch, department, or agency of the U.S. Government other than NASA may (pursuant to the exercise of judgment by the NASA General Counsel) be required to enter into an agreement with NASA to accept and be governed by specified standards of conduct. Any such agreement will be signed on behalf of NASA by the NASA General Counsel or designee.

Richard H. Truly,

Administrator.

[FR Doc. 89-27545 Filed 11-22-89; 8:45 am]

BILLING CODE 7510-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 11

[Docket No. RM86-2-000]

Update of the Federal Energy Regulatory Commission's Fee Schedule for Annual Charges for the Use of Government Lands

Issued: November 17, 1989.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; update of Federal land use fees.

SUMMARY: On May 8, 1987, the Commission issued its final rule amending Part 11 of its regulations (Order No. 469, 52 FR 18201 (May 14, 1987)). The final rule revised the billing procedures for annual charges for administering part I of the Federal Power Act, the billing procedures for charges for Federal dam and land use, and the methodology for assessing Federal land use charges.

In accordance with § 11.2(b) (18 CFR 11.2(b) (1989)) of the Commission's regulations, the Commission by its designee, the Executive Director, is updating its schedule of fees for the use of government lands. The yearly update is determined by adopting the most recent schedule of fees for the use of linear rights-of-way prepared by the United States Forest Service. Since the next fiscal year will cover the period from October 1, 1989 through September 30, 1990, the fees in this notice are effective as of October 1, 1989. The fees will apply to fiscal year 1990 annual charges for the use of government lands.

EFFECTIVE DATE: October 1, 1989.

FOR FURTHER INFORMATION CONTACT: Olive Wallace, Chief, Management System Branch, Office of the Controller, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-9282.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours at the Commission's Headquarters, 825 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 357-8997. To access CIPS, set your communciations software to use 300, 1200 or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this order will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located at 825 North Capitol Street, NE., Washington, DC 20426.

Kenneth F. Plumb,

Executive Director.

List of Subjects in 18 CFR Part 11

Electric power, Reporting and recordkeeping requirements.

PART 11—[AMENDED]

Accordingly, the Commission, effective October 1, 1989, amends part 11 of chapter I, title 18 of the Code of Federal Regulations, as set forth below.

1. The authority citation for part 11 continues to read as follows:

Authority: Federal Power Act, 16 U.S.C. 791a-825r (1982); Department of Energy Organization Act, 42 U.S.C. 7101-7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142.

2. In part 11, Schedule A is revised to read as follows:

FEE SCHEDULES FOR LINEAR RIGHTS-OF-WAY RENTAL RATE YEAR

State and County	Fee per-acre per-year
Alabama: All counties	$19.84
Arkansas: All counties	$14.88
Arizona:	
Apache, Cochise, Gila, Graham, La Paz, Mohave, Navajo, Pima, Yavapai, Yuma, Coconino North of Colorado River	$4.96
Coconino South of Colorado River, Greenlee, Maricopa, Pinal, Santa Cruz	$19.84
California:	
Imperial, Inyo, Lassen, Modoc, Riverside, San Bernardino	$9.91
Siskiyou	$14.88
Alameda, Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El Dorado, Fresno, Glenn, Humboldt, Kern, Kings, Lake, Madera, Mariposa, Mendocino, Merced, Mono, Napa, Nevada, Placer, Plumas, Sacramento, San Benito, San Joaquin, Sanata Clara, Shasta, Sierra, Solano, Sonoma, Stanislaus, Sutter, Tehama, Trinity, Tulare, Tuolumne, Yolo, Yuba	$24.80
Los Angeles, Marin, Monterey, Orange, San Diego, San Francisco, San Luis Obispo, San Mateo, Santa Barbara, Santa Cruz, Ventura	$29.76

FEE SCHEDULES FOR LINEAR RIGHTS-OF-WAY RENTAL RATE YEAR—Continued

State and County	Fee per-acre per-year
Colorado:	
Adams, Arapahoe, Bent, Cheyenne, Crowley, Elbert, El Paso, Huerfano, Kiowa, Kit Carson, Lincoln, Logan, Moffat, Montezuma, Morgan, Pueblo, Sedgwick, Washington, Weld, Yuma	$4.96
Baca, Dolores, Garfield, Las Animas, Mesa, Montrose, Otero, Prowers, Rio Blanco, Routt, San Miguel	$9.91
Alamoso, Archuleta, Boulder, Chaffee, Clear Creek, Conejos, Costilla, Custer, Denver, Delta, Douglas, Eagle, Fremont, Gilpin, Grand, Gunnison, Hinsdale, Jackson, Jefferson, Lake, La Plata, Larimer, Mineral, Ouray, Park, Pitkin, Rio Grande, Saguache, San Juan, Summit, Teller	$19.84
Connecticut: All counties	$4.96
Florida:	
Baker, Bay, Bradford, Calhoun, Clay, Columbia, Dixie, Duval, Escambia, Franklin, Gadsen, Gilchrist, Gulf, Hamilton, Holmes, Jackson, Jefferson, Lafayette, Leon, Liberty, Madison, Nassau, Okaloosa, Santa Rosa, Suwannee, Taylor, Union, Wakulla, Walton, Washington	$29.76
All other counties	$49.60
Georgia: All counties	$29.76
Idaho:	
Cassia, Gooding, Jerome, Lincoln, Minidoka, Oneida, Owyhee, Power, Twin Falls	$4.96
Ada, Adams, Bannock, Bear Lake, Benewah, Bingham, Blaine, Boise, Bonner, Bonneville, Boundary, Butte, Camas, Canyon, Caribou, Clark, Clearwater, Custer, Elmore, Franklin, Fremont, Gem, Idaho, Jefferson, Kootenai, Latah, Lemhi, Lewis Madison, Nez Perce, Payette, Shoshone, Teton, Valley, Washington	$14.88
Kansas:	
All other counties	$4.96
Morton	$9.91
Illinois: All counties	$14.88
Indiana: All counties	$24.80
Kentucky: All counties	$14.88
Louisiana: All counties	$29.76
Maine: All counties	$14.88
Michigan:	
Alger, Baraga, Chippewa, Dickinson, Delta, Gogebic, Houghton, Iron, Keweenaw, Luce, Mackinac, Marquette, Menominee, Ontonagon, Shoolcraft	$14.88
All other counties	$19.84
Minnesota: All counties	$14.88
Mississippi: All counties	$19.84
Missouri: All counties	$14.88
Montana:	
Big Horn, Blaine, Carter, Cascade, Chouteau, Custer, Daniels, McCone, Meagher, Dawson, Fallon, Fergus, Garfield, Glacier, Golden Valley, Hill, Judith Basin, Liberty, Musselshell, Petroleum, Phillips, Pondera, Powder River, Prairie, Richland, Roosevelt, Rosebud, Sheridan, Teton, Toole, Treasure, Valley, Wheatland, Wibaux, Yellowstone	$4.96
Beaverhead, Broadwater, Carbon, Deer Lodge, Flathead, Gallatin, Granite, Jefferson, Lake, Lewis & Clark, Lincoln, Madison, Mineral, Missoula, Park Powell, Ravalli, Sanders, Silver Bow, Stillwater Sweet Grass	$14.88
Nebraska: All counties	$4.96
Nevada:	
Churchill, Clark, Elko, Esmeralda, Eureka, Humboldt, Lander, Lincoln, Lyon, Mineral, Nye, Pershing, Washoe, White Pine	$2.48
Carson City, Douglas, Storey	$24.80
New Hampshire: All counties	$14.88
New Mexico:	
Chaves, Curry, De Baca, Dona Ana, Eddy, Grant, Guadalupe, Harding, Hidalgo, Lea, Luna, McKinley, Otero, Quay, Roosevelt, San Juan, Socorro, Torrance	$4.96
Rio Arriba, Sandoual, Union	$9.91
Bernalillo, Catron, Cibola, Colfax, Lincoln, Los Alamos, Mora, San Miguel, Santa Fe, Sierra, Taos, Valencia,	$19.84

FEE SCHEDULES FOR LINEAR RIGHTS-OF-WAY RENTAL RATE YEAR—Continued

State and County	Fee per-acre per-year
New York: All counties	$19.84
North Carolina: All counties	$29.76
North Dakota: All counties	$4.96
Ohio: All counties	$19.84
Oklahoma:	
All other counties	$4.96
Beaver, Cimarron, Roger Mills, Texas	$9.91
Le Flore, McCurtain	$14.88
Oregon:	
Harney, Lake, Malheur	$4.96
Baker, Crook, Deschutes, Gilliam, Grant, Jefferson, Klamath, Morrow, Sherman, Umatilla, Union, Wallowa, Wasco, Wheeler	$9.91
Coos, Curry, Douglas, Jackson, Josephine	$14.88
Benton Clackamas, Clatsop, Columbia, Hood River, Lane, Lincoln, Linn, Marion, Multnomah, Polk, Tillamook, Washington, Yamhill	$19.84
Pennsylvania: All counties	$19.84
Puerto Rico: All	$29.76
South Dakota: Butte, Custer, Fall River, Lawrence, Mead, Pennington	$14.88
All other counties	$4.96
South Carolina: All counties	$29.76
Tennessee: All counties	$19.84
Texas:	
Culberson, El Paso, Hudspeth	$4.96
All other counties	$29.76
Utah:	
Beaver, Box Elder, Carbon, Duchesne, Emery, Garfield, Grand, Iron, Jaub, Kane, Millard, San Juan, Tooele, Uintah, Wayne	$4.96
Washington	$9.91
Cache, Daggett, Davis, Morgan, Piute, Rich, Salt Lake, Sanpete, Sevier, Summit, Utah, Wasatch, Weber	$14.88
Vermont: All counties	$19.84
Virginia: All counties	$19.84
Washington:	
Adams, Asotin, Benton, Chelan, Coumbia, Douglas, Franklin, Garfield, Grant, Kittitas, Klickitat, Lincoln, Okanagan, Spokane, Walla Walla, Whitman, Yakima	$9.91
Ferry, Pend Oreille, Stevens	$14.88
Clallam, Clark, Cowlitz, Grays Harbor, Island, Jefferson, King, Kitsap, Lewis, Mason, Pacific, Pierce, San Juan, Skagit, Skamania, Snohomish, Thurston, Wahkiakum, Whatcom	$19.84
West Virginia: All counties	$19.84
Wisconsin: All counties	$14.88
Wyoming:	
Albany, Campbell, Cargon, Converse, Goshen, Hot Springs, Johnson, Laramie, Lincoln, Natrona, Niobrara, Platte, Sheridan, Sweetwater, Fremont, Sublette, Uinta, Washakie	$4.96
Big Horn, Crook, Park, Teton, Weston	$14.88
All other zones	$6.75

[FR Doc. 89-27527 Filed 11-22-89; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 24

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

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of calculation of interest.

SUMMARY: The Tax Reform Act of 1986 established a new method of determining the adjusted rate of interest on applicable overpayments or underpayments of Customs duties. The new method provides a two-tier system based on the short-term Federal rate and is adjusted quarterly. This notice advises the public that the interest rates, as set by the Internal Revenue Service, are 11 percent for underpayments and 10 percent for overpayments for the quarter beginning October 1, 1989. It is being published for the convenience of the importing public and Customs personnel.

FOR FURTHER INFORMATION CONTACT: Robert B. Hamilton, Jr., Revenue Branch, National Finance Center, (317) 298-1245.

SUPPLEMENTARY INFORMATION:

Background

By notice published in the **Federal Register** on January 5, 1987 (52 FR 255), Customs advised the public that the Tax Reform Act of 1986 (Pub. L. 99-514), amended 26 U.S.C. 6621, mandating a new method of determining the interest rate paid on applicable overpayments or underpayments of Customs duties. This method provides a two-tier system based on the short-term Federal rate. As amended, 26 U.S.C. 6621 provides that the interest rate that Treasury pays on overpayments will be the short-term Federal rate plus 2 percentage points. The interest rate paid to the Treasury for underpayments will be the short-term Federal rate plus 3 percentage points. The rates will be rounded to the nearest full percentage.

The interest rates are determined by the Internal Revenue Service on behalf of the Secretary of the Treasury based on the average market yield on outstanding marketable obligations of the U.S. with remaining periods to maturity of 3 years or less and are to fluctuate quarterly. The rates are determined during the first month of a calendar quarter and become effective for the following quarter.

The rates of interest for the period of October 1, 1989–December 31, 1989 are 11 percent for underpayments and 10 percent for overpayments. These rates will remain in effect through December 31, 1989, and are subject to change on January 1, 1990.

Dated: November 15, 1989.

Carol Hallett,

Commissioner of Customs.

[FR Doc. 89-27514 Filed 11-22-89; 8:45 am]

BILLING CODE 4320-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 5

Delegations of Authority and Organization

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations for delegations of authority by adding a new delegation to the Commissioner of Food and Drugs from the Assistant Secretary for Health. The authorities pertain to the disposition of rights to patents and inventions under the Government Patent Policy Act of 1980 as amended by the Federal Court Reorganization Act of 1984.

EFFECTIVE DATE: November 24, 1989.

FOR FURTHER INFORMATION CONTACT: Ellen Rawlings, Office of Management and Operations (HFA-340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4976.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 22, 1988 (53 FR 27767), the Public Health Service published a notice of a delegation of authority, effective July 15, 1988, from the Assistant Secretary for Health to Public Health Service agency heads, including the Commissioner of Food and Drugs, under the Government Patent Policy Act of 1980 (35 U.S.C. 202 *et seq.*) as amended by the Federal Court Reorganization Act of 1984 (Pub. L. 98-620), as amended hereafter. This delegation of authority deals with the disposition and determination of patent and invention rights, and supplements the February 4, 1988, delegation of authority under the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3701 *et seq.*) as amended by the Federal Technology Transfer Act of 1986 and under Executive Order No. 12591 of April 10, 1987, as amended hereafter. FDA is amending § 5.10 *Delegations from the Secretary, the Assistant Secretary for Health, and Public Health Service Officials* (21 CFR 5.10) to add to FDA's regulations new paragraph (a)(31) concerning these authorities delegated to the Commissioner of Food and Drugs.

Further redelegation of the authority delegated has not been authorized by the Commissioner of Food and Drugs.

List of Subjects in 21 CFR Part 5

Authority delegations (Government agencies), Imports, Organization and functions (Government agencies).

Therefore, under the Federal Food, Drug, and Cosmetic Act, the Government Patent Policy Act of 1980, the Federal Court Reorganization Act of 1984, and the authority delegated to the Commissioner of Food and Drugs, 21 CFR part 5 is amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for 21 CFR Part 5 continues to read as follows:

Authority: 5 U.S.C. 504, 552, App. 2; 7 U.S.C. 2271; 15 U.S.C. 638, 1261–1282, 3701–3711a; secs. 2–12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451–1461); 21 U.S.C. 41–50, 61–63, 141–149 467f, 679(b), 801–886, 1031–1309; secs. 201–902 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–392); 35 U.S.C. 156; secs. 301, 302, 303, 307, 310, 311, 351, 352, 354–360F, 361, 362, 1701–1706, 2101 of the Public Health Service Act (42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 263b–263n, 264, 265, 300u–300u–5, 300aa–1); 42 U.S.C. 1395y, 3246b, 4332, 4831(a), 10007–10008; E.O. 11490, 11921, and 12591.

2. Section 5.10 is amended by adding new paragraph (a)(31) to read as follows:

§ 5.10 Delegations from the Secretary, the Assistant Secretary for Health, and Public Health Service Officials.

(a) * * *

(31) Functions vested in the Secretary under the Government Patent Policy Act of 1980 as amended by the Federal Court Reorganization Act of 1984, as they pertain to the functions of the Food and Drug Administration (FDA). The delegated authorities, to be exercised in compliance with all existing rules and regulations regarding patent and invention rights and responsibilities, are restricted to the extent that 35 U.S.C. 203, as amended, may not be redelegated and that under 35 U.S.C. 207(a), the Assistant Secretary for Health is to be notified of any significant invention, patent, or license, so that the Assistant Secretary for Health may decide whether or not documentation concerning any such invention, patent, or license should be submitted to the Assistant Secretary for Health for signature. All other authorities may be redelegated to officials at the level equivalent to bureau and institute directors.

(i) Disposition of rights, 35 U.S.C. 202(c)(7), as amended: The authority to permit a nonprofit organization to assign the rights to a subject invention in the United States to organizations which do not have as one of their primary functions the management of inventions.

(ii) Disposition of rights, 35 U.S.C. 202(d), as amended: The authority to permit a contractor to grant requests for retention of rights by the inventor.

(iii) Disposition of rights, 35 U.S.C. 202(e), as amended: The authority to transfer or assign whatever rights FDA may acquire in the subject invention in any case when an agency employee is a coinventor of any invention made under a funding agreement with a nonprofit organization or small business firm. Such rights may be transferred or assigned from the FDA employee to the contractor subject to the conditions set forth in this chapter.

(iv) March-in-rights, 35 U.S.C. 203, as amended: The authority to require the contractor to grant nonexclusive, partially exclusive, or exclusive licenses to responsible applicant(s), or the authority for FDA to grant such licenses, provided such action would be in the best interest of FDA, in accordance with all provisions of this section.

(v) Preference for United States industry, 35 U.S.C. 204, as amended: The authority to waive the preference for U.S. industry requirement.

(vi) Domestic and foreign protection of federally owned inventions, 35 U.S.C. 207(a) as amended, the authority to:

(A) Apply for, obtain, and maintain patents or other forms of protection in the United States and in foreign countries on inventions in which the Federal Government owns a right, title, or interest;

(B) Grant nonexclusive, exclusive, or partially exclusive licenses under federally owned patent applications, patents, or other forms of protection obtained, royalty-free or for royalties or other consideration, and on such terms and conditions, including the grant to the licensee of the right of enforcement pursuant to the provisions of chapter 29 of title 35 as determined appropriate in the public interest;

(C) Undertake all other suitable and necessary steps to protect and administer rights to federally owned inventions on behalf of the Federal Government either directly or through contract; and

(D) Transfer custody and administration, in whole or in part, to another Federal agency, of the right, title, or interest in any federally owned invention.

(vii) Determination as to domestic rights and notice to employee of determination, 45 CFR 7.3 and 7.7, as amended, authority to:

(A) Leave title to invention in the FDA employee inventor where the Government has insufficient interest in an invention to obtain the entire domestic right, title, and interest therein; and

(B) Notify the FDA employee inventor of the determination in writing.

* * * * *

Dated: October 5, 1989.

Ronald G. Chesemore,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-27576 Filed 11-22-89; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 520

Oral Dosage Form New Animal Drugs Not Subject to Certification; Sulfadimethoxine-Ormetoprim Tablets

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Hoffman-La Roche, Inc. The NADA provides for the safe and effective use of tablets containing four concentrations of sulfadimethoxine-ormetoprim for treating skin and soft tissue infections in dogs.

EFFECTIVE DATE: November 24, 1989.

FOR FURTHER INFORMATION CONTACT: Sandra K. Woods, Center for Veterinary Medicine (HFV-114), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3420.

SUPPLEMENTARY INFORMATION: Hoffman-La Roche, Inc., Nutley, NJ 07110, filed NADA 100-929 which provides for use in dogs of Primor® (sulfadimethoxine-ormetoprim) Tablets for treating skin and soft tissue infections caused by *Staphylococcus aureus* and *Escherichia coli*. Tablets are available containing four concentrations of ormetoprim-potentiated sulfadimethoxine ranging from 120 to 1200 milligrams (mg) (e.g., 100 mg of sulfadimethoxine and 20 mg of ormetoprim). The drug is restricted to use by or on the order of a licensed veterinarian.

The NADA is approved and the regulations are amended by adding new 21 CFR 520.2220d to reflect this approval. The basis for approval is discussed in the freedom of information summary.

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 submitted to support approval of this 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.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FOR NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

New § 520.2220d is added to read as follows:

§ 520.2220d Sulfadimethoxine-ormetoprim tablets

(a) *Specifications.* Each tablet contains 120 milligrams (100 milligrams of sulfadimethoxine and 20 milligrams of ormetoprim), 240 milligrams (200 milligrams of sulfadimethoxine and 40 milligrams of ormetoprim), 600 milligrams (500 milligrams of sulfadimethoxine and 100 milligrams of ormetoprim), or 1200 milligrams (1,000 milligrams of sulfadimethoxine and 200 milligrams of ormetoprim).

(b) *Sponsor.* See No. 000004 in § 510.600(c) of this chapter.

(c) *Conditions of use*—(1) *Amount.* On the first day of treatment, administer 25 milligrams per pound (55 milligrams per kilogram) of body weight. Then follow with a daily dosage of 12.5 milligrams per pound (27.5 milligrams per kilogram) of body weight.

(2) *Indications of use.* Treatment of skin and soft tissue infections (wounds and abscesses) in dogs caused by strains of *Staphylococcus aureus* and *Escherichia coli* susceptible to ormetoprim-potentiated sulfadimethoxine.

(3) *Limitations.* Continue treatment until patient is asymptomatic for 48 hours, but do not exceed a total of 21 consecutive days. Maintain adequate water intake during the treatment period. Safety in breeding animals has not been established. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: November 15, 1989

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 89-27485 Filed 11-22-89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review

28 CFR Part 68

[A.G. Order 1377-89]

Rules of Practice and Procedure for Administrative Hearings Before Administrative Law Judges in Cases Involving Allegations of Unlawful Employment of Aliens and Unfair Immigration-Related Employment Practices

AGENCY: Executive Office for Immigration Review—Department of Justice.

ACTION: Final rule.

SUMMARY: This final rule sets forth procedures for implementation of sections 274A and 274B of the Immigration and Nationality Act (INA) as amended by the Immigration Reform and Control Act of 1986 (IRCA). 8 U.S.C. 1324a and 1324b.

Specifically, these regulations adopt as final and revise part 68 of title 28 of the Code of Federal Regulations which will provide the rules of practice and procedure in administrative hearings regarding:

(1) Allegations of unlawful hiring, recruiting or referring for a fee, for employment in the United States, of aliens knowing that such aliens are not authorized to work in the United States; or the continued employment of aliens in the United States knowing such aliens are (or have become) unauthorized to work in the United States; or failure to comply with the employment verification requirements;

(2) Allegations of unfair immigration-related employment practices; or

(3) Allegations of the unlawful imposition of any requirement that an individual post bond, security, or otherwise guarantee or indemnify

against potential liability for unlawful hiring, recruiting or referring of such individual.

EFFECTIVE DATE: November 24, 1989.

FOR FURTHER INFORMATION CONTACT: Gerald S. Hurwitz, Counsel to the Director, Executive Office for Immigration Review, Suite 1609, 5203 Leesburg Pike, Falls Church, Virginia 22041, (703) 756–6470.

SUPPLEMENTARY INFORMATION: Sections 274A and 274B of the INA require that hearings be held by Administrative Law Judges in certain cases involving allegations of knowingly hiring, recruiting or referring for a fee, for employment in the United States, unauthorized aliens; or continuing to employ aliens not authorized to work in the United States; or failure to comply with certain employment verification requirements; and in situations where unfair immigration-related employment practices are alleged. On November 24, 1987, the Department of Justice published an interim final rule to implement sections 274A and 274B of the INA. 52 FR 44972 (November 24, 1987). The interim final rule designated hearing procedures to guide in the conduct of section 274A and 274B proceedings. The interim final rule established a set of rules for all cases properly brought before the Administrative Law Judges which comply with the requirements of the INA.

The interim final rule provided for responsive pleadings with complaints lodged with the Office of the Chief Administrative Hearing Officer. Time limits were established for the various pleadings. Discretionary pre-hearing statements and conferences designed to streamline the proceedings were also provided.

A discovery process was set forth to assist the Administrative Law Judge and the parties in the development of the facts and a complete record. Consistent with the INA, the rules provided the Administrative Law Judge with subpoena power and included a provision that a subpoena may be enforced in the appropriate federal district court.

Representation by any licensed attorney in good standing was allowed in all cases. Individuals may also appear pro se. In unfair immigration-related employment cases, any person who believed that he/she had been adversely affected directly by an unfair immigration-related employment practice, or any individual or private organization authorized in writing to act on such person's behalf could petition the Administrative Law Judge to intervene or appear under certain circumstances. Intervenors as parties and amicus curiae were also permitted under certain circumstances.

The actual mechanics of the hearing were set forth. After the close of the hearing, the Administrative Law Judge was given the full authority to make appropriate awards, grant relief, and issue other appropriate orders as provided by statute.

In cases involving knowingly hiring, recruiting or referring for a fee, for employment in the United States, of aliens not authorized to work in the United States, and failure to comply with employment verification requirements and prohibition of indemnity bond cases, the Administrative Law Judge's decision was subject to review by the Chief Administrative Hearing Officer. This official had the authority to vacate or modify the decision, but had no review authority over other immigration-related matters. Thereafter, judicial review was available. Failure to request that the Chief Administrative Hearing Officer review a decision by the Administrative Law Judge did not prevent a party from seeking judicial review. In cases involving unfair immigration-related employment practices, only judicial review was available. Recourse to the Chief Administrative Hearing Officer was not available.

Although not required under the Administrative Procedures Act for the promulgation of rules of agency procedure or practice, the Executive Office of Immigration Review published the interim final rule with a request for comments. 52 FR 44973 (November 24, 1987). The comment period ended on December 24, 1987. A total of three comments were received and considered in preparing this final rule. Changes were made in this final rule based on consideration of the comments received and experience gained by the agency in implementing the hearing procedures. What follows is a section-by-section analysis of the final revisions to the interim final rule and a discussion of comments concerning the sections to which they apply.

Section 68.1 briefly sets out the scope of the rules of practice and is revised to state that the Federal Rules of Civil Procedure shall be used as general guidelines in any situation not otherwise provided for by these rules, or by any statute, executive order, or regulation. The interim final rule stated that the Federal Rules of Civil Procedure shall be used in such situations. This provision was changed to give the Administrative Law Judge flexibility in applying the appropriate procedure in a hearing or proceeding. While the Federal Rules of Civil Procedure are the general guidelines to be followed, this section recognizes that there may be situations in which it would be more appropriate for another standard to be applied. In particular, such standards would apply if it would be less expensive for the parties expedite the matter, and meet the ends of justice without prejudicing any party.

Section 68.2 subsection (d) was revised to include an Acting Chief Administrative Hearing Officer in the definition of the Chief Administrative Hearing Officer. Language repeating the administrative review authority of such officials under § 63.51 was removed from subsection (d) as surplusage.

Section 68.2 subsection (m) was revised to remove requests for discovery from the definition of a pleading. Consistent with this revision, §§ 68.17 through 68.19 of the final rule are also revised. The purpose of these revisions is to remove the administrative burden which resulted from the interim requirement of filing discovery requests and responses with the court. Finally, this section was revised to allow a party to submit a pleading to the Chief Administrative Hearing Officer before a case is assigned to an Administrative Law Judge.

Section 68.3 was revised and reorganized. Under the final rules this provision applies only to service of documents by the Chief Administrative Hearing Officer or the Administrative Law Judge assigned to the case. Section 68.4 was revised and now deals with notice of date, time, and place of hearing. Section 68.5 covers service and filing of documents by parties. Such procedures were previously included in interim final rule § 68.3. The revisions change the sequence of the rules and they will be renumbered accordingly.

Section 68.6 governs the form of pleadings and documents. The revisions require complaints to contain a more complete statement of facts and law. Complainants are also required to attach certain administrative records to the complaint to allow the Office of the Chief Administrative Hearing Officer to confirm proper jurisdiction. The final rule aids respondents in preparing answers to complaints by reducing the need for filing a motion for a more definite statement.

Section 68.7 provides rules for time computations and allows a party, served by mail, an additional five days beyond the prescribed period to file a response. This section was revised and no longer adds five days to the prescribed filing period when a party files a pleading by

mail. This revision is consistent with the Administrative Procedure Act and the Federal Rules of Civil Procedure.

Regarding § 68.8(c), concern was expressed by a commenter that requiring a respondent to answer each allegation of the complaint was duplicative and burdensome because 8 CFR 274a.9(d) requires a respondent to answer each allegation in the Notice to Fine. Section 274a.9(d) of 8 CFR has been revised and an answer to the allegations in the Notice to Fine is not mandatory. Since this is a more formal proceeding a detailed answer is necessary. Consequently, § 68.8(c) is not revised.

Section 68.9 deals with motions and requests and is revised to clarify the Chief Administrative Hearing Officer's authority to act on non-adjudicatory matters prior to the appointment of an Administrative Law Judge. The title of subsection (b) "[a]nswers to motions," was changed to "[r]esponses to motions." The term responses is more accurate than the term answers, which could be confused with answers to complaints.

Section 68.12 deals with the form and submission of consent findings or dismissals. This section was previously entitled Consent order or settlement. The title of this section was changed to clarify that the section deals with consent findings and dismissals. In addition, this section was reorganized for further clarification. Subsection: (a) Dealing with deferments of proceedings was deleted as surplusage in view of the general powers of the Administrative Law Judge under § 68.26(a) and the Administrative Procedure Act. A change was made to correct a technical deficiency by referring to an order submitted by the parties as a proposed order. A further change was made in subsection (c) to provide for "decision and order" rather than just "order." This change was made for administrative efficiency so that the Administrative Law Judge does not have to rewrite the submission. Finally, this section was revised to provide that dismissal of an action by consent of the parties is subject to the Administrative Law Judge's approval.

Section 68.13 was revised by removing the regulatory provision granting the Special Counsel the right to intervene at any time in section 274B proceedings. Section 68.13 now provides that Special Counsel, like interested private persons or organizations, may intervene at the Administrative Law Judge's discretion. This revision was made because the statute does not expressly provide for intervention as a matter of right by the Special Counsel.

Section 68.16 governs the scope of discovery and provides for orders to protect a party from annoyance, harassment, embarrassment, oppression, undue burden or expense. A commenter suggested that the regulations be revised to impose a requirement limiting the number of interrogatories and other discovery requests. Section 68.16 has been revised to clarify the Administrative Law Judge's authority to limit the frequency or extent of the discovery methods upon his/her initiative or upon motion by a party. In addition, a party may move for a protective order under this section. Section 68.16 has also been revised to remove a provision allowing certain discovery stipulations.

Sections 68.17, 68.18, and 68.19, which deal with written interrogatories, requests for production of documents, things, inspection of land, and admissions, were revised to eliminate the unnecessary burden and expense of filing such documents and answers thereto with the Administrative Law Judge.

One commenter expressed concern about the costs associated with adjudication of section 274A of the INA recordkeeping violations. Specifically, concerns were expressed about costs incurred regarding: (1) Answering each allegation of the complaint; (2) pleading facts supporting affirmative defenses; (3) responding to a variety of discovery requests; (4) responding to any motions or subpoenas arising from the discovery process; (5) responding to any motions for summary decision; and (6) hearing and participating at the formal hearing. It was suggested that the procedures for adjudication of section 274A recordkeeping and indemnity bond violations be "streamlined." After careful consideration, it was determined that the final rules will not reflect "different" procedures for recordkeeping and indemnity bond cases than for other section 274A cases. These rules were promulgated primarily for the purpose of establishing an equitable and orderly procedure for conducting a hearing or proceeding under sections 274A and 274B of the INA. Accordingly, certain costs associated with adhering to the rules of practice are unavoidable. Moreover, § 68.16 provides the parties with protective remedies in the event discovery becomes unduly burdensome or expensive.

A commenter suggested that discovery be governed by Rule 16 of the Federal Rules of Criminal Procedure in section 274A cases where the government is prosecuting the respondent in collateral criminal proceedings (and where the respondent asserts a potential for criminal prosecution arising from the same facts alleged in the civil complaint). Since proceedings under section 274A are civil in nature, the existing discovery rules patterned after the Federal Rules of Civil Procedure are both appropriate and efficient. The rules provide for an exchange of information not otherwise available and thereby make for a fairer proceeding. Where there has been a criminal investigation reasonably likely to result in a prosecution or when a prosecution is imminent, a section 274A respondent is afforded protections similar to those available in a civil proceeding in a United States district court. Most importantly, there is nothing novel or extraordinary about the juxtaposition of civil and criminal liability arising out of identical circumstances. Vulnerability of respondents in civil proceedings to criminal prosecution has existed under the jurisdiction of many Federal agencies for a considerable number of years. Any problem in this respect is best treated on a case-by-case basis.

It was also suggested that in cases where the proposed fine is $10,000 or less, and the respondent qualifies as a small employer within the meaning of the Equal Access to Justice Act, that no pre-trial discovery be allowed. The Administrative Conference of the United States (ACUS) in recommending that agencies provide for prehearing discovery in adjudicatory proceedings stated that discovery "insures that the parties to the proceeding have access to all relevant, unprivileged information prior to hearing." 1 CFR 305.70–4. The ACUS noted that the primary objectives of discovery include a more expeditious hearing, the encouragement of settlement between the parties, and greater fairness in adjudication. *Id.* An exception to the discovery rules for small employers is contrary to such objectives and will not be created. Moreover, an exception is unnecessary because under section 68.16 any party may seek a protective order from the Administrative Law Judge if discovery becomes oppressive.

Section 68.20(c) dealing with taking and receiving depositions in evidence is revised to allow witnesses to waive signature of depositions. This is a common practice and this revision is included for the convenience of the witness and his/her attorney.

Section 68.23, which deals with subpoenas, is revised to clarify the Administrative Law Judges' statutory power to issue subpoenas for investigatory purposes prior to and subsequent to the filing of a complaint.

We note that the Administrative Law Judges' authority to issue subpoenas under § 68.23 and section 274A(e) of the INA does not restrict the Immigration and Naturalization Service's concurrent authority to issue subpoenas pursuant to section 235 of the INA.

Section 68.25 deals with continuances and subsection (c) is revised to make the timeframes for filing a continuance consistent with the timeframe set forth in subsection (b).

Section 68.31, which deals with appearances and representation, was revised and reorganized for clarification purposes.

Section 68.32 states that the Office of the Chief Administrative Hearing Officer does not have the authority to appoint legal counsel. The interim final rules stated that such office did not have the authority to appoint counsel or refer parties to counsel. One commenter expressed concern that a prohibition from providing parties with referrals to lawyers was unduly broad because it would apply not only to employer sanctions cases but to hearings regarding individuals who allege unfair immigration-related employment practices. It was suggested that the provision be revised to include referrals to legal services programs to individuals who allege unfair immigration-related employment practices. Section 68.32 has been revised, and the prohibition regarding referrals to lawyers has been removed. Section 68.32 of the final rules will not include a requirement that parties be provided with referrals to lawyers.

Section 68.46 deals with the record of hearings and was revised to establish the length of time permitted for filing corrections of the original transcript. In addition, this provision was revised to eliminate the requirement of a written record in cases which are terminated by consent or settlement order. The revision removes the unnecessary administrative burden of retaining the record in cases terminated by the parties.

Section 68.51 was revised to remove language requiring that upon issuance of a final order by an Administrative Law Judge in a section 274A case, a copy of the decision and the record of proceeding be forwarded to the Chief Administrative Hearing Officer for such review as he/she deems appropriate. This section was revised to improve administrative efficiency. The final rule retains the procedure whereby a party may request review of an Administrative Law Judge's decision within five days of the date of decision.

One commenter suggested that review by the Chief Administrative Hearing Officer does not adequately insure independent and impartial review of Administrative Law Judges' orders because such official's responsibility for supervision of Administrative Law Judges will increase the probability of bias or prejudice in favor of Administrative Law Judges' orders. It was suggested that final administrative review of Administrative Law Judges' final orders be assigned to an individual or panel with no review authority over immigration-related matters and no responsibility for the supervision of Administrative Law Judges. The commenter's suggestions were carefully reviewed, but rejected because there is no indication that general supervision of Administrative Law Judges has created bias or prejudice in favor of the Administrative Law Judges' orders. Concern was also expressed that these rules make administrative review of orders unlikely because review is conducted only at the discretion of the Chief Administrative Hearing Officer and only if that individual acts within 30 days. The Immigration Reform and Control Act of 1986 mandates that the administrative review be completed within 30 days of the date of decision. Thus, the 30-day period cannot be extended by regulatory revision. It was suggested that the rules be revised to make administrative review mandatory in section 274A cases. The Immigration Reform and Control Act of 1986 clearly does not provide for mandatory administrative review in section 274A cases.

Section 68.52 deals with the filing of the official record and removes the interim final rules requirement that the Chief Administrative Hearing Officer certify and file the record. This revision was made in order to improve administrative efficiency.

A commenter suggested that the final regulations include a provision providing interpreters for non-English speaking parties in section 274B hearings. The commenter further suggested that interpreters be provided at the Government's expense to indigent section 274B complainants. There is no statutory requirement to provide interpreters at section 274B hearings and such a generally applicable requirement would unduly burden the Government.

This is not a major rule within the meaning of Executive Order No. 12291. In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule will not have a signficant economic impact on a substantial number of small entities because it is procedural in nature.

List of Subjects in 28 CFR Part 68

Administrative practice and procedure, Aliens, Citizenship and naturalization, Civil rights, Discrimination in employment, Employment, Equal employment opportunity, Immigration, Nationality, Non-Discrimination.

Accordingly, part 68 is revised as follows:

PART 68—RULES OF PRACTICE AND PROCEDURE FOR ADMINISTRATIVE HEARINGS BEFORE ADMINISTRATIVE LAW JUDGES IN CASES INVOLVING ALLEGATIONS OF UNLAWFUL EMPLOYMENT OF ALIENS AND UNFAIR IMMIGRATION-RELATED EMPLOYMENT PRACTICES

Sec.

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68.21 Motion to compel response to discovery; sanctions.
68.22 Use of depositions at hearings.
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68.26 Authority of Administrative Law Judge.
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68.31 Appearances and representation.
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Sec.
68.44 Authenticity.
68.45 Stipulations.
68.46 Record of hearings.
68.47 Closing the record.
68.48 Receipt of documents after hearing.
68.49 Restricted access.
68.50 Decision and order of the Administrative Law Judge.
68.51 Administrative and judicial review.
68.52 Filing of the official record.

Authority: 5 U.S.C. 301; 5 U.S.C. 554; 8 U.S.C. 1103; 8 U.S.C. 1324 a and b.

§ 68.1 Scope of rules.

These rules of practice are generally applicable to adjudicatory proceedings before Administrative Law Judges of the Executive Office of Immigration Review, United States Department of Justice, with regard to unlawful employment cases and unfair immigration-related employment practice cases under sections 274A and 274B of the INA. Such proceedings shall be conducted expeditiously and the parties shall make every effort at each stage of a proceeding to avoid delay. To the extent that these rules may be inconsistent with a rule of special application as provided by statute, executive order, or regulation, the latter is controlling. The Rules of Civil Procedure for the District Courts of the United States shall be used as a general guideline in any situation not provided for or controlled by these rules, or by any statute, executive order, or regulation.

§ 68.2 Definitions.

For purposes of these rules:

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

(b) *"Administrative Law Judge"* means an Administrative Law Judge appointed pursuant to the provisions of 5 U.S.C. 3105;

(c) *"Administrative Procedure Act"* means those provisions of the Administrative Procedure Act, as codified, which are contained in 5 U.S.C. 551 through 559;

(d) *"Chief Administrative Hearing Officer,"* or an official who has been designated to act as the Chief Administrative Hearing Officer, is the official who, under the direction of the Director, Executive Office for Immigration Review, generally administers the Administrative Law Judge program, and exercises administrative supervision over Administrative Law Judges and others assigned to the Office of the Chief Administrative Hearing Officer;

(e) *"Commencement of Proceeding"* is the filing of a complaint with the Office of the Chief Administrative Hearing Officer;

(f) *"Complainant"* means the Immigration and Naturalization Service in cases arising under section 274A of the INA. In cases arising under section 274B of the INA, "complainant" means the Special Counsel (as defined in § 68.2(o)), and also includes the person or entity who has filed a charge with the Special Counsel, or, in private actions, an individual or private organization;

(g) *"Complaint"* means the formal document initiating proceedings;

(h) *"Consent order"* means any written document containing a specified remedy or other relief agreed to by all parties and entered as an Order by the Administrative Law Judge;

(i) *"Hearing"* means that part of a proceeding which involves the submission of evidence, either by oral presentation or written submission;

(j) *"Motion"* means an oral or written request, made by a person a party, for some action by an Administrative Law Judge;

(k) *"Order"* means the whole or any part of a final procedural or substantive disposition of a matter by the Administrative Law Judge;

(l) *"Party"* includes all persons or entities named or admitted as a complainant, respondent, or intervenor in a proceeding;

(m) *"Pleading"* means the complaint, motions, the answer thereto, any supplement or amendment thereto, and reply that may be permitted to any answer, supplement or amendment submitted to the Administrative Law Judge or when no judge is assigned the Chief Administrative Hearing Officer;

(n) *"Respondent"* means a party to an adjudicatory proceeding against whom findings may be made or who may be required to provide relief or take remedial action;

(o) *"Special Counsel"* means the Special Counsel for Immigration-Related Unfair Employment Practices appointed by the President under section 274B of the INA, or his or her designee;

(p) *"Unlawful employment cases"* means cases involving knowingly hiring, recruiting or referring for a fee, or continued employment of certain aliens and cases involving failure to comply with verification requirements in violation of section 274A of the INA;

(q) *"Unfair immigration-related employment practice cases"* means cases involving discrimination against any individual (other than an unauthorized alien) with respect to the hiring, or recruitment or referral for a fee, of the individual for employment, or the discharging of the individual from employment:

(1) Because of such individual's national origin, or

(2) In the case of a citizen or intending citizen, because of the individual's citizenship status, in violation of section 274B of the INA.

(r) *"Prohibition of indemnity bond cases"* means cases where a person or entity unlawfully requires, as a condition to the hiring, recruiting or referring (for a fee) of an individual for employment in the United States, that the individual post a bond or otherwise provide a financial guarantee or indemnify for potential liability as a result of the hiring, recruiting, or referring of the individual.

§ 68.3 Service of complaint, notice of hearing, written orders and decisions.

Service of complaint, notice of hearing, written orders and decisions shall be made by the Office of the Chief Administrative Hearing Officer or the Administrative Law Judge to whom the case is assigned either:

(a) By delivering a copy to the individual party, partner of a party, officer of a corporate party, registered agent for service of process of a corporate party, or attorney of record of a party; or

(b) By leaving a copy at the principal office, place of business, or residence of a party; or

(c) By mailing to the last known address of such individual, partner, officer, or attorney.

(d) Service of complaint and notice of hearing is complete upon receipt by addressee.

§ 68.4 Notice of date, time, and place of hearing.

(a) *Generally.* The Administrative Law Judge to whom the case is assigned shall notify the parties of a date, time, and place set for hearing thereon or for a prehearing conference, or both within thirty (30) days of receipt of respondent's answer to the complaint.

(b) *Place of hearing.* Due regard shall be given to the convenience of the parties and the witnesses in selecting a place for the hearing. In this regard, section 274A of the INA requires that hearings in unlawful employment cases be held at the nearest practicable place to the place where the person or entity resides or to the place where the alleged violation occurred.

§ 68.5 Service and filing of documents.

(a) *Generally.* An original and four copies of the complaint shall be filed with the Office of the Chief Administrative Hearing Officer. An original and two copies of all other pleadings, including any attachments, shall be filed with the Office of the Chief Administrative Hearing Officer by the

parties presenting the pleadings until an Administrative Law Judge is assigned to a case. Thereafter, all pleadings shall be delivered or mailed for filing to the Administrative Law Judge assigned to the case, and shall be accompanied by a certification indicating service to all parties of record. When a party is represented by an attorney, service shall be made upon the attorney. Service of any document upon any party may be made by personal delivery or by mailing a copy to the last known address. The person serving the document shall certify to the manner and date of service.

(b) The parties shall not file requests for discovery, answers or responses thereto with the Administrative Law Judge; however, the Administrative Law Judge may, upon motion of a party or on his/her own initiative, order that such requests for discovery, answers or responses thereto be filed.

§ 68.6 Form of pleadings.

(a) Every pleading shall contain a caption setting forth the statutory provision under which the proceeding is instituted, the title of the proceeding, the docket number assigned by the Office of the Chief Administrative Hearing Officer, the names of all parties (or after the complaint, at least the first party named as a complainant or respondent), and a designation of the type of pleading (e.g., complaint, motion to dismiss, etc.). The pleading shall be signed and shall contain the address and telephone number of the party or person representing the party. The pleading shall be on standard size (8 ½×11) paper and should also be typewritten when possible.

(b) A complaint filed pursuant to section 274A or section 274B of the INA shall contain the following:

(1) A clear and concise statement of facts, upon which an assertion of jurisdiction is predicated;

(2) The names and addresses of the respondents, agents and/or their representatives who have been alleged to have committed the violation;

(3) The alleged violations of law, with a clear and concise statement of facts for each violation alleged to have occurred; and,

(4) A short statement containing the remedies and/or sanctions sought to be imposed against the respondent.

(5) Complainants in cases arising under section 274A of the INA shall attach to the complaint a copy of the Notice of Intent to Fine and Request for Hearing. Complainants in cases arising under section 274B of the INA shall attach to the complaint a copy of the charge filed with Special Counsel pursuant to section 274B(b)(1) and a copy of the Special Counsel's letter of determination regarding the charges.

(c) Illegible documents, whether handwritten, typewritten, photocopied, or otherwise, will not be accepted. Papers may be reproduced by any duplicating process, provided all copies are clear and legible.

(d) All documents presented by a party in a proceeding must be in the English language or, if in a foreign language, accompanied by a certified translation.

§ 68.7 Time computations.

(a) *Generally.* In computing any period of time under these rules or in an order issued hereunder, the time begins with the day following the act, event, or default, and includes the last day of the period unless it is Saturday, Sunday, or legal holiday observed by the Federal Government in which case the time period includes the next business day. When the period of time prescribed is seven (7) days or less, intermediate Saturdays, Sundays, and holidays shall be excluded in the computation.

(b) Computation of time for filing by mail. Pleadings are not deemed filed until received by the Office of the Chief Administrative Hearing Officer or Administrative Law Judge assigned to the case.

(c) Computation of time for service by mail.

(1) Service of all pleadings other than complaints is deemed effective at the time of mailing; and

(2) Whenever a party has the right or is required to take some action within a prescribed period after the service of a pleading, notice, or other document upon said party, and the pleading, notice, or document is served upon said party by mail, five (5) days shall be added to the prescribed period.

§ 68.8 Responsive pleadings—answer.

(a) *Time for answer.* Within thirty (30) days after the service of a complaint, each respondent shall file an answer.

(b) *Default.* Failure of the respondent to file an answer within the time provided shall be deemed to constitute a waiver of his/her right to appear and contest the allegations of the complaint. The Administrative Law Judge may enter a judgment by default.

(c) *Answer.* Any respondent contesting any material fact alleged in a complaint, or contending that the amount of a proposed penalty or award is excessive or inappropriate, or contending that he/she is entitled to judgment as a matter of law, shall file an answer in writing. The answer shall include:

(1) A statement that the respondent admits, denies, or does not have and is unable to obtain sufficient information to admit or deny each allegation; a statement of lack of information shall have the effect of a denial; any allegation not expressly denied shall be deemed to be admitted; and

(2) A statement of the facts supporting each affirmative defense.

(d) Complainants may file a reply responding to each affirmative defense asserted.

(e) *Amendments and supplemental pleadings.* If and whenever a determination of a controversy on the merits will be facilitated thereby, the Administrative Law Judge may, upon such conditions as are necessary to avoid prejudicing the public interest and the rights of the parties, allow appropriate amendments to complaints and other pleadings at any time prior to the issuance of the Administrative Law Judge's final order based on the complaint. When issues not raised by the pleadings are reasonably within the scope of the original complaint and are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings, and such amendments may be made as necessary to make the pleading conform to the evidence. The Administrative Law Judge may, upon reasonable notice and such terms as are just, permit supplemental pleadings setting forth transactions, occurrences, or events which have happened or new law promulgated since the date of the pleadings and which are relevant to any of the issues involved.

§ 68.9 Motions and requests.

(a) *Generally.* The Chief Administrative Hearing Officer is authorized to act on non-adjudicatory matters relating to a proceeding prior to the appointment of an Administrative Law Judge. After the complaint is referred to an Administrative Law Judge, any application for an order or any other request shall be made by motion which shall be made in writing unless the Administrative Law Judge in the course of an oral hearing consents to accept such motion orally. The motion or request shall state with particularity the grounds therefor, and shall set forth the relief or order sought. Motions or requests made during the course of any oral hearing or appearance before an Administrative Law Judge shall be stated orally and made part of the transcript. Whether a motion is made orally or in writing, all parties shall be given reasonable opportunity to respond or to object to the motion or request.

(b) *Responses to motions.* Within ten (10) days after a written motion is served, or within such other period as the Administrative Law Judge may fix, any party to the proceeding may file a response in support of, or in opposition to, the motion, accompanied by such affidavits or other evidence upon which he/she desires to rely. Unless the Administrative Law Judge provides otherwise, no reply to a response, counter-response to a reply, or any further responsive document shall be filed.

(c) *Oral arguments or briefs.* No oral argument will be heard on motions unless the Administrative Law Judge otherwise directs. Written memoranda or briefs may be filed with motions or answers to motions, stating the points and authorities relied upon in support of the position taken.

§ 68.10 Prehearing statements.

(a) At any time prior to the commencement of the hearing, the Administrative Law Judge may order any party to file a prehearing statement of position.

(b) A prehearing statement shall state the name of the party or parties on whose behalf it is presented and shall briefly set forth the following matters, unless otherwise ordered by the Administrative Law Judge:

(1) Issues involved in the proceedings;

(2) Facts stipulated to together with a statement that the party or parties have communicated or conferred in a good faith effort to reach stipulation to the fullest extent possible;

(3) Facts in dispute;

(4) Witnesses, except to the extent that disclosure would be privileged, and exhibits by which disputed facts will be litigated;

(5) A brief statement of applicable law;

(6) The conclusions to be drawn;

(7) The estimated time required for presentation of the party's or parties' case; and

(8) Any appropriate comments, suggestions, or information which might assist the parties or the Administrative Law Judge in preparing for the hearing or otherwise aid in the disposition of the proceeding.

§ 68.11 Conferences.

(1) *Purpose and scope.* (1) Upon motion of a party or in the Administrative Law Judge's discretion, the judge may direct the parties or their counsel to participate in a prehearing conference at any reasonable time prior to the hearing, or in a conference during the course of the hearing, when the Administrative Law Judge finds that the proceeding would be expedited by such a conference. Prehearing conferences normally shall be conducted by conference telephonic communication unless, in the opinion of the Administrative Law Judge, such method would be impractical, or when such conferences can be conducted in a more expeditious or effective manner by correspondence or personal appearance. Reasonable notice of the time, place, and manner of the prehearing conference shall be given.

(2) At the conference, the following matters may be considered:

(i) The simplification of issues;

(ii) The necessity of amendments to pleadings;

(iii) The possibility of obtaining stipulations of facts and of the authenticity, accuracy, and admissibility of documents, which will avoid unnecessary proof;

(iv) The limitations on the number of expert or other witnesses;

(v) Negotiation, compromise, or settlement of issues;

(vi) The exchange of copies of proposed exhibits;

(vii) The identification of documents or matters of which official notice may be requested;

(viii) A schedule to be followed by the parties for completion of the actions decided at the conference; and

(ix) Such other matters, including the disposition of pending motions, as may expedite and aid in the disposition of the proceeding.

(b) *Reporting.* A verbatim record of the conference will not be kept unless directed by the Administrative Law Judge.

(c) *Order.* Actions taken as a result of a conference shall be reduced to a written order, unless the Administrative Law Judge concludes that a stenographic report shall suffice, or, if the conference takes place within seven (7) days of the beginning of the hearing, the Administrative Law Judge elects to make a statement on the record at the hearing summarizing the actions taken.

§ 68.12 Consent findings or dismissal.

(a) *Submission.* The parties or their authorized representatives or their counsel may:

(1) Submit a proposed agreement containing consent findings and a proposed decision and order for consideration by the Administrative Law Judge; or

(2) Notify the Administrative Law Judge that the parties have reached a full settlement and have agreed to dismissal of the action. Dismissal of the action shall be subject to the approval of the Administrative Law Judge.

(b) *Content.* Any agreement containing consent findings and a proposed decision and order disposing of a proceeding or any part thereof shall also provide:

(1) That the decision and order based on consent findings shall have the same force and effect as a decision and order made after full hearing;

(2) That the entire record on which any decision and order may be based shall consist solely of the complaint, notice of hearing, and any other such pleadings and documents as the Administrative Law Judge shall specify;

(3) A waiver of any further procedural steps before the Administrative Law Judge; and

(4) A waiver of any right to challenge or contest the validity of the decision and order entered into in accordance with the agreement.

(c) *Disposition.* In the event an agreement containing consent findings and a proposed decision and order is submitted, the Administrative Law Judge, within thirty (30) days or as soon as practicable thereafter, may, if satisfied with its timeliness, form, and substance, accept such agreement by issuing a decision and order based upon the agreed findings. In his or her discretion, the Administrative Law Judge may conduct a hearing to determine the fairness of the agreement, consent findings, and proposed decision and order.

§ 68.13 Intervenor in unfair immigration-related employment cases.

The Special Counsel, or any interested person or private organization, other than an officer of the Immigration and Naturalization Service, may petition to intervene as a party in unfair immigration-related employment cases. The Administrative Law Judge may, in his or her discretion, grant such a petition, if, in his or her opinion, the petitioner has a legitimate interest in the proceedings and the participation will not unduly delay the outcome and is likely to contribute materially to the proper disposition of the proceedings.

§ 68.14 Consolidation of hearings.

When two or more hearings are to be held, and the same or substantially similar evidence is relevant and material to the matters at issue at each such hearing, the Administrative Law Judge assigned may, upon motion by any party, or on his or her own motion, order that a consolidated hearing be conducted. Where consolidated hearings are held, a single record of the proceedings may be made and the evidence introduced in one matter may

be considered as introduced in the others, and a separate or joint decision shall be made at the discretion of the Administrative Law Judge.

§ 68.15 Amicus curiae.

A brief of an amicus curiae may be filed by leave of the Administrative Law Judge upon motion or petition of the amicus curiae. The amicus curiae shall not participate in any way in the conduct of the hearing, including the presentation of evidence and the examination of witnesses.

§ 68.16 Discovery—general provisions.

(a) *General.* Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things, or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admissions. The frequency or extent of these methods may be limited by the Administrative Law Judge upon his/her own initiative or pursuant to a motion under subdivision (c).

(b) *Scope of discovery.* Unless otherwise limited by order of the Administrative Law Judge in accordance with these rules, the parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the proceeding, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things, and the identity and location of persons having knowledge of any discoverable matter.

(c) *Protective orders.* Upon motion by a party or the person from whom discovery is sought, and for good cause shown, the Administrative Law Judge may make any order which justice requires to protect a party or person from annoyance, harassment, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) The discovery not be had;

(2) The discovery may be had only on specified terms and conditions, including a designation of the time, amount, duration, or place;

(3) The discovery may be had only by a method of discovery other than that selected by the party seeking discovery; or

(4) Certain matters not relevant may not be inquired into, or that the scope of discovery be limited to certain matters.

(d) *Supplementation of responses.* A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement his/her response to include information thereafter acquired, except as follows:

(1) A party is under a duty to supplement timely his/her response with respect to any question directly addressed to:

(i) The identity and location of persons having knowledge of discoverable matters; and

(ii) The identity of each person expected to be called as an expert witness at the hearing, the subject matter on which he/she is expected to testify, and the substance of his/her testimony.

(2) A party is under a duty to amend timely a prior response if he/she later obtains information upon the basis of which:

(i) He/she knows the response was incorrect when made; or

(ii) He/she knows that the response, though correct when made, is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(3) A duty to supplement responses may be imposed by order of the Administrative Law Judge upon motion of a party or agreement of the parties.

§ 68.17 Written interrogatories to parties.

(a) Any party may serve upon any other party written interrogatories to be answered in writing by the party served, or if the party served is a public or private corporation or a partnership or association or governmental agency, by any authorized officer or agent, who shall furnish such information as is available to the party. A copy of the interrogatories shall be served on all parties to the proceeding.

(b) Each interrogatory shall be answered separately and fully in writing under oath or affirmation, unless it is objected to, in which event the reasons of objection shall be stated in lieu of an answer. The answers and objections shall be signed by the person making them. The party upon whom the interrogatories were served shall serve a copy of the answer or objections upon all parties to the proceeding within thirty (30) days after service of the interrogatories, or within such shorter or longer period as the Administrative Law Judge upon motion may allow.

(c) An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the Administrative Law Judge may upon motion order that such an interrogatory need not be answered until after designated discovery has been completed or until a prehearing conference or other later time.

(d) A person or entity upon whom interrogatories are served may respond by the submission of business records, indicating to which interrogatory the documents respond, if they are sufficient to answer said interrogatories.

§ 68.18 Production of documents, things, and inspection of land.

(a) Any party may serve on any other party a request to:

(1) Produce and permit the party making the request, or a person acting on his/her behalf, to inspect and copy any designated documents or things or to inspect land, in the possession, custody, or control of the party upon whom the request is served; and

(2) Permit the party making the request, or a person acting on his/her behalf, to enter the premises of the party upon whom the request is served to accomplish the purposes stated in paragraph (1) of this section.

(b) The request may be served on any party without leave of the Administrative Law Judge.

(c) The request shall:

(1) Set forth the items to be inspected either by individual item or by category;

(2) Describe each item or category with reasonable particularity; and

(3) Specify a reasonable time, place, and manner of making the inspection and performing the related acts.

(d) The party upon whom the request is served shall serve on the party submitting the request a written response within thirty (30) days after service of the request.

(e) The response shall state, with respect to each item or category:

(1) That inspection and related activities will be permitted as requested; or

(2) That objection is made in whole or in part, in which case the reasons for objection shall be stated.

(f) A copy of each request for production and each written response shall be served on all parties.

§ 68.19 Admissions.

(a) A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the genuineness and authenticity of any relevant document described in or attached to the request, or for the admission of the truth of any specified relevant matter of fact.

(b) Each matter of which an admission is requested is admitted unless, within thirty (30) days after service of the request or such shorter or longer time as the Administrative Law Judge may

allow, the party to whom the request is directed serves on the requesting party:

(1) A written statement denying specifically the relevant matters of which an admission is requested;

(2) A written statement setting forth in detail the reasons why he/she can neither truthfully admit nor deny them; or

(3) Written objections on the ground that some or all of the matters involved are privileged or irrelevant or that the request is otherwise improper in whole or in part.

(c) An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the party states that he/she has made reasonable inquiry and that the information known or readily obtainable by him/her is insufficient to enable the party to admit or deny.

(d) Any matter admitted under this section is conclusively established unless the Administrative Law Judge upon motion permits withdrawal or amendment of the admission.

(e) A copy of each request for admission and each written response shall be served on all parties.

§ 68.20 Depositions.

(a) *When, how and by whom taken.* Depositions may be taken by oral examination or upon written interrogatories before any person having power to administer oaths. All costs involved with the taking of depositions, including the cost of a certified court reporter and the original transcripts, shall be paid by the party seeking the despositions.

(b) *Notice.* Any party desiring to take the deposition of a witness shall give notice in writing to the witness and all other parties of the time and place of the deposition, and the name and address of each witness. If documents are requested, the notice shall include a written request for the production of documents. Not less than ten (10) days written notice shall be given when the deposition is to be taken within the continental United States, and not less than twenty (20) days written notice shall be given when the deposition is to be taken elsewhere, unless otherwise permitted by the Administrative Law Judge or agreed to by the parties.

(c) *Taking and receiving in evidence.* Each witness testifying upon deposition shall testify under oath and any other party shall have the right to cross-examine. The questions propounded and the answers thereto, together with all objections made, shall be reduced to writing, certified by the person administering the oath, read by or to, and subscribed by the witness unless the witness and the parties by stipulation waive such signature.

(d) *Motion to terminate or limit examination.* During the taking of a deposition, a party or deponent may request suspension of the deposition on grounds of bad faith in the conduct of the examination, oppression of a deponent or party or improper questions propounded. The deposition will then be adjourned. However, the objecting party or deponent must immediately move the Administrative Law Judge for a ruling on his/her objections to the deposition conduct or proceedings.

§ 68.21 Motion to compel response to discovery; sanctions.

(a) If a deponent fails to answer a question propounded, or a party upon whom a discovery request is made pursuant to §§ 68.16 through 68.20, fails to respond adequately or objects to the request or to any part thereof, or fails to permit inspection as requested, the discovering party may move the Administrative Law Judge for an order compelling a response or inspection in accordance with the request. Likewise, a party who has taken a deposition or has requested admissions or has served interrogatories may move to determine the sufficiency of the answers or objections thereto. Unless the objecting party sustains his/her burden of showing that the objection is justified, the Administrative Law Judge may order that an answer be served. If the Administrative Law Judge determines that an answer does not comply with the requirements of these rules, he/she may order either that the matter is admitted or that an amended answer be served.

(b) The motion shall set forth:

(1) The nature of the questions or request;

(2) The response or objections of the party upon whom the request was served; and

(3) Arguments in support of the motion.

(c) If a party or an officer or agent of a party fails to comply with an order, including, but not limited to, an order for the taking of a deposition, the production of documents, or the answering of interrogatories, or responding to request for admissions, or any other order of the Administrative Law Judge, the Administrative Law Judge, for the purposes of permitting resolution of the relevent issues and disposition of the proceeding without unnecessary delay despite such failure, may take such action in regard thereto as is just, including but not limited to the following:

(1) Infer and conclude that the admissions, testimony, documents, or other evidence would have been adverse to the non-complying party;

(2) Rule that for the purposes of the proceeding the matter or matters concerning which the order was issued be taken as established adversely to the non-complying party;

(3) Rule that the non-complying party may not introduce into evidence or otherwise rely upon testimony by such party, officer or agent, or the documents or other evidence, in support of or in opposition to any claim or defense;

(4) Rule that the non-complying party may not be heard to object to introduction and use of secondary evidence to show what the withheld admission, testimony, documents, or other evidence should have been shown;

(5) Rule that a pleading, or part of a pleading, or a motion or other submission by the non-complying party, concerning which the order was issued, be stricken, or that a decision of the proceeding be rendered against the non-complying party, or both;

(6) In the case of failure to comply with a subpoena, the Administrative Law Judge may also take the action provided in § 68.23(e); and

(7) In ruling on a motion made pursuant to this section, the Administrative Law Judge may make and enter a protective order such as he/she is authorized to enter on a motion made pursuant to § 68.40.

§ 68.22 Use of depositions at hearings.

(a) *Generally.* At the hearing, any part or all of a deposition, so far as admissible, may be used against any party who was present or represented at the taking of the deposition or who had due notice thereof, in accordance with any one of the following provisions:

(1) Any deposition may be used by any party for the prupose of contradicting or impeaching the testimony of the deponent as a witness;

(2) The deposition of an expert witness may be used by any party for any purpose, unless the Administrative Law Judge rules that such use would be unfair or a violation of due process;

(3) The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or duly authorized agent of a public or private corporation, partnership, or association which is a party, may be used by any other party for any purpose;

(4) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the Administrative Law Judge finds:

(i) That the witness is dead; or

(ii) That the witness is out of the United States or more than 100 miles

from the place of hearing unless it appears that the absence of the witness was procured by the party offering the deposition; or

(iii) That the witness is unable to attend to testify because of age, sickness, infirmity, or imprisonment; or

(iv) That the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or

(v) Upon application and notice, that such exceptional circumstances exist to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open hearing, to allow the deposition to be used;

(5) If only part of a deposition is offered in evidence by a party, any other party may require him/her to introduce all of it which is relevant to the part introduced, and any party may introduce any other parts; and

(6) Substitution of parties does not affect the right to use depositions previously taken; and, when a proceeding in any hearing has been dismissed and another proceeding involving the parties or their representatives or successors in interest has been brought (or commenced), all depositions lawfully taken and duly filed in the former proceeding may be used in the latter if originally taken therefor.

(b) *Objections to admissibility.* Except as provided in this paragraph, objections may be made at the hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

(1) Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.

(2) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless reasonable objection thereto is made at the taking of the deposition.

§ 68.23 Subpoenas.

(a) Except as provided in paragraph (b) of this section, an Administrative Law Judge may issue subpoenas as authorized by statute or law, either prior to or subsequent to the filing of a complaint, and upon written application of a party requiring attendance and testimony of witnesses and production of things including, but not limited to, papers, books, documents, records, correspondence, or tangible things in their possession and under their control and access to such things for the purposes of examination and copying. A subpoena may be served by overnight courier service or overnight mail, certified mail or by any person who is not less than 18 years of age. A witness, other than a witness for the Federal Government, may not be required to attend a deposition or hearing unless the mileage and witness fee applicable to witnesses in courts of the United States for each date of attendance is paid in advance of the date of the proceeding.

(b) If a party's written application for subpoena is submitted three (3) working days or less before the hearing to which it relates, a subpoena shall issue at the discretion of the presiding Administrative Law Judge, as appropriate.

(c) The subpoena shall identify the person or things subpoenaed, the person to whom and the place, date, and the time at which it is returnable or the nature of the evidence to be examined or copied, and the date and time when access is requested.

(d) Any person served with a subpoena issued by an Administrative Law Judge who intends not to comply with it shall, within ten (10) days after the date of service of the subpoena upon him or her, petition the Administrative Law Judge to revoke or modify the subpoena. A copy of the petition shall be served on all parties to the hearing. The petition shall separately identify each portion of the subpoena with which the petitioner does not intend to comply and shall state, with respect to each such portion, the grounds upon which the petitioner relies. A copy of the subpoena shall be attached to the petition. Within eight (8) days after receipt of the petition the party who applied for such subpoena may respond to such petition and the Administrative Law Judge shall then make a final determination upon the petition. The Administrative Law Judge shall cause to be served a copy of the final determination of the petition upon the petitioner and all parties.

(e) *Failure to comply.* Upon the failure of any person to comply with an order to testify or a subpoena issued under this Section, the Administrative Law Judge may, where authorized by statute or by law, apply through appropriate counsel to the appropriate district court of the United States for an order requiring compliance with the order or subpoena.

§ 68.24 Designation of Administrative Law Judge.

Hearings will be held before an Administrative Law Judge appointed under 5 U.S.C. 3105 and assigned to the Department of Justice. The presiding judge in any case shall be designated by the Chief Administrative Hearing Officer. In unfair immigration-related employment practice cases, only Administrative Law Judges specially designated by the Attorney General as having special training respecting employment discrimination may be chosen by the Chief Administrative Hearing Officer to preside.

§ 68.25 Continuances.

(a) *When granted.* Continuances will only be granted in cases of prior judicial commitments or undue hardship, or a showing of other good cause.

(b) *Time limit for requesting.* Except for good cause arising thereafter, requests for continuances must be filed not later than fourteen (14) days prior to the date set for hearing.

(c) *How filed.* Motions for continuances shall be in writing, unless made during the prehearing conference or hearing. Copies shall be served on all parties. Any motions for continuances filed less than fourteen (14) days of the date of the scheduled proceeding shall, in addition to the written request, be telephonically communicated to the Administrative Law Judge or a member of his/her staff and to all other parties.

(d) *Ruling.* Time permitting, the Administrative Law Judge shall issue a written order in advance of the scheduled proceeding date which either allows or denies the request. Otherwise, the ruling made orally by telephonic communication to the party requesting same who shall be responsible for telephonically notifying all other parties. Oral orders shall be confirmed in writing by the Administrative Law Judge.

§ 68.26 Authority of Administrative Law Judge.

(a) *General powers.* In any proceeding under this part, the Administrative Law Judge shall have all powers necessary to the conduct of fair and impartial hearings, including, but not limited to, the following:

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

(2) Administer oaths and examine witnesses;

(3) Compel the production of documents and appearance of witnesses in control of the parties;

(4) Compel the appearance of witnesses by the issuance of subpoenas as authorized by statute or law;

(5) Issue decisions and orders;

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

(7) Exercise, for the purpose of the hearing and in regulating the conduct of the proceeding, such powers vested in the Attorney General as are necessary and appropriate therefor;

(8) Where applicable, take any appropriate action authorized by the Rules of Civil Procedure for the United States District Courts, issued from time-to-time and amended pursuant to 28 U.S.C. 2072; and

(9) Do all other things necessary to enable him/her to discharge the duties of the office.

(b) *Enforcement.* If any person in proceedings before an Administrative Law Judge disobeys or resists any lawful order or process, or misbehaves during a hearing or so near the place thereof as to obstruct the same, or neglects to produce, after having been ordered to do so, any pertinent book, paper, or document, or refuses to appear after having been subpoenaed, or upon appearing refuses to take the oath as a witness, or after having taken the oath refuses to be examined according to law, the Administrative Law Judge responsible for the adjudication may, where authorized by statute or law, apply through appropriate counsel to the Federal District Court having jurisdiction in the place in which he/she is sitting to request appropriate remedies.

§ 68.27 Unavailability of Administrative Law Judge.

In the event the Administrative Law Judge designated to conduct the hearing becomes unavailable, the Chief Administrative Hearing Officer may designate another Administrative Law Judge for the purpose of further hearing or other appropriate action.

§ 68.28 Disqualification.

(a) When an Administrative Law Judge deems himself or herself disqualified to preside in a particular proceeding, such judge shall withdraw therefrom by notice on the record directed to the Chief Administrative Hearing Officer.

(b) Whenever any party shall deem the Administrative Law Judge for any reason to be disqualified to preside, or to continue to preside, in a particular proceeding, that party shall file with the Administrative Law Judge a motion to recuse. The motion shall be supported by an affidavit setting forth the alleged grounds for disqualification. The Administrative Law Judge shall rule upon the motion.

(c) In the event of disqualification or recusal of an Administrative Law Judge as provided in paragraph (a) or (b) of this section, the Chief Administrative Hearing Officer shall refer the matter to another Administrative Law Judge for further proceedings.

§ 68.29 Separation of functions.

No officer, employee, or agent of the Federal Government engaged in the performance of investigative or prosecutorial functions in connection with any proceeding shall, in that proceeding or a factually related proceeding, participate or advise in the decision of the Administrative Law Judge, except as a witness or counsel in the proceedings.

§ 68.30 Expedition.

Hearings shall proceed with all reasonable speed, insofar as practicable and with due regard to the convenience of the parties.

§ 68.31 Appearance and representation.

(a) Appearances. Any party shall have the right to appear at a hearing to examine and cross-examine witnesses, and to introduce into the record documentary or other relevant evidence, except that the participation of any intervenor shall be limited to the extent prescribed by the Administrative Law Judge.

(b) *Representation.* (1) A party may be represented by an attorney qualified under paragraph (b)(4) of this section, at no expense to the Government.

(2) Any person compelled to testify in a proceeding in response to a subpoena may be accompanied, represented, and advised by counsel.

(3) The Department of Justice may be represented by the appropriate counsel in these proceedings.

(4) *Qualifications of attorneys.* An attorney at law who is admitted to practice before the federal courts or before the highest court of any state, the District of Columbia, or any territory or commonwealth of the United States, may practice before the Administrative Law Judges. An attorney's own representation that he/she is in good standing before any of such courts shall be sufficient proof thereof, unless otherwise ordered by the Administrative Law Judge.

(5) Each attorney shall file a notice of appearance. Such notice shall indicate the name of the case or controversy, the case number if assigned, and the party on whose behalf the appearance is made. The notice of appearance shall be accompanied by a certification indicating that such notice was served on all parties of record.

(6) *Authority for representation.* Any individual acting in a representative capacity in any adjudicative proceeding may be required by the Administrative Law Judge to show his/her authority to act in such capacity.

(c) *Withdrawal or substitution of an attorney.* Withdrawal or substitution of an attorney may be permitted by the Administrative Law Judge upon written motion.

§ 68.32 Legal assistance.

The Office of the Chief Administrative Hearing Officer does not have authority to appoint counsel.

§ 68.33 Standards of conduct.

(a) All persons appearing in proceedings before an Administrative Law Judge are expected to act with integrity, and in an ethical manner.

(b) The Administrative Law Judge may exclude from proceedings parties, witnesses, and their representatives for refusal to comply with directions, continued use of dilatory tactics, refusal to adhere to reasonable standards of orderly and ethical conduct, failure to act in good faith, or violation of the prohibition against ex parte communications. The Administrative Law Judge shall state in the record the cause for barring an attorney or other individual from participation in a particular proceeding. The Administrative Law Judge may suspend the proceeding for a reasonable time for the purpose of enabling a party to obtain another attorney or representative.

§ 68.34 Ex parte communications.

(a) *General.* Except for other employees of the Executive Office for Immigration Review, the Administrative Law Judge shall not consult any person, or party, on any fact in issue unless upon notice and opportunity for all parties to participate. Communications by the Office of the Chief Administrative Hearing Officer, the assigned judge, or any party for the sole purpose of scheduling hearings, or requesting extensions of time are not considered ex parte communications, except that all other parties shall be notified of such request by the requesting party and be given an opportunity to respond thereto.

(b) *Sanctions.* A party or participant who makes a prohibited ex parte communication, or who encourages or solicits another to make any such communication, may be subject to any appropriate sanction or sanctions, including but not limited to, exclusion

from the proceedings and adverse ruling on the issue which is the subject of the prohibited communication.

§ 68.35 Waiver of right to appear and failure to participate or to appear.

(a) *Waiver of right to appear.* If all parties waive in writing their right to appear before the Administrative Law Judge or to present evidence or argument personally or by representative, it shall not be necessary to give notice of and conduct an oral hearing. A waiver of the right to appear and present evidence and allegations as to facts and law shall be made in writing and filed with the Chief Administrative Hearing Officer or the Administrative Law Judge. Where such a waiver has been filed by all parties and they do not appear before the Administrative Law Judge personally or by representative, the Administrative Law Judge shall make a record of the relevant written evidence submitted by the parties, together with any pleadings they may submit with respect to the issues in the case. Such documents shall be considered as all of the evidence in the case and decision shall be based on them.

(b) *Dismissal—Abandonment by party.* A request for hearing may be dismissed upon its abandonment by the party or parties who filed it. A party shall be deemed to have abandoned a request for hearing if neither the party nor his/her representative appears at the time and place fixed for the hearing and either

(1) Prior to the time for hearing, such party does not show good cause as to why neither he/she nor his/her representative can appear; or

(2) Within ten (10) days after the time for hearing such party does not show good cause for such failure to appear.

(c) *Default—Failure to appear.* A default decision, under § 68.8(b), may be entered, with prejudice, against any party failing, without good cause, to appear at a hearing.

§ 68.36 Motion for summary decision.

(a) Any party may, at least twenty (20) days before the date fixed for any hearing, move with or without supporting affidavits for a summary decision on all or any part of the proceeding. Any other party may, within ten (10) days after service of the motion, serve supporting or opposing papers with affidavits if appropriate, or countermove for summary decision. The Administrative Law Judge may set the matter for argument and/or call for submission of briefs.

(b) Any affidavits submitted with the motion shall set forth such facts as would be admissible in evidence in a proceeding subject to 5 U.S.C. 556 and 557 and shall show affirmatively that the affiant is competent to testify to the matters stated therein. When a motion for summary decision is made and supported as provided in this section, a party opposing the motion may not rest upon the mere allegations or denials of such pleading. Such response must set forth specific facts showing that there is a genuine issue of fact for the hearing.

(c) The Administrative Law Judge may enter a summary decision for either party if the pleadings, affidavits, material obtained by discovery or otherwise, or matters officially noticed show that there is no genuine issue as to any material fact and that a party is entitled to summary decision.

(d) *Form of summary decisions.* Any final decision issued as a summary decision shall conform to the requirements for all final decisions. An initial decision and a final decision made under this paragraph shall include a statement of:

(1) Findings of fact and conclusions of law, and the reasons therefor, on all issues presented; and

(2) Any terms and conditions of the rule or order.

(e) Hearings on issue of fact. Where a genuine question of material fact is raised, the Administrative Law Judge shall, and in any other case may, set the case for an evidentiary hearing.

§ 68.37 Formal hearings.

(a) *Public.* Hearings shall be open to the public. The Administrative Law Judge may order a hearing or any part thereof closed, where to do so would be in the best interests of the parties, a witness, the public, or other affected persons. Any order closing the hearing shall set forth the reasons for the decision. Any objections thereto shall be made a part of the record.

(b) *Jurisdiction.* The Administrative Law Judge shall have jurisdiction to decide all issues of fact and related issues of law.

(c) *Rights of parties.* Every party shall have the right of timely notice and all other rights essential to a fair hearing, including, but not limited to, the right to present evidence, to conduct such cross-examination as may be necessary for a full and complete disclosure of the facts, and to be heard by objection, motion, and argument.

(d) *Rights of participation.* Every party shall have the right to make a written or oral statement of position. At the discretion of the Administrative Law Judge, participants may file proposed findings of fact, conclusions of law, and a post hearing brief.

(e) *Amendments to conform to the evidence.* When issues not raised by the request for hearing, prehearing stipulation, or prehearing order are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence may be made on motion of any party at any time; but failure to so amend does not affect the result of the hearing of these issues. The Administrative Law Judge may grant a continuance to enable the objecting party to meet such evidence.

§ 68.38 Evidence.

(a) *Applicability of Federal rules of evidence.* Unless otherwise provided by statute or these rules, the Federal Rules of Evidence will be a general guide to all proceedings held pursuant to these rules.

(b) *Admissibility.* All relevant material and reliable evidence is admissible, but may be excluded if its probative value is substantially outweighed by unfair prejudice or confusion of the issues, or by considerations of undue delay, waste of time, immateriality, or needless presentation of cumulative evidence. Stipulations of fact may be introduced in evidence with respect to any issue. Every party shall have the right to present his/her case or defense by oral or documentary evidence, depositions, and duly authenticated copies of records and documents; to submit rebuttal evidence; and to conduct such reasonable cross-examination as may be required for a full and true disclosure of the facts. The Administrative Law Judge shall have the right in his/her discretion to limit the number of witnesses whose testimony may be merely cumulative and shall, as a matter of policy, not only exclude irrelevant, immaterial, or unduly repetitious evidence but shall also limit the cross-examination of witnesses to reasonable bounds so as not to prolong the hearing unnecessarily, and unduly burden the record. Material and relevant evidence shall not be excluded because it is not the best evidence, unless its authenticity is challenged, in which case reasonable time shall be given to establish its authenticity. When only portions of a document are to be relied upon, the offering party shall prepare the pertinent excerpts, adequately identified, and shall supply copies of such excerpts, together with a statement indicating the purpose for which such materials will be offered, to the Administrative Law Judge and to the other parties. Only the

excerpts, so prepared and submitted, shall be received in the record. However, the original document should be made available for examination and for use by opposing counsel for purposes of cross-examination. Compilations, charts, summaries of data, and photostatic copies of documents may be admitted in evidence if the proceedings will thereby be expedited, and if the material upon which they are based is available for examination by the parties.

(c) *Objections to evidence.* Objections to the admission or exclusion of evidence shall be in short form, stating the grounds of objections relied upon, and to the extent permitted by the Administrative Law Judge, the transcript shall include argument or debate thereon. Rulings on such objections shall be made at the time of objection or prior to the receipt of further evidence. Such ruling shall be a part of the record.

(d) *Exceptions.* Formal exceptions to the rulings of the Administrative Law Judge made during the course of the hearing are unnecessary. For all purposes for which an exception otherwise would be taken, it is sufficient that a party, at the time the ruling of the Administrative Law Judge is made or sought, makes known the action he/she desires the Administrative Law Judge to take or his/her objection to an action taken, and his/her grounds therefor.

(e) *Offers of proof.* Any offer of proof made in connection with an objection taken to any ruling of the Administrative Law Judge rejecting or excluding proffered oral testimony shall consist of a statement of the substance of the evidence which counsel contends would be adduced by such testimony, and, if the excluded evidence consists of evidence in documentary or written form or of reference to documents or records, a copy of such evidence shall be marked for identification and shall constitute the offer of proof.

§ 68.39 Official notice.

Official notice may be taken of any material fact, not appearing in evidence in the record, which is among the traditional matters of judicial notice. Provided, however, that the parties shall be given adequate notice, at the hearing or by reference in the Administrative Law Judge's decision, of the matters so noticed, and shall be given adequate opportunity to show the contrary.

§ 68.40 In camera and protective orders.

(a) *Privileged communications.* Upon application of any person, the Administrative Law Judge may limit discovery or introduction of evidence or issue such protective or other orders as in his/her judgment may be consistent with the objective of protecting privileged communications and of protecting data and other material the disclosure of which would unreasonably prejudice a party, witness, or third party.

(b) *Classified or sensitive matter.* (1) Without limiting the discretion of the Administrative Law Judge to give effect to any other applicable privilege, it shall be proper for the Administrative Law Judge to limit discovery or introduction of evidence or to issue such protective or other orders as in his/her judgment may be consistent with the objective of preventing undue disclosure of classified or sensitive matter. Where the Administrative Law Judge determines that information in documents containing sensitive matter should be made available to a respondent, he/she may direct the party to prepare an unclassified or nonsensitive summary or extract of the original. The summary or extract may be admitted as evidence in the record.

(2) If the Administrative Law Judge determines that this procedure is inadequate and that classified or otherwise sensitive matter must form part of the record in order to avoid prejudice to any party, he/she may advise the parties and provide opportunity for arrangements to permit a party or a representative to have access to such matter. Such arrangements may include obtaining security clearances or giving counsel for a party access to sensitive information and documents subject to assurances against further disclosure.

§ 68.41 Exhibits.

(a) *Identification.* All exhibits offered in evidence shall be numbered and marked with a designation identifying the party or intervenor by whom the exhibit is offered.

(b) *Exchange of exhibits.* When written exhibits are offered in evidence, one copy must be furnished to each of the parties at the hearing, and two copies to the Administrative Law Judge, unless the parties previously have been furnished with copies or the Administrative Law Judge directs otherwise. If the Administrative Law Judge has not fixed a time for the exchange of exhibits, the parties shall exchange copies of exhibits at the earliest practicable time, preferably before the hearing or, at the latest, at the commencement of the hearing.

(c) Substitution of copies for original exhibits. The Administrative Law Judge may permit a party to withdraw original documents offered in evidence and substitute true copies in lieu thereof.

§ 68.42 Records in other proceedings.

In case any portion of the record in any other proceeding or civil or criminal action is offered in evidence, a true copy of such portion shall be presented for the record in the form of an exhibit unless the Administrative Law Judge directs otherwise.

§ 68.43 Designation of parts of documents.

Where relevant and material matter offered in evidence is embraced in a document containing other matter not material or relevant and not intended to be put in evidence, the participant offering the same shall plainly designate the matter so offered, segregating and excluding insofar as practicable the immaterial or irrelevant parts. If other matter in such document is in such bulk or extent as would necessarily encumber the record, such document will not be received in evidence, but may be marked for identification, and if properly authenticated, the relevant and material parts thereof may be read into the record, or if the Administrative Law Judge so directs, a true copy of such matter in proper form shall be received in evidence as an exhibit, and copies shall be delivered by the participant offering the same to the other parties or their attorneys appearing at the hearing, who shall be afforded an opportunity to examine the entire document and to offer in evidence in like manner other material and relevant portions thereof.

§ 68.44 Authenticity.

The authenticity of all documents submitted as proposed exhibits in advance of the hearing shall be deemed admitted unless written objection therto is filed prior to the hearing, except that a party will be permitted to challenge such authenticity at a later time upon a clear showing of good cause for failure to have filed such written objection.

§ 68.45 Stipulations.

The parties may by stipulation in writing at any stage of the proceeding, or by stipulation made orally at the hearing, agree upon any pertinent facts in the processing. It is desirable that the facts be thus agreed upon so far as and whenever practicable. Stipulations may be recieved in evidence at a hearing or prior thereto, and when received in evidence, shall be binding on the parties thereto.

§ 68.46 Record of hearings.

(a) *General.* A verbatim written record of all hearings shall be kept, except in cases where the proceedings are terminated in accordance with § 68.12. All evidence upon which the

Administrative Law Judge relies for decision shall be contained in the transcript of testimony, either directly or by appropriate reference. All exhibits introduced as evidence shall be marked for identification and incorporated into the record. Transcripts may be obtained by the parties and the public from the official court reporter of record. Any fees in connection therewith shall be the responsibility of the parties.

(b) *Corrections.* Corrections to the official transcript will be permitted upon motion. Motions for correction must be submitted within ten (10) days of the receipt of the transcript by the Administrative Law Judge or such other time as may be permitted by the Administrative Law Judge. Corrections of the official transcript will be permitted only when errors of substance are involved and only upon approval of the Administrative Law Judge.

§ 68.47 Closing the record.

(a) When there is a hearing, the record shall be closed at the conclusion of the hearing unless the Administrative Law Judge directs otherwise.

(b) If any party waives a hearing, the record shall be closed on the date set by the Administrative Law Judge as the final date for the receipt of submissions of the parties to the matter.

(c) Once the record is closed, no additional evidence shall be accepted into the record except upon a showing that new and material evidence has become available which was not readily available prior to the closing of the record. However, the Administrative Law Judge shall make part of the record any motions for attorney's fees authorized by statutes, and any supporting documentation, any determinations thereon, and any approved correction to the transcript.

§ 68.48 Receipt of documents after hearing.

Documents submitted for the record after the close of the hearing will not be received in evidence except upon ruling of the Administrative Law Judge. Such documents when submitted shall be accompanied by proof that copies have been served upon all parties, who shall have an opportunity to comment thereon. Copies shall be received not later than twenty (20) days after the close of the hearing except for good cause shown, and not less than ten (10) days prior to the date set for filing briefs. Exhibit numbers should be assigned by counsel or the party.

§ 68.49 Restricted access.

On his/her own motion, or on the motion of any party, the Administrative Law Judge may direct that there be a restricted access portion of the record to contain any material in the record to which public access is restricted by law or by the terms of a protective order entered in the proceedings. This portion of the record shall be placed in a separate file and clearly marked to avoid improper disclosure and to identify it as a portion of the official record in the proceedings.

§ 68.50 Decision and order of the Administrative Law Judge.

(a) *Proposed decision and order.* Within twenty (20) days of filing of the transcript of the testimony, or such additional time as the Administrative Law Judge may allow, a party may file proposed findings of fact, conclusions of law, and order together with a supporting brief expressing the reasons for such proposals. Such proposals and brief shall be served on all parties, and shall refer to all portions of the record and to all authorities relied upon in support of each proposal.

(b) *Decision.* Unless an extension of time is given by the Chief Administrative Hearing Officer on good cause, the Administrative Law Judge shall make his/her decision within sixty (60) days after receipt of the hearing transcript or of receipt by the Administrative Law Judge of post-hearing briefs, proposed findings of fact, and conclusions of law, if any. The decision of the Administrative Law Judge shall be based upon the whole record. It shall be supported by reliable and probative evidence. The standard of proof shall be by a preponderance of the evidence. Such decision shall be in accordance with the regulations and rulings of the statute or regulations conferring jurisdiction.

(c) *Order.* (1) Unfair Immigration-Related Employment Practice Cases.

(i) If, upon the preponderance of the evidence, the Administrative Law Judge determines that an unfair immigration-related employment practice has occurred, the order shall include a requirement that the respondent cease and desist from such practice. The order may also require the respondent—

(A) To comply with the requirements of section 274A(b) of the INA with respect to individuals hired (or recruited or referred for employment for a fee) during a period of up to three years;

(B) To retain for a period of up to three years, and only for purposes consistent with section 274A(b)(5) of the INA, the name and address of each individual who applies, in person or in writing, for hiring for an existing position; or for recruiting or referring for a fee, for employment in the United States;

(C) To hire individuals directly and adversely affected, with or without back pay; and

(D) To pay a civil penalty of not more than $1,000 for each individual discriminated against; and in the case of a respondent previously subject to such an order, to pay a civil penalty of not more than $2,000 for each individual discriminated against.

(ii) Back pay liability shall not accrue from a date more than two years prior to the date of the filing of the complaint with the Administrative Law Judge. In no event shall back pay accrue from before November 6, 1986. Interim earnings or amounts earnable with reasonable diligence by the individual or individuals discriminated against shall operate to reduce the back pay otherwise allowable. No order shall require the hiring of an individual as an employee or the payment to an individual of any back pay, if the individual was refused employment for any reason other than discrimination on account of national origin or citizenship status.

(iii) In applying this section in the case of a person or entity composed of distinct, physically separate subdivisions each of which provides separately for the hiring, recruiting, or referring for employment without reference to the practices of, and not under the control of, or common control with, another subdivision, each such subdivision shall be considered a separate person or entity.

(iv) If upon the preponderance of the evidence, the Administrative Law Judge determines that an unfair immigration-related employment practice has not occurred, then the order shall dismiss the complaint.

(v) *Attorneys' fees.* The Administrative Law Judge may allow a prevailing party, other than the United States, a reasonable attorney's fee, if the losing party's argument is without reasonable foundation in law and fact.

(2) *Unlawful employment of unauthorized aliens.* (i) If upon the preponderance of the evidence, the Administrative Law Judge determines that a person or entity has violated section 274A (a)(1)(A) or (a)(2) of the INA, the order shall include a requirement that the respondent cease and desist from such violations and to pay a civil penalty in an amount of

(A) Not less than $250 and not more than $2,000 for each unauthorized alien with respect to whom a violation of either such subsection occurred;

(B) Not less than $2,000 and not more than $5,000 for each unauthorized alien in the case of a respondent previously subject to one order under this subparagraph; or

(C) Not less than $3,000 and not more than $10,000 for each unauthorized alien in the case of a respondent previously subject to more than one order under this subparagraph.

(ii) The order may also require the respondent to comply with the requirements of section 274A(b) of the INA with respect to individuals hired (or recruited or referred for employment for a fee) during a period of up to three years; and to take such other remedial action as is appropriate.

(iii) In the case of a person or entity composed of distinct, physically separate subdivisions each of which provides separately for the hiring, recruiting, or referring for employment, without reference to the practices of, and under the control of, or common control with, another subdivision, each such subdivision shall be considered a separate person or entity.

(iv) With respect to a violation of section 274A(a)(1)(B) of the INA, the order under this subsection shall require the person or entity to pay a civil penalty in an amount of not less than $100 and not more than $1,000 for each individual with respect to whom such violation occurred. In determining the amount of the penalty, due consideration shall be given to the size of the business of the employer being charged, the good faith of the employer, the seriousness of the violation, whether or not the individual was an unauthorized alien, and the history of previous violations.

(3) *Prohibition of indemnity bonds.* If upon the preponderance of the evidence, the Administrative Law Judge determines that a person or entity has violated section 274A(g)(l) of the INA, the order may require the respondent to pay a penalty of $1,000 for each individual with respect to whom such violation occurred and require the return of any amounts received in such violation to the individual, or, if the individual cannot be located, to the general fund of the Treasury.

§ 68.51 Administrative and judicial review.

(a) Review of the final order and decision of an Administrative Law Judge in unlawful employment and prohibition of indemnity bond cases arising under section 274A of the INA. Any party may file with the Chief Administrative Hearing Officer, an official having no review authority over other immigration-related matters, within five (5) day of the date of decision, a written request for review of the decision together with supporting arguments. After such a request is made, and within thirty (30) days from the date of decision, the Chief Administrative Hearing Officer shall issue an order which adopts, affirms, modifies or vacates the Administrative Law Judge's order.

(1) The order of the Chief Administrative Hearing Officer shall become the final order of the Attorney General. If no review is requested under § 68.51(a), the order of the Administrative Law Judge becomes the final order of the Attorney General.

(2) A person or entity adversely affected by a final order respecting an assessment or penalty may, within forty-five (45) days after the date the final order is issued, file a petition in the Court of Appeals for the appropriate circuit for review of the order. Failure to request review by the Chief Administrative Hearing Officer of a decision by an Administrative Law Judge shall not prevent a party from seeking judicial review.

(b) Review of the final order and decision of an Administrative Law Judge in unlawful immigration-related employment practice cases arising under section 274B of the INA. Any person aggrieved by an order issued under § 68.50(c)(1) may, within 60 days after entry of the order, seek review of the order in the United States Court of Appeals for the circuit in which the violation is alleged to have occurred or in which the respondent resides or transacts business. If an order issued under § 68.50(c)(1) is not appealed, the Special Counsel (or, if the Special Counsel fails to act, the person filing the charge, other than an Immigration and Naturalization Service officer) may file a petition in the United States District Court for the district in which a violation of the order is alleged to have occurred, or in which the respondent resides or transacts business, requesting that the order be enforced.

§ 68.52 Filing of the official record.

Upon timely receipt of notification that administrative review is to be conducted or that an appeal has been taken, a certified copy of the record will be promptly filed with the appropriate United States Court.

Dated: November 14, 1989.

Dick Thornburgh,

Attorney General.

[FR Doc. 89-27425 Filed 11-22-89; 8:45 am]

BILLING CODE 1531-26-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 62

[CGD 88-018]

RIN 2115-AD36

United States Aids to Navigation System

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard has completed conversion of all federal aids in the U.S. Aids to Navigation System to harmonize with the IALA Maritime Buoyage System. This rule makes minor editorial changes and removes the parenthetical references to the pre-IALA marking system now that the conversion is complete.

EFFECTIVE DATE: December 26, 1989.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade J.B. Favero, Project Manager, Office of Navigation Safety and Waterway Services, U.S. Coast Guard, Room 1416, 2100 Second Street SW., Washington, DC 20593-0001. Telephone: (202) 267-1973.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking has not been published for this regulation. This rulemaking does not substantively change the existing regulations. It merely removes parenthetical references to the previous U.S. Aids to Navigation System. Therefore, the Coast Guard finds that an opportunity for notice and comment is unnecessary under 5 U.S.C. 553(b)(B).

Drafting Information: The principal persons involved in drafting this rulemaking are Lieutenant G.R. Wulfkuhle and Lieutenant Junior Grade J.B. Favero, Project Managers, and Christena Green, Project Counsel, Office of the Chief Counsel.

Background: In 1982, the United States, along with most of the world's other maritime nations, became a party to the agreement which implemented the International Association of Lighthouse Authorities (IALA) Maritime Buoyage System. The IALA Maritime Buoyage System promotes safety of navigation by establishing a worldwide harmonious buoyage system.

On November 7, 1987, the Coast Guard published the final rule incorporating changes to harmonize with the IALA Buoyage System, leaving all of the parenthetical references to the previous system in the final rule during the conversion period. (52 FR 42639)

The Coast Guard has completed conversion of all federal aids in the U.S. Aids to Navigation System to harmonize with the IALA Maritime Buoyage System. Widespread publicity and public education efforts since 1983 have resulted in U.S. mariners already becoming familiar with the new marking system. This final rule is primarily editorial and removes the unnecessary parenthetical references to the pre-IALA system now that the conversion is complete.

Regulatory Evaluation: This rule is considered to be non-major under Executive Order 12291, and non-significant under the DOT regulatory policies and procedures (44 FR 11034 February 26, 1979). The economic impact of this proposed rule has been found to be so minimal that further evaluation is unnecessary.

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

List of Subjects in 33 CFR Part 62

Navigation (water).

For the reasons set out in the preamble, 33 CFR part 62 is amended as follows:

PART 62—UNITED STATES AIDS TO NAVIGATION SYSTEM

1. The authority citation for Part 62 is revised to read as follows:

Authority: 14 U.S.C. 85; 33 U.S.C. 1233; 43 U.S.C. 1333; 49 CFR 1.46.

2. Section 62.1 paragraph (b) is revised to read as follows:

§ 62.1 Purpose.

* * * * *

(b) This part describes the general characteristics of the U.S. Aids to Navigation System, and the details, policies and procedures employed by the Coast Guard in establishing, maintaining, operating, changing or discontinuing Federal aids to navigation. Regulations concerning the marking of wrecks, structures, and other obstructions are found in 33 CFR part 64. Regulations concerning private aids are found in 33 CFR part 66. Regulations concerning the marking of artificial islands and structures which are erected on or over the seabed and subsoil of the Outer Continental Shelf of the United States or its possessions are found in 33 CFR part 67. Regulations concerning the marking of bridges are found in 33 CFR part 118. Regulations concerning aids to navigation at deepwater ports are found in subchapter NN of this chapter.

* * * * *

3. In § 62.21 paragraphs (a) and (c)(4) are revised and new paragraph (h) is added to read as follows:

§ 62.21 General.

(a) The navigable waters of the United States are marked to assist navigation using the U.S. Aids to Navigation System, a system consistent with the International Association of Lighthouse Authorities (IALA) Maritime Buoyage System. The IALA Maritime Buoyage System is followed by most of the world's maritime nations and will improve maritime safety by encouraging conformity in buoyage systems worldwide. IALA buoyage is divided into two regions made up of Region A and Region B. All navigable waters of the United States follow IALA Region B, except U.S. possessions west of the International Date Line and south of 10 degrees north latitude, which follow IALA Region A. Lateral aids to navigation in Region A vary from those described throughout this Subpart. Non-lateral aids to navigation are the same as those used in Region B. See § 62.25. Appropriate nautical charts and publications should be consulted to determine whether the Region A or Region B marking schemes are in effect for a given area.

* * * * *

(c)* * *

(4) The Notice to Mariners is a national publication similar to the Local Notice to Mariners, published by the Defense Mapping Agency, and available by writing: Director, Defense Mapping Agency, Combat Support Center, Code PMSA, Washington, DC 20315–0010. A letter of justification should be included in the request. This publication provides ocean going vessels significant national and international navigation and safety information.

* * * * *

(h) Until 1994, some private aids to navigation may display characteristics at variance with the U.S. Aids to Navigation System. Mariners should exercise caution when using private aids to navigation because private aids are often established to serve the needs of specific users rather than general navigation and their purpose may not be obvious to casual users; and, discrepancies to private aids are often detected, reported, and corrected less promptly than discrepancies to Coast Guard aids to navigation.

* * * * *

§§ 62.25 and 2.27 [Amended]

4. Part 62 is amended by removing the word "(black)" wherever it appears in the following paragraph,

a. Section 62.25(b)(1)
b. Section 62.25(c)
c. Section 62.27

§ 62.29 [Amended]

5. Section 62.29 is amended by removing the last sentence in the section.

§ 62.43 [Amended]

6. Section 62.43 is amended by removing the words "(or black)" wherever it appears in the following paragraph,

a. Section 62.43(a)
b. Section 62.43(e)

§ 62.45 [Amended]

7. Section 62.45 is amended by removing the words "(or black)" and "(or white)" from paragraph (b)(1), by removing the words "(or white)" from paragraph (b)(2), and by removing the words "(or white or amber)" from paragraph (d)(5).

Robert T. Nelson,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 89–27589 Filed 11–22–89; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–3682–2]

Michigan: Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: Michigan has applied for final authorization of a revision to its hazardous waste program under the Resource Conservation and Recovery Act of 1976 as amended (hereinafter "RCRA" or the "Act"). The Environmental Protection Agency (EPA) has reviewed Michigan's application and has reached a decision, subject to public review and comment, that Michigan's hazardous waste program revisions satisfy all the requirements necessary to qualify for final authorization. Thus, EPA intends to approve Michigan's hazardous waste program revisions. Michigan's application is available for public review and comment.

DATES: Final authorization for Michigan shall be effective January 23, 1990, unless EPA publishes a prior **Federal Register** action withdrawing this final rule. All comments on Michigan's program revision application must be received by the close of business on December 26, 1989.

ADDRESSES: Copies of Michigan's program revision application are available from 8:30 a.m. to 4:30 p.m. at the following addresses for inspection and copying: Michigan Department of Natural Resources, 608 W. Allegan, South Ottawa Tower, Lansing, Michigan. Contact: Jim Roberts, Phone: (517) 373–2487; U.S. EPA Headquarters Library, PM211A, 401 M Street, SW., Washington, DC 20460, Phone: (202) 382–5926; EPA Region V, Waste Management Division, Office of RCRA, 230 South Dearborn Street, Chicago, Illinois 60604. Contact: Judy Greenberg, Phone: (312) 886–4179. Written comments should be sent to Judy Greenberg at the address below:

FOR FURTHER INFORMATION CONTACT: Judy Greenberg, Michigan Regulatory Specialist, U.S. Environmental Protection Agency, Region V, Waste Management Division, Office of RCRA, Program Management Branch, Regulatory Development Section, 5HR–JCK–13, 230 South Dearborn, Chicago, Illinois 60604, Phone: (312) 886–4179 [FTS 886–4179].

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of RCRA, 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Public Law 98–616, November 8, 1984, hereinafter "HSWA") allow States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. A State exercising this latter option receives "interim authorization" for the HSWA requirements under section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later applies for final authorization for the HSWA requirements.

In accordance with 40 CFR 271.21(a), revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 124, 260–268 and 270.

B. Michigan

Michigan initially received final authorization for its base RCRA program on October 30, 1986 (51 FR 36804–36805, October 16, 1986). On September 12, 1988, Michigan submitted an application for approval of program revisions. Today, Michigan is seeking approval of its program revisions in accordance with 40 CFR 271.21(b)(3). Specific provisions included in the Michigan program revision application are listed in the table below. Several provisions included in Michigan's September 12, 1988, application are not included in this table: Small Quantity Generators (50 FR 28702, July 15, 1985, and 51 FR 10174, March 24, 1986) and Dioxin Waste Listing and Management Standards (50 FR 1978). Further rulemaking is needed in order for Michigan's program to be equivalent to these Federal provisions; the State will resubmit its application for authorization for these provisions once equivalence has been achieved.

EPA has reviewed Michigan's application and has made an immediate final decision, subject to public review and comment, that Michigan's hazardous waste management program revisions (except for those provisions noted above) satisfy all the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization to Michigan for its program revisions. The public may submit written comments on EPA's immediate final decision up until December 26, 1989. Copies of Michigan's application for program revisions are available for inspection at the locations indicated in the **"ADDRESSES"** section of this notice.

Approval of Michigan's program revision shall become effective in 60 days, unless an adverse comment pertaining to the State's revision discussed in this notice is received by the end of the comment period. If an adverse comment is received, EPA will publish either (1) a withdrawal of this immediate final rule or (2) a notice containing a response to the comment which either affirms that the immediate final decision takes effect or reverses the decision.

Michigan will be authorized to carry out, in lieu of the Federal program, those provisions of the State's program which are analogous to certain provisions of the Federal program. The State regulations are published in the 1987 Annual Supplement to the Michigan Administrative Code and the Michigan Register, April 1988. The provisions are as follows:

Federal provisions	Analogous State provisions
[1] Paint Filter Test 50 FR 18370, April 30, 1985).	Rule 299.9502, 299.9601, 299.9605, 299.9609, 299.9619 299.11003
[1] Omnibus Provision (50 FR 28702, July 15, 1985).	Rule 299.9521(3)
[1] Location Standards for Salt Domes, Salt Beds and Caves (50 FR 28702, July 15, 1985).	Rule 299.9502, 299.9601, 299.9605, 299.11003
[1] Liquids in Landfills (50 FR 28702, July 15, 1985).	Rule 299.9502, 299.9504, 299.9601, 299.9619, 299.11003
[1] Exposure Information (50 FR 28702, July 15, 1985).	Rule 299.9504, 299.9510
[1] Double Liners (50 FR 28792, July 15, 1985).	Rule 299.9502, 299.9601, 299.9614, 299.9616, 299.9619, 299.11003
[1] Ground-Water Monitoring (50 FR 28702, July 15, 1985).	Rule 299.9612, 299.9616, 299.9617, 299.9619, 299.11003
[1] Permit Life (50 FR 28702, July 15, 1985).	Rule 299.9516, 299.9519, 299.11003
[1] Interim Status (50 FR 28702, July 15, 1985).	Rule 299.9502, 299.9510, 299.9521, 299.9601, 299.11003
[1] Correction to the Definition of Solid Waste (50 FR 33542, August 20, 1985).	Rule 299.9202, 299.9206, 299.9802, 299.9804
[1] Listing of TDI, TDA, DNT (50 FR 42936, October 23, 1985).	Rule 299.9216, 299.9222, 299.9225, 299.11003
[1] Spent Solvents Listing (50 FR 53315, December 31, 1985).	Rule 299.9220 Table 203(a), 299.9213
[1] Correction: Spent Solvents Listing (51 FR 2702, January 21, 1986).	Rule 299.9220 Table 203(a)
[1] EDB Waste Listing (51 FR 5330, February 13, 1986).	Rule 299.9213, 299.9216, 299.9222 Table 204(a), 299.11003
[1] Four Spent Solvents Listing (51 FR 6541, February 25, 1986).	Rule 299.9213, 299.9214, 299.9216, 299.9220 Table 203(a), 299.9225 Table 205(b), 299.9623, 299.11003
[1] Closure, Post-Closure and Financial Responsibility Requirements (51 FR 16443, May 2, 1986).	Rule 299.9101, 299.9103, 299.9104, 299.9106, 299.9502, 299.9504, 299.9519, 299.9522, 299.9601, 299.9613, 299.9702, 299.9703, 299.9704, 299.9705, 299.9706, 299.9708, 299.9709, 299.9710, 299.11003
[1] Correction: Paint Filter Test (51 FR 19176, May 28, 1986).	Rule 299.9502
Listing of Spent Pickle Liquor (K062) (51 FR 19320, May 28, 1986).	Rule 299.9502
Radioactive Mixed Wastes (51 FR 24504, July 3, 1986).	Michigan Statute 1979 Public Acts 64, § 4(3); Michigan Compiled Laws 299.504(3); Michigan Statutes Annotated 13.30(4)(3).
Liability Coverage: Corporate Guarantee (51 FR 25350, July 11, 1986).	Rule 299.9710, 299.9502

Federal provisions	Analogous State provisions
[2] Hazardous Waste Tank Systems (51 FR 25470, July 14, 1986).	Rule 299.9101-299.9109, 299.9204, 299.9306, 299.9502, 299.9504, 299.9508, 299.9615
[1] Correction: Biennial Reports (51 FR 28556, August 8, 1986).	Rule 299.9308, 299.9601, 299.9610
[1] Exports of Hazardous Wastes (51 FR 28664, August 8, 1986).	Rule 299.9102, 299.9103, 299.9106, 299.9204, 299.9205, 299.9206, 299.9301, 299.9304, 299.9308, 299.9309, 299.9310, 299.9409
[2] Correction: Hazardous Waste Tank System (51 FR 29430, August 15, 1986).	Rule 299.9504, 299.9508, 299.9615
Correction: Listing of Spent Pickle Liquor (51 FR 33612, September 22, 1986).	Rule 299.9222 Table 204(a)
[1] Standards for Generators: Waste Minimization Certifications (51 FR 55190, October 1, 1986).	Rule 299.9304
[1] Land Disposal Restrictions (51 FR 40572, November 7, 1986).	Rule 299.9101, 299.9109, 299.9202, 299.9203, 299.9204, 299.9205, 299.9206, 299.9207, 299.9211, 299.9212, 299.9213, 299.9309, 299.9311, 299.9502, 299.9601, 299.9609, 299.9627, 299.11003

[1] Denotes HSWA regulations
[2] Denotes both non-HSWA and HSWA provision

EPA shall administer any RCRA hazardous waste permits, or portions of permits, that contain conditions based upon the Federal program provisions for which the State is applying for authorization and which were issued by EPA prior to the effective date of Michigan's authorization. EPA will suspend issuance of any further permits under the provisions for which the State is being authorized on the effective date of this authorization. EPA has previously suspended issuance of permits for other provisions on October 30, 1986, the date of Michigan's final authorization for the RCRA base program.

Michigan is not authorized to operate the Federal program on Indian lands. This authority remains with EPA unless provided otherwise in a future statute or regulation.

C. Effect of HSWA on Michigan's Authorization

Prior to HSWA, a State with final authorization administered its hazardous waste program instead of, or entirely in lieu of, the Federal program. Except for enforcement provisions, EPA no longer directly applied the Federal requirements in the authorized State and EPA could not issue permits for any facilities the State was authorized to permit. When new, more stringent, Federal requirements were promulgated or enacted, the State was obligated to obtain equivalent authority within specified time frames. New Federal requirements usually did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under the amended section 3006(g) of RCRA, 42 U.S.C. 6926(g), new HSWA requirements and prohibitions take effect in authorized States at the same time they take effect in non-authorized States. EPA carries out those requirements and prohibitions directly in all States, whether authorized or non-authorized, including the issuance of full or partial HSWA permits, until EPA grants the State authorization to do so. States must still adopt HSWA-related provisions as State law, following established timeframes, to retain final authorization. In the interim, the HSWA provisions apply in authorized States.

As a result of the HSWA, there is a dual State/Federal regulatory program in Michigan. To the extent HSWA does not affect the authorized State program, the State program will operate in lieu of the Federal program. To the extent HSWA-related requirements are in effect, EPA will administer and enforce those HSWA requirements in Michigan until the State is authorized to do so. Among other things, this will entail the issuance of Federal permits for those HSWA requirements for which the State is not yet authorized, in addition to the State permits. Any State requirement that EPA has reviewed, approved, and determined to be more stringent than a HSWA provision also remains in effect; thus the universe of the more stringent provisions in HSWA and the approved State program defines the applicable subtitle C requirements in Michigan.

Once EPA authorizes the State to carry out a HSWA requirement or prohibition, the State program in that area will operate in lieu of the Federal provision or prohibition. Unit that time, the State may assist EPA's implementation of the HSWA under a Cooperative Agreement.

Today's rulemaking includes authorization of Michigan's program revisions for several HSWA provisions, which are noted in the table in section B above.

EPA has published a **Federal Register** notice that explains in detail the HSWA and its effect on authorized States (50 FR 28702–28755, July 15, 1985).

D. Decision

I conclude that Michigan's application for this program revision meets all the statutory and regulatory requirements established by RCRA. Accordingly, EPA intends to approve Michigan's application for final authorization to operate its hazardous waste program as revised. Michigan now has responsibility for permitting treatment, storage, and dispoal facilities within its borders and for carrying out other aspects of the RCRA program. This responsibility is subject to the limitations of this program revision application and previously approved authorities. Michigan also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA, and to take enforcement actions under sections 3008, 3013, and 7003 of RCRA.

E. Codification in Part 272

On February 21, 1989, U.S. EPA published a **Federal Register** notice which codified the Michigan hazardous waste program that was in effect when U.S. EPA granted Michigan final authorization. (51 FR 36804) One of the reasons U.S. EPA codified Michigan's hazardous waste program was to provide the public with notice of the scope of work of Michigan's revised hazardous waste program. In a future **Federal Register** notice, U.S. EPA will codify Michigan's revised hazardous waste program.

Compliance With Executive Order 12291

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

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Michigan's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final

rule. This rule will not impose any information requirements upon the regulated community.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of sections 2002(a) 3006, and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926 and 6974(b).

Dated October 23, 1989.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 89-27467 Filed 11-22-89; 8:45 am]

BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Subtitle F

[FTR Temp. Reg. 3]

Travel and Transportation Expense Payment System Using Contractor-Issued Charge Cards, Centrally-Billed Accounts, and Travelers Checks

AGENCY: Federal Supply Service, GSA.

ACTION: Temporary regulation.

SUMMARY: This rule extends the expiration date of FTR Temp. Reg. 3, "Travel and Transportation Expense Payment System Using Contractor-Issued Charge Cards, Centrally-Billed Accounts, and Travelers Checks," to November 29, 1990. This extension will keep FTR Temp. Reg. 3 in effect while GSA proceeds to permanently codify its provisions.

EFFECTIVE DATE: November 30, 1989.

FOR FURTHER INFORMATION CONTACT: Larry Tucker, Travel Management Division, Regulations Branch (FBTR), Washington, DC 20406, telephone FTS 557-1253 or commercial (703) 557-1253.

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this rule is not a major Rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. The General Services Administration has based all administrative decisions underlying this rule on adequate information concerning the need for and consequences of this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

By the Administrator's authority (sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c)), FTR Temporary Regulation 3 in the appendix to subtitle F of title 41 of the Code of Federal Regulations is amended by revising item 3 to read as follows:

Federal Travel Regulation Temporary Regulation 3

* * * * *

3. **Expiration date.** This regulation expires November 29,1990, unless sooner canceled or revised.

* * * * *

Richard G. Austin,

Acting Administrator of General Services.

[FR Doc. 89-27544 Filed 11-22-89; 8:45 am]

BILLING CODE 6820-24-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88-604, RM-6271]

Radio Broadcasting Services; Prairie Grove, AR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 235A to Prairie Grove, Arkansas, as that community's first local broadcast service, in response to a petition filed by C.R. Crisler d/b/a Southside Broadcasting. Coordinates used for Channel 235A at Prairie Grove are 35-53-52 and 94-19-29. With this action, the proceeding is terminated.

DATES: Effective January 2, 1990, the window period for filing applications on Channel 235A at Prairie Grove, Arkansas, will open on January 3, 1990, and close on February 2, 1990.

FOR FURTHER INFORMATION CONTACT: Ordee Pearson, (202) 634-6530. Questions related to the window application filing process at Prairie Grove, Arkansas, should be addressed to the Audio Service Division, FM Branch, Mass Media Bureau, (202) 632-0394.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order in MM Docket 88-604, adopted October 24, 1989, and released November 16, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

47 CFR PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of Allotments, is amended under Arkansas by adding Prairie Grove, Channel 235A.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-27492 Filed 11-22-89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF ENERGY

48 CFR Parts 916 and 970

Acquisition Regulation Amendment; Management and Operating Contracts

AGENCY: Department of Energy.

ACTION: Final rule

SUMMARY: The Department of Energy today adopts a final rule which will amend the Department of Energy Acquisition Regulation (DEAR) regarding management and operating (M&O) contracts. The rule provides a mandatory contract clause and instructions for its use in award fee M&O contracts, incorporating certain desirable features heretofore used in individual contracts throughout the agency, as well as suggestions resulting from the public comment process. The contract clause provides for contractor self-assessments which will be used in the Government's evaluation of contractor management efforts, establishes controls on the carry-over of unearned award fee from one period to the next, sets standards for the number of award fee periods per year, and establishes the Government's right to withhold all award fee for unsatisfactory performance in any area set forth in the Government's Performance Evaluation Plan.

EFFECTIVE DATE: This rule will be effective December 26, 1989.

FOR FURTHER INFORMATION CONTACT:
Charles A. Dan, Procurement Policy Division (MA–421), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585; telephone (202) 586–8247.
Christopher T. Smith, Office of the Assistant General Counsel for Procurement and Finance (GC–34), Washington, DC 20585; (202) 586–1526.

SUPPLEMENTARY INFORMATION:

I. Procedural Requirements
a. Review Under Executive Order 12291
b. Review Under the Regulatory Flexibility Act
c. Review Under the Paperwork Reduction Act
d. Review Under the National Environmental Policy Act
e. Review Under Executive Order 12612
f. Public Hearing
II. Comments on Proposed Rule
a. Publication of Proposed Rule
b. Discussion of Comments Received

I. Procedural Requirements

a. Review Under Executive Order 12291

This final rule is exempt from the requirement for review by the Office of Management and Budget under E.O. 12291 pursuant to an exemption for procurement regulations as discussed in OMB Bulletin No. 85–7 of December 14, 1984.

b. Review Under the Regulatory Flexibility Act

This final rule was reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96–345), which requires preparation of a regulatory flexibility analysis for any rule expected to have significant economic effect on a substantial number of small entities. The Department has concluded that this final rule is expected to have no significant effect on interest rates, tax policy or liabilities, the cost of goods or services, or other direct economic considerations, nor is it expected to have a significant effect on indirect economic considerations. The Department certifies that this final rule will not have a significant economic effect on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

c. Review Under the Paperwork Reduction Act

The information collection requirement contained in this final rule is approved under OMB Control Number 1910–4100. It imposes no additional paperwork burden.

d. Review Under the National Environmental Policy Act

The Department has concluded that this final rule does not constitute a major Federal action having a significant effect on the environment under the National Environmental Policy Act of 1969 (42 U.S.C. 432 *et seq.* (1976)), the Council on Environmental Quality Regulations (40 CFR parts 1500–1508) or DOE guidelines (10 CFR part 1021). Therefore, an environmental assessment is not required pursuant to the Act.

e. Review Under Executive Order 12612

This final rule does not involve issues which are expected to have a substantial direct effect on traditional state functions or their institutional interest and, thus, the "federalism" assessment requirements of Executive Order 12612 (52 FR 41685, October 30, 1987) do not apply.

f. Public Meeting

The Department has concluded that this final rule does not involve a substantial issue of fact or law, nor should it have a substantial effect on the nation's economy or large numbers of individuals or businesses. Therefore, pursuant to Public Law 95–91, the DOE Organization Act, and the Administrative Procedure Act (5 U.S.C. 553), the Department has not held a public hearing on this final rule.

II. Comments on Proposed Rule

a. Publication of Proposed Rule

The Department of Energy issued a proposed rule (54 FR 30230, July 19, 1989) announcing its intention to revise certain portions of the DEAR dealing with M&O contracts' award fee provisions. Comments were requested through August 18, 1989.

The proposed rule included a contract clause which combined elements of five clauses which are included in the DEAR at 916.405, but which are not mandatory for use in management and operating contracts. The clause set forth in the proposed rule included a provision which would have allowed the Government to withhold all award fee for unsatisfactory performance by the contractor in any important area, even if that performance area were not mentioned in the Government's PEP. In addition, the clause would have deleted a provision of the current clauses which allowed the Fee Determination Official to carry over unearned award fee from one period to later periods. Also, the clause established a new requirement for the contractor to submit a self-assessment after each award fee evaluation period, which would be judged by the Government in its evaluation of the contractor's management efforts. These provisions of the proposed rule resulted in comments and responses which are discussed below.

In response to the proposed rule, the Department received comments from eight parties. Of those, all but two were either from the Department's M&O contractors or from contractors which may be interested in proposing on the Department's M&O contracts. Of the two remaining parties, one was the Office of Federal Procurement Policy, and the other was a trade association representing the aerospace industries.

The comments received, along with the responses thereto, are presented below.

b. Discussion of Comments Received

One commenter disagreed with the identification of the Fee Determination Official (FDO) in the contract clause at 970.5204–54(b)(2), suggesting that it should be provided in the PEP. Identification of the FDO, by title, is provided primarily as a convenience. In almost all cases, the FDO will be the cognizant DOE Operations Office Manager. Identification of the FDO by title provides for continuity in the event that the individual occupying this position is replaced. Because this occurs relatively infrequently, and could be accomplished under the proposed contract language without the need for contract modification, we believe the contract clause is the appropriate place to identify the FDO. In the final clause, this provision has been placed at 970.5204–54(c)(2).

Several commenters objected to language at 970.5204–54(b)(3) in the draft clause which would have allowed the FDO to withhold all award fee whenever it was determined that the contractor's performance was unsatisfactory in any performance area, even if the particular performance area was not mentioned in the PEP. In proposing this provision, DOE was concerned that the FDO must be able to withhold award fee for any performance failure which seriously jeopardizes the successful performance of the contract. At the same time, we recognize that the PEP should place emphasis on performance areas which are worthy of priority treatment by the contractor. Accordingly, the clause has been revised to allow the FDO to withhold all award fee when a contractor's performance is determined to be unacceptable in any performance area specified in the PEP, even though there may be no weight or percentage of award fee specifically assigned to such area. In the prescription for use of the clause, located at 970.1509–8(g), we have added instructions to the FDO to ensure that all important areas of contract performance are included in the PEP,

even if such areas are not assigned specific weights or percentages of award fee.

Some commenters objected to language at 970.5204–54(b)(3), which allows the FDO to consider all information available to him or her in reaching a final fee determination. The FDO, because of his/her position within the Department's management structure, may well have information regarding the contractor's performance or the impacts of the contractor's performance which is unavailable to the staff which prepares a fee recommendation to the FDO. For this reason, the contract clause must allow the FDO to consider such information in making his/her fee decision. However, to address the concern that the award fee determination might be made on the basis of information not related to the PEP, language has been added to this paragraph, now at 970.5204–54(c)(3), to make it clear that such information must be related to performance areas set forth in the PEP in order to have an effect on the FDO's fee decision. We note that this provision puts into regulation what has been the practice within DOE.

One commenter objected to the requirement at 970.5204–54(c) for a 30–day notice of unilateral changes by the Government in the PEP, suggesting instead a minimum of 90 days notice. The commenter is "concerned that misinterpretation of performance requirements due to such short 30–day notice may result in an ineffective response by a contractor and higher costs to DOE," and recommends a 90–day notice. The 30–day notice is not a new requirement, and is in place on most of DOE's award fee M&O contracts, without any noticeable problem. Based on this, we have continued the requirement for a 30–day notice, now located at 970.5204–54(d).

One commenter suggested that changes to the PEP issued unilaterally by the FDO in accordance with proposed 970.5204–54(c) should be consistent with the contract Statement of Work. We agree and have incorporated such language at 970.5204–54(d)(3).

Three commenters took exception to the proposed approach to evaluating contractor self-assessments set forth in 970.5204–54(e). All three were concerned with the potential disadvantages to the contractor of revealing performance problems or deficiencies which had not been discovered by Government monitors. One commenter suggested the use of a formal presentation of a contractor self-assessment, rather than submission of a written self-assessment. For various reasons, we see no need to require a formal presentation of a contractor's self-assessment in all contracts. No restrictions are being placed upon the length of a contractor's self-assessment, although it is logical to assume that an unnecessarily lengthy self-assessment might not be well-received. Contractors will be provided ample opportunity to explain themselves in a written self-assessment. We would also like to point out that the clause does not prohibit formal presentations; it merely does not suggest the need for them. The FDO has always been free to call for such a presentation if he or she feels it necessary. If a contractor feels that such presentations are needed, this might be suggested to the FDO for his/her consideration. If the FDO is agreeable to a presentation, however, the contractor should be ready to accept the delays in the ultimate fee decision and payment which this might entail.

Also, two commenters suggested that the contractor should not be "penalized" for a frank, honest self-assessment which reveals performance problems not discovered already by the Government. We do not believe that the contractor would be penalized as a result of an honest and open self-assessment and using the self-assessment as a basis for a penalty is not our intention. The FDO should be aware of a contractor's deficiencies in performance even before the submission of a self-assessment. The self-assessment will provide the contractor with a forum to explain the deficiencies and present a description of its own initiatives and plans to correct such deficiencies and prevent their recurrence. By doing so, the contractor may convince the FDO that its management efforts have mitigated the impact of the deficiencies. Granted, there is the possibility that the contractor's self-assessment will reveal deficiencies or problems which the Government performance monitors have overlooked in their reports to the FDO. However, this is viewed as a benefit, since it should result in more accurate evaluations of a contractor's performance.

Some commenters objected to the use of six-month evaluation periods, set forth in the Note following the clause at 970.5204–54 as the standard for the Department. The use of semiannual evaluation periods was based upon a comprehensive study of the Department's existing award fee practices and procedures, which revealed that more frequent evaluation periods were more costly without providing additional benefits. The study revealed indications that more frequent evaluations did not provide enough time for a thorough evaluation, and the evaluations were not as effective a management technique as possible. Some contractors noted that conversion to six-month evaluation periods would result in losses associated with less frequent award fee payments. Some suggested interim payments of award fee. Our estimate of the cost of award fee appraisals indicates that an average of six man-years of effort is dedicated to each award fee contract, most of which is spent on award fee appraisals. These costs appear to outweigh the costs to the contractors. The Department has decided that the benefits of more thorough and effective evaluations outweigh the additional costs. The Note at the end of the clause has been deleted and replaced by language in section 970.5204–54(b) requiring six-month evaluation periods.

A number of commenters disagreed with the omission of a provision which would allow the FDO to carry over unearned award fee from one period to a later period. After further consideration, the Department has decided that such carry-over provisions are appropriate, provided certain controls are in place. The following controls are included at 970.5204–54(c)(4) in this final rule. First, unearned award fee may only be carried over within the same fee negotiation cycle. Award fee unearned in one fee cycle cannot be carried over to a later fee cycle. This will discourage carry-over of funds from one fiscal year to the next. Second, unearned award fee can be carried over only to the next period. Finally, in order to earn any fee carried over from a prior period, the contractor's overall performance must be rated higher than in the prior period. The contractor should not benefit simply because the award fee pool is greater.

One commenter suggested that the proposed clause should provide for a specific payment due date. This commenter suggests the last day of each month should be the due date for payments of base fee increments, and that the award fee payment due dates should be specified in the PEP. In the vast majority of DOE's M&O contracts, the payment of award fee is allowed on the date the award fee determination is presented to the contractor. The commenter suggests an "interest penalty" for payments made more than 15 days after the due date for the award fee determination and notice. We feel that this comment has merit, since the incentive of an award fee arrangement is most effective if the payment or withholding of an award fee to the

contractor is timely. We have added a new paragraph to the clause at 970.5204–54(f), to establish a schedule for award fee determinations. Because the submission of a contractor's self-assessment will be an important aspect of the Government's evaluation process, we have established that award fee determinations must be made not later than sixty (60) calendar days after the receipt by the contracting officer of the contractor's self-assessment. We have included an agreement to pay interest on award fee determinations made after such date, based upon the "Renegotiation Board Interest Rate," which is the rate used under the Contract Disputes Act and the Prompt Payment Act.

Two commenters suggested that the FDO's fee determination should be subject to some sort of appeal, perhaps an administrative appeal, by the contractor. Appeal procedures are inconsistent with the award fee system of Government contracting, which is based on the premise of a unilateral decision by the FDO. Therefore, we have not incorporated such procedures in this final rule.

Two commenters suggested that the revisions included in the proposed clause reflect a more rigorous standard of performance which should be rewarded by additional incentives in the form of fees beyond those allowed in existing Departmental regulations. The Department is currently studying its fee schedules, and will consider these comments in that study. Accordingly, we do not believe it appropriate to provide additional fees as a part of this final rule.

One commenter suggested that this final rule should only apply to contracts awarded after the effective date of the amendments, because contractors would not have had an opportunity to negotiate their contracts accordingly. The clause issued in this final rule will be mandatory in M&O contracts using an award fee arrangement which are entered into after the effective date of this final rule. Existing contracts will be modified on the occasion of the next fee negotiations, typically conducted on an annual basis. This will provide contractors the opprotunity to negotiate fees with a full understanding of the new requirements which are included in the clause.

In addition to the above comments, certain comments were made which did not relate specifically to this proposed rule. These comments will not be addressed in this discussion, but have been forwarded to the appropriate parties in the Department for consideration.

It should be noted that certain changes have been made at our own initiative, in the interest of clarity. For example, throughout 970.5204–54, we have revised the language of the contract clause to recognize that M&O contract fees are almost universally negotiated on an annual basis, requiring contract modifications to incorporate the results of these negotiations. The Note following the contract clause at 970.5204–54 has been deleted, both to recognize the need for annual fee negotiations, as previously discussed, and to delete confusing language which might have been interpreted as allowing deviations from the standard six-month evaluation periods through means other than the Department's existing deviation procedures. Deviations from the standard six-month evaluation periods must be accomplished in accordance with the procedures set forth in DEAR subpart 901.4. In addition, a sentence was added to 970.5204–54(b) to clarify that if DOE and the contractor cannot agree on a reasonable fee, the contracting officer will determine a fee in accordance with the Disputes clause.

List of Subjects in 48 CFR Parts 916 and 970

Government contracts, DOE management and operating contracts.

Dated: November 16, 1989.

Berton J. Roth,

Director, Directorate of Procurement and Assistance Management.

PART 916—TYPES OF CONTRACTS

1. The authority citation for part 916 continues to read as follows:

Authority: Sec. 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254); and sec. 148 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2168).

2. The introductory text of paragraph (e) in section 916.405 is revised to read as follows:

916.405 Contract clause.

(e) For other than management and operating contracts, award fee contracts should include in the contract schedule the ARTICLES shown below. The ARTICLES may be modified to meet individual situations and any ARTICLE or specified requirement therein should be deleted when it is not applicable to a given contract. If substantial changes are believed appropriate, consultation with the Director, Office of Policy, Headquarters, is advisable.

* * * * *

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

2A. The authority citation for part 970 continues to read as follows:

Authority: Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201); Sec. 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254); Sec. 201 of the Federal Civilian Employee and Contractor Travel Expenses Act of 1985 (41 U.S.C. 420); and Sec. 1534 of the Department of Defense Authorization Act, 1986, Pub. L. 99–145 (42 U.S.C. 7256a), as amended.

3. Section 970.1509–8 is amended by adding new paragraphs (f) and (g).

970.1509–8 Special considerations—award fee.

* * * * *

(f) When a management and operating contract is to be awarded on an award-fee basis, the contract shall include the clause at 970.5204–54.

(g) Fee Determination Officials must be careful to ensure that all important areas of contract peformance are mentioned in the Performance Evaluation Plan, even if such areas are not assigned specific weights or percentages of award fee.

4. Section 970–5204–16 is amended by redesignating the Note following paragraph (a) as Note 1, and adding directly thereafter, as Note 2, the Note set out below. The Note after paragraph (d) is hereby redesignated Note 3, and the Note after paragraph (e) is hereby redesignated Note 4.

970.5204–16 Payments and advances.

* * * * *

Note 2.—When award-fee provisions are used, the clause should be modified by replacing subparagraph (a) with the following:

(a) Payment of Base Fee and Award Fee. The base fee shall become due and payable in equal monthly installments on the last day of each month. Award fees earned shall become due and payable following the issuance by the government Fee Determination Official (FDO) of a Determination of Award Fee Earned, in accordance with the clause of this contract entitled Award Fee.

* * * * *

5. Section 970.5204–54 is added as follows:

970.5204–54 Award fee.

Award Fee (Date to be Entered)

(a) *Base Fee and Award Fee* It is herewith agreed that a base fee and an award fee, to be determined in accordance with the provisions of this clause, are available for payment in accordance with the clause of this

contract entitled Payments and Advances.

(b) *Fee Negotiations.* Prior to the beginning of each fiscal year under this contract, or other appropriate period as mutually agreed upon, the contracting officer and contractor shall enter into negotiation of a base and award fee in accordance with appropriate provisions for management and operating contract fees set forth in the Department of Energy Acquisition Regulation. This contract shall be modified at the conclusion of each negotiation to reflect the negotiated amounts for base and award fees. It is herein agreed the award fee amount shall be assigned to evaluation periods six months in duration. If the parties are unable to agree on a reasonable fee, the contracting officer shall determine the base and award fee unilaterally, in accordance with the clause of this contract entitled Disputes.

(c) *Determination of Award Fee Earned.* (1) The Government shall at the conclusion of each specified evaluation period evaluate the contractor's performance for a determination of award fee earned.

(2) For this contract, the Government Fee Determination Official (FDO) will be (Insert title of FDO). The contractor agrees that the determination as to the amount of award fee earned will be made by the Government FDO and such determination is binding on both parties and shall not be subject to appeal under the "Disputes" clause or any other appeal clause.

(3) The evaluation of contractor performance shall be in accordance with the Performance Evaluation Plan described in subparagraph (d), below. The contractor shall be promptly advised in writing of the determination, and the reasons why the award fee was or was not earned. While it is recognized that the basis for determination of the fee shall be the evaluation by the government, in accordance with the Performance Evaluation Plan, the FDO may also consider any information available to him or her which relates to the contractor's performance of contract requirements. In the event that the contractor's performance is considered unacceptable in any area of contract performance which is specified in the Performance Evaluation Plan, even if no weight or fee is specifically assigned to the particular performance area, the FDO may at his/her discretion determine the contractor's overall performance to be unacceptable, and accordingly may withhold the entire award fee for the evaluation period.

(4) Unearned award may be carried over within a single fiscal year, or other two-period fee negotiation cycle as may have been agreed upon. The FDO may, at their sole discretion, specify in a fee determination that award fee not earned during the first evaluation period of a two-period fee cycle may be allocated to the second fee period in that fee cycle. The contractor shall not, however, be entitled to earn any of this "carry-over" fee it its overall performance in the latter evaluation period does not reflect an improvement over the prior evaluation period. Overall performance evaluations in the second period which are equal to or the same as those in the first period shall not be considered as improvements providing entitlement to the carry-over portion of the award fee pool. If the single negotiation of a base and award fee amount (fee cycle) will be for more than two evaluation periods, unearned award fees in any one of the evaluation periods established by that negotiation may be carried over only to the next period covered by that negotiation. Fees unearned under one fee cycle may not be carried forward to another fee cycle.

(d) *Performance Evaluation Plan.* (1) The Government shall establish unilaterally a Performance Evaluation Plan upon which the determination of award fee shall be based. Such Plan shall include the criteria to be considered under each area evaluated and the percentage of award fee, if any, available for each area. A copy of the plan shall be provided to the contractor thirty (30) calendar days prior to the start of an evaluation period.

(2) The Performance Evaluation Plan will set forth the criteria upon which the contractor will be evaluated for performance relating to any technical, schedule, management, and/or cost functions selected for evaluation.

(3) The Performance Evaluation Plan may, consistent with the contract statement of work, be revised unilaterally by the Government at any time during the period of performance. Notification of such changes shall be provided to the contractor at least thirty (30) calendar days prior to the start of the evaluation period to which the change will apply.

(e) *Contractor Self-Assessment.* Following each evaluation period, the contractor shall submit a self-assessment within (Insert Number) calendar days after the end of the period. This self-assessment shall address both the strengths and weaknesses of the contractor's performance during the evaluation period. Where deficiencies in performance are noted, the contractor shall describe the actions planned or taken to correct such deficiencies and avoid their recurrence. The FDO will review the contractor's self-assessment as part of their evaluation of the contractor's management during the period. An unrealistic self-assessment will result in lower award fee determinations. The contractor will not be penalized for a realistic self-assessment, although deficiencies noted by the contractor may be reflected in the Government's evaluation. The self-assessment itself will not be the basis for the award fee determination.

(f) *Schedule for Award Fee Determinations.* The FDO shall issue the final award fee determination in accordance with a schedule set forth in the Performance Evaluation Plan. However, a determination must be made within sixty (60) calendar days after the receipt by the contracting officer of the contractor's self-assessment discussed in paragraph (e), above. If the determination is delayed beyond that date, the contractor shall be entitled to interest on the determined award fee amount at the rate established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) that is in effect on the payment date. This rate is referred to as the "Renegotiation Board Interest Rate," and is published in the **Federal Register** semiannually on or about January 1 and July 1. The interest on any late award fee determination amount will accrue daily and be compounded in 30-day increments inclusive from the first day after the scheduled determination date through the actual date the determination is issued. That is, interest accrued at the end of any 30-day period will be added to the determined amount of award fee and be subject to interest if not paid in the succeeding 30-day period.

[FR Doc. 89-27476 Filed 11-22-89; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 393

[FHWA Docket No. 90-1]

RIN 2125-AC49

Parts and Accessories Necessary for Safe Operation; Front Wheel Brakes on Mexican Commercial Motor Vehicles

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Interim final rule and request for comments.

SUMMARY: The FHWA is amending part 393, Parts and Accessories Necessary for Safe Operation, to allow Mexican motor carriers operating commercial motor vehicles in border commercial zones additional time to comply with the requirement that every commercial motor vehicle be equipped with brakes acting on all wheels. This action will facilitate the flow of trade and traffic between the two countries without interruption. The FHWA is requesting comments from all interested parties concerning this issue. The FHWA is also removing the exception (paragraph (b)) to § 393.1 which deferred application of part 393 to certain Mexican commercial motor vehicles until November 18, 1989.

EFFECTIVE DATE: November 24, 1989. Written comments will be accepted until January 14, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Neill L. Thomas, Office of Motor Carrier Standards, (202) 366-2983; or Mr. Charles E. Medalen, Office of the Chief Counsel, HCC-20, (202) 366-1354, Federal Highway Administration, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., ET, Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: Section 9102(b) of the Truck and Bus Safety and Regulatory Reform Act of 1988 (the Act) required the Department of Transportation (DOT) to delay the applicability of part 393 of the Federal Motor Carrier Safety Regulations (FMCSRs) to Mexican motor carriers for a period of 1 year beginning on November 18, 1988. The requirement was implemented by the FHWA with a final rule that was published in the **Federal Register** on March 24, 1989 [to be codified at 49 CFR 393.1(b), 54 FR 12200, 12202-12203].

Section 9102 also required the Secretary of Transportation to submit a report to Congress on the effects of the delay in application of part 393 together with recommendations on the extent to which Mexican motor carriers may or should be required to comply with all or any of the requirements contained in part 393. The required report was forwarded to Congress on September 29, 1989. In that report, the Secretary recommended:

> The part 393 exemption created by section 9102 of the 1988 Act should be allowed to lapse, with the exception of the front wheel brake requirement. A transition period, to January 1, 1991, should be established for Mexican motor carriers operating in border commercial zones to comply with the front brake standard. A similar transition period was provided to both Canadian and U.S. carriers when the requirement was instituted in 1987. This will provide sufficient time to the Mexican carriers who have operated in commercial zones with the exemption to comply with the front wheel brake requirement. The requirements should apply to all Mexican commercial motor vehicles manufactured after July 24, 1980, the same date applicable to U.S. and Canadian vehicles. This date was chosen because it is the effective date of the Federal Motor Vehicle Safety Standard which requires brakes acting on all axles and is now applicable to all other carriers operating in the United States.
>
> Continuing to grant an exemption from part 393 for Mexican motor carriers operating in border municipalities otherwise appears unwarranted, and would compromise safety. The appearance of an exemption creates unnecessary complexity for foreign carriers operating in border jurisdictions when, in fact, States continue to enforce their own safety regulations. State personnel presently conduct the predominant share of transborder inspections. All vehicles, no matter of what origin, should be required to comply with part 393 with the exception of the transitional period for front brakes.

The FHWA is therefore amending § 393.42, Brakes required on all wheels, by adding a new paragraph (b)(4) which will implement the Secretary's recommendation to Congress. This rulemaking action will also assure the uninterrupted flow of trade and traffic between the two countries.

The 1-year delay in the applicability of part 393 of the FMCSRs to Mexican motor carriers operating commercial motor vehicles in U.S. border commercial zones lapses on November 18, 1989. The FHWA is therefore removing that exception, § 393.1(b), from part 393.

Regulatory Impact

Because the one-year delay discussed above expires on November 18, 1989, the braking requirements of part 393 would otherwise be fully applicable to Mexican motor carriers absent this action. If the orderly flow of traffic and goods between the United States and Mexico is to continue, this amendment to part 393 must become effective immediately. The amendment imposes no additional regulatory burden on industry or the general public. The FHWA therefore finds good cause to promulgate the amendment as an interim final rule without prior notice. However, in order to provide an opportunity for public response to the retrofitting provision, the FHWA will accept comments until January 14, 1990. The transition period for vehicles not equipped with front-wheel brakes will not be extended beyond January 1, 1991.

The FHWA has determined that this document does not contain a major rule under Executive Order 12291 or a significant regulation under the regulatory policies and procedures of the DOT. It is anticipated that the economic impact of this rulemaking will be minimal. Therefore, a full regulatory evaluation is not required. For this reason and under the criteria of the Regulatory Flexibility Act, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

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

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 contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

(Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety)

List of Subjects in 49 CFR Part 393

Highways and roads, Highway safety, Motor carriers, Motor vehicle safety, Parts and accessories.

Issued on: November 17, 1989.

T.D. Larson,

Administrator.

In consideration of the foregoing, the FHWA is amending title 49, CFR, subtitle B, chapter III, part 393 as set forth below:

PART 393—[AMENDED]

1. The authority citation for part 393 continues to read as follows:

Authority: 49 U.S.C. App. 2505; 49 U.S.C. 3102; 49 CFR 1.48.

2. Section 393.1 is revised to read as follows:

§ 393.1 Scope of the rules of this part.

Every employer and employee shall comply and be conversant with the requirements and specifications of this part. No employer shall operate a commercial motor vehicle, or cause or permit it to be operated, unless it is equipped in accordance with the requirements and specifications of this part.

§ 393.42 [Amended]

3. In § 393.42, a new paragraph (b)(4) is added to read as follows:

§ 393.42 Brakes required on all wheels.

* * * * *

(b) * * *

(4) Trucks or truck tractors having three or more axles and being operated by or under the control of a Mexican motor carrier must be retrofitted to meet the requirements of paragraph (a) of this section by January 1, 1991 if the vehicle was manufactured on or after July 25, 1980.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 649

[Docket No. 90809-9259]

RIN 0648-AC28

American Lobster Fishery

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

ACTION: Final rule.

SUMMARY: NOAA issues this final rule implementing Amendment 3 to the Fishery Management Plan for the American Lobster Fishery (FMP). This rule (1) delays implementation of an increase in the escape vent size scheduled for January 1, 1990 to January 1, 1992 and (2) requires that effective January 1, 1992, lobster traps contain a biodegradable escape panel, or equivalent mechanism, to keep a trap from ghost fishing after it has been abandoned or lost for 12 months or more. Ghost fishing describes the action of fishing gear which continues to operate after all control of that gear is lost by the fishermen. This requirement becomes effective 12 months after the New England Fishery Management Council (Council) specifies and the Regional Director publishes a list of acceptable escape mechanisms. The earliest implementation date is January 1, 1992. The purpose of this action is to allow the maximum utilization of the resource through maximum retention of legal sized lobsters during the period of scheduled size increases and to reduce mortality caused by lost or abandoned traps.

EFFECTIVE DATE: This regulation is effective December 24, 1989, except for § 649.21(c)(3) which will be effective 12 months after a list of acceptable mechanisms has been published in the **Federal Register**, but not before January 1, 1992.

ADDRESSES: Copies of the amendment, which incorporates the environmental assessment and the regulatory impact review, are available from Douglas G. Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway, Saugus, Massachusetts 01960.

FOR FURTHER INFORMATION CONTACT: Patricia A. Kurkul, Resource Policy Analyst, 508-281-9331.

SUPPLEMENTARY INFORMATION: The FMP is implemented by regulations appearing at 50 CFR part 649. The objective of the FMP is to support and promote the development and implementation, on a continuing basis, of a unified regional management program for American lobsters (*Homarus americanus*), which is designed to promote conservation, to reduce the possibility of recruitment failure, and to allow full utilization of the resource by the U.S. fishing industry. Efforts to better achieve this objective have resulted in Amendment 1 to the FMP in 1986 (51 FR 19210) and Amendment 2 to the FMP in 1987 (52 FR 46088). Amendment 3 to the FMP was submitted to the Secretary of Commerce (Secretary) on August 1, 1989, and a notice of availability published on August 10, 1989 (54 FR 32834). The proposed rule for Amendment 3 was published on September 7, 1989 (54 FR 37138) and public comments were invited until October 16, 1989.

Amendment 3: (1) Delays the implementation of the increase in the escape vent size scheduled for January 1, 1990 until January 1, 1992; and (2) requires that lobster traps contain an escape panel or equivalent mechanism which degrades and allows lobsters to escape after a trap has been abandoned or lost for 12 months or more.

Amendment 2 increased the minimum legal carapace length of lobsters to 3 5/16 inches, in four steps over a five year period between 1988 and 1992. Amendment 2 also required that on January 1, 1992 lobster trap escape vents were to become compatible with a minimum carapace length of 3 5/16 inches. Scientific guidance for the exact specification of this vent size was not available at the time the original schedule was set and was to be promulgated by later rulemaking. Guidance was provided to the Council by the NMFS in April 1988. Based on this guidance, and consistent with the objective of the FMP to promote conservation, the Council opted for an escape vent size that maximizes escapement of lobsters smaller than the legal size. Requiring that this vent size be implemented in 1990, could cause an unintended loss in revenue to the fishery, and erode the cooperation and compliance needed to achieve the objectives of the FMP. Therefore, Amendment 3 delays the increase in the vent size requirement until January 1, 1992.

Amendment 3 also requires that lobster traps contain a biodegradable escape panel, or equivalent mechanism, to keep a trap from ghost fishing after it has been abandoned or lost for 12 months or more. The purpose of this proposal is to reduce fishing mortality caused by lost traps ("ghost fishing") on all sizes of lobster.

This requirement becomes effective January 1, 1992, only if the Council specifies, and the Regional Director publishes, consistent with the rulemaking provision of the Administrative Procedure Act (5 USC § 553) and at least 12 months prior to this date, a list of acceptable escape mechanisms. If a list is not available, or has not been published in final form in the **Federal Register** by January 1, 1991, implementation will occur 12 months after publication.

The preamble to the proposed rule to implement Amendment 2 described these measures and their rationale and is not repeated here.

Comments and Responses

No comments were received either in support or opposition to this amendment.

Changes From the Proposed Rule

In § 649.21, paragraph c, text is being added that was not included in the proposed rule.

Classification

The Director, Northeast Region, NMFS, has determined that the amendment these rules would implement is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law.

The Council prepared within Amendment 3 an environmental assessment (EA). Based on this EA, the

Assistant Administrator for Fisheries, NOAA, found that there will be no significant impact on the environment as a result of this rule. A copy of the EA and finding of no significant impacts may be obtained from the Council at the address above.

The Under Secretary for Oceans and Atmosphere, NOAA, has determined that this rule is not a "major rule" requiring a regulatory impact analysis under E.O. 12291. This rule is not 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 a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign based enterprises in domestic or export markets.

The General Counsel of the Department of Commerce has certified to the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities. As a result, a regulatory flexibility analysis was not prepared.

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

The Council determined that this rule will be implemented in a manner that is consistent, to the maximum extent practicable, with the approved coastal zone management programs of the affected states. This determination has been submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act. Connecticut, Maine, Delaware, and North Carolina have agreed with the Council's determination. None of the other states commented within the statutory time period, and therefore, consistency is automatically implied. All measures approved were included in this amendment; therefore this determination remains applicable.

This rule does not contain policies with federalism implications sufficient to warrant a federalism assessment under E.O. 12621.

List of Subjects in 50 CFR Part 649

Fisheries, Reporting and recordkeeping requirements.

Dated: November 11, 1989.

James E. Douglas, Jr.,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 649 is amended as follows:

PART 649—AMERICAN LOBSTER FISHERY

1. The authority citation for part 649 continues to read as follows:

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

2. In § 649.2, the definition of "escape vent" is added in alphabetical order to read as follows:

§ 649.2 Definitions.

* * * * *

Escape Vent means an opening in a lobster trap designed to allow lobster smaller than the legal minimum size to escape from the trap.

* * * * *

3. Section 649.20, the table in paragraph (b) is revised to read as follows:

§ 649.20 Harvesting and landing requirements.

* * * * *

(b) Carapace length.

* * * * *

Effective dates	Minimum carapace length
January 1, 1985, through December 31, 1987.	3 3/16 inches.
January 1, 1988, through December 31, 1988.	3 3/32 inches.
January 1, 1989, through December 31, 1990.	3 1/4 inches.
January 1, 1991, through December 31, 1991.	3 3/32 inches.
January 1, 1992, and beyond.[1]	3 5/16 inches.

[1] By January 1, 1992, escape vents in traps must be compatible with a minimum carapace length of 3 5/16 inches.

* * * * *

4. Section 649.21, is amended by revising paragraph (c)(1) introductory text and paragraph (c)(2) and by adding paragraph (c) introductory text and paragraph (c)(3) to read as follows:

§ 649.21 Gear identification, marking, and escape vent requirements.

* * * * *

(c) *Escape vents.* All lobster traps deployed in the EEZ or possessed by a person whose vessel is permitted for fishing in the EEZ must be constructed to include one of the following escape vents in the parlor section of the trap. The vent must be located in such a manner that it would not be blocked or obstructed by any portion of the trap, associated gear, or the sea floor in normal use.

(1) Until January 1, 1992, all lobster traps must contain one of the following:

* * * * *

(2) On January 1, 1992, all lobster traps must contain one of the following:

(i) A rectangular escape vent compatible with an unobstructed opening not less than 1 5/16 inches high (49.2 mm) by 6 inches wide (152.2 mm), if the escape vent is made by cutting meshes on a wire mesh trap the width will be measured from center to center on the wires;

(ii) Two circular escape vents with unobstructed openings not less than 2 7/16 inches (61.9 mm) in diameter; or

(iii) Any other type of escape vent which the Regional Director finds to be consistent with paragraphs (c)(2)(i) and (c)(2)(ii) of this section.

(3) On January 1, 1992, lobster traps must contain an escape panel or equivalent mechanism to keep a trap from ghost fishing after it has been abandoned or lost for 12 months or more. This requirement shall become effective on or before January 1, 1991, only if the Council specifies, and the Regional Director consistent with 5 U.S.C. 553 publishes in the **Federal Register**, a list of acceptable methods for complying with this requirement, including the minimum dimensions of the escape path.

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[FR Doc. 89-27462 Filed 11-22-89; 8:45 am]

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Proposed Rules

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 919

[Docket No. AO-102-A6; FV-88-132]

Peaches Grown in Mesa County, Colorado; Recommended Decision on Proposed Amendment of Marketing Agreement and Order No. 919

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and opportunity to file exceptions.

SUMMARY: This recommended decision invites written exceptions on proposed further amendment of the Marketing Agreement and Marketing Order No. 919, covering peaches grown in Mesa County, Colorado. The amendment proposals would: (1) Authorize regulation of shipments of fresh peaches within the State of Colorado as well as shipments to locations outside of the State; (2) amend six existing definitions and add three new definitions to the order; (3) reapportion committee membership (increasing number of independent handler members and reducing number of cooperative handler members), add informal rulemaking authority to reapportion committee membership and change the size and composition of the committee; (4) revise the committee nomination and selection process and add informal rulemaking authority to make changes in the process, and establish limits on the tenure of committee members; (5) increase the amount of committee compensation, add informal rulemaking authority to revise that compensation, and revise the voting procedures of the committee; (6) authorize a late payment charge and an additional interest rate charge on overdue assessments; (7) consolidate provisions regarding the regulation of shipments; (8) authorize establishment and funding of production research projects; (9) add provisions for verification of reports and records and for maintaining confidentiality of handler records; (10) add informal rulemaking authority to change the minimum quantity of peaches per shipment exempt from regulation and include an additional requirement that peaches purchased under such exemption be removed from the seller's premises on the day of the sale; (11) require a periodic referendum to determine whether growers favor continuance of the order; and (12) make necessary conforming changes. The amendment proposals are designed to improve the administration, operation, and functioning of the marketing order.

DATES: Written exceptions must be filed by December 26, 1989.

ADDRESSES: Written exceptions should be filed with the Hearing Clerk, United States Department of Agriculture, Room 1079, South Building, Washington, DC 20250. Four copies of all written exceptions should be submitted, and they shall be made available for public inspection during regular business hours. Exceptions should refer to the **Federal Register** publication date, page number and docket reference number.

FOR FURTHER INFORMATION CONTACT: George J. Kelhart, 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) 475–3919, or Joseph C. Perrin, Officer-In-Charge, Northwest Marketing Field Office, Green-Wyatt Federal Building, 1220 SW Third Ave., Room 369, Portland, Oregon 97204, telephone: (503) 221–2724.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding: Notice of hearing issued November 1, 1988, and published in the **Federal Register** on November 3, 1988 (53 FR 44407).

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 and Departmental Regulation 1512–1.

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to the proposed further amendment of Marketing Agreement and Marketing Order No. 919, as amended [7 CFR Part 919], regulating the handling of peaches grown in Mesa County, Colorado, hereinafter referred to collectively as the order.

This notice of filing of the recommended decision and of opportunity to file exceptions thereto is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), 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).

This proposed amendment of the order is based on the record of a public hearing held in Palisade, Colorado, on November 16 and 17, 1988. All but one of the amendment proposals considered at the hearing were submitted by the Administrative Committee (committee) established under the order. The United States Department of Agriculture (Department) proposed that it be authorized to make any necessary conforming changes.

Small Business Considerations

In accordance with the provisions of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–602), the Administrator of the Agricultural Marketing Service has determined that this action would not have a significant economic impact on a substantial number of small entities. Small agricultural producers have been defined by the Small Business Administration (SBA) (13 CFR 121.2) as those having annual receipts of less than $500,000. Small agricultural service firms, which include shippers under this marketing agreement and order, are defined as those firms with annual receipts of less than $3,500,000.

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. The Act requires the application of uniform rules to regulated handlers. 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 the RFA and the Act are compatible with respect to small entities. Interested persons were invited in the notice of hearing to present evidence at the hearing on the probable regulatory and informational impact of the proposed changes on small businesses.

During the 1988 season, approximately 28 handlers of Mesa County peaches were subject to regulation under the order. In addition, there are approximately 260 peach producers in Mesa County. The majority of these handlers and producers may be classified as small entities.

The Federal marketing order for peaches grown in Mesa County, Colorado, began in 1939 and was last amended in 1969. Peach acreage in Mesa County totals around 1,800 acres. Inspected production volume in 1988 was 134,275 bushels with a value of approximately $2.75 million. In addition to the inspected production, an estimated 40,000 bushels was sold within Mesa County at packing sheds, local roadside stands and farmers' markets. These sales were not subject to grade or size requirements. Two-thirds of the crop is handled by independent producer/handlers and one-third by a cooperative handler organization. Currently, no Mesa County peaches are exported or used in processed markets.

The Federal marketing order for peaches operated jointly with a State order until March 1, 1989, when the State order was terminated after failing a State-run termination referendum. All programs conducted under the State program, such as paid advertising and production research, have ceased with the termination of the State order. In conjunction with this, official notice is taken of that termination. The Federal order regulates the sale of interstate peaches (approximately 70 percent of the annual crop) and requires that peaches shipped out of the State meet U.S. No. 1 or better standards and be at least 2⅛ inches in diameter.

The proposal amending § 919.9 (redesignated as § 919.10) would revise the definition of the term "ship" to include the handling of peaches in the current of commerce within the production area and to any points outside the production area. This would require the inspection of all commercial shipments of Mesa County peaches and ensure minimum standards for all such peaches marketed. This proposal should improve the market for peaches handled within the county and the State, as well as those markets outside the State. This could benefit both producers and handlers because minimum quality and size requirements established under the order are important to the industry in fostering consumer satisfaction and increasing the demand for Mesa County peaches.

Six additional definitions are proposed to be revised and three new definitions are proposed to be added to this marketing order. Section 919.4, which currently defines "peaches," would be amended to define the new term "production area." The revised definition of the term "peaches" would be inserted as § 919.5. Current §§ 919.5 through 919.11 would be amended and/or redesignated as §§ 919.6 through 919.12. Redesignated § 919.6 would change the name of the Administrative Committee to the Colorado Peach Administrative Committee to more closely associate the name of the committee with the commodity regulated. This action would necessitate numerous conforming changes throughout the order. The proposed amended definitions for producer, redesignated § 919.7 and handler, redesignated § 919.8, would further clarify these two terms. The definitions of fiscal period, redesignated § 919.11, and district, redesignated § 919.12, would allow the committee, with the approval of the Secretary, to establish new operating periods and new district alignments for the efficient operation of the program. New definitions would be added for grade, § 919.13, and size, § 919.14, to provide an appropriate basis for determining grade and size standards for peaches grown in the production area. These changes in definitions and the addition of new definitions are meant to further define and clarify terms used in the order, and would not have a significant impact on small business entities in the industry.

The proposed amendment to § 919.20 would reapportion committee membership to reflect the position of the cooperative marketing association and independent and independent handler segments of the industry. Section 919.20 also would include a requirement that committee members shall represent and be selected from segments of the industry (producers, independent handlers and cooperative handlers) of which they are members. Additionally, the proposed amendment to § 919.22 would provide the committee with informal rulemaking authority to: (1) Recommend reapportionment of committee membership among producer and handler members; (2) change the size of the committee; and (3) change the composition of the committee to reflect future structured changes in the industry should a new segment develop in the future. These proposals would provide for appropriate representation of the various industry segments, and would allow the committee, with the approval of the Secretary, to respond to future structured changes in the industry. These proposals should benefit small entities.

Several proposed amendments would revise and consolidate the nomination and selection process for committee members under § 919.21. The new proposals would provide more appropriate lengths of time for the committee to nominate and the Department to select new members (§ 919.21) and fill vacancies (§ 919.29); revise and qualification process (§ 919.26), and standardize the length of terms and limit tenure for committee members (§ 919.27). Existing sections covering the nomination and selection of independent handler members (§ 919.22), and cooperative handler members (§ 919.23), and the eligibility for membership of all members (§ 919.24), would be removed and the requirements of these three sections would be consolidated in the nomination and selection process under § 919.21. Section 919.22 would be revised to include informal rulemaking authority to: (1) Reapportion the committee; (2) change the size of the committee; (3) revise the composition of the committee; and (4) redefine the districts. Sections 919.23 and 919.24 would be removed and reserved. These proposals are intended to improve the committee nomination and selection process, and would have no significant impact on small business entities in the industry.

Proposed § 919.30, regarding compensated and expenses for committee members, would provide for an increase in the amount of money which members receive while attending committee meetings from $5.00 to $10.00. The proposed changes would not present a financial burden on operating expenses. The proposed amendment would authorize the committee, with the approval of the Secretary, to change the compensation rate as necessary. Section 919.33 on committee voting procedures would be amended by lowering the quorum requirement for committee meetings. It would also provide, with certain safeguards, for committee votes to be cast by mail, telegraph, telephone or other means of communication. This provision is expected to improve the committee's ability to respond expeditiously to needs of the industry and should therefore be beneficial to small entities.

The proposed amendment to § 919.41 would authorize the committee, with the Secretary's approval, to establish a late payment charge and an additional interest rate charge on overdue handler assessment accounts. Such authority should provide handlers with an incentive to make assessment payments in a timely manner and would not have a significant impact on small entities.

Revisions would be made to four sections regarding the committee's annual marketing policy and the regulation of peach shipments. Various provisions in §§ 919.32, 919.50, 919.51 and 919.52 would be reorganized.

The proposed amendment to § 919.60 would authorize the establishment of production research projects. This would be added to the current order authority for market research and development projects. Under the proposal, production research projects, as well as market research and development projects, would be paid for, with the approval of the Secretary, using assessment funds and other sources of income as approved by the Secretary. Such projects would benefit producers and handlers and would not adversely affect small entities. Any costs associated with this provision would be outweighed by the benefits of such projects. In addition, proposed § 919.40, regarding expenses incurred by the committee, would allow the committee, with the approval of the Secretary, to use funds, other than those collected from assessments, for production research and market research and development projects. Such authority should provide increased opportunity for the committee to conduct production and market research projects.

The proposed addition of § 919.67 regarding verification of reports and records would authorize the Secretary and the committee to verify the corrections of reports filed by handlers, and to verify handler compliance with recordkeeping requirements. The requirement would not have a significant impact on small entities in the industry. Additionally, new § 919.68 would require confidential information provided by handlers to be protected from disclosure. It would not adversely affect small entities.

The proposal to amend § 919.71, regarding peaches not subject to inspection and assessment regulations, would authorize the committee, with the approval of the Secretary, to revise the minimum quantity of peaches per shipment not subject to such regulations. This proposal is intended to provide that the exempted volume of peaches remain in line with quantities normally sold for home use. Additionally, testimony indicates that the current exemption should require that the 19 bushels per day, sold to any single individual, be removed from the seller's premises on the day of the sale. This would help to provide that only legitimate roadside sales to local producers and consumers be exempted from regulation. The authorized exemptions are intended to help small producers market their fruit directly to consumers at retail stands near where the fruit is grown, at nearby packinghouses or at local farmers' markets.

Amendment of § 919.81 would require periodic continuance referenda which would provide producers an opportunity to periodically vote on whether the order should be continued. Such referenda would not have a significant impact on small entities in the industry.

All of the proposed changes set forth in this document are designed to enhance the administration, operation, and functioning of the order. The proposed amendments to the order would not have a significant impact on the recordkeeping and reporting burdens of Mesa County peach handlers. The proposed revisions would change the reporting and recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), which have been previously approved by the Office of Management and Budget (OMB) under OMB No. 0581–0139. This action would require information to be retained by handlers for at least two years. The evidence of record indicates that handlers generally maintain such information in the normal course of business for periods longer than two years. The information collection requirements contained in this proposed action will be submitted to the OMB for approval. Such requirements will not become effective prior to OMB approval.

Material Issues

The material issues of record addressed in this decision are:

(1) Whether the definition of "ship" should be revised to regulate shipments of fresh peaches within Colorado as well as shipments to locations outside the State;

(2) Whether to revise existing definitions for peaches, committee, producer, handler, fiscal period, and district, and add new definitions for production area, grade, and size;

(3) Whether to reapportion the committee to more accurately reflect the relative position of handler segmetns in the industry, and whether to provide informal rulemaking authority to further reapportion the committee and make future changes in committee size and composition as necessary;

(4) Whether to make changes in the committee nomination and selection process, provide informal rulemaking authority to make future changes as necessary, and establish tenure limits for committee members;

(5) Whether to revise the provisions for committee compensation and voting procedures;

(6) Whether to authorize late payment and penalty charges on past due handler assessments;

(7) Whether to reorganize and consolidate provisions regarding marketing policy and the regulation of peach shipments;

(8) Whether to authorize establishment and funding of production research projects;

(9) Whether to add provisions for the Secretary and the committee to verify the correctness of reports filed by handlers and to protect the confidentiality of information provided by handlers;

(10) Whether to provide informal rulemaking authority to change the minimum quantity of peaches per shipment not subject to regulation;

(11) Whether to require a continuance referendum every eight years; and

(12) Whether conforming changes should be made.

Findings and Conclusions

The findings and conclusions on the material issues, all of which are based on evidence presented at the hearing and the record thereof, are:

(1) Section 919.9 should be amended to provide for the regulation of shipments of fresh peaches within the State of Colorado as well as shipments of peaches to locations outside the State. Currently the term "ship" in § 919.9 means to sell, transport or ship fresh peaches by rail, truck or any other means whatsoever in the current of commerce between the State of Colorado and any point outside thereof. That definition should be revised to include the preparation for market of fresh peaches and the movement of such peaches into the current of commerce within the production area or between the production area and any points outside the production area. In addition, the term "ship" should be changed to "handle" to be consistent with common industry usage and the two terms should be made synonymous. The new definition should include the terms "pack" and "consign" which are common handling functions in the industry. The terms are intended to clarify the definition of the term "ship." Also, in the definition of "ship" printed in the notice of hearing, the word "ship" appearing in the fourth line, should be changed to the word "transport" for clarity. Finally, "handle" would not include the transportation within the production area of peaches from the orchard where grown to a packing

facility located within the production area for preparation for market. This exception recognizes that it is customary for producers to sell and deliver their peaches to handlers for packing and handling functions.

Mesa County peaches are sold in Colorado and throughout several western and midwestern States. Evidence presented at the hearing indicates that an estimated 70 percent (approximately 94,000 bushels in 1988) of Mesa County's inspected peach production was shipped to Denver and then on to markets outside Colorado. The remaining 30 percent of inspected peaches was shipped to markets within Colorado. A very small percentage of inspected peaches was marketed through one major grocery store chain in the production area. No Mesa County peaches are exported or sent to processed markets.

Record evidence indicates that the price of peaches in State markets has a direct and immediate effect on prices in markets outside the State. Therefore, the handling of peaches within the production area and within Colorado directly burdens, obstructs and affects the handling of peaches in interstate commerce to such an extent as to make appropriate the regulation of peaches marketed fresh in Mesa County and throughout Colorado under Federal marketing order 919.

The proposed change in the order would authorize regulation of all shipments of peaches from the production area except for small quantities of peaches that are sold directly to consumers at roadside stands and farmers' markets, that are removed from the premises on the day of the sale and which are not-for-resale, peaches sold to charitable institutions, and peaches for processing.

It is therefore concluded that § 919.9 should be amended to specify that "handle" is synonymous with "ship" and means to pack, sell, consign, transport, offer for transportation, or transport peaches in fresh form by any means whatsoever, in the current of commerce within the production area or between the production area and any points outside thereof. However, the term "handle" shall not include the transportation within the production area of peaches from the orchard where grown to a packing facility located within such area for preparation for market.

(2) Six current definitions should be revised and three new definitions should be added to the order. The addition of the definition for "production area" should logically be inserted at the beginning of the list of definitions. This necessitates the redesignation of current §§ 919.5 through 919.11 as §§ 919.6 through 919.12. Current § 919.8 "variety" is not proposed to be amended, but would be redesignated as § 919.9. The redesignated and amended sections would read as follows:

a. The term "production area" should be defined in § 919.4 to mean all territory included within Mesa County, Colorado. That section now defines the term "peaches," which would be moved to § 919.5. The production area of Mesa County, Colorado, is referred to in the current definition of peaches, § 919.4. The proposed new definition specifies the area in which peaches are grown that are subject to regulation under the marketing order. This proposal would not change the location, size, or in any other way revise, the production area as currently defined.

b. The definition for "peaches" in § 919.4 should be modified and designated § 919.5. The new definition would mean all varieties of peaches grown in the production area, classified botanically as Prunus persica. The addition of the botanical name is desirable to specifically identify the commodity regulated under the marketing order.

c. The name of the administrative agency established under the order should be changed from the "Administrative Committee" to the "Colorado Peach Administrative Committee." Adding the name of the State and the commodity covered under the program to the current title would more precisely identify the committee. Therefore the amended and redesignated definition of "committee" in § 919.6 should mean the Colorado Peach Administrative Committee established pursuant to the provisions of this subpart.

There are 14 sections which make reference to the Administrative Committee. The provisions in these sections should be revised to reference the term "committee." These conforming changes should be made in § 919.31 Powers, § 919.32 Duties, § 919.34 Rights of the Secretary, § 919.35 Funds and other property, § 919.41 Assessments, § 919.43 Suit to enforce collection, § 919.53 Exemptions and exemption certificates, § 919.54 Inspection and certification, § 919.55 Modification, suspension, or termination, § 919.65 Reports, § 919.66 Liability of Administrative Committee members, § 919.71 Peaches not subject to regulation, § 919.82 Proceedings after termination, and § 919.94 Amendments.

d. Currently, § 919.6 defines the term "producer" to mean any person engaged in growing peaches in the county of Mesa in the State of Colorado for market. That definition should be redesignated as § 919.7 and revised to more precisely determine who may be considered a producer of peaches in the production area. A clearer definition is needed to better identify those who may take part in the committee nomination procedures, and serve on the committee. The phrase "* * * is synonymous with 'grower' * * *" is proposed to be added to clarify that the term "grower," commonly used in the production area, and the term "producer," used in the Act and order, are the same. The phrase "* * * for market in fresh form * * *" is proposed to be added to further distinguish between fresh market peaches and those peaches that might be produced for personal or processed market use. The phrase "* * * and who has a proprietary interest therein." Is added in the definition to exclude from the definition persons performing as employees for peach producers and handlers and persons delivering to handlers.

The record evidence thus indicates that the amended definition should be more precise than to merely define a peach producer as someone who grows peaches. Evidence indicates that producers are those who own and operate their own farms or rent farmland, with a proprietary interest in the peaches grown, to produce peaches for fresh market. Individuals who produce peaches only for personal or family use would not be considered producers under the order. Partnerships, corporations, associations and any other business unit is included in the definition of "person" under the Act. Therefore, any such entity that produces peaches for fresh market would also be considered producers under the order.

Thus, redesignated § 919.7 should provide that the term "producer" is synonymous with "grower" and means any person engaged in growing peaches for market in fresh form in the production area, and who has a proprietary interest therein.

e. Currently, the term "handler" in § 919.7 means any person (except a common or contract carrier of peaches owned by another person) who, as grower, agent, or otherwise, ships peaches, or causes peaches to be shipped. That definition should be amended to make the term "handler" synonymous with "shipper" and should clarify that persons are handlers when they perform the functions contained in the proposed amended definition of "handle" in redesignated § 919.10. As amended, the new definition of handler would be redesignated as § 919.8 and

would be synonymous with "shipper" to mean any person (except a common or contract carrier of peaches owned by another person) who, as owner, agent, or otherwise, handles peaches or causes peaches to be handled as defined in § 919.10.

f. Currently, § 919.10 specifies that "fiscal period" is synonymous with "fiscal year" and means the 12-month period beginning on November 1 and ending on October 31 of the following year, or such other period that may be approved by the Secretary pursuant to recommendation by the committee. This term should be redesignated and amended to mean the 12-month period beginning and ending on the dates recommended by the committee and approved by the Secretary. Record evidence indicates that the fiscal period, currently specified, no longer coincides with the period currently used by the committee.

g. The definition for "District," § 919.11, should be redesignated as § 919.12 and amended by removing the specific descriptions of the five producer districts and inserting general rulemaking authority to change district boundaries. This authority will allow the committee, with the approval of the Secretary, to redefine districts when necessary, to accurately reflect peach production between the districts and provide equitable representation on the committee. The proposed revision would also remove the obsolete boundaries in the current definition. Thus, the term district should be defined to mean any one of the geographical areas into which the production area is divided as recommended by the committee and approved by the Secretary.

h. The term "grade" should be defined in new § 919.13 to mean any one of the officially established grades of peaches as defined and set forth in the United States Standards for Grades of Peaches (§§ 55.1210–51.1223 of this title) or any amendment, or modification recommended by the committee and approved by the Secretary. The grades established in the United States Standards for Grades of Peaches have been used by Colorado peach producers and handlers since promulgation of the order. The grades provide an appropriate and meaningful basis for describing the quality requirements utilized under the order. The use of amendments or modifications of the grades provide the industry the flexibility necessary to cope with problems of quality due to adverse weather or other conditions affecting the crop.

i. The term "size" should be defined in new § 919.14 to mean the smallest diameter, measured through the center of the peach, at right angles to a line running from the stem to the blossom end, or such other specifications as may be recommended by the committee and approved by the Secretary. The minimum size requirements established under the order are based on the minimum diameter of peaches packed in various types and styles of containers. It is common to refer to peaches by their size such as 2⅛ minimum, 2¼ minimum, 2½ minimum and larger. Therefore, it is appropriate to indicate how the minimum diameter is measured. Under the proposal, the committee would have the flexibility to recommend changes in size-measurement methods to the Secretary.

The six amendments to existing definitions are designed to increase industry members' understanding of the terms thereby improving the application of the order's provisions.

(3) Section 919.20 regarding establishment and membership of the committee should be amended to revise representation on the committee to reflect the amount of peach production handled by the cooperative and independent handler segments of the industry. As proposed, this amendment would also add a paragraph (b) which would provide informal rulemaking authority for the committee, with the approval of the Secretary, to revise the composition and size of the committee and to reapportion its membership.

The committee is composed of nine members and nine alternate members. Of the nine members, five are nominated by and represent peach producers. Each producer member is selected from and represents one of five production districts in the production area. The proposal would not alter the number or representation of producer members on the committee.

Four committee members are nominated by and represent peach handlers in the production area. The current handler representation on the committee has been in effect since 1939. Currently, one handler member is selected by and represents handlers and producer/handlers in the production area who are not affiliated with the one cooperative marketing association. This member is referred to as the "independent member." The remaining three handler members are nominated by and represent the cooperative marketing organization active in the production area.

Proponents testified that the current handler apportionment should be reversed. According to the record, the independent handler portion of the industry handled approximately 66 percent of the production over the last five years. The one cooperative marketing organization has handled approximately one third, or 34 percent, of the industry's production over the same period.

Therefore, a change in handler representation is necessary to more accurately reflect the amount of production handled by these two segments of the industry. To accomplish this § 919.20 should be revised to specify that the Colorado Peach Administrative Committee should be established consisting of five members, one for each district, who represent and are selected from producers; one member who represents and is selected from the cooperative marketing association of producers, and three members who represent and are selected from independent handlers and producer/handlers. In addition, these provisions are also applicable to alternate members to assure that all persons serving on the committee are equally qualified.

As proposed, a new paragraph (b) of § 919.20 would specify that every two years the committee, with the approval of the Secretary, may revise the composition of the committee and reapportion the committee membership among industry groups pursuant to § 919.22. Testimony indicates that this informal rulemaking authority should apply to changes in the size of the committee as well. Thus, it is recommended that the words "and size" should be added after the word "composition" in paragraph (b) as published in the notice of hearing (53 FR 44408). According to the record, this new provision would allow more timely and cost efficient changes in committee representation. The committee could therefore be more representative of and responsive to structural changes in the industry.

(4) The current provisions of the order regarding nomination and selection of committee members should be revised to consolidate order language, improve the efficiency of the selection process and establish limits on the tenure of committee members. These changes would encourage wider industry participation on the committee.

Time periods in which the nomination process are to take place are proposed to be revised. Section 919.20 currently provides that members and alternates must be nominated at least 30 days prior to the beginning of the term of office for which the nomination is made. However, experience has shown that a longer period of time would be beneficial for completing the selection

process prior to the beginning of a new term. The record indicates that the time period of 30 days should be extended to 45 days and the revised language should be inserted in the amended provision. Thus, paragraph (a)(1) of § 919.21 should be added to specify that the committee shall hold, or cause to be held, meetings of producers and handlers not less than 45 days prior to the expiration date of the committee member and alternate member terms of office.

Paragraphs (c) in §§ 919.21, 919.22 and 919.23 currently specify that two nominations for each member and alternate member position being filled must be submitted for the Secretary's consideration. Paragraph (a)(2) of amended § 919.21 should require that at least one nominee be submitted for each position to be filled. Record evidence indicates that because the industry is small and is divided into three separate segments, it has difficulty providing two qualified nominations for both member and alternate member positions. Proponents indicated that there are a small number of producers in some districts, and even fewer who are interested in serving on the committee.

Therefore, paragraph (a)(2) would specify that, at each meeting, at least one nominee shall be nominated for each member or alternate member position to be filled. Also, paragraph (a)(2) would provide that the nominations may be by ballot or by motion, at the option of the eligible voters who are present. The person receiving the highest number of votes would be the nominee for each position to be filled. Proxy voting would be prohibited.

The evidence of record indicates that the current order's nomination language is repetitive because nomination procedures for membership on the committee are described for producer members (§ 919.21), the independent handler member (§ 919.22), and cooperative handler association members (§ 919.23). These three sections are proposed to be consolidated under amended § 919.21, "Nomination and selection." Nomination of producer members should be addressed in paragraph (b), independent handler members in paragraph (d), and cooperative handler members in paragraph (c) of amended § 919.21. Criteria regarding eligibility for membership for these three segments of the industry currently in § 919.24 also should be included in paragraphs (b), (c) and (d) of amended § 919.21 to consolidate the nomination and selection provisions under one section. The consolidation of these provisions under one section would make the nomination and selection process easier to understand.

Paragraph (b) of amended § 919.21 should specify that nominations of producer members and their respective alternates shall be made at meetings of producers in each district, at such times and places as the committee shall designate. Only producers, including duly authorized officers or employees of producers, who are present at such nomination meetings may participate in the nomination and election of nominees. Each producer should be entitled to cast only one vote for each position to be filled in the district that producer produces peaches. No producer should participate in the election of nominees in more than one district in any one fiscal year.

Paragraph (c) of amended § 919.21 should specify that nominations for cooperative handler members and their respective alternates shall be made as follows: (1) When there is only one cooperative marketing association, that association may nominate its representatives in any manner the members of that association deem appropriate; and (2) When there is more than one cooperative marketing association, and there is a lack of agreement on who should be nominated, the vote for each position shall be weighted by the volume of peaches each association acquired from producers and handled during the preceding fiscal period.

Paragraph (d) of amended § 919.21 should specify that nominations of independent handler members and their respective alternates shall be made at a meeting of such persons at such time and place as the committee shall designate. Only independent handlers, including duly authorized officers or employees of such handlers present at such nomination meeting, may participate in the nomination and election of nominees. Each independent handler shall be entitled to cast only one vote for each position to be filled.

In the notice of hearing, the provisions on voting for producer and independent handler members specified that those voting shall be entitled to cast one vote for each nominee to be elected. Testimony indicates that those voting should cast one vote for each vacant position to be filled. Changes have been made to proposed paragraphs (b) and (d) accordingly. Based on testimony received at the hearing, wording in proposed paragraph (c)(2) has been revised to clarify that a lack of agreement among two cooperative handler organizations refers to a lack of agreement on who should be nominated. Further, a provision regarding the weighting of votes by two or more cooperative marketing associations is included that would provide a process for breaking a deadlock if the associations cannot agree on the nominees.

Evidence of record indicates that authority should be added for the committee to recommend changes in these nomination and selection procedures to recognize changing industry structure and needs. Therefore, new paragraph (e) should specify that the committee, with the approval of the Secretary, may recommend rules and regulations necessary to carry out the provisions of this section or to change the procedures in this section in the event they are no longer practical.

Finally, new paragraph (f) should specify that in the event that nominees for all available positions are not provided by the aforesaid procedures, then such unfilled positions should be treated as vacancies and the provisions of § 919.29 regarding vacancies should apply.

Revised § 919.22 regarding committee reapportionment and reestablishment should take the place of current § 919.22. Section 919.22 now includes procedures on the nomination and selection of the independent member on the committee. These procedures have been recommended to be moved to § 919.21.

Currently, § 919.23(e) provides for the reapportionment of cooperative handler membership to equitably provide representation to present and future cooperatives associations engaged in handling Mesa County peaches. Any such reapportionment under that section must be based so far as practicable upon the volume of peaches handled by the respective associations. Also, paragraph (1) of § 919.32 provides for redefining the producer districts and reapportioning producer district representation. Any changes under that section must reflect, in so far as practicable, shifts in peach production within the districts and the production area.

Evidence of record indicates that it is desirable that the authority for making such changes be included in one section of the order for easier reference and to improve order organization. Evidence also indicates that the current authority for making such changes is too narrow because it only applies to the producer and cooperative marketing association segments of the industry. Consequently, the proponents requested that the authority for making such changes be broadened to reflect structural changes

in all three segments of the industry and the relative importance of these segments of the industry. In order to keep abreast of structural changes within the industry, the proponents indicated that it may be necessary: (1) To increase or decrease the size of the committee; (2) to change the ratio between grower and handler members including their alternates; and (3) to change the industry groups represented on the committee should a new segment develop in the future. Any such changes should reflect, in so far as practicable, structural changes within the peach industry and shifts in peach production within the production area.

To provide a mechanism for such changes to be made through the informal rulemaking process, paragraph (a) of § 919.22 should specify that the committee may recommend, with the approval of the Secretary, reapportioning representation on the committee to reflect changes in the relative size of producer, cooperative marketing association, and independent handler segments of the industry. Also, it is proposed that the committee may recommend for the Secretary's approval that the size of the committee may be increased or decreased and the industry groups represented on the committee may be changed. Any such changes would reflect, insofar as practicable, structural changes within the peach industry and shifts in peach production within the production area. Also, the word "grower" is replaced with the word "producer" in paragraph (a) as published in the notice of hearing (53 FR 44409) to remain consistent with the changes in this recommended decision.

The provisions in paragraph (1) of § 919.32 should be incorporated into the revised paragraph (b) of § 919.22. Revised paragraph (b) of § 919.22 should also specify the criteria on which to base such changes. In recommending any such changes the committee should consider (a) the relative importance of production and the number of growers in each district, (b) the geographic locations of the producing districts and how the changes would affect the efficiency of administering this part, and (c) other relevant factors. All changes recommended by the committee would have to be approved by the Secretary to be implemented.

Current paragraphs (c) and (d) of § 919.22 pertain to committee nomination procedures, and would be contained in revised § 919.21, which specifies all nomination procedures.

Section 919.25 should provide that the Secretary may select members without regard to nominations if the committee fails to nominate new members 30 days prior to the new term of office, rather than the current 15-day period. Evidence indicates that this amendment would provide a more appropriate time period for the Secretary to make such nominations and would facilitate the selection process.

Section 919.26 regarding the qualification by members and alternates should be amended to simplify the selection process. Revised § 919.26 would require each nominee to submit a written acceptance indicating that the nominee will serve on the committee. This acceptance would be submitted to the Secretary at the same time that the nominee submits a background statement. Currently, a nominee must submit a background statement prior to selection and then must submit an acceptance statement after the Secretary makes the selection. Thus, § 919.26 should provide that each nominee shall provide, prior to selection, a written background and acceptance statement indicating that that person agrees to serve in the position for which nominated if selected.

Additionally, the word "members" should be added to the title of the section after the word "alternate" for consistency and clarity.

Currently, paragraph (a) of § 919.27 specifies that the terms of office of producer members and their alternates shall be for two years while the terms of office of the independent producer/handler member and cooperative handler members and alternate members shall be one year. The terms of all members and alternates begin on January 1 and end on December 31. Authority is provided for the committee, with the approval of the Secretary, to prescribe other beginning and ending dates when needed.

The evidence of record indicates that the terms of office of all members and all alternate members of the nine member committee should be for two years beginning January 1 and ending on December 31 and that the terms should continue to be staggered. Testimony provided at the hearing indicates the possible inequity of having members serve for different term lengths. Also, experience has shown that a two-year term provides an opportunity for new members to becme familiar with the operations of the committee so that they can actively participate for a longer period of time.

Provisions for requiring staggered terms of office for the cooperative handler and independent handler members as well as producer members would improve the continuity of committee planning and operations by assuring that a portion of the members who had served during the previous year would remain on the committee for an additional year. Two-year term lengths would provide for staggering the terms of member positions currently limited to one-year terms. There can be no overlap with one year terms.

Authority allowing the committee, with the approval of the Secretary, to change the beginning and ending dates of the terms of office should be continued in paragraph (a). Evidence indicates that in the event it becomes necessary to make size or composition changes or to reapportion the committee pursuant to § 919.22, this amendment would provide for corresponding changes in the terms of office.

If the size or compostion of the committee is changed, or if the committee membership is reapportioned pursuant to § 919.22, the terms of some members may have to be shortened to conform with the new structure of the committee. Thus, provisions should also be included in paragraph (a) of § 919.27 to provide that the terms of office may be shorter than specified if the size or composition of the committee is changed or if the committee membership is reapportioned. In order to effectuate the intent expressed by the proponents at the hearing, the word "composition" is removed from the last proviso of paragraph (a) of § 919.27 as published in the notice of hearing (53 FR 44409). This change will provide that the terms of office may be shorter if the committee membership is revised pursuant to § 919.22, whether the change be through size, composition, or a reapportionment of the membership.

To affect a transition to the new committee, it will be necessary for approximately one-half of the members and alternates selected for terms of office in 1990, to serve during that year. This will allow approximately one-half of the members and alternates to be replaced each year. Determination of which of the members of the committee should serve during 1990 should be by lot; the same process currently used by the committee.

Provisions in existing paragraph (a) of § 919.27 regarding the dates of the initial selection of producer members and alternates are obsolete and should be removed. In addition, miscellaneous changes for clarity have been made to proposed § 919.27 from the provisions that appeared in the notice of hearing (53 FR 44409).

Paragraph (b) of § 919.27 should be amended to limit the tenure of committee members to no more than three consecutive two-year terms, or a total of six years. Currently, members

and alternates may serve an indefinite number of consecutive terms. Evidence of record indicates that this proposal would broaden industry participation in program administration and improve committee representation by bringing additional persons with different viewpoints and experiences into active roles on the committee.

Provisions limiting each member's tenure should apply starting with the next term of office beginning with 1990. Any person after having served six consecutive years as member shall be eligible to serve as an alternate member but shall not be eligible to serve as a member until the term of office which begins two years later.

While proponents recognize the benefits of this planned rotation of membership, testimony indicates that the committee has had difficulty in finding interested producers and handlers who are willing to serve on the committee. Proponents further indicated that if active members must step down after six years, the committee would have an even more difficult time finding willing members. However, it is the Department's belief that a periodic turnover of committee members and alternate members is essential to the vitality and representative nature of the committee. Further, a nine-member committee with six-year tenures would require as few as three new members every other year. Likewise, as few as three new alternate members would be needed every other year. The Department concludes that with a total industry of over 260 members, there should be enough interest in the marketing order to recruit as few as three new members and alternate members to serve every other year. Moreover, the benefits of this requirement, in terms of active representation and creativity, far outweigh the difficulty of finding new members to serve.

However, to guard against the possibility of a position remaining vacant because of a lack of eligible nominees or eligible persons willing to serve, it is proposed that the Secretary should have the authority to exempt a person from the tenure limitation.

Therefore, paragraph (b) of § 919.27 should specify that, beginning in 1990, no member shall serve more than three consecutive terms as member.

Section 919.29 regarding vacancies on the committee should be amended to facilitate the filling of unexpected vacancies in the producer member, cooperative handler member and independent handler member positions. Currently, § 919.29 requires vacancies to be filled through nomination and selection procedures set forth in §§ 919.20 to 919.26. If a nomination to fill a vacancy is not made and submitted to the Secretary within 20 days after the vacancy occurs, the Secretary may fill the vacancy without regard to nomination.

To facilitate the filling of vacancies, amended § 919.29 should provide that the committee must nominate the alternate member to fill a vacant position if the vacancy is in a member position, and if the alternate member for that position agrees to serve in a member capacity. Record evidence indicates that because of the possibility of a limited number of candidates, the committee should automatically offer a vacant member position to the alternate member. If the alternate member declines the nomination, the committee would either hold a nomination meeting to solicit candidates for the vacant position, or would nominate another industry member. This provision differs from that published in the notice of hearing (53 FR 44409) which specified that the incumbent member should recommend the replacement member or alternate member. Based on the evidence presented it is the Department's view that this responsibility should be given to the committee. Thus, the committee should be authorized to solicit the names of qualified candidates from producer, cooperative handler and independent handler organizations and submit to the Secretary the candidate's name which the committee considers most highly qualified. In such instances, only producers would be allowed to be nominated to fill producer member vacancies, cooperative handlers would be allowed to be nominated to fill the vacancy of a cooperative handler association member, and only an independent handler would be allowed to be nominated to fill the vacancy of an independent handler member.

The proposed amendment to § 919.29 should also extend the period of time, from 20 to 45 days, which the committee would have to nominate a new member to fill a vacancy. As proposed, if the committee fails to nominate a new member or alternate member after 45 days of the position becoming vacant, the Secretary may fill the vacancy without regard to nominations. Testimony indicates that this amendment would provide the committee with necessary time to meet and nominate a new member.

Therefore, in view of the foregoing § 919.29 should be amended to provide for filling vacancies on the committee.

(5) Two sections concerning compensation for committee members and for voting procedure are proposed to be amended.

Section 919.30 regarding compensation and expenses is proposed to be amended to increase the amount that committee members and alternates may be compensated for attendance at committee meetings from $5.00 per day plus 10 cents per mile to a rate of $10.00 per day and no mileage allowance. Such compensation is intended to at least partially offset costs that members and alternate members incur while they are on committee business. The $5.00 limit plus mileage not to exceed 10 cents per mile was set 32 years ago. Reimbursement for travel expenses is proposed to be deleted because committee members live very close to the committee office where meetings are held. Evidence of record indicates that the amount of compensation should be able to be adjusted upon recommendation of the committee and approval by the Secretary to bring it more in line with current circumstances. These proposed changes in compensation would not present a financial burden on the order's operating budget.

Therefore, § 919.30 should specify that the members and alternate members of the committee shall serve without salary but may be compensated for attendance at meetings at a rate not to exceed $10.00 per meeting. The amount of compensation may be adjusted upon a recommendation by the committee and approval by the Secretary. Such members and alternates may also be reimbursed for reasonable expenses necessarily incurred by them in the performance of duties, specifically assigned by the committee, other than attendance at committee meetings.

Section 919.33 on committee voting procedures should be amended by changing the quorum and voting requirements for committee meetings. New paragraph (a) should require all decisions of the committee at assembled meetings to be by majority vote of the members present. The presence of a majority of members should be required to constitute a quorum and such majority should also be required to pass any motion or approve any committee action. Six of the nine members are currently required for a quorum. The industry considers the presence of a simple majority of members, including alternates acting as members, sufficient to conduct business and be representative of the industry. Testimony indicates that this change would simplify procedures in the event the size of the committee is changed.

A new paragraph (b) should be added to § 919.33 to permit the committee to vote by mail, telegraph, telephone, or other means of communication. The record indicates that this procedure would not be used if an assembled meeting is held. Additionally, votes cast orally would be required to be confirmed promptly in writing to prevent any misunderstanding as to how the members voted. This provision would improve the committee's abilty to respond expeditiously to needs of the industry.

In the notice of hearing, the last sentence in paragraph (b) specified that if any assembled meeting is held, all votes should be cast in person. The proponents testifed that this sentence should be modified slightly and be moved to the end of paragraph (a) to more clearly apply to assembled meetings. This recommendation is accepted for proposal in this recommended decision. Also, a typographical correction should be made to the first word in paragraph (b) as published in the notice of hearing. The word "Each" should be changed to "The."

(6) Section 919.41, requires each handler to pay assessments to the committee for its maintenance and functioning. That section should be amended by adding a new paragraph (b) to provide that the committee may impose a late payment charge, and an additional charge in the form of interest payments on any outstanding amounts, on any handler who fails to pay any assessment within a prescribed time.

Under present procedures, the committee collects inspection reports during the two-month harvest season. Within two weeks of the end of the season, a single invoice for assessments due, payable within 30 days, is sent to each handler. The one-time payment would come after the handlers have collected payments for the peaches they handled during the season.

Under the order, there is no provision for imposing on handlers a late payment charge or interest on overdue assessments. The evidence of record is that handlers normally pay their assessments when invoiced. However, there have been occasions when payments have been late. When this occurs, handlers who pay their assessment promptly are at a disadvantage relative to the delinquent handlers. The objective of this proposal is to encourage all handlers to pay assessments promptly thereby avoiding additional collection costs.

Under the proposal, if a handler does not pay all assessments within the time prescribed by the committee, the unpaid portion of the account would be considered delinquent and the handler would be subject to a late payment charge. The committee would advise the handler of the late payment charge, and that failure to pay the assessment and late payment charge prior to a specified date will result in additional charges in the form of interest on the unpaid balance each month thereafter, including accrued interest on the late payment charge. Accordingly, handlers would be charged late payment fees on unpaid assessments and interest fees on any unpaid charges until the total obligation is paid in full.

According to the record, the amount of interest charges should reflect the current interest rate on loans in the production area.

The committee, with the approval of the Secretary, should have the authority to establish the rates of such charges and to later modify those rates through the informal rulemaking process. This amended provision would provide the committee with the flexibility needed to implement such charges. Record evidence indicates that this proposal would act as an incentive for handlers to pay assessments on time.

Therefore, new paragraph (b) of § 919.41 should specify that the committee may impose a late payment charge on any handler who fails to pay any assessment within the time prescribed by the committee. In the event the handler thereafter fails to pay the amount outstanding, including the late payment charge, within the prescribed time, the committee may impose an additional charge in the form of interest on such outstanding amounts. Such rate of interest shall be added to the bill monthly until the delinquent handler's assessment plus applicable interest and late payment charges have been paid. The rate of such charges shall be prescribed by the committee, with the approval of the Secretary.

(7) Four sections covering marketing policy and the regulation of shipments should be consolidated and revised to improve organization and allow for easier reference.

Paragraph (d) of § 919.32 should be revised by moving factors required to be covered in the committee's marketing policy to amended § 919.50. New paragraph (d) of § 919.32 would require the committee to submit a marketing policy pursuant to § 919.50 as one of its duties. Additionally, paragraph (1) of § 919.32 regarding district reapportionment would be removed from that section and inserted in § 919.22, as previously discussed in Material Issue (4). The remainder of § 919.32, except for conforming changes, would remain the same.

Current § 919.50 entitled "Regulation of shipments" should be revised and retitled "Marketing policy" to include the provisions of paragraph (d) of § 919.32 as discussed immediately above. The intent of the change is to emphasize the importance of the marketing policy report and provide easier reference within the order. The requirement for an annual marketing policy has been a part of the order since it's promulgation.

Evidence of record indicates that the marketing policy report should provide an overview of all available information relating to supply and demand for peaches which may have a bearing on the type of regulations the committee may recommend. Changes are proposed for purposes of clarity. Six components of the revised marketing policy are currently contained in paragraph (d) of § 919.32 (estimated total production, expected grades and sizes, demand conditions, supplies of competitive commodities, analysis of these factors, and any recommended regulations). Four new components would be added to the marketing policy report (anticipated marketing problems, trends in consumer income, orderly marketing conditions that will be maintained in the public interest, and other relevant factors). The additional components should provide a more comprehensive analysis of anticipated marketing conditions and require the committee to fully consider anticipated marketing problems. Moreover, it would address a declared policy of the Act to establish and maintain orderly marketing conditions which are in the public interest. The proposed revised provision would require the committee to make an additional report if a marketing policy is modified due to changes in demand and supply conditions. The revised provision would also require the committee to make copies of marketing policies available to the industry.

Therefore, revised § 919.50 should specify that for each marketing season, prior to or at the same time as recommendations are made pursuant to § 919.51, the committee shall prepare and submit to the Secretary a report setting forth the marketing policy for the ensuing season. Additional reports shall be submitted if it is deemed advisable by the committee to adopt a new marketing policy because of changes in the demand or supply situation with respect to peaches. The committee shall maintain and make available in the committee office a copy of these marketing policies, and any revisions

thereof, for the examination by growers and handlers. In determining each such marketing policy, the committee shall give due consideration to the following: (a) The estimated total production of peaches within the production area; (b) The expected general quality and size of peaches in the production area; (c) The expected demand conditions for peaches in different market outlets; (d) the expected shipments of peaches from other production areas; (e) Anticipated marketing problems; (f) Supplies of competing commodities; (g) Trend and level of consumer income; (h) Establishing and maintaining such orderly marketing conditions for peaches as will be in the public interest; (i) The type of regulations expected to be recommended during the season; and (j) Other relevant factors having a bearing on the marketing of peaches.

Current § 919.51 should be renamed and revised to provide for regulation of peaches by grade and size or by minimum standards of quality and maturity. The changes consolidate the subject matter and eliminate repetitive language currently in §§ 919.50 and 919.51. The section heading should be changed from "Recommendation of the Administrative Committee" to "Recommendations for regulation." The provisions currently in § 919.50 on regulation of shipments would be moved and inserted in proposed new paragraph (a) of § 919.51. The first sentence of paragraph (b) of existing § 919.51 would remain in paragraph (b) with one minor change: the words "grades, sizes," would be specified as standards which can be recommended by the committee, and approved by the Secretary, to further the goals of the marketing order. This additional language makes provisions of new paragraph (b) consistent with paragraph (a) of the section. The last sentence of existing paragraph (b) would be removed from the proposed section. This sentence refers to grade and size regulations and was covered by the rewording of sentences already referenced. In its place, the second sentence of paragraph (a) of existing § 919.51 would be inserted requiring the committee to give adequate notice of any recommendations for regulation that the committee may make to the Secretary. As proposed, § 919.51 also would be consistent with proposed § 919.52 on the Secretary's responsibilities with regards to regulations recommended by the committee.

As revised, paragraph (a) of § 919.51 should specify that whenever the committee deems it advisable to regulate, during any period or periods, the shipment of one of more varieties of peaches by grades or sizes, or both, or by minimum standards of quality or maturity, or both, it shall so recommend to the Secretary. Also, as revised, paragraph (b) of § 919.51 should specify that, at the time of submitting each such recommendation for regulation by grades, sizes, minimum standards of quality or maturity, or any combination thereof, the committee shall furnish to the Secretary, in addition to all pertinent data and information on which it acted in making such recommendation, such other data and information as the Secretary may request. The committee shall promptly give adequate notice to handlers and producers of each such recommendation.

Section 919.51 should be amended to consolidate the provisions in paragraph (a) and paragraph (b) into a single paragraph. The intent is to establish guidelines and procedures by which the Secretary may regulate peaches grown in the production area. Thus, amended § 919.52 should specify that whenever the Secretary finds from the recommendations and information submitted by the committee, or from other available information, that such regulation would be in the public interest and tend to effectuate the declared policy of the Act, the Secretary shall regulate the handling of peaches in the manner specified therein. Such regulation may limit during any period or periods the shipments of any particular grade, size, quality, or maturity, or any combination thereof, or any variety or varieties of peaches grown in the production area.

(8) Section 919.60 regarding market research and development should be amended to permit the committee, with the approval of the Secretary, to provide for the establishment of projects involving production research. Also, the proposal should permit the committee to pay expenses of market research and development and production research projects from assessment funds or from other sources approved by the Secretary. The authority for additional funding sources would provide the committee with additional funding flexibility.

The record indicates that proponents intended this proposal to provide similar language to that contained in the State marketing order. Testimony indicates that the State order had funded production research beneficial to the industry. The testimony suggests that similar benefits could be derived from production research conducted under the Federal marketing order.

Record evidence shows that the marketing of high quality peaches includes all the operations of growing, picking, packaging, handling, and marketing as a finished product. Research could develop more efficient production and marketing techniques that could benefit the industry. Thus, the proposed amendment could have a positive impact on the industry.

The record indicates that procedures for selecting, approving, reviewing and administering production research projects would be in accordance with, and subject to, the same procedures covering market research and development projects currently authorized under § 919.60.

Therefore, § 919.60 should specify that the committee, with the approval of the Secretary, may establish or provide for the establishment of production research, marketing research or marketing development projects designed to assist, improve, or promote the marketing, distribution, consumption, or efficient production of peaches. The expense of such projects shall be paid from funds collected pursuant to § 919.41, or other funds approved by the Secretary.

Currently, § 919.40 provides that the committee may use only assessment funds to pay authorized expenses. A provision should be added to the end of § 919.40 to allow the committee the authority, with the approval of the Secretary, to use funds, other than those collected from assessments, for projects implemented pursuant to proposed § 919.60.

(9) Two new provisions should be added to provide for verification of reports and to assure confidentiality of information provided by handlers. New § 919.67 should expressly state the authority of the Secretary to verify the correctness of reports filed by handlers and to check handler compliance with reporting and recordkeeping requirements. Such right should also be conferred on the committee. New § 919.68 should specify the procedures to be used by the committee to protect from disclosure, information provided by handlers.

The record indicates that the proposal on verification would merely specify in the order the investigative authority already provided by the Act. Section 919.67 would specify that the Secretary and the committee, through its duly authorized employees, would have access to any premises where handlers' peaches are held and, at any time during normal business hours, would be permitted to examine any such peaches and any and all records with respect to

issues within the purview of this marketing order. Representatives of the Secretary and duly authorized committee employees would have the authority to examine records of all handlers to determine compliance with provisions of this marketing order. The results of such examinations and audits would be reported to the Secretary.

The second sentence of the proposed new § 919.67, as published in the notice of hearing, requires that handlers shall furnish labor necessary to facilitate such examinations at no expense to the committee. During testimony the proponents requested that this requirement be deleted from the proposed new section because it is already understood by handlers. However, the record indicates that this information should remain in the order for future reference for those who are not now handlers. Also, experience has shown that minimal labor is needed to facilitate the examination of peaches held and complete records of quantities held, sold and shipped.

Each handler would be required to maintain complete records which accurately show that handler's acquisition and disposition of peaches, including the quantity held, sold and shipped. Opponent testimony was received contending that the maintenance of such records would be a burden on handlers. However, the record indicates that such information is generally contained in records compiled by handlers in the normal course of their business.

Opposition to the proposal was expressed by some in the industry who testified that the authority provided for would constitute an unwarranted intrusion by the Federal government and the committee into the private business of those who handle peaches. Record evidence indicates, however, that any burden of such record keeping requirements would be outweighed by the benefits received from the improved, accurate and efficient administration of the order through the use of such records. The record further indicates that this amendment should aid in the prevention of order violations.

One witness in opposition to the proposal suggested that investigations could be conducted at any time during the busy harvest season. Under normal circumstances, an investigation of a handler's records would be conducted if handler reports fail to coincide with inspection reports supplied by the inspection service. Additionally, the proposal specifies that any investigation would be conducted during normal business hours.

The proposed new § 919.67 provides further that the committee, with the approval of the Secretary, should have the authority to recommend regulations which would establish the type of records to be maintained. Handlers should be required to keep such records for at least two years following the end of each fiscal period. A two-year period should afford the committee's employees adequate time for examining and reviewing such records in the event of alleged program violations by handlers. The record indicates that this requirement should not impose an undue burden on handlers, since such records are likely to be retained for a similar or longer period under normal business practices.

In addition to the proposed provision for verification of reports, a new § 919.68 should be added to specify that confidential information provided to the committee would be protected from disclosure. Section 919.68 should specify that all data or other information constituting a trade secret or disclosing a trade position or business condition shall be received by, and kept in the custody of, one or more designated employees of the committee. Information which would reveal the circumstances of a single handler shall be disclosed to no person other than the Secretary, except as required by law. Under certain circumstances, the release of composite information compiled from data and information submitted by handlers may be helpful to the committee in planning operations under the marketing order. Such composite information would not disclose the identities of the individual handlers or their separate business operations.

Therefore, the two proposed new provisions should be added to the order.

(10) Section 919.71 should be amended to provide for informal rulemaking authority to revise the quantity of peaches that may be sold exempt from regulation. Currently, exemption (c) of § 919.71 provides that 19 bushels of peaches or less may be sold without inspection or assessment charges, if such peaches are sold to any one person, on any one day, and provided such peaches are not intended for resale.

This exemption dates back to the 1930's. Farm families traveled to Mesa County from other parts of Colorado and other mountain and western States to purchase a wagon load or truck load of peaches—approximately 19 bushels—for winter canning purposes. With improved transportation and marketing technologies, few if any, 19-bushel lots are sold to families or individuals for their own personal use.

To remain current with industry conditions, proponents recommended that authority should be provided to the committee, with the approval of the Secretary, to revise minimum quantity of peaches per shipment that may be sold exempt from regulations.

According to testimony presented at the hearing, authority for changing the quantity of exempted peaches through informal rulemaking was inadvertently omitted from the committee's amendment proposals and thus not included in the notice of hearing. Based on the evidence discussed above, authority to make such changes should be added. Thus, the words "or other such amounts as recommended by the committee and approved by the Secretary" should be added to the end of exemption (c) of § 919.71 as published in the notice of hearing.

Additionally, the evidence of record indicates that the exemption should require that any exempted fruit purchased should be removed from the sales premises at the time of purchase. This requirement would help to limit the application of the exemption to consumers and roadside stand operators as intended by the proponents. The words "on any one conveyance" were proposed to be added to the restrictions already listed in exemption (c). However, the Department has determined that this addition would not effectuate the intent of the proponents as indicated in the hearing record. It is therefore recommended that the words "are removed from the seller's premises on the day of the sale" be added to exemption (c) as published in the notice of hearing (53 FR 44411).

Finally, the words "or an equivalent amount" should be added to indicate that a measure other than "bushels" could be exempted under this provision. For example, testimony indicates that a bushel is equivalent to roughly 50 pounds. This amendment would give the committee more flexibility in applying the exemption.

(11) Section 919.81 regarding termination of the marketing order should be amended by revising paragraph (d) to require that a referendum on continuance of the order be held eight years after the effective date of the amendment and continuance referenda be held a minimum of every six years thereafter. The remaining paragraphs would not be amended.

Currently, the order provides that the Secretary shall terminate any or all of the provisions of the marketing order whenever it is determined that any or all

of the provisions of such order obstruct or do not tend to effectuate the declared policy of the Act. Additionally, the Act provides that the Secretary shall terminate a marketing order whenever, through the conduct of a termination referendum it is shown that a majority of all producers in the industry favor termination, and that majority produced more than 50 percent of the commodity for market during a representative period. Since less than 50 percent of all producers usually participate in a referenda, it is difficult to determine producer support for an order. Thus, to provide a basis for determining whether producers favor continuance of the order, continuance referenda are now being required by the Secretary.

The order does not currently specify that a continuance referenda may be conducted. Record evidence indicates that the conduct of continuance referenda would be an effective means for ascertaining whether producers favor continuation of the marketing order program. The requirement for passage of a continuance referendum is the same as that for issuance of an order in a promulgation, ie., approval would be based upon a favorable vote of at least two-thirds of the producers voting in the referendum, or by a favorable vote representing at least two-thirds of the volume of the commodity produced by those voting in the referendum. The Secretary would consider termination of the order only if those favoring continuance are less than two-thirds of the producers voting in the referendum and are producers of less than two-thirds of the volume of the commodity represented in the referendum. This requirement is considered adequate to measure producer support to continue the marketing order.

In evaluating the merits of continuance versus termination, the Secretary would consider not only the results of the referendum but also would consider all other relevant information concerning the operation of the order and the relative benefits and disadvantages to producers, handlers and consumers in order to determine whether continued operation of the order would tend to effectuate the declared policy of the Act.

Testimony on the merits of this proposed amendment indicates that some feel that the proposed amendment is unnecessary, some favor the eight year interval between continuance referenda as published in the notice of hearing, while others testified that a shorter time period of six years would be preferable. Those opposing the amendment contend that sufficient authority already exists for the Secretary to conduct a referendum at any time and therefore a set schedule for such continuance referenda is not necessary. Those in favor of an eight year interval between referenda testified that, because of the five-year maturing period of new peach seedlings, the industry is not subject to short term changes or a large turnover of producers, as might be expected in other crops that are replanted every year or two. Additionally, they contend that an interval of less than eight years would not provide new producers, or those who have replanted their orchard, with a chance to evaluate their vote based on a full production level. Those preferring a shorter interval between continuance referenda contend that a six year interal is long enough for producers in the industry to wait in order to vote on continuance of the marketing order.

It is the Department's view that over the long term an interval of eight years between continuance referenda is too long a period to insure that the referenda will reflect producer support or opposition to the order in the face of changing market conditions. However, based on the record evidence, holding the first referendum within eight years of ratification of the amendment, and then a minimum of every six years thereafter, would be appropriate. Allowing an eight year period between the ratification of the amendment and the first continuance referendum would provide producers the additional time necessary to determine the initial effects of the amendments upon the industry. Once the initial effects are determined, a referendum every six years after the first referendum would allow producers opportunity to vote for or against the continuance of the order as changes occur in the industry. A six-year interval would allow producers adequate opportunity to evaluate the marketing order based on full production from their orchards and based on performance of the committee. Thus, the order should be amended by revising paragraph (d) of § 919.81 to provide for periodic continuance referenda to be held within each six year period after the first such continuance referendum is held. The first such referendum would be conducted within eight years after ratification of this amendment by the industry. The Secretary has the authority, if deemed necessary, to conduct a termination referenda at any time, without waiting for the stated time period to expire.

(12) The Department proposed in the notice of hearing that it be authorized to make any necessary changes in the order language to make the entire order conform with any amendments resulting from this proceeding. This proposal was supported at the hearing without opposition. Such conforming changes as necessary and stated herein have been incorporated in this recommended decision.

Rulings on Briefs of Interested Persons

At the conclusion of the hearing, the Administrative Law Judge fixed January 16, 1989, as the final date for interested persons to file proposed findings and conclusions and written arguments or briefs, based on the evidence received at the hearing. None were filed. However, one letter regarding the proposed amendments was received on July 27, 1989. While the letter was not timely received and cannot therefore be considered in this recommended decision, it has been placed in the docket file and will be considered as a timely filed comment to the recommended decision in any further rulemaking proceeding.

General Findings

Upon the basis of the record, it is found that:

(1) The findings, hereinafter set forth are supplementary to, and in addition to, the previous findings and determination which were made in connection with the issuance of the marketing agreement and order and each previously issued amendment thereto. Except insofar as such findings and determinations may be in conflict with the findings and determinations herein, they are hereby ratified and affirmed;

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

(3) The marketing agreement and order, as amended, and as hereby proposed to be further amended, regulate the handling of fresh peaches grown in the production area in the same manner as, and are 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;

(4) The marketing agreement and order, as amended, and as hereby proposed to be further amended, are limited in their 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 are

would not effectively carry out the declared policy of the Act;

(5) The marketing agreement and order, as amended and as hereby proposed to be further amended, prescribe, 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 peaches grown in the production area; and

(6) All handling of fresh peaches grown in the production area as defined in the marketing agreement and order, as amended, and as hereby proposed to be further amended, is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

List of Subjects in 7 CFR Part 919

Colorado, Marketing agreement and order, Mesa County, Peaches.

Recommended Further Amendment of the Marketing Agreement and Order

The following amendment of the marketing agreement and order, both as amended, is recommended as the detailed means by which the foregoing conclusions may be carried out:

PART 919—PEACHES GROWN IN MESA COUNTY, COLORADO

1. The authority citation for 7 CFR part 919 continues to read as follows:

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

2. Section 919.4 is revised to read as follows:

§ 919.4 Production area.

Production area means all territory included within Mesa County, Colorado.

§§ 919.6 through 919.12 [Redesignated from §§ 919.5 through 919.11]

3–9. Sections 919.5 through 919.11 are redesignated as §§ 919.6 through 919.12; newly redesignated §§ 919.6, 919.7, 919.8, 919.10, 919.11, 919.12 are revised; and a new § 919.5 is added to read as follows:

§ 919.5 Peaches.

Peaches means all varieties of peaches grown in the production area, classified botanically as Prunus persica.

§ 919.6 Committee.

Committee means the Colorado Peach Administrative Committee established pursuant to the provisions of this subpart.

§ 919.7 Producer.

Producer is synonymous with "grower" and means any person engaged in growing peaches for market in fresh form in the production area, and who has a proprietary interest therein.

§ 919.8 Handler.

Handler is synonymous with "shipper" and means any person (except a common or contract carrier of peaches owned by another person) who, as owner, agent, or otherwise, handles peaches of causes peaches to be handled as defined in § 919.10.

§ 919.10 Handle.

Handle is synonymous with "ship" and means to pack, sell, consign, transport, offer for transportation, or transport peaches in fresh form by any means whatsoever in the current of commerce within the production area or between the production area and any points outside thereof: Provided, That the term "handle" shall not include the transportation within the production area of peaches from the orchard where grown to a packing facility located within such area for preparation for market.

§ 919.11 Fiscal period.

Fiscal period is synonymous with "fiscal year" and means the 12-month period beginning and ending on the dates as recommended by the committee and approved by the Secretary.

§ 919.12 District.

District means any one of the geographical areas into which the production area is divided as recommended by the committees and approved by the Secretary.

10. A new § 919.13 is added to read as follows:

§ 919.13 Grade.

Grade means any one of the officially established grades of peaches as defined and set forth in the United States Standards for Grades of Peaches (§§ 51.1210–51.1223 of this title) or any amendment, or modification recommended by the committee and approved by the Secretary.

11. A new § 919.14 is added to read as follows:

§ 919.14 Size.

Size means the smallest diameter, measured through the center of the peach, at right angles to a line running from the stem to the blossom end, or such other specifications as may be recommended by the committee and approved by the Secretary.

12. Section 919.20 is revised to read as follows:

§ 919.20 Establishment and membership.

(a) A Colorado Peach Administrative Committee is hereby established consisting of nine members, each of whom shall have an alternate. The provisions of this part applicable to number, nomination, eligibility, qualification, and selection of the members shall also apply to the number, nomination, eligibility, qualification, and selection of the alternate members. Five (5) of the members, one for each district established pursuant to § 919.11 or modified pursuant to § 919.22(b), shall represent and be selected from producers or officers or employees of producers and be referred to as "producer members;" one (1) member shall represent and be selected from the cooperative marketing association of producers, and be a member or director, officer, or employee of such an association exercising a supervisory or managerial function for that association, and be referred to as a "cooperative handler member;" and three (3) members shall represent and be selected from handlers or producers who are also handlers or directors, officers, or employees exercising supervisory or managerial functions of handlers, not affiliated with the cooperative marketing association of producers, and be referred to as "independent handler members." The members of the committee and their respective alternatives shall be nominated in accordance with the provisions of § 919.21.

(b) Every two years the committee, with the approval of the Secretary, may revise the composition and size of the committee and reapportion the committee membership among industry groups pursuant to § 919.22.

13. Section 919.21 is revised to read as follows:

§ 919.21 Nomination and selection.

(a) Nominations from which the Secretary may select the members of the committee and their respective alternates may be made in the following manner:

(1) The committee shall hold or cause to be held, meetings of producers and handlers, not less than 45 days prior to the expiration date of the terms of office, or the date in which vacancies otherwise occur in the producer or independent handler member position.

(2) At each meeting at least one nominee shall be nominated by producers pursuant to paragraph (b) of this section and by independent handlers pursuant to paragraph (d) of this section for each member or alternate member position to be filled.

Such nominations may be by ballot or by motion at the option of those present in voting capacity. The person receiving the highest number of votes shall be the nominee for each position to be filled. Proxy voting shall be prohibited.

(b) Nominations of producer members and their respective alternates shall be made at meetings of producers in each district, at such times and places as the committee shall designate. Only producers, including duly authorized officers or employees of producers, who are present at such nomination meetings may participate in the nomination and election of nominees. Each producer shall be entitled to cast only one vote for each position to be filled in the district that producer produces peaches. No producer shall participate in the election of nominees in more than one district in any one fiscal year.

(c) Nominations of cooperative handler members and their respective alternates shall be made as follows:

(1) When there is only one cooperative marketing association, that association may nominate its representatives in any manner as the members of that association deem appropriate; and

(2) When there is more than one cooperative marketing association, and there is a lack of agreement on who should be nominated, the vote for each position shall be weighted by the volume of peaches each association acquired from producers and handled during the preceding fiscal period.

(d) Nominations of independent handler members and their respective alternates shall be made at a meeting of such persons at such time and place as the committee shall designate. Only independent handlers, including duly authorized officers or employees of such handlers present at such nomination meeting, may participate in the nomination and election of nominees. Each independent handler shall be entitled to cast only one vote for each position to be filled.

(e) The committee, with the approval of the Secretary, may issue rules and regulations necessary to carry out the provisions of this section or to change the procedures in this section in the event they are no longer practical.

(f) In the event that nominees for all available positions are not provided by the aforesaid procedures, then such unfilled positions shall be treated as vacancies and the provisions of § 919.29 shall apply.

14. Section 919.22 is revised to read as follows:

§ 919.22 Reapportionment of committee and reestablishment of districts.

(a) The committee may recommend, and pursuant thereto the Secretary may approve, reapportioning producer, cooperative marketing association, and independent handler member representation on the committee to reflect changes in the relative importance of these segments of the industry, and, if necessary, the size of the committee may be increased or decreased; the ratio between producer and handler members including their alternates may be changed; and the industry groups represented on the committee may be changed. Any such changes shall reflect, insofar as practicable, structural changes within the peach industry and shifts in peach production within the production area.

(b) The Committee, with the approval of the Secretary, may redefine the districts into which the production area is divided, increase or decrease the number of districts, and reapportion representation among the various districts: Provided, That in recommending any such changes, the committee shall consider:

(1) The relative importance of production and the number of producers in each district,

(2) The geographic locations of the producing districts and how the changes would affect the efficiency of administering this part, and

(3) Other relevant factors.

§ 919.23 [Removed and Reserved]

15. Section 919.23 is removed and reserved.

§ 919.24 [Removed and Reserved]

16. Section 929.24 is removed and reserved.

17. Section 919.25 is revised to read as follows:

§ 919.25 Failure to nominate.

In the event the committee fails to report nominations to the Secretary in the manner specified in § 919.21 at least 30 days prior to the beginning of the term of office, the Secretary may select the members and alternate members without nomination. Such selections shall be from the groups and in the numbers specified pursuant to this subpart.

18. Section 919.26 is revised to read as follows:

§ 919.26 Qualification by members and alternate members.

Each person to be selected by the Secretary as a member or as an alternate member of the committee shall, prior to selection, qualify by filing a written background and acceptance statement advising the Secretary that that person agrees to serve in the position for which nominated for selection.

19. Section 919.27 is revised to read as follows:

§ 919.27 Term of office.

(a) The term of office of each member and alternate member of the committee shall be for two years beginning January 1 and ending December 31, or such other beginning and ending dates as recommended by the committee and approved by the Secretary: Provided, That members and alternate members of the committee serving immediately prior to the effective date of this amended subpart shall serve on the committee until their successors have qualified and been selected: And provided further, That a portion of the members and alternates of the new committee under the amended order shall be selected so that approximately one-half of the members and alternate members may be replaced each year; And provided further, That such terms may be shorter than specified if the committee is changed pursuant to § 919.22.

(b) Committee members and alternate members shall serve during the term of office for which they have qualified and are selected, and until their successors have qualified and are selected: Provided, That no member shall serve more than three consecutive terms as member; and Provided further, That the Secretary shall have authority to exempt a person from the tenure limitation when deemed necessary.

20. Section 919.29 is revised to read as follows:

§ 919.29 Vacancies.

To fill any vacancy occasioned by the failure of any person selected as a member or as an alternate member of the committee to qualify, or in the event of the death, removal, resignation, or disqualification of any member or alternate member of the committee, a successor for the unexpired term of such member or alternate member shall be nominated and selected in the manner specified in §§ 919.20, 919.21 and 919.26: Provided, That the committee may in its discretion submit its recommendation to the Secretary of a nominee eligible to serve in accordance with the requirements specified in § 919.20 without conducting a formal nomination. If the vacancy is in a member position, the committee shall recommend appointment of the alternate member if that person is willing to serve in that position. In the case of a declination to

serve or to fill the alternate member vacancy, the committee's recommended nominee for a producer member or alternate producer member position to represent a particular district shall be a producer recommended to the committee by the producers from that particular district; the recommended nominee for a handler member or alternate handler member position representing the cooperative marketing association, with which the former member or employee was associated, shall be recommended to the committee by the cooperative marketing association; and the recommended nominee for an independent handler member or alternate independent handler member position shall be a person recommended to the committee by independent handlers in the production area. If the committee's recommendation to fill such vacancy is not submitted to the Secretary within 45 days after such vacancy occurs, the Secretary may fill such vacancy without regard to nomination.

21. Section 919.30 is revised to read as follows:

§ 919.30 Compensation and expenses.

The members and alternate members of the committee shall serve without salary but may be compensated for attendance at meetings at a rate not to exceed $10 per meeting. The amount of compensation may be adjusted upon a recommendation by the committee and approval by the Secretary. Such members and alternates may also be reimbursed for reasonable expenses necessarily incurred by them in performance of duties, specifically assigned by the committee, other than attendance at committee meetings.

22. Section 919.31 is amended by changing the words "Administrative Committee" in the introductory paragraph to "committee."

23. Section 919.32 is amended by revising paragraph (d) and removing paragraph (l) to read as follows:

§ 919.32 Duties.

* * * * *

(d) Prepare and submit a marketing policy pursuant to § 919.50.

* * * * *

24. Section 919.33 is revised to read as follows:

§ 919.33 Procedure.

(a) A majority of all members of the committee shall be necessary to constitute a quorum or to pass any motion or approve any committee action. When an assembled meeting is held, all votes shall be cast in person.

(b) The committee may provide for the members thereof, including the alternate members when acting as members, to vote by mail, telegraph, telephone, or other means of communication, provided that any such vote cast orally shall be confirmed promptly in writing.

§ 919.34 [Amended]

25. Section 919.34 is amended by changing the words "Administrative Committee" in the first sentence to "committee."

§ 919.35 [Amended]

26. Section 919.35 is amended by changing the words "Administrative Committee" in paragraphs (a) and (b) to "committee."

27. Section 919.40 is revised to read as follows:

§ 919.40 Expenses.

The committee is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by such committee for its maintenance and functioning under this part during the then current fiscal year. The committee shall prepare, and submit to the Secretary, a proposed budget of expenses and a proposed rate of assessment for the then current fiscal year. The funds to cover such expenses shall be acquired by the levying of assessments as provided in § 919.41. For projects conducted pursuant to § 919.60, other funds approved by the Secretary may also be used.

28. Section 919.41 is amended by designating the existing paragraph as "(a)," changing the words "Administrative Committee" in the first sentence to "committee," and adding a new paragraph "(b)" to read as follows:

§ 919.41 Assessments.

* * * * *

(b) The committee may impose a late payment charge on any handler who fails to pay any assessment within the term prescribed by the committee. In the event the handler thereafter fails to pay the amount outstanding, including the late payment charge, within the prescribed time, the committee may impose an additional charge in the form of interest on such outstanding amounts. Such rate of interest shall be added to the bill monthly until the delinquent handler's assessment plus applicable interest and late payment charges have been paid. The rate of such charges shall be prescribed by the committee, with the approval of the Secretary.

§ 919.43 [Amended]

29. Section 919.43 is amended by changing the words "Administrative Committee" in the first sentence to "committee."

30. Section 919.50 is revised to read as follows:

§ 919.50 Marketing policy.

Each marketing season, prior to or at the same time as recommendations are made pursuant to § 919.51, the committee shall prepare and submit to the Secretary a report setting forth the marketing policy for the ensuing season. Additional reports shall be submitted if it is deemed advisable by the committee to adopt a new marketing policy because of changes in the demand for or supply of peaches. The committee shall maintain and make available in the committee office a copy of these marketing policies, and any revisions thereof, for the examination by growers and handlers. In determining each such marketing policy, the committee shall give due consideration to the following:

(a) The estimated total production of peaches within the production area;

(b) the expected general quality and size of peaches in the production area;

(c) The expected demand conditions for peaches in different market outlets;

(d) The expected shipments of peaches from other production areas;

(e) Anticipated marketing problems;

(f) Supplies of competing commodities;

(g) Trend and level of consumer income;

(h) Establishing and maintaining such orderly marketing conditions for peaches as will be in the public interest;

(i) The type of regulations expected to be recommended during the season; and

(j) Other relevant factors having a bearing on the marketing of peaches.

31. Section 919.51 is revised to read as follows:

§ 919.51 Recommendation for regulation.

(a) Whenever the committee deems it advisable to regulate, during any period or periods, the shipment of one or more varieties of peaches by grades or sizes, or both, or by minimum standards of quality or maturity, or both, it shall so recommend to the Secretary.

(b) At the time of submitting each such recommendation for regulation by grades, sizes, minimum standards of quality or maturity, or any combination thereof, the committee shall furnish to the Secretary, in addition to all pertinent data and information on which it acted in making such recommendation, such other data and information as the Secretary may request. The committee shall promptly give adequate notice to handlers and producers of each such recommendation.

32. Section 919.52 is revised to read as follows:

§ 919.52 Establishment of regulation.

Whenever the Secretary finds from the recommendations and information submitted by the committee, or from other available information, that such regulation would be in the public interest and tend to effectuate the declared policy of the Act, the Secretary shall regulate the handling of peaches in the manner specified herein. Such regulation may limit during any period or periods the shipments of any particular grade, size, quality, or maturity, or any combination thereof, of any variety or varieties of peaches grown in the production area. The Secretary shall promptly notify the committee of each such regulation and the committee shall promptly give adequate notice thereof to handlers and producers.

§ 919.53 [Amended]

33. Section 919.53 is amended by changing the words "Administrative Committee" in paragraphs (a), (e), and (f) to "committee."

§ 919.54 [Amended]

34. Section 919.54 is amended by changing the words "Administrative Committee" in the last sentence to "committee."

§ 919.55 [Amended]

35. Section 919.55 is amended by changing the words "Administrative Committee" in the first sentence to "Committee."

36. Section 919.60 is revised to read as follows:

§ 919.60 Research and development.

The committee, with the approval of the Secretary, may establish or provide for the establishment of production research, marketing research or marketing development projects designed to assist, improve, or promote the marketing, distribution, consumption, or efficient production of peaches. The expense of such projects shall be paid from funds collected pursuant to § 919.41, or other funds approved by the Secretary.

§ 919.65 [Amended]

37. Section 919.65 is amended by changing the words "Administrative Committee" to "committee."

§ 919.66 [Amended]

38. Section 919.66 is amended by changing the words "Administrative Committee" in the title and the text of the section to "committee."

39. A new § 919.67 is added to read as follows:

§ 919.67 Verification of reports and records.

For the purpose of checking compliance with recordkeeping requirements and verifying reports filed by handlers, the Secretary and the committee, through its duly authorized employees, shall have access to any premises where peaches are held and, at any time during reasonable business hours, shall be permitted to examine any peaches held, and any and all records with respect to matters within the purview of this part. Handlers shall furnish labor necessary to facilitate such examinations at no expense to the committee. All handlers shall maintain complete records which accurately show the quantity of peaches held, sold, and shipped. The committee, with the approval of the Secretary, may establish the types of records to be maintained. Such records shall be retained by handlers for not less than two years subsequent to the termination of each such fiscal period.

40. A new § 919.68 is added to read as follows:

§ 919.68 Confidential information.

All data or other information constituting a trade secret or disclosing a trade position, or business condition of a particular handler, shall be treated as confidential and shall at all times, be received by and kept in the custody and under the control of one or more designated employees of the committee. Information which would reveal the circumstances of a single handler shall be disclosed to no person other than the Secretary.

41. Section 919.71 is revised to read as follows:

§ 919.71 Peaches not subject to regulation.

Nothing contained in this part shall be construed to authorize any limitation of the right of any person to ship (a) peaches for consumption by a charitable institution or for distribution for relief purposes or for distribution by a relief agency; (b) peaches for processing on a commercial scale; or (c) peaches to any one person during any one day, if such peaches are removed from the sellers premises on the day of the sale, are not for resale and do not aggregate more than 19 bushels, or an equivalent amount, or other such amounts as recommended by the committee and approved by the Secretary. The inspection and assessment provisions of this subpart shall not be applicable to peaches so shipped. The committee may prescribe adequate safeguards to prevent peaches, shipped for such purposes, from entering commercial channels of trade contrary to the provisions of this part.

42. Section 919.81 is amended by revising paragraph (d) to read as follows:

§ 919.81 Termination.

* * * * *

(d) Within eight years of the effective date of the amendment of this paragraph the Secretary shall conduct a continuance referendum to ascertain whether continuance of this subpart is favored by producers. Subsequent referenda to ascertain continuance shall be conducted within every six years thereafter. 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 subpart is not favored by producers who, during a representative period determined by the Secretary, have been engaged in the production for market of peaches in the production area. Such termination shall be announced on or before February 1 of the current fiscal period.

§ 919.82 [Amended]

43. Section 919.82 is amended by changing the words "Administrative Committee" in paragraphs (a), (b), and (d) to "committee."

§ 919.94 [Amended]

44. Section 919.94 is amended by changing the words "Administrative Committee" in the first sentence to "committee."

Dated: November 20, 1989.

Daniel Haley,

Administrator.

[FR Doc. 89-27593 Filed 11-24-89; 8:45 am]

BILLING CODE 3410-02-M

Food Safety and Inspection Service

9 CFR Parts 317, 318, 319, and 381

[Docket No. 86-042C]

RIN 0583-AA64

Use of Certain Binders in Meat and Poultry Products and Transfer of Binders in Text to the Tables of Approved Substances

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule; correction; reopening of comment period.

SUMMARY: The Food Safety and Inspection Service (FSIS) is correcting

several omissions in the proposed rule which appeared in the **Federal Register** on October 6, 1988 (53 FR 39307). As a result of the omissions, FSIS is providing an additional 30 days for public comment.

DATE: December 26, 1989.

ADDRESS: Written comments to Policy Office, ATTN: Linda Carey, FSIS Hearing Clerk, Room 3171, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. (See also "Comments" under Supplementary Information.)

FOR FURTHER INFORMATION CONTACT: Ashland Clemons, Director, Standards and Labeling Division, Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250; Area Code (202) 447-4293.

SUPPLEMENTARY INFORMATION:

Comments

Interested persons are invited to submit comments in response to this action. Written comments should be sent to the Policy Office. Please include the docket number that appears in the heading of this document.

Any person desiring an opportunity for an oral presentation of views, as provided for in the Poultry Products Inspection Act (21 U.S.C. 451 et seq.), should make such request to Mr. Clemons so that arrangements can be made for such views to be presented. A record will be made of all views orally presented. Comments submitted will be available for public inspection in the Policy Office between 9:00 a.m. and 4:00 p.m., Monday through Friday.

Background

On October 6, 1988, FSIS published a proposed rule in the **Federal Register** (53 FR 39307) to amend the Federal meat and poultry products inspection regulations to permit the use of wheat gluten, tapioca dextrin, whey protein concentrate and sodium caseinate as binders in various meat and poultry products. FSIS also proposed to transfer text references for specific binders from individual product standards to the tables of approved substances. In addition, FSIS proposed to provide for the use of binders in the standardized product "Chili con Carne with Beans." In the proposed rule, a labeling provision for the use of binders and information in the tables of approved substances were inadvertently omitted. These omissions are discussed briefly below, and FSIS is requesting comments on these aspects of the proposed rule.

Done at Washington, DC, on November 16, 1989.

Lester M. Crawford,

Administrator, Food Safety and Inspection Service.

PART 317—[AMENDED]

1. The following labeling requirement is currently in § 317.8 of the Federal meat inspection regulations (9 CFR 317.8) but does not list the substances "wheat gluten, tapioca dextrin or sodium caseinate" nor does it provide the examples "Sodium Caseinate Added" and "Tapioca Dextrin Added" as shown below. Because binders and extenders are not expected ingredients in sausages, FSIS requires that any use of binders or extenders be prominently disclosed on the product label. This provision was inadvertently omitted from the proposed rule. Section 317.8 (b)(16) is revised to read as follows:

§ 317.8 False or misleading labeling or practices generally; specific prohibitions and requirements for labels and containers.

* * * * *

(b) * * *

(16) When cereal, vegetable starch, starchy vegetable flour, soy flour, soy protein concentrate, isolated soy protein, dried milk, nonfat dry milk, dry or dried whey, reduced lactose whey, reduced minerals whey, whey protein concentrate, calcium reduced dried skim milk, wheat gluten, tapioca dextrin, or sodium caseinate is added to sausage within the limits prescribed in part 319 of this subchapter, there shall appear on the label, in a prominent manner, contiguous to the name of the product, the name of each such added ingredient as, for example, "Cereal Added," "With Cereal," "Potato Flour Added," "Cereal and Potato Flour Added," "Soy Flour Added," "Soy Protein Concentrate Added," "Isolated Soy Protein Added," "Nonfat Dry Milk Added," "Sodium Caseinate Added," "Tapioca Dextrin Added," "Calcium Reduced Dried Skim Milk Added" or "Cereal and Nonfat Dry Milk Added" as the case may be.

2. The table that appeared on page 39310 across from the entry "Sodium caseinate" is corrected in four places as shown in the table reprinted below. In each of these four entries under "Amount," across from the entry "Sodium caseinate," the phrase referencing the Food and Drug Administration's (FDA) conditions of use for sodium caseinate was inadverently omitted. Conditions of use for the other three binders, whey protein concentrate, tapioca dextrin and wheat gluten, were included in the proposed rule. Therefore, the table has been corrected to add the reference to FDA's conditions of use for sodium caseinate which is 21 CFR 182.1748.

3. In addition, in this same section of the table across from the entry "Sodium caseinate" and regarding the products "Imitation sausage, nonspecific loaves, soups, stews" the "Amount" column is further corrected, as shown in the table reprinted below, by including an additional reference to FDA's definition of "good manufacturing practice" which appears at 21 CFR 172.5. This reference is intended to direct the user to the restrictions with regard to the use of sodium caseinate in imitation sausage, nonspecific loaves, soups, and stews, because FSIS has not provided a specific use level for the use of sodium caseinate in these products.

4. In the preamble of the proposed rule, on page 39309, in the middle column, in the first full paragraph the term "sufficient for purpose" should have been followed by "in accordance with 21 CFR 172.5," the reference to FDA's definition of good manufacturing practice.

5. On page 39309, in the middle column of text on that page, lines eleven through fifteen are reprinted below in corrected form.

"This proposed rule would also correct a printing error in the table of substances at § 318.7(c)(4) by changing the allowable amount of xanthan gum from "8 percent" to "Sufficient for purpose in accordance with 21 CFR 172.5."

6. On page 39309, in the middle column of text on that page, lines fifteen through twenty-three are repinted below in corrected form.

"This proposed rule would also correct printing errors in the same table for the substances "Carrageenan" by changing the products in which carrageenan can be used to "Breading mix; sauces" and by changing the amount that may be used to "Sufficient for purpose in accordance with 21 CFR 172.5."

7. On pages 39309 and 39310 in the table with respect to the following substances: Algin, Carrageenan, Isolated soy protein (in imitation sausage, nonspecific loaves, soups, stews); Dry or dried whey (in imitation sausage, soups, stews, nonspecific loaves), Reduced lactose whey, Reduced minerals whey, the entry "Sufficient for purpose" should be followed with "in accordance with 21 CFR 172.5." This reference is intended to direct the user to the restrictions with regard to the uses of the substances listed above, because FSIS has not provided a specific use level for the use of these substances. These corrections are shown in the table reprinted below.

8. On page 39308, in the middle column of text under item 4. "Whey Protein Concentrate," the first word in the second sentence should be changed from "When" to "Whey."

9. On page 39312, in the third column of text under item 13., the amendatory language should be changed to read as follows:

"13. The table of substances in § 381.147(f)(4) would be amended by adding the substances gelatin, sodium caseinate, tapioca dextrin, and wheat gluten, in alphabetical order, under the class of substances entitled "Binders and Extenders" as set forth below:"

PART 318—[AMENDED]

§ 318.7 [Amended]

* * * * *

(c) * * *

(4) * * *

Class of substance	Substance	Purpose	Products	Amount
Binders and extenders	Agar-agar	To stabilize and thicken	Thermally processed canned jellied meat food products.	0.25 percent of finished product.
	Algin	To extend and stabilize product.	Breading mix; sauces	Sufficient for purpose in accordance with 21 CFR 172.5.
	A mixture of sodium alginate, calcium carbonate and calcium lactate/lactic acid (or glucono delta-lactone).	To bind meat pieces	Restructured meat food products.	Sodium alginate not to exceed 1.0 percent; calcium carbonate not to exceed 0.2 percent; and lactic acid/calcium lactate (or glucono delta-lactone) not to exceed 0.3 percent of product formulation. Added mixiture may not exceed 1.5 percent of product at formulation. Ingredients of mixture must be added dry.
	Bread	To bind and extend product.	Bockwurst	3.5 percent individually or collectively with other binders.
	Calcium lactate	...do	Sausage as provided in Part 319.	Do.
	Calcium reduced dried skim milk.	...do	...do	Do.
	...do	...do	Chili con carne, chili con carne with beans.	8 percent individually or collectively with other binders.
	...do	...do	Spaghetti with meatballs and sauce, spaghetti with meat and sauce and similar products.	12 percent individually or collectively with other binders.
	Carrageenan	To extend and stabilize product.	Breading mix; sauces	Sufficient for purpose in accordance with 21 CFR 172.5.
	Carboxymethyl celluslose (cellulose gum).	...do	Baked pies	Do.
	Cereal	To bind and extend product.	Sausages as provided in Part 319, bockwurst.	3.5 percent individually or collectively with other binders.
	...do	...do	Chili con carne, chili con carne with beans.	8 percent individually or collectively with other binders.
	Dried milk	...do	Sausages as provided in Part 319.	3.5 percent individually or collectively with other binders.
	...do	...do	Chili con carne, chili con carne with beans.	8 percent individually or collectively with other binders.
	Enzyme (rennet) treated calcium reduced dried skim milk and calcium lactate.	To bind and extend product.	Sausages as provided for in Part 319.	3.5 percent total finished product. (Calcium lactate required at rate of 10 percent of binder).
	...do	...do	Imitation sausages, nonspecific loaves, soups, stews.	Sufficient for purpose in accordance with 21 CFR 172.5. (Calcium lactate required at rate of 10 percent of binder).
	Enzyme (rennet) treated sodium caseinate and calcium lactate.	...do	Imitation sausages, nonspecific loaves, soups, stews.	Sufficient for purpose in accordance with 21 CFR 172.5. (Calcium lactate required at rate of 25 percent of binder).
	Gums, vegetable	...do	Egg roll	Sufficient for purpose in accordance with 21 CFR 172.5.
	Methyl cellulose	To extend and to stabilize product (also carrier).	Meat and vegetablek patties.	0.15 percent.
	Isolated soy protein	To bind and extend product.	Sausage, as provided for in Part 319.	2 percent.
	...do	...do	Imitation sausages, nonspecific loaves, soups, stews.	Sufficient for purpose in accordance with 21 CFR 172.5.
	...do	...do	Chili con carne, chili con carne with beans.	8 percent individually or collectively with other binders.
	...do	...do	Spaghetti with meatballs and sauce, spaghetti with meat and sauce and similar products.	12 percent individually or collectively with other binders.
	Sodium caseinate	...do	Imitation sausages, nonspecific loaves, soups, stews.	Sufficient for purpose in accordance with 21 CFR 182.1748 and 21 CFR 172.5.
	...do	...do	Sausage as provided in Part 319.	2 percent in accordance with 21 CFR 182.1748.
	...do	...do	Chili con carne, chili con carne with beans.	8 percent individually or collectively with other binders and extenders in accordance with 21 CFR 182.1748.

Class of substance	Substance	Purpose	Products	Amount
	....do	....do	Spaghetti with meatballs and sauce, spaghetti with meat and sauce and similar products.	12 percent individually or collectively with other binders and extenders in accordance with 21 CFR 182.1748.
	Dry or dried whey	To bind or thicken	Sausage as provided in Part 319, bockwurst.	3.5 percent individually or collectively with other binders and extenders.
	Reduced lactose whey	....do	....do	Do.
	Reduced minerals whey	....do	....do	Do.
	Whey protein concentrate	....do	....do	In accordance with 21 CFR 184.1979c.
	Dry or dried whey	....do	Imitation sausages, soups, stews, nonspecific loaves.	Sufficient for purpose in accordance with 21 CFR 172.5.
	Reduced lactose whey	....do	....do	Do.
	Reduced minerals whey	....do	....do	Do.
	Whey protein concentrate	....do	....do	In accordance with 21 CFR 184.1979c.
	Dry or dried whey	....do	Chili con carne, chili con carne with beans, pork or beef with barbecue sauce.	8 percent individually or collectively with other binders and extenders.
	Reduced lactose whey	....do	....do	Do.
	Reduced minerals whey	....do	....do	Do.
	Whey protein concentrate	....do	....do	In accordance with 21 CFR 184.1979c.
	....do	To bind meat pieces	Restructured meat food products, whole muscle meat cuts.	3.5 percent individually or collectively with other binders and extenders. In accordance with 21 CFR 184.1979c.
	Soy flour	To bind and extend product.	Sausage as provided in Part 319, bockwurst.	Do.
	Soy protein concentrate	....do	....do	Do.
	Starchy vegetable flour	....do	....do	Do.
	Vegetable starch	....do	....do	Do.
	Wheat gluten	....do	....do	In accordance with 21 CFR 184.1322.
	Tapioca dextrin	....do	....do	In accordance with 21 CFR 184.1277.
	Soy flour	....do	Chili con carne, chili con carne with beans.	8 percent individually or collectively with other binders and extenders.
	Soy protein concentrate	....do	....do	Do.
	Starchy vegetable flour	....do	....do	Do.
	Vegetable starch	....do	....do	Do.
	Wheat gluten	....do	....do	In accordance with 21 CFR 184.1322.
	Tapioca dextrin	....do	....do	In accordance with 21 CFR 184.1277.
	Soy flour	....do	Spaghetti with meatballs and sauce, spaghetti with meat and sauce and similar products.	12 percent individually or collectively with other binders and extenders.
	Soy protein concentrate	....do	....do	Do.
	Wheat gluten	....do	....do	In accordance with 21 CFR 184.1322.
	Tapioca dextrin	....do	....do	In accordance with 21 CFR 184.1277.
	Xanthan gum	To maintain uniform viscosity; suspension of particulate matter, emulsion stability; freeze-thaw stability.	Meat sauces, gravies or sauces and meats, canned or frozen and/or refrigerated meat salads, canned or frozen meat stews, canned chili or chili with beans, pizza topping mixes and batter or breading mixes.	Sufficient for purpose in accordance with 21 CFR 172.5.

PART 381—[AMENDED]

§ 381.147 [Amended]

10. The table that appears on page 39312 with respect to the following substances: Algin; Carrageenan; Carboxymethly cellulose; Enzyme (rennet) treated calcium reduced dried skim milk and calcium lactate; Enzyme (rennet) treated sodium caseinate and calcium lactate; Gums, vegetable; Isolated soy protein; Whey (dried); and Xanthan gum; the text in the amount column is changed to read: "Sufficient for purpose in accordance with 21 CFR 172.5." This reference is intended to direct the user to the restrictions in regard to the uses of the substances listed above, because FSIS has not provided a specified use level for the use of these substances. These corrections are shown in the table reprinted below.

11. The table that appears on page 39312 across from the entry "Sodium caseinate" is corrected as shown in the table reprinted below. In the entry under "Amount," across from the entry "Sodium caseinate and the phrase referencing FDA's good manufacturing practice were inadvertently omitted. Therefore, the table has been corrected to add the references to FDA's conditions of use for sodium caseinate and good manufacturing practice which are 21 CFR 182.1748 and 172.5.

Class of substance	Substance	Purpose	Products	Amount
Binders and extenders	Algin	To extend and stabilize product.	Various	Sufficient for purpose in accordance with 21 CFR 172.5.
	Carrageenan	....do	....do	Do.

Class of substance	Substance	Purpose	Products	Amount
	Carboxymethyl cellulose (cellulose gum).	do	do	Do.
	Enzyme (rennet) treated calcium reduced dried skim milk and calcium lactate.	To bind and extend product.	do	Sufficient for purpose in accordance with 21 CFR 172.5. (Calcium lactate required at rate of 10 percent of binder.)
	Enzyme (rennet) treated sodium caseinate and calcium lactate.	do	do	Sufficient for purpose in accordance with 21 CFR 172.5. (Calcium lactate required at rate of 25 percent of binder.)
	Gelatin	do	do	3 percent in cooked product, 2 percent in raw product.
	Gums, vegetable	do	do	Sufficient for purpose in accordance with 21 CFR 172.5.
	Methyl cellulose	To extend and to stabilize product (also carrier).	do	0.15 percent.
	Isolated soy protein	To bind and extend product.	do	Sufficient for purpose in accordance with 21 CFR 172.5.
	Sodium caseinate	do	do	3 percent in cooked product, 2 percent in raw product, and in accordance with 21 CFR 172.5 and 182.1748.
	Tapioca dextrin	do	do	Sufficient for purpose in accordance with 21 CFR 172.5. and 184.1277.
	Whey (dried)	do	do	Sufficient for purpose in accordance with 21 CFR 172.5.
	Wheat gluten	do	do	3 percent in cooked product, 2 percent in raw product, and in accordance with 21 CFR 184.1322.
	Xanthan gum	To maintain: Uniform viscosity; suspension of particulate matter; emulsion stability; freeze-thaw stability.	Various, except uncooked products or sausages or other products with a moisture limitation established by Subpart P of this Part.	Sufficient for purpose in accordance with 21 CFR 172.5.

[FR Doc. 89-27449 Filed 11-22-89; 8:45 am]
BILLING CODE 3410-DM-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 89-ANE-31]

Proposed Alteration of Transition Area, Biddeford, ME

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This Notice proposes to amend the description of the Biddeford, Maine 700 foot Transition Area so as to provide protected airspace for instrument flight rules helicopters executing a new Copter TACAN 135/ Copter TACAN 315 Standard Instrument Approach Procedure (SIAP) to the Walker's Point Heliport, Kennebunkport, Maine.

DATES: Comments must be received no later than January 15, 1990.

ADDRESSES: Send comments on the Rule in triplicate to: Manager, Systems Management Branch, Air Traffic Division, New England Region, Docket No. 88-ANE-31, Department of Transportation, Federal Aviation Administration, Burlington, MA 01803.

The Official Docket may be examined in the Office of Assistant Chief Counsel, New England Region, Federal Aviation Administration, room 311, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Charles M. Taylor, Airspace Specialist, Systems Management Branch, ANE-530, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803; Telephone: (617) 270-2428.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89-ANE-31." The postcard will be date/time stamped and returned to commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules and Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No., 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to section 181 of part 71 of

the Federal Aviation Regulations (14 CFR part 71) to amend the description of the Biddeford, ME 700 foot transition area so as to provide protected airspace for Instrument Flight Rules Helicopters executing a new Standard Instrument Approach Procedure to the Walker's Point Heliport, Kennebunkport, Maine. Section 181 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

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

Lists of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

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

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

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Biddeford, ME [Amended]

Line five, after the word, bearing, add: and within 5 miles each side of the Kennebunk VORTAC 118 radial (135 magnetic), extending from the 8.5 mile radius area and the 10 mile radius area to 16.5 miles southeast of the Kennebunk VORTAC, excluding that airspace which coincides with the Sanford, ME 700 foot transition area.

Issued in Burlington, Massachusetts, on November 14, 1989.

James I. Lucas,

Manager, Air Traffic Division.

[FR Doc. 89-27550 Filed 11-22-89; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[PS-47-89]

RIN 1545-AN72

Alcohol Fuels Credit; Definition of Mixture

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations under section 40 interpreting the term "mixture" as used in that section. The proposed regulations provide that a product derived from alcohol and other components is considered to be a mixture of that alcohol and those other components even if the alcohol is chemically transformed in producing the product so that the alcohol is no longer present as a separate chemical in the final product. Thus, the proposed regulations provide that a product is considered to be a "mixture of alcohol and gasoline or of alcohol and a special fuel" within the meaning of section 40(b)(1)(B) if such product is produced by blending a chemical compound derived from alcohol with gasoline or a special fuel, so long as there is no significant loss of energy content of the alcohol. For example, a blend of gasoline and ethyl tertiary butyl ether (ETBE), a compound derived in part from ethanol, is considered for purposes of section 40(b)(1)(B) to be a mixture of gasoline and the ethanol used to produce the ETBE, even though the ethanol is chemically transformed in the production of ETBE and is not present in the final mixture.

DATES: Written comments and/or requests to appear (with an outline of the oral comments to be presented) at a public hearing scheduled for Thursday, January 4, 1990, at 10:00 a.m., must be delivered by December 26, 1989. These regulations are proposed to be effective for sales or uses after September 30, 1980, in tax years ending after September 30, 1980.

ADDRESS: Send comments and requests to appear at the public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R (PS-47-89), Room 4429, Washington, DC 20044. The public hearing will be held in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Ave., NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Frank Boland, Office of Assistant Chief Counsel (Passthroughs and Special Industries), 202-566-4077 (not a toll-free call). For further information concerning the hearing, contact Angela Wilburn, Regulations Unit, 202-566-3935 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Introduction

The Internal Revenue Service has been asked by taxpayers and other interested parties to rule as to whether alcohol used in the production of ethyl tertiary butyl ether (ETBE) is eligible for the alcohol mixture credit determined under section 40. Because no regulations have been issued under section 40, and because the answer to this question is not clear under the statutory language of section 40, the Treasury Department has determined that this matter should be resolved by reference to policy considerations. After weighing the relevant policy considerations, the Treasury Department is proposing that section 40 should be interpreted so as to allow the alcohol mixture credit for alcohol used in the production of ETBE.

Background

Section 40(a) provides for an alcohol fuels credit equal to the sum of the alcohol mixture credit and the alcohol credit. Section 40(b)(1) provides that the alcohol mixture credit is 60 cents for each gallon of alcohol used by the taxpayer in the production of a qualified mixture during the taxable year. The term "qualified mixture" means a mixture of alcohol and gasoline or of alcohol and a special fuel which either (i) is sold by the taxpayer producing such mixture to any person for use as a fuel, or (ii) is used as a fuel by the taxpayer producing the mixture. For purposes of section 40 the term "alcohol" does not include alcohol produced from petroleum, natural gas, or coal.

ETBE is a chemical compound produced in a reaction between ethanol (an alcohol that is not produced from petroleum, natural gas, or coal), and isobutylene (a by-product of petroleum refining). ETBE is then blended with gasoline as an octane enhancer. There is no significant loss in the energy content

of ethanol when it is used to produce ETBE.

Eligibility of Ethanol Used To Produce ETBE for Credit

Whether ethanol used in the production of ETBE is eligible for the alcohol mixture credit depends in part on how the term "mixture" used in section 40(b)(1)(B) is interpreted. If this term were interpreted in the narrow technical sense in which it is used in chemistry or in the tariff laws, then ethanol used in producing ETBE would not be eligible for the credit. In chemistry, and in the tariff laws, a mixture is a substance consisting of two or more ingredients that is distinguished from a compound in that the ingredients are not in fixed proportions, do not lose their physical characteristics, and can be separated by physical means. *See Webster's New World Dictionary of the English Language* 912 (2d college ed. 1972); Tariff Schedules of the United States, Schedule 4, Headnote 3(a). Under this narrow definition, no mixture of alcohol is produced, either when ETBE is created or when it is blended with gasoline.

In nontechnical use, however, the term mixture may have a broader meaning, and overlaps with the term compound. *See* "American Heritage Dictionary of the English Language" 842 (New college ed. 1976). Under such a nontechnical interpretation, ETBE could be considered to be a mixture of isobutylene and ethanol, and thus gasoline into which ETBE has been blended could be considered to be a mixture of gasoline, isobutylene and ethanol. Therefore, under such an interpretation, ethanol used to produce ETBE may qualify for the credit determined under section 40, even though it is chemically transformed in the reaction in which ETBE is produced.

Because the term mixture as used in section 40 is reasonably susceptible to either of two different interpretations, the Treasury Department believes that this issue must be resolved by reference to the policy objectives that section 40 was intended to achieve, and to broader considerations of public policy. The legislative history of the Crude Oil Windfall Profit Tax Act of 1980, which enacted the section 40 credit, indicates that the purpose of the credit is to encourage the development of energy sources other than petroleum products for use in motor fuels by providing a tax benefit for alcohol (other than alcohol produced from petroleum, natural gas or coal) used in motor fuel. *See* S. Rep. No. 394, 96th Cong., 2d Sess. 91, 1980–3 C.B. 209; H.R. Rep. No. 817, 96th Cong., 2d Sess. 142–43, 1980–3 C.B. 302–03. To the extent that ETBE or any other chemical compound is derived from ethanol, and there is no significant loss of energy content of the alcohol in producing such compound, this purpose is accomplished by the use of such compound in motor fuel, despite the fact that ethanol loses its chemical identity when used to produce the compound; from a policy standpoint, this chemical change has no significance. Therefore, consideration of the policy objectives of section 40 leads to the conclusion that ethanol used to produce ETBE should qualify for the section 40 credit.

In addition, this interpretation of the term mixture, which would extend the section 40 credit to ETBE, is consistent with Administration policy. Several government agencies have written the Treasury Department to point out the benefits of ETBE use. Allowing the section 40 credit for ETBE will have the following benefits. First, allowing the credit will increase the substitution of ETBE for other octane enhancers that cause more pollution. Second, it makes ETBE a more viable means of increasing the oxygen content of gasoline, which should help smooth the transition to oxygenated fuels in those areas that are not in compliance with carbon monoxide standards. Third, it encourages the substitution of ETBE-gasoline blends for ethanol-gasoline blends (gasohol). ETBE does not absorb water, which means it is easier to transport than gasohol, and it can be blended into the gasoline with less pollution than the "splash blending" of gasohol. Fourth, it may increase the demand for domestic ethanol because ETBE is easier to use than ethanol, which would expand this alternative market for America's farmers. Fifth, ETBE is a fuel, not just an octane enhancer, and it will displace some gasoline consumption. Substituting a renewable and domestically-produced fuel for imported petroleum will enhance national energy security and will improve the trade balance.

The Treasury Department has carefully weighed policy arguments against interpreting section 40 to allow a credit for ethanol used to produce ETBE. In particular the Treasury Department understands the possibility that such an interpretation will provide an advantage for ethanol used to make ETBE that is not available for methanol used to make methyl tertiary butyl ether (MTBE), a competing octane enhancer with properties similar to ETBE. This competitive advantage for ethanol relative to methanol, however, is a logical consequence of the decision made by Congress in 1980 to favor alcohols derived from renewable sources (such as ethanol) over alcohols derived from nonrenewable sources (such as methanol).

Explanation of Provisions

The proposed regulations provide that a product is considered to be a "mixture of alcohol and gasoline or of alcohol and a special fuel" within the meaning of section 40(b)(1)(B) if such product is a chemical compound derived from alcohol and gasoline or from alcohol and a special fuel, or if such product is produced by blending a chemical compound derived from alcohol with gasoline or a special fuel, provided that there is no significant loss in energy content of the alcohol. Therefore, under the proposed regulations, ETBE is considered to be a mixture of ethanol and isobutylene, and a mixture of ETBE and gasoline is considered to be a mixture of gasoline, ethanol, and isobutylene. Consequently a taxpayer that uses ethanol to produce ETBE, blends the ETBE with gasoline, and then either uses the resulting mixture as a fuel, or sells the resulting mixture to any person for use as a fuel, has produced a qualified mixture within the meaning of section 40(b)(1)(B). Provided that such sale or use is in a trade or business of the taxpayer, the taxpayer would be eligible for a credit of 60 cents per gallon of ethanol used.

The proposed regulations do not address the question of whether a taxpayer that produces ETBE, but does not blend it with gasoline, has produced a qualified mixture. In Rev. Rul. 88–64, 1988–2 C.B. 10, however, the Service considered a similar question. The taxpayer in this ruling produced an octane enhancer by mixing ethanol with other ingredients. The taxpayer did not blend the octane enhancer with gasoline, but instead sold it to another person for blending with gasoline. The Service ruled that the octane enhancer was not itself a qualified mixture because it was not sold for use as a stand-alone fuel, but rather for use as an octane enhancer. Therefore the taxpayer was not eligible for the alcohol mixtures credit. Rather, the person purchasing the octane enhancer for blending with gasoline was the producer of a qualified mixture and was eligible for the credit with respect to the ethanol component of the octane enhancer. Under the reasoning of this ruling, a taxpayer that produces ETBE, but does not blend it with gasoline, would not be eligible for the credit. However, a person purchasing ETBE and blending it with gasoline would be eligible for the credit.

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, the regulations proposed in this document will be submittd to the Administrator of the Small Business Administration for comment on their impact on small business.

Comments and Requests To Appear at the 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 Internal Revenue Service. All comments will be available for public inspection and copying in their entirety. Because the Treasury Department expects to issue final regulations on this matter as soon as possible after the end of 1989, a public hearing will be held at 10:00 a.m. on January 4, 1990, in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

Drafting Information

The principal author of these proposed regulations is Frank Boland, Office of Assistant Chief Counsel (Passthroughs and Special Industries), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and the Treasury Department participated in developing the regulations, both on matters of substance and style.

List of Subjects in 26 CFR 1.0–1 through 1.58–8

Income taxes, Tax liability, Tax rates, Credits.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAX

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

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

Par. 2. Section 1.40–1 is revised to read as follows:

§ 1.40–1 Questions and answers relating to the meaning of the term "qualified mixture" in section 40(b)(1).

Q–1. What is a "qualified mixture" within the meaning of section 40(b)(1)?

A–1. A "qualified mixture" is a mixture of alcohol and gasoline or of alcohol and a special fuel which (1) is sold by the taxpayer producing such mixture to any person for use as a fuel, or (2) is used as a fuel by the taxpayer producing such mixture.

Q–2. Must alcohol be present in a product in order for that product to be considered a mixture of alcohol and either gasoline or a special fuel?

A–2. No. A product is considered to be a mixture of alcohol and gasoline or of alcohol and a special fuel if the product is derived from alcohol and either gasoline or a special fuel even if the alcohol is chemically transformed in producing the product so that the alcohol is no longer present as a separate chemical in the final product, provided that there is no significant loss in the energy content of the alcohol. Thus, a product may be considered to be a "mixture of alcohol and gasoline or of alcohol and a special fuel" within the meaning of section 40(b)(1)(B) if such product is produced in a chemical reaction between alcohol and either gasoline or a special fuel. Similarly a product may be considered to be a "mixture of alcohol and gasoline or of alcohol and a special fuel" if such product is produced by blending a chemical compound derived from alcohol with either gasoline or a special fuel.

Thus, for example, a blend of gasoline and ethyl tertiary butyl ether (ETBE), a compound derived from ethanol (a qualified alcohol), in a chemical reaction in which there is no significant loss in the energy content of the ethanol, is considered for purposes of section 49(b)(1)(B) to be a mixture of gasoline and the ethanol used to produce the ETBE, even though the ethanol is chemically transformed in the production of ETBE and is not present in the final product.

Fred. T. Goldberg, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 89–27515 Filed 11–20–89; 1:51 pm]

BILLING CODE 4830–01–M

DEPARTMENT OF VETERANS AFFAIRS

DEPARTMENT OF DEFENSE

38 CFR Part 21

RIN 2900–AD85

Veterans Education; the Veterans' Benefits and Programs Improvement Act of 1988 and VEAP

AGENCY: Department of Veterans Affairs and Department of Defense.

ACTION: Proposed Regulations.

SUMMARY: The Veterans' Benefits and Programs Improvement Act of 1988 contains several provisions which affect the Post-Vietnam Era Veterans' Educational Assistance Program (VEAP). These include permitting cooperative training in this program, permitting refresher, remedial and deficiency training in this program, providing tutorial assistance to veterans in this program, liberalizing the standards for determining extensions to a veteran's basic period of eligibility, and reducing benefits to veterans who are incarcerated by reason of a felony conviction. Some of these changes are liberalizing. Some are more restrictive. This proposal will acquaint the public with the way in which the Department of Veterans Affairs will administer the new provisions of law.

DATES: Comments must be received on or before December 26, 1989. Comments will be available for public inspection until January 3, 1990. It is proposed that the amendments to § 21.5021 (r) and (s) and § 21.5230 (a) and (b) become effective 30 days after the date of publication of the final rules. It is proposed that the effective dates of the remainder of these changes coincide with the effective dates of the sections of the law upon which they are based. Consequently, it is proposed to make the amendments to §§ 21.5021 (t), (u) and (v), 21.5042, 21.5072(a), 21.5130, 21.5131 and 21.5296 and the proposed new regulations §§ 21.5072 (f) and (g), 21.5139 and 21.5141 retroactively effective on November 18, 1988. It is proposed to make § 21.5230(c) effective on August 15, 1989, and to make all other changes retroactively effective on January 1, 1989.

ADDRESSES: Send written comments to: Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 132 of the above address, between the

hours of 8 a.m. to 4:30 p.m., Monday through Friday (except holidays) until January 3, 1990.

FOR FURTHER INFORMATION CONTACT: William G. Susling, Acting Assistant Director for Education Policy and Program Administration, Vocational Rehabilitation and Education Service, Veterans Benefits Administration, (202) 233–2092.

SUPPLEMENTARY INFORMATION: The Department of Veterans Affairs and the Department of Defense are proposing to amend various regulations and to add other regulations in order to implement several provisions of Public Law 100–689, the Veterans' Benefits and Programs Improvements Act of 1988, which affect VEAP. These provisions provide for cooperative training in VEAP; permit refresher and remedial training in that program; allow for the payment of tutorial assistance to veterans enrolled under VEAP; provide that the disabling effects of chronic alcoholism will not be considered to be the result of willful misconduct when the Department of Veterans Affairs determines whether or not veteran training in VEAP is entitled to an extension of the period of eligibility due to a disability; and provide for a reduction or termination of VEAP benefits when a veteran is incarcerated due to conviction of a felony. The changes in law concerning willful misconduct as to disabling effects of chronic alcoholism do not apply to the compensation and pension programs.

The Department of Veterans Affairs and the Department of Defense find that good cause exists for making the final amendments to §§ 21.5021 (t), (u) and (v), 21.5042, 21.5072(a), 21.5130, 21.5131 and 21.5296 and the final new regulations §§ 21.5072 (f) and (g), 21.5139, and 21.5141, like the sections of Public Law 100–689 they implement, retroactively effective on November 18, 1988. The Department of Veterans Affairs and the Department of Defense find that good cause exists for making § 21.5230(c), like the section of law it implements, effective on August 15, 1989. The Department of Veterans Affairs and the Department of Defense find that good cause exists for making the remainder of the regulations (other than § 21.5021 (r) and (s) and § 21 5230 (a) and (b)) retroactively effective on January 1, 1989. To achieve the maximum benefit of the legislation for the affected individuals, it is necessary to implement these provisions of law as soon as possible. A delayed effective date would be contrary to statutory design; would complicate administration of these provisions of law; and might result in denial or improper payment of a benefit to a veteran or servicemember. Moreover, the above sections simply interpret and implement statutory provisions.

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

The Secretary of Veterans Affairs and the Secretary of Defense certify that these amended regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), the amended regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the regulations affect only individuals. They will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

The Catalog of Federal Domestic Assistance number for the program affected by this regulation is 64.120.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: August 10, 1989.

Edward J. Derwinski,

Secretary of Veterans Affairs.

Approved: 29 September 1989.

Donald W. Jones,

Lieutenant General, USA Deputy Assistant Secretary of Defense (Military Manpower & Personnel Policy)

38 CFR part 21, Vocational Rehabilitation and Education, is proposed to be amended as follows:

PART 21—[AMENDED]

1. In § 21.5021, paragraphs (r) through (v) are added to read as follows:

§ 21.5021 Definitions.

* * * * *

(r) *"Educational objective"*—An educational objective is one that leads to the awarding of a diploma, degree or certificate which is generally recognized as reflecting educational attainment.

(Authority: 38 U.S.C. 1602(2), 1652(b)).

(s) *"Professional or vocational objective"*—A professional or vocational objective is one that leads to an occupation. It may include educational objectives essential to prepare for the chosen occupation. When a program of education consists of a series of courses not leading to an educational objective, these courses must be generally accepted as necessary for attainment of a designated professional or vocational objective.

(Authority: 38 U.S.C. 1602(2))

(t) *"deficiency course"*—The term "deficiency course" means any secondary level course or subject not previously completed satisfactorily which is specifically required for pursuit of a post-secondary program of education.

(Authority: 38 U.S.C. 1641; Pub. L. 100–689)

(u) *"Referesher course"*—The term "refresher course" means-

(1) Either a course at the elementary or secondary level to review or update material previously covered in a course that has been satisfactorily completed, or

(2) A course which permits an individual to update knowledge and skills or be instructed in the techological advances which have occurred in the individual's field of employment and which is necessary to enable the individual to pursue an approved program of education.

(Authority: 38 U S.C. 1641(a); Pub. L. 100–689)

(v) *Disabling effects of chronic alcoholism.*

(1) The term "disabling effects of chronic alcoholism" means alcohol-induced physical or mental disorders or both, such as habitual intoxication, withdrawal, delirium, amnesia, dementia, and other like manifestations of chronic alcoholism which, in the particular case,—

(i) Have been medically diagnosed as manifestations of alcohol dependency or chronic alcohol abuse, and

(ii) Are determined to have prevented commencement or completion of the affected individual's chosen program of education.

(2) A diagnosis of alcoholism, chronic alcoholism, alcohol-dependency, chronic

alcohol abuse, etc., in and of itself, does not satisfy the definition of this term.

(3) Injury sustained by a veteran as a proximate and immediate result of activity undertaken by the veteran while physically or mentally unqualified to do so due to alcoholic intoxication is not considered a disabling effect of chronic alcoholism.

(Authority: 38 U.S.C. 105, 1632, 1662; Pub. L. 100-689)

2. In § 21.5042, paragraphs (c) (1) and (2) are redesignated as paragraphs (c) (3) and (4) respectively; paragraph (a)(2) is revised and paragraphs (c) (1) and (2) and (d)(4) are added so that revised and added text reads as follows:

§ 21.5042 Extended period of eligibility.

(a) * * *

(2) The veteran was prevented from initiating or completing the chosen program of education within the otherwise applicable delimiting period because of a physical or mental disability that did not result from the willful misconduct of the veteran. VA will not consider the disabling effects of chronic alcoholism to be the result of willful misconduct. See § 21.5021(v).

(Authority: 38 U.S.C. 105, 1632, 1662; Pub. L. 99-576, Pub. L. 100-689)

* * * * *

(c) *Qualifying period of disability.*

(1) A veteran's extended period of eligibility shall be based on the period of time that the veteran himself or herself was prevented by reason of physical or mental disability, not the result of the veteran's willful misconduct, from initiating or completing his or her chosen program of education.

(2) VA will not consider the disabling effects of chronic alcoholism to be the result of willful misconduct provided the last date of the time limit for filing a claim for the extension determined under § 21.5030(c)(3) of this part occurs after November 17, 1988.

(Authority: 38 U.S.C. 105; Pub. L. 100-689)

* * * * *

(d) *Commencing date.* * * *

(4) For a veteran whose entitlement to an extended period of eligibility is dependent upon the disabling effects of chronic alcoholism, may not begin before November 18, 1988.

(Authority: 38 U.S.C. 105, 1632; Pub. L. 99-576, Pub. L. 100-689)

3. In § 21.5072, paragraph (a) heading and paragraph (a)(1) are revised and paragraphs (e), (f), and (g) are added to read as follows:

§ 21.5072 Entitlement charge.

(a) *General.* (1) Except as provided in paragraphs (b) through (g) of this section, VA will make a charge against the period of entitlement as follows:

* * * * *

(e) *Cooperative training.* VA will make a charge against entitlement of 80 percent of a month for each month for which a veteran is paid educational assistance allowance at the cooperative training rate as provided in § 21.5138(a). If the veteran is paid for a partial month of training, the entitlement charge will be prorated.

(Authority: 38 U.S.C. 1631(d); Pub. L. 100-689)

(f) *Training while the veteran is incarcerated.* If the veteran must be paid educational assistance allowance at a reduced rate because he or she is incarcerated as provided in § 21.5139 of this part, VA will make a charge against entitlement of one month for each amount of educational assistance allowance paid to the veteran which is the equivalent of one month's benefits as provided in § 21.5138 of this part for the appropriate type of training pursued.

(Authority: 38 U.S.C. 1631(e); Pub. L. 100-689)

(g) *Tutorial assistance.* If an individual is paid tutorial assistance as provided in § 21.5141 of this part, the following provisions will apply.

(1) There will be no charge to entitlement for the first $600 of tutorial assistance paid to an individual.

(2) VA will make a charge against the period of entitlement for each amount of tutorial assistance paid to the individual in excess of $600 that is equal to the amount of monthly educational assistance the individual is otherwise eligible to receive for full-time pursuit of a residence course as provided in § 21.5138(c) of this part. When the amount of tutorial assistance paid to the individual in excess of $600 is less than the amount of monthly educational assistance the individual is otherwise eligible to receive, the entitlement charge will be prorated.

(Authority: 38 U.S.C. 1634; Pub. L. 100-689)

4. In § 21.5130, paragraphs (a) and (d) are revised to read as follows:

§ 21.5130 Payments-educational assistance allowance.

* * * * *

(a) § 21.4131 (except paragraph (e))—Commencing dates.

(Authority: 38 U.S.C. 1641)

* * * * *

(d) § 21.4135 (except paragraphs (b), (c), (d), (o), and (v))—Discontinuance dates.

(Authority: 38 U.S.C. 1641)

* * * * *

5. Section 21.5131 is revised to read as follows:

§ 21.5131 Educational assistance allowance.

VA will pay educational assistance allowance at the rate specified in §§ 21.5136 and 21.5138 of this part while the individual is pursuing either an approved program of education or a refresher or deficiency course or other preparatory or special education or training which is necessary to enable the individual to pursue an approved program of education. VA will make no payment for pursuit of any course which either is not part of the veteran's program of education, or is not a refresher, deficiency or other preparatory or special education or training course which is necessary to enable the individual to pursue an approved program of education. VA may withhold final payment until it receives proof of the individual's continued enrollment and adjusts the individual's account.

(Authority: 38 U.S.C. 1641; Pub. L. 94-502, 99-576, 100-689)

6. In § 21.5132, paragraph (a) is revised to read as follows:

§ 21.5132 Criteria used in determining benefit payments.

(a) *Training time.* The amount of benefit payment to an individual in all types of training except cooperative training, correspondence training, and apprenticeship and other on-job training depends on whether VA determines that the individual is a full-time student, three-quarter-time student, half-time student or one-quarter-time student.

(Authority: 38 U.S.C. 1641, 1788; Pub. L. 99-576, Pub. L. 100-689)

* * * * *

7. In § 21.5138 paragraph (a)(4) is added to read as follows:

§ 21.5138 Computation of benefit payments and monthly rates.

* * * * *

(a) * * *

(4) For cooperative training the VA will compute the entitlement factor as follows:

(i) Enter the number of full months in the applicable benefit period. (1) _____

(II) Enter the number of full days in excess of the number of full months. (a) _____

(iii) Divide line a by 30. Enter the quotient. (2) _____

(iv) Total lines 1 and 2. (3)
(v) Multiply line 3 by .80. Enter the result. (4)
(This is the entitlement factor).

(Authority: 38 U S.C. 1631; Pub. L. 100-689)

8. Sections 21 5139 and 21.5141 are added to read as follows:

§ 21.5139 Computation of benefit payments for incarcerated individuals.

Notwithstanding the provisions of § 21.5138, some incarcerated individuals may have their educational assistance allowance terminated or reduced. The provisions of this section shall not apply in the case of any individual who is pursuing a program of education while residing in a halfway house or participating in a work-release program in connection with that individual's conviction of a felony.

(a) *No educational assistance allowance payable to some incarcerated individuals.*

VA will pay no educational assistance to an individual who—

(1) Is incarcerated in a Federal, State or local penal institution for conviction of a felony, and

(2) Is enrolled in a course where his or her tuition and fees are being paid by a Federal program (other than one administered by VA) or a State or local program, and

(3) Has incurred no expenses for supplies, books or equipment.

(Authority: 38 U S.C. 1631(e))

(b) *Reduced educational assistance allowance for some incarcerated individuals.*

(1) VA will pay a reduced educational assistance allowance to a veteran who—

(i) Is incarcerated in a Federal, State or local penal institution of conviction of a felony, and

(ii) Is enrolled in a course—

(A) For which the individual pays some (but not all) of the charges for tuition and fees, or

(B) For which a Federal program (other than one administered by VA) or a State or local program pays all the charges for tuition and fees, but which requires the individual to pay for books, supplies and equipment.

(2) The monthly rate of educational assistance allowance payable to such an individual shall be the lesser of the following:

(i) The monthly rate determined by adding the tuition and fees that the veteran must pay and the charge to the veteran for the cost of necessary supplies, books and equipment and prorating the total on a monthly basis, or

(ii) The monthly rate for the individual as determined by § 25.5138(c) of this part.

(Authority· 38 U S.C. 1631(e))

§ 21.5141 Tutorial assistance.

(a) *Entitlement to tutorial assistance.* (1) An individual who is otherwise eligible to receive benefits under the Post-Vietnam Era Veterans' Educational Assistance Program may receive supplemental monetary assistance to provide tutorial services if he or she—

(i) Is pursuing a post-secondary educational program on a half-time or greater basis at an educational institution, and

(ii) Has a deficiency in a subject which is indispensable to the satisfactory pursuit of an approved program of education.

(2) This supplemental monetary assistance shall be termed tutorial assistance.

(Authority: 38 U.S.C. 1634, 1692; Pub. L. 100-689)

(b) *Application for tutorial assistance.* The application for tutorial assistance shall be in the form prescribed by the Secretary and shall contain such information as the Secretary may require.

(Authority: 38 U.S.C. 1634, 3001; Pub. L. 100-689)

(c) *Approval of tutorial assistance.* The Department of Veterans Affairs will approve an application for tutorial assistance when—

(1) The educational institution where the individual is pursuing a program of education certifies that—

(i) Individualized tutorial assistance is essential to correct a deficiency in a specified subject or subjects required as a part of, or which is prerequisite to, or which is indispensable to the satisfactory pursuit of an approved program of education;

(ii) The tutor selected—

(A) Is qualified, and

(B) Is not the parent, spouse, child, brother or sister of the individual; and

(iii) The charges for this assistance do not exceed the customary charges for such tutorial assistance; and

(2) The assistance is furnished on an individual basis.

(Authority: 38 U S.C. 1634, 1692; Pub. L. 100-689)

(d) *Limitations on tutorial assistance* (1) The Department of Veterans Affairs will authorize tutorial assistance in an amount not to exceed $100 per month.

(2) Tutorial assistance provided under this section will not exceed a maximum of $1,200.

(Authority· 38 U.S.C. 1634, 1692; Pub. L. 100-689)

9. Section § 21.5230 is revised to read as follows:

§ 21.5230 Programs of education.

(a) *Approving the selected program of education.* Except as provided in paragraphs (b) and (c) of this section, VA will approve a program of education under chapter 32, title 38, United States Code, only if it—

(1) Meets the definition of a program or education stated in § 21.5021(q) of this part;

(2) Has an objective as described in § 21.5021(r) or (s) of this part;

(3) The courses or subjects in the program are approved for VA training; and

(4) The veteran or serviceperson is not already qualified for the objective of the program.

(Authority: 38 U S.C. 1602(2)

(b) *Programs which include secondary school training.* VA may aprove the enrollment of a veteran or serviceperson in a refresher, remedial, deficiency or other preparatory or special educational assistance course when the veteran or eligible serviceperson needs the course in order to pursue an approved program of education.

(Authority: 38 U S.C. 1641(a)(2))

(c) *Refresher training for those already qualified.* The refresher training referred to in paragraph (b) of this section includes training in a course or courses for which the veteran is already qualified provided the course or courses permit the veteran to update knowledge and skills or to be instructed in the technological advances which have occurred in the veteran's field of employment. The relevant field of employment may have been pursued either before, during or aftr the veteran's active duty.

(Authority: 38 U S.C. 1641(a)(2); Pub. L. 100-689)

10. In § 21.5250 paragraphs (h) through (n) are revised and paragraph (o) is added to read as follows:

§ 21.5250 Courses.

* * * * *

(h) § 21.4257—Cooperative courses.

(Authority: 38 U S.C. 1602(2); Pub. L. 100-689)

(i) § 21.4258—Notice of approval.

(Authority: 38 U S.C. 1641, 1778; Pub. L. 94-502, Pub. L. 99-576)

(j) § 21 4259—Suspension or disapproval.

(Authority: 38 U.S.C. 1641, 1779; Pub. L. 94–502)

(k) § 21.4260—Courses in foreign countries.

(Authority: 38 U.S.C. 1641, 1676; Pub. L. 94–502)

(l) § 21.4261—Apprentice courses.

(Authority: 38 U.S.C. 1641, 1685; Pub. L. 99–576)

(m) § 21.4262—Other training on-the-job courses.

(Authority: 38 U.S.C. 1641, 1685; Pub. L. 99–576)

(n) § 21.4265 (except paragraph (g))—Practical training approved as institutional training.

(Authority: 38 U.S.C. 1641, 1772; Pub. L. 94–502)

(o) § 21.4266—Courses offered at subsidiary branches or extensions.

(Authority: 38 U.S.C. 1641, 1772, 1789(c); Pub. L. 94–502)

11. In § 21.5270 paragraph (a) is revised to read as follows:

§ 21.5270 Assessment and pursuit of course.

* * * * *

(a) Section 21.4270 (except those portions of the paragraph and footnotes dealing with farm cooperative training)—Measurement of courses. For the purpose of benefits payable under Chapter 32 that training identified in § 21.4270 of this part as less than one-half and more than one-quarter time will be treated as one-quarter-time training.

(Authority: 38 U.S.C. 1641, 1788; Pub. L. 94–502, Pub. L. 99–576, Pub. L. 100–689)

* * * * *

12. In § 21.5296, paragraphs (a) (2) and (c) introductory text are revised to read as follows:

§ 21.5296 Extended period of eligibility.

(a) * * *

(2) The veteran was prevented from initiating or completing the chosen program of education within the otherwise applicable delimiting period because of a physical or mental disability that did not result from the willful misconduct of the veteran. VA will not consider the disabling effects of chronic alcoholism to be the result of willful misconduct.

(Authority: 38 U.S.C. 105, 1632; Pub. L. 99–576, Pub. L. 100–689)

* * * * *

(c) *Qualifying period of disability.* A veteran's extended period of eligibility shall be based on the period of time that the veteran himself or hereself was prevented by reason of physicial or mental disability, not the result of the veteran's willful misconduct, from initiating or completing his or her chosen program of education. VA will not consider the disabling effects of chronic alcoholism to be the result of willful misconduct.

(Authority: 38 U.S.C. 105, 1632; Pub. L. 99–576, Pub. L. 100–689)

* * * * *

[FR Doc. 89–27490 Filed 11–22–89; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AC73

Training Outside the United States

AGENCY: Department of Veterans Affairs.

ACTION: Proposed regulatory amendment.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to clarify the range of services which may be furnished to a veteran pursuing a vocational rehabilitation program outside the United States and the factors which must be considered in authorizing these services. The effect of the change is to help assure that necessary services are furnished in a manner which is in the veteran's and the government's best interest.

DATES: Comments must be received on or before December 26, 1989. Comments will be available for public inspection until January 3, 1990. It is proposed to make these amendments effective upon final publication.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding these changes to the Secretary of Veterans Affairs, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 132 of the above address, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays) until January 3, 1990.

FOR FURTHER INFORMATION CONTACT: Morris Triestman, Rehabilitation Consultant, Vocational Rehabilitation and Education Service (226), Veterans Benefits Administration, (202) 233–6496.

SUPPLEMENTARY INFORMATION: The conditions under which training is furnished outside a State under the vocational rehabilitation program and the types of services which may be provided are contained in § 21.130. The rule authorizes the provision of educational and vocational courses, and supportive services. We propose to clarify the types of services which are included in the term "supportive services". The proposed clarification specifies that employment services are included under "supportive services". In addition the factors which must be considered in providing "supportive services" are also clarified.

The regulations contained herein will better acquaint eligible veterans, vocational training and rehabilitation facilities, and the public at large with the way these provisions will be implemented.

These proposed amendments do not meet the criteria for major rules as contained in Executive Order 12291, Federal Regulation. The proposed regulations 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 certifies that these proposed 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 proposed rules are therefore exempt from the initial and final regulatory flexibility analyses requirements of §§ 603 and 604. The reasons for this certification are that the proposed regulatory amendments implement and interpret statutory provisions. These changes only concern 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: October 31, 1989.

Edward J. Derwinski,

Secretary.

PART 38—[AMENDED]

38 CFR part 21, Vocational Rehabilitation and Education, is proposed to be amended by revising § 21.130(b)(3) to read as follows:

§ 21.130 Educational and vocational courses outside the United States.

* * * * *

(b) * * *

(3) All necessary supportive and follow-up services, including medical care and treatment and employment

services, reasonably can be provided by or through VA, considering such factors as the availability, accessibility and cost of such services.

(Authority: 38 U.S.C. 1514)

[FR Doc. 89-27489 Filed 11-22-89; 8:45 am]

BILLING CODE 8320-01-M

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38 CFR Part 36

RIN 2900-AE21

Loan Guaranty: Discrimination on the Basis of Handicap or Family Status

AGENCY: Department of Veterans Affairs.

ACTION: Proposed regulations.

SUMMARY: The Department of Veterans Affairs (VA) is proposing amendments to its loan guaranty regulations to conform to the requirements of the Fair Housing Amendments Act of 1988 which prohibit discrimination on the basis of handicap or family status.

DATES: Comments must be received on or before December 26, 1989. Comments received will be available for public inspection until January 3, 1990.

ADDRESSES: Interested persons are invited to submit written comments, suggestions or objections regarding this proposal to the Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, Room 132 at the above address, between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays) until January 3, 1990.

FOR FURTHER INFORMATION CONTACT: Alan Schneider, Assistant Director for Loan Policy (264), Loan Guaranty Service, Veterans Benefits Administration, (202) 233-3042.

SUPPLEMENTARY INFORMATION: Under chapter 37 of title 38, United States Code, VA guarantees a portion of the loan made to an eligible veteran to acquire or refinance a home, condominum, or manufactured home, or to install certain energy conservation features or other home improvements. The guaranty is a promise by the Government to pay a portion of the veteran's indebtedness in the event of a loan default and eventual termination through foreclosure or other proceedings.

VA regulations at 38 CFR 36.4253 and 36.4350 prescribe the estate which the veteran is required to obtain in the property which serves as security for the loan, generally a fee simple estate, with exceptions for certain easements and other restrictions. These regulations presently permit restrictions on title which limit the sale, lease or occupancy of a dwelling to persons based on age, including prohibitions against the permanent occupancy of the dwelling by children. The regulations were designed to enable older veterans to purchase homes in retirement communities containing restrictions on the age of persons who could own and/or occupy dwellings in the community. Under these regulations, the Secretary reserved the right to reject any such restriction if its operation would work an undue hardship upon the owner in the case of sudden, unforeseen events or be likely to result in an increased risk of default.

Under the Fair Housing Amendments Act of 1988, Public Law 100-430, approved September 13, 1988, it is unlawful to discriminate in residential real estate transactions against any person because of handicap or familial status. However, the law provides an exception for certain age restricted communities which meet the definition provided in the law for "housing for older persons." That definition is now contained in section 807 of the Fair Housing Act, title VIII of the Civil Rights Act of 1968, Public Law 90-284, 42 U.S.C. 3601 et seq, as amended by Public Law 100-430. "Housing for older persons" is essentially defined as including housing provided under a Federal or State program specifically designed to assist elderly persons and housing intended for and solely occupied by persons 62 years of age or older. It is also defined to include housing intended and operated for occupancy by at least one person 55 or older per unit, provided there are significant facilities and services specifically designed for older persons, and at least 80 percent of the units are occupied by at least one person 55 years of age or older.

VA proposes to amend §§ 36.4253(b)(7) and 36.4350(b)(5)(iv)(B) to provide that age restrictions will be considered acceptable limitations on the veteran's estate in the property only if they are acceptable under the provisions of the Fair Housing Act. This will assure that VA's home loan program conforms to the requirements of the law.

The Secretary hereby certifies that these proposed regulatory amendments will not, if promulgated, have a significant impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. These proposed regulations simply conform VA regulations to the requirements of the Fair Housing Act. Pursuant to 5 U.S.C. 605(b), these regulations are exempt from the initial and final regulatory analysis requirements of sections 603 and 604.

The Secretary hereby determines that these proposed regulations do not contain a major rule as defined by Executive Order 12291, Federal Regulation. They will not have an annual effect on the economy of $100 million or more; cause a major increase in cost or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or have other 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.

Catalog of Federal Domestic Assistance Program Numbers are 64.114 and 64.119.

These amendments are promulgated under authority granted the Secretary by 38 U.S.C. 210(c), 1803(c)(1) and 1812(g).

List of Subjects in 38 CFR Part 36:

Condominium, Handicapped, Housing loan program-housing and community development, Manufactured Homes, Veterans.

Approved: October 26, 1989.

Edward J. Derwinski,

Secretary.

38 CFR Part 36, LOAN GUARANTY, is proposed to be amended as set forth below:

PART 36—[AMENDED]

1. In § 36.4253, pargraph (b)(7) is revised to read as follows:

§ 36.4253 Title and lien requirements.

* * * * *

(b) * * *

(7) A recorded restriction on title designed to provide housing for older persons, provided that the restriction is acceptable under the provisions of the Fair Housing Act, title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. 3601 et seq. The veteran must be fully informed and consent in writing to the restrictions. A copy of the veteran's consent statement must be forwarded with the application for manufactured home loan guaranty or the report of a manfuactured home loan processed on the automatic basis;

(Authority: 38 U.S.C. 210(c), 1803(c)(1), 1812(g))

* * * * *

§ 36.4350 [Amended]

2. In § 36.4350, the following paragraphs are redesignated as shown in the table:

Paragraph	Redesignated as
(b)(5)(i)(*a*)	(b)(5)(i)(A)
(b)(5)(i)(*b*)	(b)(5)(i)(B)
(b)(5)(i)(*c*)	(b)(5)(i)(C)
(b)(5)(ii)(*a*)	(b)(5)(ii)(A)
(b)(5)(ii)(*b*)	(b)(5)(ii)(B)
(b)(5)(iv)(*a*)	(b)(5)(iv)(A)
(b)(5)(iv)(*b*)	(b)(5)(iv)(B)
(b)(5)(iv)(*c*)	(b)(5)(iv)(C)

3. In § 36.4350, the undesignated flush paragraph following paragraph (b)(5)(iv)(A)(*3*) and newly redesignated paragraph (b)(5)(iv)(B) are revised, and newly redesignated paragraph (b)(5)(iv)(C) is removed, to read as follows:

§ 36.4350 Estate of veteran in real property.

* * * * *

(b) * * *
(5) * * *
(iv) * * *
(A) * * *
(3) * * *

The sale price of a property under any of the restrictions of paragraph (b)(5)(iv)(A) shall not be less than the lowest of the following: The price designated by the owner as the asking price; the appraised value of the property; or the original purchase price of the property, increased by a factor reflecting all or a reasonable portion of the increased costs of housing or the percentage increase in median income in the area between the date of original purchase and resale, plus the reasonable value or actual costs of any capital improvements made by the owner plus a reasonable real estate commission less the cost of necessary repairs required to place the property in saleable condition; or other reasonable formula approrved by the Secretary. The veteran must be fully informed and consent in writing to the housing restrictions. A copy of the veteran's consent statement must be forwarded with the application for home loan guaranty or the report of a home loan processed on the automatic basis; or

(Authority: 38 U.S.C. 1803(c))

(B) A recorded restriction on title designed to provide housing for older persons, provided that the restriction is acceptable under the provisions of the Fair Housing Act, title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. 3601 et seq. The veteran must be fully informed and consent in writing to the restrictions. A copy of the veteran's consent statement must be forwarded with the application for home loan guaranty or the report of a home loan processed on the automatic basis:

(Authority: 38 U.S.C. 210(c), 1803(c)(1))

* * * * *

[Fr Doc. 89-27491 Filed 11-22-89; 8:45 am]
BILLING CODE 8320-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 8270

[AA-340-00-4332-02]

RIN 1004-AA27

Paleontology; Negotiated Rulemaking

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of a negotiated rulemaking.

SUMMARY: The Director, Bureau of Land Management, will convene a negotiated group to participate in a negotiated rulemaking on the management of paleontological resources on the public lands. The negotiating group will include Federal and State officials, representatives of professional and scientific groups, commercial collectors, amateur hobbyists, and others. This notice solicits expressions of interest in participating by individuals or groups that believe (1) they would be substantially affected by the rule, and (2) they are not already adequately represented in the group. The Bureau of Land Management has obtained the services of a facilitator through a competitive bidding procurement process. The negotiation will be followed by a proposed rule published in the **Federal Register** with an opportunity for public comment.

DATES: Additional persons or groups wishing to be represented at the negotiation should submit a request to Frank Snell, (202) 343-9353, by November 29, 1989. The meeting of the negotiating group is scheduled on December 4, 5, and 6, 1989, in Boulder, Colorado. Due to limitations of space, the meeting is not open to the public. Other meetings may be recommended and scheduled by the Department, if necessary.

ADDRESS: Persons desiring additional information about the issues to be discussed at the negotiating meeting may contact Frank Snell, Chief, Division of Recreation, Cultural, and Wilderness Resources, Bureau of Land Management, (340), Room 3360 MIB, Department of the Interior, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Frank Snell, (202) 343-9353.

SUPPLEMENTARY INFORMATION:

Background

On August, 17, 1982, the Bureau of Land Management published a proposed rulemaking on the collection of geologic and hobby mineral materials (47 FR 35914). This rule would have combined isolated existing regulations on the private collection of common invertebrate fossils and on the management and sale of petrified wood with new provisions on hobby collection of vertebrate fossils. Due to the concerns expressed in a great number of comment letters, the Bureau deferred action on a final rulemaking until the issues could be further studied. The National Academy of Sciences initiated a 2-year study on what role, if any, the Federal Government should play in the management of fossil collection. The Academy report, "Paleontological Collecting," is now complete, and it is the intention of the Bureau of Land Management to use the findings in this report as a starting point in formulating new regulations.

However, from the experience of analyzing the approximately 1,200 comments received in response to the 1982 proposal, the Bureau is cognizant of the many varying, competing, and conflicting views on the role of Government in the management of paleontological resources. Therefore, the Bureau has, through a competitive contracting process, engaged the services of a neutral third party to facilitate a negotiated proposed rulemaking, involving representatives of as many competing viewpoints as possible and seeking their agreement and cooperation in formulating new regulations.

This third party assists in arranging and convening meetings, helping participants to articulate their most important concerns, encouraging them to listen to the views of others, and working to facilitate creative and cooperative problem solving. The neutral third party does not make decisions or pass judgment on the equity or fairness of agreements or decisions. The Bureau reserves the right to make

final decisions regarding the regulations, but it is committed to honoring understandings reached through this negotiating process to the fullest extent possible. All parties to the negotiations should realize that all understandings reached are tentative and subject to policy and legal review, but that everything possible will be done to meet concerns and objectives on which concensus is reached during the negotiations.

The Bureau of Land Management has contracted with CDR Associates of Boulder, Colorado, to manage this regulatory negotiation process. For the past several months, CDR staff have interviewed interested parties in an attempt to understand the issues involved, determine what form the negotiating process should take, and assist parties in determining what role they should take in the process, who should represent their views, and what strategies would best serve their interests as well as the field of paleontology.

Items Selected for Negotiation

The following recommendations from the National Academy of Sciences report on paleontological collecting have been selected for the negotiated rulemaking process. They were choosen because they are the recommendations that will require regulations to implement.

1. "All public lands should be open to fossil collecting for scientific purposes. Except in cases involving quarrying or commercial collecting, and except in National Parks, collecting fossils on public land should not be subject to permit requirements or other regulation."

2. "Fossils of scientific significance should be deposited in institutions where there are established research and educational programs in paleontology. These repositories will ensure that specimens are accessioned, maintained, and remain available for study and education. There is no justification for requiring that fossils be deposited in an institution in the same State in which they were found; such requirements discourage paleontological research."

3. "Commercial collecting of fossils from public lands should be regulated to minimize the risk of losing fossils and data of importance to paleontology. Permit applications must be subject to review by paleontologists qualified to assess the projects' potential impact on related research programs. Applications must receive the endorsement of a paleontologist who is willing to supply guidance to the commercial operation. Specimens deemed to be of special scientific interest must be deposited in a public institution, such as a museum, college, or university."

Discussions at the negotiated rulemaking session may cover other subjects as necessary or as raised by participants.

Participants

Following is a list of participants who have been invited by the Bureau of Land Management to participate in the negotiation. If, in response to this notice, an additional individual or representative of an interest group requests representation, the Bureau, in consultation with the facilitators, will determine whether that individual or representative will be added to the group. Such decisions will be based on whether the individual or representative: (1) Would be substantially affected by the rule; and (2) is not already adequately represented by the group.

Federal Agencies—Bureau of Land Management, U.S. Forest Service, U.S. Geological Survey, National Park Service.

Commercial Collectors—American Association of Paleontological Suppliers.

Amateur Collectors—American Federation of Mineralogical Societies.

Professional, academic, and scientific paleontologists—Paleontological Society, Society for Vertebrate Paleontology.

Also included will be representatives of concerned State government agencies and congressional staffs.

As discussed above, individuals and group representatives are encouraged to express their views to the appropriate organization listed above if they have concerns additional to those stated in this notice, or if they have suggestions for resolution of these concerns. Alternatively, suggestions may be submitted to the Director (140), Bureau of Land Management, Room 5555, U.S. Department of the Interior, Washington, DC 20240.

The Bureau of Land Management will keep a record of the December meeting. This record will be placed in the public record for this rulemaking.

Dated: November 17, 1989.

Cy Jamison,

Director, Bureau of Land Management.

[FR Doc. 89-27453 Filed 11-22-89; 8:45 am]

BILLING CODE 4310-84-M

FEDERAL MARITIME COMMISSION

46 CFR Parts 502, 587

[Docket No. 89-24]

Miscellaneous Amendments to Rules of Practice and Procedure

AGENCY: Federal Maritime Commmission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Maritime Commission proposes to amend its Rules of Practice and Procedure, which govern procedures in proceedings before the Commission. The purpose of the amendments is to clarify certain filing and service requirements and to add a provision regarding the handling of confidential materials filed in Commission proceedings.

DATE: Comments due on or before December 26, 1989.

ADDRESS: Send comments (original and fifteen copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573, (202) 523-5725.

FOR FURTHER INFORMATION CONTACT: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573, (202) 523-5725.

SUPPLEMENTARY INFORMATION: The Commission's Rules of Practice and Procedure, 46 CFR part 502, govern procedures in proceedings before the Commission. Experience under the rules suggests certain provisions are either unclear, conflicting or inadequate to achieve their desired purpose. To remedy these deficiencies, the Commission proposes to make several revisions to its rules. In addition, the Commission proposes to fill a current void in the rules by adding a new section regarding the handling of confidential materials in Commission proceedings.

A section by section explanation of the proposed rule changes follows.

Section 502.51 is proposed to be amended to make clear that the $50 filing fee required by § 502.69(b) for petitions generally is also applicable to petitions for rulemaking.

Section 502.53 is proposed to be amended to clarify that when replies or a second round of comments are permitted in rulemaking proceedings, they must be served on all parties who have previously submitted comments in the proceeding.

Section 502.62 is proposed to be amended to make clear that complaints filed thereunder must be verified. This

requirement is in keeping with section 11(a) of the Shipping Act of 1984, 46 U.S.C. app. 1710(a), which authorizes the filing of "sworn complaints." Similarly, the general information on filing formal complaints, contained at subpart E, Exhibit 1, is proposed to be amended to specify that verification of a complaint is required whether or not the complainant is represented by an attorney or other person qualified to practice before the Commission. The small claim form at subpart S, Exhibit 1, would be changed in the same manner, and for the same purpose.

Section 502.111 is proposed to be amended to make clear that facsimile copies of documents may not be filed. Facsimile filings are normally not necessary in view of the provision in § 502.114 which permits filing deadlines to be met by depositing of the filing in the mail or by delivery of it to a courier. Additionally, facsimile filings do not provide the quality of copy which is needed for long term record keeping purposes. Finally, such filings usually are deficient in that they do not comply with the Commission's requirements regarding submission of multiple copies.

The Commission proposes to amend its service requirements in § 502.114 to make clear that service must be effected on all prior participants when submitting comments or replies beyond the initial round, or when submitting post-decisional pleadings such as petitions for reconsideration, for stay or to reopen (including replies thereto) in all general notice proceedings. This requirement would apply in proceedings involving disposition of petitions for rulemaking (46 CFR 502.51), petitions for declaratory order (46 CFR 502.68), petitions general (46 CFR 502.69), and notices of proposed rulemaking (46 CFR 502.53), including proceedings under section 19 of the Merchant Marine Act, 1920, 46 U.S.C. app. 876(1)(b) (part 585), and proceedings under section 13(b)(5) of the Shipping Act of 1984, 46 U.S.C. app. 1712(b)(5) (Part 587). An amendment to § 587.1 is also proposed to conform that rule with this clarification.

Section 502.118 is proposed to be amended to clarify that the Commission requires fifteen (15) copies of answers to complaints filed pursuant to § 502.64 and of filings on which it appears that the Commission may ultimately rule on review, even when the matter is to be initially determined by the administrative law judge. Motions to dismiss and petitions to intervene are examples of filings to be governed by this rule.

The Commission proposes to add a new § 502.119 outlining requirements for submitting filings containing confidential material. The new rule would provide that all confidential filings be clearly marked on the cover page and identified as confidential in a transmittal letter which describes the nature and extent of confidentiality sought, and that the public portions of such filings be separated from the confidential portions and identify where confidential materials are excluded.

Finally, § 502.167 is proposed to be amended to eliminate the requirement for a written motion when, at a hearing, testimony has been ordered withheld from the public pursuant to objection. Experience indicates that such a motion is often unnecessary and, in practice, the requirement to file a written motion is often waived by the administrative law judge. Even without such an express requirement in the rules the presiding administrative law judge may order such a written motion in his or her discretion.

The Commission has determined that this proposed rule is not a "major rule" as defined in Executive Order 12291, dated February 17, 1981, because it will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographical regions; or investment productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Federal Maritime Commission certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units or small governmental organizations.

The Paperwork Reduction Act, 44 U.S.C. 3501–3520, does not apply to this Notice of Proposed Rulemaking because the amendments to part 502 of title 46, Code of Federal Regulations, do not impose any additional reporting or recordkeeping requirements or change the collection of information from members of the public which require the approval of the Office of Management and Budget.

List of Subjects in 46 CFR Part 502

Administrative practice and procedure.

PART 502—[AMENDED]

Part 502 of title 46, Code of Federal Regulations, is proposed to be amended as follows:

1. The authority citation for part 502 continues to read as follows:

Authority: 5 U.S.C. 504, 551, 552, 553, 559; 12 U.S.C. 1141j(a); 18 U.S.C. 207; 26 U.S.C. 501(c)(3); 28 U.S.C. 2112(a); 46 U.S.C. app. 817, 820, 821, 826, 841a 1114(b), 1705, 1707–1711, 1713–1716; and E.O. 11222 of May 8, 1965 (30 FR 6469).

§ 502.51 [Amended]

2. Section 502.51 Petition for issuance, amendment, or repeal of rule, is amended by adding a new sentence immediately before the last sentence, reading as follows:

* * * Petitions shall be accompanied by a $50 filing fee.* * *

§ 502.53 [Amended]

3. Section 502. 53, Participation in Rulemaking, is amended by adding the following to the end of paragraph (a):

(a) * * * In the event that replies or a second round of comments are permitted, copies shall be served on all prior participants in the proceeding. A list of participants may be obtained from the Secretary of the Commission.

* * * * *

4. In § 502.62, paragraph (a) is amended to read as follows:

§ 502.62 Complaints and fee.

(a) The complaint must be verified and shall contain the name and address of each complainant, the name and address of each complainant's attorney or agent, the name and address of each person against whom complaint is made, a concise statement of the cause of action, and a request for the relief or other affirmative action sought.

* * * * *

Subpart E, Exhibit 1—[Amended]

5. The first sentence of the fifth paragraph of subpart E, Exhibit 1, "Information to Assist in Filing Formal Complaint," is amended to read as follows:

* * * * *

The format of Exhibit No. 1 to subpart E must be followed and a verification must be included. (See §§ 502.21–502.32, 502.62 and 502.112.) * * *

Subpart S, Exhibit 1 [Amended]

6. The first sentence of the fifth paragraph of subpart S, Exhibit 1, "Information to Assist in Filing Informal

Complaints," is amended to read as follows:

* * * * *

The format of Exhibit No. 1 must be followed and a verification must be included (See §§ 502.21–502.32, 502.112, and 502.304.) * * *

§ 502.111 [Amended]

7. Section 502.111 is amended by adding a new last sentence ot read as follows:

* * * Facsimile transmission copies will not be accepted.

8. Section 502.114 is amended by redesignating paragraph (b) as paragraph (c) and adding a new paragraph (b) reading as follows:

§ 502.114 Service and filing by parties.

* * * * *

(b) Service on all prior participants shall be shown when submitting comments or replies beyond the initial round, or when submitting post-decisional pleadings and replies such as petitions for reconsideration, or for stay under § 502.261 or to reopen under § 502.230 in all general notice proceedings, including those involving disposition of petitions for rulemaking (§ 502.51), petitions for declaratory order (§ 502.68), petitions general (§ 502.69), notices of proposed rulemaking (§ 502.53), proceedings under section 19 of the Merchant Marine Act, 1920, 46 U.S.C. app. § 876(1)(b) (part 585), and proceedings under section 13(b)(5) of the Shipping Act of 1984, 46 U.S.C. app. § 1712(b)(5) (part 587). A list of all participants may be obtained from the Secretary of the Commission.

* * * * *

9. Section 502.118 is amended by revising paragraph (b)(1)(iv) and adding a new paragraph (b)(1)(v) to read as follows:

§ 502.118 Copies of documents for use of Commission.

* * * * *

(b) * * *

(1) * * *

(iv) All motions, replies and other filings for which a request is made of the administrative law judge for certification to the Commission or on which it otherwise appears it will be necessary for the Commission to rule either directly or upon review of the administrative law judge's disposition thereof, pursuant to § 502.227;

(v) Answers to complaints filed pursuant to § 502.64.

* * * * *

10. A new § 502.119 is added to read:

§ 502.119 Documents containing confidential materials.

Except as otherwise provided in the rules of this part, all briefs, motions or other filings submitted for consideration by the administrative law judge or the Commission, which contain information previously designated as confidential pursuant to §§ 502.167, 502.201(i)(l)(vii), or any other rules of this part or for which a request for protective order pursuant to § 502.201(i)(1)(vii) is pending, are subject to the following requirements:

(a) Filings shall be accompanied by a transmittal letter which identifies the filing as "confidential" and describes the nature and extent of the authority for requesting confidential treatment.

(b) Such filings shall consist of public and confidential copies. The public copies shall exclude confidential materials and shall indicate on the cover page and on each affected page "confidential materials excluded." The confidential copies shall consist of the complete filing and shall include a cover page marked "confidential," with the confidential materials clearly marked on each page.

(c) Any information designated as confidential may be used by the administrative law judge or the Commission if deemed necessary to a decision in the proceeding. (Rule 119.)"

11. Section 502.167 is revised to read as follows:

§ 502.167 Objection to public disclosure of information.

Upon objection to public disclosure of any information sought to be elicited during a hearing, the presiding officer may in his or her discretion order that the witness shall disclose such information only in the presence of those designated and sworn to secrecy by the presiding officer. The transcript of testimony shall be held confidential. Copies of said transcript need be served only upon the parties to whose representatives the information has been disclosed and upon such other parties as the presiding officer may designate. Any confidential information may be used by the presiding officer or the Commission if deemed necessary to a decision in the proceeding. [Rule 167.]

PART 587—[AMENDED]

Part 587 of title 46, Code of Federal Regulations is proposed to be amended as follows:

1. The authority citation of part 587 continues to read:

Authority: 5 U.S.C. 533; secs. 13(b)(5), 15 and 17 of the Shipping Act of 1984 (46 U.S.C. app. 1712(b)(5), 1714, and 1716).

2. In § 587.1, paragraph (b)(2) is revised to read as follows:

§ 587.1 Purpose; general provisions.

* * * * *

(b) * * *

(2) The provisions of part 502 of this chapter (Rules of Practice and Procedure) shall not apply to this part except for those provisions governing *ex parte* contracts (§ 502.11 of this chapter) and governing service of documents and copies of documents (§§ 502.114(b) and 502.118 of this chapter), and except as the Commission may otherwise determine by order.

* * * * *

Joseph C. Polking,

Secretary.

[FR Doc. 89–27512 Filed 11–22–89; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89–515, RM–6898]

Radio Broadcasting Services; Clarkesville, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Clara Morris Martin, seeking the substitution of Channel 275C3 for Channel 275A at Clarkesville, Georgia, and modification of her construction permit (BPH–871026ML) to specify the higher class channel. Channel 275C3 can be allotted to Clarkesville in compliance with the Commission's minimum distance separation requirements with a site restriction of 12.3 kilometers (7.7 miles) south. The coordinates for this allotment are North Latitude 34–30–00. In accordance with Section 1.420(g) of the Commission's Rules, we shall not accept competing expressions of interest nor require the petitioner demonstrate the availability of an additional equivalent channel for use by interested parties.

DATES: Comments must be filed on or before January 8, 1990, and reply comments on or before January 23, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Christopher J. Reynolds, Audrey L. Allison, Peper, Martin, Jensen, Maichel and Hetlage,

1875 Eye Street, NW., Suite 1200, Washington, DC 20006. (Attorneys for petitioner).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–515, adopted October 30, 1989, and released November 17, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contracts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–27494 Filed 11–22–89; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 89–512, RM–6973]

Radio Broadcasting Services; Fairfield and Norwood, OH

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by WLLT, Inc., seeking the reallotment of Channel 235B from Fairfield, Ohio, to Norwood, Ohio, as the community's first local FM service, and the modification of its license for Station WOFX accordingly. Channel 235B can be allotted to Norwood in compliance with the Commission's minimum distance separation rules and can be used at the station's present transmitter site. The coordinates for this allotment are North Latitude 39–18–41 and West Longitude 84–30–45. In accordance with § 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest in use of the channel at Norwood.

DATES: Comments must be filed on or before January 8, 1990, and reply comments on or before February 23, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Robert L. Olender, Esq., Baraff, Koerner, Olender & Hochberg, P.C., 2033 M Street NW., Suite 700, Washington, DC 20036 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–512, adopted October 30, 1989, and released November 17, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–27500 Filed 11–22–89; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 89–510, RM–6860]

Radio Broadcasting Services; Beeville, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Lovelace Associates, Inc., licensee of Station KIBL–FM, Channel 285A at Beeville, Texas, proposing the substitution of Channel 289C3 for Channel 285A at Beeville, and the modification of its station's license to specify operation on the higher powered channel. Channel 289C3 can be allotted to Beeville in compliance with Section 73.207 of the Commission's Rules, with a site restriction of 9.8 kilometers (6.1 miles) northwest of the city. The coordinates are 28–27–00 and 97–49–51. Concurrence by the Mexican government is required for the proposal.

DATES: Comments must be filed on or before January 8, 1990; and reply comments on or before January 23, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Larry G. Fuss, P.O. Box 159, Fayetteville, GA 30214 (Consultant to petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–510, adopted October 31, 1989, and released November 17, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments.

See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-27501 Filed 11-22-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-509, RM-6816]

Radio Broadcasting Services; Denison-Sherman, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Transcontinental Broadcasting Company, Inc., licensee of Station KDSQ(FM), Channel 269A, Denison-Sherman, Texas, proposing the substitution of Channel 269C3 for Channel 269A at Denison-Sherman, and the modification of its station's license accordingly. A site restriction of 13.6 kilometers (8.4 miles) southwest of Denison is required. The coordinates are 33-41-24 and 96-40-28. The community could receive its first wide coverage area FM service.

DATES: Comments must be filed on or before January 8, 1990 and reply comments on or before January 22, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Steve M. Kramer, P.E., Stephan M. Kramer, P.E. and Associates, 10500 Bighorn Trail, Suite 100, McKinney, TX 75070 (Consultant to petitioner); and Transcontinental Broadcasting Company, Inc., 444 Florida St., Baton Rouge, LA 70821 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-509, adopted October 31, 1989, and released November 16, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of—Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-27502 Filed 11-22-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-508, RM-6975]

Radio Broadcasting Services; Gilchrist, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by James Owens, d/b/a Gilchrist Community Broadcasting proposing the allotment of Channel 268C3 to Gilchrist, Texas, as that community's first local FM service. The allotment can be made consistent with the Commission's minimum separation requirements at the city reference coordinates, which are 29-30-48 and 94-29-00.

DATES: Comments must be filed on or before January 8, 1990, and reply comments on or before January 22, 1990.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: James Owens, Gilchrist Community Broadcasting, 306 Stratford Drive, #12, Houston, TX 77006 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-508, adopted October 31, 1989, and released November 16, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-27503 Filed 11-22-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-511; RM-6941]

Radio Broadcasting Services; Shawano, WI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Wheeler Broadcasting, Incorporated, licensee of Station WOWN(FM), Channel 257A, Shawano, Wisconsin, proposing the substitution of Channel 257C3 for Channel 257A at Shawano, and the modification of its station's license accordingly. The proposal could provide the community with its first wide coverage area FM service. A site restriction of 17.6 kilometers (10.9 miles)

northeast is required, at coordinates 44–50–52 and 88–24–28.

DATES: Comments must be filed on or before January 8, 1990, and reply comments on or before January 23, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Lyle Robert Evans, Broadcast Consultant, 124 North Main Street, Mayville, Wisconsin 53050 (Consultant to petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–511, adopted October 31, 1989, and released November 17, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–27504 Filed 11–22–89; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 80

[PR Docket No. 89–514; FCC 89–310]

Use of narrow-Band Direct-Printing Frequencies in the Maritime Services

AGENCY: Federal Communications Commission.

ACTION: Proposed rules.

SUMMARY: The proposed rules require applicants to submit a showing of need to obtain new or additional narrow-band direct-printing (NB–DP) frequencies in the Maritime Services. Applicants would be required to show at least 40 percent channel usage on existing licensed frequencies or series of frequencies. The purpose of this showing is to prevent "warehousing" of these frequencies.

DATES: Comments are due on or before January 4, 1990 and Reply Comments on or before January 19, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Robert P. DeYoung, Private Radio Bureau, Washington, DC 20554, (202) 632–7175.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM) adopted November 2, 1989, and released November 14, 1989. The full text of this Commission document and the proposed rules are available for inspection and copying during normal hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The full text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc. (202) 857–3800, 2100 M Street NW., Washington, DC 20037.

The following collection of information contained in this proposed rule has been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act. Copies of the submission may be purchased from the Commission's copy contractor, International Transcription Services, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037. Persons wishing to comment on this information collection should contact Eyvette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395–3785. A copy of any comments made should also be sent to the Federal Communications Commission, Office of the Managing Director, Washington, DC 20554. For further information contact Jerry Cowden, Federal Communications Commission, (202) 632–7513.

OMB Number: None.

Title: Proposed § 80.361 -Frequencies for narrow-band direct-printing (NB–DP) and data transmissions.

Action: New collection.

Respondents: Individuals, state or local governments, businesses (including small business), and non-profit institutions.

Frequency of Response: On occasion.

Estimated Annual Burden: 2 responses; 4 hours total; 2 hours per response.

Needs and Uses: Rule is needed to ensure spectrum efficiency by requiring applicants to provide justification for frequency assignment.

Summary of Notice of Proposed Rulemaking

It appears desirable to require a need showing for applicants wanting to obtain new or additional NB–DP frequencies. A need showing is instrumental in our efforts to weed out licensees who do not use their frequencies and in reassigning them to those who will. For example, to guard against frequency warehousing the rules require licensees to place frequencies in operation within eight months of the date of grant. *See* 47 CFR 80.49. Public coast stations are common carriers and therefore already maintain traffic records for billing purposes. Further, they must file tariffs with the Commission for the communication services provided. Thus, requiring a showing should not be on added burden.

Initial Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980 (Pub. L. 96–354), our initial analysis is as follows:

Reason for Action

This action is being taken to incorporate into the Commission's Rules a requirement for applicants for narrow-band direct-printing frequencies to justify the need for those frequencies.

Objectives

The proposed action would prevent granting NB–DP frequencies to public coast stations that do need or will not use them efficiently thereby keeping them available for public coast stations that will.

Legal Basis

The proposed action is authorized under sections 4(i), 303(f) and (r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(f) and (r).

Reporting, Recordkeeping and Other Compliance Requirements

Public coast station applicants will be required to include in their application for additional frequencies a traffic showing based on records kept for other purposes.

Federal Rules which Overlap, Duplicate, or Conflict with this Rule

None.

Description, Potential Impact, and Number of Small Entities Involved

The only impact of this proposal will be on public coast station applicants and licensees. The requirement will be a small incremental addition to the application. There are currently less than ten licensees providing NB–DP services. The proposals contained herein have been analyzed with respect to the Paper Reduction Act of 1980 and found to impose a new information collection requirement on a small number of licensees. The information that must be submitted is similar to a prior requirement and based on records kept for other purposes. Implementation of any new or modified requirements will be subject to approval by the Office of Management and Budget as prescribed by the Act.

Any Significant Alternative Minimizing the Impact on Small Entities and Existing Licensees and Consistent with the Stated Objective

None. The only alternative for determining a need for these frequencies is a showing. A similar showing has been required in the past.

Ordering Clause

Authority for issuance of this Notice is contained in sections 4(i), 303(f) and (r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) 303(f) and (r). Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules (47 CFR 1.415 and 1.419) interested parties may file comments on or before January 4, 1990, and reply comments on or before January 19, 1990. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and five copies of all comments, reply comments and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original and nine copies must be filed. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference Room (Room 239) of the Federal Communications Commission, 1919 M Street NW., Washington, DC.

A copy of this NPRM shall be sent to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

Maritime services, Coast stations, private.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89–27493 Filed 11–22–89; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 89–513; RM–6897]

Radio Broadcasting Services; Dublin, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by State Broadcasting Company, Inc. proposing the substitution of Channel 240C1 for Channel 240C2 at Dublin, Georgia, and modification of its license to specify the higher class channel. Channel 240C1 can be allotted to Dublin in compliance with the Commission's minimum distance separation requirements with a site restriction of 37.2 kilometers (23.1 miles) east. The coordinates for this proposed allotment are 32–39–51 and 82–32–18. In accordance with § 1.420(g) of the Commission's Rules, we shall not accept competing expressions of interest, nor require the petitioner to demonstrate the availability of an additional equivalent channel for use by interested parties.

DATES: Comments must be filed on or before January 8, 1990, and reply comments on or before January 23, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition of filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Lawrence J. Bernard, Jr., Ward & Mendelsohn, P.C., 1100 17th Street, NW., suite 900, Washington, DC 20036 (Attorney for petitioner).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–513, adopted October 30, 1989, and released November 17, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–27495 Filed 11–22–89; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 89–514; RM–6978]

Radio Broadcasting Services; Gardner, IL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document request comments on a petition by David B. Knoll, proposing to allot Channel 293A to Gardner, Illinois, as the community's first local FM service. The coordinates for this allotment are North Latitude 41–10–49 and West Longitude 88–16–52.

DATES: Comments must be filed on or before January 8, 1990, and reply comments on or before, January 23, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: David B. Knoll, 1305 Smokey Row Lane, Carmel, Indiana 46032.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-514. adopted October 30, 1989, and released November 17, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Docket Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

Provisions of the Regualtory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-27496 Filed 11-22-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-507; RM-6946]

Radio Broadcasting Services; Breaux Bridge, LA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by JBC, Inc., proposing the substitution of Channel 243C3 for Channel 243A at a Breaux Bridge, Louisiana, and the modification of its construction permit to specify operation on Channel 243C3 in lieu of Channel 243A. A site restriction of 18.9 kilometers (11.7 miles) west of the city to required, a coordinates 30-13-00 and 92-05-00. The community could receive its first wide coverage area FM service.

DATES: Comments must be filed on or before January 8, 1990, and reply comments on or before January 22, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: David Tillotson, Esquire, Arent, Fox, Kintner, Plotkin & Kahn, 1050 Connecticut Avenue, NW., Washington, DC 20036 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-507, adopted October 31, 1989, and released November 16, 1989. The Full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Docket Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-27497 Filed 11-22-89; 845 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-500, RM-6970]

Radio Broadcasting Services; Stephenson, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Stephenson Radio Company, proposing the substitution of FM Channel 272C2 for Channel 272A (vacant), at Stephenson, Michigan. Canadian concurrence will be requested at coordinates 45-35-31 and 87-36-10. The allotment of Channel 272C2 at Stephenson requires a site restriction 19.7 kilometers (12.2 miles) north of the community.

DATES: Comments must be filed on or before January 8, 1990, and reply comments on or before January 22, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows Lawrence Roberts, Mark N. Lipp, Mullin, Rhyne, Emmons and Topel, P.C., 1000 Connecticut Avenue, Suite 500, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-500, adopted October 24, 1989, and released November 16, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-27498 Filed 11-22-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-501; RM-7041]

Radio Broadcasting Services; Mora, MN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by John James Godfrey proposing the substitution of FM Channel 238C3 for Channel 237A at Mora, Minnesota. Petitioner also requests modification of his construction permit for Channel 237A to specify Channel 238C3. Canadian concurrence will be requested at coordinates 45-49-18 and 93-22-18.

DATES: Comments must be filed on or before January 8, 1990, and reply comments on or before January 22, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: John James Godfrey, R.R. 5, Box 186, Mora, Minnesota 55051.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheurele, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-501, adopted October 24, 1989, and released November 16, 1989.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibits in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-27499 Filed 11-22-89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 172

[Docket No. HM-181, Notice No. 89-10]

RIN 2137-AA01

Classification of Gases Which Are Toxic by Inhalation; Reopening of Comment Period

AGENCY: Research and Special Programs Administration (RSPA), (DOT).

ACTION: Notice of proposed rulemaking; reopening of comment period.

SUMMARY: On July 26, 1989, RSPA published a supplemental notice of proposed rulemaking (Docket HM-181, Notice No. 89-5) in the **Federal Register** (54 FR 31158) concerning the classification of anhydrous ammonia. RSPA has received a joint request from the Railway Labor Executives' Association and the Environmental Policy Institute/Friends of the Earth for additional time to submit comments. The requesters indicate that additional time is needed "* * * for getting informed, genuine and widespread commens from our members and constituents in the general public." The comment period has previously been reopened and extended based on requests from other sectors of the affected public, particularly the agricultural community, and closed on October 24,1989. RSPA notes that this issue has a significant public interest and many late-filed comments are being received. RSPA believes that reopening the comment period is in the public interest and, by this notice, is reopening the comment period for Notice No. 89-5 to January 30, 1990.

DATES: Comments must be received on or before January 30, 1990.

FOR FURTHER INFORMATION CONTACT: Ann Boylan or Beth Romo, Standards Division, telephone (202) 366-4488, Office of Hazardous Materials Transportation, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

ADDRESSES: Address comments to Dockets Unit (DHM-30), Office of Hazardous Materials Transportation, RSPA, U.S. Department of Transportation, Washington, DC 20590. Comments should identify the docket and notice number and be submitted, when possible, in five copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed, stamped postcard. The Docket Unit is located in Room 8421 of the Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Office hours are 8:30 am to 5:00 pm Monday through Friday, except public holidays.

Issued in Washington, DC on November 17, 1989 under authority delegated in 49 CFR part 1.

Alan I. Roberts,

Director, Office of Hazardous Materials Transportation.

[FR Doc. 89-27543 Filed 11-22-89; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 652

[Docket No. 91164-9264]

Atlantic Surf Clam and Ocean Quahog Fisheries

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

ACTION: Notice of proposed 1990 fishing quotas.

SUMMARY: NOAA issues a notice of proposed quotas for the surf clam and ocean quahog fisheries for 1990. These quotas were selected from a range defined a optimum yield (OY) for each fishery and will be adjusted to reflect 1989 fishing activity at the conclusion of the year. The intended effect of this action is to establish allowable harvests of surf clams and ocean quahogs from the exclusive economic zone in 1990.

DATE: Comments will be accepted until December 20, 1989.

ADDRESS: Send comments on the proposed 1990 fishing quotas to Richard B. Roe, Regional Director, National Marine Fisheries mark the outside of the envelope "Surf Clam Quota Comments". Information used to justify the quota is available for public inspection during business hours at this address; copies may be requested in writing.

FOR FURTHER INFORMATION CONTACT: Jack Terrill (Resource Policy Analyst) 508-281-9252.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog

Fisheries (FMP) directs the Secretary of Commerce (Secretary), in consultation with the Mid-Atlantic Fishery Management Council (Council), to specify quotas for surf clams and ocean quahogs on an annual basis from within ranges which have been identified as OY for each fishery.

In specifying the quota values in this action, the Secretary considered the latest available stock assessments prepared by NMFS, data reported by harvesters and processors, and other relevant information concerning exploitable biomass and spawning biomass, fishing mortality rates, stock recruitment, projected effort and catches, and areas likely to be reopened to fishing. This information was presented in a written report prepared by the Council and adopted by the Regional Director, Northeast Region, NMFS. The Secretary has also received and taken into account specific recommendations from the Council.

For the surf clam fisheries, the annual quotas are divided into quarterly quotas under § 652.21 (a), (b)(2), and (c)(2). Surf clam quotas are adjusted under § 652.21 (a)(3), (b)(3), and (c)(3) to reflect the amount of underharvest or overharvest in each designated surf clam fishery for 1990. At the conclusion of the 1989 fishing season, the Secretary will publish by notice in the **Federal Register**, the final adjusted quotas for the fishery.

As of October 16, 1989, surf clam landings from the Mid-Atlantic Area were 2,005,000 bushels out of an adjusted annual quota of 2,563,000 bushels. Landings or surf clams from the Georges Bank Area were 56,000 bushels out of an adjusted annual quota of 503,000. The Georges Bank Area fishery was closed, for three months beginning August 11, 1989, (54 FR 33700, August 16, 1989) by emergency action of the Secretary due to the presence of paralytic shellfish poisoning (PSP) in the surf clams harvested there. Monitoring has determined that the PSP toxin is still present a higher than acceptable levels and the Secretary extended (54 FR 47364, November 14, 1989) the emergency closure of the Georges Bank Area fishery for an additional three months, or until the toxin is no longer present or is reduced to acceptable levels. As of October 16, 1989, Nantucket Shoals Area surf clam landings were 174,000 bushels out of an annual quota of 200,000 bushels. Ocean quahog landings were 4,021,000 bushels out of a quota of 5,200,000 bushels. The adjusted surf clam quotas were derived from base quotas of 2,650,000 bushels for the Mid-Atlantic Area and 300,000 bushels for the Georgas Bank Area. No adjustment was necessary for the Nantucket Shoals Area.

The proposed quotas for the surf clam and ocean guahog fisheries for 1990 are:

1990 PROPOSED SURF CLAM OCEAN QUAHOG QUOTAS

Fishery areas	1990 proposed quotas (in bushels)
Mid-Atlantic surf clam	2,650,000
Georges Bank surf clam	56,000
Nantucket Shoals surf clam	200,000
Ocean quahog	5,300,000

The proposed surf clam quotas for the Mid-Altantic and Nantucket Shoals Areas are the same as those which have been in place for the past 4 years. The Council recommended that the surf clam quota for the Georges Bank Areas be held to 300,000 bushels including any rollover of unharvested amounts, which is the maximum OY. The proposed quota for this area of 56,000 bushels, plus a 244,000 bushel rollover from the 1989 fishery reflects this position. The 244,000 bushel rollover is the unharvested portion of the 1989 quota that was not able to be taken due to the early closure of the Georges Bank Area. Under § 652.21(c)(3) any unharvested amounts from previous quarters or years are added proportionately to the remaining quarters. If further harvesting occurs, the Georges Bank Area quota may be increased at the time of final specifications to compensate for lower unharvested amounts. The proposed ocean quahog quota has been increased to 5,300,000 bushels from 5,200,000 bushels to reduce the likelihood of an early closure and reflects anticipated 1990 landings based upon what occurred in the 1989 fishery.

The proposed quarterly surf clam quotas, by area, are:

1990 SURF CLAM/OCEAN QUAHOG QUARTERLY QUOTAS

Fishery areas	Qtr 1	Qtr 2	Qtr 3	Qtr 4
Mid-Atlantic surf clam	662,500	662,500	662,500	662,500
Georges Bank surf clam	14,000	14,000	14,000	14,000
Nantucket Shoals surf clam	40,000	60,000	60,000	40,000

If adopted, the proposed surf clam quotas and associated quarterly quotas will be adjusted based upon the final 1989 harvest data and notice will be published in the **Federal Register**. The amount of adjustment will be determined from the difference between the base 1989 quotas and the amount actually harvested. The regulations implementing the FMP do not provide for an adjustment of the ocean quahog quota, unless quarterly quotas have been established. To date, the Regional Director has not made a determination that quarterly quotas are necessary in the ocean quahog fishery.

Comments on the proposed quotas will be accepted for 30 days. Comments will be considered by the Secretary, who will determine appropriate final amount quotas for each fishery and publish those quotas by notice in the **Federal Register**.

Other Matters

This action is taken under authority of 50 CFR 652.21 and is taken in compliance with E.O. 12291. This action is covered by the Regulatory Flexibility Analysis prepared for the authorizing regulations.

List of Subjects in 50 CFR Part 652

Fisheries, Recordkeeping and reporting requirements.

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

Dated: November 17, 1989.

James E. Douglas, Jr.,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 89-27611 Filed 11-20-89; 2:29 pm]

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Notices

Federal Register
Vol. 54, No. 225
Friday, November 24, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Legal Description of Lands Transferred Pursuant to the National Forest and Public Lands of Nevada Enhancement Act of 1988

November 13, 1989.

AGENCIES: Bureau of Land Management, Interior. U.S. Forest Service, Agriculture.

ACTION: Notice.

SUMMARY: This notice provides official publication of the legal description of the lands transferred between the Bureau of Land Management and the U.S. Forest Service pursuant to the National Forest and Public Lands of Nevada Enhancement Act of 1988 (Public Law 100–550) enacted October 28, 1988.

EFFECTIVE DATE: April 26, 1989.

FOR FURTHER INFORMATION CONTACT: Regarding land transferred to the U.S. Forest Service, contact Bob Larkin, Officer, Land Management and Planning, U.S. Forest Service, Toiyabe National Forest, 1200 Franklin Way, Sparks, Nevada 89431. Regarding land transferred to the Bureau of Land Management, contact Bob Stewart, Chief, Public Affairs Staff, Bureau of Land Management, Nevada State Office, P.O. Box 12000, 850 Harvard Way, Reno, Nevada 89520.

SUPPLEMENTARY INFORMATION: The legal description of the lands transferred pursuant to Public Law 100–550, 102 Stat. 2749, is as follows:

Land transferred from the U.S. Forest Service to the Bureau of Land Mangement:

Sierra Foothills Area

Mount Diablo Meridian, Nevada

T. 6 N., R. 29 E.,
Sec. 5, Lots 3 and 4, S½NW¼, N½SW¼, SW¼SW¼, that portion north of Lucky Boy Pass Road;
Sec. 6, SE¼SE¼, that portion north of Lucky Boy Pass Road, Lots 1–7, S½NE¼, SE¼NW¼, E½SW¼, N½SE¼, SW¼SE¼;
Sec. 7, Lots 3 and 4, N½NE¼, SW¼NE¼, SE¼NW¼, NE¼SW¼, that portion north of Lucky Boy Pass Road, Lots 1 and 2, NE¼NW¼.
T. 5 N., R. 31 E.,
Secs. 13–15, and 22–28, all.
T. 2 N., R. 32 E.,
Sec. 5, Lots 1–4, S½N½, S½;
Sec. 6, Lots 1–7, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 7, Lots 1–4, E½, E½W½;
Sec. 15–17, all;
Sec. 18, Lots 1–4, E½, E½W½;
Sec. 19, Lots 1–4, E½, E½W½;
Sec. 20–22, all.

The area described above aggregates 15,059.35 acres in Mineral County. Land transferred from the Bureau of Land Management to the U.S. Forest Service:

Sierra Foothills Area

Mount Diablo Meridian, Nevada

T. 19 N., R. 18 E.,
Sec. 10, SE¼SE¼;
Sec. 17, Lots 2, 4, W½SW¼, SE¼SW¼.
T. 20 N., R. 18 E.,
Sec. 2, Lot 4, S½NW¼, that portion west of the westerly boundary of highway right-of-way for U.S. Highway 395;
Sec. 10, S½, except Patents 20957 and 1188159;
Sec. 13, Lot 1, S½SE¼, except Patents 27218 and 906058;
Sec. 14, S½NE¼, W½, SE¼;
Sec. 22, E½;
Sec. 24, Lots 5–7, NE¼SW¼, except Patents 2614, 26498, 27218 and 906058, Lots 1–4, W½NW¼, SE¼SW¼.
T. 21 N., R. 18 E.,
Sec. 34, SW¼NW¼, N½SW¼, NW¼SE¼, that portion west of the westerly boundary of highway right-of-way for U.S. Highway 395.
T. 12 N., R. 19 E.,
Sec. 26, Lots 7,11;
Sec. 36, Lot 8.
T. 14 N., R. 19 E.,
Sec. 1, W½ of Lot 1 of NE¼, Lot 1 of NW¼, E½ of Lot 2 of NW¼, except five acres withdrawn by Secretarial Order of July 29, 1903, SW¼, W½SE¼;
Sec. 2, SE¼NE¼, E½SW¼, SE¼;
Sec. 11, E½, N½NW¼, SW¼NW¼;
Sec. 12, W½, W½E½, E½SE¼;
Sec. 13, all;
Sec. 14, E½E½, NW¼NE¼, W½SE¼;
Sec. 22, SW¼;
Sec. 23, NE¼;
Sec. 24, N½, N½SW¼, N½NE¼SE¼, NE¼NW¼SE¼, W½NW¼SE¼;
Sec. 27, N½N½N¼.
T. 15 N., R. 19 E.,
Sec. 2, N½SE¼;
Sec. 13, S½SE¼;
Sec. 24, SW¼NE¼, E½NW¼, SW¼, W½SE¼;
Sec. 25, NW¼NE¼, S½NE¼, NW¼, SE¼;
Sec. 35, N½NE¼, SE¼NE¼;
Sec. 36, NE¼NE¼, S½N½, N½S½, S½SE¼.
T. 16 N., R. 19 E.,
Sec. 26, NE¼SW¼.
T. 18 N., R. 19 E.,
Sec. 11, SW¼SE¼;
Sec. 24, W½SE¼,SE¼SE¼;
Sec. 25, W½NE¼SW¼SW¼,E½NW¼SW¼,W½SW¼SW¼SW¼,W½SE¼SW¼SW¼,SW¼SE¼SW¼;
Sec. 26, E½NW¼NW¼SW¼,E½NE¼NW¼SW¼,E½SW¼NW¼SW¼,W½NW¼NE¼SW¼,E½SW¼NE¼SW¼,W½SE¼SE¼SW¼,W½SE¼SW¼,W½NE¼NW¼SE¼,W½W½NW¼SE¼,E½SE¼NW¼SE¼,N½N½SE¼SE¼,S½NW¼SE¼S¼,E½NE¼SW¼SE¼,W½SE¼SW¼SE¼,S½SE¼SE¼SE¼;
Sec. 27, NE¼NE¼SE¼,W½NW¼NE¼SE¼,W½SE¼NE¼SE¼;
Sec. 34, N½NW¼NE¼,N½S½NW¼NE¼,S½SW¼NW¼NE¼,SW¼SE¼NW¼NE¼,N½,NE¼NE¼SE¼,SW¼NE¼NE¼SE¼,E½NE¼NW¼SE¼,NE¼NW¼NW¼SE¼,NW¼SW¼NW¼SE¼,SW¼SW¼SW¼SE¼,E½SE¼SW¼E¼,SW¼SW¼SW¼SE¼,N½SE¼SW¼SE¼;SE¼SE¼SW¼SE¼,SW¼NE¼SW¼SE¼,SE¼SW¼SE¼SE¼,S½NW¼NE¼SW¼SE¼;
Sec. 36, E½,N½NE¼NE¼NW¼,S½N½NE½NW¼,S½NE¼NW¼,S½NW¼NW¼NW¼,S½NE¼SW¼NW¼,SW¼SW¼NW¼,N½NW½NW¼SW¼,N½SE¼NW¼SW¼,E½SE¼SW¼.
T. 20 N., R. 19 E.,
Sec. 7, S½ of Lots 1 and 2 of SW¼;
Sec. 16, SW¼,SW¼SE¼;
Sec. 17, NW¼NE¼SE¼,E½NW½SE¼,N½SW¼SE¼,SW¼SW¼SE¼,SE¼SE¼SW¼;
Sec. 18, Lot 1 of NW¼, Lot 1 of SW¼, Lots 3–7, E½;
Sec. 20, all;
Sec. 21, N½N½NE¼NE¼,S½NW¼NE¼NE¼,S½NE¼NE¼,S½NE¼,W½, SE¼;
Sec. 22, NE¼SW¼NW¼,E½NW¼SW¼NW¼,NW¼SE¼NW¼,SW¼,SW¼SE¼,N½SE¼SE¼;
Sec. 27, Lot 3, E½NE¼NE¼,N½NW¼NE¼NE¼,SE¼NW¼NE¼NE¼,E½SW¼NW¼NE¼NE¼,E½NE¼NW¼NE¼,S½SW¼NE¼NE¼,S½N½SW¼NE¼NE¼,N½NE¼SW¼NE¼NE¼,S½NW¼NE¼NW¼, S½NE¼NW¼NW¼,S½NW¼NW¼, S½NW¼SW¼NW¼, S½NW¼SW¼NW¼, S½NW¼SW¼NW¼,N½SW¼SE¼NW¼, W½SW¼, SE¼SW¼;
Sec. 28, E½NE¼, SW¼NE¼, W½, SE¼;

Sec. 29, all;
Sec. 30, Lots 1 and 2 of NW¼, Lots 1 and 2 of SW¼, E½;
Sec. 31, all, except Patents 93701, 944731, 87033, 487586, and 1224709;
Sec. 32, all;
Sec. 33, N½, N½SW¼, SW¼SW¼, NW¼ SE¼.
T. 11 N., R. 20 E.,
Sec. 1, Lots 1 and 2 of NE¼, Lots 1 and 2 of NW¼, S½;
Sec. 2, Lots 1 and 2 of NE¼, E½ of Lots 1 and 2 of NW¼, S½SW¼, N½SE¼, SE¼ SE¼;
Sec. 4, Lots 1 of NW¼, SW¼;
Sec. 5, E½ of Lot 2 of NE¼;
Sec. 9, Lots 1, 2, 4, NW¼, SE¼;
Sec. 10, SW¼NW¼, W½SW¼, E½SE¼;
Sec. 11, N½NE¼, SW¼NE¼, W½, W½ SE¼;
Sec. 12, N½, N½S½, SE¼SW¼, S½SE¼;
Sec. 13, E½, E½W½, SW¼NW¼, SW¼ SW¼;
Sec. 14, NE¼, N½SE¼, SW¼SE¼;
Sec. 15, Lot 3, E½NE¼, SE¼;
Sec. 16, Lots 12, 16, NE¼NE¼;
Sec. 22, Lots 15, 16;
Sec. 23, Lot 4, E½NE¼, NE¼SE¼;
Sec. 24, N½.
T. 12 N., R. 20 E.,
Sec. 23, SW¼SW¼;
Sec. 25, SW¼NE¼, E½NW¼, W½SE¼, SE¼SE¼, that portion west of the westerly boundary of the highway right-of-way for U.S. Highway 395, SW¼;
Sec. 26, SE¼NE¼, NW¼, NW¼SW¼, S½SE¼; NE¼SE¼;
Sec. 27, NE¼, E½NW¼, SW¼NW¼, S½;
Sec. 28, SE¼;
Sec. 33, NE¼, N½SE¼, SE¼SE¼;
Sec. 34, N½NE¼, SW¼NE¼, W½, NW¼ SE¼;
Sec. 35, NE¼, E½W½, W½SE¼;
Sec. 36, all.
T 14 N., R. 20 E.,
Sec. 6, Lot 8, E½SE¼NW¼SE¼, that portion west of the westerly bundary of the highway right-of-way for U.S. Highway 395, W½NW¼SE¼, W½SE¼ NW¼SE¼;
Sec. 7, Lot 2 of SW¼;
Sec. 18, S½ of Lot 1 of SW¼, that portion west of the westerly boundary of the highway right-of-way for U.S. Highway 395, S½ of Lot 2 of SW¼.
T 15 N., R. 20 E.,
Sec. 18, S½ of Lot 1 of SW¼, except Patent 1222468, S½ of Lot 2 of SW¼;
Sec. 30, S½ of Lots 1 and 2 of NW¼, Lots 1 and 2 of SW¼, NW¼SE¼, W½SW¼ SE¼, N½NE¼SW¼SE¼, N½SE¼SW¼ SE¼;
Sec. 31, E½SE¼NE¼NE¼, that portion west of the westerly boundary of the highway right-of-way for U.S. Highway 395, Lots 1 and 2 of NW¼, N½ of Lot 1 of SW¼, Lot 2 of SW¼, NW¼SE¼, S½SW¼NE¼.
T 16 N., R. 20 E.,
Sec. 31, N½ of Lot 1 of SW¼, N½ of Lot 2 of SW½, that portion west of the westerly boundary of the highway right-of-way for U.S. Highway 395.
T 17 N., R 20 E.,
Sec. 6, Lots 3,5,8–17, W½SE¼, SE¼NE¼.
T. 18 N., R. 20 E.,
Sec. 30, Lots 9, 22, 37, 38, 41, 44–50, 55–58, 60, 63–65, 67–70, 81, 87, 88;
Sec. 32, Lots 3,4, W½SW¼, SE¼SW¼, E½SE¼, SW¼SE¼.
T. 10 N., R. 21 E.,
Sec. 5, Tract 39;
Sec. 9, Lots 5–7;
Sec. 11, SW¼;
Sec. 12, NW¼NE¼;
Sec. 23, Lots 4, 5;
Sec. 24, Lots 4, 5;
Sec. 25, Lots 6, 7.
T. 11 N., R. 21 E.,
Sec. 6, Lots 4, 5;
Sec. 15, SW¼;
Sec. 16, S½;
Sec. 17, NW¼NW¼;
Sec. 19, Lots 3, 4, E½NE¼, E½SW¼;
Sec. 30, Lots 3, 4.
T. 12 N., R. 21 E.,
Sec. 31, Lots 1, 2, SE¼NW¼, NE¼SW¼, SE¼, that portion west of the westerly boundary of the highway right-of-way for U.S. Highway 395, Lots 3, 4, SE¼SW¼.
T. 9 N., R. 22 E.,
Sec. 3, Lots 3, 4, S½NW¼, N½SE¼;
Sec. 4, Lots 1, 2, 8–11, S½NE¼.
T. 10 N., R. 22 E.,
Sec. 7, Lots 3, 4;
Sec. 19, Lots 2, 3, S½NE¼, E½W½, SE¼;
Sec. 20, all;
Sec. 21, S½;
Sec. 27, N½, N½S½;
Sec. 28, N½;
Sec. 29, N½N½N½, S½N½NE¼, SE¼ NE¼, N½SW¼NE¼, SE¼SW¼NE¼, E½SW¼SW¼NE¼, E½SW¼NE¼ NW¼, SE¼NE¼NW¼, N½NE¼SE¼ NW¼, S½NW¼SE¼NW¼, NW¼SE¼ SE¼NW¼;
Sec. 30, Lots 6–14, NE¼NE¼, SW¼NE¼;
Sec. 31, Lot 3;
Sec. 32, Lot 7, E½NE¼NE¼SE¼;
Sec. 33, SW¼NW¼, W½SW¼;
Sec. 34, S½NE¼, SE¼NW¼, S½;
Sec. 35, W½NE¼, E½NW¼, SW¼NW¼, SW¼NW¼SE¼.
T 9 N., R. 23 E.,
Sec. 4, Lots 11–14;
Sec. 9, Lots 1–8, E½W½;
Sec. 16, Lots 1–7, E½W½;
Sec. 20, Lots 1–11, S½SE¼, SE¼NE¼;
Sec. 21, W½.
T 10 N., R. 23 E.,
Sec. 10, W½NW¼, SE¼;
Sec. 11, Lots 1, 2, 7, 8, SW¼NE¼, S½ NW¼;
Sec. 13, Lots 1, 2, 5, SW¼NE¼;
Sec. 15, E½NE¼, NW¼NE¼;
Sec. 21, Lots 1–4, 7–10, S½NE¼;
Sec. 22, Lots 1–4, S½N½;
Sec. 28, Lots 1–4, E½W½;
Sec. 33, Lots 1–5, E½NW¼, NE¼SW¼.
T. 9 N., R. 24 E.,
Sec. 1, Lots 1, 2, S½NE¼, W½, SE¼;
Sec. 2, all;
Sec. 3, Lots 3, 4, E½, S½NW¼, SW¼;
Sec. 4, Lots 1, 2, S½NE¼, SE¼;
Sec. 5, Lot 4, SW¼NW¼, W½SW¼;
Secs. 10–15, all.
T. 10 N., R. 24 E.,
Secs. 1 and 2, all;
Sec. 3, Lots 1, 2, S½N½, S½;
Sec. 4, SE¼;
Sec. 9, N½NE¼, SE¼NE¼, NE¼SE¼;
Secs. 10–15, all;
Sec. 18, Lots 1–4, W½SE¼;
Sec. 19, Lots 1–4, SW¼NE¼, SE¼NW¼, E½SW¼, S½SE¼;
Sec. 20, S½SW¼;
Sec. 21, SE¼NE¼, SE¼NW¼, NE¼SW¼, S½SW¼;
Secs. 22–28, all;
Sec. 29, E½E½, W½;
Sec. 30, Lots 1–4, SE¼NE¼, NW¼NE¼, E½W½, NW¼SE¼, SE¼SE¼;
Sec. 31, Lots 1–4, SE¼NE¼, W½NE¼, E½ W½, SE¼;
Sec. 32, NE¼NE¼, W½W½, NE¼NW¼;
Sec. 33, N½, NE¼SW¼, SE¼;
Secs. 34–36, all.
T. 11 N., R. 24 E.,
Sec. 14, S½SE¼, that portion south of the southerly boundary of the highway right-of-way for State Highway 208;
Sec. 23, NW¼, NW¼NE¼, that portion south of the southerly boundary of the highway right-of-way for State Highway 208, S½;
Sec. 24, N½N½, that portion south of the southerly boundary of the highway right-of-way for State Highway 208, S½N½, S½;
Secs. 25 and 26, all;
Sec. 27, E½SE¼;
Sec. 34, E½E½;
Secs. 35 and 36, all.
T. 9 N., R. 25 E.,
Sec. 6, W½;
Sec. 7, W½.
T. 10 N., R. 25 E.,
Sec. 1, Lots 1–4, S½N½, S½;
Sec. 2, Lots 1–4, S½N½, S½;
Sec. 3, Lots 1–4, S½N½, S½;
Sec. 4, Lots 1–4, S½N½, S½;
Sec. 5, Lots 1–4, S½N½, S½;
Sec. 6, Lots 1–7, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 7, Lots 1–4, E½W½;
Sec. 18, Lots 1–4, E½W½;
Sec. 19, Lots 1–4, E½W½;
Sec. 30, Lots 1–4, E½W½;
Sec. 31, Lots 1–4, E½W½.
T. 11 N., R. 25 E.,
Sec. 8, SE¼SE¼, that portion south of the southerly boundary of the highway right-of-way for State Highway 208;
Sec. 11, E½SE¼;
Sec. 12, that portion west of Pine Grove Flat Road;
Sec. 13, NE¼, NE¼NW¼, SW¼NW¼, W½SW¼, SE¼SW¼, NE¼SE¼, S½ SE¼;
Sec. 14, E½, NW¼NW¼, S½NW¼, SW¼;
Sec. 15, Lots 1–6, N½, N½SW¼;
Sec. 16, Lots 1–4, S½N½, S½;
Sec. 17, that portion south of the southerly boundary of the highway right-of-way for State Highway 208;
Sec. 18, SE¼SE¼, that portion south of the southerly boundary of the highway right-of-way for State Highway 208;
Sec. 19, Lot 1, N½NE¼, NE¼NW¼, that portion south of the southerly boundary of the highway right-of-way for State Highway 208, Lots 2–4, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Secs. 20–29, all;
Sec. 30, Lots 1–4, E½W½, E½;
Sec. 31, Lots 1–4, E½W½, E½;
Secs. 32–36, all.

T 6 N., R. 26 E.,
Sec. 1, Lots 1–4, S½N½, S½;
Sec. 12, all.
T 7 N., R. 26 E.,
Sec. 25, Lots 1–4, W½E½, SW¼;
Sec. 36, E½, SE¼NW¼, SW¼.
T. 9 N., R. 26 E.,
Sec. 1, that portion west of Pine Grove Flat Road and County Road 3C;
Sec. 12, that portion west of County Road 3C;
Secs. 13, 24, 25, and 36, all.
T. 10 N., R. 26 E.,
Sec. 3, W½SW¼, that portion west of Pine Grove Flat Road;
Sec. 4, Lots 1,2, SE¼NE¼, NE¼SE¼, that portion west of Pine Grove Flat Road, Lots 3,4, SW¼NE¼, S½NW¼, SW¼, W½SE¼, SE¼SE¼;
Sec. 5, Lots 1–4, S½N½, S½;
Sec. 6, Lots 1–7, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 7, Lots 1,2, NE¼, E½NW¼;
Secs. 8 and 9, all;
Sec. 10, W½, SW¼SE¼, that portion west of Pine Grove Flat Road;
Sec. 15, E½, that portion west of Pine Grove Flat Road, W½;
Sec. 16, all;
Sec. 17, E½;
Secs. 21 and 22, all;
Sec. 23, W½W½, E½SW¼, that portion west of Pine Grove Flat Road;
Sec. 26, W½, SW¼SE¼, that portion west of Pine Grove Flat Road;
Sec. 27, all;
Sec. 34, NE¼;
Sec. 35, all;
Sec. 36, W½SW¼, that portion west of Pine Grove Flat Road.
T 11 N., R. 26 E.,
Sec. 7, Lot 4, that portion west of Pine Grove Flat Road;
Sec. 17, SW¼SW¼, that portion west of Pine Grove Flat Road;
Sec. 18, Lot 1, SW¼NE¼, E½NW¼, N½SE¼, SE¼SE¼, that portion west of Pine Grove Flat Road, Lots 2–4, E½SW¼, SW¼SE¼;
Sec. 19, Lots 1–4, E½W½, E½;
Sec. 20, E½W½, W½SE¼, that portion west of Pine Grove Flat Road, W½W½;
Sec. 28, SW¼SW¼, that portion west of Pine Grove Flat Road;
Sec. 29, NE¼, E½SE¼, that portion west of Pine Grove Flat Road, W½, W½SE¼;
Sec. 30, Lots 1–4, E½W½, E½;
Sec. 31, Lots 1–4, E½W½, E½;
Sec. 32, all;
Sec. 33, NW¼NW¼, S½NW¼, NE¼SW¼, SE¼SW¼, that portion west of Pine Grove Flat Road, W½SW¼.
T. 5 N., R. 27 E.,
Sec. 1, Lots 1, 2, 4, S½NE¼, SW¼NW¼, NE¼SW¼, SE¼;
Sec. 2, Lots 1–4, SW¼NE¼, S½NW¼, N½SW¼, SW¼SW¼;
Sec. 11, W½W½, SE¼NW¼, E½SW¼, S½SE¼;
Sec. 12, E½, NE¼NW¼, S½NW¼, SW¼;
Sec. 13, all;
Sec. 14, W½,W½E½, SE¼SE¼;
Secs. 23–25, all;
Sec. 26, Lots 1–7, NE¼, NE¼NW¼, NE¼SE¼;
Sec. 35, Lot 1;
Sec. 36, Lots 1–6, E½NE¼, NW¼NE¼, NE¼NW¼.
T. 6 N., R. 27 E.,
Sec. 1, Lots 1–4, S½N½, S½;
Sec. 2, Lots 1–4, S½N½, S½;
Sec. 3, Lots 1–4, S½NE¼, SE¼NW¼, N½SE¼, SE¼SE¼;
Sec. 4, Lots 3, 4, S½NW¼, SW¼, SW¼SE¼;
Sec. 5, Lots 1–4, S½N½, S½;
Sec. 6, Lots 1–7, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 7, Lots 1–4, E½, E½W½;
Secs. 8 and 9, all;
Sec. 10, NE¼NE¼, S½NW¼, SW¼, S½SE¼;
Sec. 11, N½N½, S½NW¼, SE¼NE¼;
Secs. 12 and 13, all;
Sec. 14, S½,W½NW¼;
Secs. 15–17, all;
Sec. 18, Lots 1–4, E½, E½W½;
Secs. 20–23, all;
Sec. 24, NE¼NE¼, NW¼NW¼, S½N½, N½S½, S½SW¼;
Sec. 25, W½;
Sec. 26, E½, E½W½, W½NW¼, NW¼SW¼;
Sec. 35, SE¼NE¼, N½NE¼, W½NW¼, SW¼NW¼, S½;
Sec. 36, S½NE¼, W½, SE¼.
T. 7 N., R. 27E.,
Sec. 1, S½;
Sec. 2, Lots 1–4, S½N½, S½;
Sec. 3, Lots 1–4, S½N½, S½;
Sec. 4, Lots 1–4, S½N½, S½;
Sec. 5, Lots 1–4, S½N½, S½;
Sec. 6, Lots 1–7, S½NE¼, SE¼NW¼, W½SW¼, SE¼;
Sec. 7, Lots 1, 2, 5–8, E½, E½NW¼;
Secs. 8–11, all;
Secs. 12 and 13, that portion west of County Road 3C;
Secs. 14–17, all;
Sec. 18, Lots 1–8, E½W½, SE¼;
Sec. 19, Lots 1–4, NE¼NE¼, SE¼NW¼, E½SW¼;
Secs. 20–23, all;
Secs. 24 and 25, that portion west of County Road 3C;
Secs. 26–29, all;
Sec. 30, Lots 1–4, E½;
Sec. 31, Lots 1–10, S½NE¼, SE¼NW¼, NE¼SW¼, N½SE¼;
Secs. 32–36, all.
T. 8 N., R. 27 E.,
Sec. 6, Lot 1, SE¼NE¼, E½NE¼, that portion west of County Road 3C;
Sec. 7, Lots 1–4, E½W½, E½;
Sec. 8, NW¼NW¼, SE¼NW¼, N½SE¼, SE¼SE¼, that portion west of County Road 3C, SW¼NW¼, SW¼, SW¼SE¼;
Sec. 14, SW¼SW¼, that portion west of County Road 3C;
Sec. 15, NW¼SW¼, S½SE¼, that portion west of County Road 3C, S½SW¼;
Sec. 16, W½NE¼, NE¼NW¼, NE¼SE¼, that portion west of County Road 3C, W½NW¼, SE¼NW¼, SW¼, W½SE¼, SE¼SE¼;
Sec. 21, all;
Sec. 22, Lots 1–5, N½NE¼, SE½NE¼, NW¼;
Sec. 23, NW¼NW¼, SE¼NW¼, NE¼SW¼, W½SE¼, that portion west of County Road 3C, W½SW¼, SE¼SW¼, SE¼SE¼;
Secs. 25 and 26, that portion west of County Road 3C;
Sec. 27, Lots 1–12, SW¼;
Sec. 28, Lots 1–8, W½;
Sec. 33, Lots 1–8, W½;
Sec. 34, Lots 1–12, NW¼;
Sec. 35, W½;
Sec. 36, NE¼NE¼, that portion west of County Road 3C, NW¼NE¼, S½NE¼, NW¼NW¼, SE¼.
T. 9 N., R. 27 E.,
Sec. 7, Lot 4, that portion west of County Road 3C;
Sec. 18, Lot 1, E½NW¼, W½SE¼, SE¼SE¼, that portion west of County Road 3C, Lots 2–4, E½SW¼;
Sec. 19, E½NE¼, that portion west of County Road 3C, Lots 1–4, E½W½, W½E½, NE¼SE¼;
Sec. 20, SW¼NW¼, that portion west of County Road 3C;
Sec. 30, Lots 1–4, E½W½;
Sec. 31, Lots 5–12.
T. 4 N., R. 28 E.,
Sec. 1, Lots 1–4, S½N½, S½;
Sec. 2, Lots 1–4, S½N½, S½;
Sec. 3, Lots 1–4, S½N½, S½;
Sec. 4, Lots 1–4, S½N½, N½SW¼, SE¼SW¼, SE¼;
Sec. 5, Lots 1–5, S½N½, E½SW¼, SE¼;
Sec. 6, Lots 1–9, SE¼NE¼;
Sec. 8, Lots 1, 2, N½NE¼, SE¼NE¼;
Sec. 9, Lots 1, 2, N½, NE¼SW¼, SE¼;
Sec. 10–12, all;
Sec. 13, NW¼;
Sec. 14, N½;
Sec. 15, N½;
Sec. 16, Lots 1–4, NE¼NE¼.
T. 5 N., R. 28 E.,
Sec. 2, Lots 1–4, S½N½, S½;
Sec. 3, Lots 1–4, S½N½, S½;
Sec. 4, Lots 1, 2, S½N½, S½;
Sec. 5, Lots 2–4, SW¼NE¼, SE¼NW¼, NE¼SW¼, S½SW¼, SE¼;
Sec. 6, Lots 1–7, SE¼NW¼, E½SW¼, W½SE¼, SE¼SE¼;
Sec. 7, SW¼SE¼, except Patent 561308, Lots 1–4, NE¼, E½W½, NW¼SE¼;
Sec. 8, SE¼SW¼, except Patent 652473, N½, N½S½, SE¼;
Sec. 9, all;
Sec. 10, SE¼, N½, SW¼, except Patents 17802, 17803, 17804, and 17805;
Sec. 11, NE¼, N½NW¼, SW¼NW¼, S½;
Secs. 14 and 15, all;
Sec. 16, E½, E½W½, NW¼NW¼, SW¼SW¼;
Sec. 17, W½, S½SE¼, except Patents 909, 933, 1373, 2783, 5340, 5341, 16001, 17372, 22217, 409046, 436951, 561308, 613890, 646882, and 768039, Lots 17–20, N½NE¼;
Sec. 18, E½, E½SW¼, except Patents 933, 1373, 2783, 2784, 16001, 17372, 18358, 18359, 39391, 296555, 436951, 556195, 561308, 646882, and 768039, Lots 1–4, E½NW¼;
Sec. 19, E½, E½NW¼, SW¼, except Patents 91, 92, 93, 226, 870, 871, 933, 1246, 1374, 1377, 5081, 5084, 17799, 17800, 17801, 17806, 39389, 39391, 296555, 409048, 502795, 502796, 503172, 586243, and 652473, Lots 1 and 2;
Sec. 20, SW¼NE¼, NW¼, N½SW¼, SW¼SW¼, except Patents 225, 226, 909, 933, 2783, 20066, 20067, 39389, 39391,

409046, 409048, 512661, 586243, and 768039, Lot 4, N½NE¼, SE¼NE¼, SE¼SW¼, NE¼SE¼, S½SE¼;
Secs. 21–23, and 25, all;
Sec. 26, N½, SW¼, N½SE¼;
Sec. 27, N½, SW¼, N½SE¼, SE¼SE¼;
Sec. 28, E½, E½NW¼, SW¼NW¼, SW¼;
Sec. 29, N½, N½SW¼, SE¼SW¼, SE¼;
Sec. 30, Lot 1, W½NE¼, E½NW¼, NE¼SW¼, NW¼SE¼, except Patents 91, 92, 3004, 502795, 503172, and 592992, Lots 2–4, E½NE¼, SE¼SW¼, NE¼SE¼, SW¼SE¼;
Sec. 31, Lots 1–4, W½NE¼, SE¼NE¼, E½W½, SE¼;
Sec. 32, NE¼NE¼, W½SW¼, SE¼SW¼;
Sec. 33, NE¼, E½NW¼, SW¼NW¼, E½SW¼, N½SE¼, SE¼SE¼;
Sec. 34, NE¼, W½, N½SE¼, SE¼SE¼;
Sec. 35, W½, SE¼.

T 6 N., R. 28 E.,
Sec. 6, Lot 3, SE¼NW¼, E½SW¼, that portion west of County Road 3C, Lots 4–7;
Sec. 7, E½W½, that portion west of County Road 3C, Lots 1–4;
Secs. 13 and 14, that portion south of Lucky Boy Pass Road;
Sec. 18, E½W½, that portion west of County Road 3C, Lots 1–4;
Sec. 19, Lots 1–3, NE¼NW¼, that portion west of County Road 3C, Lot 4, SE¼SW¼, that portion west of County Road 028, NE¼SE¼, S½SE¼, that portion south of Lucky Boy Pass Road;
Secs. 20–24, that portion south of Lucky Boy Pass Road;
Secs. 25–29, all;
Sec. 30, NW¼NE¼, NE¼NW¼, that portion south of County Road 028 and Lucky Boy Pass Road, Lots 1–4, NE¼NE¼, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 31, Lots 1–4, E½W½, E½;
Secs. 32 and 33, all;
Sec. 34, N½NE¼, SE¼NE¼, NW¼, NW¼SW¼, SE¼SW¼, NE¼SE¼, S½SE¼;
Sec. 35, N½, S½SW¼, NE¼SE¼, S½SE¼;
Sec. 36, all.

T 7 N., R. 28 E.,
Sec. 6, Lots 2, 6, 7, SW¼NE¼, SE¼NW¼, NE¼SW¼, that portion west of County Road 3C, Lots 3–5;
Sec. 30, Lots 3, 4, that portion west of County Road 3C;
Sec. 31, Lots 1, 2, SE¼NW¼, E½SE¼, that portion west of County Road 3C, Lots 3, 4.

T. 8 N., R. 28 E.,
Sec. 31, Lots 1, 2, SE¼NW¼, NE¼SW¼, W½SE¼, SE¼SE¼ that portion west of County Road 3C, Lots 3, 4, SE¼SW¼.

T 7 N., R. 29 E.,
Sec. 23, that portion south of Lucky Boy Pass Road;
Sec. 24, that portion south of Lucky Boy Pass Road;
Sec. 25, E½SW¼;
Secs. 26–28, and 32–33, that portion south of Lucky Boy Pass Road;
Sec. 34, except Patent 27–76–0015;
Sec. 35, all;
Sec. 36, S½NE¼, W½, SE¼.

T 5 N., R. 30 E.,
Sec. 1, Lots 1, 2, SW¼NE¼, SE¼SW¼, W½SE¼, that portion west of the westerly boundary of the highway right-of-way for State Highway Route 359 (also known as Pole Line Road), Lots 3, 4, S½NW¼, N½SW¼, SW¼SW¼;
Sec. 2, Lots 1–4, S½NE¼, SW¼, S½SE¼;
Sec. 11, all;
Secs. 12–14, 23, and 26, that portion west of the westerly boundary of the highway right-of-way for State Highway Route 359.

T. 6 N., 30 E.,
Sec. 1, that portion west of the westerly boundary of the highway right-of-way for Highway U.S. 95;
Sec. 2, Lots 1, 2, SE¼NE¼, NE¼SE¼, that portion west of the westerly boundary of the highway right-of-way for Highway U.S. 95, Lot 3, SW¼NE¼, S½NW¼, SW¼, NW¼SE¼, S½SE¼;
Sec. 3, Lots 1–4, S½N½, S½;
Sec. 4, Lots 1–4, S½N½, S½;
Sec. 5, Lots 1–4, S½N½, S½;
Secs. 8–11, all;
Sec. 12, W½NE¼, E½NW¼, SE¼, that portion west of the westerly boundary of the highway right-of-way for Highway U.S. 95, W½NW¼, SW¼;
Sec. 13, E½E½, that portion west of the westerly boundary of the highway right-of-way for Highway U.S. 95, W½E½, W½;
Secs. 14–17, all;
Sec. 24, E½E½, that portion west of the westerly boundary of the highway right-of-way for Highway U.S. 95, W½E½, W½;
Sec. 25, E½, that portion west of the westerly boundary of the highway right-of-way for Highway U.S. 95, W½;
Sec. 36, W½E½, E½W½, that portion west of the westerly boundary of the highway right-of-way for Highway U.S. 95, W½ W½.

T. 7 N., R. 30 E.,
Sec. 18, SW¼SE¼, that portion south of Lucky Boy Pass Road;
Sec. 19, Lot 1, N½NE¼, NE¼NW¼, that portion south of Lucky Boy Pass Road, Lots 2–3, SE¼NW¼;
Sec. 20, NW¼NW¼, that portion south of Lucky Boy Pass Road, E½, E½NW¼, SW¼NW¼, SW¼;
Sec. 21, E½, that portion west of the westerly boundary of the highway right-of-way for State Highway Route 359;
Sec. 27, SW¼, SW¼SE¼, that portion west of the westerly boundary of the highway right-of-way for State Highway Route 359;
Sec. 28, E½NE¼, NE¼SE¼, that portion west of the westerly boundary of the highway right-of-way for State Highway Route 359, W½NE¼, N½NW¼, SE¼NW¼, NW¼SE¼;
Sec. 29, E½NE¼;
Sec. 30, NE¼SW¼;
Sec. 31, Lot 4, E½NE¼, SW¼NE¼, E½SW¼, NE¼SE¼, S½SE¼;
Sec. 32, NW¼NW¼, SW¼;
Sec. 33, S½SE¼;
Sec. 34, N½NW¼, SE¼NE¼, that portion west of the westerly boundary of the highway right-of-way for State Highway Route 359, SW¼NW¼, E½NW¼, N½SE¼;
Sec. 35, W½NW¼, SE¼NW¼, SW¼, SW¼SE¼, that portion west of the westerly boundary of the highway right-of-way for State Highway Route 359.

T. 3 N., R. 31 E.,
Sec. 1, Lots 1–4, S½N½, S½;
Sec. 2, Lots 1–4, S½N½, S½;
Sec. 3, Lots 1–4, S½N½, S½;
Sec. 4, Lots 1–4, S½N½, S½;
Sec. 6, Lots 1–7, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 7, Lots 1–4, E½, E½W½;
Secs. 8–17, all;
Sec. 18, Lots 1–4, E½W½, E½.

T 4 N., R. 31 E.,
Secs. 25–28, all;
Sec. 29, except Patent 959088;
Sec. 30, Lots 1–4, E½W½, E½;
Sec. 31, Lots 1–4, E½W½, E½, except Patent 959088;
Sec. 32, except Patent 959088;
Secs. 33–36, all.

T. 5 N., R. 31 E.,
Secs. 13–15, and 22–28, all.

T. 1 N., R. 32 E.,
Sec. 1, Lots 2–4, S½N½, S½;
Sec. 2, Lots 1–4, S½N½, S½;
Sec. 3, Lots 1–4, S½N½, S½;
Sec. 4, Lots 1–4, S½N½, S½;
Sec. 5, Lots 1–4, S½N½, S½;
Sec. 8, N½, NE¼SW¼, SW¼SW¼;
Sec. 9, NE¼, N½NW¼, N½SE¼;
Secs. 10–12, all;
Sec. 13, NE¼, W½, W½SE¼;
Secs. 14 and 15, all;
Sec. 16, S½NE¼, NW¼, W½SW¼, SE¼SW¼, SE¼;
Secs. 17, 20, and 21, all;
Sec. 22, N½, E½SW¼, N½NW¼SW¼, N½S½NW¼SW¼, S½SW¼NW¼SW¼, S½SW¼SW¼, S½NE¼SW¼SW¼, SE¼;
Secs. 23–27, all;
Sec. 28, N½N½, SE¼NE¼, SW¼NW¼, SE¼;
Sec. 29, Lots 1–3, N½, NE¼SW¼;
Sec. 30, Lots 1–5, NE¼NE¼;
Sec. 33, Lots 1–3, N½, NE¼SW¼, N½SE¼, SE¼SE¼;
Sec. 34, all.

T. 2 N., R. 32 E.,
Sec. 29, N½, SW¼, N½SE¼, SE¼SE¼;
Sec. 30, Lots 1–4, E½W½, E½;
Sec. 31, Lots 1–4, E½W½, E½;
Secs. 32–35, all;
Sec. 36, W½, W½E½, NE¼NE¼.

T. 1 N., R. 33 E.,
Sec. 1, Lots 1–4, S½N½, S½;
Sec. 2, Lots 1–4, S½N½, S½;
Sec. 3, Lots 1,2, S½NE¼, W½SE¼;
Sec. 5, Lots 2–4, SW¼NW¼, NW¼SW¼, S½SW¼;
Sec. 6, Lots 1–7, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 7, Lots 1–4, E½W½, E½;
Sec. 8, W½;
Sec. 9, SE¼;
Sec. 10, NE¼, S½NW¼, S½;
Secs. 11 and 12, all.

T. 2 N., R. 33 E.,
Sec. 31, Lot 1, N½NE¼, NE¼NW¼, SE¼SE¼;
Sec. 32, NE¼, N½NW¼, SW¼, N½SE¼;
Sec. 33, N½, N½S½;
Secs. 34–36, all.

T. 2 S., R. 34 E.,

Sec. 1, Lots 1–4, S½SW¼, NE¼SE¼, S½SE¼;
Sec. 2, Lots 1–4, SW¼NE¼, S½NW¼, SW¼, S½SE¼;
Sec. 3, Lots 1,2, S½NE¼, W½, SE¼;
Secs. 4, 9–14, 23–26, and 36, all.
T. 3 S., R. 34 E.,
Secs. 1 and 12, all.
T. 2 S., R. 35 E.,
Sec. 6, Lots 1–7, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 7, Lots 1–4, E½W½, E½;
Sec. 18, Lots 1–4, E½W½, E½;
Sec. 19, Lots 1–4, E½W½, E½;
Sec. 30, Lots 1–4, E½W½, E½;
Sec. 31, Lots 1–4, E½W½, E½.
T. 3 S., R. 35 E.,
Secs. 6, 7, and 18, all.

Hot Creek Area

Mount Diablo Meridian

T. 8 N., R. 49 E.,
Sec. 1, all;
Sec. 2, Lots 1–4, S½N½, S½;
Sec. 3, Lots 1–4, S½N½, S½;
Sec. 4, Lots 1–4, S½N½, S½;
Sec. 5, Lots 1–4, S½N½, S½;
Secs. 8–17, all;
Secs. 20–25, 28, and 29, that portion identified on the map entitled Nevada Interchange "C" dated August 1988.
T. 9 N., R. 49 E.,
Secs. 1–4, all;
Sec. 9, N½NE¼, SW¼NE¼, W½, W½SE¼;
Sec. 10, E½, E½W½, NW¼NW¼;
Secs. 11–14, all;
Sec. 15, E½, E½W½, W½SW½;
Secs. 16, and 21–28, all.
T. 10 N., R. 49 E.,
Sec. 1, Lots 1, 2, S½NE¼, W½, SE¼;
Sec. 2, E½, SW¼NW¼, SE¼SW¼;
Sec. 3, Lots 1, 2, S½NE¼, W½, SE¼;
Sec. 4, all;
Sec. 5, E½;
Sec. 8, E½;
Secs. 9 and 10, all;
Sec. 11, E½, E½NW¼, NE¼SW¼;
Secs. 12 and 13, all;
Sec. 14, NE¼, NW¼NW¼, S½NW¼, NW¼SW¼, W½SE¼;
Secs. 15 and 16, all;
Sec. 17, E½;
Sec. 20, E½;
Sec. 21, all;
Sec. 22, W½NE¼, W½, E½SE¼;
Secs. 23–26, all;
Sec. 27, E½E½, W½NW¼, SW¼SE¼;
Secs. 28, and 33–36, all.
T. 11 N., R. 49 E.,
Sec. 13, NW¼, W½SW¼, NE¼SE¼, S½SE¼;
Secs. 14–16, all;
Sec. 20, Lots 1–3, 6, 7, W½NE¼, NW¼SE¼;
Secs. 21–23, all;
Sec. 24, E½, W½NW¼, NE¼SW¼, S½SW¼;
Sec. 25, all;
Sec. 26, N½, NE¼SW¼, N½SE¼, SE¼SE¼;
Secs. 27 and 28, all;
Sec. 29, E½;
Sec. 32, E½;
Sec. 33, NE¼, N½NW¼, SW¼NW¼, SW¼, W½SE¼, SE¼SE¼;
Sec. 34, all;
Sec. 35, E½, E½SW¼;
Sec. 36, all;
T. 9 N., R. 49½ E.,
Secs. 1, 2, 11–14, 23–26, 35, and 36, all.
T. 10 N., R. 49½ E.,
Secs. 11–14, 23–26, and 35–36, all.
T. 8 N., R. 50 E.,
Secs. 1–11, and 16–21, all;
Secs. 12–15, 22, and 27–30, that portion identified on the map entitled Nevada Interchange "C" dated August 1988.
T. 9 N., R. 50 E.,
Secs. 1–36, all.
T. 10 N., R. 50 E.,
Secs. 7–36, all.
T. 11 N., R. 50 E.,
Secs. 1–4, all;
Sec. 5, Lots 3, 4, NE¼, S½NW¼, S½;
Secs. 8–17, all;
Sec. 18, Lots 1, 2, NE¼, E½NW¼, S½;
Secs. 19–36, all.
T. 12 N., R. 50 E.,
Secs. 1, 12–14, 23–27, and 34–36, all.
T. 13 N., R. 50 E.,
Sec. 36, that portion identified on the map entitled Nevada Interchange "C" dated August 1988.
T. 8 N., R. 51 E.,
Secs. 5–7, that portion identified on the map entitled Nevada Interchange "C" dated August 1988.
T. 9 N., R. 51 E.,
Secs. 1, 2, 11, 14–16, 21, 28, 32, and 33, that portion identified on the map entitled Nevada Interchange "C" dated August 1988;
Secs. 3–10, 17–20, and 29–31, all.
T. 10 N., R. 51 E.,
Sec. 7, Lots 1–4;
Sec. 8, Lots 1–4;
Sec. 9, Lots 1–4;
Secs. 16 and 17, all;
Sec. 18, Lots 1–4, E½W½, E½;
Sec. 19, Lots 1–4, E½W½, E½;
Secs. 20, 21, 28, and 29, all;
Sec. 30, Lots 1–4, E½W½, E½;
Sec. 31, Lots 1–4, E½W½, E½;
Secs. 32–35, all.
T. 11 N., R. 51 E.,
Sec. 4, W½, W½E½;
Secs. 5–8, all;
Sec. 9, W½, W½E½;
Sec. 16, W½, W½E½;
Secs. 17–20, all;
Sec. 21, W½, W½E½;
Sec. 28, W½, W½E½;
Secs. 29–32, all;
Sec. 33, W½, W½E½.
T. 12 N., R. 51 E.,
Secs. 4, 5, 9, and 16, that portion identified on the map entitled Nevada Interchange "C" dated August 1988;
Sec. 6, Lots 1–7, S½NE¼, SE¼W¼, E½SW¼, SE¼;
Sec. 7, Lots 1–4, E½W½, E½;
Secs. 8 and 17, all;
Sec. 18, Lots 1–4, E½W½, E½;
Sec. 19, Lots 1–4, E½W½, E½;
Sec. 20, all;
Sec. 21, W½, W½E½;
Sec. 28, W½, W½E½;
Sec. 29, all;
Sec. 30, Lots 1–4, E½W½, E½;
Sec. 31, Lots 1–4, E½W½, E½;
Sec. 32, all;
Sec. 33, W½, W½E½.
T. 13 N., R. 51 E.,
Secs. 31 and 32, that portion identified on the map entitled Nevada Interchange "C" dated August 1988.

Red Rock Area

Mount Diablo Meridian

T. 17 S., R. 53 E.,
Sec. 1, Lots 1–4, S½N½, S½;
Sec. 2, Lots 1–4, S½N½, S½;
Sec. 3, Lots 1–4, S½N½, S½;
Sec. 10, all;
Sec. 11, NW¼NE¼, S½NE¼, W½, SE¼;
Sec. 12, N½, NE¼SW¼, S½SW¼, SE¼;
Secs. 13–15, and 22–25, all;
Sec. 26, N½N½, SE¼NE¼, SE¼NW¼, SW¼, N½SE¼, SW¼SE¼;
Sec. 27, N½, SW¼, W½SE¼;
Sec. 34, except Patent 42615;
Sec. 35, all;
Sec. 36, N½, W½SW¼, SE¼SW¼, SE¼.
T. 18 S., R. 53 E.,
Sec. 1, Lots 1–4, S½N½, S½.
T. 17 S., R. 54 E.,
Sec. 3, Lots 3, 4, S½NW¼, SW¼;
Sec. 4, Lots 1–4, S½N½, S½;
Sec. 5, Lots 1–4, S½N½, S½;
Sec. 6, Lots 1–7, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 7, Lots 1–4, E¼W½, E½;
Secs. 8 and 9, all;
Sec. 10, W½;
Secs. 15–17, all;
Sec. 18, Lots 1–4, E½W½, E½;
Sec. 19, Lots 1–4, E½W½, E½;
Secs. 20–23, and 25–29, all;
Sec. 30, Lots 1–4, E½W½, E½;
Sec. 31, Lots 1–4, E½W½, E½;
Secs. 32–36, all.
T. 18 S., R. 54 E.,
Sec. 1, Lots 1–4, S½N½, S½;
Sec. 2, Lots 1–4, S½N½, S½;
Sec. 3, Lots 1–4, S½N½, S½;
Sec. 4, Lots 1–4, S½N½, S½;
Sec. 5, Lots 1–4, S½N½, S½;
Sec. 6, Lots 1–7, S½N¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 7, Lots 1–4, E½W½, E½;
Secs. 8–17, 20–28, and 33–36, all.
T. 19 S., R. 54 E.,
Sec. 1, Lots 1–4, S½N½, S½;
Sec. 2, Lots 1–4, S½N½, S½;
Sec. 3, Lots 1–4, S½N½, S½;
Sec. 4, Lots 1–4, S½N½, S½;
Secs. 9–15, all.
T. 17 S., R. 55 E.,
Secs. 16 and 17, all;
Sec. 18, Lots 1–4, E½W½, E½;
Sec. 19, Lots 1–4, E½W½, E½;
Secs. 20–22, and 27–29, all;
Sec. 30, Lots 1–4, E½W½, E½;
Sec. 31, Lots 1–4, E½W½, E½;
Secs. 32–35, all;
Sec. 36, W½, W½E½.
T. 18 S., R. 55 E.,
Sec. 1, Lots 1–4, S½N½, SW¼, S½SE¼;
Sec. 2, Lots 1–4, S½N½, S½;
Sec. 3, Lots 1–4, S½N½, S½;
Sec. 4, Lots 1–4, S½N½, S½;
Sec. 5, Lots 1–4, S½N½, S½;
Sec. 6, Lots 1–7, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 7, Lots 1–4, E½W½, E½;
Secs. 8 and 9, all;

Sec. 10, W½;
Sec. 15, W½;
Secs. 16 and 17, all;
Sec. 18, Lots 1–4, E½W½, E½;
Sec. 19, Lots 1–4, E½W½, E½;
Secs. 20–22, and 26–29, all;
Sec. 30, Lots 1–4, E½W½, E½;
Sec. 31, Lots 1–4, E½W½, E½;
Secs. 32–35, all.
T. 19, S., R. 55 E.,
Sec. 3, Lots 1–4, S½N½, S½;
Sec. 4, Lots 1–4, S½N½, S½;
Sec. 5, Lots 1–4, S½N½, S½;
Sec. 6, Lots 1–7, S½NE½, SE¼NW¼, E½ SW¼, SE¼;
Sec. 7, Lots 1–4, E½W½, E½;
Secs. 8–10, and 15–17, all;
Sec. 18, Lots 1–4, E½W½, E½;
Sec. 20, E½;
Secs. 21–23, 25–27, and 34–36, all.
T. 20 S., R. 55 E.,
Sec. 1, Lots 1–4, S½N½, S½;
Sec. 2, Lots 1–4, S½N½, S½;
Sec. 3, Lots 1–4, S½N½, S½;
Secs. 10–14, 24, and 25, all.
T. 17 S., R. 56 E.,
Sec. 31, Lots 1–4, NE¼, NE¼NW¼, SE¼SW¼, E¼SE¼,
T. 18 S., R. 56 E.,
Sec. 1, Lots 1–4, S½N½, S½;
Sec. 2, Lots 1–4, S½N½, S½;
Sec. 3, Lots 1–4, S½N½, S½;
Sec. 4, Lots 1–4, S½N½, S½;
Sec. 5, Lots 1–4, S½N½, S½;
Sec. 6, Lots 1–4, 7, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 7, lots 1–4, E½W½, E½;
Secs. 8–11, all;
Sec. 12, N½, N½S½, SE¼SW¼, S½SE¼;
Sec. 13, E½, S½NW¼, SW¼;
Sec. 14, NW¼NE¼, S½NE¼, W½, SE¼;
Secs. 15–17, 23, and 24, all.
T. 20 S., R. 56 E.,
Sec. 6, Lots 1–7, S½NE¼, SE¼NW¼, E½ SW¼, SE¼;
Sec. 7, lots 1–4, E½W½, E½;
Secs. 8–10, and 14–17, all;
Sec. 18, Lots 1–4, E½W½, E½;
Sec. 19, Lots 1–4, E½W½, E½;
Secs. 20–26, all;
Sec. 27, N½NE¼, SE¼NE¼, NW¼, W½ SW¼, NE¼SE¼, S½SE¼;
Secs. 28 and 29, all;
Sec. 30, Lots 1–4, E½W½, E½;
Secs. 32–36, all.
T. 21 S., R. 56 E.,
Sec. 1, Lots 1–4, S½N½, S½;
Sec. 2, Lots 1–4, S½N½, S½;
Sec. 3, Lots 1–4, S½N½, S½;
Sec. 4, Lots 1–4, S½N½, S½;
Sec. 5 Lots 1–4, S½N½, S½;
Secs. 8–17, 20–28, and 33–36, all.
T. 18 S., R. 57 E.,
Sec. 2, Lots 1–4, S½N½, S½;
Sec. 3, Lots 1–4, S½N½, S½;
Sec. 4, Lots 1–4, S½N½, S½;
Sec. 5 Lots 1–4, S½N½, S½;
Sec. 6, Lots 1–7, S½NE¼, SE¼NW¼, E½ SW¼, SE¼;
Sec. 7, Lots 1–4, E½W½, E½;
Secs. 8–11, and 14–17, all;
Sec. 18, Lots 1–4, E½W½, E½;
Sec. 19, Lots 1–4, E½W½, E½;
Sec. 20–23, 26–29, and 32–35, all.
T. 19 S., R. 57 E.,
Sec. 1, Lots 5–20;
Sec. 2, Lots 5–20;
Sec. 3, Lots 5–20;
Sec. 4, Lots 5–20;
Sec. 9, N½NE¼NE¼NE¼, SE¼NE¼NE¼ NE¼, N½NW¼NE¼NE¼, SW¼NW¼ NE¼NE¼, W½SW¼NE¼NE¼, NW¼, W½NE¼SW¼NE¼, W½SW¼NE¼, SE¼SW¼NE¼, S½NE¼SE¼NE¼, SE¼NW¼SE¼NE¼, S½SE¼NE¼, S½;
Sec. 10, N½NE¼NW¼, E½SE¼NE¼ NW¼, N½NW¼NW¼, S½N½SW¼ NW¼, S½SW¼NW¼, NE¼SE¼NW¼, NE¼NW¼SE¼NW¼, S½NW¼SE¼ NW¼, S½SE¼NW¼, S½;
Sec. 11, Lots 1–16;
Sec. 12, Lots 1–16;
Secs. 13–16, and 21–26, all;
Sec. 27, N½N½, E½SW¼NE¼, N½NW¼ SW¼NE¼, S½SW¼SW¼NE¼, SE¼ NE¼, SW¼NW¼, N½NE¼SE¼NW¼, SW¼NE¼SE¼NW¼, W½SE¼NW¼, NW¼SE¼SE¼NW¼, S½SE¼SE¼ NW¼, S½;
Sec. 28, N½NE¼, NW¼, NW¼SW¼, S½ SW¼,NE¼SE¼,S½SE¼;
Sec. 34–36, all.
T. 20 S., R. 57 E.,
Sec. 1, Lots 1–4, S½NE¼, SW¼NW¼, W½SW¼, SE¼SW¼, SE¼;
Sec. 2, Lots 1–4, S½N½, S½;
Sec. 3, Lots 1–4, S½N½, S½;
Secs. 10–17, all;
Sec. 19, Lots 1–4, E½W½, E½;
Secs. 20–23, and 26, all;
Sec. 27, N½, N½S½, SE¼SW¼, S½SE¼;
Sec. 28, NE¼NE¼, W½, W½SE¼, SE¼ SE¼;
Sec. 29, all;
Sec. 30, Lots 1–4, E½W½, E½;
Sec. 31, Lots 1–3, NE¼, E½NW¼, NE¼ SW¼, N½SE¼;
Secs. 32–33, all;
Sec. 34, E½, SW¼NW¼, SW¼;
Sec. 35, all.
T. 21 S., R. 57 E.,
Sec. 2, Lots 1–4, S½N½, S½;
Sec. 3, Lots 1–4, S½N½, S½;
Sec. 4, Lots 1–4, S½N½, S½;
Sec. 5, Lots 1–4, S½N½, S½;
Sec. 6, Lots 1–7, S½NE¼, SE¼NW¼, E½ SW¼, SE¼;
Sec. 7, Lots 1–4, E½W½, E½;
Secs. 8–11, and 14–17, all;
Sec. 18, Lots 1–4, E½W½, E½;
Sec. 19, Lots 1–4, E½W½, E½;
Secs. 20–23, and 26–29, all;
Sec. 30, Lots 1–4, E½W½, E½;
Sec. 31, Lots 1–4, E½W½, E½;
Secs. 32–35, all.
T. 22 S., R. 57 E.,
Sec. 1, Lots 1–4, S½N½, S½;
Sec. 2, Lots 1–4, S½N½, S½;
Sec. 3, Lots 1–4, S½N½, S½;
Secs. 10–14, all;
Sec. 15, N½; E½SW¼, SE¼;
Secs. 22–27, and 35–36, all.
T. 23 S., R. 57 E.,
Sec. 1, Lots 3, 4, S½NW¼, SW¼, except Patent 648859, SE¼;
Sec. 2, Lots 1–4, S½N½, S½;
Sec. 11, all;
Sec. 12, except Patents 2203 and 648859;
Secs. 13, 14, 24, and 25, all.
T. 19 S., R. 58 E.,
Sec. 6, Lots 1–7, S½NE¼, SE¼NW¼, E½ SW¼, SE¼;
Sec. 7, Lots 1–4, E½W½, E½;
Sec. 18, Lots 1–4, E½W½, E½;
Sec. 19, Lots 1–4, E½W½, E½;
Sec. 30, Lots 1–4, E½W½, E½;
Sec. 31, Lots 1–4, E½W½, E½.
T. 20 S., R. 58 E.,
Sec. 6, Lots 1, 5–7, S½NE¼, E½SW¼, N½ SE¼, SW¼SE¼;
Sec. 7, Lots 1–4, E½W½, E½.
T. 22 S., R. 58 E.,
Sec. 19, Lots 1–4, E½W½, NE¼, except Patent 200252, NW¼SE¼, S½SE¼;
Sec. 20, NW¼, E½NW¼SW¼SW¼, NW¼SE¼SW¼, W½SW¼SE¼SW¼, N½SE¼, SE¼SE¼;
Sec. 29, Lots 1–10, S½NE¼NE¼, SW¼ NE¼, E½NE¼SE¼NE¼, W½SE¼NE¼, SE¼SE¼NE¼, NE¼SE¼, S½SE¼;
Sec. 30, Lots 5–20;
Sec. 31, Lots 5–12.
T. 23 S., R. 58 E.,
Sec. 5, Lots 1, 2, S½NE¼, S½;
Sec. 6, Lots 3–7, SE¼NW¼, E½SW¼, SE¼;
Sec. 7, Lots 1–4, E½W½, E½;
Secs. 8, and 14–17, all;
Sec. 18, Lots 1–4, E½W½, E½;
Sec. 19, Lots 1–4, E½W½, E½;
Secs. 20–23, and 26–29, all;
Sec. 30, Lots 1–4, E½W½, E½.

The area described above aggregates 704,482.785 acres in Carson City, Clark, Douglas, Esmeralda, Lyon, Mineral, Nye and Washoe Counties (Sierra Foothills Area aggregates 270,405.883 acres, Hot Creek Area aggregates 180,653.958 acres and the Red Rock Area aggregates 253,422.944 acres).

A copy of the legal description and the maps depicting the involved lands are on file for public inspection in the following offices:

Governor of Nevada, State of Nevada, Carson City, Nevada 89710
Supervisor, Toiyabe National Forest, 1200 Franklin Way, Sparks, Nevada 89431
Supervisor, Inyo National Forest, 873 N. Main Street, Bishop, California 93514
State Director, Bureau of Land Management, Nevada State Office, 850 Harvard Way, Reno, Nevada 89502
Chief, U.S. Forest Service, U.S. Department of Agriculture, South Building, 12th and Independence Avenue, SW., Washington, DC 20250
Director (322), Room 3643, MIB, Bureau of Land Management, 18th and C Streets, NW., Washington, DC 20240

R.M. (Jim) Nelson,

Supervisor, Toiyabe National Forest, U.S. Forest Service.

Edward F. Spang,

State Director, Nevada Bureau of Land Management.

[FR Doc. 89–27518 Filed 11–22–89; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

November 17, 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 of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Public Law 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.

Revision

- National Agricultural Statistics Service
  Milk and Milk Products
  None
  Monthly; Quarterly; Annually
  Farms; Businesses or other for-profit; 167,493 responses; 19,747 hours; not applicable under 3504(h)
  Larry Gambrell (202) 447-7737
- Forest Service
  Determination of Financial Status of Contractors and Prospective Contractors
  FS-6500-24, FS-6500-25
  On Occasion
  Businesses or other for-profit; Small businesses or organizations; 350 responses; 6,714 hours; not applicable under 3504(h)
  William Helmer (703) 235-8466

Extension

- Foreign Agricultural Service
  CFR Part 1493—Regulations Covering CCC's Export Credit Guarantee Program (GSM-102) and CCC's Intermediate Export Credit Guarantee Program (GSM-103)
  None
  Recordkeeping; On Occasion
  Businesses or other for-profit; 13,920 responses; 14,344 hours; not applicable under 3504(h)
  L.T. McElvain (202) 447-6225
- National Agricultural Statistics Service
  Egg, Chicken, and Turkey Surveys
  None
  Weekly, Monthly, Quarterly, Annually
  Farms; Businesses or other for-profit; 42,775 responses; 6,638 hours; not applicable under 3504(h)
  Larry Gambrell (202) 447-7737

Larry K. Roberson,

Acting Departmental Clearance Officer.

[FR Doc. 89-27532 Filed 11-22-89; 8:45 am]

BILLING CODE 3410-01-M

Forest Service

West Branch and Bruin II Timber Sales, Kootenai National Forest, Lincoln County, MT

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare environmental impact statement.

SUMMARY: Notice is hereby given that the Forest Service is gathering information in order to prepare an EIS (Environmental Impact Statement) for a proposal to harvest approximately 1,800 acres of timber and construct approximately 21 miles of road in the West Branch of the South Fork of Big Creek Drainage. The drainage is located approximately 12 air miles north of Libby, Montana. All of the proposed timber harvest and road construction would occur within the Rare II Gold Hill Roadless Area. Some road reconstruction would occur outside the West Branch Drainage.

The primary purpose and need for the proposed action is to access and harvest primarily high risk (to mountain pine beetle infestation) Lodgepole pine (LPP). This proposed project would salvage and regenerate mature LPP stands, create diversity to prevent future mountain pine beele outbreaks, and improve habitat diversity for wildlife.

DATE: Comments concerning the scope of the analysis should be received in writing on or before January 8, 1990.

ADDRESSES: Send written comments to: District Ranger, Rexford Ranger District, 1299 Hwy. 93 N., Eureka, MT. 59917.

FOR FURTHER INFORMATION CONTACT: Bob Seidel, Timber Management Assistant or Reta Laford, EIS Team Leader, Rexford Ranger District, Phone: (406) 296-2536.

SUPPLEMENTARY INFORMATION: This EIS will tier to the Kootenai Forest Plan Final EIS of September, 1987, which provides overall guidance in achieving the desired future condition for the area. The activities associated with timber harvest and road construction will be conducted in a manner that will maintain high quality wildlife, fisheries, and watershed objectives.

Some preliminary analysis work was initiated for this project in 1984 and has been on-going since that date. The Forest Service is seeking information and comments from Federal, State, local agencies, and other organizations or individuals who may be interested in or affected by the proposed actions. The Forest Service invites written comments and suggestions on the issues for the proposal and the area being analyzed. Information received will be used in preparation of the Draft EIS. Preparation of the EIS will include the following steps:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Identification of additional reasonable alternatives.
5. Identification of potential environmental effects of the alternatives.
6. Determination of potential cooperating agencies.

The timber sales and road construction under consideration would occur in an area encompassing approximately 5,500 acres of National Forest lands in the West Branch of the South Fork of the Big Creek Drainage on the Rexford Ranger District. All 5,500 acres are within the 10,200 acre Gold Hill (West) Roadless Area (#1X176).

Included in the area of analysis are all or portions of the following: Sections 15, 16, 20, 21, 22, 23, 25, 26, 27, 28, 29, 32, 33, 34, 35, 36, T33N, R30W and Sections 4, 5, 6, T32N, R30W Montana Principle Meridian.

The areas of proposed harvest and reforestation are within Management Area (MA) 12. Forest Plan direction states MA 12 is productive timber land. The management goal is to maintain or enhance summer/fall big game habitat and produce a programmed yield of timber. MA 21 (Big Creek Riparian Ecosystem) is also within the analysis area, but no timber harvesting or road construction activities are planned in this MA.

To date we have identified some primary issues we feel will have to be analyzed to determine the effects the proposed project will have on these resources. These issues are as follows:

1. To what extent would the proposed action affect big game security habitat within and adjacent to the analysis area?

2. To what extent would harvest methods and fuel reduction measures affect soil productivity?
3. How would the proposed action affect water quality and watershed stability?
4. To what extent would the proposed action allow us to harvest the LPP stands killed by or at risk of Mountain Pine Beetle infestations?
5. To what extent would the proposed action reduce or allow us to manage the potential fire hazard associated with large areas of LPP at risk for insect infestation?
6. To what extent would the proposed action affect the Grizzly Bear?
7. How would the proposed action affect the roadless character of the area?

The Forest Service will analyze and disclose in the DEIS/FEIS the environmental effects of the proposed action and a reasonable range of alternatives, including no action. The alternatives to the proposed action will be developed responsive to the purpose and need for the action and to the environmental issues raised during the scoping process. The DEIS/FEIS will disclose the direct, indirect, and cumulative environmental effects of each alternative and its associated site specific mitigation measures.

Public participation is especially important at several points of the analysis. People may visit with Forest Service officials at any time during the analysis and prior to the decision. However, two periods of time are identified for the receipt of comments on the analysis. The two public comment periods are during the scoping process, on or before January 8, 1990 and during the review of the DEIS in March, 1990.

The U.S. Fish and Wildlife Service, Department of the Interior, will be informally consulted throughout the analysis. We will adhere to requirements of the Endangered Species Act as they pertain to the proposed action and its estimated effects on threatened and endangered species.

The DEIS is expected to be filed with the Environmental Protection Agency (EPA) and available for public review by March, 1990. At that time, the EPA will publish a notice of availability of the DEIS in the **Federal Register**.

The comment period on the draft environmental impact statement will be 45 days from the date the notice of availability is published in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements 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)*. Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so 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 environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement.

Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.).

After the comment period ends on the draft environmental impact statement, the comments will be analyzed and considered by the Forest Service in preparing the Final EIS.

Dated: November 13, 1989.

H. Drew Bellon,

District Ranger, Rexford Ranger District, Kootenai National Forest.

[FR Doc. 89-27564 Filed 11-22-89; 8:45 am]

BILLING CODE 3410-11-M

Scientific Advisory Board Mount St. Helens National Volcanic Monument; Gifford Pinchot National Forest; Clark County, Vancouver, WA; Meeting

The Mount St. Helens Scientific Advisory Board will meet at 8:30 a.m., March 13, 1990, at the David A. Johnston Cascades Volcanic Observatory, 5400 McArthur Blvd., Vancouver, WA 98661, to receive information on and discuss the following:

1. Coldwater Lake—Johnston Ridge update.
2. Castle Lake containment plans.
3. Status of the 1990 NVM 10th year research thrust.
4. Observatory tour.
5. Open discussion of topics of interest to the Advisory Board and public comments.

The meeting will be open to the public. Persons who wish to make a statement to the Board should notify Dr. Jack K. Winjum, Chairperson, c/o Gifford Pinchot National Forest, 6926 E. Fourth Plain Blvd., Vancouver, Washington 98668, 206-696-7570. Written statements may be filed with the Board before or after the meeting.

Dated: November 16, 1989.

Richard A. Ferraro,

Acting Regional Forester.

[FR Doc. 89-27563 Filed 11-22-89; 8:45 am]

BILLING CODE 3410-11-M

RIN 0596-AB06

Recreation Residence Authorization

AGENCY: Forest Service, USDA.

ACTION: Advance notice of proposed policy; extension of public comment period.

SUMMARY: On September 20, 1989, at 54 FR 38700, the Forest Service gave notice of its intent to reconsider its policy for administering privately-owned recreation residences on National Forest System lands. The reconsideration responds to an appeal decision by the Assistant Secretary for Natural Resources and Environment. In the September notice, the agency requested public comment on alternatives to various provisions of the current interim policy. The public comment period was to close on November 20. However, a number of organizations and individuals have indicated that the 60-day review period was not sufficient time to review and analyze the complex new alternatives and have requested additional time to prepare comments. Accordingly, the Forest Service has decided to extend the comment period an additional 60 days to January 19, 1990.

DATES: Comments must be received in writing and postmarked no later than January 19, 1990.

ADDRESSES: Send written comments to F. Dale Robertson, Chief (2720), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090-6090.

FOR FURTHER INFORMATION CONTACT: Questions about this policy should be addressed to Betty J. Blair, Lands Staff, (703) 235-2160.

Dated: November 17, 1989.

David G. Unger,

Associate Deputy Chief, National Forest Service System.

[FR Doc. 89-27565 Filed 11-22-89; 8:45 am]

BILLING CODE 3410-11-M

Adson Timber Sale, Swamp Creek Timber Sale, Harriet Lou Timber Sale

ACTION: Notice of withdrawal of decisions.

SUMMARY: The Beaverhead National Forest has withdrawn the decisions to implement the Adson Timber Sale, Swamp Creek Capital Investment Road and Timber Sale, and the Harriet Lou Timber Sale. Future management activities in the areas will occur only after further environmental analysis and documentation pursuant to NEPA. Any new decisions to proceed with activities in the areas will be appealable under Forest Service Regulations 36 CFR part 217. The following Notices of Withdrawal have been executed.

DATES: The effective dates for the Notices of Withdrawal are October 27, 1989 for the Adson Timber Sale, October 27, 1989 for the Swamp Creek Timber Sale, and December 7, 1989 for the Harriet Lou Timber Sale.

ADDRESS: The individual withdrawal notices were executed by the District Ranger, Wise River Ranger District, Box 100, Wise River, Montana 59762.

FOR FURTHER INFORMATION CONTACT: Ed Levert, District Ranger, Wise River Ranger District, Beaverhead National Forest, Telephone (406) 832-3178.

SUPPLEMENTARY INFORMATION: The text of the Notice of Withdrawal of Decision on the Adson and Swamp Creek sales as they will appear in the local newspaper, The Dillon Tribune, is as follows:

Notice

Withdrawal of Decision

for

Adson Timber Sale

USDA—Forest Service

Beaverhead National Forest

Wise River Ranger District

Beaverhead County, Montana

On June 30, 1987, I signed a Decision Notice to implement the Adson timber sale on the Beaverhead National Forest, Wise River Ranger District.

This notice constitutes the withdrawal of my decision to proceed with the Adson timber sale. Future management activities in the area will occur only after further environmental analysis and documentation pursuant to NEPA. Any new decision to proceed with activities in the area will be accompanied by a new decision notice and will be appealable under Forest Service regulations 36 CFR part 217.

Copies of this notice are being sent to all persons, groups, and agencies on the mailing list for the 1987 Adson Decision Notice and Environmental Assessment. Further, this notice is being published November 7, 1989 as a legal notice in the Dillon Tribune newspaper and will be published in the **Federal Register**. All parties on the 1987 mailing list and those requesting to be notified will be given notice if management activities are proposed in the future in this area. Consequently, the public will have the opportunity to ask for administrative review pursuant to Forest Service regulations of any future decisions in the area.

Dated: October 27, 1989.

Ed Levert,

District Ranger, Wise River Ranger District.

Notice

Withdrawal of Decision

for

Swamp Creek Capital Investment Road and Timber Sale

USDA—Forest Service

Beaverhead National Forest

Wise River Ranger District

Beaverhead County, Montana

On June 30, 1987, I signed a Decision Notice to implement the Swamp Creek capital investment road and timber sale on the Beaverhead National Forest, Wise River Ranger District.

This notice constitutes the withdrawal of my decision to proceed with the Swamp Creek capital investment road and timber sale. Future management activities in the area will occur only after further environmental analysis and documentation pursuant to NEPA. Any new decision to proceed with activities in the area will be accompanied by a new decision notice and will be appealable under Forest Service regulations 36 CFR part 217.

Copies of this notice are being sent to all persons, groups, and agencies on the mailing list for the 1987 Swamp Creek Decision Notice and Environmental Assessment. Further, this notice is being published November 7, 1989 as a legal notice in the Dillon Tribune newspaper and will be published in the **Federal Register**. All parties on the 1987 mailing list and those requesting to be notified will be given notice if management activities are proposed in the future in this area. Consequently, the public will have the opportunity to ask for administrative review pursuant to Forest Service regulations of any future decisions in the area.

Dated: October 27, 1989.

Ed Levert,

District Ranger, Wise River Ranger District.

The text of the Notice of Withdrawal of Decision for the Harriet Lou Timber Sale that was sent to all persons, groups, and agencies on the mailing list for the Environmental Assessment and to appellants of the original decision was as follows:

Notice

Withdrawal of Decision

Harriet Lou Timber Sale

On August 19, 1988, I signed a Decision Notice to implement the Harriet Lou Timber Sale. As identified in the Environmental Assessment, portions of the proposed action are located in Roadless Area, 1-006-F.

My decision to implement the Harriet Lou Timber Sale received two appeals within the 45 day appeal period provided by the Forest Service administrative appeal regulations (36 CFR 211.18). One appeal was filed jointly by the Wise River Sportsmen and Montana Wildlife Federation, on September 30, 1988. The second appeal was filed October 3, 1988, by the American Wilderness Alliance. Among the issues raised by the appeals by both appellants was the issue of the adequacy of the analysis of the roadless resource. In accordance with the administrative appeal regulations the appeals are presently being considered by the Forest Supervisor.

On August 15, 1988, the Chief of the Forest Service issued a decision on the roadless issue on the Idaho Panhandle National Forest. This decision outlines the steps which must be taken at the project level to implement the Forest Plan when proposed actions are located in inventoried roadless lands.

In reviewing the Environmental Assessment for the Harriet Lou Timber Sale, I find the disclosure of impacts on the roadless resource do not meet the current direction.

Therefore, I withdraw the August 19, 1988, Decision Notice to implement the Harriet Lou Timber Sale. I am directing the Interdisciplinary Team to reanalyze the proposed sale in compliance with the Chief's direction. No further action will be taken on the proposal until a new decision, if any, is made to proceed with timber harvesting in the Harriet Lou area. Any decision that adopts other than the "no action" alternative will comply with NEPA, will be

accompanied by a new Decision Notice, and will be reviewable under applicable Forest Service regulations.

Copies of this notice are being sent to all persons, groups, and agencies on the mailing list for the Harriet Lou Timber Sale Environmental Assessment and the above named appellants.

Dated: December 7, 1988.

Ed Levert,

District Ranger, Wise River District.

Dated: November 2, 1989.

Gerald W. Alcock,

Acting Forest Supervisor, Beaverhead National Forest.

[FR Doc. 89-27562 Filed 11-22-89; 8:45 am]

BILLING CODE 3410-11-M

ARCTIC RESEARCH COMMISSION

Meetings

Notice is hereby given that the United States Arctic Research Commission will hold its 20th Meeting in Seattle, Washington, on December 11–12, 1989. On December 11, the morning session will start at 8:30 a.m. in Room 2104, Building 3, Pacific Marine Environmental Lab, NOAA, located at 7600 Sand Point Way NE, Seattle, Washington.

On Monday, December 11th, at 1:30 p.m. in Room 310C of the Atmospheric Sciences Building at the University of Washington, the Commission will hold a Public Meeting on Arctic Research Priorities. At 5:30 p.m. the Commission will host a reception for arctic scientists at the Meany Towers Hotel in Seattle.

On Tuesday, December 12th, the Commission will meet in Room 2104 at the Pacific Marine Environmental Lab at NOAA. The Commission will meet in Executive Session following the conclusion of regular business.

Agenda items include: (1) Chairman's Report; (2) Comments from the Interagency Arctic Research Policy Committee; (3) Comments from the Alaska Congressional Delegation; (4) Comments from the Alaska Governor's Office; (5) Consideration of a Statement on Arctic Engineering Research; (6) Consideration of a Health Initiative; (7) National Bipolar Research Plan; (8) International Arctic Research Cooperation; (9) Items emerging from Public Meeting, and (10) Status of Annual Report.

Contact Person for More Information: Philip L. Johnson, Executive Director, U.S. Arctic Research Commission, (202) 371–9631.

Philip L. Johnson,

Executive Director, U.S. Arctic Research Commission.

[FR Doc. 89-27517 Filed 11-22-89; 8:45 am]

BILLING CODE 7555-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review; Application

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Douglas J. Aller, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (Pub. L. 97–290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the Federal Register identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. An original and five (5) copies should be submitted not later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1223, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 89–00016." A summary of the application follows.

Summary of the Application

Applicant: National Geothermal Association (NGA), P.O. Box 1350, Davis, California 95617, Contact: Arthur John Armstrong, Counsel, Telephone: (202) 625–6731.

Application No.: 89–00016.

Date Deemed Submitted: November 7, 1989.

Members (in addition to applicant): Air Drilling Services, Inc., Englewood, CO; American Line Builders, Inc., Dayton, WA; Barber-Nichols Engineering Co., Arvada, CO; The Ben Holt Company, Pasadena, CA; Bridwell Controls, Martinez, CA; Dames & Moore, Los Angeles, CA; Eastman Christensen, Santa Rosa, CA, and its controlling entity Norton Company, Worcester, MA; EnergyLog Corporation, Sacramento, CA; Foster Oilfield Equipment Company, Houston, TX, and its controlling entity Masco Industries, Inc., Taylor, MI; Geothermal Management Company, Inc., Evergreen, CO; Geothermal Power Company, Inc., Elmira, NY; GeothermEx, Inc., Richmond, CA; Grace Drilling Company, Dallas, TX; H & H Oil Tool Company, Inc., Santa Paula, CA; Halliburton Services, Houston, TX; Kern Steel Fabrication, Inc., Bakersfield, CA; Loffland Brothers Company, Tulsa, OK; Mesquite Group, Inc., Fullerton, CA; Ormat Energy Systems, Inc.; Sparks, NV; Oxbow Power Corporation, Dedham, MA; Petrorentas Internacionales, Inc., Houston, TX; Pruett Industries, Inc., Bakersfield, CA; Technology Export Company, Houston, TX, and its controlling entity Masco Industries, Inc., Taylor, MI; Trans-Pacific Geothermal Corporation, Oakland, CA; University of Utah Research Institute, Salt Lake City, UT; and Unocal Geothermal Division, Los Angeles, CA, and its controlling entity Unocal Corporation, Los Angeles, CA.

Export Trade:

Products

Equipment, instrumentation, and supplies for (1) exploration (including geological, geophysical geochemical, and software); (2) drilling and completion; (3) reservoir assessment; (4) environmental monitoring; (5) production and power generation including pumps, separators and condensers; power generation systems,

and miscellaneous equipment and supplies; (6) non-electric direct-use (including downhole pumps, heat exchangers, and miscellaneous equipment and software); (7) general and technical geothermal information and publications; and (8) all other products related to geothermal exploration, development, and production (including heavy duty transportation equipment and stress relief equipment and supplies).

Services

Engineering, design, and other services related to (1) exploration (including geophysical photography and remote sensing, geologic field studies, subsurface studies, geochemical and hydrological analysis and interpretation, aquifer assessment, thermal studies, magnetic surveys, gravity surveys and interpretations, seismic studies, electrical studies, and geodata synthesis and numerical simulation); (2) drilling and completion; (3) reservoir assessment (including geological and geophysical well-logging, reservoir engineering, and well testing); (4) field development (including environmental systems evaluation and monitoring and environmental problems mitigation); (5) project analysis for electric and non-electric direct-use projects; (6) engineering studies and design; (7) plant management and operations; (8) financing; and (9) servicing, training, and other services related to the sale, use, or maintenance of Products or to projects that substantially incorporate Products; and all other Services related to geothermal exploration, development, and production.

Export Trade Facilitation Services (as they relate to the export of Products)

Consulting; international market research, marketing, and trade promotion; trade show participation; trade missions and reverse trade missions; insurance; legal assistance; accounting assistance; services related to compliance with customs requirements; transportation; trade documentation and freight forwarding; communication and processing of sales leads and export orders; warehousing; foreign exchange; financing; taking title to goods; and liaison with foreign government and multinational agencies, trade associations, and banking institutions.

Technology Rights

Patents; trademarks; service marks; trade names; copyrights (including neighboring rights); trade secrets; know-how; semiconductor mask works; utility models (including petty patents); industrial designs; and *sui generis* forms of computer software protection associated with Products, Services, or Export Trade Facilitation Services.

Export Markets: The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation: NGA and/or one or more of its Members may:

1. Engage in joint selling arrangements for Products and/or Services in Export Markets, including, but not limited to, joint marketing negotiation, offering, bidding and financing, and allocating sales resulting from such arrangements;

2. Establish export prices for sales of Products and/or Services by the Members in Export Markets;

3. Discuss and reach agreements relating to the interface specifications and engineering requirements demanded by specific potential customers in Export Markets;

4. Refuse to quote prices for, or to market or sell in Export Markets, Products and/or Services;

5. Solicit non-Member Suppliers to sell their Products and/or Services or offer their Export Trade Facilitation Services through NGA and/or its Members;

6. Coordinate the development of projects in Export Markets in which Products and/or Services shall be exported, including, but not limited to, exploration, scientific and/or technical assessment, transportation and/or delivery, installation, construction, ownership (including, but not limited to, transfer of ownership) operations, servicing, and establishing joint warranty, service, parts warehousing, and training centers in such markets;

7. License associated Technology Rights in conjunction with the sale of Products and/or Services, but in all instances the terms of such licenses shall be determined solely by negotiations between the licensor Member and the export customer without coordination with NGA or any other Member;

8. Engage in joint promotional activities aimed at developing existing or new Export Markets, including, but not limited to, advertising and trade missions, demonstrations, field trips, and trade shows;

9. Bring together, from time to time, groups of Members to plan and discuss how to fulfill the technical Product and/or Service requirements of specific export customers or particular Export Markets;

10. Establish and operate joint ventures and jointly owned entities, including, but not limited to, corporations or other joint venture entities, owned exclusively by Members, to export Products and/or Services to Export Markets;

11. Jointly provide and/or jointly negotiate with non-Member and Member Suppliers to provide Export Trade Facilitation Services to Member and/or non-Member Suppliers;

12. Jointly establish, or arrange to have NGA and/or one or more of its Members and/or non-Members to act as exclusive or non-exclusive Export Intermediaries on the Members' behalf in Export Markets. Any such exclusive Export Intermediary may agree not to represent any other Supplier of Products and/or Services in the relevant Export Market, and the Members may agree that they will not export independently, either directly or through any other Export Intermediary or other party;

13. Agree that any information obtained pursuant to this Certificate shall not be provided to any non-Member;

14. Act as a shippers' association to negotiate favorable transportation rates and other terms with individual ocean common carriers and individual conferences;

15. On a country-by-country basis for the Export Markets, jointly establish and/or negotiate with purchasers regarding specifications for Products;

16. Enter into agreements wherein:

a. One or more Members or a jointly owned entity may agree to act in certain Export Markets as the Member's exclusive or non-exclusive Export Intermediary for Products and/or Services in that Export Market. In such agreements, (i) the Member(s) acting as exclusive Export Intermediary may agree not to represent any other Supplier for sale in the relevant Export Market, and (ii) Members may agree that they will export for sale in the relevant Export Market only through the Member(s) acting as exclusive Export Intermediary, and that they will not export independently to the relevant Export Market either directly or through any other Export Intermediary. NGA and/or any Member(s) and/or a jointly owned entity when acting as an exclusive Export Intermediary shall supply its services on a non-discriminatory basis to those Members that are parties to the exclusive arrangement, and which request such servicing, and shall not unreasonably refuse to supply such services;

b. A non-Member Supplier may agree to act in certain Export Markets as the Member's exclusive or non-exclusive Export Intermediary for Products and/or Services in that Export Market;

c. One or more Members or a jointly owned entity may agree to purchase for export to the Export Markets Products and/or Services from Suppliers on such terms as the parties to the agreement may determine;

d. NGA and/or one or more Members or a jointly owned entity may enter into exclusive or non-exclusive agreements with persons, including Members and non-Members, whereby consulting and professional services may be procured and provided to Members;

e. One or more Members or a jointly owned entity may enter into contracts which provide for transportation services to Members, including, but not limited to, the chartering and space chartering of vessels, the negotiation and utilization of through intermodal rates with common and contract carriers for inland freight transportation for export shipments to a United States export terminal, port, or gateway; and

f. Members may agree to export for sale in one or more Export Markets only directly through other Members, and/or through designated Export Intermediaries;

17. Exchange and discuss the following types of information about Export Trade, Export Markets, Export Trade Activities and Methods of Operation, and the agreements related thereto:

a. Information (other than information about the costs, output, capacity, inventories, domestic prices, domestic sales, domestic orders, and terms of domestic marketing or sale of United States business plans, strategies or methods) that is already generally available to the trade or public;

b. Information about sales and marketing efforts in Export Markets, activities and opportunities for sales of Products and/or Services in Export Markets, pricing in Export Markets, projected demands (quality and quantity) in Export Markets, customary terms of sale in Export Markets, the types of Products and/or Services available from competitors for sale in particular Export Markets, market strengths and economic and business conditions in Export Markets, and the prices for Products and/or Services in Export Markets;

c. Information about the export prices, quality, quantity, source, available capacity to produce, and delivery dates of Products available from Members for export; provided, however, that exchanges of information and discussions as to Product quantity, source, available capacity to produce, and delivery dates must be on a transaction-by-transaction basis only and involve only those Members who are participating or have a genuine interest in participating in such transactions;

d. Information about terms and conditions of contracts for sales in Export Markets to be considered and/or bid on by Members;

e. Information about joint bidding, selling, or servicing arrangements for Export Markets and allocation of sales resulting from such arrangements among the Members;

f. Information about expenses specific to exporting to Export Markets, including, but not limited to, transportation, intermodal shipments, insurance, inland freight to port, port storage, commissions, export sales, documentation, financing, customs, duties, and taxes;

g. Information about U.S. and foreign legislation, regulations, and executive actions affecting the sales of Products and/or Services in Export Markets, including, but not limited to, U.S. Federal and State programs affecting sales to and in Export Markets;

h. Information about Members' export operations, including, but not limited to, sales and distribution networks established by the Members in Export Markets, and prior export sales by Members including, but not limited to, export price information;

i. Information relevant to the conduct of Export Trade and Export Trade Activities and Methods of Operation in the Export Markets; and

j. Information on the organization, governance, financial condition, and membership of NGA;

18. Forward to the appropriate individual Member requests for information received from a foreign government or its agent (including, but not limited to, private pre-shipment inspection firms) concerning that Member's domestic or export activities (including, but not limited to, prices and/or costs), and if such individual Member elects to respond, it shall respond directly to the requesting foreign government or its agent with respect to such information;

19. License and sub-license Technology Rights in Export Markets to non-Members, but in all instances the terms of such licenses shall be determined solely by negotiations between the licensor Member and such non-Member without coordination with NGA or any other Member. Such licenses and sub-licenses may: convey exclusive or non-exclusive rights in Export Markets; impose restrictions as to the prices at which Products and/or Services incorporating, or manufactured or produced using, Technology Rights may be sold or leased in Export Markets; impose requirements as to pricing and other terms and conditions of sub-licenses of Technology Rights in Export Markets; restrict licenses and sub-licenses as to fields of use, or maximum sales, or operations in Export Markets; impose territorial restrictions relating to any Export Market on foreign licensees and sub-licensees; require the assignment back or exclusive or non-exclusive grantback to the licensor Member of rights in Export Markets to all improvements in Technology Rights, whether or not such improvements fall within the field of use authorized in such license; require package licensing of Technology Rights; and require products or services (including, but not limited to, Products and/or Services) to be used, sold, or leased as a condition of the license of Technology Rights;

20. Refuse to provide Export Trade Facilitation Services or participation in the other activities described herein to non-Members;

21. Provide its Members or other Suppliers the benefit of any Export Trade Facilitation Service to facilitate the export of Products and/or Services to Export Markets. This may be accomplished by NGA itself, or by agreement with one or more Members or other parties; and

22. Meet to engage in the activities described herein.

Definitions: 1. "Export Intermediary" means a person who acts as a distributor, sales representative, sales or marketing agent, consultant, provider of professional services, or broker, or who performs similar functions, including providing or arranging for the provision of Export Trade Facilitation Services.

2. "Supplier" means a person who produces, provides, or sells a Product, Service, Technology Right, and/or Export Trade Facilitation Service, whether a Member or non-Member.

3. "Member" means a person who has membership in the NGA and who has been certified as a "Member" within the meaning of § 325.2 (1) of the Regulations.

4. "Non-Member" means a person other than a Member.

Dated: November 17, 1989.

Douglas J. Aller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 27513 Filed 11-22-89; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF COMMERCE

Minority Business Development Agency

Business Development Center Applications: Denver, CO

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for approximately a 3-year period, subject to the availability of funds. The cost of performance for the first 12 months is estimated at $184,260 in Federal funds and a minimum of $32,516 in non-Federal contributions for the budget period April 1, 1990 to March 31, 1991. Cost-sharing contributions may be in the form of cash contributions, client fees for services, in-kind contributions, or combinations thereof. The MBDC will operate in the Denver, Colorado standard metropolitan statistical area (SMSA).

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, local and state governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can coordinate and broker public and private resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodology) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive.

MBDC's shall be required to contribute at least 15% of the total project cost through non-Federal contributions. Client fees for billable management and technical assistance (M&TA) rendered must be charged by MBDC's. Based on a standard rate of $50 per hour, MBDC's will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less and 35% of the total cost for firms with gross sales of over $500,000.

The MBDC may continue to operate, after the initial competitive year, for up to two additional budget periods. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds and agency priorities.

CLOSING DATE: The closing date for applications is December 15, 1989. Applicants should mail the completed applications to the office specified in the project announcement. MBDA will accept only those applications (1) which are received by the closing date or (2) which show acceptable evidence of mailing on or before the closing date. Acceptable evidence consists of (1) a legible U.S. Postal Service postmark or (2) a legible mail or courier service receipt dated on or before the closing date. Applications must be post marked on or before December 15, 1989.

ADDRESS: Dallas Regional Office, 1100 Commerce Street, Suite 7B23, Dallas, Texas 75242–0790, (214) 767–8001.

FOR FURTHER INFORMATION CONTACT: Darnecia Tyler, Dallas Regional Office.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372 "Intergovernmental Review of Federal Programs" is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address. A pre-bid conference will be held at the Denver Federal Center, Sixth and Kipling, Building 41, in the South Dakota Room, Number 212, starting at 1:00 p.m..

(11.800 Minority Business Development Catalog of Federal Domestic Assistance.)

Melda Cabrera,

Regional Director, Dallas Regional Office. Regional Office.

Section B—Project Specifications

(To be completed by the Regional Offices)

PROJECT IDENTIFICATION

1. Program Number and Title: 11,800 Minority Business Development
2. Poject Name: Denver, Colorado (Geographic Area of SMSA) MBDC
3. Project Identification Number: 08–10–9000–01

BUDGET PERIOD DURATION

1. Budget Period (Check One): First X Second _____ Third _____
2. Start Date: April 1, 1990
3. End Date: March 31, 1991
4. Budget Period Duration (Months): Twelve

PROJECT COST

1. Required Federal Funding Level: $184,260
2. Minimum Non-Federal Contribution: $32,516
3. Total Project Cost: $216,776

PROJECT MINIMUM PERFORMANCE GOAL LEVELS

1. Combined Financial Package and Procurement Minimum Goal Level: $12,454,000
2. Billable SM&TA Minimum Goal Level: $125,000
3. Number of Clients Minimum Goal Level: 125

OTHER PROJECT SPECIFICATIONS

1. Closing Date for Submission of this Application: December 15, 1989
2. *Geographic Specification:* The Minority Business Development Center shall offer assistance in the geographic area of: Denver, Colorado, Standard Metropolitan Statistical Area
3. *Eligibility Criteria*: There are no eligibility restrictions for this project. Eligible applicants may include individuals, non-profit organizations, for-profit firms, local and state governments, American Indian tribes and educational institutions.
4. *Budget Period*: The competitive award period will be for approximately three (3) years consisting of three (3) separate budget periods. Performance evaluations will be conducted, and funding levels will be established for each of three (3) budget periods. The MBDC will receive continued funding, after the initial competitive year, at the discretion of MBDC based upon

the availability of funds, the MBDC's performance and Agency priorities.

[FR Doc. 89-27567 Filed 11-22-89; 8:45 am]

BILLING CODE 3510-21-M

Business Development Center Applications: Richmond, VA

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for approximately a 3 year period, subject to the availability of funds. The cost of performance for the first 12 months is estimated at $165,000 in Federal funds and a minimum of $29,118 in non-Federal contributions for the budget period April 1, 1990 to March 31, 1991. Cost-sharing contributions may be in the form of cash contributions, client fees for services, in-kind contributions, or combinations thereof. The MBDC will operate in the Richmond, Virginia geographic service area.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can coordinate and broker public and private resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodology) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive.

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. Client fees for billable management and technical assistance (M&TA) rendered must be charged by MBDCs. Based on a standard rate of $50 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less and 35% of the total cost for firms with gross sales of over $500,000.

The MBDC may continue to operate, after the initial competitive year, for up to 2 additional budget periods. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding wil be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the available of funds and agency priorities.

Closing date: The closing date for applications is December 28, 1989. Applications must be postmarked on or before December 28, 1989.

ADDRESS: Washington Regional Office, Minority Business Development Agency, U.S. Department of Commerce, Room 6723, Washington, DC 20230, 202-377-8275.

FOR FURTHER INFORMATION CONTACT: John F. Iglehart, Acting Regional Director, Washington Regional Office.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development Catalog of Federal Domestic Assistance)

Dated: November 15, 1989.

John F. Iglehart,

Acting Regional Director, Washington Regional Office.

[FR Doc. 89-27519 Filed 11-22-89; 8:45 am]

BILLING CODE 3510-21-M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 11-13 December 1989.

Time: 0900-1600 hours, daily.

Place: The Pentagon, Washington, DC.

Agenda: The Army Science Board Ad Hoc Subgroup on Electromagnetic and Electrothermal Technologies will convene to continue a review of the program. 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) 695-0781/0782.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 89-27483 Filed 11-22-89; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 18-20 December 1989.

Time: 0900-1600 hours, daily.

Place: The Pentagon, Washington, DC.

Agenda: The Army Science Board Ad Hoc Subgroup on Electromagnetic and Electrothermal Technologies will convene for the purpose of preparing a report documenting the results of their review of the program. 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 matter 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 futher information at (202) 695-0781/0782.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 89-27484 Filed 11-22-89; 8:45am]

BILLING CODE 3710-08-M

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the potential modifications at Marmet Locks and Dam on the Kanawha River near Charleston, WV

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: The Huntington District is currently involved in navigation studies on the Kanawha River. These studies are to determine the need to, and ways to modify the existing Marmet navigation structure to maintain a modern, safe and efficient system on the Kanawha. Traffic congestion at Marmet Locks is a recurring problem. Preliminary studies indicate that by 2010 the problem will be chronic. Lock closures for outages and maintenance are becoming increasingly frequent at the structure. Alternatives to add, or replace at least one chamber with a larger, more efficient chamber; or to replace the entire project are being evaluated. Construction activities and disposal of excavated materials will cause significant environmental impacts. These effects are being assessed. The possibility of significant secondary impacts to the river ecosystem caused by changes in tow configurations and traffic is also being studied. Consequently, the Huntington District Engineer has determined that preparation of a Draft Environmental Impact statement is required.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and DEIS should be addressed to: Mr. Tom O'Neil, Planning Division (CEORH-PD-R), Huntington District, Corps of Engineers, 502 Eighth Street, Huntington, West Virginia 25701-2070, Phone: 304-529-5712.

SUPPLEMENTARY INFORMATION:

Project Authorities

Marmet Locks and Dam is located on the Kanawha River, 67.7 above the river's mouth, about 10 miles upstream of Charleston, WV. The project was authorized by the River and Harbor Act of 3 July 1930 and the Public Works Administration in 1933. It was completed in 1934. The present study for navigation improvements at Marmet is the second of three interim reports for the multiphased Kanawha River Navigation Study which the Senate Committee on Environment and Public Works authorized by resolution on 1 October 1979.

Proposed Action

Currently no single alternative has been proposed for implementation.

Reasonable Alternatives

Eight lock improvement alternatives involving construction were considered during the initial planning phase. Four of these alternatives, plus a no action alternative are being evaluated in the detailed plan formulation studies. Each of the remaining alternative includes one or two locks with a range of potential lock chamber sizes. Each alternative is being evaluated to determine the optimum number and size lock. The basic construction alternatives being considered are:

a. A new main lock at the existing site along the right bank.

b. A new lock at mid-river.

c. A new main lock at the left bank.

d. A new lock(s) and dam project downstream near Rand, WV.

Implementation of a no action alternative will lead to the future without project condition. The future without project condition will be the condition to which all alternatives will be compared.

Excavated Materials Disposal

Disposal of material excavated for construction of the new lock(s) would adversely impact environmental resources in the dispoasl area. Several disposal sites are being studied.

Public Involvement

The District has actively sought the views of several federal, state, and local agencies, and groups likely to have ecological, recreational, cultural, social, or industrial concerns. District staff have been consulting and/or meeting regularly with the US Fish and Wildlife Service (US FWS), the West Virginia Department of Natural Resources (WV DNR), the US and WV Departments of Agriculture, the US Environmental Protection Agency (US EPA), the US and WV Departments of Energy, the WV Housing Development Funds, WV Department of Commerce, the Governor's Office of Economic and Community Development, and the Huntington District Waterways Advisory Committee (a navigation industry organization). In February 1987, the various agencies were invited to become cooperating agencies in the study. An initial public meeting and workshops to obtain the views of agencies, groups, and individuals will be conducted. These meetings will be conducted near the Marmet Locks. A second public meeting will be scheduled after the distribution of the draft report and DEIS.

Significant Issues

Several potentially significant issues have been identified. Studies are presently underway to assess and quantify the significance of each issue. Potentially significant issues are: (1) The economic effects of continuing and increasing lockage delays at Marmet Locks to the shippers, the industries in the Kanawha Valley, and the regional and national economy, (2) The probability of chemical spills due to tow accidents increases as lock congestion increases, (3) Local residents are concerned about the effects of displacement and relocation of their homes, jobs, and shopping places, (4) Local businesses and industries are concerned about the effects of displacement and relocation of their facilities, employees and clients, (5) Impacts to cultural, biological and recreational resources at the project construction and disposal sites may be significant, (6) Impacts to the river ecosystem caused by changes in the Marmet Pool tow traffic and tow configurations are also an issue.

Agency Involvement

The cooperating agencies, WV DNR, the Huntington District Waterways Advisory Committee, and other interested agencies will contribute information to the Corps of Engineers for use in preparing the DEIS. The cooperating agencies, VW DNR and the Waterways Advisory Committee will also provide preliminary document review before the district finalizes and circulates the DEIS.

Environmental Requirements

Full compliance with all applicable environmental protection statutes and regulations will be accomplished prior to, or as a part of, the National Environmental Policy Act procedure. The federal, state and local entities responsible for enforcing these laws will be consulted throughout the planning process.

Scoping Meetings

It is anticipated that the initial public scoping meeting and workshops will be conducted in November 1989. A public notice will announce each public scoping meeting.

DEIS Availability

It is anticipated that the DEIS should be made available for public review early in 1992.

Dated: November 9, 1989.

Thomas E. Farewell,

Colonel, Corps of Engineers, District Engingeer.

[FR Doc. 89-27520 Filed 11-22-89; 8:45 am]

BILLING CODE 3710-GM-M

Department of the Navy

Intent To Prepare Environmental Impact Statement for Proposed Operation of Electromagnetic Pulse Radiation Environment Simulator for Ships (Empress II) in Gulf of Mexico

Pursuant to procedural requirements of section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as implemented by the Council on Environmental Quality regulations (40 CFR parts 1500–1508), and Executive Order 12114 (Environmental Effects Abroad of Major Federal Actions), the Department of the Navy announces its intent to prepare an Environmental Impact Statement (EIS) for the proposed operation of the Electromagnetic Pulse Radiation Environment Simulator for Ships (EMPRESS II) in both fixed point and underway station-keeping configurations in the Gulf of Mexico.

EMPRESS II, a transportable, barge-mounted, ocean-capable Electromagnetic Pulse (EMP) simulator, is an essential element in identifying U.S. Navy electronic systems that are vulnerable to EMP and in validating those systems for which EMP protection has been provided. EMP is a brief, intensive burst of electromagnetic energy of the kind that would be generated by a nuclear explosion. EMP from a high altitude detonation is able to penetrate, and upset or damage; unprotected critical electronic systems. EMPRESS II simulates only the EMP output of a nuclear detonation; other phenomena assocated with a nuclear detonation (blast energy, heat and ionizing radiation) are not simulated by the test facility.

EMPRESS II had been operating periodically at a single-point moor about 15 miles off the North Carolina coast following the completion of a Final Environmental Impact Statement (FEIS) in April 1988 and a Record of Decision (ROD) issued on 27 May 1988. EMPRESS II has also been operating periodically in an underway station-keeping configuration aout 15 to 20 miles off the North Carolina Coast following completion of an Environmental Assessment (EA) in June 1989 and a Finding of No Significant Impact (FONSI) on 19 June 1989. The underway station-keeping configuration is accomplished by towing the EMPRESS II vessel on a prescribed course within the confines of a designated area while the ship under test maintains distance and aspect by maneuvering.

As a consequence of weather and sea conditions, the Atlantic Ocean operations are restricted to the months of June, July and August. A winter operating site is desired to meet testing requirements and provide for scheduling flexibility. The proposed operating areas for EMPRESS II in the Gulf of Mexico are located 25 to 70 miles from the nearest land masses at the Alabama/Mississippi state boundary.

The Navy held meetings with various Federal, state and local agencies in May 1989 to scope the issue of operating EMPRESS II in the Gulf of Mexico. Public meetings were held in July 1989 by the Navy in Slidell, Louisiana, Biloxi, Mississippi, and Mobile, Alabama to present an overview of the EMPRESS II project.

A letter describing the Navy's intentions to prepare an EA for operation of EMPRESS II in the Gulf of Mexico was sent in July 1989 to about 175 interested and potentially affected citizens, as well as Federal, state and local agencies. Comments regarding the Navy's intentions were solicited. About 25 comments were received.

The Navy held another series of public meetings in September and October 1989 in Slidell, Louisiana, Biloxi, Mississippi, Pascagoula, Mississippi, Mobile, Alabama, and Dauphin Island, Alabama.

Because the proposed action would result in EMPRESS II operations at a new site about 1,500 miles form the existing sites off North Carolina, and in order to more formally include interested citizens and agencies to the maximum extent possible, the Navy has decided that an EIS would be more appropriate than an EA for this proposed action.

Site selection criteria includes Navy control of surface/air operations; minimal impact on commercial shipping/air operations; relatively isolated environment; maneuvering room with at least 40 feet of water; avoidance of defined shipping channels; minimal socio-economic/environmental impact; proximity to Navy ships, Navy and commercial shipbuilding yards, and Navy training areas; acceptable transit time from berth to operating areas; ability to allow an exclusion area, two nautical miles in radius and 6000 feet above the EMPRESS II facility.

Alternative operational areas to be considered in the EIS, as specified by the Latitude and Longitude of their corners and their associated Warning area designation, include:

Alternative	Latitude	Longitude	Warning Area Designation
1	29°17'00" N	88°30'00" W	Eagle Gulf 1
	29°17'00" N	88°01'30" W	
	29°32'00" N	88°30'00" W	
	29°32'00" N	88°01'30" W	
2	29°36'00" N	88°01'00" W	W-155A
	29°48'30" N	87°37'00" W	Lanes 5 & 6
	29°48'30" N	88°01'00" W	
	29°32'30" N	87°37'00" W	
3	29°00'30" N	88°01'00" W	W-155B
	29°13'30" N	87°37'00" W	Lane 7
	29°13'30" N	88°01'00" W	
	28°51'00" N	87°37'00" W	

The EIS will also include consideration of the No Action alternative. The No Action alternative would preclude operations in the Gulf of Mexico and would result in EMPRESS II operations continuing as currently conducted in the operating areas off the coast of North Carolina.

Typical usage of EMPRESS II in the Gulf of Mexico would be about 60 days per year. Testing would typically be conducted during daylight hours for test periods of one, three, or ten days from November through April.

Public input is solicited to help identify any environmental issues meriting in-depth study during preparation of the EIS. Information regarding areas of concern, specific interest or expertise should be sent within 30 days of the date of publication of this notice to Commander, Naval Sea Systems Command (Attn: LT Jay Rose, Code PMS–423), Washington, DC 20362–5101.

Dated: November 20, 1989.

Sandra M. Kay,

Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 89–27558 Filed 11–22–89; 8:45 am]

BILLING CODE 3810–AE–M

Government-Owned Inventions; Availability of Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice of Availability of Inventions for Licensing.

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are made available for licensing by the Department of the Navy.

Copies of patents cited are available from the Commissioner of Patents and Trademarks, Washington, DC 20231, for $1.50 each. Requests for copies of patents must include the patent number.

Copies of patent applications cited are available from the National Technical Information Service (NTIS), Springfield, Virginia 22161. Copies also may be ordered by telephone request to (703) 487–4650. Requests for copies of patent applications must include the patent application serial number. Claims are deleted from the patent application copies sold to avoid premature disclosure.

DATE: November 24, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. R.J. Erickson, Staff Patent Attorney, Office of the Chief of Naval Research (Code OOCCIP), Arlington, Virginia 22217–5000, telephone (202) 696–4001.

Patent 4,452,123: COMPOSITE ROUND/RAPID FIRE GUN; filed 1 March 1982; patented 5 June 1984.

Patent 4,550,601: METHOD FOR DETERMINING THE MAGNITUDE OF EARTH'S GRAVITY; filed 27 February 1984; patented 5 November 1985.

Patent 4,639,399: NICKEL, OXIDE, CERAMIC INSULATED HIGH TEMPERATURE COATING; filed 26 November 1985; patented 27 January 1987.

Patent 4,698,635: TERRAIN REFLECTIVITY CONTOUR MAPPING; filed 31 March 1986; patented 6 October 1987.

Patent 4,722,825: METHOD OF FABRICATING A METAL/CERAMIC COMPOSITE STRUCTURE; filed 1 July 1987; patented 2 February 1988.

Patent 4,728,682: METAL TERNARY SULFIDES; filed 30 September 1985; patented 1 March 1988.

Patent 4,736,175: POLARIZED ROTARY SOLENOID; filed 9 February 1987; patented 5 April 1988.

Patent 4,736,439: IMAGE PREPROCESSING BY MODIFIED MEDIAN FILTER; filed 24 May 1985; patented 5 April 1988.

Patent 4,737,740: DISCONTINUOUS-TAPER DIRECTIONAL COUPLER; filed 26 May 1983; patented 12 April 1988.

Patent 4,738,412: AIR-STABILIZED GIMBAL PLATFORM; filed 24 August 1987; patented 19 April 1988.

Patent 4,740,628: 2,4,4,5,5,6,6-HEPTAFLUORO-2-TRIFLUOROMETHYL-3-OXAHEPTANE-1,7-DIOL POLYFORMAL AND METHOD OF PREPARATION; filed 5 May 1987; patented 26 April 1988.

Patent 4,741,742: DIAZIDO ALKANES AND DIAZIDO ALKANOLS AS COMBUSTION MODIFIERS FOR LIQUID HYDROCARBON RAMJET FUELS; filed 3 July 1986; patented 3 May 1988.

Patent 4,747,673: HIGH POWER OPTICAL ATENUATOR; filed 1 June 1987; patented 31 May 1988.

Patent 4,775,729: CURABLE POLYETHER COMPOSITIONS; filed 23 May 1986; patented 4 October 1988.

Patent 4,778,871: HIGH TEMPERATURE INSULATOR; filed 25 August 1987; patented 18 October 1988.

Patent 4,799,202: COMPLIMENTARY INTERFEROMETRIC HYDROPHONE; filed 27 September 1982; patented 17 January 1989.

Patent 4,815,858: REFLECTOMETER; filed 9 October 1987; patented 28 March 1989.

Patent 4,816,881: TIW DIFFUSION BARRIER FOR AUZU OHMIC CONTACTS TO P-TYPE INP; filed 27 June 1985; patented 28 March 1989.

Patent 4,818,661: METHOD FOR FABRICATING THIN FILM METALLIC MESHES FOR USE AS FABRY-PEROT INTERFEROMETER ELEMENTS, FILTERS, AND OTHER DEVICES; filed 31 July 1987; patented 4 April 1989.

Patent 4,819,190: VIDEO LINE PROCESSOR; filed 18 June 1986; patented 4 April 1989.

Patent 4,821,302: METHOD AND APPARATUS FOR TRANSIENT UNIT CELL MEASUREMENT; filed 29 February 1988; patented 11 April 1989.

Patent 4,827,414: MONITORING SYSTEM FOR NUCLEAR WARFARE DETECTION AND DAMAGE ASSESSMENT; filed 8 July 1985; patented 2 May 1989.

Patent 4,828,935: A PASSIVATING LAYER FOR III–V SEMICONDUCTOR MATERIALS; filed 30 March 1988; patented 9 May 1989.

Patent 4,829,521: TEST CIRCUIT FOR DETECTING DIGITAL PULSES; filed 11 September 1987; patented 9 May 1989.

Patent 4,843,965: THERMALLY ACTIVATED SAFETY AND ARMING DEVICE; filed 23 February 1988; patented 4 July 1989.

Patent 4,845,508: ELECTRIC WAVE DEVICE AND METHOD FOR EFFICIENT EXCITATION OF A DIELECTRIC ROD; filed 1 May 1986; patented 4 July 1989.

Patent 4,846,209: SCUTTLE VALVE; filed 13 November 1987; patented 11 July 1989.

Patent 4,846,545: FIBER OPTIC CABLE SPLICE; filed 17 February 1988; patented 11 July 1989.

Patent 4,847,628: FREQUENCY INDEPENDENT CONSTANT BEAMWIDTH LENS DIRECTIONAL ANTENNA FOR VERY WIDEBAND AND MULTI-CHANNEL ELECTROMAGNETIC COMMUNICATIONS; filed 7 July 1988; patented 11 July 1989.

Patent 4,847,817: BROADBAND SONAR SIGNAL PROCESSOR AND TARGET RECOGNITION SYSTEM; filed 10 March 1987; patented 11 July 1989.

Patent 4,848,210: ELASTOMERIC IMPULSE ENERGY STORAGE AND TRANSFER SYSTEM; filed 1 July 1987; patented 18 July 1989.

Patent 4,848,233: MEANS FOR PROTECTING ELECTROEXPLOSIVE DEVICES WHICH ARE SUBJECT TO A WIDE VARIETY OF RADIO FREQUENCY; filed 1 October 1985; patented 18 July 1989.

Patent 4,848,262: PRESSURE SENSITIVE RELEASE DEVICE; filed 25 August 1988; patented 18 July 1989.

Patent 4,849,540: PENTAFLUOROTHIO POLYNITROALIPHATIC EXPLOSIVES; filed 24 June 1988; patented 18 July 1989.

Patent 4,849,925: MAXIMUM ENTROPY DECONVOLVER CIRCUIT BASED ON NEURAL NET PRINCIPLES; filed 15 January 1988; patented 18 July 1989.

Patent 4,850,098: METHOD AND APPARATUS TO ENHANCE THE SENSITIVITY OF CYLINDRICAL MAGNETOSTRICTIVE

TRANSDUCERS TO MAGNETIC FIELDS; filed 15 April 1988; patented 25 July 1989.

Patent 4,851,661: PROGRAMMABLE NEAR-INFRARED RANGING SYSTEM; filed 26 February 1988; patented 25 July 1989.

Patent 4,851,664: NARROW BAND AND WIDE ANGLE HEMISPHERICAL INTERFERENCE OPTICAL FILTER; filed 27 June 1988; patented 25 July 1989.

Patent 4,851,848: FREQUENCY AGILE SYNTHETIC APERTURE RADAR; filed 1 February 1988; patented 25 July 1989.

Patent 4,853,294: CARBON FIBER REINFORCED METAL MATRIX COMPOSITES; filed 28 June 1988; patented 1 August 1989.

Patent 4,853,339: METHOD OF SENSITIZING PB–SALT EPITAXIAL FILMS FOR SCHOTTKY DIODES; filed 27 July 1988; patented 1 August 1989.

Patent 4,853,650: SYMMETRIC WAVEGUIDE JUNCTION COMBINER; filed 4 October 1988; patented 1 August 1989.

Patent 4,853,771: ROBOTIC VISION SYSTEM; filed 8 April 1988; patented 1 August 1989.

Patent 4,853,900: STABILIZED SUSPENSION FOR IMMERSIBLE APPARATUS; filed 19 October 1987; patented 1 August 1989.

Patent 4,854,174: COLINEAR FLUCTUATING WALL SHEAR STRESS AND FLUCTUATING PRESSURE TRANSDUCER; filed 25 April 1988; patented 8 August 1989.

Patent 4,856,095: OPFET DEMODULATOR–DOWNCONVERTER FOR DETECTING MICROWAVE MODULATED OPTICAL SIGNALS; filed 28 May 1987; patented 8 August 1989.

Patent 4,857,894: LIQUID LEVEL MEASUREMENT SYSTEM FOR ANALOG AND DIGITAL READOUT; filed 27 June 1988; patented 15 August 1989.

Patent 4,857,912: INTELLIGENT SECURITY ASSESSMENT SYSTEM; filed 27 July 1988; patented 15 August 1989.

Patent 4,859,059: THERMAL MODULATION OF LIGHT BEAMS; filed 13 January 1988; patented 22 August 1989.

Patent 4,860,013: AUTOMATIC THRESHOLDING MULTICHANNEL DIGITAL RADAR EARLY WARNING SYSTEM; filed 4 April 1988; patented 22 August 1989.

Patent 4,861,298: ACTUATION SYSTEM OF AN ENCAPSULATING LIFE RAFT; filed 24 June 1988; patented 29 August 1989.

Patent 4,861,859: CONDUCTIVE POLYMERS OF TRANSITION–METAL COMPLEXES COORDINATED BY DIAMINOBEZENEDITHIOL; filed 28 March 1988; patented 29 August 1989.

Patent 4,862,115: OPTICAL BEAMFORMERS; filed 12 February 1988; patented 29 August 1989.

Patent 4,862,116: ACTIVE PHASE AND AMPLITUDE MODULATOR; filed 17 October 1988; patented 29 August 1989.

Patent 4,862,406: ADAPTIVE ASSOCIATIVE–PROCESSING OPTICAL COMPUTING ARCHITECTURES; filed 29 January 1988; patented 29 August 1989.

Patent 4,862,456: HIGH SPEED MODEM; filed 4 May 1988; patented 29 August 1989.

Patent Application 266,955: HELMET–MOUNTED HEAD RESTRAINT; filed 3 November 1988.

Patent Application 275,873: LARGE APERTURE SPARSE ARRAY ANTENNA SYSTEM OF / MODERATE BANDWIDTH FOR MULTIPLE EMITTER LOCATION; filed 25 November 1988.

Patent Application 304,442: GYROKLYSTRON DEVICE HAVING MULTI–SLOT BUNCHING CAVITIES; filed 31 January 1989.

Patent Application 342,919: INTERFEROMETRIC SURFACE DISTORTION DETECTOR; filed 20 April 1989.

Patent Application 343,762: COATING AND COMPOSITION CONTAINING LIPID MICROSTRUCTURE TOXIN; filed 14 April 1989.

Patent Application 347,132: MONOLITHIC LASER DIODE STRUCTURE FOR MICROWAVE GENERATION; filed 4 May 1989.

Patent Application 364,416: TEMPERATURE STABLE CERAMIC DIELECTRIC COMPOSITIONS; filed 12 June 1989.

Patent Application 370,521: A SCHEINER–PRINCIPLE VERNIER OPTOMETER; filed 23 June 1989.

Patent Application 371,778: METHOD OF MAKING SELF–ALIGNED GAAS/ALGAAS FET'S; filed 27 June 1989.

Patent Application 372,961: MULTIBAND PHOTOCONDUCTIVE DETECTOR BASED ON LAYERED SEMICONDUCTOR QUANTUM WELLS; filed 29 June 1989.

Patent Application 372,963: FOCAL PLANE ANTENNA ARRAY FOR MILLIMETER WAVES; filed 29 June 1989.

Patent Application 373,979: NOISE SUPPRESSING HYDROPHONE; filed 30 June 1989.

Patent Application 373,980: IMPROVED METHOD FOR STABILIZATION OF PAN–BASED CARBON FIBERS; filed 30 June 1989.

Patent Application 374,035: FABRICATION OF NBN BASED ELECTRONIC DEVICES WITH SILICON BARRIERS; filed 30 June 1989.

Patent Application 374,119: HIGH POWER TRANSDUCERS; filed 30 June 1989.

Patent Application 376,278: METHOD FOR DETERMINING ASTRONOMIC AZIMUTH; filed 5 July 1989.

Patent Application 377,997: METAL FILM COATINGS ON AMORPHOUS METALLIC ALLOYS; filed 11 July 1989.

Patent Application 387,048: VOLATILE DIVALENT METAL ALKOXIDES; filed 31 July 1989.

Patent Application 389,218: SILVER COMPOSITE CATHODES FOR ALKALINE SECONDARY BATTERIES; filed 2 August 1989.

Patent Application 389,219: ELECTROCHEMICAL PREPARATION OF SILVER OXIDE ELECTRODES HAVING HIGH THERMAL STABILITY; filed 2 August 1989.

Patent Application 389,220: SILVER COATED SUPERCONDUCTING CERAMIC POWDER; filed 2 August 1989.

Patent Application 394,457: LASER DETECTION AND DISCRIMINATION SYSTEM; filed 16 August 1989.

Patent Application 394,547: SILVER–NICKEL COMPOSITE CATHODES FOR ALKALINE SECONDARY BATTERIES; filed 16 August 1989.

Patent Application 400,197: FLUOROALIPHATIC POLYAMIDES SYNTHESIZED VIA PEPTIDE BLOCKING GROUP AND COUPLING TECHNIQUES; filed 28 August 1989.

Patent Application 401,197: A METHOD OF SOLDERING ALUMINUM; filed 29 August 1989.

Patent Application 408,337: LASER COMMUNICATION SYSTEM WITH WIDE BAND MAGNETOSTRICTIVE MODULATION; filed 15 September 1989.

Patent Application 408,970: RECONFIGURABLE N–DIMENSIONAL COMPUTER MEMORY FOR SERIAL AND PARALLEL PROCESSORS; filed 18 September 1989.

Dated: November 20, 1989.

Sandra M. Kay,

Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 89–27557 Filed 11–22–89; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF EDUCATION

Office of Educational Research and Improvement

AGENCY: Advisory Council on Education Statistics (ACES), Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Advisory Council on Education Statistics. This notice also describes the functions of the Council. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATE AND TIME: December 14, 9:00 a.m.–4:45 p.m. and December 15, 1989, 9 a.m.–4:45 p.m.

ADDRESS: 555 New Jersey Avenue NW., Room 326, Washington, DC 20208.

FOR FURTHER INFORMATION CONTACT: Carrol B. Kindel, Executive Director, Advisory Council on Education Statistics, 555 New Jersey Avenue, Room 308E, Washington, DC 20208–5574, telephone: (202) 357–6329.

SUPPLEMENTARY INFORMATION: The Advisory Council on Education Statistics is established under section 406(c)(1) of the Education Amendments of 1974, Public Law 93–380. The Council is established to review general policies for the operation of the National Center for Education Statistics (NCES) in the Office of Educational Research and Improvement and is responsible for advising on standards to insure that statistics and analyses disseminated by NCES are of high quality and are not subject to political influence. The meeting of the Council is open to the public.

The proposed agenda includes the following:

- Data Quality—A Three-Part Discussion: NCES standards revision; NCES management indicators; and, Trade-offs between data quality and timeliness
- Review of Progress: Sharing Data and Confidentiality Issues
- Education Indicators Panel: Work-in-Progress

Records are kept of all Council proceedings and are available for public inspection at the Office of the Executive Director, Advisory Council on Education Statistics, 555 New Jersey Avenue NW., Room 308E, Washington, DC 20208–5574.

Dated: November 15, 1989.

Christopher T. Cross,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 89–27560 Filed 11–22–89; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP89–242–001]

Tennessee Gas Pipeline Co.; Filing

November 16, 1989.

Take notice on November 9, 1989, Tennessee Gas Pipeline Company (Tennessee) tendered for filing the following revised tariff sheets in Second Revised Volume No. 1 of its FERC Gas Tariff to be effective on October 26, 1989:

Substitute Second Revised Sheet No. 106
Second Substitute Second Revised Sheet No. 111
Second Substitute Original Sheet No. 111A
Second Substitute Third Revised Sheet No. 114
Third Substitute Second Revised Sheet No. 205
Substitute Second Revised Sheet No. 208
Substitute First Revised Sheet No. 208A
Substitute First Revised Sheet No. 208B
Substitute Second Revised Sheet No. 247
Substitute Second Revised Sheet No. 249
Substitute Second Revised Sheet No. 252
Substitute Second Revised Sheet No. 339
Substitute Second Revised Sheet No. 347

Tennessee states that this filing is made to comply with the Commission's order on October 25, 1989, which directed Tennessee (1) to revise the tariff sheets filed in this proceeding to make them effective as of October 26, 1989; (2) to remove that portion of section 5.1 of Rate Schedule FT–A that provides that the reservation and commodity rate is incapable of reduction, but subject to increase; (3) to clarify that a shipper will not be penalized twice for the same imbalance infraction; and (4) to remove sections 7(g) and 7(h) of the General Terms and Conditions.

Tennessee also requested that the Commission waive the imposition of the scheduling penalties in sections 7(e) and 7(f) of its General Terms and Conditions filed in this proceeding until December 1, 1989. Tennessee states that such a limited waiver is required to enable it to notify its customers of the new penalties.

Tennessee has also requested an extension of time until December 22, 1989, to file tariff sheet(s) which will set forth the minimum throughput required for the operation of the compressor stations located on its system based upon design compressor ratios and minimum design suction pressures.

Tennessee states that copies of its filing are available for inspection at its principal place of business in the Tenneco Building, Houston, Texas, and have been mailed to all affected customers.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such protests should be filed on or before November 24, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–27561 Filed 11–22–89; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

[ERA Docket No. 88–71–NG]

Intalco Aluminum Corp.; Order Amending Conditional Authorization To Import Natural Gas

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of an order amending a conditional authorization to import natural gas by allowing use of existing facilities.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice that is has issued an order amending a conditional authorization granting Intalco Aluminum Corporation (Intalco) blanket authorization to import natural gas from Canada. The order issued in ERA Docket No 88–71–NG authorizes Intalco to import up to 2 Bcf per year of Canadian natural gas using existing facilities over a two-year period for use as fuel in its aluminum smelting plant located near Ferndale, Washington.

A copy of this order is available for inspection and copying in the Office of

Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, November 14, 1989.

Constance L. Buckley,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 89–27608 Filed 11–22–89; 8:45 am]

BILLING CODE 6450–01–M

Office of Hearings and Appeals

Cases Filed; Week of October 20 Through October 27, 1989

During the Week of October 20 through October 27, 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: November 15, 1989.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of October 20 through October 27, 1989]

Date	Name and location of applicant	Case No.	Type of submission
Oct. 24, 1989	Georgia-Pacific Corporation, Atlanta, GA	RR272–39	Modification/rescission in the crude oil refund proceeding. If granted: The August 24, 1989 Decision and Order (Case No. RF272–153) issued to Georgia-Pacific Corporation would be modified regarding the firm's Application for Refund submitted in the crude oil refund proceeding.
Oct. 26, 1989	Ben Glaser's Service Station, Inc., Buffalo, NY	RR272–40	Request for modification/rescission in the crude oil refund proceeding. If granted: The Decision and Order issued to Ben Glaser's Service Station would be modified regarding the firm's Application for Refund submitted in the crude oil refund proceeding.
Oct. 26, 1989	William Albert Hewgley, Kingston, TN	LFA–0004	Appeal of an information request denial. If granted: The October 17, 1989 Freedom of Information Request Denial issued by the Oak Ridge Operations Office would be rescinded, and William A. Hewgley would receive access to certain DOE information.
Oct. 27, 1989	Petraco-Valley Oil Company, Washington, DC	LEF–0002	Implementation of special refund procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR Part 205, Subpart V, in connection with February 15, 1984 consent order which the DOE entered into with Petraco-Valley Company.

REFUND APPLICATIONS RECEIVED

[Week of October 20, 1989 to October 27, 1989]

Date	Name of firm	Date received
10/20/89	Independent Oil & Fire Company	RF250–2750
10/20/89 thru 10/27/89	Crude oil refund, applications received	RF272–75850 thru RF272–76125
10/20/89 thru 10/27/89	Atlantic Richfield refund, applications received	RF304–10536 thru RF304–10561
10/20/89 thru 10/27/89	Shell oil refund, applications received	RF315–7677 thru RF315–7778
10/23/89	Douglas Dowson	RF300–10881
10/23/89	Glenn Dowson	RF300–10882
10/25/89	Robert L. & Irene Anderson	RF310–347
10/25/89	J.M. & R.D. Lapinski	RF300–10883
10/25/89	Hammond Spur	RF309–1375
10/26/89	Winding Ridge Gulf	RF300–10884

[FR Doc. 89–27609 Filed 11–22–89; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FM 3682–8]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATE: Comments must be submitted on or before December 26, 1989.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 382–2740.

SUPPLEMENTARY INFORMATION:

Office of Research and Development

Title: Quality Control Samples Form (EPA ICR #0941.03). This is a renewal.

Abstract: The Quality Control Samples Forms are completed and used by the laboratories conducting water and waste analysis to offer independent checks on their quality control activities. The information required is name, address, and quality control samples or

calibration standard types. The information is used as the basis for laboratory quality assurance.

Burden Statement: The estimated average public reporting burden for this collection of information is about 10 minutes per respondent. This estimate includes all aspects of the information collection including time for reviewing instructions, gathering data, and preparing and reviewing the form.

Respondents: Laboratories conducting water or waste analyses.

Estimated No. of Respondents: 5000.

Estimated total annual Burden of Respondents: 800 hours.

Frequency of collection: on occasion.

Send comments regarding the burden estimate, or any other aspect of these information collections, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223), 401 M Street, SW., Washington, DC 20460

and

Marcus Peacock, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place, NW., Washington, DC 20530.

Dated: November 14, 1989.

Paul Lapsley,

Director, Information and Regulatory Systems Division.

[FR Doc. 89-27606 Filed 11-22-89; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3683-1]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5076 or (202) 382-5073.

Availability of Environmental Impact Statements Filed November 13, 1989 Through November 17, 1989 Pursuant to 40 CFR 1506.9.

EIS No. 890322, Draft, COE, WV, Petersburg Local Flood Protection Plan, Implementation, Grant County, WV, Due: January 8, 1990. Contact: J. William Haines (301) 962-8154.

EIS No. 890323, Draft, FRC, MA, CT, NH, NY, RI, and TN, Iroquois and Tennessee Gas Transmission Pipelines Project, Construction and Operation, MA, CT, NH, NY, RI, TN, Due: January 19, 1990, Contact: Mark W. Jensen (202) 357-9021.

EIS No. 890324, Draft, FRC, MA, NH, VT, Champlain Pipeline and Algonquin Gas Transmission Pipeline, Construction and Operation, Section 10 and 404 Permits, MA, VT, and NH, Due: Open Indefinitely, Contact: Lonnie Lister (202) 357-8891.

If you have comments on the Algonquin Facilities which is also a part of the Iroquois/Tennessee Pipeline EIS, please be sure to submit them to Mr. Mark Jensen, Environmental Policy/Project Branch, Office of Pipeline/Producer Regs, Rm 7312, 825 North Capitol St, NE, Wash, DC 20426, by January 19, 1990.

EIS No. 890325, Draft, FRC, NJ, Mount Hope Pumped Storage Hydroelectric Project, Construction, Operation and Maintenance, License, Section 404 Permit, Morris County, NJ, Due: January 8, 1990, Contact: Mr. Paul Carrier (202) 376-9213.

EIS No. 890326, Final, BLM, AK, Utility Corridor Planning Area Resource Management Plan and Central Arctic Management, WSA Recommendations Implementation, AK, Due: December 26, 1989, Contact: Tom Dean (907) 474-2302.

EIS No. 890327, Draft, UAF, CA, Mather Air Force Base (AFB) Closure, 323rd Flying Training Wing Relocation to Beale AFB, Implementation, Sacramento, County, CA, Due: January 8, 1990, Contact: Catherine Hitchins (512) 652-3240.

EIS No. 890328, DSuppl, AFS, NH, Loon Mountain Ski Area, South Mountain Expansion Project, Updated Information, Special Use Permit, White Mountain National Forest, Grafton County, NH, Due: January 8, 1990, Contact: Dain Maddox (414) 291-3305.

EIS No. 890329, FSuppl, AFS, AK, 1981-86 and 1986-90 Alaska Pulp Long-Term Timber Sale Operating Plan, Phase I and II, Implementation Tongass National Forest, AK, Due: December 26, 1989, Contact: James W. Price (907) 586-8871.

EIS No. 890330, Draft, UAF, CA, Norton Air Force Base (AFB) Closure, 63rd Military Airlift Wing, Relocation to March AFB, Implementation, San Bernardino County, CA, Due: January 8, 1990, Contact: Patricia Calliott (681) 256-5764.

Dated: November 20, 1989.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 89-27614 Filed 11-22-89; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3683-2]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared November 6, 1989 through November 10, 1989 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the **Federal Register** dated April 7, 1989 (54 FR 15006).

Draft EISs

ERP No. D-APH-A82120-00, Rating EO2, National Boll Weevil Cooperative Control Program, Implementation and Funding, AL, AZ, AR, CA, FL, GA, KS, LA, MS, MO, NM, NC, OK, SC, TN, TX, VA.

Summary

EPA has environmental objections to the implementation of the program because of significant impacts to water resources and non-target species by pesticide use.

Final EISs

ERP No. F-FHW-D40239-MD, US 1 Improvements, Silver Spring Road to MD-152, Funding and 404 Permit, Baltimore and Harford Counties, MD.

Summary

EPA believes that the environmental concerns have been adequately addressed. EPA has offered to participate in the development of the wetland mitigation plan.

Dated: November 20, 1989.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 89-27615 Filed 11-22-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL 3683-4]

Negotiated Rulemaking Advisory Committee for the Volatile Organic Chemical Equipment Leaks

As required by section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), we are giving notice of open meetings of the Advisory Committee to negotiate a rule to control fugitive emissions of toxic volatile organic compounds (VOCs) from chemical equipment leaks.

The second meeting will be held on December 6, 1989 from 10:00 a.m. to 5:00 p.m., and on December 7, 1989 from 9:00 a.m. to 4:00 p.m., at the Embassy Suites Hotel, 2000 N St., NW., Washington, DC. The purpose of the meeting is to continue to address the substantive issues.

The third meeting is scheduled for January 17 and 18, 1990, at the Pickett Inn, 2515 Meridan Street, Raleigh Durham, NC.

Persons needing further information on substantive aspects of the rule should call Robert Ajax, Office of Air Quality Planning and Standards, U.S. EPA, (919) 541–5579. Persons needing further information on committee arrangements or procedures should contact Deborah Dalton, Regulatory Negotiation Project, U.S. EPA, (202) 382–5495 or the Committee's facilitator, Philip Harter, (202) 887–1033.

Dated: November 20, 1989.

Paul Lapsley,

Acting Director, Office of Standards and Regulations, OPPE.

[FR Doc. 89–27665 Filed 11–22–89; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL MARITIME COMMISSION

Port of New Orleans Terminal Agreement Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 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 in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commisson regarding a pending agreement.

Agreement Nos.: 224–200060–013

Title: Port of New Orleans Terminal Agreement.

Parties:

Port of New Orleans

Coastal Cargo Company

Synopsis: The Agreement amends the basic lease agreement to provide for the re-letting of ten sections of the leased premises.

By Order of the Federal Maritime Commission.

Dated: November 17, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89–27566 Filed 11–22–89; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Alameda Bancorp., Inc.; Formation of; Acquisition by; and Merger of Bank Holding Companies

The company listed in this notice has 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 application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

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 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 the hearings, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than December 13, 1989.

A. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Alameda Bancorporation, Inc.*, Alameda, California; to acquire 100 percent of the voting shares of Westside Bank, Tracy, California.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89–27553 Filed 11–22–89; 8:45 am]

BILLING CODE 6210–01–M

Bankamerica Corp., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(v)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.12(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than December 15, 1989.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *BankAmerica Corporation*, San Francisco, California; Bankers Trust New York Corporation, New York, New York; The Chase Manhattan Corporation, New York, New York; Chemical Banking Corporation, New York, New York; Citicorp, New York, New York; Continental Bank Corporation, Chicago, Illinois; First Chicago Corporation, Chicago, Illinois; The Bank of New York Company, Inc., New York, New York; J.P. Morgan & Co., Incorporated, New York, New York; Manufacturers Hanover Corporation, New York, New York; The HongKong and Shanghai Banking Corporation Limited, Hong Kong; HSBC Holdings, B.V., Amsterdam, The Netherlands; Kellett N.V., Curacao, Netherlands Antilles; Marine Midland Banks, Incorporated, Buffalo, New York; Midland Bank PLC, London, England; and Westpac Banking Corporation, Sydney, Australia; to acquire Market Vision Corporation, New York, New York, and thereby engage in providing to others data processing and data

transmission services, facilities (including data processing and data transmission hardware, software, documentation or operating personnel), data bases, or access to such services, facilities, or data bases by any technological means, if (i) the data to be processed or furnished are financial, banking or economic, and the services are provided pursuant to a written agreement so describing and limiting the services; (ii) the facilities are designed, marketed, and operated for the processing and transmission of financial, banking, or economic data; and (iii) the hardware provided in connection therewith is offered only in connection with software designed and marketed for the processing and transmission of financial, banking, or economic data, and where the general purpose hardware does not constitute more than 30 percent of the cost of any packaged offering pursuant to § 225.25(b)(7) of the Board's Regulation Y.

B. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *PSB Financial Corporation,* Many, Louisiana; to retain an H & R Block franchise in Many, Lousiana, and thereby continue to engage in providing individuals, businesses, and nonprofit organizations with tax planning and preparation services pursuant to § 225.25(b)(21) of the Board's Regulation Y. These activities will be conducted in West Louisiana and East Texas.

Board of Governors of the Federal Reserve System, November 17, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-27554 Filed 11-22-89; 8:45 am]

BILLING CODE 6210-01-M

South Carolina National Corp.; Application to Engage de novo in Permissible Nonbanking Activites

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

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 December 15, 1989.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *South Carolina National Corporation,* Columbia, South Carolina; to engage *de novo* in community development activities by investing in one or more community develoment projects which will provide safe and affordable rental housing to low- to moderate-income persons in South Carolina pursuant to § 225.25(b)(6) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 17, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-27555 Filed 11-22-89; 8:45 am]

BILLING CODE 6210-01-M

Fleet/Norstar Financial Group, Inc., Providence, RI; Proposal To Conduct Private Placements as Agent of All Types of Securities and Engage in Investment Advisory and Full Service Brokerage Activities; Correction

This notice corrects a previous **Federal Register** Notice (FR Doc. 89-26543) published at page 47269 of the issue for November 13, 1989.

On page 47269, in the second column, the first paragraph under the heading is amended to read as follows:

Fleet/Norstar Financial Group, Inc., Providence, Rhode Island, and its wholly-owned subsidiary, Fleet/Norstar New York, Inc., Albany, New York (together "Fleet/Norstar"), have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and section 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)), for permission to engage through their wholly-owned subsidiary, Adams McEntee, Fleet Norstar Securities, Inc., New York, New York ("Company"), in the placement, as agent for issuers, of all types of securities (not including securities that are registered under the Securities Act of 1933), buying and selling all types of securities on the order of investors as a "riskless principal", and providing investment advisory services.

Comments on this application must be received by November 30, 1989.

Board of Governors of the Federal Reserve System, November 17, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-27556 Filed 11-22-89; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

[File No. 842-3103]

Jeep Eagle Corp.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement accepted subject to final Commission approval, would require, among other things, the Highland Park, Mi. successor to American Motors Corp. to implement a redress program to benefit purchasers of new 1983, 1984 and 1985 model year Renault Alliance automobiles and new 1984 and 1985 Renault Encore automobiles that experienced four or more documented repair visits to correct specific automatic transmission fluid and engine oil leaks and related problems.

DATE: Comments must be received on or before January 23, 1989.

ADDRESS: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Lydia Parnes, FTC/H-238, Washington, DC 20580. (202) 326-3126.

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

Jeep Eagle Corporation, a Successor Corporation to American Motors Corporation; Agreement to Cease and Desist

The Federal Trade Commisson having initiated an investigation of certain acts and practices of American Motors Corporation, which has been succeeded by Jeep Eagle Corporation (hereinafter referred to as "proposed respondent" or "Jeep Eagle"), and it now appears that proposed repondent is willing to enter into an agreement to cease and desist containing the following Order,

It is hereby agreed by and between proposed respondent, by its duly authorized officer, and attorneys, and counsel for the Federal Trade Commission that:

1. Jeep Eagle Corporation is a Maryland corporation, with its principal office and place of business located at 12000 Chrysler Drive, Highland Park, Michigan 48288–1919.

2. Proposed respondent admits all the jurisdictional facts set forth in the attached draft complaint.

3. Proposed respondent waives:

(a) Any further procedural steps;

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

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

(d) any claim under the Equal Access to Justice Act, 5 U.S.C. 504.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. In accordance with § 2.34 of the Commission's Rules, if this agreement is accepted by the Commission, the agreement, together with the attached draft complaint, will be placed on the public record for a period of sixty (60) days. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the attached draft complaint, other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent: (a) Issue its complaint corresponding in form and substance with attached draft complaint and its decision containing the following Order in disposition of the proceeding, and (b) make relevant information public in respect thereto, except that proposed respondent does not waive any claim of confidentiality for any information submitted in Commission File Number 842 3103. When so entered, the Order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to Order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it might have to any other manner of service. The complaint may be used in construing the terms of the Order, and no agreement, understanding, representation, or interpretation not contained in the Order or the agreement may be used to vary or contradict the terms of the Order.

7. By its final acceptance of this agreement, the Commission waives its right to commence a civil action against proposed respondent, its successors and assigns, under sections 13 and 19 of the Federal Trade Commission Act, as amended, 15 U.S.C. 53 and 57b, and section 110 of the Magnuson-Moss Warranty Act, 15 U.S.C. 2310, with respect to any acts or practices under investigation in Commission File Number 842 3103 that occurred prior to the date of final acceptance of this agreement.

8. Proposed respondent has read the attached draft complaint and the following Order and understands that once the Order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the Order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

Definitions

For the purposes of this Order, the following definitions shall apply:

1. *"Original Owner"*—"Original Owner" shall mean any consumer who purchased a new 1983, 1984, or 1985 model year Alliance automobile or a new 1984 or 1985 model year Encore automobile for his or her personal, family or household use.

2. *"Eligible Claimant"*—"Eligible claimant" shall mean any original owner who files a properly completed claim form with proposed respondent on or before the return dates established in Parts I.C., I.D., and I.E. of this Order with respect to a vehicle that underwent more than three repair visits.

3. *"Repair Visit"*—"Repair visit" shall mean a single trip to an authorized dealership for a warranty repair. Each individual repair visit shall be identified by referring to the computerized list prepared by the proposed respondent pursuant to subpart I.A. of this part. Each entry in a Warranty Claim History contained in the list that references a Technical Information Code identifying an automatic transmission fluid leak or engine oil leak shall be compared to the other entries in the same Warranty Claim History referencing any such Technical Information Codes. An individual entry shall qualify as a single visit if the Julian date, dealer code, zone code, repair order date, or mileage of the record are different from the other records in the vehicle's warranty claim file, except that if the dealer code, zone code, repair order date, and mileage are the same but the Julian date is greater than 30 days from the otherwise identical claim record, then the claim is assumed to be a resubmission of a previously denied claim and not counted as a separate repair visit.

I. It is ordered that proposed respondent, its successors and assigns, shall cease and desist from failing to take the following actions:

(A) Conduct a computer search of its warranty claims files to identify and prepare a list of the vehicles whose original owners are eligible to file a claim, using the following criteria:

(1) 1983, 1984, and 1985 model year Alliance and Encore vehicles;

(2) Warranty claims paid through February 29, 1988;

(3) Repairs within the first 24 months or 24,000 miles of warranty coverage; and

(4) More than three repair visits for an automatic transmission fluid or engine oil leak or any combination of the two as reflected by the indication of the Technical Information Codes that identify automatic transmission fluid leaks or engine oil leaks.

The list of Technical Information Codes, dated February 9, 1989, placed on the public record in File No. 842 3103, shall constitute all of the Technical Information Codes that identify automatic transmission fluid leaks or engine leaks, as required by Definition 3 and part I.A.4. The list of the vehicles whose original owners are eligible to file a claim, dated February 9, 1989, prepared by the proposed respondent and placed on the public record in File No. 842 3103 shall constitute the list required by this part.

(B) Within forty-five (45) days of the date of service on proposed respondent of this Order:

(1) Using the list prepared pursuant to subpart A, compile from its own records a mailing list that includes the name and last-known address of each original owner of a new 1983, 1984, or 1985 model year Alliance or a new 1984 or 1985 model year Encore that underwent more than three repair visits.

(2) Calculate a payment for each eligible original owner identified pursuant to subparts A and B(1) of this part in the amount of $40.00 for each repair visit in excess of three.

(C) Within sixty (60) days of the date of service on proposed respondent of this Order, send by first class mail to the last known address of each original owner identified by proposed respondent from its records pursuant to subparts A and B(1) of this part, a notice package consisting of: (i) A copy of the letter attached to this Order as Attachment A with the return date and amount of payment filled in; (ii) a copy of a claim form attached to this Order as Attachment B with the amount of payment filled in; (iii) a self-addressed, first class, postage-paid return envelope; and (iv) an envelope containing the materials described in subsections (i)–(iii) marked "Address Correction Requested," "Forwarding Postage Guaranteed by Sender," and "Payment Offer." For purposes of this subpart, the return date shall be the date one hundred fifty (150) days after the date of service of this Order. Compliance with the return date shall be determined by the postmark of the envelope in which the claimant returns the claim form.

(D) For a period of two hundred ten (210) days following the date of service on proposed respondent of this Order, provide to original owners not identified by proposed respondent pursuant to subparts A and B(1) of this part who present to proposed respondent records of repair visits evidencing their eligibility for payment under the criteria contained in subpart A of this part, a notice package consisting of: (i) A copy of the letter attached to this Order as Attachment C with the return date and amount of payment filled in; (ii) a copy of a claim form attached to this Order as Attachment D with the amount of payment filled in; (iii) a self-addressed, first class, postage-paid return envelope; and (iv) an envelope containing the materials described in subsections (i)–(iii) marked "Address Correction Requested," "Return Postage Guaranteed by Sender," and "Payment Offer." For purposes of this Subpart, the return date shall be the date two hundred seventy (270) days after the date of service of this Order. Compliance with the return date shall be determined by the postmark on the envelope in which the claimant returns the claim form.

(E) For a period of two hundred ten (210) days following the date of service on proposed respondent of this Order, provide to each original owner identified by proposed respondent from its own records pursuant to subparts A and B(1) of this part, who has not returned the claim form pursuant to subpart C of this part and who writes proposed respondent concerning this Order, a notice package consisting of: (i) A copy of the letter attached to this Order as Attachment A with the return date and amount of payment filled in; (ii) a copy of a claim form attached to the Order as Attachment B with the amount of payment filled in; (iii) a self-addressed, first class, postage-paid return envelope; and (iv) an envelope containing the materials described in subsections (i)–(iii) marked "Address Correction Requested," "Forwarding Postage Guaranteed by Sender," and "Payment Offer." For purposes of this subpart, the return date shall be the date two hundred seventy (270) days after the date of service of this Order. Compliance with the return date shall be determined by the postmark on the envelope in which the claimant returns the claim form.

(F) Within three hundred (300) days of the date of service on proposed respondent of this Order, send to each eligible claimant by first-class mail a payment in the amount determined as provided in subpart B.2 of this part.

(G) Proposed respondent's obligations under this part shall terminate upon expenditure of the sum of money equal to the total amount needed to award payments calculated pursuant to subparts A and B of this part, or within one (1) year from the date of service on proposed respondent of this Order, whichever occurs earlier.

II. It is further ordered that proposed respondent, its successors and assigns, shall, on or before one (1) year after the date of service of this Order, file with the Commission a report, in writing, setting forth in detail the manner and form of its compliance with this Order.

III. It is further ordered that proposed respondent, its successors and assigns, shall maintain records demonstrating the manner and form of proposed respondent's compliance with part I of this Order. These records shall be retained and made available to the Commission for inspection and copying upon reasonable notice until such time as the Order terminates pursuant to the part IV of this Order.

IV. It is further ordered that this Order shall terminate six (6) years after the date of service of this Order on proposed respondent.

Attachment A

[corporate letterhead]

[date]

Dear _____:

Our records show that you are the original owner of an 1983–1985 Alliance or 1984–1985 Encore. Pursuant to an agreement with the Federal Trade Commission, Jeep Eagle as the successor corporation to American Motors Corporation is offering payments to certain original owners of particular vehicles that underwent more than three visits to repair certain automatic transmission fluid and engine oil leaks. Our records indicate that you are eligible for a payment of $_____ under this program provided that you follow the steps discussed below. Please read this letter and follow the steps listed below in order to apply for payment.

How To Apply

In order to apply for a payment, you must do the following:

1. Fill out the enclosed claim form completely.

2. Return the completed claim form to us in the enclosed envelope. You must mail the claim form back to us by [return date] to make sure you are considered for this program.

3. The claim form contains a release, which you must sign in order to receive a payment. By signing the release, you will give up your right to sue Jeep Eagle for any warranty claims you may have relating to the engine, transmission, or transaxle of your vehicle.

4. Please write us at the address below if you change your address in the next several months so we can contact you again.

If you have any questions about this program, please contact:
[Jeep Eagle] [address] [telephone]
or
Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580, [telephone].

Remember: You must mail the completed claim form to us by [return date]. Also, please remember to let us know if you change your address.

Sincerely yours,
Jeep Eagle Corporation
Enclosure

Attachment B—Claim Form

Name:_____
Address: _____
_____
_____

Telephone: (_____) _____ (home)
(_____) _____ (business)
1. Model Year: _____
2. Model Description: Alliance Encore (Circle one)

I bought the vehicle described above as new for my personal use or the use of my family or household. During the period that I owned this vehicle, it underwent more than three visits to repair certain automatic trasmission fluid and engine oil leaks.

I hereby accept Jeep Eagle's payment, as contained in its letter of _____, in the amount of $_____.

In consideration of this payment, I hereby release and discharge Jeep Eagle, its successors and assigns, and its directors, officers, agents, representatives, and employees, and its divisions and other subsidiaries, from any and all warranty claims relating to the engine, transmission, or transaxle of the vehicle described above.

_____
Date

_____
Owner's Signature

Attachment C

[corporate letterhead]

[date]

Dear_____:

Thank you for writing us regarding your 1983–1985 Alliance or 1984–1985 Encore. Pursuant to an agreement with the Federal Trade Commission, Jeep Eagle as successor corporation to American Motors Corporation is offering payments to certain original owners of particular vehicles that underwent more than three visits to repair certain automatic transmission fluid and engine oil leaks. The records you submitted indicate that you may be eligible for a payment of $_____ under this program. Please read this letter and follow the steps listed below in order to apply for payment.

How To Apply

In order to apply for a payment, you must do the following:

1. Fill out the enclosed claim form completely. This will be used to determine your eligibility for a payment.

2. Return the completed claim form to us in the enclosed envelope. You must mail the claim form back to us by [return date] to make sure you are considered for this program.

3. Once we receive your completed claim form, we will determine if you are eligible for a payment. If you are eligible we will send you a check. Please write us at the address below if you change your address in the next several months so we can contact you again.

4. The claim form contains a release, which you must sign in order to receive a payment. By signing the release, you will give up your right to sue Jeep Eagle for any warranty claims you may have relating to the engine, transmission, or transaxle of your vehicle.

If you have any questions about this program, please contact:
[Jeep Eagle] [address] [telephone]
or
Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580, [telephone].

Remember: You must mail the completed claim form to us by [return date]. Also, please remember to let us know if you change your address.

Sincerely yours,
Jeep Eagle Corporation
Enclosure

Attachment D—Claim Form

Name:_____
Address: _____
_____
_____

Telephone: (_____) _____ (home)
(_____) _____ (business)
1. Date of Purchase: ____(mo); ____(day); ____(year)
2. Model Year: _____
3. Model Description: Alliance Encore (Circle one)
4. Vehicle Identification Number:

_____

(This seventeen-digit number appears on an embossed plate on the upper left-hand side of the instrument panel.)

I bought the vehicle described above as new for my personal use or the use of my family or household. During the period that I owned this vehicle, it underwent more than three visits to repair certain automatic transmission fluid and engine oil leaks.

I hereby accept Jeep Eagle's payment, as contained in its letter of _____, in the amount of $_____.

In consideration of this payment, I hereby release and discharge Jeep Eagle, its successors and assigns, and its directors, officers, agents, representatives, and employees, and its divisions and other subsidiaries, from any and all warranty claims relating to the engine, transmission, or transaxle of the vehicle described above.

_____
Date

_____
Owner's Signature

Jeep Eagle Corporation, File No. 842 3103 (JO6)

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Jeep Eagle Corporation ("Jeep Eagle"), the successor corporation to American Motors Corporation ("AMC") and American Motors Sales Corporation ("AMSC"), with its principal place of business at 12000 Chrysler Drive, Highland Park, Michigan 48288–1919.

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

The proposed complaint alleges that AMC's authorized Renault dealers often failed to repair successfully automatic transmission fluid and engine oil leaks and problems related to such leaks in 1983, 1984, and 1985 model year Renault Alliance automobiles and 1984 to 1985 model year Renault Encore automobiles, as required by the written warranties issued by AMSC. The complaint alleges AMC's failure to honor warranty obligations was a breach of contract which caused substantial injury to consumers. The complaint alleges that AMC's failure to honor its warranty obligations constituted and unfair trade practice in violation of section 5 of the FTC Act.

The proposed consent agreement requires Jeep Eagle, as successor corporation to AMC and AMSC, to implement a redress program to benefit approximately 2,000 purchasers of new 1983, 1984, and 1985 model year Renault Alliance automobiles and new 1984 to 1985 Renault Encore automobiles that experienced four or more documented repair visits to correct specific automatic transmission fluid and engine oil leaks and related problems.

The redress program provides for:

1. Cash redress to be calculated as follows: $40.00 per documented repair visit beginning with the fourth visit, to each purchaser of a new 1983, 1984, or 1985 model year Alliance automobile or a new 1984 or 1985 model year Encore automobile who experienced four or more dealer repair visits for certain specified automatic transmission fluid leak problems, engine oil leak problems and related problems during the term of

their full and limited warranties (24 months/24,000 miles).

2. Notice of the redress program mailed to the last known address of the approximately 2,000 purchasers shown to be eligible for redress by AMC's warranty records. The checks will be mailed to eligible purchasers as soon as possible, but no later than 10 months from the date that the order becomes final.

3. Jeep Eagle also agrees to pay purchasers who do not receive notice of the redress program but who submit documented evidence to Jeep Eagle of four or more automatic transmission fluid, engine oil leak repairs and related problems which fall within the specified categories during the term of their full and limited warranties.

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

Donald S. Clark,

Secretary.

Separate Statement of Commissioner Mary L. Azcuenaga

In the Matter of AMC-Renault

Having failed to find reason to believe that AMC-Renault or Jeep-Eagle Corporation, its successor, has violated the law as alleged in this complaint, I dissent from the Commission's decision to accept this consent agreement for public comment. Although I have substantial sympathy for the plight of consumers affected by the conduct alleged, the Commission can impose a remedy only when it has reason to believe that a violation of law has occurred. Here that burden has not been met.

Concurring Statement of Commissioner Andrew J. Strenio, Jr. AMC-Renault, File No. 842 3103

The Commission has accepted for public comment the consent agreement negotiated with Jeep Eagle Corporation, the successor to American Motors Corporation ("AMC"). This agreement is in response to allegations that AMC breached its full and limited warranties—and thereby committed an unfair practice in violation of section 5 of the FTC Act—by failing within a reasonable time to repair successfully fluid and oil leaks in the automatic transmissions and engines of many 1983 to 1985 Renault Encore and Alliance vehicles.

In her dissenting statement, Commissioner Machol commends staff's diligence in attempting to resolve this matter but criticizes the Commission for accepting the settlement. I join in her words of thanks to current staff for the arduous work completed, but respectfully conclude instead that the Commission is justified in provisionally accepting the proposed consent and placing it on the public record for comment. In essence, although I agree with most of the cautionary principles espoused by Commissioner Machol as a general matter, to me this particular settlement on these particular facts appears compatible with those principles.

To be sure, the proposed consent may be imperfect in some regards. If we were writing upon a cleaner slate rather than this one which has been smudged by numerous tracings and erasures over the five-plus years since the investigation began, I might be tempted to send the consent back for renegotiation.[1] As it is, though, in this context the responsible choice is between provisionally accepting the consent intact or closing the investigation. Since the Commission has reason to believe sufficient to issue the related complaint, and none of the "policy" arguments justifies rejection in toto of the relief obtained in the agreement for the injured consumers, I favor provisionally accepting the consent intact.

Regarding the "reason to believe" aspect, I find on balance that staff at this point has presented adquate evidence to meet the three-pronged test for issuance of an unfairness complaint based upon Section 5.[2] The net effect of the evidence provides reason to believe that the consumer injury flowing from the conduct in question was: (1) substantial; (2) not outweighed by any offsetting consumer or competitive benefits that the practice produced; and (3) not something consumers reasonably could have avoided. More evidence on each of these points might well have been adduced had this matter gone into litigation, yet the existing evidence suffices in conjunction with the signed consent before us.

Finally, allow me to elaborate upon two points. Point one involves the substantial nature of the consumer injury here. No doubt, this case is far from the biggest the FTC has ever handled and the numbers are lower than might have been expected earlier. Still, with approximately 2,000 consumers eligible for some $120,000 in redress payments, the absolute numbers are respectable and exceed the figures in a great many cases the Commission brings.

It is true that the class of purchasers who suffered through four or more repair attempts during the time the warranties were in effect ("redress class") is a small subset of all purchasers of 1983 to 1985 Renault Encore or Alliance vehicles with automatic transmissions ("total purchasers"). But I do not consider this first comparison determinative. A no less applicable comparison would look to the ratio of the redress class to the set of all purchasers who invoked their warranty protection for serious leakage difficulties with their automatic transmissions and engines. On the evidence before us, this ratio indicates substantial injury to consumers.[3]

We should not place excessive weight in this setting upon either type of comparison made in the paragraph above. After all, whether the incidence of four-plus repair odysseys was relatively greater or lesser, these repeatedly unsuccessful efforts may well have constituted a breach of AMC's warranty in substantial numbers (i.e. some 2,000 times) on a system critical to a car's operation. AMC made a promise to purchasers that it would repair or replace covered components "within a reasonable time." This is not a promise that was inferred from AMC's conduct or implied by AMC's language; it is a promise that AMC expressly made in so many words in its warranties. AMC's failure—time and time again—to honor this express promise is the crux of the case. I am satisfied that staff's suggestion, and Jeep Eagle's acceptance, of four repair visits as the threshold for relief is a defensible reading of "a reasonable time" on the evidence presented here.

Point two is that accepting this consent is sensible from a policy perspective. To begin with, the settlement terms represent a unique negotiated solution to a complicated and specific set of circumstances. These terms do not establish four as the threshold of an unreasonable number of attempts to fix a warranty problem under other circumstances.[4] Indeed, in the abstract at least, a high or lower threshold could be justified under other circumstances. Accordingly, the facts of any subsequent case properly will be decisive should this threshold issue recur.

In addition, while I will not belabor the twists and turns that the investigation took once AMC resisted providing requested information, this consent hardly is likely to "intimidate" the industry in any fashion—let alone into adopting four as a de facto threshold standard. Attributing excessive zeal to the FTC is not an apt description for this situation where the warranty program, the manufacture of Encores and Alliances, and AMC itself all had gone out of existence before the Commission began contemplation of the consent. For that matter, in light of this history, the consent is more likely to be interpreted by the industry as a slap on the

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[1] In particular, I question the terms of the consent which do not require sending notice of the settlement to all owners, yet would permit any unclaimed redress to revert to the proposed respondent. Further, it is not self-evident that either the lack of prospective injunctive relief or the omission of the potential Magnuson-Moss Warranty Act basis for this case is desirable.

[2] In this regard, I respectfully differ with Commissioner Azcuenaga's conclusion.

[3] To explore why this type of comparison is no less relevant to the question at hand than the first type of comparison, assume that AMC had sold one million cars in 1983 and offered a warranty only on its windshield wiper blades and on leaks from its transmissions. Assume, further, that over the years AMC received 100,000 warranty complaints on its 1983 vehicles. Of these, say that 94,000 involved windshield wiper blades and that every such complaint was handled to the customer's satisfaction on the first repair visit. But of the 6,000 transmission leak complaints, say that at least 1,000 required four or more repair visits.

It would theoretically be possible to characterize this transmission warranty problem as "non-substantial" since only 6 percent of all complaining purchasers had problems with their transmissions and only 1 percent encountered the four-plus repairs situation. But such a characterization would not be compelling given the importance of transmissions as a warranty item and the relative frequency with which a transmission complaint became a transmission nightmare.

[4] Had this case been based upon Magnuson-Moss, of course, the possibility of establishing binding precedent might not have been so remote.

wrist than a kick in the pants. On the other hand, to reject the consent in its entirety would run a serious risk of sending a message of complete indifference by the Commission regarding AMC's alleged behavior toward consumers.

Moreover, this consent does not venture into the swamp of dictating to the industry a particular combination of automobile reliability and warranty coverage. As this settlement has been crafted, it merely says that AMC (or its successor) must live up to the warranty coverage that it chose to offer in the marketplace. This does not look like a case where AMC said (exclicitly or implicitly) to the prospective purchasers, "You can save some money here by buying our car, but the tradeoff is you will incur a higher risk of flaws and/or narrower warranty protection." To the contrary, apart and aside from the detailed coverage guaranteed in the full and limited warranties accompanying the vehicles, AMC's marketing emphasizing the asserted superiority of its warranties as an inducement to purchase. A corporation that makes specific claims of warranty protection (not to mention claims of warranty superiority) ordinarily ought to later be excused from honoring those claims on the ground that by some overall measure its performance is roughly average.

In this sense, rejection of the consent by the Commission could do more than deprive consumers injured by AMC's alleged breaches of some redress funds. It also could lead to inefficiency and distortion in the automobile market if consumers no longer can rely upon written warranties as a basis for comparison shopping. Rejection also could inflict injury upon car manufacturers who abide by their warranties yet lose sales to competitors who promise more coverage than they deliver.

For the above reasons, I have voted to provisionally accept the proposed consent agreement and place it, along with the draft complaint, on the public record for comment.

Dissenting Statement of Commissioner Margot E. Machol, AMC-Renault, File No. 842-3103

I would have preferred to close this investigation rather than accept the settlement submitted by staff. Warranty and reliability issues are complex, and compiling the relevant information is difficult. Although I oppose the staff recommendation, I commend their diligence in attempting to resolve this matter.

When this investigation began five years ago, it looked as though it would be a good case. Tens of thousands of consumers apparently were plagued by leaks in their AMC/Renault Alliances and Encores. Only after the general framework of the settlement had been negotiated did it become apparent that relatively few consumers had persistent leaks as covered by the order.

I was at first tempted to accept the settlement. Commission action will lead to a major automobile manufacturer paying $120,000 to approximately 2,000 consumers. These consumers clearly were inconvenienced by an unexpectedly high number of dealer visits to have leaks repaired Despite its initial appeal, however, I have voted against accepting the settlement. I do not believe section 5 has been violated because I do not believe that AMC's conduct meets our unfairness criteria. In addition, I believe that accepting the settlement is not in the public interest because it sets a deleterious precedent.

The Commission has previously stated that it will find a practice unfair only when, *inter alia*, the practice produced substantial consumer injury. Injury is weighed in the context of the market in which the injury is alleged to have occurred. In this matter, the consumer injury is not substantial. Fewer than 1 percent of purchasers of Alliances and Encores made 4 or more visits to repair leaks and fewer than 3 tenths of 1 percent had 5 or more visits to repair leaks.

Further, consumers may not actually have been injured. *Consumer Reports* indicates that, although Alliances and Encores had worse-than-average to much-worse-than-average incidence of repair during their warranty periods, the cars had less-than-average to average cost of repairs. Thus, the warranty coverage was successful in shifing the cost of repairs from car owners to AMC. Commissioner Azcuenaga has previously stated that it "seems inappropriate to term a car 'defective' unless its overall repair costs are significantly greater than those of comparable cars."[1] Similarly, here it seems inappropriate to find warranty coverage defective unless overall repair costs are significantly greater than those of comparable cars.

I believe that this settlement sets an undesirable precedent because it articulates a standard that four or more attempts to repair transmission and engine leaks is an unfair practice under section 5. Some play down the precedent by arguing that the order provision here should not be viewed as anything more than the result of negotiations that led to successful resolution of a difficult case. I respectfully disagree. The underlying theory of the complaint is that some number of repair visits (in this case, four) constitutes a breach of contract in violation of section 5. There is no reason to believe, however, that the FTC or any other government agency would do as well as the market in deciding the most desirable combination of automobile reliability and warranty coverage. The Commission should reserve action to those cases in which it has some evidence that a company behaved unreasonably.

Other Commission cases demonstrate the kind of evidence that would, in my mind, justify Commission action. In *International Harvester* (104 F.T.C. 949), for example, the company knew that fuel geysering could maim or kill tractor operators, yet it failed to provide simple, low-cost warning labels. In *Orkin* (108 F.T.C. 263), the company had a widespread, systematic program to breach its contracts. The breach unilaterally shifted costs to its customers and harmed competition in addition to harming consumers.

Such conduct is conspicuously absent in this case. Unlike *International Harvester*, safety issues are not involved. Unlike *Orkin*, AMC did not unilaterally shift costs to its customers. AMC did not refuse to provide warranty service; in fact, AMC repaired leaks on some vehicles up to 12 times. Repairing transmission leaks is often expensive; AMC undoubtedly would have adopted more reliable repairs if they had been available. Further, AMC did not gain a competitive edge by its actions. Alliances and Encores are no longer produced and AMC was well along its way toward bankruptcy when Chrysler purchased it in 1987. Consumers appropriately punished AMC and rewarded more efficient competitors.

My final objection to this consent is that it obtains relief that we would not be able to obtain in litigation. Neither a section 19 action nor a section 13(b) action predicated on section 19 principles would produce monetary relief because there is no evidence of dishonest or fraudulent conduct. As a matter of policy, I believe that relief obtained in consents should be limited to the potential relief available through litigation. Therefore, I have voted against accepting the settlement.

[FR Doc. 89-27452-31-11-22-89: 8:45 am]

BILLING CODE 6750-01-M

[1] "Defects Cases: What Legal Theories, Evidentiary Standards and Remedies Should Apply?" Speech Before the Sixteenth Annual Meeting of the National Advertising Review Board, New York, New York, December 9, 1987, page 9.

GENERAL SERVICES ADMINISTRATION

Federal Supply Service

New Item Introductory Schedule (NIIS) Gets a Partner

The Tools Commodity Center is introducing a new program to provide an informal evaluation for tools being offered to the Government. The New Product Evaluation Program (NPEP) provides an opportunity for suppliers to offer samples of new or redesigned tools to the Tools Commodity Center for evaluation. The Tools Center will then distribute the samples to the customers who have previously agreed to evaluate new products. The customers will use the tools in the work environment and report back to the Tools Center with recommendations to either include the item in the supply system, not consider the items for inclusion in the system, broaden the scope of the test evaluation to include other activities or to extend the test period.

This program is not a replacement for the New Item Introductory Schedule but is simply an informal way in which suppliers, customers, and GSA can consider the potential applications in the Government for new products.

If the recommendation of the evaluators is to include the item in the supply system or to expand the evaluation, the supplier will be asked to make a formal offer to be included on

the New Item Introductory Schedule. This will provide the supplier with a contract for up to three years while a permanent location in the supply system is found. During this period, the supplier can attempt to sell his product to potential users. The NIIS contract facilitates purchases by the Government users. If the recommendation of the evaluators is that the item is not suitable for Government application the supplier will be so advised.

For further information on NPEP please contact the Tools Commodity Center Ombudsman, Mrs. Linda Edwards at (703) 603–1301.

Dated: November 13, 1989.

Walter L. Eckbreth,

Director, Tools Commodity Center.

[FR Doc. 89–27521 Filed 11–22–89; 8:45 am]

BILLING CODE 6820-24-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Senior Executive Service Performance Review Board Membership

Title 5, U.S. Code, section 4314(c)(4) of the Civil Service Reform Act of 1978, Public Law 95–454, requires that the appointment of Performance Review Board members be published in the **Federal Register.**

The following persons will serve on the Performance Review Boards or Panels which oversee the evaluation of performance appraisals of Senior Executive Service members of the Department of Health and Human Services:

Richard H. Adamson, Ph.D.
Ann C. Agnew
Duane F. Alexander, M.D.
Joseph R. Antos, Ph.D.
Michele W. Applegate
William H. Aspden, Jr.
Michael J. Astrue
Paul D. Barnes
James S. Benson
Joyce T. Berry, Ph.D.
Katherine L. Bick, Ph.D.
Lyle W. Bivens, Ph.D.
Annette H. Blum
Eileen Bradley
Samuel Broder, M.D.
Kathleen A. Buto
Ronald H. Carlson
Bruce A. Chabner, M.D.
Gerald Chader, M.D.
Philip S. Chen, Jr., Ph.D.
Andria T. Childs
Pamela A. Coughlin
Glenda S. Cowart
Don J. Davis
John L. Decker, M.D.
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Walter R. Dowdle, Ph.D.
John C. Eberhart, Ph.D.
Joyce D. Essien, M.D.
Anthony S. Fauci, M.D.
Jorgen Fex, Ph.D.
Dennis J. Fischer
J. Michael Fitzmaurice
Florence B. Fiori, Ph.D.
Barbara J. Gagel
George J. Galasso, Ph.D.
John I. Gallin, M.D.
Donna N. Givens
Murray Goldstein, M.D.
Phillip Gorden, M.D.
Alexander R. Grant
Jerome G. Green, M.D.
Joseph A. Gribben
Gerald B. Guest, D.V.M.
George E. Hardy, Jr.
Louis B. Hays
Michael Heningburg
Alan R. Hinman
Ada Sue Hinshaw, Ph.D.
George R. Holland
Sharon Smith Holston
Constance Horner
Robert A. Israel
Barry L. Johnson, Ph.D.
Elaine M. Johnson, Ph.D.
Lewis L. Judd, M.D.
Martha F. Katz
John M. Kelso
Eugene Kinlow
Ruth L. Kirschstein, M.D.
Irwin J. Kopin, Ph.D.
Jeffrey P. Koplan, M.D.
Edward D. Korn, Ph.D.
Carl Kupfer, M.D.
Richard P. Kusserow
Claude J. Lenfant, M.D.
Joseph R. Leone
Alan I. Leshner
Arthur S. Levine, M.D.
Huldah Lieberman
Donald A.B. Lindberg, M.D.
Harald A. Loe, D.D.S.
Donald H. Luecke, M.D.
Stephanie A. Lynch
John D. Mahoney
Thomas E. Malone, Ph.D.
Dorothy H. Mann, M.P.H.
Norman D. Mansfield
Naomi B. Marr
George Martin, M.D.
Larry G. Massanari
Thomas S. McFee
Bryan B. Mitchell
Henry Metzger
Kevin E. Moley
Larry D. Morey
Jay Moskowitz, Ph.D.
Clennie H. Murphy
Stuart L. Nightingale
Abner L. Notkins, M.D.
Jack Orloff, M.D.
Carl C. Peck, M.D.
Roy W. Pickens, Ph.D.
Betty H. Pickett, Ph.D.
Arnold W. Pratt, M.D.
Alan S. Rabson, M.D.
David P. Rall, M.D.
Joseph E. Rall, M.D.
Juan Ramos, Ph.D.
Wiliam F. Raub, Ph.D.
Luana L. Reyes
William A. Robinson, M.D.
Martin Rodbell, Ph.D.
Mary E. Ross
Jesse Roth, M.D.
Philip E. Schambra, Ph.D.
Matthew G. Schwienteck
Lawrence E. Shulman, M.D.
Robert Singyke
Marvin Snyder, Ph.D.
Dale W. Sopper
Joan F.M. Steward
Robert E. Stovenour
Robert A. Streimer
Boris Tabakoff, Ph.D.
John M. Taylor
Stephen B. Thacker, M.D.
Robert L. Trachtenberg
James A. Walsh
S. Timothy Wapato
Kenneth R. Warren, Ph.D.
John C. West
Storm H. Whaley
Daniel F. Whiteside, D.D.S.
Robert A. Whitney, Jr., D.V.M.
T. Franklin Williams, M.D.
Will Wolstein.

Dated: November 13, 1989.

Thomas S. McFee,

Assistant Secretary for Personnel Administration.

Summary Statement

ACTION: Listing of members of this Department's Senior Executive Service Performance Review Boards.

DATE: Performance Review Boards effective November 13, 1989.

FOR FURTHER INFORMATION CONTACT: Brenda J. Clinton, (202) 245–6536.

[FR Doc. 89–27206 Filed 11–22–89; 8:45 am]

BILLING CODE 4110-60-M

Food and Drug Administration

[Docket No. 89N–0490]

Drug Export; Didronel® (Etidronate Disodium 200 MG Tablets, U.S.P.)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Norwich Eaton has filed an application requesting approval for the export of the human drug Didronel® (Etidronate Disodium 200 mg Tablets, U.S.P.) to Australia and New Zealand.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Mary F. Cooper, Division of Drug Labeling Compliance (HFD–313), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8073.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet his requirement, the agency is providing notice that Norwich Eaton Pharmaceuticals, Inc., P.O. Box 191, Norwich, NY 13815–0191, has filed an application requesting approval for the export of the drug Didronel® (Etidronate Disodium 200 mg Tablets, U.S.P.), to Australia and New Zealand. This product in conjunction with adequate calcium intake is indicated for the prevention and treatment of bone loss observed in patients with postmenopausal osteoporosis while reducing the risk of osteoporotic fracture. The application was received and filed in the Center for Drug Evaluation and Research on October 30, 1989, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by December 4, 1989, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 381)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: November 14, 1989.

Sammie R. Young,

Acting Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 89–27486 Filed 11–22–89; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 89M–0471]

Allergan Optical; Premarket Approval of Allergan® Preserved Saline Solution

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the supplemental application by Allergan Optical, Irvine, CA, for premarket approval, under the Medical Device Amendments of 1976, of Allergan® Preserved Saline Solution. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of October 16, 1989, of the approval of the supplemental application.

DATE: Petitions for administrative review by December 26, 1989.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: David M. Whipple, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–427–1080.

SUPPLEMENTARY INFORMATION: On April 3, 1989, Allergan Optical, Irvine, CA 92715–1599, submitted to CDRH a supplemental application for premarket approval of Allergan® Preserved Saline Solution indicated for use for rinsing after cleaning and before lens application in a heat, chemical, or hydrogen peroxide lens care system, for use to keep lenses hydrated during heat disinfection and for storage after heat disinfection for soft (hydrophilic) contact lenses.

On June 23, 1989, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On October 16, 1989, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact David M. Whipple (HFZ–460), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register.** If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before December 26, 1989, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: November 13, 1989.

Walter E. Gundaker,

Acting Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 89-27487 Filed 11-22-89; 8:45 am]

BILLING CODE 4160-01-M

Consumer Participation; Open Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following district consumer exchange meeting: New York District Office, chaired by Edward T. Warner, District Director. The topic to be discussed is proposed changes to food labeling.

DATES: Thursday, November 30, 1989, 1 p.m. to 3 p.m.

ADDRESSES: Jacob K. Javits Federal Bldg., Rm. 305C, 26 Federal Plaza, New York, NY 10278.

FOR FURTHER INFORMATION CONTACT: Herman B. Janiger, Consumer Affairs Officer, Food and Drug Administration, 850 Third Ave., Brooklyn, NY 11232-1593, 718-965-5043.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's district offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: November 16, 1989.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-27488 Filed 11-22-89; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

[BPD-656-N]

Medicare and Medicaid Program; ICD-9-CM Coordination and Maintenance Committee Meeting

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice announces the next meeting of the International Classification of Diseases, Ninth Revision, Clinical Modification (ICD-9-CM) Coordination and Maintenance Committee. The public is invited to participate in the discussion of the topic areas.

DATE: The meeting will be held on Monday and Tuesday, December 4 and 5, 1989, from 9:00 a.m. to 4:00 p.m. Eastern Standard Time.

ADDRESS: The meeting will be held in Room 503A-529A, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Patrice Robins, (301) 966-9364.

SUPPLEMENTARY INFORMATION: The ICD-9-CM is the clinical modification of the World Health Organization's International Classification of Diseases, Ninth Revision. It is the coding system required for use by hospitals and other health care facilities in reporting both diagnoses and surgical procedures for Medicare, Medicaid, and all other health-related DHHS programs. The work of the ICD-9-CM Coordination and Maintenance Committee will allow this coding system to continue to be an appropriate reporting tool for use in Federal programs.

The Committee is composed entirely of representatives from various Federal agencies interested in the International Classification of Diseases (ICD) and its modification, updating, and use of Federal programs. It is co-chaired by the National Center for Health Statistics and the Health Care Financing Administration.

The Committee holds public meetings to present proposed coding changes and other educational issues. The meetings provide an opportunity for inpurt concerning these issues to representatives of organizations active in medical coding, as well as physicians, medical record administrators, and other members of the public. The Committee encourages the public to participate in these meetings. After considering the comments presented at the public meetings, the Committee makes recommendations concerning the proposed changes to the Director of NCHS and the Administrator of HCFA for their approval.

At this meeting, the Committee will discuss: rate responsive pacemakers; additional inclusion terms for replacement of cardioverter/defibrillator leads; combined heart/lung transplant; Mitrofanoff procedure; removal of remnant of cystic duct in conjunction with cholecystectomy; transesophageal pacing with thallium stress electrocardiogram; laser fragmentation of gallstones; additional inclusion terms for implantation of cochlear prosthetic device; injection or ligation of esophageal varices; clamping of the aorta in conjunction with aortocoronary bypass graft; excludes notes for percutaneous transluminal coronary angioplasty (PTCA) with concurrent intravenous (IV) therapy; chemotherapy; genetic-related disorders; hepatitis B, anti-negative, anti-positive, viral-non B; neurofibromatosis; V codes V56 (aftercare involving intermittent dialysis) and V58.0 (radiotherapy); cystic kidney diseases; diabetes mellitus; index items; and other topics.

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program; No. 13.773, Medicare—Hospital Insurance Program; No. 13-774, Medicare—Supplementary Medical Insurance)

Dated: November 13, 1989.

Louis B. Hays,

Acting Administrator, Health Care Financing Administration.

[FR Doc. 89-27516 Filed 11-22-89; 8:45 am]

BILLING CODE 4120-01-M

[IOA-22-N]

Medicare and Medicaid Programs; Meeting of the Advisory Council on Social Security

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of public meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the Advisory Council on Social Security.

DATE: The meeting will be held on December 7, 1989, from 1 p.m. to 5:30 p.m. Eastern Standard Time (E.S.T.), and on December 8, 1989, from 8 a.m. to 4 p.m. E.S.T. The meeting will be open to the public.

ADDRESS: The meeting will be held at the DuPont Plaza Hotel, 1500 New Hampshire Ave. NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Darleen DiGirolamo, Administrative Officer, Advisory Council on Social Security, (202) 245-0217.

SUPPLEMENTARY INFORMATION:

I. Purpose

Under section 706 of the Social Security Act, the Secretary of Health and Human Services appoints an Advisory Council on Social Security every four years. The Advisory Council examines issues affecting the Social Security retirement, disability and

survivors insurance programs, as well as the Medicare and Medicaid programs, which were created under the Social Security Act.

In addition, Secretary Sullivan has asked the Advisory Council specifically to address the following:

—The adequacy of the Medicare program to meet the health and long-term care needs of our aged and disabled populations, the impact on Medicaid of the current financing structure for long-term care, and the need for more stable health care financing for the aged, the disabled, the poor, and the uninsured;

—Major Old-Age, Survivors, and Disability Insurance (OASDI) financing issues, including the long-range financial status of the program, relationship of OASDI income and outgo to budget-deficit reduction efforts under the Balanced Budget and Emergency Deficit Control Act of 1985, and projected buildings in the OASDI trust funds; and

—Broad policy issues in Social Security, such as the role of Social Security in overall U.S. retirement income policy.

The Council is composed of 12 members: G. Lawrence Atkins, Robert M. Ball, Phillip Briggs, Lonnie R. Bristow, Theodore Cooper, John T. Dunlop, Karen Ignani, James R. Jones, Paul O'Neill, A.L. "Pete" Singleton, John J. Sweeney, and Don C. Wegmiller; and the Chair, Deborah Steelman. The Council is to report to the Secretary and Congress by January 1, 1991.

II. Agenda

Agenda items for the meeting on December 7 and early on December 8 will include the presentation of background information and general discussion related to Social Security, the OASDI trust funds, and options with regard to the projected buildings in those funds. The meeting on December 8 will include discussion of health financing reform for the elderly and nonelderly populations.

Agenda items are subject to change as priorities dictate.

(Catalog of Federal Domestic Assistance Programs Nos. 13.714 Medical Assistance Program; 13.733 Medicare—Hospital Insurance; 13.774 Medicare—Supplementary Medical Insurance.)

Dated: November 20, 1989.

Deborah J. Chollet,

Executive Director, Advisory Council on Social Security.

[FR Doc. 89-27622 Filed 11-22-89; 8:45 am]

BILLING CODE 4120-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-89-1917; FR-2606-N-47]

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 Community Planning and Development, 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: November 24, 1989.

ADDRESS: For further information, contact James Forsberg, Room 7228, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 755-7300; TDD number for the hearing- and speech-impaired (202) 755-5965. (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 landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus 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 about 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.

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 information 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: Department of Interior: John Moresko, Department of Interior, 18th and C Sts. NW., Mailstop 5512, Washington, DC 20240, (202) 343–2704; U.S. Army Corps of Engineers: 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.

Dated: November 20, 1989.

Stephen A. Glaude,

Deputy Assistant Secretary for Program Management.

Suitable Land (by State)

(Number of Properties [ ])

Colorado

Land [1]
13627 County Road 501
LaPlata, CO
Landholding Agency: Interior
Location: approx. 20 miles northeast of Durango County at the Vallecito Reservoir
Comment: 4.07 acres; steep slope rises almost directly from edge of highway

Illinois

Wm. L. Springer Lake [1]
Section 34, T17N, R3E, 3rd PM
Decatur, IL
Landholding Agency: COE
Location: Macon County (excess)
Comment: 2.98 acres; no road access/access right of way needs to be obtained

Wm. L. Springer Lake [1]
Section 34, T17N, R3E, 3rd PM
Decatur, IL
Landholding Agency: COE
Location: Macon County (excess)
Comment: 0.52 acres; no utilities or improvements

Mississippi River Lock and Dam No. 18 [1]
Section 12, T1ON, R6W, 4th PM
Gladstone, IL
Landholding Agency: COE
Location: (excess)
Comment: 11.31 acres; partially leased until 4/90

Minnesota

Leech Lake Tract B [1]
Federal Dam
Cass, MN
Landholding Agency: COE
Location: (excess)
Comment: 10 acres; current use—parking

Leech Lake Tract 98 [1]
Hubbard County
Benedict, MN
Landholding Agency: COE
Location: (excess)
Comment: 7.3 acres; portion submerged

Pine River Parcel D [1]
Crow Wing County
Crosslake, MN
Landholding Agency: COE
Location: (excess)
Comment: 17 acres; reservoir flowage problem

Sandy Lake Tract 92 [1]
Aitkin County
McGregor, MN
Landholding Agency: COE
Location: (excess)
Comment: 4 acres; partially submerged

Texas

Part of Tract 340 [1]
Joe Pool Lake
Tarrant County, TX
Landholding Agency: COE
Location:
Comment: one acre; no utilities or improvements

Suitable Building (by State)

(Number of Properties [ ])

Illinois

Brandon Rock Lock and Dam [1]
1100 Brandon Road
Joliet, IL
Landholding Agency: COE
Location: Will County (excess)
Comment: two-story frame; 720 sq ft; off-site use only

Michigan

Former Coast Guard Lightkeeper's Dwell. [1]
Little Rapids Channel
Sault Ste. Marie, MI
Landholding Agency: COE
Location:
Comment: two-story wood frame; .62 acres; need extensive repairs; utils. disconnect

Minnesota

Duluth Vessel Year [1]
900 Minnesota Avenue
Duluth, MN
Landholding Agency: COE
Location: (Former Lockmaster's Dwelling)
Comment: two-story wood frame; utilities disconnected; 1,568 sq. ft.

Wisconsin

Appleton 1st Lock [1]
905 South Oneida Street
Appleton, WI
Landholding Agency: COE
Location: (Former Lockmaster's Dwelling)
Comment: two-story wood frame; need extensive repairs; utilities disconnected

Little Kaukauna Lock [1]
Little Rapids
Lawrence, WI
Landholding Agency: COE
Location: (Former Lockmaster's Dwelling)
Comment: two-story brick/wood frame; need extensive repairs; utils. disconnected

Rapid Croche Lock [1]
Lock Road
Wrightstown, WI
Landholding Agency: COE
Location: Ontagamie and Brown Counties
Comment: two-story wood frame; need extensive repairs; utilities disconnected.

Unsuitable Land (by State)

(Number of Properties [ ])

Minnesota

Pine River Parcel G [1]
Crosslake, MN
Landholding Agency: COE
Location: (excess)
Reason: Other
Comment: highway right-of-way

Texas

Part of Tract 201–3 [1]
Joe Pool Lake
Dallas County, TX
Landholding Agency: COE
Location:
Reason: Other
Comment: 18 acres; floodwater release area

Tracts 104, 105–1, 105–2, 118 [4]
Joe Pool Lake
Dallas County, TX
Landholding Agency: COE
Location:
Reason: Other
Comment: floodwater release area

Part of Tract 323 [1]
Joe Pool Lake
Dallas County, TX
Landholding Agency: COE
Location:
Reason: Other
Comment: floodwater release area

Tract W–A33 [1]
Portion of Whitney Lake Project
Hill County, TX
Landholding Agency: GSA
Location: GSA # 7–GD–TX–505–F
Reason: Other
Comment: not government owned; easement for railroad use only

[FR Doc. 89–27610 Filed 11–22–89; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–050–00–4320–14]

Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: District Grazing Advisory Board Meetings.

SUMMARY: The Richfield District Grazing Board will hold a meeting on December 14, 1989. The meeting will start at 10 a.m. in the District Office, 150 East 900 North, Richfield, Utah.

The agenda will be:

1. Approval of range projects
2. Drought update
3. Supplemental feeding
4. Electronic Combat Test Capability
5. Deep Creek Exchange-Grazing allocation
6. Predator Control
7. AMP/Allotment change

Interested persons may make oral statements to the Board between 1:15 p.m. and 2:15 p.m. or file written comments for the Board's consideration. Anyone wishing to make an oral statement must notify the District

Manager, Bureau of Land Management, 150 East 900 North, Richfield, Utah 84701 (801–896–8221). For further information contact: Bert Hart, District Public Affairs Specialist at the above address.

Dated: November 17, 1989.

Jerry Goodman,

Richfield District Manager.

[FR Doc. 89–27595 Filed 11–22–89; 8:45 am]

BILLING CODE 4310-DQ-M

[MT–930–00–4212–13; MTM 76695]

Conveyance and Order Providing for Opening of Public Land in Teton County, MT; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction.

SUMMARY: The land description in the notice published in the **Federal Register** on October 20, 1989 (54 FR 43143–44), is corrected as follows:

The land description in the second column on page 43144, which reads "T. 13 N., R. 22 E., sec. 13, lots 1–2, W½NE¼, E½NW¼, SW¼NE¼," should read T. 13 N., R. 22 E., sec. 13, lots 1–2, W½NE½, E½NW¼, SW¼NW¼.

Dated: November 14, 1989.

John A. Kwiatkowski,

Deputy State Director, Division of Lands and Renewable Resources.

[FR Doc. 89–27571 Filed 11–22–89; 8:45 am]

BILLING CODE 4310-DN-M

[ID–050–00–4920–10; IDI–26669]

Amendment to Notice of Realty Action (NORA) IDI–26669 Classification; ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Amendment to Notice of Realty Action (NORA) I–26669; Exchange of public and private lands in Blaine County, Idaho.

SUMMARY: The original NORA was published in the **Federal Register,** Vol. 54, No. 45, Thursday, March 9, 1989, page 10054. This amendment addresses only the description of the private lands to be acquired by the United States (U.S.).

The lands described in the original NORA are no longer desired by the U.S. In their place, the U.S. will acquire the following described land from the American Public Land Exchange Co., Inc.:

Boise Meridian, Blaine County, Idaho

T. 4 N., R. 17 E., Section 12: fractional portion SE4SE4 described as Lot 2 of INDUSTRIAL EAST, a subdivision of Tax Lot 4807; containing 1.94 acres.

No other elements of the NORA published as noted above are affected by this amendment.

For a period of 45 days from the date of publication of this notice, interested parties may submit comments regarding the proposed exchange to the District Manager, BLM Shoshone District Office, P.O. Box 2–B, Shoshone, ID 83352. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice.

Jon H. Idso,

Associate District Manager.

[FR Doc. 89–27524 Filed 11–22–89; 8:45 am]

BILLING CODE 4310-GG-M

[UT–943–00–4212–13; U–49298]

Issuance of Land Exchange Conveyance Document; UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Exchange of public and private lands.

SUMMARY: This action informs the public of the conveyance of 142.02 acres of public land out of Federal ownership. This action will also open 320 acres of reconveyed lands to surface entry, mining, and mineral leasing.

FOR FURTHER INFORMATION CONTACT: Mike Barnes, BLM Utah State Office, 324 South State Street, Salt Lake City, Utah 84111, 801–539–4119.

SUPPLEMENTARY INFORMATION:

1. The United States has issued an exchange conveyance document to the Pace 1984 Irrevocable Children's Trust, for the following described lands under section 206 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2756, 43 U.S.C. 1716:

Salt Lake Meridian, Utah

T. 40 S., R. 16 W.,
Sec. 17, lot 1; Sec. 19, SE¼NE¼, E½NE¼SE¼; Sec. 20, SW¼NW¼, NW¼SW¼.
Containing 142.02 acres.

2. In exchange for these lands, the United States acquired the surface and mineral estate of the following described lands.

Salt Lake Meridian, Utah

T. 40 S., R. 16 W.,
Sec. 2, S½.
Containing 320.00 acres.

3. At 8 a.m., on December 11, 1989, the lands described in paragraph 2 will be open to operation of the public land laws generally subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 8 a.m., on December 11, 1989, will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

4. At 8 a.m., on December 11, 1989, the lands described in paragraph 2 will be open to location and entry under the United States mining laws. Appropriation of land under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State Law where not in conflict with Federal Law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determination in local courts.

5. At 8 a.m., on December 11, 1989, the lands describe in paragraph 2 will be open to applications and offers under the mineral leasing laws.

Ted D. Stephenson,

Chief, Branch of Lands and Mineral Operations.

[FR Doc. 89–27597 Filed 11–22–89; 8:45 am]

BILLING CODE 4310-DQ-M

[WY–930–00–4212–13; WYW 89429]

Conveyance and Opening Order; Sublette County, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of conveyance and opening order.

SUMMARY: This notice advises the public of the completion of an exchange of land between the United States of America, Bureau of Land Management, and Joseph R. Hicks, and opens the private land acquired by the United States to operation of the public land laws.

EFFECTIVE DATE: December 4, 1989.

FOR FURTHER INFORMATION CONTACT: Jon Johnson, BLM Wyoming State Office, Bureau of Land Management, 2515 Warren Avenue, P.O. Box 1828, Cheyenne, Wyoming 82003, 307–772–2074.

SUPPLEMENTARY INFORMATION:

1. The following public land, surface estate only, has been conveyed to

Joseph R. Hicks under the authority of section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716 (1982):

Sixth Principal Meridian

T. 34 N., R. 108 W.,
Sec. 26, SE¼SE¼.
The land described contains 40.00 acres.

2. In exchange for the above land, the United States acquired the following private land, surface estate only, from Joseph R. Hicks:

Sixth Principal Meridian

T. 36 N., R. 110 W.,
Sec. 5, E½NE¼NE¼SW¼SE¼, E½SW¼NE¼SW¼SE¼, SE¼NE¼SW¼SE¼, E½NE¼SW¼SW¼SE¼, E½SW¼SW¼SW¼SE¼, SE¼SW¼SW¼SE¼, and SE¼SW¼SE¼.
The land described contains 20.00 acres.

3. The land described in paragraph 2 was acquired for stock driveway and public recreation access purposes. The selected public land and the offered private land are both valued at $2,000.00. All minerals in the selected public land were reserved to the United States. All minerals in the offered private land are owned by the United States. The land described in paragraph 2 became public land under administrative jurisdiction of the Bureau of Land Management upon acceptance of title by the United States on October 2, 1989.

4. At 10 a.m. on December 4, 1989, the land described in paragraph 2 will be open to operation of the public land laws generally, subject to existing rights and the requirements of applicable law. All applications received at or prior to 10 a.m. on December 4, 1989, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

5. The land described in paragraph 1, including the Federal mineral estate, and the Federal mineral estate in the land described in paragraph 2 were segregated from all forms of appropriation under the public land laws, including the mining laws, on June 2, 1989, by publication of Notice of Realty Action WYW 89429 in the **Federal Register**. The segregative effect of that notice terminated on October 4, 1989, insofar as it affected the land in paragraph 2. The Federal mineral estate in the land described in paragraph 1 remains segregated to operation of the general mining laws pending issuance of regulations by the Secretary of the Interior.

Dated: November 8, 1989.

James K. Murkin,

Deputy State Director, Division of Lands and Renewable Resources.

[FR Doc. 89-27573 Filed 11-22-89; 8:45 am]

BILLING CODE 4310-22-M

[WY-040-000-4212-14; WYW-91094]

Realty Action; Modified Competitive Sale of Public Lands in Sublette County, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, modified competitive sale of public lands in Sublette County, WY.

SUMMARY: The Bureau of Land Management has determined that the lands described below are suitable for public sale under section 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713):

Sixth Principal Meridian

T. 30 N., R. 111 W.,
Sec. 19, W½NW¼NW¼NE¼,SE¼NW¼NW¼NE¼,SW¼NW¼NE¼,W½SE¼NW¼NE¼,SE¼SE¼NW¼NE¼.
The land described contains 25.00 acres.

FOR FURTHER INFORMATION CONTACT: David E. Harper, Realty Specialist, Bureau of Land Management, Pinedale Resource Area, P.O. Box 768, Pinedale, Wyoming 82941, 307-367-4358.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management (BLM) proposes to sell the surface estate, under the above cited authority. The lands are being sold under modified competitive sale authority to resolve an unauthorized residential occupancy of public lands by James F. Mickelson and Jay Carlson.

The price of these lands will be determined at market value.

The proposed sale is consistent with the Pinedale Resource Management Plan. The land does not possess any known public values and is not required for any federal purpose. The Planning Document/Environmental Assessment for the proposed sale will be available for review at the BLM Pinedale Resource Area Office, Pinedale, Wyoming.

The sales patent will be subject to all valid existing rights and will contain reservations to The United States for ditches, canal and all minerals. The exact wording of these reservations, as well as specific conditions of the sale and the appraised market Value, are available for review in the Pinedale Resource Area Office, Pinedale, Wyoming.

Upon publication of this notice in the Federal Register, the public lands described above are segregated from all forms of appropriation under the public land laws, including the mining laws. The segregation will end 270 days from the date of this publication.

For a period of 45 days from the date of issuance of this notice, interested parties may submit comments to the Bureau of Land Management, District Manager, Rock Springs, P.O. Box 1869, Rock Springs, Wyoming 82901. Any adverse comments will be evaluated by the State Director, who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: November 14, 1989.

Arlan G. Hiner,

Area Manager.

[FR Doc. 89-27596 Filed 11-22-89; 8:45 am]

BILLING CODE 4310-22-M

[OR-100-07-6332-02; GPO-038]

Camping Limits, Roseburg District, OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Establishment of camping limit for campgrounds and undeveloped public lands, Roseburg District, OR

SUMMARY: Persons may camp within designated campgrounds for a total period of not more than 14 consecutive days at a campground, subject to payment of camping use fees at the site.

At developed campgrounds where no fee is charged the camping limit is also 14 consecutive days, and repeated re-occupation of the same campground is not permitted except after a period of non-occupancy of 20 days.

Within the North Umpqua River corridor camping or overnight use is prohibited on BLM lands outside designated campgrounds except by special permit issued by an authorized BLM officer.

Camping by hikers or riders along the North Umpqua Trail is permitted but must be at least 100 feet from the trail. Campfires are permitted in the center of an area cleared of duff down to mineral soil in a six-foot radius around the campfire during open fire season.

Campfires are prohibited during closed fire season as established by Douglas Forest Protective Association. Propane backpacker stoves may be used during fire closures in the center of a three-foot radius area cleared of duff down to mineral soil.

On public lands not closed to camping outside designated campgrounds persons may camp for a total period of not more than fourteen days at the same location. After an initial 14-day occupancy, persons may return only after 20 days of non-occupancy.

The 14-day limit may be reached either through a number of separate visits or through a period of continuous occupation of the public lands. Under special circumstances and upon request, the authorized officer may give written permission for extensions to the 14-day limit.

Additionally, except for vehicles or trailers parked at trailheads, no person may leave personal property unattended in designated day use areas for a period of more than 24 hours or in designated campgrounds or recreation developments for a period of more than 48 hours, or elsewhere on public lands for a period of more than 10 days without written permission from the authorized officer.

DATE: This camping occupancy limit shall be effective December 1, 1989, and remain in effect until further notice.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, N.W. 777 Garden Valley Blvd., Roseburg, Oregon 97470. Telephone (503) 672–4491.

SUPPLEMENTARY INFORMATION: This camping stay limit is being established in order to reduce the incidence of long-term unauthorized occupancy, while permitting legitimate camping on the public lands administered by the Roseburg District of the Bureau of Land Management. Authority for this camping occupancy limit is contained in CFR title 43, chapter II, part 8360, subpart 8364.1, § 8365.1–2 and § 8365.2–3.

Persons who fail to comply with the provisions of this closure may be subject to the penalties provided in 43 CFR 8360.0–7 and 43 CFR 9262.1, which include a fine not to exceed $1000.00 and/or imprisonment for not to exceed 12 months.

Dated: November 16, 1989.

Richard Burch,

Acting District Manager.

[FR Doc. 89–27572 Filed 11–22–89; 8:45 am]

BILLING CODE 4310-33-M

[AK-060-00-4410-08]

Availability of the Proposed Utility Corridor Resource Management Plan and Final Environmental Impact Statement

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of availability of proposed resource management plan and final environmental impact statement.

SUMMARY: The proposed resource management plan and final environmental impact statement (RMP/EIS) for approximately 6,080,000 acres of Federal land located in and near the Trans Alaska Pipeline Utility Corridor north of Fairbanks, Alaska, is available for distribution to the public. These lands are located within the Bureau of Land Management (BLM) Arctic District. A copy of the RMP/EIS will be mailed to individuals, government agencies and groups who requested copies or otherwise expressed an interest in the Utility Corridor planning effort.

This action is being announced pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, as amended. The RMP is subject to protest from any adversely affected party who participated in the planning process. Protests must be made in accordance with the provisions of 43 CFR 1610.5–2. Protests must be received by the Director of BLM, 18th and C Streets NW., Washington, DC 20240, within thirty days after the date of publication of Notice of Availability for the EIS in the **Federal Register** by the Environmental Protection Agency.

The RMP will guide management of the public lands and resources in: the Utility Corridor north of the Yukon River; the "Venetie block", located outside the Corridor immediately north of the Yukon Flats National Wildlife Refuge; and the Central Arctic Management Area (CAMA), located north of the Brooks Range. The RMP provides comprehensive management for the lands described above and would designate thirteen Areas of Environmental Concern (ACECs). The RMP also incorporates the CAMA wilderness recommendation submitted to the President and Congress in December of 1988.

The final EIS presents the proposed plan in detail and summarizes the four alternatives considered in detail and presented in the draft RMP/EIS. Comments on the draft EIS have been considered in preparation of this document. Each alternative recognizes the transportation of energy resources as the primary function of the Utility Corridor and addresses the following issues:

1. Mineral and commercial (node) development,
2. Land disposals and acquisitions,
3. Recreation,
4. Access,
5. Subsistence,
6. Wilderness,
7. Wildlife resources.

The proposed plan emphasizes development of the recreational development opportunities within the Utility Corridor. Alternative A is the "no action" alternative; it proposes continuation of present management throughout the planning area. Alternative B emphasizes environmental protection and enhancement with much of CAMA managed as wilderness. Alternative C focuses on the development of economic opportunities in the planning area and maximizes land available for mineral development; it also provides at least as many opportunities for recreational development as the proposed plan. Alternative D is a land disposal option; all currently withdrawn lands would be opened to state selection and present management would continue on remaining lands.

The RMP will be implemented after publication of a separate Record of Decision and Final RMP.

Areas of Critical Environmental Concern

Thirteen Areas of Critical Environmental Concern (ACEC) including one Research Natural Area (RNA) would be designated under the proposed plan. The ACECs and a summary of use limitations are listed below:

1. *Galbraith Lake ACEC (approximately 56,000 acres).* This area has the highest concentration of historic and prehistoric resources of any area yet surveyed within the Utility Corridor. The area also provides crucial lambing habitat areas and mineral licks for Dall's sheep. Particular care will be exercised in permitting activities in this area, no surface occupancy will be allowed, and the area will be closed to mineral entry.

2. *Ivishak River ACEC (approximately 3,800 acres).* The lower Ivishak River contains the highest concentration of overwintering arctic char in CAMA. Mineral material extraction in the area will be restricted, no-surface-occupancy stipulations will apply to oil and gas leasing, and the northern portion of the ACEC is closed to mineral entry.

3. *Jim River ACEC (approximately 200,000 acres).* The Jim River drainage is

an excellent sport fishery, contains a rich concentration of archaeological sites, is of high scenic quality and contains raptor nesting sites including peregrine falcon. Gravel extraction within the Jim River floodplain will be restricted, plans of operations with protective stipulations and mitigation measures will be applied to all mining operations regardless of size, and seasonal use and surface occupancy restrictions will be applied to oil and gas and other activities which may affect identified resource values.

4. *Kanuti Hot Springs ACEC (approximately 40 acres).* This is an undeveloped hot springs about 8 miles west of the Dalton Highway. There is an immediate need for special management of this area to protect and preserve this spring and the surrounding meadow. Leasing and development will be restricted to actions which will not directly affect the springs, no-surface-occupancy stipulations will apply to mineral leasing, and the area will remain closed to mineral entry.

5. *Nigu-Iteriak ACEC (approximately 64,000 acres).* The area contains known archaeological resources, including two potential national register sites. The area also contains unique geological resources including ice cored-kame terraces and a collapsed pingo. The southern portion of the ACEC is bordered by two part system wilderness areas and exhibits high scenic values. A portion of this ACEC will be closed to mineral entry and leasing, managed as VRM class I, and closed to recreational ORV use.

6. *Nugget Creek ACEC (approximately 3,300 acres).* This is a Dall's sheep lambing area and contains a mineral lick. The area immediately surrounding the lick site (160 acres) will be closed to mineral entry and the extraction of mineral materials. No-surface-occupancy stipulations would apply to mineral leasing at the lick site. Within the ACEC, but outside the lick site, plans of operation would be required and protective stipulations and mitigation measures would be applied to all surface disturbing activities to avoid restricting sheep movement or unduly impacting sheep habitat.

7. *Poss Mountain ACEC (approximately 8,000 acres).* This is a Dall's sheep lambing area and contains a mineral lick. The area immediately surrounding the lick site (160 acres) will be closed to mineral entry and the extraction of mineral materials. No-surface-occupancy stipulations will apply to mineral leasing at the lick site. Within the ACEC, but outside the lick site, plans of operation will be required and protective stipulations and mitigation measures will be applied to all surface disturbing activities to avoid restricting sheep movement or unduly impacting sheep habitat.

8. *Sagwon Bluffs ACEC (approximately 42,200 acres).* This is habitat for several species of raptors, including peregrine falcon; includes significant riparian habitat; and at least one sensitive plant species is present. All BLM-authorized activities shall follow the protective measures for the peregrine falcon as specified in the *Peregine Falcon Recovery Plan, Alaska Population* (1982). No-surface-occupancy stipulations will be applied to mineral leasing activities within sensitive plant habitat and protective stipulations and mitigation measures will be applied to all surface disturbing activities to avoid unduly disturbing peregrine falcons and their habitat.

9. *Slope Mountain ACEC (approximately 5,100 acres).* This is a Dall's sheep lambing area and contain a mineral lick. It also is an area of high potential for future peregrine falcon nest sites. The area immediately surrounding the lick site (160 acres) will be closed to mineral entry and the extraction of mineral materials. No-surface-occupancy stipulations will apply to mineral leasing at the lick site. Within the ACEC, but outside the lick site, plans of operation will be required and protective stipulations and mitigation measures will be applied to all surface disturbing activities to avoid restricting sheep movement or unduly impacting sheep habitat. All BLM-authorized activities shall follow the protective measures for peregrine falcon as specified in the *Peregrine Falcon Recovery Plan, Alaska Population* (1982).

10. *Snowden Mountain ACEC (approximately 28,000 acres).* This area exhibits important geologic and associated paleontological resource including excellent exposures of Devonian corals and Cambrian trilobites. This area is also a Dall's sheep lambing area and contains two known mineral licks. The area immediately sorrounding each lick site (160 acres) will be closed to mineral entry and the extraction of mineral materials. No-surface-occupancy stipulations will apply to mineral leasing at the lick sites. Within the ACEC, but outside the lick sites, plans of operation will be required and protective stipulations and mitigation measures will be applied to all surface disturbing activities to avoid restricting sheep movement or unduly impacting sheep habitat or other identified resources.

11. *Sukakpak Mountain (approximately 3,500 acres).* This mountain exhibits unique geologic structures, folds and faults and is the site of a rare plant species. Because of its proximity to the Dalton Highway it also offers highway travelers an outstanding view from the highway. The ACEC will remain closed to mineral location and gravel extraction will not be allowed in areas visible from the highway. No-surface-occupancy stipulations will be applied to mineral leasing activities.

12. *Toolik Lake ACEC (82,200 acres).* This area is representative of the north slope lake and tundra biome. A large number of research projects have been based in and around this lake area and the University of Alaska maintains a research facility at this site. Additionally a sensitive plant species, *Montia bostockii*, is located in the ACEC. The area will be closed to mineral location, gravel extraction will be restricted and no recreational camping will be permitted.

13. *West fork Atigun ACEC (8,500 acres).* This is a Dall's sheep lambing area and contains a mineral lick. The area immediately surrounding the lick site (160 acres) will be closed to mineral entry and the extraction of mineral materials. No-surface-occupancy stipulations would apply to mineral leasing at the lick site. Within the ACEC, but outside the lick site, plans of operation would be rerquired and protective stipulations and mitigation measures would be applied to all surface disturbing activities to avoid restricting sheep movement or unduly impacting sheep habitat.

DATES: Protests on the Proposed Plan-Final ELS must be postmarked by December 26, 1989.

ADDRESSES: Protests or comments on the Proposed Plan/Final EIS should be sent to Director (760), Bureau of Land Management , 18th and C Streets NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: M. Thomas Dean, District Manager, Bureau of Land Management, 1150 University Avenue, Fairbanks, Alaska 99709–3844; (907) 474–2301.

Date: November 15, 1989.

Lester Rosendrance,

State Director, Acting.

[FR Doc. 89–27414 Filed 11–22–89; 8:45 am]

BILLING CODE 4310–84–M

[OR-943-00-4214-11; GPO-061; ORE-03468, et al.]

Proposed Continuation of Withdrawals; Oregon; Correction

The land descriptions in FR Doc. 89-25253, published on page 43629, in the issue of Thursday, October 26, 1989, are hereby corrected as follows:

On page 43629 under 9. ORE-013403, as reads "Jefferson County, 24 miles west" and is corrected to read "Deschutes County, 1 mile northwest"; as reads "T. 15 S., R. 7 E.," and is corrected to read "T. 15 S., R. 10 E.,"; and as reads "Jefferson County, 35 miles", and is corrected to read "Deschutes County, 35 miles."

Dated: November 15, 1989.

Champ C. Vaughan,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 89-27575 Filed 11-22-89; 8:45 am]

BILLING CODE 4310-33-M

Fish and Wildlife Service

Availability of a Draft Recovery Plan for the Louisiana pearlshell (Margaritifera hembeli) for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service announces the availability for public review of a draft recovery plan for the Louisiana pearlshell. This species occurs in headwaters of Bayou Boeuf in Rapides Parish, Louisiana. Most of the known range is streams on U.S. Forest Service land. The Service solicits review and comment from the public on this draft plan.

DATE: Comments on the draft recovery plan must be received on or before January 23, 1990 to receive consideration by the Service.

ADDRESS: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Jackson Field Office, U.S. Fish and Wildlife Service, Jackson Mall Office Center, 300 Woodrow Wilson Avenue, Suite 316, Jackson, Mississippi 39213. Written comments and materials regarding the plan should be addressed to the Field Supervisor at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Jim Stewart at the above address (601/965-4990).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, criteria for recognizing the recovery levels for downlisting or delisting them, and initial estimates of times and costs to implement the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act as amended in 1988, requires that a public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The primary species considered in this draft recovery plan is the Louisiana pearlshell (*Margaritifera hembeli*). The area of emphasis for recovery actions is the Bayou Boeuf system in Kisatchie National Forest, Rapides Parish, Louisiana. Habitat protection and management are major objectives of this recovery plan.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: November 16, 1989.

Robert Bowker,

Complex Field Supervisor.

[FR Doc. 89-27570 Filed 11-22-89; 8:45 am]

BILLING CODE 4310-55-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-432]

Drafting Machines and Parts Thereof From Japan; Commission Determination to Conduct a Portion of a Hearing in Camera

AGENCY: U.S. International Trade Commission.

ACTION: Closure of a portion of a Commission hearing to the public.

SUMMARY: Upon request of respondents in the above-captioned final investigation, the Commission (Commissioner Lodwick dissenting) has determined to conduct a portion of its hearing scheduled for November 4, 1989, *in camera*. *See* Commission rules 201.13 and 201.35(b)(3) (19 CFR 201.13 and 201.35(b)(3)). The remainder of the hearing will be open to the public.

FOR FURTHER INFORMATION CONTACT: William T. Kane, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202)-252-1116. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Commission's TDD terminal on (202)-252-1810.

SUPPLEMENTARY INFORMATION: The Commission believes that unusual circumstances are present in this investigation such as it is appropriate to hold a portion of the hearing *in camera*. Because petitioner is the only domestic manufacturer of drafting machines, and there is a single foreign manufacturer/importer of subject drafting machines, much of the information collected by the Commission is business proprietary information (BPI). In light of this, the Commission has determined that a full discussion of petitioner's financial condition and of many of the other indicators that the Commission examines in assessing material injury by reason of subject imports could only take place if at least part of the hearing were held *in camera*. In making this decision, the Commission nevertheless reaffirms its belief that wherever possible its business should be conducted in public.

The hearing will begin with the usual public presentation by petitioner, followed by questioning of petitioner by the Commission. Respondents will then make their public arguments, and be questioned as appropriate by the Commission. Following respondents' public presentation and questioning, an *in camera* session concerning

petitioner's BPI will begin. For this, the room will be cleared of all persons except: (1) those who have been granted access to business proprietary information under a Commission administrative protective order (APO) and are included on the Commission's APO service list in this investigation, and (2) personnel of petitioner Vemco, if any. *See* 19 CFR 201.35(b)(1), (2). In the *in camera* session, respondents will make a presentation, limited to a discussion of petitioner's BPI, to be followed by questions from the Commission as appropriate. Petitioner will then have an opportunity to respond, and will also be questioned by the Commission as appropriate.

Following these presentations and questions concerning petitioner's BPI, if requested by either petitioner or respondents, the Commission will allow *in camera* presentations concerning BPI submitted by respondents (with or without accompanying discussion of the BPI of petitioner for comparative purposes). For these presentations, personnel of Vemco who are not under the Commission's APO will be excused from the room. Following any presentations concerning respondents' BPI, the Commission may question either or both sides as appropriate. Following the *in camera* session, the Commission may determine that it is appropriate to reopen the hearing to the public for concluding statements or for additional public questioning by the Commission. The time for the parties' presentations in the *in camera* session will be taken from their respective overall allotments for the hearing. All those planning to attend the *in camera* portions of the hearing should be prepared to present proper identification.

Authority: The General Counsel has certified, pursuant to Commission Rule 201.39 (19 CFR 201.39) that, in her opinion, a portion of the Commission's hearing in *Drafting Machines and Parts Thereof from Japan*, Inv. No. 731–TA–432 (Final) may be closed to the public to prevent the disclosure of business proprietary information.

Issued: November 13, 1989.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 89–27507 Filed 11–22–89; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 332–282]

Review of Mexico's Recent Trade and Investment Liberalization Measures and Prospects for Future U.S.-Mexican Trade Relations, Phase I, Commission Determination To Change Date Of Hearing

AGENCY: United States International Trade Commission.

ACTION: Change in hearing date.

SUMMARY: The Commission has determined to change the date of its hearing in connection with the above-captioned investigation to 9:30 a.m., December 5, 1989. The hearing will be held in the Commission Hearing Room, 500 E Street, SW., Washington, DC 20436. All persons have the right to appear by counsel or in person, to present information, and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Commission, 500 E Street, SW., Washington, DC 20436, no later than noon, November 27, 1989. The deadline for filing prehearing briefs (original and 14 copies) is November 27, 1989. Post hearing briefs are due on December 18, 1989.

FOR FURTHER INFORMATION CONTACT: Constance A. Hamilton (202)–252–1263, Trade Reports Division, Office of Economics, U.S. International Trade Commission, Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Commission's TDD terminal on (202) 252–1810.

By order of the Commission.

Issued: November 17, 1989.

Kenneth R. Mason,

Secretary.

[FR Doc. 89–27542 Filed 11–22–89; 8:45 am]

BILLING CODE 7020–02–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: Four–M Properties, Inc., 301 East Indiana Street, Evansville, Indiana 47711.

2. Wholly-owned subsidiaries which will participate in the operations, and state(s) of incorporation: Replas, Inc., Indiana.

B. 1. Parent Corporation: Inland Container Corporation I, Fortune Park, 4030 Vincennes Road, Indianapolis, IN 46268–0937.

2. Directly or indirectly wholly-owned subsidiaries which will participate in the operations, and state of incorporation.

1. Anderson Box Company, Inc., Indiana
ii. El Morro Corrugated Box Corporation, Delaware
ii. El Morro Corrugated Box Corporation, de Puerto Rico
iv. Indisc, Inc., Indiana
v. Inland Paper Company, Inc., Indiana
vi. Inland Real Estate Investment, Inc., Indiana
vii. Inland Rome, Inc., Delaware
viii. Inland Orange, Inc., Delaware
ix. Sabine River & Northern Railroad, Inc., Texas
x. Inland Container Corporation, Delaware

C. 1. The parent corporation and address of principal office is: Insteel Industries, Inc., 1373 Boggs Drive, Mount Airy, NC 27030.

2. Wholly-owned subsidiaries which will participate in the operations, and state(s) of incorporation are:

i. Forbes Steel & Wire Corporation, Delaware
ii. Expo Wire Company, North Carolina
iii. Rappahannock Wire Company, North Carolina
iv. Federal Nail Mfg. Company, North Carolina

Noreta R. McGee,

Secretary.

[FR Doc. 89–27598 Filed 11–22–89; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 31564]

Georgia Pacific Corp. and NM Acquisition Corp.—Acquisition of Control Exemption—Nonconnecting Railroads

Georgia Pacific Corporation (Georgia Pacific) and its new wholly owned noncarrier subsidiary, NM Acquisition Corp. (NM), have filed a notice of exemption under 49 CFR 1180.4(g) regarding an exempt transaction under 49 CFR 1180.2(d)(2).

Pursuant to a public tender offer, NM, on behalf of Georgia Pacific, seeks to acquire control of Great Northern Nekoosa Corp. (GNN) by purchasing 100

percent of its outstanding common stock.[1] Although GNN is not a carrier, it controls the following Commission-regulated shortline railroads: Chattahoochee Industrial Railroad (located in Georgia); Marinette, Tomahawk and Western Railroad (located in Wisconsin); Old Augusta Railroad (located in Mississippi); and Valdosta Southern Railroad (located in South Carolina) (collectively, GNN railroads). Georgia Pacific, also a noncarrier, controls the following Commission-regulated shortline railroads: Ashley, Drew and Northern Railway Company (located in Arkansas); Fordyce & Princeton Railroad Company (located in Arkansas); Gloster Southern Railroad Company (located in Louisiana and Mississippi); and Amador Central Railroad Company (located in California) (collectively, Georgia Pacific railroads).

The lines of the Georgia Pacific railroads do not connect with the lines of the GNN railroads, and the proposed transaction is not a part of a series of anticipated transactions that would connect any of the GNN railroads with one another or with the Georgia Pacific railroads. No Class I railroad is involved in the transaction. Accordingly, the acquisition of control is exempt from the prior review requirements of 49 U.S.C. 11343. *See* 49 CFR 1180.2(d)(2).

As a condition to use of this exemption, any employees affected by the transaction will be protected by the conditions set forth in New York Dock Ry.—Control—Brooklyn Eastern Dist., 360 I.C.C. 60 (1979).

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. Pleadings must be filed with the Commission and served on: Betty Jo Christian, Steptoe & Johnson, 1330 Connecticut Ave., NW., Washington, DC 20036.

Decided: November 17, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-27599 Filed 11-22-89; 8:45 am]

BILLING CODE 7035-01-M

[1] On November 13, 1989, GNN filed a petition seeking revocation of the exemption on grounds that the Notice of Exemption filed by applicants is procedurally defective, misleading, and inaccurate. GNN's petition will be addressed in a separate decision.

DEPARTMENT OF JUSTICE

Extension of Public Comment Period on Proposed Consent Decree

In accordance with section 122 of the Comprehensive Environmental Response, Compensation and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622, and the policy of the Department of Justice, 28 CFR 50.7, notice was published in the **Federal Register** on October 11, 1989, that a complaint was filed on September 27, 1989, in *United States* v. *Browning-Ferris Chemical Services, Inc., et al.*, Civil Action No. B-89-859, in the United States District Court for the Eastern District of Texas, Beaumont Division, and, simultaneously, a consent decree between the United States, Browning-Ferris Chemical Services, Inc., Chevron Chemical Company, E.I. DuPont De Nemours, French Limited, French Ltd., of Houston, Luther P. Hendon, George A. Whitten, Gulf Utilities Company, Owens-Illinois, Inc., Phillips Petroleum Company, Sun Refining and Marketing Company, Inc., Texaco Chemical Company, and The Uniroyal Goodrich Tire Company was lodged with the court. The prior notice stated that public comments on the proposed consent decree would be received for a period of thirty (30) days from the date of publication of the notice. In response to a request submitted on behalf of several potentially responsible parties, the public comment period on the proposed consent decree is being extended until November 24, 1989.

Accordingly, the Department of Justice will receive comments relating to the proposed consent decree until November 24, 1989. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, 10th and Pennsylvania Avenue, NW., Washington, DC 20530. All comments should refer to *United States* v. *Browning-Ferris Chemical Services, Inc., et al.*, D.J. Ref. 90-11-2-390.

The proposed consent decree may be examined at the following offices of the United States Attorney and the Environmental Protection Agency ("EPA"):

EPA Region VI

Contact: Pamela Phillips, Office of Regional Counsel, U.S. Environmental Protection Agency, Region VI, 1445 Ross Avenue, Dallas, Texas 75202-2733, (214) 655-2120;

United States Attorney's Office

United States Attorney, Eastern District of Texas, 700 North Street, Suite 102, Beaumont, Texas 77701.

Copies of the proposed consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, Room 1515, 10th and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy of the decree, please enclose a check for copying costs in the amount of $17.00 payable to the Treasurer of the United States.

George Van Cleve,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-27522 Filed 11-22-89; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree; Pursuant to the Comprehensive Enviromental Response, Compensation and Liability Act

In accordance with section 122(d)(2)(B) of the Comprehensive Environmental Response, Compensation and Liability Act and with Department of Justice Policy, 28 CFR 50.7, notice is hereby given that on October 23, 1989, a Proposed Consent Decree in *United States* v. *Hancock County, Mississippi*, Civil Action No. SS88-0496(M) was lodged with the United States District Court, Southern District of Mississippi, Southern Division. The proposed Consent Decree concerns payment to the United States by Hancock County, Mississippi for costs incurred by the United States in connection with the clean-up of hazardous substances located in Hancock County, Mississippi. The hazardous substances were located at Lot 5A of the Port Bienville Industrial Park, Pearlington, Mississippi owned by Hancock County, Mississippi. The Consent Decree provides that Hancock County will pay the United States two equal installments of $82,500. The first payment is due within forty-five (45) days of the entry of this Consent Decree. The second payment is due on or before the first anniversary of the entry of the Consent Decree. The Consent Decree shall terminate upon the United States' certification to the court that all payments have been made and received in accordance with the terms of the Consent Decree.

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 Decree. 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. Hancock County, Mississippi*, D.J. Ref. 90–11–3–360.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Southern District of Mississippi, United States Courthouse, Biloxi, Mississippi and at the Region IV, Office of the Environmental Protection Agency, 345 Courtland Street, Atlanta, Georgia. Copies of the Consent Decree may be examined at the Enviromental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1647, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.10 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Richard B. Stewart,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89–27523 Filed 11–22–89; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Labor Advisory Committee for Trade Negotiations and Trade Policy; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463 as amended), notice is hereby given of a meeting of the Labor Advisory Committee for Trade Negotiations and Trade Policy.

Date, time and place: December 12, 1989, 9:30 p.m.–12:00 p.m., Rm. S2217, Frances Perkins, Department of Labor Building, 200 Constitution Ave, NW., Washington, DC 20210.

Purpose: To discuss trade negotiations and trade policy of the United States.

This meeting will be closed under the authority of section 10(d) of the Federal Advisory Committee Act and U.S.C. section 552b(c)(1). The Committee will hear and discuss sensitive and confidential matters concerning U.S. trade negotiations and trade policy.

For further information, contact: Fernand Lavallee, Director, Labor Advisory Committee Group, Phone: (202) 523–2752.

Signed at Washington, DC, this 15th day of November.

Shellyn G. McCaffrey,

Deputy Under Secretary, International Affairs.

[FR Doc. 89–27600 Filed 11–22–89; 8:45 am]

BILLING CODE 4510–28–M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3504, Washington, DC 20210.

New General Wage 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 II

Iowa, IA89–11 ..... p. 63, p. 64

Kansas

KS89–10 ..... p. 382a, p. 382b

KS89–11 ..... p. 382c, p. 382d

Texas

TX89–55 ..... p. 1136m, p. 1136n

TX89–56 ..... p. 1136o, p. 1136p

TX89–57 ..... p. 1136q, pp. 1136r–1136t

TX89–58 ..... p. 1136u, p. 1136v

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

Pennsylvania
PA89-6 (Jan. 6, 1989) ..... p. 893, pp. 894-895
PA89-12 (Jan. 6, 1989) ..... p. 941, p. 942
PA89-23 (Jan. 6, 1989) ..... p. 1005, p. 1007
PA89-24 (Jan. 6, 1989) ..... p. 1011, p. 1013

Volume II

Arizona, AZ89-2 (Jan. 6, 1989) p. 15, p. 19

Volume III

California, CA89-2 (Jan. 6, 1989) p. 43, pp. 53-64

General Wage Determination Publication

General wage determination 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 17th day of November, 1989.

Alan L Moss,

Director, Division of Wage Determinations.

[FR Doc. 89-27475 Filed 11-22-89; 8:45 am]
BILLING CODE 4510-27-M

Employment and Training Administration

[TA-W-21,765 et al.]

Tesoro Drilling Co., Laurel, MS and Affiliated Companies Located in San Antonio, TX and in Other Locations of Texas; Amended Notice of Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance

In the matter of
TA-W-21,765A Tesoro Petroleum Corporation
TA-W-21,765B Tesoro Crude Oil Company
TA-W-21,765C Tesoro Pipeline Company
TA-W-21,765D Tesoro Refining, Marketing & Supply Co.
TA-W-21,765E Land & Marine Rental Company and
TA-W-21,765F Tesoro Petroleum Corporation, All Locations in Louisiana

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Notice of Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance on March 2, 1989 applicable to all workers of Tesoro Drilling Company, Laurel, Mississippi; Tesoro Petroleum Corporation; Tesoro Crude Oil Company; Tesoro Pipeline Company; Tesoro Refining, Marketing & Supply Company and the Land & Marine Rental Company all in San Antonio, Texas. Workers at Tesoro Drilling Company, Tesoro Petroleum Corporation, Tesoro Crude Oil Company and Tesoro Pipeline Company were certified eligible to apply for adjustment assistance. Workers at Tesoro Refining and Land & Marine Rental Company were denied adjustment assistance. The notice was published in the **Federal Register** on May 23, 1989 (54 FR 22382).

The Department is amending the notice to show the correct location of the certified worker groups. The notice, therefore, is amended by including all other locations in Texas besides San Antonio, Texas for the certified worker groups. The amended notice applicable to TA-W-21,765 is hereby issued as follows:

All workers of Tesoro Drilling, Company, Laurel, Mississippi (TA-W-21,765) who became totally or partially separated from employment on or after October 1, 1985 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

All workers of Tesoro Petroleum Corporation (TA-W-21,765A); Tesoro Crude Oil Company (TA-W-21,765B) and Tesoro Pipeline Company (TA-W-21,765C) in San Antonio and all other locations in Texas and all workers of Tesoro Petroleum Corporation (TA-W-21,765F) in all locations in Louisiana who became totally or partially separated from employment on or after October 17, 1987 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

I further determine that all workers of Tesoro Refining, Marketing & Supply Company (TA-W-21,765D) and of Land & Marine Rental Company (TA-W-21,765E) both in San Antonio, Texas are denied eligibility to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 17th day of November 1989.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 89-27601 Filed 11-22-89; 8:45 am]
BILLING CODE 4510-30-M

NATIONAL CRITICAL MATERIALS COUNCIL

National Commission on Superconductivity (NCOS); Meeting

The purpose of the National Commission on Superconductivity is to review all major policy issues regarding United States applications of recent research in advanced superconductors in order to assist the Congress in devising a national strategy, including research and development priorities, the development of which will assure United States leadership in the development and application of superconducting technologies. The Commission will meet on December 11, 1989, in the second floor theater of the Office of Thrift Supervision, 1700 G Street, NW., Washington, DC, from 3:00 p.m. until 5:00 p.m.

The proposed agenda is the following:

1. Status reports on working groups.
2. An open period for public comment and discussion.

The entire meeting will be open to the public.

Perry M. Lindstrom,

Acting Executive Director.

[FR Doc. 89-27770 Filed 11-21-89; 4:28 pm]
BILLING CODE 3130-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Dance Advisory Panel (Advancement Section); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Dance

Advisory Panel (Advancement Section) to the National Council on the Arts will be held on December 11, 1989, from 9:30 a.m.–5:30 p.m. and on December 12, 1989, from 9:30 a.m.–4:00 p.m. in room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on December 12, 1989, from 2 p.m.–4 p.m., time permitting. The topic for discussion will be policy issues.

The remaining portions of this meeting on December 11, 1989, from 9:30 a.m.–5:30 p.m. and on December 12, 1989, from 9:30 a.m.–2 p.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 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: November 17, 1989.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89–27537 Filed 11–22–89; 8:45 am]

BILLING CODE 7537-01-M

Media Arts Advisory Panel (Narrative Film Development Section); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Media Arts Advisory Panel (Narrative Film Development Section) to the National Council on the Arts will be held on December 13, 1989, from 9:15 a.m.–5:30 p.m. in room 716 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: November 17, 1989.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89–27538 Filed 11–22–89; 8:45 am]

BILLING CODE 7537-01-M

Office of Public Partnership Advisory Panel (Locals Section); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Office of Public Partnership Advisory Panel (Locals Section) to the National Council on the Arts will be held on December 7, 1989, from 9 a.m.–5 p.m. and on December 8, from 9 a.m.–4:30 p.m. in room M14 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on December 7, 1989, from 9 a.m.–5 p.m. and on December 8, 1989, from 9:00 a.m.–1:30 p.m. The topic for discussion will be application review.

The remaining portion of this meeting on December 8, 1989 from 1:30 p.m.–4:30 p.m. 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 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 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: November 9, 1989.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

FR Doc. 89–27539 Filed 11–22–89; 8:45 am]

BILLING CODE 7537-01-M

Theater Advisory Panel (Support to Individuals/Fellowships for Playwrights Section; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Theater Advisory Panel (Support to Individuals/ Fellowships for Playwrights Section) to the National Council on the Arts will be held on December 7, 1989 from 9:30 a.m.–6:00 p.m. in room M07 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on December 7, 1989, from 9:30 a.m.–10 a.m. and from 4:30 p.m.–6 p.m. The topic for discussion will be opening remarks and category and guidelines overview.

The remaining portion of this meeting on December 7 from 10 a.m.–5:30 p.m. 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 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: November 17, 1989.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89–27540 Filed 11–22–89; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–362]

Southern California Edison Co., et al.; San Onofre Nuclear Generating Station, Unit 3 Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–15 issued to Southern California Edison Company, San Diego Gas and Electric Company, the City of Riverside, California and the City of Anaheim, California (the licensees), for operation of San Onofre Nuclear Generating Station, Unit 3, located in San Diego County, California.

ENVIRONMENTAL ASSESSMENT

Identification of Proposed Action

The proposed amendment would revise Technical Specification 3/4.7.6, "Snubbers." Surveillance Requirement 4.7.6.b requires a visual inspection of all snubbers on a regular basis. The interval for visual inspections is decreased as a function of the number of inoperable snubbers discovered. With no inoperable snubbers found, a maximum interval of 18 months plus or minus 25% is allowed. With one inoperable snubber per inspection period, the interval is 12 months plus or minus 25%. The proposed change would allow a one–time extension of the 12 month interval to 20 months plus or minus 25%, for the case where one inoperable snubber was found.

The Need for the Proposed Action

The proposed amendment is required to prevent unnecessary unit shutdown. Performance of these inaccessible snubber inspections would require unit shutdown due to their location in high radiation zones and the need to erect ladders or scaffolding for inspection.

Environmental Impacts of the Proposed Action

The proposed action would not involve a significant change in the probability or consequences of any accident previously evaluated, nor does it involve a new or different kind of accident. Consequently, any radiological releases resulting from an accident would not be significantly greater than previously determined. The proposed amendment does not otherwise affect routine radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed amendment. The Commission also concludes that the proposed action will not result in a significant increase in individual or cumulative occupational radiation exposure.

With regard to nonradiological impacts, the proposed amendment does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on September 7, 1989 (54 FR 37171). No request for hearing or petition for leave to intervene was filed following this notice.

Alternatives to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the Final Environmental Statement related to operation of San Onofre Nuclear Generating Station, Units 2 and 3, dated April 1981 and its Errata dated June 1981.

Agencies and Persons Consulted

The NRC staff has reviewed the licensees' request that supports the proposed amendment. The NRC staff did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement of the proposed amendment.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated July 26, 1989 which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and at the General Library, University of California, P.O. Box 19557, Irvine, California 92713.

Dated at Rockville, Maryland, this 16 day of November 1989.

For the Nuclear Regulatory Commission.

George W. Knighton,

Director, Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects Office of Nuclear Reactor Regulation.

[FR Doc. 89–27603 Filed 11–22–89; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50–269, 50–270, and 50–287]

Duke Power Co.; Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment Nos. 177, 177, and 174 to Facility Operating License Nos. DPR–38, DPR–47, and DPR–55 issued to Duke Power Company (the licensee), which revised the Technical Specifications for operation of the Oconee Nuclear Station, Units 1, 2, and 3 (the facility) located in Oconee County, South Carolina. The amendments were effective as of the date of issuance.

The amendments revise the Technical Specifications to establish requirements for movement of a dry storage fuel transfer cask in Oconee Units 1, 2 and 3 spent fuel pools. In addition, the changes authorize storage of spent fuel at the Oconee Independent Spent Fuel Storage Installation (ISFSI). Authorizations for the ISFSI required under the provisions of 10 CFR part 72 are being handled by the Commission's Office of Nuclear Material Safety and Safeguards.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The

Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments.

Notice of Consideration of Issuance of Amendments and Opportunity for Hearing in connection with this action was published in the **Federal Register** on July 11, 1988 (53 FR 26122). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of these amendments will not have a significant effect on the quality of the human environment (54 FR 43369).

For further details with respect to the action see (1) the application for amendments dated March 31, 1988, (2) Amendment Nos. 177, 177, and 174 to License Nos. DPR-38, DPR-47, and DPR-55 and (3) the Commission's related Safety Evaluation and Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29691. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects I/II.

Dated at Rockville, Maryland, this 16th day of November, 1989.

For the Nuclear Regulatory Commission.

Jon B. Hopkins,

Project Manager, Project Directorate II-3, Division of Reactor Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-27604 Filed 11-22-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-433]

University of California at Santa Barbara L-77 Research Reactor; Order Terminating Facility Operating License

By application dated September 9, 1985, as supplemented on November 20 and December 9, 1985, and March 24 and June 27, 1986, the University of California at Santa Barbara (the licensee) requested the Nuclear Regulatory Commission (the Commission) for authorization to dispose of the component parts of its L-77 Research Reactor located in Santa Barbara, California and to terminate Facility Operating License No. R-124. A Notice of "Proposed Issuance of Order Authorizing Disposition of Component Parts and Terminating Facility License," was published in the **Federal Register** o 1 October 30, 1985, (50 FR 45180). No request for a hearing or petition for leave to intevene was filed followig notice of the proposed action. By Order dated August 26, 1986, the Commission authorized dismantling of the facility and disposal of component parts as proposed in the licensee's dismantling plan.

The reactor fuel has been removed from the core and shipped to a Department of Energy facility. The reactor facility has been completely dismantled and all requirements particularly those relevant to residual radioactivity and the packaging and shipping of fuel and radioactive material, have been met. Accordingly, the Commission has found that the facility has been dismantled and decontaminated pursuant to the Commission's Order dated August 26, 1986. Satisfactory disposition has been made of the component parts and fuel in accordance with the Commission's regulations in 10 CFR chapter 1, and in a manner not inimical to the common defense and security, or to the health and safety of the public. Therefore, based on the application filed by the University of California at Santa Barbara, located in Santa Barbara, California, and pursuant to sections 104 and 161 b, i, of the Atomic Energy Act of 1954, as amended, and in 10 CFR 50.82(b), Facility Operating License No. R-124 is terminated as of the date of this Order. In accordance with 10 CFR part 51, the Commission has determined that the issuance of this termination Order will have no significant impact. The Environmental Assessment was published in the **Federal Register** on November 16, 1989 (54 FR 47743).

For further details with respect to this action see (1) the application for termination of Facility Operating License No. R-124, dated September 9, 1985 as supplemented, (2) the Commission's Safety Evaluation related to the termination of the license, (3) the Environmental Assessment, and (4) the Notice of "Proposed Issuance of Order Authorizing Disposition of Component Parts and Terminating Facility License," published in the **Federal Register** on October 30, 1985 (50 FR 45180). Each of these items is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, 20555. Copies of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC, 20555, Attention: Director, Division of Reactor Projects—III, IV, V and Special Projects.

Dated at Rockville, Maryland, this 17th day of November 1989.

For the Nuclear Regulatory Commission.

Gary M. Holahan,

Acting Director, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-27605 Filed 11-22-89; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-27445; File No. S7-29-89]

Automated Systems of Self-Regulatory Organizations

AGENCY: Securities and Exchange Commission.

ACTION: Policy statement.

SUMMARY: The Securities and Exchange Commission today announces publication of an Automation Review Policy in which it states its view that self-regulatory organizaiton should, on a voluntary basis, establish comprehensive planning and assessment programs to determine systems capacity and vulnerability.

DATE: Comments must be received on or before December 26, 1989.

ADDRESS: Persons wishing to submit comments should file ten copies with Jonathan G. Katz, Secretary, Securities and Exchange Commission, Mail Stop 6-9, 450 Fifth Street, NW., Washington, DC 20549. All comments should refer to File No. S7-29-89 and will be available at the Commission's Public Reference Room.

FOR FURTHER INFORMATION CONTACT: Kathryn V. Natale, Assistant Director, 202/272-2405, Christine Sakach, Branch Chief, 202/272-2857, or Tonya Noonan Herring, 202/272-2415, Division of Market Regulation, Securities and Exchange Commission, Mail Stop 5-1, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTAL INFORMATION: .

I. Background

From the early 1960s through 1982, securities market trading increased steadily. Since 1982, a dramatic acceleration has occurred.[1] For

[1] Trading volume dropped in 1988 to 40.8 billion shares, however, following an all-time high of 47.8 billion shares for 1987. Annual trading volume for 1988 still was higher than in 1986, when 35.7 billion shares were traded. *See* New York Stock Exchange Fact Book (1989) at 71.

example, the volume of trading on the New York Stock Exchange ("NYSE") during only two days in October 1987, October 19 and 20 (1.2 billion shares), exceeded the annual NYSE trading volume for each year up to 1963. In addition, the aggregate NYSE trading volume for only five days in October 1987, October 16–22 (2.4 billion shares), was equivalent to 21.3% of the NYSE's annual volume for 1980 and 17.4% of its annual volume.[2] The over-the-counter ("OTC") and options markets also have experienced tremendous volume growth during the past decade.[3]

Institutional investors and broker-dealers increasingly have employed trading strategies that involve the purchase or sale of a large number of stocks simultaneously ("basket trading").[4] These trading strategies have not only contributed to the increase in trading volume noted above, but also "the velocity and concentration of stock trading." [5] The events of Friday, October 13, 1989, when the Dow Jones Industrial Average ("DJIA") fell 165 points in little more than an hour, and on Tuesday, October 24, 1989, when the DJIA fell more than 60 points in 30 minutes, demonstrate that concentrated surges of trading volume can occur. During the last hour of trading on October 13, 108,170,000 shares were traded on the NYSE, for a daily total of 251,170,000 shares. On Monday, October 16, the DJIA fell more than 63 points in the first 40 minutes of trading. More than 141 million shares were traded in the first hour, and more tran 225 million shares were traded over the first two hours. The total NYSE volume for the day was 416,493,810 shares, the fourth highest in NYSE history.

In order to accommodate this growth in trading activity and the volume surges associated with basket trading strategies, the self-regulatory organizations ("SROs") have replaced manually intensive order routing and execution procedures with automated systems that permit electronic routing and execution of certain orders.[6] These automated systems, which generally handle only small orders, successfully have increased the capacity of U.S. securities markets and have improved the efficiency and timeliness with which transactions are executed.[7] Indeed, the SROs have exercised foresight in anticipating future volume levels and designing and continually monitoring and enhancing automated systems to accommodate anticipated volume levels.

The increase in trading volume noted above also has had a ripple effect on the degree of automation of other SRO functions auxiliary to order execution. Specifically, the SROs have developed and continue to enhance automated systems for the dissemination of transaction and quotation information [8] and the comparison of trades prior to settlement.[9] These systems, in

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[2] *Id.*

[3] For example, the average daily share volume on NASDAQ, the primary OTC market, has grown from 11 million shares per day in 1978 to 122.8 million shares per day in 1988, a 1,116% increase. *See* NASDAQ Fact Book (1988) at 7. In the standardized options market, contract volume for 1987 and 1988, in comparison to 1978, was, respectively, 497% and 319% larger. *See* SEC Monthly Statistical Review, April 1981 at 5 and February 1989 at 4.

[4] *See* Division of Market Regulation, *The October 1987 Market Break* (Feb. 1988) ch. 1, at 1–7 for a description of some of the basic trading strategies that employ basket trading ("Market Break Study").

[5] *Id.* at 3–17.

[6] Prior to the automation of the markets, orders to purchase or sell exchange-listed securities generally were processed in the following manner. A customer would place an order with his or her registered representative at a branch office of a broker-dealer who, in turn, would telephone the order to the broker-dealer's order desk. The order desk would then route the order by telephone or pneumatic tube to the firm's trading booth on the exchange floor and the firm's floor trader would take the order to the applicable specialist post for execution. If the order was not executable (*e.g.*, a non-marketable limit order), then it was given to the specialist's and transcribed by hand onto the specialist's book for future execution. *See* Special Study of Securities Markets, Report of the Securities and Exchange Commission (1963), *reprinted in* H.R. Doc. No. 95, 88th Cong., 1st Sess. (1963), Pt. 2 at 41–42 ("Special Study Report"), and Market Break Study, *supra* note 4, ch. 7 at 16. Orders for OTC securities were handled in a manner similar to exchange-listed securities except that once they reached the broker-dealer's trading desk, they could be filled out of the firm's inventory (principal transactions) or through telephone negotiations with other broker-dealers (agency transactions). *See* Special Study Report, Pt. 2 at 552.

[7] The NYSE and the American Stock Exchange ("Amex") have developed automatic order routing systems, termed DOT and PER, respectively, that permit orders to be routed directly from member firm branch offices to the applicable specialist post, thereby by-passing the member firm's trading desk and floor broker. After orders are executed, DOT and PER generate and transmit execution reports to the member firms and other automated systems that disseminate market information. For a more complete description of these systems and their enhancements, *see* Market Break Study, *supra* note 4, ch. 7 at 16–21 and 24–25. The Boston, Midwest, Pacific ("PSE"), and Philadelphia ("Phlx") Stock Exchanges have developed systems called BEACON, MAX, SCOREX, and PACE, respectively, that automatically route and execute small orders (generally up to 1,099 shares). These four systems bassically operate in the same manner. After an order is routed to the system, it is priced based on the best bid or offer displayed on the Intermarket Trading System ("ITS") at the time the order was received by the system, and then routed to the applicable specialist post. The order is then displayed on a video terminal at the post for 15 seconds to permit the specialist and/or trading crowd to improve upon the assigned ITS execution price. If no floor trader intervenes within the 15 seconds, the order is automatically executed against the specialist at the predetermined price. Under the PACE system, however, orders are executed once priced and are not displayed for price improvement. The four systems also transmit transaction reports to members and market data vendors. For a more complete description of these systems, *see* Market Break Study, *supra* note 4, ch. 7 at 26–28 and Adkins & Ruder, Appendix to "Automation of Information and Trading in the U.S. Securities Market" at 6–13 ("Annenberg Forum Paper") (paper presented by Chairman Ruder to the Annenberg Washington Program's 1989 Forum, "Technology and Financial Markets," on February 27, 1989). *See also* "Automation in U.S. and Foreign Securities Markets: A Report by the Division of Market Regulation of the United States Securities and Exchange Commission" (September 1989).

The Amex and the Chicago Board Options Exchange ("CBOE") have developed automated order execution systems, termed RAES and Auto-Ex, respectively, for the execution of small public customer option orders. The Phlx has developed an automated order routing system for small customer options orders called Autom. In the OTC market, the national Association of Securities Dealers ("NASD") has developed a system called the Small Order Execution System ("SOES") that permits the automatic execution of small customer orders. For a more complete description of these systems, *see* Market Break study, *supra* note 4, ch. 8 at 8–10 and ch. 9 at 12–13 and Appendix to Annenberg Forum Paper, *supra* at 14–17 and 20–22.

Finally, the Cincinnati Stock Exchange ("CSE") has established a fully automated electronic trading system, National Securities Trading System ("NSTS"), that permits CSE members, without having to maintain a physical presence on the CSE floor, to enter agency or principal orders into the system through remote terminals. Once entered, orders are stored, queued, and executed by the system according to price and time priorities. Public agency orders, however, are granted priority over other orders at the same price, regardless of time of entry. The screens for each security traded in the system are updated instantaneously to reflet the entry, revision, cancellation and execution of orders.

[8] Through a coordinated and cooperative effort, SROs developed the Consolidated Transaction Reporting System and the Consolidated Quotation Reporting System in 1974 and 1978, respectively. These systems provide for the electronic collection and dissemination of real-time trade and quotation information (*i.e.*, immediately or soon after the event, rather than at the end of the trading day) in NYSE and Amex listed securities, as well as certain regional securities. Under these plans, quotation and trade reports are submitted by particular markets electronically to a central processor, the Securities Information Automation Corporation ("SIAC"). SIAC, in turn, processes this information and broadcasts it to financial information vendors for dissemination to investors. For options, transaction and quotation information is collected and disseminated pursuant to a plan administered by the Options Price Reporting Authority ("OPRA"). As with equity securities, each options exchange electronically collects and transmits to OPRA last sale information and bids and offers for the options that it trades. OPRA, in turn, processes this information and disseminates it to vendors. In the OTC market, NASDAQ, Inc., a subsidiary of the NASD, operates a system that collects quotations that are electronically submitted by market makers from computer terminals in their offices and then disseminates them to vendors and other market makers. For the largest and most actively traded NASDAQ companies, which are known as NASDAQ/NMS securities, the NASD provides real-time last sale reports.

[9] Trade comparison, the matching of the buy and sell sides of a securities transaction, is the process after a trade has been executed by which broker-dealers confirm with each other the trade's terms (*e.g.*, security, number of units, and price) and the

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conjunction with automated trading systems, allow investors to receive and act on market information in a timely fashion and ensure that trades are settled in an accurate and efficient manner. The Commission commends the SROs for their efforts to develop and constantly improve these systems.

While the SROs' development of execution, market information and comparison systems substantially has improved the efficiency of their markets, the October 1987 Market Break exposed the continuing vulnerability of these systems to operational problems during extreme high volume periods. The following problems were among those encountered by automated trading systems during the October 1987 Market Break. First, inadequate computer capacity caused queues of unprocessed orders to develop that, in turn, resulted in significant delays in order execution.[10] Second, the SROs did not have adequate contingency plans to free-up or create additional computer-file space to accommodate the increase in order traffic.[11] Third, delays were experienced by some SROs in the transmission of transaction reports to both member firms and market information dissemination systems. Fourth, delays in order processing caused the expiration of ITS commitments to trade before they reached the applicable specialist post. Finally, due in large part to capacity strains, some SROs lowered the order-eligibility size of their systems or asked member firms not to route orders through their systems. The disengagement of these systems, in turn, hampered order execution throughout the market as a whole, because orders that would otherwise have been processed electronically were required to be processed manually.[12]

The market decline on October 13, 1989, demonstrated that the systems worked substantially better than two years ago, but there were still problems with some systems. A few of the exchanges again experienced queuing problems, while some exchanges had other systems problems that may or may not have been related to the volume surge during that volatile period.[13]

The NASD experienced problems with SOES. On October 16, trading on SOES totaled 13,483 transactions and 4.7 million shares. A variety of factors, such as mandatory participation in SOES, the penalties for market-maker withdrawals, and the efforts of market-makers to unlock and uncross their markets, resulted in an unprecedented flow of market-maker quotation changes to NASDAQ. As a preliminary matter, it appears that this may have produced a communications delay between the computers that operate the basic NASDAQ System and the computers that operate SOES, causing orders to be executed based on delayed quotations.[14]

The effect of the earthquake in Northern California on the PSE during the week of October 16–20, 1989, demonstrates the vulnerability of the securities markets to external circumstances. The earthquake and the resultant loss of power caused the PSE in San Francisco to substantially scale down operations until October 23, 1989.[15] To ensure that trading in PSE options could continue, the Commission permitted trading in PSE options on the American, New York, and Philadelphia Stock Exchanges and the Chicago Board Options Exchange, on October 19–20.

In addition, on November 10, 1989, the NYSE delayed opening until 10:30 a.m. due to an electrical fire in the building that houses SIAC, causing the NYSE to rely on its back-up generators. The options and futures markets also halted trading during that period.

II. Automation Review Policy

Because of the impact systems failures have on public investors, broker-dealer risk exposure, and market efficiency, the Commission believes it is appropriate for the SROs to take certain steps to ensure that their automated systems [16] have the capacity to

existence of a contract. Comparison is the first of three basic steps in processing a securities transaction, the other two being clearance and settlement. For a more complete discussion of trade comparison, see Market Break Study, *supra* note 4., ch. 10 at 1–5.

The NASD has developed a system, called Automated Confirmation Transaction ("ACT"), that facilitates the automated clearing of pre-negotiated trades. *See* Securities Exchange Act Release No. 26991 (June 29, 1989), 54 FR 28531. ACT is a facility for same-day comparison of inter-dealer, over-the-counter equity trades. Participants must enter trade reports within specific time frames, which are then compared and submitted to clearing as matched, "locked-in" trades. The NASD also has introduced a system called the Order Confirmation Transaction ("OCT") System. *See* Securities Exchange Act Release No. 25263 (January 11, 1988), 53 FR 1430. OCT permits negotiation through screen terminals of trades of all sizes between market makers, and brokers and the automated, locked-in comparison of those trades once agreed upon. The system in effect replaces telephone negotiation with negotiation through computer links and screen. If an order is accepted, the system generates locked-in comparison reports, as well as publicly-disseminated trade reports.

The NYSE and the National Securities Clearing Corporation ("NSCC") recently have developed an automated comparison system called the Overnight Comparison System ("OCS"). This system, which is being implemented in stages, consists of two subsystems, called the Correction System and the Comparison Redesign System. The Correction System computerizes the NYSE's processing of uncompared trades. The Exchange's Correction System began operation on April 27, 1989, and by July 18, 1989, all uncompared or "Questioned Trades" were being resolved through the System. *See* Securities Exchange Act Release No. 27096 (August 3, 1989), 54 FR 33299. The Comparison Redesign System permits all transactions to be compared or closed out by the close of the business day following trade date, T+1, as required by new NYSE Rule 130.

[10] In some cases, the queuing problems adversely affected the priority of orders placed in the system. For instance, in one system, once an order file was full, incoming orders would replace, or "wrap-over," orders previously placed in the system.

[11] While some of the markets, such as the MSE, were able to make certain adjustments in their systems to continue operations, two markets, the PSE and the Phlx, asked members to refrain from using their automated systems for several periods of time during the week of October 29, 1987, because the systems were overloaded. *See* Market Break Study, *supra* note 4, ch. 7 at 15–41.

[12] The OTC and options markets' automated execution systems, however, did not experience operational strains during the market break, in part because order flow was diverted from these systems for reasons unrelated to the operation of the computer facilities themselves. For a more thorough discussion of the problems encountered by these markets, *see* Market Break Study, *supra* note 4, at chs. 7–9. With regard to trade comparison systems, the number of uncompared trades on all securities markets increased substantially, thereby placing great stress on the clearance and settlement process. This was not, however, a systems capacity problem, except for the NYSE's odd-lot system, the Automated Pricing and Reporting Service ("APARS"). APARS reports were delayed significantly on October 20 and 21, 1987, and the system as a whole experienced problems on October 20 when no member odd-lot trades were reported to NSCC (however, those trades were reported the next day and were entered into NSCC's clearance systems without further effect on timely settlements). APARS also experienced capacity overload problems on October 20, which caused a computer failure and, in switching over to a backup computer, loss of approximately 8,000 to 9,000 orders. The lost trades were re-established through the NYSE's trade correction process. *See id.* ch. 10 at 5–12. In December 1987, the Commission approved a NYSE rule change that modified pricing procedures for standard odd-lot market orders. The APARS system was eliminated, and standard odd-lots now are routed through the Exchange's Limit Order File ("LMT"). *See* Securities Exchange Act Release No. 25177 (December 7, 1987), 54 FR 47472. Finally, there were delays at several of the regional exchanges in transmitting trade information to the Securities Industry Automation Corporation ("SIAC"). See *id.* ch. 7 at 3–7.

[13] Not surprisingly, those exchanges that had conducted prior testing of their automated systems seemed to fare better than those that had not.

[14] Apparently, the computer receiving quote updates was so fast that the computer could not read and send the quotes to the computer which processes executions. Therefore, the computer or the link was shut off for approximately 20 minutes from 9:38 to 10:04 am.

[15] The equities floor in San Francisco remained open on a limited basis with orders being routed to and executed in Los Angeles, while some workers at the PSE's main floor in San Francisco executed orders by flashlight. W.S.J. Oct. 19, 1989 at C14.

[16] The Commission believes that the Policy Statement is consistent with and in furtherance of Sections 2 and 11A(a)(1) (B) and (C) of the

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accommodate current and reasonably anticipated future trading volume levels adequately and to respond to localized emergency conditions. For this reason, the Commission today announces its Automation Review Policy ("Policy").[17] It is the Commission's belief that the SROs should establish comprehensive planning and assessment programs to test systems capacity and vulnerability. These programs should have three primary objectives. First, the Commission believes the SROs should formally establish current and future capacity estimates ("Capacity Estimates") for their automated order routing and execution, market information, and trade comparison systems. Second, the SROs should conduct capacity stress tests ("Stress Tests"), periodically, to determine the behavior of automated systems under a variety of simulated conditions.[18] Third, we believe that the SROs should contract with independent reviewers to assess annually whether these systems can perform adequately at their estimated current and future estimated capacity levels and whether these systems have adequate protection against physical threat.[19]

III. Discussion

The Commission believes this Policy Statement is consistent with and in furtherance of a Congressional finding that one of the two paramount objectives of a national market system is "the maintenance of stable and orderly markets with maximum capacity for absorbing trading imbalances without undue price movements."[20] In light of the operational difficulties experienced by SRO automated systems during the October 1987 Market Break, predicted future capacity requirements based on past increases in trading volume, the need to maintain accurate trade and quote information, and the degree to which computer automation has become, and is likely to increase as, an integral part of securities trading, the Commission believes that the SROs should take certain steps to ensure that their automated systems have adequate capacity to process reasonably predictable volume levels.[21]

The Commission's announcement of these guidelines does not mean the Commission believes SRO automated systems are inadequate or that enhancements made to these systems since the October 1987 Market Break have not been sufficient or beneficial. On the contrary, the Commission believes the SROs have made great strides since October 1987 to increase

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Securities Exchange Act of 1934. Specifically, Section 2 states in pertinent part that "transactions in securities as commonly conducted upon securities exchanges and over-the-counter markets are affected with a national public interest which makes it necessary to provide for regulation and control of such transactions and of practices and matters related thereto, . . . to require appropriate reports, to remove impediments to and perfect the mechanisms of a national market system for securities and a national system for the clearance and settlement of securities transactions and the safeguarding of securities and funds related thereto, and to impose requirements necessary to make such regulation and control reasonably complete and effective, . . ." In Section 11A(a)(1), Congress found that: (1) "securities markets are an important national asset which must be preserved and strengthened"; (2) "new data processing and communications techniques create the opportunity for more efficient and effective market operations"; and (3) "it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure . . . [the] economically efficient execution of securities transactions."

[17] The Commission notes that compliance with this policy statement by the SROs is voluntary. The Commission's examination program, however, will review carefuly the preparedness of SRO systems to handle substantial volume spikes. If the Commission becomes concerned over the level of voluntary compliance with this Policy Statement, it may propose a rule that would place an affirmative obligation on the SROs to obtain a periodic review of their automated systems.

While this Policy Statement does not directly discuss the obligations of broker dealers, proprietary trading systems, service bureaus, and vendors, the Commission believes all should engage in systems testing, and this Policy Statement should be used as a guideline. The Commission staff will review these entities' systems preparedness in the coming months and, if appropriate, the Commission may consider the issuance of a second Policy Statement thereafter.

[18] We note that, in fact, the SROs already have begun a testing program. For example, on Saturday, April 30, 1988, the NYSE and SIAC tested the key computer systems that experienced difficulties in October 1987. During the test the participants replayed actual data from October 19, 1987, compressed into five hours (8:00 a.m. to 1:00 p.m.) to achieve the peak volumes required to stress the systems. Beginning at 8:00 a.m., incoming market orders were accepted into the Opening Automatic Reporting System ("OARS") and limit orders were sent to display books and card printers. At 9:30 a.m., specialist personnel opened the "market" and simulated normal (but intense) trading activity by reporting executions and entering additional order from the floor.

The NYSE reported that the test showed that the improvements made since October 19 (for example, expanding the trading floor, adding input/output devices, greatly increasing the use of display books, and upgrading hardware and software) have resulted in higher capacity, increased flexibility and better performance. The NYSE's systems processed a traffic flow comparable to that of October 19, 1987, in much less time and at much higher message rates. *See* Report from NYSE and SIAC, 600-Million-Share-Day Volume and Stress Test on April 30, 1988 (May 23, 1988).

On Saturday, November 12, 1988, the NYSE and SIAC, in conjunction with the member-firm community and the financial service vendors, tested the Exchange's switching and order-processing systems. The test, according to the report of the NYSE and SIAC, met its five objectives. Specifically, it:

1. proved that the Common Message Switch (CMS) interface to member firms can accommodate message rates up to those expected on a 600-million-share day;

2. demonstrated that member firms can deliver orders to and receive reports from the NYSE at 600-million-share-day message rates;

3. identified potential weak lines when many systems were stressed at rates in excess of 600-million-share-day levels; collected extensive information about systems' behavior under heavy loads;

4. used the market-data systems to distribute trade and quote data to financial-service vendors in preparation for the 1989 test; and

5. helped NYSE/SIAC identify requirements for system tools and procedures to conduct similar tests routinely.

Report from NYSE and SIAC, 600-Million-Share-Day Member-Firm Interface Test on November 12, 1988 (December 16, 1988).

The 1989 tests focused on the National Market System ("NMS"), and consisted of three phases. On Saturday, May 13, 1989, NYSE and SIAC, with the cooperation of other market centers, conducted a vendor test. The NYSE and SIAC reported that the May test successfully transmitted test market data, previously recorded, from all market-center sources to the financial-service vendors and that the test met its two objectives by:

1. distributing trade and quote data to the vendor community at 600-million-share-day rates to test vendors' ability to receive and process at these rates; and

2. identifying the SIAC and vendor tools needed to conduct similar tests routinely.

Report from NYSE and SIAC, 600-Million-Share-Day Financial Service Vendor Test on May 13, 1989 (June 9, 1989).

On June 24, 1989, a stress test was conducted to examine the Consolidated Trading and Consolidated Quote Systems. According to the report issued by the NYSE and SIAC on August 4, 1989, the test met its two objectives by:

1. demonstrating that the Consolidated Trading System and the Consolidated Quote System can handle 600-million-share-day message rates when all participants are active; and

2. identifying the SIAC and participant tools needed to conduct similar tests routinely.

At 600-million-share-day rates, all SIAC operations ran smoothly, with minimal queuing. Report from NYSE and SIAC, 600-Million-Share-Day Consolidated Trade and Quote Systems Test on June 24, 1989 (August 4, 1989).

A third stress test conducted in September 1989, tested ITS. Reports of this third test are not yet available, although preliminary results indicated that the systems accommodated simulated volume levels that exceed those of the October 1987 Market Break.

[19] These objectives are discussed in greater detail in Section III, *infra*.

[20] Senate Comm. on Banking, Housing & Urban Affairs, *Report to Accompany S. 249*, S. Rep. No. 94-75, 94th Cong., 1st Sess. 7, *reprinted in* 1975 U.S. Code Cong. & Ad. News 179. *See also* § 11A(a)(1)(B) and (C), 15 U.S.C. 78f (1982).

[21] The term "automated systems" or "automated trading systems", as used in this release, refers collectively to computer systems for listed and OTC equities, as well as options, that electronically route orders to applicable market makers and systems that electronically route and execute orders, including the data networks that feed the systems. The term "automated systems" also encompasses systems that disseminate transaction and quotation information and conduct trade comparisons prior to settlement, including the associated communication networks. Moreover, because lack of adequate communications capacity can be as damaging to the overall performance of an exchange during peak periods as poorly designed order processing, capacity tests of the data networks that feed the computer systems also should be conducted.

the capacity of their systems and the Commission is encouraged that planned enhancements to these systems will further strengthen the integrity of the securities markets.[22] The Commission does believe, however, that a periodic review and test of each SRO's systems capacity will help indentify potential weak points and reduce the risk of serious system failures. The Commission's Policy reflects its desire to ensure that market movements are the result of market participants' changing expectations about the direction of the market for a particular security, or group of securities, and not the result of investor confusion or panic resulting from operational failures or delays in SRO automated trading or market information systems.

The Commission believes that each SRO should formulate current Capacity Estimates for the maximum number of transactions its order handling and execution systems can process daily without unreasonable delays, the maximum number of transactions its system can handle over a fifteen-minute surge in volume, and future capacity requirements based on projected volume figures.[23] Similarly, the Commission believes that the SROs should formulate daily and fifteen-minute Capacity Estimates for their automated market information and trade comparison systems, along with future Capacity Estimates. In addition, the SROs should formulate contingency protocols ("Contingency Protocols")[24] designed to provide back-up facilities in the event of on-line system failures and additional processing capacity during high volume periods.[25] Furthermore, the SROs should prepare an evaluation of any implementation of system enhancements needed to accommodate future trading levels. The SROs should consider preparing planning statements anticipating such enhancements ("Planning Statements").

The SROs also should institute procedures to continue periodic Stress Tests of all of their automated systems and report the results of those tests to the Division. The SROs should use standards generally set by the computer industry to develop, and evaluate the results of, Stress Tests and should specify in their report the specific standards they are applying. In this connection, the Commission requests comments on whether the Commission should in the future mandate specific standards, and if so, what those standards should be.

The Commission also requests that the SROs periodically assess the vulnerability of their automated systems to external and internal threat ("Vulnerability Studies"). The Commission believes that such studies should address the susceptibility of automated systems to computer viruses, unauthorized use, computer vandalism, and failures as a result of catastrophic events (*i.e.*, fire, power outages, earthquakes). In addition, the Commission requests that the SROs promptly notify the Division of any instances in which unauthorized persons gained or attempted to gain access to their systems, and follow-up with a written report of the problem, its problem, its cause, and the steps taken to prevent a recurrence.

The Commission believes that review of SRO actions relating to automation systems will be important in monitoring SRO performance. Accordingly, the Commission, pursuant to its oversight authority, expects to request that the SROs provide to the Division Capacity Estimates, Planning Statements, Stress Tests, Contingency Protocols, Vulnerability Studies, and reports of any incidents of unauthorized access which they have prepared.

Finally, as part of a capacity planning and assessment program, SRO automated systems also should receive, periodically, a comprehensive, critical, and independent review. The Capacity Estimates, Planning Statements, Stress Tests, Contingency Protocols, and Vulnerability Studies previously produced by the SROs, along with the actual automated systems themselves, should form the basis on which independent reviewers will be able to critique automated systems.[26] The Commission believes that each SRO should have its automated systems reviewed annually by an independent reviewer starting in 1991.[27] Pursuant to its oversight examination authority, the Commission expects to request the SROs to provide the Commission copies of the reports, which have been prepared, describing the findings of the independent reviewer.[28] Areas which appear appropriate for independent review include: (1) Whether current and future SRO Capacity Estimates are accurate; (2) whether the automated systems can perform at estimated capacity levels; (3) whether planned system enhancements realistically will accommodate future capacity requirements; (4) whether Contingency Protocols are well designed and likely to be effective; (5) whether SRO automated systems are vulnerable to systems integrity failures; and (6) recommendations to address deficiencies found in areas (1)–(5) above.

Dated: November 16, 1989.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–27531 Filed 11–22–89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34–27446; File No. SR–MCC–89–02]

Self-Regulatory Organizations; Midwest Clearing Corp.; Order Approving Proposed Rule Change Relating to the Limitation or Elimination of a Director's Liability in Certain Instances

November 16, 1989.

On April 11, 1989, the Midwest Clearing Corporation ("MCC") filed a proposed rule change (SR–MCC–89–02) under Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder.[2] The proposal would limit the personal liability of MCC directors in certain instances. The Commission published notice of the proposal in the **Federal Register** on June

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[22] *See* Letter from David S. Ruder, Chairman, SEC, to the Honorable William Proxmire, Chairman, Committee on Banking, Housing, and Urban Affairs dated March 4, 1988 (discussing contingency planning and coordination and operational capacity enhancements).

[23] Future capacity estimates also should take into consideration increased message traffic resulting from planned modifications to existing systems or the introduction of new systems. For example, if the NYSE were to expand the instances where DOT automatically would execute orders or if the CBOE were to increase the order eligibility size for RAES, then they would have to incorporate the anticipated increase in order flow into their capacity estimates.

[24] A contingency protocol is a plan to deal with extreme market conditions which potentially could overburden automated order routing and execution systems.

[25] The Commission understands that many of the SROs already have produced similar capacity estimates, planning statements, and protocols that they will be able to use them to comply with this Policy.

[26] In the future, the Commission may suggest expansion of this Policy to other SRO computer-driven support systems for, among other things, clearance and settlement, and market surveillance, if the Commission finds it necessary to ensure the maintenance of fair and orderly markets.

[27] In view of the voluntary nature of this Policy, the Commission has not mandated specific requirements for determining whether a reviewer is independent. The Commission, however, requests comments on whether it should mandate such standards in the future, and if so, what those standards should be.

[28] In addition, the Commission requests that each SRO include a general discussion of its automation review in its Exchange Act Form 1–A submitted annually to the Commission.

[1] 15 U.S.C. 78s(b) (1982).

[2] 17 CFR 240.19b–4 (1989).

1, 1989.[3] No public comments were received. For the reasons discussed below, the Commission is approving the proposal.

I. Description

The proposal would limit the personal liability of MCC directors to the fullest extent permissible under Section 102(b)(7) of the General Corporation Law of Delaware (MCC's state of incorporation),[4] except that violations of the federal securities laws would be excluded from the liability limitation. Under section 102(b)(7), MCC may limit a director's personal liability to MCC or its shareholders for a breach of that director's fiduciary duty of care.[5] Section 102(b)(7) precludes MCC from limiting liability for: (1) Breach of the director's duty of loyalty; [6] (2) acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; (3) unlawful dividend payments or unlawful stock purchases or redemptions; (4) transactions from which a director derived improper personal benefit; (5) acts or omissions occurring prior to effectiveness of the liability limitation; and (6) director action in a capacity other than as a director, such as that of an officer or majority stockholder. The limit also may not apply to claims for non-monetary relief, such as injunction or rescission.[7] In addition, as noted above, MCC's proposed director liability provisions would exclude violations of the federal securities laws from the liability limitation.

II. Rationale for the Proposed Rule Change

MCC believes the proposal is consistent with the purposes and requirements of section 17A of the Act. Specifically, MCC believes the proposal is necessary to promote the recruitment and retention of competent directors. MCC argues that without the protections offered by the proposal, decisions by directors would be deterred.

III. Discussion

The Commission believes the proposal is consistent with the Act and therefore is approving the proposal. Specifically, the Commission believes that because the proposal excludes violations of the federal securities laws from liability limitation, it is not designed to affect adversely MCC director compliance with the federal securities laws.

Section 17A of the Act [8] and Division of Market Regulation standards interpreting section 17A [9] require clearing agencies to be organized and have the capacity to comply with the Act and rules and regulations thereunder. Accordingly, clearing agency directors must exercise their duties consistent with the Act and clearing agency rules must be designed to promote such compliance. Directors also have a duty to promote clearing agency and clearing member compliance with clearing agency rules.[10]

Clearing agency directors exercising their duties in a manner inconsistent with the Act and clearing agency rules may be subject to Commission sanction. Under section 19(h)(4) of the Act,[11] the Commission can remove from office or ensure any clearing agency director who has: (1) Willfully violated any provision of the Act; (2) willfully violated any rules or regulations under the Act; (3) willfully violated clearing agency rules; (4) willfully abused his authority; or (5) without reasonable justification, failed to enforce compliance with clearing agency rules by any clearing agency member. Congress directs the Commission to use this authority to ensure clearing agencies do not exercise their delegated power "in a manner inimical to the public interest or unfair to private interests." [12]

To facilitate compliance with the federal securities laws by clearing agency directors, clearing agencies generally must have an audit committee which either selects, or makes a recommendation to the board of directors regarding the selection of, the clearing agency's independent public accountant.[13] The audit committee must include nonmanagement directors who "review the nature and scope of the work performed by the independent public accountant and results thereof." [14]

The Commission believes MCC's proposal is consistent with the Act. As noted above, the proposal excludes violations of the federal securities laws from liability limitation. Therefore, the proposal would not limit the ability of the Commission or private litigants to seek monetary relief for violations of the federal securities law. The proposal also would not affect the Commission's authority to remove from office or censure a director under section 19(h)(4) of the Act for reasons enumerated in that section. Moreover, the Commission notes that MCC's board has audit, executive, and nominating committees designed to promote director compliance with the Federal securities law.[15]

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the Act and, in particular, with section 17A. The Commission believes that because violations of the federal securities laws are excluded from the proposed liability limitation, the proposal is not designed to affect adversely MCC director compliance with the federal securities laws.[16]

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR–MCC–89–02) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. 17 CFR 200.30–3.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–27530 Filed 11–22–89; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–27447; File No. SR–NSCC–89–16]

Self-Regulatory Organizations: National Securities Clearing Corp.; Notice for Filing of Proposed Rule Change Amending the Rule Regarding the Clearing Fund

November 16, 1989.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 27, 1989, National Securities Clearing Corporation ("NSCC"), filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III

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[3] *See* Securities Exchange Act Release No. 26866 (May 23, 1989), 54 FR 23556.

[4] *See* Del. Code Ann. tit. VIII 102(b)(7) (1988).

[5] Pursuant to their fiduciary duty of care, directors must act on an informed basis, in good faith, and in honest belief that action taken is in the best interests of the company. *See* Grobow v. Perot, 539 A.2d 180 (Del. 1988).

[6] Pursuant to their duty of loyalty, directors must act in good faith without self-interest. *See* Cede & Co. v. Technicolor, Inc., 542 A.2d 1188 (Del. 1988).

[7] Under Section 102(b)(7), a corporate provision limiting director liability must receive shareholder approval prior to effectiveness.

[8] 15 U.S.C. 78q–1 (1988).

[9] *See* Securities Exchange Act Release No. 16900 (June 17, 1980), 45 FR 41920 ("Standards Release").

[10] *See* section 19(g) of the Act (15 U.S.C. 78s(g)(1988)).

[11] 15 U.S.C. 78s(h)(1988).

[12] *See* Securities Acts Amendments of 1975: Hearings before the Subcomm. on Securities of the Senate Comm. on Banking, Housing, and Urban Affairs, 94th Cong., 1st Sess. 185 (1975).

[13] *See* Standards Release at 45 FR 41926.

[14] *Id.*

[15] The audit committee serving MCC's board is a board committee of the Midwest Stock Exchange ("MSE") designed to serve all MSE subsidiaries.

[16] *Cf.* Baker Watts & Co. v. Miles & Stockbridge, 876 F.2d 1101 (4th Cir. 1989); King v. Gibbs, 876 F.2d 1275 (7th Cir. 1989).

below, which Items have been prepared by NSCC. 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

Amend NSCC's Rules and Procedures as follows:
Italics Indicate additions
[Brackets] Indicate deletions
Amend Procedure Section XV *Other Matters* as follows:

A.II. Alternative Clearing Fund Formula

Each Member of the Corporation who is eligible and elects to utilize the Alternative Clearing Fund Formula is required to contribute to the Clearing Fund maintained by the Corporation an amount equal to:

* * * * *

(c) $20,000 if the Member has daily Fund/Serv settlement debits of more than $500,000 with respect to any one Fund Member[;].

A.III. Cash Requirement

[provided, however, that] *With respect to either Clearing Fund formula* each Member, except for a Fund/Serv Broker-Dealer, shall be required to contribute a minimum of $10,000 (the "minimum contribution"). Except with respect to a Fund/Serv Broker-Dealer, the first $10,000 of a Member's contribution is required to be in cash unless all or part of the Member's open account indebtedness is collateralized with Letters of Credit, in which case, the *greater of $50,000 or 10 percent of the Member's Clearing Fund Required Deposit up to a maximum of $1,000,000* [first $50,000 of the Member's contribution] is required to be in cash; a Fund/Serv Broker-Dealer's entire deposit is required to be in cash.

A.IV. Non-CNS Factor for Members

For the purposes of Section XV, subsection A.I.(ii), the factor for broker/dealer Members shall be calculated as follows:

* * * * *

Amend Rule 4, Clearing Fund, section 1 as follows:

Clearing fund

Rule 4. SEC. 1. Each Member shall and each Fund Member may be required to make a deposit to the Clearing Fund; such deposits to the Clearing Fund shall be held by the Corporation to be applied as provided in this Rule. The amount of each Member's and Fund Member's required deposit shall be fixed by the Corporation in accordance with one or more formulas specified by the Board of Directors and included in the Procedures (the "Required Deposit"). The basis of each formula shall be use of the Corporation's facilities. The minimum *Required* Deposit for each Member (except Fund/Serv Broker-Dealers) shall be $10,000 unless changed by the Board of Directors and shall be in cash unless changed by the Board of Directors. The minimum *Required* Deposit for Fund/Serv Broker-Dealers shall be $5,000 unless changed by the Board of Directors and shall be in cash unless changed by the Board of Directors. The Corporation may rquire a Member or Fund Member to deposit additional amounts to the Clearing Fund pursuant to Rule 15 and such amounts shall be part of the Member's or Fund Member's Required Deposit.

The Corporation, in its discretion, may permit part of a Member's (except Fund/Serv Broker-Dealers) or Fund Member's [actual] deposit to be evidenced by an open account indebtedness (a) secured by unmatured bearer bonds which are either direct obligations of, or obligations guaranteed as to principal and interest by, the United States or its agencies or general obligations of, or obligations guaranteed as to principal and interest by, a State or political subdivision thereof which are in the first or second rating of any nationally known statistical service (the "qualifying bonds") and or (b) secured by one or more irrevocable Letters of Credit issued on behalf of the Member or Fund Member in favor of the Corporation under which a bank, trust company or United States branch or agency of a foreign bank, in each case approved by the Corporation for such purpose, is obligated to honor drafts up to a specified amount drawn on it by the Corporation, provided that the terms and conditions of any such Letter of Credit are deemed acceptable to the Corporation in its sole discretion[.], *and provided further, that only 70% of a Member's Required Deposit may be collateralized with Letters of Credit.*

* * * * *

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.*

(a) The purpose of the proposed rule change is to modify the amount of a Member's Clearing Fund Required Deposit that may be collateralized by letters of credit. Specifically, the rule change will increase the minimum cash contribution for those Members who use letters of credit from $50,000 to the greater of $50,000 or 10 percent of their Clearing Fund Required Deposit up to a maximum of $1,000,000. In addition, the rule change will provide that only 70 percent of a Member's Required Deposit may be collaterlized with letters of credit. Finally, the rule change has added headings to the Clearing Fund formula section for clarity and other nonsubstantive drafting changes have been made. The intended effect of the rule change is to increase the liquidity of the Clearing Fund and limit exposure to NSCC of any unusual risk from the reliance on letters of credit. This is a goal that the Commission has endorsed to insure the liquidity of the clearing system in the event of a major Member insolvency, catastrophic loss, or a major settlement suspense.

(b) Because the proposed rule change relates to NSCC's capacity to safeguard securities and funds in its custody or control and protect the public interest, it is consistent with the requirements of the Act, as amended, and the rules and regulations thereunder applicable to a self-regulating organization.

B. *Self-Regulatory Organization's Statement on Burden on Competition.*

NSCC does not believe that the propsoed 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 publishes 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 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 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. 552, will be available for inspection and copying in the Commission's Public Reference section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR–NSCC–89–16 and should be submitted by December 15, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–27529 Filed 11–22–89; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35—24986]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

November 16, 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 views in writing by December 11, 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.

New England Energy Inc. (70–6971)

New England Energy Incorporated ("NEEI"), 25 Research Drive, Westborough, Massachusetts 01582, a fuel supply subsidiary of New England Electric System, a registered holding company, has filed a post-effective amendment to its application-declaration filed under Sections 6(a) and 7 of the Act.

By order dated August 16, 1984 (HCAR No. 23397), NEEI was authorized to enter into interest payment exchange contracts ("Swap Agreement(s)") with one or more parties ("Counterparty"), on or before December 31, 1985 covering a total principal amount of up to $150 million for a term or terms ranging between three and seven years. By order dated March 7, 1986 (HCAR No. 24046), this authority was extended through December 31, 1987 and the total principal amount increased to $200 million. Subsequently, by Commission order, dated December 17, 1987 (HCAR No. 24531), NEEI was authorized to enter into additional Swap Agreements or other types of interest rate protection mechanisms on or before December 31, 1989. The total principal amount that could be covered under all of these arrangements at any one time could not exceed $200 million. To date, NEEI has entered into a five-year Swap Agreement with Harris Trust and Savings Bank covering a principal amount of $25 million. NEEI now requests that this authority to enter into all such arrangements, under the same terms and conditions, be extended through December 21, 1991.

Columbia Gas System, Inc. et al. (70–7688)

The Columbia Gas System, Inc. ("Columbia"), a registered holding company and its subsidiary companies, Columbia Gas of Ohio Inc. ("Columbia Ohio"), Columbia Gas of Pennsylvania, Inc. ("Columbia Pennsylvania"), Columbia Gas of Kentucky, Inc. ("Columbia Kentucky"), Columbia Gas of New York, Inc. ("Columbia New York"), Columbia Gas of Maryland, Inc. ("Columbia Maryland"), Commonwealth Gas Services, Inc. ("Commonwealth Services"), all located at 200 Civic Center Drive, Columbus, Ohio 43215; Columbia Gulf Transmission Company ("Columbia Gulf"), 3805 West Alabama Avenue, Houston, Texas 77027; Columbia Gas Development Corporation ("Development"), 5847 San Felipe, Houston, Texas 77057; Columbia Gas Development of Canada Ltd. ("Development Canada") 639—5th Avenue, S.W. Calgary, Alberta, Canada T2P 0M9; Commonwealth Propane, Inc. ("Commonwealth Propane"), 800 Moorefield Park Drive, Richmond, Virginia 23236; Columbia Gas System Service Corporation ("Service"), Columbia LNG Corporation ("Columbia LNG"), Columbia Hydrocarbon Corporation ("Hydrocarbon"), Columbia Atlantic Trading Corporation ("Columbia Atlantic"), Columbia Coal Gasification Corporation ("Coal Gasification"), The Inland Gas Company, Inc. ("Inland"), Tristar Ventures Corporation ("Tristar Ventures"), all located at 20 Montchanin Road, Wilmington, Delaware 19807; Columbia Gas Transmission Corporation ("Columbia Transmission"), Columbia Natural Resources, Inc. ("Columbia Natural"), and Commonwealth Gas Pipeline Corporation ("Commonwealth Pipeline"), all located at 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314 (collectively, "Subsidiaries") have filed an application-declaration under sections 6(a), 6(b), 7, 9(a), 10 and 12(b) under the Act and Rules 43, 45 and 50(a)(5) thereunder.

The Columbia system companies seek authorization through December 31, 1991 of the Subsidiaries long-term and short-term intercompany financing programs, Columbia's external short-term financing program and the continuation of the Intrasystem Money Pool.

Certain of the Subsidiaries propose to issue and sell, and Columbia proposes to acquire, their common stock at par value and/or installment promissory notes ("Installment Notes") up to the amounts indicated below:

Company	1990–1991 Long term financing		
	Common stock	Long-term debt	Total
Columbia Kentucky	$1,400	$10,100	$11,500
Columbia Maryland		4,000	4,000
Columbia New York		6,900	6,900
Columbia Ohio		82,800	82,800
Columbia Pennsylvania		37,400	37,400
Commonwealth Services		20,500	20,500
Columbia Natural		111,000	111,000
Development	80,000	125,400	205,400
Development Canada	64,000		64,000
Commonwealth Propane	2,200	3,400	5,600
Hydrocarbon	5,000	16,000	21,000
Coal Gasification	8,000		8,000
Service	4,600	5,400	10,000
Commonwealth Pipeline	25,000	27,000	52,000
Columbia Gulf		96,000	96,000
Total	190,200	545,900	736,100

The Installment Notes will be unsecured, will be dated the date of their issue, and will have similar provisions as the installment promissory notes heretofore approved by the Commission. The interest rate on the Installment Notes will approximate the effective cost of money to Columbia with respect to its most recent issuance of long-term debt. The principal amount of the Installment Notes will be repaid over a term, not exceeding thirty years, which will approximate the term of Columbia's last issued long-term debt instrument. All of the Installment Notes will be purchased by Columbia by December 31, 1991.

Columbia Transmission will finance its long-term needs by issuing first mortgage bonds ("Bonds") to Columbia. Bonds will be issued in two series secured by a first lien on certain of Columbia Transmission's assets. Up to $400 million of Series A Bonds will be issued on a revolving basis to fund Columbia Transmission's short-term financing needs (other than for gas inventory). Prior to December 31, 1991, long-term Series F Bonds in the principal amount of up to $295 million will be issued to repay a like amount of Series A Bonds and to fund Columbia Transmission's longer-term requirements. Interest rates on these securities will be: (1) For Series A Bonds, the same as those on the short-term advances to other Subsidiaries; and (2) for Series F Bonds, the same as those on the Installment Notes issued by the other Subsidiaries.

Columbia Transmission will finance its gas inventory under an inventory financing note issued to Columbia, as previously authorized under the order dated June 7, 1985 (HCAR No. 23724). Up to $400 million of these loans will be outstanding, will be secured by Columbia Transmission's gas in storage, will bear the same rate of interest as Columbia's short-term advances to the other Subsidiaries, and will be repayable no later than April 30 of the year following the advance.

The Subsidiaries' (except Columbia Transmission) short-term requirements are estimated to be $597 million for 1990 through 1991, to be funded first through borrowings from the Intrasystem Money Pool ("Money Pool") and/or borrowings from Columbia funded by the issuance and sale of commercial paper and/or issuance of short-term notes under bank lines of credit ("Bank Loans"). It is proposed that the Money Pool, which was extended through December 31, 1989 by order of the Commission dated August 30, 1988 (HCAR No. 24706), be continued through December 31, 1991. Borrowings from Columbia will be limited to a maximum amount outstanding at any one time for 1990 through 1991 for each of the Subsidiaries as shown below:

	Short-term debt
Columbia Kentucky	$45,000
Columbia Maryland	7,000
Columbia New York	14,000
Columbia Ohio	290,000
Columbia Pennsylvania	105,000
Commonwealth Services	40,000
Commonwealth Pipeline	10,000
Columbia Natural	19,000
Development	15,000
Inland	5,000
Commonwealth Propane	4,000
Hydrocarbon	5,000
Coal Gasification	10,000
Service	8,000
Columbia Gulf	10,000
Columbia LNG	10,000
Total	597,000

The funds would be advanced, repaid and reborrowed, as required through 1991 with all such advances to be fully repaid by April 30, 1992. The Subsidiaries' cost of money on all such short-term advances will be the composite weighted average effective cost incurred by Columbia on its own short-term transactions.

Columbia's 1990–1991 short-term financing program will involve either commercial paper or Bank Loans not to exceed $525 million. In order to issue and sell such an amount, Columbia requests, pursuant to Section 6(b) of the Act, an increase in the Section 6(b) exemption from the requirements of Section 6(a) to a limitation of 37 percent of the principal amount and par value of Columbia's outstanding securities. Columbia's current Section 6(b) exemption and related short-term financing authorizations expire December 31, 1989. The proposed new Section 6(b) exemption effectively extends the existing short-term authority through December 31, 1991.

Columbia currently has a $500 million Credit Agreement with a group of banks and proposes to continue to borrow under this Credit Agreement, as permitted by its terms, through 1991. The interest rates on the Bank Loans under the $500 million Credit Agreement are based on either the Prime Rate, Adjusted Certificate of Deposit ("CD") Rate plus ½ percent, or the London Interbank Offer Rate ("LIBOR") plus ⅜ percent. Maturities on loans under the CF rate option may be 30, 60, 90 or 180 days. Maturities on loans under the LIBOR rate option may be 1, 2, 3 or 6 months. In addition, an annual commitment fee of ¼ percent on undrawn amounts is payable quarterly.

In addition to the Bank Loans, Columbia proposes to issue and sell commercial paper in the form of unsecured notes to one or more commercial paper dealers. Columbia will normally issue and sell commercial paper when its effective rate is less than the effective interest cost on the Bank Loans. Commercial paper will be issued in denominations of not less than $50,000 and will be reoffered by the dealer(s) in non-public offerings. The commercial paper will be sold to the dealer(s) at the then prevailing discount rate for similar commercial paper. The dealer(s) may reoffer the paper at a discount rate of up to ⅛ of 1 percent per annum less than the rate borne by Columbia as issuer. Columbia requests an exception from the competitive bidding requirements of Rule 50 pursuant to subsection 50(a)(5) for the proposed sale of commercial paper by Columbia.

Entergy Corp., et al. (70–7679)

Entergy Corporation ("Entergy"), 225 Baronne Street, New Orleans, Louisiana 70112, a registered holding company; its service company subsidiary, Entergy Services, Inc. ("Services"), 639 Loyola Avenue, New Orleans, Louisiana 70113; Arkansas Power & Light Company ("Arkansas"), 425 West Capitol, 40th Floor, Little Rock, Arkansas 72201, Louisiana Power & Light Company ("Louisiana"), 142 Delaronde Street, New Orleans, Louisiana 70174, Mississippi Power & Light Company

("Mississippi"), P.O. Box 1640, Jackson, Mississippi 39215–1640 and New Orleans Public Service Inc., 317 Baronne Street, New Orlenas, Louisiana 70112, each an operating subsidiary of Entergy (collectively, "Operating Companies"); the Operating Companies' fuel supply subsidiary, System Fuels, Inc., 639 Loyola Avenue, New Orleans, Louisiana 70113; and System Energy Resources, Inc. ("System Energy"), Echelon One, 1340 Echelon Parkway, Jackson, Mississippi 39213, Entergy's generating company subsidiary, have filed under sections 6(a), 7, 9(a), 10 and 12(b) of the Act and Rules 43, 45 and 50(a)(5) thereunder an amendment to their application-declaration previously filed under Sections 6(a), 7, (9a), 10, 12(b) and 13(b) of the Act and Rules 45, 86–91, 93 and 94 thereunder.

On November 9, 1989 (HCAR No. 24982), the Commission issued a notice in this matter, which was jointly filed on September 25, 1989 by Entergy and four of its subsidiaries, Arkansas, Louisiana, Mississippi and System Energy, seeking authorization from the Commission to form, organize and have Entergy acquire the capital stock of a newly proposed wholly-owned subsidiary of Entergy to be incorporated in Delaware and called Entergy Operations, Inc. ("EOI"). EOI is to be a service company subsidiary of Entergy with the overall operational responsibilities for the nuclear power plants owned by Arkansas, Louisiana and System Energy. EOI sought authority to finance its interim capital needs by entering into a Loan Agreement with Entergy ("Loan Agreement") pursuant to which EOI would be permitted to borrow and reborrow from Entergy, from time to time through June 30, 1992, up to an aggregate principal amount of $15 million at any one time outstanding, reserving the right to increase this amount to $20 million upon receipt of appropriate authorization from the Commission.

By amendment herein filed on November 15, 1989, EOI seeks additional and alternative authority to finance its interim capital needs through Entergy's system money pool ("Money Pool") as a participant ("Participant") following EOI's organization. The Money Pool will continue to be administered on behalf of the Participants by Services under the direction of its treasurer. EOI's participation in the Money Pool will be for the same purposes and structured in the same manner as last authorized by the Commission (HCAR No. 24798, December 30, 1988) for each of the other Participants, except that it is not currently contemplated that EOI issue and sell unsecured short-term promissory notes to commercial banks and/or dealers in commercial paper.

The aggregate principal amount of borrowings by EOI at any one time through the Money Pool, pursuant to the Loan Agreement and through such other borrowing arrangements as may hereafter be entered into by EOI pursuant to authorization of the Commission shall not exceed $15 million, subject to increase to $20 million upon receipt of appropriate authorization from the Commission. The aggregate principal amount of borrowings by EOI outstanding at any one time through the Pool shall not exceed an amount equal to the aggregate unused portion of the line(s) of credit then available to EOI pursuant to the Loan Agreement and/or such other borrowing arrangements as may hereafter be entered into by EOI pursuant to the authorization of the Commission.

National Fuel Gas Co. et al. (70–7691)

National Fuel Gas Company ("National"), a registered holding company, 30 Rockefeller Plaza, Suite 4545, New York, New York 10112, and its wholly owned subsidiary companies: National Fuel Gas Supply Corporation ("Supply"), Penn-York Energy Corporation ("Penn-York"), National Fuel Gas Distribution Corporation ("Distribution"), Empire Exploration, Inc. ("Empire"), Highland Land & Minerals, Inc. ("Highland"), Enerop Corporation ("Enerop"), each located at 10 Lafayette Square, Buffalo, New York 14203; Utility Constructors, Inc. ("UCI"), East Erie Extension, Linesville, Pennsylvania 16424; and Seneca Resources Corporation ("Seneca"), M Corp. Plaza, 333 Clay Street, Suite 4150, Houston, Texas 77002 (collectively "Subsidiary Companies"), have filed an application-declaration pursuant to Sections 6(a), 7, 9(a), 10 and 12(b) of the Act and Rules 43, 45, 50(a)(5) thereunder.

By orders dated December 30, 1983 (HCAR No. 23193), February 12, 1985 (HCAR No. 23598), December 20, 1985 (HCAR No. 23958), August 3, 1987 (HCAR No. 24435), December 29, 1987 (HCAR No. 24551), January 7, 1988 (HCAR No. 24551A), and December 20, 1988 (HCAR No. 24785), National and its Subsidiary Companies were authorized, in relevant part, to participate in the National system money pool ("Money Pool"), to be administered by National, and to make short-term loans of surplus funds generated by National and its Subsidiary Companies, through December 31, 1989. National and its Subsidiary Companies now propose to continue to participate in, and incur short-term borrowings through the Money Pool, through December 31, 1991. Total outstanding short-term borrowings through the Money Pool will not exceed a principal amount of: (1) $230 million for Distribution; (2) $125 million for Supply; (3) $125 million for Seneca; (4) $35 million for Empire; (5) $35 million for Penn-York; (6) $5 million for UCI; (7) $5 million for Highland; and (8) $2 million for Enerop. National will not borrow through the Money Pool or from any Subsidiary Company.

In addition, in the event that intrasystem sources of funds are insufficient to meet short-term loan needs of the Subsidiary Companies, National proposes, from time-to-time through December 31, 1991, to: (1) issue and sell, under an exception from the competitive bidding requirements of Rule 50 under Subsection (a)(5) thereunder, up to $120 million aggregate principal amount at any one time outstanding of commercial paper ("Commercial Paper") through Merrill Lynch Money Markets, Inc. ("Dealer") and the Chase Manhattan Bank, N.A. ("Placement Agent"); and/or (2) issue an aggregate principal amount of up to $350 million short-term unsecured notes ("Notes") to certain banks under bank lines of credit. The aggregate principal amount of such Commercial Paper and Notes shall not exceed $350 million outstanding at any one time. The proceeds of such external borrowings by National shall be made available to its Subsidiary Companies through the Money Pool. In addition, National proposes that up to $10 million of its external borrowing be made available for its own corporate purposes.

The interest rate applicable to all loans of surplus funds through the Money Pool will be the lower of (1) the rate for Commercial Paper placed by the Dealer/Placement Agent, having the same rating as National and having a term most nearly equal to the particular Money Pool loan in question, or (2) the prime rate at Chase Manhattan Bank, N.A. The interest rate applicable to funds borrowed by National, either through Commercial Paper or bank loans, and loaned through the Money Pool will be equal to National's net cost for such external borrowings. In the event that both surplus funds and external funds are concurrently borrowed through the Money Pool, the interest rate applicable to all funds borrowed will be equal to the net cost of funds borrowed externally from the Money Pool.

The Commercial Paper will have varying maturities not to exceed nine

months, and will not be prepayable prior to maturity. No commission will be payable in connection with the issuance and sale of the Commercial Paper; however, the Dealer/Placement Agent will reoffer and sell the Commercial Paper at a discount rate of one-eighth of 1 percent per annum less than the prevailing discount rate granted by the Dealer/Placement Agent to National. The Notes will mature not later than twelve months from the date of issuance and will be prepayable at any time, in whole or in part, without penalty or premium. The Notes will bear interest at the prime rate of interest in effect at each individual bank, or will be negotiated at a rate lower than prime. The borrowing arrangements with these banks may require compensating balances, commitment fees on amounts borrowed, or no fees whatsoever. National may incur, if necessary, commitment fees not to exceed one-half of 1 percent of average daily line of credit used and compensating balances not to exceed 20 percent of lines of credit established. National, at all times, will attempt to negotiate the most favorable effective borrowing rate taking into account any compensating balances and/or commitment fees. National will issue and sell Commercial Paper when its effective rate is less than the effective interest cost of the issuance of Notes under available bank lines of credit on the date of such borrowing. Assuming National borrowed the full amount under each bank line of credit and maintained a compensating balance of 10 percent under each line, the effective cost of money, based on a 10.5 percent prime rate, would be 11.6 percent.

Eastern Edison Co. et al. (70–7692)

Eastern Edison Company ("Eastern"), 110 Mulberry Street, Brockton, Massachusetts 02403, Montaup Electric Company ("Montaup"), P.O. Box 2333, Boston, Massachusetts 02107, Blackstone Valley Electric Company ("Blackstone"), Washington Highway, P.O. Box 1111, Lincoln, Rhode Island 02865, and EUA Service Corporation ("Service"), P.O. Box 2333, Boston, Massachusetts 02107, (collectively, "Subsidiaries"), subsidiary companies of Eastern Utilities Associates, a registered holding company, have filed a declaration pursuant to Sections 6(a) and 7 of the Act.

The Subsidiaries each propose to issue and sell short-term notes to banks ("Notes"), from time to time during the period from December 28, 1989, to December 31, 1991, in aggregate amounts outstanding at any one time not to exceed $25 million for Eastern, $40 million for Montaup, $12 million for Blackstone and $5 million for Service. The Notes will be issued to banks and renewed from time to timne prior to December 31, 1991, provided no such Notes wil mature after September 30, 1992.

Each Note will be dated as of the date of issuance and will be issued no later than December 31, 1991. Some Notes will bear interest at a floating prime rate, have maximum maturities of nine months, and be prepayable at any time without premium. Other Notes will bear interest at available money market rates, in all cases less than the prime rate at the time of issuance, will have maximum maturities of nine months, and will not be prepayable.

Credit lines with banks are subject in some cases to commitment fees and/or compensating balance requirements. The existing bank credit lines expire at various times in 1990 and their continued availability is subject to continuing review by the banks involved. Bank credit lines and arrangements may be increased, decreased or changed and additional lines may be obtained from other banks. The existing credit line arrangements include: (1) Borrowing at the prime rate or money market rates, if lower; and (2) borrowing at the prime rate or money market rates, if lower, together with a commitment fee equal to 1/4 of 1 percent multiplied by the credit line. Any such commitment fee will be allocated among the four declarants in proportion to their respective borrowing authorizations hereunder.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–27528 Filed 11–22–89; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[CM–8/1324]

The U.S. Organization for the International Telegraph and Telephone Consultative Committee, National Committee; Meeting

The Department of State announces that the National Committee for the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT), will meet on December 1, 1989 in the East Auditorium (Room 2925), Department of State, 2201 C Street, NW., Washington, DC. The meeting will be from 9:00 a.m. to 1:00 p.m.

The National Committee assists in the resolution of administrative/procedural problems pertaining to U.S. CCITT activities; provides advice on matters of policy and positions in the preparation for CCITT Plenary Assemblies and meetings of the International Study Groups; provides advice and recommendations in regard to the work of the U.S. CCITT Study Groups; and recommends the disposition of proposed U.S. contributions to the international CCITT which are submitted to the Committee for consideration.

The purpose of the meeting is to discuss with CCITT Director Th. Irmer his views concerning the future relationship between CCITT and other standard organizations.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and individual building passes are required for each attendee. Entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, persons who plan to attend should so advise the office of Mr. Earl Barbely, State Department, Washington, DC; telephone (202) 647–5220. All attendees must use the C entrance to the building.

Dated: November 9, 1989.

Earl S. Barbely,

Director, Office of Telecommunications and Information Standards, Chairman U.S. CCITT National Committee.

[FR Doc. 89–27524 Filed 11–22–89; 8:45 am]

BILLING CODE 4710–07–M

[CM–8/1326]

The U.S. Organization for the International Telegraph and Telephone Consultative Committee, Study Group D; Meetings

The Department of State announces that Study Group D of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on January 5 and January 30, 1990 at 10:00 a.m. in Room 1107, Department of State, 2201 C Street, NW., Washington, DC.

The purpose of the meetings will be to review proposed U.S. and company contributions for the upcoming meetings of CCITT Study Group VII (5–16) February, Study Group VIII (26 March–4 April) and Study Group XVII (19–27 April); to review other country contributions relevant to these meetings,

to discuss Study Group organization and working methods, including rapporteur's activities, to nominate delegations for these meetings, and to discuss any other business that may be raised from the floor relevant to any topics within the purview of U.S. Study Group D.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and individual building passes are required for each attendee. Entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, persons who plan to attend should so advise the office of Mr. Earl Barbely, State Department, Washington, DC, telephone (202) 647–5220. All attendees must use the C Street entrance to the building.

Dated: November 8, 1989.

Earl S. Barbely,

Director, Office of Telecommunications and Information Standards, Chairman, U.S. CCITT National Committee.

[FR Doc. 89–27525 Filed 11–22–89; 8:45 am]

BILLING CODE 4710–07–M

[CM–8/1327]

Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea, Working Group on Radiocommunications; Meetings

The Working Group on Radiocommunications of the Subcommittee on Safety of Life at Sea will conduct open meetings at 0930 on the following dates: January 18, 1990; February 15, 1990; April 19, 1990; and June 21, 1990. These meetings will be held in room 9230 of the Department of Transportation, 400 Seventh, SW., Washington, DC 20950–0001.

The purpose of these meetings is to discuss the Global Maritime Distress and Safety System (GMDSS), and to prepare for the 35th and 36th Sessions of the International Maritime Organization Subcommittee on Radiocommunications. Agenda items also include GMDSS implementation in the U.S., improved dissemination of maritime safety information, and Chapter 9 of the Torremolinos International Convention for the Safety of Fishing Vessels.

Members of the public may attend these meetings up to the seating capacity of the room.

For further information contact Mr. Ronald J. Grandmaison, U.S. Coast Guard Headquarters (G–TTS–3), 2100 Second Street, SW., Washington, DC 20593–0001. Telephone: (202) 267–1389.

Dated: November 8, 1989.

Thomas J. Wajda,

Chairman, Shipping Coordinating Committee.

[FR Doc. 89–27526 Filed 11–22–89; 8:45 am]

BILLING CODE 4710–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Fitness Determination of Scott Aviation, Inc. d/b/a Scott Air Charter d/b/a Scott Express

AGENCY: Department of Transportation.

ACTION: Notice of commuter air carrier fitness determination—Order 89–11–40, Order to show cause.

SUMMARY: The Department of Transportation is proposing to find that Scott Aviation, Inc. d/b/a Scott Air Charter d/b/a Scott Express is fit, willing, and able to provide commuter air service under section 419(e)(1) of the Federal Aviation Act.

Responses: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Air Carrier Fitness Division, Room 6401, Department of Transportation, 400 7th Street, SW., Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than December 4, 1989.

FOR FURTHER INFORMATION CONTACT: Barbara P. Dunnigan, Air Carrier Fitness Division, Department of Transportation, 400 7th Street, SW., Washington, DC 20590, (202) 366–2342.

Dated: November 17, 1989.

Jeffrey N. Shane,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 89–27511 Filed 11–22–89; 8:45 am]

BILLING CODE 4910–62–M

Coast Guard

Towing Safety Advisory Committee; Meeting of Subcommittee

AGENCY: Coast Guard, Department of Transportation.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Act (Pub. L. 92–463; U.S.C. App. I), notice is hereby given of a meeting of the Subcommittee on Tug-Barge Construction, Certification and Operations of the Towing Safety Advisory Committee (TSAC). The subcommittee meeting will be held on January 16, 1990, at the Houston Marriott Hotel-Greenspoint, 255 North Belt Drive, Houston, Texas (713) 879–4000. The meeting is schedule to begin at 9:00 a.m. The agenda for the meeting consists of the following items:

1. Development of suggested improvements in the provisions of 46 CFR part 151.
2. Evaluation of the adequacy of current 46 CFR part 31 inspection intervals for tank barges.
3. Evaluation of the adequacy of U.S. Coast Guard policy regarding the application of "Rivers" structural rules for tank barges regularly plying "Lakes, Bays and Sounds" route or on "Oceans" route within the boundary line.
4. Evaluation of the requirement for a buckling analysis for existing barges with "Rivers" scantling as a condition of continuing operation on "Lakes, Bays and Sounds" or "Oceans" routes within the boundary line.
5. Evaluation of the requirement for high level alarms in cargo tanks on tank barges to reduce the incidence of cargo tank overfilling and overpressurization.
6. Evaluation of the progress in identifying problems confronting the towing industry that could result from a full conversion to 1969 Tonnage Convention tonnage.

Members of the public may present oral or written statements at the meeting.

FOR FURTHER INFORMATION CONTACT: CDR John Hersh, U.S. Coast Guard Headquarters (G–MVI–2), 2100 2nd Street, SW, Washington, DC 20593–0001, (202) 267–1181.

Dated: November 17, 1989.

J. D. Sipes,

Rear Admiral, U.S. Coast Guard Chief, Office of Marine Safety, Security and Enironmental Protection.

[FR Doc. 89–27592 Filed 11–22–89; 8:45 am]

BILLING CODE CGD–89–097

Federal Aviation Administration

Meetings; Bangor, ME Terminal Radar Service Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The FAA is proposing to replace the Bangor, ME Terminal Radar Service Area (TRSA) by designating Bangor as an Airport Radar Service Area (ARSA). An informal airspace meeting has been scheduled to provide the opportunity to gather additional facts relevant to the aeronautical effects

of the proposal, and provide interested persons an opportunity to discuss objections to the proposal. All comments received from these meetings will be considered prior to the issuance of a Notice of Proposed Rulemaking (NPRM).

DATE: February 14, 1990.

Time: p.m.

Location: Operations Building #491, Bangor Air National Guard Base, Bangor, ME.

Point of contact: Send or deliver comments by March 15, 1990, to: Federal Aviation Administration, Air Traffic Division ANE–530, 12 New England Executive Park, Burlington, MA 01803.

For further information contact Eileen Seaman, Air Traffic Division, ANE–533, (617) 273–7132.

SUPPLEMENTARY INFORMATION:

Meeting Procedures

(a) The meeting will be informal in nature and will be conducted by a representative of the FAA New England Region. Representatives from the FAA will present a formal briefing on problems and proposals for change that have been received from the public. All other participants will be given an opportunity to make a presentation.

(b) Any person wishing to make a presentation to the FAA Team will be asked to sign in and estimate the amount of time needed for such a presentation. This will permit the Team to allocate an appropriate amount of time for each presenter. The Team may allocate the time available for each presentation in order to accommodate all speakers. The meeting will not be adjourned until everyone on the list has had an opportunity to address the panel. The meeting may be adjourned at any time if all persons present have had the opportunity to speak.

(c) Any person who wishes to present a position paper to the Team, pertinent to the topic of the Bangor ARSA, may do so. Persons wishing to hand out pertinent position papers to the attendees should present two copies to the presiding officer. There should be additional copies of each handout available for other attendees.

(d) The meeting will not be formally recorded, however, informal tape recordings will be made of presentations to ensure that each respondent's comments are noted accurately. A summary of the comments at the meeting will be made available to all interested parties.

Materials relating to the proposed Bangor, ME, ARSA will be accepted at the meeting. Every reasonable effort will be made to hear every request for presentation consistent with a reasonable closing time for the meeting. Written materials may also be submitted to the Team until March 15, 1990.

Agenda

Opening Remarks and Discussion on Meeting Procedures
Briefing on Identified Problems and Change Proposals
Public Presentations
Closing Comments

Issued in Burlington, MA, on November 15, 1989.

James I. Lucas,

Manager, Air Traffic Division, ANE–500.

[FR Doc. 89–27551 Filed 11–22–89; 8:45 am]

BILLING CODE 4910–13–M

Flight Service Station At Eau Claire County Airport, Eau Claire, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of closing.

SUMMARY: Notice is hereby given that on November 7, 1989, the Flight Service Station (FSS) at Eau Claire, Wisconsin was closed. Services to the aviation public in the Eau Claire flight plan area, formerly provided by Eau Claire FSS, are being provided by the automated flight service station (AFSS) at Green Bay, Wisconsin. This information will be reflected in the FAA organization statement the next time it is reissued. [Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354.]

Timothy P. Forte,

Regional Administrator, Great Lakes Region.

[FR Doc. 89–27552 Filed 11–22–89; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: November 17, 1989.

The Department of the 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.

U.S. Customs Service

OMB Number: 1515–0068.

Form Number: CF 28.

Type of Review: Extension.

Title: Request for Information.

Description: Customs Form 28 is used to request additional information from importers if sufficient information is not provided on the invoice or entry documentation for Customs to carry out their responsibilities.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents: 150,000.

Estimated Burden Hours Per Response/Recordkeeping: 30 minutes.

Frequency of Response: On occasion.

Estimated Total Recordkeeping/Reporting Burden: 82,500 hours.

OMB Number: 1515–0091.

Form Number: None.

Type of Review: Extension.

Title: Importers of Merchandise Subject to Actual Use Provision.

Description: This part of the Regulation provides that certain items may be admitted duty-free, such as farming implements, seed potatoes, etc. providing the importer can prove these items were actually used as contemplated by the law. The importer must maintain detailed records and furnish a statement of use.

Respondents: Individuals or households, Small businesses or organizations.

Estimated Number of Respondents: 12,000.

Estimated Burden Hours Per Response/Recordkeeping: 1 hour.

Frequency of Response: On occasion.

Estimated Total Recordkeeping/Reporting Burden: 13,000 hours.

Clearance Officer: Dennis Dore (202) 535–9267, U.S. Customs Service, Paperwork Management Branch, Room 6316, 1301 Constitution Avenue NW., Washington, DC 20229.

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. 89–27584 Filed 11–22–89; 8:45 am]

BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review

Date: November 13, 1989.

The Department of the Treasury has made revisions and resubmitted 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: 1545–0051.
Form Number: IRS Form 990–C.
Type of Review: Resubmission.
Title: Farmers' Cooperative Association Income Tax Return.
Description: Form 990–C is used by farmers' cooperatives to report the tax imposed by section 1381. IRS uses the information to determine whether the tax is being properly reported.
Respondents: Farms, Businesses or other for-profit.
Estimated Number of Respondents/Recordkeepers: 5,600.
Estimated Burden Hours Per Response/RecordKeeping:
Recordkeeping—75 hrs., 34 mins.
Learning about the law or the form—23 hrs., 4 mins.
Preparing the form—40 hrs., 13 mins.
Copying, assembling, and sending the form to IRS—4 hrs., 17 mins.
Frequency of Response: Annually.
Estimated Total Recordkeeping/Reporting Burden: 801,640 hours.
Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC. 20224.
OMB Review: 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. 89–27585 Filed 11–22–89; 8:45 am]

BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review.

Date: November 13, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, 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: 1545–0197.
Form Number: IRS Form 5300.
Type of Review: Revision.
Title: Application for Determination for Employee Benefit Plan.
Description. IRS needs certain information on the financing and operating of employee benefit and employee contribution plans set up by employers. IRS uses Form 5300 to obtain the information needed to determine whether the plans qualify under Code sections 401(a) and 501(a).
Respondents: Individuals or households, Businesses or other for-profit, Small Businesses or organizations.
Estimated Number of Respondents/Recordkeepers: 300,000.
Estimated Burden House Per Response/Recordkeeping:
Recordkeeping—25 hrs. 58 mins.
Learning about the law or the form—6 hrs., 41 mins.
Preparing the form—9 hrs., 13 mins.
Copying, assembling, and sending the form to IRS—32 mins.
Frequency of Response: On occasion.
Estimated Total Reporting/Recordkeeping Burden: 11,823,000 hours.
Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB: Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 89–27586 Filed 11–22–89; 8:45 am]

BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review

Date: November 13, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, 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.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512–0220.
Form Number: ATF F 5170.4.
Type of Review: Extension.
Title: Application for Importer's and/or Wholesaler's Basic Permit Under Federal Alcohol Administration Act.
Description: Form 5170.4 is completed by persons intending to engage in the business of importing and/or wholesaling alcoholic beverages. The information provided allows ATF to identify the applicant and the location of the business and to determine whether the applicant qualifies for a basic permit under the Federal Alcohol Administration Act.
Respondents: Individuals or household, Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 1,300.
Estimated Burden Hours Per Response: 3 hours.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 3,900 hours.
Clearance Officer: Robert Masarsky (202) 566–7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 89–27587 Filed 11–22–89; 8:45 am]

BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review

Date: November 13, 1989.

The Department of the 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, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Financial Management Service

OMB Number: 1510–0007.
Form Number: SP 1199–A.
Type of Review: Extension.
Title: Direct Deposit Sign-Up Form.
Description: The Direct Deposit Sign-Up Form is used by recipients to authorize the deposit of Federal payments into their accounts at financial institutions. This information is used to route the Direct Deposit payment to the correct account at the correct financial institution. It identifies persons who have processed the form.
Respondents: Individuals or households, Businesses or other for-profit, Federal agencies and employees, Non-profit institutions.
Estimated Number of Respondents: 3,850,000.
Estimated Burden Hours Per Response: 10 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 654,500 hours.
Clearance Officer: Mary MacLeod (301) 436–5300, Financial Management Service, Room 500–A, 3700 East West Highway, Hyattsville, MD 20782.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 89–27588 Filed 11–22–89; 8:45 am]

BILLING CODE 4810–25–M

Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service

AGENCY: Departmental Offices, Treasury.

ACTION: Notice of meeting.

SUMMARY: This notice announces the date of the next meeting and the agenda for consideration by the Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service.

DATE: The next meeting of the Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service will be held on Thursday, December 14, 1989, at 9:30 a.m. in Room 4121 of the Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dennis M. O'Connell, Director, Office of Trade and Tariff Affairs, Office of the Assistant Secretary (Enforcement), Room 4004, Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220. Tel.: (202) 566–8435.

SUPPLEMENTARY INFORMATION: Agenda items for the fifth meeting of the Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service on December 14, 1989, will include:

I. Old Business

1. Update on the user fee legislation.
2. Triangle processing: report on the project and status of the proposed legislation.

II. New Business

1. Review of the Annual Report to Congress of the Advisory Committee.
2. Other new business.

The meeting is open to the public. Owing to the security procedures in place at the Treasury Building, it is necessary for any person other than an Advisory Committee member who wishes to attend the meeting to give advance notice. In order to be admitted to the building to attend the meeting, contact Dennis M. O'Connell at (202) 566–8435, no later than Friday, December 8, 1989.

Salvatore R. Martoche,

Assistant Secretary (Enforcement).

[FR Doc. 89–27559 Filed 11–22–89; 8:45 am]

BILLING CODE 4810–25–M

Office of the Secretary

[Amendment to Department Circular—Public Debt Series—No. 32–89]

8⅛% Treasury Bonds of 2019

Washington, November 9, 1989.

Department of the Treasury Circular, Public Debt Series No. 32–89, dated November 2, 1989, descriptive of 8⅛% Treasury Bonds of 2019, is hereby amended effective November 9, 1989.

The same-numbered paragraph of Department of the Treasury Circular, Public Debt Series—No. 32–89, is hereby amended and replaced with the following paragraph. The other terms and conditions remain unchanged.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239–1500, prior to 1:00 p.m., Eastern Standard time, Tuesday, November 14, 1989. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Monday, November 13, 1989, and received no later than Wednesday, November 15, 1989.

The foregoing Amendment was effected under authority of Chapter 31 of Title 31, United States Code. Notice and public procedures thereof are unnecessary as the fiscal policy of the United States is involved.

Marcus W. Page,

Acting Fiscal Assistant Secretary.

[FR Doc. 89–27581 Filed 11–22–89; 8:45 am]

BILLING CODE 4810–40–M

[Amendment to Department Circular—Public Debt Series—No. 30–89]

Treasury Notes, Series U–1992

Washington, November 9, 1989.

Department of the Treasury Circular, Public Debt Series No. 30–89, dated November 2, 1989, descriptive of Treasury Notes of Series U–1992, is hereby amended effective November 9, 1989.

The same-numbered paragraph of Department of the Treasury Circular, Public Debt Series—No. 30–89, is hereby amended and replaced with the following paragraph. The other terms and conditions remain unchanged.

3. Sale Procedures

3.1 Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239–1500, prior to 1:00 p.m., Eastern Standard time, Thursday, November 9, 1989. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Wednesday, November 8, 1989, and received no later than Wednesday, November 15, 1989.

The foregoing Amendment was effected under authority of chapter 31 of title 31, United States Code. Notice and public procedures thereof are unnecessary as the fiscal policy of the United States is involved.

Marcus W. Page,

Acting Fiscal Assistant Secretary.

[FR Doc. 89–27577 Filed 11–22–89; 8:45 am]

BILLING CODE 4810–40–M

[Supplement to Department Circular—Public Debt Series—No. 30–89]

Treasury Notes, Series U–1992

Washington, November 13, 1989.

The Secretary announced on November 9, 1989, that the interest rate on the notes designated Series U–1992, described in Department Circular—Public Debt Series—No. 30–89 dated November 2, 1989, as amended, will be 7¾ percent. Interest on the notes will be

payable at the rate of 7¾ percent per annum.

Marcus W. Page,

Acting Fiscal Assistant Secretary.

[FR Doc. 89-27578 Filed 11-22-89; 8:45 am]

BILLING CODE 4810-40-M

[Amendment to Department Circular—Public Debt Series—No. 31-89]

Treasury Notes, Series D-1999

Washington, November 9, 1989.

Department of the Treasury Circular, Public Debt Series No. 31-89, dated November 2, 1989, descriptive of Treasury Notes of Series D-1999, is hereby amended effective November 9, 1989.

The same-numbered paragraph of Department of the Treasury Circular, Public Debt Series—No. 31-89, is hereby amended and replaced with the following paragraph. The other terms and conditions remain unchanged.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239-1500, prior to 12:00 noon, Eastern Standard time, Monday, November 13, 1989. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Sunday, November 12, 1989, and received no later than Wednesday, November 15, 1989.

The foregoing Amendment was effected under authority of chapter 31 of title 31, United States Code. Notice and public procedures thereof are unnecessary as the fiscal policy of the United States is involved.

Marcus W. Page,

Acting Fiscal Assistant Secretary.

[FR Doc. 89-27579 Filed 11-22-89; 8:45 am]

BILLING CODE 4810-40-M

[Supplement to Department Circular—Public Debt Series—No. 31-89]

Treasury Notes, Series D-1999

Washington, November 14, 1989.

The Secretary announced on November 13, 1989, that the interest rate on the notes designated Series D-1999, described in Department Circular—Public Debt Series—No. 31-89 dated November 2, 1989, as amended, be 7⅞ percent. Interest on the notes will be payable at the rate of 7⅞ percent per annum.

Marcus W. Page,

Acting Fiscal Assistant Secretary.

[FR Doc. 89-27580 Filed 11-22-89; 8:45 am]

BILLING CODE 4810-40-M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 225
Friday, November 24, 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).

AFRICAN DEVELOPMENT FOUNDATION

Board of Directors Meeting

TIME: 10:00 a.m.–1:00 p.m.

PLACE: African Development Foundation.

DATE: Friday, 8 December 1989.

STATUS: Open.

Agenda

1. Chairman's Report.
2. President's Report.
3. Other Business.

CONTACT PERSON FOR MORE INFORMATION: Ms Janis McCollim, 673–3916.

Leonard H. Robinson, Jr.,

President.

[FR Doc. 89–27660 Filed 11–20–89; 4:51 pm]

BILLING CODE 6116-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:30 a.m., Wednesday, November 22, 1989.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 89–27707 Filed 11–21–89; 2:07 pm]

BILLING CODE 6351-01-M

FEDERAL ELECTION COMMISSION

* * * * *

DATE AND TIME: Tuesday, November 28, 1989 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, D.C.

STATUS: This meeting will be closed to the Public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g. Audits conducted pursuant to 2 U.S.C. § 437g and § 438(b) and Title 26 U.S.C. Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

DATE AND TIME: Thursday, November 30, 1989 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, D.C. (Ninth Floor).

STATUS: This meeting will be open to the Public.

MATTERS TO BE CONSIDERED:

Setting of Dates for Future Meetings.
Correction and Approval of Mintues.
Draft Advisory Opinions:
Draft AO 1989–23
David T. Wright on behalf of Coopers & Lybrand.
Draft AO 1989–24 (Tentative)
Kay Yarbrough on behalf of First Florida Partners for Good Government.
Draft AO 1989–25
John P. Stabile, II on behalf of New Hampshire Republic State Committee.
Draft AO 1989–26
Trey Rogers on behalf of Dick Bond for Congress.
Status of Presidential Audits.
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: (202) 376–3155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 89–27741 Filed 11–21–89; 3:14 pm]

BILLING CODE 6715-01-M

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

Meeting

DATE AND TIME: The Board of Directors meeting will be held on December 1, 1989. The meeting will commence at 10:00 a.m.

PLACE: Holiday Inn Capitol, Columbia Room North, 550 "C" Street, SW., Washington, DC 20024.

STATUS OF MEETING: Open [A portion of the meeting may be closed subject to the recorded vote of a majority of the Board of Directors to discuss privileged or confidential, personal, investigatory and litigation matters under the Government in the Sunshine Act [5 U.S.C. 552b (c) (4), (5), (7), and (10) and 45 CFR 1622.5 (c), (d), (f), and (h)].

MATTERS TO BE CONSIDERED: A portion of the meeting may be closed for the reasons cited above, subject to an advance recorded vote of a majority of the Board of Directors.

1. Approval of Agenda.
2. Approval of Minutes.
   —June 13, 1989
3. Discussion and Approval of Fiscal Year 1991 Budget Proposal.
4. Report on President Wear's Trip to Address the California Legal Services Trust Fund Commission.
5. Report and Accounting of the Use of Outside Law Firms by Corporation Staff.
6. Report and Accounting of the Pursuit of Lobbying activities by Corporation Staff.
7. Requests for Emergency Funding.
8. Adjournment.

CONTACT PERSON FOR MORE INFORMATION: Maureen R. Bozell, Executive Office, (202) 863–1839.

Date Issued: November 21, 1989.

Maureen R. Bozell,

Corporation Secretary.

[FR Doc. 89–27733 Filed 11–21–89; 2:08 pm]

BILLING CODE 7050-01-M

RESOLUTION TRUST CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 3:40 p.m. on Thursday, November 16, 1989, the Board of Directors of the Resolution Trust Corporation met in closed session to consider certain matters relating to the Corporation's corporate activities.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred by Director M. Danny Wall (Director of the Office of Thrift Supervision), and Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: November 20, 1989.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Executive Secretary.

[FR Doc. 89–27705 Filed 11–21–89; 8:45 am]

BILLING CODE 6714-01-M

TENNESSEE VALLEY AUTHORITY

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 54 FR 48056 (November 20, 1989).

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m. (EST) Wednesday, November 22, 1989.

PREVIOUSLY ANNOUNCED PLACE OF MEETING: TVA Chattanooga Office Complex Auditorium, 1101 Market Street, Chattanooga, Tennessee.

CHANGE IN THE MEETING: Each member of the TVA Board of Directors has approved the addition of the following item to the previously announced agenda:

A—Budget and Financing

1. Redemption Prior to Maturity of Certain High-Interest Debt Held by the Federal Financing Bank.

Item A1 in the previously announced agenda is redesignated as A2.

CONTACT PERSON FOR MORE INFORMATION: Alan Carmichael, Manager, Public Affairs, or a member of his staff can respond to requests for information about this meeting. Call 615–632–8000, Knoxville, Tennessee. Information is also available at TVA's Washington Office, 202–479–4412.

William L. Osteen, Jr.,

Assistant Secretary and Associate General Counsel.

[FR Doc. 89–27673 Filed 11–21–89; 10:56 am]

BILLING CODE 8120–01–M

Federal Register

Friday
November 24, 1989

Part II

Department of the Interior

Fish and Wildlife Service

Endangered Species Act Notification: Tibetan Argali, People's Republic of China; Notice

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Review of Status of Argali Sheep; Notice of Status Review

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species Act Notification; Tibetan Argali, People's Republic of China

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of information No. 20.

Subject: Tibetan argali (*Ovis ammon hodgsoni*)—People's Republic of China.

SUMMARY: The Fish and Wildlife Service (Service) has determined that the endangered wild sheep known as the Tibetan argali (*O. a. hodgsoni*) occurs in Xizang Province, Qinghai Province, and portions of Xinjiang, Sichuan, and Gansu Provinces, People's Republic of China, and in other areas of the Tibetan Plateau. Due to a recent investigation involving the import of several Tibetan argali, the Service wishes to notify the public that *O. a. hodgsoni* occurs in these areas and is afforded the full protection of the Endangered Species Act. In particular, the Service warns big-game hunters traveling to China for the purpose of taking argali sheep that *O. a. hodgsoni* may not be imported into the United States without a permit from the Service. The Service will closely scrutinize all specimens of *Ovis ammon* that are imported to determine if they are the listed subspecies.

DATE: This notice is effective November 24, 1989 and remains in effect until revoked.

ADDRESS: Questions regarding this notice should be addressed to the Director, U.S. Fish and Wildlife Service, Division of Law Enforcement, P.O. Box 3247, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Clark R. Bavin, Chief, Division of Law Enforcement, U.S. Fish and Wildlife Service, at the above address, Telephone (703) 358–1949, FTS 921–1949.

SUPPLEMENTARY INFORMATION: On March 6, 1973, the Tibetan argali (*Ovis ammon hodgsoni*) was listed on Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) (TIAS 8249). Federal regulations (50 CFR part 23) state that species listed on Appendix I may not be imported into the United States unless the Service has issued an import permit upon finding that the import would not be detrimental to the survival of the species.

On June 14, 1976 (41 FR 24064, effective July 14, 1976), the Service listed the Tibetan argali as endangered under the Endangered Species Act (Act) (16 U.S.C. 1531 *et seq.*; 50 CFR 17.11). The Act provides that species listed as endangered may not be imported into the United States without a permit from the Service (16 U.S.C. 1538(a)(1)(A).

In 1988, a group of big-game hunters traveled from the United States to Gansu Province, People's Republic of China, and shot several argali sheep. On their return to the United States, the hunters presented export permits from the Chinese government and declared the sheep only as *Ovis ammon*, without identifying the subspecies involved. The Service detained the trophies and consulted several world experts on wild sheep, who identified them as the endangered subspecies *O. a. hodgsoni*. Subsequently, the Service seized the argali trophies and submitted the matter to the United States Attorney and the Field Solicitor, Department of the Interior, for the appropriate action.

A dispute over the identification and taxonomic classification of the trophies arose during the investigation. While the Service ultimately concluded that the trophies were properly identified as *O. a. hodgsoni*, the unavoidably long delay in the adjudication process resulted in court rulings that finally caused the Service to return the trophies to the hunters. In order to avoid future situations of a similar nature, the Service is currently reviewing the status of *Ovis ammon* and other taxa listed under the Endangered Species Act to determine if any changes are needed to further clarify the present classification of the species or subspecies involved.

Action by the Fish and Wildlife Service

The Service reaffirms that the Tibetan argali (*Ovis ammon hodgsoni*) ranges throughout the Tibetan Plateau, including but not limited to Xizang Province, Qinghai Province, and portions of Xinjiang, Sichuan, and Gansu Provinces, People's Republic of China. This subspecies is listed as endangered and will be afforded the full protection of the Endangered Species Act.

Specifically, *O. a. hodgsoni* may not be imported into the United States without a permit from the Service. All specimens of *Ovis ammon* that are imported will be closely scrutinized to determine if they are the listed subspecies. The Service will continue to rigorously enforce the Endangered Species Act and will refuse import clearance for specimens of any species listed as endangered or on Appendix I of CITES that are imported without a permit from the Service.

This notice was prepared by Senior Special Agent Michael Sutton, Division of Law Enforcement.

Dated: November 16, 1989.

Richard N. Smith,

Deputy Director.

[FR Doc. 89–27505 Filed 11–22–89; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Review of Status of Argali Sheep

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of status review.

SUMMARY: The Service announces a review of the status of the argali sheep of Central Asia. At present, only a single subspecies, *Ovis ammon hodgsoni*, is classified as endangered. There are questions as to the systematics and distribution of this subspecies, and also as to whether other subspecies may warrant addition to the List of Endangered and Threatened Wildlife.

DATE: Comments and information may be submitted until March 26, 1990.

ADDRESSES: Comments, information, and questions should be submitted to the Chief, Office of Scientific Authority; Mail Stop: Room 725, Arlington Square; U.S. Fish and Wildlife Service; Washington, DC 20240. Comments and other information received will be available for public inspection, by appointment, from 8:00 a.m. to 4:00 p.m., Monday through Friday, in Room 750, 4401 North Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Dr. Charles W. Dane, Chief, Office of Scientific Authority, at the above address (phone 703–358–1708 or FTS 921–1708).

SUPPLEMENTARY INFORMATION: The argali sheep (*Ovis ammon*) is a relative of the North American bighorn sheep (*Ovis canadensis*). It is found in mountainous parts of Central Asia, including Kazakhstan, southern Siberia, northern and western China, Tibet, Nepal, and northern India. As many as 17 subspecies have been recognized (Nadler *et al.* 1973).

In the Federal Register of June 14, 1976 (41 FR 24064), the U.S. Fish and Wildlife Service (Service) classified the subspecies *Ovis ammon hodgsoni* as endangered. This listing was in response to a petition requesting endangered classification for all taxa that were already on Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora, but that then were not on the U.S. Lists of Endangered and Threatened Wildlife and Plants.

According to some authorities, such as Ellerman and Morrison-Scott (1966) and Nadler *et al.* (1973), the subspecies *O. a. hodgsoni* is found in the Himalayan region and parts of the Chinese province of Xizang (Tibet), while another subspecies, *O. a. dalailamae*, occurs farther north and east in the Chinese provinces of Xinjiang, Qinghai, Gansu, and Sichuan. Other authorities, including Pfeffer (1967) and Valdez (1982) consider *O. a. dalailamae* to be only a synonym of *O.a. hodgsoni*, and thus the range of the latter actually includes that of the former. In the U.S. List of Endangered and Threatened Wildlife, the range of *hodgsoni* is given as "China (Tibet, Himalayas)."

As pointed out in the notice by the Service's Division of Law Enforcement, in this same issue of the **Federal Register**, a recent legal action involved the importation of trophies of argali sheep killed in Gansu Province. In the course of this action, a dispute arose as to whether the trophies represented *O. a. hodgsoni*. The Service eventually concluded that the trophies were properly identified as *hodgsoni*.

The Service now is considering changes to the List of Endangered and Threatened Wildlife, so that the range of *O. a. hodgsoni* is fully and accurately delineated, and that any appropriate synonyms are taken into account. The Service also has received information suggesting that additional subspecies of *O. ammon*, including both possible synonyms of *hodgsoni* and other subspecies, are of serious bioconservation concern and may warrant U.S. classification as endangered or threatened. The International Union for Conservation of Nature and Natural Resources currently classifies the entire species *O. ammon* as "indeterminate," meaning that it is known to qualify for one of that organization's categories of "endangered", "vulnerable," or "rare," but that information is not yet sufficient to determine which designation is most appropriate. In order to help clarify the situation and resolve its own listing questions, the Service now solicits relevant data, comments, and publications dealing with the taxonomy, distribution, and bioconservation status of all subspecies of *O. ammon*.

Literature Cited

Ellerman, J.R., and T.C.S. Morrison-Scott. 1966. Checklist of Palaearctic and Indian mammals. British Museum (Natural History), London, 810 pp.

Nadler, C.F., K.V. Korobitsina, R.S. Hoffmann, and N.N. Vorontsov. 1973. Cytogenetic differentiation, geographic distribution, and domestication in Palearctic sheep (*Ovis*). Z. Saugetierkunde 38:109–125.

Pfeffer, P. 1967. Le mouflon de Corse (*Ovis ammon musimon*) Schreber, 1782); position systematique, ecologie et ethologie comparees. Mammalia 31, suppl., 262 pp.

Valdez R. 1982. The wild sheep of the world. Wild Sheep and Goat International, Mesilla, New Mexico, 186 pp.

Authority: The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Fish, Marine mammals, Plants (agriculture).

Dated: November 16, 1989.

Richard N. Smith,

Deputy Director, Fish and Wildlife Service.

[FR Doc. 89–27506 Filed 11–22–89; 8:45 am]

BILLING CODE 4310–55–M

federal register

Friday
November 24, 1989

Part III

Federal Trade Commission

Hart-Scott-Rodino Act Antitrust Improvements Act of 1976 and Regulations Thereunder; Statement Concerning Hart-Scott-Rodino Filing Fees; Notice

FEDERAL TRADE COMMISSION

Hart-Scott-Rodino Act Antitrust Improvements Act of 1976 and Regulations Thereunder; Statement Concerning Hart-Scott-Rodino Filing Fees

AGENCY: Federal Trade Commission.

ACTION: Notice

SUMMARY: On November 21, 1989, President Bush signed into law the Commerce, Justice, State, the Judiciary and Related Agencies Appropriations Bill for Fiscal 1990. Section 605 of that statute, as enacted, requires the payment of a filing fee of $20,000 by each person acquiring voting securities or assets who is required to file a premerger notification by the Hart-Scott-Rodino Antitrust Improvements Act of 1976 and regulations promulgated thereunder. The statute requires the Federal Trade Commission ("Commission") to assess and collect the filing fees five working days after its enactment and thereafter. The statute also specifies that no such notification shall be considered filed until the required fee has been paid. The Commission has issued this statement in order to advise the public about the filing fee obligation.

EFFECTIVE DATE: The filing fee requirement is effective as of November 29, 1989. Premerger notification and report forms received after 5 p.m. eastern time on November 28, 1989 will be deemed effected on November 29, 1989.

FOR FURTHER INFORMATION CONTACT: John M. Sipple, Jr., Chief, Premerger Notification Office, Bureau of Competition (Sixth Street and Pennsylvania Avenue NW., Room 300), Federal Trade Commission, Washington, DC 20580, 202–326–2862.

SUPPLEMENTARY INFORMATION:

Statement of the Federal Trade Commission on Hart-Scott-Rodino Filing Fees

On November 8, 1989, the United States Congress, as part of the Commerce, Justice, and State Appropriations Bill [1], mandated that a fee of $20,000 must be paid by "persons acquiring voting securities or assets who are required to file premerger notifications by the Hart-Scott-Rodino Antitrust Improvements Act of 1976 and the regulations promulgated thereunder" (the Act).[2] President Bush signed the Bill into law on November 21, 1989. The statute requires the Federal Trade Commission ("Commission") to assess and collect the filing fees five working days after its enactment and thereafter. The statute further specifies that "[f]or purposes of said Act, no notification shall be considered filed until payment of the fee required by this Section." In other words, as of November 29, 1989, the waiting period required under the Act will not begin until payment of a filing fee.

The Commission issues this statement in order to advise the public about the filing fee obligation, and to set out procedures for payment of the filing fee

I. Persons With a Fee Payment Obligation

The statute requires persons acquiring voting securities or assets who are required to file premerger notifications by the Act and the regulations [3] promulgated thereunder to pay a filing fee. "Acquiring person" is defined, for purposes of the Act, in Rule 801.2.

In most transactions the Act and Rules specify only one acquiring person who is required to file a premerger notification, and who therefore is obligated by the statute to pay a filing fee. However, in some transactions more than one person is required under the Act and Rules to file a premerger notification. In these circumstances, each acquiring person required to file a premerger notification will be obligated by the statute to pay a filing fee. Some of the more common transactions in which this is likely to occur are set out below

For consolidations in which more than one person is an acquiring person required to file a premerger notification, each such person must separately pay a filing fee. (*See* Rule 801.2(d)).

Example [4]: (1) Assume corporations A and B (each being its own ultimate parent entity) will be consolidated pursuant to an agreement in which a newly formed corporate entity, C, will be the surviving entity The shareholders of A and B will receive newly issued shares of C as a result of the transaction. Under the Act and Rules A and B are each an acquiring person required to file a premerger notification and pay a filing fee. Any shareholder of A or B who is also an acquiring person required to file a premerger notification under Rule 801.2(a) and (e) must also pay a filing fee.

To the extent the formation of a joint venture or other corporation is reportable pursuant to Rule 801.40, each acquiring person (contributor) required to file a premerger notification under the Act and Rules must pay a filing fee.

When an entity making an acquisition is controlled by more than one person (*e.g.*, a joint bid is being made), each acquiring person required to file a premerger notification under the Act and Rules must pay a filing fee.

Example: (2) Assume corporation A has two ultimate parent entities, "X" and "Y" under Rule 801 1(c). "X" and "Y" will cause A to make a cash tender offer for B's outstanding voting securities. "X" and "Y" must each file a premerger notification and pay a filing fee.

A person acquiring voting securities in secondary acquisitions, separately reportable under Rule 801.4, shall pay a filing fee for each secondary acquisition for which it is required by the Act and Rules to file a premerger notification. This fee shall be in addition to any filing fee that is required in the primary acquisition.

When persons file documents and information with the Commission pursuant to section 7A(c)(6) and (8) of the Act and Rules 802.6(a) and 802.8 in order to obtain an exemption from the filing requirements of the Act, no filing fee is required.

II. Mechanics of Payment

Filing fees shall be paid in accordance with the procedures set forth below

(A) The filing fee requirement is effective as of November 29, 1989. Pursuant to Rule 803.10(c)(1) premerger notification and report forms received after 5 p.m. eastern time on November 28, 1989 are deemed effected on November 29, 1989. Premerger notification and report forms received prior to November 29, 1989, and which the Commission's Premerger Notification Office has certified in writing are complete (*See* part (I) below), are not affected by the filing fee requirement.

(B) Fees are due and payable at the time of filing premerger notification and report forms. Fees are payable to the "Federal Trade Commission", omitting the name or title of any official of the Commission, by electronic wire transfer, United States postal money order, bank money order, bank cashier's check or certified check in U.S. currency

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[1] Commerce, Justice, State, the Judiciary and Related Agencies Appropriations Bill for the Fiscal Year Ending September 30, 1990 (H.R. 2991), section 605.

[2] References to "the Act" refer to section 7A of the Clayton Act, 15 U.S.C. 18a, as added by section 201 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, Pub. L. 95–435, 90 Stat. 1390.

[3] References to "Regulations" and "Rules" in this statement refer to the Premerger Notification Rules, 16 CFR parts 801–803.

[4] Throughout the examples, persons are designated ("A" "B" etc.) with quotation marks, and entities are designated (A, B, etc.) without quotation marks. Unless otherwise indicated, assume the size-of-person, size-of-transaction and commerce tests are satisfied.

(C) Fees paid by electronic wire transfer shall be deposited to the Treasury's account at the New York Federal Reserve Bank (the "Bank"). To insure fees paid are attributed to the proper acquiring person, the following information must be given at the time of transfer by the payor to the Bank:

1. Treasury's ABA number: 021030004
2. Commission's ALC number: 29000001
3. Commission's Clearing Account: 29X3875.2
4. The payor's name, the acquiring person's name (or a pseudonym if preferred), and an identification of the payment as a "Pre-Merger Filing Fee."

(D) Fees paid by United States postal money order, bank money order, bank cashier's check, or certified check shall be submitted to the Commission's Premerger Notification Office along with the required premerger notification and report forms.

(E) A person required to pay a filing fee shall include in the letter of transmittal that accompanies its premerger notification and report forms a statement that a filing fee has been paid, the method of payment and, if payment was made by electronic wire transfer, the date of transfer and any pseudonym used to identify the acquiring person.

(F) Any filing that is not accompanied by payment of a filing fee is deficient. See Rule 803.10(c)(2). Payment of a filing fee does not preclude a determination that a filing is deficient for any other reason.

(G) Except as provided in this paragraph, no filing fee received by the Commission will be returned to the payor and no part of the filing fee shall be refunded. However, if it is determined that premerger notification was not required by the Act and Rules, the filing fee shall be returned.

(H) Filing fees are to be paid solely to the Commission. No additional fee is required to be submitted to the Antitrust Division of the Department of Justice.

(I) In accordance with past policy, the Commission staff will send a letter to persons filing under the Act to verify the receipt of completed notification and report forms and to identify the expiration date of the waiting period. Such notice will henceforth acknowledge receipt of a filing fee.

By direction of the Commission.

Donald S. Clark,

Secretary

[FR Doc. 89-27783 Filed 11-22-89; 9:55 am]

BILLING CODE 6750-01-M

federal register

Friday
November 24, 1989

Part IV

The President

Proclamation 6076—National Adoption Week, 1989

Public Papers

of the Presidents

Federal Register
Vol. 54, No. 225
Friday, November 24, 1989

Presidential Documents

Title 3–

The President

Proclamation 6076 of November 21, 1989

National Adoption Week, 1989

By the President of the United States of America

A Proclamation

During this week of Thanksgiving, most of us will gather with our families to offer thanks to God, not only for His gift of life but also for the many blessings we enjoy as individuals and as a Nation. Tragically, however, thousands of American children do not have a family to call their own this Thanksgiving. These are children waiting to be adopted.

Adoption is a generous and loving act that benefits everyone involved: the little ones who need a permanent home, the couples hoping to become parents, and the young women who face a crisis pregnancy. Each year, many babies are given the chance to be loved when their mothers choose adoption over abortion. Each year, some 60,000 children in the United States are adopted. However, some 30,000 children who are legally available for adoption still wait in foster care for a family of their own. Many of these are children with special needs—children who have physical, mental, or emotional disabilities; older children; minority children; and children with siblings who need to be adopted by the same family. All of these children, however, have a wealth of love to share with their adoptive families. Encouraging their adoption is worthy of our greatest commitment.

Adoption provides a loving family and a lasting home to children who may have neither. It also can help address some of the most pressing issues facing our Nation today: issues such as teen pregnancy, welfare dependency, drug addiction, and child abuse.

Many Americans longing for a child are willing to adopt, yet they, too, wait. We must eliminate the public and private barriers to adoption opportunities, and we must heighten public awareness about adoption. Within the Federal Government, I have asked the heads of the departments and agencies to support the adoption plans and needs of civilian and military employees, and I have asked them to promote adoption among the work force. I have also proposed The Special Needs Adoption Assistance Act of 1989, designed to encourage and help facilitate the adoption of children with special needs.

During this National Adoption Week, as we acknowledge the importance of adoption to waiting children, let us also recognize the many Americans who work to place needy children in loving homes. These concerned individuals include thousands of foster parents, child welfare workers, pregnancy counselors, judges, lawyers, physicians, members of the clergy, legislators, volunteers, and adoptive family support groups. This week, let us also renew our determination to support both the courageous women who choose life for their children and the generous adoptive families who welcome needy children into their homes.

In order to encourage public awareness of adoption, and in recognition of all those who work to place waiting children with loving families, the Congress, by House Joint Resolution 278, has designated the week beginning November 20, 1989, as "National Adoption Week" and has authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the week beginning November 20, 1989, as National Adoption Week. I call upon all Americans to observe this week with appropriate programs, ceremonies, and activities

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-first day of November, 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. 89-27797
Filed 11-22-89; 10:14 am]
Billing code 3195-01-M

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