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

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THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register.

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

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

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

WASHINGTON, DC

WHEN: January 30, 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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Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

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

Rules and Regulations

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FEDERAL LABOR RELATIONS AUTHORITY

5 CFR Part 2429

Agency Rule Implementing the Law Governing Selection of Court for Multiple Appeals

AGENCY: Federal Labor Relations Authority.

ACTION: Final rule.

SUMMARY: The Federal Labor Relations Authority (FLRA) amends its rules and regulations as required by Public Law 100–236, which was enacted to provide for the selection of the court of appeals to decide multiple appeals of an agency order. The statute obligates the agency to designate an officer and office to receive petitions to review agency orders that are filed with the courts of appeals.

EFFECTIVE DATE: February 26, 1990.

FOR FURTHER INFORMATION CONTACT: William E. Persina,Solicitor, Federal Labor Relations Authority, 500 C Street, SW., Washington, DC 20424, Telephone: (202) 382–0781.

SUPPLEMENTARY INFORMATION: Public Law 100–236 was enacted to provide a procedure for selection of an appropriate court of appeals to review an agency order when multiple appeals to the order are filed with more than one court of appeals. Formerly, the practice of selecting the "court of venue" when an appeal was filed in more than one circuit was determined by the circuit where the appeal of the agency orders was first filed. The "first to file" rule, however, gave rise to "races to the courthouse" in order to file in a circuit which a lawyer believed would be sympathetic to the client's position. (H.R. Rep. No. 100–72 at 1–2 (1987)).

In order to alleviate the need for a circuit race when multiple appeals are filed, Public Law 100–236 establishes a procedure for a random selection of a circuit from among those circuits in which petitions are filed. In order to qualify for participation in the random selection process, a person must file a petition for review of the agency order and submit a copy of the petition to the agency within 10 days of issuance of the order. The statute requires agencies to designate by rule an office and officer to receive the petition for review. Therefore, the Federal Labor Relations Authority is amending part 2429 of its rules and regulations to provide that its Solicitor will receive petitions for court review of agency orders.

List of Subjects in 5 CFR Part 2429

Administrative practice and procedure, Government employees, Labor-management relations.

For the reasons set forth in the preamble, 5 CFR part 2429 is amended as follows:

PART 2429—MISCELLANEOUS AND GENERAL REQUIREMENTS

1. The authority citation for part 2429 is revised to read as follows:

Authority: 5 U.S.C. 7134; § 2429.18 also issued under 28 U.S.C. 2112(a).

2. Part 2429, subpart A is amended by adding § 2429.18 to read as follows:

§ 2429.18 Service of petitions for review of final authority orders.

Any aggrieved person filing pursuant to 5 U.S.C. 7123(a) a petition for review of a final Authority order in an appropriate Federal circuit court of appeals within 10 days of issuance of the Authority's final order must ensure that a court-stamped copy of the petition for review is received by the Solicitor of the Authority within that 10-day period in order to qualify for participation in the random selection process established in Public Law No. 100–236 for determining the appropriate court of appeals to review an agency final order when petitions for review of that order are filed in more than one court of appeals.

Dated: January 22, 1990.
Jean McKee,
Chairman.
Tony Armendariz,
Member.
Pamela Talkin,
Member.

[FR Doc. 90–1693 Filed 1–24–90; 8:45 am]
BILLING CODE 6727–01–M

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

7 CFR Part 1762

RIN 0572–AA21

REA Contract Form 515, Telephone System Construction Contract, Labor and Materials

AGENCY: Rural Electrification Administration, USDA.

ACTION: Correction to final rule.

SUMMARY: This notice corrects a minor typographical error in 7 CFR part 1762 published as a final rule on January 3, 1990, at 55 FR 130. This rule issues a revised REA Contract Form 515, Telephone System Construction Contract, Labor and Materials. Through an error, the date entry in the table for the revised contract has the words "Date of final rule" instead of the "January 1990," the actual date of issue of the revised contract. The text of the regulation with the correct date appears below.

FOR FURTHER INFORMATION CONTACT: Garnett G. Adams, Chief, Outside Plant Branch, Telecommunications Staff Division, Rural Electrification Administration, Washington, DC 20250, telephone (202) 382–8667.

List of Subjects in 7 CFR Part 1762

Loan programs—communications, Telecommunications, telephone.

In view of the above, REA hereby amends 7 CFR part 1762 by issuing revised form 515

PART 1762—[AMENDED]

1. The authority cited for part 1762 continues to read:

Authority: 7 U.S.C. 901 *et seq.*, 7 U.S.C. 1921 *et seq.*

2. The table in § 1762.01 is amended by revising the entry for REA Form 515 to read as set forth below and footnote (1) is republished as follows:

§ 1762.01 List of standard forms of telecommunications contracts.

REA form No.	Issue date	Title	Purpose	Source of copies
•	•	•	•	•
515	January 1990.....	Telephone System Construction Contract (Labor and Materials).	Telephone outside plant construction, including direct buried plant, conduit and manholes, underground cable, pole lines, aerial cable, service entrances and station protector.	Supt. of Doc., GPO, Wash DC 20402.[2]
•	•	•	•	•

[1] A limited number of copies of the publication will be furnished by REA upon request. As this document is produced by the Federal Government and is, therefore, in the public domain, additional copies may be duplicated locally by any user as desired. Requests for copies should be sent to the Director, Administrative Services Division, U.S. Department of Agriculture, Washington, DC 20250. The telephone number of the REA Publications Office is (202)382-8674.

[2] This contract form is for sale by the Superintendent of Documents, Government Printing Office, Washington, DC 20402. REA Form 33, Order Blank for REA Contract Forms from the Government Printing Office should be used to order the publication. Follow the procedure under ([1]) to obtain copies of Form 33 from REA.

Dated: January 18, 1990.

Jack Van Mark,

Acting Administrator.

[FR Doc. 90-1709 Filed 1-24-90; 8:45 am]

BILLING CODE 3410-15-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 133

[Docket No. 85P-0584]

Cheeses: Amendment of Standards of Identity To Permit Use of Antimycotics on the Exterior of Bulk Cheeses During Curing and Aging; Update of the Formats of Several Standards; Confirmation of Effective Date

AGENCY: Food and Drug Administration.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date for compliance with the final rule that amended the standards of identity for several cheeses to permit the use of antimycotics on the exterior of bulk cheeses during curing and aging and on the exterior of those cheeses for manufacturing. The final rule also amended several standards to update the format and language of the standards to make them consistent with the natural cheese standards that FDA revised in 1983, to provide for safe and suitable functional ingredient categories, and to provide for optional ingredient labeling requirements.

EFFECTIVE DATE: Effective date confirmed: October 3, 1989, for all products initially introduced or initially delivered for introduction into interstate commerce on or after this date.

FOR FURTHER INFORMATION CONTACT: James F. Lin, Center for Food Safety and Applied Nutrition (HFF-414), Food and Drug Administration, 200 C Street, SW., Washington, DC 20204, 202-485-0122.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 4, 1989 (54 FR 32050), FDA issued a final rule that was based on a citizen petition from the National Cheese Institute (NCI), a trade association representing U.S. cheese manufacturers. In that document, FDA amended the standards of identity for brick cheese (21 CFR 133.108), brick cheese for manufacturing (21 CFR 133.109), washed curd and soaked curd cheese (21 CFR 133.136), washed curd cheese for manufacturing (21 CFR 133.137), granular and stirred curd cheese (21 CFR 133.144), granular cheese for manufacturing (21 CFR 133.145), monterey cheese and monterey jack cheese (21 CFR 133.153), muenster and munster cheese (21 CFR 133.160), muenster and munster cheese for manufacturing (21 CFR 133.161), and, by cross-reference, high-moisture jack cheese (21 CFR 133.154) to permit the expanded use of safe and suitable antimycotics (currently permitted on cuts and slices in consumer-size packages for a number of standardized cheeses) on the exterior of bulk cheeses during curing and aging, and on the exterior of those cheeses for manufacturing.

FDA also amended the standards of identity for brick cheese (21 CFR 133.108), cook cheese, koch kaese (21 CFR 133.127), cream cheese (21 CFR 133.133), cream cheese with other foods (21 CFR 133.134), washed curd and soaked curd cheese (21 CFR 133.136), gammelost cheese (21 CFR 133.140), gorgonzola cheese (21 CFR 133.141), granular and stirred curd cheese (21 CFR 133.144), grated cheeses (21 CFR 133.146), monterey cheese and monterey jack cheese (21 CFR 133.153), muenster and munster cheese (21 CFR 133.160), neufchatel cheese (21 CFR 133.162), nuworld cheese (21 CFR 133.164), roquefort cheese, sheep's milk blue-mold, and blue-mold cheese from sheep's milk (21 CFR 133.104), sap sago cheese (21 CFR 133.186), spiced cheeses (21 CFR 133.190) and, by cross-reference, part-skim spiced cheeses (21 CFR 133.191) to make the format and language of these standards consistent with the format and language of nine natural cheese standards that FDA revised in 1983 (48 FR 2736; January 21, 1983) to conform more closely to the Codex international standards for those foods. The amendments also included provisions for safe and suitable functional ingredient categories and for optional ingredient labeling requirements.

FDA also amended the standard of identity for blue cheese (21 CFR 133.106) by removing paragraph (a)(2) which established a maximum phenol equivalent value when unpasteurized dairy ingredients are used in the manufacture of the cheese.

FDA gave interested persons until September 5, 1989, to file written objections or request a hearing on the specific provisions to which there were objections. No objections or requests for a hearing were received in response to the final regulation.

List of Subjects in 21 CFR Part 133

Cheese, Food grades and standards.

PART 133—CHEESES AND RELATED CHEESE PRODUCTS

Therefore, under sections 201, 401, 403, 409, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 348, 371, 376) and under authority delegated to the Commissioner

of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Food Safety and Applied Nutrition (21 CFR 5.62), notice is given that no objections were received and that the final regulation amending the standards of identity for cheeses (21 CFR part 133) as promulgated in the Federal Register of August 4, 1989 (54 FR 32050), became effective October 3, 1989.

Dated: January 18, 1990.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 90-1691 Filed 1-24-90; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8284]

RIN: 1545-AJ42

Arbitrage Restrictions on Qualified Student Loan Bonds

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to arbitrage restrictions on qualified student loan bonds. Changes to the applicable law were made by the Tax Reform Act of 1984 and the Tax Reform Act of 1986. The regulations provide guidance on how to compute the yield on student loans.

DATES: The regulations are effective for qualified student loan bonds issued after January 5, 1990.

FOR FURTHER INFORMATION CONTACT: George F. Delduke, 202-566-4545 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document amends the Income Tax Regulations (26 CFR part 1) to provide rules under section 148 of the Internal Revenue Code relating to arbitrage restrictions on qualified student loan bonds. On July 5, 1989, the Federal Register published proposed amendments (54 FR 28075) to the Income Tax Regulations. This document adopts final regulations based on the notice of proposed rulemaking published on July 5, 1989.

Twenty-seven written comments responding to the notice of proposed rulemaking were received. In addition, seven persons provided oral comments at a public hearing held on December 13, 1989. After Treasury and Service consideration of all the comments received, the proposed amendments are adopted as revised by this Treasury decision.

Public Comments

Several commentators disagreed with the treatment in the proposed regulations of special allowance payments made by the Secretary of Education pursuant to section 438 of the Higher Education Act of 1965. The proposed regulations provided that these payments were to be taken into account in determining the yield on guaranteed student loans.

Section 625 of the Tax Reform Act of 1984 (98 Stat. 924) provides that the Treasury Department shall prescribe regulations that specify the circumstances under which a qualified student loan bond shall be treated as an arbitrage bond and that these regulations may require special allowance payments to be taken into account in determining yields on student loan notes (notwithstanding the special rule in former section 103(c)(5) that provided the contrary). In section 1301 of the Tax Reform Act of 1986 (100 Stat. 2602), Congress eliminated the special rule of former section 103(c)(5) and added section 148(g) to the Code, which provides that, except to the extent otherwise provided in regulations, special allowance payments are not to be taken into account in determining yields on student loan notes for purposes of section 148(a)(1). Section 5052 of the Technical and Miscellaneous Revenue Act of 1988 (102 Stat. 3677) provides that if the Treasury Department fails to exercise its regulatory authority under section 625 of the Tax Reform Act of 1984 and section 148(g) of the Code by July 1, 1989, it must report to Congress the reasons for not doing so. Through this series of enactments, Congress in effect required the Treasury Department to exercise its regulatory authority to include special allowance payments in the computation of yield on student loan notes or explain its failure to do so. After review of the Congressional Budget Office ("CBO") study discussed below and all the comments received, the final regulations adopt the rule of the proposed regulations requiring the inclusion of special allowance payments in the computation of yield on student loan notes.

Section 1.103-13(b)(5)(viii) provides that the yield on a student loan that is treated as an acquired program obligation is materially higher than the yield on an issue if the yield on the obligation exceeds the yield on the issue by more than one and one-half percentage points. The proposed regulations increased the permissible arbitrage spread on student loans from one and one-half percentage points to two percentage points to reflect the higher costs of administering student loan programs relative to most other loan programs. Notwithstanding this increase in the permissible spread, some commentators stated that the spread was still insufficient to cover issuance, servicing, and administrative costs associated with student loans.

After having studied a 1986 report issued by the CBO, the Treasury Department and the Service have concluded that an arbitrage spread of two percentage points is sufficient to cover the costs of administering most student loan programs. See generally Congressional Budget Office, "The Tax-Exempt Financing of Student Loans" 55-56 (Aug. 1986). However, the commentators argued that the study is based on statistical data that is several years old and, therefore, does not reflect the realities of current market conditions.

The final regulations adopt the increase in the permissible arbitrage spread from one and one-half to two percentage points provided under the proposed regulations. The increase in the permissible arbitrage spread to two percentage points is based on the CBO study, the only reliable information available to the Service on this issue. Several commentators stated that an independent study concerning costs of administering student loan programs has been commissioned by certain industry groups and that the study will be based on more accurate data than that relied upon in the CBO study. The Service understands that the results of this study will not be available in the near future. The Service welcomes the opportunity to review any data relating to this issue and may reconsider the sufficiency of the two-percentage-point permissible arbitrage spread.

The final regulations adopt the rule of the proposed regulations, under which the yield on a student loan may be increased to a level sufficient to cover all necessary expenses allocable to the loan. Thus, if the two-percentage-point arbitrage spread is insufficient to cover the amount of necessary expenses allocable to the loan, an issuer may substitute that larger amount in lieu of two percentage points. Although commentators stated that allocating expenses to loans may be burdensome, the Service has received no specific comments on difficulties that may arise

in this regard. The Service welcomes comments on this issue.

In response to several comments, the final regulations clarify that issuers continue to have the option of treating student loans as nonprogram, acquired purpose obligations, which are subject to a one-eighth-of-one-percentage-point arbitrage spread under § 1.103–13(b)(5)(i). The final regulations also clarify that "administrative costs" include (as under § 1.103–13(c)(5)(iv)) the underwriter's spread and the cost of purchasing, carrying, and selling or redeeming student loans.

In response to many comments, proposed and temporary regulations are being published in this issue of the Federal Register setting forth procedures under which issuers may be permitted to comply with the arbitrage yield limitations on student loans by paying to the United States any amounts necessary to reduce the yield on these loans to a yield that is not materially higher than the yield on the issue. Because proposed and temporary regulations address this issue, § 1.148–10(b)(2)(ii) of the proposed regulations is not included in the final regulations.

Effective Date

The regulations are generally effective for qualified student loan bonds issued after January 5, 1990. The regulations do not apply to a bond issued exclusively to refund a qualified student loan bond if (1) The refunded bond was issued before January 5, 1990, (2) the amount of the refunding bond does not exceed 101 percent of the amount of the refunded bond, and (3) the maturity date of the refunding bond is not later than the date 17 years after the date of issue of the refunded bond (or, in the case of a series of refundings, the date of issue of the original bond).

Special Analyses

It has been determined that these 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, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking for the regulations was submitted to the Administrator of the Small Business Administration for comment on their impact on small business.

Drafting Information

These regulations were drafted in the Office of Tax Legislative Counsel, Department of the Treasury, and in the Office of Assistant Chief Counsel (Financial Institutions & Products), Internal Revenue Service. However, personnel from other offices of the Treasury Department and the Internal Revenue Service participated in their development.

List of Subjects in 26 CFR 1.61—1.281–4

Income taxes, Taxable income, Deductions, Exemptions.

Adoption of Amendments to the Regulations

The amendments to 26 CFR part 1 are as follows:

PART 1—[AMENDED]

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

Authority: 26 U.S.C. 7805. * * * Section 1.148–10 also issued under 26 U.S.C. 148 (g) and (i) and 98 Stat. 924.

Par. 2. The following new section 1.148–10 is added in the appropriate place:

§ 1.148–10 Purpose investments.

(a) *General rule.* [Reserved]

(b) *Special rules for student loans*—(1) *Program loans*—(i) *Materially higher.* The yield on student loans that are treated as acquired program obligations within the meaning of § 1.103–13(h) (rather than as nonprogram, acquired purpose obligations for purposes of § 1.103–13(b)(5)(i)) and are allocated to the proceeds of an issue is not materially higher than the yield on the issue if the yield on the student loans does not exceed the yield on the issue by more than two percentage points. In lieu of the amount described in the preceding sentence, the issuer may substitute such larger amount as is necessary to pay expenses (including losses resulting from bad debts) reasonably expected to be incurred as a direct result of administering the student loan program to the extent that those expenses are not payable with funds appropriated from other sources.

(ii) *Administrative costs.* For purposes of determining the yield on student loans under paragraph (b)(1)(i) of this section, administrative costs (within the meaning of § 1.103–13(c)(5)(iv)) that are paid by the obligors are not taken into account. The preceding sentence applies whether or not the payments are made from proceeds of the issue and whether or not the payments are treated as reimbursements of administrative costs, provided that the present value of the payments does not exceed the present value of the administrative costs paid by the issuer. This paragraph (b)(1)(ii) does not apply to any amount taken into account in computing the yield on the issue.

(2) *Special allowance payments.* Payments made by the Secretary of Education pursuant to section 438 of the Higher Education Act of 1965 are taken into account in determining the yield on student loans.

(3) *Effective date.* This paragraph (b) applies to any bond issued after January 5, 1990, except—

(i) A bond issued exclusively to refund a bond issued before that date if—

(A) The amount of the refunding bond does not exceed 101 percent of the amount of the refunded bond; and

(B) The maturity date of the refunding bond is not later than the date that is 17 years after the date on which the refunded bond was issued (or, in the case of a series of refundings, the date on which the original bond was issued); and

(ii) A qualified student loan bond described in section 144(b)(1)(A) needed to fulfill binding written commitments to acquire or finance student loans originated before such date and after June 30, 1984, but only if the amount of those commitments is consistent with practices of the issuer that were in effect on March 15, 1984, with respect to establishing secondary markets for student loans described in section 144(b)(1)(A).

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

Approved:

Kenneth W. Gideon,

Assistant Secretary of the Treasury.

[FR Doc. 90–1726 Filed 1–22–90; 2:36 pm]

BILLING CODE 4830–01–M

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26 CFR Part 1

[T.D. 8285]

RIN 1545–AO18

Yield Adjustment Payments for Qualified Student Loan Bonds

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to certain yield adjustment payments to be made with respect to excess earnings on acquired purpose obligations acquired

with proceeds of qualified student loan bonds. Changes to the applicable law were made by the Tax Reform Act of 1984 and the Tax Reform Act of 1986. The text of the temporary regulations set forth in this document also serves as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking in the proposed rules section of this issue of the Federal Register.

EFFECTIVE DATE: These temporary regulations are effective for qualified student loan bonds issued after January 5, 1990.

FOR FURTHER INFORMATION CONTACT: George F. Delduke, 202–566–4545 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On July 5, 1989, proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 148 of the Internal Revenue Code, relating to arbitrage bonds, were published in the Federal Register (54 FR 28075). Section 1.148–10(b)(2)(ii) of the proposed regulations states that the Commissioner shall adopt procedures under which issuers of qualified student loan bonds described in section 144(b)(1)(A) may "rebate" to the United States amounts necessary to reduce the yield on student loans to a yield that is not materially higher than the yield on the issue. A public hearing with respect to the proposed regulations was held on December 13, 1989. Most of the provisions of the proposed regulations are being adopted in T.D. 8284 in the rules and regulations portion of this issue of the Federal Register.

Numerous commentators at the public hearing as well as those submitting written comments regarding the proposed regulations have expressed concern that the absence of guidance regarding the implementation of the "rebate" procedure described in § 1.148–10(b)(2)(ii) was a significant problem. These temporary regulations provide guidance regarding the "rebate" procedure referred to in § 1.148–10(b)(2)(ii) of the proposed regulations. Because of the possibility of confusion with the "rebate" referred to in section 148(f), the "rebate" payment referred to in § 1.148–10(b)(2)(ii) of the proposed regulations is renamed a "yield adjustment payment" in these temporary regulations.

Explanation of Provisions

Issuers of qualified student loan bonds must restrict the yield to maturity (yield) on acquired purpose obligations (student loan notes) acquired with proceeds of the bonds to a yield that is not materially higher than the yield on the bonds. Because of factors such as variable administrative costs and variable special assistance payments (SAP), the yield on the student loan notes may be materially higher than the yield on the bond issue. Under the temporary regulations, qualified student loan bonds that would be arbitrage bonds solely because the yield on student loan notes acquired with proceeds of the bonds is materially higher than the yield on the bond issue are not arbitrage bonds if the issuer makes yield adjustment payments to the United States based on the amount of excess earnings on the student loan notes. Excess earnings on student loan notes are that portion of the total earnings taken into account in determining the yield on the notes which results in the notes having a materially higher yield than the bond issue.

The payment of yield adjustment payments to the United States does not prevent a qualified student loan bond from being an arbitrage bond if proceeds of the bond not invested in student loan notes are invested in a manner that would cause the bonds to be arbitrage bonds under section 148. The temporary regulations apply only to student loan notes.

Generally, the temporary regulations require the issuer to calculate excess earnings on or before the tenth anniversary of the date of issue of the bond issue and every five years thereafter (the excess earnings calculation date). The temporary regulations also require that excess earnings be calculated on the date the last bond that is part of an issue matures or is redeemed. Yield adjustment payments are based on excess earnings and are due on or before the date that is 60 days after the excess earnings calculation date.

A problem may arise in calculating excess earnings and making yield adjustment payments prior to the final maturity or redemption of a bond issue because the issuer may not yet know of all the amounts that will eventually be taken into account in computing the yield on either the bonds or the student loan notes. Servicing fees and other costs of administering a student loan program tend to be relatively constant over the life of a student loan while interest earnings and SAP with respect to a student loan generally decline over the life of the loan. Therefore, computation of the yield on a student loan note prior to the date it matures or is redeemed may result in a higher yield (and therefore a higher excess earnings amount) than would be computed at maturity. Most student loan notes mature or are repaid within 7 years of the date repayment of the loan begins (usually 8 to 11 years after the loan is made). The temporary regulations generally do not require an excess earnings calculation and a corresponding yield adjustment payment until 10 years after the date of issue of the bonds. Also, the temporary regulations generally require that only 50 percent of excess earnings be paid in the first yield adjustment payment (60 days after the tenth anniversary) and only 75 percent of excess earnings be paid in subsequent yield adjustment payments prior to maturity or redemption of the bonds. One hundred percent of excess earnings is due upon maturity or redemption of the last bond that is part of the issue.

Requiring less than 100 percent of excess earnings to be paid in yield adjustment payments other than at maturity or redemption provides a "cushion" in the event that subsequent earnings and expenses allocable to the notes cause a previously computed yield to be too high. This "cushion" should also significantly reduce any possibility of an overpayment of excess earnings to the United States.

The Service welcomes comments regarding the computation of excess earnings, the yield adjustment payment amount, and yield adjustment payment intervals.

Effective Date

These temporary regulations apply to qualified student loan bonds issued after January 5, 1990.

Special Analyses

It has been determined that these 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, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking for the regulations was submitted to the Administrator of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is David A. Walton, Office of the Assistant Chief Counsel (Financial Institutions and Products), Internal Revenue Service. However, other personnel from the Service and

Treasury Department participated in their development.

List of Subjects in 26 CFR 1.61—1.281–4

Income taxes, Taxable income, Deductions, Exemptions.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—[AMENDED]

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

Authority: 26 U.S.C. 7805. * * * Section 1.148–10T also issued under 26 U.S.C. 148 (g) and (i) and 98 Stat. 924.

Par. 2. The following new section 1.148–10T is added in the appropriate place:

§ 1.148–10T Special rules for qualified student loan bond purpose investments (Temporary).

(a) *Yield adjustment payment of excess earnings to the United States*—(1) Effect of yield adjustment payments. If an issuer of qualified student loan bonds, at the time and in the manner prescribed in paragraph (d) of this section, remits to the United States yield adjustment payments as described in paragraph (e) of this section, then, for purposes of determining whether the bonds are arbitrage bonds, the yield of the class of acquired purpose obligations (student loan notes) that were acquired with the proceeds of the bonds is deemed to be not materially higher than the yield on the bond issue. For purposes of computing the yield under section 148 on the class of acquired purpose obligations, yield adjustment payments that are so remitted are treated as reductions in the earnings of the class of obligations.

(2) *Scope of section.* This section applies only to qualified student loan bonds and to acquired purpose obligations of a qualified student loan bond issue that are eligible to be treated as acquired program obligations under § 1.103–13(h).

(b) *Excess earnings defined*—(1) *In general.* As of any excess earnings calculation date (defined in paragraph (c) of this section), the excess earnings of the class of acquired purpose obligations is the smallest amount that, if treated as reasonable costs (taken into account in calculating yield) paid on that date, would reduce the yield on the class to a yield that is not materially higher than the yield on the bonds. See §§ 1.103–13(b)(5)(viii), 1.103–13(b)(5)(ix), and 1.148–10(b)(1).

(2) *Yield defined.* For purposes of this paragraph (b), as of any excess earnings calculation date, the yield on the class of acquired purpose obligations and the yield on qualified student loan bonds is computed in the manner set forth in § 1.103–13(c) with the following modifications—

(i) The calculation of excess earnings is cumulative, and each prior yield adjustment payment is taken into account (as of the excess earnings calculation date with respect to which the payment was calculated) as a reduction in the earnings on the class of acquired purpose obligations;

(ii) Obligations acquired after the excess earnings calculation date are not taken into account in determining the yield on the obligations;

(iii) Acquired purpose obligations held on the excess earnings calculation date are treated as if liquidated on that date at their stated redemption price at maturity plus unpaid accrued interest as of the excess earnings calculation date;

(iv) If the issue price of a bond was at least 98 percent of its stated redemption price at maturity and the bond is outstanding as of the excess earnings calculation date—

(A) All interest and principal payments due with respect to the bond between the excess earnings calculation date and the deemed redemption date are treated as paid as of the dates due, and

(B) The bond is treated as redeemed as of the deemed redemption date at an amount equal to the stated redemption price of the bond at maturity plus interest (other than original issue discount, if any) scheduled to be accrued and unpaid as of the deemed redemption date less any payments of principal paid on or before the excess earnings calculation date and less any payments of principal described in paragraph (b)(2)(iv)(A) of this section;

(v) If the issue price of a bond was less than 98 percent of its stated redemption price at maturity and the bond is outstanding as of an excess earnings calculation date—

(A) All interest and principal payments due with respect to the bond between the excess earnings calculation date and the deemed redemption date are treated as paid as of the dates due, and

(B) The bond is treated as redeemed as of the deemed redemption date at an amount equal to the issue price plus interest (including original issue discount) scheduled to be accrued and unpaid as of the deemed redemption date less any payments of principal paid on or before the excess earnings calculation date and less principal payments described in paragraph (b)(2)(v)(A) of this section; and

(vi) The accrual of original issue discount is determined in the manner provided by section 1272(a).

(c) *Excess earnings calculation date defined*—(1) *First earnings calculation date.* The first excess earnings calculation date with respect to an issue is a date chosen by the issuer that is no later than the earlier of—

(i) The date the last bond that is part of the issue matures or is redeemed, or

(ii) The tenth anniversary of the date of issue of the bond issue.

(2) *Subsequent excess earnings calculation dates.* Subsequent to the first excess earnings calculation date, each excess earnings calculation date is the earlier of—

(i) The date that is 5 years after the immediately preceding excess earnings calculation date, or

(ii) The date the last bond that is part of the issue matures or is redeemed.

(d) *Time and manner of making yield adjustment payments.* Yield adjustment payments must be made—

(1) Within 60 days of each excess earnings calculation date, and

(2) In accordance with procedures published by the Internal Revenue Service.

(e) *Yield adjustment payment defined*—(1) *Last payment.* The yield adjustment payment (if any) for the last excess earnings calculation date is an amount chosen by the issuer that is not less than 100 percent of the excess earnings calculated as of that date.

(2) *Special rule for first excess earnings calculation date.* If the first excess earnings calculation date with respect to an issue is not the last excess earnings calculation date for the issue, then the amount of the yield adjustment payment (if any) with respect to that date is an amount chosen by the issuer that is not less than 50 percent of the excess earnings calculated as of that date.

(3) *Special rule for subsequent excess earnings calculation dates where bonds are outstanding.* If an excess earnings calculation date is neither the first nor the last excess earnings calculation date for an issue, the amount of the yield adjustment payment (if any) with respect to that date is an amount chosen by the issuer that is not less than 75 percent of the excess earnings calculated for that date.

(f) *Definitions*—(1) *Acquired purpose obligation.* The term "acquired purpose obligation" is defined in § 1.103–13(b)(4)(iv)(A).

(2) *Arbitrage bond.* The term "arbitrage bond" means a bond described in section 148(a).

(3) *Deemed redemption date.* For any excess earnings calculation date for a bond, the term "deemed redemption date" means the earlier of—

(i) The maturity date of the bond, or

(ii) The first date, if any, which is after the excess earnings calculation date and on which the rate of interest borne by the bond may change to a rate not determinable prior to the excess earnings calculation date.

(4) *Issue price.* The term "issue price" means the issue price calculated under sections 1273 and 1274.

(5) *Materially higher.* The term "materially higher" is defined in § 1.148–10(b)(1)(i) with respect to acquired purpose obligations that the issuer elects to treat as acquired program obligations within the meaning of § 1.103–13(b)(5)(i) and is defined in § 1.103–13(b)(5) with respect to all other acquired purpose obligations.

(6) *Original issue discount.* The term "original issue discount" is defined in section 1273(a)(1).

(7) *Qualified student loan bond.* The term "qualified student loan bond" is defined in section 144(b)(1)(A).

(8) *Stated redemption price at maturity.* The term "stated redemption price at maturity" is defined in section 1273(a)(2).

(g) *Effective date.* This section applies to any qualified student loan bond issued after January 5, 1990.

There is a need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impracticable to issue this Treasury decision with notice and public procedure under subsection (b) of section 553 of title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

Approved: January 16, 1990.

Kenneth W. Gideon,

Assistant Secretary of the Treasury.

[FR Doc. 90–1727 Filed 1–22–90; 2:36 pm]

BILLING CODE 4830–01–M

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26 CFR Part 1

[T.D. 8283]

RIN 1545–AN79

Earnings and Profits of Controlled Foreign Corporations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary Income Tax Regulations relating to the election or adoption of tax accounting methods affecting the computation of earnings and profits of a controlled foreign corporation in post-1986 taxable years. Changes to the applicable law were made by the Tax Reform Act of 1986. The text of the temporary regulations set forth in this document also serves as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking in the Proposed Rules section of this issue of the Federal Register.

DATE: These temporary regulations are effective for taxable years of a controlled foreign corporation beginning after December 31, 1986.

FOR FURTHER INFORMATION CONTACT: Barbara A. Felker of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:CORP:T:R (INTL–589–89)) (202–566–6284, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains temporary Income Tax Regulations (26 CFR part 1) under section 964 of the Internal Revenue Code of 1986.

Need for Temporary Regulations

The proper application of section 964 is dependent upon the Internal Revenue Service's detailed specification of the manner in which the requirements of the statute will be administered. These regulations are necessary to provide taxpayers with immediate guidance in the application of changes made by sections 1202(a) and 1261 of the Tax Reform Act of 1986 (Pub. L. 99–514, 100 Stat. 2085). Therefore, good cause is found to dispense with the notice and public procedure requirements of 5 U.S.C. 553(b) and the delayed effective date requirement of 5 U.S.C. 553(d).

Explanation of Provisions

The temporary regulations amend the regulations under section 964(a) by adding special rules applicable in computing the earnings and profits of a controlled foreign corporation (CFC) for taxable years beginning after December 31, 1986. Section 1.964–1T(g)(1) provides that the earnings and profits of a CFC shall be computed in its functional currency (as determined under section 985). In addition, this paragraph clarifies that § 1.964–1 (d), (e), and (f) apply only for taxable years beginning before January 1, 1987.

Section 1.964–1T(g)(2) states that for taxable years beginning after December 31, 1986, tax accounting elections are required when a CFC's earnings and profits first become relevant for United States income tax purposes. The definition in the current regulations of a significant event is thus prospectively amended to provide an illustrative, rather than exclusive, list. Generally, as under the existing regulations, the adoption or election of a method of accounting must be made within 180 days after the close of the CFC's first tax year in which a significant event occurs.

Section 1.964–1T(g)(3) provides that the failure to make timely elections will be treated as the affirmative adoption of any permissible methods of accounting (not requiring elections) that are reflected in the CFC's books. As under the existing regulations, the Commissioner may approve late elections if reasonable cause for missing a filing deadline is shown; however, under the new regulations mere inadvertence will not suffice.

A similar rule is provided in § 1.964–1T (g)(4) for a minority United States shareholder who must compute a CFC's earnings and profits before accounting elections are made (*e.g.*, in order to compute the amount of the gain on the minority shareholder's sale of CFC stock treated as a dividend under section 1248). This is consistent with the current rule that only the CFC itself or its controlling United States shareholders have the power to make accounting elections. The Service is interested in receiving comments on the extent to which the regulations should provide for tax accounting elections by shareholders of a noncontrolled foreign corporation.

Section 1.964–1T(g)(5) clarifies that earnings and profits of a CFC in post-1986 taxable years must be computed consistently under the rules of sections 964(a) and 986(b) for all federal income tax purposes. In addition, this paragraph generally provides that pre-1987 elections are binding in post-1986 taxable years unless the Commissioner consents to a change.

Section 1.964–1T(g)(6) provides examples illustrating the operation of § 1.964–1T(g). The service solicits comments on other appropriate changes to § 1.964–1.

Special Analyses

It has been determined that these 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, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking for the regulations was submitted to the Administrator of the Small Business Administration for comment on their impact on small business.

Drafting Information

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

List of Subjects in 26 CFR 1.861–1 Through 1.997–1

Income taxes, Corporate deductions, Aliens, Exports, DISC, Foreign investments in U.S., Foreign tax credit, FSC, Source of income, U.S. investments abroad.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAX REGULATIONS

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

Authority: 26 U.S.C. 7805. * * * Section 1.964–1T also issued under 26 U.S.C. 964.* * *

Par. 2. A new § 1.964–1T is added immediately following § 1.964–1 to read as follows:

§ 1.964–1T Special rules for computing earnings and profits of controlled foreign corporations in taxable years beginning after December 31, 1986 (Temporary regulations).

(a)–(f) [Reserved]

(g)(1) *Earnings and profits computed in functional currency*— (i) *Rule.* For taxable years of a controlled foreign corporation (within the meaning of section 957) beginning after December 31, 1986, earnings and profits shall be computed in the controlled foreign corporation's functional currency (determined under section 985 and the regulations thereunder) in accordance with § 1.964–1 as modified by this paragraph (g). Accordingly, § 1.964–1 (d), (e), and (f) and (to the extent inconsistent with this paragraph (g)) § 1.964–1(c) do not apply for taxable years of a controlled foreign corporation beginning after December 31, 1986. For purposes of this section, the term "earnings and profits" includes a deficit in earnings and profits.

(ii) *Cross reference.* In the case of a controlled foreign corporation with a functional currency other than the United States dollar (dollar), see sections 986(b) and 989(b) for rules regarding the time and manner of translating distributions or inclusions of the controlled foreign corporation's earnings and profits into dollars.

(2) *Election required when first significant.* Tax accounting methods or elections may be adopted or made by, or on behalf of, a controlled foreign corporation in the manner prescribed by the Code and regulations no later than 180 days after the close of the first taxable year of the controlled foreign corporation in which the computation of its earnings and profits is significant for United States income tax purposes with respect to its controlling United States shareholders (as defined in § 1.964–1(c)(5)). For taxable years of a controlled foreign corporation beginning before January 1, 1989, only the events listed in § 1.964–1(c)(6) are considered to cause a controlled foreign corporation's earnings and profits to have United States tax significance. For taxable years of a controlled foreign corporation beginning after December 31, 1988, events that cause a controlled foreign corporation's earnings and profits to have United States tax significance include, without limitation—

(i) The events listed in § 1.964–1(c)(6),

(ii) A distribution from the controlled foreign corporation to its shareholders with respect to their stock,

(iii) Any event making the controlled foreign corporation subject to tax under section 882,

(iv) An election by the controlled foreign corporation's controlling United States shareholders to use the tax book value method of allocating interest expense under section 864(e)(4), and

(v) A sale or exchange of the controlled foreign corporation's stock by the controlling United States shareholders.

The filing of the information return required by section 6038 shall not itself constitute a significant event.

(3) *Effect of failure to make required election.* If an accounting method or election is not timely adopted or made by, or on behalf of, a controlled foreign corporation, and such failure is not shown to the satisfaction of the Commissioner to be due to reasonable cause under § 1.964–1(c)(6), earnings and profits shall be computed in accordance with this section. Such computation shall be made as if no elections had been made and any permissible accounting methods not requiring an election and reflected in the books of account regularly maintained by the controlled foreign corporation for the purpose of accounting to its shareholders had been adopted. Thereafter, any change in a particular accounting method or methods may be made by, or on behalf of, the controlled foreign corporation only with the Commission's consent.

(4) *Computation of earnings and profits by a minority shareholder prior to majority election or significant event.* A minority United States shareholder (as defined in section 951(b)) of a controlled foreign corporation may be required to compute a controlled foreign corporation's earnings and profits before the controlled foreign corporation or its controlling United States shareholders make, or are required under this section to make, an election or adopt a method of accounting for United States tax purposes. In such a case, the minority United States shareholder must compute earnings and profits in accordance with this section. Such computation shall be made as if no elections had been made and any permissible accounting methods not requiring an election and reflected in the books of account regularly maintained by the controlled foreign corporation for the purpose of accounting to its shareholders had been adopted. However, a later, properly filed, and timely election or adoption of method by, or on behalf of, the controlled foreign corporation shall not be treated as a change in accounting method.

(5) *Binding effect.* For taxable years beginning after December 31, 1986, except as otherwise provided in the Code or regulations, earnings and profits of a controlled foreign corporation shall be computed consistently under the rules of sections 964(a) and 986(b) for all federal income tax purposes. An election or adoption of a method of accounting for United States tax purposes by a controlled foreign corporation, or on its behalf pursuant to § 1.964–1(c) or any other provision of the regulations (*e.g.*, § 1.985–2(c)(3)), shall bind both the controlled foreign corporation and its United States shareholders as to the computation of the controlled foreign corporation's earnings and profits under section 964(a) for the year of the election or adoption and in subsequent taxable years unless the Commissioner consents to a change. The preceding sentence shall apply regardless of—

(i) Whether the election or adoption of a method of accounting was made in a pre-1987 or a post-1986 taxable year;

(ii) Whether the controlled foreign corporation was a controlled foreign corporation at the time of the election or adoption of method;

(iii) When ownership was acquired; or

(iv) Whether the United States shareholder received the written notice required by § 1.964–1(c)(3).

Adjustments to the appropriate separate category (as defined in § 1.904–5(a)(1)) of earnings and profits and income of the controlled foreign corporation shall be required using the principles of section 481 to prevent any duplication or omission of amounts attributable to previous years that would otherwise result from any such election or adoption.

(6) *Examples.* The following examples illustrate the rules of this section.

Example (1)—(i) *P*, a calendar year domestic corporation, owns all of the outstanding stock of *FX*, a calendar year controlled foreign corporation. None of the significant events specified in § 1.964–1(c)(6) or this section has occurred. In addition, neither *P* nor *FX* has ever made or adopted, or been required to make or adopt, an election or method of accounting for United States tax purposes with respect to *FX*. On June 1, 1990, *FX* makes a distribution to *P*. *FX* does not act to make any election or adopt a method of accounting for United States tax purposes.

(ii) *P* must compute *FX*'s earnings and profits in order to determine if any portion of the distribution is taxable as a dividend and to determine *P*'s foreign tax credit on such portion under section 902. *P* must satisfy the requirements of § 1.964–1(c)(3) and file the written statement and notice described therein within 180 days after the close of *FX*'s 1990 taxable year in order to make an election or to adopt a method of accounting on behalf of *FX*. Any such election or adoption will govern the computation of earnings and profits of *FX* for all federal income tax purposes (including, *e.g.*, the determination of foreign tax credits on subpart F inclusions) in 1990 and subsequent taxable years unless the Commissioner consents to a change.

(iii) If *P* fails to satisfy the regulatory requirements in a timely manner and such failure is not shown to the satisfaction of the Commissioner to be due to inadvertence or reasonable cause, the earnings and profits of *FX* shall be computed as if no elections were made and any permissible methods of accounting not requiring an election and reflected in its books were adopted. Any subsequent attempt by *FX* or *P* to change an accounting method shall be effective only if the Commissioner consents to the change.

Example (2)—(i) The facts are the same as in *Example (1)*, except that *P* elects to allocate its interest expense under section 864(e)(4) for its 1989 taxable year under the tax book value method of § 1.861–12T(c) of the Temporary Income Tax Regulations.

(ii) *P* must compute the earnings and profits of *FX* in order to determine the adjustment to *P*'s basis in the stock of *FX* for *P*'s 1989 taxable year. *P* must satisfy the requirements of § 1.964–1(c)(3) and file the written statement and notice described therein within 180 days after the close of *FX*'s 1989 taxable year in order to make an election or to adopt a method of accounting on behalf of *FX*. Any such election or adoption will govern the computation of *FX*'s earnings and profits in 1989 and subsequent taxable years for all federal income tax purposes (including, *e.g.*, the characterization of the June 1, 1990 distribution and the determination of *P*'s foreign tax credit, if any, with respect thereto) unless the Commissioner consents to a change.

(iii) If *P* fails to satisfy the regulatory requirements in a timely manner and such failure is not shown to the satisfaction of the Commissioner to be due to inadvertence or reasonable cause, the earnings and profits of *FX* shall be computed as if no elections were made and any permissible methods of accounting not requiring an election and reflected in its books were adopted. Any subsequent attempt by *FX* or *P* to change an accounting method shall be effective only if the Commissioner consents to the change.

Example (3)—(i) The facts are the same as in *Example (2)*, except that *P* elects to allocate its interest expense under section 864(e)(4) for its 1988 taxable year under the tax book value method of § 1.861–12T (c) of the Temporary Income Tax Regulations.

(ii) *P* must compute the earnings and profits of *FX* in order to determine the adjustment to *P*'s basis in the stock of *FX* for *P*'s 1988 taxable year. *P* must satisfy the requirements of § 1.964–1(c)(3) and file the written statement and notice described therein within 180 days after the close of *FX*'s 1988 taxable year in order to make an election or to adopt a method of accounting on behalf of *FX*. Any such election or adoption will govern the computation of *FX*'s earnings and profits in 1988 and subsequent taxable years for all federal income tax purposes (including, *e.g.*, *P*'s basis adjustment for purposes of section 864(e)(4) in 1989 and the characterization of the June 1, 1990 distribution and the determination of *P*'s foreign tax credit, if any, with respect thereto) unless the Commissioner consents to a change.

(iii) If *P* fails to satisfy the regulatory requirements in a timely manner and such failure is not shown to the satisfaction of the Commissioner to be due to inadvertence or reasonable cause, the earnings and profits of *FX* for 1988 shall be computed as if no elections were made and any permissible methods of accounting not requiring an election and reflected in its books were adopted. However, a properly filed, timely election or adoption of method by, or on behalf of, *FX* with respect to its 1989 taxable year, when *P*'s basis adjustment for purposes of section 864(e)(4) first constitutes a significant event, shall not be treated as a change in accounting method. No recomputation of *P*'s basis adjustment for 1988 shall be required by reason of any such election or adoption of method with respect to *FX*'s 1989 taxable year, but prospective adjustments to *FX*'s earnings and profits and income shall be made to the extent required by § 1.964–1T(g)(5).

Example (4)—(i) The facts are the same as in *Example (3)*, except that *FX* had subpart F income taxable to *P* in 1986, and *P* computed *FX*'s earnings and profits for purposes of determining the amount of the inclusion and the foreign taxes deemed paid by *P* in 1986 under section 960 pursuant to § 1.964–1 (a) through (e).

(ii) Any election made or method of accounting adopted on behalf of *FX* by *P* pursuant to § 1.964–1(c) in 1986 is binding on *P* and *FX* for purposes of computing *FX*'s earnings and profits in 1986 and subsequent taxable years. Thus, in determining *P*'s basis adjustment for purposes of section 864(e)(4) in 1988 and 1989 and its deemed-paid credit with respect to the 1990 dividend, *FX*'s earnings and profits must be computed consistently with the method used by *P* with regard to the 1986 subpart F inclusion. (However, § 1.964–1 (d), (e), and (f) do not apply in computing *FX*'s earnings and profits in post-1986 taxable years.)

Example (5)—(i) The facts are the same as in *Example (4)*, except that *FX* made a dividend distribution to *P* on June 1, 1985, and *P* computed *FX*'s earnings and profits for purposes of computing the foreign taxes deemed paid by *P* in 1985 under section 902 with respect to the distribution under § 1.964–1 exclusive of paragraphs (d), (e), and (f) pursuant to a timely election under § 1.902–1(g)(1).

(ii) Any election made or method of accounting adopted on behalf of *FX* by *P* pursuant to § 1.964–1(c) in 1985 is binding on *P* and *FX* for purposes of computing *FX*'s earnings and profits in 1985 and subsequent taxable years. Thus, in determining *P*'s basis adjustment for purposes of section 864(e)(4) in 1988 and 1989 and its deemed-paid credit with respect to the 1986 subpart F inclusion and the 1990 dividend, *FX*'s earnings and profits must be computed consistently with the method used by *P* with regard to the 1985 dividend. If, rather than choosing under § 1.902–1(g)(1) to use the section 964 rules, *P* computed *FX*'s earnings and profits for purposes of section 902 in 1985 in all respects as if *FX* were a domestic corporation, then *P* would have been free to make elections or adopt a method of accounting on behalf of *FX* under § 1.964–1(c) with respect to the subpart F inclusion in 1986. Any such election or adoption would be binding on *P* and *FX* as to the computation of *FX*'s earnings and profits in 1986 and subsequent taxable years.

Approved: December 21, 1989.

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

Kenneth W. Gideon,

Assistant Secretary of the Treasury.

[FR Doc. 90-1633 Filed 1-24-90; 8:45 am]

BILLING CODE 4830-01-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1601

Procedural Regulations: Notices To Be Posted

AGENCY: Equal Employment Opportunity Commission (EEOC).

ACTION: Final rule.

SUMMARY: The Equal Employment Opportunity Commission is revising its regulation concerning the posting of notices as required by section 711 of Civil Rights Act of 1964, as amended. The streamlined language of the newly revised regulation will conform with language of our procedural regulation concerning notice of posting under the Age Discrimination in Employment Act. The streamlined language will necessitate fewer revisions of this regulation in order to keep its information current and accurate.

DATE: February 26, 1990.

FOR FURTHER INFORMATION CONTACT: Nicholas M. Inzeo, Assistant Legal Counsel, Advice and External Litigation Division, or Stephanie Garner Thompson, Staff Attorney, at (202) 663–4669.

SUPPLEMENTARY INFORMATION: The Commission is revising its title VII notice posting regulation in order to obviate the need for frequent revisions to keep the information it contains current and to bring the language and format into conformance with § 1627.10

For the Commission.

Clarence Thomas,

Chairman.

PART 1601—PROCEDURAL REGULATIONS

1. The authority citation for part 1601 continues to read as follows:

Authority: 42 U.S.C. 2000e to 2000e–17.

2. Section 1601.30 is amended by revising paragraph (a), by removing paragrah (b), and by redesignating paragraph (c) as (b) to read as follows:

§ 1601.30 Notices to be posted.

(a) Every employer, employment agency, labor organization, and joint labor-management committee controlling an apprenticeship or other training program which has an obligation under title VII of the Civil Rights Act of 1964, as amended, shall post and keep posted in conspicuous places upon its premises the notice pertaining to the applicability of the Act prescribed by the Commission or its authorized representative. Such notice must be posted in prominent and accessible places where notices to employees, applicants and members are customarily maintained.

* * * * *

[FR Doc. 90–1522 Filed 1–24–90; 8:45 am]

BILLING CODE 6750–06–M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Part 1120

Public Availability of Information

AGENCY: United States Architectural and Transportation Barriers Compliance Board (ATBCB).

ACTION: Final rule.

SUMMARY: On December 8, 1980, the Architectural and Transportation Barriers Compliance Board published in final form its regulations at 36 CFR part 1120, Public Availability of Information (45 FR 10012), which provide to the public procedures for obtaining information from the Board. Section 1803 of the Freedom of Information Reform Act of 1986 required each Federal agency to establish a schedule and system for collecting fees to recover certain direct costs associated with responding to Freedom of Information Act (FOIA) requests for information. Guidelines were issued by the Office of Budget and Management on March 27, 1987 (52 FR 10012) regarding standard government-wide definitions and administrative provisions for assessing and collecting FOIA fees. On November 10, 1987, the Architectural and Transportation Barriers Compliance Board issued an interim final rule amending its Public Availability of Information Procedures to incorporate the OMB guidelines regarding fee setting and collection procedures. This notice contains the final revision of the regulations setting forth the standards to be used in making fee waiver determinations according to the Freedom of Information Act ("FOIA"), 5 U.S.C. 552(a)(4)(A)(i), which requires that individual agency FOIA regulations contain "procedures and guidelines for determining when FOIA fees shall be waived or reduced." The fee waiver provisions conform to the Uniform Freedom of Information Act Fee Schedule and Guidelines promulgated by the Office of Management and Budget, 52 FR 10011 (March 27, 1987) ("OMB Fee Guidelines").

EFFECTIVE DATE: January 25, 1990.

FOR FURTHER INFORMATION CONTACT: James Raggio, General Counsel, ATBCB, 1111 18th Street, NW., Suite 501, Washington, DC 20036, (202) 653–7834 (v/TDD). This is not a toll-free number. This final rule is available on cassette at the above address for persons with visual impairments.

SUPPLEMENTARY INFORMATION:

Background

On October 28, 1986, Congress enacted omnibus drug enforcement legislation which included amendments to the Freedom of Information Act (5 U.S.C. 552, as amended; Freedom of Information Reform Act of 1986, Public Law 99–570.) The revisions, among other things, required agencies to charge standard reasonable fees for the direct costs they incur in responding to FOIA requests. Further, the amendments required OMB to issue a uniform FOIA fee schedule for all agencies in order to ensure the consistent application of fees government-wide. On March 27, 1987, OMB issued its "Uniform Freedom of Information Act Fee Schedule and Guidelines." (52 FR 10012)

In responding to the statute's directive, OMB interpreted the direct cost provision of the legislation to mean the costs each agency incurs in operating its FOIA program. Therefore, since the costs of operating a FOIA program may vary from agency to agency, OMB determined that it was not feasible to establish a single set of FOIA fees, but rather that it was more appropriate to establish a standard set of criteria upon which agencies could establih individual fee schedules to assess actual charges for FOIA services.

On November 10, 1987, the Architectural and Transportation Compliance Board published an interim final rule which incorporated the standard criteria developed by OMB and established a fee schedule for FOIA requests to the ATBCB. Comments on the interim final rule were invited, with the comment period time extending to December 10, 1987.

Only one comment was received which was from the United States Department of Justice, Office of Legal Policy, regarding the absence of fee waiver provisions contained in the interim final rule and urging the ATBCB to amend its interim regulation to set forth detailed procedures and guidelines to be used in making fee waiver determinations. After review, fee waiver provisions have been incorporated in the Final Rule at subpart E, § 1120.53(e). Additionally, § 1120.23 was amended to reflect the new address of the ATBCB.

Provisions of the Final Rule

Subpart A, Section 1120.2

This section is amended to incorporate the standard definitions provided in OMB's guidelines. Definitions of the terms "direct costs," "document search," "duplication," and "review," clarify the nature of services to be provided. Definitions of the terms "commercial use requestor," "educational institution and non-commercial scientific institution," and "representative of the news media" provide criteria for classifying requestors.

Subpart D, Section 1120.23

This section is amended to reflect the new address of the ATBCB.

Subpart D, Section 1120.25

This section was amended in the interim rule to correct an inaccurate reference regarding fee estimates and assurance of payments. In addition, it was amended to revise the dollar amount which establishes (in accordance with the dollar limitation specified in 5 U.S.C. 552) when such estimate/assurance will be required. These changes are adopted as final without change.

Subpart E, Section 1120.51

Changes in this section amend subpart E, § 1120.51 and specifically amend paragraph (a) which states ATBCB policy with respect to assessing and collecting the full direct costs the agency incurs in responding to FOIA requests; redesignate paragraph (b) as paragraph (e); remove paragraphs (e) (1), (3) and (4); redesignate paragraph (e)(2) as paragraph (e)(3) and paragraphs (e) (5) through (8) as (e) (4) through (7) and add new paragraphs (e) (1) and (2) to provide that no charge shall be made if the costs of routine collection and processing of the fee equal or exceed the amount of the fee; or for the first two hours of search time and the first 100 pages of duplication for individuals or groups falling into categories listed at § 1120.51(b) excepting commercial use requests. Additionally, paragraph (c) is redesignated as paragraph (f).

Further, new paragraphs (b) and (c) are added to incorporate OMB guidelines regarding categories of requestors and levels of fees appropriate for each category. Paragraph (b) lists the four categories of requestors—commercial use requestor; educational and non-commercial scientific institution requestor; requestors who are representatives of the news media; and, all other requestors. Paragraph (c) sets forth the levels of fees for each category of requestor defined in paragraph (b). Further, a new paragraph (d) is added which sets forth the schedule of FOIA fees for records search, document review and duplication of documents.

Subpart E, Section 1120.51(b)

The revisions found in this section classify four distinct categories of requestors.

Subpart E, Section 1120.51(c) (1) through (4)

The revisions found in this section reiterate the four categories of requestors and contain specific provisions for recovering costs in connection with researching, reviewing, and duplicating information provided by the ATBCB.

Subpart E, Section 1120.51(g)

This section is added to advise requestors that the ATBCB will aggregate requests if there is reason to believe a requestor has broken down a request to avoid fee assessments.

Subpart E, Section 1120.53

This section is amended by redesignating paragraph (b) as paragraph (c); amending and redesignating paragraph (c) as paragraph (e), and adding paragraphs (b) and (d). Paragraph (b) advises requestors that the ATBCB will charge interest on overdue payments. Amended paragraph (c) advises requestors that advance payment or assurance of payment may be required if the amount due is likely to exceed $250.00 (an amount established by Congress). Further, if a requestor fails to make timely payments, the agency may not process further or pending requests until the debt is cleared. Paragraph (d) advises requestors that the ATBCB will employ the remedies afforded in the Debt Collection Act of 1982 to collect any overdue fees. Paragraph (e) is amended to provide certain criteria for determining proper circumstances under which fees may be waived or reduced.

Other Information

The ATBCB has determined, as required by the National Environmental Policy Act of 1969, 42 U.S.C. 4332, that the rule will not have any significant impact on the environment. This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulations.

Pursuant to the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the ATBCB certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Accordingly, 36 CFR part 1120 is amended as set forth below.

By vote of the Board on March 15, 1989.

Stanley W. Smith,

Chair.

Accordingly, the interim rule amending 36 CFR part 1120 which was published at 52 FR 43193 (November 10, 1987) is adopted as a final rule with the following changes:

PART 1120—PUBLIC AVAILABILITY OF INFORMATION

1. The authority citation for part 1120 continues to read as follows:

Authority: 5 U.S.C. 552.

2. Section 1120.2 is amended by revising paragraphs (h) through (o) to read as follows:

§ 1120.2 Definitions.

* * * * *

(h) *"Direct Costs"* means those expenditures which an agency actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.

(i) *"Search"* includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. Agencies should ensure that searching for material is done in the most efficient and least expensive manner so as to minimize costs for both the agency and the requester. For example, agencies should not engage in line-by-line search when merely duplicating an entire document would prove the less expensive and quicker method of complying with a request. "Search" should be distinguished, moreover, from "review" of material in order to determine whether the material is exempt from disclosure (see paragraph (k) of this section). Searches may be done manually or by computer using existing programming.

(j) *"Duplication"* refers to the process of making a copy of a document necessary to respond to an FOIA request. Such copies can take the form of paper copy, microform, audio-visual

materials, or machine readable documentation (e.g., magnetic tape or disk), among others. The copy provided must be in a form that is reasonably usable by requesters.

(k) *"Review"* refers to the process of examining documents located in response to a request that is for a commercial use (see paragraph (l) of this section) to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure, e.g., doing all that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(l) *"Commercial Use Request"* refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In determining whether a requester properly belongs in this category, agencies must determine the use to which a requester will put the documents requested. Moreover, where an agency has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, agencies should seek additional clarification before assigning the request to a specific category.

(m) *"Educational Institution"* refers to a preschoool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(n) *"Non-Commercial Scientific Institution"* refers to an institution that is not operated on a "commercial" basis as that term is referenced in paragraph (l) of this section, and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(o) *"Representative of the News Media"* refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive.

Moreover, as traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. In the case of "freelance" journalists, they may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but agencies may also look to the past publication record of a requester in making this determination.

§ 1120.23 [Amended]

3. Section 1120.23 is amended by (1) deleting the following language "Room 1010, 330 C Street SW., Washington, DC 20201" and (2) inserting the language "Suite 501, 1111 18th Street NW., Washington, DC 20036".

4. Section 1120.51 is revised to read as follows:

§ 1120.51 Charges for services, generally.

(a) It shall be the policy of the ATBCB to comply with requests for documents made under the FOIA using the most efficient and least costly methods available. Requesters will be charged fees, in accordance with the administrative provisions and fee schedule set forth below, for searching for, reviewing (in the case of commercial use requesters only), and duplicating requested records.

(b) *Categories of requesters.* For the purpose of standard FOIA fee assessment, the four categories of requesters are: Commercial use requesters; educational and non-commercial scientific institution requesters; requesters who are representatives of the news media; and, all other requesters (see § 1120.2 (l) through (o), Definitions).

(c) *Levels of fees.* Levels of fees prescribed for each category of requester are as follows:

(1) Commercial Use Requesters—When the ATBCB receives a request for documents which appears to be a request for commercial use, the Board may assess charges in accordance with the fee schedule set forth below, which recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. Costs for time spent reviewing records to determine whether they are exempt from mandatory disclosure applies to the initial review only. No fees will be assessed for reviewing records, at the administrative appeal level, of the exemptions already applied.

(2) Educational and Non-Commercial Scientific Institution Requesters—The ATBCB shall provide documents to requesters in this category for the cost of reproduction alone, in accordance with the fee schedule set forth below, excluding charges for the first 100 pages of reproduced documents.

(i) To be eligible for inclusion in this category, requesters must demonstrate the request is being made under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (it the request is from a non-commercial scientific institution) research.

(ii) Requesters eligible for free search must reasonably describe the records sought.

(3) Requesters Who Are Representatives of the News Media—The ATBCB shall provide documents to requesters in this category for the cost of reproduction alone, in accordance with the fee schedule set forth below, excluding charges for the first 100 pages of reproduced documents.

(4) All Other Requestors—The ATBCB shall charge requestors who do not fit into any of the categories described above, fees which recover the full direct cost of searching for and reproducing records that are responsive to the request, except that the first two hours of search time and the first 100 pages of reproduction shall be furnished without charge.

(d) Schedule of FOIA fees.

(1) Record search (ATBCB employees)—$14.00 per hour

(2) Document review (ATBCB employees)—$20.00 per hour

(3) Duplication of documents (paper copy of paper original)—$.20 per page

(e) No charge shall be made:

(1) If the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee;

(2) For any request made by an individual or group of individuals falling into the categories listed at § 1120.51(b) and described in paragraph 1120.51(c) (excepting commercial use requests) the first two hours of search time and first 100 pages of duplication;

(3) For the cost of preparing or reviewing letters of response to a request or appeal;

(4) For responding to a request for one copy of the official personnel record of the requestor;

(5) For furnishing records requested by either House of Congress, or by duly authorized committee or subcommittee or Congress, unless the records are requested for the benefit of an individual Member of Congress or for a constituent;

(6) For furnishing records requested by and for the official use of other Federal agencies; or

(7) For furnishing records needed by an A&TBCB contractor or grantee to perform the work required by the A&TBCB contract or grant.

(f) Requestors may be charged for unsuccessful or unproductive searches or for searches when records located are determined to be exempt from disclosure.

(g) Where the ATBCB reasonably believes that a requestor or group of requestors is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the ATBCB shall aggregate any such requests and charge accordingly.

5. § 1120.53 is amended by revising paragraphs (b)—(e) to read as follows:

§ 1120.53 Payment of fees.

* * * * *

(b) *Charging interest.* The ATBCB may charge interest to those requestors failing to pay fees assessed in accordance with the procedures described in § 1120.51. Interest charges, computed at the rate prescribed in § 3717 of title 31 U.S.C.A., will be assessed on the full amount billed starting on the 31st day following the day on which the bill was sent.

(c) Advance payment or assurance of payment.

(1) When an ATBCB office determines or estimates that the allowable charges a requestor may be required to pay are likely to exceed $250.00, the ATBCB may require the requestor to make an advance payment or arrangements to pay the entire fee before continuing to process the request. The ATBCB shall promptly inform the requestor (by telephone, if practicable) of the need to make an advance payment or arrangements to pay the fee. That office need not search for, review, duplicate, or disclose records in response to any request by that requestor until he or she pays, or makes acceptable arrangements to pay, the total amount of fees due (or estimated to become due) under this subpart.

(2) Where a requestor has previously failed to pay a fee charged in a timely fashion, the ATBCB may require the requestor to pay the full amount owed, plus any applicable interest, as provided in § 1120.53(b) of this section, and to make an advance payment of the full amount of the estimated fee before any new or pending requests will be processed from that requestor.

(3) In those instances described in paragraphs (1) and (2) above, the administrative time limits prescribed in § 1120.33(d) will begin only after the ATBCB has received all fee payments due or acceptable arrangements have been made to pay all fee payments due.

(d) Effect of the Debt Collection Act of 1982 (Pub. L. 97–365). Requestors are advised that the ATBCB shall use the authorities of the Debt Collection Act of 1982, including disclosure to consumer reporting agencies and use of collection agencies, where appropriate, to encourage repayment of debts arising from freedom of information act requests.

(e) Waiver or reduction of fees.

(1) Records responsive to a request under 5 U.S.C. 552 shall be furnished without charge or at a charge reduced below that establsihed under paragraph (d) of § 1120.51 where the Freedom of Information Officer determines, based upon information provided by a requestor in support of a fee waiver request or otherwise made known to the Freedom of Information Officer, that disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requestor. Requests for a waiver or reduction of fees shall be considered on a case-by-case basis.

(2) In order to determine whether the first fee waiver requirement is met—i.e., that disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government—Freedom of Information Officer shall consider the following four factors in sequence:

(i) The subject of the request: Whether the subject of the requested records concerns "the operations or activities of the government." The subject matter of the requested records, in the context of the request, must specifically concern identifiable operations or activities of the federal government—with a connection that is direct and clear, not remote or attenuated. Furthermore, the records must be sought for their informative value with respect to those government operations or activities; a request for access to records for their intrinsic informational content alone will not satisfy this threshold consideration.

(ii) The informative value of the information to be disclosed: Whether the disclosure is "likely to contribute" to an understanding of government operations or activities. The disclosable portions of the requested records must be meaningfully informative on specific government operations or activities in order to hold potential for contributing to increase public understanding of those operations and activities. The disclosure of information that already is in the public domain, in either a duplicative or a substantially identical form, would not be likely to contribute to such understanding, as nothing new would be added to the public record.

(iii) The contribution to an understanding of the subject by the public likely to result from disclosure: Whether disclosure of the requested information will contribute to "public understanding." The disclosure must contribute to the understanding of the public at large, as opposed to the individual understanding of the requestor or a narrow segment of interested persons. A requestor's identity and qualifications—e.g., expertise in the subject area and ability and intention to effectively convey information to the general public—should be considered. It reasonably may be presumed that a representative of the news media (as defined in § 1120.2(o)) who has access to the means of public dissemination readily will be able to satisfy this consideration. Requests from libraries or other record repositories (or requestors who intend merely to disseminate information to such institutions) shall be analyzed, like those of other requestors to identify a particular person who represents that he actually will use the requested information in scholarly or other analytic work and then disseminate it to the general public.

(iv) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities. The public's understanding of the subject matter in question, as compared to the level of public understanding existing prior to the disclosure, must be likely to be enhanced by the disclosure to a significant extent. Freedom of Information Officer shall not make separate value judgments as to whether information, even though it in fact would contribute significantly to public understanding of the operations or activities of the government, is "important" enough to be made public.

(3) In order to determine whether the second fee waiver requirement is met—i.e., that disclosure of the requested information is not primarily in the commercial interest of the requestor—the Freedom of Information Officer shall consider the following two factors in sequence:

(i) The existence and magnitude of a commercial interest: Whether the requestor has a commercial interest that would be furthered by the requested disclosure. The Freedom of Information Officer shall consider all commercial interests of the requester (with reference to the definition of "commercial use" in § 1120.2(1)) or any person on whose behalf the requestor may be acting, but shall consider only those interests which would be furthered by the requested disclosure. In assessing the magnitude of identified commercial interests, consideration shall be given to the role that such FOIA-disclosed information plays with respect to those commercial interests, as well as to the extent to which FOIA disclosures serve those interests overall. Requestors shall be given a reasonable opportunity in the administrative process to provide information bearing upon this consideration.

(ii) The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requestor is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requestor." A fee waiver or reduction is warranted only where, once the "public interest" standard set out in paragraph (e)(2) of this section is satisfied, that public interest can fairly be regarded as greater in magnitude than that of the requestor's commercial interest in disclosure. The Freedom of Information Officer shall ordinarily presume that where a news media requestor has satisfied the "public interest" standard, that will be the interest primarily served by disclosure to that requestor. Disclosure to data brokers or others who compile and market government information for direct economic return shall not be presumed to primarily serve "public interest."

(4) Where only a portion of the requested records satisfies both of the requirements for a waiver or reduction of fees under this paragraph, a waiver or reduction shall be granted only as to that portion.

(5) Requests for the waiver or reduction of fees shall address each of the factors listed in paragraphs (e) (2) and (3) of this section, as they apply to each record request. One hundred pages of reproduction shall be furnished without charge.

(6) A request for reduction or waiver of fees shall be addressed to the Freedom of Information Officer at the address shown in § 1120.23. The ATBCB office which is responding to the request for records shall initially determine whether the fee shall be reduced or waived and shall so inform the requestor. The initial determination may be appealed by letter addressed to the address shown in § 1120.23. The General Counsel or his or her designee shall decide such appeals.

Stanley W. Smith,

Chair.

[FR Doc. 90-1628 Filed 1-24-90; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 90 and 91

[CGD 82-004a]

RIN 2115-AC86

Alternative Provisions for Reinspection of Offshore Supply Vessels in Foreign Ports

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing an alternative to have Coast Guard personnel conduct the required midperiod reinspection of Offshore Supply Vessels (OSVs). The alternative reinspection program will be open to OSVs, except Liftboats, of less than 400 gross tons operating in foreign ports. Overseas inspections of OSVs result in a less than optimum allocation of Coast Guard resources. Further, OSV owners must reimburse the Coast Guard for the expenses of marine inspectors conducting overseas inspections, and occasionally bear the cost of relocating vessels to certain ports to facilitate required inspections. The benefits of the alternative reinspection program will include flexibility and financial savings to the OSV industry, and more effective use of limited Coast Guard resources.

EFFECTIVE DATE: February 26, 1990.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander W.C. Bennett, Project Manager, (202) 267-1181.

SUPPLEMENTARY INFORMATION: On May 17, 1988 a Notice of Proposed Rulemaking (NPRM) was published in the **Federal Register** (53 FR 17477). Comments on the NPRM were requested to be submitted on or before August 15, 1988. A public hearing was not requested or held.

Drafting Information

The principal persons involved in drafting this proposal are Lieutenant Commander W.C. Bennett, Project Manager, Merchant Vessel Inspection Division, Office of Marine Safety, Security and Environmental Protection and Lieutenant Commander Don M. Wrye, Project Counsel, Office of Chief Counsel.

Background

OSVs are inspected for certification every two years. They are required to be reinspected once between the tenth and fourteenth month of the period of validity of the certificate of inspection. The rules allow an alternative to having Coast Guard personnel conduct the examination required for the reinspection of OSVs that are continuously employed outside of the United States.

In 46 U.S.C. 2101(19) an OSV is defined as a motor vessel of more than 15 gross tons but less than 500 gross tons that regularly carries goods, supplies, or equipment in support of exploration, exploitation, or production of offshore mineral or energy resources and is not a small passenger vessel.

While a large number of OSVs operate in areas where Coast Guard inspectors are reasonably available, an increasing number are based overseas due to a decline in the domestic offshore exploration and production industry since 1982. Some have been based in remote locations. Most do not normally return to the United States for long periods of time.

Reinspection required by 46 CFR subpart 91.27 are necessary to promote and maintain marine safety. In the past, Coast Guard marine inspectors have performed OSV reinspections overseas. However, overseas reinspections of these vessels results in less than optimum allocation of Coast Guard resources. Also, under 46 U.S.C 3317(b), vessel owners or operators must reimburse the Coast Guard for marine inspector travel and per diem costs incurred to conduct inspections in foreign ports. Additional matters of concern are the official status and personal security of marine inspectors assigned to temporary duty overseas in remote locations where OSVs operate.

This rulemaking concerns only who may perform the alternative midperiod examinations and how the examination reports will be evaluated. In place of the reinspection process currently required, the Coast Guard is permitting Officers in

Charge, Marine Inspection (OCMIs) to authorize alternative midperiod examinations of OSVs by the masters of the vessels or by persons retained or employed by the owner/operator, provided the master and the person performing the examination verifies the accuracy of the examination report. Coast Guard marine inspectors will continue to conduct inspections for certification every two years and two drydock examinations in any five year period.

The vessel's master will be required to perform the alternative midperiod examination and submit the report or review the results of an examination by another representative of the owner/operator for completeness and accuracy on the basis of personal knowledge. The report will be forwarded to the Coast Guard via the owner or operator of the vessel. The owner or operator must certify that the report is true and complete. False statements are subject to penalties under 18 U.S.C 1001. Coast Guard marine inspectors will review alternative midperiod examination reports, conduct biennial inspections and drydock examinations of OSVs in foreign ports, conduct oversight of the alternative midperiod examination program, and carry out an unchanged OSV inspection program on vessels based in U.S. waters.

The Coast Guard will require alternative midperiod examination reports to be complete, descriptive, include photographs, if needed, and be supported by documentation of the servicing of lifesaving and fire protection equipment. Further, persons who conduct these examinations must be familiar with applicable Coast Guard regulations and the vessel's operation. The Coast Guard has final responsibility for the manner in which the alternative midperiod examination is conducted and for the determination of the condition of the vessel. The OCMI will evaluate the continued compliance and fitness of a vessel for its intended route and service on the basis of the alternative midperiod examination report.

The Coast Guard is currently engaged in a separate rulemaking which will set uniform standards for new OSVs. An NPRM, CGD 82-004, "Offshore Supply Vessel Regulations", was published in the **Federal Register** on May 9, 1989 (54 FR 20006). A public hearing was held in New Orleans, LA on September 13, 1989. It is anticipated that a Final Rule will be published in the summer of 1990. The provisions of this rulemaking providing for alternative midperiod examinations will be included in that project when it is published as a Final Rule.

The alternative midperiod examination program has been restricted to conventional hull form OSVs only. Liftboats are not currently eligible because they have a casualty record which is significantly worse than that of conventional hull form OSVs. Also, since liftboats are just now being brought under certification, both industry and the Coast Guard need to gain experience with liftboat inspections. The Coast Guard does not know of any U.S. flag liftboats presently working overseas. The definition of liftboat, as proposed in the "Offshore Supply Vessel Regulations", is included in this Final Rule.

Discussion of Comments and Changes

A total of seven comment letters were received in response to the NPRM. Four comment letters were in general support of the appropriateness and intent of this regulatory project. However, these comment letters provided specific recommendations for improvement. The other three comment letters also provided specific recommendations for improvement. Changes have been made to the proposed regulations as a result of the comments, as discussed below.

One comment opposed the NPRM, stating that owner's representatives would be less than impartial, and that classification society representatives, as impartial third parties, could do a better job. The requirement for a detailed report in § 91.27-13(c) is intended to assure that the alternative midperiod examination is properly performed. The regulations allow the use of any designated representative of the owner or operator to perform the alternative midperiod examination, including a classification society or any other third party.

Four comments requested that the scope of a reinspection be clarified. Section 91.27-13(c)(2) of the NPRM referenced § 91.27-5, which defines the scope of a reinspection the same as for an inspection, but in less detail. The Coast Guard's position is that the definition of a reinspection, which by analogy also applies to an alternative midperiod examination, is sufficient to avoid confusion and yet ensure enough detail in the performance of the reinspection or alternative midperiod examination.

Five comments requested that the tonnage cutoff for authorizing alternative midperiod examinations be increased from 400 GT, as proposed in the NPRM, to 500 GT and that other governments or classification societies be allowed to perform surveys required under the provisions of Regulation 16 of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 (MARPOL 73/78). This comment has not been adopted. Under MARPOL Regulation 16 the Coast Guard is obligated to perform annual surveys on OSVs of 400 gross tons or more operating outside of the United States, and to endorse the International Oil Pollution Prevention (IOPP) Certificate upon completing a satisfactory survey. The Coast Guard has not delegated authority for conducting IOPP surveys to any other government or third party organization, and there are no plans to do so. This survey normally is conducted concurrently with an inspection for certification or reinspection. The necessity to perform this survey limits the applicability of these rules to vessels of less than 400 gross tons. As explained in the Final Regulatory Evaluation, out of an overseas OSV population which remains near 100 at any given time, less than 10 are between 400 and 500 GT. It is probable that less than five (or only one-half) of these would need to participate in the alternative midperiod examination program in any one year, if eligible. These OSVs represent only 5% of the U.S. overseas OSV fleet and less than 1% of the total U.S. OSV fleet of 605 vessels. For the Coast Guard to continue to perform reinspections of these OSVs will not unduly burden industry and will still allow the Coast Guard to meet its international treaty obligations in this area. Therefore, OSVs between 400 and 500 GT will still be required to have a midperiod reinspection performed by the Coast Guard.

Two comments suggested that submitting a request for "permission" to conduct the alternative midperiod examination is not necessary. The alternative midperiod examination is performed under the authority of the OCMI having responsibility for the area in which the OSV is operating and will be examined. The Coast Guard has decided that "authorization" may better describe the intent of this requirement. The OCMI needs to know for planning purposes what the owner/operator is considering. Additionally, the act of requesting authorization will also start the approval process, under which the OCMI will determine whether to grant authorization by evaluating the vessel and owner/operator safety and compliance records. Having the processing start with a request for authorization formalizes the relationship.

Four comments questioned the reasonableness of the eligibility requirement of not having had a marine casualty in the last year proposed in § 91.27–13(a)(3). Eligibility for this program is based, in part, on a vessel's safety record as reflected in reports of casualties. The Coast Guard's position is that the nature, number, and severity of casualties should be taken into account. However, the Coast Guard agrees with other aspects of the comments that the OCMI should be allowed more flexibility in evaluating the vessel's overall track record. One minor casualty caused by heavy weather or while loading deck cargo near a platform or rig may not be cause for concern, but several minor casualties or a significant casualty such as a collision would be. This requirement has been included in § 91.27–13(b) as one factor to be considered by the OCMI before granting authorization to participate in the program. The wording of this section has also been changed to indicate that only reportable marine casualties, as defined in 46 CFR 4.03–1, will be the basis for this factor.

There were three comments about the eligibility requirement that the vessel not have any outstanding inspection requirements proposed in § 91.27–13(a)(4). One comment said this was reasonable and two suggested that the number and type of outstanding requirements permitted for the vessel to remain eligible should be left up to the OCMI's discretion. The Coast Guard's experience is that the nature, number, and severity of any outstanding requirements is indicative of the vessel's overall performance and safety record. However, the Coast Guard agrees that the OCMI should have more flexibility considering eligibility and has included this requirement in § 91.27–13(b) as a factor to be considered by the OCMI before granting authorization to participate in the program.

Three comments stated that the special recommendation of the Coast Guard marine inspector who last inspected the vessel proposed in § 91.27–13(a)(5) is subjective, complicates the process, and implies that OSVs applying for the alternative midperiod examination program should be in better condition than those certified by a Coast Guard marine inspector as "safe for route and service." The Coast Guard considers the consultation of previous inspection and drydock examination reports to be an important source of information concerning the vessel's inspection status, and a track record of preventative maintenance and unsafe work practices aboard the vessel. However, this is not an eligibility requirement but something that it is important to consider when determining whether to approve the owner/operator's request. Accordingly, this requirement has been included in § 91.27–13(b) and the wording changed to require the OCMI to consider information in previous inspection and drydock examination reports.

There were four comments objecting to proposed § 91.27–13(b)(2)(ii) which required the Officer in Charge, Marine Inspection to consider an owner/operator's history of reimbursement of Coast Guard expenses. The comments stated that reimbursement was irrelevant and does not impact on safety, and pointed out that there is some question about the legality of collecting reimbursement for inspections not requested by the owner/operator. The owner or managing operator is required by 46 U.S.C. 3317(b) to make reimbursement for travel and subsistence expenses incurred by Coast Guard personnel performing inspections at foreign ports or places, if the owner or managing operator requested the inspection. In the past, the Coast Guard generally has not conducted overseas inspections unless the owner or managing operator, or a representative such as a master or port engineer, requests the inspection. Therefore, reimbursement was required for all overseas inspections conducted by the Coast Guard. Unfortunately, the Coast Guard has had problems with collecting reimbursements and some companies are delinquent in payment. However, the Coast Guard has reconsidered and decided that the act of conducting a safety inspection should not be tied to collecting reimbursement for the inspection. This requirement will not be considered by this rulemaking and has been removed.

Three comments stated that the comprehensive report required by proposed § 91.27–13(c)(3) runs afoul of the concept of a reinspection, questioning why photos are necessary, and requesting to know if any particular format would be required. The report of the alternative midperiod examination must contain enough facts and details for the OCMI to determine if the vessel "is in satisfactory condition" and "reasonably fit for its intended service and route." A change was made concerning the need for photographs. Photographs are not necessary if the situation is explained in some other way such as writing or a sketch. Photos may be useful in many situations. No particular format is required. Coast Guard Hull Inspection and Machinery Inspection Books can be used as long as they meet the owner/operator's needs. It is incumbent upon all owner/operators to make sure that the report submitted to the OCMI contains sufficient information for determining the condition of the vessel.

Proposed § 91.27–13(f) was split into two new sections, (g) and (h), to clarify the Coast Guard's intent and simplify the regulations.

Two comments questioned the Coast Guard's authority to board U.S. vessels in foreign ports without notifying the owner/operators. The Coast Guard can board any U.S. vessel, as defined in 46 U.S.C. 2101, in foreign ports or on the high seas as well as in U.S. waters to enforce U.S. inspection laws and regulations. No notice to the owner/operator is required. This authority is well established by U.S. law and supported by a long history of case law. After consideration, the Coast Guard has decided it is not necessary to restate its legal authority in a regulation, and the sentence concerning "inspections with or without notice" was removed from proposed § 91.27–13(f). In the past, the Coast Guard has not exercised this authority, but unscheduled inspections may still be made as a part of the Coast Guard's responsibility to conduct oversight of the alternative midperiod examination program and to investigate any reported or suspected violations of U.S. inspection, documentation, and manning laws. Although overseas locations are not within the boundaries of Marine Inspection Zones as defined in 33 CFR part 3, the Marine Safety Manual, Volume II section 6.C.13., designates areas of responsibility for inspection of U.S. vessels in foreign countries to certain OCMIs located within the United States. As a matter of international law and the doctrine of comity the foreign flag state is notified, through the Department of State and the American Embassy in the country, by the OCMI who is going to have inspectors working in that country.

Closely related to the matter of reimbursement discussed in the paragraph about proposed § 91.27–13(b)(2)(ii), one of these comments also stated that the owner/operator should not have to pay for inspections conducted without notice. This comment pointed out that owner/operator assistance in planning an overseas inspection facilitated the inspection and mitigated the cost. The Coast Guard realizes that it must pay travel and per diem expenses for inspections conducted without notice since they will not be requested by the owner/operator.

The Coast Guard also realizes that due to changing vessel schedules and company contracts, the vessel may have been moved to another port when the inspector arrives.

Several of the comments stated that the alternative midperiod examination process was too detailed, and that the process outlined in the NPRM hinders the examination procedure by making it an option of the OCMI rather than an option of the owner/operator. The changes discussed above have addressed many of these concerns. The Coast Guard considers the procedures and process detailed in this Final Rule to be the minimum necessary to assure that the examination is done correctly.

E.O. 12291 and DOT Regulatory Policies and Procedures

This rulemaking is considered to be non-major under Executive Order 12291 and non-significant under DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). A final regulatory evaluation has been prepared and placed in the rulemaking docket. It may be inspected or copied at the office of the Executive Secretary, Marine Safety Council (G–LRA–2), Room 3600, U.S. Coast Guard, 2100 Second St. SW., Washington, DC 20593–0001, from 8 a.m. to 3 p.m., Monday through Friday, except Federal holidays.

It is estimated these regulations will result in annual savings to the OSV industry of approximately $200,000 to $250,000 for travel, per diem, and vessel relocation expenses. The Coast Guard will save approximately $60,000 annually, due primarily to reduced personnel costs and a reduction in the cost associated with collecting inspector travel and per diem expenses from OSV owner/operators. The agency will be able to focus its resources on OSVs with poor safety and compliance records.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 through 612), the Coast Guard must consider whether the rule it is proposing is likely to have significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses which are not dominant in their field and which would otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

These regulations will affect owners and operators of offshore supply vessels. Because of the relatively high costs of these vessels (one 180′ standard design may be constructed for $5 million; one 120′ standard design may be constructed for $1.2 million), their owners and operators tend to be multi-vessel corporations or otherwise substantial corporations. For the above reasons, the Coast Guard certifies that these rules will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rulemaking contains information collection requirements in § 91.27–13. They have been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been approved. The OMB Control Number assigned is 2115–0517. This number is added to the display table in § 90.01–15(b).

Environmental Analysis

The Coast Guard has considered the environmental impact of the regulations and concluded that this rulemaking is categorically excluded from further environmental documentation. A Categorical Exclusion Determination has been prepared and is on file in the rulemaking docket.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects

46 CFR Part 90

Cargo vessels, Marine safety.

46 CFR Part 91

Cargo vessels, Marine safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Coast Guard amends chapter I of Title 46 of the Code of Federal Regulations, as set forth below:

PART 90—[AMENDED]

1. The authority citation for part 90 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; 49 U.S.C. App. 1804; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 90.01–15 [Amended]

2. In § 90.01–15 paragraph (b) is amended by adding the following line, in sequential order, to the display table to read as follows:

§ 91.27–13	2115–0517

3. Subpart 90.10 is amended by adding new §90.10–20 to read as follows:

§ 90.10–20 Liftboat.

"Liftboat" means an offshore supply vessel with moveable legs capable of raising it's hull above the surface of the sea.

PART 91—[AMENDED]

4. The authority citation for part 91 is revised to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; 49 CFR 1.46.

5. Subpart 91.27 is amended by adding a new § 91.27–13 to read as follows:

§ 91.27–13 Alternative provisions for reinspections of offshore supply vessels in foreign ports.

(a) The owner or operator of an offshore supply vessel of less than 400 gross tons, except liftboats as defined in § 90.10–20 of this subchapter, may request authorization to conduct an alternative midperiod examination. The request must be made to the Officer in Charge, Marine Inspection who is assigned responsibility for conducting inspections in the country in which the vessel is operating and will be examined. To qualify for the alternative midperid examination, the following requirements must be met:

(1) The request for authorization must be in writing and received by the cognizant Officer in Charge, Marine Inspection before the end of the twelfth month of the period of validity of the vessel's certificate of inspection; and

(2) The vessel is expected to be continuously employed outside of the United States during the tenth through the fourteenth month of the period of validity of the vessel's certificate of inspection.

(b) In determining whether to grant authorization for the alternative midperiod examination, the Officer in Charge, Marine Inspection shall consider the following:

(1) Information contained in previous inspection and drydock examination reports, including the Officer in Charge, Marine Inspection's recommendation for participation in the alternative midperiod examination program, if one has been made;

(2) The nature, number, and severity of any marine casualties or accidents, as defined in § 4.03–1 of this chapter, which the vessel has experienced in the last three years;

(3) The nature, number, and severity of any outstanding inspection requirements for the vessel; and

(4) The owner or operator's history of compliance and cooperation in the alternative midperiod examination program, including:

(i) The prompt correction of deficiencies;

(ii) The reliability of previously submitted alternative examination reports; and

(iii) The reliability of representations that the vessel under consideration will be, and other vessels previously examined under this section were, employed outside of the United States for the tenth through the fourteenth month of the periods of validity of their certificates of inspection.

(c) If authorization is granted, the Officer in Charge, Marine Inspection shall provide the applicant written authorization to proceed with the alternative midperiod examination, including special instructions when appropriate.

(d) The following conditions must be met for the alternative midperiod examination to be accepted by the Coast Guard in lieu of conducting a reinspection in accordance with § 91.27–1 of this subpart.

(1) The alternative midperiod examination must be conducted between the tenth and fourteenth month of the period of validity of the vessel's certificate of inspection.

(2) The alternative midperiod examination must be of the scope detailed in § 91.27–5 of this subpart and must be conducted by the vessel's master, owner, operator, or a designated representative of the owner or operator.

(3) Upon completion of the alternative midperiod examination, the person or persons conducting the examination shall prepare a comprehensive report describing the conditions found. This examination report shall contain sufficient detail to allow an evaluation to be made by the Officer in Charge, Marine Inspection to whom the report is submitted that the vessel is fit for the service and route specified on the certificate of inspection. The report must include reports and receipts documenting the servicing of lifesaving and fire protection equipment, and any photographs or sketches necessary to clarify unusual circumstances. Each person preparing the report shall sign it and certify that the information contained therein is complete and accurate.

(4) Unless the vessel's master participated in the alternative midperiod examination and preparation of the examination report, the master shall review the report for completeness and accuracy. The master shall sign the report to indicate review and forward it to the vessel's owner or operator who requested authorization to conduct the examination.

(5) The owner or operator of an offshore supply vessel examined under this subpart must review and submit the report required by paragraph (d)(3) of this section to the Officer in Charge, Marine Inspection who issued the authorization to conduct the alternative midperiod examination. The examination report must be received by the cognizant Officer in Charge, Marine Inspection before the first day of the sixteenth month of the period of validity of the vessel's certificate of inspection. The forwarding letter or endorsement must be certified and contain the following information:

(i) That the person or persons who conducted the examination acted on behalf of the vessel's owner or operator;

(ii) That the examination report was reviewed by the owner or operator;

(iii) That the discrepancies noted during the examination have been corrected or will be corrected within a stated time frame; and

(iv) That the owner or operator has sufficient personal knowledge of conditions aboard the vessel at the time of the examination or has made necessary inquiries to justify forming a belief that the examination report is true and correct.

(e) The form of certification required under this subpart is as follows:

I certify that the above is true and complete to the best of my knowledge and belief.

(f) Deficiencies and hazards discovered during an alternative midperiod examination conducted pursuant to this section must be corrected or eliminated, if practical, before the examination report is submitted to the Officer in Charge, Marine Inspection in accordance with paragraph (d)(5) of this section. Deficiencies and hazards that are not corrected or eliminated by the time the examination report is submitted must be listed in the report as "outstanding." Upon receipt of an examination report indicating outstanding deficiencies or hazards, the Officer in Charge, Marine Inspection shall inform the owner or operator of the vessel in writing of the time period specified to correct or eliminate the deficiencies or hazards and the method for establishing that it has been accomplished. Where a deficiency or hazard remains uncorrected or uneliminated after the expiration of the time specified for correction or elimination, the Officer in Charge, Marine Inspection shall initiate appropriate enforcement measures.

(g) Upon receipt of the report required by paragraph (d)(3) of this section, the Officer in Charge, Marine Inspection shall evaluate it and make the following determinations:

(1) Whether the alternative midperiod examination is accepted in lieu of the reinspection required by § 91.27–1 of this subpart;

(2) Whether the vessel is in satisfactory condition; and

(3) Whether the vessel continues to be reasonably fit for its intended service and route.

The Officer in Charge, Marine Inspection may request any additional information required to make the determinations required by this section. The Officer in Charge, Marine Inspection shall inform the owner/operator in writing of the determinations required by this section.

(h) Should the Officer in Charge, Marine Inspection determine in accordance with paragraph (g) of this section that the alternative midperiod examination is not accepted in lieu of the reinspection required by § 91.27–1 of this subpart, the vessel must be reinspected by the cognizant Officer in Charge, Marine Inspection as soon as practical.

Dated: January 3, 1990.

J.D. Sipes,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 90–1660 Filed 1–24–90; 8:45 am]

BILLING CODE 4910–14–M

Urban Mass Transportation Administration

49 CFR Part 653

[Docket No. 88–F]

RIN 2132–AA33

Control of Drug Use in Mass Transportation Operations

AGENCY: Urban Mass Transportation Administration (UMTA), DOT.

ACTION: Final rule; suspension of 49 CFR part 653.

SUMMARY: This final rule suspends until further notice UMTA's rule requiring recipients of Federal mass transit assistance to have an anti-drug program for sensitive safety employees. This action responds to a United States Court of Appeals decision.

EFFECTIVE DATE: This rule is effective January 25, 1990.

FOR FURTHER INFORMATION CONTACT: Daniel Duff, Assistant Chief Counsel for Legislation and Regulations, or Susan Schruth, Office of the Chief Counsel, (202) 366–4011, Urban Mass Transportation Administration, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: On November 21, 1988 (53 FR 47156), UMTA published 49 CFR part 653, a final rule requiring recipients of Federal financial assistance from UMTA, and operators for such recipients, to have an anti-drug program for employees who perform sensitive safety functions. Labor organizations, whose members or employees would be subject to drug testing under the regulations, filed suits, which were consolidated in the United States District Court for the District of Columbia, challenging UMTA's statutory authority to impose 49 CFR part 653 on all recipients of federal mass transit money. In ruling against the plaintiffs on cross-motions for summary judgment, the district court concluded that UMTA had that authority.

On January 19, 1990, the United States Court of Appeals for the District of Columbia Circuit reversed the district court and held that UMTA exceeded its statutory authority over safety matters by imposing through rulemaking uniform, national requirements on local transit authorities. *Amalgamated Transit Union* v. *Skinner*, No. 89–5380 (D.C. Circuit, January 19, 1990). It ordered the case remanded with instructions to the district court to vacate the anti-drug program rule.

This final rule suspends 49 CFR part 653 until further notice. This rule is needed immediately to suspend the implementation of UMTA's anti-drug program rule. Under the implementation schedule published in the **Federal Register** on November 21, 1988, recipients of UMTA funds in an urbanized area of 200,000 or more in population had to certify that they are in compliance with the anti-drug program rule no later than December 21, 1989. Recipients of Section 18 funds and recipients of UMTA funds in an urbanized area of less than 200,000 in population were to submit their first certification of compliance on December 21, 1990. In view of the court's action, UMTA has determined that good cause exists for promulgating this final rule without notice and opportunity for comment and for making this rule effective in less than thirty days after publication.

Regulatory Assessment and Regulatory Flexibility Determination

This final rule suspends until further notice the effective date of the final rule published on November 21, 1988 in response to a court decision. As a result, further analysis is unnecessary.

Federalism Implications

In accordance with Executive Order 12612, UMTA has determined that the final rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

List of Subjects in 49 CFR Part 653

Drug testing, Grant programs—transportation, Mass transportation.

Accordingly for the reasons described above, 49 CFR part 653 is suspended.

Dated: January 22, 1990.

Brian W. Clymer,

Administrator, Urban Mass Transportation Administration.

[FR Doc. 90–1752 Filed 1–23–90; 9:41 am]

BILLING CODE 4910–57–M

Proposed Rules

Federal Register
Vol. 55, No. 17
Thursday, January 25, 1990

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

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 111, 113, 142, 143, 159

Proposed Customs Regulations Regarding Electronic Entry Filing

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

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations to provide that immediate delivery/entry and entry summary data on imported merchandise may be filed electronically with Customs through the Automated Broker Interface (ABI) module of the Customs Automated Commercial System (ACS). It would also provide general eligibility criteria for participation in the ABI system. The proposal reflects Customs significant advances in the automation of the entry filing process and its continuing commitment to increase the scope of electronic processing of imported merchandise and to reduce reliance on paper documentation, thereby resulting in lower costs, increased efficiency and the expedited release of cargo.

DATE: Comments must be received on or before March 26, 1990.

ADDRESSES: Comments (preferably in triplicate) may be addressed to and inspected at the Regulations and Disclosure Law Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2119, Washington, DC 20229. Comments relating to the information collection aspects of the proposal should be addressed to Customs, as noted above, and also the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: William Nolle, Office of Automated Commercial Systems, 566–7907.

SUPPLEMENTARY INFORMATION:

Background

For more than five years, Customs has been developing the Automated Commercial System (ACS), the goal of which is to automate all phases of the commercial processing of imported merchandise and create a single automated system.

Customs has also developed, as an integral module of the ACS, an Automated Broker Interface (ABI), fully operational nationwide since 1984, which allows the electronic interchange of import data between Customs and the trade community. ABI allows filers to transmit entry data electronically, directly to ACS. The required information is therefore immediately available to Customs without the need for keying the data. This results in faster processing of cargo, with the reduction or total elimination of paperwork. Until now, however, all such electronic transmissions have been followed by submissions of paper documentation.

With the growth of international trade, it has been determined that the Customs Service and the international trade community must take steps to increase the scope of electronic processing and reduce reliance on paper documentation. Since ABI transmissions currently account for over 70 percent of all entry summary transactions, it is for the mutual benefit of both Customs and the trade community to begin to rely totally on electronic transmissions and abandon the dependence on paper, thereby resulting, as indicated, in reduced costs, increased efficiency, and the expedited release of cargo. In order to meet this challenge, it is proposed to amend part 143, Customs Regulations (19 CFR part 143), by renaming the Part "Special Entry Procedures"; adding a new subpart A entitled "Automated Broker Interface" setting forth the requirements for and constraints on participants in electronic entry processing; and adding a new subpart D, "Electronic Entry Filing", setting forth the requirements and procedures for the entry of imported merchandise electronically through the Automated Commercial System.

Customs proposes in this document to permit qualified brokers, importers and service bureaus to file electronically through ABI immediate delivery/entry and entry summary data (the information required on Customs Forms 3461/3461 alternate (alt) and 7501, respectively). Each prospective filer must obtain Customs approval to participate in the ABI system in accordance with certain general eligibility criteria as set forth in proposed subpart A. Also, for electronic entry summary, each filer must be operational on the ABI statement processing system. Statement processing refers to a method of accounting and collection involving a statement which would be generated by ACS/ABI containing a list of entry summaries filed through ABI and due for payment; payment for all listed entry summaries is to be made at one time. (Provided a satisfactory entry bond is on file in the name of the importer, the entry summary could be filed indicating the importer as the importer of record, in which case the statement covering that entry summary would indicate the importer as the debtor.)

Customs would determine whether the transmitted data complies with its cargo and entry summary selectivity criteria. These criteria refer to categories of information which Customs uses to evaluate and assess the nature of a shipment as routine or high-risk, and thus whether the shipment merits general examination with document review or intensive examination and the entry summary merits summary document review in addition to electronic processing. If Customs determines that the data submitted for a transaction is error-free and passes the selectivity criteria (warning-free), paper documentation would not be required, and the filer would be notified of the electronic ("paperless" status of the transaction. For electronic entries or immediate deliveries, merchandise would be released. For electronic entry summaries, the entry summaries would be scheduled for liquidation upon payment of the statement.

Data filed through ABI found satisfactory would thereby meet all filing requirements of 19 CFR part 143. The filer would, of course, be responsible for the accuracy of the information electronically submitted to the same extent as if the paper documents were produced, signed and physically submitted.

Filers through ABI would be obligated to retain all records which they received, or prepared based on information received, generally for a

period of five years from the date of the consumption entry or the date the merchandise was entered for consumption. This would not include hard copy reproductions made by ABI filers of records which they received or prepared. Each ABI filer could store its records in a centralized location. Paper documents supporting immediate delivery, entry and entry summary data filed electronically could likewise be stored in a central location, but they would have to be retained in their condition as received by the filer, unless permission is obtained from Customs to store them by other means, in which case the originals need not be retained. Yet, however retained, such records would have to be produced within a reasonable time when requested by Customs with reasonable notice. If unable to produce the required documents as described, brokers, in accordance with 19 U.S.C. 1641 and 19 CFR 111.91, and importers, pursuant to their entry bonds, would be subject to applicable penalties or liquidated damages, as appropriate.

These retention rules apply only to electronic filing and to documentation in support of electronic filing. In addition, proposed changes to § 111.23 would permit financial records of brokers who have permits to do business in more than one district to be centralized after notification to Customs, rather than upon authorization of an exemption as currently required. We are interested in public comments on whether all Customs brokers should be provided the opportunity to centralize paper records of Customs transactions, as defined in §§ 111.1(f) and 162.1a of current regulations, in any customs district in which the broker holds a currently valid permit. Specifically, we are interested in comments on estimates of the burden hour and dollar savings that would result from centralization of records, the degree of interest in this option, whether centralization should require only notification of the recordkeeping location or be permitted only after a case by case review, and arguments, if any, for restricting certain records from centralization. Also, we would encourage comments by importers and other users of broker services concerning the effect on services provided to them. In addition, comments may be made concerning any period for retention of records. Commenters should provide reasons in support of their choices.

As an additional matter, to correct a problem on the Northern Border, it is proposed to add a requirement to the Customs Regulations, which will clarify that entry documents must include the identity of the party in the U.S., or if this is unknown at the time of entry or release, the premises in the U.S., to which the imported merchandise would be delivered. It is understood that this requirement will apply whether the entry data is filed by electronic transmission or through the submission of paper documentation.

In order to clearly illustrate the proper application of this rule, the following examples are given:

Example 1. Merchandise is imported for the account of a United States distributor. Whether the distributor receives the merchandise or it is delivered directly to the distributor's customers/accounts, the distributor, for Customs purposes, is the ultimate consignee.

Example 2. Where the importer of record is a non-resident corporation, under 19 CFR 141.18, and merchandise is imported for direct distribution to a customer/account of the non-resident seller/corporation, the customer/account, for Customs purposes, is the ultimate consignee.

Example 3. Where a licensed Customs broker is importer of record, other than on his own behalf, he cannot be named ultimate consignee unless the merchandise is destined to his own warehouse (see Example 5). The person resident in the United States who is destined to receive the imported merchandise is, for Customs purposes, the ultimate consignee.

Example 4. Where merchandise is enroute from a foreign port or place to a United States port consigned to Party A and, during transport, Party A sells or otherwise transfers ownership of the merchandise by endorsing a bill of lading to Party B, Party B, for Customs purposes, is the ultimate consignee.

Example 5. Where merchandise is imported by the foreign owner for sale in the United States, and the owner/seller, not knowing at the time of entry or release to whom the merchandise will be sold, intends to deposit the merchandise at a warehouse or other premises for temporary storage, those premises, for Customs purposes, shall be known as the "ultimate consignee".

Example 6. Where merchandise is imported consigned to or for delivery to a nominal consignee, such as a courier service or freight consolidator, and a licensed broker is importer of record, the person or party in the United States to whom the nominal consignee will deliver the merchandise is, for Customs purposes, the ultimate consignee.

Example 7. Where a foreign shipper exports merchandise to the United States which, at the time of entry or release, is not subject to a contract of purchase or delivery (*e.g.*, merchandise imported for show at a trade fair), the foreign shipper shall be named as the ultimate consignee.

Comments

Before adopting this proposal, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations and Disclosure Law Branch, Room 2119, Customs Headquarters, 1301 Constitution Avenue, NW., Washington, DC.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that, if adopted, the proposed amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, they are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in E.O. 12291. Accordingly, a regulatory impact analysis is not required.

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget (OBM) for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3540(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the U.S. Customs Service at the address previously specified.

The collection of information in this regulation is in sections 143.2 and 143.33–143.37. The information is necessary to determine eligibility to participate in electronic data filing through the ABI System, and to process and verify the accuracy of entries of imported merchandise filed electronically through the System. The likely respondents are business.

Estimated total annual reporting and/or recordkeeping burden: 7500 hours

Estimated average annual burden per respondent and/or recordkeeper: 6.25 hours

Estimated number of respondents and/or recordkeepers: 1200

Estimated annual frequency of responses: 7500

Drafting Information

The principal author of this document was Russell Berger, Regulations and

Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 111

Administrative practice and procedure, Brokers, Customs duties and inspection, Imports.

19 CFR Part 113

Customs bonds.

19 CFR Part 142

Customs duties and inspection, Imports.

19 CFR Part 143

Automated broker interface, Customs duties and inspection, Electronic entry filing, Imports.

19 CFR Part 159

Liquidation of entries for merchandise, Suspension of liquidation pending disposition of American manufacturer's cause of action.

Proposed Amendments

It is proposed to amend parts 111, 113, 142, 143, and 159, Customs Regulations (19 CFR parts 111, 113, 142, 143, and 159), as set forth below.

PART 111—CUSTOMS BROKERS

1. The authority citation for part 111 would continue to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1624, 1641; unless otherwise noted. Section 111.3 also issued under 19 U.S.C. 1484; Section 111.96 also issued under 31 U.S.C. 9701.

2. It is proposed to amend § 111.22 by revising paragraph (e), to read as follows:

§ 111.22 Additional record of transactions.

* * * * *

(e) *Authorization.* The regional commissioner for the region where a broker has given notification to commissioner for the region where a broker has given notification to maintain records of financial transactions on a centralized system basis, as set forth in § 111.23(e), is responsible for providing an exemption or withdrawal of exemption under paragraphs (b) and (c) of this section.

3. It is proposed to amend § 111.23 by revising paragraphs (a)(1) and (e), removing current paragraph (f), and by redesignating paragraph (g) as (f), and revising it, to read as follows:

§ 111.23 Retention of records.

(a) *Place and period of retention*—(1) *Place.* The records, as defined in § 111.1(f), and required by §§ 111.21 and 111.22 to be kept by the broker, shall be retained within the Customs district to which they relate, unless nottification of centralized accounting records is given under paragraph (e) of this section, or notification is provided by electronic entry filers under part 143, subpart D, of this chapter.

* * * * *

(e) *Notification*—(1) *Applicability.* The procedure to maintain financial records on a centralized system basis is generally available to brokers who have been granted permits to do business in more than one district.

(2) *Form and content.* If a centralized storage is desired by the broker, he must submit a written notice addressed to the regional commissioner responsible for the region in which the centralized records are to be maintained. The written notice shall include:

(i) The address at which the broker intends to maintain the centralized accounting records. This location must be within a district where the broker has been granted a permit;

(ii) A detailed statement describing all the records of financial transactions to be maintained at the centralized location, the methodology of record maintenance, a description of any automated data processing to be applied, and a list of all the broker's customs business activity locations;

(iii) An agreement that there will be no change in the records, the manner of recordkeeping, or the location at which they will be maintained, unless Customs is first notified.

(3) *Action.* If the notification involves records from districts not within the jurisdiction of the regional commissioner of the region where the notification was filed, the regional commissioner shall inform the other affected regional commissioners of the centralized storage.

(f) *Reproduction of centralized accounting records.* The regional commissioner for the region in which a broker has given notification to maintain records on a centralized system basis, provided in paragraph (e) of this section, is responsible for approving requests for the reproduction of centralized financial records provided under paragraphs (b) and (d) of this section.

PART 113—CUSTOMS BONDS

1. The authority citation for part 113 would continue to read as follows:

Authority: 19 U.S.C. 66, 1623, 1624. Subpart E also issued under 19 U.S.C. 1484, 1551, 1565.

2. It is proposed to amend § 113.62, by redesignating paragraph (j) as (k), and by adding a new paragraph (j) thereto, as follows:

§ 113.62 Basic importation and entry bond conditions.

* * * * *

(j) *Agreement to comply with electronic entry filing requirements.* If the principal obtains permission to utilize electronic entry filing as provided for in part 143, subpart D, of this chapter, the principal agrees to:

(1) Comply with all conditions set forth therein;

(2) Retain all supporting documents, supporting data and/or any electronic transmissions, as required;

(3) Produce them on demand; and

(4) Send and accept electronic transmissions without the necessity of paper copies.

* * * * *

PART 142—ENTRY PROCESS

1. The authority citation for part 142 would continue to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624.

2. It is proposed to amend § 142.3 to add a new paragraph (a)(6) thereto, as follows:

§ 142.3 Entry documentation.

(a) * * *

(6) *Identification.* When merchandise is imported having been sold, or consigned, to a person in the United States, the name, street address, and appropriate identification number of that person, as provided in § 24.5 of this chapter, shall be shown on the entry documents (CF 3461, 3461 ALT, 7501). When, at the time of immediate delivery, entry or release, there is no known buyer, the name, street address, and appropriate identification number (as above) of the premises in the United States to which the merchandise is to be delivered must be shown on the entry or release documents.

* * * * *

PART 143—SPECIAL ENTRY PROCEDURES

1. It is proposed to revise the title of part 143 as set forth above.

2. The authority citation for part 143 would continue to read as follows:

Authority: 19 U.S.C. 66, 1481, 1484, 1498, 1624.

3. It is proposed to amend the first sentence of § 143.0 to read as follows:

§ 143.0 Scope.

This part sets forth the requirements and procedures for participation in the Automated Brokers Interface System

(ABI) and for the clearance of imported merchandise under appraisement and informal entries as well as under electronic entry filing, which are in addition to the general requirements and procedures for all entries set forth in part 141 of this chapter. * * *

4. It is proposed to amend part 143 by revising the heading of subpart A and adding §§ 143.1 through 143.8 to read as follows:

Subpart A—Automated Broker Interface

Secs.

Subpart A—Automated Broker Interface

§ 143.1 Eligibility.

The automated Broker Interface (ABI) is a module of the Customs Automated Commercial System (ACS) which allows participants to transmit data electronically to Customs through ABI and to retrieve transmissions from ACS. Its purpose is to improve administrative efficiency, lower costs and expedite the release of cargo. Participants in ABI may be:

(a) Customs brokers as defined in § 111.1(b) of this chapter;

(b) Importers as defined in § 101.1(1) of this chapter; and

(c) ABI service bureaus, that is, an individual, partnership, association or corporation which provides automated data processing and communications facilities for brokers or importers.

§ 143.2 Application.

A prospective participant in ABI, who may be a broker, importer or service bureau, shall submit a letter of intent to the district director closest to his principal office, with a copy to the Assistant Commissioner, Commercial Operations, or designee. The letter of intent shall set forth a commitment to develop, maintain and adhere to the performance requirements and operational standards of the ABI system in order to ensure the validity, integrity and confidentiality of the data transmitted. The letter of intent must also contain the following, as applicable:

(a) A description of the computer hardware, communications and entry processing systems to be used and the estimated completion date of the programming;

(b) If the participant has offices in more than one location, the location of each office and the estimated start-up date for each office listed;

(c) The name of the participant's principal management and contact person(s) regarding the system;

(d) If the system is being developed or supported by a data processing company, the data processing company's name and the contact person;

(e) The software vendor's name and the contact person; and

(f) The participant's entry filler code and average monthly volume.

§ 143.3 Action on application.

(a) *Approval.* Permission to use ABI will be granted by the Assistant Commissioner, Commercial Operations, or his designee, only to those applicants who are not delinquent or otherwise remiss in their transactions with Customs and are in compliance with the ABI system performance procedures and standards as described in § 143.5 of this subpart. If there is any cause to question the qualifications or fitness of the applicant to participate in ABI, the application will be referred for report and investigation to the special agent in charge at the district closest to the applicant's principal office. The investigation may include, but need not be limited to:

(1) The accuracy of the information provided in the letter of intent;

(2) The business integrity of the applicant; and

(3) The character and reputation of an individual applicant or a member of a partnership or an officer of an association or corporation.

(4) The character and reputation of the software vendor.

(b) *Denial.* If permission to use ABI is denied to an applicant by the Assistant Commissioner, or his designee, written notice, including the grounds for the denial, will be given to him and to the district director. The applicant may appeal the denial in the manner prescribed in § 143.8 of this subpart and those procedures for handling an appeal shall apply.

§ 143.4 Confidentiality of data.

Service bureaus must hold in confidence the data exchanged and maintain the accuracy of data received in the process of formatting and transmitting data for others (see § 111.24 of this chapter).

§ 143.5 System performance requirements.

The performance requirements and operational standards for electronic data filing are detailed in Customs Publication 540, *ABI Interface Requirements,* which is updated periodically. The Office of Automated Commercial Systems, Customs Headquarters, upon request, shall provide each prospective participant with a copy of this publication. Each prospective participant must demonstrate that his system can interface directly with the Customs computer and ensure accurate submission of required data. Such demonstration will include intensive testing of the participant's system and monitoring of its performance in accordance with Publication 540.

§ 143.6 Failure to maintain performance standards.

ABI participants must adhere to the performance requirements and operational standards of the ABI system and maintain a high level of quality in the transmission of data to participate in ABI.

(a) *Probational status.* A participant who does not adhere to the requirements and standards of the ABI system or maintain a high level of quality may be placed on probational status. The participant will be notified, electronically and in writing, by the Director, ACS Operations, of any action to place the participant on probation. This notice will specifically set forth the grounds and the effective date of the probationary period. The participant's performance will be closely monitored during this period.

(b) *Suspension following probationary period.* If deficiencies are not corrected within the probationary period, the participant will be suspended from operational status. The participant will be notified, electronically and in writing, by the Director, ACS Operations, of any action to suspend participation. The notice will specifically set forth the grounds and effective date for the suspension.

(c) *Reinstatement following suspension.* The participant will be reinstated to operational status after submitting a letter to the Director, ACS Operations, stating that the deficiencies have been corrected, if the Director is satisfied that the deficiencies have been corrected. The participant will be subject to demonstrating compliance with the system performance requirements as stated in § 143.5 of this subpart.

§ 143.7 Revocation of ABI participation.

If it is determined at any time that participation in the system was obtained through fraud or the misstatement of a material fact, or if the participant's

continued use of ABI would pose a potential risk of significant harm to the integrity and functioning of the system, the Director, ACS Operations, will immediately revoke ABI participation. The participant will be notified, electronically and in writing, by the Director, ACS Operations, of any action to revoke participation. The notice will specifically set forth the grounds and effective date of revocation.

§ 143.8 Appeal of probation, suspension or revocation.

The placement of a participant on probation, or the suspension or revocation of participation as provided in §§ 143.6 and 143.7 shall take effect, notwithstanding that the participant may file a written appeal thereof with the Assistant Commissioner, or designee, within 10 days following the receipt of either the electronic or the written notice of such action. The Customs officer who receives an appeal shall stamp the date of receipt on the appeal and the stamped date is the date of receipt for purposes of the appeal. The Assistant Commissioner, or designee, shall inform the participant of the date of receipt and the date that a response is due under this paragraph. The Assistant Commissioner, or designee, shall render his decision to the participant, in writing, stating his reasons therefor, by letter mailed within 30 working days following receipt of the appeal.

5. It is proposed to amend Part 143 by adding a new subpart D thereto, to read as follows:

Subpart D—Electronic Entry Filing

Secs.

Subpart D—Electronic Entry Filing

§ 143.31 Applicability.

This subpart sets forth general requirements for the entry of imported merchandise processed electronically through the Customs Automated Commercial System (ACS). Entries processed electronically are subject to the documentation, document retention and document retrievability requirements of this chapter as well as the general entry requirements of parts 141 and 142. Use of this system is voluntary and optional on behalf of the filer. Customs does not contemplate that non-electronic filings shall be delayed.

§ 143.32 Definitions.

The following are definitions for the purposes of this subpart D:

(a) *ACS.* "ACS" means the Automated Commercial System and refers to Customs integrated comprehensive tracking system for the acquisition, processing and distribution of import data.

(b) *ABI.* "ABI" means the Automated Broker Interface and refers to a module of ACS that allows entry filers to transmit immediate delivery, entry and entry summary data electronically to Customs through ACS and to receive transmissions from ACS.

(c) *AII.* "AII" means Automated Invoice Interface and is a method of transmitting detailed invoice data through ABI.

(d) *Broker.* "Broker" means a Customs broker licensed under Part 111 of this chapter.

(e) *Certification.* "Certification" means the electronic equivalent of a signature for data transmitted through ABI. This electronic (facsimile) signature must be transmitted as part of the immediate delivery, entry or entry summary data. Such data is referred to as "certified".

(f) *Data.* "Data" when used in conjunction with immediate delivery, entry and/or entry summary means the information required to be submitted in connection with the immediate delivery, entry and/or entry summary, respectively. It does not mean the actual paper documents, but includes all of the information required to be in such documents.

(g) *Documentation.* "Documentation" when used in conjunction with immediate delivery, entry and/or entry summary means the documents set forth in § 142.3 of this chapter, required to be submitted as part of an application for immediate delivery, entry and/or entry summary with the exception of Customs Forms 7501, 3461 (or alternative forms).

(h) *EDIFACT.* "EDIFACT" means the Electronic Data Interchange for Administration, Commerce and Transport which provides an electronic capability to transmit detailed CF 3461, CF 7501 and invoice data.

(i) *Electronic immediate delivery.* "Electronic immediate delivery" means the electronic transmission of CF 3461 or CF 3461 alt (alternate) data utilizing ACS in order to obtain the release of goods under immediate delivery.

(j) *Electronic entry.* "Electronic entry" means the electronic transmission of CF 3461 data utlizing ACS in order to obtain the release of merchandise from Customs custody.

(k) *Electronic entry summary.* "Electronic entry summary" means the electronic transmission of CF 7501 data utilizing ACS for the purpose of duty assessment and the collection of statistical data.

(l) *Filer.* "Filer" means the party certifying the electronic filing of the application for immediate delivery, entry or entry summary. Filer may be a broker or importer.

(m) *Invoice description.* "Invoice description" means the description of the merchandise transmitted as part of the ABI transmission.

(n) *Preclassification/binding ruling number.* "Preclassification/binding ruling number" means the system by which classifications are approved and assigned a unique identifying number. This number is transmitted as part of the ABI data.

(o) *Records.* "Records" means the records as defined in § 162.1a(a) of this chapter, which are required to be maintained pursuant to this chapter.

(p) *Selectivity criteria.* "Selectivity criteria" means the categories of information which guide Customs judgment in evaluating and assessing the risk of an immediate delivery, entry or entry summary transaction. Based upon these criteria, immediate delivery, entry or entry summary transactions will be subject to either general examination with document review, intensive examination or summary document review or electronic processing

(g) *Statement processing.* "Statement processing" means the method of collection and accounting within ACS which allows a filer to pay for more than one entry summary with one payment. ACS/ABI generates the statement, consisting of a list of entry summaries due for payment.

§ 143.33 Eligibility criteria for participation.

To be eligible for electronic immediate delivery, electronic entry and electronic entry summary, the filer must be qualified to use the ABI feature of ACS, as prescribed in § 143.5. In addition, to be eligible for electronic entry summary, filers must be operational on the ABI statement processing system.

§ 143.34 Procedure for electronic immediate delivery or entry.

The filer will submit certified immediate delivery or entry data electronically through ABI. Data will be validated and, if found error-free, will be accepted. If it is determined through

selectivity criteria and review of data that documentation is not required to be physically filed in paper form, merchandise wil be released and Customs will electronically notify the filer.

§ 143.35 Procedure for electronic entry summary.

The filer will submit certified entry summary data electronically through ABI. Data will be validated and, if found error-free, will be accepted. If it is determined through selectivity criteria that documentation is not required to be physically filed in paper form, Customs will notify the filer and the entry summary will be scheduled for liquidation upon payment by the statement processing method. Provided a satisfactory entry bond is on file in the name of the importer, the entry summary may be filed indicating the importer as importer of record, in which case the statement processing statement covering that entry summary shall indicate the importer as the debtor.

§ 143.36 Form of immediate delivery, entry and entry summary.

(a) *Electronic form of data.* If Customs determines that the immediate delivery, entry or entry summary data, in its electronic state including invoice data or its equivalent, is satisfactory, the form of the immediate delivery, entry or entry summary through ABI shall be deemed to satisfy all filing requirements under this Part. Further, the filer will not be required to produce or physically submit any official Customs forms of immediate delivery, entry or entry summary. The filer is responsible for the accuracy of the data submitted electronically to the same extent as if the documents were produced, signed, and physically submitted by the filer.

(b) *Accuracy of data.* Participation constitutes declaration by the electronic filer that all transactions filed electronically fully disclose that prices, values, quantities, rebates, drawbacks, fees, commissions, and royalties, are true and correct, and that all goods or services provided either free or at reduced cost to the seller of the merchandise are fully disclosed.

(c) *Submission of invoice.* In order to satisfy the statutory requirement for presentation of invoice, invoice must be submitted in one of the following forms:

(1) Paper form;

(2) AII or EDIFACT format;

(3) An invoice description through ABI in select cases determined by Customs.

§ 143.37 Retention of records.

(a) *Period of retention*—(1) *Filers.* Pursuant to § 111.23(a)(2) of this chapter, all records received or generated by the filer must be retained for a period of at least 5 years from the date of the consumption entry or the date the merchandise was entered for consumption unless maintenance of records is required for another time period.

(2) *Importer.* Pursuant to 19 U.S.C. 1508(b), all records received by the importer must be retained for a period of at least 5 years from the date of the consumption entry or the date the merchandise was entered for consumption (see § 162.1c of this chapter).

(b) *Termination of broker's responsibility.* If the broker is discharged by the importer, he shall retain the documentation for those immediate deliveries, entries or entry summaries filed by him prior to such discharge. Documentation in possession of a broker at the time of permanent termination of the brokerage business shall be accounted for pursuant to § 111.30(e) of this chapter.

(c) *Location of records.* Filers may store records and electronic data in centralized locations. If a centralized storage is desired by the filer, he must submit a written notice addressed to the Assistant Commissioner, Commercial Operations, U.S. Customs Service, Washington, DC 20229, stating the location of the immediate delivery, entry or entry summary records.

(d) *Condition of records retained.* Documentation supporting electronic immediate delivery, entry and entry summary must be retained in the condition as received by the filer or importer, unless the Assistant Commissioner, Commercial Operations, grants written permission to store such documentation by other means (including optical disk storage), in which case the originals need not be retained.

§ 143.38 Retrievability of records.

Pursuant to §§ 111.25 and 162.1a–162.1i of this chapter, any Customs officer may request to see invoices or other documentation supporting electronic immediate delivery, entry or entry summary retained by the filer or importer. The filer or importer must produce these documents within a reasonable time and upon reasonable notice. The filer or importer may submit a certified copy of such supporting documentation. In the event the original supporting documentation is lost, damaged or destroyed, the filer or importer may submit true copies or graphic reproductions thereof with a letter of explanation.

§ 143.39 Penalties.

(a) *Brokers.* Brokers unable to produce documents requested by Customs within a reasonable time will be subject to penalties pursuant to § 111.91 of this chapter and 19 U.S.C. 1641.

(b) *Importers.* Importers unable to produce documents requested by Customs within a reasonable time will be subject to penalties pursuant to § 113.62(i) of this chapter.

PART 159—LIQUIDATION OF DUTIES

1. The authority citation for part 159 would be revised to read as follows:

Authority: 19 U.S.C. 66, 1500, 1624. Subpart C also issued under 31 U.S.C. 5151. Additional authority and statutes interpreted or applied are cited in the text or following the sections affected.

2. It is proposed to amend § 159.9 by adding a new sentence to the end of paragraph (c)(1) to read as follows:

§ 159.9 Notice of liquidation and date of liquidation for formal entries

* * * * *

(c) *Date of liquidation*—(1) *Generally.* * * * For electronic entries, in lieu of posting the bulletin notice of liquidation or stamping the liquidation date on the entry documentation, the date of liquidation will be the date contained in the electronic notification of liquidation which is transmitted to the filer.

* * * * *

Michael Schmitz,

Acting Commissioner of Customs.

Approved: December 15, 1989.

John P. Simpson,

Acting Assistant Secretary for Enforcement.

[FR Doc. 90–1635 Filed 1–24–90; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 50, 55, 58, and 200

[Docket No. R–90–1463; FR–865–C–02]

Procedures for the Implementation of Executive Orders 11988 and 11990; Revision of Minimum Property Standards for One and Two Family Dwellings; Correction

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule; correction.

SUMMARY: On January 4, 1990 (55 FR 396), the Department published in the Federal Register, a proposed rule that proposed procedures to implement

Executive Order 11988, Floodplain Management, and Executive Order 11990, Protection of Wetlands. The purpose of this document is to republish a table contained in § 55.11(c), that was published incorrectly.

DATE: Comment due date: March 5, 1990.

ADDRESS: Interested persons are invited to submit comments to the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Communications should refer to the above docket number and title, and give reasons for any recommendations. A copy of each communication will be available for public inspection at the above address from 8:45 a.m. to 5:15 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Concerning 24 CFR parts 50, 55, and 58, Richard H. Broun, Director, Office of Environment and Energy, Room 7154, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. For telephone communications, contact Truman Goins, Water Resources Coordinator, Office of Environment and Energy, at (202) 755–7894. (This is not a toll-free number.) With respect to 24 CFR part 200, contact John E. Bonkoski, Office of Housing, at (202) 755–6740. (This is not a toll-free number.)

Accordingly, in FR Doc. 90–103, published in the **Federal Register** on January 4, 1990 at 55 FR 396, 24 CFR part 55 would be amended by correcting the table following § 55.11(c) to read as follows:

PART 55—[AMENDED]

1. The authority citation for 24 CFR part 55 would continue to read as follows:

Authority: Flood Disaster Protection Act of 1973, 42 U.S.C. 4001–4128; Executive Order 11988 (Floodplain Management), 42 FR 26951 (May 25, 1977); Executive Order 11990 (Protection of Wetlands), 42 FR 26961 (May 25, 1977); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. On page 405, in the third column, the table located at the end of § 55.11(c) would be corrected by republishing it in its entirety, as follows:

TABLE 1

Type of proposed action (new reviewable action or an amendment) [1]	Type of Proposed Location			
	Floodways	Coastal high hazard areas	Wetland or 100-year floodplain outside high hazard area	Non-wetland area between 100- and 500-year floodplain
Critical actions as defined in § 55.2(b)(2)	Critical actions not allowed		Allowed if the proposed critical action is processed under § 55.20 [2]	
Non-critical actions not excluded under § 55.12 (b) or (c).	Allowed only if the proposed action is a functionally dependent use and processed under § 55.20 [2].	Allowed only if the proposed action (1) is either (a) designed for location in a coastal high hazard area or (b) a functionally dependent use; and (2) is processed under § 55.20 [2].	Allowed if the proposed action is processed under § 55.20 [2].	Any non-critical action is allowed without processing under this part

[1] Under Executive Order 11990, the decisionmaking process in § 55.20 only applies to Federal assistance for new construction in wetland locations.
[2] Or those paragraphs of § 50.20 that are applicable to an action listed in § 55.12(a).

Dated: January 22, 1990.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 90–1737 Filed 1–24–90; 8:45 am]

BILLING CODE 4210–32–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[FI–75–89]

RIN 1545–AO19

Yield Adjustment Payments for Qualified Student Loan Bonds

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the rules and regulations portion of this issue of the **Federal Register**, the Internal Revenue Service is issuing temporary regulations to allow certain yield adjustment payments with respect to excess earnings on acquired purpose obligations acquired with proceeds of qualified student loan bonds. The text of the temporary regulations also serves as the comment document for this notice of proposed rulemaking.

DATES: Written comments and requests for a public hearing must be delivered by March 26, 1990. The amendment is proposed to be effective for qualified student loan bonds issued after January 5, 1990.

ADDRESS: Send comments and requests for a public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attention: CC:CORP:T:R (FI–75–89), Room 4429, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: George F. Delduke, 202–566–4545 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations published in the rules and regulations portion of this issue of the **Federal Register** add new § 1.148–10T to part 1 of title 26 of the Code of Federal Regulations. The new temporary regulations provide rules concerning the computation and payment of excess earnings to the United States with respect to certain qualified student loan bonds. The text of the new temporary regulations serves as the comment document for this notice of proposed rulemaking. In addition, the preamble to the temporary regulations provides a discussion of the proposed and temporary rules.

For the text of the temporary regulations, see T.D. 8285 published in the rules and regulations portion of this issue of the **Federal Register**.

Special Analyses

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

not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Administrator of the Small Business Administration for comment on their impact on small business.

Comments and Requests for a Public Hearing

Before the adoption of 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. A public hearing will be held upon written request to the Internal Revenue Service by any person who also submits written comments. If a public hearing is held, notice of the time and place will be published in the Federal Register.

Drafting Information

The principal author of these regulations is David A. Walton, Office of the Assistant Chief Counsel (Financial Institutions and Products), Internal Revenue Service. However, other personnel from the Service and Treasury Department participated in their development.

List of Subjects in 26 CFR 1.61—1.281–4

Income taxes, Taxable income, Deductions, Exemptions.

Proposed Amendments to the Regulations

The temporary regulations, T.D. 8285, published in the Rules and Regulations portion of this issue of the Federal Register, are hereby also proposed as final regulations under section 148 of the Internal Revenue Code.

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 90–1728 Filed 1–22–90; 2:36 pm]

BILLING CODE 4830–01–M

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26 CFR Part 1

[INTL–40–89]

RIN 1545–AM90

Earnings and Profits of Controlled Foreign Corporations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document contains proposed Income Tax Regulations relating to the election or adoption of tax accounting methods affecting the computation of earnings and profits of a controlled foreign corporation in post-1986 taxable years. Changes to the applicable law were made by the Tax Reform Act of 1986. These proposed regulations would provide guidance needed to comply with those statutory changes and would affect controlled foreign corporations and their United States shareholders. In the Rules and Regulations portion of this Federal Register, the Internal Revenue Service is issuing temporary regulations relating to these matters. The text of those temporary regulations serves as the comment document for this proposed rulemaking.

DATES: These regulations are proposed to be effective for taxable years of a controlled foreign corporation beginning after December 31, 1986. Comments and requests for a public hearing must be delivered by March 26, 1990.

ADDRESS: Send comments and requests for a public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station. (Attention: CC:CORP:T:R, INTL–40–89), Room 4429, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Barbara A. Felker of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:CORP:T:R (INTL–40–89)) (202–566–6284, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations published in the Rules and Regulations portion of this issue of the Federal Register add new § 1.964–1T. The final regulations that are proposed to be based on the temporary regulations would amend 26 CFR part 1 For the text of the temporary regulations, see T.D. 8283 published in the Rules and Regulations portion of this issue of the Federal Register.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Administrator of the Small Business Administration for comment on their impact on small businesses.

Comments and Request for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably a signed original and eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request by any person who submits written comments on the proposed rules. Notice of the time and place for the hearing will be published in the Federal Register.

Drafting Information

The principal author of these proposed regulations is Barbara A. Felker of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. Other personnel from the Internal Revenue Service and Treasury Department participated in developing the regulations.

List of Subjects in 26 CFR §§ 1.861–1 Through 1.997–1

Income taxes, Corporate deductions, Aliens, Exports, DISC, Foreign investments in U.S., Foreign tax credit, FSC, Source of income, U.S. investments abroad.

Proposed Amendments to the Regulations

The temporary regulations published in the Rule and Regulations portion of this issue of the Federal Register are hereby also proposed as final regulations under section 964 of the Internal Revenue Code of 1986.

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 90–1634 Filed 1–24–90; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 56, 57, 58, 70, 71, 72, 75, and 90

RIN 1219–AA48

Air Quality, Chemical Substances, and Respiratory Protection Standards; Extension of Comment Period; Public Hearings

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Extension of comment period; notice of hearings.

SUMMARY: The Mine Safety and Health Administration (MSHA) is extending the period for public comment on portions of the Agency's proposed rule revising existing standards for air quality and chemical substances at coal, metal and nonmetal mines. MSHA is scheduling three separate comment periods for different provisions in the proposal. MSHA is also announcing a tentative schedule for a series of three sets of public hearings. Each set will cover different provisions of the proposal.

DATES: The comment period will close for each provision of the proposal as indicated below. MSHA is also tentatively scheduling public hearings on the following dates:

March 2, 1990—Close of comment period on the permissible exposure limits for nitrogen dioxide (NO_2), nitric oxide (NO), carbon monoxide (CO), and sulfur dioxide (SO_2); exposure monitoring; abrasive blasting; drill dust control; dangerous atmospheres; and prohibited areas for food and beverages.

April 23–27, 1990—Tentative dates for public hearings on the permissible exposure limits for nitrogen dioxide, nitric oxide, carbon monoxide, and sulfur dioxide; exposure monitoring; abrasive blasting; drill dust control; dangerous atmospheres; and prohibited areas for food and beverages.

June 1, 1990—Close of comment period on carcinogens, asbestos construction work, means of control, respiratory protection, and medical surveillance.

July 23–27, 1990—Tentative dates for public hearings on carcinogens, asbestos construction work, means of control, respiratory protection, and medical surveillance.

August 24, 1990—Close of comment period on permissible exposure limits other than nitrogen dioxide, nitric oxide, carbon monoxide, and sulfur dioxide.

October 22–26, 1990—Tentative dates for public hearings on permissible exposure limits other than nitrogen dioxide, nitric oxide, carbon monoxide, and sulfur dioxide.

December 1990—Close of record.

ADDRESSES: The locations for hearings will be announced at the close of each comment period in separate Federal Register notices.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, Phone (703) 235–1910.

SUPPLEMENTARY INFORMATION: On August 29, 1989, MSHA published a proposed rule revising existing standards for air quality and chemical substances at coal, metal and nonmetal mines (54 FR 35760). It contains permissible exposure limits for substances that may pose health hazards at these mines. In addition, the proposed rule contains revised requirements for exposure monitoring, carcinogens, and respiratory protection programs.

These actions are part of the Agency's ongoing review of coal, metal, and nonmetal mine safety and health standards to improve protection for miners. MSHA initially scheduled the comment period to close on November 27, 1989. In response to requests from the mining community, MSHA extended the comment period to March 2, 1990. Due to the scope and complexity of the issues involved in this rulemaking and in response to further requests from the ll parties sufficient time to prepare their comments and participate in the series of forthcoming public hearings. MSHA requests that comments on the proposal be submitted on various provisions according to the following schedule:

The comment period for the first group of provisions will still close on March 2, 1990. These provisions are: The permissible exposure limits for nitrogen dioxide (NO_2), nitric oxide (NO), carbon monoxide (CO), and sulfur dioxide (SO_2); exposure monitoring; abrasive blasting; drill dust control; dangerous atmospheres; and prohibited areas for food and beverages. These permissible exposure limits and the exposure monitoring provisions have a particular importance to MSHA's ongoing rulemaking on the use of diesel-powered equipment in underground coal mines which cross-references them. On December 28, 1989, MSHA extended the comment period for the diesel-powered equipment proposed rule to July 6, 1990 (54 FR 53329) and referenced the nitrogen dioxide exposure monitoring provisions. MSHA intends that issues concerning exposure monitoring procedures and the permissible exposure limits for nitrogen dioxide, nitric oxide, carbon monoxide, and sulfur dioxide be addressed as fully as possible during the first written comment period and hearings. This will allow the development of a record which could be useful to the mining community in the preparation of comments on the Agency's proposal for the use of diesel-powered equipment in underground coal mines. Hearings for this group of air quality provisions are tentatively scheduled for the week of April 25–29, 1990.

The second group of provisions includes: means of control; respiratory protection; carcinogens; medical surveillance; and asbestos use. The comment period for these provisions will close June 1, 1990. The hearings for these provisions are tentatively scheduled to be held the week of July 23–27, 1990.

The third group of provisions includes the proposed permissible exposure limits except nitrogen dioxide, nitric oxide, carbon monoxide, and sulfur dioxide. The comment period for this portion of the rulemaking will close on August 24, 1990. Hearings are tentatively scheduled to be held the week of October 22–26, 1990.

MSHA encourages all parties interested in making comments to do so by the dates indicated. Although the rulemaking record will remain open until all hearings have been held, MSHA intends that the substantive issues on each provision be fully discussed during its respective comment period and hearing.

Dated: January 16, 1990.

Roy L. Bernard,

Deputy Assistant Secretary for Mine Safety and Health.

[FR Doc. 90–1632 Filed 1–24–90; 8:45 am]

BILLING CODE 4510–43–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

Indiana Regulatory Program

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

ACTION: Proposed rules.

SUMMARY: OSM is announcing receipt of three proposed amendments submitted separately by Indiana as modifications to the State's regulatory program (hereinafter referred to as the Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The amendments consist of proposed changes to the Indiana Surface Mining Statute and Rules provisions concerning: 1. Adjudicative proceedings; this amendment sets the rules to be followed during proceedings conducted by an administrative law judge for the Indiana Department of Natural Resources. The submittal also contains three subsequent amendments to this Indiana rule. 2. Delegation of authority; the

amendment authorizes the natural resources commission to adopt rules to carry out its duties. 3. Public participation, prime farmland, enforcement, civil penalties and suspension or revocation of certification; the amendments are intended to improve rule language and to correct codification.

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

DATES: Written comments must be received on or before 4:00 p.m. on February 26, 1990; if requested, a public hearing on the proposed amendments is scheduled for 1:00 p.m. on February 20, 1990; and request to present oral testimony at the hearing must be received on or before 4:00 p.m. February 9, 1990.

ADDRESSES: Written comments and requests to testify at the hearing should be directed to Mr. Richard D. Rieke, Director, Indianapolis Field Office, at the address listed below. If a hearing is requested, it will be held at the same address.

Copies of the Indiana program, the amendments, a listing of any scheduled public meeting, and all written comments received in response to this notice will be available for public review at the following locations, during normal business hours Monday through Friday, excluding holidays:

Office of Surface Mining Reclamation and Enforcement, Indianapolis Field Office, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, IN 46204. Telephone: (317) 226–6166.

Indiana Department of Natural Resources, 608 State Office Building, Indianapolis, IN 46204. Telephone: (317) 232–1547.

Each requester may receive, free of charge, one single copy of the proposed amendments by contacting the OSM Indianapolis Field Office.

FOR FURTHER INFORMATION CONTACT: Mr. Richard D. Rieke, Director Indianapolis Field Office, (317) 226–6166; (FTS) 331–6166.

SUPPLEMENTARY INFORMATION:

I. Background

On July 29, 1982, the Indiana program was made effective by the conditional approval of the Secretary of the Interior. Information pertinent to the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Indiana program can be found in the July 26, 1982 **Federal Register** (47 FR 32107). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 914.10, 914.15, and 914.16.

II. Discussion of Amendments

1. Adjudicative Proceedings

By letter dated December 5, 1989, (Administrative Record No. IND–0723), the Indiana Department of Natural Resources (IDNR) submitted a proposed amendment to the Indiana program at Indiana Administrative Code (IAC) 310 IAC 0.6. The proposed amendment would add 310 IAC 0.6 to the approved program and includes three changes to the 310 IAC 0.6 provisions. The proposed rule establishes adjudicative proceedings to be followed during proceedings conducted by an administrative law judge for the IDNR. This procedural rule addresses the following subjects at the indicated subsections:

1. Definitions
2. Applicability of rule
3. Review of actions taken by delegates of natural resources commission
4. Petition for administrative review; notice of appointment of administrative law judge
5. Petition for review; response
6. Amendments of pleadings
7. Filing and service of documents
8. Administrative law judge; automatic change
9. Dismissals
10. Applicability of rules of trial procedure
11. Conduct of hearing
12. Recommendations of an administrative law judge; objections
13. Award of costs and attorney fees for a proceeding under the surface mine coal reclamation act
14. Court reporter; transcripts
15. Special status determinations
16. Continuances

The three changes to 310 IAC 0.6 which are included with the December 5, 1989 submittal make changes to subsections 3, 4, 5 and 13.

2. Delegation of Authority to the Natural Resources Commission

By letter dated December 6, 1989, (Administrative Record No. IND–0724), the IDNR submitted proposed amendments to the Indiana program at Indiana Code (IC) 14–3–3–21 and at 310 IAC 0.7. The proposed amendment to the IC is contained in Indiana's 1989 Engrossed House Bill 1296 and adds a new Subsection C to IC 14–3–3–21 which allows the natural resources commission to adopt rules under IC 4–22–2 to carry out its duties.

The proposed amendment adds 310 IAC 0.7 which defines terms and identifies the areas of commission authority which are being designated to other divisions, including the division of reclamation.

3. Stylistic and Codification Changes.

By letter dated December 5, 1989, (Administrative Record No. IND–0725), the IDNR submitted a proposed amendment to the Indiana program which makes numerous stylistic and codification changes to various parts of the approved program concerning public participation, prime farmland, enforcement, civil penalties, and suspension or revocation of certification. The amendment also changes a reference at 310 IAC 12–8–9(c) concerning adjudicative procedures from IC 4–22–1 to IC 4–21.5.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendments proposed by IDNR satisfy the requirements of 30 CFR 732.15 for the approval of State program amendments. If the amendments are deemed adequate, they will become part of the Indiana program.

Written Comments

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

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **"FOR FURTHER INFORMATION CONTACT"** by the close of business on February 9, 1990. If no one requests an opportunity to comment at a public hearing, the hearing will not be held. Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard.

Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons who desire to comment have been heard.

Public Meeting

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

List of Subjects in 30 CFR Part 914

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

Dated: January 12, 1990.

Carl C. Close,

Assistant Director, Eastern Field Operations.

[FR Doc. 90–1696 Filed 1–24–90; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 914

Indiana Regulatory Program; Self-Bonding

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

ACTION: Proposed rule: reopening and extension of public comment period.

SUMMARY: OSM is reopening and extending the public comment period on a proposed amendment to the Indiana permanent regulatory program (hereinafter referred to as the Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment adds a new provision to the Indiana surface mining statute to allow self-bonding by surface coal mine permit applicants. The proposed amendment was revised by the Indiana Department of Natural Resources (IDNR) after its initial submittal to OSM. OSM is reopening the public comment period to provide the public an opportunity to reconsider the amendment in light of this revision.

The amendment is intended to provide coal mine operators an alternative means for satisfying the requirement to obtain a performance bond.

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

DATES: Written comments must be received on or before 4:00 p.m. on February 9, 1990 to ensure consideration in the rulemaking process. If requested, a public hearing on the amendment will be held at 9:00 a.m. on February 6, 1990. Requests to present testimony at the hearing must be received on or before 4:00 p.m. on February 1, 1990.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand-delivered to Richard D. Rieke, Director, Indianapolis Field Office at the address listed below. Copies of the Indiana program, the revised proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays.

Each requestor may receive, free of charge, one copy of the proposed revised amendment by contacting OSM's Indianapolis Field office.

Office of Surface Mining Reclamation and Enforcement, Indianapolis Field Office, Minton-Capehart Federal Building, Room 301, 575 North Pennsylvania Street, Indianapolis, Indiana 46204, Telephone: (317) 226–6166.

Indiana Department of Natural Resources, 608 State Office Building, Indianapolis, Indiana 46204, Telephone (317) 232–4022.

FOR FURTHER INFORMATION CONTACT: Richard D. Rieke, Director, Indianapolis Field Office, (317) 226–6166.

SUPPLEMENTARY INFORMATION:

I. Background on the Indiana Program

The Secretary of the Interior conditionally approved the Indiana program effective July 29, 1982. Information on the background of the Indiana program, including the Secretary's findings, the disposition of public comments and a detailed explanation of the conditions of approval can be found in the July 26, 1982, **Federal Register** (47 FR 32107). Subsequent actions concerning the conditions of approval and proposed amendments are identified in 30 CFR 914.15 and 914.16.

II. Submission of Amendment

On March 18, 1988 (Administrative Record No. IND–0559A), the Indiana Department of Natural Resources (IDNR) submitted to OSM pursuant to 30 CFR 732.17, a proposed State program amendment. The provisions of the amendment were included in three laws enacted by the 1988 Indiana General Assembly: Senate Enrolled Acts (SEA) Nos. 45, 121, and 231. By letter dated October 19, 1988, Indiana requested that OSM process each of the three laws separately as individual program amendments (Administrative Record No. IND–0611). By an undated letter received by OSM on May 9, 1989, the IDNR requested that the self-bonding and the bond pool fund provisions of SEA 231 be processed separately as individual State program amendments (Administrative Record No. IND–0643). This notice pertains only to the self-bonding provisions of SEA 231.

During the review of Indiana's proposed self-bond amendment, OSM identified the following concerns.

1. As submitted, the proposed amendment would have allowed either the self-bond applicant or the guarantor to submit an indemnity agreement. The Federal regulations require that the agreement shall be executed by all parties who are to be bound by it.

2. The original submittal required the applicant to provide the State regulatory authority with a copy of the corporate authorization that allowed the signers to bind the corporation. The Federal regulations contain an additional provision which requires the applicant to also provide an affidavit certifying that the agreement is valid under all applicable Federal and State laws.

3. Also, the original submittal did not address cessation of operations followed by site reclamation when a self-bond becomes invalid and alternate bond is not posted within 90 days.

OSM notified Indiana of these concerns during a meeting on September 21, 1989 (Administrative Record No. IND–0700). Indiana responded in a letter dated November 22, 1989, by submitting modifications to its proposed amendment (Administrative Record No. IND–0736). The proposed modifications are intended to correct the above identified deficiencies if they are incorporated into the existing statute language.

III. Public Comment Procedures

OSM is reopening and extending the public comment period for Indiana's proposed amendment in order to provide the public an opportunity to reconsider the amendment's adequacy in light of the revisions submitted by IDNR. Specifically, OSM is seeking comments on whether the proposed revised amendment is no less effective than the corresponding Federal rules at 30 CFR 800.23. If the amendment is deemed adequate, it will become part of the Indiana program.

Written Comments

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

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by 4:00 p.m. on February 1, 1990. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

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

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

Public Meeting

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

List of Subjects in 30 CFR Part 914

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

Dated: January 12, 1990.

Carl C. Close,

Assistant Director, Eastern Field Operations.

[FR Doc. 90-1695 Filed 1-24-90; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 80

[CGD 89-068]

RIN 2115-AD44

International Regulations for Preventing Collisions at Sea; 1972 COLREGS Demarcation Lines

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This rulemaking proposes to improve safety by adjusting four 1972 COLREGS Demarcation Lines. This rulemaking also proposes to correct the descriptions of four other Demarcation Lines.

DATE: Comments must be received on or before March 12, 1990.

ADDRESS: Comments should be submitted to Executive Secretary, Marine Safety Council (G-LRA-2/3600), (CGD 89-068), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593-0001. Comments may be delivered to and will be available for inspection and copying in Room 3600, between the hours of 8 a.m. and 3:30 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Peter Palmer, Navigation Rules and Information Branch, Office of Navigation Safety and Waterway Services, (202) 267-0406.

SUPPLEMENTARY INFORMATION:

Regulatory History/or Background

The regulations establishing COLREGS Demarcation Lines in 33 CFR Part 80 were promulgated July 11, 1977 (42 FR 35782). Some descriptions were updated to reflect geographic and marking changes and were published on March 6, 1986 in the **Federal Register** (51 FR 7785).

The Coast Guard proposes to update the following COLREGS Demarcation Line descriptions:

1. The description in § 80.703(b) will be revised by adding Murrels Inlet Light 2 and Murrels Inlet Light 1 as additional connection points in the description of the line.

2. The description in § 80.735(c) will be revised by removing Biscayne Channel Light 8 as a connection point for the demarcation line in Biscayne Channel.

3. The change to § 80.1370 correctly identifies the line from Willapa Bay light as 169.8° true instead of 171° true.

4. The change to § 80.1460 correctly identifies the names of the breakwater lights.

The U.S. Coast Guard also proposes to adjust the Demarcation Line locations at the Mississippi River entrances of Southwest Pass, South Pass and the Mississippi River Gulf Outlet. The Lower Mississippi River Advisory Committee recommended changes to § 80.815(g) and § 80.825 (a), (b), (c) (Southwest Pass, South Pass and the Mississippi River Gulf Outlet) to reduce the confusion caused when operators of vessels exchange meeting and passing signals when navigating in these areas. The International meeting/passing signals use signals of "action" while Inland Rules require signals of "intention". The location of the current demarcation lines are in a high traffic area where vessels have to complete a large turning maneuver requiring meeting and passing signals. Operators of vessels in this area have experienced some confusion by not knowing whether the signals made are signals of "action" or "intention". These lines will be moved to a location beyond the pilot boarding area, so the entire channel entrance is under the Inland Rules. These demarcation line adjustments will reduce the hazards to navigation by allowing operators of vessels to more easily determine when they are operating on COLREGS waters and on Inland Rules waters so they can exchange appropriate meeting and passing signals.

Interested persons are invited to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD 89-068), and the specific section to which their comments apply, and give reasons for each comment.

The Coast Guard will consider all comments received during the comment period before taking final action on this proposal.

Regulatory Evaluation

The proposed regulations are 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 Coast Guard certifies that this rule will not have a significant economic impact on a substantial number of small entities because there are no costs associated with this proposal.

Federalism

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

List of Subjects in 33 CFR Part 80

Navigation, Navigable waters.

For the reasons stated above, The Coast Guard proposes to amend title 33, Code of Federal Regulations as follows:

PART 80—[AMENDED]

1. The authority citation for part 80 is revised to read as follows:

Authority: 14 U.S.C. 2; 33 U.S.C.151(a); 49 CFR 1.46.

2. Section 80.703 is amended by revising paragraph (b) to read as follows:

§ 80.703 Little River Inlet, SC to Cape Romain, SC.

* * * * *

(b) From Little River Inlet, a line drawn parallel with the general trend of the highwater shoreline across Hog Inlet; thence a line drawn from Murrels Inlet Light 2 to Murrels Inlet Light 1; thence a line drawn parallel with the general trend of the highwater shoreline across Midway Inlet, Pawleys Inlet, and North Inlet.

* * * * *

3. Section 80.735 is amended by revising paragraph (c) to read as follows:

§ 80.735 Miami, FL to Long Key, FL.

* * * * *

(c) A line drawn from Cape Florida Light to the northernmost extremity on Soldier Key.

* * * * *

4. Section 80.815 is amended by revising paragraph (g) to read as follows:

§ 80.815 Mobile Bay, AL to the Chandeleur Islands, LA.

* * * * *

(g) A line drawn from the Ship Island Light to Chandeleur Light; thence in a curved line following the general trend of the seaward, highwater shorelines of the Chandeleur Islands to the island at latitude 29°44.1′ N., longitude 88°53.0′ W.; thence to latitude 29°26.5′ N., longitude 88°55.6′ W.

5. Section 80.825 is amended by revising paragraphs (a), (b) and (c) to read as follows:

§ 80.825 Mississippi Passes, LA.

(a) A line drawn from latitude 29°26.5′ N., longitude 88°55.6′ W. to 29°10.6′ N., longitude 88°59.8′ W.; thence to latitude 29°03.5′ N., longitude 89°03.7′ W.; thence to latitude 28°58.8′ N., longitude 89°04.3′ W.

(b) A line drawn from latitude 28°58.8′ N., longitude 89°04.3′ W.; to latitude 28°57.3′ N., longitude 89°05.3′ W.; thence to latitude 28°56.95′ N., longitude 89°05.6′ W.; thence to latitude 29°00.4′ N., longitude 89°09.8′ W.; thence following the general trend of the seaward highwater shoreline in a northwesterly direction to latitude 29°03.4′ N., longitude 89°13.0′ W.; thence west to latitude 29°03.5′ N., longitude 89°15.5′ W.; thence following the general trend of the seaward highwater shoreline in a southwesterly direction to latitude 28°57.7′ N., longitude 89°22.3′ W.

(c) A line drawn from latitude 28°57.7′ N., longitude 89°22.3′ W.; to latitude 28°51.4′ N., longitude 89°24.5′ W.; thence to latitude 28°52.65′ N., longitude 89°27.1′ W.; thence to the seaward extremity of the Southwest Pass West Jetty located at latitude 28°54.5′ N., longitude 89°26.1′ W.

* * * * *

6. Section 80.1370 is revised to read as follows:

§ 80.1370 Willapa Bay, WA.

A line drawn from Willapa Bay Light 169.8° true to the westernmost tripod charted 1.6 miles south of Leadbetter Point.

7. Section 80.1460 is revised to read as follows:

§ 80.1460 Kahului Harbor, Maui, HI.

A line drawn from Kahului Harbor Entrance East Breakwater Light to Kahului Harbor Entrance West Breakwater Light.

Dated: January 3, 1990.

R. T. Nelson,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 90-1661 Filed 1-24-90; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 435

[FRL-3716-8]

Oil and Gas Extraction Point Source Category, Coastal and Stripper Subcategories; Effluent Limitation Guidelines and New Source Performance Standards; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of comment period on request for comments.

SUMMARY: On November 8, 1989, EPA published in the Federal Register a Request for Comments pertaining to establishment of effluent limitations guidelines based upon the best available technology economically achievable (BAT), the best conventional pollutant control technology (BCT), and new source performance standards (NSPS) for the coastal and stripper subcategories of the oil and gas extraction point source category (54 FR 46919). The comment period for that Request for Comments was announced to end on January 8, 1990. EPA is today extending the comment period to March 8, 1990.

DATES: Comments on the November 8, 1989 Request for Comments must be submitted by March 8, 1990.

ADDRESSES: Comments should be sent to Ms. Karen Troy, Office of Water, Industrial Technology Division (WH-552), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

The supporting information for the November 8, 1989 Request for Comments are available for inspection and copying at the EPA Public Information Reference Unit, Room M-2904 (rear of EPA Library), 401 M St., SW., Washington, DC 20460. The EPA Public Information Regulation (40 CFR Part 2) provides that a reasonable fee may be charged for copying.

FURTHER INFORMATION CONTACT: Ms. Karen Troy at the above address or call (202) 382-7115.

SUPPLEMENTARY INFORMATION: On November 8, 1989, EPA published a Request for Comments in the Federal Register (54 FR 46919) stating that the Agency was considering initiating rulemaking to revise and add to the existing regulations under the Clean Water Act that limit effluent discharges to water of the United States from coastal oil and gas extraction facilities. The revisions would establish effluent

limitations guidelines based on the best available technology economically achievable (BAT), the best pollutant control technology (BCT) and also would establish new source performance standards (NSPS) for drilling fluids, drill cuttings, produced water, and miscellaneous waste streams in the coastal subcategory of the oil and gas extraction point source category. These regulations would apply to discharges from facilities involved in exploration development and production operations. The November 8, 1989 notice did not propose any regulations.

Since publication of the Notice, the Administrator signed a separate notice issued under section 304(m) of the Clean Water Act (55 FR 80). This notice announces the Agency's intention to begin the development of BAT and BCT guidelines and new source performance standards covering the coastal subcategory and contains a schedule for the issuance of these rules by 1995. The scope and degree of coverage of any requirements to be proposed for the coastal subcategory has yet to be determined and the Agency hopes that information received as part of the comments on the notice will help focus our efforts.

The November 8, 1989 Request for Comments established a 60-day period in which the general public was invited to submit comments on all aspects of the information presented and discussed in the Request for Comments. The comment period was to end on January 8, 1989.

On December 4, 1989, the American Petroleum Institute (API) on behalf of itself and its interested member companies, submitted a request to extend the comment period on the November 8, 1989 Request for Comments by 60 days. In addition to the request from API, the Agency also received requests to extend the comment period to March 8, 1990 from the Alaska Oil and Gas Association (AOGA) on December 12, 1989, from Shell Western E & P Inc. On December 12, 1989 and from BP Exploration (Alaska) Inc. on December 13, 1989.

In light of the number, complexity, and significance of the issues presented in the request for comments, EPA has decided to grant the request for extension of the comment period in full. Therefore, comments on the November 8, 1989 Request for Comments must be submitted by March 8, 1990. This does not preclude the submittal of information following the close of the comments, as appropriate, as this project proceeds.

Dated: January 10, 1990.

Robert H. Wayland III,

Acting Assistant Administrator for Water.

[FR Doc. 90-1712 Filed 1-24-90; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB36

Endangered and Threatened Wildlife and Plants; Public Hearing and Reopening of Comment Period on Proposed Endangered Status for Wilkesia Hobdyi (Dwarf Iliau)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Correction of dates.

SUMMARY: The U.S. Fish and Wildlife Service (Service) gives notice that the dates of the public hearing and reopening of the comment period for the proposed rule (54 FR 40444, October 2, 1989) to determine *Wilkesia hobdyi* (dwarf iliau) as an endangered species pursuant to the Endangered Species Act of 1973, as amended, have been changed.

DATES: The comment period on the proposal is reopened January 25, 1990. The public hearing date has been changed to Friday, February 23, 1990, from 7:00 to 9:00 p.m., in Lihue, Hawaii. The comment period, which originally closed on December 1, 1989, now closes March 5, 1990.

ADDRESSES: The public hearing will be held in the conference room of the Lihue Public Library, 4344 Hardy Street, Lihue, Kauai, Hawaii. Written comments and material should be sent to Ernest F. Kosaka, Field Supervisor, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, Room 6307, P.O. Box 50167, Honolulu, Hawaii 96850. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Derral R. Herbst, at the above address (808/541-2749 or FTS 551-2749).

SUPPLEMENTARY INFORMATION:

Background

A notice of a public hearing and reopening of the comment period for the proposed rule to determine *Wilkesia hobdyi* (dwarf iliau) as an endangered species was published in the Federal Register (55 FR 761) on January 9, 1990. Due to conflicting schedules, the Service has changed the date of the hearing from January 26, to February 23, 1990. The hearing will be held from 7:00 to 9:00 p.m., at the Lihue Public Library, in Lihue, Hawaii. Those parties wishing to make statements for the record should have available a copy of their statements to be presented to the Service at the start of the hearing. Oral statements may be limited to 5 or 10 minutes, if the number of parties present that evening necessitates some limitation. There are no limits to the length of written comments presented at this hearing or mailed to the Service.

The comment period on the proposal originally closed on December 1, 1989. In order to accommodate the hearing, the Service reopens the public comment period. Written comments may now be submitted until March 5, 1990, to the Service office in the **ADDRESSES** section.

Author

The primary author of this notice is Dr. Derral R. Herbst, Fish and Wildlife Enhancement, Pacific Islands Office, U.S. Fish and Wildlife Service, P.O. Box 50167, Honolulu, Hawaii 96850 (808/541-2749 or FTS 551-2749).

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531-1543).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Fish, Marine mammals, Plants (agriculture).

Dated: January 22, 1990.

Don Weathers,

Regional Director.

[FR Doc. 90-1811 Filed 1-23-90; 1:53 pm]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 55, No. 17
Thursday, January 25, 1990

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

January 19, 1990.

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

- Animal and Plant Health Inspection Service.
- National Animal Health Monitoring System (NAHMS).
- NAHMS–5, 6, 7, 8, 9, and 10.
- Monthly; Annually.
- Farms; 70,000 responses; 12,740 hours; not applicable under 3504(h).
- William D. Hueston (303) 498–1900.

New Collection

- Food Safety and Inspection Service.
- Supplemental Qualifications Statement for Veterinary Medical Officers.
- On occasion.
- Individuals or households; Federal agencies or employees; 300 responses; 900 hours; not applicable under 3504(h).
- Roy Purdie, Jr. (202) 447–5372.

Donald E. Hulcher,
Acting Departmental Clearance Officer.

[FR Doc. 90–1653 Filed 1–24–90; 8:45 am]
BILLING CODE 3410–01–M

Forest Service

White Salmon National Scenic River, Columbia River Gorge National Scenic Area, Klickitat County, Washington; Boundary Establishment

AGENCY: Forest Service, USDA.
ACTION: Notice of availability.

SUMMARY: The Columbia River Gorge National Scenic Area is transmitting the final boundary of the White Salmon National Scenic River to Congress.

FOR FURTHER INFORMATION CONTACT: Information may be obtained by contacting Stephen Mellor, Hydrologist, 902 Wasco Avenue, Hood River, OR 97031, telephone (503) 386–2333.

SUPPLEMENTARY INFORMATION: The White Salmon River boundary is available for review at the following offices: USDA Forest Service, Recreation, South Building, 12th and Independence Avenues SW., Washington, DC 20250; Pacific Northwest Regional Office, 319 SW Pine, Portland, OR 97208; Columbia River Gorge National Scenic Area, 902 Wasco Avenue, Suite 200, Hood River, OR 97031; Gifford Pinchot National Forest, 500 W. 12th Street, Vancouver, WA 98660; and Mt. Adams Ranger District, Trout Lake, WA 98650.

The Columbia River Gorge National Scenic Area Act (Pub. L. 99–663) of November 17, 1986, designated the lower White Salmon River, Washington, as a National Scenic River, to be administered by the Secretary of Agriculture. A notice in the **Federal Register** dated November 9, 1987 (52 FR 43094) announced that the Forest Service had delineated river corridor boundaries for the White Salmon River as required by the Wild and Scenic Rivers Act. The final decision on delineation of river corridor boundaries, based on an Environmental Assessment and the provision that the boundaries would be addressed in the Final Environmental Impact Statement, was signed on February 24, 1989 by Arthur DuFault, National Scenic Area Manager. Unless changed by Congress, the boundary decision will be implemented ninety days after Congress receives this transmittal.

Dated: January 11, 1990.

Arthur W. DuFault,
National Scenic Area Manager.

[FR Doc. 90–1724 Filed 1–24–90; 8:45 am]
BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Alabama Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Alabama Advisory Committee to the Commission will convene at 2 p.m. and adjourn at 4:30 p.m., on February 6, 1990, at the Federal Building Court House, 1800 5th Avenue North, Room 448, Birmingham, Alabama 35203. The purpose of the meeting is to plan for future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, William Barnard, or William F. Muldrow, Civil Rights Analyst of the Central Regional Division (816) 426–5253, (TDD 816–426–5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, January 9, 1990.

Melvin L. Jenkins,
Acting Staff Director.

[FR Doc. 90–1672 Filed 1–24–90; 8:45 am]
BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Agency Information Collection Under the Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Institute of Standards and Technology (NIST).

Title: NIST Manufacturing Technology Centers.

Form Number: Agency—N/A; OMB—0693–0005.

Type of Request: Reinstatement of a previously approved collection.

Burden: 20 respondents; 800 burden hours. Average hours per response—40 hours.

Needs and Uses: Under the authority of the Omnibus Trade and Competitiveness Act, NIST is establishing Regional Centers for the transfer of manufacturing technology. The objective of the Centers is to enhance productivity and technological performance in U.S. manufacturing businesses. NIST will be soliciting applications from nonprofit institutions to develop and operate Centers. Information provided by applicants will be used by NIST to award "cooperative agreements."

Affected Public: Non-profit institutions.

Frequency: One-time application.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Robert Veeder, 395–3785.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Robert Veeder, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

Dated: January 18, 1990.

Gerald J. Tache,

Chief, Management Support Division, Office of Management and Organization

[FR Doc. 90–1721 Filed 1–24–90; 8:45 am]

BILLING CODE 3510-CW-M

Changes in Organization and Functions During Calendar Year 1989

AGENCY: Office of the Secretary, Department of Commerce.

SUMMARY: Following is a summary of Department of Commerce officials and units affected by major changes in authority, title, function, or structure during the past calendar year. Specific information on each action can be obtained by requesting a copy of the applicable Department Organization Order (DOO), also listed below.

Department Officials

Under Secretary for Technology

DOO 10–17, 1/6/89
DOO 10–17, Amendment 1, 9/7/89
DOO 10–17, Amendment 2, 12/4/89

Under Secretary for International Trade:

DOO 10–3, Amendment 3, 8/9/89

Under Secretary for Oceans and Atmosphere and Administrator or the National Oceanic and Atmospheric Administration:

DOO 10–15, Amendment 1, 9/15/89
DOO 10–15, Amendment 2, 11/7/89

Assistant Secretary for Administration:

DOO 10–5, Amendment 9, 1/19/89
DOO 10–5, Amendment 10, 2/6/89
DOO 10–5, Amendment 11, 2/9/89

Assistant Secretary for Communications and Information:

DOO 10–10, Amendment 3, 12/4/89

Inspector General:

DOO 10–13, Amendment 4, 12/8/89

Units Within the Office of the Secretary

Office of Inspector General:

DOO 23–1, Revision, 12/8/89

Units Within the Office of the Assistant Secretary for Administration

Office of Information Systems:

DOO 20–20 Revision, 12/28/89

Operating Units

National Oceanic and Atmospheric Administration:

DOO 25–5, Revision, 3/3/89
DOO 25–5, Amendment 1, 9/15/89

Bureau of the Census:

DOO 35–2B, Amendment 2, 3/6/89

United States Travel and Tourism Administration:

DOO 25–1, Amendment 3, 6/12/89

Patent and Trademark Office:

DOO 130–3, Amendment 6, 10/3/89

Bureau of Economic Analysis:

DOO 35–1B, Revision, 6/22/89

International Trade Administration:

DOO 40–1, Amendment 2, 8/9/89

National Institute of Standards and Technlolgy:

DOO 30–2A, Revision, 10/3/89
DOO 30–2B, Revision, 10/3/89

National Technical Information Service:

DOO 30–7A, Revision, 10/6/89
DOO 30–7B, Revision, 10/6/89

FOR FURTHER INFORMATION CONTACT: Robert L. Ingram, Office of Management and Organization, Department of Commerce, room 5317, Washington DC 20230, Telephone (202) 377–5481.

Stephen C. Browning,

Acting Director, Office of Management and Organization

[FR Doc. 90–1674 Filed 1–24–90; 8:45 am]

BILLING CODE 3510-DK-M

International Trade Administration

[App. No. 85-2A018]

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of issuance of an amended export trade certificate of review.

SUMMARY: The Secretary of Commerce has issued an amended Export Trade Certificate of Review to the U.S. Shippers Association ("USSA") on January 16, 1990. The original Certificate was issued on June 3, 1986. Notice of issuance of the original Certificate was published in the Federal Register on June 9, 1986 (51 FR 20873).

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 (15 U.S.C. 4011–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing title III are found at 15 CFR part 325 (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Secretary of Commerce to publish a summary of a Certificate in the Federal Register. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in

any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

USSA's Certificate has been amended to include the following changes:

1. Each of the following companies has been added as a "Member" within the meaning of § 325.2(l) of the Regulations (15 CFR 325.2(l)): Air Products and Chemicals Inc., Allentown, Pennsylvania; and Akzo Chemicals Inc., Chicago, Illinois.

2. The name of an existing "Member," "Stauffer Chemical Company," has been changed to "Rhone-Poulenc Basic Chemicals Co."

3. The definition of "Products" has been changed to cover "all products", making the Certificate applicable to the export of all products by USSA and its Members, on behalf of the Members or non-members.

4. The protection of the Certificate has been extended to any subsidiary of a USSA Member and to the officers, directors and employees of such subsidiaries. "Subsidiary" means a company wholly owned, directly or indirectly, by one of the Members.

Pursuant to section 304(a)(2) of the ETC Act, 15 U.S.C. 4014(a)(2), and 15 CFR 325.7, the amended Certificate is effective from October 18, 1989, the date on which the application for an amendment was deemed submitted.

A copy of the amended Certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

Dated: January 17, 1990.

Douglas J. Aller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 90-1638 Filed 1-24-90; 8:45 am]

BILLING CODE 3510-DR-M

COMMISSION OF FINE ARTS

Meeting

The Commission of Fine Arts' next scheduled meeting is Thursday, 15 February 1990 at 10 a.m. at the Commission's offices at 708 Jackson Place NW., Washington, DC 20006 to discuss various projects affecting the appearance of Washington, DC, including buildings, memorials, parks, etc.; also matters of design referred by other agencies of the government. Handicapped persons should call the offices (566-1066) for details concerning access to meetings.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Mr. Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call the above number.

Dated in Washington, DC 18 January 1990.

Charles H. Atherton,

Secretary.

[FR Doc. 90-1673 Filed 1-24-90; 8:45 am]

BILLING CODE 6330-01-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Bilateral Consultations With the Government of Thailand on Cotton Carded Yarn

January 19, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on categories on which consultations have been requested, call (202) 377-3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On December 29, 1989, under the terms of Article 3 of the Arrangement Regarding International Trade in Textiles, the Government of the United States requested consultations with the Government of Thailand regarding Category 300pt. (singles and multiples of 85% or more cotton carded yarn), produced or manufactured in Thailand.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations with Thailand, the Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for consumption of cotton carded yarn in Category 300pt., produced or manufactured in Thailand and exported during the twelve-month period which began on December 29, 1989 and extends through December 28, 1990 at a level of 3,048,630 kilograms.

A summary market statement concerning this category follows this notice.

Anyone wishing to comment or provide data or infomation regarding the treatment of Category 300pt., or to comment on domestic production or availability of products included in this category, is invited to submit 10 copies of such comments or information to Auggie D. Tantillo, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exception contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning Category 300pt. Should such a solution be reached in consultations with the Government of Thailand, further notice will be published in the **Federal Register.**

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989).

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Thailand—Market Statement

Category 300 pt.—85 Percent or More Cotton Carded Yarn, Singles and Multiples

December 1989.

Import Situation and Conclusion

U.S. imports of 85 percent or more cotton, carded yarn, singles and multiples—category 300 part—from Thailand reached 4,355,002 kilograms in the year ending October 1989, 67 percent above the 2,614,841 kilograms imported a year earlier. During the first 10 months of 1989, Thailand shipped 4,054,148 kilograms, 94 percent above their January-October 1988 level and 70 percent above their total calendar year 1988 level. During the first nine months of 1989, imports from Thailand

averaged 294,422 kilograms per month. In October 1989 imports were 1,404,348 kilograms nearly five times the average of the previous nine months. Based on trade publication information, this high level of imports has been maintained in November. In the year ending October 1989, Thailand was the largest supplier, accounting for 20 percent of total imports.

The sharp and substantial increase of category 300 part imports from Thailand is disrupting the U.S. market for 85 percent or more cotton carded yarn.

Import Penetration and Market Share

U.S. production of cotton carded yarns declined nine percent in 1988. Production began to recover slightly in 1989, up three percent through the first nine months. Imports on the other hand increased 11 percent in the first nine months of 1989 over the same period in 1988 and then surged in October, resulting in a 25 percent increase for the first 10 months of 1989 over the January-October 1988 period. The U.S. producers' share of the cotton carded market was 80 percent in January-September 1989. As a result of the surge in imports in October and reportedly in November the domestic producers' share of the cotton carded yarn market is expected to be two or three percentage points lower for the year.

Thailand accounted for a disproportionate share of the increase in imports, accounting for over 50 percent of the January-October 1989 import increase.

Duty Paid Value and U.S. Producers' Price

Approximately 76 percent of Category 300 part imports from Thailand during January-October 1989 entered under HTS number 5205.12.1000—cotton yarn (other than sewing thread) containing 85 percent or more by weight of cotton, not put up for retail sale, single yarn of uncombed fibers: Exceeding 14 nm but not exceeding 43 nm, unbleached, not mercerized.

[FR Doc. 90–1637 Filed 1–24–90; 8:45 am]

BILLING CODE 3510-25-M

DEPARTMENT OF DEFENSE

Department of the Army

Open Meeting of the Army Advisory Panel on ROTC Affairs

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Panel meeting:

Name of Panel: Army Advisory Panel on ROTC Affairs.

Date of Meeting: February 21, 1990.

Place: Duquesne University, Pittsburgh, PA.

Time: 8 a.m.–5 p.m.

Proposed Agenda: The meeting will consist of briefings and discussions. The meeting is open to the public. Any interested person may appear before or file a statement with the Panel at the time, and in the manner, permitted by the Panel. It is projected that the following events will take place during the meeting. After opening remarks by Major General Robert E. Wagner and the chairman of the Panel, Dr. Anthony F. Ceddia, any administrative matters requiring attention will be resolved. The meeting will then proceed with a variety of recent ROTC Cadet Command initiatives. Major General Wagner will provide an overview of the significant changes since the June 1989 meeting at Fort Bragg, NC. Briefings on February 21 will include updates on Scholarships, Advertising Strategy, Marketing Operation Citizen Soldier, Spring Gold, Green to Gold, Campus, Cadet Professional Development Training, the High School Program and the Hispanic Task Force. On February 22 the Army Advisory Panel on ROTC Affairs will visit Pittsburgh area ROTC battalions and observe cadets enrolled in Military Science Classes.

For Additional Information: Commander, United States Army ROTC Cadet Command, ATTN: Director of Training, Fort Monroe, Virginia 23651–5000.

Kenneth L. Denton,

Alternate Army Liaison Officer With the Federal Register.

[FR Doc. 90–1676 Filed 1–24–90; 8:45 am]

BILLING CODE 3710-08-M

Intent To Grant an Exclusive Patent License to Defense Research Technologies, Inc.

The Department of the Army's Harry Diamond Laboratories announces its intention to grant an exclusive license to Defense Research Technologies, Inc., having a place of business at 354 Hungerford Drive, Rockville, MD 20850 under the following U.S. Patents:

Patent No.	Title
4,276,943	Fluidic Pulser.
4,291,395	Fluidic Oscillator.
4,323,991	Fluidic Mud Pulser.
4,391,299	Electro Fluidic Actuator.
4,418,721	Fluidic Valve & Pulsing Device.
4,557,295	Fluidic Mud Pulse Telemetry Transmitter.

The proposed exclusive license will comply with the terms and conditions of 35 U.S.C. 209 and the Department of Commerce's regulations at 37 CFR 404.7. The proposed license may be granted unless, within 60 days from the date of this notice, the U.S. Army's Harry Diamond Laboratories receives written evidence and argument which establishes that the grant of the proposed license would not serve the public interest. All comments and materials must be submitted to: Mr. George Gillespie, harry Diamond Laboratories, ATTN: SLCHD–PO–P, 2800 Powder Mill Rd., Adelphi, MD 20783–1197.

For further information concerning this notice, please contact: George Gillespie, Harry Diamond Laboratories, 2800 Powder Mill Rd., Adelphi, MD 20783–1197, Telephone No. (301) 394–1551.

Kenneth L. Denton,

Alternated Army Liaison Officer With the Federal Register.

[FR Doc. 90–1677 Filed 1–24–90; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board, Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Reading Committee of the National Assessment Governing Board. This notice also describes the functions of the Board. 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: Wednesday, February 7, 1990.

Time: 1:00 p.m. until adjournment.

Place: 1100 L Street NW., Washington, DC, Conference Room 12126.

FOR FURTHER INFORMATION CONTACT: Roy Truby, Executive Director, National Assessment Governing Board, Suite 7322, 1100 L Street NW., Washington, DC, 20005–4013, Telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 406(i) of the General Education Provisions Act (GEPA) as amended by section 3403 of the National Assessment of Educational Progress Improvement Act (NAEP Improvement Act), title III–C of the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100–297), (20 U.S.C. 1221e–1).

The Board is established to advise the Commissioner of the National Center for Education Statistics on policies and actions needed to improve the form and use of the National Assessment of Educational Progress, and develop specifications for the design, methodology, analysis and reporting of test results. The Board also is responsible for selecting subject areas to be assessed, identifying the objectives for each age and grade tested, and establishing standards and procedures for interstate and national comparisons. The Reading Committee of the National Assessment Governing Board will meet on Wednesday, February 7, 1990 1:00

p.m. until the completion of business. The purpose of this meeting is to review Reading Test and Item Specifications.

Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite 7322, 1100 L Street NW., Washington, DC from 8:30 a.m. to 5:00 p.m., Monday through Friday.

Christopher T. Cross,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 90-1702 Filed 1-24-90; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Financial Assistance Award to Hague International; Research Cooperative Agreement

AGENCY: U.S. Department of Energy (DOE), Morgantown Energy Technology Center.

ACTION: Notice of Acceptance of an unsolicitated financial assistance application for a research cooperative agreement.

SUMMARY: The DOE, Morgantown Energy Technology Center, in accordance with 10 CFR 600.14(e)(1)(ii), gives notice of its plans to award a 30-month Research Cooperative Agreement to Hague International, South Portland, Maine, in the amount of $4,000,003.

The pending award is based on an unsolicited application for a research project entitled "High Pressure, Coal Fired Ceramic Air Heater for Gas Turbine Applications." The research will attempt to establish suitable design technology for a high-pressure ceramic heat exchanger, for use as an air heater in a promising coal-fueled, exhaust-fired gas turbine cycle.

The proposed project will benefit the public by accelerating the commercialization of coal-fueled exhaust-fired gas turbine technology, as well as technology spinoffs which may accrue to ceramic barrier environments. Commercial power plants incorporating coal-fired ceramic air heaters in exhaust-fired gas turbine power systems have the potential to produce electricity at lower cost and with less environmental emissions than conventual pulverized coal power plants, without the coal-water slurry fuel supply infrastructure system required by direct-fired systems.

FOR FURTHER INFORMATION CONTACT: Raymond R. Jarr, 107, U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, West Virginia 26507-0880, Telephone: (304) 291-4088, Procurement Request No. 21-90MC26008.000.

Dated: January 19, 1990.

Louie L. Calaway,

Director, Acquisition & Assistance Division, Morgantown Energy Technology Center.

[FR Doc. 90-1714 Filed 1-24-90; 8:45 am]

BILLING CODE 6450-01-M

Assistant Secretary for International Affairs and Energy Emergencies

Proposed Subsequent Arrangement; Switzerland

Pursuant to section 131 of the Atomic Energy Act of 1954, as mended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation Between the Government of the United States of America and the Government of Switzerland Concerning Civil Uses of Atomic Energy, as amended.

This subsequent arrangement would give approval, which must be obtained under the above-mentioned agreements, for the following transfer of special nuclear materials of United States origin, or of special nuclear materials produced through the use of materials of United States origin, as follows:

Switzerland to France for the purpose of reprocessing, 36 irradiated fuel assemblies, containing approximately 6,348 kilograms of uranium, enriched to approximately 0.82% in U-235 and 54 kilograms of plutonium, from the Muhleberg nuclear power station. This subsequent arrangement is designated as RTD/EU(SD)-73. The Department of Energy has received letters of assurance from the Government of Switzerland that the recovered uranium and plutonium will be stored in France, and will not be transferred from France, nor put to any use, without the prior consent of the United States Government.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice and after fifteen days of continuous session of the Congress, beginning the day after the date on which the reports required by section 131(b)(1) of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), are submitted to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate. The two time periods referred to above shall run concurrently.

Dated: January 17, 1990.

Thad Grundy, Jr.,

Deputy Assistant Secretary for International Affairs.

[FR Doc. 90-1656 Filed 1-24-90; 8:45 am]

BILLING CODE 6450-01-M

Proposed Subsequent Arrangement; Switzerland

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of Switzerland concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreements involves the transfer of 150 kilograms of plutonium from France to Belgonucleaire, Dessel, Belgium, for fabrication of mixed uranium-plutonium oxide fuel and subsequent retransfer of the fuel to Switzerland for use in a demonstration program at the Beznau power reactor. Retransfer document RTD/SD(EU)-54 has been assigned to this retransfer.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice and after fifteen days of continuous session of the Congress, beginning the day after the date on which the reports required by section 131(b)(1) of the Atomic Energy Act of

1954, as amended (42 U.S.C. 2160), are submitted to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate. The two time periods referred to above may run concurrently.

For the Department of Energy.

Dated: January 17, 1990.

Thad Grundy, Jr.,

Deputy Assistant Secretary for International Affairs.

[FR Doc. 90-1657 Filed 1-24-90; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ST89-2196-001 and ST89-2418-001]

Brooklyn Union Gas Co.; Extension Reports

January 18, 1990.

The company listed below filed extension reports pursuant to section 311 of the Natural Gas Policy Act of 1978 (NGPA) and part 284 of the Commission's regulations giving notice of its intention to continue sales of natural gas for an additional term of up to 2 years.[1]

The table below lists the name and address of the company selling pursuant to part 284; the party receiving the gas; the date the extension report was filed; and the effective date of the extension. A "D" indicates a sale by an intrastate pipeline extended under § 284.146.

Lois D. Cashell,

Secretary.

[1] Notice of this extension report does not constitute a determination that a continuation of service will be approved.

EXTENSION LIST

[Dec. 29, 1989, and Jan. 8, 1990]

Docket No.	Seller	Recipient	Date Filed	Part 284 Subpart	Effective Date	Expiration Date [2]
ST89-2196-001 [1]	Brooklyn Union Gas Co., The Brooklyn Union Gas Co., 195 Montague St., Brooklyn, NY 11201.	Clinton Newberry Natural Gas Authority	12-29-89	D	10-28-89	03-29-90
ST89-2418-001 [1]	Brooklyn Union Gas Co., The Brooklyn Union Gas Co., 195 Montague St., Brooklyn, NY 11201.	Piedmont Natural Gas Co	01-08-90	D	11-30-89	04-08-90

[1] This extension report was filed after the date specified by the Commission's Regulations, and shall be the subject of a further Commission order.
[2] The pipeline has sought Commission approval of the extension of this transaciton. The 90-day Commission review period expires on the date indicated.

[FR Doc. 90-1650 Filed 1-24-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-3-32-001]

Colorado Interstate Gas Co.; Proposed Changes in Tariff Sheets

January 18, 1990.

Take notice that on January 10, 1990, Colorado Interstate Gas Company (CIG) filed with the Federal Energy Regulatory Commission (Commission) First Revised Sheet No. 7.1 of its FERC Gas Tariff, Original Volume No. 1. CIG states that First Revised Sheet No. 7.1 was filed as superseding Original Sheet No. 7, rather than Original Sheet No. 7.1.

CIG states that the substitute tariff sheets reflect CIG's quarterly PGA change and the subject GRI change effective January 1, 1990. CIG's also states that there is no rate impact.

CIG states that the filing has been served upon CIG's jurisdictional customers and public bodies.

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 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211 (1989). All such protests should be filed on or before January 26, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. 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. 90-1644 Filed 1-24-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA90-1-2-001]

East Tennessee Natural Gas Co.; Rate Filing Pursuant to Tariff Rate Adjustment Provisions

January 18, 1990.

Take notice that on January 12, 1990, East Tennessee Natural Gas Company (East Tennessee) filed Substitute Fifty-Fifth Revised Sheet No. 4 to its FERC gas tariff to be effective January 1, 1990. The purpose of this filing was to comply with the Commission order dated December 29, 1989, which directed East Tennessee to refile its exchange report and to recalculate the Account No. 191 balance upon which East Tennessee's surcharge was calculated.

East Tennessee states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before January 26, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person withing to become a party must file a motion to intervene; provided, however, that any person who had previously filed a motion to intervene in this proceeding is not required to file a further motion. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-1645 Filed 1-24-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CI82-257-001 and CI82-360-000]

Enron Gas Processing Co. (Successor to Northern Gas Products Co.); Redesignation

January 18, 1990.

Take notice that on February 9, 1989, Enron Gas Processing Company of P.O. Box 1188, Houston, Texas 77251-1188, filed an application pursuant to section 7(c) of the Natural Gas Act and § 154.92(d) of the Federal Energy Regulatory Commission's (Commission) regulations thereunder to amend the certificates of public convenience and necessity previously issued to Northern Gas Products Company authorizing sales of natural gas to Northern Natural Gas Company, Division of Enron Corp. to reflect the change in corporate name to Enron Gas Processing Company and to redesignate Northern Gas Products Company's related rate schedules, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Effective June 9, 1986, the corporate name of Northern Gas Products Company was changed to Enron Gas Processing Company as evidenced by a Certificate of Amendment of Certificate of Incorporation dated June 9, 1986.

Notice is hereby given that Northern Gas Products Company's certificates in Docket Nos. CI82-257-000 and CI82-360-000 and related FERC Gas Rate Schedule Nos. 1 and 2 are hereby redesignated to reflect the corporate name change from Northern Gas Products Company to Enron Gas Processing Company.

Lois D. Cashell,

Secretary.

[FR Doc. 90-1651 Filed 1-24-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ90-2-24-001]

Equitrans, Inc.; Proposed Change in FERC Gas Tariff

January 18, 1990.

Take notice that Equitrans, Inc. (Equitrans) on January 10, 1990 tendered for filing with the Federal Energy Regulatory Commission (Commission) the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1, effective December 8, 1989.

Substitute First Revised Twelfth Revised Sheet No. 14

Equitrans states that the foregoing tariff sheets are being filed in compliance with the Commission's Letter Order issued on January 3, 1990 in Docket No. TQ90-2-24-000. The Order directed Equitrans to refile its Tariff Sheet No. 14 to reflect the correct current adjustment and Schedule D1 working papers which support the adjustment.

Equitrans states that a copy of its filing has been served upon its purchasers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before January 26, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any persons wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary

[FR Doc. 90-1646 Filed 1-24-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ90-3-51-001]

Great Lakes Gas Transmission Co.; Proposed Changes in Tariff Sheets

January 18, 1990.

Take notice that on January 12, 1990, Great Lakes Gas Transmission Company (Great Lakes) filed with the Federal Energy Regulatory Commission (Commission) First/Twentieth Revised Sheet No. 4 to its FERC Gas Tariff, First Revised Volume No. 1.

Great Lakes states that on December 22, 1989, it filed certain tariff sheets to reflect the elimination of Peoples Natural Gas Company as a sales customer under Rate Schedule G-3, the implementation of a transportation service for Peoples under a new Rate Schedule T-17 and the elimination of Rate Schedule G from Great Lakes FERC Gas Tariff, First Revised Volume No. 1. Great Lakes states that Twenty-Second Revised Sheet No. 4, First Revised Volume No. 1 should have been identified as First Revised Twentieth Revised Sheet No. 4.

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 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1989)). All such protests should be filed on or before January 26, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. 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. 90-1647 Filed 1-24-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. OR90-1-000]

Kuparuk Transportation Co.; Complaint and Petition for Investigation

January 18, 1990.

Take notice that on December 29, 1989, the State of Alaska (Alaska), pursuant to sections 13 and 16 of the Interstate Commerce Act, 49 U.S.C. 13, 16 and Rules 206 and 207 of the Commission's Rules of Practice, 18 CFR 285.206 and 385.207, filed a complaint for relief from the tarriff rate charged by Kuparuk Transportation Company (KTC) during the period from January 1, 1988 to the present.

Alaska states that KTC's initial and subsequently changed tariff rates were placed under investigation following a complaint and protest by Alaska in Docket No. IS85-9-000. After hearing and briefing, an administrative law judge issued an initial decision in October, 1988, which is now pending before the Commission. Alaska states that under the Interstate Commerce Act, any person may file a complaint and seek monetary damages up to two years prior to the date of the complaint. 49 U.S.C. 13, 16. By filing this complaint, Alaska states that KTC's tariff collections for the period beginning January 1, 1988 are subject to challenge. Those collections reflect a rate of 61 cents per barrel for the entire two-year period since that date.

Alaska states that while it is not a shipper over the Kuparuk pipeline, its interests are identical to those of present and future independent shippers. Alaska is seeking assurance that KTC's tariff rate will be limited to a level that is truly "just and reasonable"—a level that provides KTC with an adequate, but not excessive, return on its investment.

Alaska states that KTC's 1988 and 1989 tariffs should be substantially less

than whatever is found to be the just and reasonable 1986 tariff level.

Alaska requests an investigation but does not want a hearing until after the issuance of a Commission opinion on the initial decision. Alaska requests that, pending issuance of that opinion, it be permitted to conduct discovery relating to throughput, property changes and operating expenses covering the years 1988, 1989 and 1990.

Any person desiring to be heard or to protest said complaint should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure [18 CFR 385.214, 385.211 (1989)]. All such motions or protests should be filed on or before February 20, 1990. Protest will be considered by the Commission in determing the appropriate action to be taken, but will not serve to amke protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. Answers to this complaint shall be due on or before February 20, 1990.

Lois D. Cashell,

Secretary.

[FR Doc. 90-1649 Filed 1-24-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-50-002]

Northwest Pipeline Corp.; Proposed Change in FERC Gas Tariff

January 18, 1990.

Take notice that on January 11, 1990, Northwest Pipeline Corporation ("Northwest") tendered for filing an acceptance the following tariff sheets.

First Revised Volume No. 1

Sixtieth Revised Sheet No. 10
Thirty-Fourth Revised Sheet No. 10-A

Original Volume No. 1-A

Twenty-Fourth Revised Sheet No. 201

Original Volume No. 2

Thirteenth Revised Sheet No. 2.3

Northwest states that the purpose of this filing is to restate the quarterly SSP surcharge effective January 1, 1990 in accordance with the directives set forth in the Commission's December 29, 1989 order, issued in the above docket. The instant filing also incorporates Northwest's settlement rates along with Northwest's most recent quarterly purchased gas cost adjustment, both having received Commission approval.

Northwest requests waiver of the Commission's regulations to permit an effective date of January 1, 1990. A copy of this filing is being mailed to all parties of record in Docket No. RP88-47 and on all jurisdictional customers and affected state commissions.

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 §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before January 25, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. 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. 90-1648 Filed 1-24-90; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 89-72-NG]

Poco Petroleum, Inc.; Order Granting Blanket Authorization To Import Natural Gas

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of an order granting blanket authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice that it has issued an order granting Poco Petroleum, Inc. blanket authorization to import from Canada up to 150 Bcf of Canadian natural gas over a two-year period beginning on January 21, 1990 and ending January 20, 1992.

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 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal Holidays.

Issued in Washington, DC, January 19, 1990.

Michael R. McElwrath,

Acting Assistant Secretary, Fossil Energy.

[FR Doc. 90-1713 Filed 1-24-90; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-00285; FRL-3707-6]

State FIFRA Issues Research and Evaluation Group (SFIREG) Working Committee On Ground Water Protection and Pesticide Disposal; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The State FIFRA Issues Research and Evaluation Group (SFIREG) Working Committee on Ground Water Protection and Pesticide Disposal will hold a 2-day meeting, beginning on February 8, 1990 and ending on February 9, 1990. This notice announces the location and times for the meeting and sets forth tentative agenda topics. The meeting is open to the public.

DATES: The SFIREG Working Committee will meet on Thursday, February 8, 1990 from 8:30 a.m. to 5 p.m. and on Friday, February 9, 1990 beginning at 8:30 a.m. and adjourning at approximately 2 p.m.

ADDRESS: The meeting will be held at: Hyatt Regency—Crystal City, 2799 Jefferson Davis Highway, Arlington, VA 22202, (703) 486-1234.

FOR FURTHER INFORMATION CONTACT:

By mail: Arty Williams, Office of Pesticide Programs (H7506C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 1007, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 557-3401.

SUPPLEMENTARY INFORMATION: The tentative agenda includes the following topics:

1. Ground water survey status report.
2. Agricultural chemicals in ground water strategy.
3. Ground water State management plan guidance.
4. Ground water data elements and definitions.
5. Ground water activities within the States.
6. Pesticide and container disposal issues.
7. Other topics as appropriate.

Dated: January 18, 1990.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 90-1711; Filed 1-24-90; 8:45 am]

BILLING CODE 6560-50-D

[FRL 3706-5]

Revision of Washington's National Pollutant Discharge Elimination System (NPDES) Program Memorandum of Agreement

AGENCY: Environmental Protection Agency.

ACTION: Notice of approval of Washington's Revised NPDES Memorandum of Agreement.

SUMMARY: On January 9, 1990, the Regional Administrator approved Revision of Washington's NPDES Program Memorandum of Agreement (MOA). The MOA serves to outline respective program responsibilities of EPA and the state. Document revision ensures continuing validity of EPA's approval of Washington's NPDES program.

FOR FURTHER INFORMATION CONTACT: Ms. Andi Manzo, Environmental Protection Agency, 1200 Sixth Avenue, WD-134, Seattle, Washington 98101.

SUPPLEMENTARY INFORMATION: The original MOA for the National Pollutant Discharge Elimination System was entered into by EPA and Ecology on November 9, 1973. Ecology has been carrying out the NPDES program as a delegated State for the past 16 years.

Washington's MOA has been updated to reflect recent changes in the Federal Clean Water Act (CWA) and 40 CFR parts 122 through 125. This MOA includes a new section (section XIV) addressing Indian issues, which makes clear that EPA is not delegating authority over Indian lands to the State of Washington.

Additionally, the NPDES Program Description for the State of Washington was updated to reflect the revised MOA. Day to day operations under this MOA are delineated in a compliance assurance agreement.

EPA determined that the state's submittal was complete and, as required under CFR 123.62, issued 30-day public notice of the proposed MOA revision. No comments were received during the public comment period. Based upon the contents of the submittal and upon meeting the requirements of 40 CFR part 123, EPA has approved the modification.

Review Under Executive Order 12291 and the Regulatory Flexibility Act

The Office of Management and Budget has exempted this rule from the review requirements of Executive Order 12291 pursuant to section 8(b) of that Order.

Under the Regulatory Flexibility Act, EPA is required to prepare a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. Revision of Washington's MOA establishes no new substantive requirements, nor does it alter the regulatory control over any municipal or industrial category. Because this notice does not have a significant impact on a substantial number of small entities, a Regulatory Flexibility Analysis is not necessary.

Dated: January 9, 1990.

Robie G. Russell,

Regional Administrator, EPA Region 10.

[FR Doc. 90-1281 Filed 1-24-90; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 87-339, FCC 89-336]

Establishment of a Program To Monitor the Impact of Joint Board Decisions

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Commission adopted the Common Carrier Bureau's prescribed reporting format that all carriers must use when filing jurisdictional revenue requirements shifts that are five percent or greater.

EFFECTIVE DATE: January 25, 1990.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Michael Wilson, Accounting and Audits division, Common Carrier Bureau, at (202) 632-7500.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order, CC Docket 87-339, FCC 89-336, adopted December 5, 1989, and released December 26, 1989.

The complete test of this Order 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 Order may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street NW., Suite 140, Washington, DC 20037, (202) 857-3800.

Summary of Memorandum Opinion and Order

In this Order the Commission requires Tier 1 carriers that experience a shift in their jurisdictional revenue requirement of 5 percent or greater to file a report prescribed by the Commission that shows the impact of this shift. This Order also allows other carriers experiencing shifts in their jurisdictional revenue requirement of 5 percent or greater to file reports on an optional basis. These reports are due 30 days after the release of the Order.

Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the collection of information contained in this Order. The OMB control number for this collection of information is 3060-0391, which expires September 30, 1990.

Filing Requirements

The Commission requires that all reporting carriers file the report contained in Appendix A of the Order using the instructions set forth in Appendices A and B of the Order. To facilitate the submission of the data, the Commission has provided a computer disk that contains the data request in the format of a spreadsheet file. The first page of the data request contains specific instructions for the completion of the worksheet. The Commission requires that all reporting carriers file two hard copies of the report with the Secretary of the Commission, deliver one hard copy and one diskette to the Commission's copy contractor, International Transcription Service, 2100 M Street NW., Suite 140, Washington, DC 20037, (202) 857-3800; and deliver one hard copy and one diskette to Alicia Dunnigan, Accounting and Audits Division, Common Carrier Bureau, Federal Communications Commission, 2000 L Street NW., Suite 812, Washington, DC 20554; and one hard copy to each Joint Board Commissioner and staff person listed in Appendix C of the Order.

Ordering Clauses

Accordingly, *It is ordered*, That the jurisdictional revenue requirements monitoring report is *adopted*.[1]

It is further ordered, That all Tier 1 carriers with jurisdictional shifts in total study area unseparated revenue requirements of 5 percent of greater shall file reports as specified in Appendices A, B, and C of the Order within 30 days of release of the Order.

Federal Communications Commission.

Donna R. Search,

Secretary.

[FR Doc. 90-1527 Filed 1-24-90; 8:45 am]

BILLING CODE 6712-01-M

[1] This action is taken pursuant to 47 U.S.C. 154(i) and (j), 201, 202, 203, 403, and 410.

FEDERAL TRADE COMMISSION

[File No. 901 0007]

Archer-Daniels-Midland Company, et al.; Proposed Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, ADM Milling Co., a subsidiary of Archer-Daniels-Midland Company, to divest certain wheat flour mills and to obtain FTC approval, for a period of 10 years, before acquiring any wheat flour milling assets located in the southeast portion of the United States. Respondents would also be required to comply with all the terms of the Agreement to Hold Separate.

DATES: Comments must be received on or before March 26, 1990.

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

FOR FURTHER INFORMATION CONTACT: Marc G. Schildkraut, FTC/S–3302, Washington, DC 20580. (202) 326–2622.

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)).

Agreement Containing Consent Order

The Federal Trade Commission ("the Commission"), having initiated an investigation of the proposed acquisition by ADM Milling Co., a wholly owned subsidiary of Archer-Daniels-Midland Company, (hereinafter collectively "ADM"), of certain of the assets and businesses of Dixie Portland Flour Mills, Inc., Dixie Portland of Georgia, Inc., and The White Lily Foods Company, (hereinafter collectively "Dixie Portland"), which acquisition is more fully described at paragraph 7 below, and ADM having been furnished with a copy of a draft complaint that the Bureau of Competition has presented to the Commission for its consideration and which, if issued by the Commission, would charge ADM with violations of the Clayton Act and Federal Trade Commission Act, and it now appearing that ADM is willing to enter into an agreement containing an order to divest certain assets and to cease and desist from certain acts:

It is hereby agreed by and between ADM, by its duly authorized officers, and counsel for the Commission that:

1. Proposed respondent Archer-Daniels-Midland Company is a corporation organized under the laws of Delaware, with its principal office and place of business located at 4666 Faries Parkway, Decatur, Illinois 62525.

2. Proposed respondent ADM Milling Co. is a corporation organized and existing under the laws of Minnesota with its principal place of business at Suite 300, 4501 College Blvd., Leawood, Kansas 66211.

3. Dixie Portland Flour Mills, Inc., is a corporation organized under the laws of Tennessee with its principal office and place of business located at 1755–D Lynnfield Road, Suite 107, Memphis, Tennessee 38119.

4. Dixie Portland of Georgia, Inc., is a corporation organized and existing under the laws of Georgia, with its principal office and place of business located at Old Milner Road, Milner, Georgia 30257.

5. The White Lilly Foods Company is a corporation organized and existing under the laws of Delware, with its principal office and place of business located at 218 Depot Avenue, Knoxville, Tennessee 37917.

6. ADM admits all the jurisdictional facts set forth in the attached draft of complaint.

7. On September 25, 1989, ADM entered into an Asset Purchase Agreement which contemplates the acquisition of certain assets and businesses of Dixie Portland (hereinafter the "Acquisition").

8. ADM 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 challenge or contest the validity of the order entered pursuant to this agreement; and

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

9. This agreement shall not become a part of the public record of the proceeing unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify ADM, 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.

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

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

12. ADM has read the draft of complaint and Order contemplated hereby. ADM 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. ADM 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—I.

As used in this Order, the following definitions shall apply:

(A) *"Acquisition"* means the Asset Purchase Agreement entered into on September 25, 1989, in which ADM and Dixie Portland agreed that ADM will acquire certain of the assets and businesses of Dixie Portland.

(B) *"ADM"* means Archer-Daniels-Midland Company and ADM Milling Co., their predecessors, subsidiaries, divisions, groups and affiliates (including the Assets and Businesses of Dixie Portland as hereinafter defined) controlled by Archer-Daniels-Midland Company or ADM Milling Co., and their respective directors, officers, employees, agents, and representatives, and their respective successors and assigns.

(C) *"Properties to be Divested"* means the Assets and Businesses of the wheat flour mills currently owned by Dixie Portland in Milner, Georgia, and in Knoxville, Tennessee.

(D) *"Assets and Businesses"* include but are not limited to all assets, properties, business and goodwill, tangible and intangible, utilized in the transportation, production, distribution or sale of wheat flour or its raw materials that ADM will acquire from Dixie Portland, including, without limitation, the following:

1. All machinery, fixtures, equipment, vehicles, transportation facilities, furniture, tools and other tangible personal property;

2. All customer lists, vendor lists, catalogs, sales promotion literature, advertising materials, research materials, technical information, management information systems, software, inventions, trade secrets, technology, know-how, specifications, designs, drawings, processes and quality control data;

3. Inventory and storage capacity;

4. All right, title and interest in and to owned or leased real property, together with appurtenances, licenses and permits;

5. All right, title and interest in and to the contracts entered into in the ordinary course of business with customers (together with associated bid and performance bonds), suppliers, sales representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, consignors and consignees;

6. All rights under warranties and guarantees, express or implied;

7. All books, records and files; and

8. All items of prepaid expense.

(E) *"Commission"* means the Federal Trade Commission.

(F) *"Dixie Portland"* means Dixie Portland Flour Mills, Inc., Dixie Portland of Georgia, Inc., and The White Lily Foods Company, their predecessors, subsidiaries, (other than Rustco Products, Co.) divisions, groups and affiliates controlled by Dixie Portland Flour Mills, Inc., Dixie Portland of Georgia, Inc., or The White Lily Foods Company and their respective directors, officers, employees, agents, and representatives, and their respective successors and assigns.

(G) *"Remaining Properties to be Divested"* means the Properties to be Divested. Provided, however, if ADM has divested, after receiving Commission approval, the Assets and Businesses of one of the wheat flour mills included in the Properties to be Divested, the Remaining Properties to be Divested shall mean only the Assets and Businesses of any one of the remaining two wheat flour mills within the Properties to be Divested.

(H) *"Southeast"* means North Carolina, South Carolina, Georgia, Alabama, Florida and that part of Tennessee east of Nashville.

(I) *"Viability and Competitiveness"* of the Properties to be Divested or the Remaining Properties to be Divested means each such property has sufficient provision for transportation, wheat storage, cleaning, grinding, and milling; is capable of operating independently at the same output as currently (at competitive prices); and is capable of having the same competitive impact as it currently has in the bulk bakery wheat flour market.

II.

It is ordered that:

(A) Within twelve (12) months of the date this Order becomes final, ADM shall divest, absolutely and in good faith, the Properties to be Divested, along with any additional Assets and Businesses of Dixie Portland and other arrangements that may be necessary to assure the Viability and Competitiveness of the Properties to be Divested. Provided, however, ADM may divest absolutely and in good faith, the Assets and Businesses of the wheat flour mills currently owned by Dixie Portland in Milner, Georgia, and in Cleveland, Tennessee, if the Commission, in its sole discretion, approves the substitute divestiture of the Assets and Businesses of such mills for the divestiture of the Properties to be Divested.

(B) ADM shall comply with all terms of the Agreement to Hold Separate, attached hereto and made a part hereof as Appendix I. Said Agreement shall continue in effect until such time as ADM has divested the Properties to be Divested or until such other time as the Agreement to Hold Separate provides.

(C) ADM shall divest the Properties to be Divested only to an acquiring entity or entities that receive the prior approval of the Commission and only in a manner that receive the prior approval of the Commission. ADM shall demonstrate the Viability and Competitiveness of the Properties to be Divested in its application for approval of a proposed divestiture. The purpose of the divestiture of the Properties to Be Divested is to ensure the continuation of the assets as ongoing, viable wheat flour mills engaged in the same businesses in which the Properties to Be Divested are presently employed and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's complaint.

(D) ADM shall take such action as is necessary to maintain the viability and marketability of the Properties to be Divested and shall not cause or permit the destruction, removal or impairment of any assets or businesses it may have to divest except in the ordinary course of business and except for ordinary wear and tear.

III.

It is further ordered, That:

(A) If ADM has not divested, absolutely and in good faith and with the Commission's approval, the Properties to be Divested within twelve (12) months of the date this Order becomes final, ADM shall consent to the appointment by the Commission of a trustee to divest the Remaining Properties to be Divested, along with any additional Assets and Businesses of Dixie Portland and other arrangements that may be necessary to assure the Viability and Competitiveness of the Remaining Properties to be Divested. *Provided, however,* if the Commission has not approved or disapproved a proposed divestiture within 120 days of the date the application for such divestiture has been put on the public record, the running of the twelve (12) month period shall be tolled until the Commission approves or disapproves the divestiture. In the event the Commission or the Attorney General brings an action pursuant to section 5(*l*) of the Federal Trade Commission Act, 15 U.S.C. 45(*l*), or any other statute enforced by the Commission, ADM shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Paragraph shall preclude the Commission from seeking civil penalties or any other relief

available to it, including a court-appointed trustee, pursuant to section 5(*l*) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by ADM to comply with this Order.

(B) If a trustee is appointed by the Commission or a court pursuant to Paragraph III.(A) of this Order, ADM shall consent to the following terms and conditions regarding the trustee's powers, authorities, duties and responsibilities:

1. The Commission shall select the trustee, subject to the consent of ADM, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures.

2. The trustee shall, subject to the prior approval of the Commission, have the exclusive power and authority to divest the Remaining Properties to be Divested, along with any additional Assets and Businesses of Dixie Portland and other arrangements that may be necessary to assure the Viability and Competitiveness of the Remaining Properties to be Divested.

3. The trustee shall have eighteen (18) months from the date of appointment to accomplish the divestiture. If, however, at the end of the eighteen-month period the trustee has submitted a plan of divestiture or believes that divestiture can be accomplished within a reasonable time, the divestiture period may be extended by the Commission. Provided, however, the Commission may only extend the divestiture period two (2) times.

4. The trustee shall have full and complete access to the personnel, books, records and facilities related to the Remaining Properties to be Divested, or any other relevant information, as the trustee may reasonably request. ADM shall develop such financial or other information as such trustee may reasonably request and shall cooperate with any reasonable request fo the trustee. ADM shall take no action to interfere with or impede the trustee's accomplishment of the divestitures. Any delays in divestiture caused by ADM shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or the court for a court-appointed trustee.

5. Subject to ADM's absolute and unconditional obligation to divest at no minimum price and the purpose of the divestiture as stated in Paragarph II.(C) of this Order, the trustee shall use his or her best efforts to negotiate the most favorable price and terms available with each acquiring entity for the divestiture of the Remaining Properties to be Divested. The divestiture shall be made in the manner set out in Paragraph II, *Provided, however,* if the trustee receives bona fide offers from more than one acquiring entity or entities, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity or entities selected by ADM from among those approved by the Commission.

6. The trustee shall serve, without bond or other security, at the cost and expense of ADM, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have authority to employ, at the cost and expense of ADM, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are reasonably necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the sale and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of ADM and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting the Remaining Properties to be Divested.

7. ADM shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, or liabilities arising in any manner out of, or in connection with, the trustee's duties under this Order.

8. Within sixty (60) days after appointment of the trustee, and subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, ADM shall execute a trust agreement that transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture required by this Order.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in Paragraph III.(A) of this Order.

10. The Commission and, in the case of a court-appointed trustee, the court may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order.

11. The trustee shall have no obligation or authority to operate or maintain the Remaining Properties to be Divested.

12. The trustee shall report in writing to ADM and to the Commission every sixty (60) days concerning the trustee's efforts to accomplish divestiture.

IV.

It is further ordered that, within sixty (60) days after the date this Order becomes final and every sixty (60) days thereafter until ADM has fully complied with the provisions of Paragraphs II and III of this Order, ADM shall submit to the Federal Trade Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying or has complied with those provisions. ADM shall include in its compliance reports, among other things that are required from time to time, a full description of substantive contacts or negotiations for the divestiture of assets or businesses specified in Paragraph II of this Order, including the identity of all parties contacted. ADM also shall include in its compliance reports copies of all written communications to and from such parties, all internal memoranda, and reports and recommendations concerning divestiture.

V.

It is further ordered that, for a period commencing on the date this Order becomes final and continuing for ten (10) years, ADM shall cease and desist from acquiring, without the prior approval of the Federal Trade Commission, directly or indirectly, through subsidiaries or otherwise, assets located in the Southeast used for or previously used for (and still suitable for use for) the production, distribution or sale of bulk bakery wheat flour. ADM shall also cease and desist from acquiring, without the prior approval of the Federal Trade Commission, directly or indirectly, through subsidiaries or otherwise, any interest in, or the stock or share capital of any entity that owns or operates assets located in the Southeast engaged in the production, distribution or sale of bulk bakery wheat flour. Provided, however, these prohibitions shall not relate to the construction of new facilities. One year from the date this Order becomes final and annually for nine years thereafter, ADM shall file with the Federal Trade Commission a verified written report of its compliance with this paragraph.

VI.

It is further ordered that, for the purposes of determining or securing compliance with this Order, and subject

to any legally recognized privilege, upon written request and on reasonable notice to ADM made to its principal office, ADM shall permit any duly authorized representatives of the Federal Trade Commission:

(A) Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of ADM relating to any matters contained in this Order; and

(B) Upon five days notice to ADM and without restraint or interference from ADM, to interview officers or employees of ADM, who may have counsel present, regarding such matters.

VII.

It is further ordered that ADM shall notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in the corporation such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation, dissolution or sale of subsidiaries or any other change that may affect compliance obligations arising out of the Order.

Analysis to Aid Public Comment on Consent Order Accepted Subject to Final Approval

The Federal Trade Commission ("Commission") has accepted for public comment from Archer-Daniels-Midland Company and ADM Milling Co. (Collectively "ADM") an agreement containing consent order. The Commission is placing the agreement on the public record for sixty (60) days for reception of comments from 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 Commission's investigation of this matter concerned ADM's proposed acquisition of the assets of Dixie Portland Flour Mills, Inc., Dixie Portland of Georgia, Inc., and The White Lily Foods Company (collectively "Dixie Portland"). Both ADM and Dixie Portland are engaged in the production and sale of bakery wheat flour.

The Commission has reason to believe that ADM's acquisition of Dixie Portland would substantially lessen competition in the production of sale of bulk bakery wheat flour in the southeastern United States, including Alabama, Florida, Georgia, North Carolina, South Carolina, and eastern Tennessee in violation of section 7 of the Clayton Act and section 5 of the Federal Trade Commission Act.

The Agreement containing Consent Order ("Order") would, if issued by the Commission, settle the complaint that alleges anticompetitive effects in the production and sale of bulk bakery wheat flour in the southeastern United States.

Under the terms of the proposed Order, ADM must divest the Dixie Portland wheat flour mills located in Milner, Georgia (sometimes described as located in Barnesville, Georgia) and in Knoxville, Tennessee ("Properties to be Divested"). However, the Commission, in its sole discretion, may approve the substitute divestiture of the Dixie Portland mills located in Milner, Georgia, and in Cleveland, Tennessee.

In addition to divesting the Milner and Knoxville mills, ADM must divest any Dixie Portland assets necessary to assure the "Viability and Competitiveness" of the mills. "Viability and Competitiveness" means that each such property has sufficient provision for transportation, wheat storage, cleaning, grinding, and milling; is capable of operating independently at the same output as currently (at competitive prices); and is capable of having the same competitive impact as it currently has in the bulk bakery wheat flour market."

The Order gives ADM twelve months to divest these assets. The divestiture shall be made only to an acquirer or acquirers that receive the prior approval of the Commission. ADM shall demonstrate the Viability and Competitiveness of the assets in its application for approval of a proposed divestiture. If ADM fails to satisfy the divestiture provisions set out in the Order, the Commission may appoint a trustee to divest the assets.

For a period of ten (10) years from its effective date, the proposed Order prohibits ADM from acquiring, without the prior approval of the Commission, assets (or stock in an entity that owns or operates assets) located in the Southeast that have been used for the production, distribution or sale of bulk bakery wheat flour.

It is anticipated that the Order would resolve the competitive problems alleged in the Complaint. The purpose of this analysis is to invite public comment concerning the Order, in order to aid the Commission in its determination of whether it should make final the Order contained in the agreement.

This analysis is not intended to constitute an official interpretation of the agreement and Order, nor is it intended to modify the terms of the agreement and Order in any way.

Donald S. Clark,

Secretary.

[FR Doc. 90-1703 Filed 1-24-90; 8:45 am]

BILLING CODE 6750-01-M

[Dkt. 9229]

Outdoor World Corporation; Proposed Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In partial 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, a membership campground promoter, based in Bushkill, Pa., to retain accurate records, for a period of 3 years, of all advertising and promotional materials containing representations regarding prize or gift offerings, and records of all prizes and gifts awarded. Respondent would also be required to notify the Commission of any proposed corporate changes.

DATES: Comments must be received on or before March 26, 1990.

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

FOR FURTHER INFORMATION CONTACT: Eileen Harrington, FTC/H-238, Washington, DC 20580. (202) 326-3127.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 3.25(f) of the Commission's Rules of Practice (16 CFR 3.25(f)), 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)).

Outdoor World Corporation, by its duly authorized officer ("respondent") and counsel for the Federal Trade Commission enter into this agreement in partial settlement of Paragraphs Six and Seven of the complaint in accordance with the Commission's rules governing

consent order procedures. The parties agree that:

1. Outdoor World Corporation is a Pennsylvania corporation with its principal office and place of business located at Route 209, Bushkill, Pennsylvania 18324.

2. Respondent has been served with a copy of the complaint issued by the Federal Trade Commission charging it with violations of section 5 of the Federal Trade Commission Act, 15 U.S.C. 45.

3. Respondent admits all the jurisdictional facts set forth in the Commission complaint in this proceeding.

4. 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.

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

6. This agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in the complaint.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 3.25(f) of the Commission's Rules, the Commission may, without further notice to respondent, (a) issue its decision containing the following order to cease and desist in disposition of the proceeding and (b) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to respondent's address as stated in this agreement shall constitute service. 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.

8. Respondent has read the complaint and order contemplated hereby. It 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. 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—I.

It is ordered that respondent, Outdoor World Corporation, a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, do forthwith cease and desist from representing, directly or by implication, to any consumer that the consumer will receive a prize, award, gift, bonus, premium, or any other good or service that is similarly described as being available at no cost, without disclosing fully, in type of equal size to that used to identify such good or service and immediately following each good or service thus represented, any cost that the consumer must pay to receive such good or service.

II.

It is further ordered that respondent, its successors and assigns shall for three years after the date the representation was last made maintain and upon request make available to the Federal Trade Commission for inspection and copying accurate records of (1) all advertising, promotional or sales materials containing representations regarding prize or gift offerings and (2) all prizes or gifts awarded pursuant to such offerings.

III.

It is further ordered that respondent shall notify the Commission at least thirty (30) days prior to any proposed change in respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other changes in the corporation which may affect compliance obligations arising out of the Order.

IV.

It is further ordered that respondent shall, within sixty (60) days after service of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has compiled with all requirements of this order.

Analysis of Proposed Consent Order to Aid Public Comment

File No. 892 3213 (JO1)

The Federal Trade Commission has accepted an agreement for a proposed consent order form Outdoor World Corporation which would settle the remainder of the case. Outdoor World Corporation is a seller and promoter of membership campgrounds. Its principal place of business is located at Route 209, Bushkill, Pennsylvania 18324.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments of 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 complaint alleges that in numerous instances, Outdoor World Corporation has made false and misleading representations that consumers will receive one or more prizes at no cost, where additional costs must be paid by consumers. The proposed consent order would require that Outdoor World Corporation fully disclose any cost that a consumer must pay to receive a prize, award, gift, bonus, premium or any other good or service similarly described as being available for no cost. The disclosure would be made immediately following the identification of the good or service and in type of equal size.

The complaint also alleges that in numerous instances, Outdoor World Corporation has made false and midleading representations that a named consumer has won one or more specified prizes. This charge was recently resolved through a partial consent agreement that was placed on the public record.

The present proposed order would require Outdoor World Corporation to retain accurate records for three (3) years of all advertising and promotional materials containing representations regarding prize or gift offerings, and records of all prizes and gifts awarded.

The proposed order would require Outdoor World Corporation to notify the Commission of any proposed change in the corporation which may affect compliance with the order, and to file a compliance report within 60 days after service of the order.

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.

[FR Doc. 90-1704 Filed 1-24-90; 8:45 am]

BILLING CODE 6750-01-M

GOVERNMENT PRINTING OFFICE

Depository Library Council to the Public Printer; Meeting

The Depository Library Council to the Public Printer will meet April 25-27, 1990, at the Scottsdale Hilton, 6333 N. Scottsdale Road, Scottsdale, Arizona. Reservations: 1-800-528-3119.

The purpose of this meeting is to discuss the Depository Library Program.

The meeting is open to the public. Anyone who wishes to attend should notify the Conference Manager, David H. Brown, U.S. Government Printing Office (SM), Washington, DC 20401. Telephone: (202) 275-2255.

General participation by members of the public, or questioning of Council members or other participants, shall be permitted with approval of the Chair.

Dated: January 17, 1990.

Joseph E. Jenifer,

Acting Public Printer.

[FR Doc. 90-1678 Filed 1-24-90; 8:45 am]

BILLING CODE 1505-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Cooperative Research and Development Agreement

AGENCY: Centers for Disease Control (CDC), Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The Centers for Disease Control (CDC), Center for Infectious Diseases, Division of Bacterial Diseases, Meningitis and Special Pathogens Branch, desires to enter into a Cooperative Research and Development Agreement (CRADA) to develop tests for the rapid and specific detection of *Listeria monocytogenes* in foods, clinical specimens, and environmental samples. The collaborator and CDC will jointly support research aimed at development of an immunoassay for detection of the beta-hemolysin (listeriolysin). The test(s) will be developed using one or more from a set of twelve murine monoclonal antibodies, developed at CDC, which react specifically with this protein. The CDC will provide either the cell lines or quantities of antibody sufficient for such research. The CDC will also provide samples of foods and enrichment broths obtained during ongoing investigations aimed at identifying sources of foods responsible for sporadic and epidemic cases of listeriosis for final testing of the method(s).

It is anticipated that all inventions which may arise from this CRADA will be jointly owned and licensed on a royalty-bearing basis exclusively to the collaborator with which the CRADA is made. The CRADA will be executed for a two-year period with the possibility of renewal for another two-year period.

SUPPLEMENTARY INFORMATION: This opportunity is available until 30 days after publication of this notice. For additional information contact:

Technical Contact(s): Balasubramanian Swaminathan, Ph.D. or William F. Bibb, Meningitis and Special Pathogens Branch, Division of Bacterial Diseases, Centers for Disease Control, 1600 Clifton Road, N.E., Mailstop D11, Atlanta, GA 30333, telephone (404) 639-3764 or (404) 639-3563

Business Contact: Nancy C. Bridger, Technology Transfer Coordinator, Center for Infectious Diseases, Centers for Disease Control, 1600 Clifton Road, N.E., Mailstop C19, Atlanta, GA 30333, telephone (404) 639-3766

Respondents may be provided an additional opportunity to furnish additional information if the CDC finds this necessary.

Applicants will be judged according to the following criteria:

1. Soundness of the research plan;
2. Adequacy of the staff to develop the tests;
3. Adequacy and availability of the facilities and equipment;
4. Evidence of scientific credibility; and
5. Evidence of commitment and ability to develop immunologic tests to the level of a product which benefits the public interest.

The responses must be made to: R. Eric Greene, Technology Transfer Coordinator, Centers for Disease Control, 1600 Clifton Road, N.E., Mailstop A20, Atlanta, GA 30333.

Dated: January 18, 1990.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 90-1715 Filed 1-24-90; 8:45 am]

BILLING CODE 4160-18-M

Health Resources and Services Administration

Health Education Assistance Loan Program; Maximum Interest Rates for Quarter Ending March 31, 1990

Section 727 of the Public Health Service Act (42 U.S.C. 294) authorizes the Secretary of Health and Human Services to establish a Federal program of student loan insurance for graduate students in health professions schools.

Section 60.13(a)(4) of the program's implementing regulations (42 CFR part 60, previously 45 CFR part 126) provides that the Secretary will announce the interest rate in effect on a quarterly basis.

The Secretary announces that for the period ending March 31, 1990, three interest rates are in effect for loans executed through the Health Education Assistance Loan (HEAL) program.

1. For loans made before January 27, 1981, the variable interest rate is 11½ percent. Using the regulatory formula (45 CFR 126.13(a)), in effect prior to January 27, 1981, the Secretary would normally compute the variable rate for this quarter by finding the sum of the fixed annual rate (7 percent) and a variable component calculated by subtracting 3.50 percent from the average bond equivalent rate of 91-day U.S. Treasury bills for the preceding calendar quarter (7.90 percent), and rounding the result (11.40 percent) upward to the nearest ⅛ percent (11½ percent). However, the regulatory formula also provides that the annual rate of the variable interest rate for a 3-month period shall be reduced to the highest one-eighth of 1 percent which would result in an average annual rate not in excess of 12 percent for the 12-month period concluded by those 3 months. Because the average rate of the 4 quarters ending March 31, 1990, is not in excess of 12 percent, there is no necessity for reducing the interest rate. For the previous 3 quarters the variable interest at the annual rate was as follows: 12⅜ percent for the quarter ending June 30, 1989; 12¼ percent for the quarter ending September 30, 1989; and 11⅜ percent for the quarter ending December 31, 1989.

2. For variable rate loans executed during the period of January 27, 1981 through October 21, 1985, the interest

rate is 11½ percent. Using the regulatory formula (42 CFR 60.13(a)) in effect for that time period, the Secretary computes the maximum interest rate at the beginning of each calendar quarter by determining the average bond equivalent rate for the 91-day U.S. Treasury bills during the preceding quarter (7.90 percent); adding 3.50 percent (11.40 percent); and rounding that figure to the next higher one-eight of 1 percent (11½ percent).

3. For fixed rate loans executed during the period of January 1, 1990 through March 31, 1990, and for variable rate loans executed on or after October 22, 1985, the interest rate is 11 percent. The Health Professions Training Assistance Act of 1985 (Pub. L. 99–129), enacted October 22, 1985, amended the formula for calculating the interest rate by changing 3.5 percent to 3 percent. Using the regulatory formula (42 CFR 60.13(a)), the Secretary computes the maximum interest rate at the beginning of each calendar quarter by determining the average bond equivalent rate for the 91-day U.S. Treasury bills during the preceding quarter (7.90 percent); adding 3.0 percent (10.90 percent) and rounding that figure to the next higher one-eight of 1 percent (11 percent).

(Catalog of Federal Domestic Assistance No. 13.108, Health Education Assistance Loans)

Dated: January 19, 1990.

John H. Kelso,

Acting Administrator.

[FR Doc. 90–1629 Filed 1–24–90; 8:45 am]

BILLING CODE 4160–15–M

Public Health Service

Agency for Health Care Policy and Research; National Advisory Council for Health Care Policy, Research and Evaluation; Request for Nominations for Voting Members

SUMMARY: 42 U.S.C. 299(c) as amended by section 6103(c) of the Omnibus Budget Reconciliation Act of 1989 established a National Advisory Council for Health Care Policy, Research and Evaluation (the Council). The Council is to advise the Secretary and the Administrator, Agency for Health Care Policy and Research, on matters related to the enhancement of the quality, appropriateness, and effectiveness of health care services and access to such services through scientific research and the promotion of improvements in clinical practice and the organization, financing, and delivery of health care services. Nominations for membership should be received on or before February 28, 1990.

ADDRESS: All nominations for membership should be submitted to J. Jarrett Clinton, M.D., Acting Administrator, Agency for Health Care Policy and Research, Room 1805, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

FOR FURTHER INFORMATION CONTACT: J. Jarrett Clinton, M.D., Acting Administrator, Agency for Health Care Policy and Research at (301) 443–5650.

SUPPLEMENTARY INFORMATION: Section 921 of the Public Health Service Act, as amended by Public Law 101–239, 42 U.S.C. 299c, provides that the National Advisory Council for Health Care Policy, Research and Evaluation shall consist of 17 appropriately qualified representatives of the public appointed by the Secretary. Of the 17 public members, 8 are to be individuals distinguished in the conduct of research, demonstration projects, and evaluations with respect to health care; 3 are to be individuals distinguished in the practice of medicine; 2 are to be individuals distinguished in the health professions; 2 are to be individuals distinguished in the fields of business, law, ethics, economics, and public policy; and 2 are to be individuals representing the interests of consumers of health care.

The Council shall advise the Secretary through the Administrator regarding priorities for a national agenda and strategy for:

- Conduct of research, demonstration projects, and evaluations with respect to health care, including clinical practice and primary care;
- Development and application of appropriate health care technology assessments;
- Development and periodic review and updating of guidelines for clinical practice, standards of quality, performance measures, and medical review criteria with respect to health care;
- Conduct of research on outcomes of health care services and procedures; and

In addition, members shall perform second level review of grant applications in excess of $250,000 total direct costs.

The term of office is 3 years, except that initial appointments will be staggered to permit an orderly rotation of membership.

Interested persons may nominate one or more qualified persons for membership on the Council. Nominations shall state that the nominee is willing to serve as a member of the Council and appears to have no conflict of interest that would preclude Council membership. Potential candidates will be asked to provide detailed information concerning such matters as financial holdings, consultancies, and research grants or contracts, to permit evaluation of possible sources of conflict of interest.

The Department has special interest in assuring that women, minority groups, and the physically handicapped are adequately represented on advisory bodies and, therefore, extends particular encouragement to nominations for appropriately qualified female, minority, or physically handicapped candidates.

Dated: January 18, 1990.

J. Jarrett Clinton,

Acting Administrator, Agency for Health Care Policy and Research.

[FR Doc. 90–1690 Filed 1–24–90; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N–90–3004]

Notice of Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESSES: Interested persons are invited to submit comment regarding these proposals. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collections of information, as

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: January 17, 1990.

John T. Murphy,

Director, Information Policy and Management Division.

Submission of Proposed Information Collection to OMB

Proposal: Form HUD–50060, Transmittal of Form HUD–50058 (Tenant Data Summary).

Office: Public and Indian Housing.

Description of the Need for the Information and Its Proposed Use: This information collection will support the processing of public and Indian housing tenant data for the Multifamily Tenant Characteristics System. Form HUD–50060 will be used to transmit Form HUD–50058 from the respondents to Department's data capture contractor.

Form Number: HUD–50060.

Respondents: State or Local Governments.

Frequency of Submission: Monthly.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Form HUD–50060	3,253		50		.05		8,133

Total Estimated Burden Hours: 8,123.

Status: Revision

Contact: Edward C. Whipple, HUD, (202) 426–0744, John Allison, OMB, (202) 395–6880.

Dated: January 17, 1990.

Submission of Proposed Information Collection to OMB

Proposal: Request for construction change.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: This information is used by contractors, mortgagors, and mortgagees to obtain approval of changes in the contract drawings and specifications. HUD will use the information to make sure they are complying with Article 1F of the Construction Contract.

Form Number: HUD–92441, 92442, 92442A, 92437.

Respondents: Businesses or Other For-Profit.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Request for construction change	500		20		3		30,000

Total Estimated Burden Hours: 30,000.

Status: Reinstatement.

Contact: Richard Murray, HUD, (202) 755–5643, John Allison, OMB, (202) 395–6880.

Dated: January 17, 1990.

Submission of Proposed Information Collection to OMB

Proposal: Survey of Owner's Degree of Customer Satisfaction as a Result of Using the Rental Rehabilitation Program.

Office: Community Planning and Development.

Description of the Need for the Information and Its Proposed Use: This survey will provide the Department with feedback on the Rental Rehabilitation Program as operated by the investor/owner's State or local housing rehabilitation agency in order to identify program areas and undertake efforts to improve national delivery of the program.

Form Number: None.

Respondents: Individuals or Households, Businesses or Other For-Profit, and Non-Profit Institutions.

Frequency of Submission: One Time Survey.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Survey	30,000		1		.5		15,000

Total Estimated Burden Hours: 15,000.
Status: New.
Contact: Marybeth Frazier, HUD (202) 755–5870, John Allison, OMB, (202) 395–6880.

Dated: January 17, 1990.

[FR Doc. 90–1643 Filed 1–24–90; 8:45 am]
BILLING CODE 4210–01–M

Office of Housing

[Docket No. N–90–3005]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Housing, HUD.
ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information as described below to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35). HUD has requested that OMB complete its review within seven days.

This Notice gives the following information: (1) The title of the information collection proposal; (2) the office of the agency that will collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members, of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new, an extension, or reinstatement; and (9) the telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: January 18, 1990.

C. Austin Fitts,
Assistant Secretary for Housing-Federal Housing Commissioner.

Submission of Proposed Information Collection to OMB

Proposal: Owner Certificate on Low-Income Housing Tax Credits.
Office: Housing.
Description of the Need for the Information and Its Proposed use: The submissions will tell HUD which participants in HUD programs will also receive LIHT credits and enable HUD to adjust its mortgage insurance and subsidy commitments to reflect the tax credit's rent restrictions and investors' equity contributions. These adjustments will limit HUD's subsidy costs and mortgage insurance commitments to amounts needed for project feasibility and preclude owners and developers from making excessive profits by combining tax credits with HUD programs.
Form Number: None.
Respondents: Owners/developers who will receive tax credits, participate in a HUD program and request HUD approval of one of the actions listed in the proposed notice's Attachment 1.
Frequency of Submission: On occasion.
Reporting Burden:

Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
1,170		1/year		½		585

Information Collection: Revision.
Contact: Sue Donahue, HUD (202) 755–5547, John Allison, OMB (202) 395–6988.

Dated: January 18, 1990.

[FR Doc. 90–1642 Filed 1–24–90; 8:45 am]
BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–010–4760–12–NMZA–2112/GPO–0102]

Albuquerque District, NM; Notice of Intent to Prepare an EIS

AGENCY: Bureau of Land Management.
ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: In compliance with § 1506.6 of the National Policy Act of 1969, the Bureau of Land Management issues notice today of its intent to prepare an Environmental Impact Statement (EIS) addressing the investigation and remediation of potential hazardous waste contamination at the Lee Acres Landfill in Farmington, New Mexico.

Background: The Lee Acres Landfill is located approximately 4.5 miles east of Farmington in San Juan County, New Mexico. From May 1962 to April 1986, a total of 60 acres of land on the landfill property was leased from the Bureau of Land Management (BLM) by the San Juan County Department of Public Works. In April 1985, emergency clean-up action was taken to prevent the release of vapor from the landfill's septage disposal sites, and the landfill was closed for the disposal of liquid wastes. A new lease with San Juan County was suspended in 1986, and the BLM took direct control of the landfill site. In 1989, the landfill was proposed for inclusion on the Environmental Protection Agency's (EPA's) National Priority List of Superfund Sites.

On October 29, November 1, and November 3, 1988, three Remedial Investigation (RI)/Feasibility Study (FS) scoping meetings were held in Farmington, Santa Fe, and Albuquerque, respectively. The meetings were held to seek public comment and discussion on how the study of remediation of Lee Acres Landfill should be approached.

EIS Scoping Meeting: The BLM plans to hold an EIS scoping meeting to review a draft EIS Work Plan on February 22, 1990, at 7 p.m. at McGee Park in the San Juan County Fairgrounds, Farmington, New Mexico. The EIS Work Plan

identifies applicable guidelines and regulations with which the EIS work must comply. In addition, the Plan: Identifies the individual tasks that must be carried out in order to adequately prepare the EIS; provides a schedule for the development of an EIS in support of the RI/FS activities; and indentifies all documents to be provided to the BLM. Based on the comments received at the scoping meeting, the Plan will be further revised as necessary and a final EIS Work Plan will be prepared.

For more information, please contact Alan Hoffmeister, Bureau of Land Management, 435 Montano NE., Albuquerque, New Mexico 87107, (505) 761–4513.

Dated: January 17, 1990.

Robert T. Dale,

District Manager.

[FR Doc. 90–1680 Filed 1–24–90; 8:45 am]

BILLING CODE 4310–FB–M

[UT–020–00–4320–02]

Salt Lake District; Advisory Board Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given in accordance with Public Law 92–463 that the Salt Lake District Grazing Advisory Board will be meeting on March 6, 1990.

The Board will meet at 10:00 a.m. at the Salt Lake District, Bureau of Land Management office, at 2370 South 2300 West, Salt Lake City, Utah. The purpose of the meeting will be to review range improvement projects to be funded with State Grazing Advisory Board funds. The meeting is open to the public and interested persons may make oral statements at the meeting between 10:00 a.m. and 10:30 a.m., or file a written statement for the Board's consideration.

Persons wishing to make statements to the Board are required to contact Glade Anderson at 977–4300 prior to March 2, so that adequate time can be included on the agenda.

FOR FURTHER INFORMATION CONTACT: Glade Anderson, Range Conservationist, Bureau of Land Management, Salt Lake District Office, 2370 South 2300 West, Salt Lake City, Utah 84119, (801) 977–4300.

Jordon C. Pope,

Acting District Manager.

[FR Doc. 90–1719 Filed 1–24–90; 8:45 am]

BILLING CODE 4310–DQ–M

[AZ–040–00–4410–02]

Meeting for Safford District Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given in accordance with Public Law 94–579 and 43 CFR part 1780, that a meeting of the Safford District Advisory Council will be held.

DATE: Friday, February 23, 1990; 10 a.m.

ADDRESS: BLM Office, 425 E. 4th Street, Safford, Arizona 85546.

FOR FURTHER INFORMATION CONTACT: Cindy Alvarez, Planning and Environmental Coordinator, Safford District, 425 E. 4th St., Safford, AZ 85546. Telephone (602) 428–4040.

SUPPLEMENTARY INFORMATION: The agenda for the meeting includes the following items:

1. Review of Advisory Council formal input on Safford District Draft Resource Management Plan.
2. Briefing on comments from the four public meetings held on the RMP.

The meeting will be open to the public. Interested persons may make oral statements to the Board between 1 p.m. and 2 p.m. or may file written statements for consideration by the Council. Anyone wishing to make an oral statement must notify the District Manager, by Thursday, February 22, 1990. Depending upon the number of people wishing to make oral statements, a per person time limit may be considered.

Summary minutes of the Board meeting will be maintained in the District Office and will be available for public inspection and reproduction (during business hours) within thirty (30) days following the meeting.

Dated: January 16, 1990.

Ray A. Brady,

District Manager.

[FR Doc. 90–1681 Filed 1–24–90; 8:45 am]

BILLING CODE 4310–32–M

[CA–940–90–4111–15; CACA 20952]

California; Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Public Law 97–451, a petition for reinstatement of oil and gas lease CACA 20952 for lands in Kern County, California, was timely filed and was accompanied by all required rentals and royalties accruing from August 1, 1989, the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $5.00 per acre and 16⅔ percent, respectively. Payment of a $500.00 administrative fee has been made.

Having met all the requirements for reinstatement of the lease as set out in sections 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease effective August 1, 1989, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above, and the reimbursement for cost of publication of this notice.

Dated: January 19, 1990.

Sonia I. Santillan,

Acting Chief, Leasable Minerals Section.

[FR Doc. 90–1720 Filed 1–24–90; 8:45 am]

BILLING CODE 3210–40–M

[AZ–050–0–4212–11; A–22679]

Arizona: Mohave County, Realty Action, Lease of Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action—lease of lands, Mohave County, Arizona.

SUMMARY: The following described lands and interests therein have been determined to be suitable to be classified for lease under the provisions of the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C. 869 *et seq.*) and the regulations established by 43 CFR 2740 and 2910.

Gila and Salt River Meridian, Arizona

T. 20 N., R. 22 W.,
Sec. 12, NE¼NW¼NE¼, containing 5.73 acres more or less.

The Bullhead City Fire Department has applied to lease the above described lands for an existing fire station. This Recreation and Public Purposes lease will supersede an existing lease issued under Bureau of Reclamation authority.

The land is not required for any Federal purpose. The classification and subsequent lease are consistent with the Bureau's planning for the area.

Subject to all valid existing rights, the lands are hereby segregated from appropriations under any other public land law, including location under the mining laws. This segregation will terminate upon issuance of a lease, publication of a Notice of Termination, or 18 months from the date of this publication, whichever occurs first.

DATES: On or before March 12, 1990, interested parties may submit comments to the District Manager, 3150 Winsor Avenue, Yuma, Arizona 85365. Any objections will be reviewed 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, effective March 26, 1990.

FOR FURTHER INFORMATION CONTACT: Mike Ford, Area Manager, Havasu Resource Area, Bureau of Land Management, 3189 Sweetwater Avenue, Lake Havasu City, Arizona 86403, 602–855–8017.

Dated: January 10, 1990.

Maureen A. Merrell,

Acting District Manager.

[FR Doc. 90–1636 Filed 1–24–90; 8:45 am]

BILLING CODE 4310–32–M

[CO–942–90–4730–12]

Colorado: Filing of Plats of Survey

January 17, 1990.

The plats of survey of the following described land will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10 a.m., January 17, 1990.

The plat representing the retracement of the north one-half mile between sections 33 and 34 and the west one-half mile between sections 27 and 34, T. 14 S., R. 70 W., Sixth Principal Meridian, Colorado, Group No. 733, was accepted December 6, 1989.

This retracement was executed to meet certain administrative needs of this Bureau.

This supplemental plat creating new lot 17, from the area previously designated as lot 16 in the SW¼SE¼ of section 23, T. 6 S., R. 70 W., Sixth Principal Meridian, Colorado, was accepted December 12, 1989.

This supplemental plat creating new lots 33 through 40, from previously designated lots, areas, and cancelled mineral surveys in the west half of section 34, T. 14 S., R. 70 W., Sixth Principal Meridian, Colorado, was accepted December 12, 1989.

This supplemental plat corrects the lot numbers, which were previously designated as lots 1, 2, 3, and 4, in section 7 on the plat accepted January 20, 1978 to conform to the lots and areas as shown on the plat approved March 13, 1924, T. 5 S., R. 93 W., Sixth Principal Meridian, was accepted December 5, 1989.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado, 80215.

Darryl A. Wilson,

Acting Chief, Cadastral Surveyor for Colorado.

[FR Doc. 90–1679 Filed 1–24–90; 8:45 am]

BILLING CODE 4310–JB–M

[ES–940–09–4520–13; ES–039974, Group 136]

Wisconsin; Cancellation of Plat of Survey

January 18, 1990.

1. The plat accepted February 24, 1989 and stayed April 19, 1989, has been cancelled effective January 18, 1990.

Stephen G. Kopach,

Deputy State Director for Cadastral Survey.

[FR Doc. 90–1671 Filed 1–24–90; 8:45 am]

BILLING CODE 4310–84–M

Fish and Wildlife Service

Availability of a Draft Recovery Plan for the Red Wolf 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 (Service) announces the availability for public review of a draft recovery plan for the red wolf (*Canis rufus*). This animal historically occurred in the Southeastern United States from the South Atlantic Coast, west to central Oklahoma and Texas. Presently, the red wolf persists in various captive-breeding projects in the United States, and a small number is in the wild in three carefully managed projects. As of the time of this notice, only 113 wolves exist. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before March 26, 1990, to receive consideration by the Service.

ADDRESS: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Red Wolf Coordinator, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801. Written comments and materials regarding the plan should be addressed to the Red Wolf Coordinator 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: Mr. Warren Parker at the above address (704/259–0321; FTS 672–0321).

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 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 time 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 red wolf (*Canis rufus*). The areas of emphasis for recovery actions are the States that comprise the Southeastern United States and include Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee. Capitive breeding, reintroductions, and preservation of genetic material 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: January 18, 190

Warren T. Parker,

Red Wolf Coordinator.

[FR Doc. 90-1718 Filed 1-24-90; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Outer Continental Shelf Advisory Board; Gulf of Mexico Regional Technical Working Group; Meeting

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of Gulf of Mexico Regional Technical Working Group (RTWG) meeting.

SUMMARY: Notice of this meeting is issued in accordance with the Federal Advisory Committee Act (Pub. L. No. 92-463). The Gulf of Mexico RTWG meeting will be held April 3-5, 1990, at the Gulf of Mexico OCS Regional Office, Rooms 111 and 115, 1201 Elmwood Park Boulevard, New Orleans, Louisiana. Dates and times are as follows: April 3-4, 1990—9 a.m. to 4:30 p.m.; April 5, 1990—9 a.m. to 12 Noon.

The RTWG business meeting will be held in conjunction with the Spring Ternary Studies Meeting. tentative agenda items for the business meeting include:

- Roundtable Discussion.
- 5-Year Program Briefing.
- Dispersant Studies.
- Environmental Studies—FY 1992.

FOR FURTHER INFORMATION CONTACT: This meeting is open to the public. Individuals wishing to make oral presentations to the committee concerning agenda items should contact Ann Hanks of the Gulf of Mexico OCS Regional Office at (504) 736-2589 by March 23, 1990. Written statements should be submitted by the same date to the Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123. A taped cassette transcript and complete summary minutes of the Business Meeting will be available for public inspection in the Office of the Regional Director at the above address not later than 60 days after the meeting.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico RTWG is one of six such Committees that advises the Director of the Minerals Management Service on technical matters of regional concern regarding offshore prelease and postlease sale activities. The RTWG membership consists of representatives from Federal Agencies, the coastal States of Alabama, Florida, Louisiana, Mississippi, and Texas, the petroleum industry, the environmental community, and other private interests.

Dated: January 19, 1990.

J. Rogers Pearoy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 90-1682 Filed 1-24-90; 8:45 am]

BILLING CODE 4310-MR-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31579]

Richard D. Robey—Continuance in Control Exemption—Stourbridge Railroad Co., Inc.

Richard D. Robey has filed a notice of exemption to continue to control Stourbridge Railroad Company, Inc. (Stourbridge). Mr. Robey already controls the North Shore Railroad Company (North Shore), the Nittany and Bald Eagle Railroad Company (Nittany), and the Shamokin Valley Railway Company (Shamokin), non-connecting Class III railroads.

Stourbridge was formed by Mr. Robey to operate approximately 25 miles of rail line formerly operated by the Lackawaxen and Stourbridge Railroad Company, in Wayne and Pike Counties, PA, and owned by the Commonwealth of Pennsylvania, Stourbridge concurrently filed a notice of exemption in Finance Docket No. 31508, Stourbridge Railroad Company, Inc.—Operation Exemption—In Wayne and Pike Counties, PA, to operate the line.

Mr. Robey states that: (1) Stourbridge, North Shore, Nittany, and Shamokin will not connect with each other; (2) the continuance in control is not part of a series of anticipated transactions that would connect the railroads with each other; and (3) the transaction does not involve a Class I carrier.

This transaction involves the continuance in control of a nonconnecting carrier, and comes within the class exemption in 49 CFR 1100.2(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: Richard R. Wilson, Vuono, Lavelle & Gray, 2310 Grant Building, Pittsburgh, PA 15219.

Decided: January 17, 1990.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 90-1594 Filed 1-24-90; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31508]

Stourbridge Railroad Co., Inc.—Operation Exemption—In Wayne and Pike Counties, Pennsylvania

Stourbridge Railroad Company, Inc. (Stourbridge), has filed a notice of exemption to operate approximately 25 miles of rail line, between Lackawaxen (milepost 110.26) and Honesdale (milepost 135.00), in Wayne and Pike Counties, PA. The line is owned by the Commonwealth of Pennsylvania and was formerly operated by the Lackawaxen and Stourbridge Railroad Company.

This transaction is related to a notice of exemption filed concurrently in Finance Docket No. 31579, Richard D. Robey—Continuance in Control Exemption—Stourbridge Railroad Company, Inc., under 49 CFR 1180.2(d)(2), for the continued control of Stourbridge and a number of nonconnecting carriers by Richard Robey.

Any comments must be filed with the Commission and served on: Richard R. Wilson, Vuono, Lavelle & Gray, 2310 Grant Building, Pittsburgh, PA 15219.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: January 17, 1990.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 90-1595 Filed 1-24-90; 8:45 am]

BILLING CODE 7035-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Literature Advisory Panel; 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 Literature Advisory Panel (Audience Development Section) to the National Council on the

Arts will be held on February 15–16, 1990 from 9 a.m.–6:30 p.m. and on February 17 from 9 a.m.–3 p.m. in room 714 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on February 17, 1990, from noon–3 p.m. The topic for discussion will be policy issues.

The remaining portions of this meeting on February 15–16, 1990, from 9 a.m.–6:30 p.m. and on February 17, from 9 a.m.–noon 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 informatoin given in confidence to the agency 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) (5), (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.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 90–1685 Filed 1–24–90; 8:45 am]

BILLING CODE 7537–01–M

Meeting of the Media Arts Advisory Panel

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 (Film/Video Production Pre-screening #3 Section) to the National Council on the Arts will be held on February 13–14, 1990, from 9 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.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 90–1686 Filed 1–24–90; 8:45 am]

BILLING CODE 7537–01–M

Meeting of the Music Advisory Panel

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 Music Advisory Panel (Centers for New Music Resources/Services to Composers Section) to the National Council on the Arts will be held on February 14, 1990 from 9 a.m.–5:30 p.m. in room 714 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on February 14, 1990, from 4 p.m.–5:30 p.m. The topic for discussion will be policy and guideline review.

This remaining portion of this meeting on February 14, 1990, from 9 a.m.–4 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, DC20506, 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: January 12, 1990.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 90–1683 Filed 1–24–90; 8:45 am]

BILLING CODE 7537–01–M

Visual Arts Advisory Panel; 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 Visual Arts Advisory Panel (Art in Public Places Section) to the National Council on the Arts will be held on February 12–13, 1990, from 9 a.m.–6 p.m. and on February 14, from 9 a.m.–4 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 February 14, 1990, from 2:30 pm.–4 p.m. The topics for discussion will be policy and guidelines issues.

The remaining portions of this meeting on February 12–13, 1990, from 9 a.m.–6 p.m.; February 14 from 9 a.m.–2:30 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: January 12, 1990.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 90-1684 Filed 1-24-90; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL LABOR RELATIONS BOARD

Appointments of Individuals To Serve as Members of Performance Review Boards

5 U.S.C. 4314(c)(4) requires that the appointments of individuals to serve as members of performance review boards be published in the Federal Register. Therefore, in compliance with this requirement, notice is hereby given that the individuals whose names and positions titles appear below have been appointed to serve as members of performance review boards in the National Labor Relations Board for the rating year beginning October 1, 1988 and ending September 30, 1989.

Name and Title

Robert E. Allen—Associate General Counsel, Enforcement Litigation
Harold J. Datz—Associate General Counsel, Advice
Joseph E. DeSio—Associate General Counsel, Operations Management
Frederick Freilicher—Chief Counsel to Board Member
Lester A. Heltzer—Chief Counsel to Board Member
John E. Higgins—Solicitor
Joseph E. Moore—Deputy Executive Secretary
S.F. Timothy Mullen—Deputy Director of Administration
Anne G. Purcell—Chief Counsel to Board Member
Ernest Russell—Director of Administration
W. Garrett Stack—Deputy Associate General Counsel, Operations Management
Elinor H. Stillman—Chief Counsel to the Chairman
Berton B. Subrin—Director, Office of Representation Appeals
John C. Truesdale—Executive Secretary
Melvin J. Welles—Chief Administrative Law Judge.

Dated: Washington, DC, January 19, 1990.

By direction of the Board.

John C. Truesdale,

Executive Secretary.

[FR Doc. 90-1641 Filed 1-24-90; 8:45 am]

BILLING CODE 7545-01-M

NATIONAL SCIENCE FOUNDATION

Earth Sciences Proposal Review Panel; Meeting

The National Science Foundation announces the following meeting:

Name: Continental Lithosphere Subpanel, Earth Sciences Proposal Review Panel.

Date: February 12-13, 1990.

Time: 8:30 a.m. to 5:30 p.m. each day.

Place: The National Science Foundation, Room 1242, 1800 G Street NW., Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. Ian D. MacGregor, Head, Major Projects Section, Earth Sciences, Room 602, National Science Foundation, Washington, DC 20550; Telephone: (202) 357-9591.

Minutes: May be obtained from the Contact Person at the above address.

Purpose of Meeting: To provide advice and recommendations concerning support for research in the Continental Lithosphere Program, Division of Earth Sciences.

Agenda: To review and evaluate research proposals and projects as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b (c), Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 90-1663 Filed 1-25-90; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Basin Testing Labortory, Inc.; Establishment of Atomic Safety and Licensing Board

[Docket No. 15000033-SC/CivP; ASLBP No. 90-601-01-SC/CivP]

Pursuant to delegation by the Commission dated December 29, 1972, published in the Federal Register, 37 FR 28710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.14a, 2.717, and 2.721 of the Commission's Regulations, all as amended, and Atomic Safety and Licensing Board is being established in the following proceeding.

Basin Testing Laboratory, Inc., dba Basin Services, Inc.

General Licensee (10 CFR 150.20) E. A. 88-265

This Board is being designated pursuant to the request of the Licensee for an enforcement hearing regarding Orders issued by the Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support, dated December 6, 1989, entitled "Order Imposing Civil Monetary Penalty" and "Order To Show Cause Why License Should Not Be Suspended" (54 FR 51272, published December 13, 1989).

The Board is comprised of the following administrative judges:

Administrative Judge Charles Bechhoefer, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555;

Administrative Judge James H. Carpenter, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555;

Administrative Judge Richard F. Cole, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

An Order designating the time and place of any hearing will be issued at a later date. All correspondence, documents and other materials shall be filed with each of the Administrative Judges in accordance with 10 CFR 2.701.

Issued at Betheda, Maryland, this 18th day of January 1990.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 90-1631 Filed 1-24-90; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards (ACRS) and Advisory Committee on Nuclear Waste (ACNW); Proposed Meetings

In order to provide advance information regarding proposed public meetings of the ACRS Subcommittees and meetings of the ACRS full Committee, and of the ACNW, the following preliminary schedule is published to reflect the current situation, taking into account additional meetings which have been scheduled and meetings which have been postponed or cancelled since the last list of proposed meetings published December 29, 1989 (54 FR 53787). Those meetings which are definitely scheduled have had, or will have, an individual notice published in the Federal Register approximately 15 days (or more) prior to the meeting. It is expected that sessions of ACRS full Committee and ACNW meetings designated by an asterisk (*) will be open in whole or in part to the public. ACRS full Committee and ACNW meetings begin at 8:30 a.m. and ACRS Subcommittee meetings usually begin at 8:30 a.m. The time when items listed on the agenda will be discussed during ACRS full Committee and ACNW meetings and when ACRS Subcommittee meetings will start will be published prior to each meeting. Information as to whether a meeting has

been firmly scheduled, cancelled, or rescheduled, or whether changes have been made in the agenda for the February 1990 ACRS and ACNW full Committee meetings can be obtained by a prepaid telephone call to the Office of the Executive Director of the Committe (telephone: 301/492–4600 (recording) or 301/492–7288, ATTN: Barbara Jo White) between 7:30 a.m. and 4:15 p.m., eastern time.

ACRS Subcommittee Meetings

Joint Severe Accidents and Probabilistic Risk Assessment, January 23–24, 1990, Albuquerque, NM. The Subcommittees will continue their review of NUREG–1150, "Severe Accident Risks: An Assessment for Five U.S. Nuclear Power Plants," (Second Draft for Peer Review). Topics tentatively scheduled for discussion at this meeting include: back-end analysis, uncertainties and the expert opinion process.

Structural Engineering, January 24–25, 1990, Albuquerque, NM. The Subcommittee will review structural integrity issues on various containment configurations and Category I structures.

Systematic Assessment of Experience, February 6, 1990, Bethesda, MD. The Subcommittee will review the proposed power level increase for Indian Point Unit 2.

Containment Systems, February 6, 1990, Bethesda, MD. The Subcommittee will discuss the NRC staff's document (proposed supplement to GL 88–20) on the Containment Performance Improvements (CPI) Program (all containment types other than the BWR Mark I).

Safety Research Program, February 7, 1990, Bethesda, MD. The Subcommittee will discuss the proposed NRC Safety Research Program and Budget for FY 1991 and other related matters.

Joint Containment Systems and Structural Engineering, February 28, 1990, Bethesda, MD. The Subcommittees will discuss the development of a position or recommendations regarding new containment design criteria for future plants.

Mechanical Components, March 7, 1990, Bethesda, MD. The Subcommittee will review nuclear power plant valve concerns including: (1) status of the MOV program, (2) the status of the check valve program, (3) the status of the diagnostics for check valves (programs on valves import to safety, i.e., butterfly valves), and (5) related valve concerns.

Regulatory Policies and Practices, March 22, 1990, Bethesda, MD. The Subcommittee will review the NRC staff's Draft Rule for license renewal.

Advanced Pressurized Water Reactors, Date to be determined (February/March), Bethesda, MD. The Subcommittee will review the licensing review bases document being developed by the Staff for Combustion Engineering's Standard Safety Analysis Report-Design Certification (CESSAR-DC).

Thermal Hydraulic Phenomena, Date to be determined (February/March), Idaho Falls, ID. The Subcommittee will review the details of the modifications made to the RELAP–5 MOD–2 code as specified in the MOD–3 version.

Joint Thermal Hydraulic Phenomena and Core Performance, Date to be determined (March), Bethesda, MD. The Subcommittees will continue their review of boiling water reactor core power stability pursuant to the core power oscillation event at LaSalle County Station, Unit 2.

Decay Heat Removal Systems, Date to be determined (March), Bethesda, MD. The Subcommittee will review the NRC staff's proposed resolution of Generic Issue 84, "CE PORVs."

Quality and Quality Assurance in Design and Construction, Date to be determined (April), Bethesda, MD. The Subcommittee will discuss the performance-based concept to quality—what it means, its implementation, and preliminary results.

Materials and Metallurgy, Date to be determined (April/May), Bethesda, MD. The Subcommittee will review the proposed resolution of Generic Issue 29, "Bolting Degradation or Failure in Nuclear Power Plants."

Occupational and Environmental Protection Systems, Date to be determined (1st Quarter 1990), Bethesda, MD. The Subcommittee will continue its review of Interim Standard for hot particles.

Decay Heat Removal Systems, Date to be determined (June/July), Bethesda, MD. The Subcommittee will review the proposed resolution of Generic Issue 23, "RCP Seal Failures."

Decay Heat Removal Systems, Date to be determined, Bethesda, MD. The Subcommittee will explore the issue of the use of feed and bleed for decay heat removal in PWRs.

Auxiliary and Secondary Systems, Date to be determined, Bethesda, MD. The Subcommittee will discuss the: (1) Criteria being used by utilities to design Chilled Water Systems, (2) regulatory requirements for Chilled Water Systems design, and (3) criteria being used by the NRC staff to review the Chilled Water Systems design.

Reliability Assurance, Date to be determined, Bethesda, MD. The Subcommittee will discuss the status of implementation of the resolution of USI A–46, "Seismic Qualification of Equipment in Operating Plants," and other related matters.

Joint Regulatory Activities and Containment Systems, Date to be determined, Bethesda, MD. The Subcommittees will review the proposed final revision to Appendix J to 10 CFR part 50, "Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors."

ACRS Full Committee Meeting

358th ACRS Meeting, February 8–10, 1990, Bethesda, MD. Items are tentatively scheduled.

*A *Coherence in the Regulatory Process (Open)*—Discuss proposed ACRS report to NRC regarding coherence in the regulatory process.

*B. *Generic Issue B–56, Diesel Generator Reliability and Associated Regulatory Guide 1.9, Revision 3 (Open)*—Review and report on proposed resolution of this generic matter.

*C. *Reactor Operating Experience (Open/Closed)*—Briefing and discussion of recent reactor operating events and incidents.

*D. *Reactor Safety Research (Open)*—Discuss proposed ACRS report to the U.S. Congress regarding the NRC safety research program.

*E. *Indian Point Nuclear Station Unit 2 (Open)*—Review and report on proposed power level increase for the Indian Point Nuclear Station Unit 2.

*F. *Training and Qualification Program for NRC Employees (Open)*—Briefing and discussion regarding the facilities and courses available for NRC employees at the NRC Technical Training Center at Chattanooga, TN.

*G. *Meeting and AEOD Director (Open/Closed)*—Briefing and discussion regarding activities of the NRC Office for Analysis and Evaluation of Operational Data (AEOD) and other items of mutual interest.

*H. *ACRS Subcommittee Activities (Open)*—Reports and discussion of ongoing ACRS subcommittee activities in assigned areas.

*I. *Appointment of ACRS Members (Open/Closed)*—Discuss the qualifications of candidates for appointment as ACRS members and the needs of the Committee for balanced membership.

*J. *Future Activities (Open)*—Discuss anticipated ACRS subcommittee activities and items proposed for consideration by the full Committee.

*K. *Containment Performance Improvement Program (tentative) (Open)*—Review and report on proposed NRC staff program for containment types other than Mark I type containment.

359th ACRS Meeting, March 8–10, 1990—Agenda to be announced.

360th ACRS Meeting, April 5–7, 1990—Agenda to be announced.

ACNW Full Committee Meeting

17th ACNW Meeting, February 21–23, 1990, Bethesda, MD. Items are tentatively scheduled.

*A. Meet with the Commissioners (Open), possible topics:
- Report on West Valley Trip
- Report on trip to the Center for Nuclear Waste Regulatory Analyses
- Discuss ACNW Report on Implementation of EPA Standards
- Other reports

*B. Discussion and possible comment on the implementation of a policy containing criteria for residual levels of radioactivity following decommissioning (Open).

*C. Discussions of problem areas in the LLW field with William P. Dornsife, Chief, Division of Nuclear Safety, Bureau of Radiation Protection, Department of Environmental Protection Commonwealth of Pennsylvania (Open).

*D. The Committee will be briefed by the NRC staff on the technical aspects of criteria for the treatment, storage and disposal of mixed radioactive and hazardous waste (Open).

*E. Committee Activities—The Committee will discuss anticipated and proposed Committee activities, future meeting agenda, and organizational matters, as appropriate (Open).

18th ACNW Meeting, March 21–23, 1990—Agenda to be announced.

19th ACNW Meeting, April 26–27, 1990—Agenda to be announced.

Dated: January 18, 1990.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 90–1630 Filed 1–24–90; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

President's Council of Advisors; Meeting

The President's Council of Advisors on Science and Technology (PCAST) will meet on February 3, 1990 at Camp David, Maryland, from 10:30 a.m. until 1:30 p.m.

The purpose of the Council is to advise the President on matters involving science and technology.

Proposed Agenda:

1. Opening remarks by the President.
2. Orientation of members concerning PCAST functions and operations.
3. Discussion of selected science and technology issues of national importance.
4. Discussion of panel activities and composition.
5. Discussion of future agenda.

The meeting will be closed to the public.

The meeting will include discussion of information that is classified in the interest of national defense or for foreign policy reasons. In addition, agenda items 2, 3, and 4 will involve discussions of internal personnel procedures of the Executive Office of the President and information which, if prematurely disclosed, would significantly frustrate the implementation of recommendations made concerning agency action. A portion of the discussion of panel composition will involve the disclosure of information of a personal nature the public disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Accordingly, the meeting will be closed to the public pursuant to 5 U.S.C. 552b. (c) (1), (2), (6), and (9)(B).

Dated: January 22, 1990.

Barbara J. Diering,

Committee Management Officer.

[FR Doc. 90–1751 Filed 1–22–90; 8:45 am]

BILLING CODE 3170–01–M

OFFICE OF THE U.S. TRADE REPRESENTATIVE

Investment Policy Advisory Committee, Advisory Committee for Trade Policy and Negotiations, Intergovernmental Policy Advisory Committee; Meetings and Determination of Closing of Meetings

The meetings of the Investment Policy Advisory Committee to be held February 5, 1990 from 10 a.m. to 12 p.m., in Washington, DC., and the Advisory Committee for Trade Policy and Negotiations to be held February 14, 1990 from 1:30 a.m. to 4:30 p.m., in Washington, DC., and the Intergovernmental Policy Advisory Committee to be held February 28, 1990 from 8 a.m. to 11 a.m., in Washington, DC., will include the development, review and discussion of current issues which influence the trade policy of the United States. Pursuant to section 2155(f)(2) of title 19 of the United States Code, I have determined that these meetings will be concerned with matters the disclosures of which would seriously compromise the Government's negotiating objectives or bargaining positions.

Additional information can be obtained by contacting Mollie Van Heuven, Office of Private Sector Liaison, Office of the U.S. Trade Representative, Executive Office of the President, Washington, DC 20506.

Carla A. Hills,

U.S. Trade Representative.

[FR Doc. 90–1662 Filed 1–24–90; 8:45 am]

BILLING CODE 3190–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–27620; File No. SR–MSRB–89–12]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Municipal Securities Rulemaking Board; Relating to Supervision and Preservation of Records

On November 16, 1989, the Municipal Securities Rulemaking Board ("Board") filed with the Securities and Exchange Commission ("Commission") a proposed rule change amending the Board's rules on supervision and preservation of records. The Board requested that the Commission delay the effectiveness of the proposed rule change for a period of six months following the date of Commission approval in order to provide dealers an opportunity to review their procedures to ensure compliance with the proposed rule change. The Commission published notice of the proposed rule change on December 7, 1989, in Securities Exchange Act Release No. 27484, 54 FR 50544. No comments were received on the proposal.[1]

[1] The Board received one letter on the proposed rule change. The commentator did not specifically address the proposed rule amendments but requested that the Board for the National Association of Securities Dealers, Inc. ("NASD") make a form of supervisory procedures available to firms so that they may more easily comply with the requirement for written supervisory procedures. Neither the Board nor the NASD have developed such a form because of the differences in how securities firms and bank dealers arrange their supervisory structure and how they ensure compliance with Board rules. In its filing the Board noted that the NASD expressed a willingness to have its examiners comment on the adequacy of written supervisory procedures to assist firms in their compliance.

Rule G–27 on supervision requires a dealer to supervise the municipal securities activities of its associated persons and the conduct of its business. It specifies that one or more municipal securities principals must be designated to supervise the dealer and also requires a dealer to have and enforce written supervisory procedures. Rule G–27 places responsibility for ensuring compliance with Board and other rules directly on the dealer. The Board believes that this provides important customer protections and ensures the continued integrity of the municipal securities market. The Board reviewed the requirements of Rule G–27 and determined that the proposed rule change provides more specific guidance as to the supervisory responsibilities of municipal securities dealers. The rule change also clarifies Rule G–9 on the retention of records as it applies to Rule G–27.

The proposed rule change to Rule G–27 will require a dealer to establish an effective supervisory system that has three major components: (i) The specific designation of each principal, including his area of supervisory responsibility; (ii) the adoption and maintenance of detailed written supervisory procedures designed to ensure that a dealer's business and the municipal securities activities of its associated persons are in compliance with Board and other applicable rules; and (iii) at least an annual review of its supervisory system and written procedures to ensure that they are adequate and up-to-date and to determine whether the dealer is in compliance with Board and other applicable rules. The Board stated that these requirements are consistent with the practices of many dealers who have established effective supervisory systems and with the supervisory requirements of other self-regulatory organizations.

Section (a)

Section (a) of the rule is amended to reiterate a dealer's essential obligation to supervise the conduct of its municipal securities business and the municipal securities activities of its associated persons.

Section (b)

All supervision must be effected through and by a qualified principal. Rule G–27 permits considerable flexibility, subject to certain minimum numerical requirements specified in Rule G–3(b), on standards of professional qualification, to delegate supervisory responsibility to one or more principals in a manner that best serves the administrative and other practical concerns of a dealer.

Section (b) of the rule is amended to simply restate, in a more organized fashion, which category of principal may discharge various supervisory responsibilities. In general, supervisory responsibilities for the municipal securities activities of a dealer must rest with a qualified municipal securities principal. However, Rule G–27(b) specifies a number of supervisory responsibilities that also may be performed by municipal securities sales principals, by general securities principals, and by financial and operations principals. In addition, this section provides that a dealer that is not a bank dealer or an introducing broker must appoint at least one financial and operations principal to discharge SEC financial reporting and customer protection requirements and to be principally responsible for the books and records of the dealer; the chief financial officer of such a dealer must be a financial and operations principal. An introductory broker may appoint either a financial and operations principal or a municipal securities principal to supervise its books and records or act as the chief financial officer.

A written record of the name of each designated principal and of his supervisory responsibilities must be maintained for six years as required in Rule G–9 and the dealer's records must be updated as changes occur. The Board stated that nothing in the proposed rule change alters the long-standing position of the Board that a principal designated as responsible for supervising the municipal activities of a branch office or unit need not be physically located there as long as the supervisor effectively can supervise the associated persons and activities of the branch office or unit from his different location.

Section (c)

One of the principal provisions of Rule G–27 has been the requirement that a dealer establish written supervisory procedures to assure compliance with Board and other applicable rules. This ensures that designated principals are informed about the scope of their duties and permits the dealer to oversee its principals' activities. Section (c) of the rule is amended to provide additional guidance as to what matters should be covered in written supervisory procedures. The Board anticipates that supervisory procedures will cover all supervisory activities permitted of principals under Rule G–3. In addition, section (c) would specifically require written supervisory procedures to provide for the periodic review of each office in which municipal securities activities occur, including branch offices or units. Among other things, the section would anticipate that the written supervisory procedures specifically will address Board rules and how supervision will occur. For example, paragraph (c)(iii) of the amended rule would require the regulator and frequent review and approval by a designated principal of customer accounts in which transactions occur. The purpose of this requirement, which is contained in current Rule G–27, is to detect and prevent irregularities and abuses. The Board expects dealers to establish procedures that effectively obtain this objective and are capable of compliance. Thus, in determining when an account must be reviewed, a dealer might look to the volume and frequency of trading and the nature of the securities traded. Such guidelines would be appropriate if they are articulated clearly in a dealer's written supervisory procedures.

Section (d)

Section (d) of the amended rule requires a dealer to revive and update its supevisory procedures when necessary to respond to changes in Board or other applicable rules, administrative changes at the dealer, and other relevant developments. The Board stated that its intent is to ensure that a dealer is aware of current regulatory developments and will educate its supervisors and associated persons in all applicable requirements to ensure compliance.

The proposed rule change also clarifies a dealer's obligation to evaluate its compliance with Board and other applicable rules at least annually. The proposed rule change permits a dealer to develop its own procedures for evaluation of compliance. For example, some dealers may require principals to report on compliance issues periodically or to submit written compliance reports summarizing activities under their particular supervision. In addition, a dealer must be satisifed that its designated principals are following their respective written supervisory procedures. This can be accomplished by ensuring that a designated princicpal keep notes sufficient to permit adequate oversight by the dealer.

The Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Board and, in particular, sections 15B(b)(2) (C) and (G) of the Act in that it protects investors and the public interest by maintaining standards of supervision

and by prescribing clear guidelines for the preservation of records.

It is therefore ordered, pursuant to section 19(b)(2) of the Act that the proposed rule change be, and hereby is, approved, effective July 16, 1990.

For the Commission, by the Division of Market Regulation, pursuant tro delegated authority, 17 CFR 200.30-3(a)(12).

Dated: January 16, 1990.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-1699 Filed 1-24-90; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-27632; [File No. SR-NSCC-89-211]]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Securities Clearing Corporation Relating to a New Fee Schedule

January 17, 1990.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 72s(b)(1), notice is hereby given that on December 21, 1989, National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR-NSCC-89-21) as described in Items I, II, and III 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

The text of the proposed rule change (*i.e.*, the proposed fee schedule) was noticed in the Federal Register on December 15, 1989.[1]

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 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.

[1] *See* Securities Exchange Act Release No. 27524 (December 8, 1989), 54 FR 51521.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) The purpose of the rule change is to implement NSCC's revised fee structure for a temporary period from January 1, 1990 through March 31, 1990.

(b) The proposed rule change provides for the equitable allocation of reasonable fees among NSCC participants, and, therefore, it is consistent with the requirements of the Act, as amended, and the rules and regulations thereunder applicable to NSCC. NSCC has designed the proposal as a change to its dues, fees and other charges that, consistent with Rule 19b4(3)(2), under the Act may take effect upon filing with the Commission.[2]

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule will have an impact or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Propose Rule Change Received from Members, Participants, or Others

See File Number SR-NSCC-89-18 for a discussion of the comments received by NSCC on the revised fee schedule.[3]

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective, pursuant to section 19(b)(3)(A) of the Act. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to file number SR-NSCC-89-21 and should be submitted by February 15, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-1700 Filed 1-24-90; 8:45 am]

BILLING CODE 8010-01-M

[2] NSCC has represented to the Commission that in the event the Commission does not approve the proposed fee increase, NSCC will rebate the difference between the fees collected and the current fees. *See* letter from Karen L. Saperstein, Associate General Counsel, NSCC, to Ester Saverson, Jr., Branch Chief, SEC, dated December 20, 1989.

[3] *See, supra,* note 1.

[Rel. No. IC-17314; 811-4735]

Meritor Growth Opportunities Fund, Inc.; Application for Deregistration

January 19, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "1940 Act").

Applicant: Meritor Growth Opportunities Fund, Inc. ("Applicant").

Relevant 1940 Act Section: Section 8(f).

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company under the 1940 Act.

Filing Dates: The application on Form N-8F was filed on February 16, 1989.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 16, 1990, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549.

Applicant, 259 Radnor-Chester Road, Radnor, Pennsylvania 19087.

FOR FURTHER INFORMATION CONTACT: Patricia Copeland, Legal Technician, (202) 272–3009, or Max Berueffy, Branch Chief, (202) 272–3016 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. Applicant is a Maryland corporation and an open-end diversified management investment company under the 1940 Act. On July 3, 1986, Applicant filed a Notification of Registration on Form N–8A pursuant to section 8(a) of the 1940 Act. On the same date, Applicant filed a registration statement on Form N–1A under the Securities Act of 1933 which was declared effective on September 26, 1986. The initial public offering commenced shortly thereafter.

2. At a meeting held on November 8, 1988, Applicant's Board of Directors ("Board") authorized the Agreement and Plan of Reorganization ("Reorganization") under which Applicant distributed in liquidation to its shareholders shares of common stock of Sigma Special Fund ("Sigma") (811–1967) a registered investment company, received by Applicant in exchange for the transfer of all of its assets and liabilities to Sigma.

Applicant's shareholders approved the Reorganization at a special meeting held on December 29, 1988. The number of shares received by the shareholders of Applicant was determined by dividing Applicant's net asset value per share by the net asset value per share of Sigma, all as of the close of business on December 29, 1988. However, Meritor Financial Group funded an amount equal to Applicant's deferred organizational expenses and prepaid insurance premiums.

3. On December 30, 1988, all of Applicant's assets were transferred to Sigma Special Fund, Inc. Applicant distributed in liquidation to each of its shareholders shares of common stock of Sigma received by the Applicant in exchange for the transfer of all of Applicant's assets and liabilities to Sigma. The total number of Sigma shares distributed to Applicant's shareholders was 628,920.420.

4. Sigma Management, Inc., the Investment Adviser to Sigma Special Fund, Inc., paid approximately $45,000 for expenses incurred in connection with the reorganization, principally legal and accounting fees and costs of printing and mailing the combined Proxy Statement and Prospectus.

5. On December 30, 1989, Applicant filed Articles of Transfer with the Maryland State Department of Assessments and Taxation.

Applicant has no shareholders, assets or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not engaged, nor does it propose to engage in any business activities other than those necessary to wind up its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 90–1697 Filed 1–24–90; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–17313; 811–4736]

Meritor Money Market Fund, Inc.; Application for Deregistration

January 19, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "1940 Act").

Applicant: Meritor Money Market Fund, Inc. ("Applicant").

Relevant 1940 Act Section: Section 8(f).

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company under the 1940 Act.

Filing Dates: The application on Form N–8F was filed on February 16, 1989.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant(s) with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 15, 1990, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicant, 259 Radnor-Chester Road, Radnor, Pennsylvania 19087.

FOR FURTHER INFORMATION CONTACT: Patricia Copeland, Legal Technician, (202) 272–3009, or Max Berueffy, Branch Chief, (202) 272–3016 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. Applicant is a Maryland corporation and an open-end diversified management investment company under the 1940 Act. On July 3, 1986, Applicant filed a Notification of Registration on Form N–8A pursuant to section 8(a) of the 1940 Act. On the same date, Applicant filed a registration statement on Form N–1A under the Securities Act of 1933 which was declared effective on September 26, 1986, and the initial public offering commenced shortly thereafter.

2. At a meeting held on November 8, 1988, Applicant's Board of Directors ("Board") authorized the Agreement and Plan of Reorganization ("Reorganization") under which Applicant distributed in liquidation to its shareholders shares of common stock of Sigma Moneyfund, Inc. ("Sigma") (811–3042), a registered investment company, received by Applicant in exchange for the transfer of all of its assets and liabilities of Applicant to Sigma. Applicant's shareholders approved the Reorganization at a special meeting held on December 29, 1988. The number of shares received by the shareholders of Applicant was determined by dividing Applicant's net asset value per share by the net asset value per share of Sigma, all as of the close of business on December 29, 1988. However, Meritor Financial Group funded an amount equal to Applicant's deferred organizational expenses and prepaid insurance premiums.

3. On December 30, 1988, all of Applicant's assets were transferred to Sigma Moneyfund, Inc. Applicant distributed in liquidation to each of its shareholders shares of common stock of Sigma received by the Applicant in exchange for the transfer of all of Applicant's assets and liabilities to Sigma. The total number of Sigma shares distributed to Applicant's shareholders was 7,091,237.29.

4. Sigma Management, Inc., the Investment Adviser to Sigma Special Fund, Inc. paid approximately $45,000 for expenses incurred in connection with the reorganization, principally legal and

accounting fees and costs of printing and mailing the combined Proxy Statement and Prospectus.

5. On December 30, 1989, Applicant filed Articles of Transfer with the Maryland State Department of Assessments and Taxation.

Applicant has no shareholders, assets or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not engaged, nor does it propose to engage in any business activities other than those necessary to wind up its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-1698 Filed 1-24-90; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the Federal Register notifying the public that the agency has made such a submission.

DATE: Comments should be submitted on or before February 26, 1990. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

AGENCY CLEARANCE OFFICER: William Cline, Small Business Administration, 1441 L Street NW Room 200, Washington, DC 20416, Telephone: (202) 653-8538.

OMB REVIEWER: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Telephone: (202) 395-7340.

Tile: Use of Proceeds Section 503/504.
Form No.: SBA Form 1429.
Frequency: Upon closure of each loan.
Description of respondents: Certified Development Companies.
Annual Responses: 1,200.
Annual Burden Hours: 600.

Tile: Application for Certificate of Competency—Samll Purchase Actions.
Form No.: SBA 1531.
Frequency: On occassion.
Description of respondents: Small Business Owners.
Annual Responses: 1,500.
Annual Burden Hours: 3000.

William Cline,

Chief, Administrative, Information Branch

[FR Doc. 90-1668 Filed 1-24-90; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2399]

Texas; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration which made available Individual Assistance, in the form of Disaster Unemployment Assistance, on January 9, 1990, I find that the Counties of Cameron, Hidalgo, Starr, and Willacy in the State of Texas constitute a disaster area as a result of damages caused by a severe freeze on December 21 through 24, 1989.

Applications for loans for physical damage may be filed until the close of business on March 12, 1990, and for economic injury until the close of business on October 10, 1990, at the address listed below: Disaster Area 3 Office, Small Business Administration, 4400 Amon Carter Blvd., Suite 102, Ft. Worth, TX 76155. Or other locally announced locations. In addition, applications for economic injury from small businesses located in the contiguous counties of Zapata, Jim Hogg, Brooks and Kenedy may be filed until the specified date at the above location.

The interest rates are:

	Percent
For physicial damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	9.250
For economic injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage for the State of Texas is 239907, and for economic injury the number is 692300.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: January 11, 1990.

Bernard Kulik,

Deputy Associate Administrator, for Disaster Assistance.

[FR Doc. 90-1670 Filed 1-24-90; 8:45 am]

BILLING CODE 8025-01-M

Buffalo and Rochester, NY; Upgrade of Status

AGENCY: Small Business Administration (SBA).

ACTION: Statement of organization and function.

SUMMARY: This action to upgrade the Buffalo Branch Office to a District Office and the Rochester Post-of-Duty to a Branch Office is taken to enhance the Small Business Administration's (SBA) ability to service the upstate New York area effective January 14, 1990. Demand for SBA assistance in the Buffalo/Rochester area has grown as the area's commerical base has developed, and continued economic growth is expected to place greater demand upon SBA program delivery systems in the future. The geographic boundaries for these offices will remain unchanged and there will be no adverse impact upon employees as a result of these changes.

DATES: January 25, 1990.

ADDRESS: Thomas G. Peretzman, Deputy Director, Office of Personnel Services, Small Business Administration, 1441 L Street, NW., Room 300, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Thomas G. Peretzman, at (202) 653-6567.

Dated: January 19, 1990.

Richard L. Osbourn,

Director of Personnel.

[FR Doc. 90-1669 Filed 1-24-90; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Mifflin County, PA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be

prepared for a proposed highway project in Mifflin County, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: George J. Catselis, District Engineer, Federal Highway Administration, 228 Walnut Street, P.O. Box 1086, Harrisburg, Pennsylvania 17108–1086, Telephone: (717) 782–3411 or James R. Bathurst, P.E., Design Services Engineer, Pennsylvania Department of Transportation, 1924–30 Daisy Street, Clearfield, Pennsylvania 16830, Telephone (814) 765–0437.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Pennsylvania Department of Transportation (PennDOT), will prepare an Environmental Impact Statement for a section of U.S. Route 322 in Mifflin County, Pennsylvania. Located near Milroy, Pennsylvania, this four mile project will improve the safety and relieve traffic congestion on the section of U.S. Route 322. The northern terminus and study area limits will be the existing four lanes of U.S. Route 322 at Mt. Pleasant. The southern terminus and study area limits will be approximately one-half mile south of the interchange of U.S. Route 322 and PA Route 655. The western limit will extend approximately one and one-quarter mile west along PA Route 655, and the eastern limit will extend approximately one-half mile east of the existing U.S. Route 322.

Based on existing and projected traffic volumes, all build alternatives will require a four-lane facility to accommodate these traffic volumes. The alternates under consideration are: upgrading the existing facility, transportation system management, alternatives on new location west of existing U.S. Route 322, alternatives on new location east of existing U.S. Route 322, alternatives on new location being an east-west combination, and the "NO BUILD" alternate. Interchanges serving both Milroy and the existing PA Route 655 will be evaluated.

A two-phase approach will be used to develop the Environmental Impact Statement. The initial phase of this project will be the development of the need for the project. A Preliminary Alternative Analysis will evaluate all suggested alternatives against the need along with the environmental and engineering constraints. A Plan of Study for the Environmental Impact Statement will be prepared and circulated to State and Federal agencies for those alternatives recommended as feasible by the Preliminary Alternative Analysis.

The second phase of the study process will consist of analyzing the alternatives selected for detailed study. These alternatives will be the basis for the detailed environmental studies and the Environmental Impact Statement. From this analysis a preferred alternative will be identified which best meets the needs of the traffice demand, and satisfies the environmental, socioeconomic, and engineering evaluations and public comments.

An active public participation program will be pursued during the project. A Citizens Advisory Committee will be formed and will meet regularly during the study. This committee will provide liaison between the Commonwealth of Pennsylvania and the local citizens, and participate in all aspects of the study. Public meetings will be held throughout the study to gather input to be used in the study and distribute information on the study. A Public Hearing will be held at the conclusion of the study to solicit comments from the public on alternatives presented. The Draft Environmental Impact Statement will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistant Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernment consultation on Federal programs and activities apply to this program.)

Dated: January 19, 1990.

George L. Hannon,

Assistant Division Administrator, Harrisburg, PA.

[FR Doc. 89–1687 Filed 1–24–89; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Art Advisory Panel of the Commissioner of Internal Revenue

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of determination of necessity for renewal of the Art Advisory Panel.

SUMMARY: It is in the public interest to continue the existence of the Art Advisory Panel.

FOR FURTHER INFORMATION CONTACT: Karen Carolan, CC:AP:AS, 901 D Street, SW., Room 224, Box 68, Washington, DC., 20024, Telephone No. (202) 252–8128 (not a toll free number).

Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. I (1982), the Commissioner of Internal Revenue announces the renewal of the following advisory committee:

Title. The Art Advisory Panel of the Commissioner of Internal Revenue.

Purpose. The Panel assists the Internal Revenue Service by reviewing and evaluating the acceptability of property appraisals submitted by the taxpayers in support of the fair market value claimed on works of art involved in Federal Income, Estate or Gift taxes in accordance with sections 170, 2031, and 2512 of the Internal Revenue Code of 1986.

In order for the Panel to perform this function, Panel records and discussions must include tax return information. Therefore, the Panel meetings will be closed to the public since all portions of the meetings will concern matters that are exempted from disclosure under the provisions of section 552b(3), (4), (6) and (7) of title 5 of the U.S. Code. This determination, which is in accordance with section 10(d) of the Federal Advisory Committee Act, is necessary to protect the confidentiality of tax returns and return information as required by section 6103 of the Internal Revenue Code.

Statement of Public Interest. It is in the public interest to continue the existence of the Art Advisory Panel. The Secretary of the Treasury, with the concurrence of the General Services Administration, has also approved renewal of the Panel. The membership of the Panel is balanced between museum directors and art dealers to afford differing points of view in determining fair market value.

Authority for this Panel will expire two years from the date the Charter is approved by the Assistant Secretary of the Treasury (Management) and filed with the appropriate Congressional committees unless, prior to the expiration of its Charter, the Panel is renewed.

The Commissioner of Internal Revenue has determined that this document is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required. Neither does this document constitute a rule subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Linda M. Combs,

Assistant Secretary (Management).

[FR Doc. 90–1692 Filed 1–24–90; 8:45 am]

BILLING CODE 4810–25–M

Sunshine Act Meetings

Federal Register
Vol. 55, No. 17
Thursday, January 25, 1990

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).

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 55 FR 2198, Monday, January 22, 1990.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2:00 p.m. (Eastern Time) Monday, January 29, 1990.

CHANGE IN THE MEETING: The meeting has been cancelled.

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer, Executive Secretariat, (202) 663-7100.

Dated: January 22, 1990.

This Notice Issued, January 22, 1990.

Frances M. Hart,

Executive Officer, Executive Secretariat.

[FR Doc. 90-1761 Filed 1-23-90; 9:38 am]

BILLING CODE 6750-06-M

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, January 30, 1990 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and title 26 U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, February 1, 1990 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Correction and Approval of Minutes.
Draft Advisory Opinion 1989-28: James Bopp, Jr. on behalf of Maine Right to Life Committee, Inc.
Final Rules Concerning Debts Owed by Candidates and Political Committees (11 CFR part 116).
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. 90-1836 Filed 1-23-90; 2:10 pm]

BILLING CODE 6715-01-M

UNITED STATES POSTAL SERVICE

Board of Governors; Meeting

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 CFR 7.5) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice that it intends to hold a meeting at 1:00 p.m. on Monday, February 5, 1990, and at 8:30 a.m. on Tuesday, February 6, 1990, in Los Angeles, California. The February 5 meeting, at which the Board will discuss preparations for the rate case filing and possible strategies in collective bargaining negotiations, is closed to the public. (See 55 FR 1309, January 12, 1990). The February 6 meeting is open to the public and will be held in Conference Room 133 of the Los Angeles Main Post Office, 7001 South Central Avenue. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268-4800.

Agenda

Monday Session

February 5—1:00 p.m. (Closed)

1. Preparations for Rate Case Filing. (Comer S. Coppie, Senior Assistant Postmaster General, Finance Group; and Frank R. Heselton, Assistant Postmaster General, Rates and Classification Department)
2. Status Report on Preparations for Collective Bargaining. (Joseph J. Mahon, Jr., Assistant Postmaster General, Labor Relations Department)

Tuesday Session

February 6—8:30 a.m. (Open)

1. Minutes of the Previous Meeting, January 8-9, 1990.
2. Remarks of the Postmaster General.
3. Officer Compensation. (Postmaster General Frank)
4. Appointment of Audit Committee Members. (Chairman Setrakian)
5. Quarterly Report on Final Performance. (Comer S. Coppie, Senior Assistant Postmaster General, Final Group)
6. Quarterly Report on Service Performance. (Ann McK. Robinson, Consumer Advocate)
7. Report on the Los Angeles Division. (Charles W. King, Field Division General Manager/Postmaster)
8. Briefing on Operational Opportunities through Barcoding. (John G. Mulligan, Senior Assistant Postmaster General, Operations Support Group)
9. Tentative Agenda for March 5-6, 1990 meeting in Washington, DC

David F. Harris,

Secretary.

[FR Doc. 90-1845 Filed 1-23-90; 3:16 pm]

BILLING CODE 7710-12-M

federal register

Thursday
January 25, 1990

Part II

Department of Energy

Western Area Power Administration

Request for Public Comments on the Western Area Power Administration's Conservation and Renewable Energy Guidelines and Acceptance Criteria; Notice

DEPARTMENT OF ENERGY

Western Area Power Administration

Request for Public Comments on the Western Area Power Administration's Conservation and Renewable Energy Guidelines and Acceptance Criteria

AGENCY: Western Area Power Administration, DOE.

ACTION: Request for public comments on conservation and renewable energy (C&RE) guidelines and acceptance criteria (G&AC).

SUMMARY: The Western Area Power Administration (Western) will review the overall status of its C&RE G&AC, with the intent of considering possible revisions in policy and content. Many of Western's customers will face depletion of power surpluses in the coming decade. Subsequently, they will begin their planning processes for demand-side options and the search for the addition of new supply-side resources. Western proposes to look at its existing C&RE G&AC and consider new initiatives in light of such anticipated utility conditions. Western solicits and encourages public submission of viable C&RE initiatives for consideration in the development of new policy and content changes.

Western's C&RE Program was initiated in 1981 with the inclusion of a C&RE contract article in all new or amended long-term firm power contracts. The issuance of Western's Guidelines and Acceptance Criteria (G&AC) on November 13, 1981 (46 FR 56140), defined the mandatory C&RE requirements. On August 21, 1985 (50 FR 33892), the G&AC were amended to reflect the requirements of title II of the Hoover Power Plant Act of 1984, 42 U.S.C. 7275–76 ("the Hoover Act"). Within this amendment, Western stated that it would review and possibly modify its G&AC every 5 years.

In requesting public comments on its C&RE G&AC, Western recognizes the current economic and business environment changes taking place in the utility industry. This general notice addresses some of the points related to potential program changes, briefly summarizes three possible policy initiatives to be considered and invites public suggestions and participation for potential modifications to Western C&RE G&AC during scheduled public meetings/workshops.

DATES: The effective date of this request for public comment will occur with the publication of this general notice in the **Federal Register**. Written comments in response to this notice should be sent to Western at the address noted below no later than May 25, 1990. Verbal comments are invited during the public information meetings/workshops to be held in accordance with the schedules defined in section VI.

ADDRESSES: For further information concerning this notice, the central point of contact is the Office of the Assistant to the Administrator for Conservation, Environment, and Safety, Western Area Power Administration, P.O. Box 3402, Golden, CO 80410, (303) 231–1544 (Mr. Clarence D. Council). Contact may also be made with one of the following five Western Area Offices: Billings Area Office—P.O. Box 35800, Billings, MT 59107–5800, (406) 657–6530 (Ms. Diane Noennig); Boulder City Area Office—P.O. Box 200, Boulder City, NV 89005–0200, (702) 477–3268 (Mr. Dan Bunch); Loveland Area Office—P.O. Box 3700, Loveland, CO 80539, (303) 490–7227 (Ms. Peggy Plate); Sacramento Area Office—1825 Bell Street, Suite 105, Sacramento, CA 95825–1097, (916) 649–4435 (Mr. Guy Nelson); or the Salt Lake City Area Office—P.O. Box 11606, Salt Lake City, UT 84147–0606, (801) 524–3344 (Mr. Burt Hawkes).

SUPPLEMENTARY INFORMATION:

Contents

I. Introduction

a. Authority

The authority wherein Western develops and administers its C&RE Program is pursuant to the Department of Energy Organization Act, 42 U.S.C. 7101, *et seq.*; the Reclamation Act of 1902, 43 U.S.C. 391, *et seq.*, and acts amendatory thereof or supplementary thereto, in particular section 9(c) of the Reclamation Project Act of 1939; 43 U.S.C. 485h(c); and the Hoover Act.

b. Background

Western's C&RE Program began in 1980 with the involvement of the power marketing administrations with their utility customers in the C&RE technologies. In 1981, Western published its controlling document for the program entitled the G&AC. Title II of the Hoover Power Plant Act of 1984 raised the C&RE G&AC to a legislatively mandated requirement as a condition for the purchase of long-term firm power from Western and directed an amendment to the G&AC which was issued in August 1985. Western requires all of its customers and their members with new or revised long-term power contracts to comply with the C&RE G&AC.

For the purposes of this notice, reference to "customers" pertains to all rural electric cooperatives, municipalities, irrigation districts, public utility districts, investor-owned utilities, and Federal and State agencies who purchase long-term firm power from Western. The C&RE G&AC currently applies to almost 800 Western customers and their members. Currently, over 2,400 annual ongoing customer C&RE activities are approved.

Western's C&RE policy objectives are: To encourage energy conservation activities that reduce the wasteful use of electricity; to improve the generation, transmission, and end-use efficiencies of electrical power to enhance the place of electricity in the energy market; and to ensure the C&RE technologies are understood and the benefits sufficiently evaluated to enable a fair comparison with conventional power sources when additional electrical capacity or energy are required.

In fiscal year 1988, Western conducted 22 workshops, made 282 direct customer consultations, awarded 29 cost-shared contracts totaling $880,000 for the development of customer C&RE programs, conducted 16 direct customer technical assistance tasks, responded to 176 "hotline" inquiries, administered the loan of over 80 pieces of C&RE equipment, tested 299 irrigation pumps, distributed 14 C&RE related informational packages, cosponsored 19 regional and national conferences and workshops, published 17 C&RE publications, arranged 11 utility technology transfer peermatches, and made 4 C&RE awards for outstanding performance. Western also reviewed and approved 344 customer C&RE plans.

II. Discussion—A Philosophy for Change

The basic philosophy within which Western is considering possible changes

to its C&RE G&AC is summarized as follows: Western has a responsibility to support the wise and efficient use of our Nation's natural resources. This area of responsibility is an integral part of Western's mission to implement national energy policy by marketing Federal power over an efficient and reliable transmission system while encouraging conservation and the use of renewable energy resources.

Meeting this responsibility, while integrating society's demands in light of current environmental and economic interests, is important. The impacts of change to the utility industry are foreseen as a wide variety of challenges. Western's C&RE G&AC may be a viable instrument in providing an enhanced energy services mechanism for our customers. It is not Western's intention to place an undue economic or administrative burden or process upon its customers in whatever form new policy or program changes may take.

III. New Policy Options

Briefly described are new policy options for consideration. These policy options could be incorporated into the G&AC as replacement or additional alternatives to the currently defined C&RE activities. The evaluation of any options considered will include an analysis of potential impact to all parties along the utility chain (i.e., from suppliers to end consumers).

Western specifically invites the public to offer comments related to these options and the G&AC, as well as to submit any other reasonable alternatives. Western will evaluate and consider geographical and regional differences in its determination of any final actions.

A. Energy Conservation Incentives

Western might institute arrangements in order to create incentives which would result in energy or capacity conservation by a customer through their application of demand-side management or other energy conservation practices. Such an incentive may include a variety of options—power exchanges (up to some set kilowatthour or kilowatt limit), rebates, (i.e. bill credits), or financial options in the form of cost-sharing or loans. Under this activity, power saved as a part of a defined and substantiated customer conservation action could be acquired by Western when such savings eliminate the need to make firming purchases from other sources and provide a benefit to our customers.

The exact savings or potential financial arrangements would likely vary within each of Western's five service areas, may vary according to the legislation or power conditions associated with each Federal power project, and in all cases, must comply with the prohibition of resale of power by customers.

B. Renewable Energy Development Incentives

Western wishes to encourage renewable energy project development or utilization among Western's customers to the extent possible. Arrangements might include such actions as: cost-shared assistance or loans whereby Western and its customers could share in the developmental risks of a renewable resource project, a cooperative effort in securing adequate transmission services for renewable energy generated power, assistance in matching one customer's need for added energy or capacity with the generation capability from another reliable renewable power generation supply, an incentive in the form of a firming power arrangement which supports a local renewable energy project, or rebates (i.e., bill credits). Renewable resources include solar, wind, geothermal, biomass, and small-scale hydropower.

If a customer's incentive to invest in a reasonable energy project is dampened because transmission represents a serious obstacle, a contractual arrangement could be considered to secure a mutually beneficial solution. Impacts on affected utilities would be important in the structuring of such a contract.

Likewise, in geographical areas where Western may know of available power that could help a customer by providing a firming arrangement, Western may be able to help ensure the success of a developmental venture. Such an initiative could serve as a prototype activity for encouraging the development of renewable technologies in preparation for times when serious attention must turn to the acquisition of added capacity.

C. Least-Cost Utility Planning

Western is exploring the adoption of an incentive policy for the application of least-cost utility planning (LCUP) strategies. Under this concept, Western's customers would be encouraged to look at all supply- and demand-side options available to obtain the most cost-effective benefits to everyone along the energy chain (suppliers, distributors, and end-consumers). LCUP would be of special interest to customers who are in a strategic planning mode or nearing a point where long-term firm-resource planning is indicated.

Three methods for applying an LCUP policy to Western's C&RE Program are tentatively identified. These may be described as follows:

1. Add a requirement of LCUP to the G&AC as a contractual condition of power sales. In this application, Western would count a customer's activity in applying a LCUP process as credit in meeting a part (or all) of its contractual requirements for C&RE activities as defined in the G&AC (e.g., LCUP may count for perhaps two activities).

2. Replace the current C&RE requirements of the G&AC entirely with a formal LCUP process whereby each long-term firm-power purchaser would be required to adopt a LCUP approach to their actual method of operations.

3. Offer LCUP as an optional voluntary activity within the framework of the existing G&AC.

D. Other Options

Western anticipates the potential identification of other policy options for consideration as a result of this public involvement process. Since all issues are in an early identification stage, many options and suggestions will be considered.

IV. The C&RE Guidelines and Acceptance Criteria

The C&RE technologies have seen extensive changes and growth since the inception of Western's C&RE G&AC. Western solicits and encourages public comment on existing G&AC and will consider the merits of appropriate updates to the controlling C&RE G&AC documentation in the light of both technological and program changes.

The amended G&AC published August 21, 1985, in the **Federal Register** is the most recent C&RE G&AC control document. Western proposes to modify this G&AC document to incorporate new policies, program initiatives, and direction into its C&RE G&AC and to make changes deemed appropriate in furthering the C&RE objectives.

V. Legislative and Regulatory Compliance

A. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act of 1980, (5 U.S.C. 601 *et seq.*) each agency, when required by 5 U.S.C. 601 to publish a rule, is further required to prepare and make available for public comment an initial regulatory flexibility analysis to describe the impact of the proposed rule on small entities. In any proposed rule that may result from the

public involvement and data collection defined within this notice, Western will comply with 5 U.S.C. 601. However, it is too early in the developmental process to make a meaningful analysis in meeting such a requirement at this time.

B. Paperwork Reduction Act Review

Any proposed rulemaking resulting from this notice or Western's evaluation of its C&RE G&AC will comply with the Paperwork Reduction Act, and Western will secure the necessary clearance.

C. Executive Order 12291

Pursuant to Executive order 12291 of February 17, 1981 (46 FR 13193, February 19, 1981), each agency is to determine whether a rule it intends to issue is a major rule. Western will comply with this order in its development of any rules resulting from the public involvement process or its evaluation and formulation of C&RE G&AC changes as defined within this notice.

D. National Environmental Policy Act

Pursuant to the provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321, *et seq.*), all agencies of the Federal Government shall include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the environment a detailed statement by the responsible official. Western will consider the applicability of the NEPA in conjunction with the issues and actions being considered under this **Federal Register** notice and the public meetings defined therein. Following the series of public meetings herein referenced, Western will consider the scope of reasonable initiatives under consideration and determine whether or not at this time a formal announcement of our intent to prepare an Environmental Impact Statement is appropriate.

VI. Public Information Meetings/ Workshops

A. Purpose and Procedures

Western's public information meetings will afford all affected customers and interested parties an opportunity to voice their views and opinions regarding the formulation and content of the C&RE G&AC. Western recognizes the limited resources currently available to rural electric utilities and small municipalities. Thus, the locations and numbers of meetings have been designed to accommodate those limits. These meetings will offer attendees both an opportunity to hear Western staff present the G&AC evaluation process and to discuss the issues on each aspect of the C&RE changes and additions being considered.

Western invites any person or group who has an interest in active participation in these public meetings to attend the public meeting of his or her choice. The intent of these meetings is to encourage open discussion which will result in beneficial public input to Western's planning process for possible changes to the C&RE G&AC.

Persons who participate in a meeting may submit written comments to Western (See section VII) as well as participate in active discussions at these meetings. A Western official will be designated to preside at each meeting. The official conducting the meeting will determine the order for discussions. The order and conduct of the meetings may be altered at the discretion of the presiding Western official.

B. Meeting Locations and Schedules

The timetable and locations for the conduct of public information meetings on Western's C&RE G&AC for policy and content modifications are planned as follows:

Western area/ Locations	Facility	Dates
Billings Area:		
Lincoln, NE	Nebraska Center For Continuing Education, 33rd & Holdrege Street.	04/23/90
Sioux Falls, SD	Ramkota Inn, 2400 North Louise.	04/24/90
Bismarck, ND	Kirkwood Inn, 800 South 3rd Street.	04/25/90
Billings, MT	Sheraton Hotel, 27 North 27th Street.	04/26/90
Boulder City Area:		
Pasadena, CA	Holiday Inn, 303 East Cordova.	04/18/90
Mesa, AZ	Mesa Community Center, 201 North Center.	04/20/90
Boulder City, NV	Boulder City Area Office, 3 Miles South on Buchanan.	04/30/90
Loveland Area:		
Casper, WY	Casper Hilton Inn, 800 North Poplar.	04/11/90
Scottsbluff, NE	Candlelight Inn, 1822 East 20th Place.	04/12/90
McPherson, KS	Holiday Manor Best Western, 2211 East Kansas.	04/17/90
Northglenn, CO	Holiday Inn, 10 120th Avenue.	04/19/90
Sacramento Area:		
Sacramento, CA	Holiday Inn, 5321 Date Avenue.	03/12/90
Salt Lake City Area:		
Grand Junction, CO.	Hilton Inn, 743 Horizon Drive.	04/03/90
Albuquerque, NM.	Amfac Hotel-Airport, 2910 Yale Boulevard Southeast.	04/04/90
San Antonio, TX	Laquinta Inn-East, 333 Northwest Loop 410.	04/05/90
Salt Lake City Area:		
Salt Lake City, UT.	Red Lion Hotel, 255 South West Temple.	04/10/90
St. George, UT	City Council Chambers, 175 East 200 North.	04/12/90

Note: Meetings/workshops are targeted to begin at 3 p.m. and end by 7 p.m. dependent upon participation level and meeting circumstances. These times may be shortened or extended at Western's discretion.

VII. Written Comment Procedures

Interested persons are invited to participate in this public process by submitting written comments regarding any subjects identified in this notice. Comments should be labeled "C&RE G&AC Comments" and be received by the date specified at the beginning of this notice. One copy is sufficient for submittal. Comments received as a result of this notice will be available for public inspection under the provisions of the Freedom of Information Act. Pursuant to the provisions of 10 CFR 1004.11, any person submitting information or data that are believed to be confidential and exempt by law from public disclosure should submit one complete original copy of the document, in which the information believed to be confidential by the submitter has been highlighted or otherwise annotated. Factors of interest to Western, when evaluating requests to treat as confidential information that has been submitted, include: (1) A description of the item; (2) an indication as to whether and why such items of information have been treated by the submitting party as confidential, and whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person that would result from public disclosure; (6) an indication as to when such information might lose its confidential character due to the passage of time; and (7) whether disclosure of the information would be in the public interest.

In consideration of the foregoing, Western issues this general notice as set forth above.

FOR FURTHER INFORMATION CONTACT:
Mr. Clarence D. Council, Energy Resources Manager, Western Area Power Administration, P.O. Box 3402, Golden, CO 80401, (303) 231–7504.

Issued at Golden, Colorado, January 11, 1990.

William H. Clagett,
Administrator.

[FR Doc. 90–1658 Filed 1–24–90; 8:45 am]
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federal register

Thursday
January 25, 1990

Part III

Department of the Interior

Bureau of Indian Affairs

25 CFR Part 262

Protection of Archaeological Resources; Proposed Rule

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 262

RIN 1076-AC23

Protection of Archaeological Resources

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Indian Affairs (BIA) proposes to add a part on the protection of archaeological resources to chapter I. The intent, in response to direction in the Archaeological Resources Protection Act of 1979 and consistent with its government-wide, uniform regulations, is to establish regulations detailing the BIA's carrying out of its functions and authorities under the Act.

DATE: Comments must be received on or before February 26, 1990.

ADDRESS: Send written comments to: Donald R. Sutherland, Environmental Services Staff, Bureau of Indian Affairs, MS-4544, 18th and C Streets NW., Washington, DC 20240. All written comments will be available for public inspection in room 4544 at the above address between the hours of 8 a.m. and 4 p.m., Monday through Friday (except holidays) until 30 days after the close of the comment period.

FOR FURTHER INFORMATION CONTACT: Donald R. Sutherland, (202) 343-2791.

SUPPLEMENTARY INFORMATION: This proposed rule is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

The Archaeological Resources Protection Act of 1979 ("Act"; Public Law 96-95; 93 Stat. 721; 16 U.S.C. 470aa-11) was enacted primarily to protect archaeological resources which are on public lands and Indian lands. To meet this purpose, the Act (1) restricts access to archaeological resources on such lands to qualified persons whose intentions are to further archaeological knowledge in the public interest, and requires them to have a permit from the Federal land manager in order to do so, and (2) prescribes civil and criminal penalties for persons who excavate or remove archaeological resources on public or Indian lands without a permit.

Section 10(a) of the Act charged the Secretaries of the Interior, Agriculture and Defense and the Chairman of the Board of the Tennessee Valley Authority with promulgating basic, government-wide implementing regulations. The resulting Uniform Regulations were published as final rule in 48 FR 1016 on January 6, 1984, and can be found at 43 CFR part 7, 36 CFR part 296, 32 CFR part 229 or 18 CFR part 1312. Section 10(b) of the Uniform Regulations charged all Federal agencies with promulgating "such rules and regulations, consistent with the uniform rules and regulations * * * as may be appropriate for the carrying out of (their) functions and authorities under this Act."

Pursuant to section 10(b) of the Act, the Department of the Interior issued the supplemental final rule, 43 CFR part 7, subpart B. This rule covers definitions specific to the Department of the Interior, the determination of loss or absence of archaeological interest, permitting procedures relating to Indian lands, permit appeals and disputes and hearing and appeals procedures.

In order to carry out its functions and authorities under the Act, the BIA also finds it appropriate to promulgate proposed regulations pursuant to section 10(b). The areas to be covered include (1) consultation to determine need for a permit, (2) permit requirements for Indian tribes and individuals, (3) application for permits, (4) landowner consent by the Secretary, (5) notification to Indian tribes of possible harm to, or destruction of, sites having religious or cultural importance, and (6) custody of archaeological resources. For other elements of the Act, such as civil penalties and hearings and appeals, the BIA adheres to the procedures in the uniform regulations and in the Department of the Interior supplemental regulations. Those regulations also provide the definitions applicable to the proposed rule.

(1) *Consultation to determine need for a permit.* Section 5(e) of the uniform regulations states that any person wishing to conduct on public or Indian lands activities related to, but believed to fall outside the scope of, the uniform regulations should consult with the Federal land manager, for the purpose of determining whether any authorization is required, prior to beginning such activities. Because many Indian tribes require permits for archaeological activities on their lands, and because almost any archaeological activity has the potential to fall within the scope of the uniform regulations—even the act of walking over an archaeological site could cause damage by dislodging objects from their context—the proposed rule requires persons wishing to conduct any archaeological activity on public lands of the BIA or on Indian lands to contact, in advance, the appropriate BIA Area Director and the tribe having jurisdiction over the lands on which the investigations are proposed, in order to determine whether or not a permit is needed.

(2) *Permit requirements.* Section 4(g)(1) of the Act exempts an Indian tribe, or its members, from the permit requirements of the Act; provided, there is tribal law regulating the excavation or removal of archaeological resources from Indian lands and the archaeological resources to be excavated or removed are located on Indian lands of such Indian tribe. It does not apply to individual members of tribes whose laws lack such a substitute for the protections afforded by the Act. Neither does it apply to lands, such as certain allotted lands, that are not of the tribe and are not covered by tribal law. Owners of such lands must be viewed in the same light as individual members of tribes that lack tribal laws regulating the excavation or removal of archaeological resources. The exemption also does not apply, with respect to lands of a tribe that has laws protecting archaeological resources, to another tribe or to individuals who are not members of that tribe. The proposed rule clarifies the circumstances under which Indian tribes and individuals are subject to the permit requirements of the Act. It also specifies permit requirements for persons, Indian and non-Indian, who perform archaeological work on behalf of Indian tribes.

(3) *Application for permits.* The proposed rule specifies where to apply for a permit from the BIA and, for permits on Indian lands, the consent documents that must accompany the permit application. It broadens the Department of the Interior Supplemental Regulations, 43 CFR part 7 subpart B, in regard to the details in section 35(b) concerning landowner consent, by employing more encompassing terms for non-tribally owned Indian lands and for lands under tribal jurisdiction. The only non-tribally owned Indian lands addressed in 43 CFR part 7, subpart B, 35(b) are allotted lands. The Act, however, also covers non-tribally owned Indian lands that are subject to a restriction against alienation imposed by the United States. The proposed rule accommodates both these and allotted lands by addressing "individually owned Indian lands."

43 CFR part 7, subpart B, 35(b) also specifies that consent for archaeological work on allotted lands within reservation boundaries must be obtained from both the tribe and the individual landowner(s). In keeping with the language in the uniform regulations, 43 CFR 7.8(a)(5), and in order to

accommodate situations where an Indian tribe might be successful in establishing its jurisdiction over a parcel of individually owned Indian land outside a reservation boundary, or where tribal jurisdiction over a parcel of individually owned Indian land within a reservation boundary might be in dispute, the proposed rule expresses the requirement for tribal consent on individually owned Indian lands in terms of whether or not such lands are "under tribal jurisdiction."

In regard to consent documents, the proposed rule requires specific content relating to terms and conditions to be attached to a permit and advises content addressing possible harm to, or destruction of, religious or cultural sites that issuance of a permit might cause. The latter is discussed further in paragraph (5) below.

(4) *Landowner consent by the Secretary.* 25 CFR 162.2 provides for the Secretary of the Interior, under certain conditions, such as where the landowner is *non compos mentis*, to grant leases on behalf of owners of individually owned Indian land. Section 25 CFR 169.3(c) allows the Secretary, under similar conditions, to issue permission to survey with respect to, and grant rights-of-way over and across individually owned Indian lands. The proposed rule makes like provision for the grants of landowner consent required under the Act.

(5) *Notification to Indian tribes of possible harm to, or destruction of, sites having religious or cultural importance.* Section 7(a) of the uniform regulations requires that the Federal land manager, where he or she has determined that issuance of a permit under the Act might result in harm to, or destruction of, any Indian tribal religious or cultural site on public lands, notify any Indian tribe which may consider the site as having religious or cultural importance. Indian lands are not mentioned here, even though the Act does not distinguish between these and public lands in the notification requirements in section 4(c). Presumably it is because Indian landowners and Indian tribes having jurisdiction over such lands may address concerns about regligious or cultural sites when asked for their consent to work proposed for, and afforded an opportunity to attach conditions to, a permit under the Act.

The proposed rule, as indicated in the discussion in paragraph (4) above, confirms this by advising that written consent either acknowledge that no religious or sacred site would be harmed by the proposed work or request that terms and conditions safeguarding against such harm be included in the permit. In addition, the proposed rule affirms that notification is required for BIA owned public lands; for individually owned Indian lands not under tribal jurisdiction; and for Indian lands that are under tribal jurisdiction; but upon which sites of religious or cultural importance to other Indian tribes or Native American groups might be located.

(6) *Custody of archaeological resources.* Section 13(b) of the uniform regulations states that "archaeological resources excavated or removed from Indian lands are the property of the Indian or Indian tribe having rights of ownership over such resources." Actually, such resources, because they are on the land, are the property of the Indian or Indian tribe having rights of ownership over the land. The proposed rule, in keeping with section 5 of the Act, makes this clear.

The proposed rule also specifies that no permit under the Act may be issued for Indian lands without the prior, written agreement of the Indian landowner(s) to release the archaeological resources recovered to a curation facility that meets the requirements of 36 CFR part 79, or, alternatively, to allow the permittee a reasonable period of time to hold, or have ready access to them for study. Whether or not, in the case of individually owned Indian lands, there should also be consent for this purpose by the tribe having jurisdiction over the lands is unclear in the uniform regulations. These acknowledge, as noted above, that archaeological resources are the property of the Indian or the Indian tribe having rights of ownership over the lands/resources, but do not mention tribal jurisdiction. Section 5 of the Act, however, subjects the exchange (by appropriate institutions) or ultimate disposition of archaeological resources to the consent of the Indian or Indian tribe which owns or has jurisdiction over the lands from which such resources were excavated or removed.

What the acknowledgement in the uniform regulations and the provision in the Act indicate is that on lands under tribal jurisdiction, Indian landowners have sole control, subject to the limitations in section 6(b) of the Act, over archaeological resources excavated or removed from their lands. When an Indian landowner has granted permanent custody of such resources to a curatorial facility, however, their exchange or ultimate disposition becomes a matter of interest to the Indian tribe having jurisdiction over the lands from which those resources came, as well as to the Indian landowner. Accordingly, it is only in the latter case that the proposed rule requires the additional step of securing consent, in regard to the disposition of archaeological resources, from the tribe having jurisdiction over the lands from which those resources were excavated or removed.

In addition to the above provisions, the proposed rule allows the Federal land manager to deny a permit if there is any verifiable reason, such as a record of prior occurrences, to believe that archaeological resources returned to an Indian landowner will be sold to any person, or will be exchanged or transferred to anyone other than the Indian tribe having jurisdiction over the land from which they were removed or a curatorial facility that meets the requirements of 36 CFR part 79. These provisions are based on the requirement, in section 4(b)(2) of the Act, that permitted activity further archaeological knowledge in the public interest. Where archaeological resources cannot be adequately studied, or are likely to become commodities on the antiquities market, their excavation or removal would not meet that requirement and would thus be contrary to the purposes of the Act.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The reason for this determination is that the proposed regulations are primarily directed toward the management of Federal resources, with negligible impact on the general public. Furthermore, the rulemaking merely adds detail to the existing, uniform regulations, which have themselves already been found not to be a major rule.

The Department of the Interior has determined that this proposed rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

The policy of the Department of the Interior is, whenever practical, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding the proposed rule to the location identified in the **ADDRESSES** section of this preamble.

The information collection requirements contained in § 262.4 have been approved by the Office of Management and Budget under 44 U.S.C.

3501 *et seq.* and assigned clearance number 1024–0037.

The primary author of this document is Donald R. Sutherland, Archaeologist, Environmental Services Staff, Office of Trust and Economic Development, Bureau of Indian Affairs.

There is no Federal Domestic Assistance number for these regulations.

List of Subjects in 25 CFR Part 262

Historic preservation, Monuments and memorials, Antiquities, Archaeology.

For the reasons set out in the preamble, part 262 of title 25, chapter I of the Code of Federal Regulations is proposed to be added as set forth below.

PART 262—PROTECTION OF ARCHAEOLOGICAL RESOURCES

Sec.

Authority: Sec. 10(b), P.L. 96–95, 93 Stat. 721 (16 U.S.C. 470aa–11).

Cross Reference: For uniform regulations issued by the Secretaries of the Departments of Agriculture, Defense and the Interior and the Chairman of the Board of the Tennessee Valley Authority pertaining to the protection of archaeological resources, and for supplemental regulations issued by the Department of the Interior pertaining to the same, see Public Lands: Interior, 43 CFR part 7, subparts A and B.

§ 262.1 Purpose, scope and information collection.

(a) *Purpose and scope.* The purpose of this part is to implement certain provisions of the Archaeological Resources Protection Act (ARPA) of 1979 (16 U.S.C. 470aa–11), in accordance with section 10(b) and consistent with uniform regulations promulgated under section 10(a) by the Secretaries of the Interior, Agriculture and Defense and the Chairman of the Board of the Tennessee Valley Authority (43 CFR part 7, 36 CFR part 296, 32 CFR part 229, CFR part 1312) on February 6, 1984. This part shall provide guidance to officials of the Bureau of Indian Affairs (BIA) on the implementation of ARPA, as it pertains to this agency. (16 U.S.C. 470aa–11).

(b) *Information collection.* (1) The information collection requirements contained in § 262.4 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1024–0037. Response is required to obtain a benefit in accordance with 16 U.S.C. 470aa–11.

(2) The public reporting burden for this information is estimated to average one hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Bureau of Indian Affairs, Information Collection Clearance Office, Room 337–SIB, 18th and C Streets NW., Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project (1024–0037), Washington, DC 20503.

§ 262.2 Consultation to determine need for a permit.

Persons proposing to engage in any archaeological investigations on Indian lands or on properties owned or administered by the BIA shall, prior to doing so, provide the appropriate BIA Area Director with a brief, written description of the proposed work and obtain his or her written determination as to whether or not a permit is required. Such persons must also provide written notification, with a copy to the appropriate Area Director, to the tribe having jurisdiction over the lands on which the investigations are proposed, in order to determine whether or not a permit from the tribe is required. Persons proposing to excavate or remove archaeological resources, however, may bypass these requirements by submitting, instead, an application for a permit under the Act.

§ 262.3 Permit requirements for Indian tribes and individuals.

(a) No Indian tribe may, without a permit issued by the appropriate Area Director, excavate or remove archaeological resources on:

(1) Indian lands of another Indian tribe; or

(2) Individually owned Indian lands, except for those on which that Indian tribe's law regulates the excavation or removal of archaeological resources.

(b) No individual Indian may, without a permit issued by the appropriate Area Director, excavate or remove archaeological resources on:

(1) Indian lands of any Indian tribe other than that of which the individual Indian is a member; or

(2) Indian lands of any Indian tribe, including that of which the individual Indian is a member, that does not have tribal law regulating the excavation or removal of archaeological resources on Indian lands; or

(3) Individually owned Indian lands, except for those on which Indian tribal law regulates the excavation or removal of archaeological resources by any tribal member, including the owner(s). Absent such tribal law and, with respect to individually owned Indian lands covered by such law, for non-members of that tribe, the permit requirements of the Act shall apply to all individual Indians, including the owners.

(c) No person may, as a consultant for or in any other way on behalf of any Indian tribe, excavate, remove, or direct the excavation or removal of archaeological resources on Indian lands without a permit issued by the appropriate Area Director, unless:

(1) The person is a permanent employee of that tribe and the work to be performed is an official undertaking of the tribe; or

(2) The tribe has law regulating the excavation or removal of archaeological resources and the person is a member of that tribe.

§ 262.4 Application for permits.

(a) Permits from the BIA shall be issued, and may be conditioned, modified, suspended or revoked by the Area Director. Area Directors may delegate this authority to Agency Superintendents, but only on a permit by permit basis.

(b) Prospective applicants may obtain details on how to apply for a permit by contacting the Area Director, BIA Area Office at Aberdeen, SD; Albuquerque, NM; Anadarko, OK; Arlington, VA (Eastern Area); Billings, MT; Juneau, AK; Minneapolis, MN; Muskogee, OK; Phoenix, AZ; Portland, OR; Sacramento, CA; or Window Rock, AZ (Navajo Area); or by writing to the Assistant Secretary—Indian Affairs, Department of the Interior, Washington, DC 20245.

(c) Permit applications proposing the excavation or removal of archaeological resources on Indian lands shall include the following consent documents:

(1) Written permission from the Indian landowner and from the tribe having jurisdiction over such lands. This must contain any appropriate terms and conditions the landowner or tribe requests be included in the permit; and, where the permission is from a tribe, should either state that no religious or cultural site will be harmed or destroyed by the proposed work or specify terms and conditions that the permit must include in order to safeguard against such harm or destruction.

(i) For tribally owned Indian lands, permission must be granted by the tribe.

(ii) For individually owned Indian lands not under tribal jurisdiction, permission must be granted by the owner(s), except as provided in § 262.5.

(iii) For individually owned Indian lands under tribal jurisdiction, permission must be granted by both the owner(s), except as provided in § 262.5, and the tribe having such jurisdiction. Where an applicant is the owner, consent must still be obtained from the tribe.

(iv) Where the ownership of individually owned Indian lands is multiple, permission must be granted by the owners of a majority of interests, except as provided in § 262.5. The same shall apply where the applicant is one of the owners.

(2) Copies of any permits required by tribal law for archaeological work on lands under tribal jurisdiction.

(3) Written agreement by the Indian landowner(s) to release archaeological resources for curation or study, as specified in § 262.7(b).

(d) Information on, and assistance in contacting Indian landowners for the purpose of requesting the consent documents listed under paragraph (c) of this section may be obtained from the BIA office to which the permit application is submitted.

§ 262.5 Landowner consent by the Secretary.

The Secretary of the Interior, or delegate thereof, may, on behalf of the owner(s) of individually owned Indian lands, grant consent for the purposes in § 262.4(c)(1) and (c)(3) when the Secretary finds that such consent will not result in any injury to the land or owner(s) and when one or more of the following conditions exist:

(a) The owner is a minor or a person *non compos mentis;* or

(b) The heirs or devisees of deceased owner have not been determined; or

(c) The whereabouts of the owner are unknown; or

(d) Multiple owners are so numerous that the Secretary finds it would be impractical to obtain their consent, as prescribed in § 262.4(c)(1)(iv); or

(e) The owner has given the Secretary written authority to grant such consent on his or her behalf.

§ 262.6 Notification to Indian tribes of possible harm to, or destruction of, sites having religious or cultural importance.

When consent by an Indian tribe to proposed excavation or removal of archaeological resources from Indian lands it owns or over which it has jurisdiction contains all of the information written as prescribed and advised in § 262.4(c)(1), it may be taken to mean that: subject to such terms and conditions as the tribe might specify, issuance of a permit for the proposed work will not result in harm to, or destruction of, any site of religious or cultural importance. No further notification is necessary, unless the Area Director has reason to believe that the proposed work might harm or destroy a site of religious or cultural importance to another tribe or Native American group. In such a case, he or she shall follow the notification procedures established in the uniform regulations, 43 CFR 7.7. Notification in accordance with those procedures must also be followed for proposed excavation or removal of archaeological resources on individually owned Indian lands over which there is no tribal jurisdiction and on public lands owned or administered by the BIA.

§ 262.7 Custody of archaeological resources.

(a) Archaeological resources excavated or removed from Indian lands remain the property of the Indian tribe or Indian individual(s) having rights of ownership over such lands.

(b) No permit for the excavation or removal of archaeological resources on Indian lands may be issued without the written consent of the Indian landowner(s) either to grant custody of the archaeological resources recovered to a curatorial facility that meets the requirements of 36 CFR part 79, or to allow the permittee a reasonable period of time to hold them, or have ready access to them at a single, appropriate location for study. Written consent to custody by a curatorial facility may include terms and conditions regarding curation (e.g., cleaning, viewing, loaning, studying, etc.), provided these are consistent with 36 CFR part 79.

(1) On tribally owned Indian lands, consent must be obtained from the tribe.

(2) On individually owned Indian lands, consent must be obtained from the owner of the land or the owners of a majority of interests therein, except as provided in § 262.5.

(3) Where consent is by the owners of a majority of interests, it must, if the archaeological resources are to be retained by or, after study, returned to the Indian landowners, designate a representative to receive those resources. Any distribution of such archaeological resources following their study and/or return is a matter for the landowners themselves to decide.

(c) The Area Director may decline to issue a permit for individually owned Indian lands when the landowner(s) consents only to temporarily relinquish custody of archaeological resources, if the Area Director has any verifiable reason to believe that archaeological resources returned to the landowner(s) will be sold to any person, or will be exchanged or transferred other than to the tribe having jurisdiction over such lands or to a curatorial facility that meets the requirements of 36 CFR part 79. The basis for decline shall be that the excavation or removal of archaeological resources under such circumstances would not be in the public interest and would thus be contrary to the purposes of the Act.

(d) The landowner(s) alone may grant custody of archaeological resources excavated or removed from individually owned Indian lands that are under tribal jurisdiction to a curatorial facility that meets the requirements of 36 CFR part 79. When, however, such consignment constitutes the ultimate disposition of the archaeological resources, the tribe having jurisdiction must also grant its consent. Thereafter, any exchange or ultimate disposition of the archaeological resources by the curatorial facility must have the consent of both the landowner(s) and the tribe.

Walter R. Mills,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 90-1640 Filed 1-24-90; 8:45 am]

BILLING CODE 4310-02-M

federal register

Thursday
January 25, 1990

Part IV

Department of Defense

Corps of Engineers, Department of the Army

33 CFR Part 334

Restricted Areas in the West Arm of Behm Canal Near Ketchikan, Alaska; Rule

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Part 334

Restricted Areas in the West Arm of Behm Canal Near Ketchikan, Alaska

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Final rule.

SUMMARY: The Corps of Engineers is establishing five restricted areas in the waters of the West Arm of the Behm Canal, north of Ketchikan, Alaska. The Navy has requested the establishment of the restricted areas to regulate certain vessel activities which could interfere with testing operations, threaten vessel safety or damage naval equipment and instrumentation. Scheduling of Naval testing activities will take into account other existing uses of the area including commercial and recreational boaters and fishing.

EFFECTIVE DATE: February 26, 1990.

ADDRESS: HQDA, CECW–OR, Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Ms. Carol Gorbics at (907) 753–2712 or Mr. Ralph Eppard at (202) 272–1783.

SUPPLEMENTARY INFORMATION: The U.S. Navy has requested the Corps of Engineers establish five restricted areas within the waters of the West Arm of Behm Canal to regulate vessel activities which could interfere with naval testing operations in those areas and threaten vessel safety or damage U.S. Government equipment and instrumentation. On February 16, 1989, the Corps published the Navy's proposal in the **Federal Register** with the comment period expiring on March 20, 1989. Due to comments received in response to the proposed rule the following changes are made only to area No. 5 in the final regulation.

a. During the period May 1 through September 15 annually, the Navy will only conduct acoustic measurement tests which will result in transitory restrictions in Area #5 for a total of no more than 15 days.

b. Transitory restrictions in Area #5 will not be enforced during daylight hours when Navy testing coincides with pre-scheduled special events in Behm Canal. Special events are defined as summer holidays or celebrations, competitions, or economic endeavors scheduled by an agency or organization, and typically occurring every year, for the utilization of natural resources of Behm Canal. Special events include commercial emergency seine fishery openings from July 25 through September 15, historic salmon derbies lasting eight days or less, Memorial Day, Labor Day, Independence Day or any nationally recognized three day weekend to celebrate these holidays.

c. Public notification that the Navy will be conducting operations in Behm Canal will be given at least 72 hours in advance to the following Ketchikan contracts: U.S. Coast Guard, Ketchikan Gateway Borough Planning Department, Harbor Master, Alaska Department of Fish and Game, KRBD Radio, KTKN Radio, and the Ketchikan Daily News.

d. Vessels will be allowed to transit Restricted area #5 within 20 minutes of marine radio or telephone notification to the Navy Range Operations Officer.

There are no changes to restricted areas number 1 through 4 and they are established as proposed. Economic Assessment and Certification. This rule is issued with respect to a military function of the Department of Defense and provisions of E.O. 12291 do not apply. I hereby certify that if adopted, this regulation will have no significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 334

Navigation (water) transportation, Danger zones.

In consideration of the above the Corps of Engineers is establishing restricted area regulations in 33 CFR part 334 to read as follows:

PART 334—DANGER ZONES AND RESTRICTED AREA REGULATIONS

1. The authority citation for part 334 continues to read as follows:

Authority: 30 Stat. 266; (33 U.S.C. 1) and 40 Stat. 892; (33 U.S.C. 3)

2. Part 334 is amended by adding a new § 334.1275 as follows:

§ 334.1275 West Arm Behm Canal, Ketchikan, Alaska, restricted areas.

(a) *The areas*—(1) *Area No. 1.* The waters of Behm Canal bounded by a circle 2,000 yards in diameter, centered on 55 36''N latitude, 131 49.2'W longitude.

(2) *Area No. 2.* The waters of Behm Canal bounded by a circle 2,000 yards in diameter, centered at 55 34'N latitude, 131 48'W longitude.

(3) Area No. 3. The waters of Behm Canal excluding those areas designated as areas Nos. 1 and 2 above, bounded by an irregular polygon beginning at the shoreline on Back Island near 55 32.63'N latitude. 131 45.18'W longitude, then bearing about 350 T to 55 38.06'N latitude, 131 46.75'W longitude, then bearing about 300 T to 55 38.52'N latitude, 131 48.15'W longitude, then bearing about 203 T to 55 33.59'N latitude, 131 51.54'W longitude, then bearing about 112 T to the intersection of the shoreline at Back Island near 55 32.53'N latitude, 131 45.77'W longitude, then northeast along the shoreline to the point of beginning.

(4) Area No. 4. The waters of Clover Passage bounded by an irregular polygon beginning at the shoreline on Back Island near 55 32.63'N latitude, 131 45.18'W longitude, then bearing 150 T to the intersection of the shoreline on Revillagegedo Island near 55 30.64'N latitude, 131 43.64'W longitude, then southwest along the shoreline to near 55 30.51'N latitude, 131 43.88'W longitude, then bearing 330 T to the intersection of the shoreline on Back Island near 55 32.16'N latitude, 131 45.20'W longitude, and from there northeast along the shoreline to the point of beginning.

(5) Area No. 5. The waters of Behm Canal bounded to the north by a line starting from Point Francis on the Cleveland Peninsula to Escape Point on Revillagegedo Island then south along the shoreline to Indian Point, then south to the Grant Island Light at 55 33.4'N latitude, 131 43.6'W longitude then bearing 216 T to the south end of Back Island and continuing to the intersection of the shoreline on Betton Island at about 55 31.52'N latitude, 131 45.98'W longitude, then north along the shoreline of Betton Island to the western side below Betton Head at about 55 31.83'N latitude, 131 50'W longitude, then bearing 283 T across Behm Canal to the intersection of shoreline near the point which forms the southeast entrance of Bond Bay at about 55 33.60'N latitude, 131 56.58'W longitude, then northeast to Helm Point on the Cleveland Peninsula, then northeast along the shoreline to the point of beginning at Point Francis.

(b) The regulations—(1) Area No. 1. Vessels are allowed to transit the area at any time. No vessel may anchor within the restricted area or tow a drag of any kind, deploy a net or dump any material within the area.

(2) Area No. 2. Vessels are allowed to transit the area at any time. No vessel may anchor within the restricted area or tow a drag of any kind, deploy a net or dump any material within the area. Vessels are also prohibited from mooring or tying up to, loitering alongside or in the immediate vicinity of naval equipment and barges in the restricted area.

(3) Area No. 3. Vessels are allowed to transit the area at any time. Due to the presence of underwater cables and instrumentation, anchoring is prohibited and the towing of a drag or any object

within 100 feet of the bottom is also prohibited. Anchoring is allowed within 100 yards of the shore of Back Island except within 100 yards of each side of the area where electrical and other cables are brought ashore. The termination location of the cables on the land is marked with a warning sign that is visible from the water.

(4) Area No. 4. Due to the presence of communication and power cables crossing from Revillagegedo Island to Back Island no anchoring or towing of a drag is allowed. Anchoring is allowed within 100 yards of the shore of Back Island except within 100 yards of each side of the area where the cables are brought ashore. The termination location of the cables on the land is marked with a warning sign that is visible from the water.

(5) Area No. 5. (i) The area will be open unless the Navy is actually conducting operations. To ensure safe and timely passage through the restricted area vessel operators are required to notify the Range Operations Officer of their expected time of arrival, speed and intentions. For vessels not equipped with radio equipment, the Navy shall signal with flashing beacon lights whether passage is prohibited and when it is safe to pass through the area. A flashing green beacon indicates that vessels may proceed through the area. A flashing red beacon means that the area is closed to all vessels and to await a green clear signal. Each closure of the area by the Navy will normally not exceed 20 minutes.

(ii) Small craft may operate within 500 yards of the shoreline at speeds no greater than 5 knots in accordance with the restrictions in effect in area No. 3.

(iii) During the period May 1 through September 15 annually, the Navy will only conduct acoustic measurement tests which will result in transitory restrictions in Area #5 for a total of no more than 15 days.

(iv) Transitory restrictions in Area #5 will not be enforced during daylight hours when Navy testing coincides with pre-scheduled special events in Behm Canal. Special events are defined as summer holidays or celebrations, competitions, or economic endeavors scheduled by an agency or organization, and typically occurring every year for the utilization of natural resources of Behm Canal. Special events include commercial emergency seine fishery openings from July 25 through September 15, historic salmon derbies lasting eight days or less, Memorial Day, Labor Day, Independence Day or any nationally recognized three day weekend to celebrate these holidays.

(v) Public notification that the Navy will be conducting operations in Behm Canal will be given at least 72 hours in advance to the following Ketchikan contacts: U.S. Coast Guard, Ketchikan Gateway Borough Planning Department, Harbor Master, Alaska Department of Fish and Game, KRBD Radio, KTKN Radio, and the Ketchikan Daily News.

(c) Vessels will be allowed to transit Restricted Area #5 within 20 minutes of marine radio or telephone notification to the Navy Range Operations Officer.

(d) Enforcement. The regulations in this section shall be enforced by the Commander, David Taylor Research Center and such agencies he/she may designate.

Dated: December 21, 1989.

Patrick J. Kelly,

Brigadier General (P), USA, Director of Civil Works.

[FR Doc. 90–1675 Filed 1–24–90; 8:45 am]

BILLING CODE 3710-08-M

federal register

Thursday
January 25, 1990

Part V

Department of Energy

Office of Conservation and Renewable Energy

10 CFR Part 436

Federal Energy Management and Planning Programs; Life Cycle Cost Methodology and Procedures; Proposed Rules

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

10 CFR Part 436

[Docket No. CAS-RM-79-107]

Federal Energy Management and Planning Programs; Life Cycle Cost Methodology and Procedures

AGENCY: Office of Conservation and Renewable Energy, DOE.

ACTION: Notice of proposed rulemaking and public hearing.

SUMMARY: The Department of Energy proposes to amend 10 CFR part 436, which sets forth guidelines applicable to Federal agency in-house energy management programs, in order to make changes required by the Federal Energy Management Improvement Act of 1988 (Public Law 100-615) or agreed to by the principal Federal agencies responsible for energy management on the basis of experience over the last decade. The principal regulatory changes proposed today involve amendments to the life cycle cost methodology and procedures to provide for an annually determined market-based discount rate and for a more effective system to revise annually the energy cost escalation rates Federal agencies are required to assume.

DATES: Written comments (six copies) must be received on or before March 12, 1990 in order to ensure their consideration. A public hearing will be held on February 23, 1990, beginning at 9:30 a.m., e.d.t., at the address indicated below. Requests to speak at the hearing must be received by 4:30 p.m., e.d.t. on February 21, 1990.

ADDRESSES: Written comments (six copies) and requests to speak at the public hearing, are to be submitted to: U.S. Department of Energy, Office of Conservation and Renewable Energy, CE-43.1, Room 6B-025, FEMP-Life Cycle Costs, Docket No. CAS-RM-79-107, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586-3012.

The public hearing will be held at the U.S. Department of Energy, Room 1E-245, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585. Please bring six copies of the oral testimony to the hearing. Copies of the transcript of the public hearing, and the public comments received, may be obtained at the DOE Freedom of Information Reading Room, Room 1E-190, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-6020.

FOR FURTHER INFORMATION CONTACT:

K. Dean DeVine, Federal Energy Management Program, CE-10.1, Office of Conservation and Renewable Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6784,

Neal J. Strauss, Office of General Counsel, GC-12, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9507,

U.S. Department of Energy, Office of Conservation and Renewable Energy, CE-43.1, Room 6B-025, Hearings and Dockets, 1000 Independence Ave., SW., Washington, DC 20585, (202) 586-3012.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Department of Energy (DOE) today proposes amendments to some of the rules in 10 CFR part 436 which are applicable to programs for the management of energy consumption by Federal agencies. The amendments are directed principally toward updating the life cycle cost methodology and procedures in subpart A in light of changes in law granting DOE more discretion in setting discount and energy cost escalation rates, and of ten years of experience under the existing rule. Secondarily the amendments also are designed to make necessary revisions to Part 436 to take account of the execution of some provisions of section 10 of Executive Order 11912, as amended, (Executive Order) 42 FR 37523 (July 20, 1977) related to FY 1985 building energy reduction goals and the expiration of part II of title V of the National Energy Conservation Policy Act (NECPA), Public Law 95-619 which provided for the Solar in Federal Buildings Demonstration Program (Solar Demo Program).

II. Background of the Life Cycle Cost Methodology Amendments

On January 23, 1980, DOE published a final Life Cycle Cost rule (LCC rule) (45 FR 5620) which established the methodology and procedures for calculating and comparing the life cycle costs of proposed investments to upgrade the economic efficiency of Federal buildings through energy conservation or substitution of renewable energy sources. The LCC rule was published pursuant to section 381(a)(2) of the Energy Policy and Conservation Act, as amended, 42 U.S.C. 6361(a)(2), section 10 of the Executive Order, and title V, part 3, of NECPA. The principal uses of the LCC rule are determining the cost effectiveness of proposed investments and assigning priorities among proposed cost-effective investments. The methodology and procedures of the LCC rule are amplified in a manual published for DOE by the National Institute of Standards and Technology (NIST HB135), revised as necessary to reflect amendments. It is referred to as the "Life Cycle Costing Manual for the Federal Energy Management Program".

The methodology required by the LCC rule involves a systematic analysis of all significant costs associated with proposed investments the principal purpose of which is to increase energy efficiency on a life-cycle cost effective basis. This analysis relates investment costs to future costs associated with a proposed investment. The LCC rule provides for standardized assumptions for establishing and comparing relevant costs. *See* 10 CFR 436.14.

Two of the most critical assumptions concern the appropriate discount and energy cost escalation rates which Federal agencies have been required to use. The discount rate represents the opportunity cost of money, and is applied to adjust future cash flows to present values so that all cash flows are measurable and comparable in equally valued dollars, that is to say, in dollars adjusted as necessary to reflect the time value of money. As one hypothetically increases the discount rate, the smaller the future energy cost savings appear relative to investment costs. The energy cost escalation rates represent rates at which DOE projects energy prices will increase. The 1980 Energy Security Act (Pub. L. 96-294) amendments to NECPA required use of a 7% real discount rate and of regional marginal real fuel cost escalation rates. In practice, the fixed discount rate was criticized as an unnecessary simplification. Setting escalation rates based on the price of the hypothetical marginal unit of supply, instead of the average unit price in the marketplace, proved to be a very difficult task of questionable desirability.

The Federal Energy Management Improvement Act of 1988 (Pub. L. 100-615) amended NECPA by giving DOE the authority to set discount and average fuel cost escalation rates that are practical, effective, and rational. The principal amendments proposed today are pursuant to that authority.

All of today's proposed amendments were developed in active consultation with representatives of the Office of Management and Budget (OMB), the Department of Defense (DOD), the General Services Administration (GSA), and the National Institute of Standards and Technology (NIST). The proposed

amendments, other than those required by changes in law, are based upon the cumulative experience of Federal agencies over the last 10 years under the existing rule. Once the amendments become final, the implementing agencies will have to modify manuals and computer software, as well as provide supplementary training to personnel. The effort will be costly, and the agencies agree that further changes to the life cycle cost methodology and procedures should be resisted. Experience has proved that the LCC rule is basically sound, and with today's proposed technical amendments to facilitate more effective use of computer software, and greater flexibility for structuring problems for solution, it should not be necessary to make further regulatory changes in the near term. The benefits of any such changes very likely would be small, and therefore would be offset by the costs of implementation.

During the last ten years software has been made available to Federal agencies which tends to reduce errors and improve the accuracy of life cycle cost analysis. Specifically, NIST has developed life cycle costing software which permits life cycle cost analysis to be done more quickly and with less chance of human error. In addition, whole building energy analysis software is available to significantly improve energy savings calculations for life cycle costing. Use of such software should be matched to the project to assure cost effective application, i.e., in doing such analysis potential benefits should outweigh the estimated costs of analysis and implementation of results.

A section-by-section discussion of the proposed amendments follows. As necessary, the discussion elaborates on the difference from existing language and the basis for the proposed amendments. For the convenience of the reader, following the preamble, DOE is publishing the entire text of the LCC rule including provisions that remain unchanged, as well as the amended sections.

III. Section-by-Section Discussion

A. Introductory Sections

Sections 436.1 and 436.2, the introductory sections for all of part 436, would be updated to take account of the expiration of the FY 1985 building energy reduction goals of the Executive Order and the substitution of a new FY 1995 goal by the Federal Energy Management Improvement Act amendments to NECPA. The new goal is set forth as proposed § 436.2(a).

B. Subpart A—Life Cycle Cost Methodology and Procedures

1. Definitions

(a) DOE Proposes to substitute a definition for a new term—"building energy system"—which will supplant the current definitions for "alternative building system" and "building system." (Conforming changes throughout the rule are proposed.) The new definition is desirable to confirm what was previously implicit and is now explicit in the statutory definition of "Federal building". NECPA now explicitly includes, as a legitimate objective of life cycle cost analysis, "energy consuming support systems" for a "collection" of buildings, as in the case of a district heating system in which steam is delivered from a central heating plant by pipes to more than one building. Furthermore, there is no longer any need to define "alternative building system", the word "alternative" will be used in the rule according to normal English usage.

(b) DOE also proposes to revise the definition of "energy conservation measure" to conform to a change in the statutory definition of the same term. Eliminated, as no longer necessary, is a long list of examples of an "energy conservation measure." It should be noted the new definition includes "improvements in operations and maintenance efficiencies." If such an improvement involves negligible investment cost, the presumption of cost-effectiveness should apply under 10 CFR 436.13. However, if a significant investment cost is involved, then a life cycle cost analysis will be required.

(c) DOE proposes to revise the definitions of "Federal agency" and "Federal building" to comply with the definitions of those terms in the recent amendments to NECPA. These amendments clarify the existing regulatory coverage, but do not appear to make a significant substantive change.

2. Discount Rate

Over the last ten years, the methodological assumption in § 436.14(a) on the appropriate discount rate has changed. In the beginning, the rate was fixed administratively at 10% pursuant to the Executive Order. The 1980 Energy Security Act amendments to NECPA lowered the fixed rate to 7%. While a fixed rate had the virtue of simplifying the task of setting guidelines by rule for the conduct of life cycle cost analyses by Federal agencies, it departed significantly from market-based rates. It also detracted from the credibility of the methodology with members of the public who closely follow DOE developments in building energy economic analysis and know how critical discount rate assumptions are. As indicated above, the 1988 Federal Energy Improvement Act amendments to NECPA eliminated the requirement to use a 7% discount rate, and gave DOE discretion to use an estimated variable, market-based discount rate suitable for the programmatic needs of a long-term investment program.

A desired characteristic of the discount rate is that it be closely tied to current market rates for bonds issued by the United States Treasury (T-bonds). T-bond rates reflect the long-run cost to the United States of investing in building energy systems for energy cost savings. DOE believes that architecture and engineering firms and others who perform life cycle cost analyses for Federal agencies will readily understand this to be the case.

The 10% and 7% discount rates which were previously used were defined as real rates which excluded general price inflation. They were applied to projected future cost streams measured in constant dollars which also excluded general price inflation. This approach conforms to the well-accepted principle of economic analysis that estimating future costs in constant dollars (excluding inflation) and adjusting them to present value using a real discount rate (excluding inflation) is theoretically equivalent to estimating future costs in current dollars (including inflation) and adjusting them to present value using a market, or nominal, discount rate (including inflation). The essential analytical requirement is that the treatment of general price inflation be consistent in the discount rate and the estimation of future costs, both either excluding or including the same measure of general price inflation.

Market rates of interest, such as T-bond rates, include inflation. Hence, basing the discount rate on T-bond rates necessitates either of two approaches: (1) Adjusting the resulting nominal discount rate to an equivalent real rate to use for discounting constant dollar cash flows, or (2) leaving the discount as a nominal rate and estimating cash flows in current dollars. The bottom-line result will be identical, provided consistent assumptions are made about the underlying inflation rate.

Both the real discount rate/constant dollar approach and the nominal discount rate/current dollar approach are widely used in practice, both by the government and private sector. Office of Management and Budget Circular No.

A–94 which provides discounting guidelines applicable to the evaluation of most Federal projects, calls for the real discount rate/constant dollar approach, while Circular No. A–104 which pertains to lease/buy decisions calls for the nominal discount rate/current dollar approach. DOE proposes to revise § 436.14, which sets forth methodological assumptions, and to broaden the life cycle cost methodology for the Federal Energy Management and Planning Programs to allow for either approach. As long as OMB adheres to the real discount rate/constant dollar approach in Circular A–94, DOE plans to choose that approach when specifying the discount rate annually, and NIST will publish supporting tables in that form. In the event that A–94 is revised to adopt a nominal discount rate/current dollar approach, DOE will shift to it as the preferred approach. The rationale is to make the treatment of inflation in energy related analyses compatible with analyses for other capital budgeting decisions in buildings, which are guided primarily by A–94, while avoiding the need for further changes in the life-cycle costing methodology and procedures.

The discount rate will be set for one-year intervals coinciding with the Federal fiscal year. Having the rate vary more often than once a year would interfere with providing energy projection data and be disruptive to agency evaluations. The rate set by DOE and the supporting tables for use in life cycle cost analysis are to be made available in an annual supplement to the Life Cycle Costing Manual for the Federal Energy Management Program (NIST 85–3273) issued at the beginning of each fiscal year.

The proposed method is to base the discount rate on the composite yield on all outstanding T-bonds neither due nor callable in less than 10 years, as reported by the Federal Reserve Board in Statistical Release H.15. DOE considered letting the discount rate be a function of the length of the project study period, by basing the discount rate for a given analysis on the yield rate for T-Notes or Bonds of a comparable maturity. But after considering the relatively small variation in yields on bonds with maturities of five years or greater, and taking into account the characteristically long life of most building energy systems, DOE opted for the simplicity of using a single, composite long-term rate. The composite rate will be averaged over the most recent three months prior to the cut-off date for preparing the Annual Supplement to avoid fluctuations that might be present in a single day or week's yields.

To apply the real discount rate/constant dollar approach requires adjusting the composite T-bond market rate to an equivalent real rate. This requires an estimate of the inflation component. DOE proposes to base the inflation component on the Administration's projection as reported in the most recent Economic Report of the President. To adjust for the fact that the inflation projection is for a five-year period, while the T-bond maturity is 10 years and greater, DOE proposes to assume that the five-year inflation projection bears the same proportional relationship to the yield on T-bonds with a five-year maturity, as the inflation rate for 10 years and longer bears to yields on T-bonds with maturities 10 years and longer. Thus, if the Administration's projection of inflation over the coming five years were, for example, 3.0%, the yield on five-year T-notes were 8.5%, and the composite yield for T-bonds with maturities 10 years and greater were 9.0%, the derived inflation component of the composite yield would be 3.2% (i.e., the ratio of 3.2% to 9.0% equals the ratio of 3.0% to 8.5%, apart from rounding errors). This is the kind of adjustment referred to by the proposed § 436.14(a) which states:

> The real discount rate shall be the nominal discount rate adjusted to exclude inflation consistent with the inflation projections in the most recent Economic Report of the President.

Conversion of the composite T-bond yield to a counterpart real rate is accomplished by dividing (1 + composite T-bond yield) by (1 + the derived inflation component) and subtracting 1 from the quotient. Hence, carrying through the hypothetical illustration, a real discount rate, counterpart to a nominal discount rate of 9.0%, would be 5.6% (i.e., (1 + 0.09)/(1 +0.032)−1).

3. Base Year Energy Costs and Energy Cost Escalation Rates

With some minor exceptions, § 436.14(c) generally has required Federal agencies to use their actual delivered energy prices in calculating base year energy costs. To account for the possibility that a Federal agency might not know or be able to derive its actual delivered energy prices § 436.14(c) provided for Federal agencies to assume appropriate base year energy costs from tables in an appendix to subpart A.

With some minor exceptions, § 436.14(b) generally has required Federal agencies to calculate future energy costs by applying to base year energy costs appropriate factors in an appendix to subpart A which reflect real energy cost escalation rates set by DOE. Originally, DOE set those rates by projecting market-based average energy costs with the aid of a computer model of the economy which was developed and maintained by DOE's Energy Information Administration (EIA). It was assumed that annual changes in energy cost escalation rates and related factors in the appendix to subpart A would be accomplished by rulemaking.

DOE today is proposing to amend subsections (c) and (b) of § 436.14 in a variety of ways. First, DOE is proposing to delete the provision in subsection (c) permitting Federal agencies to use DOE projected base year energy costs. The rationale for this proposal is lack of need and avoidance of unnecessary confusion; DOE is unaware of any current examples where a Federal agency is unable to determine an actual delivered energy cost.

Second, DOE now proposes to amend subsection (b) to provide for use of annually updated factors reflecting energy cost escalation rates set in accordance with EIA projections for four regions (projections developed with a revised computer model and base case assumptions described below). DOE, with NIST assistance, further proposes to make annual updates available by publishing annual supplements to the Life Cycle Cost Manual for the Federal Energy Management Program unless there are significant changes in the method or assumptions in projecting those cost figures. More frequent resort to voluntary rulemaking in order to generate annual updates would be undesirable because of the long time to complete the process and the lack of new significant issues for public comment. EIA will publish updated model documentation and assumptions for its annual forecasts. These reports are available from EIA's National Energy Information Center (202) 586–8800.

Generally, the energy price projections are consistent with the base case projections that are listed in the current Annual Energy Outlook, published by EIA. However, since the forecast horizon evaluated in the Annual Energy Outlook (generally about 15 years) is less than the 25 years required for life cycle cost analysis, prices for the additional years are based on a separate methdology. Methdologies for both periods are described below.

The Annual Energy Outlook Price Methodology: 1988 to 2000. Energy projections listed in the Annual Energy

Outlook are developed using the integrating framework of the PC AEO Forecasting Model (PC–AEO). Complete documentation on the PC–AEO is available in PC–AEO Forecasting Model for the Annual Energy Outlook 1987 (DOE/EIA–MO29), June 1988. This integrating framework solves for equilibrium market prices by balancing energy supply (represented by individual supply modules for oil refining, electric utilities, natural gas, crude, oil, and coal) and end-use demand (represented by individual demand modules for residential, commercial, industrial, and transportation demand sectors). PC–AEO takes into account interfuel competition, government policies and regulations, and trends in energy conservation.

The PC–AEO forecast results are calibrated to EIA's short-term energy projection (as published in the Short-Term Energy Outlook) and to EIA's historical data. The PC–AEO model retains the major features of the Mid-Term Energy Forecasting System (MEFS) and the Intermediate Future Forecasting System (IFFS) models in use in the early 1980's by EIA in preparing its Annual Energy Outlook. No major changes in forecasts should be attributed solely to the change in modeling systems. PC–AEO is a more concise, tractable modeling system than the earlier systems which were used.

Although, the Annual Energy Outlook only presents energy prices, consumption, and supplies at the national level, PC–AEO also formulates projections of energy markets on a regional basis to show particular regional differences in sector/fuel consumption and prices. It is these disaggregated energy totals from which the regional energy price projections provided for life cycle cost analysis are obtained. Regional results are presented in greater detail in the Service Report Regional Projections of End-Use Energy Consumption and Prices through 2000 (SR/EAFD/8801), October 1988.

The PC–AEO model relies on certain exogenous forecasts and assumptions in the formulation of its price projections. The projected world oil price is a principal exogenous variable. World oil price assumptions for PC–AEO are developed using EIA's Oil Market Simulation Model (OMS), which projects market economies' oil production, consumption, and prices, including pricing patterns of the Organization of Petroleum Exporting Countries. Complete documentation on OMS is available in Oil Market Simulation Model User's Manual (DOE/EIA–M028), May 1988.

ASSUMPTION FOR ANNUAL ENERGY OUTLOOK 1987

	1990	1995	2000
World Oil Price (1988 $/Barrel)	$18	$22	$31
Annual Change in Real GNP (percent)	2.5	2.3	2.6

Certain economic statistics, such as projected growth rates of the economy, are the other main exogenous input assumptions to PC–AEO. (These particular input assumptions are based on forecasts by Data Resources, Inc., revised to be consistent with EIA oil price assumptions). A complete description of the basis for macroeconomic simulations is presented in the documentation for the PC–AEO model, noted above.

Further assumptions are made in the specification of sub-models for individual end-use demand sectors and fuel supplies, noted above. The submodels largely reflect an analysis of historical trends for energy use and production patterns. No changes are assumed concerning the Federal laws and regulations affecting energy use, production, and pricing. Several key assumptions also included in the base case forecast are:

1. Natural gas prices are not constrained by Federal Energy Regulatory Commission regulations.

2. Undiscovered recoverable resources of oil and gas reflect estimates by the United States Geological Survey (USGS Open File Report 81–192, 1981).

3. No production from the Alaska National Wildlife Refuge (ANWR) or offshore Northern California will be forthcoming before 2000. No gas pipeline from Alaska's North Slope will be in place before 2000.

4. Nuclear electric utility projects currently deferred or canceled will not be reactivated. Otherwise, all currently planned or announced utility projects will be completed as schedule.

5. Electric utility load factors, reserve margins, and plant efficiencies are fixed over the forecast for each of 4 Census regions. Peaking/nonpeaking capacity mixes change over the forecast.

6. The price effects of wheeling electricity between regions are accounted for indirectly to the extent that the PC AEO model results are calibrated to those of a more detailed model (EIA's Intermediate Future Forecasting Model) that does represent wheeling.

For a more in-depth discussion of data, methods, assumptions, and limitations underlying the AEO projections used for life cycle cost analysis, the reader should refer to the Service Report Assumptions for the Annual Energy Outlook 1987 (SR/EAFD/88-02), October 1988.

The Extended Price Methodology. In general, if EIA has conducted any recent price analyses in addition to the Annual Energy Outlook that present projections from PC–AEO for a longer horizon and are consistent with the Annual Energy Outlook assumptions, those extended projections will be used. A description of the assumptions used in developing those projections will also be provided in an EIA service report.

For today's proposal, a separate methodology to develop extended price projections (i.e., beyond the Annual Energy Outlook horizon) has been developed. Extended projections (for 2001–2013) were developed for life cycle analysis based on Annual Energy Outlook results, but independent of the PC–AEO model. These prices are presented in the EIA Service Report Average Regional Energy Price Projections to the Year 2013 (SR/EAFD/88–03), October 1988.

World oil price forecasts beyond 2000 were developed using EIA's Oil Market Simulation (OMS) model. Complete documentation on OMS is available in Oil Market Simulation Model User's Manual (DOE/EIA–MO28), May 1988. Refined petroleum product prices for all sectors grow at the same rate as world oil prices, with adjustments to account for the cost effects of expected changes in domestic refinery activity. (For example, distillate prices may be assumed to increase at a slightly greater rate than gasoline prices, as gasoline consumption stabilizes and diesel consumption increases.) The national average wellhead price for natural gas grows at the same rate as world oil prices. End-use natural gas prices for all sectors grow at the same rate as the respective competing oil product in each sector. (For residential and commercial sectors the competing oil product was distillate fuel. For industrial, it was residual fuel.)

The national average minemouth price for coal grows at the average 1987–2000 rate for minemouth coal projected in the Annual Energy Outlook base case. End-use coal prices for all sectors grow at the same rate as minemouth prices.

Electricity prices for all sectors grow at a rate commensurate with the contribution of the weighted average industrial prices of residual fuel oil, natural gas, and coal (year 2000 weights

based on base case Annual Energy Outlook national results) to the fuel component of electricity prices. The fuel, capital, and operating and maintenance share of electricity prices are adjusted from the base case to reflect the consequences of assumed capacity expansion in the next century. These components are described in the EIA Service Report Assumptions for the Annual Energy Outlook 1987 (SR/EAFD/88-02), October 1988.

4. Investment Costs

Today's proposed rule would revise section 436.14(f) which required Federal agencies to assume "that investment costs are a lump sum occurring at the beginning of the base year and constituting 90 percent of the actual investment costs." The proposed revision would make the base year lump sum assumption permissive so that Federal agencies, particularly those who perform life cycle cost analyses on computers, have the flexibility to achieve greater accuracy by taking into account the reality that construction on a large project may occur over a period of years or that construction begins several years after the base year. The proposed revision also would delete the second part of the assumption, requiring in effect the assumption of a 10 percent credit. Originally inspired by the 10 percent Federal energy tax credit, this requirement is proposed for deletion because the tax credit has expired.

5. Accrual of Cash Flows

For purposes of simplicity, subsections (g) and (h) of section 436.14 inflexibly required Federal agencies to make certain assumptions about the occurrence of cash flows. The former required the assumption that energy costs and non-fuel operation and maintenance costs begin to accrue at the beginning of the base year. The latter required the assumption that non-investment costs in any year occur in a lump sum at the end of the year in which they are incurred.

The proposed rule would make these two provisions more flexible. Federal agencies, particularly those with computer capability, could choose to assume that energy costs and non-fuel operation and maintenance costs begin to accrue in the actual future year when construction is projected to be complete and a building energy system will be in service. (It would be inappropriate to make this choice unless an agency is assuming that investment costs are incurred over more than one year.) Federal agencies also could choose to assume that non-investment costs occur at some point during the year other than year's end. As long as each Federal agency makes the latter choice consistently for all of its projects, there is no need to impose the uniformity which has existed under the current rule.

6. Estimating Non-Fuel Costs

DOE considered allowing agencies to include their own projected rates of price change in estimating non-fuel costs if those estimates are faster or slower than the projected rate of general price inflation, and provided there is a compelling rationale for it. While DOE decided against this change for the Federal Energy Management Program, it recognizes that agencies may wish to make this modification when using the LCC methodology to evaluate non-energy projects.

7. Shared Savings Projects

Under Public Law 99-272, Congress authorized contractual arrangements under which a contractor privately finances a building energy system and is compensated with a share of the energy cost savings over time. A privately financed project, without significant Federal investment costs, is presumed cost effective under 10 CFR 436.13.

8. Adjusted Internal Rate of Return (AIRR) and Rank Ordering

Today's proposed rule would expand § 436.18(c) to allow, as an alternative to the savings-to-investment ratio method, the use of the adjusted internal rate of return method for ranking energy conservation measures. It would add a new § 436.22 to describe the method. DOE is proposing to add the adjusted internal rate of return method for ranking energy conservation measures to meet the specific request by managers of certain agencies who prefer allocating budgets on the basis of a comparison of rates of return of competing energy conservation measures rather than a comparison of savings-to-investment ratios. The two methods, the savings-to-investment ratio as described in § 435.21 and the adjusted internal rate of return as described in § 436.22, will result in consistent rankings. Section 436.18(f), the provision on rank ordering, has been revised to include adjusted internal rate of return. For clarification, it also has been revised to provide for maximizing net savings in situations where, for a given fiscal year, available appropriations cannot be exhausted by taking projects only in order of their savings to investment ratio or their adjusted internal rate of return.

9. Use of Software

Section 436.18 indicates procedures to be followed by agencies in determining cost-effectiveness under subpart A of 10 CFR part 436. In recent years computer software has become available which has the potential to improve the speed as well as reduce errors and the cost of LCC analysis. In order to assure conformance with subpart A when computerized LCC analysis is used, § 436.18(b) was added. Section 436.18(b) provides for use of DOE-provided software or software which is consistent with supart A. Software will be regarded as consistent with subpart A if the results of life cycle cost analyses are substantially the same as the results when DOE-provided software is used.

10. Uncertainty

Section 436.23 provides for "sensitivity analysis" to probe uncertainty about cost data. This provision has been criticized by some Federal agencies because "sensitivity analysis" was too narrow as a descriptive term and because nothing was said about how to use the results. To respond to these criticisms, DOE is proposing to broaden the section by extending it to any kind of useful uncertainty analysis which constitutes a standard engineering economics method (e.g., probabilistic analysis). DOE is also proposing that for analyses showing substantial doubt, agencies obtain more reliable date or eliminate a building energy system alternative from consideration until such data can be obtained.

C. Subpart B—Preliminary Energy Audits

Subpart C—Guidelines for Buildings Plans

Subpart D—Solar Demonstration Program

Subpart F—General Operations Planning Guidelines

DOE today proposes to delete and reserve subparts B, C, and D, because the requirements for them under NECPA and the Executive Order are amendments to eliminate a reference to subpart C dealing with process energy intensive buildings and substitute an appropriate substitute reference to section 543 of NECPA.

IV. Environmental Review

Pursuant to section 7(c)(2) of the Federal Energy Administration Act of 1974, a copy of this notice has been submitted to the Administrator of the Environmental Protection Agency for his comments concerning the impact of this

proposal on the quality of the environment.

Since the life cycle costing methodology is used only to make cost effective decisions for the reduction of energy usage, DOE has determined that using a market-based discount rate and average costs, and clarifying the methodology is not a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969. Consequently, neither an Environmental Impact Statement nor an Environmental Assessment is required for the proposed rule.

V. Review Under Executive Order 12291

The proposed rule has been reviewed in accordance with Executive Order 12291, which directs that all regulations achieve their intended goals without imposing unnecessary burdens on the economy, on individuals, on public or private organizations, or on State and local governments. The Executive Order also requires that regulatory impact analyses be prepared for "major rule." The Executive Order defines "major rule" as any regulation that is likely to 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, and local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The proposed rule would amend an already existing life cycle costing methodology. DOE has determined that the incremental effect of today's proposed amendments, if finalized, will not have the magnitude of effects on the economy to bring the proposed rule within the definition of "major rule."

Pursuant to the Executive Order the proposed rule was submitted to OMB for pre-publication regulatory review.

VI. Review Under Executive Order 12612

Executive Order 12612 requires that rules be reviewed for Federalism effects on the institutional interests of States and local governments, and if the effects are sufficiently substantial, preparation of Federalism assessment is required to assist senior policymakers. The rulemaking to revise 10 CFR part 436 will not have any substantial direct effects on State and local governments. The final rule will affect Federal agency building and operations which are not subject to direct State regulation.

VII. Regulatory Flexibility Act

The Regulatory Flexibility Act, Public Law 96-345 (5 U.S.C. 601-612), requires that an agency prepare an initial regulatory flexibility analyses to be published at the time the proposed rule is published. This requirement (which appears in section 603) does not apply if the agency "certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." The proposed rule only modifies the process by which the life cycle cost effectiveness of Federal buildings is determined. Therefore, DOE certifies that this rule, if promulgated, would not have a "significant economic impact on a substantial number of small entities."

VIII. Public Comment Procedures

A. Written Comment Procedures

Interested persons are invited to participate in this rulemaking by submitting data, views, or arguments with respect to the proposed procedures, standards, and criteria set forth in this Notice. Comments should be submitted to the address indicated in the ADDRESSES section of this Notice and should be identified on the outside of the envelope and on documents submitted to DOE with the designation "FEMP Life Cycle Costs—Proposed Rule (Docket No. CAS-RM-79-107)." Six copies must be submitted. All comments received by the date indicated in the "DATES" section and all other relevant information will be considered by DOE before final action is taken on the proposed regulations.

Pursuant to the provisions of 10 CFR 1004.11, any person submitting information which he or she believes to be confidential and exempt by law from public disclosure should submit one complete copy of the document and six copies, if possible, from which the information believed to be confidential has been deleted. DOE will make its own determination with regard to the confidential status of the information and treat it according to its determination.

B. Public Hearing

1. Procedures for Submitting Requests to Speak

The time and place of the public hearing are indicated at the beginning of this notice. DOE invites any person who has an interest in today's proposed rule, or who is a representative of a group or class of persons that has an interest in the proposed amendments, to make a request for an opportunity to make an oral presentation. Such requests should be directed to the address indicated at the beginning of this notice. Requests may be hand delivered to such address between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday. Requests should be labeled: FEMP-LIFE CYCLE COSTS, DOCKET NO. CAS-RM-79-107 both on the document and on the envelope.

The person making the request should give a telephone number where he or she may be contacted. Each person to be heard must submit six copies of his or her statement at the hearing registration desk. In the event any person wishing to testify cannot meet this requirement, alternative arrangements can be made with the Hearings and Dockets Office/CE in advance of the hearing by so indicating in the letter requesting to make an oral presentation.

2. Conduct of Hearing

DOE reserves the right to select the persons to be heard at the hearing, to schedule the respective presentations, and to establish the procedures governing the conduct of the hearing. Each presentation shall be limited to 20 minutes.

A DOE official will be designated to preside at the hearing. The hearing will not be a judicial or an evidentiary-type hearing, but will be conducted in accordance with 5 U.S.C. 553. At the conclusion of all initial oral statements each person will be given the opportunity to make a rebuttal statement. The rebuttal statements will be given in order in which the official statements were made and will be subject to time limitations.

Any interested person who wishes to ask a question at the hearing may submit the question, in writing, to the presiding officer to be asked of any person making a statement at the hearing. The presiding officer will determine whether the question is relevant and whether time limitations permit it to be presented for an answer.

A transcript of the hearing will be made and the entire record of the hearing, including the transcript, will be retained by DOE and made available for inspection at the DOE Freedom of Information Reading Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday. For more information concerning the availability of records at the Freedom of Information Reading Room, call (202) 586-6020. In addition, any person may purchase a copy of the

hearing transcript from the court reporter.

List of Subjects in 10 CFR Part 436

Energy conservation Federal buildings and facilities, Renewable energy resources, Reporting and recordkeeping requirements.

Issued in Washington, DC, January 18, 1990.

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

PART 436—[AMENDED]

10 CFR part 436 is proposed to be amended as follows:

1. The authority citation for 10 CFR part 436 continues to read as follows:

Authority: Energy Policy and Conservation Act, as amended, 42 U.S.C. 6361; Executive Order 11912, as amended, 42 FR 37523 (July 20, 1977) National Energy Conservation Policy Act, Title V, Part 3, as amended. 42, U.S.C. 8251–8261.

2A. Sections 436.1 and 436.2 are revised to read as follows:

§ 436.1 Scope.

This part sets forth the rules for Federal energy management and planning programs to reduce Federal energy consumption and to promote life cycle cost effective investments in building energy systems and energy conservation measures for Federal buildings.

§ 436.2 General objectives.

The objectives of Federal energy management and planning programs are:

(a) To apply energy conservation measures to, and improve the design for construction of Federal buildings such that the energy consumption per gross square foot of Federal buildings in use during the fiscal year 1995 is at least 10 percent less than the energy consumption per gross square foot in 1985;

(b) To promote the methodology and procedures for conducting life cycle cost analyses of proposed investments in building energy systems and energy conservation measures; and

(c) To promote efficient use of energy in all agency operations through general operations plans.

2B. Subpart A of 10 CFR part 436 is revised as follows:

Subpart A—Methodology and Procedures for Life Cycle Cost Analyses

Sec.

Subpart A—Methodology and Procedures for Life Cycle Cost Analyses

§ 436.10 Purpose.

This subpart establishes a methodology for estimating and comparing the life cycle costs of Federal buildings, for determining the life cycle cost effectiveness of energy conservation measures, and for rank ordering life cycle cost effective energy conservation measures in order to attain the 10 percent Btu per gross square foot reduction goal in § 436.2(a) in the most cost-effective manner practicable.

§ 436.11 Definitions.

As used in this subpart—

"Base Year" means the fiscal year in which a cycle cost analysis is conducted.

"Building energy system" means an energy conservation measure or any portion of the structure of a building or any mechanical, electrical, or other functional system supporting the building, the nature or selection of which for a new building influences significantly the cost of energy consumed.

"Component price" means any variable sub-element of the total charge for a fuel or energy, including but not limited to such charges as "demand charges," "off-peak charges" and seasonal charges."

"Demand charge" means that portion of the charge for electric service based upon the plant and equipment costs associated with supplying the electricity consumed.

"DOE" means Department of Energy.

"Energy conservation measures" means measures that are applied to an existing Federal building that improve energy efficiency and are life cycle cost effective and that involve energy conservation, cogeneration facilities, renewable energy sources, improvements in operation and maintenance efficiencies, or retrofit activities.

"Federal agency" means *"agency"* as defined by 5 U.S.C. 551(1).

"Federal building" means an energy conservation measure or any building, structure, or facility, or part thereof, including the associated energy consuming support systems, which is constructed, renovated, leased, or purchased in whole or in part for use by the Federal Government and which consumes energy. Such term also means a collection of such buildings, structures, or facilities and the energy consuming support systems for such collection.

"Investment costs" means the initial costs of design, engineering, purchase, construction, and installation exclusive of sunk costs.

"Life Cycle Cost" means the total cost of owning, operating and maintaining a building over its useful life, (including its fuel, energy, labor, and replacement components), determined on the basis of a systematic evaluation and comparison of alternative building systems, except that in the case of leased buildings, the life cycle cost shall be calculated over the effective remaining term of the lease.

"Non-recurring costs" means costs that are not uniformly incurred annually over the study period.

"Non-fuel operation and maintenance costs" means material and labor cost for routine upkeep, repair and operation exclusive of energy cost.

"Recurring costs" means future costs that are incurred uniformly and annually over the study period.

"Replacement costs" means future cost to replace a building energy system, energy conservation measure, or any component thereof.

"Retrofit" means installation of a building energy system alternative in an existing Federal building.

"Salvage value" means the value of any building energy system removed or replaced during the study period, or recovered through resale or remaining at the end of the study period.

"Study period" means the time period covered by life cycle cost analysis.

"Sunk costs" means costs incurred prior to the time at which the life cycle cost analysis occurs.

"Time-of-day rate" means the charge for service during periods of the day based on the cost of supplying services during various times of the day.

§ 436.12 Life cycle cost methodology.

The life cycle cost methodology for this part is a systematic analysis of relevant costs, excluding sunk costs, over a study period, relating initial costs to future costs by the technique of discounting future costs to present values.

§ 436.13 Presuming cost-effectiveness results.

(a) If the investment and other costs for an energy conservation measure

considered for retrofit to an existing Federal building or a building energy system considered for incorporation into a new building design are insignificant, a Federal agency may presume that such a system is life-cycle cost-effective without further analysis.

(b) A Federal agency may presume that an investment in an energy conservation measuring retrofit to an existing Federal building is not life cycle cost-effective if the Federal building is—

(1) Occupied under a short-term lease without a renewal option or with a renewal option which is not likely to be exercised;

(2) Occupied under a lease which includes the cost of utilities in the rent and does not provide a pass through of energy savings to the government; or

(3) Scheduled to be demolished or retired from service within three years.

§ 436.14 Methodological assumptions.

(a) Each Federal Agency shall discount to present values the future cash flows established in either current or constant dollars, as appropriate, in accordance with the nominal or real discount rate, and related tables, published in the annual supplement to the Life Cycle Costing Manual for the Federal Energy Management Program (NIST85–3273) and determined annually by DOE as follows—

(1) The nominal discount rate shall be a three-month average of the composite yields of all outstanding U.S. Treasury bonds neither due nor callable in less than ten years, as most recently reported by the Federal Reserve Board; and

(2) The real discount rate shall be a three-month average of the composite yields of all outstanding U.S. Treasury bonds neither due nor callable in less than ten years, as most recently reported by the Federal Reserve Board, adjusted to exclude estimated increases in the general level of prices consistent with projections of inflation in the most recent Economic Report of the President.

(b) Each Federal agency shall assume that energy prices will change at rates projected by DOE's Energy Information Administration using its base case assumptions and its computer model PC–AEO, and published annually no later than the beginning of the fiscal year in the Annual Supplement to the Life Cycle Costing Manual for the Federal Energy Management Program, in tables consistent with the discount rate determined by DOE under paragraph (a) of this section, except that—

(1) If the Federal agency is using component prices under § 436.14(c), that agency may use corresponding component escalation rates provided by the energy supplier.

(2) For Federal buildings in foreign countries, the Federal agency may use a "reasonable" escalation rate.

(c) Each Federal agency shall assume that the price of energy in the base year is the actual price charged for energy delivered to the Federal building and may use actual component prices as provided by the energy supplier.

(d) Each Federal agency shall assume that the appropriate study period is as follows:

(1) For evaluating and ranking alternative retrofits for an existing Federal building, the study period is the expected life of the retrofit, or 25 years from the beginning of beneficial use, whichever is shorter.

(2) For determining the life cycle costs or net savings of mutually exclusive alternatives for a given building energy system (e.g., alternative designs for a particular system or size of a new or retrofit building energy system), a uniform study period for all alternatives shall be assumed which is equal to—

(i) The estimated life of the mutually exclusive alternative having the longest life, not to exceed 25 years from the beginning of beneficial use with appropriate replacement and salvage values for each of the other alternatives; or

(ii) The lowest common multiple of the expected lives of the alternative, not to exceed 25 from the beginning of beneficial use with appropriate replacement and salvage values for each alternative.

(3) For evaluating alternative designs for a new Federal building, the study period extends from the base year through the expected life of the building or 25 years from the beginning of beneficial use, whichever is shorter.

(e) Each Federal agency shall assume that the expected life of any building energy system is the period of service without major renewal or overhaul, as estimated by a qualified engineer or architect, as appropriate, or any reliable source except that the period of service of a building energy system shall not be deemed to exceed the expected life of the owned building, or the effective remaining term of the leased building (taking into account renewal options likely to be exercised).

(f) Each Federal agency may assume that investment costs are a lump sum occurring at the beginning of the base year, or may discount future investment costs to present value using the appropriate present worth factors under paragraph (a) of this section.

(g) Each Federal agency may assume that energy costs and non-fuel operation and maintenance costs begin to accrue at the beginning of the base year, or, when actually projected to occur.

(h) Each Federal agency may assume that costs occur in a lump sum at any time within the year in which they are incurred.

(i) This section shall not apply to calculations of estimated simple payback time under § 436.22 of this subpart.

§ 436.15 Formatting cost data.

In establishing cost data under §§ 436.16 and 436.17 and measuring cost effectiveness by the modes of analysis described by § 436.19 through § 436.22, a format for accomplishing the analysis which includes all required input data and assumptions shall be used. Subject to section 418(b), Federal agencies are encouraged to use worksheets and computer software referenced in the Life Cycle Cost Manual for the Federal Energy Management Program.

§ 436.16 Establishing non-fuel cost categories.

(a) The relevant non-fuel cost categories are—

(1) Investment costs;

(2) Non-fuel operation and maintenance cost;

(3) Replacement cost; and

(4) Salvage value.

(b) The present value of recurring costs is the product of the base year value of recurring costs as multiplied by the appropriate uniform present worth factor under § 436.14, or as calculated by computer software indicated in § 436.18(b) and used with the official discount rate and escalation rate assumptions under § 436.14. When recurring costs begin to accrue at a later time, subtract the present value of recurring costs over the delay, calculated using the appropriate uniform present worth factor for the period of the delay, from the present value of recurring costs over the study period, or, if using computer software, indicate a delayed beneficial occupancy date.

(c) The present value of non-recurring cost under § 436.16(a) is the product of the non-recurring costs as multiplied by appropriate single present worth factors under § 436.14 for the respective years in which the costs are expected to be incurred, or as calculated by computer software provided or approved by DOE and used with the official discount rate and escalation rate assumptions under § 436.14.

§ 436.17 Establishing energy cost data.

(a) Each Federal agency shall establish energy costs in the base year

by multiplying the total units of energy used in the base year by the price per unit of energy in the base year as determined in accordance with § 436.14(c).

(b) When energy costs begin to accrue in the base year, the present value of energy costs over the study period is the product of energy costs in the base year as established under § 436.17(a), multiplied by the appropriate modified uniform present worth factor adjusted for energy price escalation for the applicable region, sector, fuel type, and study period consistent with § 436.14, or as calculated by computer software provided or approved by DOE and used with the official discount rate and escalation rate assumptions under § 436.14. When energy costs begin to accrue at a later time, subtract the present value of energy costs over the delay, calculated using the adjusted, modified uniform present worth factor for the period of delay, from the present value of energy costs over the study period, or, if using computer software, indicate a delayed beneficial occupancy date.

§ 436.18 Measuring cost-effectiveness.

(a) In accordance with this section, each Federal agency shall measure cost-effectiveness by combining cost data established under §§ 436.16 and 436.17 in the appropriate mode of analysis as described in § 436.19 through § 436.22.

(b) Federal agencies performing LCC analysis on computers shall use either the Federal Buildings Life Cycle Costing (FBLCC) software provided by DOE or software consistent with this subpart.

(c) Replacement of a building energy system with an energy conservation measure by retrofit to an existing Federal building or by substitution in the design for a new Federal building shall be deemed cost-effective if—

(1) Life cycle costs, as described by § 436.19, are estimated to be lower; or

(2) Net savings, as described by § 436.20, are estimated to be positive; or

(3) The savings-to-investment ratio, as described by § 436.21, is estimated to be greater than one; or

(4) The adjusted internal rate of return, as described by § 436.22, is estimated to be greater than the discount rate as set by DOE.

(d) As a rough measure, each Federal agency may determine estimated simple payback time under § 436.23, which indicates whether a retrofit is likely to be cost-effective under one of the four calculation methods referenced in § 436.18(c). An energy conservation measure alternative is likely to be cost-effective if estimated payback time is significantly less than the useful life of that system, and of the Federal building in which it is installed.

(e) Mutually exclusive alternatives for a given building energy system, considered in determining such matters as the optimal size of a solar energy system, the optimal thickness of insulation, or the best choice of double-glazing or triple-glazing for windows, shall be compared and evaluated on the basis of life cycle costs or net savings over equivalent study periods. The alternative which is estimated to result in the lowest life cycle costs or the highest net savings shall be deemed the most cost-effective because it tends to minimize the life cycle cost of Federal building.

(f) When available appropriations will not permit all cost-effective energy conservation measures to be undertaken, they shall be ranked in descending order of their savings-to-investment ratios, or their adjusted internal rate of return, to establish priority. If available appropriations cannot be fully exhausted, for a fiscal year, by taking all budgeted energy conservation measures according to their rank, the set of energy conservation measures that will maximize net savings for available appropriations should be selected.

(g) Alternative building designs for new Federal buildings shall be evaluated on the basis of life cycle costs. The alternative design which results is the lowest life cycle costs for a given new building shall be deemed the most cost-effective.

§ 436.19 Life cycle costs.

Life cycle costs are the sum of the present values of—

(a) Investment costs, less salvage values at the end of the study period;

(b) Non-fuel operation and maintenance costs;

(c) Replacement costs less salvage costs of replaced building systems; and

(d) Energy costs.

§ 436.20 Net savings.

For a retrofit project, net savings may be found by subtracting the life cycle costs based on the proposed project from life cycle costs based on not having it. For a new building design, net savings is the difference between the life cycle costs of an alternative design and the life cycle costs of the basic design.

§ 436.21 Savings-to-investment ratio.

The savings-to-investment ratio is the ratio of the present value savings to the present value costs of an energy conservation measure. The numerator of the ratio is the present value of net savings in energy and non-fuel operation and maintenance costs attributable to the proposed energy conservation measure. The denominator of the ratio is the present value of the net increase in investment and replacement costs less salvage value attributable to the proposed energy conservation measure.

§ 436.22 Adjusted internal rate of return.

The adjusted internal rate of return is the overall rate of return on an energy conservation measure. It is calculated by subtracting 1 from the Nth root of the ratio of the terminal value of savings to the present value of costs, where N is the number of years in the study period. The numerator of the ratio is calculated by using the discount rate to compound forward to the end of the study period the yearly net savings in energy and non-fuel operation and maintenance costs attributable to the proposed energy conservation measure. The denominator of the ratio is the present value of the net increase in investment and replacement costs less salvage value attributable to the proposed energy conservation measure.

§ 436.23 Estimated simple payback time.

The estimated simple payback time is the number of years required for the cumulative value of energy cost savings less future non-fuel costs to equal the investment costs of the building energy system, without consideration of future price changes or discount rates.

§ 436.24 Uncertainty analyses.

If particular items cost data or timing of cash flows are uncertain and are not fixed under § 436.14, Federal agencies may examine the impact of uncertainty on the calculation of life cycle cost effectiveness or the assignment of rank order by conducting additional analyses using any standard engineering economics method such as sensitivity and probabilistic analysis. If additional analysis casts substantial doubt on the life cycle cost analysis results, a Federal agency should consider obtaining more reliable data or eliminating the building energy system alternative.

Appendix A to part 436 [Removed]

Subparts B–D [Removed and Reserved]

3. 10 CFR part 436 is further proposed to be amended by removing Appendix A to subpart A, and by removing and reserving subparts B, C and D.

4. 10 CFR part 436 is further proposed to be amended by removing the last two sentences of § 436.100(a) and by revising § 436.100(b) to read:

§ 436.100 Purpose and scope.

* * * * *

(b) *Scope.* This subpart applies to all general operations of Federal agencies and is applicable to management of all energy used by Federal agencies that is excluded from coverage by subpart A of this part pursuant to § 543(a)(2) of part 3 of title V of the National Energy Conservation Policy Act, as amended (42 U.S.C. 8251–8261).

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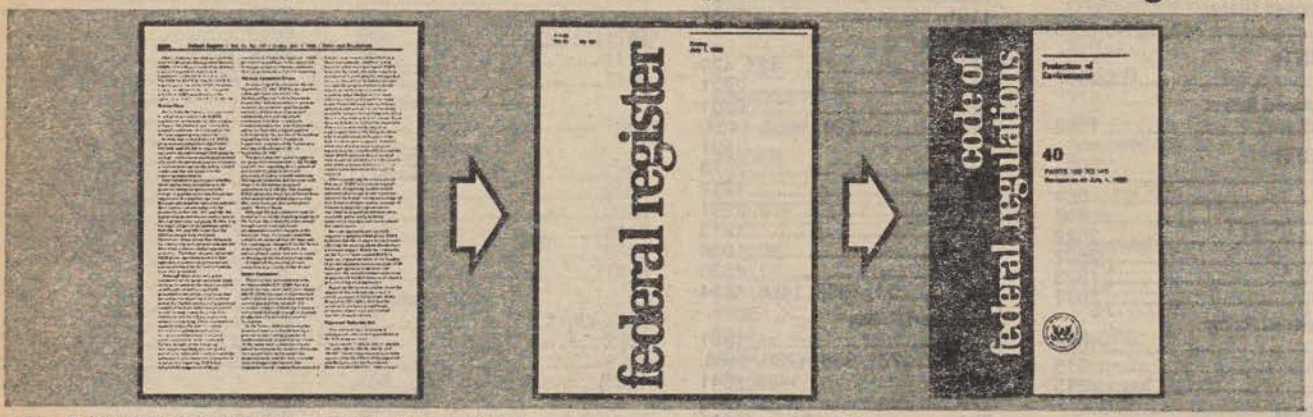

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